CHAPTER 7
TAXATION

ARTICLE 1
ADMINISTRATION

7-1-1. Short title.

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

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

ANNOTATIONS

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

7-1-2. Applicability.

The Tax Administration Act [this article] applies to and governs:

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

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

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

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

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

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

(6) any municipal local option gross receipts tax;

(7) any county local option gross receipts tax;

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

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

(10) petroleum products loading fee, which fee shall be considered a tax for the purpose of the Tax Administration Act;

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

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

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

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

(15) Investment Credit Act [Chapter 7, Article 9A NMSA 1978];

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

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

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

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

(20) Filmmaker's Credit Act; and

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

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

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

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

(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;

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) Special Fuels Tax Act;

(3) 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;

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

(5) 911 emergency surcharge and the network and database surcharge, which surcharges shall be considered taxes for purposes of the Tax Administration Act;

(6) the solid waste assessment fee authorized by the Solid Waste Act, which fee shall be considered a tax for purposes of the Tax Administration Act;

(7) 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

(8) the gaming tax imposed pursuant to the Gaming Control Act [60-2E-1 to 60-2E-61 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.

ANNOTATIONS

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

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

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

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

The 1992 amendment, effective July 1, 1992, added "and any state gross receipts tax" at the end of Subsection A(3); added present Subsection A(11); redesignated former Subsections A(11) to A(13) as present Subsections A(12) to A(14); deleted former Subsection A(14), which read: "County and Municipal Gasoline Tax Act"; added "Uniform" at the beginning of Subsection C(5); and added Subsection C(7).

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

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

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

The 1997 amendment, in Subsection A, deleted Paragraph (6) referring to the Banking and Financial Corporations Tax Act, and redesignated former Paragraphs (7) to (22) as Paragraphs (6) to (21); in Subsection C, deleted "and" at the end of Paragraph (6) and added Paragraph (8). Laws 1997, ch. 190 does not contain an effective date provision applicable to this section, but, pursuant to N.M. Const., art. IV, § 23, the amendment is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

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

Solid Waste Act. - See 74-9-1 NMSA 1978 and notes thereto.

Special Fuels Tax Act. - The Special Fuels Tax Act, referred to in Paragraph (2) of Subsection C, was compiled as Chapter 7, Article 16 NMSA 1978 before being repealed by Laws 1992, ch. 51, § 23, effective January 1, 1993. For present comparable provisions, see Chapter 7, Article 16A NMSA 1978.

Filmmaker's Credit Act. - The Filmmaker's Credit Act, referred to in Paragraph A(21), was repealed effective July 1, 1996 by Laws 1995, ch. 80, § 2. Prior to its repeal it was compiled as Chapter 7, Article 9B NMSA 1978.

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

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

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

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

ANNOTATIONS

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

7-1-3. Definitions.

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

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

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

C. "director" means the secretary;

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

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

F. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended;

G. "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;

H. "local option gross receipts tax" means a tax authorized to be imposed by a county or municipality upon the taxpayer's gross receipts, as that term is defined in the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978], and required to be collected by the department at the same time and in the same manner as the gross receipts tax; "local option gross receipts tax" includes the taxes imposed pursuant to the Municipal Local Option Gross Receipts Taxes Act [Chapter 7, Article 19D NMSA 1978], Supplemental Municipal Gross Receipts Tax Act [7-19-10 to 7-19-18 NMSA 1978], Special Municipal Gross Receipts Tax Act [7-19A-1 to 7-19A-7 NMSA 1978], County Local Option Gross Receipts Taxes Act [Chapter 7, Article 20E NMSA 1978], Local Hospital Gross Receipts Tax Act [7-20C-1 to 7-20C-15 NMSA 1978], County Correctional Facility Gross Receipts Tax Act [7-20F-3 to 7-20F-12 NMSA 1978] and such other acts as may be enacted authorizing counties or municipalities to impose taxes on gross receipts, which taxes are to be collected by the department in the same time and in the same manner as it collects the gross receipts tax;

I. "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;

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

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

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

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

N. "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, any federal, state or other governmental unit or subdivision, or an agency, department or instrumentality thereof; "person", as used in Sections 7-1-72 through 7-1-74 NMSA 1978, also includes an officer or employee of a corporation, a

member or employee of a partnership or any individual who, as such, is under a duty to perform any act in respect of which a violation occurs;

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

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

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

R. "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;

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

T. "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;

U. "tax" means the total amount of each tax imposed and required to be paid, withheld and paid or collected and paid under provision of any law made subject to administration and enforcement according to the provisions of the Tax Administration Act and, unless the context otherwise requires, includes the amount of any interest or civil penalty relating thereto; "tax" also means any amount of any 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 and includes, unless the context requires otherwise, the amount of any interest or civil penalty relating thereto;

V. "taxpayer" means a person liable for payment of any tax, a person responsible for withholding and payment or for collection and payment of any tax or a person to whom an assessment has been made, if the assessment remains unabated or the amount thereof has not been paid; and

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

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

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

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

History: 1953 Comp., § 72-13-15, enacted by Laws 1965, ch. 248, § 3; 1977, ch. 249, § 41; 1979, ch. 144, § 3; 1982, ch. 18, § 2; 1985, ch. 65, § 3; 1986, ch. 20, § 3; 1987, ch. 169, § 1; 1992, ch. 55, § 2; 1993, ch. 5, § 2; 1994, ch. 51, § 2; 1997, ch. 67, § 1.

ANNOTATIONS

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

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

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

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

Compiler's notes. - Section 7-1-5 NMSA 1978, referred to in Subsection Q, was repealed by Laws 1995, ch. 31, § 7.

Internal Revenue Code. - The federal Internal Revenue Code is codified as 26 U.S.C. § 1 et seq.

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

Right of United States to participate as party in certain cases. - In cases involving a challenge to state taxes as violating the federal government's sovereign and constitutional rights, the United States must be permitted to participate as a party. United States v. New Mexico, 455 F. Supp. 993 (D.N.M. 1978), rev'd in part on other

grounds, 624 F.2d 111 (10th Cir. 1980), aff'd, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

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

A. For the purpose of establishing or determining the extent of the liability of any person for any tax, for the purpose of collecting any tax or for the purpose of enforcing any statute administered under the provisions of the Tax Administration Act [this article], the secretary or the secretary's delegate is authorized to examine equipment and to examine and require the production of any pertinent records, books, information or evidence, to require the presence of any person and to require that person to testify under oath concerning the subject matter of the inquiry and to make a permanent record of the proceedings.

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

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

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

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

ANNOTATIONS

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

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

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

7-1-5. Repealed.

ANNOTATIONS

Repeals. - Laws 1995, ch. 31, § 7 repeals 7-1-5 NMSA 1978, as amended by Laws 1986, ch. 20, § 5, relating to administrative regulations, rulings, instructions and orders issued by the secretary, effective July 1, 1995. For provisions of the former section, see the 1993 Replacement Pamphlet. For present comparable provisions, see 9-11-6.2 NMSA 1978.

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

A. All money received by the department with respect to laws administered under the provisions of the Tax Administration Act [this article] shall be deposited with the state treasurer before the close of the next succeeding business day after receipt of the money, except that for 1989 and every subsequent year, money received with respect to the Income Tax Act [Chapter 7, Article 2 NMSA 1978] during the period starting with the fifth day prior to the due date for payment of income tax for the year and ending on the tenth day following that due date shall be deposited before the close of the tenth business day after receipt of the money.

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

C. Disbursements for tax credits, tax rebates, refunds, the payment of interest, the payment of fees charged by attorneys or collection agencies for collection of accounts as agent for the department, the payment of credit card service charges on payments of taxes by use of credit cards, distributions and transfers shall be made by the department of finance and administration upon request and certification of their appropriateness by the secretary or the secretary's delegate. There are hereby created in the state treasury the "tax administration suspense fund", the "extraction taxes suspense fund" and the "workers' compensation collections suspense fund" for the purpose of making the disbursements authorized by the Tax Administration Act.

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

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

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

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

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

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

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

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

ANNOTATIONS

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

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

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

Compiler's notes. - Section 7-1-5 NMSA 1978, referred to in Subsection I, was repealed by Laws 1995, ch. 31, § 7.

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

Am. Jur. 2d, A.L.R. and C.J.S. references. - 85 C.J.S. Taxation §§ 1057 to 1067.

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

After the necessary disbursements have been made from the tax administration suspense fund, the money remaining, except for remittances received within the previous sixty days that are unidentified as to source or disposition, in the suspense fund as of the last day of the month shall be identified by tax source and distributed or transferred in accordance with the provisions of Sections 7-1-6.2 through 7-1-6.19, 7-1-6.24 through 7-1-6.26 and 7-1-6.28 through 7-1-6.40 NMSA 1978. After the necessary distributions and transfers, any balance shall be distributed to the general fund.

History: 1978 Comp., § 7-1-6.1, enacted by Laws 1983, ch. 211, § 6; 1985, ch. 154, § 1; 1986, ch. 20, § 7; 1990, ch. 6, § 19; 1990, ch. 86, § 3.

ANNOTATIONS

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

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

The 1990 amendments. - Laws 1990, ch. 6, § 19, effective February 13, 1990, substituting "7-1-6.30 NMSA 1978" for "7-1-6.18 NMSA 1978" at the end of the first sentence, was approved February 13, 1990. However, Laws 1990, ch. 86, § 3, effective July 1, 1990, substituting "Sections 7-1-6.2 through 7-1-6.19, 7-1-6.24 through 7-1-6.26 and 7-1-6.28 through 7-1-6.40 NMSA 1978" for "Sections 7-1-6.2 through 7-1-6.18 NMSA 1978" at the end of the first sentence, but not giving effect to the changes made

by the first 1990 amendment, was approved March 2, 1990. The section is set out as amended by Laws 1990, ch. 86, § 3. See 12-1-8 NMSA 1978.

Temporary provisions. - Laws 1999, ch. 10, § 1, effective June 18, 1999, appropriates $200,000 from the general fund to the taxation and revenue department for expenditure in fiscal year 2000 for the purpose of conducting a tax amnesty program as provided in the Act; further provides that for the taxes and tax acts administered under the Tax Administration Act, the secretary of taxation and revenue conduct a temporary amnesty program authorizing an amnesty period of no more than ninety days within the fiscal year 2000; further provides that the secretary of taxation and revenue is authorized to waive, during the amnesty period only, the interest and penalty provisions under §§ 7-1-67 and 7-1-69 on certain taxes; and further provides that of the tax revenue received during the amnesty period, $200,000 be distributed to the general fund and the remainder be transferred to the taxation and revenue department for the taxation and revenue information management systems project.

Laws 1999, ch. 10, § 2 provides that the provisions of the act are repealed effective July 1, 2001.

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

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

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

ANNOTATIONS

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

7-1-6.3. Repealed.

ANNOTATIONS

Repeals. - Laws 1993, ch. 65, § 23, repeals 7-1-6.3 NMSA 1978, as amended by Laws 1986, ch. 44, § 1, relating to distributions to the community alcoholism treatment and detoxification fund, effective July 1, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

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

(1) within that municipality;

(2) on land owned by the state, commonly known as the "state fair grounds", 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.

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

ANNOTATIONS

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

The 1992 amendment, effective August 1, 1992, added the Subsection A designation at the beginning of the formerly undesignated introductory paragraph and added "Except as provided in Subsection B of this section" at the beginning of the paragraph,

redesignated former Subsections A to D as Paragraphs (1) to (4) of Subsection A, revised the subparagraph designations in Subsection A(4), and added Subsection B.

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

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

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

ANNOTATIONS

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

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

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

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

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

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

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

History: 1978 Comp., § 7-1-6.7, enacted by Laws 1994, ch. 5, § 2; 1995, ch. 6, § 1; 1995, ch. 36, § 1.

ANNOTATIONS

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

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

1995 amendments. Laws 1995, ch. 6, § 1, effective August 1, 1995, amended this section by deleting "tax" following "gross receipts" in Subsection A; deleting former Subsection B relating to distribution of a percentage of the compensating tax attributable to the use of fuel specially prepared and sold for use in turboprop or jet-type engines; designating former Subsection C as Subsection B; and substituting "twenty-six hundredths" for "twenty-two hundredths" in Subsection B, and was approved March 9, 1995. Laws 1995, ch. 36, § 1, effective August 1, 1995, also amended this section by substituting "three and fifty nine hundredths percent" for "two and fifteen hundredths percent" in Subsection A and giving effect to the earlier amendment by Laws 1995, ch. 6, and was approved March 18, 1995. This section is set out as amended by Laws 1995, ch. 36, § 1.

Applicability. - Laws 1995, ch. 6, § 22 makes the provisions of §§ 1 through 9 and 21 of the act applicable to receipts received by the taxation and revenue department on or after August 1, 1995.

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

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

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

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

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

ANNOTATIONS

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

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

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

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

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

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

Applicability. - Laws 1995, ch. 6, § 22 makes the provisions of §§ 1 through 9 and 21 of the act applicable to receipts received by the taxation and revenue department on or after August 1, 1995.

Compiler's notes. - Subsection A of Laws 1995, ch. 6, § 20 repeals 7-1-6.8 NMSA 1978 as enacted by Laws 1994, ch. 5, § 5, relating to distributions to the motorboat fuel tax fund and which was to become effective August 1, 1997, effective June 16, 1995. See 1994 Cumulative Supplement.

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. 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 state highway and transportation department 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.

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.

ANNOTATIONS

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

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

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

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

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

Applicability. - Laws 1995, ch. 6, § 22 makes the provisions of §§ 1 through 9 and 21 of the act applicable to receipts received by the taxation and revenue department on or after August 1, 1995.

Compiler's notes. - Subsection A of Laws 1995, ch. 6, § 20 repeals 7-1-6.9 NMSA 1978, as enacted by Laws 1994, ch. 5, § 7, relating to distribution of gasoline taxes to municipalities and counties and which was to become effective August 1, 1997, effective June 16, 1995. For provisions of former section, see 1994 Cumulative Supplement.

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

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

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

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

History: 1978 Comp., § 7-1-6.10, enacted by Laws 1983, ch. 211, § 15; 1987, ch. 347, § 9; 1988, ch. 70, § 8; 1988, ch. 73, § 5; 1989, ch. 356, § 5; 1990, ch. 86, § 4; 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.

ANNOTATIONS

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

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

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

The 1992 amendment, effective July 1, 1992, substituted "corrective action fund" for "petroleum storage cleanup fund" in Subsection A(5).

1993 amendments. - Laws 1993, ch. 272, § 1, inserting "and Special Fuels Supplier Tax Act" near the end of the introductory paragraph of Subsection A, was approved April 7, 1993. However, Laws 1993, ch. 357, § 4, effective August 1, 1993, also amending this section by inserting "and the Special Fuels Supplier Tax Act; near the end of the introductory paragraph of Subsection A and adding Paragraph (8) of Subsection A, making related grammatical changes, was approved April 8, 1993. The section is set out as amended by Laws 1993, ch. 357, § 4. See 12-1-8 NMSA 1978.

The 1994 amendment, effective August 1, 1994, substituted "general fund" for "transportation distribution of the public school fund" in Paragraph A(8).

The 1995 amendment, effective August 1, 1995, substituted "Subsection B" for "Subsection C" in Paragraph A(1); substituted "amounts" for "amount" and inserted "and the local governments road fund" in Paragraph A(5); and substituted "local governments road fund" for "general fund" and "Section 7-1-6.39" for "Section 7-1-6.37" in Paragraph A(8).

The 1995 amendment, effective January 1, 1996, inserted "and the Alternative Fuel Tax Act" near the end of the introductory paragraph of Subsection A.

The 1996 amendment, effective July 1, 1996, substituted "Subsection B of Section 7-1-6.7" for "Subsection C of Section 7-1-6.7" in Paragraph A(1), rewrote Paragraph A(5), substituted "of the local" for "and the local" in Paragraph A(7), and deleted Paragraph A(8) which read "the amount distributed to the general fund pursuant to Section 7-1-6.37 NMSA 1978" and made related changes.

Applicability. - Laws 1995, ch. 6, § 22 makes the provisions of §§ 1 through 9 and 21 of the act applicable to receipts received by the taxation and revenue department on or after August 1, 1995.

Special Fuels Tax Act. - The Special Fuels Tax Act was formerly compiled as Chapter 7, Article 16 NMSA 1978 prior to its repeal in 1993.

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 county and municipality recreational fund in an amount equal to four and three-quarters 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 shall be made to the county and municipal cigarette tax fund in an amount equal to nine and one-half percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax.

C. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the cancer center at the university of New Mexico school of medicine in an amount equal to four and three-quarters percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax.

D. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the New Mexico finance authority in an amount equal to seven and one-eighth percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax.

History: 1978 Comp., § 7-1-6.11, enacted by Laws 1983, ch. 211, § 16; 1985, ch. 25, § 3; 1986, ch. 13, § 1; 1993, ch. 358, § 1.

ANNOTATIONS

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

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

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

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

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

A transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each municipality for which the department is collecting a local option gross receipts tax imposed by that municipality in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the net receipts attributable to the local option gross receipts tax imposed by that municipality, less any deduction for administrative cost determined and made by the department pursuant to the provisions of the act authorizing imposition by that municipality of the local option gross receipts tax and any additional administrative fee withheld pursuant to Subsection C of Section 1 [7-1-6.41 NMSA 1978] of this 1997 act.

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

ANNOTATIONS

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

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

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

Emergency clauses. - Laws 1997, ch. 125, § 14 makes the act effective immediately. Approved April 9, 1997.

Compiler's notes. - The phrase "this 1997 act" refers to Laws 1997, ch. 125, which amended this section.

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

A transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each county for which the department is collecting a local option gross receipts tax imposed by that county in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the net receipts attributable to the local option gross receipts tax imposed by that county, less any deduction for administrative cost determined and made by the department pursuant to the provisions of the act authorizing imposition by that county of the local option gross receipts tax and any additional administrative fee withheld pursuant to Subsection C of Section 1 [7-1-6.41 NMSA 1978] of this 1997 act.

History: 1978 Comp., § 7-1-6.13, enacted by Laws 1983, ch. 211, § 18; 1986, ch. 20, § 9; 1987, ch. 45, § 9; 1989, ch. 326, § 11; 1990, ch. 99, § 47; 1991, ch. 176, § 16; 1993, ch. 30, § 2; 1997, ch. 125, § 3.

ANNOTATIONS

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

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

Emergency clauses. - Laws 1997, ch. 125, § 14 makes the act effective immediately. Approved April 9, 1997.

Compiler's notes. - The phrase "this 1997 act" refers to Laws 1997, ch. 125, which amended this section.

7-1-6.14. Repealed.

ANNOTATIONS

Repeals. - Laws 1990, ch. 88, § 21 repeals 7-1-6.14 NMSA 1978, as amended by Laws 1987, ch. 45, § 21, relating to transfers to counties or municipalities of amounts of net receipts attributable to county or municipal gasoline tax, effective May 16, 1990. For provisions of former section, see 1988 Replacement Pamphlet.

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

A. The provisions of this section apply to:

(1) any distribution to a municipality of gross receipts taxes pursuant to Section 7-1-6.4 NMSA 1978 or of interstate telecommunications gross receipts tax pursuant to Section 7-1-6.36 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 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 municipality or a county of cigarette taxes pursuant to Sections 7-1-6.11, 7-12-15 and 7-12-16 NMSA 1978;

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

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

(10) any distribution to a municipality, county, school district or special district of oil and gas ad valorem production tax reduced as a result of a refund requested in December 1998 with respect to production of carbon dioxide.

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

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

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

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

F. The secretary is authorized to decrease a distribution 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 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 notice to redirect a distribution to a municipality or county, the secretary shall decrease or redirect the next designated distribution, and succeeding distributions 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.

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.

ANNOTATIONS

Bracketed material. - The bracketed material near the end of Subsection F was added by the compiler to account for language inadvertently dropped from the act when printing it for the governor's signature. The bracketed material was not enacted by the legislature and is not part of the law.

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

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

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

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

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

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

and "or to the New Mexico finance authority pursuant to written agreement" in the last sentence.

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

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

7-1-6.16. County equalization distribution.

A. Beginning on September 15, 1989 and on September 15 of each year thereafter, the department shall distribute to any county that has imposed or continued in effect during the state's preceding fiscal year a county gross receipts tax pursuant to the County Gross Receipts Tax Act an amount equal to:

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

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

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

C. As used in this section:

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

(2) "monthly amount" means an amount equal to the product of the net receipts received by the department in the month attributable to the state gross receipts tax multiplied by a fraction, the numerator of which is one-eighth percent and the denominator of which is the tax rate imposed by Section 7-9-4 NMSA 1978 in effect on the last day of the previous month;

(3) "population" means the most recent official census or estimate determined by the bureau of the census for the unit, or if neither is available, the most current estimated

population for the unit provided in writing by the bureau of business and economic research at the university of New Mexico; and

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

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

ANNOTATIONS

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

County Gross Receipts Tax Act. - The County Gross Receipts Tax Act, referred to in Subsection A, was repealed by Laws 1993, ch. 354, § 19. Prior to its repeal, the act was compiled as 7-20-1 to 7-20-9 NMSA 1978.

7-1-6.17. Repealed.

ANNOTATIONS

Repeals. - Laws 1987, ch. 264, § 25A repeals 7-1-6.17 NMSA 1978, as enacted by Laws 1986, ch. 112, § 1, relating to distribution of tobacco products tax, effective July 1, 1987. For provisions of former section, see 1986 Replacement Pamphlet.

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

Upon a certification by the state board of finance that the city of Santa Fe grants and conveys additional acreage for the Santa Fe national cemetery, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the veterans' national cemetery fund of the amounts designated pursuant to Section 7-2-28 NMSA 1978 as contributions to that fund; provided that, when the sum of contributions received on or after January 1, 1988 equals one million seventy thousand dollars ($1,070,000), any contributions received in excess of that amount shall be distributed to the substance abuse education fund, if House Bill 103 of the first session of the thirty-eighth legislature becomes law, or to the general fund if House Bill 103 does not become law.

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

ANNOTATIONS

Delayed repeals. - Laws 1987, ch. 257, § 6 repeals 7-1-6.18, as enacted by Laws 1987, ch. 257, § 1, relating to the distribution of the veterans' national cemetery fund, effective January 1 of the year following the year in which the sum of contributions received on or after January 1, 1988, pursuant to 7-2-28 NMSA 1978, equals or exceeds $1,070,000.

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

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

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

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

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

ANNOTATIONS

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

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

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

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

Applicability. - Laws 1995, ch. 6, § 22 makes the provisions of §§ 1 through 9 and 21 of the act applicable to receipts received by the taxation and revenue department on or after August 1, 1995.

Compiler's notes. - Subsection A of Laws 1995, ch. 6, § 20 repeals 7-1-6.19 NMSA 1978, as enacted by Laws 1994, ch. 5, § 10, relating to the creation of and distributions

to county government road fund and which was to become effective August 1, 1997, effective June 16, 1995. For provisions of section, see 1994 Cumulative Supplement.

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

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

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

ANNOTATIONS

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

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

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

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

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

ANNOTATIONS

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

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

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

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

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

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

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

ANNOTATIONS

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

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

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.

ANNOTATIONS

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

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

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

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the substance abuse education fund of the amounts designated pursuant to Section 7-2-28 NMSA 1978 as contributions to that fund.

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

ANNOTATIONS

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

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

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

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

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

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

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

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

ANNOTATIONS

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

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

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

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

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

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

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

Applicability. - Laws 1995, ch. 6, § 22 makes the provisions of §§ 1 through 9 and 21 of the act applicable to receipts received by the taxation and revenue department on or after August 1, 1995.

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

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

B. The secretary of highway and transportation shall determine and certify on or before July 1, 1987 and on or before July 1 of each subsequent year the total miles of public roads maintained by each county pursuant to Section 66-6-23 NMSA 1978. For the purposes of this subsection, if the certified mileage of public roads maintained by a county is less than four hundred miles, the state treasurer shall increase the number of miles of public roads maintained by that county by fifty percent and revise the total miles of public roads maintained by all counties accordingly. Except as provided otherwise in Subsection D of this section, each county shall receive an amount equal to its proportionate share of miles of public roads maintained, as the number of miles for the county may have been revised pursuant to this subsection, to the total miles of public roads maintained by all counties, as that total may have been revised pursuant to this subsection, times fifty percent of the distributable amount in the county government road fund.

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

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

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

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

D. If the distribution for a class A county or for an H class county determined pursuant to Subsections 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 May 1, 1988, and by April 1 of every year thereafter, of the year for which distribution is being made, the secretary of highway and transportation shall estimate the mileage maintained by those counties for the purpose of making distribution to all counties, and the amount calculated to be distributed each month to those counties not certifying mileage shall be reduced by one-third each month for that fiscal year and that amount not distributed to those counties shall be distributed equally to all counties 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 state highway and transportation department 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.

ANNOTATIONS

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

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

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

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

7-1-6.27. Distribution; municipal roads.

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

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

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

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

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

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

C. For the purposes of this section:

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

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

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

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

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

(1) the floor amount; or

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

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

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

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

ANNOTATIONS

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

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

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

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

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

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

Applicability. - Laws 1995, ch. 6, § 22 makes the provisions of §§ 1 through 9 and 21 of the act applicable to receipts received by the taxation and revenue department on or after August 1, 1995.

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

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

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

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

ANNOTATIONS

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

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

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

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

Applicability. - Laws 1995, ch. 6, § 22 makes the provisions of §§ 1 through 9 and 21 of the act applicable to receipts received by the taxation and revenue department on or after August 1, 1995.

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

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

A. After the necessary disbursements from the workers' compensation collections suspense fund have been made, money remaining in the suspense fund as of the last

day of the month, less any deduction for administrative costs determined and made by the department pursuant to Section 52-5-19 NMSA 1978, less any distribution made pursuant to Subsection B of this section and less any amount determined by the department to be retained in the suspense fund for the purpose of making refunds, shall be distributed to the workers' compensation administration fund.

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

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

ANNOTATIONS

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

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

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

For the eighty-first and subsequent fiscal years, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the retiree health care fund in an amount equal to one-twelfth of one hundred six percent of the total amount distributed to the retiree health care fund in the previous fiscal year.

History: 1978 Comp., § 7-1-6.30, enacted by Laws 1990, ch. 6, § 20; 1992, ch. 55, § 7.

ANNOTATIONS

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

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

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

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the network and database surcharge fund of the net receipts attributable to the network and database surcharge imposed pursuant to the Enhanced 911 Act [63-9D-1 to 63-9D-11 NMSA 1978].

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

ANNOTATIONS

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

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

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

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the solid waste facility grant fund of the net receipts attributable to the solid waste assessment fee authorized under the Solid Waste Act [74-9-1 to 74-9-42, 74-9-72 and 74-9-73 NMSA 1978] less any administrative fee withheld pursuant to Section 1 [7-1-6.41 NMSA 1978] of this 1997 act.

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

ANNOTATIONS

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

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

Emergency clauses. - Laws 1997, ch. 125, § 14 makes the act effective immediately. Approved April 9, 1997.

Compiler's notes. - The phrase "this 1997 act" refers to Laws 1997, ch. 125, which amended this section.

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

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the county-supported medicaid fund of the net receipts attributable to the taxes imposed pursuant to the County Health Care Gross Receipts Tax Act.

History: Laws 1991, ch. 212, § 15.

ANNOTATIONS

County Health Care Gross Receipts Tax Act. - The County Health Care Gross Receipts Tax Act, referred to in this section, was repealed by Laws 1993, ch. 354, § 19. Prior to its repeal, the act was compiled as 7-20D-1 to 7-20D-7 NMSA 1978.

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

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

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

ANNOTATIONS

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

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

Applicability. - Laws 1992, ch. 108, § 5 makes the provisions of the act applicable to taxable years beginning on or after January 1, 1992.

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

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

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

ANNOTATIONS

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

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

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

Applicability. - Laws 1992, ch. 108, § 5 makes the provisions of the act applicable to taxable years beginning on or after January 1, 1992.

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

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

A. within that municipality;

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

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

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

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

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

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

ANNOTATIONS

Duplicate Laws. - Identical versions of this section were enacted by Laws 1992, ch. 50, § 13 and Laws 1992, ch. 67, § 13, both effective July 1, 1992.

7-1-6.37. Repealed.

ANNOTATIONS

Repeals. - Laws 1995, ch. 6, § 21 repeals 7-1-6.37 NMSA 1978, as amended by Laws 1994, ch. 5, § 15, relating to distribution of gasoline and special fuel excise taxes to the

general fund, effective August 1, 1995. For provisions of section, see 1994 Cumulative Supplement.

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

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

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

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the energy, minerals and natural resources department in an amount equal to twenty-five percent of the net receipts attributable to the governmental gross receipts tax. Forty 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 sixty percent of the distribution is appropriated to the energy, minerals and natural resources department for state park and recreation area capital improvements, including the costs of planning, engineering, design, construction, renovation, repair, equipment and furnishings.

C. 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.

ANNOTATIONS

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

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

For New Mexico Youth Conservation Corps Act, see 9-5B-1 to 9-5B-11 NMSA 1978.

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

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

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

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

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the local governments road fund in an amount equal to eleven and eleven 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.

ANNOTATIONS

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

Applicability. - Laws 1995, ch. 6, § 22 makes the provisions of §§ 1 through 9 and 21 of the act applicable to receipts received by the taxation and revenue department on or after August 1, 1995.

7-1-6.40. Distribution; local DWI grant fund.

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

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

History: Laws 1997, ch. 182, § 1.

ANNOTATIONS

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

Effective dates. - Laws 1997, ch. 182 § 5 makes the act effective on July 1, 1998.

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

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

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

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

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

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

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

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

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

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

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

F. The administrative fee to be withheld under Subsection E of this section shall be withheld on distributions made on or after July 1, 2000 and shall continue until the earlier of December 31, 2006 or the date on which the New Mexico finance authority certifies to the taxation and revenue department that all obligations for bonds issued pursuant to Section 12 of this 1997 act have been fully discharged and directs the

department to cease distributing money to the authority pursuant to this section. After the department has been directed by the authority to cease distributing money to the authority pursuant to this section, the administrative fee shall be remitted to the state treasurer for deposit in the state general fund each month.

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

History: Laws 1997, ch. 125, § 1.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 125, § 13 makes the act effective on July 1, 1997.

Emergency clauses. - Laws 1997, ch. 125, § 14 makes the act effective immediately. Approved April 9, 1997.

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

7-1-7. Repealed.

ANNOTATIONS

Repeals. - Laws 1992, ch. 55, § 18 repeals 7-1-7 NMSA 1978, as enacted by Laws 1969, ch. 147, § 2, relating to distribution in lieu of municipal sales tax and pledges of municipal sales tax, effective July 1, 1992. For provisions of former section, see 1990 Replacement Pamphlet.

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

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

A. to an authorized representative of another state; provided that the receiving state has entered into a written agreement with the department to use the information for tax purposes only and that the receiving state has enacted a confidentiality statute similar to this section to which the representative is subject;

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

C. to the multistate tax commission or its authorized representative; provided that the information is used for tax purposes only and is disclosed by the multistate tax commission only to states that have met the requirements of Subsection A of this section;

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

(1) in response to an order thereof in an action relating to taxes to which the state is a party and in which the information sought is about a taxpayer who 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 any 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 his own liability for taxes at issue, in which case only that information regarding the taxpayer who is party to the action may be produced, but this shall not prevent the disclosure of department policy or interpretation of law arising from circumstances of a taxpayer who is not a party;

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

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

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

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

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

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

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

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

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

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

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

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

N. with respect to the tax on gasoline imposed by the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978], the department shall make available for public inspection at monthly intervals a report covering the amount and gallonage of gasoline and ethanol blended fuels imported, exported, sold and used, including tax-exempt sales to the

federal government reported or upon which the gasoline tax was paid and covering taxes received from each distributor in the state of New Mexico;

O. the identity of distributors and gallonage reported on returns required under the Gasoline Tax Act, Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978] or Alternative Fuel Tax Act [Chapter 7, Article 16B NMSA 1978] to any distributor or supplier, 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;

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

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

R. upon request of a municipality or county of this state, the department shall permit officials or employees of the municipality or county to inspect the records of the department pertaining to an increase or decrease to a distribution or transfer made pursuant to Section 7-1-6.15 NMSA 1978 for the purpose of reviewing the basis for the increase or decrease. The municipal or county officials or employees receiving information provided in this subsection shall not reveal that information to any person other than another employee of the municipality or the county, the department or a district court, an appellate court or a federal court in a proceeding relating to a disputed distribution and in which both the state and the municipality or county are parties. Any information provided in this subsection that is revealed other than as provided in this subsection shall subject the person revealing the information to the penalties contained in Section 7-1-76 NMSA 1978;

S. to a county of this state that has in effect any local option gross receipts tax imposed by the county upon its request for any period specified by that county within the twelve months preceding the request for the information by that county:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts either for that county in the case of a local option gross receipts tax imposed on a county-wide 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 release the information described in this paragraph quarterly or upon such other periodic basis as the secretary and the county may agree;

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

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

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

T. to authorized representatives of an Indian nation, tribe or pueblo, the territory of which is located wholly or partially within New Mexico, pursuant to the terms of a reciprocal agreement entered into with the Indian nation, tribe or pueblo for the exchange of that information for tax purposes only; provided that the Indian nation, tribe or pueblo has enacted a confidentiality statute similar to this section;

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

(1) information for or relating to any period prior to July 1, 1985 with respect to Sections 7-25-1 through 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978 may be released 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 such contracts and agreements shall not be released without the consent of all parties to the contract or agreement; and

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

(a) the minerals management service 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, but this paragraph does not prohibit the release of any proprietary information contained in the workpapers that is also available from returns or from other sources not subject to the provisions of this section;

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

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

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

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

Z. any decision and order made by a hearing officer pursuant to Section 7-1-24 NMSA 1978 with respect to a protest filed with the secretary on or after July 1, 1993;

AA. information required by any provision of the Tax Administration Act to be made available to the public by the department;

BB. upon request by the Bernalillo county metropolitan court, the department shall furnish the last known address and the date of that address for every person certified to the department by the court as being 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;

CC. upon request by a magistrate court, the department shall furnish the last known address and the date of that address for every person certified to the department by the court as being 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; and

DD. to 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 similar to this section.

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.

ANNOTATIONS

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

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

For references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

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

Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

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

1993 amendments. - Laws 1993, ch. 5, § 3, effective July 1, 1993, which, in Subsection D, inserted "is about a taxpayer who is party to the action and", inserted "subject to court order protecting the confidentiality of the information", and deleted "or" at the end of Paragraph (1), inserted the paragraph designation "(3)" and inserted "department is a party and the" and added the language beginning "in which case" at the end of that paragraph; in Subsection K, substituted "or a local option gross receipts tax imposed by the municipality" for "the Municipal Gross Receipts Tax Act, the Supplemental Municipal Gross Receipts Tax Act or the Special Municipal Gross Receipts Tax Act" in Paragraph (1) and in the first paragraph of Paragraph (2); in Subsection O, inserted "or Special Fuels Supplier Tax Act", "or supplier", and "or the Special Fuels Supplier Tax Act"; in Subsection P inserted "or special fuel" near the beginning; rewrote Subsection S to substitute references to a "local option gross receipts tax" for references to "county gross receipts tax", "county fire protection excise tax", and "Special County Hospital Gross Receipts Tax Act" throughout; rewrote Subsection U to delete "and 7-27-1 through 7-27-48" in current Paragraph (1) and to add Paragraphs (2) and (3); added current Subsection V; redesignated former Subsections V through X as current Subsections W through Y; added Subsections Z and AA; and made minor stylistic changes, was approved February 23, 1993. Laws 1993, ch. 261, § 1, effective July 1, 1993, also amending this section by incorporating the amendments in the first 1993 amendment and adding Subsections BB and CC, making a related grammatical

change, was approved April 7, 1993. The section is set out as amended by Laws 1993, ch. 261, § 1. See 12-1-8 NMSA 1978.

The 1996 amendment, effective July 1, 1996, added "to which the representative is subject" at the end of Subsection A, inserted "of this state" in the introductory paragraph of Subsection K, deleted "within the twelve months following the request for such information by the municipality" following "may also release" in the second sentence of Paragraph K(1), substituted "and covering taxes" for "together with a tabulation of taxes" in Subsection N, inserted "Alternative Fuel Tax Act" twice in Subsection O, inserted "of this state" in Subsection R and in the introductory paragraph of Subsection S, deleted "within the twelve months following the request for such information by the county" following "may also release" in Paragraph S(1), substituted "7-26-8" for "7-26-9" in Paragraph U(1), added "except as provided in Paragraph (3) of this subsection" at the beginning of Paragraph U(2), rewrote Paragraph U(3), added Subsection DD and made other related and stylistic changes throughout the section.

Compiler's notes. - Section 7-1-64 NMSA 1978, referred to in Subsection J, was repealed in 1997.

Release of audit to non-affiliated property owner not permitted. - Subsection U does not permit the release of an audit report on oil and gas operations by the Taxation and Revenue Department to a non-affiliated owner of working interests in properties operated by the audited company. Meridian Oil, Inc. v. New Mexico Taxation & Revenue, 1996-NMCA-079, 122 N.M. 131, 921 P.2d 327 (Ct. App. 1996).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 590, 591.

Validity, construction, and effect of state laws requiring public officials to protect confidentiality of income tax returns or information, 1 A.L.R.4th 959.

What constitutes privileged communications with preparer of federal tax returns so as to render communication inadmissible in federal tax prosecution, 36 A.L.R. Fed. 686.

84 C.J.S. Taxation § 481.

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

A. Any notice required or authorized by the Tax Administration Act [this article] to be given by mail is effective if mailed or served by the secretary or the secretary's delegate to the taxpayer or person at the last address shown on his registration certificate or other record of the department. Any notice, return, application or payment required or authorized to be delivered to the secretary or the department by mail shall be addressed to the secretary of taxation and revenue, taxation and revenue department, Santa Fe,

New Mexico or in any other manner which the secretary by regulation or instruction may direct.

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

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

ANNOTATIONS

The 1997 amendment, effective July 1, 1997, added the second sentence to Subsection B.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Penalty for nonpayment of taxes where due as affected by lack of notice to taxpayer, 102 A.L.R. 405.

Sufficiency of compliance with statute providing for service by mail of notice in tax procedure, 155 A.L.R. 1279.

Time of mailing or time of receipt as determinative of liability for penalty or additional amount for failure to pay tax on license fee within prescribed time, 158 A.L.R. 370.

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

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

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

C. Prior to changing his method of accounting in keeping his books and records for tax purposes, a taxpayer 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 his 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. 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 [this article] 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.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "department" for "division" in Subsections A and E; substituted "secretary or the secretary's delegate" for "director or his delegate" in Subsection C and in two places in Subsection D; substituted "department" for "director or his delegate" in the second sentence of Subsection C; substituted "secretary" for "director" in Subsection E; and made minor stylistic changes.

Taxpayer has duty to provide director (now secretary) with books and records upon which to establish a standard for taxation as provided by law. If he fails to do so, he cannot complain of the best methods used by the commissioner (now secretary). Archuleta v. O'Cheskey, 84 N.M. 428, 504 P.2d 638 (Ct. App. 1972).

Adequacy of taxpayer's books and records is question of fact and the fact that taxpayer, in the hearing before the commissioner (now secretary), introduced evidence that his books and records were adequate did not require a ruling, as a matter of law, that they were adequate. Waldroop v. O'Cheskey, 85 N.M. 736, 516 P.2d 1119 (Ct. App. 1973).

Director's (now secretary's) decision conclusive if more than one inference possible. - If more than one inference can reasonably be drawn from the evidence, then the determination made by the commissioner (now secretary) that the books and records were inadequate is conclusive. Waldroop v. O'Cheskey, 85 N.M. 736, 516 P.2d 1119 (Ct. App. 1973).

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

A. The department shall cause the records and books of account of taxpayers to be inspected or audited at such times as the department deems necessary for the effective execution of the department's responsibilities.

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

C. Taxpayers shall upon request make their records and books of account available for inspection at reasonable hours to the secretary or the secretary's delegate who properly identifies himself to the taxpayer.

History: 1953 Comp., § 72-13-28, enacted by Laws 1965, ch. 248, § 16; 1979, ch. 144, § 10; 1993, ch. 30, § 6.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "department" for "director or his delegate" in Subsection A and for "division" in two places in Subsection B; substituted "secretary" for "director" in two places in Subsection B and "secretary or the secretary's delegate" for "director or his delegate" in Subsection C; and made related stylistic changes.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 110, 136, 603; 72 Am. Jur. 2d State and Local Taxation § 729.

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

7-1-12. Identification of taxpayers.

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

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

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

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

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

ANNOTATIONS

Possession of taxpayer identification number. - The mere possession of a New Mexico registration number by a foreign taxpayer does not mean that the taxpayer is registered with New Mexico for gross receipts tax purposes; the possession of a New Mexico taxpayer identification number did not mean that the taxpayer acknowledged that a nexus existed with respect to its activities in New Mexico for gross receipts tax purposes. Siemens Energy & Automation, Inc. v. New Mexico Taxation & Revenue Dep't, 119 N.M. 316, 889 P.2d 1238 (Ct. App. 1994).

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

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

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

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

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

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "Department" for "Oil and gas accounting division" in the section heading and throughout this section; substituted "department" for "division" in Subsection C; and made a minor stylistic change.

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

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

request the 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.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "department" for "oil and gas accounting division" in the first sentence and for "division" in two places in the final sentence.

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

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

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

C. If any adjustment is made in the basis for computation of any federal tax as a result of an audit by the internal revenue service or the filing of an amended federal return changing a prior election or making any other change for which federal approval is required by the Internal Revenue Code, the taxpayer affected shall, within ninety days of the internal revenue service audit adjustment or payment of the federal refund, file an amended return with the department. Payment of any additional tax due shall accompany the return.

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

E. The secretary or the secretary's delegate may, for good cause, extend in favor of a taxpayer or a class of taxpayers, for no more than a total of twelve months, the date on which payment of any tax is required or on which any return required by provision of the Tax Administration Act [this article] shall be filed, but no extension shall prevent the accrual of interest as otherwise provided by law. When an extension of time for income tax has been granted a taxpayer under the Internal Revenue Code, such extension shall serve to extend the time for filing New Mexico income tax provided that a copy of the approved federal extension of time is attached to the taxpayer's New Mexico income tax return, except that the secretary by regulation may also provide for the automatic extension for no more than four months of the date upon which payment of any New

Mexico income tax or the filing of any New Mexico income tax return is required. If the secretary or the secretary's delegate believes it necessary to assure the collection of the tax, the secretary or the secretary's delegate may require, as a condition of granting any extension, that the taxpayer furnish security in accordance with the provisions of Section 7-1-54 NMSA 1978.

History: 1953 Comp., § 72-13-30, enacted by Laws 1965, ch. 248, § 18; 1971, ch. 276, § 7; 1978, ch. 90, § 1; 1979, ch. 144, § 12; 1983, ch. 211, § 23; 1988, ch. 99, § 2; 1989, ch. 325, § 4; 1993, ch. 5, § 4; 1994, ch. 51, § 3.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, made a minor stylistic change in Subsection A and, in Subsection E, substituted "shall be filed" for "must be filed" and, at the end of the second sentence, inserted the language beginning "except that".

The 1993 amendment, effective July 1, 1993, rewrote the first sentence of Subsection C which read "If any adjustment is made in the basis for computation of any federal tax, the taxpayer affected shall, within thirty days, file an amended return with the department" and made a minor stylistic change in Subsection D.

The 1994 amendment, effective July 1, 1994, substituted "ninety" for "thirty" in the first sentence in Subsection C.

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

State returns used for audit although federal taxes filed on different basis. - Since the taxpayer filed consolidated federal income tax returns for a three-year period, but, for the same period, elected to file its state income tax returns as a separate corporate entity, excluding its subsidiaries, and since it was not obligated to file its state returns on the same basis as its federal return, the revenue department was not required to audit and assess the taxpayer's income taxes on the basis of consolidated income reported by the taxpayer in its federal returns rather than on the basis of its state returns which it had filed. Getty Oil Co. v. Taxation & Revenue Dep't, 93 N.M. 589, 603 P.2d 328 (Ct. App. 1979).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 834, 835, 842.

What amounts to reasonable cause for failure to file, or delay in filing, tax return, 3 A.L.R.2d 617.

84 C.J.S. Taxation §§ 607, 608, 617.

7-1-13.1. Method of payment of certain taxes due.

A. Payment of the taxes, including any applicable penalties and interest, described in Paragraph (1), (2) or (3) of this subsection shall be made on or before the date due in accordance with Subsection B of this section if the taxpayer's average tax payment for 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 Vehicles 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]; or

(3) Group 3: the tax due under the Natural Gas Processors Tax Act [Chapter 7, Article 33 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) automated clearinghouse transactions to allow deposit and fund availability to the state on or before the due date and containing the information required by the department;

(2) a transfer of funds through the wire transfer system operated by the federal reserve system, which provides immediate availability of funds to the state on or before the due date and containing the information required by the department;

(3) currency of the United States;

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

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

D. For the purposes of this section:

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

(2) "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; and

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

History: 1978 Comp., § 7-1-13.1, enacted by Laws 1988, ch. 99, § 3; 1989, ch. 76, § 1; 1990, ch. 86, § 6; 1992, ch. 55, § 8; 1993, ch. 5, § 5.

ANNOTATIONS

The 1989 amendment, effective May 1, 1989, rewrote the introductory paragraph of Subsection A; added present Subsection B; redesignated former Subsection B as present Subsection C, substituting therein all of the language of the first sentence preceding "the payment" for "If the taxes required to be paid by automated clearing-house deposit under this section are not paid by automated clearing-house deposit on or before the date due" and adding the second sentence; deleted former Subsection C, which read: "Any tax, including any applicable penalty and interest, may be paid by check drawn on the main office of the state fiscal agent"; and in Subsection D substituted the colon and Paragraph (1) designation for a comma, inserted "deposit" preceding "payable" in Paragraph (1), deleted "which must be initiated by the taxpayer or the taxpayer's agent one banking day prior to the due date" at the end of Paragraph (1), and added Paragraph (2).

The 1990 amendment, effective July 1, 1990, in Subsection A, rewrote the introductory clause which read "Payment of the following taxes, including any applicable penalties and interests described in this subsection, shall be made on or before the date due in accordance with Subsection B of this section"; deleted "if the sum of these taxes equals or exceeds twenty-five thousand dollars ($25,000)" at the end of Paragraphs (1) and (2);

deleted "if the tax equals or exceeds twenty-five thousand dollars ($25,000)" at the end of Paragraph (3); deleted former Paragraph (4) which read "the taxes described in Paragraph (1), (2), or (3) of this subsection if the taxpayer's average tax payment for those taxes during the preceding calendar year equaled or exceeded twenty-five thousand dollars ($25,000)"; added the final paragraph and made a stylistic change; and, in Subsection B, substituted "shall make payment" for "must make payment" in the introductory clause.

The 1992 amendment, effective July 1, 1992, rewrote Subsection B; substituted "transaction" for "deposit" in the second sentence of Subsection C; and, in Subsection D(1), substituted "transaction" for "deposit", inserted "or debit", and deleted "deposit" preceding "payable".

The 1993 amendment, effective July 1, 1993, in Subsection A, substituted "the group of taxes" for "those taxes" in the first paragraph, inserted "Group 1", "Group 2", and "Group 3" at the beginning of Paragraphs (1), (2), and (3), substituted the language beginning "local option" for "and any other act authorizing a municipal or county tax to be collected at the same time or in the same manner as the gross receipts tax" at the end of Paragraph (1); in Subsection C, deleted "an offsetting debit to" following "When", inserted "is reversed" and substituted "automated clearinghouse transaction" for "debit" in the second sentence and inserted "reversal or" in the final sentence; in Subsection D, added current Paragraph (2) and redesignated former Paragraph (2) as (3); and made minor stylistic changes.

7-1-13.2. Repealed.

ANNOTATIONS

Repeals. - Laws 1989, ch. 319, § 15 repeals 7-1-13.2 NMSA 1978, as enacted by Laws 1988, ch. 73, § 55, relating to bond required of certain persons, effective July 1, 1989. For provisions of former section, see 1988 Replacement Pamphlet.

Compiler's notes. - Laws 1992, ch. 55, § 9 enacted a section designated 7-1-13.2 NMSA 1978 which has been compiled as 7-1-13.3 NMSA 1978.

7-1-13.3. Repealed.

ANNOTATIONS

Repeals. - Laws 1999, ch. 176, § 2 repeals 7-1-13.3 NMSA 1978, as enacted by Laws 1992, ch. 55, § 9, authorizing the department to accept payment of taxes by credit card, effective June 18, 1999. For provisions of former section, see 1998 Replacement Pamphlet. For present comparable provisions, see 6-1-14 NMSA 1978.

7-1-14. Secretary may determine where certain gross receipts are to be reported; place of business for construction projects and certain real property sales.

A. By regulation, the secretary may require any person maintaining one or more places of business to report the person's taxable gross receipts and deductions for each municipality or county or area within an Indian reservation or pueblo grant in which the person maintains a place of business.

B. For persons engaged in the construction business, the place where the construction project is performed is a "place of business", and all receipts from that project are to be reported from that place of business.

C. The secretary may, by regulation, also require any person maintaining a business outside the boundaries of a municipality on land owned by that municipality to report the person's taxable gross receipts for that municipality.

D. For a person engaged in the business of selling real estate, the location of the real property sold is the "place of business", and all receipts from that sale are to be reported from that place of business.

History: 1953 Comp., § 72-13-30.1, enacted by Laws 1969, ch. 145, § 1; 1970, ch. 57, § 2; 1977, ch. 315, § 3; 1979, ch. 144, § 13; 1983, ch. 211, § 24; 1992, ch. 55, § 10; 1995, ch. 100, § 1.

ANNOTATIONS

The 1992 amendment, effective July 1, 1992, substituted "Secretary" for "Director" in the section heading and throughout the section, substituted "one or more places" for "more than one place" and deleted "covered by a contract of the type described in Section 7-1-6.4 NMSA 1978" following "pueblo grant" in the first sentence, added "all of the present language of the second sentence" following "place of business", and made minor stylistic changes throughout the section.

The 1995 amendment, effective July 1, 1995, rewrote the section heading which read "Secretary may require gross receipts to be reported according to municipality, Indian reservation, pueblo grant or if on municipally owned land"; designated the former first, second and third sentences as Subsections A through C; and added Subsection D.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation § 727.

85 C.J.S. Taxation § 1092.

7-1-15. Secretary may set tax reporting and payment intervals.

The secretary may, pursuant to regulation, allow taxpayers with an anticipated tax liability of less than two hundred dollars ($200) a month to report and pay taxes at intervals which the secretary may specify. However, unless specifically permitted by law, an interval shall not exceed six months. The secretary may also allow direct marketers who have entered into an agreement with the department to collect and remit compensating tax to report and pay on a quarterly or semi-annual basis.

History: 1953 Comp., § 72-13-30.1, enacted by Laws 1969, ch. 31, § 1; 1979, ch. 144, § 14; 1983, ch. 211, § 25; 1988, ch. 73, § 7; 1991, ch. 138, § 1; 1998, ch. 105, § 2.

ANNOTATIONS

The 1991 amendment, effective July 1, 1991, substituted "two hundred dollars ($200)" for "one hundred dollars ($100)".

The 1998 amendment added the last sentence. Laws 1998, ch. 105, contains no effective date provision, but pursuant to N.M. Const., art. IV, § 23, is effective May 20, 1998, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

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 [this article] to be distributed or transferred partly to local governments and partly to state funds, the gain or loss due to rounding shall be attributed to the state funds.

History: 1978 Comp., § 7-1-15.1, enacted by Laws 1987, ch. 169, § 4.

7-1-15.2. Agreements; collection of compensating tax.

The department may enter into agreements with direct marketers for purposes of enforcing collection of the compensating tax.

History: Laws 1998, ch. 105, § 1.

ANNOTATIONS

Cross references. - For compensating tax, see Article 9 of Chapter 7.

Effective dates. - Laws 1998, ch. 105, contains no effective date provision, but pursuant to N.M. Const., art. IV, § 23, is effective May 20, 1998, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

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 thirty days after the date of assessment or demand for payment make payment, protest the assessment or demand for payment as provided by Section 7-1-24 NMSA 1978 or furnish security for payment as provided by Section 7-1-54 NMSA 1978 becomes a delinquent taxpayer and remains such until:

(1) payment of the total amount of all such taxes is made;

(2) a retroactive extension of time to file a protest is granted pursuant to Section 7-1-24 NMSA 1978; provided, however, that the taxpayer again becomes a delinquent taxpayer if the assessment is not abated and the taxpayer does not pay, protest or furnish security within the time allowed by the retroactive extension of time;

(3) security is furnished for payment; or

(4) 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. If a taxpayer files for an extension of time to file a protest as provided in Section 7-1-24 NMSA 1978 within thirty days after the date of the assessment or demand for payment, the taxpayer does not become a delinquent taxpayer unless the assessment is not abated and the taxpayer does not pay, protest or furnish security within the time allowed by the extension of time.

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.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, in Subsection C, substituted "taxpayer files a protest" for "taxpayer does make application for hearing" and made minor stylistic changes throughout the section.

The 1993 amendment, effective July 1, 1993, in Subsection A, inserted the paragraph designations, added Paragraph (2), and made minor stylistic changes.

The 1999 amendment, effective July 1, 1999, in Subsection A, added "Except as provided in Subsection D of this section" at the beginning of the introductory language and inserted "the assessment is not abated and" in Paragraph (2); and added Subsection D.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 782 to 787, 835, 842, 843.

85 C.J.S. Taxation §§ 736 to 743, 750.

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

A. If the secretary or the secretary's delegate determines that a taxpayer is liable for taxes in excess of ten dollars ($10.00) that are due and that have not been previously assessed to 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 [this article].

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

D. When taxes have been assessed to any taxpayer and remain unpaid, the secretary or the secretary's delegate may demand payment at any time except as provided otherwise by Section 7-1-19 NMSA 1978.

History: 1953 Comp., § 72-13-32, enacted by Laws 1965, ch. 248, § 20; 1969, ch. 32, § 1; 1979, ch. 144, § 16; 1992, ch. 55, § 11.

ANNOTATIONS

The 1992 amendment, effective July 1, 1992, substituted "secretary" for "director" and "department" for "division" several times throughout the section, added "except as provided otherwise by Section 7-1-19 NMSA 1978" at the end of Subsection D, and made minor stylistic changes throughout the section.

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

Presumption of correctness applies when assessment delivered. - Once the notice of assessment of taxes is delivered to the taxpayer, the statutory presumption, of the correctness of the assessment, applies, and absent a showing of incorrectness by taxpayers, the audit and notice of assessment of taxes must stand. Torridge Corp. v. Commissioner of Revenue, 84 N.M. 610, 506 P.2d 354 (Ct. App. 1972), cert. denied, 84 N.M. 592, 506 P.2d 336 (1973).

Burden on protesting taxpayers to overcome presumption. - The burden is on taxpayers protesting assessment to overcome presumption that the bureau's (now department's) assessment is correct. Archuleta v. O'Cheskey, 84 N.M. 428, 504 P.2d 638 (Ct. App. 1972); Tipperary Corp. v. New Mexico Bureau of Revenue, 93 N.M. 22, 595 P.2d 1212 (Ct. App. 1979); Anaconda Co. v. Property Tax Dep't, 94 N.M. 202, 608 P.2d 514 (Ct. App. 1979), cert. denied, 94 N.M. 628, 614 P.2d 545 (1980); Hawthorne v. Director of Revenue Div. Taxation & Revenue Dep't, 94 N.M. 480, 612 P.2d 710 (Ct. App. 1980).

Presumption overcome when not supported by substantial evidence. - The assessment is presumed to be correct; the taxpayer may overcome the presumption of correctness of the assessment by presenting evidence and showing that the decision of the bureau (now department) is not supported by substantial evidence. Floyd & Berry Davis Co. v. Bureau of Revenue, 88 N.M. 576, 544 P.2d 291 (Ct. App. 1975).

Standard of review on appeal. - Department's gross receipts tax assessment can only be reversed by the court of appeals if arbitrary, capricious, or there is an abuse of discretion, such that the assessment's not supported by substantial evidence or it is otherwise not in accordance with law. ITT Educ. Serv. v. Taxation & Revenue Dep't, 1998-NMCA-078, 125 N.M. 244, 959 P.2d 969 (Ct. App. 1998).

Assessment upheld when statutes followed and no dispute of factual correctness. - Since the record showed the statutory provisions were followed and taxpayer presented no evidence tending to dispute the factual correctness of the assessments, assessment will be upheld. McConnell v. State ex rel. Bureau of Revenue, 83 N.M. 386, 492 P.2d 1003 (Ct. App. 1971).

Protesting taxpayer must dispute factual correctness to overcome presumption. - Since any assessment of taxes is presumed to be correct, the duty rested on the taxpayer to present evidence tending to dispute the factual correctness of the

assessments and to overcome this presumption. Champion Int'l Corp. v. Bureau of Revenue, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975).

A biotechnology company whose expertise was in the diagnosis of genetic disorders that could be detected through the appearance of chromosomes, and who produced tangible objects that were provided to its customers, such as a written report of its experts' diagnosis and a laminated karyotype, which consisted of photographs of chromosomes that were numbered and pasted onto a piece of laminated cardboard, did not establish its entitlement to a manufacturing deduction, since the company could not identify any out-of-state purchases that would be subject to the compensating tax of products incorporated into its reports or laminated karyotypes. The department, whose assessment is assumed correct, had identified as subject to the compensating tax such items as microscopes, sinks, and furniture, which undoubtedly were not incorporated into the documents or laminated karyotypes. Vivigen, Inc. v. Minzner, 117 N.M. 224, 870 P.2d 1382 (Ct. App. 1994).

Any assessment of taxes by the Taxation and Revenue Department is presumed to be correct and in protesting the assessment of taxes the taxpayer has the burden of proving the deductions were proper. In reviewing, courts will reverse the Department's decision only if it is arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, or not supported by substantial evidence. Arco Materials, Inc. v. State, Taxation & Revenue Dep't, 118 N.M. 12, 878 P.2d 330 (Ct. App. 1994), rev'd on other grounds sub nom. Blaze Constr. Co. v. Taxation & Revenue Dep't, 118 N.M. 647, 884 P.2d 803 (1994), cert. denied, 514 U.S. 1016, 115 S. Ct. 1359, 131 L. Ed. 2d 216 (1995).

Presumption may be overcome by disputing factual correctness. - The presumption of Subsection C need be overcome only by a taxpayer's disputing the factual correctness of an assessment. When the taxpayer challenged the interpretation of a county ordinance in its submitted memorandum of positions, the burden was properly shifted by the memorandum to the bureau (now department) to at least acknowledge the existence of the ordinance. Co-Con, Inc. v. Bureau of Revenue, 87 N.M. 118, 529 P.2d 1239 (Ct. App.), cert. denied, 87 N.M. 111, 529 P.2d 1232 (1974).

Presumption overcome by showing that division (now department) failed to follow statutory provisions. - An assessment made by the bureau (now department) is presumptively correct. This presumption may be overcome by showing that the bureau (now department) failed to follow the statutory provisions contained in the Tax Administration Act. Regents of N.M. College of Agric. & Mechanic Arts v. Academy of Aviation, Inc. 83 N.M. 86, 488 P.2d 343 (1971).

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

Exemption strictly construed in favor of taxing authority. - There is a presumption that an assessment of gross receipts taxes is correct, and in order for the taxpayer to be successful, he must clearly overcome this presumption. Moreover, where an exemption is claimed, the exemption is strictly construed in favor of the taxing authority. Stohr v. New Mexico Bureau of Revenue, 90 N.M. 43, 559 P.2d 420 (Ct. App. 1976), cert. denied, 90 N.M. 254, 561 P.2d 1347 (1977).

No basis for overturning decision where taxpayer unprepared. - Since the record showed that hearing officer carefully advised taxpayer as to the statutory procedures and his rights in connection with hearing and it also showed the taxpayer did not come prepared for the hearing, taxpayer's claims that bureau (now department) should have given him opportunity to present his evidence at a later time and, although it was his burden to proceed, that he was denied the right to cross-examine a witness who was never called were based on taxpayer's lack of preparation and do not provide a basis for overturning the commissioner's (now secretary's) decision. McConnell v. State ex rel. Bureau of Revenue, 83 N.M. 386, 492 P.2d 1003 (Ct. App. 1971).

Presumption not overcome by contradictory evidence. - Evidence that the construction contract between the taxpayer, a contracting business and a corporation created a ceiling price was not compelling in view of the contradictory evidence as to the actual cost of the construction, and the presumption of correctness of the assessment of gross receipts tax was not overcome. Floyd & Berry Davis Co. v. Bureau of Revenue, 88 N.M. 576, 544 P.2d 291 (Ct. App. 1975).

Presumption not overcome since acceptable audit method used. - Since the "test months" method was used for audit of taxpayers whose records were destroyed by fire in order to determine gross receipts subject to tax, and since there was evidence that the "test months" method was acceptable practice, the presumption of correctness of the assessments was not overcome. Torridge Corp. v. Commissioner of Revenue, 84 N.M. 610, 506 P.2d 354 (Ct. App. 1972), cert. denied, 84 N.M. 592, 506 P.2d 336 (1973).

Presumption overcome when no basis for assessments existed. - Since the undisputed evidence of no audit for a two-year period of no test for gross receipts for those years and of different under-reporting percentages for the audited period established an absence of any basis for the assessments for that period, such showing overcame the presumption that the assessments were correct. Torridge Corp. v. Commissioner of Revenue, 84 N.M. 610, 506 P.2d 354 (Ct. App. 1972), cert. denied, 84 N.M. 592, 506 P.2d 336 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 596 to 602; 72 Am. Jur. 2d State and Local Taxation §§ 704 to 738.

Who may complain of underassessment or nonassessment of property for taxation, 5 A.L.R.2d 576, 9 A.L.R.4th 428.

Judicial notice as to assessed valuations, 42 A.L.R.3d 1439.

Separate assessment and taxation of air rights, 56 A.L.R.3d 1300.

84 C.J.S. Taxation §§ 349 to 372, 390 to 420.

7-1-18. Limitation on assessment by 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 his 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 that results in liability for any tax, the amount thereof may be assessed at any time but not after three years from the end of the calendar year in which filing of an amended return is required by Subsection C of Section 7-1-13 NMSA 1978.

F. If the taxpayer has signed a waiver of the limitations on assessment imposed by this section, an assessment of tax may be made or a proceeding in court begun without regard to the time at which payment of the tax was due.

History: 1953 Comp., § 72-13-33, enacted by Laws 1965, ch. 248, § 21; 1970, ch. 18, § 1; 1979, ch. 144, § 17; 1983, ch. 211, § 26; 1993, ch. 5, § 7; 1994, ch. 51, § 4.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, substituted "department" for "director" in the catchline and in Subsection D and for "director or his delegate" in Subsection A, and made a minor stylistic change in Subsection E.

The 1994 amendment, effective July 1, 1994, substituted the language at the end of Subsection E, beginning with "three years", for "one year after the date of the receipt of the amended return or not after the end of the period limited by Subsection A of this section, whichever is later".

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

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 719, 788.

Civil liability of tax assessor to taxpayer for excessive or improper assessment of real property, 82 A.L.R.2d 1148.

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

7-1-19. Limitation of actions.

No action or proceeding shall be brought to collect taxes administered under the provisions of the Tax Administration Act [this article] and due under an assessment or notice of the assessment of taxes after ten years from the date of such assessment or notice.

History: 1953 Comp., § 72-7-35.1, enacted by Laws 1971, ch. 21, § 1; 1972, ch. 73, § 2; recompiled as 1953 Comp., § 72-13-33.1, by Laws 1973, ch. 258, § 154; 1979, ch. 144, § 18; 1986, ch. 20, § 14.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 876, 877, 896, 1141.

Claim of government against taxpayer which is barred by lapse of time as available to defeat or diminish claim of taxpayer against government, or vice versa, 109 A.L.R. 1354, 130 A.L.R. 838, 154 A.L.R. 1052, 12 A.L.R.2d 815.

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

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

A. At any time after the assessment of any tax, if the secretary in good faith is in doubt of the liability for the payment thereof, the secretary may, with the written approval of the attorney general, compromise the asserted liability for taxes by entering with the taxpayer into a written agreement that adequately protects the interests of the state.

B. The agreement provided for in this section is to be known as a "closing agreement". If entered into after any court acquires jurisdiction of the matter, the agreement shall be part of a stipulated order or judgment disposing of the case.

C. As a condition for entering into a closing agreement, the secretary may require the taxpayer to furnish security for payment of any taxes due according to the terms of the agreement.

D. A closing agreement is conclusive as to liability or nonliability for payment of assessed taxes relating to the periods referred to in the agreement, and except upon a showing of fraud or malfeasance, or misrepresentation or concealment of a material fact:

(1) the agreement shall not be modified by any officer, employee or agent of the state; and

(2) in any suit, action or proceeding, the agreement or any determination, assessment, collection, payment, abatement, refund or credit made in accordance therewith shall not be annulled, modified, set aside or disregarded.

History: 1953 Comp., § 72-13-34, enacted by Laws 1965, ch. 248, § 22; 1979, ch. 144, § 19; 1995, ch. 70, § 1.

ANNOTATIONS

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

The 1995 amendment, effective July 1, 1995, substituted references to "the secretary" for references to "the director" in Subsections A and C.

Attorney general's approval necessary. - A settlement agreement compromising tax liability was not valid or enforceable since it lacked the attorney general's written approval as required by this section. Johnson & Johnson v. Taxation & Revenue Dep't, 1997-NMCA-030, 123 N.M. 190, 936 P.2d 872 (Ct. App. 1997).

No authority for settlement. - Employees of the Taxation and Revenue Department did not have apparent authority to enter into a compromise tax settlement agreement

without the attorney general's written approval. Johnson & Johnson v. Taxation & Revenue Dep't, 1997-NMCA-030, 123 N.M. 190, 936 P.2d 872 (Ct. App. 1997).

No estoppel to permit enforcement of invalid settlement. - The doctrine of equitable estoppel did not apply to preclude disavowal of a compromise tax settlement agreement entered into without the attorney general's written approval. Johnson & Johnson v. Taxation & Revenue Dep't, 1997-NMCA-030, 123 N.M. 190, 936 P.2d 872 (Ct. App. 1997).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation § 310; 72 Am. Jur. 2d State and Local Taxation §§ 853 to 855, 1074.

Power of legislature to remit, release or compromise tax claim, 28 A.L.R.2d 1425.

84 C.J.S. Taxation §§ 630, 701.

7-1-21. Installment payments of taxes; installment agreements.

A. Whenever justified by the circumstances, the secretary or the secretary's delegate may enter into a written agreement with any taxpayer wherein the taxpayer admits conclusive liability for the entire amount of taxes due and agrees to make monthly installment payments thereof according to the terms of the agreement, but not for a period longer than thirty-six months. No installment agreement shall prevent the accrual of interest as otherwise provided by law.

B. The agreement provided for in this section is to be known as an "installment agreement". If entered into after any court acquires jurisdiction of the matter, the agreement shall be part of a stipulated order or judgment disposing of the case.

C. At the time of entering into an installment agreement, the secretary shall require the affected taxpayer or person to furnish security for payment of the taxes admitted to be due according to the terms of the agreement, but if the taxpayer does not provide security, the secretary shall cause a notice of lien to be filed in accordance with the provisions of Section 7-1-38 NMSA 1978, and when so filed it shall constitute a lien upon all the property or rights to property of the taxpayer in that county in the same manner as in the case of the lien provided for in Section 7-1-37 NMSA 1978.

D. An installment agreement is conclusive as to liability for payment of the amount of taxes specified therein but does not preclude the assessment of any additional tax.

E. After entering into the agreement, except in unusual circumstances as require the secretary in his discretion to take further action to protect the interests of the state, no further attempts to enforce payment of the tax by levy or injunction shall be made; however, if installment payments are not made on or before the times specified in the agreement, if any other condition contained in the agreement is not met or if the taxpayer does not make payment of all other taxes for which he becomes liable as they

fall due, the secretary may proceed to enforce collection of the tax as if the agreement had not been made or may proceed, as provided in Section 7-1-54 NMSA 1978, against the security furnished.

F. Records of installment agreements in excess of one thousand dollars ($1,000) shall be available for inspection by the public. The department shall keep such records for a minimum of three years from the date of the installment agreement.

History: 1953 Comp., § 72-13-35, enacted by Laws 1965, ch. 248, § 23; 1979, ch. 144, § 20; 1987, ch. 169, § 5.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation § 135; 72 Am. Jur. 2d State and Local Taxation § 845.

Constitutionality of statute permitting payment of taxes in installments, 101 A.L.R. 1335.

Failure of property owner to make formal election to avail himself of privilege of paying taxes or special assessment in installments, 140 A.L.R. 1442.

84 C.J.S. Taxation §§ 617, 634.

7-1-22. Exhaustion of administrative remedies.

No court of this state has jurisdiction to entertain any proceeding by a taxpayer in which 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 [this article], except as a consequence of the appeal by the taxpayer to the court of appeals from the action and order of the secretary, all as specified in Section 7-1-24 NMSA 1978, or except as a consequence of a claim for refund as specified in Section 7-1-26 NMSA 1978.

History: 1953 Comp., § 72-13-36, enacted by Laws 1965, ch. 248, § 24; 1966, ch. 30, § 1; 1979, ch. 144, § 21; 1995, ch. 70, § 2.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, substituted "secretary" for "director" near the end of the section, and made gender neutral changes throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 97, 605; 72 Am. Jur. 2d State and Local Taxation § 811.

84 C.J.S. Taxation § 722.

7-1-23. Election of remedies.

Any taxpayer must elect to dispute his liability for the payment of taxes either by protesting the assessment thereof as provided in Section 7-1-24 NMSA 1978 without making payment or by claiming a refund thereof as provided in Section 7-1-26 NMSA 1978 after making payment. The pursuit of one of the two remedies described herein constitutes an unconditional waiver of the right to pursue the other.

History: 1953 Comp., § 72-13-37, enacted by Laws 1965, ch. 248, § 25; 1979, ch. 144, § 22.

7-1-24. Administrative hearing; procedure.

A. Any taxpayer may dispute the assessment to the taxpayer of any amount of tax, the application to the taxpayer of any provision of the Tax Administration Act [this article] or the denial of or failure to either allow or deny a claim for refund made in accordance with Section 7-1-26 NMSA 1978 by filing with the secretary a written protest against the assessment or against the application to the taxpayer of the provision or against the denial of or the failure to allow or deny the amount claimed to have been erroneously paid as tax. Every protest shall identify the taxpayer and the tax or taxes involved and state the grounds for the taxpayer's protest and the affirmative relief requested. The statement of grounds for protest shall specify individual grounds upon which the protest is based and a summary statement of the evidence expected to be produced supporting each ground asserted, if any; provided that the taxpayer may supplement the statement at any time prior to any hearing conducted on the protest under Subsection E of this section. The secretary may, in appropriate cases, provide for an informal conference before setting a hearing of the protest or acting on any claim for refund.

B. Any protest by a taxpayer shall be filed within thirty days of the date of the mailing to the taxpayer by the department of the notice of assessment or mailing to, or service upon, the taxpayer of other peremptory notice or demand, or the date of mailing or filing a return. Upon written request of the taxpayer made within the time permitted for filing a protest, the secretary may grant an extension of time, not to exceed sixty days, within which to file the protest. If a protest is not filed within the time required for filing a protest or, if an extension has not been granted within the extended time, the secretary may proceed to enforce collection of any tax if the taxpayer is delinquent within the meaning of Section 7-1-16 NMSA 1978. Upon written request of the taxpayer made after the time for filing a protest but not more than sixty days after the expiration of the time for filing a protest, the secretary may grant a retroactive extension of time, not to exceed sixty days, within which to file the protest provided that the taxpayer demonstrates to the secretary's satisfaction that the taxpayer was not able to file a protest or to request an extension within the time to file the protest and that the grounds for the protest have substantial merit. 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 acknowledgement of receipt by the taxpayer shall not be deemed to demonstrate the taxpayer's inability to protest or request an extension within the time for filing a protest within the required time. The secretary shall not grant a retroactive extension if a levy has already been served under Sections 7-1-31, 7-1-33 and 7-1-34

NMSA 1978 or a jeopardy assessment under Section 7-1-59 NMSA 1978. No proceedings other than those to enforce collection of any amount assessed as tax and to protect the interest of the state by injunction, as provided in Sections 7-1-31, 7-1-33, 7-1-34, 7-1-40, 7-1-53, 7-1-56 and 7-1-58 NMSA 1978, are stayed by timely filing of a protest under this section.

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

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

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

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

G. In hearings before the hearing officer, the Rules of Civil Procedure for the District Courts shall not apply, but the hearing shall be conducted so that both complaints and defenses are amply and fairly presented. To this end, the hearing officer shall hear arguments, permit discovery, entertain and dispose of motions, require written expositions of the case as the circumstances justify and render a decision in accordance with the law and the evidence presented and admitted.

H. In the case of the hearing of any protest, the hearing officer shall make and preserve a complete record of the proceedings. At the beginning of the hearing, the hearing officer shall inform the taxpayer of the taxpayer's right to representation. The hearing officer, within thirty days of the hearing, shall inform the protestant in writing of the decision, informing the protestant at the same time of the right to, and the requirements for perfection of, an appeal from the decision to the court of appeals and of the consequences of a failure to appeal. The written decision shall embody an order granting or denying the relief requested or granting such part thereof as seems appropriate.

I. Nothing in this section shall be construed to authorize any criminal proceedings hereunder or to authorize an administrative protest of the issuance of a subpoena or summons.

History: 1953 Comp., § 72-13-38, enacted by Laws 1965, ch. 248, § 26; 1966, ch. 30, § 2; 1971, ch. 276, § 8; 1979, ch. 144, § 23; 1982, ch. 18, § 10; 1986, ch. 20, § 15; 1989, ch. 325, § 6; 1993, ch. 5, § 8.

ANNOTATIONS

Cross references. - For Rules of Procedure for the District Courts, see Rule 1-001 NMRA 1997 et seq.

The 1989 amendment, effective June 16, 1989, in Subsection A, inserted "or the denial of, or failure to either allow or deny, a claim for refund made in accordance with Section 7-1-26 NMSA 1978"; in Subsection B, in the next-to-last sentence, substituted "protest" for "appeal" in two places; in Subsection D, deleted "or a request for hearing after denial of a claim for refund" preceding "the department or hearing officer"; in Subsection G, in the last sentence, inserted "permit discovery"; in Subsection H, in the first sentence, deleted "or claim for refund" following "any protest", in the third sentence, deleted "The hearing officer may announce the decision at the conclusion of the hearing or may take the matter under advisement, but he shall, in either case" from the beginning, substituted "The hearing officer" for "The secretary", inserted "of the hearing, shall", deleted "or claimant" preceding "in writing"; and made minor stylistic changes throughout the section.

The 1993 amendment, effective July 1, 1993, in Subsection A, substituted "against the denial of or the failure to allow or deny" for "a written claim for refund of" near the end of the first sentence, rewrote the second sentence which read "Every protest shall state the nature of the taxpayer's complaint and the affirmative relief requested", inserted the current third sentence, and made a minor stylistic change; rewrote Subsection B; and, in Subsection H, deleted the former final sentence which read "All decisions and orders shall be signed by the secretary".

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

No abatement of assessment for lack of prompt hearing. - Assessments are not abated merely because taxpayers were not given prompt hearing on protests. Ranchers-Tufco Limestone Project Joint Venture v. Revenue Div. 100 N.M. 632, 674 P.2d 522 (Ct. App. 1983).

Taxpayer appearing alone does so at own peril. - Taxpayer has a right to appear by himself or by an attorney or an accountant, but if he chose to appear alone, he appeared at his own peril. McConnell v. State ex rel. Bureau of Revenue, 83 N.M. 386, 492 P.2d 1003 (Ct. App. 1971).

Taxpayer must establish timely filing. - Where a taxpayer failed to establish that he filed a protest of an audit by the Taxation and Revenue Department within 30 days of notice, as required by this section, the issue of an improper audit was not before the hearing officer. Lopez v. New Mexico Dep't of Taxation & Revenue, 1997-NMCA-115, 124 N.M. 270, 949 P.2d 284 (Ct. App. 1997).

Decision upheld when arguments based on taxpayer's unpreparedness. - Since the record showed that hearing officer carefully advised taxpayer as to the statutory procedures and his rights in connection with hearing and it also showed the taxpayer did not come prepared for the hearing, taxpayer's claims that revenue bureau (now department) should have given him opportunity to present his evidence at a later time and, although it was his burden to proceed, that he was denied the right to cross-examine a witness who was never called were based on taxpayer's lack of preparation and do not provide a basis for overturning the commissioner's (now secretary's) decision. McConnell v. State ex rel. Bureau of Revenue, 83 N.M. 386, 492 P.2d 1003 (Ct. App. 1971).

Hearing officer need not assume duties of counsel at second hearing. - Since taxpayer's rights were amply protected at the first hearing, and the second hearing was a continuation of the first, at which the only issue was taxpayer's duty to secure additional proof that its sales were nontaxable transactions, taxpayer was granted a full and fair hearing, at which he voluntarily and willingly waived his right to counsel, and the hearing officer was not required to assume the duties of counsel for taxpayer at the second hearing. Al Zuni Traders v. Bureau of Revenue, 90 N.M. 258, 561 P.2d 1351 (Ct. App. 1977).

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

Evidential rules governing weight, applicability or materiality not limited. - The rules governing the admissibility of evidence before administrative boards are frequently relaxed to expedite administrative procedure but the rules relating to weight, applicability or materiality of evidence are not thus limited. Eaton v. Bureau of Revenue, 84 N.M. 226, 501 P.2d 670 (Ct. App.), cert. denied, 84 N.M. 219, 501 P.2d 663 (1972).

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

If testimony based on supposition, Subsection F not satisfied. - Since taxpayer's books and records are not adequate to permit an accurate computation of the state tax, and his testimony is based on supposition and guess, he does not satisfy the requirements of Subsection F. Archuleta v. O'Cheskey, 84 N.M. 428, 504 P.2d 638 (Ct. App. 1972).

Ruling reversed if director (now secretary) failed to consider all evidence. - Since the commissioner (now secretary), before arriving at a decision, did not consider all of the evidence presented at the hearing but only that pertaining to the "indicia" under G.R.

Regulation 12.5:1, the court could not say that he would have reached the same conclusion had all of "the evidence presented and admitted" been considered, as required by Subsection G, and therefore held the ruling reversed for arbitrariness. Eaton v. Bureau of Revenue, 84 N.M. 226, 501 P.2d 670 (Ct. App.), cert. denied, 84 N.M. 219, 501 P.2d 663 (1972).

Record must indicate reasoning and basis for denial. - Although the commissioner (now secretary) is not required to make formal findings of fact and conclusions of law, the record presented to the court for review must indicate his reasoning and the basis on which he denied the taxpayer's protest and in the absence of this matter must be remanded to him for further proceedings. Title Servs., Inc. v. Commissioner of Revenue, 86 N.M. 128, 520 P.2d 284 (Ct. App. 1974).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 603 to 605; 72 Am. Jur. 2d State and Local Taxation §§ 782 to 787, 802 to 809, 812 to 816.

Notice to property owners of increase in assessment or valuation by board of equalization or review, 24 A.L.R. 331, 84 A.L.R. 197.

Power or duty of tax review or equalization boards to act after date for adjournment or closing of books, 105 A.L.R. 624.

Power of board of tax review to receive evidence as to assessable value, without notice to taxpayer, 113 A.L.R. 990.

Sufficiency of compliance with statute providing for service by mail of notice in tax procedure, 155 A.L.R. 1279.

84 C.J.S. Taxation §§ 512 to 559.

7-1-25. Appeals from secretary's decision and order.

A. If the protestant or secretary is dissatisfied with the decision and order of the hearing officer, the party may appeal to the court of appeals for further relief, but only to the same extent and upon the same theory as was asserted in the hearing before the hearing officer. All such appeals shall be upon the record made at the hearing and shall not be de novo. All such appeals to the court of appeals shall be taken within thirty days of the date of mailing or delivery of the written decision and order of the hearing officer to the protestant, and, if not so taken, the decision and order are conclusive.

B. The procedure for perfecting an appeal under this section to the court of appeals shall be as provided by the Rules of Appellate Procedure [Rule 12-101 NMRA 1997 et seq.].

C. Upon appeal, the court shall set aside a decision and order of the hearing officer only if found to be:

(1) arbitrary, capricious or an abuse of discretion;

(2) not supported by substantial evidence in the record; or

(3) otherwise not in accordance with the law.

D. If the secretary appeals a decision of the hearing officer and the court's decision, from which either no appeal is taken or no appeal may be taken, upholds the decision of the hearing officer, the court shall award reasonable attorney's fees to the protestant. If the decision upholds the hearing officer's decision only in part, the award shall be limited to reasonable attorney's fees associated with the portion upheld.

History: 1953 Comp., § 72-13-39, enacted by Laws 1965, ch. 248, § 27; 1966, ch. 30, § 3; 1973, ch. 167, § 1; 1979, ch. 144, § 24; 1985, ch. 65, § 15; 1986, ch. 20, § 16; 1989, ch. 325, § 7.

ANNOTATIONS

I. GENERAL CONSIDERATION.

The 1989 amendment, effective June 16, 1989, in Subsection A, substituted "protestant or secretary" for "protestant or claimant" and "the hearing officer, the party" for "the secretary, the protestant or claimant" in the first sentence and "the hearing officer to the protestant" for "the secretary to the protestant, or claimant" in the last sentence of the subsection; substituted present Subsection B for the provisions of former Subsections B and C, specifying the procedure for perfecting an appeal under this section; redesignated former Subsection D as present Subsection C, substituting "hearing officer" for "secretary" near the beginning; and added present Subsection D.

Section grants court of appeals jurisdiction to review director's (now secretary's) decisions. - Court of appeals lacks jurisdiction to review decisions of the commissioner (now secretary) under the Administrative Procedures Act (12-8-1 to 12-8-25 NMSA 1978), but does have jurisdiction to review such decisions under this section of the Tax

Administration Act. Westland Corp. v. Commissioner of Revenue, 83 N.M. 29, 487 P.2d 1099 (Ct. App.), cert. denied, 83 N.M. 22, 487 P.2d 1092 (1971).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 711, 718, 786, 787, 820, 827.

Propriety of certiorari to review decisions of tax boards, 77 A.L.R. 1357.

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

II. APPEAL.

A. IN GENERAL.

Record must indicate reasoning and basis of denial of protest. - Although the commissioner (now secretary) is not required to make formal findings of fact and conclusions of law, the record presented to the court for review must indicate his reasoning and the basis on which he denied the taxpayer's protest and in the absence of this matter must be remanded for further proceedings. Title Servs., Inc. v. Commissioner of Revenue, 86 N.M. 128, 520 P.2d 284 (Ct. App. 1974).

Meaning of "claimant" and "taxpayer". - The court of appeals had no jurisdiction over the appeal of an Indian tribe which had been denied the right to intervene in a protest brought by a construction company over assessment of gross receipts tax on receipts under a contract between the tribe and the company, despite the fact that contractual indemnity provisions would ultimately render the tribe liable to the company for any tax due; the tribe was not a "claimant," since no taxes had yet been paid, and was not a "taxpayer" since the taxes were assessed not to it but to the company. Mescalero Apache Tribe v. Bureau of Revenue, 88 N.M. 525, 543 P.2d 493 (Ct. App. 1975), cert. denied, 89 N.M. 206, 549 P.2d 284 (1976).

"Unjust enrichment". - A hearing officer acted in a manner inconsistent with the law in weighing additional equitable factors beyond those required by the doctrine of equitable recoupment, thereby undercutting the required factors, where taxpayer paid correct amount of tax but mistakenly did so as a compensating use, not gross receipts, tax. Teco Invs. v. Taxation & Revenue Dep't, 1998-NMCA-055, 125 N.M. 103, 957 P.2d 532 (Ct. App. 1998).

B. ISSUE AT HEARING.

Issue not raised at hearing cannot be heard on appeal. - The appeal to a court of appeals from the commissioner's (now secretary's) decision is on the record made at the hearing. If the record does not show an issue was raised at the hearing, this issue is not before the appellate court for review. Till v. Jones, 83 N.M. 743, 497 P.2d 745 (Ct. App.), cert. denied, 83 N.M. 740, 497 P.2d 742 (1972).

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

Appeal to same extent and upon same theory as hearing. - This section provides that the appeal to an appellate court is only to the same extent and upon the same theory as was asserted in the hearing. New Mexico Sheriffs & Police Ass'n v. Bureau of Revenue, 85 N.M. 565, 514 P.2d 616 (Ct. App. 1973).

A party will not be permitted to change his theory of a case on appeal, thus precluding from consideration questions or issues which were not raised at the hearing. Kaiser Steel Corp. v. Revenue Div. 96 N.M. 117, 628 P.2d 687 (Ct. App. 1981).

Audit items not protested or issue in hearing not reviewable. - Since the appellant did not protest items included in audit and these items were not an issue at the hearing, appellant may not challenge, in the court of appeals, the sufficiency of the evidence as to receipts from these items when they were not an issue in the hearing because this section authorizes appeals to this court only to the same extent and upon the same theory as was asserted in the hearing before the commissioner (now secretary). Archuleta v. O'Cheskey, 84 N.M. 428, 504 P.2d 638 (Ct. App. 1972).

Arguments not raised at hearing not reviewable. - The taxpayer did not raise the argument before the bureau (now department) that the base figure for the gross receipts tax was not correct and therefore it need not be considered on appeal. Floyd & Berry Davis Co. v. Bureau of Revenue, 88 N.M. 576, 544 P.2d 291 (Ct. App. 1975).

III. RECORD.

Question of law not binding but inference from facts conclusive. - As all facts before the commissioner (now secretary) and relating to both questions were stipulated, accordingly, if but one inference can reasonably be drawn from the stipulated facts, a question of law is presented and a finding of the commissioner (secretary) to the contrary is not binding on the reviewing court. If, however, more than one inference can reasonably be drawn, then the finding of the commissioner (secretary) is conclusive. Rust Tractor Co. v. Bureau of Revenue, 82 N.M. 82, 475 P.2d 779 (Ct. App.), cert. denied, 82 N.M. 81, 475 P.2d 778 (1970); Rock v. Commissioner of Revenue, 83 N.M. 478, 493 P.2d 963 (Ct. App. 1972).

IV. GROUNDS FOR REVERSAL.

A. ARBITRARY.

If Paragraphs (2) and (3) of Subsection D (now Subsection C) are satisfied, then Paragraph (1) satisfied. - Since the order was supported by substantial evidence and was in accordance with applicable law, it was neither arbitrary nor capricious and its

entry was not an abuse of discretion. Union County Feedlot, Inc. v. Vigil, 79 N.M. 684, 448 P.2d 485 (Ct. App. 1968).

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

Ruling arbitrary if all evidence not considered. - Since the commissioner (now secretary), before arriving at a decision, did not consider all of the evidence presented at the hearing but only that pertaining to the "indicia" under G.R. Regulation 12.5:1, the court could not say that the commissioner (secretary) would have reached the same conclusion had all of "the evidence presented and admitted" been considered as required by 7-1-24G NMSA 1978, and therefore held the ruling reversed for arbitrariness. Eaton v. Bureau of Revenue, 84 N.M. 226, 501 P.2d 670 (Ct. App.), cert. denied, 84 N.M. 219, 501 P.2d 663 (1972).

B. SUBSTANTIAL EVIDENCE.

Evidence viewed in light most favorable to director's (now secretary's) decision. - The duty of the court of appeals is to determine whether there is substantial evidence in the record to support the order, viewing all evidence in the light most favorable to the commissioner's (now secretary's) decision. Floyd & Berry Davis Co. v. Bureau of Revenue, 88 N.M. 576, 544 P.2d 291 (Ct. App. 1975).

Whether previous owner sold out its business and whether plaintiff purchased that business is a question of fact and, accordingly, this court examines the facts. In doing so, it views the evidence in the light most favorable to the commissioner's (now secretary's) decision. Sterling Title Co. v. Commissioner of Revenue, 85 N.M. 279, 511 P.2d 765 (Ct. App. 1973).

Only favorable evidence considered. - In determining whether there is substantial evidence in the record, the court considers only favorable evidence and views that evidence in a light most favorable to the commissioner's (now secretary's) decision. Westland Corp. v. Commissioner of Revenue, 84 N.M. 327, 503 P.2d 151 (Ct. App. 1972); C & D Trailer Sales v. Taxation & Revenue Dep't, 93 N.M. 697, 604 P.2d 835 (Ct. App. 1979).

Director's (now secretary's) determination conclusive if more than one inference drawn. - If more than one inference can reasonably be drawn from the evidence, then the determination made by the commissioner (now secretary), that the books and records were inadequate, is conclusive. Waldroop v. O'Cheskey, 85 N.M. 736, 516 P.2d 1119 (Ct. App. 1973).

Conclusion must be supported by entire record. - In resolving conflicts in the evidence in support of the findings, it is not contemplated, nor is it consistent with reason, that words, phrases, clauses or sentences may be selected out of context and then combined to give support for a conclusion which is not supportable by the entire

text of the testimony of the witnesses on the particular subject or subjects from which the selections are taken. McVean & Barlow, Inc. v. New Mexico Bureau of Revenue, 88 N.M. 521, 543 P.2d 489 (Ct. App.), cert. denied, 89 N.M. 6, 546 P.2d 71 (1975).

Presumption of assessment's correctness overcome when no substantial evidence supports. - The assessment is presumed to be correct; the taxpayer may overcome the presumption of correctness of the assessment by presenting evidence and showing that the decision of the bureau (now department) is not supported by substantial evidence. Floyd & Berry Davis Co. v. Bureau of Revenue, 88 N.M. 576, 544 P.2d 291 (Ct. App. 1975).

Presumption not overcome when contradictory evidence presented. - Evidence that the construction contract between the taxpayer, a contracting business, and a corporation created a ceiling price was not compelling in view of the contradictory evidence as to the actual cost of the construction, and the presumption of correctness of the assessment of gross receipts tax was not overcome. Floyd & Berry Davis Co. v. Bureau of Revenue, 88 N.M. 576, 544 P.2d 291 (Ct. App. 1975).

Since there was substantial evidence to support decision that the moneys paid to taxpayer were used solely for taxpayer's own obligations and purposes, and the appellate court found nothing in the record to indicate that any of the sums were used by taxpayer to pay the debts of any of the other three corporations, they were properly taxable under Gross Receipts and Compensating Tax Act (Chapter 7, Article 9 NMSA 1978). Westland Corp. v. Commissioner of Revenue, 84 N.M. 327, 503 P.2d 151 (Ct. App. 1972).

C. ACCORDANCE WITH LAW.

Decision not in accordance with law if record not complete. - Under Subsection D(3) (now subsection C(3)), the court will set aside a decision and order of the commissioner (now secretary) if it is found to be not in accordance with law, and the court's review, pursuant to Subsection A, must be based upon the record. Since there was nowhere in the record any indication that the ordinance in question even existed and the court found it impossible to proceed without some knowledge of the considerations underlying the bureau's (now department's) action, the case was remanded so that the record could indicate the bureau's (department's) reasoning and basis for denial of taxpayer's request. Co-Con, Inc. v. Bureau of Revenue, 87 N.M. 118, 529 P.2d 1239 (Ct. App.), cert. denied, 87 N.M. 111, 529 P.2d 1232 (1974).

7-1-26. Claim for refund.

A. Any person who believes that an amount of tax has been paid by or withheld from that person in excess of that for which the person was liable, who has been denied any credit or rebate claimed or who claims a prior right to property in the possession of the department pursuant to a levy made under authority of Sections 7-1-31 through 7-1-34 NMSA 1978 may claim a refund by directing to the secretary, within the time limited by

the provisions of Subsections C, D and E of this section, a written claim for refund. Except as provided in Subsection H of this section, a refund claim shall include the taxpayer's name, address and identification number, the type of tax for which a refund is being claimed, the sum of money being claimed, the period for which overpayment was made and the basis for the refund.

B. The secretary or the secretary's delegate may allow the claim in whole or in part or may deny the claim. If the claim is denied in whole or in part in writing, the claim may not be refiled. If the claim is not granted in full, the person, within ninety days after either the mailing or delivery of the denial of all or any part of the claim, may elect to pursue one, but not more than one, of the remedies in Paragraphs (1) and (2) of this subsection. If the department has neither granted nor denied any portion of a claim for refund within one hundred twenty days of the date the claim was mailed or delivered to the department, the department may not approve or deny the claim but the person may refile it within the time limits set forth in Subsection C of this section or may within ninety days elect to pursue one, but only one, of the remedies in Paragraphs (1) and (2) of this subsection. In any case, if a person does timely pursue more than one remedy, the person shall be deemed to have elected the first remedy invoked. The remedies are as follows:

(1) the person may direct to the secretary a written protest against the denial of, or failure to either allow or deny the claim, which shall be set for hearing by a hearing officer designated by the secretary promptly after the receipt of the protest in accordance with the provisions of Section 7-1-24 NMSA 1978, and pursue the remedies of appeal from decisions adverse to the protestant as provided in Section 7-1-25 NMSA 1978; or

(2) the person may commence a civil action in the district court for Santa Fe county by filing a complaint setting forth the circumstance of the claimed overpayment, alleging that on account thereof the state is indebted to the plaintiff in the amount stated, together with any interest allowable, demanding the refund to the plaintiff of that amount and reciting the facts of the claim for refund. The plaintiff or the secretary may appeal from any final decision or order of the district court to the court of appeals.

C. Except as otherwise provided in Subsections D and E of this section, no credit or refund of any amount may be allowed or made to any person unless as the result of a claim made by that person as provided in this section:

(1) within three years of the end of the calendar year in which:

(a) the payment was originally due, the payment was made or the overpayment resulted from an assessment by the department pursuant to Section 7-1-17 NMSA 1978, whichever is later;

(b) the final determination of value occurs with respect to any overpayment that resulted from a disapproval by any agency of the United States or the state of New Mexico or

any court of increase in value of a product subject to taxation under the Oil and Gas Severance Tax Act [Chapter 7, Article 29 NMSA 1978], the Oil and Gas Conservation Tax Act [Chapter 7, Article 30 NMSA 1978], the Oil and Gas Emergency School Tax Act [Chapter 7, Article 31 NMSA 1978], the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978] or the Natural Gas Processors Tax Act [Chapter 7, Article 33 NMSA 1978]; or

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

(2) within one year of the date:

(a) of the denial of the claim for credit under the provisions of the Investment Credit Act [Chapter 7, Article 9A NMSA 1978] or Filmmaker's Credit Act;

(b) an assessment of tax is made; or

(c) a proceeding begun in court by the department with respect to any period that is covered by a waiver signed on or after July 1, 1993 by the taxpayer pursuant to Subsection F of Section 7-1-18 NMSA 1978; or

(3) for assessments made on or after July 1, 1993, within one year of the date of an assessment of tax made under Subsection B, C or D of Section 7-1-18 NMSA 1978 when the assessment applies to a period ending at least three years prior to the beginning of the year in which the assessment was made, but the claim for refund shall not be made with respect to any period not covered by the assessment.

D. No credit or refund shall be allowed or made to any person claiming a refund of gasoline tax under Section 7-13-11 NMSA 1978 unless notice of the destruction of the gasoline was given the department within thirty days of the actual destruction and the claim for refund is made within six months of the date of destruction. No credit or refund shall be allowed or made to any person claiming a refund of gasoline tax under Section 7-13-14 NMSA 1978 [repealed] 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.

E. If, as a result of an audit by the internal revenue service or the filing of an amended federal return changing a prior election or making any other change for which federal approval is required by the Internal Revenue Code, any adjustment of federal tax is made with the result that there would have been an overpayment of tax if the adjustment to federal tax had been applied to the taxable period to which it relates, claim for credit or refund of only that amount based on the adjustment may be made as provided in this section within one year of the date of the internal revenue service audit adjustment or payment of the federal refund or within the period limited by Subsection C of this section, whichever expires later. Interest computed at the rate specified in Subsection B of Section 7-1-68 NMSA 1978 shall be allowed on any such claim for

refund from the date one hundred twenty days after the claim is made until the date the final decision to grant the credit or refund is made.

F. Any refund of tax paid under any tax or tax act administered under Subsection B of Section 7-1-2 NMSA 1978 may be made, at the discretion of the department, in the form of credit against future tax payments if future tax liabilities in an amount at least equal to the credit amount reasonably may be expected to become due.

G. For the purposes of this section, the term "oil and gas tax return" means a return reporting tax due with respect to oil, natural gas, liquid hydrocarbons or carbon dioxide pursuant to the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978].

H. The filing of a fully completed original income tax return, corporate income tax return, corporate income and franchise tax return, estate tax return or special fuel excise tax return that shows a balance due the taxpayer or a fully completed amended income tax return, an amended corporate income tax return, an amended corporate income and franchise tax return, an amended estate tax return, an amended special fuel excise tax return or an amended oil and gas tax return that shows a lesser tax liability than the original return constitutes the filing of a claim for refund for the difference in tax due shown on the original and amended returns.

History: 1953 Comp., § 72-13-40, enacted by Laws 1965, ch. 248, § 28; 1966, ch. 30, § 4; 1971, ch. 276, § 9; 1974, ch. 32, § 1; 1975, ch. 213, § 2; 1979, ch. 144, § 25; 1982, ch. 18, § 11; 1983, ch. 211, § 27; 1985, ch. 65, § 16; 1986, ch. 20, § 17; 1989, ch. 325, § 8; 1990, ch. 86, § 7; 1993, ch. 5, § 9; 1994, ch. 51, § 5; 1996, ch. 15, § 4; 1997, ch. 67, § 3; 1999, ch. 84, § 2.

ANNOTATIONS

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

Bracketed material. - The bracketed word "Repealed" in Subsection D was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

The 1993 amendment, effective July 1, 1993, rewrote this section to the extent that a detailed comparison would be impracticable.

The 1994 amendment, effective July 1, 1994, substituted the exception clause at the end of the second sentence in the introductory paragraph of Subsection A for the former proviso clause, relating to the same subject matter; substituted "person" for "taxpayer" in the next-to-last sentence in the introductory paragraph of Subsection A, in Paragraph

A(1) and in both sentences in Paragraph A(2), and "July 1, 1993" for "the effective date of this act" in Paragraph B(3); and added Subsection G.

The 1996 amendment, effective July 1, 1996, rewrote the second sentence of Subsection A, added Subparagraph B(2)(a) and designated the existing provisions of Paragraph B(2) as Subparagraphs B(2)(b) and (c).

The 1997 amendment, effective July 1, 1997, redesignated the second paragraph of Subsection A as Subsection B, inserted "or delivery" following "mailing" in the second sentence, inserted "the department may not approve or deny the claim but" preceding "the person may refile" in the third sentence; and redesignated former Subsections B through G as C through H and made related stylistic changes.

The 1999 amendment, effective July 1, 1999, inserted "the payment was made" in Subsection C(1)(a).

Applicability. - Laws 1997, ch. 67, § 11 makes the provisions of Subsection B of this section applicable to claims for refund filed on or after July 1, 1997 and provides that claims for refund filed before July 1, 1997 shall be administered in accordance with the provisions of this section in effect on June 30, 1997.

Internal Revenue Code. - The federal Internal Revenue Code is codified as 26 U.S.C. § 1 et seq.

Filmmaker's Credit Act. - The Filmmaker's Credit Act, referred to in Subparagraph C(2)(a), was compiled as Chapter 7, Article 9B NMSA 1978 prior to its repeal effective July 1, 1996 by Laws 1995, ch. 80, § 2.

Repealed section. - Section 7-13-14 NMSA 1978, referred to in Subsection D, was repealed by Laws 1998, ch. 44, § 6, effective July 1, 1998.

It was mandatory that taxpayers follow administrative procedures of this section before questioning in court the constitutionality of the tax at issue, and district court correctly determined that it lacked jurisdiction because of the failure to timely appeal. Neff v. State ex rel. Taxation and Revenue Dep't, 116 N.M. 240, 861 P.2d 281 (Ct. App. 1993).

Section provides adequate remedy at law. - Taxpayers have standing under this section to contest the constitutionality of New Mexico taxes assessed against them; thus, under the rule of *National Private Truck Council v. Oklahoma Tax Commission,* 515 U.S. 582, 115 S. Ct. 2351, 132 L. Ed. 2d 509 (1995), a § 1983 action for injunctive or declaratory relief cannot lie with respect to imposition of a state tax, because taxpayers have been provided an adequate remedy at law. Ramah Navajo Sch. Bd., Inc. v. New Mexico Taxation & Revenue Dep't, 1999-NMCA-050, 127 N.M. 101, 977 P.2d 1021 (Ct. App. 1999), cert. denied, N.M. , 981 P.2d 1207 (1999).

Secretary decides actions on refund claims. - Secretary of the Taxation and Revenue Department has discretion to act or refuse to act on refund claims under 7-1-26A and 7-1-29A NMSA 1978. Unisys Corp. v. New Mexico Taxation & Revenue Dep't, 117 N.M. 609, 874 P.2d 1273 (Ct. App. 1994).

Time limitation not denial of plain and speedy remedy. - Fact that Subsection B limits claims for refund to periods three years from the end of the calendar year in which payment of the New Mexico income tax was due did not deny plaintiffs a plain, speedy and efficient remedy under New Mexico law so as to invoke federal jurisdiction in tax refund case. Lung v. O'Cheskey, 358 F. Supp. 928 (D.N.M.), aff'd, 414 U.S. 802, 94 S. Ct. 159, 38 L. Ed. 2d 39 (1973).

Enactment of limitation not impermissible exercise of state's legislative power. - The enactment of a statute fixing a period of limitations within which to sue the state for a refund does not constitute an impermissible exercise of legislative power of a state. When a statute creates a substantive right and in connection therewith specifies the time within which an action for the enforcement thereof must be instituted, upon failure to institute the action within the specified period, not only the remedy, but the right of action itself, is extinguished. United States v. Bureau of Revenue, 217 F. Supp. 849 (D.N.M. 1963).

Failure to institute action constitutes waiver of protest. - Failure of the atomic energy commission, which had become subrogated to the rights of certain uranium producers to protest the imposition of certain taxes on the proceeds of the uranium sold to it, to bring suit within four months constituted a waiver of the protest and of all claims against the state on account of any illegality in the tax so paid, since the statute created the substantive right to sue the state for a refund and fixed the time within which suit for the enforcement of the right must be instituted. United States v. Bureau of Revenue, 217 F. Supp. 849 (D.N.M. 1963).

No offset of overpayment against prior liability. - No statute expressly authorizes the Taxation and Revenue Department to apply overpayments of taxes for one reporting period as offsets against underpayments for another prior reporting period. In fact, the legislature has granted the Department only the specific authority to credit refunds or overpayments of gas production taxes against future tax payments. The Department complied with this provision by allowing Taxpayer to net out its overpayment against current tax liabilities on the estimated tax term form when Taxpayer filed its amended form reporting an overpayment of taxes for a prior reporting period. Amoco Prod. Co. v. New Mexico Taxation & Revenue Dep't, 118 N.M. 72, 878 P.2d 1021 (Ct. App. 1994).

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

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 494, 608 to 611, 629; 72 Am. Jur. 2d State and Local Taxation §§ 1039, 1064 to 1114, 1138, 1154.

Recovery of tax paid under unconstitutional statute or ordinance, 48 A.L.R. 1381, 74 A.L.R. 1301.

Action to recover back tax illegally exacted as one upon contract as regards applicability of limitation statutes, 92 A.L.R. 1360.

Mandamus as a proper remedy for return of a tax illegally or erroneously exacted, 93 A.L.R. 585.

Payment of tax in installments as affecting time for claiming refund under statute requiring claim to be made within specified time after payment of tax, 94 A.L.R. 978.

Right to recover back taxes paid upon property assessed in wrong district, 94 A.L.R. 1223.

Constitutionality of statutes providing for refund of taxes illegally or erroneously exacted, 98 A.L.R. 284.

Who as between grantor and grantee, immediate or remote, is entitled to refund of tax or assessment for public improvement against land, 105 A.L.R. 698.

Excessive assessments as within contemplation of statute providing for refunding of taxes "erroneously or illegally charged," 110 A.L.R. 670.

Right to amend claim for refund to taxes after time for filing has expired, 113 A.L.R. 1291.

Grounds stated in protest against payment of property tax as a limitation of grounds upon which recovery of back tax may be claimed, 113 A.L.R. 1479.

Statute repealing or modifying previous statute providing for refunding of taxes illegally or erroneously assessed, collected or paid, as applicable retroactively, 124 A.L.R. 1480.

When statute of limitation commences to run against action to recover tax, 131 A.L.R. 822.

Assignability of claim for tax refund and rights of assignee in respect thereof, 134 A.L.R. 1202.

Right of taxpayer to maintain action for refund of income tax paid by him, without paying the entire tax assessed against him or shown on his return, 138 A.L.R. 1426.

Power or duty, in absence of statute, to allow tax or license fee illegally exacted or erroneously paid as credit on valid tax or license fee, 160 A.L.R. 1423.

Retrospective operation of statute enlarging or shortening period for claim of tax refund, 163 A.L.R. 778.

Right to refund or recovery of back taxes paid on property not owned by taxpayer, 165 A.L.R. 879.

When does special limitation period for filing applications for tax refund begin to run, 175 A.L.R. 1100.

When right to refund of state or local taxes accrues, within statute limiting time for applying for refund, 46 A.L.R.2d 1350.

Propriety of class action in state courts to recover taxes, 10 A.L.R.4th 655.

Effect of delay in receipt or negotiation of refund check in determining right to interest under § 6611 of the Internal Revenue Code (26 USCA § 6611), 145 A.L.R. Fed. 437.

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

7-1-26.1. Repealed.

ANNOTATIONS

Repeals. - Laws 1997, ch. 67, § 10 repeals 7-1-26.1 NMSA 1978, as enacted by Laws 1991, ch. 9, § 23, providing limitation on claims for refund based on net operating losses, effective July 1, 1997. For provisions of former section, see 1995 Replacement Pamphlet.

7-1-27. Conclusiveness of court order on liability for payment of tax.

Whenever the jurisdiction of the district court of Santa Fe county or the court of appeals is invoked according to the provisions of Section 7-1-25, 7-1-26 or 7-1-59 NMSA 1978, or whenever the jurisdiction of any federal court is invoked or whenever the jurisdiction of any district court of this state is invoked according to the provisions of Section 7-1-58 NMSA 1978, a final decision of that court or of any higher court which reviews the matter and from which decision no appeal or review is successfully taken is conclusive as regards the liability or nonliability of any person for payment of any tax.

History: 1953 Comp., § 72-13-41, enacted by Laws 1965, ch. 248, § 29; 1966, ch. 30, § 5; 1999, ch. 84, § 3.

ANNOTATIONS

The 1999 amendment, effective July 1, 1999, updated statutory references.

If liability nonexistent under one theory then also under another theory. - The language of this section does not contemplate that, having imposed tax liability under a theory held to be erroneous, the commissioner (now secretary) can then proceed anew against a taxpayer under another theory. Leaco Rural Tel. Coop. v. Bureau of Revenue, 86 N.M. 629, 526 P.2d 426 (Ct. App. 1974).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 1149, 1150.

84 C.J.S. Taxation §§ 503, 543.

7-1-28. Authority for abatements of assessments of tax.

A. In response to a written protest against an assessment, submitted in accordance with the provisions of Section 7-1-24 NMSA 1978, but before any court acquires jurisdiction of the matter, or when a "notice of assessment of taxes" is found to be incorrect, the secretary or the secretary's delegate may, with the written approval of the attorney general, abate any part of an assessment determined by the secretary or the secretary's delegate to have been incorrectly, erroneously or illegally made. Notwithstanding the above, abatements of assessments incorrectly, erroneously or illegally made to one person amounting to less than five thousand dollars ($5,000) in one calendar year may be made without the prior written approval of the attorney general, except that:

(1) 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 Sections 7-13-13 through 7-13-15 NMSA 1978 [repealed] and abatements of cigarette tax made under the Cigarette Tax Act [Chapter 7, Article 12 NMSA 1978] may be made without the prior approval of the attorney general regardless of the amount; and

(2) abatements with respect to the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] amounting to less than twenty thousand dollars ($20,000) may be made without prior approval of the attorney general.

B. Pursuant to the final order of the district court for Santa Fe county, the court of appeals, the supreme court of New Mexico or any federal court, from which order, appeal or review is not successfully taken by the department, adjudging that any person is not required to pay any portion of tax assessed to that person, the secretary or the secretary's delegate shall cause that amount of the assessment to be abated.

C. Pursuant to a compromise of taxes agreed to by the secretary and according to the terms of the closing agreement formalizing the compromise, the secretary or the secretary's delegate shall cause the abatement of the appropriate amount of any assessment or assessments of tax.

D. The secretary or the secretary's delegate shall cause the abatement of the amount of an assessment of tax 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 five thousand dollars ($5,000) shall be available for inspection by the public. The department shall keep such records for a minimum of three years from the date of the abatement.

History: 1953 Comp., § 72-13-42, enacted by Laws 1965, ch. 248, § 30; 1966, ch. 30, § 6; 1971, ch. 32, § 1; 1975, ch. 116, § 2; 1977, ch. 297, § 1; 1979, ch. 144, § 26; 1986, ch. 20, § 18; 1996, ch. 15, § 5.

ANNOTATIONS

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

Bracketed material. - The bracketed word "Repealed" in Paragraph A(1) was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

The 1996 amendment, effective July 1, 1996, added "except that:" at the end of the introductory paragraph of Subsection A and made related changes in that subsection, added Paragraphs A(1) and (2), substituted "five thousand dollars ($5,000)" for "one thousand dollars ($1,000)" in Subsection E, and made a minor stylistic change in Subsection D.

Repealed sections. - Sections 7-13-13 to 7-13-15 NMSA 1978, referred to in Paragraph A(1), were repealed by Laws 1998, ch. 44, § 6, effective July 1, 1998.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 795 to 816.

84 C.J.S. Taxation § 583; 85 C.J.S. Taxation § 1105.

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

A. In response to a claim for refund made as provided in Section 7-1-26 NMSA 1978, but before any court acquires jurisdiction of the matter, the secretary or the secretary's delegate may authorize the refund to a person of the amount of any overpayment of tax determined by the secretary or the secretary's delegate to have been erroneously made

by the person, together with allowable interest. Any refund of tax and interest erroneously paid and amounting to more than five thousand dollars ($5,000) may be made to any one person only with the prior approval of the attorney general, except that:

(1) refunds with respect to the Oil and Gas Severance Tax Act [Chapter 7, Article 29 NMSA 1978], the Oil and Gas Conservation Tax Act [Chapter 7, Article 30 NMSA 1978], the Oil and Gas Emergency School Tax Act [Chapter 7, Article 31 NMSA 1978], the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978], the Natural Gas Processors Tax Act [Chapter 7, Article 33 NMSA 1978] or the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978], refunds of gasoline tax made under Sections 7-13-13 through 7-13-15 NMSA 1978 [repealed] and refunds of cigarette tax made under the Cigarette Tax Act [Chapter 7, Article 12 NMSA 1978] may be made without the prior approval of the attorney general regardless of the amount; and

(2) refunds with respect to the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] amounting to less than twenty thousand dollars ($20,000) may be made without the prior approval of the attorney general.

B. Pursuant to the final order of the district court, the court of appeals, the supreme court of New Mexico or any federal court, from which order, appeal or review is not successfully taken, adjudging that any person has made an overpayment of tax, the secretary shall authorize the refund to the person of the amount thereof.

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

D. Records of refunds made in excess of five thousand dollars ($5,000) shall be available for inspection by the public. The department shall keep such records for a minimum of three years from the date of the refund.

History: 1953 Comp., § 72-13-43, enacted by Laws 1965, ch. 248, § 31; 1966, ch. 30, § 7; 1970, ch. 17, § 1; 1975, ch. 116, § 3; 1977, ch. 297, § 2; 1979, ch. 144, § 27; 1982, ch. 18, § 12; 1989, ch. 325, § 9; 1992, ch. 55, § 12.

ANNOTATIONS

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

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

Bracketed material. - The bracketed word "Repealed" in Paragraph A(1) was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

The 1989 amendment, effective June 16, 1989, in Subsection A, in the first sentence, substituted "secretary or the secretary's delegate" for "director or his delegate" in two places, deleted "with the written approval of the attorney general" preceding "authorize the refund", in the second sentence, deleted "Notwithstanding the above" from the beginning, substituted "more than five thousand dollars" for "less than five thousand dollars", "only with the prior approval" for "without the prior approval" and "through 7-13-15 NMSA 1978" for "through 7-13-16 NMSA 1978" and inserted the language beginning with "except that" and ending with "Oil and Gas Production Equipment Ad Valorem Tax Act"; in Subsections B and C, substituted "the secretary" for "the director or his delegate"; in Subsection D, substituted "department" for "division" in the second sentence; and made minor stylistic changes.

The 1992 amendment, effective July 1, 1992, in Subsection A, substituted "Any refund" for "Refunds" and deleted "during any one calendar year" following "($5,000)" in the second sentence, inserted the colon and Paragraph (1) designation, and added Paragraph (2); and substituted "five thousand dollars ($5,000)" for "one thousand dollars ($1,000)" in the first sentence of Subsection D.

Repealed sections. - Sections 7-13-13 to 7-13-15 NMSA 1978, referred to in Paragraph A(1), were repealed by Laws 1998, ch. 44, § 6, effective July 1, 1998.

Secretary decides actions on refund claims. - Secretary of the Taxation and Revenue Department has discretion to act or refuse to act on refund claims under 7-1-26A and 7-1-29A NMSA 1978. Unisys Corp. v. New Mexico Taxation & Revenue Dep't, 117 N.M. 609, 874 P.2d 1273 (Ct. App. 1994).

No offset of overpayment against prior liability. - No statute expressly authorizes the Taxation and Revenue Department to apply overpayments of taxes for one reporting period as offsets against underpayments for another prior reporting period. In fact, the legislature has granted the Department only the specific authority to credit refunds or overpayments of gas production taxes against future tax payments. The Department complied with this provision by allowing Taxpayer to net out its overpayment against current tax liabilities on the estimated tax term form when Taxpayer filed its amended form reporting an overpayment of taxes for a prior reporting period. Amoco Prod. Co. v. New Mexico Taxation & Revenue Dep't, 118 N.M. 72, 878 P.2d 1021 (Ct. App. 1994).

Interest on underpayment of taxes is calculated without regard to receipt by the Taxation and Revenue Department of any overpayment of taxes. The Department, once a claim for refund is made, is authorized only to allow a taxpayer claiming a refund for overpayment of gas production taxes to credit the refund against current or future tax liabilities. Amoco Prod. Co. v. New Mexico Taxation & Revenue Dep't, 118 N.M. 72, 878 P.2d 1021 (Ct. App. 1994).

Director (now secretary) was within his discretion in applying amount wrongfully paid to the amount he determined to be owing. G.M. Shupe, Inc. v. Bureau of Revenue, 89 N.M. 265, 550 P.2d 277 (Ct. App.), cert. denied, 89 N.M. 321, 551 P.2d 1368 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 549 to 552; 72 Am. Jur. 2d State and Local Taxation §§ 846, 1064 to 1076.

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

7-1-30. Collection of penalties and interest.

Any amount of civil penalty and interest may be collected in the same manner as, and concurrently with, the amount of tax to which it relates, without assessment or separate proceedings of any kind.

History: 1953 Comp., § 72-13-44, enacted by Laws 1965, ch. 248, § 32.

ANNOTATIONS

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

For penalties generally, see 7-1-69 to 7-1-71 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 856 to 865, 1068, 1069.

Retroactive effect of statutes relating to interest on or penalties in respect of delinquent taxes, 77 A.L.R. 1034.

Liability to penalty imposed for failure to pay tax of one who in good faith contested its validity, 96 A.L.R. 925, 147 A.L.R. 142.

Penalty for nonpayment of taxes when due as affected by lack of notice to taxpayer, 102 A.L.R. 405.

Doubt as to liability for, or as to person to whom to pay, tax, as affecting liability for penalties and interest, 137 A.L.R. 306.

Time of mailing or time of receipt as determinative of liability for penalty or additional amount for failure to pay tax or license fee within prescribed time, 158 A.L.R. 370.

85 C.J.S. Taxation §§ 1021 to 1036.

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 such person and the conversion thereof to money by appropriate means.

B. A levy is made by taking possession of property pursuant to authority contained in a warrant of levy or by the service, by the secretary or secretary's delegate or any sheriff, 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 him 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.

History: 1953 Comp., § 72-13-45, enacted by Laws 1965, ch. 248, § 33; 1979, ch. 144, § 28; 1993, ch. 242, § 1.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, substituted "secretary or secretary's delegate" for "director or his delegate" in Subsection A and in two places in Subsection B, and inserted "upon the taxpayer's employer" near the middle of Subsection B.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 866 to 880.

Enforceability, against undivided tract, of tax or special assessment levied against part of it at one rate and part at another, 112 A.L.R. 73.

84 C.J.S. Taxation §§ 685 to 715.

7-1-32. Contents of warrant of levy.

A warrant of levy shall:

A. bear on its face a statement of the authority for its service and compelling compliance with its terms, shall be attested by the secretary and shall bear the seal of the department;

B. identify the taxpayer whose liability for taxes is sought to be enforced, the amount thereof and the date or approximate date on which the tax became due;

C. order the person on whom it is served to reveal the amount of property or rights to property in his own possession that belong to the taxpayer and the extent of his own interest therein, and to reveal the amount and kind of property or rights to property of the taxpayer that are, to the best of his knowledge, in the possession of others;

D. order the person on whom it is served to surrender the property forthwith but may allow him to agree in writing to surrender the property or the proceeds therefrom on a certain date in the future when the taxpayer's right to it would otherwise mature;

E. 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 which may become owing 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.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, added current Subsection E and redesignated former Subsections E and F as Subsections F and G.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 866, 868.

Use of abbreviations in description of land in tax proceedings, 1 A.L.R. 1228.

Sufficiency of description of property on tax rolls or in tax proceedings, by reference to map, plat or survey, 137 A.L.R. 184.

84 C.J.S. Taxation §§ 687 to 694.

7-1-33. Successive seizures.

Whenever any property or right to property upon which levy has been made by virtue of Section 7-1-31 NMSA 1978 is not sufficient to satisfy the claim for which levy is made, the secretary or secretary's delegate may thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property or rights to property subject to levy of the person against whom the claim exists, until the amount due from him is fully paid. Successive levies are not necessary in the case of a levy served on an employer of the taxpayer with respect to wages or salary of the taxpayer.

History: 1953 Comp., § 72-13-47, enacted by Laws 1965, ch. 248, § 35; 1979, ch. 144, § 30; 1993, ch. 242, § 3.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, substituted "secretary or secretary's delegate" for "director or his delegate" in the first sentence and added the second sentence.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Power to make additional tax levy necessitated by failure of some property owners to pay their proportion of original levy, 79 A.L.R. 1157.

84 C.J.S. Taxation §§ 688, 694.

7-1-34. Surrender of property subject to levy; penalty.

A. Any person in possession of or obligated with respect to property or rights to property subject to levy upon which a levy has been made shall surrender the property or rights, or discharge such obligation, to the secretary or the secretary's delegate, except that part of the property or right as is, at the time of such demand, the subject of a bona fide attachment, execution, levy or other similar process, unless the person is entitled to and does redeem it according to the provisions of Section 7-1-47 NMSA 1978.

B. Upon demand of the secretary or the secretary's delegate, any employer owing a taxpayer wages or salary subject to levy upon which a levy has been made shall surrender to the secretary or the secretary's delegate each subsequent pay period that portion of the taxpayer's wages or salary not exempted under Section 7-1-36 NMSA 1978 and not subject to a prior bona fide attachment, execution, levy, garnishment or similar process, until the amount of the levy is satisfied in full or until notified by the secretary or the secretary's delegate. The secretary or secretary's delegate shall notify the employer promptly when the levy has been satisfied.

C. Any person who wrongfully fails or refuses to surrender or redeem, as required by this section, any property or rights to property levied upon, upon demand by the secretary or the secretary's delegate, is liable for a civil penalty in an amount equal to the lesser of the value of the property or rights not so surrendered or the amount of the taxes for the collection of which such levy has been made.

D. Notwithstanding any other provision of law, the surrender by a person in possession of or obligated with respect to property, rights to property or proceeds from the sale or other disposition of property subject to levy upon which a levy has been made by the secretary or the secretary's delegate of such property or rights to property, discharges such obligation to the department. A surrender by a person shall be a defense against the assertion of any obligation or liability to the delinquent taxpayer or any other person with respect to such property or rights to property arising from a surrender or payment.

E. The term "person", as used in this section, includes an officer or employee of a corporation or a member or employee of a partnership, who, as such officer, employee or member, is under a duty to surrender the property or rights to property or to discharge the obligation.

History: 1953 Comp., § 72-13-48, enacted by Laws 1965, ch. 248, § 36; 1979, ch. 144, § 31; 1986, ch. 20, § 20; 1993, ch. 242, § 4.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, deleted "upon demand of the secretary or the secretary's delegate" preceding "surrender the property" in Subsection A; added current Subsections B and D; redesignated former Subsections B and C as Subsections C and E; substituted "is liable for a civil penalty in an amount equal to the lesser of" for "shall be liable in his own person and estate to the state of New Mexico in a sum equal to", substituted "or the amount" for "but not exceeding the amount" and deleted "together with costs and interests on such sum at the rate specified in Section 7-1-67 NMSA 1978 from the date of such levy" at the end, in Subsection C; and deleted "Subsections A and B of" preceding "this section" in Subsection E.

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

7-1-35. Stay of levy.

Levy shall not be made on the property or rights to property of any taxpayer who furnishes security in accordance with the provisions of Section 7-1-54 NMSA 1978. A levy made under authority of Section 7-1-31 NMSA 1978 shall be released as otherwise provided in the Tax Administration Act [this article] 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.

ANNOTATIONS

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

7-1-36. Property exempt from levy.

A. There shall be exempt from levy the money or property of a delinquent taxpayer in a total amount or value not in excess of one thousand dollars ($1,000).

B. In addition to the property exempt under Subsection A of this section, there shall also be exempt from levy on an employer of the taxpayer the greater of the following portions of the taxpayer's disposable earnings:

(1) seventy-five percent of the taxpayer's disposable earnings for any pay period; or

(2) an amount each week equal to forty times the federal minimum hourly wage rate.

The superintendent of the regulation and licensing department shall provide a table giving equivalent exemptions for pay periods of other than one week.

C. As used in this section:

(1) "disposable earnings" means that part of a taxpayer's wages or salary remaining after deducting the amounts that are required by law to be withheld; and

(2) "federal minimum hourly wage" means the current highest federal minimum hourly wage rate for an eight-hour day and a forty-hour week. It is immaterial whether the employer is exempt under federal law from paying the federal minimum hourly wage rate.

History: 1953 Comp., § 72-13-50, enacted by Laws 1965, ch. 248, § 38; 1993, ch. 242, § 5.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, designated the formerly undesignated provision as Subsection A and added Subsections B and C.

Creditor's assignee entitled to exemption. - Defendant, as assignee for the benefit of creditors of delinquent corporate taxpayer, is entitled to $1,000 exemption of taxpayer's assets under this section. Regents of N.M. College of Agric. & Mechanic Arts v. Academy of Aviation, Inc. 83 N.M. 86, 488 P.2d 343 (1971).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 866, 869.

Enforcement against tax-exempt property of tax on nonexempt property or on owner of tax-exempt property, 159 A.L.R. 461.

84 C.J.S. Taxation §§ 688, 694.

7-1-37. Assessment as lien.

A. If any person liable for any tax neglects or refuses to pay the tax after assessment and demand for payment as provided in Section 7-1-17 NMSA 1978 or if any person liable for tax pursuant to Section 7-1-63 NMSA 1978 neglects or refuses to pay after demand has been made, unless and only so long as such a person is entitled to the protection afforded by a valid order of a United States court entered pursuant to Section 362 or 1301 of Title 11 of the United States Code, as amended or renumbered, the amount of the tax shall be a lien in favor of the state upon all property and rights to property of the person.

B. The lien imposed by Subsection A of this section shall arise at the time both assessment and demand, as provided in Section 7-1-17 NMSA 1978, have been made or at the time demand has been made pursuant to Section 7-1-63 NMSA 1978 and shall continue until the liability for payment of the amount demanded is satisfied or extinguished.

C. As against any mortgagee, pledgee, purchaser, judgment creditor, person claiming a lien under Sections 48-2-1 through 48-11-9 NMSA 1978, lienor for value or other encumbrancer for value, the lien imposed by Subsection A of this section shall not be considered to have arisen or have any effect whatever until notice of the lien has been filed as provided in Section 7-1-38 NMSA 1978.

History: 1953 Comp., § 72-13-51, enacted by Laws 1965, ch. 248, § 39; 1979, ch. 144, § 32; 1982, ch. 18, § 13; 1993, ch. 242, § 6.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, substituted "person claiming a lien under Sections 48-2-1 through 48-11-9 NMSA 1978, lienor for value" for "lienor" in Subsection C and made minor stylistic changes in Subsection A.

Jeopardy assessments become liens on all property and rights to property of a person when that person neglects or refuses to pay the tax after it has been assessed. Regents of N.M. College of Agric. & Mechanic Arts v. Academy of Aviation, Inc. 83 N.M. 86, 488 P.2d 343 (1971).

The requirements of 7-1-38 NMSA 1978 must be met in order to effectuate a lien under this section. In re What D'Ya Call It, Inc. 105 N.M. 164, 730 P.2d 467 (1986).

Liens arising upon transfer of liquor license. - The tax liability referred to in 7-1-82 NMSA 1978, governing transfer of a liquor license, may become a lien in favor of the state in the amount of taxes due if the procedures set forth in this section and 7-1-38 NMSA 1978 are followed. In re What D'Ya Call It, Inc. 105 N.M. 164, 730 P.2d 467 (1986).

A lien pursuant to former 60-6B-3E NMSA 1978, which gives a lien to wholesale creditors of a liquor licensee, has a superpriority status over other lienholders, including the tax lien in favor of the state, unless the latter liens were perfected under 7-1-38 NMSA 1978 or under applicable general law prior to the date that the licensee incurred debts owed to wholesale creditors. In re What D'Ya Call It, Inc. 105 N.M. 164, 730 P.2d 467 (1986).

Payment may be required prior to transfer of liquor license. - The state may require payment of delinquent taxes prior to transfer of a liquor license, pursuant to 7-1-82 NMSA 1978, where its liens under this section and 7-1-38 NMSA 1978 have been

foreclosed. First Interstate Bank v. Taxation & Revenue Dep't, 108 N.M. 756, 779 P.2d 133 (Ct. App. 1989).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 891 to 897.

Lien for tax imposed by one taxing unit as affected by lien or sale for tax imposed by another taxing unit of same state, 135 A.L.R. 1464.

84 C.J.S. Taxation §§ 585 to 595.

7-1-38. Notice of lien.

A notice of the lien provided for in Section 7-1-37 NMSA 1978 may be recorded in any county in the state in the tax lien index established by Sections 48-1-1 through 48-1-7 NMSA 1978 and a copy thereof shall be sent to the taxpayer affected. Any county clerk to whom the notices are presented shall record them as requested without charge. The notice of lien shall identify the taxpayer whose liability for taxes is sought to be enforced and the date or approximate date on which the tax became due and shall state that New Mexico claims a lien for the entire amount of tax asserted to be due, including applicable interest and penalties. Recording of the notice of lien shall be effective as to all property and rights to property of the taxpayer.

History: 1953 Comp., § 72-13-52, enacted by Laws 1965, ch. 248, § 40; 1979, ch. 144, § 33; 1996, ch. 15, § 6.

ANNOTATIONS

The 1996 amendment, effective July 1, 1996, made stylistic changes in the second and third sentences, and substituted "all property and rights to property of the taxpayer" for "both real and tangible personal property" at the end of the section.

The object of the notice of tax lien is to give constructive notice to mortgagees, pledgees, purchasers, and other potential creditors. In re Hill, 166 Bankr. 444 (Bankr. D.N.M. 1993).

Priority of tax lien. - Liquor wholesalers have a superpriority lien over all lien holders, with the exception of the New Mexico State Taxation and Revenue Department, if the tax lien is perfected pursuant to this section. The tax lien is effective as of the date the notice is filed. D & M, Inc. v. United N.M. Bank, 114 Bankr. 274 (Bankr. D.N.M. 1990).

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

Liens arising upon transfer of liquor license. - The tax liability referred to in 7-1-82 NMSA 1978, governing transfer of a liquor license, may become a lien in favor of the

state in the amount of taxes due if the procedures set forth in 7-1-37 NMSA 1978 and this section are followed. In re What D'Ya Call It, Inc. 105 N.M. 164, 730 P.2d 467 (1986).

A lien pursuant to former 60-6B-3E NMSA 1978, which gives a lien to wholesale creditors of a liquor licensee, has a superpriority status over other lienholders, including the tax lien in favor of the state, unless the latter liens were perfected under this section or under applicable general law prior to the date that the licensee incurred debts owed to wholesale creditors. In re What D'Ya Call It, Inc. 105 N.M. 164, 730 P.2d 467 (1986).

Payment may be required prior to transfer of liquor license. - The state may require payment of delinquent taxes prior to transfer of a liquor license, pursuant to 7-1-82 NMSA 1978, where its liens under this section and 7-1-37 NMSA 1978 have been foreclosed. First Interstate Bank v. Taxation & Revenue Dep't, 108 N.M. 756, 779 P.2d 133 (Ct. App. 1989).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 891 to 894.

Sufficiency of designation of taxpayer in recorded notice of federal tax lien, 3 A.L.R.3d 633.

84 C.J.S. Taxation §§ 585 to 588.

7-1-39. Release or extinguishment of lien; limitation on actions to enforce lien.

A. When any substantial part of the amount of tax due from a taxpayer is paid, the department shall immediately file, in the same county in which a notice of lien was filed, and in the same records, a document completely or partially releasing the lien. The county clerk to whom such a document is presented shall record it without charge.

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

ANNOTATIONS

The 1997 amendment, effective July 1, 1997, added Subsection B, redesignated former Subsection B as Subsection C, and made a minor stylistic change.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 895, 896.

Effect of receiver's failure to discharge tax liens, 39 A.L.R. 1415.

Constitutionality, construction and application of statute permitting release of part of property subject to tax liens or special assessments, 100 A.L.R. 418.

Applicability of general statute of limitations to real estate tax lien foreclosure action, 59 A.L.R.2d 1144.

84 C.J.S. Taxation §§ 595 to 598.

7-1-40. Foreclosure of lien.

The liens provided for in the Tax Administration Act [this article] may be foreclosed or satisfied by seizure and sale of property or rights to property as provided in the Tax Administration Act, except the lien provided for in Section 7-1-47 NMSA 1978.

History: 1953 Comp., § 72-13-54, enacted by Laws 1965, ch. 248, § 42; 1979, ch. 144, § 35.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 896, 897, 904 to 915.

Persons in possession of real property as affected by decree foreclosing tax lien, upon service by publication, or in a proceeding against unknown owners, 128 A.L.R. 114.

Constitutionality, construction and application of statutes providing for impleading other taxing units in suit by taxing unit for foreclosure of tax lien and the sale of the property free from lien of taxes due to such impleaded units, 134 A.L.R. 1286.

Constitutional validity of statute providing for in rem or summary foreclosure of delinquent tax liens on real property, 160 A.L.R. 1026.

85 C.J.S. Taxation §§ 770 to 785.

7-1-41. Notice of seizure.

As soon as practicable after the levy, the director or his delegate shall notify the owner thereof of the amount and kind of property seized and of the total amount demanded in payment of tax.

History: 1953 Comp., § 72-13-55, enacted by Laws 1965, ch. 248, § 43; 1979, ch. 144, § 36.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 868, 916 to 930.

Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party, 45 A.L.R.4th 447.

84 C.J.S. Taxation §§ 359, 605; 85 C.J.S. Taxation § 773.

7-1-42. Notice of sale.

As soon as practicable after the levy, the director or his delegate shall decide on a time and place for the sale of the property, shall make a diligent inquiry as to the identity and whereabouts of the owner of the property and persons having an interest therein, and shall notify the owner and persons having an interest therein of the time and place for the sale. The fact that any person entitled thereto does not receive the notice provided for in this section does not affect the validity of the sale.

History: 1953 Comp., § 72-13-56, enacted by Laws 1965, ch. 248, § 44; 1979, ch. 144, § 37.

ANNOTATIONS

Cross references. - For publication of notice generally, see 14-11-1 to 14-11-13 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 916 to 930.

Effect of misnomer of landowner or delinquent taxpayer in notice, advertisement, etc., of tax foreclosure or sale, 43 A.L.R.2d 967.

Validity of notice of tax sale or of tax sale proceeding which fails to state tax year or kind or type of taxes covered by tax assessments, 43 A.L.R.2d 988.

What is "public place" within requirements as to posting of notices, 90 A.L.R.2d 1210.

Inclusion or exclusion of first and last days in computing the time for performance of an act or event which must take place a certain number of days before a known future date, 98 A.L.R.2d 1331.

Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party, 45 A.L.R.4th 447.

85 C.J.S. Taxation §§ 790 to 797.

7-1-43. Sale of indivisible property.

If any property of the taxpayer subject to levy is not divisible so as to enable the director or his delegate by sale of a part thereof to raise the whole amount of the tax and expenses, the whole of the taxpayer's interest in the property shall be sold but is always subject to redemption before sale according to the provisions of Section 7-1-47 NMSA 1978.

History: 1953 Comp., § 72-13-57, enacted by Laws 1965, ch. 248, § 45; 1979, ch. 144, § 38.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation § 938.

Lump-sum assessment for taxes on public improvement against property owned by cotenants in undivided shares, 80 A.L.R. 862.

Interest of spouse in estate by entireties as subject to satisfaction of his or her individual debt, 75 A.L.R.2d 1172.

85 C.J.S. Taxation § 806.

7-1-44. Requirements of sale.

No sale of imperishable property shall be held until after the expiration of thirty days from the date of the levy thereon, and no sale of imperishable property shall be held until after publication of notice thereof in a newspaper of general circulation in the county wherein the property was located when levied upon once each week for three successive weeks stating the time and place of the sale and describing the property to be sold. Perishable property may be sold immediately after seizure without publication or notice of the sale. The department shall make special efforts to give notice of the sale to persons with a particular interest in special property and shall, apart from the requirements stated above, advertise the sale in a manner appropriate to the kind of property to be sold.

History: 1953 Comp., § 72-13-58, enacted by Laws 1965, ch. 248, § 46; 1971, ch. 276, § 10; 1979, ch. 144, § 39; 1986, ch. 20, § 22.

ANNOTATIONS

Cross references. - For publication of notice generally, see 14-11-1 to 14-11-13 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 908 to 910.

Use of abbreviations in description of land in tax proceedings, 1 A.L.R. 1228.

Sufficiency of description of land in notice of tax sale, 67 A.L.R. 890.

Failure of advertisement in judicial proceeding for sale of land for delinquent taxes on foreclosure of tax lien, to describe lands affected, as contrary to due process of law or other constitutional objection, 107 A.L.R. 285.

Sufficiency of description of property on tax rolls or in tax proceedings, by reference to map, plat or survey, 137 A.L.R. 184.

Effect of misnomer of landowner on delinquent taxpayer in notice, advertisement, etc., of tax foreclosure or sale, 43 A.L.R.2d 967.

Validity of notice of tax sale or of tax sale proceeding which fails to state tax year or kind or type of taxes covered by tax assessments, 43 A.L.R.2d 988.

85 C.J.S. Taxation §§ 749 to 752, 799 to 802.

7-1-45. Manner of sale or conversion to money.

All property levied upon, not consisting of money, shall be sold at public auction at one o'clock in the afternoon on the steps or in front of the courthouse of the county in which the property was located when levied upon or may be consigned to an auctioneer for sale. Payment may be accepted only in full and immediately after the acceptance of a bid for the property. Stocks, bonds, securities and similar property may be negotiated or surrendered for money in accordance with uniform regulations issued by the director, notwithstanding the above.

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

ANNOTATIONS

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

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 931 to 939.

Validity of judicial, execution, tax or other public sale as affected by the particular point in courthouse or other place identified by notice, or designated by statute or by mortgage or trust deed, at which the sale was made, or by indefiniteness of notice as regards that point, 120 A.L.R. 660.

What constitutes "public sale," 4 A.L.R.2d 575.

85 C.J.S. Taxation §§ 798 to 812.

7-1-46. Minimum prices.

Before the sale, the director or his delegate shall determine a minimum price for which the property shall be sold, and if no person offers for the property at the sale the amount of the minimum price, the property shall not be sold but the sale shall be readvertised and held at a later time. In determining the minimum price, the director or his delegate shall take into account and determine the expense of making the levy and sale.

History: 1953 Comp., § 72-13-60, enacted by Laws 1965, ch. 248, § 48; 1979, ch. 144, § 41.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 933, 934.

Sale of property at tax sale for more or less than the amount of taxes, penalties and costs as affecting its validity, 97 A.L.R. 842, 147 A.L.R. 1141.

Constitutionality of statutes authorizing tax sale or resale for less than the amount of the taxes due, 155 A.L.R. 1177.

85 C.J.S. Taxation §§ 803 to 805.

7-1-47. Redemption before sale.

Any person whose property has been levied upon shall have the right to pay the amount due, together with the expenses of the proceeding, or furnish acceptable security for the payment thereof according to the provisions of Section 7-1-54 NMSA 1978, to the director or his delegate at any time prior to the sale thereof, and upon payment or furnishing of security the director or his delegate shall restore the property to him, and all further proceedings in connection with the levy on the property shall cease from the time of the payment. Any person who has a sufficient interest in property or rights to property levied upon to entitle him to redeem it from sale, according to the provisions of

this section, who does pay the amount due and accomplishes the redemption, shall have a lien against the property in the amount paid and may file a notice thereof in the records of any county in the state in which the property is located and may foreclose the lien as provided by law.

History: 1953 Comp., § 72-13-61, enacted by Laws 1965, ch. 248, § 49; 1979, ch. 144, § 42.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 988 to 1030.

Constitutionality of statute extending period for redemption from judicial or tax sale, or sale upon mortgage foreclosure, 1 A.L.R. 143, 38 A.L.R. 229, 89 A.L.R. 966.

Right after redemption from tax sale or forfeiture to maintain action for trespass committed between sale or forfeiture and redemption, 33 A.L.R. 302.

Right of person under disability to redeem from tax sale, 65 A.L.R. 582, 159 A.L.R. 1467.

Payment of tax or redemption from tax sale by public officer for benefit of owner, 66 A.L.R. 1035.

Necessity and sufficiency of statement in notice of application for tax deed, or notice to redeem from tax sale, as regards time for redemption, 82 A.L.R. 502.

Right and remedy of mortgagee who for the protection of his security pays taxes on, or redeems from tax sale of, mortgaged property, 84 A.L.R. 1366, 123 A.L.R. 1248.

Judgment as lien on judgment debtor's equity of redemption in land sold for taxes, 91 A.L.R. 647.

Erroneous or incomplete information by public officials, or refusal to give information, as excusing taxpayer's failure to redeem within required time, 134 A.L.R. 1299, 21 A.L.R.2d 1273.

Refusal of tender, made under protest, of amount required for redemption from tax sale, 142 A.L.R. 1198.

Constitutionality of provision for service by publication of notice of proceeding by purchaser at tax sale to foreclose delinquent owner's right of redemption, or of other proceeding to perfect tax purchaser's title, 145 A.L.R. 597.

Constitutionality, construction and application of statutes providing for partial or proportional redemption from tax sale of land, 145 A.L.R. 1328.

Who entitled to rents and profits, or rental value, during the redemption period following tax sale, 147 A.L.R. 1084.

Retroactive application, to previous sales, of statutes reducing period of redemption from tax sales, as unconstitutional impairment of contract obligations, 147 A.L.R. 1123.

Sufficiency of tax redemption notice which includes more than one tax assessment for which land was sold, or more than one tract of land, 155 A.L.R. 1198.

One in adverse possession as within class of persons entitled to redeem from tax sale, 164 A.L.R. 1285.

What constitutes "execution" of tax deed beginning or ending period for redemption from tax sale, 166 A.L.R. 853.

Holder of tax certificate as affected by public official's waiver of, or failure to require, compliance with conditions of redemption, 21 A.L.R.2d 1273.

Provisions of Soldiers' and Sailors' Civil Relief Act relating to taxation of property of military personnel, 32 A.L.R.2d 618.

Who may redeem, from a tax foreclosure or sale, property to which title or record ownership is held by corporation, 54 A.L.R.2d 1172.

Applicability of tax redemption statutes to separate mineral estates, 56 A.L.R.2d 621.

Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party, 45 A.L.R.4th 447.

85 C.J.S. Taxation §§ 841 to 894.

7-1-48. Documents of title.

In case property is sold as above provided, the director or his delegate, after payment for the property is received, shall prepare and deliver to the purchaser thereof a certificate of sale, in the case of personalty, or, in the case of realty, a deed, in form as the director shall by regulation prescribe. Such documents of title shall recite the authority for the transaction, the date of the sale, the interest in the property that is conveyed and the price paid therefor.

History: 1953 Comp., § 72-13-62, enacted by Laws 1965, ch. 248, § 50; 1979, ch. 144, § 43.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 973 to 987.

Necessity and sufficiency of statement in notice of application for tax deed, or notice to redeem from tax sale, as regards time for redemption, 82 A.L.R. 520.

Payment, tender or deposit of tax as condition of injunction against issuance of tax deed upon ground that it had become barred by lapse of time or that the property had been redeemed, 134 A.L.R. 543.

85 C.J.S. Taxation §§ 895 to 965.

7-1-49. Legal effect of certificate of sale.

In all cases of sale of property other than real property, the certificate of sale provided for in Section 7-1-48 NMSA 1978 shall:

A. be prima facie evidence of the right of the director or his delegate to make the sale, and conclusive evidence of the regularity of his proceedings in making the sale;

B. transfer to the purchaser all right, title and interest of the delinquent taxpayer in and to the property sold, subject to all outstanding prior interests and encumbrances of record and free of any subsequent encumbrance;

C. if such property consists of stock certificates, be notice, when received, to any corporation, company or association of such transfer, and be authority to such corporation, company or association to record the transfer on its books and records in the same manner as if the stock certificates were transferred or assigned by the record owner;

D. if the subject of sale is securities or other evidences of debt, be a good and valid receipt to the person holding the same, as against any person holding or claiming to hold possession of the securities or other evidences of debt; and

E. if such property consists of a motor vehicle as represented by its title, be notice, when received, to any public official charged with the registration of title to motor vehicles, of the transfer and be authority to that official to record the transfer on his books and records in the same manner as if the certificate of title to the motor vehicle were transferred or assigned by the record owner.

History: 1953 Comp., § 72-13-63, enacted by Laws 1965, ch. 248, § 51; 1979, ch. 144, § 44.

ANNOTATIONS

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

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

For purchase of investment securities generally, see 55-8-301 NMSA 1978 et seq.

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

Am. Jur. 2d, A.L.R. and C.J.S. references. - Right of public officer to purchase tax certificate or tax titles, 5 A.L.R. 969.

Right of holder of tax title or certificate of sale to reimbursement by taxing authorities where sale proves invalid, 77 A.L.R. 824, 116 A.L.R. 1408.

Statutory enactment or repeal subsequent to tax sale or issuance of tax certificates as affecting rights of holders of tax certificates or purchasers at tax sale, 111 A.L.R. 237.

Doctrine of constructive trust or unjust enrichment as applicable between owner and one who fraudulently procures tax certificates, 175 A.L.R. 700.

Effect of certificate, statement (or refusal thereof), or error by tax collector or other public official regarding unpaid taxes or assessments against specific property, 21 A.L.R.2d 1273.

Void tax deed, tax sale certificate, and the like, as constituting color of title, 38 A.L.R.2d 986.

7-1-50. Legal effect of deed to real property.

In the case of the sale of real property:

A. the deed of sale given pursuant to Section 7-1-48 NMSA 1978 shall be prima facie evidence of the facts therein stated;

B. if the proceedings have been substantially in accordance with the provisions of law, the deed shall be considered and operate as a conveyance of all the right, title and interest of the delinquent taxpayer in and to the real property thus sold at the time the notice of lien was filed as provided in Section 7-1-38 NMSA 1978 or immediately before the sale, whichever is earlier; and

C. neither the taxpayer nor anyone claiming through or under him shall bring an action after one year from the date of sale to challenge the conveyance.

History: 1953 Comp., § 72-13-64, enacted by Laws 1965, ch. 248, § 52; 1979, ch. 144, § 45.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 982 to 987.

Tax deed and recitals therein as evidence of regularity of tax proceedings as to advertising and notice of sale, and as to time, manner and place of sale, 30 A.L.R. 8, 88 A.L.R. 264.

Necessity of recording tax deed to protect title as against interest derived from former owner, 65 A.L.R. 1015.

What informalities, irregularities or defects in respect to the execution of a tax deed prevent the running of the statute of limitations or period of adverse possession, 113 A.L.R. 1343.

Tax title or deed as subject to attack for want of notice of application for tax deed or of expiration of redemption period, where a statute makes tax deed conclusive evidence of matters preliminary to its issuance or limits attack thereon to specified grounds or exempts deed from attack for procedural irregularities or omissions, 134 A.L.R. 796.

What constitutes "execution" of tax deed beginning or ending period for redemption from tax sale, 166 A.L.R. 853.

Statutory limitation of period for attack on tax deed as affected by failure to comply with statutory requirement as to notice before tax deed, 5 A.L.R.2d 1021.

Void tax deed, tax sale certificate, and the like, as constituting color of title, 38 A.L.R.2d 986.

Property owner's liability for unpaid taxes following acquisition of property by another at tax sale, 100 A.L.R.3d 593.

85 C.J.S. Taxation §§ 951 to 965.

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

A. Money realized by levy or sale under provision of the Tax Administration Act [this article] shall be first applied against the expenses of the proceedings;

B. The amount, if any, remaining shall then be applied to the liability for tax in respect of which the levy was made; and

C. The balance, if any, remaining shall be returned to a person legally entitled thereto.

History: 1953 Comp., § 72-13-65, enacted by Laws 1965, ch. 248, § 53.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation § 911.

85 C.J.S. Taxation §§ 816 to 818.

7-1-52. Release of levy.

It shall be lawful for the director or his delegate, under regulations prescribed by the director to release the levy upon all or part of the property or rights to property levied upon if the director or his delegate determines that such action will facilitate the collection of the liability, but the release shall not operate to prevent any subsequent levy.

History: 1953 Comp., § 72-13-66, enacted by Laws 1965, ch. 248, § 54; 1979, ch. 144, § 46.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation § 215; 72 Am. Jur. 2d State and Local Taxation §§ 895, 896.

Effect of receiver's failure to discharge tax liens, 39 A.L.R. 1415.

Constitutionality, construction and application of statute permitting release of part of property subject to tax liens or special assessments, 100 A.L.R. 418.

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

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

A. In order to ensure or to compel payment of taxes and to aid in the enforcement of the provisions of the Tax Administration Act [this article], the director may apply to a district court of this state to have any delinquent taxpayer or person who may be or may become liable for payment of any tax enjoined from engaging in business until he ceases to be a delinquent taxpayer or until he complies with other requirements, reasonably necessary to protect the revenues of the state, placed on him by the director.

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

injunction, the court may also order the business premises of the taxpayer to be sealed by the sheriff and may allow the taxpayer access thereto only upon approval of the court.

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

D. No temporary restraining order or injunction shall issue by provision of this section against any person who has furnished security in accordance with the provisions of Section 7-1-54 NMSA 1978. Upon a showing to the court by any person against whom a temporary restraining order or writ of injunction has issued by provision of this section that he has furnished security in accordance with the provisions of Section 7-1-54 NMSA 1978, the court shall dissolve or set aside the temporary restraining order or injunction.

History: 1953 Comp., § 72-13-67, enacted by Laws 1965, ch. 248, § 55; 1979, ch. 144, § 47.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - Payment of taxes to prevent closing of, or interference with, business as involuntary so as to permit recovery, 80 A.L.R.2d 1040.

7-1-54. Security for payment of tax.

A. Whenever it is necessary to ensure payment of any tax due or reasonably expected to become due, the department is authorized to require or allow any person subject to the provisions of the Tax Administration Act [this article] to furnish an acceptable surety bond in an appropriate amount, payable to the state and conditioned upon the payment to the state of the taxes therein identified on a date no later than that on which his liability for the payment thereof becomes conclusive, or to furnish other acceptable security in an appropriate amount and to require any person to furnish additional security as becomes necessary.

B. If, after notice of a requirement that he furnish security, any person neglects or refuses to comply, the department may demand of him by certified mail or in person that he furnish security in a stated amount. Upon the failure of any person to comply within

ten days of the date of the making of such demand upon him for the furnishing of security, the secretary may institute a proceeding to enjoin him from doing business as provided in Section 7-1-53 NMSA 1978.

C. When a serious and immediate risk exists that an amount of tax due or reasonably expected to become due will not be paid, the secretary may require any person liable or prospectively liable for tax to furnish security as otherwise provided in the Tax Administration Act, and, upon a refusal by the person immediately to comply with the requirement, the secretary may without further notice of any kind apply to any district court of the state for an injunction as provided in Section 7-1-53 NMSA 1978.

D. The secretary may require taxpayers who protest, in accordance with Section 7-1-24 NMSA 1978, an assessment or the payment of any tax administered by the department under Subsection B of Section 7-1-2 NMSA 1978 to furnish security pursuant to this section with respect to amounts in excess of two hundred thousand dollars ($200,000) whenever the total amount protested, whether by a single protest or a series of protests by a single taxpayer with respect to one or more tax acts administered by the department under Subsection B of Section 7-1-2 NMSA 1978, exceeds two hundred thousand dollars ($200,000). If the taxpayer fails to provide security as required by this subsection, the department may take all appropriate actions authorized by the Tax Administration Act to collect the amount assessed, provided that any proceeds collected shall be held as the security required by this subsection until the protest is resolved.

History: 1953 Comp., § 72-13-68, enacted by Laws 1965, ch. 248, § 56; 1971, ch. 276, § 11; 1979, ch. 144, § 48; 1985, ch. 65, § 17; 1986, ch. 20, § 23.

ANNOTATIONS

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

For when and to whom surety bonds are payable, see 7-1-57 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation § 1094.

Bond as condition of injunction in suits by or in interest of state or other political unit, or taxpayer, 83 A.L.R. 205.

Constitutionality, construction and application of statutes requiring bond or security for costs and expenses in taxpayers' action, 41 A.L.R.5th 47.

Constitutionality, construction, and application of statutes requiring bond or other security in taxpayers' action, 41 A.L.R.5th 47.

84 C.J.S. Taxation §§ 690, 728.

7-1-55. Contractor's bond for gross receipts; tax; penalty.

A. A person engaged in the construction business who does not have a principal place of business in New Mexico and who enters into a prime construction contract to be performed in this state shall, at the time such contract is entered into, furnish the secretary or the secretary's delegate with a surety bond, or other acceptable security, in a sum equivalent to the gross receipts to be paid under the contract multiplied by the sum of the applicable rate of the gross receipts tax imposed by Section 7-9-4 NMSA 1978 plus the applicable rate or rates of tax imposed pursuant to 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 any person fails to comply with Subsection A or B of this section, the secretary or the secretary's delegate:

(1) may demand of the person by certified mail or in person that the person comply. Upon the failure of any person to comply within ten days of the date of the mailing of such demand, the secretary may institute a proceeding to enjoin the person from doing business as provided in Section 7-1-53 NMSA 1978; or

(2) may, when a serious and immediate risk exists that an amount of tax due or reasonably expected to become due from such person on gross receipts from a prime construction contract will not be paid, request such person to comply with Subsections A and B of this section, and, upon failure immediately to comply, the secretary may without further notice of any kind apply to any district court of the state for an injunction as provided in Section 7-1-53 NMSA 1978.

D. Subsections A, B and C of this section shall not apply if the total gross receipts to be paid under the construction contract, including any change in such amount, are less than fifty thousand dollars ($50,000).

E. "Construction" and "engaging in business" shall have the meanings set forth, respectively, in Subsections C and E of Section 7-9-3 NMSA 1978.

F. A municipality or other political subdivision of the state or any agency of the state shall not issue a building or other construction permit to any person subject to the requirements of Subsection A of this section without first having been furnished by the construction contractor with the certificate from the secretary or the secretary's delegate specified in Subsection A of this section. Any person who issues any such permit before receiving the certificate shall be deemed guilty of a misdemeanor and, upon conviction,

be fined not less than fifty dollars ($50.00) nor more than one hundred dollars ($100) for each offense.

History: 1953 Comp., § 72-13-68.1, enacted by Laws 1975, ch. 251, § 3; 1979, ch. 144, § 49; 1986, ch. 20, § 24; 1992, ch. 55, § 13.

ANNOTATIONS

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

The 1992 amendment, effective July 1, 1992, substituted "local option gross receipts taxes" for "Sections 7-19-1 through 7-21-7 NMSA 1978" near the middle of Subsection A.

Am. Jur. 2d, A.L.R. and C.J.S. references. - State or local government's liability to subcontractors, laborers, or materialmen for failure to require general contractor to post bond, 54 A.L.R.5th 649.

7-1-56. Sale of or proceedings against security.

If liability for any tax for the payment of which security has been furnished becomes conclusive, the director or his delegate may:

A. redeem for cash or, as specified in the Tax Administration Act [this article] for sale of property levied upon, sell such security; or

B. compel the surety directly to discharge the liability for payment of the principal debtor by serving demand upon him therefor.

History: 1953 Comp., § 72-13-69, enacted by Laws 1965, ch. 248, § 57; 1979, ch. 144, § 50.

ANNOTATIONS

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

7-1-57. Surety bonds.

Surety bonds accepted by the director as security in compliance with the provisions of Sections 7-1-54 and 7-1-55 NMSA 1978 shall be payable to the state of New Mexico upon demand by the director or his delegate and a showing by him to the surety that the principal debtor is a delinquent taxpayer.

History: 1953 Comp., § 72-13-70, enacted by Laws 1965, ch. 248, § 58; 1970, ch. 15, § 1; 1975, ch. 251, § 4; 1979, ch. 144, § 51.

7-1-58. Permanence of tax debt; civil actions to collect tax.

The total amount of all taxes due and assessed is a personal debt of the taxpayer to the state of New Mexico until paid and may be collected by civil action to that end commenced subject to the limitations in Section 7-1-19 NMSA 1978 by the secretary or attorney general in district court or in federal courts. Final judgments for taxes may be enforced in appropriate courts of other states by the secretary or the attorney general pursuant to agreement between the other state and this state or by attorneys or other agents in that state retained by the department or the attorney general. This remedy is in addition to any other remedy provided by law.

History: 1953 Comp., § 72-13-71, enacted by Laws 1965, ch. 248, § 59; 1971, ch. 32, § 2; 1979, ch. 144, § 52; 1992, ch. 55, § 14.

ANNOTATIONS

The 1992 amendment, effective July 1, 1992, deleted "or paid over" following "paid" in the first sentence and substituted all of the present language of that sentence following "commenced" for "by the director or attorney general in district court at any time or by actions commenced in federal courts", and inserted "secretary or the" and "or other agents" in the second sentence.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation § 5; 72 Am. Jur. 2d State and Local Taxation §§ 876 to 878.

Right to maintain action or proceeding in one state or country to collect or enforce tax due to another state or country or political subdivision thereof, 165 A.L.R. 796.

84 C.J.S. Taxation §§ 1, 697 to 713.

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 [this article], if any taxpayer against whom a jeopardy assessment has been made neglects or refuses either to pay the amount of tax demanded of the taxpayer or furnish satisfactory security therefor within five days of the service upon the taxpayer of the notice of jeopardy assessment, the secretary may immediately proceed to collect the tax by levy, as provided in Section 7-1-31 NMSA 1978, on sufficient property of the taxpayer to satisfy the deficiency, protect the interests of the state by, as provided in Section 7-1-53 NMSA 1978, enjoining the taxpayer from doing business in New Mexico or both.

D. A taxpayer to whom a jeopardy assessment has been made may cause the procedure of levy or injunction as set forth in Subsection C of this section to be stayed by filing with the department acceptable security in an amount equal to the amount of taxes assessed, as provided in Section 7-1-54 NMSA 1978. A taxpayer to whom a jeopardy assessment has been made may dispute the jeopardy assessment either by furnishing security and otherwise following the procedures set forth in Section 7-1-24 NMSA 1978 or by paying the tax and claiming a refund as provided by Section 7-1-26 NMSA 1978.

History: 1953 Comp., § 72-13-72, enacted by Laws 1965, ch. 248, § 60; 1979, ch. 144, § 53; 1993, ch. 30, § 9.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "secretary" for "director" in Subsections A, B, and C; substituted "department" for "division" in the first sentence of Subsection D; and made related and other minor stylistic changes.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation § 711.

7-1-60. Estoppel against state.

In any proceeding pursuant to the provisions of the Tax Administration Act [this article], the department shall be estopped from obtaining or withholding the relief requested if it is shown by the party adverse to the department that the party's action or inaction complained of was in accordance with any regulation effective during the time the asserted liability for tax arose or in accordance with any ruling addressed to the party personally and in writing by the secretary, unless the ruling had been rendered invalid or had been superseded by regulation or by another ruling similarly addressed at the time the asserted liability for tax arose.

History: 1953 Comp., § 72-13-73, enacted by Laws 1965, ch. 248, § 61; 1979, ch. 144, § 54; 1993, ch. 30, § 10.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "department" for "director or the division" and for "director" near the beginning; substituted "secretary" for "director" near the end; and made minor stylistic changes.

State was not estopped from applying extended limitation period to taxpayer, since taxpayer had not acted reasonably in relying on taxation and revenue department's oral representations that department would not change its policy regarding taxation of cigarette sales on Indian reservations. Taxation & Revenue Dep't v. Bien Mur Indian Mkt. Center, Inc. 108 N.M. 228, 770 P.2d 873 (1989).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation § 712.

Estoppel of state or local government in tax matters, 21 A.L.R.4th 573.

7-1-61. Duty of successor in business.

A. As used in Sections 7-1-61 through 7-1-64 NMSA 1978, "tax" means the amount of tax due imposed by provisions of the taxes or tax acts set forth in Subsections A and B of Section 7-1-2 NMSA 1978, except the Income Tax Act [Chapter 7, Article 2 NMSA 1978].

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.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, in Subsection A, substituted "or any municipal or county sales or gross receipts tax" for "the County Sales Tax Act, the Municipal Gross Receipts Tax Act or the Supplemental Municipal Gross Receipts Tax Act"; in Subsection C, substituted "the secretary" for "the director or his delegate" in two places and "department" for "division".

The 1997 amendment, effective July 1, 1997, rewrote Subsections A and C.

Compiler's notes. - Section 7-1-64 NMSA 1978, referred to in Subsection A, was repealed by Laws 1997, ch. 67, § 10.

Question of fact whether business was sold or purchased. - Whether previous owner sold out its business and whether plaintiff purchased that business is a question of fact and, accordingly, this court examines the facts. In doing so, it views the evidence in the light most favorable to the commissioner's (now secretary's) decision. Sterling Title Co. v. Commissioner of Revenue, 85 N.M. 279, 511 P.2d 765 (Ct. App. 1973).

Business need not be active for section to apply. - The business which changed hands need not be an active business for the provisions of this section to apply. Sterling Title Co. v. Commissioner of Revenue, 85 N.M. 279, 511 P.2d 765 (Ct. App. 1973).

Taking over assets of insolvent business meets requirement. - The taking over of assets of an insolvent or defunct business was sufficient to meet the statutory requirements. Sterling Title Co. v. Commissioner of Revenue, 85 N.M. 279, 511 P.2d 765 (Ct. App. 1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation § 216.

Liability of purchaser of personal property for taxes assessed against former owner, 41 A.L.R. 187.

84 C.J.S. Taxation § 644.

7-1-62. Duty of secretary; release of successor.

A. Within thirty days after receiving from the successor a written request for a certificate, or within thirty days from the date the former owner's records are made available for audit, whichever period expires the later, but in any event not later than sixty days after receiving the request, the secretary or secretary's delegate shall either issue the certificate or mail a notice to the successor of the amount of tax due from operating the business for which the former owner is liable and which must be paid as a condition of issuing the certificate.

B. Failure of the department to mail or deliver the notice of tax due within the required time releases the successor from any obligation as a successor under Section 7-1-61 NMSA 1978.

History: 1953 Comp., § 72-13-75, enacted by Laws 1965, ch. 248, § 63; 1979, ch. 144, § 56; 1997, ch. 67, § 6.

ANNOTATIONS

The 1997 amendment, effective July 1, 1997, substituted "secretary" for "director" and "successor" for "purchaser" in the section heading and throughout the section; in Subsection A, inserted "due from operating the business" following "of the amount of tax" and substituted "former owner" for "vendor" at the end of the sentence; and in Subsection B, inserted "or deliver" following "to mail", inserted "of tax due" following "the notice", and substituted "as a successor under" for "to withhold from the purchase price and releases the property from the operation of".

7-1-63. Assessment of tax due; application of payment.

A. If, after any business is transferred to a successor, any tax from operating the business for which the former owner is liable remains due, the successor shall pay the amount due within thirty days. If the successor fails to pay within thirty days of the date notice provided for in Section 7-1-62 NMSA 1978 was mailed or if a certificate was not requested, the department shall assess the successor the amount due.

B. Upon the payment of the amount due from the amount placed in a trust account as provided by Subsection C of Section 7-1-61 NMSA 1978, the balance, if any, remaining may be released to the former owner or otherwise lawfully disposed of. The former owner shall be credited with the payment of tax.

C. A successor may discharge an assessment made pursuant to this section by paying to the department the full value of the transferred tangible and intangible property. The successor shall remain liable for the amount assessed, however, until the amount is paid if:

(1) the business has been transferred to evade or defeat any tax;

(2) the transfer of the business amounts to a de facto merger, consolidation or mere continuation of the transferor's business; or

(3) the successor has assumed the liability.

History: 1953 Comp., § 72-13-76, enacted by Laws 1965, ch. 248, § 64; 1979, ch. 144, § 57; 1997, ch. 67, § 7.

ANNOTATIONS

The 1997 amendment, effective July 1, 1997, substituted "assessment of tax due" for "demand for payment" in the section heading; rewrote Subsection A; substituted "due from the amount placed in a trust account" for "required to be withheld" and made a stylistic change in Subsection B; and added Subsection C.

7-1-64. Repealed.

ANNOTATIONS

Repeals. - Laws 1997, ch. 67, § 10 repeals 7-1-64 NMSA 1978, as amended by Laws 1979, ch. 144, § 58, relating to failure to withhold, effective July 1, 1997. For provisions of former section, see 1995 Replacement Pamphlet.

7-1-65. Reciprocal enforcement of tax judgments.

A. The courts of the state shall recognize and enforce the tax judgments of other jurisdictions to the same extent to which the courts of the other jurisdictions would recognize and enforce similar tax judgments of this state or its political subdivisions, agencies or instrumentalities, except as provided in Subsection C of this section.

B. The secretary, with the permission of the attorney general, or the attorney general may employ on a contingency fee basis only members of the bars of other jurisdictions to recover taxes due this state.

C. All property in this state of a judgment debtor is exempt from execution issuing from a tax judgment of another jurisdiction that is in favor of any state for failure to pay that state's income tax on benefits received from a pension or other retirement plan.

History: 1953 Comp., § 72-13-78, enacted by Laws 1965, ch. 248, § 66; 1992, ch. 55, § 15; 1994, ch. 48, § 1.

ANNOTATIONS

The 1992 amendment, effective July 1, 1992, rewrote Subsection B, which formerly read: "The attorney general may employ members of the bars of other jurisdictions to recover taxes due this state and may fix their fees".

The 1994 amendment, effective May 18, 1994, added the exception clause at the end of Subsection A and added Subsection C.

Applicability. - Laws 1994, ch. 48, § 3 makes the act applicable to judgements filed with a court in New Mexico on or after May 18, 1994.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation § 878.

Right to maintain action or proceeding in one state or country to collect or enforce tax due to another state or country or political subdivision thereof, 165 A.L.R. 796.

7-1-66. Immunity of property of Indian nations, tribes or pueblos and of the United States.

Liens will attach or levy may be made by terms of any provision of the Tax Administration Act [this article] to or on property belonging to the United States of

America or to an Indian nation, tribe or pueblo or to any Indian only to the extent allowed by law.

History: 1953 Comp., § 72-13-79, enacted by Laws 1965, ch. 248, § 67; 1995, ch. 70, § 3.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, inserted "nations" and "or pueblos" in the section heading, and substituted "Indian nation, tribe or pueblo or to any Indian" for "Indian tribe an Indian pueblo or any Indian".

New Mexico may not tax income and gross receipts of Indians residing on a reservation when the income and gross receipts involved are derived solely from activities within the reservation. Hunt v. O'Cheskey, 85 N.M. 381, 512 P.2d 954 (Ct. App.), cert. quashed, 85 N.M. 388, 512 P.2d 961 (1973).

Indian's fee interest not taxable but non-Indian leasehold is. - Since non-Indians entered into a long-term lease with an Indian tribe, under which the non-Indians were to develop the leased land as a residential subdivision, state's ad valorem tax provision was broad enough to encompass the lessee's interest in the otherwise tax-exempt property. Therefore, whatever interest that was not part of the fee and could be taxed as separate from the fee interest of the Indians was taxable by the state, but any tax that purported to touch or create a lien on the land could not be levied by the state. Norvell v. Sangre de Cristo Dev. Co. 372 F. Supp. 348 (D.N.M. 1974), rev'd on other grounds, 519 F.2d 370 (10th Cir. 1975).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 221, 228, 235, 236.

Power of state to tax debts from United States under contracts other than loans, 30 A.L.R. 1462.

Federal government or agencies of federal government as subject to payment of tax or fee imposed upon, or for, recording or filing instrument, 124 A.L.R. 1267.

Consent to state taxation of federal property or instrumentalities as affecting exemption thereof under provision of state enabling act, constitution or statute, 168 A.L.R. 547.

84 C.J.S. Taxation §§ 251 to 260.

7-1-67. Interest on deficiencies.

A. If any tax imposed is not paid on or before the day on which it becomes due, interest shall be paid to the state on such amount from the first day following the day on which

the tax becomes due, without regard to any extension of time or installment agreement, until it is paid except that:

(1) for any income tax imposed on a member of the armed services of the United States serving in a combat zone under orders of the president of the United States, interest shall accrue only for the period beginning the day after any applicable extended due date if the tax is not paid;

(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; and

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

B. Interest due to the state under Subsection A or D of this section shall be at the rate of fifteen percent a year, computed at the rate of one and one-fourth percent per month or any fraction thereof; provided that, if a different rate is specified by a compact or other interstate agreement to which New Mexico is a party, then 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.

ANNOTATIONS

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

The 1990 amendment, effective July 1, 1990, substituted "Interest due to the state under Subsection A of this section shall be" for "Interest shall be due to the state" at the beginning of Subsection B and added Subsection E.

The 1991 amendment, effective April 2, 1991, added the proviso in Subsection A and rewrote the final sentence in Subsection E which read "Interest due under this subsection shall be in addition to any interest due under Subsection A of this section".

The 1993 amendment, effective July 1, 1993, in Subsection A, substituted "except" for "provided, however," at the end of the introductory paragraph, inserted the paragraph designation "(1)", and added Paragraphs (2) and (3); in Subsection B, inserted "or D" and deleted "except that if the amount of interest due at the time payment is made is less than one dollar ($1.00), then no interest shall be due"; deleted former Subsection C, relating to the effect of payment of any tax within ten days after demand; redesignated former Subsections D and E as Subsections C and D; and, in the first sentence of Subsection D, deleted "the interest due under this subsection shall be one and one quarter percent of the amount" preceding "required to be paid".

The 1996 amendment, effective July 1, 1996, added the proviso at the end of Subsection B.

No offset of overpayment against prior liability. - Interest on underpayment of taxes is calculated without regard to receipt by the Taxation and Revenue Department of any overpayment of taxes. The Department, once a claim for refund is made, is authorized only to allow a taxpayer claiming a refund for overpayment of gas production taxes to credit the refund against current or future tax liabilities. Amoco Prod. Co. v. New Mexico Taxation & Revenue Dep't, 118 N.M. 72, 878 P.2d 1021 (Ct. App. 1994).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation § 858.

85 C.J.S. Taxation § 1054.

7-1-67.1. Repealed.

ANNOTATIONS

Repeals. - Laws 1993, ch. 5, § 11, repeals 7-1-67.1 NMSA 1978, as enacted by Laws 1982, ch. 18, § 25, relating to the effective date of the increase in the interest rate pursuant to § 7-1-67 NMSA 1978, effective July 1, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

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 payable on overpayments of tax shall be paid at the rate of fifteen percent a year, computed at the rate of one and one-fourth percent per month or fraction thereof; provided that, if a different rate is specified by a compact or other interstate agreement to which New Mexico is a party, then that rate shall be applied 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 the claim for refund was made until a date preceding by not more than thirty days the date on which the amount thereof is credited or refunded to any person; interest on an overpayment arising from an assessment by the department shall be paid from the date overpayment was made until a date preceding by not more than thirty days the date on which the amount thereof is credited or refunded to any person.

D. No interest shall be allowed or paid with respect to an amount credited or refunded if:

(1) the amount of interest due is less than one dollar ($1.00);

(2) the credit or refund is made within seventy-five days of the date of the claim for refund of income tax, pursuant to either the Income Tax Act [Chapter 7, Article 2 NMSA 1978] or the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978], for the tax year immediately preceding the tax year in which the claim is made;

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

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

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

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

History: 1953 Comp., § 72-13-81, enacted by Laws 1965, ch. 248, § 69; 1971, ch. 266, § 1; 1979, ch. 144, § 59; 1982, ch. 18, § 15; 1989, ch. 325, § 11; 1994, ch. 44, § 1; 1996, ch. 15, § 8.

ANNOTATIONS

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

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

The 1994 amendment, effective July 1, 1994, substituted "sixty" for "one hundred twenty" in Paragraph D(5).

The 1996 amendment, effective July 1, 1996, added the proviso at the end of Subsection B and deleted "the Corporate Income Tax Act" following "the Income Tax Act" in Paragraph D(3).

Internal Revenue Code. - Section 6611 of the United States Internal Revenue Code, cited in Paragraph D(4), is codified as 26 U.S.C. § 6611.

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

No offset of overpayment against prior liability. - Interest on underpayment of taxes is calculated without regard to receipt by the Taxation and Revenue Department of any overpayment of taxes. The Department, once a claim for refund is made, is authorized only to allow a taxpayer claiming a refund for overpayment of gas production taxes to credit the refund against current or future tax liabilities. Amoco Prod. Co. v. New Mexico Taxation & Revenue Dep't, 118 N.M. 72, 878 P.2d 1021 (Ct. App. 1994).

Refund requirement not state obligation which creates vested right. - Statutory requirement that the state pay interest on refunds of taxes judicially determined to have been illegally collected, cannot be said to create an obligation of the state to the taxpayer which gives rise to a vested right in the taxpayer within the meaning of N.M. Const., art. IV, § 34. Bradbury & Stamm Constr. Co. v. Bureau of Revenue, 70 N.M. 226, 372 P.2d 808 (1962).

Requirement to pay interest statutory liability in nature of penalty. - The requirement that the state pay interest on protested taxes judicially determined to have been illegally collected is only a statutory liability and is in the nature of a penalty. Bradbury & Stamm Constr. Co. v. Bureau of Revenue, 70 N.M. 226, 372 P.2d 808 (1962).

If interest rate changes, old rate before, new rate after. - If the statutory rate of interest on tax refunds is changed after the cause of action accrues, the interest should be allowed at the old rate before, and at the new rate after, the altering enactment takes effect. Bradbury & Stamm Constr. Co. v. Bureau of Revenue, 70 N.M. 226, 372 P.2d 808 (1962).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 1068, 1069.

Right to interest on tax refunds, 57 A.L.R. 357, 76 A.L.R. 1012, 112 A.L.R. 1183, 88 A.L.R.2d 823.

Interest on tax refund or credit in absence of specific controlling statute, 88 A.L.R.2d 823.

Effect of delay in receipt or negotiation of refund check in determining right to interest under § 6611 of the Internal Revenue Code (26 USCA § 6611), 145 A.L.R. Fed. 437.

84 C.J.S. Taxation § 633.

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

A. Except as provided in Subsection B of this section, in the case of failure due to negligence or disregard of rules and regulations, but without intent to evade or defeat any tax, to pay when due any 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 any tax is due, there shall be added to the amount as penalty 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 ten 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 ten percent of the tax liability established in the late return; or

(3) a minimum of five dollars ($5.00), but the five-dollar ($5.00) minimum penalty shall not apply to taxes levied under the Income Tax Act [Chapter 7, Article 2 NMSA 1978] or taxes administered by the department pursuant to Subsection B of Section 7-1-2 NMSA 1978.

B. 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.

C. In the case of failure, with willful intent to evade or defeat any tax, to pay when due any amount of tax required to be paid, there shall be added to the amount fifty percent of the tax or a minimum of twenty-five dollars ($25.00), whichever is greater, as penalty.

D. If demand is made for payment of any tax, including penalty imposed pursuant to this section, and if such 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.

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.

ANNOTATIONS

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

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

The 1992 amendment, effective July 1, 1992, rewrote Subsection A, restructured the former three sentences of Subsection C so as to constitute a single sentence, while making minor stylistic changes therein, and, in Subsection C, substituted all of the present language following "imposed by this subsection" for "shall be in addition to any penalty due under Subsection A of this section".

The 1996 amendment, effective July 1, 1996, added "Except as provided in Subsection B of this section," at the beginning of Subsection A, added Subsection B, and redesignated former Subsections B and C as Subsections C and D.

The 1997 amendment, effective July 1, 1997, substituted "evade or defeat any tax" for "defraud" and inserted "to pay in accordance with the provisions of Section 7-1-13.1 NMSA 1978 when required to do so" in Subsection A; made a minor stylistic change in Subsection B; inserted "willful" preceding "intent" and substituted "evade or defeat any tax" for "defraud the state" in Subsection C; and rewrote Subsection D.

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

Presumption of correctness section 7-1-17 NMSA 1978 also applies to the penalty section (this section). Tiffany Constr. Co. v. Bureau of Revenue, 90 N.M. 16, 558 P.2d 1155 (Ct. App. 1976), cert. denied, 90 N.M. 255, 561 P.2d 1348 (1977).

Penalty provision not denial of equal protection. - Penalties imposed on taxpayers based upon negligent failure to pay taxes when due did not deny the taxpayers equal protection of the law. Gathings v. Bureau of Revenue, 87 N.M. 334, 533 P.2d 107 (Ct. App. 1975).

Every person is charged with reasonable duty to ascertain possible tax consequences of his action. This can be done by consultation with one's legal advisor. Tiffany Constr. Co. v. Bureau of Revenue, 90 N.M. 16, 558 P.2d 1155 (Ct. App. 1976), cert. denied, 90 N.M. 255, 561 P.2d 1348 (1977).

Every person is charged with the reasonable duty to ascertain the possible tax consequences of his action or inaction, and a taxpayer cannot abdicate this responsibility merely by appointing an accountant as its agent in tax matters. El Centro Villa Nursing Center v. Taxation & Revenue Dep't, 108 N.M. 795, 779 P.2d 982 (Ct. App. 1989).

Ordinary business care required. - Taxpayer was liable for civil penalties when taxpayer's failure to pay the gross receipts tax due was based on its erroneous beliefs, inattention, inaction where action would be reasonably required, or a failure to exercise the degree of ordinary business care that similarly situated businesses would exercise. Arco Materials, Inc. v. State, Taxation & Revenue Dep't, 118 N.M. 12, 878 P.2d 330 (Ct. App. 1994), rev'd on other grounds sub nom. Blaze Constr. Co. v. Taxation & Revenue Dep't, 118 N.M. 647, 884 P.2d 803 (1994), cert. denied, 514 U.S. 1016, 115 S. Ct. 1359, 131 L. Ed. 2d 216 (1995).

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

Negligence is general standard defining director's duties. - "Negligence" as used in Subsection A is a general standard capable of reasonable application and sufficient to limit and define the commissioner's (now director's) powers in imposing a penalty. Gathings v. Bureau of Revenue, 87 N.M. 334, 533 P.2d 107 (Ct. App. 1975).

Negligence should be equated with federal standard. - "Negligence" as used in Subsection A should be equated with the federal standard of "lack of reasonable cause" as set forth in 26 U.S.C. § 6651(a). Gathings v. Bureau of Revenue, 87 N.M. 334, 533 P.2d 107 (Ct. App. 1975).

Taxpayer's erroneous belief tantamount to negligence. - A taxpayer's mere belief that he is not liable to pay taxes is tantamount to negligence within the meaning of this section and invocation of the penalty is appropriate. C & D Trailer Sales v. Taxation & Revenue Dep't, 93 N.M. 697, 604 P.2d 835 (Ct. App. 1979).

"Diligent protest" negates negligence. - When a taxpayer's failure to pay taxes is the result of a "diligent protest" and his decision to challenge a tax is based on informed consultation and advice (i.e., from his attorney or accountant), the taxpayer negates any inference of negligence and the application of the penalty provision is inappropriate. C & D Trailer Sales v. Taxation & Revenue Dep't, 93 N.M. 697, 604 P.2d 835 (Ct. App. 1979).

Taxpayer's erroneous belief and no further investigation constituted negligence. - When taxpayer, an Arizona corporation, headquartered in Phoenix failed to file a return for work performed on the Navajo reservation within New Mexico (the first road job taxpayer had done in New Mexico), its belief that no taxes were due and that there were no taxes that they had to file for or register for, without further investigation, constituted negligence so as to justify the penalty imposed. Tiffany Constr. Co. v. Bureau of Revenue, 90 N.M. 16, 558 P.2d 1155 (Ct. App. 1976), cert. denied, 90 N.M. 255, 561 P.2d 1348 (1977).

Not negligence to protest rulings or disregard where reasonable doubt. - This section provides that a penalty shall be added to the amount owed only in the event of

failure to pay an assessed amount due to negligence or disregard of rules and regulations. Taxpayers were neither negligent nor heedless of any rules and regulations where they carried forward a thorough protest against the rulings of the commissioner (now secretary) with reasonable doubt as to the interpretation and applicability of the various taxes sought to be imposed by his order. Any presumptions of correctness which might have attached to the commissioner's (now secretary's) decision had been sufficiently overcome. The decision to assess penalties, not being in accordance with the law, was reversed in its entirety. Co-Con, Inc. v. Bureau of Revenue, 87 N.M. 118, 529 P.2d 1239 (Ct. App.), cert. denied, 87 N.M. 111, 529 P.2d 1232 (1974).

Reasonable doubt negates disregard of rules. - Penalty was improperly assessed and taxpayer is not liable for penalty and interest where diligent protest by the taxpayer negated the possibility of negligence, and the taxpayer did not disregard the rules and regulations because there was reasonable doubt as to the correctness of the taxes imposed by the commissioner (now secretary). Stohr v. New Mexico Bureau of Revenue, 90 N.M. 43, 559 P.2d 420 (Ct. App. 1976), cert. denied, 90 N.M. 254, 561 P.2d 1347 (1977).

Substantial evidence of negligence. - Substantial evidence supported hearing officer's finding that nursing home's failure to pay tax was due to negligence, since the home failed to show the hearing officer that it acted reasonably in not reporting a Medicaid readjustment to income payments as gross receipts. El Centro Villa Nursing Center v. Taxation & Revenue Dep't, 108 N.M. 795, 779 P.2d 982 (Ct. App. 1989).

Negligence not excused by actions of auditors. - A negligence penalty assessed against a taxpayer for its total failure to pay any compensating tax for a period of years was proper, since the taxpayer's sole excuse was that the failure to pay the tax was not uncovered by the accountants who certified the accuracy of the taxpayer's financial statements for the annual reports to shareholders required by federal securities law. The taxpayer offered no evidence that the outside auditors reviewed the taxpayer's monthly state tax returns, did not explain why the audit for the annual reports should have uncovered the failure to pay the compensating tax, and did not explain why the failure of the auditors to discover the error would excuse the taxpayer's failure to comply with clear state law. Vivigen, Inc. v. Minzner, 117 N.M. 224, 870 P.2d 1382 (Ct. App. 1994).

Minimum penalty when no tax due under equitable recoupment. - When the amount erroneously paid by the taxpayer for a particular tax equals the amount that should have been paid for another tax and, under the doctrine of equitable recoupment, no further sums are due from the taxpayer, there is no basis for assessing a penalty as a percentage of the tax due, but the taxpayer may be required to pay the $5 minimum penalty if the error resulted from the taxpayer's negligence. Teco Invs. v. Taxation & Revenue Dep't, 1998-NMCA-055, 125 N.M. 103, 957 P.2d 532 (Ct. App. 1998).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 856 to 865.

Retroactive effect of statutes relation to interest on or penalties in respect of delinquent taxes, 77 A.L.R. 1034.

Liability to penalty imposed for failure to pay tax of one who in good faith contested its validity, 96 A.L.R. 925, 147 A.L.R. 142.

Penalty for nonpayment of taxes when due as affected by lack of notice to taxpayer, 102 A.L.R. 405.

Doubt as to liability for, or as to person to whom to pay, tax, as affecting liability for penalties and interest, 137 A.L.R. 306.

Time of mailing or time of receipt as determinative of liability for penalty or additional amount for failure to pay tax or license fee within prescribed time, 158 A.L.R. 370.

What amounts to reasonable cause for failure to file, or delay in filing, tax return, 3 A.L.R.2d 617.

Penalties or interest incurred because of delinquency of execution, administration or trustee, in respect of taxes as a charge against him personally or against estate, 47 A.L.R.3d 507.

Retailer's or buyer's defenses against exaction of penalties for failure to file, or deficiency in, state or local sales tax return, 20 A.L.R.4th 952.

85 C.J.S. Taxation §§ 1021 to 1036.

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

If any payment required to be made by provision of the Tax Administration Act [this article] is attempted to be made by check that is not paid upon presentment, such dishonor is presumptive of negligence. The penalty shall never be less than ten dollars ($10.00). This penalty is in addition to any other penalty imposed by law.

History: 1953 Comp., § 72-13-83, enacted by Laws 1965, ch. 248, § 71; 1996, ch. 15, § 10.

ANNOTATIONS

Cross references. - For presentment and dishonor generally, see 55-3-501 NMSA 1978 et seq.

The 1996 amendment, effective July 1, 1996, made a minor stylistic change in the first sentence and added the third sentence.

7-1-71. Civil penalty for failure to collect and pay over tax.

If any person required to collect and pay over any tax fails, neglects or refuses to collect such tax or to account for and pay over such tax, he shall either pay the amount of tax himself or he shall pay a penalty equal to the total amount of the tax not collected or not accounted for and paid over, in either case in addition to other penalties provided by law.

History: 1953 Comp., § 72-13-84, enacted by Laws 1965, ch. 248, § 72.

ANNOTATIONS

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

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

Retailer's failure to pay to government sales or use tax funds as constituting larceny or embezzlement, 8 A.L.R.4th 1068.

Retailer's or buyer's defenses against exaction of penalties for failure to file, or deficiency in, state or local sales tax return, 20 A.L.R.4th 952.

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

A. The director may require by regulation any tax return preparer with respect to any return of income tax or claim for refund with respect to income tax to sign such return or claim for refund.

B. The director may require by regulation any tax return preparer with respect to any return of income tax or claim for refund with respect to income tax to furnish the tax return preparer's identification number on such return or claim for refund.

C. Any tax return preparer with respect to any return of income tax or claim for refund with respect to income tax, who is required by regulations promulgated by the director to sign a return or claim for refund or to furnish an identification number on such return or claim for refund and who fails to sign such return or claim for refund or to furnish an identification number on such return or claim for refund shall pay a penalty of twenty-five dollars ($25.00) for such failure, unless it is shown that such failure is due to reasonable cause and not due to willful neglect.

D. Any tax return preparer who endorses or otherwise negotiates, either directly or through an agent, any warrant in respect of the Income Tax Act [Chapter 7, Article 2 NMSA 1978] issued to a taxpayer, other than the tax return preparer, shall pay a penalty of five hundred dollars ($500) with respect to each such warrant; provided that the provisions of this subsection shall not apply with respect to the deposit by a bank,

savings and loan association, credit union or other financial corporation of the full amount of the warrant in the taxpayer's account for the benefit of the taxpayer.

E. For the purposes of this section, any penalty determined to be due shall be considered to be tax due.

History: 1978 Comp., § 7-1-71.1, enacted by Laws 1985, ch. 65, § 19.

ANNOTATIONS

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

Who is an "income tax return preparer" under 26 USCS § 7701(a)(36)?, 132 A.L.R. Fed. 265.

7-1-72. Attempts to evade or defeat tax.

Any person who willfully attempts to evade or defeat any tax or the payment thereof is, in addition to other penalties provided by law, guilty of a felony and, upon conviction thereof, shall be fined not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000), or imprisoned not less than one year nor more than five years, or both such fine and imprisonment, together with the costs of prosecution.

History: 1953 Comp., § 72-13-85, enacted by Laws 1965, ch. 248, § 73.

ANNOTATIONS

Prior assessment not needed. - This section covers all willful attempts to evade taxes, including willful failure to file returns if that results in evasion of taxes and willful failure to pay taxes required by law if that is motivated by an attempt to evade. There need not be a prior assessment of taxes before a defendant may be convicted of evasion of taxes. State v. Long, 1996-NMCA-011, 121 N.M. 333, 911 P.2d 227 (Ct. App. 1995).

Traditional standard of proof applied in tax fraud cases. - Court of appeals would not require a higher standard of proof in terms of criminal intent in tax fraud cases, choosing instead to follow the traditional standard of appellate review in criminal cases. State v. Martin, 90 N.M. 524, 565 P.2d 1041 (Ct. App.), cert. denied, 90 N.M. 636, 567 P.2d 485 (1977), overruled on other grounds, State v. Wilson, 116 N.M. 793, 867 P.2d 1175 (1994).

Attorney convicted for violation of this section was suspended from the practice of law. In re Cox, 117 N.M. 575, 874 P.2d 783 (1994).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation § 7.

Right of grantor or transferor or his privies to attack conveyance or transfer made for purpose of evading taxation, 118 A.L.R. 1184.

Actionability of accusation or imputation of tax evasion, 32 A.L.R.3d 1427.

Construction and application of United States Sentencing Guideline § 2T1.4(b)(2) (18 USCS § 2T1.4(b)(2)), authorizing increase in base offense level for individual for use of "sophisticated means" to impede discovery of tax fraud, 131 A.L.R. Fed. 601.

85 C.J.S. Taxation § 1056.

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.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 67, § 9 makes the act effective on July 1, 1997.

7-1-73. False statement and fraud.

Any individual or person who:

A. 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 individual or person does not believe to be true and correct as to every material matter;

B. files any return electronically, knowing the information in the return is not true and correct as to every material matter; or

C. 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, is guilty of a felony and, upon conviction thereof, shall be fined not more than five thousand dollars ($5,000) or imprisoned not less than six months or more than three years, or both, together with costs of prosecution.

History: 1953 Comp., § 72-13-86, enacted by Laws 1965, ch. 248, § 74; 1979, ch. 144, § 60; 1989, ch. 325, § 12; 1992, ch. 55, § 17.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, in Subsection A, substituted "that it is true and correct as to every material matter and which the individual or person does not" for "that it is made under the penalties of perjury and which he does not".

The 1992 amendment, effective July 1, 1992, added Subsection B, redesignated former Subsection B as Subsection C, and made minor stylistic changes throughout the section.

Traditional standard of proof applied in tax fraud cases. - Court of appeals would not require a higher standard of proof in terms of criminal intent in tax fraud cases, choosing instead to follow the traditional standard of appellate review in criminal cases. State v. Martin, 90 N.M. 524, 565 P.2d 1041 (Ct. App.), cert. denied, 90 N.M. 636, 567 P.2d 485 (1977), overruled on other grounds, State v. Wilson, 116 N.M. 793, 867 P.2d 1175 (1994).

To meet willfulness requirement of section, all that is required is proof that the person acted intentionally in the sense that he was aware of what he was doing. State v. Sparks, 102 N.M. 317, 694 P.2d 1382 (Ct. App. 1985).

UJI Criminal 1.50 (now UJI 14-141 NMRA 1997) is required in prosecutions for false statements on tax returns. State v. Sparks, 102 N.M. 317, 694 P.2d 1382 (Ct. App. 1985).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Reliance on attorney, accountant or other expert in preparing income tax returns as defense against fraud penalties, 22 A.L.R.2d 972.

Tax preparer's willful assistance in preparation of false or fraudulent tax returns under § 7206(2) of Internal Revenue Code of 1954 (26 USCS § 7206(2)), 43 A.L.R. Fed. 128.

85 C.J.S. Taxation § 1026.

7-1-74. Interference or attempts corruptly, forcibly or by threat to interfere with administration of revenue laws.

Whoever forcibly, or by bribe, threat or other corrupt practice obstructs or impedes or attempts to obstruct or impede the due administration of the provisions of the Tax Administration Act [this article] shall, upon conviction thereof, be fined not less than two hundred fifty dollars ($250) nor more than ten thousand dollars ($10,000) or imprisoned for not less than three months nor more than one year, or both, together with costs of prosecution.

History: 1953 Comp., § 72-13-87, enacted by Laws 1965, ch. 248, § 75.

7-1-75. Assault and battery of a department employee.

Whoever assaults and batters or attempts to assault and batter an employee of the department acting within the scope of his employment shall, upon conviction thereof, be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or be imprisoned for not less than three days nor more than six months, or both, together with costs of prosecution. Jurisdiction over actions brought under this section is hereby granted to magistrate courts.

History: 1953 Comp., § 72-13-87.1, enacted by Laws 1971, ch. 276, § 12; 1979, ch. 144, § 61.

7-1-76. Revealing information concerning taxpayers.

Any employee of the department, any former employee of the department or any other person who reveals to another individual any information which he is prohibited from lawfully revealing by provision of Section 7-1-8 NMSA 1978 is guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than one thousand dollars ($1,000) or imprisoned not more than one year, or both, together with costs of prosecution, and shall not be employed by the state for a period of five years after the date of the conviction.

History: 1953 Comp., § 72-13-88, enacted by Laws 1965, ch. 248, § 76; 1979, ch. 144, § 62.

7-1-77. Timeliness when last day for performance falls on Saturday, Sunday or legal holiday.

When by any provision of the Tax Administration Act [this article] the last day for performing any act falls on Saturday, Sunday or a legal state or national holiday, the performance of the act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or a legal state or national holiday.

History: 1953 Comp., § 72-13-89, enacted by Laws 1965, ch. 248, § 80.

ANNOTATIONS

Cross references. - For general rule as to computation of time, see 12-2A-7 NMSA 1978.

7-1-78. Burden of proof in fraud cases.

In any proceeding involving the issue of whether any person has been guilty of fraud or corruption, the burden of proof in respect of such issue shall be upon the director or the state.

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

7-1-79. Enforcement officials.

Every individual to whom the director delegates the function of enforcing any of the provisions of the Tax Administration Act [this article]:

A. shall be furnished with credentials identifying him; and

B. may request the assistance of any sheriff or deputy sheriff or of the state police in order to perform his duties, which assistance shall be afforded in appropriate circumstances.

History: 1953 Comp., § 72-13-91, enacted by Laws 1965, ch. 248, § 82; 1979, ch. 144, § 64.

7-1-80. Dissolution or withdrawal of corporation.

The state corporation commission [public regulation commission] 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 state corporation commission [public regulation commission] a certificate signed by the secretary or the secretary'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 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 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 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.

ANNOTATIONS

Cross references. - For references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

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

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

Bracketed material. - The bracketed material was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

The 1993 amendment, effective June 18, 1993, substituted "secretary or the secretary's delegate" for "director of the revenue division or his delegate" in four places and made minor stylistic changes.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 19 Am. Jur. 2d Corporations § 2880; 36 Am. Jur. 2d Foreign Corporations § 313.

19 C.J.S. Corporations §§ 811 to 882.

7-1-81. Repealed.

ANNOTATIONS

Repeals. - Laws 1979, ch. 144, § 67, repeals 7-1-81 NMSA 1978, relating to bar of actions for tort against bureau employees and limited liability of bureau.

7-1-82. Transfer, assignment, sale, lease or renewal of liquor license.

A. The director of the alcohol and gaming division of the regulation and licensing department shall not allow the transfer, assignment, lease or sale of any liquor license pursuant to the provisions of the Liquor Control Act until the director receives written notification from the secretary or secretary's delegate that:

(1) the licensee or any person authorized to use the license is not a delinquent taxpayer as defined in Section 7-1-16 NMSA 1978; or

(2) the transferee, assignee, buyer or lessee has entered into a written agreement with the secretary or secretary's delegate in which the transferee, assignee, buyer or lessee has assumed full liability for payment of all taxes due or which may become due from engaging in business authorized by the liquor license.

B. The director of the alcohol and gaming division of the regulation and licensing department shall not allow the renewal of any liquor license pursuant to the provisions of the Liquor Control Act until the director receives notification from the secretary or secretary's delegate that on a certain date:

(1) there is no assessed tax liability from engaging in business authorized by the liquor license or, if there is assessed tax liability, the licensee is not a delinquent taxpayer; and

(2) there are no unfiled tax returns due from engaging in business authorized by the liquor license.

History: 1953 Comp., § 72-13-94, enacted by Laws 1973, ch. 179, § 1; 1975, ch. 116, § 5; 1979, ch. 144, § 66; 1995, ch. 70, § 4.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, substituted "alcohol and gaming division of the regulation and licensing department" for "department of alcoholic beverage control" and "the director" for "he" in the introductory paragraphs of Subsections A and B, substituted "the transferee, assignee, buyer or lessee" for 'he' in Paragraph A(2), and substituted 'secretary of secretary's delegate" for "director or his delegate" throughout the section.

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

Subsections A(1) and (2) are alternatives; if either one is satisfied, the department must issue a clearance for transfer of the license. Bank of Commerce v. Department of Taxation & Revenue, 1998-NMCA-063, 125 N.M. 183, 958 P.2d 753 (Ct. App. 1998).

Tax liability as lien. - The tax liability referred to in this section may become a lien in favor of the state in the amount of taxes due if the procedures set forth in 7-1-37 and 7-1-38 NMSA 1978 are followed. In re What D'Ya Call It, Inc. 105 N.M. 164, 730 P.2d 467 (1986).

Payment of delinquent taxes may be required before transfer. - The state may require payment of delinquent taxes prior to transfer of a liquor license, pursuant to this section, where its liens under 7-1-37 and 7-1-38 NMSA 1978 have been foreclosed. First Interstate Bank v. Taxation & Revenue Dep't, 108 N.M. 756, 779 P.2d 133 (Ct. App. 1989).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors §§ 174, 177.

48 C.J.S. Intoxicating Liquors §§ 145 to 147, 151.

ARTICLE 1A
PROJECT MAINSTREAM EMPLOYMENT TAX CREDIT

(Repealed by Laws 1988, ch. 126, § 7.)

7-1A-1 to 7-1A-5. Repealed.

ANNOTATIONS

Repeals. - Laws 1988, ch. 126, § 7 repealed 7-1A-1 to 7-1A-5 NMSA 1978, as enacted by Laws 1988, ch. 126, §§ 1 to 5, relating to the Project Mainstream Employment Tax Credit Act, effective July 1, 1990. For provisions of former sections, see 1988 Replacement Pamphlet.

ARTICLE 2
INCOME TAX GENERAL PROVISIONS

7-2-1. Short title.

Chapter 7, Article 2 NMSA 1978 may be cited as the "Income Tax Act".

History: 1953 Comp., § 72-15A-1, enacted by Laws 1965, ch. 202, § 1; 1979, ch. 92, § 1.

ANNOTATIONS

Cross references. - For administration and enforcement, see 7-1-2 and 7-2-22 NMSA 1978.

For limitations on power of municipalities to tax incomes, see 3-18-2 NMSA 1978.

Law reviews. - For article, "An Intergovernmental Approach to Tax Reform," see 4 N.M.L. Rev. 189 (1974).

For comment, "Coal Taxation in the Western States: The Need for a Regional Tax Policy," see 16 Nat. Resources J. 415 (1976).

For article, "The Indian Tax Cases - A Territorial Analysis," see 9 N.M.L. Rev. 221 (1979).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 443 to 611.

What constitutes "reasonable cause" under state statutes imposing penalty on taxpayer for failure to file timely tax return unless such failure was due to "reasonable cause," 29 A.L.R.4th 413.

Damages for breach of contract as affected by income tax considerations, 50 A.L.R.4th 452.

Decision to take foreign income taxes as federal credit under § 901 of the Internal Revenue Code (26 USCS § 901) as precluding their deduction for state income tax purposes, 77 A.L.R.4th 823.

85 C.J.S. Taxation §§ 1089 to 1110.

7-2-2. Definitions.

For the purpose of the Income Tax Act [this article] and unless the context requires otherwise:

A. "adjusted gross income" means adjusted gross income as defined in Section 62 of the Internal Revenue Code, as that section may be amended or renumbered;

B. "base income":

(1) means, for estates and trusts, that part of the estate's or trust's income defined as taxable income and upon which the federal income tax is calculated in the Internal Revenue Code for income tax purposes plus, for taxable years beginning on or after January 1, 1991, the amount of the net operating loss deduction allowed by Section 172(a) of the Internal Revenue Code, as that section may be amended or renumbered, and taken by the taxpayer for that year;

(2) means, for taxpayers other than estates or trusts, that part of the taxpayer's income defined as adjusted gross income plus, for taxable years beginning on or after January 1, 1991, the amount of the net operating loss deduction allowed by Section 172(a) of the Internal Revenue Code, as that section may be amended or renumbered, and taken by the taxpayer for that year; and

(3) includes, for all taxpayers, any other income of the taxpayer not included in adjusted gross income but upon which a federal tax is calculated pursuant to the Internal Revenue Code for income tax purposes, except amounts for which a calculation of tax is made pursuant to Section 55 of the Internal Revenue Code, as that section may be amended or renumbered; "base income" also includes interest received on a state or local bond;

C. "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services;

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

E. "fiduciary" means a guardian, trustee, executor, administrator, committee, conservator, receiver, individual or corporation acting in any fiduciary capacity;

F. "filing status" means "married filing joint returns", "married filing separate returns", "head of household", "surviving spouse" and "single", as those terms are generally defined for federal tax purposes;

G. "fiscal year" means any accounting period of twelve months ending on the last day of any month other than December;

H. "head of household" means "head of household" as generally defined for federal income tax purposes;

I. "individual" means a natural person, an estate, a trust or a fiduciary acting for a natural person, trust or estate;

J. "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended;

K. "lump-sum amount" means an amount that, for the purpose of determining liability for federal income tax, was not included in adjusted gross income but upon which the five-year-averaging or the ten-year-averaging method of tax computation provided in Section 402 of the Internal Revenue Code, as that section may be amended or renumbered, was applied;

L. "modified gross income" means all income of the taxpayer and, if any, the taxpayer's spouse and dependents, undiminished by losses and from whatever source derived, including:

(1) compensation;

(2) net profit derived from business;

(3) gains derived from dealings in property;

(4) interest;

(5) net rents;

(6) royalties;

(7) dividends;

(8) alimony and separate maintenance payments;

(9) annuities;

(10) income from life insurance and endowment contracts;

(11) pensions;

(12) discharge of indebtedness;

(13) distributive share of partnership income;

(14) income in respect of a decedent;

(15) income from an interest in an estate or trust;

(16) social security benefits;

(17) unemployment compensation benefits;

(18) workers' compensation benefits;

(19) public assistance and welfare benefits;

(20) cost-of-living allowances; and

(21) gifts;

M. "modified gross income" does not include:

(1) payments for hospital, dental, medical or drug expenses whether made to or on behalf of the taxpayer;

(2) the value of room and board provided by federal, state or local governments or by private individuals or agencies based upon financial need and not as a form of compensation;

(3) payments made pursuant to a federal, state or local government program directly or indirectly to a third party on behalf of the taxpayer when identified to a particular use or invoice by the payer; or

(4) payments made pursuant to Sections 7-2-14, 7-2-14.1, 7-2-18, 7-2-18.1 and 7-3-9 NMSA 1978;

N. "net income" means, for estates and trusts, base income adjusted to exclude amounts that the state is prohibited from taxing because of the laws or constitution of

this state or the United States and means, for taxpayers other than estates or trusts, base income adjusted to exclude:

(1) an amount equal to the standard deduction allowed the taxpayer for the taxpayer's taxable year by Section 63 of the Internal Revenue Code, as that section may be amended or renumbered;

(2) an amount equal to the itemized deductions, as defined in Section 63 of the Internal Revenue Code, as that section may be amended or renumbered, allowed the taxpayer for the taxpayer's taxable year less the amount excluded pursuant to Paragraph (1) of this subsection;

(3) an amount equal to the product of the exemption amount allowed for the taxpayer's taxable year by Section 151 of the Internal Revenue Code, as that section may be amended or renumbered, multiplied by the number of personal exemptions allowed for federal income tax purposes;

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

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

(6) for taxable years that began prior to January 1, 1991, an amount equal to the sum of:

(a) net operating loss carryback deductions to that year from taxable years beginning prior to January 1, 1991 claimed and allowed, as provided by the Internal Revenue Code; and

(b) net operating loss carryover deductions to that year claimed and allowed; and

(7) for taxable years beginning on or after January 1, 1991, an amount equal to the sum of any net operating loss carryover deductions to that year claimed and allowed, provided that the amount of any net operating loss carryover from a taxable year beginning on or after January 1, 1991 may be excluded only as follows:

(a) in the case of a timely filed return, in the taxable year immediately following the taxable year for which the return is filed; or

(b) in the case of amended returns or original returns not timely filed, in the first taxable year beginning after the date on which the return or amended return establishing the net operating loss is filed; and

(c) in either case, if the net operating loss carryover exceeds the amount of net income exclusive of the net operating loss carryover for the taxable year to which the exclusion

first applies, in the next four succeeding taxable years in turn until the net operating loss carryover is exhausted; in no event shall a net operating loss carryover be excluded in any taxable year after the fourth taxable year beginning after the taxable year to which the exclusion first applies;

O. "net operating loss" means any net operating loss, as defined by Section 172(c) of the Internal Revenue Code, as that section may be amended or renumbered, for a taxable year as further increased by the income, if any, from obligations of the United States for that year less related expenses;

P. "net operating loss carryover" means the amount, or any portion of the amount, of a net operating loss for any taxable year that, pursuant to Paragraph (6) or (7) of Subsection N of this section, may be excluded from base income;

Q. "nonresident" means every individual not a resident of this state;

R. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, 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; but any individual who, on or before the last day of the taxable year, changed his place of abode to a place without this state with the bona fide intention of continuing actually to abide permanently without this state is not a resident for the purposes of the Income Tax Act;

T. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

U. "state" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, any territory or possession of the United States or any political subdivision of a foreign country;

V. "state or local bond" means a bond issued by a state other than New Mexico or by a local government other than one of New Mexico's political subdivisions, the interest from which is excluded from income for federal income tax purposes under Section 103 of the Internal Revenue Code, as that section may be amended or renumbered;

W. "surviving spouse" means "surviving spouse" as generally defined for federal income tax purposes;

X. "taxable income" means net income less any lump-sum amount;

Y. "taxable year" means the calendar year or fiscal year upon the basis of which the net income is computed under the Income Tax Act and includes, in the case of the return

made for a fractional part of a year under the provisions of the Income Tax Act, the period for which the return is made; and

Z. "taxpayer" means any individual subject to the tax imposed by the Income Tax Act.

History: 1978 Comp., § 7-2-2, enacted by Laws 1986, ch. 20, § 26; 1987, ch. 277, § 1; 1988, ch. 41, § 1; 1990, ch. 49, § 1; 1991, ch. 9, § 24; 1993, ch. 307, § 1.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, deleted former Subsection E which defined "director" as "the secretary of taxation and revenue or the secretary's delegate"; redesignated former Subsections F to K as present Subsections E to J; substituted "a trust or a fiduciary" for "trust or fiduciary" in present Subsection I; inserted "of 1986" after "Code" in present Subsection J; added present Subsection K; in Subsection L; inserted "of the taxpayer and, if any, the taxpayer's spouse and dependents" and substituted "workers' " for "workmen's" in Paragraph (18); in Paragraph (1) of Subsection N, inserted "the greater of the basic standard deduction allowed the taxpayer for the taxpayer's taxable year by Section 63 of the Internal Revenue Code, as that section may be amended or renumbered, or an amount equal to"; inserted the subparagraph designation "(a)"; redesignated former Paragraphs (2) to (4) of Subsection N as present Subparagraphs (b) to (d) of Paragraph (1) and deleted "an amount equal to" at the beginning of each of the redesignated subparagraphs; in Subsection N, redesignated former Paragraphs (5) to (7) as present Paragraphs (2) to (4), substituted "Paragraph (1) of this subsection" for "Paragraph (1), (2), (3) or (4) of this subsection" in present Paragraph (2), rewrote present Paragraph (3) which read "an amount equal to two thousand dollars ($2,000) multiplied by the number of personal exemptions allowed for federal income tax purposes"; inserted "or 'director' " in Subsection R; and added present Subsection U and redesignated former Subsections U and V as present Subsections V and W.

The 1991 amendment, effective June 14, 1991, rewrote Subsection B; deleted "or 'division' " following " 'department' " in Subsection D; in Subsection M, substituted "or" for "and" at the end of Paragraph (3) and deleted reference to 7-2-15 NMSA 1978 in Paragraph (4); rewrote Subsection N; added present Subsections O, P and V; redesignated former Subsections O to S and T to W as present Subsections Q to U and W to Z, respectively; in present Subsection T, deleted "or 'director' " following " 'secretary' "; and made a minor stylistic change in Subsection K.

The 1993 amendment, effective June 18, 1993, added the language beginning "in no event" at the end of Subparagraph (7)(c) of Subsection N and inserted "limited liability company" in Subsection R.

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

"Resident" defined. - New Mexico "resident" is an individual domiciled in New Mexico at any time during the taxable year who does not intentionally change his domicile by the end of the year. Murphy v. Taxation & Revenue Dep't, 94 N.M. 54, 607 P.2d 592 (1980).

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

State tax statutes may constitutionally refer to federal definitions. - A state has the power to gauge its income tax by reference to the income on which the taxpayer is required to pay a tax to the United States, and the constitutionality of state statutes which refer to the Internal Revenue Code definitions have been upheld. Champion Int'l Corp. v. Bureau of Revenue, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975).

Election to treat unrealized gain as federal income makes it state income. - When multistate corporate taxpayer elected to treat the cutting of certain timber as a sale or exchange, eligible for taxation at capital gains rates, even though the timber had not actually been sold, it was held that since its federal income tax was calculated by use of this gain, the gain was includable in its base income for New Mexico income tax purposes. Champion Int'l Corp. v. Bureau of Revenue, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975).

Gain may be included in apportionable income of multistate corporation. - New Mexico was not taxing on out-of-state activity where it included gain from the cutting of timber treated by the taxpayer as a sale or exchange for federal tax purposes in the apportionable business income of the corporation. Champion Int'l Corp. v. Bureau of Revenue, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975).

Law reviews. - For symposium, "Tax Implications of the Equal Rights Amendment," see 3 N.M.L. Rev. 69 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 483 to 511.

Construction and application of state corporate income tax statutes allowing net operating loss deductions, 33 A.L.R.5th 509.

85 C.J.S. Taxation § 1096.

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

A tax is imposed at the rates specified in the Income Tax Act [this article] upon the net income of every resident individual and upon the net income of every nonresident individual employed or engaged in the transaction of business in, into or from this state, or deriving any income from any property or employment within this state.

History: 1953 Comp., § 72-15A-3, enacted by Laws 1965, ch. 202, § 3; 1979, ch. 92, § 2; 1981, ch. 37, § 14.

ANNOTATIONS

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

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

State taxes domiciliaries' net income and nondomiciliaries' property income. - New Mexico taxes the net income of all New Mexicans and all nondomiciliaries deriving income from property in New Mexico. Murphy v. Taxation & Revenue Dep't, 94 N.M. 54, 607 P.2d 592 (1980).

Income of Indians from activities on reservation exempt. - New Mexico may not tax income and gross receipts of Indians residing on a reservation when the income and gross receipts involved are derived solely from activities within the reservation. Hunt v. O'Cheskey, 85 N.M. 381, 512 P.2d 954 (Ct. App.), cert. quashed, 85 N.M. 388, 512 P.2d 961 (1973).

Indian on other tribe's reservation may be taxed. - Income earned by Native Americans while living and working on reservations of which they are not tribunal members is taxable by the state. New Mexico Taxation & Revenue Dep't v. Greaves, 116 N.M. 508, 864 P.2d 324 (Ct. App. 1993).

State tax statutes may constitutionally refer to federal definitions. - A state has the power to gauge its income tax by reference to the income on which the taxpayer is required to pay a tax to the United States, and the constitutionality of state statutes which refer to the Internal Revenue Code definitions have been upheld. Champion Int'l Corp. v. Bureau of Revenue, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975).

Election to treat unrealized gain as federal income makes it state income. - When multistate corporate taxpayer elected to treat the cutting of certain timber as a sale or exchange, eligible for taxation at capital gains rates, even though the timber had not actually been sold, it was held that since its federal income tax was calculated by use of this gain, the gain was includable in its base income for New Mexico income tax purposes. Champion Int'l Corp. v. Bureau of Revenue, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975).

Gain may be included in apportionable income of multistate corporation. - New Mexico was not taxing on out-of-state activity where it included gain from the cutting of timber treated by the taxpayer as a sale or exchange for federal tax purposes in the

apportionable business income of the corporation. Champion Int'l Corp. v. Bureau of Revenue, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975).

Law reviews. - For note, New Mexico Taxes Non-Member Indians Who Work on a Reservation: *New Mexico Taxation and Revenue Dep't v. Greaves*, see 25 N.M.L. Rev. 129 (1995).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 470 to 474, 512 to 517.

85 C.J.S. Taxation § 1096.

7-2-4. Exemptions.

No income tax shall be imposed upon:

A. a trust organized or created in the United States and forming part of a stock bonus, pension or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries, which trust is exempt from taxation under the provisions of the Internal Revenue Code; or

B. religious, educational, benevolent or other organizations not organized for profit which are exempt from income taxation under the Internal Revenue Code except to the extent that such income is subject to federal income taxation as "unrelated business income" under the Internal Revenue Code.

History: 1953 Comp., § 72-15A-4, enacted by Laws 1965, ch. 202, § 4; 1969, ch. 152, § 2; 1971, ch. 20, § 2; 1981, ch. 37, § 15.

ANNOTATIONS

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

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

Internal Revenue Code. - The United States Internal Revenue Code, is codified as 26 U.S.C. § 1 et seq.

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

Exemptions strictly construed. - In pursuance of the beneficent public policy which favors equality in the distribution of the burden of government, all exemptions of

persons or property from taxation are to be construed strictly against the exemption; the intention to create exemptions must affirmatively appear and cannot be raised by implication. New Mexico Elec. Serv. Co. v. Jones, 80 N.M. 791, 461 P.2d 924 (Ct. App. 1969).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 362 to 391, 475 to 482.

Construction of exemption of religious body or society from taxation or special assessment, 17 A.L.R. 1027, 168 A.L.R. 1222.

Exemption of charitable organization from taxation or special assessment, 34 A.L.R. 634, 62 A.L.R. 328, 108 A.L.R. 284.

Extent of area within tax exemption extended to property used for educational, religious, or charitable purposes, 134 A.L.R. 1176.

Exemption of college fraternity house or dormitory from taxation, 66 A.L.R.2d 904.

When is corporation, community chest, fund, foundation or club "organized and operated exclusively" for charitable or other exempt purposes under Internal Revenue Code, 69 A.L.R.2d 871.

Qualification of health care entities for federal tax exemption as charitable organization under 26 USCS § 501(c)(3), 134 A.L.R. Fed. 395.

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

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

ANNOTATIONS

Repeals. - Laws 1990, ch. 49, § 18 repeals 7-2-5 and 7-2-5.1 NMSA 1978, as enacted by Laws 1967, ch. 70, § 1 and as amended by Laws 1984, ch. 125, § 1, relating to exemptions for annuities to retired federal civil service employees and for military retirement pay, effective May 16, 1990. For provisions of former sections, see 1988 Replacement Pamphlet.

7-2-5.2. Exemption; income of persons sixty-five and older or blind.

Any individual sixty-five years of age or older or who, for federal income tax purposes, is blind may claim an exemption in an amount specified in Subsections A through C of this section not to exceed eight thousand dollars ($8,000) of income includable except for this exemption in net income. Individuals having income both within and without this state shall apportion this exemption in accordance with regulations of the secretary:

A. for married individuals filing separate returns, for any taxable year beginning on or after January 1, 1987:

If adjusted gross income is:		The maximum amount of exemption allowable under this section shall be:
Not over $15,000		$8,000
Over $15,000 but not over $16,500	$7,000	
Over $16,500 but not over $18,000	$6,000	
Over $18,000 but not over $19,500	$5,000	
Over $19,500 but not over $21,000	$4,000	
Over $21,000 but not over $22,500	$3,000	
Over $22,500 but not over $24,000	$2,000	
Over $24,000 but not over $25,500	$1,000	
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.

ANNOTATIONS

Applicability. - Laws 1987, ch. 264, § 27 makes the provisions of Sections 6 and 7 and Subsection B of Section 25 of the act applicable to taxable years beginning on or after January 1, 1987.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 334, 464.

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

7-2-5.3. Repealed.

ANNOTATIONS

Repeals. - Laws 1990, ch. 49, § 18 repeals 7-2-5.3 NMSA 1978, as amended by Laws 1987, ch. 277, § 2, relating to exemption for social security and railroad retirement benefits, effective May 16, 1990. For provisions of former section, see 1988 Replacement Pamphlet.

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

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

A. Any individual who has adopted a special needs child on or after January 1, 1988 may claim an exemption for each such child in an amount specified in Subsection B of this section not to exceed two thousand five hundred dollars ($2,500) of income includable, except for this exemption, in net income until the taxable year in which the special needs child may no longer be claimed as a dependent for federal income tax purposes. Individuals having income both within and without this state shall apportion this exemption in accordance with regulations of the secretary.

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

C. As used in this section, "special needs child" means an individual under eighteen years of age who is certified by the human services department or a licensed child placement agency as meeting the definition of a "difficult to place child" in Subsection B of Section 32A-5-44 NMSA 1978; provided, however, that no such classification shall be based upon physical or mental handicap or emotional disturbance that is less than moderately disabling.

History: 1978 Comp., § 7-2-5.4, enacted by Laws 1988, ch. 59, § 1; 1995, ch. 11, § 1.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, added the language beginning "until the taxable year" at the end of Subsection A and, in Subsection C, substituted "Section 32A-5-44" for "Section 40-7-64" and made a stylistic change.

Applicability. - Laws 1995, ch. 11, § 10 makes the amendment by that act applicable to taxable years beginning on or after January 1, 1995.

7-2-5.5. Exemption; earnings by Indians, their Indian spouses and Indian dependents on Indian lands.

Income earned by a member of a New Mexico federally recognized Indian nation, tribe, band or pueblo, his spouse or dependent, who is a member of a New Mexico federally recognized Indian nation, tribe, band or pueblo, is exempt from state income tax if the income is earned from work performed within and the member, spouse or dependent lives within the boundaries of the Indian member's or the spouse's reservation or pueblo grant or within the boundaries of lands held in trust by the United States for the benefit of the member or spouse or his nation, tribe, band or pueblo, subject to restriction against alienation imposed by the United States.

History: Laws 1995, ch. 42, § 1.

ANNOTATIONS

Applicability. - Laws 1995, ch. 42, § 2 makes the provisions of the act applicable to taxable years beginning on or after January 1, 1995.

7-2-5.6. Exemption; medical care savings accounts.

Except as provided in Section 6 [59A-23D-6 NMSA 1978] of this act, employer and employee contributions to medical care savings accounts established pursuant to the Medical Care Savings Account Act [Chapter 59A, Article 23D NMSA 1978], the interest earned on those accounts and money reimbursed to an employee for eligible medical expenses from those accounts or money advanced to the employee by the employer for eligible medical expenses pursuant to that act are exempt from taxation.

History: Laws 1995, ch. 93, § 8.

ANNOTATIONS

Applicability. - Laws 1995, ch. 93, § 9 makes the provisions of § 8 of the act applicable to taxable years beginning on or after Jaunuary 1, 1995.

7-2-6. Repealed.

ANNOTATIONS

Repeals. - Laws 1990, ch. 49, § 18 repeals 7-2-6 NMSA 1978, as enacted by Laws 1977, ch. 300, § 1, relating to exemptions for annuities paid to retired judges of the district court, court of appeals judges, and supreme court justices, effective May 16, 1990. For provisions of former section, see 1988 Replacement Pamphlet.

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

7-2-7. 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, 1998:

A. For married individuals filing separate returns:

If the taxable income is:	The tax shall be:
Not over $ 4,000	1.7% of taxable income
Over $ 4,000 but not over $ 8,000	$ 68.00 plus 3.2% of excess over $ 4,000
Over $ 8,000 but not over $ 12,000	$ 196 plus 4.7% of excess over $ 8,000
Over $ 12,000 but not over $ 20,000	$ 384 plus 6.0% of excess over $ 12,000
Over $ 20,000 but not over $ 32,000	$ 864 plus 7.1% of excess over $ 20,000
Over $ 32,000 but not over $ 50,000	$ 1,716 plus 7.9% of excess over $ 32,000
Over $ 50,000	$ 3,138 plus 8.2% of excess over $ 50,000.

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

If the taxable income is:	The tax shall be:

Not over $ 8,000	1.7% of taxable income
Over $ 8,000 but not over $ 16,000 over $ 8,000	$ 136 plus 3.2% of excess
Over $ 16,000 but not over $ 24,000 over $ 16,000	$ 392 plus 4.7% of excess
Over $ 24,000 but not over $ 40,000 over $ 24,000	$ 768 plus 6.0% of excess
Over $ 40,000 but not over $ 64,000 over $ 40,000	$ 1,728 plus 7.1% of excess
Over $ 64,000 but not over $ 100,000 over $ 64,000	$ 3,432 plus 7.9% of excess
Over $ 100,000 over $ 100,000.	$ 6,276 plus 8.2% of excess

C. For single individuals and for estates and trusts:

If the taxable income is:	The tax shall be:
Not over $ 5,500	1.7% of taxable income
Over $ 5,500 but not over $ 11,000 over $ 5,500	$ 93.50 plus 3.2% of excess
Over $ 11,000 but not over $ 16,000 over $ 11,000	$ 269.50 plus 4.7% of excess
Over $ 16,000 but not over $ 26,000 over $ 16,000	$ 504.50 plus 6.0% of excess
Over $ 26,000 but not over $ 42,000 excess over $ 26,000	$ 1,104.50 plus 7.1% of
Over $ 42,000 but not over $ 65,000 excess over $ 42,000	$ 2,240.50 plus 7.9% of
Over $ 65,000 excess over $ 65,000.	$ 4,057.50 plus 8.2% of

D. For heads of household filing returns:

If the taxable income is:	The tax shall be:
Not over $ 7,000	1.7% of taxable income
Over $ 7,000 but not over $ 14,000	$ 119 plus 3.2% of excess over $ 7,000
Over $ 14,000 but not over $ 20,000	$ 343 plus 4.7% of excess over $ 14,000
Over $ 20,000 but not over $ 33,000	$ 625 plus 6.0% of excess over $ 20,000
Over $ 33,000 but not over $ 53,000	$ 1,405 plus 7.1% of excess over $ 33,000
Over $ 53,000 but not over $ 83,000	$ 2,825 plus 7.9% of excess over $ 53,000
Over $ 83,000	$ 5,195 plus 8.2% of excess over $ 83,000.

E. The tax on the sum of any lump-sum amounts included in net income is an amount equal to five multiplied by the difference between:

(1) the amount of tax due on the taxpayer's taxable income; and

(2) the amount of tax that would be due on an amount equal to the taxpayer's taxable income and twenty percent of the taxpayer's lump-sum amounts included in net income.

History: 1978 Comp., § 7-2-7, enacted by Laws 1994, ch. 5, § 20; 1998, ch. 99, § 1; 1999, ch. 47, § 1.

ANNOTATIONS

Repeals and reenactments. - Laws 1994, ch. 5, § 19, repeals 7-2-7 NMSA 1978, as amended by Laws 1994, ch. 5, § 18, and enacts the above section, effective January 1, 1995.

Laws 1994, ch. 5, § 20, repeals 7-2-7 NMSA 1978, as enacted by Laws 1994, ch. 17, § 19, and enacts the above section, effective January 1, 1996.

The 1998 amendment substituted "8.2%" for "8.5%" near the end of Subsections A through D. Laws 1998, ch. 99, contains no effective date provision, but pursuant to N.M. Const., art. IV, § 23, is effective May 20, 1998, 90 days after adjournment of the

legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

The 1999 amendment, effective May 20, 1998, substituted "January 1, 1998" for "January 1, 1996" at the end of the introductory language.

Applicability. - Subsection C of Laws 1994, ch. 5, § 28 makes the provisions of § 19 of the act applicable to taxable years beginning in 1995.

Subsection D of Laws 1994, ch. 5, § 28 makes the provisions of § 20 of the act applicable to taxable years beginning on or after January 1, 1996.

Subsection A of Laws 1998, ch. 99, § 6 makes the provisions of §§ 1 and 2 of the act apply to taxable years beginning on or after January 1, 1998.

7-2-7.1. Tax tables.

In lieu of the tax rate computations required in Section 7-2-7 NMSA 1978, the secretary may adopt regulations requiring taxpayers to pay taxes in accordance with tax rate tables. The tax tables may be established either by regulation or by instruction but shall be computed substantially on the basis of the rates prescribed in Section 7-2-7 NMSA 1978. The secretary may by regulation or instruction exclude from the application of this section taxpayers having net incomes in excess of an amount to be determined by the secretary and may exclude taxpayers in any net-income class having more exemptions than the number of exemptions specified by the secretary for that category.

History: 1978 Comp., § 7-2-7.1, enacted by Laws 1980, ch. 102, § 1; 1981, ch. 37, § 18; 1990, ch. 49, § 3; 1995, ch. 11, § 2.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, substituted "secretary" for "director" in the first and third sentences and for "secretary of taxation and revenue" near the middle and end of the third sentence.

The 1995 amendment, effective June 16, 1995, inserted "may be established either by regulation or by instruction but" in the second sentence and "or instruction" near the beginning of the third sentence.

Applicability. - Laws 1995, ch. 11, § 10 makes the amendment by that act applicable to taxable years beginning on or after January 1, 1995.

7-2-8. Repealed.

ANNOTATIONS

Repeals. - Laws 1981, ch. 37, § 96, repeals 7-2-8 NMSA 1978, relating to corporate income tax rates, effective June 19, 1981.

7-2-9. Tax computation; alternative method.

For those taxpayers who do not compute an amount upon which the federal income tax is calculated or who do not compute their federal income tax payable for the taxable year, the secretary shall prescribe such regulations or instructions as the secretary may deem necessary to enable them to compute their state income tax due.

History: 1953 Comp., § 72-15A-7, enacted by Laws 1965, ch. 202, § 7; 1981, ch. 37, § 19; 1990, ch. 49, § 4.

ANNOTATIONS

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

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

7-2-10. Income taxes applied to individuals on federal areas.

To the extent permitted by law, no individual shall be relieved from liability for income tax by reason of his residing within a federal area or receiving income from transactions occurring or work or services performed in such area.

History: 1953 Comp., § 72-15A-8, enacted by Laws 1965, ch. 202, § 8; 1981, ch. 37, § 20.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 474, 483, 493.

85 C.J.S. Taxation §§ 1089, 1095.

7-2-11. Tax credit; income allocation and apportionment.

A. Net income of any individual having income that is taxable both within and without this state shall be apportioned and allocated as follows:

(1) during the first taxable year in which an individual incurs tax liability as a resident, only income earned on or after the date the individual became a resident and, in addition, income earned in New Mexico while a nonresident of New Mexico shall be allocated to New Mexico;

(2) except as provided otherwise in 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, if the activities, labor or services are performed in this state for fifteen or fewer days during the taxpayer's taxable year, the compensation may be allocated to the taxpayer's state of residence;

(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.

ANNOTATIONS

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

The 1990 amendment, effective May 16, 1990, added "Tax credit" in the section heading; designated the introductory paragraph of the section as Subsection A and deleted "prior to the application of the tax rates provided in Section 7-2-7 NMSA 1978" following "state shall be" therein; redesignated former Subsections A to G as Paragraphs (1) to (7) of Subsection A; and, in Subsection A, substituted "Paragraphs (1) and (7) of this subsection" for "Subsections A, G and H of this section" in Paragraph (2),

substituted "Paragraph (1) of this subsection" for "Subsection A of this section" in Paragraph (3), substituted "Paragraph (1)" for "Subsection (A) of this section" in Paragraph (5), substituted "secretary" for "director" in Paragraph (6), inserted "but prior to January 1, 1991" in Paragraph (7), and added Subsections B and C.

The 1995 amendment, effective June 16, 1995, substituted "Paragraph (1)" for "Paragraphs (1) and (7)" near the beginning of Paragraph A(2); added the proviso at the end of Paragraph A(4); deleted former Paragraph A(7) relating to accounting by a taxpayer having business income both within and without this state and who began business in this state after July 1, 1991, but prior to January 1, 1991; and made stylistic changes throughout the section.

The 1996 amendment, effective April 1, 1996, in Subsection A, inserted "gambling winnings" in Paragraphs (2) and (3), rewrote Paragraph (5), and inserted "allocated or" and "instructions, rulings or" in Paragraph (6).

Emergency clauses. - Laws 1996, ch. 16, § 8 makes the act effective immediately. Approved March 4, 1996.

Applicability. - Laws 1995, ch. 11, § 10 makes the amendment by that act applicable to taxable years beginning on or after January 1, 1995.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 467, 472, 570, 574.

Computation of income tax as affected by fact that taxpayer was domiciled within state for only part of the taxable year, 126 A.L.R. 455.

85 C.J.S. Taxation §§ 1090, 1091, 1095 to 1099.

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

Every resident of this state and every individual deriving income from any business transaction, property or employment within this state and not exempt from tax under the Income Tax Act [this article] who is required by the laws of the United States to file a federal income tax return shall file a complete tax return with the department in form and content as prescribed by the secretary. The return required and the tax imposed on individuals under the Income Tax Act are due and payment is required on or before the fifteenth day of the fourth month following the end of the taxable year.

History: 1953 Comp., § 72-15A-10, enacted by Laws 1965, ch. 202, § 10; 1971, ch. 20, § 3; 1981, ch. 37, § 22; 1990, ch. 49, § 6.

ANNOTATIONS

Cross references. - See case notes to 7-2-2 and 7-2-3 NMSA 1978.

For reporting on fiscal year basis, see 7-2-20 NMSA 1978.

For income tax withholding, see 7-3-1 to 7-3-10 NMSA 1978.

The 1990 amendment, effective May 16, 1990, substituted "shall file" for "must file," "department" for "division" and "secretary" for "director" in the first sentence.

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

New Mexico may not tax income and gross receipts of Indians residing on reservation when the income and gross receipts involved are derived solely from activities within the reservation. Hunt v. O'Cheskey, 85 N.M. 381, 512 P.2d 954 (Ct. App.), cert. quashed, 85 N.M. 388, 512 P.2d 961 (1973).

State returns used for audit although federal taxes filed on different basis. - When a taxpayer filed consolidated federal income tax returns for a three-year period but, for the same period, elected to file its state income tax returns as a separate corporate entity, excluding its subsidiaries, and since it was not obligated to file its state returns on the same basis as its federal returns, the revenue department was not required to audit and assess the taxpayer's income taxes on the basis of consolidated income reported by the taxpayer in its federal returns rather than on the basis of its state returns which it had filed. Getty Oil Co. v. Taxation & Revenue Dep't, 93 N.M. 589, 603 P.2d 328 (Ct. App. 1979)(decided prior to 1981 amendment).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 450, 481.

Duress in obtaining waiver from taxpayer extending time for assessment of income tax, 78 A.L.R. 631.

Liability on bond given as condition of extension of time for payment of income tax, 117 A.L.R. 452.

What constitutes "reasonable cause" under state statutes imposing penalty on taxpayer for failure to file timely tax return unless such failure was due to "reasonable cause," 29 A.L.R.4th 413.

85 C.J.S. Taxation §§ 1092 to 1099.

7-2-12.1. Limitation on claiming of credits and tax rebates.

A. Except as provided otherwise in this section, a credit or tax rebate provided in the Income Tax Act [this article] that is claimed shall be disallowed if the claim for the credit or tax rebate was first made after the end of the third calendar year following the

calendar year in which the return upon which the credit or tax rebate was first claimable was initially due.

B. Subsection A of this section does not apply to:

(1) the credit authorized by Section 7-2-13 NMSA 1978 for income taxes paid another state; or

(2) the credit authorized by Section 7-2-19 NMSA 1978 for income taxes paid another state.

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

ANNOTATIONS

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

7-2-12.2. Estimated tax due; payment of estimated tax; penalty.

A. Except as otherwise provided in this section, every individual who is required to file an income tax return under the Income Tax Act [this article] 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 credits provided by Sections 7-2-13 and 7-2-18.1 through 7-2-18.4 NMSA 1978 and for any applicable tax 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, he 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, seventy-five percent of the required annual payment must be paid 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, one hundred percent of the required annual payment must be paid 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 his gross income for the taxable year from ranching or farming, or who has received at least two-thirds of his 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.

No penalty under Subsection G of this section shall be imposed unless the rancher or farmer underpays his tax by more than one-third. If a joint return is filed, a rancher or farmer must consider his or her 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] 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 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 wage withholding and any other amounts withheld under the Withholding Tax Act.

G. Except as otherwise provided in this section, in the case of any underpayment of the required annual payment by a taxpayer, there shall be added to the tax an amount as

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 five hundred dollars ($500):

(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 for that taxpayer for that taxable year;

(2) the individual's preceding taxable year was a taxable year of twelve months, the individual did not have any tax liability for the preceding taxable year and the individual was a resident of New Mexico for the entire taxable year;

(3) through either withholding or estimated tax payments, the individual 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 no penalty under Subsection G of this section shall be imposed with respect to any underpayment of the fourth required installment for the taxable year.

J. This section shall be applied 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. With respect to any taxable year ending 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.

ANNOTATIONS

The 1997 amendment, effective April 8, 1997, in Subsection A, added "through either withholding or estimated tax payments" and deleted the former last sentence relating to installment payments of 25% of annual payment; added the last sentence in Subsection C and added paragraphs C(1) to (3); in Subsection D, added the exception at the beginning and substituted "estimated payments of the required annual payment are due on or before" for "the due dates for the installments are"; added Subsection E and redesignated the following subsections accordingly; substituted "required annual payment" for "estimated tax" in Subsection G; substituted "annual payment" for "installment" and deleted "of the installment" before "paid" in Paragraph G(1); rewrote Paragraph G(3); added Paragraph H(3) and redesignated the following paragraph accordingly; inserted "and to taxpayers reporting on a fiscal year other than a calendar year" in Subsection J; and made stylistic changes throughout the section.

The 1999 amendment, effective June 18, 1999, added Subsection M.

Applicability. - Laws 1996, ch. 17, § 2 provides that the provisions of this act apply to taxable years beginning on or after January 1, 1997.

Laws 1997, ch. 63, § 2 makes the provisions of the act applicable to taxable years beginning on or after January 1, 1997.

Laws 1999, ch. 47, § 10 makes the provisions of Sections 2, 3, 4, 6 and 7 of the act applicable to the 1999 and subsequent taxable years.

Appropriations. - Section 5(2) of Laws 1996, ch. 12, the General Appropriations Act of 1996, provides that $250,000 is appropriated from the general fund to the taxation and revenue department for implementing the provisions of this section.

Internal Revenue Code. - The Internal Revenue Code is codified as Title 26 of the United States Code.

7-2-13. Credit for taxes paid other states by resident individuals.

When a resident individual is liable to another state for tax upon income derived from sources outside this state but also included in net income under the Income Tax Act [this article] as income allocated or apportioned to New Mexico pursuant to Section 7-2-11 NMSA 1978, the individual, upon filing with the secretary satisfactory evidence of the payment of the tax to the other state, shall receive a credit against the tax due this state in the amount of the tax paid the other state with respect to income that is required to be either allocated or apportioned to New Mexico. However, in no case shall the credit exceed five and one-half percent of income that is required to be either allocated or apportioned to New Mexico on which the tax payable to the other state was determined. The credit provided by this section does not apply to or include income taxes paid to any municipality, county or other political subdivision of a state.

History: 1953 Comp., § 72-15A-11, enacted by Laws 1965, ch. 202, § 11; 1970, ch. 34, § 1; 1973, ch. 133, § 1; 1974, ch. 56, § 2; 1981, ch. 37, § 23; 1990, ch. 49, § 7; 1992, ch. 78, § 1.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, deleted the subsection designation "A" and "Except as provided otherwise in Subsection B of this section" at the beginning, inserted "as income allocated or apportioned to New Mexico pursuant to Section 7-2-11 NMSA 1978" and substituted "secretary" for "director" in the first sentence, rewrote the third sentence which read "This credit does not apply to or include income taxes paid to any municipality" and deleted former Subsection B which read "This credit does not apply during the first taxable year in which an individual incurs tax liability as a resident. Income of such an individual shall be allocated and apportioned in accordance with Section 7-2-11 NMSA 1978".

The 1992 amendment, effective May 20, 1992, added all of the present language of the first sentence beginning with "with respect to income"; and inserted "that is required to be either allocated or apportioned to New Mexico" in the second sentence.

Applicability. - Laws 1992, ch. 78, § 5 makes the provisions of the act applicable to taxable years beginning on or after January 1, 1992.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d §§ 530 to 532, 549 to 551.

What constitutes doing business, business done, or the like, outside the state for purposes of allocation of income under tax laws, 167 A.L.R. 943.

Other state or country, credit for income tax paid to, construction and application of statutory provisions allowing, 12 A.L.R.2d 359.

84 C.J.S. Taxation §§ 39 to 47; 85 C.J.S. Taxation § 1099.

7-2-14. Low-income comprehensive tax rebate.

A. Except as otherwise provided in Subsection B of this section, any resident who files an individual New Mexico income tax return and who is not a dependent of another individual may claim a tax rebate for a portion of state and local taxes to which the resident has been subject during the taxable year for which the return is filed. The tax rebate may be claimed even though the resident has no income taxable under the Income Tax Act [this article]. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the tax rebate that would have been allowed on a joint return.

B. No claim for the tax rebate provided in this section shall be filed by a resident who was an inmate of a public institution for more than six months during the taxable year for which the tax rebate could be claimed or who was not physically present in New Mexico for at least six months during the taxable year for which the tax rebate could be claimed.

C. For the purposes of this section, the total number of exemptions for which a tax rebate may be claimed or allowed is determined by adding the number of federal exemptions allowable for federal income tax purposes for each individual included in the return who is domiciled in New Mexico plus two additional exemptions for each individual domiciled in New Mexico included in the return who is sixty-five years of age or older plus one additional exemption for each individual domiciled in New Mexico included in the return who, for federal income tax purposes, is blind plus one exemption for each minor child or stepchild of the resident who would be a dependent for federal income tax purposes if the public assistance contributing to the support of the child or stepchild was considered to have been contributed by the resident.

D. The tax rebate provided for in this section may be claimed in the amount shown in the following table:

Modified Gross Income is: But	And the total number of exemptions is:

Not Over	Over	1	2	3	4	6 or 5 More
$ 0	$ 500	$120	$160	$200	$240	$280	$320
500	1,000	135	195	250	310	350	415
1,000	1,500	135	195	250	310	350	435
1,500	2,000	135	195	250	310	350	450
2,000	2,500	135	195	250	310	350	450
2,500	3,000	135	195	250	310	350	450
3,000	3,500	135	195	250	310	350	450
3,500	4,000	135	195	250	310	355	450
4,000	4,500	135	195	250	310	355	450
4,500	5,000	125	190	240	305	355	450
5,000	5,500	115	175	230	295	355	430
5,500	6,000	105	155	210	260	315	410
6,000	7,000	90	130	170	220	275	370
7,000	8,000	80	115	145	180	225	295
8,000	9,000	70	105	135	170	195	240
9,000	10,000	65	95	115	145	175	205
10,000	11,000	60	80	100	130	155	185
11,000	12,000	55	70	90	110	135	160
12,000	13,000	50	65	85	100	115	140
13,000	14,000	50	65	85	100	115	140
14,000	15,000	45	60	75	90	105	120
15,000	16,000	40	55	70	85	95	110

16,000	17,000	35	50	65	80
85	105				
17,000	18,000	30	45	60	70
80	95				
18,000	19,000	25	35	50	60
70	80				
19,000	20,000	20	30	40	50
60	65				
20,000	21,000	15	25	30	40
50	55				
21,000	22,000	10	20	25	35
40	45.				

E. If a taxpayer's modified gross income is zero, the taxpayer may claim a credit in the amount shown in the first row of the table appropriate for the taxpayer's number of exemptions.

F. The tax rebates provided for in this section may be deducted from the taxpayer's New Mexico income tax liability for the taxable year. If the tax rebates exceed the taxpayer's income tax liability, the excess shall be refunded to the taxpayer.

G. For purposes of this section, "dependent" means "dependent" as defined by Section 152 of the Internal Revenue Code of 1986, as that section may be amended or renumbered, but also includes any minor child or stepchild of the resident who would be a dependent for federal income tax purposes if the public assistance contributing to the support of the child or stepchild was considered to have been contributed by the resident.

History: 1953 Comp., § 72-15A-11.1, enacted by Laws 1972, ch. 20, § 2; 1973, ch. 336, § 1; 1974, ch. 17, § 1; 1975, ch. 213, § 1; 1977, ch. 197, § 1; 1978, ch. 145, § 1; 1981, ch. 37, § 24; 1986, ch. 20, § 29; 1986 (3d S.S.), ch. 1, § 1; 1987, ch. 264, § 7; 1990, ch. 49, § 8; 1992, ch. 78, § 2; 1994, ch. 5, § 21; 1998, ch. 99, § 2.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, added the language beginning "plus one exemption for each minor child" at the end of Subsection C and added Subsection F.

The 1992 amendment, effective May 20, 1992, added present Subsection E; redesignated former Subsections E and F as present Subsections F and G; and inserted "of 1986" near the beginning of Subsection G.

The 1994 amendment, effective May 18, 1994, deleted "tax rebates for food and medical expenses" at the end of the section heading, and substituted the table in Subsection D for the former table.

The 1998 amendment, rewrote the tax rebate table in Subsection D. Laws 1998, ch. 99, contains no effective date provision, but pursuant to N.M. Const., art. IV, § 23, is effective May 20, 1998, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Applicability. - Subsection A of Laws 1994, ch. 5, § 28 makes the provisions of §§ 17 and 21 of the act applicable to taxable years beginning on or after January 1, 1994.

Subsection A of Laws 1998, ch. 99, § 6 makes the provisions of §§ 1 and 2 of the act apply to taxable years beginning on or after January 1, 1998.

Law reviews. - For article, "An Intergovernmental Approach to Tax Reform," see 4 N.M.L. Rev. 189 (1974).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 549 to 551.

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

7-2-14.1, 7-2-14.2. Repealed.

ANNOTATIONS

Repeals. - Laws 1993, ch. 356, § 1 repeals 7-2-14.1 NMSA 1978, as enacted by Laws 1987, ch. 264 § 8, relating to a tax rebate for gross receipts tax on food and medical expenses, effective July 1, 1993. For provisions of former section see 1990 Replacement Pamphlet.

Laws 1987, ch. 264, § 25B repeals 7-2-14.2 NMSA 1978, as amended by Laws 1983, ch. 213, § 3, relating to withholding instructions, effective June 19, 1987. For provisions of former section, see 1986 Replacement Pamphlet.

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 first taxable year 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 July 1 of the year immediately following the first year in which the low-income taxpayer property tax rebate provided in the Income Tax Act [this article] is in effect for a county, and no later than July 1 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.

ANNOTATIONS

The 1997 amendment revised the table in Subsection D to add the last four income ranges; and in Subsection E, in the second sentence, substituted "three hundred fifty dollars ($350)" for "two hundred fifty dollars ($250)", substituted "one hundred seventy-five dollars ($175)" for "one hundred twenty-five dollars ($125)", and in the third sentence substituted "twenty-four thousand dollars ($24,000)" for "sixteen thousand dollars ($16,000)". Laws 1997, ch. 196 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Applicability. - Subsection B of Laws 1994, ch. 111, § 5 makes the provisions of § 1 of the act applicable to tax years beginning on or after January 1, 1995.

Laws 1997, ch. 196, § 2 makes the provisions of § 1 of the act applicable to taxable years beginning on or after January 1, 1998.

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 [this article] if:

(1) the county has adopted an ordinance providing the property tax rebate; and

(2) the county has not adopted an ordinance imposing a transfer tax pursuant to the provisions of the Transfer Tax Act upon property transfers occurring in any property tax year for which the property tax rebate is to be in effect.

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 [Articles 35 to 38 of Chapter 7 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.

ANNOTATIONS

Applicability. - Subsection A of Laws 1994, ch. 111, § 1 makes §§ 2 and 3 of the act applicable to the 1995 and subsequent property tax years.

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 [this article], a majority of the qualified electors voting on the question votes in favor of the

imposition of the tax, the tax rate shall be certified by the department of finance and administration for any year in which the tax is imposed. The rate certified shall be the rate specified in the authorizing resolution or any lower rate required by operation of the rate limitation provisions of Section 7-37-7.1 NMSA 1978. The tax shall be imposed at the rate certified unless the board of county commissioners determines that the tax imposition be decreased or not made pursuant to Subsection B of this section. The revenue produced by the tax shall be placed in a separate fund in the county treasury and is pledged solely for the payment of the income tax revenue reduction resulting from the implementation of the property tax rebate for low-income taxpayers.

B. A tax imposed pursuant to Subsection A of this section shall be imposed for one, two, three, four or five years commencing with the property tax year in which the tax rate is first imposed. The board of county commissioners may direct that the rate of imposition of the tax be decreased for any year if, in its judgment, imposition of the total rate is not necessary for such year. The board of county commissioners shall direct that the imposition not be made for any property tax year for which the property tax rebate for low-income taxpayers is not provided or for any year in which the county has imposed a property transfer tax pursuant to the Transfer Tax Act.

History: Laws 1994, ch. 111, § 3.

ANNOTATIONS

Applicability. - Subsection A of Laws 1994, ch. 111, § 5 makes the provisions of §§ 2 and 3 of the act applicable to the 1995 and subsequent property tax years.

7-2-15 to 7-2-17.1. Repealed.

ANNOTATIONS

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

Laws 1990, ch. 49, § 20 repeals Sections 7-2-16, 7-2-16.1 and 7-2-17, as enacted by Laws 1986, ch. 110, § 1 and as amended by Laws 1983, ch. 213, § 5 and Laws 1983, ch. 17, § 1, relating to credits for solar or wind energy equipment installation, solar capital investments, and solar irrigation, effective May 16, 1990. For provisions of former sections, see 1988 Replacement Pamphlet.

Laws 1990, ch. 49, § 21 repeals 7-2-17.1 NMSA 1978, as enacted by Laws 1983, ch. 212, § 1, relating to tax credits for geothermal capital investments, effective January 1, 1991. For provisions of former section, see 1990 Replacement Pamphlet.

7-2-18. Tax rebate of property tax due 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 multi-dwelling or a multi-purpose 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

Prop erty Tax

Taxpayers' Modified Gross Income Liability			
	Over	But Not Over	
	$ 0	$ 1,000	$ 20
25	1,000	2,000	30
35	2,000	3,000	40
45	3,000	4,000	50
55	4,000	5,000	60
75	5,000	6,000	90
105	6,000	7,000	120
135	7,000	8,000	150
165	8,000	9,000	180
195	9,000	10,000	210
225	10,000	11,000	240
	11,000	12,000	
	12,000	13,000	
	13,000	14,000	
	14,000	15,000	
	15,000	16,000	
	16,000	17,000	
	17,000	18,000	
	18,000	19,000	
	19,000	20,000	
	20,000	21,000	
	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. 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.

ANNOTATIONS

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

The 1993 amendment, effective June 18, 1993, added the first sentence of Subsection G and made a minor stylistic change in Subsection C.

The 1997 amendment made stylistic changes throughout the section, redesignated Subsection H as Subsection I, and added Subsections G, H, and J. Laws 1997, ch. 117 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

The 1999 amendment, effective June 18, 1999, added additional amounts to the table in Subsection F.

Applicability. - Laws 1993, ch. 307, § 6 makes the provisions of the act applicable to taxable years beginning on or after January 1, 1993.

Laws 1997, ch. 117, § 2 makes the provisions of this act applicable to taxable years beginning on or after January 1, 1997.

Laws 1999, ch. 47, § 10 makes the provisions of Sections 2, 3, 4, 6 and 7 of the act applicable to the 1999 and subsequent taxable years.

Compiler's notes. - Laws 1977, ch. 196, designated the above section as 72-15A-11.4, 1953 Comp. Since Laws 1977, ch. 114, had previously enacted a section designated as 72-15A-11.4, 1953 Comp., then compiled as 7-2-17 NMSA 1978, the above section was designated as 72-15A-11.5, 1953 Comp., by the compiler.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 518, 545, 549, 551.

85 C.J.S. Taxation §§ 1096 to 1100.

7-2-18.1. Credit for expenses for dependent child day care necessary to enable gainful employment to prevent indigency.

A. As used in this section:

(1) "caregiver" means a corporation or an individual eighteen years of age or over who receives compensation from the resident for providing direct care, supervision and guidance to a qualifying dependent of the resident for less than twenty-four hours daily and includes related individuals of the resident but does not include a dependent of the resident;

(2) "cost of maintaining a household" means the expenses incurred for the mutual benefit of the occupants thereof by reason of its operation as the principal place of abode of such occupants, including property taxes, mortgage interest, rent, utility charges, upkeep and repairs, property insurance and food consumed on the premises.

"Cost of maintaining a household" shall not include expenses otherwise incurred, including cost of clothing, education, medical treatment, vacations, life insurance, transportation and mortgages;

(3) "dependent" means "dependent" as defined by Section 152 of the Internal Revenue Code, as that section may be amended or renumbered, but also includes any minor child or stepchild of the resident who would be a dependent for federal income tax purposes if the public assistance contributing to the support of the child or stepchild was considered to have been contributed by the resident;

(4) "disabled person" means a person who has a medically determinable physical or mental impairment, as certified by a licensed physician, that renders such person unable to engage in gainful employment;

(5) "gainfully employed" means working for remuneration for others, either full time or part time, or self-employment in a business or partnership; and

(6) "qualifying dependent" means a dependent under the age of fifteen at the end of the taxable year who receives the services of a caregiver.

B. Any resident who files an individual New Mexico income tax return and who is not a dependent of another taxpayer may claim a credit for child day care expenses incurred and paid to a caregiver in New Mexico during the taxable year by such resident if the resident:

(1) singly or together with a spouse furnishes over half the cost of maintaining the household for one or more qualifying dependents for any period in the taxable year for which the credit is claimed;

(2) is gainfully employed for any period for which the credit is claimed or, if a joint return is filed, both spouses are gainfully employed or one is disabled for any period for which the credit is claimed;

(3) compensates a caregiver for child day care for a qualifying dependent to enable such resident together with his spouse, if any and if not disabled, to be gainfully employed;

(4) is not a recipient of public assistance under a program of aid to families with dependent children, a program under the New Mexico Works Act [27-2B-1 to 27-2B-20 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.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, in Subsection A, substituted "dependent of the resident" for "dependent for whom the resident or his spouse would be eligible for an exemption for federal income tax purposes" at the end of Paragraph

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

The 1995 amendment, effective June 16, 1995, in Subsection E, substituted "federal credit for filed and dependent care expenses" for "federal child care credit", added the proviso at the end, and made stylistic changes.

The 1999 amendment, effective June 18, 1999, inserted "a program under the New Mexico Works Act or any successor program" in Paragraph B(4).

Applicability. - Laws 1995, ch. 11, § 10 makes the amendment by that act applicable to taxable years beginning on or after January 1, 1995.

Laws 1999, ch. 47, § 10 makes the provisions of Sections 2, 3, 4, 6 and 7 of the act applicable to the 1999 and subsequent taxable years.

Internal Revenue Code. - Section 152 of the Internal Revenue Code, referred to in Paragraph A(3), is codified at 26 U.S.C. § 152.

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

A. To encourage the restoration, rehabilitation and preservation of cultural properties, any taxpayer who files an individual New Mexico income tax return and who is not a dependent of another individual and who is the owner of a cultural property listed on the official New Mexico register of cultural properties, with his consent, may claim a credit not to exceed a maximum aggregate of twenty-five thousand dollars ($25,000) in an amount equal to one-half of the cost of restoration, rehabilitation or preservation of a cultural property listed on the official New Mexico register.

B. The taxpayer may claim the credit if:

(1) he submitted a plan and specifications for such restoration, rehabilitation or preservation to the committee and received approval from the committee for the plan and specifications prior to commencement of the restoration, rehabilitation or preservation;

(2) he received certification from the committee after completing the restoration, rehabilitation or preservation, or committee-approved phase, that it conformed to the plan and specifications and preserved and maintained those qualities of the property which made it eligible for inclusion in the official register; and

(3) the project is completed within twenty-four months of the date the project is approved by the committee in accordance with Paragraph (1) of this subsection.

C. A taxpayer may claim the credit provided in this section for each taxable year in which restoration, rehabilitation or preservation is carried out. Except as provided in

Subsection F of this section, claims for the credit provided in this section shall be limited to three consecutive years, and the maximum aggregate credit allowable shall not exceed twenty-five thousand dollars ($25,000) for any single restoration, rehabilitation or preservation project for any cultural property listed on the official New Mexico register certified by the committee.

D. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the credit that would have been allowed on a joint return.

E. A taxpayer who otherwise qualifies and claims a credit on a restoration, rehabilitation or preservation project on property owned by a partnership of which the taxpayer is a member may claim a credit only in proportion to his interest in the partnership. The total credit claimed by all members of the partnership shall not exceed twenty-five thousand dollars ($25,000) in the aggregate for any single restoration, rehabilitation or preservation project for any cultural property listed on the official New Mexico register certified by the committee.

F. The credit provided in this section may only be deducted from the taxpayer's income tax liability. Any portion of the maximum tax credit provided by this section which remains unused at the end of the taxpayer's taxable year may be carried forward for four consecutive years; provided, however, the total tax credits claimed under this section shall not exceed twenty-five thousand dollars ($25,000) for any single restoration, preservation or rehabilitation project for any cultural property listed on the official New Mexico register.

G. The historic preservation division shall promulgate regulations for the implementation of Subsection B of this section.

H. As used in this section:

(1) "committee" means the cultural properties review committee created in Section 18-6-4 NMSA 1978; and

(2) "historic preservation division" means the historic preservation division of the office of cultural affairs created in Section 18-6-8 NMSA 1978.

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

ANNOTATIONS

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

7-2-18.3. Credit; prescription drugs. (Repealed effective January 1, 1999.)

A. Except as otherwise provided in Subsection E 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 credit for state and local gross receipts taxes imposed on the receipts from the sale of prescription drugs to the resident in New Mexico.

B. The amount of the credit that may be claimed pursuant to this section shall be three percent of the taxpayer's actual unreimbursed expenditures for prescription drugs purchased in New Mexico during the taxable year for which the return is filed, but the amount of the credit claimed shall not exceed one hundred fifty dollars ($150) per exemption allowable for federal income tax purposes for each individual included in the return or three hundred dollars ($300) per return, whichever is less. As used in this subsection, the term "drugs purchased in New Mexico" excludes drugs purchased from any out-of-state source unless the New Mexico compensating tax has been paid on the purchase.

C. The credit provided under 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 for the taxable year, the excess shall be refunded to the taxpayer.

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 provided under this section that would have been allowed on a joint return.

E. No claim for the credit provided under 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 credit could be claimed or who was not physically present in New Mexico for at least six months during the taxable year for which the credit could be claimed.

F. As used in this section:

(1) "dependent" means "dependent" as defined by Section 152 of the Internal Revenue Code, but also includes a 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; and

(2) "prescription drugs" means insulin and substances that are:

(a) dispensed by or under the supervision of a licensed pharmacist or other person authorized under state law to dispense the substance;

(b) prescribed for a specified individual by a person authorized under state law to prescribe the substance; and

(c) subject to the restrictions on sale contained in 21 U.S.C. 353(b)(1).

History: Laws 1994, ch. 5, § 17.

ANNOTATIONS

Applicability. - Subsection A of Laws 1994, ch. 5, § 28 makes the provisions of §§ 17 and 21 of the act applicable to taxable years beginning on or after January 1, 1994.

Laws 1998, ch. 95, § 4, and Laws 1998, ch. 99, § 6B make the repeal of 7-2-18.3 NMSA 1978 applicable to taxable years beginning on or after January 1, 1999.

Repeals. - Laws 1998, ch. 95, § 5 and ch. 99, § 3 both repeal 7-2-18.3 NMSA 1978, concerning credit for prescription drugs. Laws 1998, ch. 95, § 5 makes the repeal by that act effective January 1, 1998. Laws 1998, ch. 99 contains no effective date provisions applicable to § 5, but pursuant to N.M. Const. art. IV, § 23, is effective on May 20, 1998, 90 days after adjournment of the legislature. Both chapters repeal Section 7-2-18.3 NMSA 1978 effective for taxable years beginning on or after January 1, 1999.

Internal Revenue Code. - Section 152 of the federal Internal Revenue Code is codified as 26 U.S.C. § 152.

7-2-18.4. Qualified business facility rehabilitation credit; income tax credit.

A. To stimulate the creation of new jobs and revitalize economically depressed areas within New Mexico enterprise zones, any taxpayer who files an individual New Mexico income tax return, who is not a dependent of another individual and who is the owner of a qualified business facility may claim a credit in an amount equal to one-half of the cost, not to exceed fifty thousand dollars ($50,000), incurred to restore, rehabilitate or renovate a qualified business facility.

B. A taxpayer may claim the credit provided in this section for each taxable year in which restoration, rehabilitation or renovation is carried out. Except as provided in Subsection E of this section, claims for the credit provided in this section shall be limited to three consecutive years, and the maximum aggregate credit allowable shall not exceed fifty thousand dollars ($50,000) for any single restoration, rehabilitation or renovation project for any qualified business facility. Each claim for a qualified business facility rehabilitation credit shall be accompanied by documentation and certification as the department may require by regulation or instruction.

C. No credit may be claimed or allowed pursuant to the provisions of this section for any costs incurred for a restoration, rehabilitation or renovation project for which a credit may be claimed pursuant to the provisions of Section 7-2-18.2 or Section 7-9A-1 NMSA 1978.

D. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the credit that would have been allowed on a joint return.

E. A taxpayer who otherwise qualifies and claims a credit on a restoration, rehabilitation or renovation project on a building owned by a partnership or other business association of which the taxpayer is a member may claim a credit only in proportion to his interest in the partnership or association. The total credit claimed by all members of the partnership or association shall not exceed fifty thousand dollars ($50,000) in the aggregate for any single restoration, rehabilitation or renovation project for a qualified business facility.

F. The credit provided in this section may only be deducted from the taxpayer's income tax liability. Any portion of the maximum tax credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried forward for four consecutive taxable years; provided, the total tax credits claimed under this section shall not exceed fifty thousand dollars ($50,000) for any single restoration, rehabilitation or renovation project for a qualified business facility.

G. As used in this section:

(1) "qualified business facility" means a building located in a New Mexico enterprise zone that is suitable for use and is put into service by a person in the manufacturing, distribution or service industry immediately following the restoration, rehabilitation or renovation project; provided, the building must have been vacant for the twenty-four month period immediately preceding the commencement of the restoration, rehabilitation or renovation project; and

(2) "restoration, rehabilitation or renovation" includes:

(a) the construction services necessary to ensure that a building is in compliance with applicable zoning codes, is safe for occupancy and meets the operating needs of a person in the manufacturing, distribution or service industry; and

(b) expansion of or an addition to a building if the expansion or addition does not increase the usable square footage of the building by more than ten percent of the usable square footage of the building prior to the restoration, rehabilitation or renovation project.

History: Laws 1994, ch. 115, § 1.

7-2-18.5. Welfare-to-work tax credit.

A. Any taxpayer who files an individual New Mexico income tax return and is not a dependent of another taxpayer and is entitled to claim the federal welfare-to-work credit provided by 26 U.S.C. Section 51A with respect to a state-qualified employee in a state-

qualified job may take a tax credit equal to fifty percent of the amount of the welfare-to-work credit claimed and allowed under 26 U.S.C. Section 51A with respect to that employee in that job.

B. To be eligible for the credit provided by this section, a taxpayer must be in compliance with the following provisions:

(1) the hiring of any state-qualified employee shall not result in the displacement of any currently employed worker or position, including partial displacement such as a reduction in the hours of nonovertime work, wages or employment benefits, or in any infringement of the promotional opportunities of any currently employed individual;

(2) the hiring of any state-qualified employee shall not impair existing contracts for services or collective bargaining agreements, and no employment under the terms of this act [7-2-1 to 7-2-34 NMSA 1978] shall be inconsistent with the terms of a collective bargaining agreement or involve the performance of duties covered under a collective bargaining agreement unless the employer and the labor organization concur in writing;

(3) a state-qualified employee may fill or perform the duties of an employment position only in a manner that is consistent with existing laws, personnel procedures and collective bargaining contracts;

(4) no state-qualified employee shall be employed or assigned:

(a) when any other individual is on layoff from the same or any substantially equivalent job;

(b) if the employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction of its work force with the effect of filling the vacancy so created with a state-qualified employee; or

(c) to any position at a particular work site when there is an ongoing strike or lockout at that particular work site;

(5) state-qualified employees shall be paid a wage that is substantially like the wage paid for similar jobs with the employer with appropriate adjustments for experience and training but not less than the federal minimum hourly wage; and

(6) employers shall:

(a) maintain health, safety and working conditions not less than those of comparable jobs offered by the employer; and

(b) maintain standard and customary entry-level wages and benefits and apply historical and normal increases in wages and benefits appropriate for experience and training of the state-qualified employee.

C. For the purposes of this section:

(1) "high-unemployment county" means a county in which the unemployment rate as reported by the labor department exceeds ten percent in six or more months of the calendar year preceding the year for which the tax credit provided by this section is claimed;

(2) "state-qualified employee" means a "long-term family assistance recipient", as that term is defined in 26 U.S.C. Section 51A(c), who resides in a high-unemployment county during the period of employment for which the welfare-to-work credit provided by 26 U.S.C. Section 51A applies with respect to that employee; and

(3) "state-qualified job" means a job established by the taxpayer that:

(a) when first occupied by a state-qualified employee results in the total number of the taxpayer's employees exceeding the average number of the taxpayer's employees during the taxpayer's preceding tax year; or

(b) was a position previously filled by a state-qualified employee and was vacant prior to the hiring of the new state-qualified employee in that position.

D. The labor department shall determine whether the employee is a state-qualified employee and whether the job is a state-qualified job and, if the employee is a state-qualified employee and the job is a state-qualified job, certify that fact to the employer. The taxpayer claiming the tax credit provided by this section shall provide a copy of the certification with respect to each employee for which the tax credit is claimed.

E. By July 1, 1998 and by January 31 of each subsequent year, the labor department shall certify to the taxation and revenue department the high-unemployment counties for the preceding calendar year.

F. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the tax credit provided by this section that would have been allowed on a joint return.

G. A taxpayer who otherwise qualifies may claim his pro rata share of the tax credit provided by this section with respect to state-qualified employees employed by a partnership or other business association of which the taxpayer is a member. The total tax credit claimed by all members of the partnership or association shall not exceed the amount of tax credit provided pursuant to Subsection A of this section with respect to each state-qualified employee for which the credit is allowed.

H. The tax credit provided by this section may only be deducted from the taxpayer's income tax liability. Any portion of the tax credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried forward for three consecutive taxable years.

History: Laws 1998, ch. 97, § 2.

ANNOTATIONS

Effective dates. - Laws 1998, ch. 97 contains no effective date provision, but pursuant to N.M. Const. art. IV, § 23, is effective on May 20, 1998, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

7-2-18.6. Job mentor ship tax credit. (Repealed effective January 1, 2002.)

A. To encourage New Mexico businesses to hire youth participating in certified school-to-career programs, any taxpayer who files an individual New Mexico income tax return, who is not a dependent of another individual and who is the owner of a 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 may be known as the "job mentor ship tax credit".

B. A taxpayer who is the owner of a New Mexico business may claim the credit provided in this section 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 number of qualified students whose employment qualifies for a job mentor ship tax credit pursuant to this section or the Corporate Income and Franchise Tax Act shall be limited to a pilot program of one thousand qualified students in any calendar year. The department shall allocate annually to the state school-to-work director one thousand pilot program certificates that shall be distributed by the state school-to-work director to administrators of certified school-to-career programs. The pilot program certificates, when properly executed, shall serve as evidence of the taxpayer's eligibility for the job mentor ship tax credit. The maximum number of pilot program certificates that may be issued to a single school-to-career program administrator is equal to the number of qualified school-to-career participants in that program on May 1 of the current calendar year. The pilot program certificates shall be issued in the order in which they are requested. To claim the credit pursuant to this section, the taxpayer must submit with respect to each employee for whom the credit is claimed:

(1) a properly executed pilot program 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 mentor ship tax credit for that employee pursuant to this section or the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978].

D. The credit provided pursuant to this section may only be deducted from the taxpayer's New Mexico income tax liability for the taxable year. 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 three consecutive taxable years; provided the total tax credits claimed under this section shall not exceed the maximum allowable pursuant to Subsection B of this section.

E. A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the credit that would have been allowed on a joint return.

F. A taxpayer who otherwise qualifies for and claims a job mentor ship 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 tax credit allowable pursuant to Subsection B of this section.

G. As used in this section:

(1) "certified school-to-career program" means a summer employment program certified by the state school-to-work office as a 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 less 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 certified school-to-career program.

History: Laws 1999, ch. 217, § 1.

ANNOTATIONS

Delayed repeals. - Laws 1999, ch. 217, § 4 repeals this section, as enacted by Laws 1999, ch. 217, § 1, effective January 1, 2002.

Effective dates. - Laws 1999, ch. 217 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Applicability. - Laws 1999, ch. 217, § 5 makes the provisions of the act applicable to taxable years beginning in calendar years 1999 through 2001.

Temporary provisions. - Laws 1999, ch. 217, § 3, effective June 18, 1998, provides that if an income tax or corporate income tax taxpayer has been allowed a credit pursuant to Section 1 or 2 of this act and any portion of the credit allowed is unused on the date the sections are repealed, the unused amount may be carried forward regardless of the repeal to any taxable year within the three consecutive taxable years following the first taxable year for which the claim was allowed.

7-2-19. Repealed.

ANNOTATIONS

Repeals. - Laws 1990, ch. 49, § 19 repeals Section 7-2-19 NMSA 1978, as amended by Laws 1981, ch. 37, § 29, relating to credit for taxes paid other states by nonresident individuals, effective May 16, 1990. For provisions of former section, see 1988 Replacement Pamphlet.

7-2-20. Information returns.

A. Pursuant to regulation, the secretary may require any person doing business in this state and making payments in the course of business to another person to file information returns with the department.

B. The provisions of this section also apply to payments made by the state of New Mexico, by the governing bodies of any political subdivision of the state of New Mexico, by any agency, department or instrumentality of the state or of any political subdivision thereof and, to the extent permitted by law or pursuant to any agreement entered into by the secretary, to payments made by any other governmental body or by an agency, department or instrumentality thereof.

History: 1953 Comp., § 72-15A-13, enacted by Laws 1965, ch. 202, § 13; 1981, ch. 37, § 30; 1983, ch. 213, § 6; 1990, ch. 49, § 11.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, substituted "secretary" for "director" in Subsections A and B and "department" for "division" at the end of Subsection A.

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

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation § 589.

85 C.J.S. Taxation § 1102.

7-2-21. Fiscal years permitted.

Any individual who files income tax returns under the Internal Revenue Code on the basis of a fiscal year shall report income under the Income Tax Act [this article] on the same basis.

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

ANNOTATIONS

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

Internal Revenue Code. - The United States Internal Revenue Code is codified as 26 U.S.C. § 1 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Section 52(a) of the Internal Revenue Code requiring receivers, trustees in bankruptcy or assignees operating business or property of corporations to make income tax returns and the like, 31 A.L.R.2d 877.

7-2-21.1. Accounting methods.

A taxpayer shall use the same accounting methods for reporting income for New Mexico income tax purposes as are used in reporting income for federal income tax purposes.

History: 1978 Comp., § 7-2-21.1, enacted by Laws 1981, ch. 37, § 32.

ANNOTATIONS

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

For deduction of accounting services from gross receipts by corporation, see 7-9-69 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 578, 579.

85 C.J.S. Taxation § 1102.

7-2-22. Administration.

The Income Tax Act [this article] shall be administered pursuant to the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

History: 1953 Comp., § 72-15A-15, enacted by Laws 1965, ch. 202, § 18; 1981, ch. 37, § 33.

ANNOTATIONS

Cross references. - For provisions applicable to administration and enforcement, see 7-1-2 NMSA 1978.

7-2-23. Finding[; wildlife funds].

The legislature finds that it is in the public interest to provide additional wildlife funds to perpetuate the renewable wildlife resource of New Mexico that gives so much pleasure and recreation to all New Mexicans. This act [7-2-23 to 7-2-25 NMSA 1978] provides a means by which additional wildlife funds may be provided from a voluntary check-off designation of tax refunds due the taxpayer on the state income tax form. It is the intent of the legislature that this program of income tax refund check-off is supplemental to any other funding and is in no way intended to take the place of the funding that would otherwise be appropriated for this purpose.

History: Laws 1981, ch. 343, § 1.

7-2-24. Optional designation of tax refund contribution[; game protection fund].

A. Except as otherwise provided in Subsection C of this section, any individual whose state income tax liability after application of allowable credits and tax rebates in any year is lower than the amount of money held by the department to the credit of such individual for that tax year may designate any portion of the income tax refund due him to be paid into the game protection fund. In the case of a joint return, both individuals must make such designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in substantially the following form:

"New Mexico Game Protection Fund - Check []

if you wish to contribute a part or all

of your tax refund to the Game Protection

Fund. Enter here $_____ the amount

of your contribution."

C. The provisions of this section do not apply to income tax refunds subject to interception under the provisions of the Tax Refund Intercept Program Act [Chapter 7, Article 2C NMSA 1978] and any designation made under the provisions of this section to such refunds is void.

History: Laws 1981, ch. 343, § 2; 1987, ch. 277, § 4.

ANNOTATIONS

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

7-2-24.1. Optional designation of tax refund contribution for tree plantings.

A. Except as otherwise provided in Subsection C of this section, any individual whose state income tax liability after application of allowable credits and tax rebates in any year is lower than the amount of money held by the department to the credit of such individual for that tax year may designate any portion of the income tax refund due him to be paid into the conservation planting revolving fund. In the case of a joint return, both individuals must make such designation.

B. The department shall revise the state income tax form to allow the designation of such contributions in substantially the following form:

"Conservation Planting Revolving Fund - Check if you wish to []

contribute a part or all of your tax refund to the Conservation Planting Revolving Fund to pay for the planting of trees in New Mexico. Enter here $_____ the amount of your contribution."

C. The provisions of this section do not apply to income tax refunds subject to interception under the provisions of the Tax Refund Intercept Program Act [Chapter 7, Article 2C NMSA 1978] and any designation made under the provisions of this section to such refunds is void.

History: 1978 Comp., § 7-2-24.1, enacted by Laws 1992, ch. 108, § 4.

ANNOTATIONS

Applicability. - Laws 1992, ch. 108, § 5 makes the provisions of the act applicable to taxable years beginning on or after January 1, 1992.

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

ANNOTATIONS

Repeals. - Laws 1987, ch. 277, § 7 and Laws 1985, ch. 154, § 6 repeal 7-2-25 and 7-2-26 NMSA 1978, as enacted by Laws, 1981, ch. 343, § 3 and Laws 1985, ch. 154, § 3, relating to the optional designation of tax refund for contribution to the statue of liberty fund, effective June 19, 1987, and December 31, 1986, respectively. For provisions of former sections, see 1986 Replacement Pamphlet.

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

The legislature finds that it is in the public interest to provide additional funds to increase the size of the Santa Fe national cemetery to provide a lasting tribute to all veterans of New Mexico. This act provides a means by which additional funds may be provided from a voluntary check-off designation of tax refunds due the taxpayer on the state income tax form. It is the intent of the legislature that this program of income tax refund check-off is supplemental to any other funding and is in no way intended to take the place of the funding that would otherwise be appropriated for this purpose. It is further the intent of the legislature that all contributions obtained under this act will automatically be transferred into the veterans' national cemetery fund in the event the city of Santa Fe grants and conveys the additional acreage for the Santa Fe national cemetery.

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

ANNOTATIONS

Delayed repeals. - Laws 1987, ch. 257, § 6 repeals 7-2-27 NMSA 1978, as enacted by Laws 1987, ch. 257, § 2, relating to legislative findings and intent as to additional funds to increase the size of the Santa Fe national cemetery, effective on the January 1 of the year following the year on which the sum of contributions received on or after January 1, 1988, pursuant to 7-2-28 NMSA 1978, equals or exceeds $1,070,000.

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

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

A. Any individual whose state income tax liability in any year is lower than the amount of money held by the taxation and revenue department to the credit of such individual for that tax year may designate any portion of the income tax refund due him to be paid into the veterans' national cemetery fund. In the case of a joint return, both individuals must make such designation.

B. The secretary of taxation and revenue shall revise the state income tax form to allow the designation by individual taxpayers of such contributions in substantially the following form:

"New Mexico Veterans' National Cemetery Fund - Check []

if you wish to contribute a part or all

of your tax refund to the Veterans' National Cemetery

Fund. Enter here $_____ the amount

of your contribution.".

C. The provisions of this section do not apply to refund amounts intercepted under the Tax Refund Intercept Program Act [Chapter 7, Article 2C NMSA 1978], and any designation under the provisions of this section with respect to such intercepted refunds is void.

History: 1978 Comp., § 7-2-28, enacted by Laws 1987, ch. 257, § 3.

ANNOTATIONS

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

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

7-2-29. Finding.

The legislature finds that it is in the public interest to provide additional funds to ensure that substance abuse educational programs are provided in New Mexico schools. This act provides a means by which additional substance abuse education funds may be provided from a voluntary check-off designation of tax refunds due the taxpayer on the state income tax form. It is the intent of the legislature that this program of income tax refund check-off is supplemental to any other funding and is in no way intended to take the place of the funding that would otherwise be appropriated for this purpose.

History: Laws 1987, ch. 265, § 1.

ANNOTATIONS

Meaning of "this act". - The term "this act", referred to in this section, means Laws 1987, Chapter 265, which appears as §§ 7-1-6.18, 7-2-29, 7-2-30, 26-2-4, and 26-2-4.1 NMSA 1978.

7-2-30. Optional designation of tax refund contribution[; substance abuse education fund].

A. Any individual whose state income tax liability in any year is lower than the amount of money held by the taxation and revenue department to the credit of such individual for that tax year may designate any portion of the income tax refund due him to be paid into the substance abuse education fund. In the case of a joint return, both individuals must make such designation.

B. The secretary of the department shall revise the state income tax form to allow the designation by individual taxpayers of such contributions in substantially the following form:

"New Mexico Substance Abuse Education Fund - Check []

if you wish to contribute a part or all

of your tax refund to the Substance Abuse

Education Fund. Enter here $_____ the amount

of your contribution.".

C. The provisions of this section do not apply to refund amounts intercepted under the tax refund intercept program and any designation under the provisions of this section with respect to such intercepted refunds is void.

History: Laws 1987, ch. 265, § 2.

ANNOTATIONS

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

7-2-31. Optional designation of tax refund contribution.

A. Any individual whose state income tax liability in any year is lower than the amount of money held by the taxation and revenue department to the credit of that individual for

that tax year may designate two dollars ($2.00) of the income tax refund due the individual to be paid to a state political party. "State political party", for the purposes of this section, means those parties that on January 1 of the taxable year for which the return is filed meet the requirements of Section 1-7-2 (A) NMSA 1978. In the case of a joint return, each individual may make a designation.

B. The secretary of taxation and revenue shall revise the state income tax form to allow on the face of the form the designation by individual taxpayers of contributions to state political parties in substantially the following form:

"New Mexico Political Party Income Tax Refund Check-Off - Check if you wish to contribute two dollars ($2.00) of your income tax refund to a state political party that qualifies as such under Section 1-7-2 NMSA 1978. My contribution should be made to the _____ party."
(name of state political party)

C. The secretary of taxation and revenue shall provide a list on the state income tax form of the qualified state political parties to which the taxpayer may make a contribution.

D. The provisions of this section do not apply to income tax refunds subject to interception under the provisions of the Tax Refund Intercept Program Act [Chapter 7, Article 2C NMSA 1978], and any designation made under the provisions of this section to such refunds is void.

History: Laws 1992, ch. 108, § 1.

ANNOTATIONS

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

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

Applicability. - Laws 1992, ch. 108, § 5 makes the provisions of the act applicable to taxable years beginning on or after January 1, 1992.

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 [this article] 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.

ANNOTATIONS

Effective dates. - Laws 1999, ch. 47 contains no effective date provision for §§ 2 through 11 of the act, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

7-2-32. Deduction-payments into education trust fund.

A taxpayer may claim a deduction from net income in an amount equal to the payments made by the taxpayer into the education trust fund pursuant to a college investment agreement or prepaid tuition contract under the Education Trust Act [21-21K-1 to 21-21K-7 NMSA 1978] in the taxable year for which the deduction is being claimed. The amount of payments made on behalf of any one beneficiary that may be deducted shall not exceed in the aggregate the cost of attendance at the applicable institution of higher education, as determined by the education trust board. A husband and wife who file separate returns for the taxable year in which they could have filed a joint return may each claim only one-half of the deduction that would have been allowed on the joint return. Individuals having income both within and without this state shall apportion this deduction in accordance with regulations of the secretary.

History: Laws 1997, ch. 259, § 8.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 259 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

7-2-33. Education trust fund; earnings tax exempt; withdrawals are taxable income; authority to withhold tax.

A. All earnings of an investor, purchaser or beneficiary from investment of money paid by the investor or purchaser or on behalf of the beneficiary into the education trust fund pursuant to a college investment agreement or prepaid tuition contract authorized in the Education Trust Act [21-21K-1 to 21-21K-7 NMSA 1978] are exempt from the income tax pursuant to the Income Tax Act [this article].

B. All amounts refunded to an investor upon termination of a college investment agreement or to a purchaser upon termination of a prepaid tuition contract pursuant to the Education Trust Act are taxable in the year in which they are received.

C. Upon payment of a refund to an investor or purchaser pursuant to the provisions of the Education Trust Act, the education trust board shall deduct and withhold from that refund a tax in an amount equal to six percent of the refund. The amount withheld shall be transmitted to the taxation and revenue department for disposition pursuant to regulations of the secretary.

History: Laws 1997, ch. 259, § 9.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 259 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

7-2-34. Deduction; net capital gain income.

A. Except as provided in Subsection B of this section, a taxpayer may claim a deduction from net income in an amount equal to the taxpayer's net capital gain income for the taxable year for which the deduction is being claimed, but not to exceed one thousand dollars ($1,000). A husband and wife who file separate returns for a taxable year in which they could have filed a joint return may each claim only one-half of the deduction provided by this section that would have been allowed on the joint return.

B. A taxpayer may not claim the deduction provided in Subsection A of this section if the taxpayer has claimed the credit provided in Section 7-2D-8.1 NMSA 1978.

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.

ANNOTATIONS

Effective dates. - Laws 1999, ch. 205 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Applicability. - Laws 1999, ch. 205, § 2 makes the provisions of § 1 of the act applicable to taxable years beginning on or after January 1, 1999.

Internal Revenue Code. - Section 1222(11) of the Internal Revenue Code, referred to in Subsection C, is codified at 26 U.S.C. § 1222.

ARTICLE 2A
CORPORATE INCOME AND FRANCHISE TAX

7-2A-1. Short title.

Chapter 7, Article 2A NMSA 1978 may be cited as the "Corporate Income and Franchise Tax Act".

History: 1978 Comp., § 7-2A-1, enacted by Laws 1981, ch. 37, § 34; 1986, ch. 20, § 32.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - Decision to take foreign income taxes as federal credit under § 901 of the Internal Revenue Code (26 USCS § 901) as precluding their deduction for state income tax purposes, 77 A.L.R.4th 823.

7-2A-2. Definitions.

For the purpose of the Corporate Income and Franchise Tax Act [this article] and unless the context requires otherwise:

A. "affiliated group" means that term as it is used in the Internal Revenue Code;

B. "bank" means any national bank, national banking association, state bank or bank holding company;

C. "base income" means that part of the taxpayer's income defined as taxable income and upon which the federal income tax is calculated in the Internal Revenue Code for income tax purposes plus, for taxable years beginning on or after January 1, 1991, the amount of the net operating loss deduction allowed by Section 172(a) of the Internal Revenue Code, as that section may be amended or renumbered, and claimed by the taxpayer for that year; "base income" also includes interest received on a state or local bond;

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

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

F. "fiscal year" means any accounting period of twelve months ending on the last day of any month other than December;

G. "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended;

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

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

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

(3) for taxable years that began prior to January 1, 1991, an amount equal to the sum of:

(a) net operating loss carryback deductions to that year from taxable years beginning prior to January 1, 1991 claimed and allowed, as provided by the Internal Revenue Code; and

(b) net operating loss carryover deductions to that year claimed and allowed; and

(4) for taxable years beginning on or after January 1, 1991, an amount equal to the sum of any net operating loss carryover deductions to that year claimed and allowed, provided that the amount of any net operating loss carryover from a taxable year beginning on or after January 1, 1991 may be excluded only as follows:

(a) in the case of a timely filed return, in the taxable year immediately following the taxable year for which the return is filed; or

(b) in the case of amended returns or original returns not timely filed, in the first taxable year beginning after the date on which the return or amended return establishing the net operating loss is filed; and

(c) in either case, if the net operating loss carryover exceeds the amount of net income exclusive of the net operating loss carryover for the taxable year to which the exclusion first applies, in the next four succeeding taxable years in turn until the net operating loss carryover is exhausted; in no event may a net operating loss carryover be excluded in any taxable year after the fourth taxable year beginning after the taxable year to which the exclusion first applies;

I. "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;

J. "net operating loss carryover" means the amount, or any portion of the amount, of a net operating loss for any taxable year that, pursuant to Paragraph (3) or (4) of Subsection H of this section, may be excluded from base income;

K. "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;

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

M. "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;

N. "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;

O. "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;

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

Q. "unitary corporations" means two or more integrated corporations, other than any foreign corporation incorporated in a foreign country and not engaged in trade or business in the United States during the taxable year, that are owned in the amount of more than fifty percent and controlled by the same person and for which at least one of the following conditions exists:

(1) there is a unity of operations evidenced by central purchasing, advertising, accounting or other centralized services;

(2) there is a centralized management or executive force and centralized system of operation; or

(3) the operations of the corporations are dependent upon or contribute property or services to one another individually or as a group.

History: 1978 Comp., § 7-2A-2, enacted by Laws 1986, ch. 20, § 33; 1991, ch. 9, § 25; 1993, ch. 307, § 3; 1993, ch. 309, § 1; 1995, ch. 11, § 5; 1999, ch. 47, § 6.

ANNOTATIONS

The 1991 amendment, effective June 14, 1991, added the language beginning "plus, for taxable years" at the end of Subsection C; deleted "or 'director' " following " 'department' " in Subsection E; deleted former Subsection F which read " 'director' means the secretary of taxation and revenue or the secretary's delegate"; redesignated former Subsections G to J as present Subsections F to I; in present Subsection I, added present Paragraph (2) and Paragraphs (4) and (5), added "other" at the beginning of Paragraph (3) and made a related stylistic change; added present Subsections J, K and O; and redesignated former Subsections K to M and N to P as present Subsections L to N and P to R, respectively.

1993 amendments. - Identical amendments to this section were enacted by Laws 1993, ch. 307, § 3 and Laws 1993, ch. 309, § 1, both approved April 8, 1993 and both effective June 18, 1993, which added the language beginning "in no event" at the end of Subparagraph (5)(c) of Subsection I, inserted "limited liability company" in Subsection L and inserted "other than any foreign corporation incorporated in a foreign country and not engaged in trade or business in the United States during the taxable year" in Subsection R. The section is set out above as amended by Laws 1993, ch. 309, § 1. See 12-1-8 NMSA 1978.

The 1995 amendment, effective June 16, 1995, inserted "and limited liability companies" near the end of Subsection D and "of 1986" in Subsection H.

The 1999 amendment, effective June 18, 1999, deleted former Subsection F, which defined "financial corporation" and redesignated subsequent subsections accordingly; in Subsection H deleted former Paragraph (1), which read "amounts that have been taxed as income under the Banking and Financial Corporations Tax Act" and redesignated subsequent paragraphs accordingly; and updated statutory references.

Applicability. - Laws 1995, ch. 11, § 10 makes the amendment by that act applicable to taxable years beginning on or after January 1, 1995.

Laws 1999, ch. 47, § 10 makes the provisions of Sections 2, 3, 4, 6 and 7 of the act applicable to the 1999 and subsequent taxable years.

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

Law reviews. - For note, "The Entry and Regulation of Foreign Corporations Under New Mexico Law and Under the Model Business Corporation Act," see 6 Nat. Resources J. 617 (1966).

For comment, "Coal Taxation in the Western States: The Need for a Regional Tax Policy," see 16 Nat. Resources J. 415 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 103 to 107, 255, 266 to 270, 272 to 276, 304, 451, 452.

Building and loan association as within provisions as to franchise taxes, 86 A.L.R. 826, 143 A.L.R. 1026.

Holding companies, 98 A.L.R. 1511.

Association or joint stock company, meaning of, within statutes taxing associations or joint stock companies as corporations, 108 A.L.R. 340, 144 A.L.R. 1050, 166 A.L.R. 1461.

Foreign corporation, validity, under Federal Constitution, of state tax on, or measured by, income of, 67 A.L.R.2d 1322.

Construction and application of state corporate income tax statutes allowing net operating loss deductions, 33 A.L.R.5th 509.

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

7-2A-3. Imposition and levy of taxes.

A. A tax to be known as the "corporate income tax" is imposed at the rate specified in the Corporate Income and Franchise Tax Act [this article] upon the net income of every

domestic corporation and upon the net income of every foreign corporation employed or engaged in the transaction of business in, into or from this state or deriving any income from any property or employment within this state.

B. A tax to be known as the "corporate franchise tax" is imposed in the amount specified in the Corporate Income and Franchise Tax Act upon every domestic corporation and upon every foreign corporation employed or engaged in the transaction of business in, into or from this state or deriving any income from any property or employment within this state and upon every domestic or foreign corporation, whether engaged in active business or not, but having or exercising its corporate franchise in this state.

History: 1978 Comp., § 7-2A-3, enacted by Laws 1981, ch. 37, § 36; 1986, ch. 20, § 34.

ANNOTATIONS

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

More business interstate than intrastate. - A franchise tax upon a foreign corporation is not invalid because its interstate business exceeds its intrastate business. Southern Pac. Co. v. SCC, 41 N.M. 556, 72 P.2d 15 (1937).

"Property and business" in the state as used in the former section was construed by the commission to mean all property of the corporation not used exclusively in interstate business, plus the total gross receipts from intrastate business therein. It did not refer to business across state lines. Southern Pac. Co. v. SCC, 41 N.M. 556, 72 P.2d 15 (1937).

Constitutionality of formula applied to taxation of dividends received from foreign subsidiaries. - Taxation of dividends from foreign subsidiaries under the separate corporate entity method violates the commerce clause of the United States Constitution, and application of the *Detroit* formula is an insufficient remedy. Conoco, Inc. v. Taxation & Revenue Dep't, 1997-NMSC-005, 122 N.M. 736, 931 P.2d 730 (1996), cert. denied, 521 U.S. 1112, 117 S. Ct. 2497, 138 L. Ed. 2d 1003 (1997) (reversing *Conoco, Inc. v. Taxation & Revenue Dep't,* 122N.M. 745, 931 P.2d 739 (1995)).

Law reviews. - For note, "The Entry and Regulation of Foreign Corporations Under New Mexico Law and Under the Model Business Corporation Act," see 6 Nat. Resources J. 617 (1966).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 18 Am. Jur. 2d Corporations §§ 70 to 72; 71 Am. Jur. 2d State and Local Taxation §§ 254 to 276, 285 to 288, 294 to 296, 569, 571, 572, 574, 575.

Rights in navigable waters as franchise, 36 A.L.R. 1523.

Property tax distinguished from franchise tax, 103 A.L.R. 61.

Carriers by water, tax on, 105 A.L.R. 11, 139 A.L.R. 950.

Affiliated corporation, franchise tax of corporation as affected by creation of, 117 A.L.R. 508.

Nature of tax on foreign corporation as franchise or property tax, 131 A.L.R. 927.

Doing business, business done, or the like, outside the state, for purposes of allocating income under franchise tax law, what constitutes, 167 A.L.R. 943.

Validity under export-import clause of federal constitution of state tax on corporations, 20 A.L.R.2d 152, 46 L. Ed. 2d 955.

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

7-2A-4. Exemptions.

No corporate income or franchise tax shall be imposed upon:

A. insurance companies, reciprocal or inter-insurance exchanges which pay a premium tax to the state;

B. a trust organized or created in the United States and forming part of a stock bonus, pension or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries, which trust is exempt from taxation under the provisions of the Internal Revenue Code; or

C. religious, educational, benevolent or other organizations not organized for profit which are exempt from income taxation under the Internal Revenue Code unless the organization receives income which is subject to federal income taxation as "unrelated business income" under the Internal Revenue Code, in which case the organization is subject to the corporate franchise tax, and the corporate income tax applies to the unrelated business income.

History: 1978 Comp., § 7-2A-4, enacted by Laws 1981, ch. 37, § 37; 1986, ch. 20, § 35; 1989, ch. 111, § 1.

ANNOTATIONS

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

The 1989 amendment, effective June 16, 1989, substituted the present provisions of Subsection C for "religious, educational, benevolent or other organizations not

organized for profit which are exempt from income taxation under the Internal Revenue Code except to the extent that such income is subject to federal income taxation as "unrelated business income under the Internal Revenue Code".

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

Internal Revenue Code. - The United States Internal Revenue Code is codified as 26 U.S.C. § 1 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 19 Am. Jur. 2d Corporations, § 2524; 71 Am. Jur. 2d State and Local Taxation §§ 309, 318, 326 to 331, 362 to 391, 428 to 435, 475, 477 to 482.

Exemption from taxation of property which religious or charitable body has no right to hold, 27 A.L.R. 1047.

Exemption of charitable organization from taxation or special assessment, 34 A.L.R. 634, 62 A.L.R. 328, 108 A.L.R. 284.

Gift or trust for benefit of employees of corporation or business as within exemption or deduction provisions of succession tax or income tax law, 71 A.L.R. 870.

Permissible classification of insurance companies which will justify discrimination among them by taxing statutes, 83 A.L.R. 464.

Business trust, franchise tax on, as denial of equal protection of the laws, 108 A.L.R. 333.

Annuities, consideration paid for, as "premium" within contemplation of statute imposing franchise tax on insurance company, 109 A.L.R. 1060, 135 A.L.R. 1248.

What constitutes a trust, for income tax purposes, 113 A.L.R. 457.

Extent of area within tax exemption extended to property used for educational, religious, or charitable purposes, 134 A.L.R. 1176.

Hospitals as within tax exemption provision not specifically naming hospital, 144 A.L.R. 1483.

Tax exemption of property of religious, educational, or charitable body as extending to property or income thereof used in publication or sale of literature, 154 A.L.R. 895.

What amounts to trust for benefit of employees within exemption from income tax, 161 A.L.R. 774.

When is corporation, community chest, fund, foundation, or club "organized and operated exclusively" for charitable or other exempt purposes under Internal Revenue Code, 69 A.L.R.2d 871.

Receipt of payment from beneficiaries as affecting tax exemption of charitable institutions, 37 A.L.R.3d 1191.

Tax exemption of property of educational body as extending to property used by personnel as living quarters, 55 A.L.R.3d 485.

Qualification of health care entities for federal tax exemption as charitable organization under 26 USCS § 501(c)(3), 134 A.L.R. Fed. 395.

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

7-2A-5. Corporate income tax rates.

The corporate income tax imposed on corporations by Section 7-2A-3 NMSA 1978 shall be at the rates specified in the following table:

If the net income is:	The tax shall be
Not over $500,000	4.8% of net income
Over $500,000 but not over $1,000,000	$24,000 plus 6.4% of excess over $500,000
Over $1,000,000	$56,000 plus 7.6% of excess over $1,000,000.

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.

ANNOTATIONS

Use of federal tax code and regulations. - New Mexico income taxation law does not adopt directly the Internal Revenue Code and Treasury Regulations, but does permit New Mexico taxpayers to enjoy the benefits of their election to use accelerated depreciation methodologies in calculating federal taxable income. Mountain States Tel. & Tel. Co. v. New Mexico SCC, 104 N.M. 36, 715 P.2d 1332 (1986).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation § 469.

85 C.J.S. Taxation § 1101.

7-2A-5.1. Corporate franchise tax amount.

The corporate franchise tax amount imposed on a corporation by Section 7-2A-3 NMSA 1978 shall be fifty dollars ($50.00) per taxable year or any fraction thereof.

History: Laws 1986, ch. 20, § 37; 1992, ch. 78, § 3.

ANNOTATIONS

The 1992 amendment, effective May 20, 1992, added "or any fraction thereof" at the end of the section.

Applicability. - Laws 1992, ch. 78, § 5 makes the provisions of the act applicable to taxable years beginning on or after January 1, 1992.

Computation. - The tax provided by the former section was a franchise tax, since neither the property nor the capital stock of the corporation is taxed. Values of property and gross receipts are used as factors to determine the number of shares of the corporate stock that measures the tax. Southern Pac. Co. v. SCC, 41 N.M. 556, 72 P.2d 15 (1937).

7-2A-6. Tax computation; alternative method.

For those taxpayers who do not compute an amount upon which the federal income tax is calculated or who do not compute their federal income tax payable for the taxable year, the secretary shall prescribe such regulations or instructions as he may deem necessary to enable them to compute their corporate income tax due.

History: 1978 Comp., § 7-2A-6, enacted by Laws 1981, ch. 37, § 39; 1986, ch. 20, § 38.

ANNOTATIONS

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

7-2A-7. Taxes applied to corporations on federal areas.

To the extent permitted by law, no corporation shall be relieved from liability for corporate income tax or corporate franchise tax by reason of receiving income from transactions occurring or work or services performed within a federal area.

History: 1978 Comp., § 7-2A-7, enacted by Laws 1981, ch. 37, § 40; 1986, ch. 20, § 39.

ANNOTATIONS

Cross references. - For other taxes applicable in federal areas, see 19-2-5 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation § 228.

84 C.J.S. Taxation § 252.

7-2A-8. Credit; income allocation and apportionment.

A. Net income of any taxpayer having income that is taxable both within and without this state shall be apportioned and allocated as follows:

(1) except as otherwise provided in Paragraphs (2) through (4) of this subsection, income shall be allocated and apportioned as provided in the Uniform Division of Income for Tax Purposes Act [Chapter 7, Article 4 NMSA 1978];

(2) except for gambling winnings, nonbusiness income as defined in the Uniform Division of Income for Tax Purposes Act not otherwise allocated or apportioned under the Uniform Division of Income for Tax Purposes Act shall be equitably allocated or apportioned in accordance with instructions, rulings or regulations of the secretary;

(3) other deductions and exemptions allowable in computing federal taxable income and not specifically allocated in the Uniform Division of Income for Tax Purposes Act shall be equitably allocated or apportioned in accordance with instructions, rulings or regulations of the secretary; and

(4) gambling winnings that are nonbusiness income and arise from sources within this state shall be allocated to this state.

B. For the purposes of this section, "non-New Mexico percentage" means the percentage determined by dividing the difference between the taxpayer's net income and the sum of the amounts allocated or apportioned to New Mexico by that net income.

C. A taxpayer may claim a credit in an amount equal to the amount of tax determined to be due under Section 7-2A-5 NMSA 1978 multiplied by the non-New Mexico percentage.

History: 1978 Comp., § 7-2A-8, enacted by Laws 1981, ch. 37, § 41; 1983, ch. 213, § 9; 1986, ch. 20, § 40; 1990, ch. 49, § 12; 1995, ch. 11, § 6; 1996, ch. 16, § 2.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, designated the former undesignated introductory language as present Subsection A and redesignated former Subsections A to D as Paragraphs (1) to (4) of present Subsection A; and in present Subsection A,

rewrote the introductory paragraph which read "Net income of any taxpayer having income which is taxable both within and without this state shall be, prior to the application of the tax rate provided in Section 7-2A-5 NMSA 1978 of the Corporate Income and Franchise Tax Act, apportioned and allocated as follows", substituted "Paragraphs (2) through (4) of this subsection" for "Subsections B, C, D and E of this section" in Paragraph (1), and inserted "but prior to January 1, 1991" and made stylistic changes in Paragraph (4); and added present Subsections B and C.

The 1995 amendment, effective June 16, 1995, added "credit" at the beginning of the section heading; substituted "Paragraphs (2) and (3)" for "Paragraphs (2) through (4) in Paragraph A(1)"; deleted former Paragraph A(4) relating to accounting by a taxpayer having income both within and without this state and who began business in this state after July 1, 1981, but prior to January 1, 1991; and made stylistic changes throughout the section.

The 1996 amendment, effective April 1, 1996, in Subsection A, substituted "through (4)" for "and (3)" in Paragraph (1), inserted "allocated or" and "instruction, rulings or" in Paragraphs (2) and (3), added the exception at the beginning of Paragraph (2), and added Paragraph (4).

Applicability. - Laws 1995, ch. 11, § 10 makes the amendment by that act applicable to taxable years beginning on or after January 1, 1995.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 287, 294 to 296, 470 to 473, 570, 572 to 577.

State income tax on resident in respect of income earned outside the state, 87 A.L.R. 380.

State income tax in respect of business that extends into other states, 130 A.L.R. 1183.

What constitutes doing business, business done, or the like, outside the state for purposes of allocation of income under tax laws, 167 A.L.R. 943.

Foreign corporation, validity, under Federal Constitution, of state tax on, or measured by, income of, 67 A.L.R.2d 1322.

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

7-2A-8.1, 7-2A-8.2. Repealed.

ANNOTATIONS

Repeals. - Laws 1990, ch. 49, § 22 repealed 7-2A-8.1 NMSA 1978, as amended by Laws 1986, ch. 110, § 2, relating to credit for solar or wind energy equipment

installation, effective January 1, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

Laws 1990, ch. 49, § 21 repeals 7-2A-8.2 NMSA 1978, as amended by Laws 1986, ch. 20, § 42, relating to tax credits for solar capital investments, effective January 1, 1991. For provisions of former section, see 1990 Replacement Pamphlet.

7-2A-8.3. Combined returns.

A. A unitary corporation that is subject to taxation under the Corporate Income and Franchise Tax Act [this article] and that has not previously filed a combined return pursuant to this section or a consolidated return pursuant to Section 7-2A-8.4 NMSA 1978 may elect to file a combined return with other unitary corporations as though the entire combined net income were that of one corporation. The return filed under this method of reporting shall include the net income of all the unitary corporations. Transactions among the unitary corporations may be eliminated by applying the appropriate rules for reporting income for a consolidated federal income tax return. Any corporation that has filed an income tax return with New Mexico pursuant to Section 7-2A-8.4 NMSA 1978 shall not file pursuant to this section unless the secretary gives prior permission to file on a combined return basis.

B. Once corporations have reported net income through a combined return for any taxable year, they shall file combined returns for subsequent taxable years, so long as they remain unitary corporations, unless the corporations elect to file pursuant to Section 7-2A-8.4 NMSA 1978 or unless the secretary grants prior permission for one or more of the corporations to file individually.

C. For taxable years beginning on or after January 1, 1993, no unitary corporation once included in a combined return may elect, or be granted permission by the secretary, for any subsequent taxable year to separately account pursuant to Paragraph (4) of Subsection A of Section 7-2A-8 NMSA 1978.

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.

ANNOTATIONS

1993 amendments. - Identical amendments to this section were enacted by Laws 1993, ch. 307, § 4 and Laws 1993, ch. 309, § 2, both approved April 8, 1993 and both effective June 18, 1993, which rewrote this section to the extent that a detailed comparison is impracticable. The section is set out above as amended by Laws 1993, ch. 309, § 2. See 12-1-8 NMSA 1978.

Applicability. - Laws 1993, ch. 309, § 5 makes the provisions of §§ 1 to 3 of the act applicable to taxable years beginning on or after January 1, 1993.

Compiler's notes. - The reference to Paragraph (4) of Subsection A of 7-2A-8 NMSA 1978 in Subsection C is no longer current, since the 1995 amendment to 7-2A-8 NMSA 1978 deleted Paragraph A(4).

7-2A-8.4. Consolidated returns.

A. Any corporation that is subject to taxation under the Corporate Income and Franchise Tax Act [this article] and that reports to the internal revenue service for federal income tax purposes its net income consolidated with the net income of one or more other corporations may elect to report to New Mexico on the same basis.

B. Once a corporation has been included in a consolidated return to New Mexico, the corporation shall not elect to file a New Mexico return under any other method without prior permission of the secretary, unless the change in reporting method is required or allowed under the Internal Revenue Code. Furthermore, such a corporation shall not elect nor shall the secretary grant it permission to separately account for income in New Mexico pursuant to Paragraph (4) of Subsection A of Section 7-2A-8 NMSA 1978.

History: 1978 Comp., § 7-2A-8.4, enacted by Laws 1983, ch. 213, § 13; 1986, ch. 20, § 44; 1993, ch. 307, § 5; 1993, ch. 309, § 3.

ANNOTATIONS

1993 amendments. - Identical amendments to this section were enacted by Laws 1993, ch. 307, § 5 and Laws 1993, ch. 309, § 3, both approved April 8, 1993 and both effective June 18, 1993, which, in Subsection A, deleted "The secretary shall permit" at the beginning, inserted "may elect" near the end, made a minor stylistic change and rewrote Subsection B. The section is set out above as amended by Laws 1993, ch. 309, § 3. See 12-1-8 NMSA 1978.

Applicability. - Laws 1993, ch. 309, § 5 makes the provisions of §§ 1 to 3 of the act applicable to taxable years beginning on or after January 1, 1993.

Compiler's notes. - The reference to Paragraph A(4) of 7-2A-8 NMSA 1978 in Subsection B is no longer current, since the 1995 amendment to 7-2A-8 NMSA 1978 deleted Paragraph A(4).

Internal Revenue Code. - The Internal Revenue Code, referred to in Subsection B, is codified as 26 U.S.C. § 1 et seq.

7-2A-8.5. Repealed.

ANNOTATIONS

Repeals. - Laws 1990, ch. 49, § 23 repeals Section 7-2A-8.5 NMSA 1978, as amended by Laws 1986, ch. 20, relating to corporate income tax credit for geothermal capital

investment, § 45, effective January 1, 1996. For provisions of former section, see 1995 Replacement Pamphlet.

Compiler's notes. - Laws 1983, ch. 212, § 2, enacted this section as 7-2A-8.1 NMSA 1978, but, since Laws 1983, ch. 213, § 10, also enacted a section designated 7-2A-8.1 NMSA 1978, this section was compiled as 7-2A-8.5 NMSA 1978.

7-2A-8.6. Credit for preservation of cultural property; corporate income tax credit.

A. To encourage the restoration, rehabilitation and preservation of cultural properties, any taxpayer who files a corporate income tax return and who is the owner of a cultural property listed on the official New Mexico register of cultural properties, with its consent, may claim a credit not to exceed twenty-five thousand dollars ($25,000) in an amount equal to one-half of the cost of restoration, rehabilitation or preservation of the cultural property.

B. The taxpayer may claim the credit if:

(1) it submitted a plan and specifications for restoration, rehabilitation or preservation to the committee and received approval from the committee for the plan and specifications prior to commencement of the restoration, rehabilitation or preservation;

(2) it received certification from the committee after completing the restoration, rehabilitation or preservation, or committee-approved phase, that it conformed to the plan and specifications and preserved and maintained those qualities of the property which made it eligible for inclusion in the official register; and

(3) the project is completed within twenty-four months of the date the project is approved by the committee in accordance with Paragraph (1) of this subsection.

C. A taxpayer may claim the credit provided in this section for each taxable year in which preservation, restoration or rehabilitation is carried out. Claims for the credit provided in this section shall be limited to three consecutive years, and the maximum aggregate credit allowable shall not exceed twenty-five thousand dollars ($25,000) for any single restoration, rehabilitation or preservation project certified by the committee for any cultural property listed on the official New Mexico register. No single project may extend beyond a period of more than two years.

D. A taxpayer who otherwise qualifies and claims a credit on a restoration, rehabilitation or preservation project on property owned by a partnership of which the taxpayer is a member may claim a credit only in proportion to his interest in the partnership. The total credit claimed by all members of the partnership shall not exceed twenty-five thousand dollars ($25,000) in the aggregate for any single restoration, preservation or rehabilitation project for any cultural property listed on the official New Mexico register approved by the committee.

E. The credit provided in this section may only be deducted from the taxpayer's corporate income tax liability. Any portion of the maximum tax credit provided by this section which remains unused at the end of the taxpayer's taxable year may be carried forward for four consecutive years; provided, however, the total tax credits claimed under this section shall not exceed twenty-five thousand dollars ($25,000) for any single restoration, rehabilitation or preservation project for any cultural property listed on the official New Mexico register.

F. The historic preservation division shall promulgate regulations for the implementation of this section.

G. As used in this section:

(1) "committee" means the cultural properties review committee created in Section 18-6-4 NMSA 1978; and

(2) "historic preservation division" means the historic preservation division of the office of cultural affairs created in Section 18-6-8 NMSA 1978.

History: 1978 Comp., § 7-2A-8.6, enacted by Laws 1984, ch. 34, § 2; 1986, ch. 20, § 46.

ANNOTATIONS

Cross references. - For credit for preservation of cultural property against income tax, see 7-2-18.2 NMSA 1978.

7-2A-8.7. Repealed.

ANNOTATIONS

Repeals. - Laws 1994, ch. 10, § 1, repeals 7-2A-8.7 NMSA 1978, as enacted by Laws 1993, ch. 309, § 4, relating to a temporary surcharge on certain returns, effective February 15, 1994. For provisions of former section, see 1993 Replacement Pamphlet.

7-2A-8.8. Welfare-to-work tax credit.

A. Any taxpayer who files a New Mexico corporate income tax return and who is entitled to claim the federal welfare-to-work credit provided by 26 U.S.C. Section 51A with respect to a state-qualified employee in a state-qualified job may take against the taxpayer's corporate income tax liability a tax credit equal to fifty percent of the amount of the welfare-to-work credit claimed and allowed under 26 U.S.C. Section 51A with respect to that employee in that job.

B. To be eligible for the credit provided by this section, a taxpayer must be in compliance with the following provisions:

(1) the hiring of any state-qualified employee shall not result in the displacement of any currently employed worker or position, including partial displacement such as a reduction in the hours of nonovertime work, wages or employment benefits, or in any infringement of the promotional opportunities of any currently employed individual;

(2) the hiring of any state-qualified employee shall not impair existing contracts for services or collective bargaining agreements, and no employment under the terms of this act [7-2A-1 to 7-2A-16 NMSA 1978] shall be inconsistent with the terms of a collective bargaining agreement or involve the performance of duties covered under a collective bargaining agreement unless the employer and the labor organization concur in writing;

(3) a state-qualified employee may fill or perform the duties of an employment position only in a manner that is consistent with existing laws, personnel procedures and collective bargaining contracts;

(4) no state-qualified employee shall be employed or assigned:

(a) when any other individual is on layoff from the same or any substantially equivalent job;

(b) if the employer has terminated the employment of any regular employee or otherwise caused an involuntary reduction of its work force with the effect of filling the vacancy so created with a state-qualified employee; or

(c) to any position at a particular work site when there is an ongoing strike or lockout at that particular work site;

(5) state-qualified employees shall be paid a wage that is substantially like the wage paid for similar jobs with the employer with appropriate adjustments for experience and training but not less than the federal minimum hourly wage; and

(6) employers shall:

(a) maintain health, safety and working conditions not less than those of comparable jobs offered by the employer; and

(b) maintain standard and customary entry-level wages and benefits and apply historical and normal increases in wages and benefits appropriate for experience and training of the state-qualified employee.

C. For the purposes of this section:

(1) "high-unemployment county" means a county in which the unemployment rate as reported by the labor department exceeds ten percent in six or more months of the

calendar year preceding the year for which the tax credit provided by this section is claimed;

(2) "state-qualified employee" means a "long-term family assistance recipient", as that term is defined in 26 U.S.C. Section 51A(c), who resides in a high-unemployment county during the period of employment for which the welfare-to-work credit provided by 26 U.S.C. Section 51A applies with respect to that employee; and

(3) "state-qualified job" means a job established by the taxpayer that:

(a) when first occupied by a state-qualified employee results in the total number of the taxpayer's employees exceeding the average number of the taxpayer's employees during the taxpayer's preceding tax year; or

(b) was a position previously filled by a state-qualified employee and was vacant prior to the hiring of the new state-qualified employee in that position.

D. The labor department shall determine whether the employee is a state-qualified employee and whether the job is a state-qualified job and, if the employee is a state-qualified employee and the job is a state-qualified job, certify that fact to the employer. The taxpayer claiming the tax credit provided by this section shall provide a copy of the certification with respect to each employee for which the tax credit is claimed.

E. By July 1, 1998 and by January 31 of each subsequent year, the labor department shall certify to the taxation and revenue department the high-unemployment counties for the preceding calendar year.

F. The tax credit provided in this section may only be deducted from the taxpayer's corporate income tax liability. Any portion of the tax credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried forward for three consecutive taxable years.

History: Laws 1998, ch. 97, § 3.

ANNOTATIONS

Effective dates. - Laws 1998, ch. 97 contains no effective date provision, but pursuant to N.M. Const. art. IV, § 23, is effective on May 20, 1998, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

7-2A-9. Taxpayer returns; payment of tax.

A. Every corporation deriving income from any business transaction, property or employment within this state and not exempt from tax under the Corporate Income and Franchise Tax Act [this article] which is required by the laws of the United States to file

a federal income tax return shall file a complete tax return with the department in form and content as prescribed by the secretary. Corporations shall file such returns with the department on or before the fifteenth day of the third month following the end of each taxable year. The corporate income tax imposed on corporations under Subsection A of Section 7-2A-3 NMSA 1978 is due and payment is required on or before the fifteenth day of the third month following the end of the taxable year.

B. Every domestic or foreign corporation, not exempt from tax under the Corporate Income and Franchise Tax Act, employed or engaged in the transaction of business in, into or from this state or deriving any income from property or employment within this state and every domestic or foreign corporation, whether engaged in active business or not, but having or exercising its corporate franchise in this state and not exempt from tax under the Corporate Income and Franchise Tax Act is required to file a return in the form and content as prescribed by the secretary and pay the tax levied pursuant to Subsection B of Section 7-2A-3 NMSA 1978 in the amount for each corporation as specified in Section 7-2A-5.1 NMSA 1978. Returns and payment of tax for corporate franchise tax for a taxable year shall be filed and paid on the date specified in Subsection A of this section for payment of corporate income tax for the preceding taxable year.

History: 1978 Comp., § 7-2A-9, enacted by Laws 1981, ch. 37, § 42; 1986, ch. 20, § 47; 1989, ch. 111, § 2.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, in Subsection A substituted all of the language of the last sentence preceding "is due" for "The tax imposed on corporations under the Corporate Income and Franchise Tax Act", and in Subsection B substituted "is required" for "shall be required" near the middle of the first sentence, and inserted "for a taxable year" near the beginning of the second sentence while adding all of the language of that sentence following "this section".

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

Trustees in bankruptcy who have been appointed to conduct the business of a foreign railroad corporation are liable for the tax, since otherwise the franchise would be dissolved and could not be returned to the corporation when rehabilitation was complete. Lowden v. SCC, 42 N.M. 254, 76 P.2d 1139 (1938)(see 53-3-3 NMSA 1978).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 266, 589 to 596.

Corporation in hands of receiver, 18 A.L.R. 700, 26 A.L.R. 426.

Forfeiture of charter for nonpayment of franchise taxes, 47 A.L.R. 1288, 97 A.L.R. 477.

Penalty for nonpayment of franchise taxes when due as affected by lack of notice to the taxpayer, 102 A.L.R. 406.

Amount in controversy in case involving franchise taxes, 109 A.L.R. 314.

84 C.J.S. Taxation § 628; 85 C.J.S. Taxation §§ 1102, 1106.

7-2A-9.1. Estimated tax due; payment of estimated tax; penalty; exemption.

A. Every taxpayer shall pay estimated corporate income tax to the state of New Mexico during its taxable year if its tax after applicable credits for such taxable year can reasonably be expected to be five thousand dollars ($5,000) or more. 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 and if the amount due for that previous taxable year was at least five thousand dollars ($5,000); or

(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, the amount due for the taxable year immediately preceding the previous taxable year was at least five thousand dollars ($5,000) 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.

B. If Subsection A of this section applies, the amount of estimated tax shall be paid in installments as follows: twenty-five percent of the estimated tax is due on or before the fifteenth day of the fourth month of the taxable year, another twenty-five percent is due on or before the fifteenth day of the sixth month of the taxable year, another twenty-five percent is due on or before the fifteenth day of the ninth month of the taxable year and the final twenty-five percent is due on or before the fifteenth day of the twelfth month of the taxable year. Application of this subsection to a taxable year 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 [this article] or the amount required by Paragraph (2) or (3) 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) or (3) 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.

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.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, inserted "after applicable credits" in Subsection A, substituted "secretary" for "director" at the end of Subsection B, redesignated former Paragraphs (1) and (2) of Subsection C as present Subsections D and E, designated former Subparagraphs (a) and (b) of Paragraph (C)(2) as present Paragraphs (1) and (2) of Subsection E; in Paragraph (2) of Subsection E, substituted "this paragraph" for "this subparagraph" and "Subsection D of this section" for "Paragraph (1) of this subsection"; and made a minor stylistic change in Subsection D.

The 1992 amendment, effective May 20, 1992, added the second sentence of Subsection A; and, in Subsection C, substituted "the lesser of eighty percent of the income tax" for "eighty percent of the tax", substituted "Corporate Income and Franchise Tax Act" for "Corporate Income Tax Act", and inserted "or one hundred percent of the tax liability for the previous taxable year".

The 1995 amendment, effective June 16, 1995, inserted "the greater of five thousand dollars ($5,000)" in Subsection A(2), substituted "the amount required by Paragraph (2) of Subsection A of this section" for "one hundred percent of the tax liability for the previous taxable year" in Subsections C and D, and made a stylistic change.

The 1997 amendment rewrote Paragraph A(2), and added Paragraph A(3) and made related stylistic changes. Laws 1997, ch. 60 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Applicability. - Laws 1995, ch. 11, § 10 makes the amendment by that act applicable to taxable years beginning on or after January 1, 1996.

Laws 1997, ch. 60, § 2 makes the provisions of this act applicable to taxable years beginning on or after January 1, 1998.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation § 596.

85 C.J.S. Taxation §§ 1106, 1107.

7-2A-9.2. Limitation on claiming of credits and tax rebates.

A credit or tax rebate provided in the Corporate Income and Franchise Tax Act [this article] that is claimed shall be disallowed if the claim for the credit or tax rebate was first made after the end of the third calendar year following the calendar year in which the return upon which the credit or rebate was first claimable was initially due.

History: 1978 Comp., § 7-2A-9.2, enacted by Laws 1990, ch. 23, § 2.

7-2A-10. Information returns.

A. Pursuant to regulation, the secretary may require any person doing business in this state and making payments in the course of business to another person to file information returns with the department.

B. The provisions of this section also apply to payments made by the state of New Mexico, by the governing bodies of any political subdivision of the state of New Mexico, by any agency, department or instrumentality of the state or of any political subdivision thereof and, to the extent permitted by law or pursuant to any agreement entered into by the secretary, to payments made by any other governmental body or by an agency, department or instrumentality thereof.

History: 1978 Comp., § 7-2A-10, enacted by Laws 1981, ch. 37, § 43; 1983, ch. 213, § 14; 1986, ch. 20, § 48.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation § 589.

85 C.J.S. Taxation §§ 1102, 1106.

7-2A-11. Accounting methods.

A taxpayer shall use the same accounting methods for reporting income for corporate income tax purposes as are used in reporting income for federal income tax purposes.

History: 1978 Comp., § 7-2A-11, enacted by Laws 1981, ch. 37, § 44; 1986, ch. 20, § 49.

ANNOTATIONS

Cross references. - For deduction of accounting services from gross receipts by corporations, see 7-9-69 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 578, 579.

85 C.J.S. Taxation § 1102.

7-2A-12. Fiscal years permitted.

Any corporation which files income tax returns under the Internal Revenue Code on the basis of a fiscal year shall report income under the Corporate Income and Franchise Tax Act [this article] on the same basis.

History: 1978 Comp., § 7-2A-12, enacted by Laws 1981, ch. 37, § 45; 1986, ch. 20, § 50.

ANNOTATIONS

Internal Revenue Code. - The United States Internal Revenue Code is codified as 26 U.S.C. § 1 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 578 to 586.

85 C.J.S. Taxation § 1100.

7-2A-13. Administration.

The Corporate Income and Franchise Tax Act [this article] shall be administered pursuant to the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

History: 1978 Comp., § 7-2A-13, enacted by Laws 1981, ch. 37, § 46; 1986, ch. 20, § 51.

7-2A-14. Corporate-supported child care; credits allowed.

A. A taxpayer that pays for child care services in New Mexico for dependent children of an employee of the taxpayer during the employee's hours of employment may claim a credit against the corporate income tax imposed pursuant to the Corporate Income and Franchise Tax Act [this article] in an amount equal to thirty percent of the total expenses, 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 [24-1-1 to 24-1-5, 24-1-6 to 24-1-21 NMSA 1978] and is operated without profit by the taxpayer. For the purposes of this section, the term "net cost" means the cost of operating a child care facility less any amounts collected as fees for use of the facility, any federal tax credits with respect to the facility or its operation and any other payment or reimbursement from any other source other than the credit provided by this section.

C. For the purposes of this section, "dependent children" means children under twelve years of age.

D. The credits provided for by Subsections A and B of this section may only be deducted from the taxpayer's corporate income tax liability for the taxable year in which the expenditures occurred. The credit may not exceed thirty thousand dollars ($30,000) in any taxable year. If the credit amount exceeds the corporate income tax liability, the excess may be carried forward for three consecutive years; provided that in no event shall the annual credit amount exceed thirty thousand dollars ($30,000).

History: Laws 1983, ch. 218, § 1; 1986, ch. 20, § 52; 1995, ch. 11, § 8.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, inserted "net of any reimbursement" near the end of Subsection A; and, in Subsection B, rewrote the third sentence which read "The tax credit shall be determined by dividing the net operating cost paid by the employer by the number of children served and multiplying the result by the number of employees' children served", added the final sentence, and made stylistic changes.

Applicability. - Laws 1995, ch. 11, § 10 makes the amendment by that act applicable to taxable years beginning on or after January 1, 1995.

Payments made under salary reduction payroll program. - Under an employer's salary reduction payroll program by which employees could shelter from income tax a portion of their salary and then use the tax sheltered salary to pay for dependent care expenses, the expenses were "incurred and paid" by the employer, rather than the employees, within the meaning of this section. Intel Corp. v. Taxation & Revenue Dep't, 1997-NMCA-005, 122 N.M. 754, 931 P.2d 754 (Ct. App. 1995).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation § 549.

85 C.J.S. Taxation §§ 1103, 1106.

7-2A-15. Qualified business facility rehabilitation credit; corporate income tax credit.

A. To stimulate the creation of new jobs and revitalize economically distressed areas within New Mexico enterprise zones, any taxpayer who files a corporate income tax return and who is the owner of a qualified business facility may claim a credit in an amount equal to one-half of the cost, not to exceed fifty thousand dollars ($50,000), incurred to restore, rehabilitate or renovate a qualified business facility.

B. A taxpayer may claim the credit provided in this section for each taxable year in which restoration, rehabilitation or renovation is carried out. Except as provided in Subsection D of this section, claims for the credit provided in this section shall be limited to three consecutive years, and the maximum aggregate credit allowable shall not exceed fifty thousand dollars ($50,000) for any single restoration, rehabilitation or renovation project for any qualified business facility. Each claim for a qualified business facility rehabilitation credit shall be accompanied by documentation and certification as the department may require by regulation or instruction.

C. No credit may be claimed or allowed pursuant to the provisions of this section for any costs incurred for a restoration, rehabilitation or renovation project for which a credit may be claimed pursuant to the provisions of Section 7-2A-8.6 or Section 7-9A-1 NMSA 1978.

D. A taxpayer who otherwise qualifies and claims a credit on a restoration, rehabilitation or renovation project on a building owned by a partnership or other business association

of which the taxpayer is a member may claim a credit only in proportion to his interest in the partnership or association. The total credit claimed by all members of the partnership or association shall not exceed fifty thousand dollars ($50,000) in the aggregate for any single restoration, rehabilitation or renovation project for a qualified business facility.

E. The credit provided in this section may only be deducted from the taxpayer's corporate income tax liability. Any portion of the maximum tax credit provided by this section that remains unused at the end of the taxpayer's taxable year may be carried forward for four consecutive taxable years; provided, the total tax credits claimed under this section shall not exceed fifty thousand dollars ($50,000) for any single restoration, rehabilitation or renovation project for a qualified business facility.

F. As used in this section:

(1) "qualified business facility" means a building located in a New Mexico enterprise zone that is suitable for use and is put into service by a person in the manufacturing, distribution or service industry immediately following the restoration, rehabilitation or renovation project; provided, the building must have been vacant for the twenty-four month period immediately preceding the commencement of the restoration, rehabilitation or renovation project; and

(2) "restoration, rehabilitation or renovation" includes:

(a) the construction services necessary to ensure that a building is in compliance with applicable zoning codes, is safe for occupancy and meets the operating needs of a person in the manufacturing, distribution or service industry; and

(b) expansion of or additions to a building if the expansion or addition does not increase the usable square footage of the building by more than ten percent of the usable square footage of the building prior to the restoration, rehabilitation or renovation.

History: Laws 1994, ch. 115, § 2.

7-2A-16. Intergovernmental business tax credit.

A. With respect to the net income of a taxpayer engaged in the transaction of business occurring after July 1, 1997 from a new business on Indian land, the person who is liable for the payment of the corporate income tax may claim a credit as provided in Subsection D of this section against the corporate income tax for the aggregate amount of tax paid to an Indian nation, tribe or pueblo located in whole or in part within New Mexico.

B. The credit provided by this section may be referred to as the "intergovernmental business tax credit".

C. As used in this section:

(1) "aggregate amount of tax" means the total of all taxes imposed by an Indian nation, tribe or pueblo located in whole or in part in New Mexico on income derived from the new business's activity on Indian land, except a tax shall not be included in that total if the tax is eligible for a credit pursuant to the provisions of Section 7-29C-1 NMSA 1978 or any other intergovernmental tax credit that provides a similar tax credit;

(2) "Indian land" means all land in New Mexico that on March 1, 1997 was:

(a) within the exterior boundaries of an Indian reservation or pueblo grant; or

(b) lands held in trust by the United States for an individual Indian nation, tribe or pueblo;

(3) "new business" means a manufacturer or processor that occupies a new business facility or a grower that commences operation in New Mexico on or after July 1, 1997; and

(4) "new business facility" means a facility on Indian land that satisfies the following requirements:

(a) the facility is employed by the taxpayer in the operation of a revenue-producing enterprise. The facility shall not be considered a "new business facility" in the hands of the taxpayer if the taxpayer's only activity with respect to the facility is to lease it to another person;

(b) the facility is acquired by or leased to the taxpayer on or after January 1, 1997. The facility shall be deemed to have been acquired by or leased to the taxpayer on or after the specified date if the transfer of title to the taxpayer, the transfer of possession pursuant to a binding contract to transfer title to the taxpayer or the commencement of the term of the lease to the taxpayer occurs on or after that date or if the facility is constructed, erected or installed by or on behalf of the taxpayer, the construction, erection or installation is completed on or after that date;

(c) the facility is a newly acquired facility in which the taxpayer is not continuing the operation of the same or a substantially identical revenue-producing enterprise that previously was in operation on the Indian land of the Indian nation, tribe or pueblo where the facility is now located; a facility is a "newly acquired facility" if the facility was acquired or leased by the taxpayer from another person even if the facility was employed in a revenue-producing enterprise on the Indian land of the same Indian nation, tribe or pueblo immediately prior to the transfer of the title to the facility to the taxpayer or immediately prior to the commencement of the term of the lease of the facility to the taxpayer by another person provided that the revenue-producing enterprise of the previous occupant was not the same or substantially identical to the taxpayer's revenue-producing enterprise; and

(d) the facility is not a replacement business facility for a business facility that existed on the Indian land of the Indian nation, tribe or pueblo where the business is now located.

D. The intergovernmental business tax credit shall be determined separately for each reporting period and shall be equal to fifty percent of the lesser of:

(1) the aggregate amount of tax paid by a taxpayer; or

(2) the amount of the taxpayer's corporate income tax due for the reporting period from the new business's activity conducted on Indian land.

E. The department shall administer and interpret the provisions of this section in accordance with the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

F. The burden of showing entitlement to a credit authorized by this section is on the taxpayer claiming it, and the taxpayer shall furnish to the appropriate tax collecting agency, in the manner determined by the department, proof of payment of the aggregate amount of tax on which the credit is based.

G. For a taxpayer qualifying for the credit provided by this section that conducts business in New Mexico both on and off Indian land, the taxpayer's corporate income tax liability derived from the new business activity conducted on Indian land shall be equal to the sum of the products of one-half of the taxpayer's New Mexico corporate income tax liability before application of the credit provided by this section multiplied by the payroll factor and one-half of the taxpayer's New Mexico corporate income tax liability before application of the credit provided by this section multiplied by the property factor. The factors shall be determined as follows:

(1) the payroll factor is a fraction, the numerator of which is the amount of compensation paid to employees employed during the tax period by the taxpayer in his new business on Indian land, and the denominator of which is the total amount of compensation paid to employees employed during the tax period by the taxpayer in all of New Mexico, including Indian land; and

(2) the property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the new business on Indian land in New Mexico during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible property owned or rented and used in New Mexico, including on Indian land, during the tax period.

History: Laws 1997, ch. 58, § 1.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 58, § 3 makes the act effective July 1, 1997.

Applicability. - Laws 1997, ch. 58, § 2 makes the provisions of the act applicable to taxable years beginning after January 1, 1997.

7-2A-17. Job mentor ship tax credit. (Repealed effective January 1, 2002.)

A. To encourage New Mexico businesses to hire youth participating in certified school-to-career programs, any taxpayer who is a New Mexico business and who 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 may be known as the "job mentor ship tax credit".

B. A taxpayer may claim the 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 number of qualified students whose employment qualifies for a job mentor ship tax credit pursuant to this section or the Income Tax Act [Chapter 7, Article 2] shall be limited to a pilot program of one thousand qualified students in any calendar year. The department shall allocate annually to the state school-to-work director one thousand pilot program certificates that shall be distributed by the state school-to-work director to administrators of certified school-to-career programs. The pilot program certificates, when properly executed, shall serve as evidence of the taxpayer's eligibility for the job mentor ship tax credit. The maximum number of pilot program certificates that may be issued to a single school-to-career program administrator is equal to the number of qualified school-to-career participants in that program on May 1 of the current calendar year. The pilot program certificates shall be issued in the order in which they are requested. To claim the credit under this section, the taxpayer must submit with respect to each employee for whom the credit is claimed:

(1) a properly executed pilot program 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 mentor ship tax credit for that employee pursuant to this section or the Income Tax Act.

D. The credit provided under this section may only be deducted from the taxpayer's corporate income tax liability for the taxable year. 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 three consecutive taxable years; provided the total tax credits claimed under this section shall not exceed the maximum allowable under Subsection B of this section.

E. As used in this section:

(1) "certified school-to-career program" means a summer employment program certified by the state school-to-work office as a 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 less 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 certified school-to-career program.

History: Laws 1999, ch. 217, § 2.

ANNOTATIONS

Delayed repeals. - Laws 1999, ch. 217, § 4 repeals this section, as enacted by Laws 1999, ch. 217, § 2, effective January 1, 2002.

Effective dates. - Laws 1999, ch. 217 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Applicability. - Laws 1999, ch. 217, § 5 makes the provisions of the act applicable to taxable years beginning in calendar years 1999 through 2001.

Temporary provisions. - Laws 1999, ch. 217, § 3, effective June 18, 1998, provides that if an income tax or corporate income tax taxpayer has been allowed a credit pursuant to Section 1 or 2 of this act and any portion of the credit allowed is unused on the date the sections are repealed, the unused amount may be carried forward regardless of the repeal to any taxable year within the three consecutive taxable years following the first taxable year for which the claim was allowed.

ARTICLE 2B
SOLAR CAPITAL INVESTMENTS

(Recompiled by Laws 1983, ch. 213, § 4.)

7-2B-1. Recompiled.

ANNOTATIONS

Recompilations. - Laws 1983, ch. 213, § 4, recompiled 7-2B-1 NMSA 1978, relating to tax credit for solar investments, as 7-2-16.1 NMSA 1978.

ARTICLE 2C
TAX REFUND INTERCEPT PROGRAM

7-2C-1. Short title.

Chapter 7, Article 2C NMSA 1978 may be cited as the "Tax Refund Intercept Program Act".

History: Laws 1985, ch. 106, § 1; 1993, ch. 30, § 12.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "Chapter 7, Article 2C NMSA 1978" for "This act".

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 608, 610.

85 C.J.S. Taxation § 1109.

7-2C-2. Purpose.

A. The purpose of the Tax Refund Intercept Program Act [this article] is to comply with federal law:

(1) by enhancing the enforcement of child support and medical support obligations;

(2) to aid collection of outstanding debts owed for overpayment of public assistance and overissuance of food stamps and overpayment of unemployment compensation benefits and nonpayment of contributions or payments in lieu of contributions or other amounts due under the Unemployment Compensation Law [Chapter 51 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; and

(5) to aid collection of fines, fees and costs owed to the Bernalillo county metropolitan court.

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, fines, fees and costs owed to the district, magistrate and municipal courts 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 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.

ANNOTATIONS

The 1991 amendment, effective January 1, 1992, inserted the provisions relating to collection of amounts due under the Unemployment Compensation Law.

The 1993 amendment, effective July 1, 1993, rewrote the section, adding subsection and paragraph designations and adding Paragraphs (4) and (5) to Subsection A.

The 1994 amendment, effective March 4, 1994, inserted "and medical support" in Paragraph A(1).

The 1997 amendment substituted "district, magistrate and municipal courts" for "magistrate courts" in Paragraph A(4) and near the middle of Subsection B. Laws 1997, ch. 210 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

7-2C-3. Definitions.

As used in the Tax Refund Intercept Program Act [this article]:

A. "claimant agency" means the taxation and revenue department or any of its divisions, the human services department, the employment security division of the labor department, any corporation authorized to be formed under the Educational Assistance Act [21-21A-1 to 21-21A-23 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] or an individual to pay a liquidated amount of money:

(1) that is equal to or more than one hundred dollars ($100);

(2) that is due and owing a claimant agency, which a claimant agency is obligated by law to collect or which, in the case of an educational loan, a claimant agency has lawfully contracted to collect;

(3) that has accrued through contract, tort, subrogation or operation of law; and

(4) that, in the case of an amount due under the Unemployment Compensation Law, has been secured by a warrant of levy and lien or, in all other cases, has been reduced to judgment;

C. "debtor" means any employer subject to the Unemployment Compensation Law or any individual owing a debt;

D. "department" or "division" means, unless the context indicates otherwise, the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

E. "educational loan" means any loan for educational purposes owned by a public post-secondary educational institution or owned or guaranteed by any corporation authorized to be formed under the Educational Assistance Act;

F. "medical support" means amounts owed to the human services department pursuant to the provisions of Subsection B of Section 40-4C-12 NMSA 1978;

G. "public post-secondary educational institution" means a publicly owned or operated institution of higher education or other publicly owned or operated post-secondary educational facility located within New Mexico;

H. "spouse" means an individual who is or was a spouse of the debtor and who has joined with the debtor in filing a joint return of income tax pursuant to the provisions of the Income Tax Act [Chapter 7, Article 2 NMSA 1978], which joint return has given rise to a refund that may be subject to the provisions of the Tax Refund Intercept Program Act; and

I. "refund" means a refund, including any amount of tax rebates or credits, under the Income Tax Act that the department has determined to be due to an individual.

History: Laws 1985, ch. 106, § 3; 1986, ch. 20, § 53; 1987, ch. 125, § 2; 1988, ch. 49, § 2; 1991, ch. 141, § 1; 1991, ch. 184, § 2; 1993, ch. 261, § 3; 1994, ch. 56, § 1; 1994, ch. 76, § 2; 1997, ch. 210, § 2.

ANNOTATIONS

1991 amendments. - Laws 1991, ch. 141, § 1, effective June 14, 1991, in Subsection E, inserting "or other debt" and "the state of New Mexico or" and making minor stylistic changes in Subsections B, G and H, was approved on April 3, 1991. However, Laws 1991, ch. 184, § 2, effective January 1, 1992, inserting "the employment security division of the labor department" in Subsection A; in Subsection B, inserting "an employer subject to the Unemployment Compensation Law or" in the introductory phrase, deleting "and has been reduced to judgment" following "law" in Paragraph (3), rewriting Paragraph (4) which read "which, in the case of an educational loan has been reduced to judgment," and making minor stylistic changes; and inserting "employer subject to the Unemployment Compensation Law or any" in Subsection C, was approved on April 4, 1991. The section is set out as amended by Laws 1991, ch. 184, § 2. See 12-1-8 NMSA 1978.

The 1993 amendment, effective July 1, 1993, deleted "or" before "any corporation" and added "a magistrate court or the Bernalillo county metropolitan court" to the end, in Subsection A; substituted "one hundred dollars ($100)" for "one hundred fifty dollars ($150)" in Paragraph (1) of Subsection B; and made a stylistic change in Subsection H.

1994 amendments. - Laws 1994, ch. 56, § 1, effective May 18, 1994, substituting "that" for "which" twice in Paragraph B(2), inserting a new Subsection G defining "secretary", and redesignating Subsections G and H as Subsections H and I, was approved March 4, 1994. However, Laws 1994, ch. 76, § 2, effective March 4, 1994, inserting Subsection F, and redesignating former Subsections F to H as Subsections G to I, was also approved on March 4, 1994. The section is set out as amended by Laws 1994, ch. 76, § 2. See 12-1-8 NMSA 1978.

The 1997 amendment substituted "district, magistrate or municipal court" for "magistrate court" in Subsection A. Laws 1997, ch. 210 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Applicability. - Laws 1994, ch. 56, § 11 makes the provisions the act applicable to income tax years beginning on or after January 1, 1994.

7-2C-4. Remedy additional.

The remedies of a claimant agency under the Tax Refund Intercept Program Act [this article] 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 [this article], the department, upon request, shall render assistance in the collection of any debt owed to a claimant agency or any debt that a claimant agency is obligated by law to collect. This assistance shall be provided by withholding from any refund due to the debtor pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978] the amount of debt meeting the requirements of the Tax Refund Intercept Program Act and paying over to the claimant agency the amount withheld.

History: Laws 1985, ch. 106, § 5; 1994, ch. 56, § 2.

ANNOTATIONS

The 1994 amendment, effective May 18, 1994, substituted "Department" for "Division" in the section heading, and "department" for "division" and "that" for "which" in the first sentence.

Applicability. - Laws 1994, ch. 56, § 11 makes the provisions of the act applicable to income tax years beginning on or after January 1, 1994.

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 must apply to the claimant agency for a hearing within thirty days from the date indicated on the notice with respect to the entitlement of the spouse to all or part of the refund from which a transfer will be made at the request of the claimant agency; and

(6) a statement that failure of the spouse to apply for a hearing within thirty days may be deemed a waiver of any claim of the spouse with respect to the refund.

F. A debtor may contest the setoff of a debt by applying to the claimant agency for a hearing within thirty days of the date the notice required by Subsection D of this section

is sent to the debtor. Failure of the debtor to apply for a hearing within the time required shall constitute a waiver of the right to contest the debt or the setoff of the debt.

G. A spouse may contest the setoff of a debt against a refund to which the spouse claims entitlement in whole or in part by applying to the claimant agency for a hearing within thirty days of the date the notice required by Subsection E of this section was sent to the spouse. Failure of the spouse to apply for a hearing within the time required shall constitute a waiver of the right to contest the setoff of the debt against a refund to which the spouse may claim entitlement.

H. 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].

History: Laws 1985, ch. 106, § 6; 1994, ch. 56, § 3.

ANNOTATIONS

The 1994 amendment, effective May 18, 1994, substituted "department" for "division" throughout the section; and, in Subsection H, deleted the former first two sentences, relating to confirmation that the claimant agency has met the requirements of Subsection D, and deleted "If the division receives timely confirmation from the claimant agency" at the beginning of the first sentence.

Applicability. - Laws 1994, ch. 56, § 11 makes the provisions of the act applicable to income tax years beginning on or after January 1, 1994.

7-2C-7. Suspense account.

Upon receipt of money transferred from the department pursuant to Subsection H of Section 7-2C-6 NMSA 1978, the claimant agency shall deposit and hold the money in the suspense account until a final determination of the setoff is made.

History: Laws 1985, ch. 106, § 7; 1994, ch. 56, § 4.

ANNOTATIONS

The 1994 amendment, effective May 18, 1994, substituted "department" for "division" and "Section 7-2C-6 NMSA 1978" for "Section 6 of the Tax Refund Intercept Program Act".

Applicability. - Laws 1994, ch. 56, § 11 makes the provisions of the act applicable to income tax years beginning on or after January 1, 1994.

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 [this article] bars accrual of interest, notwithstanding the provisions of Section 7-1-68 NMSA 1978.

History: Laws 1985, ch. 106, § 8; 1994, ch. 56, § 5.

ANNOTATIONS

The 1994 amendment, effective May 18, 1994, substituted "department" for "division" twice in the first sentence and once in the proviso clause in the second sentence, and "Section 7-2C-6 NMSA 1978" for "Section 6 of the Tax Refund Intercept Program Act" in the first sentence.

Applicability. - Laws 1994, ch. 56, § 11 makes the provisions of the act applicable to income tax years beginning on or after January 1, 1994.

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 [this article].

History: Laws 1985, ch. 106, § 9; 1994, ch. 56, § 6.

ANNOTATIONS

The 1994 amendment, effective May 18, 1994, substituted "department" for "division" in the catchline and in Subsection B, and "Section 7-2C-6 NMSA 1978" for "Section 6 of the Tax Refund Intercept Program Act" in Subsection A.

Applicability. - Laws 1994, ch. 56, § 11 makes the provisions of the act applicable to income tax years beginning on or after January 1, 1994.

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 [this article] shall be final upon the exhaustion of the administrative or appellate process as applicable.

B. If, during application of setoff procedures, any changes occur in the amount of the refund subject to setoff, including any changes resulting from the filing of amended returns or the filing of additional returns during the calendar year for which the claimant agency has requested setoff with respect to the debtor, the department shall notify the claimant agency of these changes. The department shall promulgate regulations or other appropriate administrative directives to set forth the procedures by which such notice shall be made and by which the amount held in suspense shall be adjusted when required.

C. Upon final determination of the entitlement of a debtor or spouse to any or all of that portion of a refund that has been transferred to the claimant agency, as the amount transferred may be adjusted in accordance with Subsection B of this section, the claimant agency shall remit to the debtor or spouse from the suspense fund the amount determined to be due, with an appropriate accounting. A copy of the accounting shall be sent to the department.

D. Upon final determination, the claimant agency shall remit to itself from the suspense account that amount determined to be due the claimant agency and shall credit that amount against the debt. In the case that the amount remitted is not sufficient to

extinguish the debt, the claimant agency shall have the right to pursue collection of the remaining debt through any available remedy, including a proceeding under the Tax Refund Intercept Program Act for other calendar years.

E. Upon remittance from the suspense fund to the credit of the debtor's account pursuant to Subsection D of this section, the claimant agency shall notify the debtor in writing of the final determination of the setoff. A copy of the notice shall be sent to the department. The notice shall include:

(1) a final accounting of the refund against which the debt was set off, including the amount of the refund to which the debtor was entitled prior to setoff;

(2) the final determination of the amount of the debt that has been satisfied and the amount of debt, if any, still due and owing; and

(3) the amount of the refund in excess of the debt finally determined to be due and owing and the amount of any interest due.

F. Upon remittance from the suspense fund to the credit of the debtor's account pursuant to Subsection D of this section, any amount finally determined to be due to the debtor with respect to the refund amount shall be promptly paid by the claimant agency from the suspense account to the debtor with an appropriate accounting. Interest due the debtor with respect to the amount of refund finally determined to be due the debtor for any period after the transfer to the suspense fund by the department pursuant to Subsection H of Section 7-2C-6 NMSA 1978 is authorized to be paid by the claimant agency from any funds available to it for this purpose.

History: Laws 1985, ch. 106, § 10; 1994, ch. 56, § 7.

ANNOTATIONS

The 1994 amendment, effective May 18, 1994, substituted "department" for "division" throughout the section, "that" for "which" in the first sentence in Subsection C and "Section 7-2C-6 NMSA 1978" for "Section 6 of the Tax Refund Intercept Program Act" in the second sentence in Subsection F.

Applicability. - Laws 1994, ch. 56, § 11 makes the provisions of the act applicable to income tax years beginning on or after January 1, 1994.

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 [this article] or under the provisions of any other law that authorizes the department to apply amounts of tax owed against

any refund due an individual pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978].

B. After claims of the department, claims shall take priority in the following order before claims of any competing claimant agency:

(1) claims of the human services department resulting from child support enforcement liabilities;

(2) claims of the human services department resulting from medical support liabilities;

(3) claims resulting from educational loans made under the Educational Assistance Act [21-21A-1 to 21-21A-23 NMSA 1978];

(4) claims of the human services department resulting from AFDC liabilities;

(5) claims of the human services department resulting from food stamp liabilities;

(6) claims of the employment security division of the labor 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; and

(10) claims of a municipal court for fines, fees or costs owed to that court.

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.

ANNOTATIONS

The 1991 amendment, effective January 1, 1992, in Subsection B, added Paragraph (5) and made a related stylistic change.

The 1993 amendment, effective July 1, 1993, added Paragraphs (6) and (7) to Subsection B, making a related grammatical change.

The 1994 amendment, effective March 4, 1994, inserted Paragraph B(2) and redesignated former Paragraphs B(2) to B(7) as Paragraphs B(3) to B(8).

The 1997 amendment made a minor stylistic change in Subsection A, and in Subsection B, added Paragraphs (7) and (10), redesignated former Paragraphs (7) and

(8) as Paragraphs (8) and (9) and made stylistic changes accordingly. Laws 1997, ch. 210 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

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 [this article].

B. The administrative fee authorized pursuant to Subsection A of this section shall be withheld on all debts set off and collected by the department on or after July 1, 1997 and shall be distributed monthly to the New Mexico finance authority to be pledged irrevocably for the payment of the principal, interest and expenses or other obligations related to the bonds for the taxation and revenue information management systems project. That distribution shall continue until the earlier of December 31, 2005 or the date on which the New Mexico finance authority certifies to the department that all obligations for bonds issued pursuant to Section 12 of this 1997 act have been fully discharged or provision has been made for their discharge and directs the department to cease distributing the money from the fee pursuant to Subsection A of this section to the authority. Thereafter, the administrative fees are appropriated to the department for use in administering the Tax Refund Intercept Program Act.

History: Laws 1985, ch. 106, § 12; 1994, ch. 56, § 8; 1997, ch. 125, § 5.

ANNOTATIONS

The 1994 amendment, effective May 18, 1994, substituted "department" for "division" in the section heading and throughout the section.

The 1997 amendment, effective July 1, 1997, added the Subsection A designation, rewrote Subsection A, and added Subsection B.

Emergency clauses. - Laws 1997, ch. 125, § 14 makes the act effective immediately. Approved April 9, 1997.

Applicability. - Laws 1994, ch. 56, § 11 makes the provisions of the act applicable to income tax years beginning on or after January 1, 1994.

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

7-2C-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 [this article] shall be confidential and shall be used by the claimant agency only in pursuit of the collection of a debt under the provisions of the Tax Refund Intercept Program Act. Any employee or former employee of a claimant agency who unlawfully discloses any information obtained from the department is guilty of a misdemeanor and shall, upon conviction, be fined not more than one thousand dollars ($1,000) or imprisoned not more than one year or both and shall not be employed by the state for a period of five years after the date of conviction.

B. Notwithstanding other provisions of law prohibiting disclosure by the department of information from a taxpayer's return, the department may provide to a claimant agency any information deemed necessary by the department to accomplish the purposes of the Tax Refund Intercept Program Act.

History: Laws 1985, ch. 106, § 13; 1994, ch. 56, § 9.

ANNOTATIONS

The 1994 amendment, effective May 18, 1994, substituted "department" for "division" throughout the section and deleted "thereof" following "upon conviction" in the second sentence in Subsection A.

Applicability. - Laws 1994, ch. 56, § 11 makes the provisions of the act applicable to income tax years beginning on or after January 1, 1994.

7-2C-14. Repealed.

ANNOTATIONS

Repeals. - Laws 1999, ch. 47, § 9 repeals 7-2C-14 NMSA 1978, as amended by Laws 1994, ch. 56, § 10, relating to administrative regulations, rulings, instructions and orders for purposes of the Tax Refund Intercept Program Act, effective June 18, 1999. For provisions of former section, see 1998 Replacement Pamphlet.

ARTICLE 2D
VENTURE CAPITAL INVESTMENTS

7-2D-1. Short title.

Chapter 7, Article 2D NMSA 1978 may be cited as the "Venture Capital Investment Act".

History: Laws 1993, ch. 313, § 1; 1995, ch. 89, § 1.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, substituted "Chapter 7, Article 2D NMSA 1978" for "This act".

7-2D-2. Definitions.

As used in the Venture Capital Investment Act [this article]:

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 l986, as amended or renumbered;

D. "manufacturing business" means the manufacture of, and the business activities related to the manufacture of, all nondurable and durable goods;

E. "New Mexico income tax" means the tax imposed pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978];

F. "qualified diversifying business net capital gain" means the net capital gain for the taxable year determined under the Internal Revenue Code by taking into account only gains or losses from sales or exchanges of qualified diversifying business stock with a holding period of more than five years at the time of the sale or exchange;

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

H. "taxpayer" means any individual subject to the tax imposed pursuant to the Income Tax Act; and

I. "testing period" means the five-year period a stock is held by a taxpayer, beginning with the first day of the taxpayer's holding period for the stock.

History: Laws 1993, ch. 313, § 2; 1995, ch. 89, § 2.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, added Subsections A, D and F and redesignated the remaining subsections accordingly.

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

7-2D-3. Repealed.

ANNOTATIONS

Repeals. - Laws 1995, ch. 89, § 11 repeals 7-2D-3 NMSA 1978, as enacted by Laws 1993, ch. 313, § 3, relating to the tax credit for federal income tax paid on a qualified diversifying business net capital gain, effective June 16, 1995. For provisions of the former section, see the 1993 Replacement Pamphlet.

7-2D-4. Additional definition; qualified diversifying business stock.

A. For purposes of the Venture Capital Investment Act [this article], "qualified diversifying business stock" means, except as otherwise provided in Section 7-2D-13 NMSA 1978, any stock in a corporation that is originally issued after June 30, 1994 but before July 1, 2001, if:

(1) on the date of issuance the corporation is a qualified diversifying business;

(2) except as otherwise provided in Subsection B of this section and in Sections 7-2D-9 and 7-2D-10 NMSA 1978, the stock is acquired by the taxpayer at its original issue, either:

(a) in exchange for money or other property, not including stock; or

(b) as compensation for services, other than services performed as an underwriter of such stock; and

(3) the corporation throughout the testing period is an active manufacturing business and a New Mexico business and at the end of the testing period is a successful business.

B. For purposes of Paragraph (2) of Subsection A of this section, stock shall not be treated as acquired by the taxpayer at its original issue if:

(1) it is issued directly or indirectly in redemption of, or otherwise in exchange for, stock that is not qualified diversifying business stock; or

(2) it is issued in an exchange described in Section 35l of the Internal Revenue Code in exchange for property other than qualified diversifying business stock if, immediately after the exchange, both the issuer and transferee of the stock are members of the same controlled group of corporations as defined in Section 1563 of the Internal Revenue Code.

History: Laws 1993, ch. 313, § 4; 1995, ch. 89, § 3.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, in Subsection A, substituted "Section 7-2D-13 NMSA 1978" for "Section 13 of that act" in the introductory paragraph; substituted "Sections 7-2D-9 and 7-2D-10 NMSA 1978" for "Sections 9 and 10 of the Venture Capital Investment Act" in Paragraph (2); and rewrote former Paragraph (3) which formerly required that stock meet the requirements of Sections 6, 7 and 8 of the Venture Capital Investment Act throughout the testing period.

Internal Revenue Code. - Sections 351 and 1563 of the Internal Revenue Code, referred to in Paragraph (2) of Subsection B, are codified as 26 U.S.C. §§ 351 and 1563.

7-2D-5. Additional definition; qualified diversifying business.

A. For purposes of the Venture Capital Investment Act [this article], "qualified diversifying business" means, except as otherwise provided in Section 7-2D-13 NMSA 1978, any domestic corporation that has its commercial domicile in New Mexico and with respect to which the aggregate amount of money, other property and services received by the corporation for stock, as a contribution to capital and as paid-in surplus, plus the accumulated earnings and profits of the corporation, does not exceed twenty-five million dollars ($25,000,000); provided:

(1) the aggregate amount shall be determined at the time of issuance and shall include amounts received in the issuance and all prior issuances; and

(2) in the case of stock issued in a calendar year after 1993, the aggregate amount shall not exceed an amount equal to twenty-five million dollars ($25,000,000) multiplied by the cost-of-living adjustment determined under Section 1 (f)(3) of the Internal Revenue Code for that calendar year by substituting "1992" for "1987" in Subparagraph (B) of that section.

B. For the purpose of determining the aggregate amount in Subsection A of this section:

(1) the amount taken into account with respect to any property other than money shall be an amount equal to the adjusted basis of that property for determining capital gain:

(a) reduced to not below zero by any liability to which the property was subject or that was assumed by the corporation; and

(b) determined at the time the property was received by the corporation; and

(2) the amount taken into account with respect to stock issued for services shall be the value of those services.

History: Laws 1993, ch. 313, § 5; 1995, ch. 89, § 4.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, substituted "Section 7-2D-13 NMSA 1978" for "Section 13 of that act" in the introductory paragraph of Subsection A; substituted "aggregate amount shall be determined" for "determination made under this subsection shall be made" and "and" for "but" in Paragraph A(1); inserted "aggregate" near the beginning of Paragraph A(2); substituted "determining the aggregate amount" for "making the determination" in the introductory paragraph of Subsection B; and made minor stylistic changes throughout the section.

Internal Revenue Code. - Section 1(f)(3) of the Internal Revenue Code, referred to in Paragraph (2) of Subsection A, appears as 26 U.S.C. § 1(f)(3).

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 [this article], "active manufacturing business" means a corporation that throughout the testing period:

(1) either:

(a) is engaged in the active conduct of a manufacturing business; and

(b) uses substantially all of its assets in the active conduct of a manufacturing trade or business; provided, rights to computer software that produce income described in Section 543(d) of the Internal Revenue Code and any assets that are held for investment and are to be used to finance future research and experimentation or working capital needs of the corporation shall be treated as assets used in the active conduct of a manufacturing business; or

(2) is engaged in any of the following activities, whether or not the corporation has any gross income from such activities at the time of the determination:

(a) start-up activities described in Section 195(c)(l)(A) of the Internal Revenue Code;

(b) activities resulting in the payment or incurring of expenditures that may be treated as research and experimental expenditures under Section 174 of the Internal Revenue Code; or

(c) activities with respect to in-house research expenses described in Section 41(b)(4) of the Internal Revenue Code.

B. A corporation shall not be considered an active manufacturing business if at any time during the testing period:

(1) more than ten percent of the value of its assets in excess of liabilities consists of stock in other corporations that are not subsidiaries of that corporation; provided:

(a) for purposes of this section, stock and debt in any subsidiary corporation shall be disregarded and the parent corporation shall be deemed to own its ratable share of the subsidiary's assets and to conduct its ratable share of the subsidiary's activities; and

(b) a corporation shall be considered a subsidiary if the parent owns at least fifty percent of the combined voting power of all classes of stock entitled to vote or at least fifty percent in value of all outstanding stock of that corporation; or

(2) more than ten percent of the total value of its assets is real property that is not used in the active conduct of a manufacturing business. The ownership of, dealing in or renting of real property shall not be treated as the active conduct of a manufacturing business.

History: Laws 1993, ch. 313, § 6; 1995, ch. 89, § 5.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, rewrote the section heading which read "active manufacturing business requirement" and rewrote the section to such an extent that a detailed comparison would be impracticable.

Internal Revenue Code. - Sections 41, 174, 195, and 543 of the Internal Revenue Code are codified as 26 U.S.C. §§ 41, 174, 195, and 543, respectively.

7-2D-7. Additional definition; New Mexico business.

For the purposes of the Venture Capital Investment Act [this article], "New Mexico business" means a corporation that throughout the testing period meets these conditions:

A. the corporation has its commercial domicile in New Mexico and all of its corporate directors who are also employees of the corporation are full-time residents of New Mexico;

B. at least two-thirds of all of the corporation's employees, at least two-thirds of its employees who perform research, development or design activities and at least two-thirds of its employees who perform manufacturing activities are full-time residents of New Mexico;

C. the corporation maintains an employee stock purchase plan, incentive stock option plan or similar plan pursuant to which employees of the corporation have the opportunity to acquire equity ownership in the corporation; and

D. the corporation employs on a full-time basis an average of at least fifty full-time New Mexico residents.

History: Laws 1993, ch. 313, § 7; 1995, ch. 89, § 6.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, rewrote the section heading which read "New Mexico business requirement" and rewrote the introductory paragraph which read "A corporation meets the requirements pursuant to Paragraph (3) of Subsection A of Section 4 of the Venture Capital Investment Act if throughout the testing period".

7-2D-8. Additional definition; successful business.

For the purposes of the Venture Capital Investment Act [this article], "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 l994, the net increase in valuation required shall be an amount equal to fifteen million dollars ($15,000,000) multiplied by the cost-of-living adjustment determined under Section 1(f)(3) of the Internal Revenue Code for that calendar year by substituting "1992" for "1987" in Subparagraph (B) of that section.

History: Laws 1993, ch. 313, § 8; 1995, ch. 89, § 7.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, rewrote the section heading which read "Business success requirement" and rewrote the section to such an extent that a detailed comparison would be impracticable.

Internal Revenue Code. - Section 1 of the Internal Revenue Code, referred to in Subsection C, is codified as 26 U.S.C. § 1.

7-2D-8.1. Tax credit.

A. Any taxpayer who pays federal income tax on a qualified diversifying business net capital gain may claim a credit against the taxpayer's New Mexico income tax liability equal to a capital gain tax differential, if the taxpayer allocates the qualified diversifying business net capital gain to New Mexico.

B. The tax credit provided in Subsection A of this section may only be deducted from the taxpayer's New Mexico income tax liability. Any portion of the credit that remains unused at the end of the taxpayer's taxable year may be carried forward and deducted from the taxpayer's New Mexico income tax liability in succeeding years.

History: 1978 Comp., § 7-2D-8.1, enacted by Laws 1995, ch. 89, § 8.

7-2D-9. Special rules for options, warrants and certain convertible investments.

A. In the case of stock that is acquired by the taxpayer through the exercise of a nontransferable option or warrant issued in exchange for the performance of services for the corporation issuing it, through the conversion of convertible debt or in exchange for securities of the corporation in a transaction described in Section 368 of the Internal Revenue Code:

(1) the stock shall be treated as acquired by the taxpayer at original issue; and

(2) the stock shall be treated as having been held during the period that the option, warrant or debt was held or that the security was outstanding.

B. For purposes of Subsection A of Section 7-2D-5 NMSA 1978 and notwithstanding Subsection B of that section, in the case of a debt instrument converted to stock or stock issued in exchange for securities in a transaction described in Section 368 of the Internal Revenue Code, such stock shall be treated as issued for an amount equal to the sum of:

(1) the principal amount of the debt or security at the time of the conversion or exchange; and

(2) accrued but unpaid interest on that loan or security.

History: Laws 1993, ch. 313, § 9; 1995, ch. 89, § 9.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, substituted "a nontransferable option or warrant issued in exchange for the performance of services for the corporation issuing it" for "an applicable option or warrant" in the introductory paragraph of Subsection A; substituted "Section 7-2D-5 NMSA 1978" for "Section 5 of the Venture Capital Investment Act" near the beginning of Subsection B; and deleted former Subsection C which defined "applicable option or warrant".

Internal Revenue Code. - Section 368 of the Internal Revenue Code, referred to in Subsections A and B, appears as 26 U.S.C. § 368.

7-2D-10. Certain tax-free and other transfers.

A. This section applies to the following transfers of stock:

(1) by gift;

(2) at death;

(3) to the extent that the basis of the property in the hands of the transferee is determined by reference to the basis of the property in the hands of the transferor by reason of Sections 334(b), 723 or 732 of the Internal Revenue Code; and

(4) of qualified diversifying business stock for other qualified diversifying business stock in a transaction described in Section 351 of the Internal Revenue Code or a reorganization described in Section 368 of the Internal Revenue Code.

B. In the case of a transfer of stock to which this section applies, the transferee shall be treated as having acquired the stock in the same manner as the transferor and as having held such stock during any continuous period immediately preceding the transfer during which it was held or treated as held under this section by the transferor.

C. In the case of a transaction described in Section 351 of the Internal Revenue Code or a reorganization described in Section 368 of the Internal Revenue Code, if a qualified diversifying business stock is transferred for other stock that is not qualified diversifying business stock, the transfer shall be treated as a transfer to which this section applies solely with respect to the person receiving such other stock.

D. This section applies to the sale or exchange of stock treated as qualified diversifying business stock by reason of Subsection C of this section only to the extent of the gain, if any, that would have been recognized at the time of the transfer described in Subsection C of this section if Section 351 or 368 of the Internal Revenue Code had not applied at that time.

E. For purposes of this subsection, stock treated as qualified diversifying business stock under Subsection C of this section shall be so treated for subsequent transactions or reorganizations, except that the limitation of Subsection D of this section shall be applied as of the time of the first transfer to which Subsection C of this section applied.

F. Except in the case of a transaction described in Section 368 of the Internal Revenue Code, this section applies only if, immediately after the transaction, the corporation issuing the stock owns, directly or indirectly, stock representing control, within the meaning of Section 368(c) of the Internal Revenue Code, of the corporation whose stock was transferred.

History: Laws 1993, ch. 313, § 10.

ANNOTATIONS

Internal Revenue Code. - Sections 334, 351, 368, 723, and 732 of the Internal Revenue Code are codified as 26 U.S.C. §§ 334, 351, 368, 723, and 732, respectively.

7-2D-11. Stock exchanged for property.

For purposes of the Venture Capital Investment Act [this article], 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 [this article], 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 [this article].

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, l994 and that the stock was issued by a corporation that at the time did not have its commercial domicile in New Mexico and the value of such stock on that date exceeds its adjusted basis, the taxpayer may elect to set that date as the election date and treat the stock as having been sold on that date for an amount equal to its value on that date and as having been reacquired on that date for an amount equal to such value.

C. For purposes of determining the tax credit pursuant to Section 7-2D-8.1 NMSA 1978 and whether or not the taxpayer actually incurs federal or New Mexico income tax liability, the gain from sales determined in Subsection B of this section shall be treated as received or accrued and the holding period of the reacquired stock shall be treated as beginning on that election date. Such stock shall be treated after such reacquisition as acquired in the same manner and at the same time as the original acquisition. Neither the requirement of Subsection A of Section 7-2D-4 NMSA 1978 that the stock must have been issued after June 30, 1994 nor the requirement of Subsection A of Section 7-2D-5 NMSA 1978 that the issuing corporation have its commercial domicile in New Mexico shall apply.

D. An election under this section with respect to any stock shall be made in the manner the secretary prescribes. Such an election, once made with respect to any stock, is irrevocable.

E. Notwithstanding the provisions of this section, no credit shall be allowed or claimed on any qualified diversifying business net capital gain arising from the sale of stock prior to July 1, 1998.

History: Laws 1993, ch. 313, § 13; 1995, ch. 89, § 10.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, in Subsection C, substituted "Section 7-2D-8.1 NMSA 1978" for "Section 3 of the Venture Capital Investment Act", "Section 7-2D-4 NMSA 1978" for "Section 4 of the Venture Capital Investment Act" and "Section 7-2D-5 NMSA 1978" for "Section 5 of the Venture Capital Investment Act".

7-2D-14. Administration of act.

The Venture Capital Investment Act [this article] shall be administered pursuant to the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

History: Laws 1993, ch. 313, § 14.

ANNOTATIONS

Applicability. - Laws 1993, ch. 313 § 16, makes the provisions of the Venture Capital Investment Act applicable to taxable years beginning on and after January 1, 1994.

Temporary provisions. - Laws 1993, ch. 313, § 15, effective June 18, 1993, provides that the secretary shall promulgate regulations no later than November 1, 1993 to implement the Venture Capital Investment Act and such regulations shall provide for corporations and taxpayers to make appropriate filings in a timely manner with the department so as to assure taxpayers of the availability in future years of the tax credit provided by the Venture Capital Investment Act.

Nonseverability of act. - Laws 1993, ch. 313, § 17 provides that if any part or application of the act is held invalid, the entire act shall be deemed invalid and shall cease to apply and the credit shall not be extended to any taxpayer.

ARTICLE 2E
RURAL JOB TAX CREDITS

7-2E-1. Tax credit; rural job tax credit. (Effective July 1, 2000 until July 1, 2006.)

A. The tax credit created by this section may be referred to as the "rural job tax credit". Until June 30, 2006, every eligible employer may apply for, and the taxation and revenue department may allow, a tax credit for each qualifying job the employer creates in the period beginning July 1, 2000 and ending June 30, 2005. 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. As used in this section:

(1) "eligible employee" means any individual other than an individual who:

(a) bears any of the relationships described in Paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to the employer or, if the employer is a corporation, to an individual who owns, directly or indirectly, more than fifty percent in value of the outstanding stock of the corporation or, if the employer is an entity other than a corporation, to any individual who owns, directly or indirectly, more than fifty percent of the capital and profits interests in the entity;

(b) if the employer is an estate or trust, is a grantor, beneficiary or fiduciary of the estate or trust or is an individual who bears any of the relationships described in Paragraphs (1) through (8) of 26 U.S.C. Section 152(a) to a grantor, beneficiary or fiduciary of the estate or trust; or

(c) is a dependent, as that term is described in 26 U.S.C. Section 152(a) (9), of the employer or, if the taxpayer is a corporation, of an individual who owns, directly or indirectly, more than fifty percent in value of the outstanding stock of the corporation or, if the employer is an entity other than a corporation, of any individual who owns, directly or indirectly, more than fifty percent of the capital and profits interests in the entity or, if the employer is an estate or trust, of a grantor, beneficiary or fiduciary of the estate or trust;

(2) "eligible employer" means an employer who has been approved for in-plant training assistance pursuant to Section 21-19-7 NMSA 1978;

(3) "metropolitan statistical area" means a metropolitan statistical area in New Mexico as determined by the United States bureau of the census;

(4) "modified combined tax liability" means the total liability for the reporting period for the gross receipts tax imposed by Section 7-9-4 NMSA 1978 together with any tax collected at the same time and in the same manner as that gross receipts tax, such as the compensating tax, the withholding tax, the interstate telecommunications gross receipts tax, the surcharges imposed by Section 63-9D-5 NMSA 1978 and the surcharge imposed by Section 63-9F-11 NMSA 1978, minus the amount of any credit other than the rural job tax credit applied against any or all of these taxes or surcharges; but "modified combined tax liability" excludes all amounts collected with respect to local option gross receipts taxes;

(5) "qualifying job" means a job established by the employer that:

(a) qualifies for in-plant training assistance; and

(b) is occupied by an eligible employee for at least forty-eight weeks of a qualifying period;

(6) "qualifying period" means the period of twelve months beginning on the day an eligible employee begins working in a qualifying job or the period of twelve months

beginning on the anniversary of the day an eligible employee began working in a qualifying job;

(7) "rural area" means any part of the state other than:

(a) an H class county;

(b) the state fairgrounds;

(c) an incorporated municipality within a metropolitan statistical area if the municipality's population is thirty thousand or more according to the most recent federal decennial census; and

(d) any area within ten miles of the exterior boundaries of a municipality described in Subparagraph (c) of this paragraph;

(8) "tier one area" means:

(a) any municipality within the rural area if the municipality's population according to the most recent federal decennial census is fifteen thousand or less; or

(b) any part of the rural area that is not within the exterior boundaries of a municipality;

(9) "tier two area" means any municipality within the rural area if the municipality's population according to the most recent federal decennial census is more than fifteen thousand; and

(10) "wages" means wages as defined by Paragraphs (1), (2) and (3) of 26 U.S.C. Section 51(c).

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 request the economic development department to certify the amount of wages paid to each eligible employee during each qualifying period, the number of weeks during the qualifying period the position was occupied and whether the qualifying job was in a tier one or tier two area. The economic development department may require the employer to submit such information as is necessary for the

economic development department to make the certification requested. When the economic development department obtains sufficient information, either from its own records or from the employer, the economic development department shall make the certification requested.

E. The economic development department shall determine which employers are eligible employers and shall report the listing of eligible businesses to the taxation and revenue department in a manner and at times the departments shall agree upon.

F. To receive a rural job tax credit with respect to any qualifying period, an eligible employer must apply to the taxation and revenue department on forms and in the manner the department may prescribe. The application shall include a copy of the certification from the economic development department made pursuant to Subsection D of this section. If all the requirements of this section have been complied with, the taxation and revenue department may issue to the applicant a document granting a tax credit for the respective 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. Such tax credit documents may be sold, exchanged or otherwise transferred and can be carried forward for a period of three years from the date of issuance. 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.

G. The holder of the tax credit document may apply all or a portion of the rural job tax credit granted by the document against the holder's modified combined tax liability, personal income tax liability or corporate income tax liability. Any balance of rural job tax credit granted by the document may be carried forward for up to three years from the date of issuance of the tax credit document. No amount of rural job tax credit may be applied against a gross receipts tax imposed by a municipality or county.

H. Notwithstanding the provisions of Section 7-1-8 NMSA 1978, the taxation and revenue department may disclose to any person the balance of rural job tax credit remaining on any tax credit document and the balance of credit remaining on that document for any period.

I. The secretary of economic development, the secretary of taxation and revenue and the secretary of labor 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.

History: Laws 1999, ch. 183, § 1.

ANNOTATIONS

Delayed repeals. - Laws 1999, ch. 183, § 3 repeals this section, as enacted by Laws 1999, ch. 183, § 1, effective July 1, 2006.

Effective dates. - Laws 1999, ch. 183, § 4 makes the act effective on July 1, 2000.

7-2E-2. Continued applicability of rural job tax credit. (Effective July 1, 2000.)

The balance of any rural job tax credit granted with respect to qualifying periods occurring after July 1, 2006 or remaining on a tax credit document issued prior to that date may be applied after that date in the manner provided in Section 1 of this act [7-2E-1 NMSA 1978] against the holder's modified combined tax liability or corporate or personal income tax liability as if the provisions of Section 1 of this act were still in effect.

History: Laws 1999, ch. 183, § 2.

ANNOTATIONS

Effective dates. - Laws 1999, ch. 183, § 4, makes the act effective on July 1, 2000.

ARTICLE 3
INCOME TAX WITHHOLDING

7-3-1. Short title.

Chapter 7, Article 3 NMSA 1978 may be cited as the "Withholding Tax Act".

History: 1953 Comp., § 72-15-49, enacted by Laws 1961, ch. 243, § 1; 1979, ch. 29, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation § 602.

85 C.J.S. Taxation § 1107.

7-3-2. Definitions.

As used in the Withholding Tax Act [this article]:

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

B. "employee" means either an individual domiciled within the state who performs services either within or without the state for an employer or, to the extent permitted by law, an individual domiciled outside of the state who performs services within the state for an employer;

C. "employer" means a person, or an officer, agent or employee of that person, having control of the payment of wages, doing business in or deriving income from sources within the state for whom an individual performs or performed any service as the employee of that person, except that if the person for whom the individual performs or performed the services does not have control over the payment of the wages for such services, "employer" means the person having control of the payment of wages;

D. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended;

E. "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 business association, other than a sole proprietorship, not taxed as a corporation for federal income tax purposes for the taxable year;

F. "pass-through entity" means any business association other than:

(1) a sole proprietorship;

(2) an estate or trust; or

(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;

G. "payor" means any person making payment of a pension or annuity to an individual domiciled in New Mexico;

H. "payroll period" means a period for which a payment of wages is made to the employee by his employer;

I. "person" means any individual, club, company, cooperative association, corporation, estate, firm, joint venture, partnership, receiver, syndicate, trust or other association and, to the extent permitted by law, any federal, state or other governmental unit or subdivision or an agency, department or instrumentality thereof;

J. "wagerer" means any person who receives winnings that are subject to withholding;

K. "wages" means remuneration in cash or other form for services performed by an employee for an employer;

L. "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;

M. "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

N. "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.

ANNOTATIONS

Repeals and reenactments. - Laws 1990, ch. 64, § 1 repeals former 7-3-2 NMSA 1978, as amended by Laws 1986, ch. 20, § 54, and enacts the above section, effective July 1, 1990. For provisions of former section, see 1988 Replacement Pamphlet.

The 1996 amendment, effective April 1, 1996, added Subsections H and J and redesignated former Subsections H through J as Subsections I through L, and added Paragraph K(3).

The 1999 amendment, effective June 18, 1999, added present Subsections E and F, and redesignated former Subsections E through L as Subsections G through N.

Applicability. - Laws 1999, ch. 14, § 4 makes the provisions of the act applicable to taxable years beginning on or after January 1, 1999.

Internal Revenue Code. - Section 3402 of the United States Internal Revenue Code, cited in Subsection L, is codified as 26 U.S.C. § 3402.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 85 C.J.S. Taxation §§ 1092, 1097.

7-3-3. Tax withheld at source.

A. Every employer who deducts and withholds a portion of an employee's wages for payment of income tax under the provisions of the Internal Revenue Code shall deduct and withhold an amount for each payroll period computed from a state withholding tax table furnished by the department; provided:

(1) if the employee instructs the employer to withhold a greater amount, the employer shall deduct and withhold the greater amount;

(2) if the employee is not a resident of New Mexico and is to perform services in New Mexico for fifteen or fewer days cumulatively during the calendar year, the employer is not required to deduct and withhold an amount from that employee's wages; and

(3) if the aggregate monthly amount withheld under this section would be less than one dollar ($1.00) for an employee, the employer shall not be required to deduct and withhold wages in regard to that employee.

B. The department shall devise and furnish a state withholding tax table based on statutes made and provided to employers required to withhold amounts under this section. This table shall be devised to provide for a yearly aggregate withholding that will approximate the state income tax liability of average taxpayers in each exemption category.

C. If an individual requests in writing that the payor deduct and withhold an amount from the amount of the pension or annuity due the individual, the payor making payment of a pension or annuity to an individual domiciled in New Mexico shall deduct and withhold the amount requested to be deducted and withheld, provided that the payor is not required to deduct and withhold any amount less than ten dollars ($10.00) per payment. The written request shall include the payee's name, current address, taxpayer identification number and, if applicable, the contract, policy or account number to which the request applies.

D. Every person in New Mexico who is required by the provisions of the Internal Revenue Code to deduct and withhold federal tax from payment of winnings that are subject to withholding shall deduct and withhold from such payment a tax in an amount equal to six percent of the winnings, except that an Indian nation, tribe or pueblo or an agency, department, subdivision or instrumentality thereof is not required to deduct or withhold from payments made to members or spouses of members of that Indian nation, tribe or pueblo.

History: 1953 Comp., § 72-15-51, enacted by Laws 1961, ch. 243, § 3; 1990, ch. 64, § 2; 1995, ch. 11, § 9; 1996, ch. 16, § 4.

ANNOTATIONS

The 1990 amendment, effective July 1, 1990, designated the former section as Subsection A; added Subsection B; and, in present Subsection A, substituted

"department, provided that, if the employee instructs the employer to withhold a greater amount, the employer shall deduct and withhold the greater amount" for "bureau of revenue" at the end of the first sentence, substituted "department" for "bureau" in the second sentence, and substituted "one dollar ($1.00)" for "fifty cents ($.50)" in the fourth sentence.

The 1995 amendment, effective July 1, 1995, designated the first sentence of Subsection A as Paragraph A(1) and added Paragraphs A(2) and A(3); designated the former second sentence of Subsection A as Subsection B and deleted a proviso at the end thereof which read "Provided that if that aggregate monthly amount withheld under this section would be less one dollar ($1.00) for an employee, the employer shall not be required to deduct and withhold wages in regard to that employee"; and redesignated former Subsection B as Subsection C and made a stylistic change therein.

The 1996 amendment, effective April 1, 1996, added Subsection D.

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

New Mexico may not tax income and gross receipts of Indians residing on reservation when the income and gross receipts involved are derived solely from activities within the reservation. Hunt v. O'Cheskey, 85 N.M. 381, 512 P.2d 954 (Ct. App.), cert. quashed, 85 N.M. 388, 512 P.2d 961 (1973). See also case notes to 7-2-3 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation § 602.

85 C.J.S. Taxation §§ 1092, 1097.

7-3-4. Deductions considered taxes.

Amounts deducted under the provisions of the Withholding Tax Act [this article] shall be a collected tax. No employee shall have a right of action against the employer for any amount deducted and withheld from the employee's wages. No individual who has instructed a payor to deduct and withhold an amount from the pension or annuity due that individual shall have a right of action against a payor for any amount deducted and withheld pursuant to the instruction. No wagerer who receives winnings that are subject to withholding shall have a right of action against the person who deducted and withheld an amount from the wagerer's winnings for the amount deducted and withheld.

History: 1953 Comp., § 72-15-52, enacted by Laws 1961, ch. 243, § 4; 1971, ch. 27, § 1; 1990, ch. 64, § 3; 1996, ch. 16, § 5.

ANNOTATIONS

Cross references. - For right of action for gambling losses, see 44-5-1 NMSA 1978.

The 1990 amendment, effective July 1, 1990, added the second sentence and made minor stylistic changes in the first sentence.

The 1996 amendment, effective April 1, 1996, added the last sentence.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 530, 531, 596 to 607.

Construction, application and effect, with respect to withholding, social security and unemployment compensation taxes, of statutes imposing penalties for tax evasion or default, 22 A.L.R.3d 8.

85 C.J.S. Taxation §§ 1103, 1107 to 1109.

7-3-5. Withholder liable for amounts deducted and withheld; exceptions.

Every withholder or pass-through entity shall be liable for amounts required to be deducted and withheld by the Withholding Tax Act [this article] regardless of whether the amounts were in fact deducted and withheld, except that:

A. if the withholder 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, the withholder shall not be liable for those amounts not deducted and withheld; or

B. if the withholder's or pass-through entity's failure to deduct and withhold the required amounts was due to reasonable cause, the withholder or pass-through entity 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.

ANNOTATIONS

The 1990 amendment, effective July 1, 1990, substituted "Withholder" for "Employer" in the section heading and throughout the section and made a minor stylistic change in Subsection B.

The 1999 amendment, effective June 18, 1999, inserted "or pass-through entity" and "or pass-through entity's" throughout the section, and deleted "or not" following "of whether" in the introductory language.

Applicability. - Laws 1999, ch. 14, § 4 makes the provisions of the act applicable to taxable years beginning on or after January 1, 1999.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 530, 531, 596 to 607.

Application of payments, made in satisfaction of employer's withholding tax liability, to employer's liability for penalties, 59 A.L.R. Fed. 484.

85 C.J.S. Taxation §§ 1103 to 1105.

7-3-6. Date payment due.

Taxes withheld under the provisions of the Withholding Tax Act [this article] must be paid on or before the twenty-fifth day of the month following the month when the taxes were required to be withheld.

History: 1978 Comp., § 7-3-6, enacted by Laws 1969, ch. 25, § 1.

7-3-7. Statements of withholding.

A. Every employer shall file an annual statement of withholding for each employee. This statement shall be in a form prescribed by the department and shall be filed with the department on or before the last day of February of the year following that for which the statement is made. It shall include the total compensation paid the employee and the total amount of tax withheld for the calendar year or portion of a calendar year if the employee has worked less than a full calendar year.

B. Every payor shall file an annual statement of withholding for each individual from whom some portion of a pension or an annuity has been deducted and withheld by that payor. This statement shall be in a form prescribed by the department and shall be filed with the department on or before the last day of February of the year following that for which the statement is made. It shall include the total amount of pension or annuity paid to the individual and the amount of tax withheld for the calendar year.

C. Every person required to deduct and withhold tax from a payment of winnings that are subject to withholding shall file an annual statement of withholding for each wagerer from whom some portion of a payment of winnings has been deducted and withheld by that person. This statement shall be in a form prescribed by the department and shall be filed with the department on or before the last day of February of the year following that for which the statement is made. It shall include the total amount of 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.

ANNOTATIONS

The 1990 amendment, effective July 1, 1990, designated the former section as Subsection A, substituting therein "department" for "bureau" in two places and "the last day of February" for "February 15" in the second sentence, and added Subsection B.

The 1996 amendment, effective April 1, 1996, added Subsection C.

7-3-8. Copy of the statement of withholding to be furnished the withholdee.

A copy of the annual statement of withholding shall be furnished to the withholdee by the withholder on or before January 31 of the year following that for which the statement is made.

History: 1953 Comp., § 72-15-57, enacted by Laws 1961, ch. 243, § 9; 1990, ch. 64, § 6.

ANNOTATIONS

The 1990 amendment, effective July 1, 1990, substituted "withholdee" for "employee" in the section heading and in the text, and substituted "to the withholdee by the withholder" for "the employee" and "January 31" for "February 15".

7-3-9. Withheld amounts credited against tax.

The entire amount of income upon which tax was deducted and withheld shall be included in the gross income of the withholdee for state income tax purposes. The amount of tax deducted and withheld under the provisions of the Withholding Tax Act during the taxable year shall be credited against any state income tax liability for that taxable year.

History: 1953 Comp., § 72-15-59, enacted by Laws 1961, ch. 243, § 11; 1990, ch. 64, § 7.

ANNOTATIONS

The 1990 amendment, effective July 1, 1990, deleted "from wages" following "amount of income" and substituted "withholdee" for "employee" in the first sentence and "tax deducted" for "wages deducted" in the second sentence.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 258, 602.

85 C.J.S. Taxation §§ 1107, 1110.

7-3-10. Voluntary submission to act.

Any employee whose participation under the Withholding Tax Act [this article] is not mandatory may subject himself or herself to its provisions with the consent of the employer.

History: 1953 Comp., § 72-15-66, enacted by Laws 1961, ch. 243, § 18; 1990, ch. 64, § 8.

ANNOTATIONS

The 1990 amendment, effective July 1, 1990, inserted "or herself" following "himself" and substituted "the employer" for "his employer".

7-3-11. Acts to be performed by agents; liability of third parties.

A. When a fiduciary, agent or other person has the control, receipt, custody or disposal of or pays the wages of an employee or group of employees employed by one or more employers and the fiduciary, agent or other person has been designated by the United States secretary of the treasury to perform such acts as are required of employers for federal withholding purposes under the Internal Revenue Code, the fiduciary, agent or other person shall perform the acts required of employers by the provisions of the Withholding Tax Act [this article]. All provisions of Chapter 7 NMSA 1978 applicable in respect to an employer shall be applicable to a fiduciary, agent or other person so designated, but the employer, unless provided otherwise by law, for whom the fiduciary, agent or other person acts shall remain subject to the provisions of Chapter 7 NMSA 1978 applicable in respect to employers.

B. For purposes of the Withholding Tax Act, if a lender, surety or other person who is not an employer under the Withholding Tax Act with respect to an employee or group of employees, pays wages directly to the employee or group of employees employed by one or more employers or to an agent on behalf of the employee or employees, the lender, surety or other person shall be liable in its own person and estate to the state of New Mexico in a sum equal to the taxes required to be deducted and withheld from those wages by the employer. Any amount paid pursuant to this subsection shall be credited against the liability of the employer.

History: 1978 Comp., § 7-3-11, enacted by Laws 1990, ch. 64, § 9.

ANNOTATIONS

Internal Revenue Code. - The federal Internal Revenue Code, referred to in Subsection A, appears as Title 26 of the United States Code.

7-3-12. Information return required from pass-through entity; withholding.

A. A pass-through entity doing business in this state shall file an annual information return with the department on or before the due date of the entity's federal return for the taxable year. The information return shall be signed by the business manager or one of the owners of the pass-through entity.

B. The information return required by this section shall contain all information required by the department, including:

(1) the pass-through entity's gross income;

(2) the pass-through entity's net income;

(3) the amount of each owner's share of the pass-through entity's net income; and

(4) the name, address and tax identification number of each owner entitled to a share of net income.

C. A pass-through entity shall 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] and the Corporate Income and Franchise Tax Act with respect to the owner's share of net income.

D. At the time of filing the information return required by this section, the pass-through entity shall deduct and withhold from each nonresident owner's share of net income an amount equal to the owner's share of net income multiplied by a rate set by department regulation. In the case of an owner who is an individual or entity not taxed as a corporation for federal income tax purposes for the taxable year, the rate shall not exceed the rate for composite returns. In the case of an owner that is a corporation or other entity taxed as a corporation for the taxable year, the rate shall not exceed the maximum rate for corporate income tax.

E. The provisions of Subsection D of this section shall not apply with regard to the share of net income of a nonresident owner who has executed an agreement with the department that the owner will report and pay tax, if required, on its own return pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act.

F. Amounts deducted from the owner's share of net income under the provisions of this section shall be a collected tax. No owner shall have a right of action against the pass-through entity for any amount deducted and withheld from the owner's share of net income.

History: Laws 1999, ch. 14, § 3.

ANNOTATIONS

Effective dates. - Laws 1999, ch. 14 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 18, 1999, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Applicability. - Laws 1999, ch. 14, § 4 makes the provisions of the act applicable to taxable years beginning on or after January 1, 1999.

Corporate Income and Franchise Tax Act. - See 7-2A-1 NMSA 1978 and notes thereto.

ARTICLE 4
DIVISION OF INCOME FOR TAX PURPOSES

7-4-1. Short title.

Chapter 7, Article 4 NMSA 1978 may be cited as the "Uniform Division of Income for Tax Purposes Act".

History: 1953 Comp., § 72-15A-16, enacted by Laws 1965, ch. 203, § 1; 1981, ch. 37, § 47.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - Construction and application of Uniform Division of Income for Tax Purposes Act, 8 A.L.R.4th 934.

7-4-2. Definitions.

As used in the Uniform Division of Income for Tax Purposes Act [this article]:

A. "business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and income from the disposition or liquidation of a business or segment of a business. "Business income" includes income from tangible and intangible property if the acquisition, management or disposition of the property constitute integral parts of the taxpayer's regular trade or business operations;

B. "commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed;

C. "compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services;

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

E. "nonbusiness income" means all income other than business income;

F. "sales" means all gross receipts of the taxpayer not allocated under Sections 7-4-5 through 7-4-9 NMSA 1978 of the Uniform Division of Income for Tax Purposes Act;

G. "secretary" means the secretary of taxation and revenue or a division director delegated by the secretary; and

H. "state" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

History: 1953 Comp., § 72-15A-17, enacted by Laws 1965, ch. 203, § 2; 1986, ch. 20, § 55; 1999, ch. 47, § 7.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, in Subsection A inserted "income from the disposition or liquidation of a business or segment of a business. 'Business income'" and made minor stylistic changes.

Applicability. - Laws 1999, ch. 47, § 10 makes the provisions of Sections 2, 3, 4, 6 and 7 of the act applicable to the 1999 and subsequent taxable years.

Fairly apportioned tax constitutional. - When the apportioned tax is only on that portion of taxpayer's income that fairly represents the extent of taxpayer's business activities in this state, tax is not violative of the due process or commerce clauses of the federal constitution. Tipperary Corp. v. New Mexico Bureau of Revenue, 93 N.M. 22, 595 P.2d 1212 (Ct. App.), cert. denied, 92 N.M. 675, 593 P.2d 1078 (1979).

"Transactions and activity in the regular course of the taxpayer's trade or business" means business deals and the performance of a specific function in the normal, typical, customary or accustomed policy or procedure of the taxpayer's trade or business. Champion Int'l Corp. v. Bureau of Revenue, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975); Tipperary Corp. v. New Mexico Bureau of Revenue, 93 N.M. 22, 595 P.2d 1212 (Ct. App.), cert. denied, 92 N.M. 675, 593 P.2d 1078 (1979).

All income of business organization is not "business income"; business income must arise from the regular course of business. Tipperary Corp. v. New Mexico Bureau of Revenue, 93 N.M. 22, 595 P.2d 1212 (Ct. App.), cert. denied, 92 N.M. 675, 593 P.2d 1078 (1979).

Business income must arise from such transactions. - To constitute business income the income must arise from transactions and activity in the regular course of a trade or business. McVean & Barlow, Inc. v. New Mexico Bureau of Revenue, 88 N.M. 521, 543 P.2d 489 (Ct. App.), cert. denied, 89 N.M. 6, 546 P.2d 71 (1975).

Factors pertinent in determining if income is business income. - Pertinent in determining whether income arises from transactions in the regular course of business is the nature of the particular transaction and former practices of the business entity; also pertinent is how the income is used. Champion Int'l Corp. v. Bureau of Revenue, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975); Tipperary Corp. v. New Mexico Bureau of Revenue, 93 N.M. 22, 595 P.2d 1212 (Ct. App.), cert. denied, 92 N.M. 675, 593 P.2d 1078 (1979).

The use to which a multistate corporation put its investment income was determinative of whether it was business income. Champion Int'l Corp. v. Bureau of Revenue, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975).

Use to which income is put determines whether it is business income. Tipperary Corp. v. New Mexico Bureau of Revenue, 93 N.M. 22, 595 P.2d 1212 (Ct. App.), cert. denied, 92 N.M. 675, 593 P.2d 1078 (1979).

Taxation of dividends from foreign subsidiary. - As relevant to the right of a state to tax dividends from foreign subsidiaries, due process requires that the income attributed to a state for tax purposes be rationally related to values connected with the taxing state. F.W. Woolworth Co. v. Taxation & Revenue Dep't, 458 U.S. 354, 102 S. Ct. 3128, 73 L. Ed. 2d 819, rehearing denied, 459 U.S. 961, 103 S. Ct. 274, 74 L. Ed. 2d 213 (1982).

As to a foreign tax credit arising from the taxation by foreign nations of a corporation's foreign subsidiaries that had no unitary business relationship with the state, efforts by the state to tax this income "deemed received" - with respect to which the state contributed nothing - were held to contravene the due process clause. F.W. Woolworth Co. v. Taxation & Revenue Dep't, 458 U.S. 354, 102 S. Ct. 3128, 73 L. Ed. 2d 819, rehearing denied, 459 U.S. 961, 103 S. Ct. 274, 74 L. Ed. 2d 213 (1982).

Underlying unitary business required. - The linchpin of apportionability for state income taxation of an interstate enterprise is the unitary-business principle. F.W. Woolworth Co. v. Taxation & Revenue Dep't, 458 U.S. 354, 102 S. Ct. 3128, 73 L. Ed. 2d 819, rehearing denied, 459 U.S. 961, 103 S. Ct. 274, 74 L. Ed. 2d 213 (1982).

The potential to operate a company as part of a unitary business is not dispositive when, looking at the underlying economic realities of a unitary business, the dividend income from subsidiaries in fact is derived from unrelated business activity which constitutes a discrete business enterprise. F.W. Woolworth Co. v. Taxation & Revenue Dep't, 458 U.S. 354, 102 S. Ct. 3128, 73 L. Ed. 2d 819, rehearing denied, 459 U.S. 961, 103 S. Ct. 274, 74 L. Ed. 2d 213 (1982).

When, except for the type of occasional oversight - with respect to capital structure, major debt, and dividends - that any parent gives to an investment in a subsidiary, there is little or no integration of business activities or centralization of management of the parent company and its foreign subsidiaries, there is no underlying unitary business that would justify the state's taxing of dividends from the foreign subsidiaries. F.W. Woolworth Co. v. Taxation & Revenue Dep't, 458 U.S. 354, 102 S. Ct. 3128, 73 L. Ed. 2d 819, rehearing denied, 459 U.S. 961, 103 S. Ct. 274, 74 L. Ed. 2d 213 (1982).

Multistate business may be unitary or independent. - A multistate business is a "unitary business" for income tax purposes when operations conducted in one state benefit and are in turn benefited by operations in another state, and if its various parts are interdependent and of mutual benefit so as to form one integral business rather than several business entities, it is unitary. On the other hand, if a multistate business enterprise is conducted in a way that one, some or all of the business operations outside New Mexico are independent of and do not contribute to the business operations within this state, the factors attributable to the outside activity may be excluded. Champion Int'l Corp. v. Bureau of Revenue, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975).

Taxpayer must show business independent to exclude income. - Where a multistate corporation challenged commissioner's allocation of certain interest, rent and gains to business income, but failed to produce evidence that its business activity outside of New Mexico was dependent or independent of its instate operations, or that the interest, rent and gains income was not an integral part of its business carried on in this state, no question was raised whether any of its income was nonbusiness income because there was no evidence that its activities were not part of a unitary business, and therefore the assessed additional corporate income tax was affirmed. Champion Int'l Corp. v. Bureau of Revenue, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975).

Short-term investment income held business income. - Since a multistate corporation derived interest income from capital earned in its business, rather than having a large cash balance in the bank, purchasing short-term investments and highly liquid assets from which the interest was derived, money from which short-term investments was needed for future business activity, such investment was a specific function of the corporation, and that it was usual and customary in the corporation's business to follow this practice, whenever there was enough money or business income that was not immediately needed in the business, and therefore the investment income was business income. Champion Int'l Corp. v. Bureau of Revenue, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975).

Rent of part of office space held business income. - Although a multistate corporate taxpayer claimed that income derived from rent of 5% of its total office space was not "business income" because it was not in the business of renting real estate, the most reasonable inference to be drawn from the record is that rental of available office space was a customary procedure, done in the regular course of the taxpayer's business, and since there was no evidence in the record to contradict this inference, the rental income

was held to be "business income." Champion Int'l Corp. v. Bureau of Revenue, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975).

Income from sale of telephone poles by paper company held business income. - Since a multistate corporation manufactured wood and paper products from timber on land owned or leased by it, and sold some of its logs to telephone utilities for use as telephone poles and the sale of logs was a normal, customary procedure in the taxpayer's business for the year in question and had been for several years, the income arising therefrom was income arising from transactions and activity in the regular course of the taxpayer's trade or business. Champion Int'l Corp. v. Bureau of Revenue, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975).

When coal lease sale in regular course of business. - Since taxpayer is in the business of exploration and development of oil, gas and minerals, the sale of the coal leases is in the regular course of this business. Tipperary Corp. v. New Mexico Bureau of Revenue, 93 N.M. 22, 595 P.2d 1212 (Ct. App.), cert. denied, 92 N.M. 675, 593 P.2d 1078 (1979).

Coal lease sale taxable. - Since taxpayer's business is unitary and since a gain from the sale of its coal leases is business income under Subsection A of this section, this state can tax a percentage of this income. Tipperary Corp. v. New Mexico Bureau of Revenue, 93 N.M. 22, 595 P.2d 1212 (Ct. App.), cert. denied, 92 N.M. 675, 593 P.2d 1078 (1979).

Income from coal dragline leases held business income. - Oil company's income from its dragline leases was business income because the leases generated substantial capital for the company's general business purposes, and the leases were ongoing, recurring transactions constituting a regular or customary portion of company's overall business, which contributed to the company's economic enterprise as a whole. Kewanee Indus., Inc. v. Reese, 114 N.M. 784, 845 P.2d 1238 (1993).

Income from liquidation of part of business held not business income. - Since the taxpayer was not in the business of buying and selling pipeline equipment and the transaction in question was a partial liquidation of taxpayer's business and a total cessation and liquidation of one facet of the business, the sale of equipment did not constitute an integral part of the regular trade or business operations of taxpayer and the proceeds thereof were not business income. McVean & Barlow, Inc. v. New Mexico Bureau of Revenue, 88 N.M. 521, 543 P.2d 489 (Ct. App.), cert. denied, 89 N.M. 6, 546 P.2d 71 (1975).

7-4-3. Allocation and apportionment of income in general.

Except as otherwise provided by law any taxpayer having income which is taxable both within and without this state, other than the rendering of purely personal services by an individual shall allocate and apportion his net income as provided in the Uniform Division of Income for Tax Purposes Act [this article].

History: 1953 Comp., § 72-15A-18, enacted by Laws 1965, ch. 203, § 3; 1981, ch. 37, § 48.

ANNOTATIONS

Cross references. - For income allocation and apportionment, see 7-2-11 NMSA 1978.

For Multistate Tax Compact, see 7-5-1 to 7-5-7 NMSA 1978.

Constitutionality of apportionment. - The United States Constitution does not impose any single method of apportionment on a multistate or multinational taxpayer's income. NCR Corp. v. Taxation & Revenue Dep't, 115 N.M. 612, 856 P.2d 982 (Ct. App. 1993), cert. denied, 512 U.S. 1245, 114 S. Ct. 2763, 129 L. Ed. 2d 877 (1994).

Factors pertinent in determining if income is business income. - Pertinent in determining whether income arises from transactions in the regular course of business is the nature of the particular transaction and former practices of the business entity; also pertinent is how the income is used. Champion Int'l Corp. v. Bureau of Revenue, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975)(specially concurring opinion).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 394, 456, 483, 491 to 493, 569 to 577, 581.

85 C.J.S. Taxation §§ 1090, 1093, 1096, 1099, 1103.

7-4-4. When taxable in another state.

For purposes of allocation and apportionment of income under the Uniform Division of Income for Tax Purposes Act [this article], a taxpayer is taxable in another state if:

A. in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax; or

B. that state has jurisdiction to subject the taxpayer to a net income tax, regardless of whether the state does or does not.

History: 1953 Comp., § 72-15A-19, enacted by Laws 1965, ch. 203, § 4.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 471, 542.

What suits at domicile of corporation involving corporate stock or rights and obligations incident thereto are in rem, jurisdiction in which may rest upon constructive service of process against nonresidents, 145 A.L.R. 1393.

Income tax on nonresident or on foreign corporation, 156 A.L.R. 1370.

84 C.J.S. Taxation §§ 28, 51, 66, 78, 121, 134; 85 C.J.S. Taxation §§ 1089, 1092, 1096.

7-4-5. Allocation of certain nonbusiness income.

Rents and royalties from real or tangible personal property, capital gains, interest, dividends, or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in Sections 6 through 9 [7-4-6 to 7-4-9 NMSA 1978] of the Uniform Division of Income for Tax Purposes Act.

History: 1953 Comp., § 72-15A-20, enacted by Laws 1965, ch. 203, § 5.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 195, 196, 365, 554, 572, 574, 659.

84 C.J.S. Taxation §§ 66, 78, 85, 108, 120; 85 C.J.S. Taxation §§ 809, 1097, 1103.

7-4-6. Allocation of rents and royalties.

A. Net rents and royalties from real property located in this state are allocable to this state.

B. Net rents and royalties from tangible personal property are allocable to this state:

(1) if and to the extent that the property is utilized in this state; or

(2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

C. The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

History: 1953 Comp., § 72-15A-21, enacted by Laws 1965, ch. 203, § 6.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 190, 195, 196, 264, 265, 658 to 665.

Solid mineral royalty as real or personal property, 68 A.L.R.2d 728.

Effect of § 26 of Uniform Partnership Act as converting realty into personalty, 80 A.L.R.2d 1107.

84 C.J.S. Taxation §§ 66, 67, 78.

7-4-7. Allocation of capital gains and losses.

A. Capital gains and losses from sales of real property located in this state are allocable to this state.

B. Capital gains and losses from sales of tangible personal property are allocable to this state if:

(1) the property had a situs in this state at the time of the sale; or

(2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

C. Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

History: 1953 Comp., § 72-15A-22, enacted by Laws 1965, ch. 203, § 7.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 553 to 556.

Capital gain or loss on failure to exercise an option or privilege, 36 A.L.R.2d 1391.

Modern views as to capital gains or ordinary income treatment of profit on sale of subdivided realty which is asserted to be "capital asset" under § 1221 of the Internal Revenue Code of 1954 (26 USCS § 1221), 45 A.L.R. Fed. 292.

84 C.J.S. Taxation §§ 5, 107, 110, 111, 112 to 120, 130, 186, 190, 193, 335; 85 C.J.S. Taxation §§ 1097 to 1099.

7-4-8. Allocation of interest and dividends.

Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

History: 1953 Comp., § 72-15A-23, enacted by Laws 1965, ch. 203, § 8.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 664, 665, 667, 677, 680.

84 C.J.S. Taxation §§ 186, 190, 193.

7-4-9. Allocation of patent and copyright royalties.

A. Patent and copyright royalties are allocable to this state:

(1) if and to the extent that the patent or copyright is utilized by the payer in this state; or

(2) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

B. A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

C. A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

History: 1953 Comp., § 72-15A-24, enacted by Laws 1965, ch. 203, § 9.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 664, 665, 667, 677, 680.

Power of state to tax royalties from patents, 55 A.L.R. 931.

84 C.J.S. Taxation §§ 186, 190, 193.

7-4-10. Apportionment of business income. (Effective until January 1, 2003.)

A. To encourage investment and employment in this state by manufacturers who do not anticipate substantial sales revenue within this state, each taxpayer whose principal

business activity is manufacturing may elect to have business income apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus twice the sales factor and the denominator of which is four. To elect the method of apportionment provided by this subsection, the taxpayer shall notify the department of the election, in writing, no later than the date on which the taxpayer files the return for the first taxable year to which the election will apply. The election will apply to that taxable year and to each taxable year thereafter until the taxpayer notifies the department, in writing, that the election is terminated, except that the taxpayer shall not terminate the election until the method of apportioning business income provided by this subsection has been used by the taxpayer for at least three consecutive taxable years, including a total of at least thirty-six calendar months. Notwithstanding any provisions of this subsection to the contrary, the taxpayer shall use the method of apportionment provided by Subsection B of this section for the taxable year unless:

(1) the taxpayer's corporate income tax liability for the taxable year, computed by the same method of apportionment used in the preceding taxable year, exceeds the corporate income tax liability for the taxpayer's immediately preceding taxable year; or

(2) the sum of the taxpayer's payroll factor and property factor for the taxable year exceeds the sum of the taxpayer's payroll factor and property factor for the taxpayer's base year. For purposes of this paragraph, "base year" means the taxpayer's first taxable year beginning on or after January 1, 1991.

B. Each taxpayer whose principal business activity is not manufacturing and each taxpayer whose principal business activity is manufacturing but who has not made the election provided in Subsection A of this section or has terminated such an election in accordance with the provisions of Subsection A of this section shall apportion business income 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.

C. For purposes of this section, "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but does not include:

(1) construction;

(2) farming;

(3) power generation; or

(4) processing natural resources, including hydrocarbons.

History: 1978 Comp., § 7-4-10, enacted by Laws 1993, ch. 153, § 1.

ANNOTATIONS

Repeals and reenactments. - Laws 1993, ch. 153, § 1, repeals 7-4-10 NMSA 1978, as enacted by Laws 1985, ch. 203, § 10, and enacts the above section, effective June 18, 1993.

Applicability. - Laws 1993, ch. 153, § 3 makes the provisions of the act applicable to taxable years beginning on and after January 1, 1995.

Compiler's notes. - Laws 1999, ch. 35, § 1, repeals and reenacts 7-4-10 NMSA 1978, as enacted by Laws 1993, ch. 153, § 1, effective January 1, 2003.

Constitutionality of apportionment. - The United States Constitution does not impose any single method of apportionment on a multistate or multinational taxpayer's income. NCR Corp. v. Taxation & Revenue Dep't, 115 N.M. 612, 856 P.2d 982 (Ct. App. 1993), cert. denied, 512 U.S. 1245, 114 S. Ct. 2763, 129 L. Ed. 2d 877 (1994).

Constitutionality of formula applied to taxation of dividends received from foreign subsidiaries. - Taxation of dividends from foreign subsidiaries under the separate corporate entity method violates the commerce clause of the United States Constitution, and application of the *Detroit* formula is an insufficient remedy. Conoco, Inc. v. Taxation & Revenue Dep't, 1997-NMSC-005, 122 N.M. 736, 931 P.2d 730 (1996), cert. denied, 521 U.S. 1112, 117 S. Ct. 2497, 138 L. Ed. 2d 1003 (1997) (reversing *Conoco, Inc. v. Taxation & Revenue Dep't,* 122N.M. 745, 931 P.2d 739 (1995)).

Standard for challenge of apportionment. - A taxpayer seeking to invalidate a state's apportionment formula must show by clear and cogent evidence that the income attributed to the state is in fact disproportionate to the business transacted in that state. NCR Corp. v. Taxation & Revenue Dep't, 115 N.M. 612, 856 P.2d 982 (Ct. App. 1993), cert. denied, 512 U.S. 1245, 114 S. Ct. 2763, 129 L. Ed. 2d 877 (1994).

Apportionment of multinational income. - Under this statutory formula, the income attributable to the state is determined by multiplying the taxpayer's gross income by a fraction which represents the ratio of sales, payroll, and property located in the state to the total sales, payroll, and property of the corporation. This does not violate the Foreign Commerce Clause of the U.S. Constitution by taxing foreign income because the tax in question is not a tax on any of the domestic corporation's foreign subsidiaries; instead, the tax falls upon an apportioned share of the domestic corporation's income which it receives in the form of royalties, interest, and dividends from its unitary foreign subsidiaries. The fact that the tax is apportioned in part upon the domestic corporation's foreign income sources does not constitute a bar to state taxation. NCR Corp. v. Taxation & Revenue Dep't, 115 N.M. 612, 856 P.2d 982 (Ct. App. 1993), cert. denied, 512 U.S. 1245, 114 S. Ct. 2763, 129 L. Ed. 2d 877 (1994).

Taxation of undistributed earnings. - Because its subsidiaries with Subpart F income remain part of the parent's unitary business and the federal government requires

inclusion of the parent's Subpart F income in gross income, under the unitary business principle, the state assessments in question here do not violate the United States or New Mexico Constitutions, are fairly apportioned, and tax a fair portion of such income even though some of the income is undistributed subsidiary earnings. NCR Corp. v. Taxation & Revenue Dep't, 115 N.M. 612, 856 P.2d 982 (Ct. App. 1993), cert. denied, 512 U.S. 1245, 114 S. Ct. 2763, 129 L. Ed. 2d 877 (1994).

7-4-10. Apportionment of business income. (Effective January 1, 2003.)

All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor and the denominator of which is three.

History: 1978 Comp., § 7-4-10, enacted by Laws 1999, ch. 35, § 1.

ANNOTATIONS

Repeals and reenactments. - Laws 1999, ch. 35, § 1 repeals and reenacts 7-4-10 NMSA 1978, as enacted by Laws 1993, ch. 153, § 1, and enacts the above section, effective January 1, 2003. For the version effective until January 1, 2003, see the 1998 Replacement Pamphlet.

Applicability. - Laws 1999, ch. 35, § 3 makes the provisions of § 1 of the act applicable to taxable years beginning on or after January 1, 2003.

7-4-11. Property factor for apportionment of business income.

The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

History: 1953 Comp., § 72-15A-26, enacted by Laws 1965, ch. 203, § 11.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 190, 202, 208, 218, 220, 658 to 665.

Situs as between different states or countries of tangible chattels for purposes of property taxation, 110 A.L.R. 707.

84 C.J.S. Taxation §§ 66, 67, 78, 112 to 115, 130, 316.

7-4-12. Valuation of property for inclusion in property factor.

Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rate is the annual rental paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

History: 1953 Comp., § 72-15A-27, enacted by Laws 1965, ch. 203, § 12.

7-4-13. Determination of average value of property for inclusion in property factor.

The average value of property shall be determined by averaging the values at the beginning and ending of the tax period, but the department may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

History: 1953 Comp., § 72-15A-28, enacted by Laws 1965, ch. 203, § 13; 1986, ch. 20, § 56.

7-4-14. Payroll factor for apportionment of business income.

The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

History: 1953 Comp., § 72-15A-29, enacted by Laws 1965, ch. 203, § 14.

7-4-15. Determination of compensation for inclusion in payroll factor.

Compensation is paid in this state if:

A. the individual's service is performed entirely within the state; or

B. the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

C. some of the service is performed in the state and:

(1) the base of operations, or, if there is no base of operations, the place from which the service is directed or controlled is in the state; or

(2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

History: 1953 Comp., § 72-15A-30, enacted by Laws 1965, ch. 203, § 15.

7-4-16. Sales factor for apportionment of business income.

The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

History: 1953 Comp., § 72-15A-31, enacted by Laws 1965, ch. 203, § 16.

7-4-17. Determination of sales in this state of tangible personal property for inclusion in sales factor.

Sales of tangible personal property are in this state if:

A. the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

B. the property is shipped from an office, store, warehouse, factory or other place of storage in this state and:

(1) the purchaser is the United States government; or

(2) the taxpayer is not taxable in the state of the purchaser.

History: 1953 Comp., § 72-15A-32, enacted by Laws 1965, ch. 203, § 17.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 195, 196.

84 C.J.S. Taxation §§ 66, 67, 78, 112 to 115, 130, 316.

7-4-18. Determination of sales in this state of other than tangible personal property for inclusion in sales factor.

Sales, other than sales of tangible personal property, are in this state if:

A. the income-producing activity is performed in this state; or

B. the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

History: 1953 Comp., § 72-15A-33, enacted by Laws 1965, ch. 203, § 18.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 195, 196.

84 C.J.S. Taxation §§ 66, 67, 78, 112 to 115, 130, 316.

7-4-19. Equitable adjustment of standard allocation or apportionment.

If the allocation and apportionment provisions of the Uniform Division of Income for Tax Purposes Act [this article] do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for, or the department may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

A. separate accounting;

B. the exclusion of any one or more of the factors;

C. the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

D. the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

History: 1953 Comp., § 72-15A-34, enacted by Laws 1965, ch. 203, § 19; 1977, ch. 249, § 46; 1986, ch. 20, § 57.

ANNOTATIONS

Taxpayer's burden to show when modification of formula necessary. - Since there was nothing arbitrary or unreasonable about the department's conclusion that dividend income is apportionable without modification of the allocation and apportionment formula, the taxpayer bears the burden of showing by clear and cogent evidence that modification of the formula is necessary. Taxation & Revenue Dep't v. F.W. Woolworth Co. 95 N.M. 519, 624 P.2d 28 (1981), rev'd on other grounds, 458 U.S. 354, 102 S. Ct. 3128, 73 L. Ed. 2d 819, rehearing denied, 459 U.S. 961, 103 S. Ct. 274, 74 L. Ed. 2d 213 (1982).

7-4-20. Agreements authorized in unusual cases.

In circumstances within the scope of Section 7-4-19 NMSA 1978 and in other circumstances where the revenues of this state would not be adversely affected, the secretary is authorized to enter into an agreement in writing with any person with respect to apportionment and allocation of that person's income. Except upon a showing of fraud or misrepresentation of a material fact or a change in the statutory law, such agreement shall be conclusive. Any agreement, however, may be terminated by either party by written notice thereof to the other party at least ninety days before the beginning of the taxable year to which the termination applies.

History: 1953 Comp., § 72-15A-35, enacted by Laws 1965, ch. 203, § 20; 1981, ch. 37, § 49; 1986, ch. 20, § 58.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 7, 597; 72 Am. Jur. 2d State and Local Taxation § 833.

7-4-21. Construction of act.

The Uniform Division of Income for Tax Purposes Act [this article] shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

History: 1953 Comp., § 72-15A-36, enacted by Laws 1965, ch. 203, § 21.

ARTICLE 5
MULTISTATE TAX COMPACT

7-5-1. Compact enacted and entered into.

The "Multistate Tax Compact" is enacted into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

"MULTISTATE TAX COMPACT

Article I. Purposes.

The purposes of this compact are to:

1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.

2. Promote uniformity or compatibility in significant components of tax systems.

3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.

4. Avoid duplicative taxation.

Article II. Definitions.

As used in this compact:

1. "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, or any territory or possession of the United States.

2. "Subdivision" means any governmental unit or special district of a state.

3. "Taxpayer" means any corporation, partnership, firm, association, governmental unit or agency or person acting as a business entity in more than one state.

4. "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.

5. "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety.

6. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.

7. "Sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by state or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.

8. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property and (b) is complementary to a sales tax.

9. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of Articles

III, IV and V of this compact shall apply only to the taxes specifically designated therein and the provisions of Article IX of this compact shall apply only in respect to determinations pursuant to Article IV.

Article III. Elements of Income Tax Laws.

Taxpayer Option, State and Local Taxes.

1. Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate his income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with Article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this paragraph, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein Article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.

Taxpayer Option, Short Form.

2. Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of $100,000 may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The multistate tax commission, not more than once in five years, may adjust the $100,000 figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the commission, shall replace the $100,000 figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this paragraph.

Coverage.

3. Nothing in this Article relates to the reporting or payment of any tax other than an income tax.

Article IV. Division of Income.

1. As used in this Article, unless the context otherwise requires:

(a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

(b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.

(d) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company.

(e) "Nonbusiness income" means all income other than business income.

(f) "Public utility" means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipeline, or the production, transmission, sale, delivery, or furnishing of electricity, water or steam; and (2) whose rates of charges for goods or services have been established or approved by a federal, state or local government or governmental agency.

(g) "Sales" means all gross receipts of the taxpayer not allocated under paragraphs of this Article.

(h) "State" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

(i) "This state" means the state in which the relevant tax return is filed or, in the case of application of this Article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

2. Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this Article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of his income from activities subject to this Article, the taxpayer may elect to allocate and apportion his entire net income as provided in this Article.

3. For purposes of allocation and apportionment of income under this Article, a taxpayer is taxable in another state if (1) in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (2) that state has jurisdication [jurisdiction] to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

4. Rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs 5 through 8 of this Article.

5. (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state: (1) if and to the extent that the property is utilized in this state, or (2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

6. (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if (1) the property had a situs in this state at the time of the sale, or (2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this state if the taxpayer's commercial domicile is in this state.

7. Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

8. (a) Patent and copyright royalties are allocable to this state: (1) if and to the extent that the patent or copyright is utilized by the payer in this state, or (2) if and to the extent

that the patent [or] copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

9. All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

10. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

11. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

12. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

13. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

14. Compensation is paid in this state if:

(a) the individual's service is performed entirely within the state;

(b) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

15. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

16. Sales of tangible personal property are in this state if:

(a) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory or other place of storage in this state and (1) the purchaser is the United States government or (2) the taxpayer is not taxable in the state of the purchaser.

17. Sales, other than sales of tangible personal property, are in this state if:

(a) the income-producing activity is performed in this state; or

(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

18. If the allocation and apportionment provisions of this Article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) separate accounting;

(b) the exclusion of any one or more of the factors;

(c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

(d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

Article V. Elements of Sales and Use Tax Laws.

Tax Credit.

1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

Exemption Certificates, Vendors May Rely.

2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

Article VI. The Commission.

Organization and Management.

1. (a) The multistate tax commission is hereby established. It shall be composed of one "member" from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or his designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under paragraph 1(e) of this Article.

(b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

(c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

(d) The commission shall adopt an official seal to be used as it may provide.

(e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular and special meetings. Notices of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) The commission shall elect annually, from among its members, a chairman, a vice chairman and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix his duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(g) Irrespective of the civil service, personnel or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

(h) The commission may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental entity.

(i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

(j) The commission may establish one or more offices for the transacting of its business.

(k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.

(l) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

Committees.

2. (a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the chairman, vice chairman, treasurer and four other members elected annually by the commission. The executive committee, subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

(b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including

problems of special interest to any party state and problems dealing with particular types of taxes.

(c) The commission may establish such additional committees as its bylaws may provide.

Powers.

3. In addition to powers conferred elsewhere in this compact, the commission shall have power to:

(a) Study state and local tax systems and particular types of state and local taxes.

(b) Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration.

(c) Compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws.

(d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

Finance.

4. (a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this paragraph.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under paragraph (1)(i) of this Article: provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under paragraph 1(i),

the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained in this Article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VII. Uniform Regulations and Forms.

1. Whenever any two or more party states, or subdivisions of party states, have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax, sales or use tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms. The commission may also act with respect to the provisions of Article IV of this compact.

2. Prior to the adoption of any regulation, the commission shall:

(a) As provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings.

(b) Afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.

3. The commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

Article VIII. Interstate Audits.

1. This Article shall be in force only in those party states that specifically provide therefor by statute.

2. Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.

3. The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, he may be required to attend for such purpose at any time and place fixed by the commission within the state of which he is a resident; provided that such state has adopted this Article.

4. The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this Article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this paragraph apply only to courts in a state that has adopted this Article.

5. The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.

6. Information obtained by any audit pursuant to this Article shall be confidential and available only for tax purposes to party states, their subdivisions or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this Article

shall be construed to require any taxpayer to keep records for any period not otherwise required by law.

7. Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this Article.

8. In no event shall the commission make any charge against a taxpayer for an audit.

9. As used in this Article, "tax," in addition to the meaning ascribed to it in Article II, means any tax or license fee imposed in whole or in part for revenue purposes.

Article IX. Arbitration.

1. Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this Article in effect, notwithstanding the provisions of Article VII.

2. The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.

3. Whenever a taxpayer who has elected to employ Article IV, or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of Article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be affected, may secure arbitration of an apportionment or allocation, if he is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject him to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.

4. The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this paragraph shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if he is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residence within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this paragraph.

5. The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

6. The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.

7. The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoena, and the court may punish failure to obey the order as a contempt. The provisions of this paragraph apply only in states that have adopted this Article.

8. Unless the parties otherwise agree the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless he is required on account of his service to forego the regular compensation attaching to his public employment, but any such board member shall be entitled to expenses.

9. The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for the purposes of making the apportionment or allocation, but for no other purpose.

10. The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board; the board's written statement of its reasons therefor; the record of the board's proceedings; and any other documents required by the arbitration rules of the commission to be filed.

11. The commission shall publish the determinations of boards together with the statements of the reasons therefor.

12. The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

13. Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceeding.

Article X. Entry Into Force and Withdrawal.

1. This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.

2. Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

3. No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

Article XI. Effect on Other Laws and Jurisdiction.

Nothing in this compact shall be construed to:

(a) Affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement Article III 2 of this compact.

(b) Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax; provided that the definition of "tax" in Article VIII 9 may apply for the purposes of that Article and the commission's powers of study and recommendation pursuant to Article VI 3 may apply.

(c) Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.

(d) Supersede or limit the jurisdiction of any court of the United States.

Article XII. Construction and Severability.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or

circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters."

History: 1953 Comp., § 72-15A-37, enacted by Laws 1967, ch. 56, § 1.

ANNOTATIONS

Cross references. - For income allocation and apportionment, see 7-2-11 NMSA 1978.

For Uniform Division of Income for Tax Purposes Act, see Chapter 7, Article 4 NMSA 1978.

For taxpayer option to elect alternative tax pursuant to Article III 2, see 7-5-2 NMSA 1978.

For applicability of Article VIII as to interstate audits, see 7-5-7 NMSA 1978.

For filing rules, see 14-4-3 NMSA 1978.

MTC certificates. - Mere possession of a New Mexico taxpayer identification number by a foreign purchaser does not automatically preclude a seller from ever accepting a Multistate Tax Commission (MTC) certificate from such purchaser in good faith. Siemens Energy & Automation, Inc. v. New Mexico Taxation & Revenue Dep't, 119 N.M. 316, 889 P.2d 1238 (Ct. App. 1994).

Gross receipts and foreign taxpayers. - The mere possession of a New Mexico registration number by a foreign taxpayer does not mean that the taxpayer is registered with New Mexico for gross receipts tax purposes; the possession of a New Mexico taxpayer identification number did not mean that the taxpayer acknowledged that a nexus existed with respect to its activities in New Mexico for gross receipts tax purposes. Siemens Energy & Automation, Inc. v. New Mexico Taxation & Revenue Dep't, 119 N.M. 316, 889 P.2d 1238 (Ct. App. 1994).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 456, 569 to 577.

85 Am. Jur. 2d Taxation §§ 1090, 1093, 1096, 1099, 1103.

7-5-2. Election of alternative tax.

Any person:

A. who is required by the Income Tax Act [Chapter 7, Article 2 NMSA 1978] or the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] to file a return;

B. whose only activities in New Mexico consist of making sales;

C. who does not own or rent real estate within the state of New Mexico; and

D. whose annual gross sales in or into New Mexico amount to not more than one hundred thousand dollars ($100,000)

may elect to pay a tax of three-fourths of one percent of his annual gross receipts derived from sales in or into New Mexico in lieu of paying an income tax.

History: 1953 Comp., § 72-15A-38, enacted by Laws 1967, ch. 56, § 2; 1971, ch. 20, § 4; 1981, ch. 37, § 50; 1987, ch. 277, § 6.

ANNOTATIONS

Cross references. - For compact provisions relating to alternative tax, see Article III 2 of 7-5-1 NMSA 1978.

7-5-3. Appointment of multistate tax commission member.

The governor shall appoint the member of the multistate tax commission to represent New Mexico from among the persons made eligible by Article VI 1(a) of the compact [7-5-1 NMSA 1978].

History: 1953 Comp., § 72-15A-39, enacted by Laws 1967, ch. 56, § 3.

7-5-4. Alternate designated by commissioner.

The member representing New Mexico on the multistate tax commission may be represented thereon by an alternate designated by him. Any such alternate shall be a principal deputy or assistant of the member of the commission in the agency which the member heads.

History: 1953 Comp., § 72-15A-40, enacted by Laws 1967, ch. 56, § 4.

7-5-5. Counsel to be designated.

The member of the commission for New Mexico shall designate either the attorney general, one of the attorney general's assistants, or special counsel working for the agency of which the member is head, as his counsel in respect to his functions as a member of the multistate tax commission.

History: 1953 Comp., § 72-15A-41, enacted by Laws 1967, ch. 56, § 5.

ANNOTATIONS

Cross references. - For legal adviser to secretary of taxation and revenue, see 9-11-11 NMSA 1978.

7-5-6. Local government advisers.

The governor, after consultation with representatives of local governments, shall appoint three persons who are representative of subdivisions affected or likely to be affected by the Multistate Tax Compact [7-5-1 NMSA 1978] . The member of the commission representing New Mexico, and any alternate designated by him, shall consult regularly with these appointees, in accordance with Article VI 1(b) of the compact.

History: 1953 Comp., § 72-15A-42, enacted by Laws 1967, ch. 56, § 6.

7-5-7. Interaudits provisions made applicable.

Article VIII of the Multistate Tax Compact relating to interaudits shall be in force in and with respect to New Mexico.

History: 1953 Comp., § 72-15A-44, enacted by Laws 1967, ch. 56, § 8.

ARTICLE 6
BANKING AND FINANCIAL CORPORATIONS TAX

(Repealed by Laws 1981, ch. 37, § 97.)

7-6-1 to 7-6-9. Repealed.

ANNOTATIONS

Repeals. - Laws 1981, ch. 37, § 97, repeals 7-6-1 to 7-6-9 NMSA 1978, relating to the Banking and Financial Corporations Tax Act, effective January 1, 1982. For present provisions relating to corporate income tax, see Chapter 7, Article 2A NMSA 1978.

ARTICLE 7
ESTATE TAX

7-7-1. Short title.

Sections 7-7-1 through 7-7-12 NMSA 1978 may be cited as the "Estate Tax Act".

History: 1953 Comp., § 72-33-1, enacted by Laws 1973, ch. 345, § 1; 1989, ch. 122, § 1.

ANNOTATIONS

Cross references. - For provisions applicable to administration and enforcement, see 7-1-2 and 7-7-10 NMSA 1978.

The 1989 amendment, effective June 16, 1989, substituted "Sections 7-7-1 through 7-7-12 NMSA 1978" for "Sections 1 through 12 of this act".

Construction of tax statutes. - Statutes imposing taxes and providing means for the collection of the same should be construed strictly insofar as they may operate to deprive the citizen of his property by summary proceedings or to impose penalties or forfeitures upon him; but otherwise tax laws ought to be construed with fairness, if not liberality, in order to carry out the intention of the legislature and further the important public interests which such statutes subserve. NBS Corp. v. Valdez, 75 N.M. 379, 405 P.2d 224 (1965).

Law reviews. - For symposium, "Tax Implications of the Equal Rights Amendment," see 3 N.M.L. Rev. 69 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Construction and application of "pay-all-taxes" provision in will, as including liability of nontestamentary property for inheritance and estate taxes, 56 A.L.R.5th 133.

7-7-2. Definitions.

As used in the Estate Tax Act [7-7-1 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.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, substituted "'department'" for "'bureau' or 'department'"at the beginning of Subsection A, and substituted "1986" for "1954" in Subsections E, F, L and M.

Internal Revenue Code. - Sections 2001, 2011, 2031 and 2051 of the United States Internal Revenue Code are codified as 26 U.S.C. §§ 2001, 2011, 2031 and 2051, respectively.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 42 Am. Jur. 2d Inheritance, Estate, and Gift Taxes §§ 16, 20, 21, 168 to 188; 71 Am. Jur. 2d State and Local Taxation §§ 180, 183, 467.

Diverse adjudications, actual or potential, by courts of different states, as to domicile of decedent as regards taxation, probate of will, administration or distribution of estate, 121 A.L.R. 1200.

What passes under term "personal property" in will, 31 A.L.R.5th 499.

85 C.J.S. Taxation §§ 1115, 1116, 1140, 1141.

7-7-3. Residents; tax imposed; credit for tax paid other state.

A. A tax in an amount equal to the federal credit is imposed on the transfer of the net estate of every resident.

B. If any property of a resident is subject to a death tax imposed by another state for which a credit is allowed by Section 2011, and if the tax imposed by the other state is not qualified by a reciprocal provision allowing the property to be taxed in the state of decedent's domicile, the amount of the tax due under this section shall be credited with the lesser of:

(1) the amount of the death tax paid the other state and credited against the federal estate tax; or

(2) an amount computed by multiplying the federal credit by a fraction, the numerator of which is the value of the property subject to the death tax imposed by the other state and the denominator of which is the value of the decedent's gross estate.

History: 1953 Comp., § 72-33-3, enacted by Laws 1973, ch. 345, § 3.

ANNOTATIONS

Meaning of "Section 2011". - See 7-7-2L NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 42 Am. Jur. 2d Inheritance, Estate and Gift Taxes §§ 64, 168, 304.

Review of decisions of United States supreme court since Union Refrigerator Transit Co. v. Kentucky, 199 U.S. 194, 26 S. Ct. 36, 50 L. Ed. 150 (1905), on situs of personal property for purposes of taxation, 123 A.L.R. 179, 139 A.L.R. 1463, 153 A.L.R. 270.

Deductibility from testator's gross estate, under 26 USCS § 2055, of bequests for public, charitable, and religious uses, 46 A.L.R. Fed. 246.

85 C.J.S. Taxation §§ 1115, 1120, 1132, 1138 to 1140, 1187.

7-7-4. Nonresidents; tax imposed; exemption.

A. Tax in an amount computed as provided in this section is imposed on the transfer of the net estate located in New Mexico of every nonresident.

B. The tax shall be computed by multiplying the federal credit by a fraction, the numerator of which is the value of the property located in New Mexico and the denominator of which is the value of the decedent's gross estate.

C. For purposes of this section, the following is included as property located in New Mexico:

(1) debts arising from transactions in, or having a business situs in, New Mexico; and

(2) the securities of any corporation or other entity organized under the laws of New Mexico.

D. The transfer of the personal property of a nonresident is exempt from the tax imposed by this section to the extent that the personal property of residents is exempt from taxation under the laws of the state in which the nonresident is domiciled.

History: 1953 Comp., § 72-33-4, enacted by Laws 1973, ch. 345, § 4; 1999, ch. 47, § 8.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, inserted "personal" in two places in Subsection D.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 42 Am. Jur. 2d Inheritance, Estate and Gift Taxes §§ 3, 7, 60, 63, 66, 288, 304.

Deductibility from testator's gross estate, under 26 USCS § 2055, of bequests for public, charitable, and religious uses, 46 A.L.R. Fed. 246.

85 C.J.S. Taxation §§ 1116, 1123, 1132, 1138, 1141.

7-7-5. Tax return.

The personal representative of every estate subject to the tax imposed by the Estate Tax Act [7-7-1 to 7-7-12 NMSA 1978] who is required by the laws of the United States to file a federal estate tax return shall file with the department on or before the date the federal estate tax return is required to be filed, including any extension of time for filing the federal estate tax return:

A. a return for the taxes due under the Estate Tax Act; and

B. a copy of the federal estate tax return.

History: 1953 Comp., § 72-33-5, enacted by Laws 1973, ch. 345, § 5; 1989, ch. 122, § 3.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, substituted "department" for "bureau" in the undesignated introductory paragraph.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 42 Am. Jur. 2d Inheritance, Estate and Gift Taxes §§ 318 to 322, 327, 335, 342.

85 C.J.S. Taxation §§ 1166, 1169, 1220, 1223.

7-7-6. Date payment due.

The taxes imposed by the Estate Tax Act [7-7-1 to 7-7-12 NMSA 1978] shall be paid by the personal representative on or before the date the return for the taxes is required by Section 7-7-5 NMSA 1978 to be filed.

History: 1953 Comp., § 72-33-6, enacted by Laws 1973, ch. 345, § 6; 1989, ch. 122, § 4.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, substituted "Section 7-7-5 NMSA 1978" for "Section 5 of the Estate Tax Act".

Personal representative is liable for state inheritance tax. Cosby v. Shackelford, 408 F.2d 1144 (10th Cir. 1969)(decided under former statutory provisions).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 42 Am. Jur. 2d Inheritance, Estate and Gift Taxes §§ 318 to 322, 327, 335, 342.

85 C.J.S. Taxation §§ 1166, 1169, 1220, 1223.

7-7-7. Interest on amount due; extension of time to file federal return.

Interest, as provided in the Tax Administration Act [Chapter 7, Article 1 NMSA 1978], shall be paid to the state on the amount of tax due under the Estate Tax Act [7-7-1 to 7-7-12 NMSA 1978], from the first day following the day on which payment of the tax would be due in the absence of an extension of time, until the day paid, whether or not the personal representative is granted an extension of time within which to file the federal estate tax return.

History: 1953 Comp., § 72-33-7, enacted by Laws 1973, ch. 345, § 7.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 42 Am. Jur. 2d Inheritance, Estate and Gift Taxes §§ 318 to 322, 327, 335, 342.

85 C.J.S. Taxation §§ 1166, 1169, 1220, 1223.

7-7-8. Department to file certificate; final settlement of account.

A. Except as otherwise provided in Subsection B of this section, the department shall file a certificate with the clerk of the county in which the estate or any part of it is located when:

(1) no taxes imposed by the Estate Tax Act [7-7-1 to 7-7-12 NMSA 1978] are due; or

(2) the taxes due under the Estate Tax Act have been paid.

B. If the estate is not required to file a federal estate tax return, the filing of a certificate by the department is not required.

C. No court shall allow the final settlement of the account of any personal representative until either a certificate is filed as provided in this section if the estate is required to file a federal estate tax return or the personal representative demonstrates that the estate was not required to file a federal estate tax return.

History: 1953 Comp., § 72-33-8, enacted by Laws 1973, ch. 345, § 8; 1989, ch. 122, § 5.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, substituted "department" for "bureau" in the catchline and in the introductory paragraph of Subsection A; added "Except as otherwise provided in Subsection B of this section," at the beginning of the introductory paragraph of Subsection A; added present Subsection B; and redesignated former Subsection B as present Subsection C, while inserting therein "either" and adding all of the language following "section".

7-7-9. Administration not applied for; application or waiver by the department.

A. If no person interested in the estate of a decedent applies for letters testamentary or of administration within thirty days after the death of the decedent, the department may apply to the probate court having jurisdiction for the appointment of an administrator and after a hearing, the probate court shall appoint an administrator of the estate of the decedent.

B. If the administration of the estate of a decedent is not necessary, the department may waive administration. The department shall not waive administration until the taxes due under the Estate Tax Act [7-7-1 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.

ANNOTATIONS

Cross references. - For court having jurisdiction, see 45-1-303 and 45-3-201 NMSA 1978.

The 1989 amendment, effective June 16, 1989, substituted "the department" for "bureau" in the catchline, and substituted "department" for "bureau" throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 42 Am. Jur. 2d Inheritance, Estate and Gift Taxes §§ 3, 318.

Dispensing with, or revoking grant of, administration of decedent's estate on ground that administration is not necessary, 70 A.L.R. 386.

85 C.J.S. Taxation § 1169.

7-7-10. Administration.

The Estate Tax Act [7-7-1 to 7-7-12 NMSA 1978] shall be administered and enforced as provided in the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

History: 1953 Comp., § 72-33-10, enacted by Laws 1973, ch. 345, § 10.

ANNOTATIONS

Cross references. - For provisions applicable to administration and enforcement, see 7-1-2 NMSA 1978.

7-7-11. Sale of property to pay tax.

A personal representative may sell so much of any property as is necessary to pay the taxes due under the Estate Tax Act [7-7-1 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.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 42 Am. Jur. 2d Inheritance, Estate and Gift Taxes §§ 321, 324.

Rights and liabilities as between sureties on successive bonds given by executor, administrator, trustee or guardian, 76 A.L.R. 904.

Transmission of fund from ancillary to domiciliary jurisdiction, or liability of sureties on bond given in the latter jurisdiction, as affecting liability of sureties on bond given in the former jurisdiction, 78 A.L.R. 575.

Power or discretion of court, after bond of executor, administrator, or testamentary trustee has been given, to dispense with, discontinue, or modify bond, 121 A.L.R. 951.

Liability of executor or administrator to estate because of overpaying or unnecessarily paying tax, 55 A.L.R.3d 785.

7-7-13, 7-7-14. Reserved.

7-7-15. Short title.

Sections 7-7-15 through 7-7-20 NMSA 1978 may be cited as the "Art Acceptance Act".

History: 1978 Comp., § 7-7-15, enacted by Laws 1983, ch. 209, § 1; 1993, ch. 30, § 13.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "Sections 7-7-15 through 7-7-20 NMSA 1978" for "This act".

7-7-16. Definitions.

As used in the Art Acceptance Act [7-7-15 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 of or more works of art shall first obtain an appraisal of the work acceptable to the federal internal revenue service and shall then notify the museum director in writing of the desire to offer the work to the museum. The board shall, within a reasonable period of time and upon the recommendation of the museum director, notify the personal representative and the division in writing as to whether in the judgment of the board it would be advantageous to the state to accept the one or more works of art as payment or partial payment for the estate tax. The board's decision shall be final and not appealable.

B. Acceptance of a work of art shall be deemed advantageous to the state if its acceptance meets the following criteria:

(1) it encourages growth of the museum's collections by the addition of significant and original works of art;

(2) it furthers the preservation and understanding of the arts traditions which exist in New Mexico;

(3) it furthers the appreciation of arts and cultures by the people of New Mexico; or

(4) it is compatible with the standards and collections policies of the museum.

History: 1978 Comp., § 7-7-18, enacted by Laws 1983, ch. 209, § 4.

7-7-19. Agreement on valuation.

A. If the board finds that it would be advantageous for the state to accept payment in one or more works of art as payment or partial payment for the estate tax, the personal representative shall, as a condition of state acceptance of this method of payment, forward a copy of the proposed valuation to the division. The division shall have forty-five days from the date of the notification of the proposed valuation to object to that valuation.

B. If the division objects to the proposed valuation, it shall set forth the objection in writing and forward it to the personal representative. The personal representative may take into account the division's objections and submit a new valuation for the division's approval. If the division rejects the new valuation within forty-five days of its submission,

the state shall be deemed not to accept the proposed method of payment in works of art.

C. If the division does not object to a submitted valuation of a work of art within forty-five days of its submission, the state shall be deemed to have accepted the work of art for the museum collection as complete or partial payment of the estate tax owed and the board shall assume title to that work of art as soon as practicable.

History: 1978 Comp., § 7-7-19, enacted by Laws 1983, ch. 209, § 5.

7-7-20. Credit against tax.

A. Upon assumption of title to a work of art by the board, the department shall credit against the amount owed by the estate the valuation of that work of art as agreed upon under Section 7-7-19 NMSA 1978. In no case shall any credit allowed by the Art Acceptance Act [7-7-15 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 and Recompiled by Laws 1997, ch. 25, § 33.)

7-8-1 to 7-8-40. Repealed and Recompiled.

ANNOTATIONS

Repeals. - Laws 1997, ch. 25, § 33 repeals 7-8-1 to 7-8-20 and 7-8-21 to 7-8-40 NMSA 1978, as enacted or amended by Laws 1989, ch. 293, §§ 1 to 41, Laws 1991, ch. 151, § 1, and Laws 1995, ch. 51, §§ 1 & 2, relating to unclaimed property, effective July 1, 1997. For provisions of former sections, see 1995 Replacement Pamphlet. For present comparable provisions, see Chapter 7, Article 8A NMSA 1978.

Recompilations. - Former 7-8-20.1 NMSA 1978, as enacted by Laws 1990, ch. 98, § 1 and as amended by Laws 1997, ch. 25, § 32, was recompiled as 7-8A-10.1 NMSA 1978 in 1997.

ARTICLE 8A
UNIFORM UNCLAIMED PROPERTY ACT

7-8A-1. Definitions.

As used in the Uniform Unclaimed Property Act (1995) [7-8A-1 to 7-8A-31 [except 7-8A-10.1] NMSA 1978]:

(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 3 [7-8A-3 NMSA 1978] of the Uniform Unclaimed Property Act (1995) 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. 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.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 25, § 34 makes the Uniform Unclaimed Property Act effective on July 1, 1997.

Former Act did not infringe banking laws or burden banks. - There is no unlawful infringement on the national banking laws nor undue burden placed on the performance of the bank's duties by the provisions of the former article. Clovis Nat'l Bank v. Callaway, 69 N.M. 119, 364 P.2d 748 (1961).

State can compel surrender to it of deposit balances which have been abandoned or forgotten. In doing so, constitutional requirements must be met and there must be no violation of national banking laws. Clovis Nat'l Bank v. Callaway, 69 N.M. 119, 364 P.2d 748 (1961).

There must be reasonable notice and opportunity to be heard before ownership can be transferred to the state and the requirements of due process satisfied. Clovis Nat'l Bank v. Callaway, 69 N.M. 119, 364 P.2d 748 (1961).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 1 Am. Jur. 2d Abandoned, Lost, and Unclaimed Property § 1 et seq.; 27 Am. Jur. 2d Escheat §§ 1 to 48.

Validity, construction, and application of lost or abandoned goods statutes, 23 A.L.R.4th 1025.

Modern status of rules as to ownership of treasure trove as between finder and owner of property on which found, 61 A.L.R.4th 1180.

1 C.J.S. Abandonment §§ 1 to 12; 30A C.J.S. Escheat § 1 et seq.

7-8A-2. Presumptions of abandonment.

(a) Property is presumed abandoned if it is unclaimed by the apparent owner during the time set forth below for the particular property:

(1) traveler's check, fifteen years after issuance;

(2) money order, seven years after issuance;

(3) stock or other equity interest in a business association or financial organization, including a security entitlement under Article 8 of the Uniform Commercial Code [Chapter 55, Article 8 NMSA 1978], five years after the earlier of (i) the date of the most recent dividend, stock split, or other distribution unclaimed by the apparent owner, or (ii) 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, three 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), 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:

(i) 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;

(ii) 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;

(iii) the making of a deposit to or withdrawal from a bank account; and

(iv) 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) [7-8A-1 to 7-8A-31 [except 7-8A-10.1] NMSA 1978] 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.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 25, § 34 makes the Uniform Unclaimed Property Act effective on July 1, 1997.

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.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 25, § 34 makes the Uniform Unclaimed Property Act effective on July 1, 1997.

7-8A-4. Rules for taking custody.

Except as otherwise provided in the Uniform Unclaimed Property Act (1995) [7-8A-1 to 7-8A-31 [except 7-8A-10.1] NMSA 1978] 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.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 25, § 34 makes the Uniform Unclaimed Property Act effective on July 1, 1997.

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.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 25, § 34 makes the Uniform Unclaimed Property Act effective on July 1, 1997.

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.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 25, § 34 makes the Uniform Unclaimed Property Act effective on July 1, 1997.

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) [7-8A-1 to 7-8A-31 [except 7-8A-10.1] NMSA 1978].

(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) 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.

(f) 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.

(g) The holder of property presumed abandoned shall file with the report an affidavit stating that the holder has complied with Subsection (e) of this section.

History: Laws 1997, ch. 25, § 7.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 25, § 34 makes the Uniform Unclaimed Property Act effective on July 1, 1997.

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) [7-8A-1 to 7-8A-31 [except 7-8A-10.1] NMSA 1978].

(b) If the property reported to the administrator is a security or security entitlement under Article 8 of the Uniform Commercial Code [Chapter 55, Article 8 NMSA 1978], 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 of the Uniform Unclaimed Property Act (1995).

History: Laws 1997, ch. 25, § 8.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 25, § 34 makes the Uniform Unclaimed Property Act effective on July 1, 1997.

7-8A-9. Notice and publication of lists of abandoned property.

(a) The administrator shall publish a notice not later than November 30 of the year next following the year in which abandoned property has been paid or delivered to the administrator. The notice must be published in a newspaper of general circulation in the county of this state in which is located the last known address of any person named in the notice. If a holder does not report an address for the apparent owner, or the address is outside this state, the notice must be published in the county in which the holder has its principal place of business within this state or another county that the administrator reasonably selects. The advertisement must be in a form that, in the judgment of the administrator, is likely to attract the attention of the apparent owner of the unclaimed property. The form must contain:

(1) the name of each person appearing to be the owner of the property, as set forth in the report filed by the holder;

(2) the last known address or location of each person appearing to be the owner of the property, if an address or location is set forth in the report filed by the holder;

(3) a statement explaining that property of the owner is presumed to be abandoned and has been taken into the protective custody of the administrator; and

(4) a statement that information about the property and its return to the owner is available to a person having a legal or beneficial interest in the property, upon request to the administrator.

(b) The administrator is not required to advertise the name and address or location of an owner of property having a total value less than fifty dollars ($50.00), or information concerning a traveler's check, money order or similar instrument.

History: Laws 1997, ch. 25, § 9.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 25, § 34 makes the Uniform Unclaimed Property Act effective on July 1, 1997.

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) [7-8A-1 to 7-8A-31 [except 7-8A-10.1] NMSA 1978];

(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.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 25, § 34 makes the Uniform Unclaimed Property Act effective on July 1, 1997.

7-8A-10.1. Exercise of due diligence; liability; notice.

A. Notwithstanding any other provisions of the Uniform Unclaimed Property Act (1995) [7-8A-1 to 7-8A-31 [except 7-8A-10.1] NMSA 1978], the holder of unclaimed intangible property in the form of checks in payment of royalty interests, working interests or other interests payable out of oil and gas production with a value of fifty dollars ($50.00) or more who fails to exercise due diligence in attempting to locate the apparent owner of such property during the running of the period specified under Section 2 [7-8A-2 NMSA 1978] of the Uniform Unclaimed Property Act (1995) constituting a presumption of abandonment of such intangible property is subject to payment to the owner if such property is successfully claimed within the time specified by the Uniform Unclaimed Property Act (1995) or to the state of New Mexico upon payment or delivery of the property to the administrator, interest at the annual rate of interest computed as provided in Subsection B of Section 7-1-67 NMSA 1978 on the value of the intangible property, such interest running from the date commencing after the first year in which the property remained unclaimed to the date of payment or delivery.

B. Proof of the exercise of due diligence to locate the apparent owner shall be:

(1) evidence of written notice mailed to the last known address of the apparent owner; and

(2) proof of publication of notice to the apparent owner made between the end of the first year in which the property remained unclaimed and the end of the third year in which the property remained unclaimed. The publication of the notice required by this subsection for property presumed to be abandoned under the provisions of Section 7 [7-8A-7 NMSA 1978] of the Uniform Unclaimed Property Act (1995) shall be made at least thirty days, but not more than ninety days, prior to the due date on which the report of abandoned property is required to be filed.

C. Publication as required in Subsection B of this section consists of publication in a newspaper of general circulation in the county of this state in which is located the last known address of the apparent owner, or if no address is listed or the address is outside the state, in a newspaper published in the county in which the holder of the property has his principal place of business within the state. The notice shall be published at least once a week for two consecutive weeks and shall be entitled:

"NOTICE OF THE NAME OF A PERSON APPEARING TO BE THE OWNER OF ABANDONED PROPERTY".

D. The published notice shall contain:

(1) the name and last known address, if any, of the person entitled to notice as specified in this section;

(2) a statement that information concerning the unclaimed property may be obtained from the holder of the property;

(3) the name and address of the holder of the property; and

(4) a statement that if proof of claim is not presented by the owner to the holder and the owner's right to receive the property is not established to the holder's satisfaction before the expiration of the period specified by the Uniform Unclaimed Property Act (1995) for the presumption of abandonment, the intangible property will be placed in the custody of the state of New Mexico and subject to escheat to the general fund of the state.

E. The provisions of this section shall not apply to the United States or any agency or instrumentality of the United States or to the state of New Mexico or any agency or political subdivision of the state.

F. Any holder of property that has been presumed to be abandoned for more than three years as of January 1, 1990 shall not be presumed to be negligent by the failure to publish a notice in a newspaper of general circulation as required by this section.

History: Laws 1990, ch. 98, § 1; 1978 Comp., § 7-8-20.1, recompiled and amended as 1978 Comp., 7-8A-10.1 by Laws 1997, ch. 25, § 32.

ANNOTATIONS

The 1997 amendment, effective July 1, 1997, inserted "1995" following "Uniform Unclaimed Property Act" twice in Subsection A and in Paragraph D(4), substituted "Section 2 of the Uniform Unclaimed Property Act (1995)" for "Sections 7-8-3 and 7-8-6 through 7-8-16 NMSA 1978" in Subsection A, and substituted "Section 7 of the Uniform Unclaimed Property Act (1995)" for "Sections 7-8-8, 7-8-9, 7-8-11, 7-8-13 and 7-8-15 NMSA 1978" in Paragraph B(2).

Recompilations. - This section was formerly compiled as 7-8-20.1 NMSA 1978 and was recompiled at this location in 1997.

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) [7-8A-1 to 7-8A-31 [except 7-8A-10.1] NMSA 1978], 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.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 25, § 34 makes the Uniform Unclaimed Property Act effective on July 1, 1997.

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 the state 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) [7-8A-1 to 7-8A-31 [except 7-8A-10.1] NMSA 1978] 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.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 25, § 34 makes the Uniform Unclaimed Property Act effective on July 1, 1997.

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 to the general fund of this state all funds received under the Uniform Unclaimed Property Act (1995) [7-8A-1 to 7-8A-31 [except 7-8A-10.1] NMSA 1978], including the proceeds from the sale of abandoned property under Section 12 [7-8A-12 NMSA 1978] of that act. The administrator shall retain in the unclaimed property fund at least one hundred thousand dollars ($100,000) 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.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 25, § 34 makes the Uniform Unclaimed Property Act effective on July 1, 1997.

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) [7-8A-1 to 7-8A-31 [except 7-8A-10.1] NMSA 1978], 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.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 25, § 34 makes the Uniform Unclaimed Property Act effective on July 1, 1997.

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) [7-8A-1 to 7-8A-31 [except 7-8A-10.1] NMSA 1978].

(c) Within thirty days after a claim is allowed, the property or the net proceeds of a sale of the property must be delivered or paid by the administrator to the claimant, together with any dividend, interest or other increment to which the claimant is entitled under Sections 11 and 12 [7-8A-11 and 7-8A-12 NMSA 1978] of the Uniform Unclaimed Property Act (1995).

(d) A holder who pays the owner for property that has been delivered to the state and which, if claimed from the administrator by the owner would be subject to an increment under Sections 11 and 12 of the Uniform Unclaimed Property Act (1995), may recover from the administrator the amount of the increment.

History: Laws 1997, ch. 25, § 15.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 25, § 34 makes the Uniform Unclaimed Property Act effective on July 1, 1997.

7-8A-16. Appeal; action to establish claim.

A. A person aggrieved by a decision of the administrator may file an appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. A person whose claim has not been acted upon within ninety days after its filing may maintain an original action to establish the claim in the district court for the first judicial district, naming the administrator as a defendant.

C. If the aggrieved person establishes the claim in an action against the administrator, the court may award the claimant reasonable attorney fees.

History: Laws 1997, ch. 25, § 16; 1998, ch. 55, § 18; 1999, ch. 265, § 18.

ANNOTATIONS

Cross references. - For appeal of final decisions by agencies to district court, see Section 39-3-1.1 NMSA 1978.

For procedures governing administrative appeals to the district court, see Rule 1-074 NMRA.

The 1998 amendment, effective September 1, 1998, inserted "Appeal;" in the section heading; added the Subsection designations; in Subsection A, inserted "may file an appeal pursuant to the provisions of Section 12-8A-1 NMSA 1978"; inserted "A person" in Subsection B; substituted "attorney" for "attorney's" in Subsection C; and made minor capitalization and stylistic changes.

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection A.

Effective dates. - Laws 1997, ch. 25, § 34 makes the Uniform Unclaimed Property Act effective on July 1, 1997.

Compiler's notes. - For scope of review of the district court, see *Zamora v. Village of Ruidoso Downs,* 120 N.M. 778, 907 P.2d 182 (1995).

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) [7-8A-1 to 7-8A-31 [except 7-8A-10.1] NMSA 1978] 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.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 25, § 34 makes the Uniform Unclaimed Property Act effective on July 1, 1997.

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) [7-8A-1 to 7-8A-31 [except 7-8A-10.1] NMSA 1978] 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.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 25, § 34 makes the Uniform Unclaimed Property Act effective on July 1, 1997.

7-8A-19. Periods of limitation.

(a) The expiration, before or after the effective date of the Uniform Unclaimed Property Act (1995) [7-8A-1 to 7-8A-31 [except 7-8A-10.1] NMSA 1978], of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute or court order, does not preclude the property from being presumed abandoned or affect a duty to file a report or to pay or deliver or transfer property to the administrator as required by the Uniform Unclaimed Property Act (1995).

(b) An action or proceeding may not be maintained by the administrator to enforce the Uniform Unclaimed Property Act (1995) in regard to the reporting, delivery, or payment of property more than ten years after the holder specifically identified the property in a report filed with the administrator or gave express notice to the administrator of a dispute regarding the property. In the absence of such a report or other express notice, the period of limitation is tolled. The period of limitation is also tolled by the filing of a report that is fraudulent.

History: Laws 1997, ch. 25, § 19.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 25, § 34 makes the Uniform Unclaimed Property Act effective on July 1, 1997.

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) [7-8A-1 to 7-8A-31 [except 7-8A-10.1] NMSA 1978], 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.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 25, § 34 makes the Uniform Unclaimed Property Act effective on July 1, 1997.

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) [7-8A-1 to 7-8A-31 [except 7-8A-10.1] NMSA 1978] 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.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 25, § 34 makes the Uniform Unclaimed Property Act effective on July 1, 1997.

7-8A-22. Enforcement.

The administrator may maintain an action in this or another state to enforce the Uniform Unclaimed Property Act (1995) [7-8A-1 to 7-8A-31 [except 7-8A-10.1] NMSA 1978]. The court may award reasonable attorney's fees to the prevailing party.

History: Laws 1997, ch. 25, § 22.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 25, § 34 makes the Uniform Unclaimed Property Act effective on July 1, 1997.

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) [7-8A-1 to 7-8A-31 [except 7-8A-10.1] NMSA 1978] 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.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 25, § 34 makes the Uniform Unclaimed Property Act effective on July 1, 1997.

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) [7-8A-1 to 7-8A-31 [except 7-8A-10.1] NMSA 1978] 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.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 25, § 34 makes the Uniform Unclaimed Property Act effective on July 1, 1997.

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 twenty-four 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's 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.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 25, § 34 makes the Uniform Unclaimed Property Act effective on July 1, 1997.

7-8A-26. Foreign transactions.

The Uniform Unclaimed Property Act (1995) [7-8A-1 to 7-8A-31 [except 7-8A-10.1] NMSA 1978] 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.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 25, § 34 makes the Uniform Unclaimed Property Act effective on July 1, 1997.

7-8A-27. Transitional provisions.

(a) An initial report filed under the Uniform Unclaimed Property Act (1995) [7-8A-1 to 7-8A-31 [except 7-8A-10.1] NMSA 1978] 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) 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.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 25, § 34 makes the Uniform Unclaimed Property Act effective on July 1, 1997.

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) [7-8A-1 to 7-8A-31 [except 7-8A-10.1] NMSA 1978].

History: Laws 1997, ch. 25, § 28.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 25, § 34 makes the Uniform Unclaimed Property Act effective on July 1, 1997.

7-8A-29. Uniformity of application and construction.

The Uniform Unclaimed Property Act (1995) [7-8A-1 to 7-8A-31 [except 7-8A-10.1] NMSA 1978] 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.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 25, § 34 makes the Uniform Unclaimed Property Act effective on July 1, 1997.

7-8A-30. Short title.

This act [7-8A-1 to 7-8A-31 [except 7-8A-10.1] NMSA 1978] may be cited as the "Uniform Unclaimed Property Act (1995)".

History: Laws 1997, ch. 25, § 30.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 25, § 34 makes the Uniform Unclaimed Property Act effective on July 1, 1997.

7-8A-31. Severability clause.

If any provision of the Uniform Unclaimed Property Act (1995) [7-8A-1 to 7-8A-31 [except 7-8A-10.1] NMSA 1978] 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.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 25, § 34 makes the Uniform Unclaimed Property Act effective on July 1, 1997.

ARTICLE 9
GROSS RECEIPTS AND COMPENSATING TAX

7-9-1. Short title.

Chapter 7, Article 9 NMSA 1978 may be cited as the "Gross Receipts and Compensating Tax Act".

History: 1953 Comp., § 72-16A-1, enacted by Laws 1966, ch. 47, § 1; 1979, ch. 90, § 1.

ANNOTATIONS

Cross references. - For the applicability of the Tax Administration Act, see 7-1-2 NMSA 1978.

For the duties, with respect to taxation, of successors in business, see 7-1-61 NMSA 1978 et seq.

For municipal local option gross receipts taxes generally, see Chapter 7, Article 19D NMSA 1978.

For restrictions on municipal taxing power, see 3-18-2 NMSA 1978.

Tax exemptions and deductions not unconstitutional donations unless retroactive. - Gross receipts tax exemptions and deductions do not violate the antidonation clause of the N.M. Const., art. IX, § 14 unless they are applied retroactively to taxes due and payable. 1991 Op. Att'y Gen. No. 91-14.

Contracts of sale or service subject to gross receipts tax. - Taxable incidents are equally apparent and are ascertainable with equal ease whether they arise out of a contract of sale or out of a contract for services, and therefore, equally subject to the New Mexico gross receipts tax. Evco v. Jones, 83 N.M. 110, 488 P.2d 1214 (Ct. App.), cert. denied, 83 N.M. 105, 488 P.2d 1209 (1971), rev'd on other grounds, 409 U.S. 91, 93 S. Ct. 349, 34 L. Ed. 2d 325 (1972).

Purchasers of property for lease but not lessees subject to gross receipts tax. - Neither the gross receipts tax nor the compensating tax is payable under the law applicable to this appeal by one who leased property for sublease in this state. Such tax, however, is payable by one who has purchased property for lease in this state, thus the legislature has made a distinction with respect to tax liability as between purchasers and lessees. Rust Tractor Co. v. Bureau of Revenue, 82 N.M. 82, 475 P.2d 779 (Ct. App.), cert. denied, 82 N.M. 81, 475 P.2d 778 (1970).

Gross receipts tax but not use tax applicable to Indians. - The exemption in § 5 of the Indian Reorganization Act of 1934 (25 U.S.C. § 465) does not encompass or bar the collection of the state's nondiscriminatory gross receipts tax pursuant to 72-16-1, 1953 Comp. (since repealed). Therefore, a tribal ski enterprise conducted by the tribe with federal funds, on federal lands leased to them, was subject to that tax. However, a compensating or use tax, 72-17-1, 1953 Comp. (since repealed), imposed on personalty

installed in ski lift construction was improper under § 5. Mescalero Apache Tribe v. Jones, 411 U.S. 145, 93 S. Ct. 1267, 36 L. Ed. 2d 114 (1973).

The Indian trader statutes (25 U.S.C. §§ 261 to 264) preempt the imposition of gross receipts tax of this Article on receipts for non-Indian services rendered to an Indian tribal entity on the reservation. New Mexico Taxation & Revenue Dep't v. Laguna Indus., Inc. 115 N.M. 553, 855 P.2d 127 (1993).

Lessee's activity on tax-exempt Indian land subject to gross receipts tax. - Norvell v. Sangre de Cristo Dev. Co. 372 F. Supp. 348 (D.N.M. 1974), rev'd on other grounds, 519 F.2d 370 (10th Cir. 1975).

Burden on taxpayer to show rate erroneous. - When government contractor appeals the assessment of a gross receipts tax, penalty and interest, he has the burden of showing the assessment at a higher tax rate established by the 1969 Gross Receipts and Compensating Tax Act rather than a lower rate under a pre-1969 tax act was erroneous. Martinez v. Jones, 83 N.M. 722, 497 P.2d 233 (Ct. App.), cert. denied, 83 N.M. 741, 497 P.2d 743 (1972).

Regulation attacked only if taxpayer's contract properly subject thereunder. - When party, in addition to appealing the assessment of a gross receipts tax, penalty and interest, is attacking validity of regulation governing registration of contracts for purpose of determining gross receipts and compensating tax rate, and party neither offers in evidence his contract with the state highway department, nor does he prove the essential provisions of the contract, the question of the validity of the system of registration is premature until it is shown that the contract could be properly registered under the regulation. Martinez v. Jones, 83 N.M. 722, 497 P.2d 233 (Ct. App.), cert. denied, 83 N.M. 741, 497 P.2d 743 (1972).

Electrical energy tax invalid. - Because 7-9-80 NMSA 1978 (since repealed) insured that locally consumed electricity is subject to no tax burden from the electrical energy tax, while electricity generated in this state but sold outside the state is subject to a 2% tax, the tax itself indirectly but necessarily discriminates against electricity sold outside New Mexico; it thus violates a federal statute, 15 U.S.C. § 391, and is invalid under the supremacy clause of the United States constitution. Arizona Pub. Serv. Co. v. Snead, 441 U.S. 141, 99 S. Ct. 1629, 60 L. Ed. 2d 106 (1979).

Federal statute invalidating energy tax constitutional. - A federal statute, 15 U.S.C. § 391, which invalidates the New Mexico electric energy tax, does not exceed the permissible bounds of congressional action under the commerce clause of the United States constitution since congress had a rational basis for finding that the tax interfered with interstate commerce and selected a reasonable method to eliminate that interference. Arizona Pub. Serv. Co. v. Snead, 441 U.S. 141, 99 S. Ct. 1629, 60 L. Ed. 2d 106 (1979).

Law reviews. - For article, "Ad Valorem Tax Status of a Private Lessee's Interest in Publicly Owned Property: Taxability of Possessory Interests in Industrial Projects under the New Mexico Industrial Revenue Bond Act," see 3 N.M.L. Rev. 136 (1973).

For article, "An Intergovernmental Approach to Tax Reform," see 4 N.M.L. Rev. 189 (1974).

For comment, "Coal Taxation in the Western States: The Need for a Regional Tax Policy," see 16 Nat. Resources J. 415 (1976).

For article, "The Indian Tax Cases - A Territorial Analysis," see 9 N.M.L. Rev. 221 (1979).

For note, "Taxing of Electrical Energy: An Analysis of Arizona Public Service Company v. Snead," see 9 N.M.L. Rev. 349 (1979).

For article, "The Deductibility for Federal Income Tax Purposes of the New Mexico Gross Receipts Tax Paid on the Purchase of a Newly Constructed Home," see 13 N.M.L. Rev. 625 (1983).

For article, "Out of sight but not out of mind: New Mexico's tax on out-of-state services," see 20 N.M.L. Rev. 501 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 68 Am. Jur. 2d Sales and Use Taxes §§ 1, 3; 71 Am. Jur. 2d State & Local Taxation §§ 28 to 30.

Income or receipts: constitutionality of tax on corporations in nature of, or purporting to be, excise or privilege tax measured by income or receipts, 71 A.L.R. 256.

Distinction from other tax: what is a property tax as distinguished from excise, license or other taxes, 103 A.L.R. 18.

Deductibility of other taxes or fees in computing excise or license taxes, 143 A.L.R. 263, 174 A.L.R. 1263.

Retroactive statute: constitutionality of retroactive statute imposing excise, license or privilege tax, 146 A.L.R. 1011.

Goods in stock: specific tax imposed on goods in stock of dealer, as excise, or property tax, 173 A.L.R. 1316.

Sales and use taxes on leased tangible personal property, 2 A.L.R.4th 859.

Transportation, freight, mailing, or handling charges billed separately to purchaser of goods as subject to sales or use taxes, 2 A.L.R.4th 1124.

Cable television equipment or services as subject to sales or use tax, 5 A.L.R.4th 754.

84 C.J.S. Taxation §§ 121 to 123.

7-9-2. Purpose.

The purpose of the Gross Receipts and Compensating Tax Act [this article] is to provide revenue for public purposes by levying a tax on the privilege of engaging in certain activities within New Mexico and to protect New Mexico businessmen from the unfair competition that would otherwise result from the importation into the state of property without payment of a similar tax.

History: 1953 Comp., § 72-16A-2, enacted by Laws 1966, ch. 47, § 2.

ANNOTATIONS

Gross receipts tax is a tax upon seller. Mescalero Apache Tribe v. O'Cheskey, 439 F. Supp. 1063 (D.N.M. 1977), aff'd, 625 F.2d 967 (10th Cir. 1980), cert. denied, 450 U.S. 959, 101 S. Ct. 1417, 67 L. Ed. 2d 383 (1981), rehearing denied, 455 U.S. 929, 102 S. Ct. 1296, 71 L. Ed. 2d 474 (1982).

Tax is measured on gross rather than net proceeds. This act taxes the privilege of conducting business in New Mexico, whether profitable or not. United States v. New Mexico, 624 F.2d 111 (10th Cir. 1980), aff'd, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

Gross receipts and income taxes inapplicable to Indian activities within reservation. - New Mexico may not tax income and gross receipts of Indians residing on a reservation when the income and gross receipts involved are derived solely from activities within the reservation. Hunt v. O'Cheskey, 85 N.M. 381, 512 P.2d 954 (Ct. App.), cert. quashed, 85 N.M. 388, 512 P.2d 961 (1973).

Gross Receipts and Compensating Tax Act is general and contains no obvious legislative intent to repeal the special "in lieu of " provision of 60-1-15 NMSA 1978 concerning horse racing licenses. Santa Fe Downs, Inc. v. Bureau of Revenue, 85 N.M. 115, 509 P.2d 882 (Ct. App. 1973).

Gross receipts tax and compensating tax not double taxation. - Since the gross receipts tax and compensating tax were not imposed upon a single transaction, as appellant contented, but upon different taxable incidents; namely, (1) the use of property in this state, such use being leasing or renting it to others (compensating or use tax) and (2) the receipts derived from the payment of rental by those to whom the property was leased (gross receipts or sales tax), then imposition of both taxes did not constitute double taxation on an identical transaction and was not prohibited. Rust Tractor Co. v. Bureau of Revenue, 82 N.M. 82, 475 P.2d 779 (Ct. App.), cert. denied, 82 N.M. 81, 475 P.2d 778 (1970).

Exemption from gross receipts tax also exemption from compensating tax. - The legislature intended to make the gross receipts tax and compensating tax correlate: an exemption from the gross receipts tax must also be treated as an exemption from the compensating tax. Western Elec. Co. v. New Mexico Bureau of Revenue, 90 N.M. 164, 561 P.2d 26 (Ct. App. 1976).

Receipts from horse races not exempt. - The legislature, in enacting the Gross Receipts and Compensating Tax Act, did not intend to exempt receipts from horse races. There is neither ambiguity nor doubt that the language used in the Gross Receipts Tax Act applies to the receipts of a horse owner paid to him for a winning purse and the receipts of a horse trainer paid to him as his percentage of a winning purse. Till v. Jones, 83 N.M. 743, 497 P.2d 745 (Ct. App.), cert. denied, 83 N.M. 740, 497 P.2d 742 (1972). But see 7-9-40 NMSA 1978, which now exempts receipts from horse race purses.

Deductions strictly construed against taxpayer. - The avowed purpose of the Gross Receipts and Compensation Tax Act is to provide revenue, and any deductions must receive strict construction in favor of the taxing authority. Reed v. Jones, 81 N.M. 481, 468 P.2d 882 (Ct. App. 1970).

Burden on taxpayer to establish deduction. - The burden is on the taxpayer to establish clearly his right to the deduction, and the intention to authorize the deduction claimed by the taxpayer must be clearly and unambiguously expressed in the statute. Reed v. Jones, 81 N.M. 481, 468 P.2d 882 (Ct. App. 1970).

Implied rational basis. - Because regulations exempted broadcasting advertisement displayers in New Mexico from the tax imposed upon taxpayer (operator of a billboard service), there was discrimination in the treatment of these different media forms, but the burden was upon the taxpayer to negative every conceivable basis which might support the discriminatory classification, because of the implied rational basis underlying every tax statute, i.e., that the state has the right, power and duty to raise the necessary funds for its public purposes, and it was held that there was a rational basis for the state to discriminate between the broadcast industry and the outdoor advertising industry in the taxation of displays of national messages. Markham Adv. Co. v. Bureau of Revenue, 88 N.M. 176, 538 P.2d 1198 (Ct. App.), cert. denied, 88 N.M. 318, 540 P.2d 248 (1975).

Law reviews. - For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

7-9-3. Definitions.

As used in the Gross Receipts and Compensating Tax Act [this article]:

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

B. "buying" or "selling" means any transfer of property for consideration or any performance of service for consideration;

C. "construction" means building, altering, repairing or demolishing in the ordinary course of business any:

(1) road, highway, bridge, parking area or related project;

(2) building, stadium or other structure;

(3) airport, subway or similar facility;

(4) park, trail, athletic field, golf course or similar facility;

(5) dam, reservoir, canal, ditch or similar facility;

(6) sewerage or water treatment facility, power generating plant, pump station, natural gas compressing station, gas processing plant, coal gasification plant, refinery, distillery or similar facility;

(7) sewerage, water, gas or other pipeline;

(8) transmission line;

(9) radio, television or other tower;

(10) water, oil or other storage tank;

(11) shaft, tunnel or other mining appurtenance;

(12) microwave station or similar facility; or

(13) similar work;

"construction" also means:

(14) leveling or clearing land;

(15) excavating earth;

(16) drilling wells of any type, including seismograph shot holes or core drilling; or

(17) similar work;

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

E. "engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit, except that "engaging in business" does not include having a world wide web site as a third-party content provider on a computer physically located in New Mexico but owned by another nonaffiliated person;

F. "gross receipts" means the total amount of money or the value of other consideration received from selling property in New Mexico, from leasing property employed in New Mexico, from selling services performed outside New Mexico the product of which is initially used in New Mexico or from performing services in New Mexico. 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.

(1) "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 leasing, 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; and

(d) amounts received from transmitting messages or conversations by persons providing telephone or telegraph services.

(2) "Gross receipts" excludes:

(a) cash discounts allowed and taken;

(b) New Mexico gross receipts tax, governmental gross receipts tax and leased vehicle gross receipts tax payable on transactions for the reporting period;

(c) taxes imposed pursuant to the provisions of any local option gross receipts tax that is payable on transactions for the reporting period;

(d) any gross receipts or sales taxes imposed by an Indian nation, tribe or pueblo; provided that the tax is approved, if approval is required by federal law or regulation, by

the secretary of the interior of the United States; and provided further that the gross receipts or sales tax imposed by the Indian nation, tribe or pueblo provides a reciprocal exclusion for gross receipts, sales or gross receipts-based excise taxes imposed by the state or its political subdivisions;

(e) any type of time-price differential; and

(f) amounts received solely on behalf of another in a disclosed agency capacity.

(3) When the sale of property or service is made under any type of charge, conditional or time-sales contract or the leasing of property is made under a leasing contract, the seller or lessor may elect to treat all receipts, excluding any type of time-price differential, under such contracts as gross receipts as and when the payments are actually received. If the seller or lessor transfers his interest in any such contract to a third person, 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;

G. "manufacturing" means combining or processing components or materials to increase their value for sale in the ordinary course of business, but does not include construction;

H. "person" means:

(1) any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, 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) any national, federal, state, Indian or other governmental unit or subdivision, or any agency, department or instrumentality of any of the foregoing;

I. "property" means real property, tangible personal property, licenses, franchises, patents, trademarks and copyrights. Tangible personal property includes electricity and manufactured homes;

J. "leasing" means any arrangement whereby, for a consideration, property is employed for or by any person other than the owner of the property, except that the granting of a license to use property is the sale of a license and not a lease;

K. "service" means all activities engaged in for other persons for a consideration, which activities involve predominantly the performance of a service as distinguished from selling or leasing property. "Service" includes activities performed by a person for its members or shareholders. In determining what is a service, the intended use, principal objective or ultimate objective of the contracting parties shall not be controlling. "Service" includes construction activities and all tangible personal property that will become an ingredient or component part of a construction project. Such tangible

personal property retains its character as tangible personal property until it is installed as an ingredient or component part of a construction project in New Mexico. However, sales of tangible personal property that will become an ingredient or component part of a construction project to persons engaged in the construction business are sales of tangible personal property;

L. "use" or "using" includes use, consumption or storage other than storage for subsequent sale in the ordinary course of business or for use solely outside this state;

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

N. "manufactured home" means a 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;

O. "initial use" or "initially used" means the first employment for the intended purpose and does not include the following activities:

(1) observation of tests conducted by the performer of services;

(2) participation in progress reviews, briefings, consultations and conferences conducted by the performer of services;

(3) review of preliminary drafts, drawings and other materials prepared by the performer of the services;

(4) inspection of preliminary prototypes developed by the performer of services; or

(5) similar activities;

P. "research and development services" means any activity engaged in for other persons for consideration, for one or more of the following purposes:

(1) advancing basic knowledge in a recognized field of natural science;

(2) advancing technology in a field of technical endeavor;

(3) the development of a new or improved product, process or system with new or improved function, performance, reliability or quality, whether or not the new or improved product, process or system is offered for sale, lease or other transfer;

(4) the development of new uses or applications for an existing product, process or system, whether or not the new use or application is offered as the rationale for purchase, lease or other transfer of the product, process or system;

(5) analytical or survey activities incorporating technology review, application, trade-off study, modeling, simulation, conceptual design or similar activities, whether or not offered for sale, lease or other transfer; or

(6) the design and development of prototypes or the integration of systems incorporating advances, developments or improvements included in Paragraphs (1) through (5) of this subsection;

Q. "local option gross receipts tax" means a tax authorized to be imposed by a county or municipality upon the taxpayer's gross receipts and required to be collected by the department at the same time and in the same manner as the gross receipts tax; "local option gross receipts tax" includes the taxes imposed pursuant to the Municipal Local Option Gross Receipts Taxes Act [7-9-10 to 7-9-18 NMSA 1978], Supplemental Municipal Gross Receipts Tax Act [Chapter 7, Article 19D NMSA 1978], Special Municipal Gross Receipts Tax Act [7-19A-1 to 7-19A-7 NMSA 1978], County Local Option Gross Receipts Taxes Act [Chapter 7, Article 20E NMSA 1978], Local Hospital Gross Receipts Tax Act [7-20C-1 to 7-20C-15 NMSA 1978], County Correctional Facility Gross Receipts Tax Act [7-20F-3 to 7-20F-12 NMSA 1978] and such other acts as may be enacted authorizing counties or municipalities to impose taxes on gross receipts, which taxes are to be collected by the department; and

R. "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 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.

ANNOTATIONS

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II. Construction.
III. Engaging in Business.
IV. Gross Receipts.
A. In General.
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I. GENERAL CONSIDERATION.

The 1989 amendment, effective July 1, 1989, in Subsection F inserted "from selling services performed outside New Mexico the product of which is initially used in New Mexico" near the beginning of the first sentence of the first paragraph and substituted "County Fire Protection Excise Tax Act or any municipality or county sales or gross receipts tax" for "County Sales Tax Act, the County Fire Protection Excise Tax Act, the County Gross Receipts Tax Act, the Municipal Gross Receipts Tax Act or the Supplemental Municipal Gross Receipts Tax Act" near the end of that sentence; and added Subsections O and P.

1991 amendments. - Laws 1991, ch. 197, § 1, effective July 1, 1991, in Subsection F, inserting "the Leased Vehicle Gross Receipts Tax Act" near the middle of the first paragraph and making minor stylistic changes, was approved on April 4, 1991. However, Laws 1991, ch. 203, § 1, also effective July 1, 1991, deleting "or 'division' " following " 'department' " in Subsection A; in Subsection F, substituting "any local option gross receipts tax that is" for "the County Fire Protection Excise Tax Act or any municipality or county sales or gross receipts tax which are" near the middle of the first paragraph and inserting "nation" following "Indian" in two places in the second sentence thereof; substituting "manufactured homes" for "mobile homes" at the end of Subsection I; adding "except that the granting of a license to use property is the sale of a license and not a lease" at the end of Subsection J; deleting " 'director' or" at the beginning of Subsection M; rewriting Subsection N which read " 'mobile home' means a house trailer that exceeds either a width of eight feet or a length of forty feet when equipped for the road"; adding Subsection Q; and making a related stylistic change, was approved later on April 4, 1991. The section is set out as amended by Laws 1991, ch. 203, § 1. See 12-1-8 NMSA 1978.

1992 amendments. - Virtually identical amendments to this section were enacted by Laws 1992, ch. 39, § 1, Laws 1992, ch. 50, § 14, and Laws 1992, ch. 67, § 14, all

effective July 1, 1992. The first two acts were approved on March 6, 1992 and the third one on March 9, 1992. The acts rewrote Subsection F and, in Subsection Q, inserted "Municipal Infrastructure Gross Receipts Tax Act" and "Local Hospital Gross Receipts Tax Act, County Health Care Gross Receipts Tax Act". The Laws 1992, ch. 39, § 1 version, unlike the other two, added "including interstate and international messages or conversations that either originate or terminate in New Mexico and are billed to a New Mexico telephone number or account" to the end of Subsection F(1)(d). The section is set out as amended by Laws 1992, ch. 67, § 14. See 12-1-8 NMSA 1978.

The 1993 amendment, effective July 1, 1993, inserted "limited liability company, limited liability partnership," in Paragraph (1) of Subsection H; rewrote Paragraph (2) of Subsection H which read "the United States or any agency or instrumentality thereof or the state of New Mexico or any political subdivision thereof"; and substituted "modeling" for "modelling" in Paragraph (5) of Subsection P.

The 1994 amendment, effective July 1, 1994, in Paragraph F(2), deleted "and" at the end of Subparagraph (d) and added Subparagraph (f); in Subsection N, inserted "for human occupancy" and deleted "for human occupancy" at the end; and substituted the list of gross receipt acts in Subsection Q for the former list.

1998 amendments. - Laws 1998, ch. 92, § 4, effective July 1, 1998, added an exception at the end of Subsection E, and substituted "a" for "any" preceding "person" in Subection J. Laws 1998, ch. 95, § 1, effective January 1, 1999, added Subsection R and made minor punctuation and stylistic changes. Laws 1998, ch. 99, § 3, also effective January 1, 1999, made the same changes as ch. 95, and additionally substituted "movable" for "moveable" in Subsection N. The section is set out as amended by Laws 1998, ch. 99, § 3. See 12-1-8 NMSA 1978.

The 1999 amendment, effective July 1, 1999, in Subsection E, added "except that 'engaging in business' does not include having a world wide web site as a third-party content provider on a computer physically located in New Mexico but owned by another nonaffiliated person".

Compiler's notes. - Laws 1988, ch. 19, § 5, effective July 1, 1988, repealed Laws 1986, ch. 20, § 128 and Laws 1986, ch. 52, § 4, which enacted amended versions of this section which were to take effect July 1, 1988.

Laws 1989, ch. 262, § 10, effective July 1, 1989, repealed Laws 1988, ch. 19, § 1, which enacted an amended version of this section which was to take effect July 1, 1990.

Laws 1993, ch. 31, § 13, effective July 1, 1993, repeals Laws 1990, ch. 27, § 1, Laws 1991, ch. 197, § 2, Laws 1991, ch. 203, § 2, Laws 1992, ch. 39, § 2, Laws 1992, ch. 50, § 15, and Laws 1992, ch. 67, § 15, all of which amended 7-9-3 NMSA 1978 to take effect July 1, 1993.

Laws 1993, ch. 31, § 13D, and Laws 1993, ch. 310, § 3, both effective July 1, 1993, repeal Laws 1992, ch. 40, § 2, which provided for the repeal of 7-9-3 NMSA 1978 as amended by Laws 1991, ch. 203, § 2, effective October 1, 1995 if the United States announced prior to July 1, 1995 that the space systems division of the department of the air force would be relocated to New Mexico. Laws 1993, ch. 31, § 13D and Laws 1993, ch. 310, § 3 also repeal Laws 1992, ch. 40, § 3, which provided for the repeal of the provisions of Laws 1992, ch. 40 on August 1, 1995 if the United States had not announced prior to July 1, 1995 that the space systems division of the department of the air force would be relocated to New Mexico.

Language of this section is definite and unambiguous. Miller v. Bureau of Revenue, 93 N.M. 252, 599 P.2d 1049 (Ct. App. 1979), cert. denied, 92 N.M. 532, 591 P.2d 286 (1979).

Taxpayer should be given fair, unbiased and reasonable construction, without favor either to the taxpayer or the state, to the end that the legislative intent is effectuated and the public interests to be subserved thereby furthered. Baskin-Robbins Ice Cream Co. v. Revenue Div. 93 N.M. 301, 599 P.2d 1098 (Ct. App. 1979).

Taxes assessed only on receipts or future receipts. - A reading of the full act providing for gross receipts tax shows the legislative intent to be that taxes were to be assessed only on what was received or would be received. Davis v. Commissioner of Revenue, 83 N.M. 152, 489 P.2d 660 (Ct. App.), cert. denied, 83 N.M. 151, 489 P.2d 659 (1971).

Legal incidence of gross receipts tax on seller. - The statutory language of Subsection F and 7-9-4 NMSA 1978 places the legal incidence of the gross receipts tax on the seller. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978).

Taxpayers must treat transactions uniformly for all purposes within the tax scheme and not attempt to show, first, a lease for federal purposes and second, a nontaxable event for state purposes. Co-Con, Inc. v. Bureau of Revenue, 87 N.M. 118, 529 P.2d 1239 (Ct. App.), cert. denied, 87 N.M. 111, 529 P.2d 1232 (1974).

If purchase order not transfer for consideration, then not sale. - The wording of taxpayer's purchase orders and contract, together with evidence that taxpayer invoiced only for chemicals and reagents delivered to a well and retained payment only for what was used, support the inference that a purchase order was not a transfer for consideration and therefore not a sale; therefore, since no single delivery or single day's delivery to a well ever amounted to 18 tons or more, of chemicals or reagents, although the amount specified in a purchase order might aggregate that much, taxpayer was not entitled to a deduction under 7-9-65 NMSA 1978. Runco Acidizing & Fracturing Co. v. Bureau of Revenue, 87 N.M. 146, 530 P.2d 410 (Ct. App. 1974).

Corporations separate entities for taxation purposes. - Taxpayers, a parent corporation and its 100%-owned subsidiary cannot escape corporate liability for joint

use of equipment merely because the shareholders of one of the corporations own all the equipment in question. The two corporations must be treated as separate entities for taxation purposes. Co-Con, Inc. v. Bureau of Revenue, 87 N.M. 118, 529 P.2d 1239 (Ct. App.), cert. denied, 87 N.M. 111, 529 P.2d 1232 (1974).

Renting or leasing is a "use" of property. Rust Tractor Co. v. Bureau of Revenue, 82 N.M. 82, 475 P.2d 779 (Ct. App.), cert. denied, 82 N.M. 81, 475 P.2d 778 (1970).

Receipts to owner and trainer of horse subject to tax. - The legislature, in enacting the Gross Receipts Tax Act, did not intend to exempt receipts from horse races. There is neither ambiguity nor doubt that the language used in the Gross Receipts Tax Act applies to the receipts of a horse owner paid to him for a winning purse and the receipts of a horse trainer paid to him as his percentage of a winning purse. Till v. Jones, 83 N.M. 743, 497 P.2d 745 (Ct. App.), cert. denied, 83 N.M. 740, 497 P.2d 742 (1972). But see 7-9-40 NMSA 1978 which now exempts receipts from horse race purses.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 68 Am. Jur. 2d Sales and Use Taxes §§ 63 to 67, 87 to 89, 173 to 176.

II. CONSTRUCTION.

Construction work incidental to "severing" exempt from gross receipts tax. - The exemption provided by 7-9-35 NMSA 1978 applied, since "severing" was taking place as the development work was performed and none of taxpayer's work was preliminary to or preparatory for "severing"; therefore, receipts from development work, which includes construction, were exempted from the gross receipts tax and taxable under the service tax (resources excise tax) when such construction work was incidental to the "severing." Patten v. Bureau of Revenue, 86 N.M. 355, 524 P.2d 527 (Ct. App. 1974).

"Fence" not a "structure". - The word "structure" in paragraph (2) of Subsection C, which follows "building" and "stadium," is limited in its meaning to things or classes of the same general character as buildings and stadia and this does not include fences. Cardinal Fence Co. v. Commissioner of Bureau of Revenue, 84 N.M. 314, 502 P.2d 1004 (Ct. App. 1972).

Fence not within definition of "construction". - Construction of fences does not come within the definition of "construction" in Subsection C; that the fencing material sold is not a component part of a construction project. Cardinal Fence Co. v. Commissioner of Bureau of Revenue, 84 N.M. 314, 502 P.2d 1004 (Ct. App. 1972).

Non-Indians performing construction services for tribe subject to tax. - Under the gross receipts tax act, non-Indian contractors involved in the construction of an Indian resort complex are subject to a tax on the gross receipts they received for performing construction services. The legal incidence of the tax falls upon them and not upon the tribe or tribal property. The state is imposing the tax solely on non-Indians who have performed services for the tribe. Mescalero Apache Tribe v. O'Cheskey, 439 F. Supp.

1063 (D.N.M. 1977), aff'd, 625 F.2d 967 (10th Cir. 1980), cert. denied, 450 U.S. 959, 101 S. Ct. 1417, 67 L. Ed. 2d 383 (1981), rehearing denied, 455 U.S. 929, 102 S. Ct. 1296, 71 L. Ed. 2d 474 (1982).

Imposition of tax on tribal organization impermissible. - If the economic burden of the gross receipts tax ultimately falls on a tribal organization, even though the legal incidence of the tax falls on the non-Indian contractor with whom the organization contracted to build an Indian school, the imposition of the tax impermissibly impedes the clearly expressed federal interest in promoting the quality and quantity of educational opportunities for Indians by depleting the funds available for the construction of Indian schools. Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

The comprehensive federal regulatory scheme and the express federal policy of encouraging tribal self-sufficiency in the area of education preclude the imposition of the state gross receipts tax on the construction of school facilities on tribal lands pursuant to a contract between a tribal organization and a non-Indian contracting firm. Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

Construction project includes wide variety of activities. - This section was intended to make sales of construction materials to governmental entities taxable when the materials were to be incorporated into construction projects. Contrary to taxpayer's argument that Regulation GR 51:16 establishes a definite test for determining whether an endeavor is a "construction project," this regulation merely states nonexclusive guidelines for determining whether materials constitute a component part of a construction project. Thus, construction projects include the wide variety of activities listed in Subsection C. Arco Materials, Inc. v. State, Taxation & Revenue Dep't, 118 N.M. 12, 878 P.2d 330 (Ct. App. 1994), rev'd on other grounds sub nom. Blaze Constr. Co. v. Taxation & Revenue Dep't, 118 N.M. 647, 884 P.2d 803 (1994), cert. denied, 514 U.S. 1016, 115 S. Ct. 1359, 131 L. Ed. 2d 216 (1995).

"Construction" deemed question of fact. - Whether activities of a party constitute "construction," as defined in Subsection C, is a question of fact for a jury. United States v. New Mexico, 642 F.2d 397 (10th Cir. 1981).

III. ENGAGING IN BUSINESS.

Meaning of "business". - "Business" is that which occupies the time, attention and labor of a person for the purpose of livelihood, profit or improvement; that which is a person's concern or intent. It would be too narrow a view to hold that if appellant's intelligence, skill and labor is employed in New Mexico, he is not carrying on a business, trade or profession in this state. Sterling Title Co. v. Commissioner of Revenue, 85 N.M. 279, 511 P.2d 765 (Ct. App. 1973).

"Engaging in business" means carrying on or causing to be carried on any activity for the purpose of direct or indirect benefit to the taxpayer (American Automobile Association), not someone else (its members). AAA v. Bureau of Revenue, 87 N.M. 330, 533 P.2d 103 (1975). See also, AAA v. Bureau of Revenue, 88 N.M. 462, 541 P.2d 967 (1975).

A taxpayer is "engaging in business" as defined by Subsection E when it is doing what it was organized and authorized to do. Baskin-Robbins Ice Cream Co. v. Revenue Div. 93 N.M. 301, 599 P.2d 1098 (Ct. App. 1979).

To decide whether one's activity constitutes "engaging in business" in this state, the real question is whether the sale or lease is in line with the business for which the seller or lessor was organized and in which it engages. AAMCO Transmissions v. Taxation & Revenue Dep't, 93 N.M. 389, 600 P.2d 841 (Ct. App.), cert. denied, 93 N.M. 205, 598 P.2d 1165 (1979).

To engage in business, taxpayer must engage in services "for other persons" with the purpose of direct or indirect benefit to itself, for which activity it receives money for the performance of its services. Twining Coop. Domestic Water & Sewer Ass'n v. Bureau of Revenue, 89 N.M. 345, 552 P.2d 476 (Ct. App.), cert. denied, 90 N.M. 7, 558 P.2d 619 (1976).

Bookkeeping and management corporation engaged in business. - Corporation organized to centralize the bookkeeping and management functions for other corporations was engaged in business for purposes of this act. Westland Corp. v. Commissioner of Revenue, 83 N.M. 29, 487 P.2d 1099 (Ct. App.), cert. denied, 83 N.M. 22, 487 P.2d 1092 (1971).

A "nonprofit" corporation means a corporation which distributes no part of the income or profit to its members, directors or officers. AAA v. Bureau of Revenue, 87 N.M. 330, 533 P.2d 103 (1975).

Independent contractor subject to gross receipts taxes. - Since carpenter did "fifty to one hundred and fifty" jobs for different people, on those jobs where the customer (employer) deducted F.I.C.A. taxes, carpenter was an employee and his compensation was exempt as wages, and where no deductions were made, the commissioner determined that he was an independent contractor and liable for payment of gross receipt taxes. Stohr v. New Mexico Bureau of Revenue, 90 N.M. 43, 559 P.2d 420 (Ct. App. 1976), cert. denied, 90 N.M. 254, 561 P.2d 1347 (1977).

Incidence of tax on contractors selling services to United States. - The legal incidence of the gross receipts tax was on contractors as sellers of services to the United States, not on the federal government. United States v. New Mexico (10th Cir. 1978).

Foreign franchisor deemed "engaging in business". - A foreign corporation which enters into agreements as a franchisor with licensees in New Mexico for use of the franchisor's trade name and trademark is engaged in business in New Mexico. American Dairy Queen Corp. v. Taxation & Revenue Dep't, 93 N.M. 743, 605 P.2d 251 (Ct. App. 1979).

IV. GROSS RECEIPTS.

A. IN GENERAL.

"Gross receipts" means the total amount of money or the value of other considerations received from selling property or from performing services. New Mexico Enters., Inc. v. Bureau of Revenue, 86 N.M. 799, 528 P.2d 212 (Ct. App. 1974).

Gross receipts tax upon non-Indians working on reservations valid. - When the gross receipts tax levied upon non-Indians working on state reservations is nondiscriminatory and does not preclude a possible similar tax by a tribe on activities conducted on its reservation, the Indian right to self-government is not impaired and the tax is valid. Mescalero Apache Tribe v. O'Cheskey, 625 F.2d 967 (10th Cir. 1980), cert. denied, 450 U.S. 959, 101 S. Ct. 1417, 67 L. Ed. 2d 383 (1981), rehearing denied, 455 U.S. 929, 102 S. Ct. 1296, 71 L. Ed. 2d 474; 459 U.S. 1025, 103 S. Ct. 393, 74 L. Ed. 2d 522 (1982).

Federal preemption for services rendered Indians. - District court properly ordered state tax agency to refund gross receipts taxes paid by a private contractor on services performed on an Indian reservation for a corporation owned by an Indian tribe, in light of the fact that the Indian trader statutes, 25 U.S.C. §§ 261-264, preempted the agency's authority to impose such a tax since the federal trader statutes included services under the scope of "trade". Luguna Indus., Inc. v. New Mexico Taxation & Revenue Dep't, 114 N.M. 644, 845 P.2d 167 (Ct. App. 1992), aff'd, 115 N.M. 553, 855 P.2d 127 (1993).

Disbursement agents of federal funds immune from gross receipts tax. - Agents for the disbursement of federal funds are constitutionally immune from application of the gross receipts tax to those funds. United States v. New Mexico, 624 F.2d 111 (10th Cir. 1980), aff'd, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

Salaries and overhead of federal contractors not tax immune. - As long as federal contractors are separate entities solely responsible for their own employees and internal management, salaries and overhead of those contractors are not obligations of the government, for purposes of tax immunity. United States v. New Mexico, 624 F.2d 111 (10th Cir. 1980), aff'd, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

Collection agencies gross receipts. - A collection agency does not include the creditor's portion of the proceeds, nor the taxes it collects on behalf of the creditor, in calculating its commission proceeds, i.e., its gross receipts. Rather, a collection agency pays gross receipts tax only on the commission portion of the debt. The total tax

imposed on the debt and charged to the debtor is simply the sum of the creditor's tax and the agency's tax. Martinez v. Albuquerque Collection Servs., Inc. 867 F. Supp. 1495 (D.N.M. 1994).

B. OUT-OF-STATE.

Only activities within state taxable. - The validity of the application of the gross receipts tax to general and administrative expense reimbursements depended on whether the tax was laid upon gross receipts derived from the contractors' activities within the borders of the state. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978).

If when they received reimbursements for general and administrative expenses contractors were being reimbursed for work (whether called "services" or by any other name) performed outside the state, New Mexico taxing authorities lack authority to tax those transactions. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978).

Income which arises from a contract performed within the state but accrues upon a separable out-of-state transaction should be excluded from taxation as not being income arising from contracting within the state. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978).

Mere accounting device will not avoid tax. - Since all receipts resulted solely from the contractor's activities in the state and the general and administrative expense category appeared merely to be a cost accounting device, the entire amount of the receipts may be taxed by the state. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978).

Apportionment between in-state and out-of-state activity does not arise if the tax is levied only upon receipts resulting from the taxpayer's activities in New Mexico. Mountain States Adv., Inc. v. Bureau of Revenue, 89 N.M. 331, 552 P.2d 233 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976).

Tax on foreign corporation's local business does not offend commerce clause. - Gross receipts tax imposed on foreign corporation was conditioned on the local business of renting equipment located in the state. Therefore, the tax does not constitute an undue burden on interstate commerce but, on the contrary, was a tax on the taxpayers' local and intrastate business of leasing machinery. Besser Co. v. Bureau of Revenue, 74 N.M. 377, 394 P.2d 141 (1964)(decided under prior gross receipts law).

Taxing out-of-state sales impermissible. - Tax levied on gross receipts from out-of-state sales of tangible personal property, in the nature of reproducible educational material, is an impermissible burden on commerce. Evco v. Jones, 409 U.S. 91, 93 S. Ct. 349, 34 L. Ed. 2d 325 (1972).

Entire revenue from nonresident's display of signs in state taxable. - Colorado corporation which displayed billboards made in Colorado by Colorado employees and whose only contact with New Mexico was the displaying of signs and using 10% of its cost in maintenance was held subject to this section for its entire revenue and not just its 10% cost of maintenance. Mountain States Adv., Inc. v. Bureau of Revenue, 89 N.M. 331, 552 P.2d 233 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976).

Only value of property entering state taxed. - Where tuition paid by New Mexico residents to a correspondence school based in Illinois covered materials valued at an average cost of $50 per student, and the remainder of the tuition covered the costs of grading, counseling and other services connected with the educational programs, virtually all of which services were performed in Illinois, it was held that only the value of the property entering New Mexico could be taxed as gross receipts of the school. Advance Schools, Inc. v. Bureau of Revenue, 89 N.M. 79, 547 P.2d 562 (1976).

Tax applicable to foreign franchisor. - Although franchisor has no payroll, real property, personnel or offices located in this state, it does furnish signs which must be leased or purchased by its dealers, and its sales of tangible property and its granting of exclusive franchises constitute engaging in intrastate business in this state and the franchise fees received therefrom are subject to the gross receipts tax. AAMCO Transmissions v. Taxation & Revenue Dep't, 93 N.M. 389, 600 P.2d 841 (Ct. App.), cert. denied, 93 N.M. 205, 598 P.2d 1165 (1979).

Application of tax to franchise fees. - The imposition of gross receipts tax on franchise fees received from this state's dealers does not violate the due process clause or commerce clause and is proper where the franchisor is in the business of selling franchises, developing and marketing parts, receiving its primary source of income from the sale of franchises, collecting a percentage of franchisee's gross receipts as a lease payment for use of the trademark and trade name and where its leased trademarks and trade names and their businesses are protected by the laws of this state; thus, franchisor is engaged in business in this state. AAMCO Transmissions v. Taxation & Revenue Dep't, 93 N.M. 389, 600 P.2d 841 (Ct. App.), cert. denied, 93 N.M. 205, 598 P.2d 1165 (1979).

Tax applicable to foreign corporation. - Although the taxpayer, a Delaware corporation, has no employees or offices located in this state, the taxpayer's most valuable assets, its trade name, trademark and related intangibles, are used in this state, taxpayer's secret formulas and techniques are utilized in this state and its method of business exploits the New Mexico market for taxpayer's benefit, taxpayer is engaged in business in New Mexico for purposes of gross receipts tax. Baskin-Robbins Ice Cream Co. v. Revenue Div. 93 N.M. 301, 599 P.2d 1098 (Ct. App. 1979).

C. LEASES.

Receipt of money from leasing of property is the incident which gave rise to the imposition of the gross receipts and sales tax. Rust Tractor Co. v. Bureau of Revenue, 82 N.M. 82, 475 P.2d 779 (Ct. App.), cert. denied, 82 N.M. 81, 475 P.2d 778 (1970).

Property lease royalties are "gross receipts." - When a taxpayer is leasing property in this state for which it receives royalties, the royalties are "gross receipts." Baskin-Robbins Ice Cream Co. v. Revenue Div. 93 N.M. 301, 599 P.2d 1098 (Ct. App. 1979).

Gross receipts tax levied upon lessor of equipment, not user. Co-Con, Inc. v. Bureau of Revenue, 87 N.M. 118, 529 P.2d 1239 (Ct. App.), cert. denied, 87 N.M. 111, 529 P.2d 1232 (1974).

Treating transactions as rentals for federal tax implies leasing arrangements. - When a parent corporation and its 100%-owned subsidiary utilized certain items of equipment without regard to which held the legal title thereto, made accounting entries showing the machinery as either "receivable" or "liability," as appropriate, and treated the transactions as gross rentals for federal corporate income tax purposes, the intent of the taxpayers was to treat the arrangements as rentals or leases which were subject to gross receipts taxes. Co-Con, Inc. v. Bureau of Revenue, 87 N.M. 118, 529 P.2d 1239 (Ct. App.), cert. denied, 87 N.M. 111, 529 P.2d 1232 (1974).

Laundry transactions are leasings. - Since the taxpayer's coin-operated laundry business is used for a consideration by persons other than the owner, the transactions are "leasings" as defined in Subsection J and the taxpayer is entitled to a deduction from compensating tax liability for the value of the washers and dryers. Strebeck Properties, Inc. v. New Mexico Bureau of Revenue, 93 N.M. 262, 599 P.2d 1059 (Ct. App. 1979).

Franchisor's arrangements with its licensees fall within definition of "leasing." American Dairy Queen Corp. v. Taxation & Revenue Dep't, 93 N.M. 743, 605 P.2d 251 (Ct. App. 1979).

D. TIME-PRICE DIFFERENTIAL.

To be taxable must be bargained for before work finished. - In order to be taxable as a "time-price differential sale," the money in question must have been bargained for before the contract work was rendered and the final invoice delivered, and when taxpayer accepted a promissory note secured by a mortgage after it had completed its work, the additional money paid on the note was in the nature of interest and could not be characterized as "time-price" for the purposes of this section and therefore the tax as imposed by the bureau was inapplicable. Co-Con, Inc. v. Bureau of Revenue, 87 N.M. 118, 529 P.2d 1239 (Ct. App.), cert. denied, 87 N.M. 111, 529 P.2d 1232 (1974) (decided under prior law).

Time-price differential sale not taxed if no part of which was gross receipt. - Taxpayer was not liable for state and municipal gross receipts taxes on time-price

differential of installment sales contract sold to financial institution since no part of time-price differential was a "gross receipt" under the statute chargeable to taxpayer. Davis v. Commissioner of Revenue, 83 N.M. 152, 489 P.2d 660 (Ct. App.), cert. denied, 83 N.M. 151, 489 P.2d 659 (1971) (decided prior to the 1972 amendment which changed Subsection F's treatment of time-price differential arrangements) (decided under prior law).

Fees taxable even if not approved by court. - Taxpayer was liable for the gross receipts tax assessed against fees actually received and used by the taxpayer, although the fees had not been approved by the bankruptcy court. Lopez v. New Mexico Dep't of Taxation & Revenue, 1997-NMCA-115, 124 N.M. 270, 949 P.2d 284 (Ct. App. 1997).

E. AGENTS.

No agency when purchases for others merely incidental to work. - Carpenter was not liable for assessment of gross receipts tax on purchases of materials since he did not receive any commissions or fees, but acted merely as an agent for his customers, and the purchases were merely incidental to his work as a carpenter. Stohr v. New Mexico Bureau of Revenue, 90 N.M. 43, 559 P.2d 420 (Ct. App. 1976), cert. denied, 90 N.M. 254, 561 P.2d 1347 (1977).

No agency when purchaser consultant to client-buyers. - When taxpayer, engaged in the business of management consultation, supervision and administration for motels, bought large quantities of tangible personal property at wholesale and sold them to its clients without additional cost or profit, the taxpayer was not a factor, agent or broker for its motel clients and was taxable for the total amount of money received from its sale to the motel clients of the tangible personal property under the Gross Receipts and Compensating Tax Act. New Mexico Enters., Inc. v. Bureau of Revenue, 86 N.M. 799, 528 P.2d 212 (Ct. App. 1974).

V. PROPERTY.

Meaning of "license". - As "license" is not defined in the statutes, it is accordingly to be given its ordinary meaning unless a different intent is clearly indicated and as "license" is defined in terms of "to accord permission or consent," "allow," "authorize," and as "permission to act," the essential element in the creation of a license is the permission or consent of the licensor and this permission need not come from some government authority. New Mexico Sheriffs & Police Ass'n v. Bureau of Revenue, 85 N.M. 565, 514 P.2d 616 (Ct. App. 1973).

Rental of space in department store held license. - Agreements entered into between the taxpayer and several other companies which provided for the use of space in the taxpayer's department stores for the purpose of retailing certain items were license agreements and receipts from these arrangements were taxable under this section. S.S. Kresge Co. v. Bureau of Revenue, 87 N.M. 259, 531 P.2d 1232 (Ct. App. 1975).

Telephone communications not tangible personalty. - The decision of the commission that a telephone company which provided a private telephone line to a federal agency was not entitled to the deduction in 7-9-54 NMSA 1978 for the sale of tangible personal property was upheld by the appellate court which found a reasonable basis for differentiating between electricity (declared to be tangible personalty at 7-9-31 NMSA 1978) and telephone communications. Leaco Rural Tel. Coop. v. Bureau of Revenue, 86 N.M. 629, 526 P.2d 426 (Ct. App. 1974).

VI. SERVICE.

Subsection K focus changed test from product's value to seller's activity. - The 1976 amendment to Subsection K changed the test for taxation from one focusing on the end product's value to the purchaser to one focusing on the nature of seller's activity; on the seller's relative investment of skills and materials. EG & G, Inc. v. Director, Revenue Div. Taxation & Revenue Dep't, 94 N.M. 143, 607 P.2d 1161 (Ct. App.), cert. denied, 94 N.M. 628, 614 P.2d 545 (1979).

Service to its members does not constitute "service to others" as stated in the definition of "service" in this section. Twining Coop. Domestic Water & Sewer Ass'n v. Bureau of Revenue, 89 N.M. 345, 552 P.2d 476 (Ct. App.), cert. denied, 90 N.M. 7, 558 P.2d 619 (1976).

Meaning of "other persons" doubtful. - The words "other persons" have many meanings which make the words doubtful as to meaning. When this occurs, "all doubts as to the meaning and intent of a tax statute must be construed in favor of the taxpayer." Twining Coop. Domestic Water & Sewer Ass'n v. Bureau of Revenue, 89 N.M. 345, 552 P.2d 476 (Ct. App.), cert. denied, 90 N.M. 7, 558 P.2d 619 (1976).

Intent of legislature to grant tax immunity to nonprofit corporation. - The intent of the legislature was to grant immunity from the Gross Receipts and Compensating Tax Act to a nonprofit corporation which rendered services solely to its members for an assessment or a charge. Twining Coop. Domestic Water & Sewer Ass'n v. Bureau of Revenue, 89 N.M. 345, 552 P.2d 476 (Ct. App.), cert. denied, 90 N.M. 7, 558 P.2d 619 (1976).

Building contractor performs "service". - A contractor in the business of constructing buildings is not a seller of construction materials but performs a service as defined in Subsection K. Ramah Navajo School Bd., Inc. v. Bureau of Revenue, 95 N.M. 708, 625 P.2d 1225 (Ct. App. 1980), rev'd on other grounds, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

School board contracting to build school. - When an Indian school board contracts with a federal agency to construct a school on reservation property and, in turn, contracts with a general contractor for actual construction of the building, the school board is the owner of the building and not an entity engaged in the construction business within the meaning of Subsection K. Ramah Navajo School Bd., Inc. v. Bureau

of Revenue, 95 N.M. 708, 625 P.2d 1225 (Ct. App. 1980), rev'd on other grounds, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

Horse trainer and owner performing for others are performing "service". - When both a horse trainer and a horse owner are engaged in activities for other persons for a consideration, receipts in question were receipts from performing a service within the meaning of the Gross Receipts and Compensating Tax Act. Till v. Jones, 83 N.M. 743, 497 P.2d 745 (Ct. App.), cert. denied, 83 N.M. 740, 497 P.2d 742 (1972). But see 7-9-40 NMSA 1978 which now exempts receipts from horse race purses.

That part of attorney's inheritance designated attorney fees taxable. - Since attorney who was sole heir to his father's estate listed part of the inheritance received as attorney fees, that portion so designated was taxable under the gross receipts tax. Mears v. Bureau of Revenue, 87 N.M. 240, 531 P.2d 1213 (Ct. App. 1975).

Director's fees for services to corporation. - A member of the board of directors of a corporation was performing a service for the corporation and his fees therefrom are taxable as gross receipts. Mears v. Bureau of Revenue, 87 N.M. 240, 531 P.2d 1213 (Ct. App. 1975).

Municipal franchise fee and telephone carriers. - The total amount of money received by a local carrier for selling its telephone services includes the amount identified on its bills as the customer's share of the municipal franchise fee, so a telephone carrier is subject to the gross receipts tax. GTE S.W. Inc. v. Taxation & Revenue Dep't, 113 N.M. 610, 830 P.2d 162 (Ct. App. 1992).

Billboard displays intrastate in character. - Taxpayer's service is simply to post messages on billboards located in this state. It is being taxed for displaying, not for advertising. This service is intrastate in character, and thus is subject to the gross receipts tax. Mountain States Adv., Inc. v. Bureau of Revenue, 89 N.M. 331, 552 P.2d 233 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976).

Compiler's notes. - Laws 1988, ch. 19, § 5, effective July 1, 1988, repealed Laws 1986, ch. 20, § 128 and Laws 1986, ch. 52, § 4, which enacted amended versions of this section which were to take effect July 1, 1988.

Laws 1989, ch. 262, § 10, effective July 1, 1989, repealed Laws 1988, ch. 19, § 1, which enacted an amended version of this section which was to take effect July 1, 1990.

Laws 1993, ch. 31, § 13, effective July 1, 1993, repeals Laws 1990, ch. 27, § 1, Laws 1991, ch. 197, § 2, Laws 1991, ch. 203, § 2, Laws 1992, ch. 39, § 2, Laws 1992, ch. 50, § 15, and Laws 1992, ch. 67, § 15, all of which amended 7-9-3 NMSA 1978 to take effect July 1, 1993.

Laws 1993, ch. 31, § 13D, and Laws 1993, ch. 310, § 3, both effective July 1, 1993, repeal Laws 1992, ch. 40, § 2, which provided for the repeal of 7-9-3 NMSA 1978 as

amended by Laws 1991, ch. 203, § 2, effective October 1, 1995 if the United States announced prior to July 1, 1995 that the space systems division of the department of the air force would be relocated to New Mexico. Laws 1993, ch. 31, § 13D and Laws 1993, ch. 310, § 3 also repeal Laws 1992, ch. 40, § 3, which provided for the repeal of the provisions of Laws 1992, ch. 40 on August 1, 1995 if the United States had not announced prior to July 1, 1995 that the space systems division of the department of the air force would be relocated to New Mexico.

Language of this section is definite and unambiguous. Miller v. Bureau of Revenue, 93 N.M. 252, 599 P.2d 1049 (Ct. App. 1979), cert. denied, 92 N.M. 532, 591 P.2d 286 (1979).

Taxpayer should be given fair, unbiased and reasonable construction, without favor either to the taxpayer or the state, to the end that the legislative intent is effectuated and the public interests to be subserved thereby furthered. Baskin-Robbins Ice Cream Co. v. Revenue Div. 93 N.M. 301, 599 P.2d 1098 (Ct. App. 1979).

Taxes assessed only on receipts or future receipts. - A reading of the full act providing for gross receipts tax shows the legislative intent to be that taxes were to be assessed only on what was received or would be received. Davis v. Commissioner of Revenue, 83 N.M. 152, 489 P.2d 660 (Ct. App.), cert. denied, 83 N.M. 151, 489 P.2d 659 (1971).

Legal incidence of gross receipts tax on seller. - The statutory language of Subsection F and 7-9-4 NMSA 1978 places the legal incidence of the gross receipts tax on the seller. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978).

Taxpayers must treat transactions uniformly for all purposes within the tax scheme and not attempt to show, first, a lease for federal purposes and second, a nontaxable event for state purposes. Co-Con, Inc. v. Bureau of Revenue, 87 N.M. 118, 529 P.2d 1239 (Ct. App.), cert. denied, 87 N.M. 111, 529 P.2d 1232 (1974).

If purchase order not transfer for consideration, then not sale. - The wording of taxpayer's purchase orders and contract, together with evidence that taxpayer invoiced only for chemicals and reagents delivered to a well and retained payment only for what was used, support the inference that a purchase order was not a transfer for consideration and therefore not a sale; therefore, since no single delivery or single day's delivery to a well ever amounted to 18 tons or more, of chemicals or reagents, although the amount specified in a purchase order might aggregate that much, taxpayer was not entitled to a deduction under 7-9-65 NMSA 1978. Runco Acidizing & Fracturing Co. v. Bureau of Revenue, 87 N.M. 146, 530 P.2d 410 (Ct. App. 1974).

Corporations separate entities for taxation purposes. - Taxpayers, a parent corporation and its 100%-owned subsidiary cannot escape corporate liability for joint use of equipment merely because the shareholders of one of the corporations own all the equipment in question. The two corporations must be treated as separate entities for

taxation purposes. Co-Con, Inc. v. Bureau of Revenue, 87 N.M. 118, 529 P.2d 1239 (Ct. App.), cert. denied, 87 N.M. 111, 529 P.2d 1232 (1974).

Renting or leasing is a "use" of property. Rust Tractor Co. v. Bureau of Revenue, 82 N.M. 82, 475 P.2d 779 (Ct. App.), cert. denied, 82 N.M. 81, 475 P.2d 778 (1970).

Receipts to owner and trainer of horse subject to tax. - The legislature, in enacting the Gross Receipts Tax Act, did not intend to exempt receipts from horse races. There is neither ambiguity nor doubt that the language used in the Gross Receipts Tax Act applies to the receipts of a horse owner paid to him for a winning purse and the receipts of a horse trainer paid to him as his percentage of a winning purse. Till v. Jones, 83 N.M. 743, 497 P.2d 745 (Ct. App.), cert. denied, 83 N.M. 740, 497 P.2d 742 (1972). But see 7-9-40 NMSA 1978 which now exempts receipts from horse race purses.

68 Am. Jur. 2d Sales and Use Taxes §§ 63 to 67, 87 to 89, 173 to 176.

II. CONSTRUCTION.

Construction work incidental to "severing" exempt from gross receipts tax. - The exemption provided by 7-9-35 NMSA 1978 applied, since "severing" was taking place as the development work was performed and none of taxpayer's work was preliminary to or preparatory for "severing"; therefore, receipts from development work, which includes construction, were exempted from the gross receipts tax and taxable under the service tax (resources excise tax) when such construction work was incidental to the "severing." Patten v. Bureau of Revenue, 86 N.M. 355, 524 P.2d 527 (Ct. App. 1974).

"Fence" not a "structure". - The word "structure" in paragraph (2) of Subsection C, which follows "building" and "stadium," is limited in its meaning to things or classes of the same general character as buildings and stadia and this does not include fences. Cardinal Fence Co. v. Commissioner of Bureau of Revenue, 84 N.M. 314, 502 P.2d 1004 (Ct. App. 1972).

Fence not within definition of "construction". - Construction of fences does not come within the definition of "construction" in Subsection C; that the fencing material sold is not a component part of a construction project. Cardinal Fence Co. v. Commissioner of Bureau of Revenue, 84 N.M. 314, 502 P.2d 1004 (Ct. App. 1972).

Non-Indians performing construction services for tribe subject to tax. - Under the gross receipts tax act, non-Indian contractors involved in the construction of an Indian resort complex are subject to a tax on the gross receipts they received for performing construction services. The legal incidence of the tax falls upon them and not upon the tribe or tribal property. The state is imposing the tax solely on non-Indians who have performed services for the tribe. Mescalero Apache Tribe v. O'Cheskey, 439 F. Supp. 1063 (D.N.M. 1977), aff'd, 625 F.2d 967 (10th Cir. 1980), cert. denied, 450 U.S. 959, 101 S. Ct. 1417, 67 L. Ed. 2d 383 (1981), rehearing denied, 455 U.S. 929, 102 S. Ct. 1296, 71 L. Ed. 2d 474 (1982).

Imposition of tax on tribal organization impermissible. - If the economic burden of the gross receipts tax ultimately falls on a tribal organization, even though the legal incidence of the tax falls on the non-Indian contractor with whom the organization contracted to build an Indian school, the imposition of the tax impermissibly impedes the clearly expressed federal interest in promoting the quality and quantity of educational opportunities for Indians by depleting the funds available for the construction of Indian schools. Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

The comprehensive federal regulatory scheme and the express federal policy of encouraging tribal self-sufficiency in the area of education preclude the imposition of the state gross receipts tax on the construction of school facilities on tribal lands pursuant to a contract between a tribal organization and a non-Indian contracting firm. Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

Construction project includes wide variety of activities. - This section was intended to make sales of construction materials to governmental entities taxable when the materials were to be incorporated into construction projects. Contrary to taxpayer's argument that Regulation GR 51:16 establishes a definite test for determining whether an endeavor is a "construction project," this regulation merely states nonexclusive guidelines for determining whether materials constitute a component part of a construction project. Thus, construction projects include the wide variety of activities listed in Subsection C. Arco Materials, Inc. v. State, Taxation & Revenue Dep't, 118 N.M. 12, 878 P.2d 330 (Ct. App. 1994), rev'd on other grounds sub nom. Blaze Constr. Co. v. Taxation & Revenue Dep't, 118 N.M. 647, 884 P.2d 803 (1994), cert. denied, 514 U.S. 1016, 115 S. Ct. 1359, 131 L. Ed. 2d 216 (1995).

"Construction" deemed question of fact. - Whether activities of a party constitute "construction," as defined in Subsection C, is a question of fact for a jury. United States v. New Mexico, 642 F.2d 397 (10th Cir. 1981).

III. ENGAGING IN BUSINESS.

Meaning of "business". - "Business" is that which occupies the time, attention and labor of a person for the purpose of livelihood, profit or improvement; that which is a person's concern or intent. It would be too narrow a view to hold that if appellant's intelligence, skill and labor is employed in New Mexico, he is not carrying on a business, trade or profession in this state. Sterling Title Co. v. Commissioner of Revenue, 85 N.M. 279, 511 P.2d 765 (Ct. App. 1973).

"Engaging in business" means carrying on or causing to be carried on any activity for the purpose of direct or indirect benefit to the taxpayer (American Automobile Association), not someone else (its members). AAA v. Bureau of Revenue, 87 N.M. 330, 533 P.2d 103 (1975). See also, AAA v. Bureau of Revenue, 88 N.M. 462, 541 P.2d 967 (1975).

A taxpayer is "engaging in business" as defined by Subsection E when it is doing what it was organized and authorized to do. Baskin-Robbins Ice Cream Co. v. Revenue Div. 93 N.M. 301, 599 P.2d 1098 (Ct. App. 1979).

To decide whether one's activity constitutes "engaging in business" in this state, the real question is whether the sale or lease is in line with the business for which the seller or lessor was organized and in which it engages. AAMCO Transmissions v. Taxation & Revenue Dep't, 93 N.M. 389, 600 P.2d 841 (Ct. App.), cert. denied, 93 N.M. 205, 598 P.2d 1165 (1979).

To engage in business, taxpayer must engage in services "for other persons" with the purpose of direct or indirect benefit to itself, for which activity it receives money for the performance of its services. Twining Coop. Domestic Water & Sewer Ass'n v. Bureau of Revenue, 89 N.M. 345, 552 P.2d 476 (Ct. App.), cert. denied, 90 N.M. 7, 558 P.2d 619 (1976).

Bookkeeping and management corporation engaged in business. - Corporation organized to centralize the bookkeeping and management functions for other corporations was engaged in business for purposes of this act. Westland Corp. v. Commissioner of Revenue, 83 N.M. 29, 487 P.2d 1099 (Ct. App.), cert. denied, 83 N.M. 22, 487 P.2d 1092 (1971).

A "nonprofit" corporation means a corporation which distributes no part of the income or profit to its members, directors or officers. AAA v. Bureau of Revenue, 87 N.M. 330, 533 P.2d 103 (1975).

Independent contractor subject to gross receipts taxes. - Since carpenter did "fifty to one hundred and fifty" jobs for different people, on those jobs where the customer (employer) deducted F.I.C.A. taxes, carpenter was an employee and his compensation was exempt as wages, and where no deductions were made, the commissioner determined that he was an independent contractor and liable for payment of gross receipt taxes. Stohr v. New Mexico Bureau of Revenue, 90 N.M. 43, 559 P.2d 420 (Ct. App. 1976), cert. denied, 90 N.M. 254, 561 P.2d 1347 (1977).

Incidence of tax on contractors selling services to United States. - The legal incidence of the gross receipts tax was on contractors as sellers of services to the United States, not on the federal government. United States v. New Mexico (10th Cir. 1978).

Foreign franchisor deemed "engaging in business". - A foreign corporation which enters into agreements as a franchisor with licensees in New Mexico for use of the franchisor's trade name and trademark is engaged in business in New Mexico. American Dairy Queen Corp. v. Taxation & Revenue Dep't, 93 N.M. 743, 605 P.2d 251 (Ct. App. 1979).

IV. GROSS RECEIPTS.

A. IN GENERAL.

"Gross receipts" means the total amount of money or the value of other considerations received from selling property or from performing services. New Mexico Enters., Inc. v. Bureau of Revenue, 86 N.M. 799, 528 P.2d 212 (Ct. App. 1974).

Gross receipts tax upon non-Indians working on reservations valid. - When the gross receipts tax levied upon non-Indians working on state reservations is nondiscriminatory and does not preclude a possible similar tax by a tribe on activities conducted on its reservation, the Indian right to self-government is not impaired and the tax is valid. Mescalero Apache Tribe v. O'Cheskey, 625 F.2d 967 (10th Cir. 1980), cert. denied, 450 U.S. 959, 101 S. Ct. 1417, 67 L. Ed. 2d 383 (1981), rehearing denied, 455 U.S. 929, 102 S. Ct. 1296, 71 L. Ed. 2d 474; 459 U.S. 1025, 103 S. Ct. 393, 74 L. Ed. 2d 522 (1982).

Federal preemption for services rendered Indians. - District court properly ordered state tax agency to refund gross receipts taxes paid by a private contractor on services performed on an Indian reservation for a corporation owned by an Indian tribe, in light of the fact that the Indian trader statutes, 25 U.S.C. §§ 261-264, preempted the agency's authority to impose such a tax since the federal trader statutes included services under the scope of "trade". Luguna Indus., Inc. v. New Mexico Taxation & Revenue Dep't, 114 N.M. 644, 845 P.2d 167 (Ct. App. 1992), aff'd, 115 N.M. 553, 855 P.2d 127 (1993).

Disbursement agents of federal funds immune from gross receipts tax. - Agents for the disbursement of federal funds are constitutionally immune from application of the gross receipts tax to those funds. United States v. New Mexico, 624 F.2d 111 (10th Cir. 1980), aff'd, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

Salaries and overhead of federal contractors not tax immune. - As long as federal contractors are separate entities solely responsible for their own employees and internal management, salaries and overhead of those contractors are not obligations of the government, for purposes of tax immunity. United States v. New Mexico, 624 F.2d 111 (10th Cir. 1980), aff'd, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

Collection agencies gross receipts. - A collection agency does not include the creditor's portion of the proceeds, nor the taxes it collects on behalf of the creditor, in calculating its commission proceeds, i.e., its gross receipts. Rather, a collection agency pays gross receipts tax only on the commission portion of the debt. The total tax imposed on the debt and charged to the debtor is simply the sum of the creditor's tax and the agency's tax. Martinez v. Albuquerque Collection Servs., Inc. 867 F. Supp. 1495 (D.N.M. 1994).

B. OUT-OF-STATE.

Only activities within state taxable. - The validity of the application of the gross receipts tax to general and administrative expense reimbursements depended on

whether the tax was laid upon gross receipts derived from the contractors' activities within the borders of the state. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978).

If when they received reimbursements for general and administrative expenses contractors were being reimbursed for work (whether called "services" or by any other name) performed outside the state, New Mexico taxing authorities lack authority to tax those transactions. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978).

Income which arises from a contract performed within the state but accrues upon a separable out-of-state transaction should be excluded from taxation as not being income arising from contracting within the state. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978).

Mere accounting device will not avoid tax. - Since all receipts resulted solely from the contractor's activities in the state and the general and administrative expense category appeared merely to be a cost accounting device, the entire amount of the receipts may be taxed by the state. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978).

Apportionment between in-state and out-of-state activity does not arise if the tax is levied only upon receipts resulting from the taxpayer's activities in New Mexico. Mountain States Adv., Inc. v. Bureau of Revenue, 89 N.M. 331, 552 P.2d 233 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976).

Tax on foreign corporation's local business does not offend commerce clause. - Gross receipts tax imposed on foreign corporation was conditioned on the local business of renting equipment located in the state. Therefore, the tax does not constitute an undue burden on interstate commerce but, on the contrary, was a tax on the taxpayers' local and intrastate business of leasing machinery. Besser Co. v. Bureau of Revenue, 74 N.M. 377, 394 P.2d 141 (1964)(decided under prior gross receipts law).

Taxing out-of-state sales impermissible. - Tax levied on gross receipts from out-of-state sales of tangible personal property, in the nature of reproducible educational material, is an impermissible burden on commerce. Evco v. Jones, 409 U.S. 91, 93 S. Ct. 349, 34 L. Ed. 2d 325 (1972).

Entire revenue from nonresident's display of signs in state taxable. - Colorado corporation which displayed billboards made in Colorado by Colorado employees and whose only contact with New Mexico was the displaying of signs and using 10% of its cost in maintenance was held subject to this section for its entire revenue and not just its 10% cost of maintenance. Mountain States Adv., Inc. v. Bureau of Revenue, 89 N.M. 331, 552 P.2d 233 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976).

Only value of property entering state taxed. - Where tuition paid by New Mexico residents to a correspondence school based in Illinois covered materials valued at an

average cost of $50 per student, and the remainder of the tuition covered the costs of grading, counseling and other services connected with the educational programs, virtually all of which services were performed in Illinois, it was held that only the value of the property entering New Mexico could be taxed as gross receipts of the school. Advance Schools, Inc. v. Bureau of Revenue, 89 N.M. 79, 547 P.2d 562 (1976).

Tax applicable to foreign franchisor. - Although franchisor has no payroll, real property, personnel or offices located in this state, it does furnish signs which must be leased or purchased by its dealers, and its sales of tangible property and its granting of exclusive franchises constitute engaging in intrastate business in this state and the franchise fees received therefrom are subject to the gross receipts tax. AAMCO Transmissions v. Taxation & Revenue Dep't, 93 N.M. 389, 600 P.2d 841 (Ct. App.), cert. denied, 93 N.M. 205, 598 P.2d 1165 (1979).

Application of tax to franchise fees. - The imposition of gross receipts tax on franchise fees received from this state's dealers does not violate the due process clause or commerce clause and is proper where the franchisor is in the business of selling franchises, developing and marketing parts, receiving its primary source of income from the sale of franchises, collecting a percentage of franchisee's gross receipts as a lease payment for use of the trademark and trade name and where its leased trademarks and trade names and their businesses are protected by the laws of this state; thus, franchisor is engaged in business in this state. AAMCO Transmissions v. Taxation & Revenue Dep't, 93 N.M. 389, 600 P.2d 841 (Ct. App.), cert. denied, 93 N.M. 205, 598 P.2d 1165 (1979).

Tax applicable to foreign corporation. - Although the taxpayer, a Delaware corporation, has no employees or offices located in this state, the taxpayer's most valuable assets, its trade name, trademark and related intangibles, are used in this state, taxpayer's secret formulas and techniques are utilized in this state and its method of business exploits the New Mexico market for taxpayer's benefit, taxpayer is engaged in business in New Mexico for purposes of gross receipts tax. Baskin-Robbins Ice Cream Co. v. Revenue Div. 93 N.M. 301, 599 P.2d 1098 (Ct. App. 1979).

C. LEASES.

Receipt of money from leasing of property is the incident which gave rise to the imposition of the gross receipts and sales tax. Rust Tractor Co. v. Bureau of Revenue, 82 N.M. 82, 475 P.2d 779 (Ct. App.), cert. denied, 82 N.M. 81, 475 P.2d 778 (1970).

Property lease royalties are "gross receipts." - When a taxpayer is leasing property in this state for which it receives royalties, the royalties are "gross receipts." Baskin-Robbins Ice Cream Co. v. Revenue Div. 93 N.M. 301, 599 P.2d 1098 (Ct. App. 1979).

Gross receipts tax levied upon lessor of equipment, not user. Co-Con, Inc. v. Bureau of Revenue, 87 N.M. 118, 529 P.2d 1239 (Ct. App.), cert. denied, 87 N.M. 111, 529 P.2d 1232 (1974).

Treating transactions as rentals for federal tax implies leasing arrangements. - When a parent corporation and its 100%-owned subsidiary utilized certain items of equipment without regard to which held the legal title thereto, made accounting entries showing the machinery as either "receivable" or "liability," as appropriate, and treated the transactions as gross rentals for federal corporate income tax purposes, the intent of the taxpayers was to treat the arrangements as rentals or leases which were subject to gross receipts taxes. Co-Con, Inc. v. Bureau of Revenue, 87 N.M. 118, 529 P.2d 1239 (Ct. App.), cert. denied, 87 N.M. 111, 529 P.2d 1232 (1974).

Effect of Bingo and Raffle Act on lease. - An arrangement between the owner of several properties used as bingo halls and the non-profit organizations who operated the bingo games was a lease and not a license where the organizations were required to pay rent, they were granted exclusive possession of certain facilities on the premises and the use of the facilities at certain times, and the owner could not revoke the agreement at will; although the arrangement was not a typical lease, restrictions in the Bingo and Raffle Act [60-2B-1 to 60-2B-14 NMSA 1978] accounted for the type of arrangement created and to deny that this was a lease would have made it impossible for bingo operators to enter arrangements that would qualify as leases. Quantum Corp. v. State Taxation & Revenue Dep't, 1998-NMCA-050, 125 N.M. 49, 956 P.2d 848 (Ct. App. 1998).

Laundry transactions are leasings. - Since the taxpayer's coin-operated laundry business is used for a consideration by persons other than the owner, the transactions are "leasings" as defined in Subsection J and the taxpayer is entitled to a deduction from compensating tax liability for the value of the washers and dryers. Strebeck Properties, Inc. v. New Mexico Bureau of Revenue, 93 N.M. 262, 599 P.2d 1059 (Ct. App. 1979).

Franchisor's arrangements with its licensees fall within definition of "leasing." American Dairy Queen Corp. v. Taxation & Revenue Dep't, 93 N.M. 743, 605 P.2d 251 (Ct. App. 1979).

D. TIME-PRICE DIFFERENTIAL.

To be taxable must be bargained for before work finished. - In order to be taxable as a "time-price differential sale," the money in question must have been bargained for before the contract work was rendered and the final invoice delivered, and when taxpayer accepted a promissory note secured by a mortgage after it had completed its work, the additional money paid on the note was in the nature of interest and could not be characterized as "time-price" for the purposes of this section and therefore the tax as imposed by the bureau was inapplicable. Co-Con, Inc. v. Bureau of Revenue, 87 N.M. 118, 529 P.2d 1239 (Ct. App.), cert. denied, 87 N.M. 111, 529 P.2d 1232 (1974) (decided under prior law).

Time-price differential sale not taxed if no part of which was gross receipt. - Taxpayer was not liable for state and municipal gross receipts taxes on time-price

differential of installment sales contract sold to financial institution since no part of time-price differential was a "gross receipt" under the statute chargeable to taxpayer. Davis v. Commissioner of Revenue, 83 N.M. 152, 489 P.2d 660 (Ct. App.), cert. denied, 83 N.M. 151, 489 P.2d 659 (1971) (decided prior to the 1972 amendment which changed Subsection F's treatment of time-price differential arrangements) (decided under prior law).

Fees taxable even if not approved by court. - Taxpayer was liable for the gross receipts tax assessed against fees actually received and used by the taxpayer, although the fees had not been approved by the bankruptcy court. Lopez v. New Mexico Dep't of Taxation & Revenue, 1997-NMCA-115, 124 N.M. 270, 949 P.2d 284 (Ct. App. 1997).

E. AGENTS.

No agency when purchases for others merely incidental to work. - Carpenter was not liable for assessment of gross receipts tax on purchases of materials since he did not receive any commissions or fees, but acted merely as an agent for his customers, and the purchases were merely incidental to his work as a carpenter. Stohr v. New Mexico Bureau of Revenue, 90 N.M. 43, 559 P.2d 420 (Ct. App. 1976), cert. denied, 90 N.M. 254, 561 P.2d 1347 (1977).

No agency when purchaser consultant to client-buyers. - When taxpayer, engaged in the business of management consultation, supervision and administration for motels, bought large quantities of tangible personal property at wholesale and sold them to its clients without additional cost or profit, the taxpayer was not a factor, agent or broker for its motel clients and was taxable for the total amount of money received from its sale to the motel clients of the tangible personal property under the Gross Receipts and Compensating Tax Act. New Mexico Enters., Inc. v. Bureau of Revenue, 86 N.M. 799, 528 P.2d 212 (Ct. App. 1974).

V. PROPERTY.

Meaning of "license". - As "license" is not defined in the statutes, it is accordingly to be given its ordinary meaning unless a different intent is clearly indicated and as "license" is defined in terms of "to accord permission or consent," "allow," "authorize," and as "permission to act," the essential element in the creation of a license is the permission or consent of the licensor and this permission need not come from some government authority. New Mexico Sheriffs & Police Ass'n v. Bureau of Revenue, 85 N.M. 565, 514 P.2d 616 (Ct. App. 1973).

Rental of space in department store held license. - Agreements entered into between the taxpayer and several other companies which provided for the use of space in the taxpayer's department stores for the purpose of retailing certain items were license agreements and receipts from these arrangements were taxable under this section. S.S. Kresge Co. v. Bureau of Revenue, 87 N.M. 259, 531 P.2d 1232 (Ct. App. 1975).

Telephone communications not tangible personalty. - The decision of the commission that a telephone company which provided a private telephone line to a federal agency was not entitled to the deduction in 7-9-54 NMSA 1978 for the sale of tangible personal property was upheld by the appellate court which found a reasonable basis for differentiating between electricity (declared to be tangible personalty at 7-9-31 NMSA 1978) and telephone communications. Leaco Rural Tel. Coop. v. Bureau of Revenue, 86 N.M. 629, 526 P.2d 426 (Ct. App. 1974).

VI. SERVICE.

Subsection K focus changed test from product's value to seller's activity. - The 1976 amendment to Subsection K changed the test for taxation from one focusing on the end product's value to the purchaser to one focusing on the nature of seller's activity; on the seller's relative investment of skills and materials. EG & G, Inc. v. Director, Revenue Div. Taxation & Revenue Dep't, 94 N.M. 143, 607 P.2d 1161 (Ct. App.), cert. denied, 94 N.M. 628, 614 P.2d 545 (1979).

Service to its members does not constitute "service to others" as stated in the definition of "service" in this section. Twining Coop. Domestic Water & Sewer Ass'n v. Bureau of Revenue, 89 N.M. 345, 552 P.2d 476 (Ct. App.), cert. denied, 90 N.M. 7, 558 P.2d 619 (1976).

Meaning of "other persons" doubtful. - The words "other persons" have many meanings which make the words doubtful as to meaning. When this occurs, "all doubts as to the meaning and intent of a tax statute must be construed in favor of the taxpayer." Twining Coop. Domestic Water & Sewer Ass'n v. Bureau of Revenue, 89 N.M. 345, 552 P.2d 476 (Ct. App.), cert. denied, 90 N.M. 7, 558 P.2d 619 (1976).

Intent of legislature to grant tax immunity to nonprofit corporation. - The intent of the legislature was to grant immunity from the Gross Receipts and Compensating Tax Act to a nonprofit corporation which rendered services solely to its members for an assessment or a charge. Twining Coop. Domestic Water & Sewer Ass'n v. Bureau of Revenue, 89 N.M. 345, 552 P.2d 476 (Ct. App.), cert. denied, 90 N.M. 7, 558 P.2d 619 (1976).

Building contractor performs "service". - A contractor in the business of constructing buildings is not a seller of construction materials but performs a service as defined in Subsection K. Ramah Navajo School Bd., Inc. v. Bureau of Revenue, 95 N.M. 708, 625 P.2d 1225 (Ct. App. 1980), rev'd on other grounds, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

School board contracting to build school. - When an Indian school board contracts with a federal agency to construct a school on reservation property and, in turn, contracts with a general contractor for actual construction of the building, the school board is the owner of the building and not an entity engaged in the construction business within the meaning of Subsection K. Ramah Navajo School Bd., Inc. v. Bureau

of Revenue, 95 N.M. 708, 625 P.2d 1225 (Ct. App. 1980), rev'd on other grounds, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

Horse trainer and owner performing for others are performing "service". - When both a horse trainer and a horse owner are engaged in activities for other persons for a consideration, receipts in question were receipts from performing a service within the meaning of the Gross Receipts and Compensating Tax Act. Till v. Jones, 83 N.M. 743, 497 P.2d 745 (Ct. App.), cert. denied, 83 N.M. 740, 497 P.2d 742 (1972). But see 7-9-40 NMSA 1978 which now exempts receipts from horse race purses.

That part of attorney's inheritance designated attorney fees taxable. - Since attorney who was sole heir to his father's estate listed part of the inheritance received as attorney fees, that portion so designated was taxable under the gross receipts tax. Mears v. Bureau of Revenue, 87 N.M. 240, 531 P.2d 1213 (Ct. App. 1975).

Director's fees for services to corporation. - A member of the board of directors of a corporation was performing a service for the corporation and his fees therefrom are taxable as gross receipts. Mears v. Bureau of Revenue, 87 N.M. 240, 531 P.2d 1213 (Ct. App. 1975).

Municipal franchise fee and telephone carriers. - The total amount of money received by a local carrier for selling its telephone services includes the amount identified on its bills as the customer's share of the municipal franchise fee, so a telephone carrier is subject to the gross receipts tax. GTE S.W. Inc. v. Taxation & Revenue Dep't, 113 N.M. 610, 830 P.2d 162 (Ct. App. 1992).

Billboard displays intrastate in character. - Taxpayer's service is simply to post messages on billboards located in this state. It is being taxed for displaying, not for advertising. This service is intrastate in character, and thus is subject to the gross receipts tax. Mountain States Adv., Inc. v. Bureau of Revenue, 89 N.M. 331, 552 P.2d 233 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976).

7-9-3.1. Repealed.

ANNOTATIONS

Repeals. - Laws 1992, ch. 48, § 4 repeals 7-9-3.1 NMSA 1978, as enacted by Laws 1991, ch. 9, § 26, defining "livestock", effective July 1, 1992. For provisions of former section, see 1991 Cumulative Supplement.

7-9-3.2. Additional definition.

As used in the Gross Receipts and Compensating Tax Act [this article], "governmental gross receipts" means all receipts of the state of New Mexico or any agency, institution, instrumentality or political subdivision thereof from:

A. the sale of tangible personal property other than water from facilities open to the general public;

B. the performance of or admissions to recreational, athletic or entertainment services or events in facilities open to the general public;

C. refuse collection, refuse disposal or both;

D. sewage services; and

E. the sale of water by a utility owned or operated by a county, municipality or other political subdivision of the state.

"Governmental gross receipts" includes receipts from the sale of tangible personal property handled on consignment when sold from facilities open to the general public but excludes cash discounts taken and allowed, governmental gross receipts tax payable on transactions reportable for the period and any type of time-price differential.

History: 1978 Comp., § 7-9-3.2, enacted by Laws 1991, ch. 8, § 1; 1992, ch. 100, § 1.

ANNOTATIONS

The 1992 amendment, effective July 1, 1992, restructured the former introductory paragraph and former Subsection A as the present introductory paragraph and Subsections A through E; substituted "or" for "and" in the introductory paragraph; inserted "other than water" in Subsection A; added "refuse disposal or both" at the end of Subsection C; deleted former Subsection B, relating to receipts from the sale of tangible personal property; and added the undesignated last paragraph.

7-9-4. Imposition and rate of tax; denomination as "gross receipts tax".

A. For the privilege of engaging in business, an excise tax equal to five percent of gross receipts is imposed on any person engaging in business in New Mexico.

B. The tax imposed by this section shall be referred to as the "gross receipts tax".

History: 1953 Comp., § 72-16A-4, enacted by Laws 1966, ch. 47, § 4; 1969, ch. 144, § 2; 1978, ch. 151, § 2; 1981, ch. 37, § 9; 1983, ch. 213, § 15; 1986, ch. 20, § 63; 1990 (1st S.S.), ch. 1, § 2.

ANNOTATIONS

I. General Consideration.
II. Applicability.
III. Out-of-State.

I. GENERAL CONSIDERATION.

Cross references. - For exemptions from the gross receipts tax, see 7-9-12 NMSA 1978.

For deductions from the gross receipts tax, see 7-9-45 NMSA 1978.

The 1990 amendment, effective July 1, 1990, substituted "five percent" for "four and three-fourths percent" in Subsection A.

Reasonable tax classifications not unconstitutional. - It is for the legislature to adopt classifications for the imposition of excise taxes as it may deem proper and any reasonable classification cannot be held to deny equal protection or due process. Edmunds v. Bureau of Revenue, 64 N.M. 454, 330 P.2d 131 (1958).

Legislature's method of imposing gross receipts and compensating tax reasonable. - The legislature's selection of the vendor for imposition of the school tax (gross receipts tax since repealed) and of the purchaser for imposition of the former compensating tax was reasonable in view of the impossibility of subjecting a nonresident vendor - one who was out of the territorial jurisdiction of the legislature - to the school tax. Edmunds v. Bureau of Revenue, 64 N.M. 454, 330 P.2d 131 (1958).

Legislative failure to protect resident-vendor not unconstitutional. - The failure of the legislature to protect resident-vendor against the unfair competition of importations into New Mexico, without the payment of a sales tax, of chemical reagents did not offend the constitutions of either the United States or of New Mexico so as to invalidate the school tax against him. Edmunds v. Bureau of Revenue, 64 N.M. 454, 330 P.2d 131 (1958)(decided under former law).

Standard of review on appeal. - Department's gross receipts tax assessment can only be reversed by the court of appeals if arbitrary or capricious, or there is an abuse of discretion, such that the assessment is not supported by substantial evidence or it is otherwise not in accordance with law. ITT Educ. Serv. v. Taxation & Revenue Dep't, 1998-NMCA-078, 125 N.M. 244, 959 P.2d 969 (Ct. App. 1998).

Law reviews. - For comment, "Taxation of National Banks: A Novel Approach in the New Mexico Courts," see 10 Nat. Resources J. 615 (1970).

For article, "The Deductibility for Federal Income Tax Purposes of the New Mexico Gross Receipts Tax Paid on the Purchase of a Newly Constructed Home," see 13 N.M.L. Rev. 625 (1983).

II. APPLICABILITY.

Legal incidence of gross receipts tax on seller. - The statutory language of 7-9-3F NMSA 1978 and this section places the legal incidence of the gross receipts tax on the seller. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978).

Incidence of tax on contractors selling services to United States. - The legal incidence of the gross receipts tax was on contractors as sellers of services to the United States, not on the federal government. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978).

Tax valid since contractors not agents of United States. - Since contracts did not authorize contractors to act as agents of the United States in purchasing supplies and materials, application of the gross receipts tax to the contractual transactions for materials and supplies was not unconstitutional. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978).

Tax valid even though increases government's contract costs. - That the gross receipts tax may increase cost on a contract to the government does not invalidate the tax on the grounds that a state may not directly tax the federal government since its legal incidence falls elsewhere. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978).

Agency exemption. - Money received by the taxpayer, a property management company, from the property owner as reimbursement for on-site employee expenses was not taxable as gross receipts, because the taxpayer was an agent for the property owner for the purpose of employing and paying the on-site employees employed at the owners property. Carlsberg Mgt. Co. v. State, Taxation & Revenue Dep't, 116 N.M. 247, 861 P.2d 288 (Ct. App. 1993).

If bank can pass tax on, it is not real taxpayer. - Since services of maintaining and processing other banks' accounts were not reasonably necessary or incidental to business or functions of national banking association, New Mexico was not prevented by federal law from levying gross receipts tax on association's receipts collected for said services and association could pass tax on to banks for which it performed services and was therefore not the real taxpayer. First Nat'l Bank v. Commissioner of Revenue, 80 N.M. 699, 460 P.2d 64 (Ct. App.), cert. denied, 80 N.M. 707, 460 P.2d 72 (1969), appeal dismissed, 397 U.S. 661, 90 S. Ct. 1407, 25 L. Ed. 2d 643 (1970).

Gross receipts tax may be constitutionally imposed on contractor doing work on Indian reservation in the state if there is no imposition on the sovereignty of the United States or infringement of the Indian tribe's right to self-government. Tiffany Constr. Co. v. Bureau of Revenue, 96 N.M. 296, 629 P.2d 1225 (1981).

If tax ultimately falls on tribal organization. - If the economic burden of the gross receipts tax ultimately falls on a tribal organization, even though the legal incidence of the tax falls on the non-Indian contractor with whom the organization contracted to build an Indian school, the imposition of the tax impermissibly impedes the clearly expressed

federal interest in promoting the quality and quantity of educational opportunities for Indians by depleting the funds available for the construction of Indian schools. Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

The comprehensive federal regulatory scheme and the express federal policy of encouraging tribal self-sufficiency in the area of education preclude the imposition of the state gross receipts tax on the construction of school facilities on tribal lands pursuant to a contract between a tribal organization and a non-Indian contracting firm. Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

Sale of cigarettes to non-Indians on Indian reservation. - Non-Indian did not have a valid agency relationship with an Indian, so as to bar the imposition of gross receipts taxes on the sale of cigarettes to non-Indians on an Indian reservation, since the Indian made no financial contribution to the commencement or operation of the business and all decision-making was in the hands of the taxpayer. Bien Mur Indian Mkt. Center, Inc. v. Taxation & Revenue Dep't, 108 N.M. 355, 772 P.2d 885 (Ct. App. 1988), aff'd, 108 N.M. 228, 770 P.2d 873 (1989).

Federal preemption for services rendered Indians. - District court properly ordered state tax agency to refund gross receipts taxes paid by a private contractor on services performed on an Indian reservation for a corporation owned by an Indian tribe, in light of the fact that the Indian trader statutes, 25 U.S.C. §§ 261-264 preempted the agency's authority to impose such a tax since the federal trader statutes included services under the scope of "trade". Luguna Indus., Inc. v. New Mexico Taxation & Revenue Dep't, 114 N.M. 644, 845 P.2d 167 (Ct. App. 1992), aff'd, 115 N.M. 553, 855 P.2d 127 (1993).

Receipts from horse races not exempt. - The legislature, in enacting the Gross Receipts Tax Act, did not intend to exempt receipts from horse races. There is neither ambiguity nor doubt that the language used in the Gross Receipts Tax Act applies to the receipts of a horse owner paid to him for a winning purse and the receipts of a horse trainer paid to him as his percentage of a winning purse. Till v. Jones, 83 N.M. 743, 497 P.2d 745 (Ct. App.), cert. denied, 83 N.M. 740, 497 P.2d 742 (1972). But see 7-9-40 NMSA 1978 which now exempts receipts from horse race purses.

Construction work incidental to "severing" not subject to receipts tax. - The exemption provided by 7-9-35 NMSA 1978 applied since "severing" was taking place as the development work was performed and none of taxpayer's work was preliminary to or preparatory for "severing"; therefore, receipts from development work, which includes construction, were exempted from the gross receipts tax and taxable under the service tax (resources excise tax) when such construction work was incidental to the "severing." Patten v. Bureau of Revenue, 86 N.M. 355, 524 P.2d 527 (Ct. App. 1974).

Pawnbroker's receipts from sales of pawned chattel were not exempt or deductible from gross receipts tax as the recoupment of principal, interest, and handling charges

attendant to the initial loan transaction. Wing Pawn Shop v. Taxation & Revenue Dep't ex rel. State, 111 N.M. 735, 809 P.2d 649 (Ct. App. 1991) (decided on facts existing prior to enactment of Pawnbrokers Act, 56-12-1 NMSA 1978 et seq.)

Collection agencies gross receipts. - A collection agency does not include the creditor's portion of the proceeds, nor the taxes it collects on behalf of the creditor, in calculating its commission proceeds, i.e., its gross receipts. Rather, a collection agency pays gross receipts tax only on the commission portion of the debt. The total tax imposed on the debt and charged to the debtor is simply the sum of the creditor's tax and the agency's tax. Martinez v. Albuquerque Collection Servs., Inc. 867 F. Supp. 1495 (D.N.M. 1994).

Nationwide school operating location in state. - Nationwide technical-vocational school operating a location in New Mexico is subject to the gross receipts tax; the taxable base includes tuition receipts from students in New Mexico for curriculum development, financial aid services, and job placement services. ITT Educ. Serv. v. Taxation & Revenue Dep't, 1998-NMCA-078, 125 N.M. 244, 959 P.2d 969 (Ct. App. 1998).

Fees of management service company. - Fees paid to a hospital management services company as reimbursement for salaries and expenses of management personnel provided by the company were subject to the gross receipts tax. Brim Healthcare, Inc. v. State, Taxation & Revenue Dep't, 119 N.M. 818, 896 P.2d 498 (Ct. App. 1995).

III. OUT-OF-STATE.

Mere contracts are not commerce at all, neither intrastate nor interstate. Baskin-Robbins Ice Cream Co. v. Revenue Div. 93 N.M. 301, 599 P.2d 1098 (Ct. App. 1979).

Tax on items in interstate commerce to be fair and nondiscriminatory. - To be sustained against a claim that a state-imposed tax runs afoul of the commerce clause of the federal constitution, a tax upon items connected with interstate commerce must: (1) be applied to an activity with a substantial nexus with the taxing state; (2) be fairly apportioned; (3) not discriminate against interstate commerce; and (4) be fairly related to the services provided by the state. Pittsburgh & Midway Coal Mining Co. v. Revenue Div. 99 N.M. 545, 660 P.2d 1027 (Ct. App.), appeal dismissed, 464 U.S. 923, 104 S. Ct. 323, 78 L. Ed. 2d 296 (1983).

New Mexico may not tax income and gross receipts of Indians residing on a reservation when the income and gross receipts involved are derived solely from activities within the reservation. Hunt v. O'Cheskey, 85 N.M. 388, 512 P.2d 961 (1973).

Tax on gross receipts from sales in other states unconstitutional. - Tax levied on the gross receipts from the sales of tangible personal property in another state is an

impermissible burden on commerce. Evco v. Jones, 409 U.S. 91, 93 S. Ct. 349, 34 L. Ed. 2d 325 (1972).

Tax incurred at point of retail sale. - Where utilities retail their electrical energy through interstate lines only to consumers in Arizona, for that reason they incur no liability to New Mexico for its gross receipts tax, which is incurred at the point of retail sale. Arizona v. New Mexico, 425 U.S. 794, 96 S. Ct. 1845, 48 L. Ed. 2d 376 (1976).

Discrimination between broadcast and outdoor advertising held rational. - When regulations exempted broadcasting advertisement displayers in New Mexico from the tax imposed upon taxpayer (operator of a billboard service), there was discrimination in the treatment of these different media forms, but the burden was upon the taxpayer to negative every conceivable basis which might support the discriminatory classification, because of the implied rational basis underlying every tax statute, i.e., that the state has the right, power and duty to raise the necessary funds for its public purposes, and it was held that there was a rational basis for the state to discriminate between the broadcast industry and the outdoor advertising industry in the taxation of displays of national messages. Markham Adv. Co. v. Bureau of Revenue, 88 N.M. 176, 538 P.2d 1198 (Ct. App.), cert. denied, 88 N.M. 318, 540 P.2d 248 (1975).

Since broadcasters generally engage in interstate transmission of their messages, and even if broadcasts by smaller stations might not always cross interstate lines, yet the potential exists for radio and television waves to deliver transitory, interstate communications, for this reason, national advertising by local broadcasting stations has long been held exempt from state taxation. Markham Adv. Co. v. Bureau of Revenue, 88 N.M. 176, 538 P.2d 1198 (Ct. App.), cert. denied, 88 N.M. 318, 540 P.2d 248 (1975).

While billboard advertising takes place only in state. - Taxpayer's service of posting messages for national companies on billboards located in New Mexico was being taxed for displaying an activity taking place only in this state and not for advertising; thus it was intrastate in character, and the gross receipts tax imposed on it did not constitute an undue burden on interstate commerce in violation of the federal constitution. Markham Adv. Co. v. Bureau of Revenue, 88 N.M. 176, 538 P.2d 1198 (Ct. App.), cert. denied, 88 N.M. 318, 540 P.2d 248 (1975).

If multiple taxation shown, tax would likely be unconstitutional. - The activities of taxpayer, situated and performing services (posting billboards) in New Mexico, were not within the taxing authority of any other state, and therefore no multiple taxation was possible; the instant tax could be declared invalid upon a showing by the taxpayer that multiple taxation would be likely to result and would be likely to unduly burden interstate commerce, but neither showing was made, and therefore, no basis was demonstrated upon which a claim of potential multiple taxation as to this taxpayer could be found. Markham Adv. Co. v. Bureau of Revenue, 88 N.M. 176, 538 P.2d 1198 (Ct. App.), cert. denied, 88 N.M. 318, 540 P.2d 248 (1975).

Traffic between states absent in franchise agreement. - If none of the "activities" of the franchise agreement are serviced by mail, telephone correspondence or by any employees of taxpayer, no intercourse or traffic between this state and another is found. Baskin-Robbins Ice Cream Co. v. Revenue Div. 93 N.M. 301, 599 P.2d 1098 (Ct. App. 1979).

Tax constitutional on coal sales to out-of-state buyers. - The imposition of gross receipt taxes on proceeds from the sales of coal to out-of-state buyers does not impermissibly interfere with the commerce clause of the federal constitution. Pittsburgh & Midway Coal Mining Co. v. Revenue Div. 99 N.M. 545, 660 P.2d 1027 (Ct. App.), appeal dismissed, 464 U.S. 923, 104 S. Ct. 323, 78 L. Ed. 2d 296 (1983).

Tax applicable to foreign franchisor. - Because franchisor has no payroll, real property, personnel or offices located in this state, but it does furnish signs which must be leased or purchased by its dealers, its sales of tangible property and its granting of exclusive franchises constitute engaging in intrastate business in this state, and the franchise fees received therefrom are subject to the gross receipts tax. AAMCO Transmissions v. Taxation & Revenue Dep't, 93 N.M. 389, 600 P.2d 841 (Ct. App. 1979), cert. denied, 93 N.M. 205, 598 P.2d 1165 (1979).

Tax applicable to franchise fees. - The imposition of gross receipts tax on franchise fees received from this state's dealers does not violate the due process clause or commerce clause and is proper since the franchisor is in the business of selling franchises, developing and marketing parts, receiving its primary source of income from the sale of franchises, collecting a percentage of franchisee's gross receipts as a lease payment for use of the trademark and trade name and where its leased trademarks and trade names and their businesses are protected by the laws of this state; thus, franchisor is engaged in business in this state. AAMCO Transmissions v. Taxation & Revenue Dep't, 93 N.M. 389, 600 P.2d 841 (Ct. App. 1979), cert. denied, 93 N.M. 205, 598 P.2d 1165 (1979).

Foreign corporation's opinions sent to foreign clients not taxable. - Opinions by an Oklahoma corporation concerning subsurface geological formations of the earth's crust beneath New Mexico delivered to clients in Oklahoma and other states were not in intrastate commerce in New Mexico and the income from such opinions was not taxable in New Mexico. Seismograph Serv. Corp. v. Bureau of Revenue, 61 N.M. 16, 293 P.2d 977 (1956).

7-9-4.1, 7-9-4.2. Repealed.

ANNOTATIONS

Repeals. - Laws 1990, ch. 41, § 10 repeals 7-9-4.1 NMSA 1978, as enacted by Laws 1986, ch. 20, § 67, a temporary provision relating to a credit to be deducted from the gross receipts tax, effective July 1, 1990. For provisions of former section, see 1988 Replacement Pamphlet.

Laws 1994, ch. 45, § 8A repeals 7-9-4.2 NMSA 1978, as enacted by Laws 1990 (1st S.S.), ch. 1, § 3, relating to a temporary credit for the gross receipts tax, effective July 1, 1994. For provisions of former section, see 1993 Replacement Pamphlet.

7-9-4.3. Imposition and rate of tax; denomination as "governmental gross receipts tax".

For the privilege of engaging in certain activities by governments, there is imposed on every agency, institution, instrumentality or political subdivision of the state, except any school district and any entity licensed by the department of health that is principally engaged in providing health care services, an excise tax of five percent of governmental gross receipts. The tax imposed by this section shall be referred to as the "governmental gross receipts tax".

History: 1978 Comps., § 7-9-4.1, enacted by Laws 1991, ch. 8, § 2; 1992, ch. 49, § 1; 1992, ch. 100, § 2; 1993, ch. 332, § 1; 1993, ch. 352, § 1.

ANNOTATIONS

1992 amendments. - Identical amendments to this section were enacted by Laws 1992, ch. 49, § 1 and Laws 1992, ch. 100, § 2, both effective July 1, 1992, which substituted all of the present language of the first sentence beginning with "every agency" for "the state of New Mexico and any agency, institution, instrumentality, or political subdivision thereof an excise tax of five percent of governmental gross receipts". The section is set out as amended by Laws 1992, ch. 100, § 2. See 12-1-8 NMSA 1978.

1993 amendments. - Identical amendments to this section were enacted by Laws 1993, ch. 332, § 1, and Laws 1993, ch. 352, § 1, both effective July 1, 1993, which inserted "school district and any" in the first sentence. The section is set out as amended by Laws 1993, ch. 352, § 1. See 12-1-8 NMSA 1978.

Compiler's notes. - Laws 1991, ch. 8, § 2 enacted this section as 7-9-4.1 NMSA 1978, but, since a section with that code number had already been enacted, this section has been compiled as 7-9-4.3 NMSA 1978.

7-9-5. Presumption of taxability.

To prevent evasion of the gross receipts tax and to aid in its administration, it is presumed that all receipts of a person engaging in business are subject to the gross receipts tax. Any person engaged solely in transactions specifically exempt under the provisions of the Gross Receipts and Compensating Tax Act [this article] shall not be required to register or file a return under this act.

History: 1953 Comp., § 72-16A-5, enacted by Laws 1966, ch. 47, § 5.

ANNOTATIONS

Meaning of "this act". - The phrase "this act", referred to in this section, means Laws 1966, ch. 47, which is compiled as in 7-9-1, 7-9-2, 7-9-4 - 7-9-11, 7-9-43, 7-9-77, 7-9-79, and 7-9-81 NMSA 1978.

Taxpayer must prove deduction proper. - Any assessment of taxes by the Taxation and Revenue Department is presumed to be correct and, in protesting the assessment of taxes, taxpayer has the burden of proving the deductions were proper. In reviewing, courts will reverse the Department's decision only if it is arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, or not supported by substantial evidence. Arco Materials, Inc. v. State, Taxation & Revenue Dep't, 118 N.M. 12, 878 P.2d 330 (Ct. App. 1994), rev'd on other grounds sub nom. Blaze Constr. Co. v. Taxation & Revenue Dep't, 118 N.M. 647, 884 P.2d 803 (1994), cert. denied, 514 U.S. 1016, 115 S. Ct. 1359, 131 L. Ed. 2d 216 (1995).

Gross receipts to owner and trainer from horse races taxable. - The legislature, in enacting the Gross Receipts Tax Act, did not intend to exempt receipts from horse races. There is neither ambiguity nor doubt that the language used in the Gross Receipts Tax Act applies to the receipts of a horse owner paid to him for a winning purse and the receipts of a horse trainer paid to him as his percentage of a winning purse. Till v. Jones, 83 N.M. 743, 497 P.2d 745 (Ct. App.), cert. denied, 83 N.M. 740, 497 P.2d 742 (1972). But see 7-9-40 NMSA 1978 which now exempts receipts from horse race purses.

Nationwide school operating location in state. - Nationwide technical-vocational school operating a location in New Mexico is subject to the gross receipts tax; the taxable base includes tuition receipts from students in New Mexico for curriculum development, financial aid services, and job placement services. ITT Educ. Serv. v. Taxation & Revenue Dep't, 1998-NMCA-078, 125 N.M. 244, 959 P.2d 969 (Ct. App. 1998).

Standard of review on appeal. - Department's gross receipts tax assessment can only be reversed by the court of appeals if arbitrary or capricious or there is an abuse of discretion, such that it is not supported by substantial evidence or it is otherwise not in accordance with law. ITT Educ. Serv. v. Taxation & Revenue Dep't, 1998-NMCA-078, 125 N.M. 244, 959 P.2d 969 (Ct. App. 1998).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Reusable soft drink bottles as subject to sales or use taxes, 97 A.L.R.3d 1205.

7-9-6. Separately stating the gross receipts tax.

When the gross receipts tax is stated separately on the books of the seller or lessor, and if the total amount of tax that is stated separately on transactions reportable within one reporting period is in excess of the amount of gross receipts tax otherwise payable

on the transactions on which the tax was stated separately, the excess amount of tax stated on the transactions within that reporting period shall be included in gross receipts.

History: 1953 Comp., § 72-16A-6, enacted by Laws 1966, ch. 47, § 6; 1970, ch. 28, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - Reusable soft drink bottles as subject to sales or use taxes, 97 A.L.R.3d 1205.

7-9-7. Imposition and rate of tax; denomination as "compensating tax".

A. For the privilege of using tangible property in New Mexico, there is imposed on the person using the property an excise tax equal to five percent of the value of tangible property that was:

(1) manufactured by the person using the property in the state;

(2) acquired outside this state as the result of a transaction that would have been subject to the gross receipts tax had it occurred within this state; or

(3) acquired as the result of a transaction which was not initially subject to the compensating tax imposed by Paragraph (2) of this subsection or the gross receipts tax but which transaction, because of the buyer's subsequent use of the property, should have been subject to the compensating tax imposed by Paragraph (2) of this subsection or the gross receipts tax.

B. For the purpose of Subsection A of this section, value of tangible property shall be the adjusted basis of the property for federal income tax purposes determined as of the time of acquisition or introduction into this state or of conversion to use, whichever is later. If no adjusted basis for federal income tax purposes is established for the property, a reasonable value of the property shall be used.

C. For the privilege of using services rendered in New Mexico, there is imposed on the person using such services an excise tax equal to five percent of the value of the services at the time they were rendered. The services, to be taxable under this subsection, must have been rendered as the result of a transaction which was not initially subject to the gross receipts tax but which transaction, because of the buyer's subsequent use of the services, should have been subject to the gross receipts tax.

D. The tax imposed by this section shall be referred to as the "compensating tax".

History: 1953 Comp., § 72-16A-7, enacted by Laws 1966, ch. 47, § 7; 1969, ch. 144, § 3; 1978, ch. 151, § 3; 1981, ch. 37, § 10; 1983, ch. 213, § 16; 1986, ch. 20, § 64; 1990 (1st S.S.), ch. 1, § 4; 1993, ch. 31, § 2; 1995, ch. 50, § 1.

ANNOTATIONS

The 1990 amendment, effective July 1, 1990, substituted "five percent" for "four and three-fourths percent" in the introductory paragraph of Subsection A and in the first sentence of Subsection B.

The 1993 amendment, effective July 1, 1993, in Subsection A, inserted "tangible" preceding "property" in three places and substituted "using the property" for "using property" in the introductory paragraph.

The 1995 amendment, effective July 1, 1995, designated the former second paragraph of Subsection A as Subsection B and rewrote the provision which read "For the purpose of this subsection Value of tangible property shall be determined as of the time of acquisition or introduction into this state or of conversion to use, whichever is later", and redesignated former Subsections B and C as Subsections C and D.

The use or compensating tax is an excise tax and not an ad valorem tax. Robert E. McKee, Gen. Contractor v. Bureau of Revenue, 63 N.M. 185, 315 P.2d 832 (1957)(decided under former law).

Any reasonable tax classification constitutional. - It is for the legislature to adopt classifications for the imposition of excise taxes as it may deem proper and any reasonable classification cannot be held to deny equal protection or due process. Edmunds v. Bureau of Revenue, 64 N.M. 454, 330 P.2d 131 (1958)(decided under former law).

"Compensating tax" and nontaxable transaction certificates. - This section is designed to impose a compensating tax on transactions such as one which initially would have been subject to the gross receipts tax were it not for the delivery of the nontaxable transaction certificates by the buyer of the materials or services pursuant to 7-9-51 or 7-9-52 NMSA 1978. Continental Inn of Albuquerque, Inc. v. New Mexico Taxation & Revenue Dep't, 113 N.M. 588, 829 P.2d 946 (Ct. App. 1992).

Use of nontaxable transaction certificates. - The use of nontaxable transaction certificates, not the taking of the deduction, subjects a taxpayer to the compensating tax. Continental Inn of Albuquerque, Inc. v. New Mexico Taxation & Revenue Dep't, 113 N.M. 588, 829 P.2d 946 (Ct. App. 1992).

Foreign transaction subject to tax if receipts tax would apply to domestic. - Supreme court, although finding no need to interpret this section in the disposition of the case before it, indicated that this section appeared to impose a compensating or use tax on property acquired out-of-state in an isolated transaction and used in New Mexico

only where the transaction would have been subject to a gross receipts tax if the transaction had taken place in New Mexico. Union County Feedlot, Inc. v. Vigil, 79 N.M. 684, 448 P.2d 485 (Ct. App. 1968).

Tax applicable to reimbursements for property used under government contracts. - Application of the compensating tax to reimbursements for property purchased out-of-state and brought into New Mexico for use under government contracts was valid. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978).

Transportation costs excluded from sales price when paid by buyer. - Under a regulation promulgated by the bureau (now department), in computing the compensating tax, transportation costs should be excluded from the sales price of the property when paid to the carrier by the buyer. Thus, when, under the sales contract between the taxpayer (manufacturer) and the buyer, an agency relationship existed whereby the taxpayer was authorized to pay transportation charges both on materials sold to the buyer and on materials returned by it for credit or repair, the regulation specifically excluded from the sales price of the property the transportation costs, which were paid to the carrier by the buyer, since the buyer reimbursed the manufacturer for transportation costs. Western Elec. Co. v. New Mexico Bureau of Revenue, 90 N.M. 164, 561 P.2d 26 (Ct. App. 1976).

Effect of buyer's voluntary payment of tax. - A corporation engaged in the business of selling property in New Mexico was liable for payment of the state's gross receipts tax on the receipts of sales. The voluntary payment of compensating tax by the buyer did not relieve the seller of liability for the gross receipts tax otherwise collectible. Proficient Food Co. v. New Mexico Taxation & Revenue Dep't, 107 N.M. 392, 758 P.2d 806 (Ct. App. 1988).

Contractor furnishing purchased materials to federal government liable for tax. - Since general contractor was required by contracts with federal government to furnish materials to be used on federal reservation in New Mexico, the contractor purchased the materials, became the owner thereof, and was liable for the use or compensating tax under § 72-17-1, 1953 Comp. et seq. (now repealed); and this was not taxation of government land or other government property. Robert E. McKee, Gen. Contractor v. Bureau of Revenue, 63 N.M. 185, 315 P.2d 832 (1957).

Existence of promissory note does not make sale executory. - When purchase agreement was entered into out-of-state whereby purchaser would pay a deposit and make a promissory note for the balance, the agreement was not an executory document and failure to make any of the subsequent payments after the deposit did not render it executory. Therefore, the use of the article purchased was taxable pursuant to Subsection A(2). Garfield Mines, Ltd. v. O'Cheskey, 85 N.M. 547, 514 P.2d 304 (Ct. App. 1973).

Distribution of advertising materials. - New Mexico retailer who contracted with out-of-state advertising coordinators, but exercised control over its distribution contractors in

New Mexico, "used" advertising materials distributed in the state within the meaning of this section. Phillips Mercantile Co. v. New Mexico Taxation & Revenue Dep't, 109 N.M. 487, 786 P.2d 1221 (Ct. App. 1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Sales or use tax upon containers or packaging materials purchased by manufacturer or processor for use with goods he distributes, 4 A.L.R.4th 581.

Sales and use taxes on sale or lease of mailing or customer list, 80 A.L.R.4th 1126.

7-9-7.1. Department barred from taking collection actions with respect to certain compensating tax liabilities.

A. The department shall take no action to enforce collection of compensating tax due on purchases made by an individual if:

(1) the property is used only for nonbusiness purposes;

(2) the property is not a manufactured home; and

(3) the individual is not an agent for collection of compensating tax pursuant to Section 7-9-10 NMSA 1978.

B. The prohibition in Subsection A of this section does not prevent the department from enforcing collection of compensating tax on purchases from persons who are not individuals, who are agents for collection pursuant to Section 7-9-10 NMSA 1978 or who use the property in the course of engaging in business in New Mexico or from enforcing collection of compensating tax due on purchase of manufactured homes.

History: 1978 Comp., § 7-9-7.1, enacted by Laws 1995, ch. 50, § 2.

ANNOTATIONS

Compiler's notes. - This section, enacted as a temporary provision by Laws 1993, ch. 45, § 1, as amended by Laws 1994, ch. 34, § 1, was formerly noted under 7-9-7 NMSA 1978.

7-9-8. Presumption of taxability and value.

A. To prevent evasion of the compensating tax and the duty to collect it, it is presumed that property bought or sold by any person for delivery into this state is bought or sold for a taxable use in this state.

B. In determining the amount of compensating tax due on the use of property, it is presumed, in the absence of preponderant evidence of another value, that the value means the total amount of money or the reasonable value of other consideration paid

for property exclusive of any type of time-price differential. However, in an exchange in which the amount of money paid does not represent the value of the property or property and service purchased, the compensating tax shall be imposed on the reasonable value of the property or property and service purchased.

C. In determining the amount of compensating tax due on the use of a service, it is presumed, in the absence of preponderant evidence of another value, that the value means the total amount of money or the reasonable value of other consideration paid for the service exclusive of any type of time-price differential. However, in an exchange in which the amount paid does not represent the value of the service purchased, the compensating tax shall be imposed on the reasonable value of the service purchased.

History: 1953 Comp., § 72-16A-8, enacted by Laws 1966, ch. 47, § 8; 1969, ch. 144, § 4; 1972, ch. 85, § 2.

7-9-9. Liability of user for payment of compensating tax.

Any person in New Mexico using property on the value of which compensating tax is payable but has not been paid is liable to the state for payment of the compensating tax, but this liability is discharged if the buyer has paid the compensating tax to the seller for payment over to the department.

History: 1953 Comp., § 72-16A-9, enacted by Laws 1966, ch. 47, § 9; 1983, ch. 220, § 2; 1990, ch. 41, § 1.

ANNOTATIONS

The 1990 amendment, effective July 1, 1990, substituted "department" for "division" at the end of the section and made a minor stylistic change.

Due process not violated by actions of tax officials. - Department did not violate taxpayer's right to due process by: (1) making an assessment before the taxpayer provided pertinent records; (2) targeting the taxpayer because it had no history of reporting compensating taxes; and (3) delaying 18 months from the time of an audit notice to the time of the field audit. Vivigen, Inc. v. Minzner, 117 N.M. 224, 870 P.2d 1382 (Ct. App. 1994).

No offset for prior years investment credits. - A taxpayer was not entitled to an offset in the amount it owed for compensating taxes for investment credits it had made in previous years, because it had not claimed the credits within the one-year statute of limitations period. Although the taxpayer argued that it was entitled to an offset under the doctrine of equitable recoupment, a taxpayer is not entitled to seek a credit after the statute-of-limitations period has expired unless the state is imposing a tax on the same taxable event on a ground that is inconsistent with the original payment by the taxpayer. Vivigen, Inc. v. Minzner, 117 N.M. 224, 870 P.2d 1382 (Ct. App. 1994).

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, but "activity" 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.

B. To insure orderly and efficient collection of the public revenue, if any application of this section is held invalid, the section's application to other situations or persons shall not be affected.

History: 1953 Comp., § 72-16A-10, enacted by Laws 1966, ch. 47, § 10; 1983, ch. 220, § 3; 1990, ch. 41, § 2; 1998, ch. 92, § 5.

ANNOTATIONS

The 1990 amendment, effective July 1, 1990, in Subsection A, substituted "department" for "division" at the end of the first sentence and inserted "soliciting orders through advertisements placed in newspapers or magazines published in New Mexico or advertisements broadcast by New Mexico radio or television stations, soliciting orders through programs broadcast by New Mexico radio or television stations or transmitted by cable systems in New Mexico" in the second sentence.

The 1998 amendment, effective July 1, 1998, added the language beginning "but 'activity' does not include" to the end of Subsection A.

7-9-11. Date payment due.

The taxes imposed by the Gross Receipts and Compensating Tax Act [this article] are to be paid on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

History: 1953 Comp., § 72-16A-11, enacted by Laws 1966, ch. 47, § 11; 1969, ch. 25, § 2.

7-9-12. Exemptions.

Exempted from the gross receipts or compensating tax are those receipts or uses exempted in Sections 7-9-13 through 7-9-42 NMSA 1978. Exemptions from either the gross receipts tax or the compensating tax are not exemptions from both taxes unless explicitly stated otherwise by law.

History: 1978 Comp., § 7-9-12, enacted by Laws 1969, ch. 144, § 5; 1970, ch. 60, § 1; 1972, ch. 61, § 1; 1973, ch. 67, § 1; 1984, ch. 2, § 2.

ANNOTATIONS

Compiler's notes. - Section 7-9-42 NMSA 1978, referred to in this section, was repealed in 1984.

Inequalities which result from singling out of one particular class for taxation or exemption, infringe no constitutional limitation. Dikewood Corp. v. Bureau of Revenue, 74 N.M. 75, 390 P.2d 661 (1964).

Statute of exemption from taxation must receive a strict construction, and no claim of exemption should be sustained unless within the express letter or the necessary scope of the exempting clause. Robert E. McKee, Gen. Contractor v. Bureau of Revenue, 63 N.M. 185, 315 P.2d 832 (1957)(decided under former law).

Legal services performed for Indian tribe. - The gross receipts tax may properly be imposed on a non-Indian law firm for legal services performed off the reservation on behalf of an Indian tribe; federal law cannot preempt by implication the tax under such circumstances, since, when reviewing state taxation of activities of non-Indians off the reservation, an actual conflict with an express federal provision is required for preemption. Rodey, Dickason, Sloan, Akin & Robb v. Revenue Div. of Dep't of Taxation & Revenue, 107 N.M. 399, 759 P.2d 186 (1988).

Uncontemplated regulatory exception invalid. - If a regulation adopted by the bureau of revenue (now taxation and revenue department) creates an exception from exempt transactions which is not contemplated by the legislative act, even though such administrative interpretations are entitled to great weight in ascertaining the meaning of the statute, the courts may not give legal sanction to the agency's incorrect construction of unambiguous statutory language. Strebeck Properties, Inc. v. New Mexico Bureau of Revenue, 93 N.M. 262, 599 P.2d 1059 (Ct. App. 1979).

Burden rests squarely on taxpayer to prove entitlement to exemption. Al Zuni Traders v. Bureau of Revenue, 90 N.M. 258, 561 P.2d 1351 (Ct. App. 1977).

Notice of type of proof necessary to avoid taxation unnecessary. - Under the Gross Receipts and Compensating Tax Act, the contention that prior to the first audit of its books the commissioner had not sent any notice to taxpayer, or other taxpayers in the

same industry, of the type of proof necessary to avoid taxation was pure nonsense. Al Zuni Traders v. Bureau of Revenue, 90 N.M. 258, 561 P.2d 1351 (Ct. App. 1977).

Legislature intended to make gross receipts and compensating taxes correlate: an exemption from the gross receipts tax must also be treated as an exemption from the compensating tax. Western Elec. Co. v. New Mexico Bureau of Revenue, 90 N.M. 164, 561 P.2d 26 (Ct. App. 1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 68 Am. Jur. 2d Sales and Use Taxes § 217 to 229.

Sales or use tax upon containers of packaging materials purchased by manufacturer or processor for use with goods he distributes, 4 A.L.R.4th 581.

Eyeglasses or other optical accessories as subject to sales or use tax, 14 A.L.R.4th 1370.

What constitutes newspapers, magazines, periodicals, or the like, under sales or use tax law exemption, 25 A.L.R.4th 750.

Architectural drawings or illustrations as exempt from sales or use tax, 27 A.L.R.5th 794.

Sales and use tax exemption for medical supplies, 30 A.L.R.5th 494.

7-9-12.1. Repealed.

ANNOTATIONS

Repeals. - Laws 1990, ch. 41, § 10 repeals Section 7-9-12.1 NMSA 1978, as enacted by Laws 1984, ch. 2, § 10, relating to findings and intent, effective July 1, 1990. For provisions of former section, see 1988 Replacement Pamphlet.

7-9-13. Exemption; gross receipts tax; governmental agencies.

A. Except as otherwise provided in this section, exempted from the gross receipts tax are receipts of:

(1) the United States or any agency, department or instrumentality thereof;

(2) the state of New Mexico or any political subdivision thereof;

(3) any Indian nation, tribe or pueblo from activities or transactions occurring on its sovereign territory; or

(4) any foreign nation or agency, instrumentality or political subdivision thereof, but only when required by a treaty in force to which the United States is a party.

B. Receipts from the sale of gas or electricity by a utility owned or operated by a county, municipality or other political subdivision of a state are not exempted from the gross receipts tax.

C. Receipts from the operation of a cable television system owned or operated by a municipality are not exempted from the gross receipts tax.

History: 1953 Comp., § 72-16A-12.1, enacted by Laws 1969, ch. 144, § 6; 1991, ch. 8, § 4; 1993, ch. 31, § 3; 1993, ch. 208, § 7; 1994, ch. 45, § 2; 1998, ch. 89, § 1.

ANNOTATIONS

The 1991 amendment, effective July 1, 1991, deleted "water" following "gas" in the second sentence and made a related stylistic change.

1993 amendments. - Laws 1993, ch. 31, § 3, effective July 1, 1993, designating the former first and second sentences as current Subsections A and B and rewriting the provisions of Subsection A, was approved March 16, 1993. However, Laws 1993, ch. 208, § 7, also amending this section by designating the former provisions as Subsections A and B and adding Subsection C, was approved April 5, 1993. The section is set out as amended by Laws 1993, ch. 208, § 7. See 12-1-8 NMSA 1978.

The 1994 amendment, effective July 1, 1994, rewrote Subsection A, which read: "Exempted from the gross receipts tax are the receipts of the United States or any agency or instrumentality thereof or the state of New Mexico or any political subdivision thereof"; and substituted "a state" for "the state" in Subsection B.

The 1998 amendment, effective July 1, 1998, added Paragraph A(4) and made minor stylistic changes.

Disbursement agents of federal funds immune from gross receipts tax. - Agents for the disbursement of federal funds are constitutionally immune from application of the gross receipts tax to those funds. United States v. New Mexico, 624 F.2d 111 (10th Cir. 1980), aff'd, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

United States not excluded from state tax proceedings involving its contractors. - The United States may not properly be excluded, under all circumstances, from state tax proceedings involving its contractors, since the contracts obligate the United States to provide funds necessary to defray all costs incurred in the performance of contracts, including taxes. United States v. New Mexico, 624 F.2d 111 (10th Cir. 1980), aff'd, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

7-9-13.1. Exemption; gross receipts tax; services performed outside the state the product of which is initially used in New Mexico; exceptions.

A. Except as provided otherwise in Subsection B of this section, exempted from the gross receipts tax are the receipts from selling services performed outside New Mexico the product of which is initially used in New Mexico.

B. The exemption provided by this section does not apply to research and development services other than research and development services:

(1) sold between affiliated corporations;

(2) sold to the United States by persons, other than organizations described in Subsection A of Section 7-9-29 NMSA 1978, who are prime contractors operating facilities in New Mexico designated as national laboratories by act of congress; or

(3) sold to persons, other than organizations described in Subsection A of Section 7-9-29 NMSA 1978, who are prime contractors operating facilities in New Mexico designated as national laboratories by act of congress.

C. An "affiliated corporation" means a corporation that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the subject corporation. "Control" means ownership of stock in a corporation which represents at least eighty percent of the total voting power of that corporation and has a stated or par value equal to at least eighty percent of the total stated or par value of the stock of that corporation.

History: 1978 Comp., § 7-9-13.1, enacted by Laws 1989, ch. 262, § 4.

ANNOTATIONS

Compiler's notes. - Laws 1993, ch. 31, § 13A, effective July 1, 1993, repeals Laws 1989, ch. 262, § 11, which provided for the repeal of 7-9-13.1 NMSA 1978 on July 1, 1993.

7-9-13.2. Exemption; governmental gross receipts tax; receipts subject to certain other taxes.

Exempted from the governmental gross receipts tax are receipts from transactions involving tangible personal property or services on which receipts or transactions the gross receipts tax, compensating tax, motor vehicle excise tax, gasoline tax, special fuel tax, special fuel excise tax, oil and gas emergency school tax, resources tax, processors tax, service tax or the excise tax imposed under Section 66-12-6.1 NMSA 1978 is imposed.

History: Laws 1992, ch. 100, § 3; 1993, ch. 31, § 4.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, inserted "special fuel excise tax," near the end of this section.

7-9-14. Exemption; compensating tax; governmental agencies; Indians.

A. Except as otherwise provided in this subsection, there is exempted from the compensating tax the use of property by the United States or the state of New Mexico or any governmental unit or subdivision, agency, department or instrumentality thereof. The exemption provided by this subsection does not apply to:

(1) the use of property that is or will be incorporated into a metropolitan redevelopment project under the Metropolitan Redevelopment Code; or

(2) the use of tangible personal property that becomes an ingredient or component part of a construction project.

B. Exempted from the compensating tax is the use of property by 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.

ANNOTATIONS

Cross references. - For Development Incentive Act, see ch. 3, art. 64 NMSA 1978.

The 1990 amendment, effective July 1, 1990, designated the former first and second sentences of the section as present Subsections A and B, substituted "Except as otherwise provided in this subsection" for "Except for the use of property that is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code" in the first sentence in Subsection A, added the second sentence of Subsection A, and in Subsection B, substituted "Indian nation, tribe or pueblo" for "Indian tribe or Indian pueblo".

The 1993 amendment, effective July 1, 1993, deleted "or any agency or instrumentality thereof" following "United States" and substituted "any governmental unit or subdivision, agency, department or instrumentality" for "any political subdivision" in the first sentence of Subsection A and, in Subsection B, deleted "the governing body of" preceding "any Indian nation" and inserted "or any governmental unit, subdivision, agency, department or instrumentality thereof".

Metropolitan Redevelopment Code. - See 3-60A-1 NMSA 1978 and notes thereto.

Taxing contractor furnishing materials to federal government not taxing government. - When general contractor was required by contracts with federal government to furnish materials to be used on federal reservation in New Mexico, the contractor purchased the materials, became the owner thereof, and was liable for the use or compensating tax under §§ 72-17-1, 1953 Comp., et seq. (now repealed); and this was not taxation of government land or other government property. Robert E. McKee, Gen. Contractor v. Bureau of Revenue, 63 N.M. 185, 315 P.2d 832 (1957).

Tax ultimately falling on tribal organization impermissible. - If the economic burden of the gross receipts tax ultimately falls on a tribal organization, even though the legal incidence of the tax falls on the non-Indian contractor with whom the tribal organization contracted to build an Indian school, the imposition of the tax impermissibly impedes the clearly expressed federal interest in promoting the quality and quantity of educational opportunities for Indians by depleting the funds available for the construction of Indian schools. Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

The comprehensive federal regulatory scheme and the express federal policy of encouraging tribal self-sufficiency in the area of education preclude the imposition of the state gross receipts tax on the construction of school facilities on tribal lands pursuant to a contract between a tribal organization and a non-Indian contracting firm. Ramah Navajo Sch. Bd., Inc. v. Bureau of Revenue, 458 U.S. 832, 102 S. Ct. 3394, 73 L. Ed. 2d 1174 (1982).

7-9-15. Exemption; compensating tax; certain organizations.

Exempted from the compensating tax is the use of property by organizations that demonstrate to the department that they have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended or renumbered, in the conduct of functions described in Section 501(c)(3). The use of property as an ingredient or component part of a construction project is not a use in the conduct of functions described in Section 501(c)(3). This section does not apply to the use of property in an unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code of 1954, as amended or renumbered.

History: 1953 Comp., § 72-16A-12.3, enacted by Laws 1969, ch. 144, § 8; reenacted by Laws 1970, ch. 12, § 1; 1983, ch. 220, § 4; 1990, ch. 41, § 4.

ANNOTATIONS

Cross references. - For the exemption of certain organizations from the gross receipts tax, see 7-9-29 NMSA 1978.

The 1990 amendment, effective July 1, 1990, substituted "department" for "division" in the first sentence.

Internal Revenue Code. - Sections 501(c)(3) and 513 of the United States Internal Revenue Code of 1954 appear as 26 U.S.C. §§ 501(c)(3) and 513, respectively.

Use of nontaxable transaction certificates. - The use of nontaxable transaction certificates, not the taking of the deduction, subjects a taxpayer to the compensating tax. Continental Inn of Albuquerque, Inc. v. New Mexico Taxation & Revenue Dep't, 113 N.M. 588, 829 P.2d 946 (Ct. App. 1992).

7-9-16. Exemption; gross receipts tax; certain nonprofit facilities.

Exempted from the gross receipts tax are the receipts of nonprofit entities from the operation of facilities designed and used for providing accommodations for retired elderly persons.

History: 1953 Comp., § 72-16A-12.4, enacted by Laws 1969, ch. 144, § 9; 1970, ch. 12, § 2; 1975, ch. 54, § 1.

7-9-17. Exemption; gross receipts tax; wages.

Exempted from the gross receipts tax are the receipts of employees from wages, salaries, commissions or from any other form of remuneration for personal services.

History: 1953 Comp., § 72-16A-12.5, enacted by Laws 1969, ch. 144, § 10.

ANNOTATIONS

Wages, salaries, commissions and other forms of payment for personal services received by an employee are specifically exempted from gross receipts tax by this section. Eaton v. Bureau of Revenue, 84 N.M. 226, 501 P.2d 670 (Ct. App.), cert. denied, 84 N.M. 219, 501 P.2d 663 (1972).

All of taxpayer's receipts, including employee's wages, taxable. - Wages paid directly to truck drivers employed by taxpayer, pursuant to hauling agreement, which were paid out of taxpayer's gross receipts and on behalf of taxpayer, a self-employed hauler, were subject to gross receipts tax, regardless of the fact that taxpayer never received such wages to distribute to his drivers. Duke v. Bureau of Revenue, 87 N.M. 360, 533 P.2d 593 (Ct. App. 1975).

Same taxation scheme used for both state and federal purposes. - When carpenter filed self-employment returns with the internal revenue service for social security purposes when customers did not withhold F.I.C.A. taxes, and filed federal income tax returns which reported income from a business or profession, the taxpayer must not attempt to show one scheme for federal tax purposes and a nontaxable event for

purposes of state gross receipts tax. Stohr v. New Mexico Bureau of Revenue, 90 N.M. 43, 559 P.2d 420 (Ct. App. 1976), cert. denied, 90 N.M. 254, 561 P.2d 1347 (1977).

Percentages paid jockeys not exempt. - Since by established custom in the state of New Mexico the horse owner pays the jockey on his winning mount 10% of the purse, and a jockey, during the course of a racing day, may ride in several races, riding various different horses, each of which may have a different owner and a horse owner is not required to withhold income tax from the jockey's share of the purse, pay F.I.C.A. tax, or make unemployment insurance contributions for the jockey, then commissioner of revenue (now secretary of taxation and revenue department) was within his authority in denying employee exemption to defendant. Rock v. Commissioner of Revenue, 83 N.M. 478, 493 P.2d 963 (Ct. App. 1972)(case decided before the exemption granted jockeys by 7-9-40 NMSA 1978).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Tips: applicability of sales tax to "tips" or service charges added in lieu of tips, 73 A.L.R.3d 1226.

7-9-18. Exemption; gross receipts tax and governmental gross receipts tax; agricultural products.

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.

Receipts from selling dairy products at retail are not exempted from the gross receipts tax.

History: 1953 Comp., § 72-16A-12.6, enacted by Laws 1969, ch. 144, § 11; 1991, ch. 9, § 27; 1992, ch. 48, § 1; 1993, ch. 31, § 6.

ANNOTATIONS

The 1991 amendment, effective July 1, 1991, inserted "from selling livestock or horses and receipts" and deleted "livestock" preceding "live poultry" in the first sentence and, in the second sentence, deleted "or of buying and selling livestock" following "mohair".

The 1992 amendment, effective July 1, 1992, deleted "or horses" following "livestock" near the beginning of the first sentence, and inserted "or of buying and selling livestock" in the second sentence.

The 1993 amendment, effective July 1, 1993, inserted "and governmental gross receipts tax" in the catchline and inserted "and from the governmental gross receipts tax" in the first sentence.

7-9-18.1. Exemption; gross receipts tax; food stamps.

Exempted from the gross receipts tax are the receipts of a taxpayer who is approved for participation in the food stamp program authorized by U.S.C. Title 7, Chapter 51, as that chapter may be amended or renumbered, from the lawful acceptance and deposit with a financial institution of food stamps issued by the United States department of agriculture pursuant to the food stamp program.

History: 1978 Comp., § 7-9-18.1, enacted by Laws 1987, ch. 264, § 13 and Laws 1987, ch. 304, § 1.

ANNOTATIONS

Duplicate laws. - Laws 1987, ch. 264, § 13 and Laws 1987, ch. 304, § 1 enacted identical versions of this section.

U.S.C. Title 7, Chapter 51. - Title 7 of Chapter 51 of the United States Code appears as 7 U.S.C. § 2011 et seq.

7-9-19. Exemption; gross receipts tax; livestock feeding.

A. Exempted from the gross receipts tax are the receipts of any person derived from feeding or pasturing livestock.

B. Receipts derived from penning or handling livestock prior to sale are receipts derived from feeding livestock for the purposes of this section.

C. Receipts derived from training livestock are receipts derived from feeding livestock for the purposes of this section.

History: 1953 Comp., § 72-16A-12.7, enacted by Laws 1969, ch. 144, § 12; 1974, ch. 19, § 1; 1991, ch. 9, § 28; 1992, ch. 48, § 2.

ANNOTATIONS

The 1991 amendment, effective July 1, 1991, designated the formerly undesignated provisions as Subsections A to C and, in Subsection C, inserted "not" preceding "receipts".

The 1992 amendment, effective July 1, 1992, substituted "are not" for "are" in Subsection C.

7-9-20. Exemption; gross receipts tax; certain receipts of homeowners associations.

Exempted from the gross receipts tax are those receipts of homeowners associations defined in Section 528(c)(1) (A thru D), (2), (3) and (4) (A, B and D) of the Internal Revenue Code, as amended, which are received as membership fees, dues or assessments from members who are owners of residential units, residences or residential lots except for owners of time-share interests, for payment of taxes, insurance, utility expenses, management and improvement, maintenance or rehabilitation of those common areas, elements or facilities appurtenant thereto which are for the sole use of the owners and their guests.

History: 1978 Comp., § 7-9-20, enacted by Laws 1988, ch. 82, § 1.

ANNOTATIONS

Compiler's notes. - Laws 1981, ch. 37, § 97 repealed former 7-9-20 NMSA 1978, as enacted by Laws 1969, ch. 144, § 13, relating to exemption of banks and financial institutions from the Gross Receipts Act, effective January 1, 1982.

Internal Revenue Code. - Section 528 of the Internal Revenue Code appears as 26 U.S.C. § 528.

7-9-21. Repealed.

ANNOTATIONS

Repeals. - Laws 1981, ch. 37, § 97 repeals former 7-9-21 NMSA 1978, as enacted by Laws 1969, ch. 144, § 14, relating to exemption of banks and financial institutions from the Compensating Tax Act, effective January 1, 1982.

7-9-22. Exemption; gross receipts tax; vehicles.

Exempted from the gross receipts tax are the receipts from selling vehicles on which a tax is imposed by the Motor Vehicle Excise Tax Act [7-14-1 to 7-14-11 NMSA 1978] and on vehicles subject to registration under Section 66-3-16 NMSA 1978.

History: 1953 Comp., § 72-16A-12.10, enacted by Laws 1969, ch. 144, § 15; 1976 (S.S.), ch. 36, § 2; 1981, ch. 184, § 2; 1988, ch. 73, § 8.

ANNOTATIONS

There is legislative policy treating taxation of motor vehicles sales differently from the taxation of most other business activities. City of Alamagordo v. Walker Motor Co. 94 N.M. 690, 616 P.2d 403 (1980).

Mobile homes as inventory not exempt. - The gross receipts from the sale of mobile homes held as inventory are not exempt from the gross receipts tax. S & S Sales, Inc. v. Bureau of Revenue, 88 N.M. 649, 545 P.2d 1027 (Ct. App. 1976).

7-9-22.1. Exemption; gross receipts tax; boats.

Exempted from the gross receipts tax are the receipts from selling boats on which a tax is imposed by Section 66-12-6.1 NMSA 1978.

History: 1978 Comp., § 7-9-22.1, enacted by Laws 1987, ch. 247, § 1.

7-9-23. Exemption; compensating tax; vehicles.

Exempted from the compensating tax is the use of vehicles on which the tax imposed by the Motor Vehicle Excise Tax Act [7-14-1 to 7-14-11 NMSA 1978] has been paid and on the use of vehicles subject to registration under Section 66-3-16 NMSA 1978.

History: 1953 Comp., § 72-16A-12.11, enacted by Laws 1969, ch. 144, § 16; 1976 (S.S.), ch. 36, § 3; 1983, ch. 220, § 5; 1988, ch. 73, § 9.

7-9-23.1. Exemption; compensating tax; boats.

Exempted from the compensating tax is the use of boats on which the tax imposed by Section 66-12-6.1 NMSA 1978 has been paid.

History: 1978 Comp., § 7-9-23.1, enacted by Laws 1987, ch. 247, § 2.

7-9-24. Exemption; gross receipts tax; insurance companies.

Exempted from the gross receipts tax are the receipts of insurance companies or any agent thereof from premiums and any consideration received by a property bondsman, as that person is defined in Section 59A-51-2 NMSA 1978, as security or surety for a bail bond in connection with a judicial proceeding.

History: 1953 Comp., § 72-16A-12.12, enacted by Laws 1969, ch. 144, § 17; 1988, ch. 74, § 1.

7-9-25. Exemption; gross receipts tax; dividends and interest.

Exempted from the gross receipts tax are the receipts received as interest on money loaned or deposited, receipts received as dividends or interest from stocks, bonds or securities or receipts from the sale of stocks, bonds or securities.

History: 1953 Comp., § 72-16A-12.13, enacted by Laws 1969, ch. 144, § 18.

ANNOTATIONS

Pawnbroker's receipts from sales of pawned chattel were not exempt or deductible from gross receipts tax as the recoupment of principal, interest, and handling charges

attendant to the initial loan transaction. Wing Pawn Shop v. Taxation & Revenue Dep't ex rel. State, 111 N.M. 735, 809 P.2d 649 (Ct. App. 1991) (decided on facts existing prior to enactment of Pawnbrokers Act, 56-12-1 NMSA 1978 et seq.)

7-9-26. Exemption; gross receipts and compensating tax; fuel.

Exempted from the gross receipts and compensating tax are the receipts from selling and the use of gasoline, special fuel or alternative fuel on which the tax imposed by Section 7-13-3, 7-16-3 or 7-16A-3 NMSA 1978 or the Alternative Fuel Tax Act [7-16B-1 to 7-16B-10 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.

ANNOTATIONS

Cross references. - For other fuel related exemptions, see 7-9-32 to 7-9-34, 7-9-36 and 7-9-37 NMSA 1978.

The 1993 amendment, effective July 1, 1993, deleted the subsection designation "A" at the beginning; inserted "7-16A-3"; deleted former Subsection B, pertaining to the exemption of receipts from selling and use of ethanol blended fuel; and made a minor stylistic change.

The 1995 amendment, effective January 1, 1996, inserted "or alternative fuel" and "or the Alternative Fuel Tax Act".

Compiler's notes. - Section 7-16-3 NMSA 1978, referred to in this section, was repealed, effective January 1, 1993 by Laws 1992, ch. 51, § 23.

Constitutionality of deduction for ethanol-blended fuel. - Former section 7-13-4.1 NMSA 1978 discriminated between the tax treatment of ethanol-blended fuel manufactured in New Mexico and ethanol-blended fuel manufactured elsewhere; this discrimination violated the commerce clause. Giant Indus. Arizona, Inc. v. Taxation & Revenue Dep't, 110 N.M. 442, 796 P.2d 1138 (Ct. App. 1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Exemption, from sales or use tax, of water, oil, gas, other fuel, or electricity provided for residential purposes, 15 A.L.R.4th 269.

7-9-27. Exemption; compensating tax; personal effects.

Exempted from the compensating tax is the use by an individual of personal or household effects brought into the state in connection with the establishment by him of

an initial residence in this state and the use of property brought into the state by a nonresident for his own nonbusiness use while temporarily within this state.

History: 1953 Comp., § 72-16A-12.15, enacted by Laws 1969, ch. 144, § 20.

7-9-28. Exemption; gross receipts tax; occasional sale of property or services.

Exempted from the gross receipts tax are the receipts from the isolated or occasional sale of or leasing of property or a service by a person who is neither regularly engaged nor holding himself out as engaged in the business of selling or leasing the same or similar property or service.

History: 1953 Comp., § 72-16A-12.16, enacted by Laws 1969, ch. 144, § 21.

ANNOTATIONS

Oil company's receipts from coal dragline leases not exempt. - Although oil company had not "historically" engaged in the business of leasing draglines, where it had clearly entered that business with a large investment and a long-term commitment of resources, had established 20-year terms for the leases, resulting in a fixed amount of income over a long period of time, these transactions were not occasional and were accordingly not tax exempt. Kewanee Indus., Inc. v. Reese, 114 N.M. 784, 845 P.2d 1238 (1993).

Law reviews. - For article, "The Deductibility for Federal Income Tax Purposes of the New Mexico Gross Receipts Tax Paid on the Purchase of a Newly Constructed Home," see 13 N.M.L. Rev. 625 (1983).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Casual or isolated sales: exemption of casual, isolated or occasional sales under sales and use taxes, 42 A.L.R.3d 292.

7-9-29. Exemption; gross receipts tax; certain organizations.

A. Exempted from the gross receipts tax are the receipts of organizations that demonstrate to the department that they have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended or renumbered.

B. Exempted from the gross receipts tax are the receipts from carrying on chamber of commerce, visitor bureau and convention bureau functions of organizations that demonstrate to the department that they have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(6) of the United States Internal Revenue Code of 1954, as amended or renumbered.

C. This section does not apply to receipts derived from an unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code of 1954, as amended or renumbered.

History: 1978 Comp., § 7-9-29, enacted by Laws 1970, ch. 12, § 3; 1983, ch. 220, § 6; 1988, ch. 139, § 1; 1990, ch. 41, § 5.

ANNOTATIONS

Cross references. - For the exemption of certain organizations from the compensating tax, see 7-9-15 NMSA 1978.

The 1990 amendment, effective July 1, 1990, substituted "department" for "division" in Subsections A and B.

Internal Revenue Code. - Sections 501 and 513 of the Internal Revenue Code appear as 26 U.S.C. §§ 501 and 513.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Charitable organization: exemption of charitable or educational organization from sales or use tax, 53 A.L.R.3d 748.

7-9-30. Exemption; compensating tax; railroad equipment and aircraft.

A. Exempted from the compensating tax is the use of railroad locomotives, trailers, containers, tenders or cars procured or bought for use in railroad transportation.

B. Exempted from the compensating tax is the use of commercial aircraft bought or leased primarily for use in the transportation of passengers or property for hire in interstate commerce.

History: 1953 Comp., § 72-16A-12.18, enacted by Laws 1969, ch. 144, § 23; 1988, ch. 148, § 1.

ANNOTATIONS

Applicability of former provision limited. - Former 72-17-4I, 1953 Comp., exempting certain railroad property from the purview of the former Compensating Tax Act, applied only to railroads engaged in the transportation of persons or property for hire on established lines. Gibbons & Reed Co. v. Bureau of Revenue, 80 N.M. 462, 457 P.2d 710 (1969).

7-9-31. Exemption; gross receipts and compensating tax; resale activities of an armed forces instrumentality.

Exempted from the gross receipts and compensating tax are the receipts from selling tangible personal property and the use of property by any instrumentality of the armed forces of the United States engaged in resale activities.

History: 1953 Comp., § 72-16A-12.19, enacted by Laws 1969, ch. 144, § 24.

7-9-32. Exemption; gross receipts tax; oil and gas or mineral interests.

Exempted from the gross receipts tax are the receipts from the sale of or leasing of oil, natural gas or mineral interests.

History: 1953 Comp., § 72-16A-12.20, enacted by Laws 1969, ch. 144, § 25.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - Mining exemption from sales or use tax, 47 A.L.R.4th 1229.

7-9-33. Exemption; gross receipts tax; products subject to Oil and Gas Emergency School Tax Act.

A. Exempted from the gross receipts tax are receipts from the sale of products the severance of which is subject to the tax imposed by the Oil and Gas Emergency School Tax Act [Chapter 7, Article 31 NMSA 1978] except that receipts from the sale of products other than for subsequent resale in the ordinary course of business, for consumption outside the state, or for use as an ingredient or component part of a manufactured product are subject to the Gross Receipts and Compensating Tax Act [this article] as well as to the Oil and Gas Emergency School Tax Act.

B. No gross receipts tax or compensating tax pursuant to the Gross Receipts and Compensating Tax Act shall apply to storing crude oil, natural gas or liquid hydrocarbons, individually or any combination, or to the use of such products for fuel in the operation of a "production unit" as defined by the Oil and Gas Emergency School Tax Act.

History: 1953 Comp., § 72-16A-12.21, enacted by Laws 1969, ch. 144, § 26; 1975, ch. 133, § 1; 1984, ch. 2, § 3; 1989, ch. 115, § 1.

ANNOTATIONS

The 1989 amendment, effective July 1, 1989, substituted "products" for "persons" in the catchline; rewrote Subsection A; and in Subsection B deleted "any person for the privilege of" following "apply to", and deleted "thereof" following "combination".

Am. Jur. 2d, A.L.R. and C.J.S. references. - Mining exemption from sales or use tax, 47 A.L.R.4th 1229.

7-9-34. Exemption; gross receipts tax; refiners and persons subject to Natural Gas Processors Tax Act.

A. Exempted from the gross receipts tax are receipts from the sale or processing of products the processing of which is subject to the privilege tax imposed by the Natural Gas Processors Tax Act [Chapter 7, Article 34 NMSA 1978] except that receipts from the sale of products other than for subsequent resale in the ordinary course of business, for consumption outside the state, or for use as an ingredient or component part of a manufactured product are subject to the Gross Receipts and Compensating Tax Act [this article] as well as to the Natural Gas Processors Tax Act.

B. No gross receipts tax or compensating tax pursuant to the Gross Receipts and Compensating Tax Act shall apply to receipts from storing or using crude oil, natural gas or liquid hydrocarbons, individually or any combination, when stored or used in New Mexico by a "processor", as defined by the Natural Gas Processors Tax Act, or by a person engaged in the business of refining oil, natural gas or liquid hydrocarbons who stores or uses the crude oil, natural gas or liquid hydrocarbons in the regular course of his refining business.

History: 1953 Comp., § 72-16A-12.22, enacted by Laws 1969, ch. 144, § 27; 1970, ch. 13, § 1; 1975, ch. 133, § 2; 1984, ch. 2, § 4; 1989, ch. 115, § 2.

ANNOTATIONS

Cross references. - As to meaning of "processor," as defined by the Natural Gas Processors Tax Act, see 7-33-2B NMSA 1978.

The 1989 amendment, effective July 1, 1989, rewrote Subsection A; and in Subsection B substituted "receipts from storing" for "any person for the privilege of storing", and deleted "thereof" following "combination".

Company not entitled to exemption when selling natural gas to refinery. - A gas company is neither a user of natural gas nor in the business of refining natural gas when it sells natural gas to a refinery, and, thus, it is not entitled to the exemption provided in Subsection B. Gas Co. v. O'Cheskey, 94 N.M. 630, 614 P.2d 547 (Ct. App. 1980).

7-9-35. Exemption; gross receipts tax; natural resources subject to Resources Excise Tax Act.

Exempted from the gross receipts tax are receipts from the sale or processing of natural resources the severance or processing of which are subject to the taxes imposed by the

Resources Excise Tax Act [Chapter 7, Article 25 NMSA 1978] except as otherwise provided in Section 7-25-8 NMSA 1978.

History: 1953 Comp., § 72-16A-12.23, enacted by Laws 1969, ch. 144, § 28; 1984, ch. 2, § 5; 1989, ch. 115, § 3.

ANNOTATIONS

The 1989 amendment, effective July 1, 1989, substituted "natural resources" for "persons" in the catchline, and substituted the present provisions for "When a privilege tax is imposed for the privilege of severing or processing natural resources by the Resources Excise Tax Act, the provisions of the Resources Excise Tax Act shall apply for the privilege of engaging in business stated and in that act, and no gross receipts pursuant to the Gross Receipts and Compensating Tax Act shall apply to or create a tax liability for such privilege, except as is provided in Section 7-25-8 NMSA 1978. A taxpayer subject to the Resources Excise Tax Act is also subject to the compensating tax pursuant to the Gross Receipts and Compensation Tax Act and any other taxes imposed by any tax act which is applicable to the taxpayer pursuant to the NMSA 1978."

Amendment to be prospectively applied. - The amendment of this section by Laws 1984, ch . 2, § 5 is to be only prospectively applied from and after the date the legislation was signed into law, February 11, 1984. Phelps Dodge v. Revenue Div. of Dep't of Tax. 103 N.M. 20, 702 P.2d 10 (1985).

Construction work incidental to "severing" exempt. - The exemption provided by this section applies since "severing" was taking place as the development work was performed and none of taxpayer's work was preliminary to or preparatory for "severing"; therefore, receipts from development work, which includes construction, are exempted from the gross receipts tax and taxable under the service tax (resources excise tax) when such construction work was incidental to the "severing." Patten v. Bureau of Revenue, 86 N.M. 355, 524 P.2d 527 (Ct. App. 1974).

Taxation of lumber business activities. - "Road maintenance" and "hauling" are an integral and indispensable part of a taxpayer's activity of severing timber and delivering it to a lumber mill and as such are exempt from the Gross Receipts Tax Act, 7-9-1 to 7-9-82 NMSA 1978, by the provisions of this section, while being taxable under the Resources Excise Tax Act, 7-25-1 to 7-25-9 NMSA 1978. Carter & Sons v. New Mexico Bureau of Revenue, 92 N.M. 591, 592 P.2d 191 (Ct. App. 1979).

No compensation tax on property purchased outside state, used in state mine operations. - Compensating tax may not be assessed based on property purchased outside of New Mexico but used in New Mexico in the mine operations of a taxpayer in severing uranium ore. Ranchers-Tufco Limestone Project Joint Venture v. Revenue Div. 100 N.M. 632, 674 P.2d 522 (Ct. App. 1983)(decided prior to 1984 amendment).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Mining exemption from sales or use tax, 47 A.L.R.4th 1229.

7-9-36. Exemption; gross receipts tax; oil and gas consumed in the pipeline transportation of oil and gas products.

Exempted from the gross receipts tax are receipts from the sale of oil, natural gas, liquid hydrocarbon or any combination thereof consumed as fuel in the pipeline transportation of such products.

History: 1953 Comp., § 72-16A-12.24, enacted by Laws 1969, ch. 144, § 29.

7-9-37. Exemption; compensating tax; use of oil and gas in the pipeline transportation of oil and gas products.

Exempted from the compensating tax is the use of oil, natural gas, liquid hydrocarbon or any combination thereof as fuel in the pipeline transportation of such products.

History: 1953 Comp., § 72-16A-12.25, enacted by Laws 1969, ch. 144, § 30.

7-9-38. Exemption; compensating tax; use of electricity in the production and transmission of electricity.

Exempted from the compensating tax is electricity used in the production and transmission of electricity.

History: 1953 Comp., § 72-16A-12.26, enacted by Laws 1969, ch. 144, § 31.

7-9-38.1. Exemption; gross receipts tax; interstate telecommunications services.

Exempted from the gross receipts tax are receipts from the sale or provision of interstate telecommunications services subject to the Interstate Telecommunications Gross Receipts Tax Act [Chapter 7, Article 9C NMSA 1978].

History: Laws 1992, ch. 50, § 12 and Laws 1992, ch. 67, § 12; 1993, ch. 31, § 8.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, deleted the "to the extent that receipts from such services are" following "services" and "tax under" following "subject to".

Duplicate laws. - Identical versions of this section were enacted by Laws 1992, ch. 50, § 12 and Laws 1992, ch. 67, § 12.

7-9-39. Exemption; gross receipts tax; fees from social organizations.

A. Exempted from the gross receipts tax are the receipts from dues and registration fees of nonprofit social, fraternal, political, trade, labor or professional organizations and business leagues.

B. For the purposes of this section:

(1) "dues" means amounts that a member of an organization pays at recurring intervals to retain membership in an organization where such amounts are used for the general maintenance and upkeep of the organization; and

(2) "registration fees" means amounts paid by persons to attend a specific event sponsored by an organization to defray the cost of the event.

History: 1953 Comp., § 72-16A-12.27, enacted by Laws 1969, ch. 144, § 32; 1977, ch. 141, § 1.

ANNOTATIONS

Compiler's notes. - The following cases were decided under the prior version of this section which exempted nonprofit business organizations.

It is not necessary for all members to engage in business in order for a group to constitute a business organization. AAA v. Bureau of Revenue, 88 N.M. 462, 541 P.2d 967 (1975).

Nonprofit business organization exempt. - The supreme court has decided that a nonprofit business organization, the receipts of which are from dues and registration fees of its members, is exempt from the payment of a gross receipts tax. Twining Coop. Domestic Water & Sewer Ass'n v. Bureau of Revenue, 89 N.M. 345, 552 P.2d 476 (Ct. App.), cert. denied, 90 N.M. 7, 558 P.2d 619 (1976).

The American Automobile Association is a "business organization" in the common understanding of that term. It is a group of people that has a more or less constant membership, a body of officers, a purpose and a set of regulations, and engages in a commercial activity, even though it is a nonprofit activity and the receipts involved in AAA's activities are from dues and registration fees. AAA v. Bureau of Revenue, 88 N.M. 462, 541 P.2d 967 (1975).

7-9-40. Exemption; gross receipts tax; purses and jockey remuneration at New Mexico racetracks; receipts from gross amounts wagered.

A. Exempted from the gross receipts tax are the receipts of horsemen, jockeys and trainers from race purses at New Mexico horse racetracks subject to the jurisdiction of the state racing commission.

B. Exempted from the gross receipts tax are the receipts of a racetrack from the commissions and other amounts authorized by Section 60-1-10 NMSA 1978 to be retained by a racetrack conducting horse races under the authority of a license from the state racing commission.

History: 1953 Comp., § 72-16A-12.28, enacted by Laws 1970, ch. 60, § 2; 1971, ch. 145, § 1; 1985, ch. 137, § 1; 1989, ch. 260, § 1.

ANNOTATIONS

Cross references. - For the state racing commission, see 60-1-2 NMSA 1978.

The 1989 amendment, effective June 16, 1989, deleted "admissions and" following "receipts from" in the section heading; and in Subsection B restructured former Paragraph (2) so as to constitute the language beginning with "the commissions", deleted former Paragraph (1) which read "admissions to the racetrack on any racing day", and deleted former Paragraph (3) which read "the tax imposed by Paragraph (1) of Subsection A of Section 60-1-15 NMSA 1978".

Enactment of exemption shows no intent as to prior treatment. - Since the reporting periods for the receipts of a horse owner and a horse trainer are prior to the enactment of this section, no exemption under it is available. The fact that an exemption was subsequently enacted does not show a legislative intent that the receipts were not subject to the gross receipts tax prior to enactment of the exemption. Till v. Jones, 83 N.M. 743, 497 P.2d 745 (Ct. App.), cert. denied, 83 N.M. 740, 497 P.2d 742 (1972).

7-9-41. Exemption; gross receipts tax; religious activities.

Exempted from the gross receipts tax are the receipts of a minister of a religious organization, which organization has been granted an exemption from federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended or renumbered, from religious services provided by the minister to an individual recipient of the service.

History: 1953 Comp., § 72-16A-12.29, enacted by Laws 1972, ch. 61, § 2.

ANNOTATIONS

Internal Revenue Code. - Sections 501(c)(3) and 513 of the United States Internal Revenue Code of 1954 appear as 26 U.S.C. §§ 501(c)(3) and 513, respectively.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Religious organization's exemption from sales or use tax, 54 A.L.R.3d 1204.

7-9-42. Repealed.

ANNOTATIONS

Repeals. - Laws 1984, ch. 2, § 11, repeals 7-9-42 NMSA 1978, enacted by Laws 1973, ch. 67, § 2, relating to the exemption of the receipts from the leasing or licensing of theatrical and television films and tapes from the gross receipts and compensating tax, effective February 11, 1984. For provisions of former section, see 1983 replacement pamphlet. For present provisions relating to exemption of receipts from leasing and licensing theatrical and television films and tapes, see 7-9-76.2 NMSA 1978.

7-9-43. Nontaxable transaction certificates and other evidence required to entitle persons to deductions; renewal.

A. All nontaxable transaction certificates of the appropriate series executed by buyers or lessees should be in the possession of the seller or lessor for nontaxable transactions at the time the return is due for receipts from the transactions. If the seller or lessor is not in possession of the required nontaxable transaction certificates within sixty days from the date that the notice requiring possession of these nontaxable transaction certificates is given the seller or lessor by the department, deductions claimed by the seller or lessor that require delivery of these nontaxable transaction certificates shall be disallowed. The nontaxable transaction certificates shall contain the information and be in a form prescribed by the department. The department by regulation may deem to be nontaxable transaction certificates documents issued by other states or the multistate tax commission to taxpayers not required to be registered in New Mexico. Only buyers or lessees who have a registration number or have applied for a registration number and have not been refused one under Subsection C of Section 7-1-12 NMSA 1978 shall execute nontaxable transaction certificates issued by the department. If the seller or lessor has been given an identification number for tax purposes by the department, the seller or lessor shall disclose that identification number to the buyer or lessee prior to or upon acceptance of a nontaxable transaction certificate. When the seller or lessor accepts a nontaxable transaction certificate within the required time and in good faith that the buyer or lessee will employ the property or service transferred in a nontaxable manner, the properly executed nontaxable transaction certificate shall be conclusive evidence, and the only material evidence, that the proceeds from the transaction are deductible from the seller's or lessor's gross receipts.

B. Properly executed documents required to support the deductions provided in Sections 7-9-57, 7-9-58 and 7-9-74 NMSA 1978 should be in the possession of the seller at the time the return is due for receipts from the transactions. If the seller is not in possession of these documents within sixty days from the date that the notice requiring possession of these documents is given to the seller by the department, deductions claimed by the seller or lessor that require delivery of these documents shall be

disallowed. These documents shall contain the information and be in a form prescribed by the department. When the seller accepts these documents within the required time and in good faith that the buyer will employ the property or service transferred in a nontaxable manner, the properly executed documents shall be conclusive evidence, and the only material evidence, that the proceeds from the transaction are deductible from the seller's gross receipts.

C. Notice, as used in this section, is sufficient if the notice is mailed or served as provided in Subsection A of Section 7-1-9 NMSA 1978. Notice by the department under this section shall not be given prior to the commencement of an audit of the seller required to be in possession of the documents.

D. On January 1, 1992, every nontaxable transaction certificate, except for nontaxable transaction certificates of the series applicable to the ten-year period beginning January 1, 1992 and issued by the department prior to that date, is void with respect to transactions after December 31, 1991. The department shall issue separate series of nontaxable transaction certificates for the ten-year period beginning January 1, 1992 and for each ten-year period beginning on January 1 of every tenth year succeeding calendar year 1992. A series of nontaxable transaction certificates issued by the department for any ten-year period may be executed by buyers or lessees for transactions occurring within or prior to that ten-year period but are not valid for transactions occurring after that ten-year period. For administrative convenience, the department may accept and approve qualifying applications for the privilege of executing nontaxable transaction certificates and pre-issue certificates of any series within the six-month period immediately preceding the beginning of the ten-year period to which the series of nontaxable transaction certificates applies.

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. If a person is shown on the department's records to be a delinquent taxpayer, the department may refuse to approve the application of the person until the person is no longer shown to be a delinquent taxpayer, and the taxpayer may protest that refusal pursuant to Section 7-1-24 NMSA 1978. Upon the department's approval of the application, the buyer or lessee may request appropriate nontaxable transaction certificates for execution by the buyer or lessee; provided that if a person is shown on the department's records to be a delinquent taxpayer, the department may refuse to issue nontaxable transaction certificates to the person until the person is no longer shown to be a delinquent taxpayer, and the taxpayer may protest that refusal pursuant to Section 7-1-24 NMSA 1978. The department may require any buyer or lessee requesting and receiving nontaxable transaction certificates for execution by that buyer or lessee to report to the department annually the names, addresses and identification numbers assigned by the department of the sellers and lessors to whom they have delivered nontaxable transaction certificates. The department may require any seller or lessor engaged in business in New Mexico to

report to the department annually the names, addresses and federal employer identification numbers or state identification numbers for tax purposes issued by the department of the buyers or lessees from whom the seller or lessor has accepted nontaxable transaction certificates.

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.

ANNOTATIONS

The 1990 amendment, effective July 1, 1990, substituted "department" for "division" throughout the section, substituted "department" for "director or his delegate" following "lessor by the" in the first sentence of Subsection A and following "seller by the" in the second sentence of Subsection B, and made minor stylistic changes in Subsections A and B.

The 1991 amendment, effective June 14, 1991, in the section heading, deleted "farmers' and ranchers' statements" following "certificates" and added "Fee - Renewal" at the end; added "Subject to the provisions of Subsection D of this section" at the beginning of Subsection A; and added Subsection D.

The 1992 amendment, effective July 1, 1992, rewrote the former first and second sentences of Subsection A so as to constitute the present first through third sentences while adding the sixth sentence, added the first sentence of Subsection B and rewrote the second and third sentences of that subsection, made a minor stylistic change in the first sentence of Subsection C while substituting all of the language of the second sentence of that subsection following "seller" for "from whom the documents are required", rewrote Subsection D, and added Subsection E.

The 1993 amendment, effective July 1, 1993, substituted "tenth year" for "sixth year" in the second sentence of Subsection D; in Subsection E, inserted the fourth sentence, added the proviso at the end of the fifth sentence, and inserted "federal employer identification number or state" in the seventh sentence; and made minor stylistic changes in Subsections A, B, and D.

1994 amendments. - Laws 1994, ch. 94, § 1, effective April 1, 1994, deleting "Fee" from the section heading, deleting "and pay a one-time application fee of one hundred dollars ($100). The provisions of the Tax Administration Act apply to the administration and enforcement of this fee. The department shall not approve any application for which a fee is required and not paid" following "nontaxable transaction certificates" and making stylistic changes in Subsection E, was approved March 7, 1994. However, Laws 1994, ch. 98, § 1, effective July 1, 1994, also amending this section by making all of the above changes was also approved March 7, 1994. This section is set out as amended by Laws 1994, ch. 98, § 1. See 12-1-8 NMSA 1978.

The 1997 amendment, effective July 1, 1997, in Subsection A, deleted the first sentence, substituted "is not in possession of the required nontaxable transaction certificates" for "does not demonstrate possession of required nontaxable transaction certificates to the department at the commencement of an audit or demonstrate" and deleted "that the seller or lessor was in possession of such certificates at the time receipts from transactions were required to be reported" preceding "deductions claimed by the seller or lessor that require delivery" in the second sentence; in Subsection B, deleted the first sentence, substituted "is not in possession of these documents" for "does not demonstrate possession of required documents to the department at the commencement of an audit or demonstrate" and deleted "that the seller was in possession of such documents at the time receipts from the transactions were required to be reported" preceding "deductions claimed by the seller or lessor" in the second sentence; in Subsection D, deleted "before or" preceding "after" in the third sentence, and deleted the remainder of the third sentence following "after that ten year period"; and in Subsection E, deleted "that may be effective on or after January 1, 1992" following "transaction certificates" in the first sentence, deleted "On or after July 1, 1993," at the beginning of the second sentence, and deleted "on and after July 1, 1993" following "provided that" in the second sentence.

The 1998 amendment, effective July 1, 1998, in Subsection A, inserted the fourth sentence and deleted "issued by the department" from the end of the fifth sentence; in Subsection D, inserted "or prior to" near the end of the third sentence; and in Subsection E, added the exception at the end of the first sentence.

Temporary provisions. - Laws 1994, ch. 94, § 3 provides that the fee imposed by this section in effect prior to the effective date of the 1994 amendment "shall apply to all applications received prior to the effective date [April 1, 1994], regardless of when the application is approved or any nontaxable transaction certificate issued with respect to that application."

Taxable transaction not transformed by "nontaxable transaction certificate". - Issuance of a "nontaxable transaction certificate" does not operate to transform an otherwise taxable transaction into a nontaxable transaction. Gas Co. v. O'Cheskey, 94 N.M. 630, 614 P.2d 547 (Ct. App. 1980).

Commissioner (now secretary) has authority to issue regulations interpreting and exemplifying statutes concerning the possession of nontaxable transaction certificates and he also has such authority as may be fairly implied from the statutory authorization. Rainbo Baking Co. v. Commissioner of Revenue, 84 N.M. 303, 502 P.2d 406 (Ct. App. 1972).

Words "properly executed" are used in this section in the sense of completing - filling out and signing - the nontaxable transaction certificates. Leaco Rural Tel. Coop. v. Bureau of Revenue, 86 N.M. 629, 526 P.2d 426 (Ct. App. 1974).

Taxpayer not liable if certificates incorrectly issued. - Although receipts from transactions involving telephone service to schools, churches, police departments, fire departments and the like were not properly deductible in the first instance because the transactions were not sales of tangible personal property, nevertheless, when the telephone company accepted the nontaxable transaction certificates in compliance with this section, the deductions authorized thereby applied and protected the company from tax liability on receipts from those transactions, regardless of the propriety or impropriety of the certificates' issuance. Leaco Rural Tel. Coop. v. Bureau of Revenue, 86 N.M. 629, 526 P.2d 426 (Ct. App. 1974).

Reliance on certificates improper following change in law. - This section protects a taxpayer when the purchaser who provided the nontaxable transaction certificates (NTTC) has failed to live up to the promise that the actual transaction was nontaxable. However, it does not protect taxpayers from changes in the law that render formerly nontaxable transactions taxable. Indeed, a taxpayer has an affirmative duty to keep informed about changes in the tax law affecting liability and cannot escape tax liability for transactions based on NTTCs issued before a change in the law rendered the NTTCs invalid for those transactions. Arco Materials, Inc. v. State, Taxation & Revenue Dep't, 118 N.M. 12, 878 P.2d 330 (Ct. App. 1994), rev'd on other grounds sub nom. Blaze Constr. Co. v. Taxation & Revenue Dep't, 118 N.M. 647, 884 P.2d 803 (1994), cert. denied, 514 U.S. 1016, 115 S. Ct. 1359, 131 L. Ed. 2d 216 (1995).

Certificate inapplicable to in-state ambulance receipts. - A nontaxable transaction certificate accepted by a taxpayer who will make initial use of the product or service outside of this state does not apply to receipts from the taxpayer's in-state ambulance service. McKinley Ambulance Serv. v. Bureau of Revenue, 92 N.M. 599, 592 P.2d 515 (Ct. App. 1979).

7-9-43.1. Nontaxable transaction certificates not required by liquor wholesalers.

Notwithstanding the provisions of Section 7-9-43 NMSA 1978, a liquor wholesaler licensed as a wholesaler by the superintendent of regulation and licensing pursuant to the Liquor Control Act [Articles 3A, 4B, 4C, 5A, 6A, 6B, 6C, 7A, 7B and 8A Chapter 60 NMSA 1978] 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 [this article].

History: Laws 1981, ch. 333, § 1; 1992, ch. 39, § 4.

ANNOTATIONS

The 1992 amendment, effective July 1, 1992, substituted "as a wholesaler by the superintendent of regulation and licensing pursuant to the Liquor Control Act" for "by the

department of alcoholic beverage control", and substituted all of the present language beginning with "person" for "liquor retailer licensed by the department of alcoholic beverage control for the purpose of taking deductions under the Gross Receipts and Compensating Tax Act".

Am. Jur. 2d, A.L.R. and C.J.S. references. - 68 Am. Jur. 2d Sales and Use Taxes, §§ 104, 115.

7-9-44. Suspension of the right to use a nontaxable transaction certificate.

A. The secretary may suspend for not more than one year the privilege of a person to use nontaxable transaction certificates if that person fails to pay, within one year of the date the tax is due, the compensating tax on the subsequent use of property or services purchased through the use of a nontaxable transaction certificate.

B. The secretary may suspend for not more than six months the privilege of a person to use nontaxable transaction certificates, to claim deductions on the basis of nontaxable transaction certificates accepted by that person or both if that person fails to account in the manner and time required by the department, in accordance with Subsection E of Section 7-9-43 NMSA 1978, for the certificates executed or accepted by that person.

C. A suspension under this section voids the department's approval of the person's application for the privilege of executing nontaxable transaction certificates and, prior to resumption of use of such certificates, the person whose privilege to use nontaxable transaction certificates has been suspended shall reapply for the privilege of executing such certificates in accordance with Section 7-9-43 NMSA 1978 and shall pay the application fee.

D. Notwithstanding the provisions of Section 7-1-8 NMSA 1978, the department may notify the public or provide for notice to the public of the suspension of a person's privilege to use nontaxable transaction certificates.

History: 1953 Comp., § 72-16A-13.1, enacted by Laws 1969, ch. 144, § 34; 1983, ch. 220, § 8; 1990, ch. 41, § 7; 1992, ch. 39, § 5; 1993, ch. 31, § 10.

ANNOTATIONS

The 1990 amendment, effective July 1, 1990, substituted "secretary" for "director".

The 1992 amendment, effective July 1, 1992, designated the formerly undesignated provisions as Subsection A, and added Subsections B and C.

The 1993 amendment, effective July 1, 1993, substituted "privilege" for "right" near the beginning of Subsection A; substituted "shall" for "must" in two places in Subsection C; and added Subsection D.

7-9-45. Deductions.

A. In computing the gross receipts tax or governmental gross receipts tax due, only those receipts specified in Sections 7-9-46 through 7-9-76.2, 7-9-77.1, 7-9-83, 7-9-85 through 7-9-87 and 7-9-89 NMSA 1978 may be deducted. Receipts, whether specified once or several times in those sections, may be deducted only once from gross receipts or governmental gross receipts.

B. Receipts that are exempted from the gross receipts tax may not be deducted from gross receipts. Receipts that are deducted from gross receipts may not be exempted from the gross receipts tax.

C. Receipts that are exempted from the governmental gross receipts tax shall not be deducted from governmental gross receipts. Receipts that are deducted from governmental gross receipts shall not be exempted from the governmental gross receipts tax.

History: 1978 Comp., § 7-9-45, enacted by Laws 1969, ch. 144, § 35; 1970, ch. 77, § 1; 1970, ch. 78, § 1; 1971, ch. 217, § 1; 1972, ch. 39, § 1; 1977, ch. 288, § 1; 1979, ch. 338, § 2; 1984, ch. 129, § 1; 1989, ch. 262, § 5; 1994, ch. 45, § 3; 1995, ch. 70, § 5; 1999, ch. 231, § 2.

ANNOTATIONS

The 1989 amendment, effective July 1, 1989, added the third and fourth sentences.

The 1994 amendment, effective July 1, 1994, designated the previously undesignated first two sentences as Subsection A and the previously undesignated last sentence as Subsection B; in Subsection A, inserted "or governmental gross receipts tax" in the first sentence and "7-9-83 and 7-9-84" in both sentences, and added "or governmental gross receipts" at the end of the second sentence; and added Subsection C.

The 1995 amendment, effective July 1, 1995, substituted "and 7-9-83 through 7-9-85" for "7-9-83 and 7-9-84" in the first and second sentences of Subsection A.

The 1999 amendment, effective July 1, 1999, in Subsection A, substituted "Sections 7-9-46 through 7-9-76.2, 7-9-77.1, 7-9-83, 7-9-85 through 7-9-87 and 7-9-89 NMSA 1978 may be deducted" for "Sections 7-9-46 through 7-9-76.2, and 7-9-83, through 7-9-85 NMSA 1978 may be deducted" in the first sentence, and substituted "several times in those sections" for "several times in Sections 7-9-46 through 7-9-76.2 and 7-9-83 through 7-9-85 NMSA 1978" in the second sentence.

Deductions or exemptions from a tax must be strictly construed in favor of the taxing authority, must be clearly and unambiguously expressed in the statute, and must be clearly established by the taxpayer claiming the right thereto. Chavez v. Commissioner of Revenue, 82 N.M. 97, 476 P.2d 67 (Ct. App. 1970).

Tax statute must also be given fair, unbiased and reasonable construction, without favor or prejudice to either the taxpayer or the state, to the end that the legislative intent is effectuated and the public interests to be subserved thereby are furthered. Chavez v. Commissioner of Revenue, 82 N.M. 97, 476 P.2d 67 (Ct. App. 1970).

Deductions narrowly but reasonably construed. - If a tax is clearly applicable, except for a statutory exemption, exception or deduction therefrom, the provision for the exemption, exception or deduction must be narrowly but reasonably construed. Chavez v. Commissioner of Revenue, 82 N.M. 97, 476 P.2d 67 (Ct. App. 1970).

7-9-46. Deduction; gross receipts tax; governmental gross receipts; sales to manufacturers.

Receipts from selling tangible personal property may be deducted from gross receipts or from governmental gross receipts if the sale is made to a person engaged in the business of manufacturing who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must incorporate the tangible personal property as an ingredient or component part of the product that he is in the business of manufacturing.

History: 1953 Comp., § 72-16A-14.1, enacted by Laws 1969, ch. 144, § 36; 1992, ch. 100, § 4.

ANNOTATIONS

The 1992 amendment, effective July 1, 1992, inserted "governmental gross receipts" in the section heading; inserted "or from governmental gross receipts" in the first sentence; and substituted "that" for "which" in the second sentence.

Entitlement to manufacturing deduction not found. - A biotechnology company whose expertise was in the diagnosis of genetic disorders that could be detected through the appearance of chromosomes, and who produced tangible objects that were provided to its customers, such as a written report of its experts' diagnosis and a laminated karyotype, which consisted of photographs of chromosomes that were numbered and pasted onto a piece of laminated cardboard, did not establish its entitlement to a manufacturing deduction, since the company could not identify any out-of-state purchases that would be subject to the compensating tax of products incorporated into its reports or laminated karyotypes. The department, whose assessment is assumed correct, had identified as subject to the compensating tax such items as microscopes, sinks, and furniture, which undoubtedly were not incorporated into the documents or laminated karyotypes. Vivigen, Inc. v. Minzner, 117 N.M. 224, 870 P.2d 1382 (Ct. App. 1994).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Sales or use tax upon containers or packaging materials purchased by manufacturer or processor for use with goods he distributes, 4 A.L.R.4th 581.

7-9-47. Deduction; gross receipts tax; governmental gross receipts tax; sale of tangible personal property or licenses for resale.

Receipts from selling tangible personal property or licenses may be deducted from gross receipts or from governmental gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must resell the tangible personal property or license either by itself or in combination with other tangible personal property or licenses in the ordinary course of business.

History: 1953 Comp., § 72-16A-14.2, enacted by Laws 1969, ch. 144, § 37; 1992, ch. 39, § 6; 1992, ch. 100, § 5; 1994, ch. 45, § 4.

ANNOTATIONS

1992 amendments. - Laws 1992, ch. 39, § 6, effective July 1, 1992, inserting "and licenses" in the section heading and inserting "or licenses" several times throughout the section, was approved on March 6, 1992. However, Laws 1992, ch. 100, § 5, also effective July 1, 1992, inserting "governmental gross receipts" in the section heading; and inserting "or from governmental gross receipts" in the first sentence, was approved on March 10, 1992. The section is set out as amended by Laws 1992, ch. 100, § 5. See 12-1-8 NMSA 1978.

The 1994 amendment, effective July 1, 1994, inserted "or licenses" in the section heading and in both sentences, and "or license" in the second sentence.

Legislature possesses great freedom of classification in taxation field. - In the field of taxation, more than in other fields, the legislature possesses the greatest freedom in classification, and to attack such a classification as a violation of U.S. Const., amend. XIV places the burden on the one attacking to negative every conceivable basis which might support the classification and unless the classification is clearly arbitrary and capricious or void for uncertainty, the appellate court cannot substitute its views in selecting and classifying for those of the legislature. New Mexico Newspapers, Inc. v. Bureau of Revenue, 82 N.M. 436, 483 P.2d 317 (Ct. App. 1971).

Commissioner (now secretary) has authority to issue regulations interpreting and exemplifying statutes concerning the possession of nontaxable transaction certificates and he also has such authority as may be fairly implied from the statutory authorization. Rainbo Baking Co. v. Commissioner of Revenue, 84 N.M. 303, 502 P.2d 406 (Ct. App. 1972).

Authority does not extend to modifying legislative authorizations. - The commissioner (now secretary) has authority to regulate the possession of nontaxable transaction certificates, but this authority does not extend to imposing a time requirement which would abridge or modify the deduction authorized by the legislature. Rainbo Baking Co. v. Commissioner of Revenue, 84 N.M. 303, 502 P.2d 406 (Ct. App. 1972).

Certificate required. - Since there was no evidence that contractors provided "nontaxable transaction certificates" to their vendors when they purchased property to be used in fulfilling their government contracts, the technical requirements of this section were not met. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978).

A seller's failure to possess a non-taxable transaction certificate in the form prescribed by the department and to procedurally present the form in a timely and proper manner provided a valid basis for denying the deductions claimed. A "blanket exemption certificate," issued by the buyer and relied upon by the seller, failed to meet this section's requirements. Proficient Food Co. v. New Mexico Taxation & Revenue Dep't, 107 N.M. 392, 758 P.2d 806 (Ct. App. 1988).

Reimbursement for services not sale. - Reimbursements for materials and supplies consumed in performing services under certain government contracts were merely reimbursements for those services and did not involve a sale by the contractors of tangible personal property to the United States nor qualify for a deduction under this section. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978).

7-9-48. Deduction; gross receipts tax; governmental gross receipts; sale of a service for resale.

Receipts from selling a service for resale may be deducted from gross receipts or from governmental gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must separately state the value of the service purchased in his charge for the service on its subsequent sale, and the subsequent sale must be in the ordinary course of business and subject to the gross receipts tax or governmental gross receipts tax.

History: 1953 Comp., § 72-16A-14.3, enacted by Laws 1969, ch. 144, § 38; 1992, ch. 100, § 6.

ANNOTATIONS

The 1992 amendment, effective July 1, 1992, inserted "governmental gross receipts" in the section catchline; inserted "or from governmental gross receipts" in the first sentence, while adding "to the seller" at the end of that sentence; and added "or governmental gross receipts tax" at the end of the second sentence.

7-9-49. Deduction; gross receipts tax; sale of tangible personal property and licenses for leasing.

A. Except as otherwise provided by Subsection B of this section, receipts from selling tangible personal property and licenses may be deducted from gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate shall be engaged in a business that derives a substantial portion of its receipts from leasing or selling tangible personal property or licenses of the type sold. The buyer may not utilize the tangible personal property or license in any manner other than holding it for lease or sale or leasing or selling it either by itself or in combination with other tangible personal property or licenses in the ordinary course of business.

B. The deduction provided by this section shall not apply to receipts from selling:

(1) furniture or appliances, the receipts from the rental or lease of which are deductible under Subsection C of Section 7-9-53 NMSA 1978;

(2) coin-operated machines; or

(3) manufactured homes.

History: 1953 Comp., § 72-16A-14.4, enacted by Laws 1969, ch. 144, § 39; 1972, ch. 80, § 1; 1975, ch. 160, § 1; 1979, ch. 338, § 3; 1983, ch. 220, § 9; 1989, ch. 115, § 4; 1991, ch. 203, § 3; 1992, ch. 39, § 7.

ANNOTATIONS

The 1989 amendment, effective July 1, 1989, designated the formerly undesignated provisions as Subsection A; in Subsection A substituted all of the language of the first sentence preceding "may" for "Receipts from selling tangible personal property other than furniture or appliances, the receipts from the rental or lease of which are deductible under Subsection C of Section 7-9-53 NMSA 1978, other than coin-operated machines and other than mobile homes", and substituted "sold" for "leased" at the end of the second sentence; and added Subsection B.

The 1991 amendment, effective July 1, 1991, substituted "manufactured" for "mobile" in Paragraph (3) in Subsection B and made a minor stylistic change in Subsection A.

The 1992 amendment, effective July 1, 1992, inserted "and licenses" in the section catchline and in the first sentence of Subsection A, substituted "that" for "which" and inserted "or licenses" in the second sentence, and inserted "or license" and "or licenses" in the last sentence.

7-9-50. Deduction; gross receipts tax; lease for subsequent lease.

A. Except as provided otherwise in Subsection B of this section, receipts from leasing tangible personal property or licenses may be deducted from gross receipts if the lease is made to a lessee who delivers a nontaxable transaction certificate to the lessor. The lessee delivering the nontaxable transaction certificate may not use the tangible personal property or license in any manner other than for subsequent lease in the ordinary course of business.

B. The deduction provided by this section does not apply to receipts from leasing:

(1) furniture or appliances, the receipts from the rental or lease of which are deductible under Subsection C of Section 7-9-53 NMSA 1978;

(2) coin-operated machines; or

(3) manufactured homes.

History: 1953 Comp., § 72-16A-14.5, enacted by Laws 1969, ch. 144, § 40; 1972, ch. 80, § 2; 1975, ch. 160, § 2; 1979, ch. 338, § 4; 1983, ch. 220, § 10; 1991, ch. 203, § 4; 1992, ch. 39, § 8.

ANNOTATIONS

The 1991 amendment, effective July 1, 1991, designated the formerly undesignated provision as Subsection A; rewrote the first sentence of Subsection A which read "receipts from leasing tangible personal property other than furniture or appliances, the receipts from the rental or lease of which are deductible under Subsection C of Section 7-9-53 NMSA 1978, other than coin-operated machines and other than mobile homes may be deducted from gross receipts if the lease is made to a lessee who delivers a nontaxable transaction certificate to the lessor"; and added Subsection B.

The 1992 amendment, effective July 1, 1992, in Subsection A, inserted "or licenses" in the first sentence and inserted "or license" in the second sentence.

7-9-51. Deduction; gross receipts tax; sale of tangible personal property to persons engaged in the construction business.

A. Receipts from selling tangible personal property may be deducted from gross receipts if the sale is made to a person engaged in the construction business who delivers a nontaxable transaction certificate to the seller.

B. The buyer delivering the nontaxable transaction certificate must incorporate the tangible personal property as:

(1) an ingredient or component part of a construction project which is subject to the gross receipts tax upon its completion or upon the completion of the overall construction project of which it is a part; or

(2) an ingredient or component part of a construction project which is subject to the gross receipts tax upon the sale in the ordinary course of business of the real property upon which it was constructed.

History: 1953 Comp., § 72-16A-14.6, enacted by Laws 1969, ch. 144, § 41.

ANNOTATIONS

"Engaged in the construction business." - Since taxpayer constructed a hotel in this state, and taxpayer held a contractor's license and held itself out to the public as a contractor, there was sufficient evidence to conclude that taxpayer was "engaged in the construction business." Continental Inn of Albuquerque, Inc. v. New Mexico Taxation & Revenue Dep't, 113 N.M. 588, 829 P.2d 946 (Ct. App. 1992).

Proper issuance of nontaxable transaction certificate. - The deduction from gross receipts pursuant to this section and 7-9-52 NMSA 1978 is not conditioned upon proper issuance of the nontaxable transaction certificates (NTTC) by the buyer. The determination of whether a NTTC has been properly issued is a matter between the department and the buyer. Continental Inn of Albuquerque, Inc. v. New Mexico Taxation & Revenue Dep't, 113 N.M. 588, 829 P.2d 946 (Ct. App. 1992).

Message to seller that seller is entitled to deductions. - The timely delivery of a nontaxable transaction certificate (NTTC) from the buyer to the seller conveys a message to the seller that the use of the NTTC's is such that the seller is entitled to deductions under this section or 7-9-52 NMSA 1978 when taxpayer issued NTTC's to the subcontractors; taxpayer, in essence, represented to the subcontractors that the use of the NTTC's was such that the subcontractors were entitled to deductions from the gross receipts tax. Continental Inn of Albuquerque, Inc. v. New Mexico Taxation & Revenue Dep't, 113 N.M. 588, 829 P.2d 946 (Ct. App. 1992).

7-9-51.1. Deduction; gross receipts tax; railway roadbed materials. (Effective until July 1, 2003.)

Receipts from the sale of materials necessary for the construction or reconstruction of railway roadbeds may be deducted from gross receipts, if the materials are to be used outside the state and if the sale is made to a person who is engaged in the business of transporting persons or property by rail and who delivers a statement, in writing, to the person selling the materials. The statement shall contain information required by regulations of the secretary.

History: Laws 1993, ch. 31, § 14; 1998, ch. 100, § 1.

ANNOTATIONS

Delayed repeals. - Laws 1995, ch. 50, § 6, as amended by Laws 1998, ch. 100, § 1, repeals this section, effective July 1, 2003.

The 1998 amendment, added the language beginning "if the materials are to be used outside the state" to the end of the section. Laws 1998, ch. 100, contains no effective date provision, but pursuant to N.M. Const., art. IV, § 23, is effective May 20, 1998, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

7-9-52. Deduction; gross receipts tax; sale of construction services to persons engaged in the construction business.

A. Receipts from selling a construction service may be deducted from gross receipts if the sale is made to a person engaged in the construction business who delivers a nontaxable transaction certificate to the person performing the construction service.

B. The buyer delivering the nontaxable transaction certificate must have the construction services performed upon:

(1) a construction project which is subject to the gross receipts tax upon its completion or upon the completion of the overall construction project of which it is a part; or

(2) a construction project which is subject to the gross receipts tax upon the sale in the ordinary course of business of the real property upon which it was constructed.

History: 1953 Comp., § 72-16A-14.7, enacted by Laws 1969, ch. 144, § 42.

ANNOTATIONS

Language of this section is definite and unambiguous. Miller v. Bureau of Revenue, 93 N.M. 252, 599 P.2d 1049 (Ct. App.), cert. denied, 92 N.M. 532, 591 P.2d 286 (1979).

"Engaged in the construction business." - Since taxpayer constructed a hotel in this state, and taxpayer held a contractor's license and held itself out to the public as a contractor, there is sufficient evidence to conclude that taxpayer was "engaged in the construction business." Continental Inn of Albuquerque, Inc. v. New Mexico Taxation & Revenue Dep't, 113 N.M. 588, 829 P.2d 946 (Ct. App. 1992).

Construction services exempt from tax. - A decision of the commissioner of the bureau of revenue (now secretary of the taxation and revenue department) denying the exemption of the sale of construction services from the gross receipts tax is contrary to the law of this state providing an exemption for construction services. Miller v. Bureau of Revenue, 93 N.M. 252, 599 P.2d 1049 (Ct. App.), cert. denied, 92 N.M. 532, 591 P.2d 286 (1979).

Proper issuance of nontaxable transaction certificate. - The deduction from gross receipts pursuant to 7-9-51 NMSA 1978 and this section is not conditioned upon proper issuance of the nontaxable transaction certificates (NTTC) by the buyer. The determination of whether a NTTC has been properly issued is a matter between the

department and the buyer. Continental Inn of Albuquerque, Inc. v. New Mexico Taxation & Revenue Dep't, 113 N.M. 588, 829 P.2d 946 (Ct. App. 1992).

Message to seller that seller is entitled to deductions. - The timely delivery of a nontaxable transaction certificate (NTTC) from the buyer to the seller conveys a message to the seller that the use of the NTTC's is such that the seller is entitled to deductions under 7-9-51 NMSA 1978 or this section when taxpayer issued NTTC's to the subcontractors; taxpayer, in essence, represented to the subcontractors that the use of the NTTC's was such that the subcontractors were entitled to deductions from the gross receipts tax. Continental Inn of Albuquerque, Inc. v. New Mexico Taxation & Revenue Dep't, 113 N.M. 588, 829 P.2d 946 (Ct. App. 1992).

7-9-53. Deduction; gross receipts tax; sale or lease of real property and lease of manufactured homes.

A. Receipts from the sale or lease of real property and from the lease of a manufactured home as provided in Subsection B of this section, other than receipts from the sale or lease of oil, natural gas or mineral interests exempted by Section 7-9-32 NMSA 1978, may be deducted from gross receipts. However, that portion of the receipts from the sale of real property which is attributable to improvements constructed on the real property by the seller in the ordinary course of his construction business may not be deducted from gross receipts.

B. Receipts from the rental of a manufactured home for a period of at least one month may be deducted from gross receipts. Receipts received by hotels, motels, rooming houses, campgrounds, guest ranches, trailer parks or similar facilities, except receipts received by trailer parks from the rental of a space for a manufactured home or recreational vehicle for a period of at least one month, from lodgers, guests, roomers or occupants are not receipts from leasing real property for the purposes of this section.

C. Receipts attributable to the inclusion of furniture or appliances furnished as part of a leased or rented dwelling house, manufactured home or apartment by the landlord or lessor may be deducted from gross receipts.

History: 1953 Comp., § 72-16A-14.8, enacted by Laws 1969, ch. 144, § 43; 1972, ch. 80, § 3; 1973, ch. 205, § 1; 1975, ch. 160, § 3; 1979, ch. 338, § 5; 1983, ch. 220, § 11; 1991, ch. 203, § 5; 1998, ch. 94, § 1.

ANNOTATIONS

Cross references. - For deduction of real estate commissions from gross receipts tax, see 7-9-66.1 NMSA 1978.

The 1991 amendment, effective July 1, 1991, substituted "manufactured" for "mobile" in the section heading and throughout the section.

The 1998 amendment, effective April 1, 1998, inserted "or recreational vehicle" near the middle of the second sentence in Subsection B.

Receipts attributable to improvements. - Real estate developer was not entitled to deduction for receipts from the sale of real estate attributable to improvements made on the land since those improvements were completed prior to the effective date of this section but sale was not made until after effective date, as the plain language of this section shows a legislative intent not to allow a deduction on receipts from sale of real property attributable to such improvements. Dona Ana Dev. Corp. v. Commissioner of Revenue, 84 N.M. 641, 506 P.2d 798 (Ct. App. 1973).

Monies not received from lease of real property. - The receipts, which this section declares not to be "receipts from leasing real property," are clearly intended to mean the monies or rentals normally received by operators of hotels, motels, etc., when being operated as such in their customary and ordinary manner, from the lodgers, guests, roomers and occupants thereof. Chavez v. Commissioner of Revenue, 82 N.M. 97, 476 P.2d 67 (Ct. App. 1970).

"Lease" not "license". - An arrangement between the owner of several properties used as bingo halls and the non-profit organizations who operated the bingo games was a lease and not a license where the organizations were required to pay rent, they were granted exclusive possession of certain facilities on the premises and the use of the facilities at certain times, and the owner could not revoke the agreement at will; although the arrangement was not a typical lease, restrictions in the Bingo and Raffle Act (60-2B-1 to 60-2B-14 NMSA 1978) accounted for the type of arrangement created and to deny that this was a lease would have made it impossible for bingo operators to enter arrangements that would qualify as leases. Quantum Corp. v. State Taxation & Revenue Dep't, 1998-NMCA-050, 125 N.M. 49, 956 P.2d 848 (Ct. App. 1998).

Yearly lease of motel. - Since taxpayers leased motel to a railway on an annual basis at a fixed rental, having no relationship to whether the railway company let the rooms to lodgers, guests or roomers, the rental received by the taxpayer was not income received from lodgers, guests or roomers, but was income by way of rental received from the lessee railway for the entire premises, and was deductible from gross receipts. Chavez v. Commissioner of Revenue, 82 N.M. 97, 476 P.2d 67 (Ct. App. 1970).

Receipts from license agreements not deductible. - Agreements between the taxpayer and several other companies providing for the use of space in the taxpayer's department stores for the purpose of retailing certain items, which agreements expressly negatived the intention to create a lease, constituted licenses, the money from selling which was not deductible from the gross receipts tax under this section. S.S. Kresge Co. v. Bureau of Revenue, 87 N.M. 259, 531 P.2d 1232 (Ct. App. 1975).

Law reviews. - For article, "The Deductibility for Federal Income Tax Purposes of the New Mexico Gross Receipts Tax Paid on the Purchase of a Newly Constructed Home," see 13 N.M.L. Rev. 625 (1983).

7-9-54. Deduction; gross receipts tax; governmental gross receipts tax; sales to governmental agencies.

A. Except as provided otherwise in Subsection C of this section, receipts from selling tangible personal property to the United States or New Mexico or any governmental unit or subdivision, agency, department or instrumentality thereof may be deducted from gross receipts or from governmental gross receipts.

B. Except as provided otherwise in Subsection C of this section, receipts from selling tangible personal property to an Indian tribe, nation or pueblo or any governmental 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. Unless contrary to federal law, the deduction provided by this section 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 tangible personal property that will become an ingredient or component part of a construction project; or

(4) that portion of the receipts from performing a "service", as defined in Subsection K of Section 7-9-3 NMSA 1978, that reflects the value of tangible personal property utilized or produced in performance of such service.

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.

ANNOTATIONS

The 1989 amendment, effective July 1, 1989, designated the formerly undesignated first sentence as Subsection A, while substituting therein "as provided otherwise in Subsection C of this section" for "for receipts from selling nonfissionable metalliferous mineral ore and except for receipts from selling tangible personal property which is or will be incorporated into a metropolitan redevelopment project created under the Metropolitan Redevelopment Code; designated the formerly undesignated second sentence as Subsection B, while substituting all of the language thereof preceding "to" for "Receipts from selling tangible personal property other than nonfissionable metalliferous mineral ore"; added the introductory paragraph of Subsection C and

Subsections C(1) through C(3); and designated the formerly undesignated third sentence as Subsection C(4).

The 1992 amendment, effective July 1, 1992, inserted "governmental gross receipts" in the section heading; added "or from governmental gross receipts" at the end of Subsections A and B; substituted "that" for "which" in Subsection C(2); and substituted "that" for "which" in Subsection C(4), while deleting "is not deductible" at the end of that subsection.

The 1993 amendment, effective July 1, 1993, deleted "or any agency or instrumentality thereof" following "United States" and substituted "any governmental unit or subdivision, agency, department or instumentality" for "any political subdivision" in Subsection A, and deleted "the governing body of" following "personal property to" and substituted "nation or pueblo or any governmental subdivision, agency, department or instrumentality thereof" for "or Indian pueblo" in Subsection B.

The 1995 amendment, effective July 1, 1995, inserted "tax" following "governmental gross receipts" in the section heading, deleted "nonfissionable" preceding "metalliferous" in Paragraph C(1), and made a minor stylistic change.

Metropolitan Redevelopment Code. - See 3-60A-1 NMSA 1978 and notes thereto.

Effect on government's contract costs does not invalidate tax. - That the gross receipts tax may increase cost on a contract to the government does not validate the tax on the grounds that a state may not directly tax the federal government where its legal incidence falls elsewhere. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978).

Suppliers of personal property for federal agents entitled to deduction. - If contractors are procurement agents for the federal government, their suppliers of tangible personal property would be entitled to a tax deduction. United States v. New Mexico, 624 F.2d 111 (10th Cir. 1980), aff'd, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

Tax proper unless purchasing contractors agents of United States. - Since contracts do not authorize the contractors to act as agents of the United States in purchasing supplies and materials, an application of the gross receipts tax to the contractual transactions for materials and supplies is not unconstitutional. United States v. New Mexico, 581 F.2d 803 (10th Cir. 1978).

Construction project includes wide variety of activities. - This section was intended to make sales of construction materials to governmental entities taxable when the materials were to be incorporated into construction projects. Contrary to taxpayer's argument that Regulation GR 51:16 establishes a definite test for determining whether an endeavor is a "construction project," this regulation merely states nonexclusive guidelines for determining whether materials constitute a component part of a construction project. Thus, construction projects include the wide variety of activities

listed in 7-9-3C NMSA 1978. Arco Materials, Inc. v. State, Taxation & Revenue Dep't, 118 N.M. 12, 878 P.2d 330 (Ct. App. 1994), rev'd on other grounds sub nom. Blaze Constr. Co. v. Taxation & Revenue Dep't, 118 N.M. 647, 884 P.2d 803 (1994), cert. denied, 514 U.S. 1016, 115 S. Ct. 1359, 131 L. Ed. 2d 216 (1995).

Direct passage of title to government insufficient to establish agency. - That title to tangible personal property passes directly from the vendor to the federal government is insufficient in itself to establish an agency relationship. United States v. New Mexico, 455 F. Supp. 993 (D.N.M. 1978), aff'd in part and rev'd in part on other grounds, 624 F.2d 111 (10th Cir. 1980), aff'd, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

Contract and circumstances establish agency relationship. - In determining whether contractors are procurement agents of the federal government, the surrounding facts and contract provisions must be analyzed, and specific words naming the contractors as agents are not required so long as it is clear from the contracts and the factual circumstances that the relationship is one of agency. United States v. New Mexico, 455 F. Supp. 993 (D.N.M. 1978), aff'd in part and rev'd in part on other grounds, 624 F.2d 111 (10th Cir. 1980), aff'd, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

Facts that contracts were management contracts, in existence for nearly 30 years and conducted in government-owned facilities with government-owned funds for the purpose of carrying out significant energy research and development administration statutory responsibilities, were important in determining whether contractor was an agent of the federal government. United States v. New Mexico, 455 F. Supp. 993 (D.N.M. 1978), aff'd in part and rev'd in part on other grounds, 624 F.2d 111 (10th Cir. 1980), aff'd, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

Tax may not be imposed on non-Indian for purchase price of materials for tribal housing project. - The state, through its bureau of revenue (now taxation and revenue department) and the commissioner of revenue (now secretary of the taxation and revenue department), may not impose upon a non-Indian construction company its gross receipts tax for the purchase price of materials used in connection with a tribal housing project on the Mescalero Apache reservation. Mescalero Apache Tribe v. O'Cheskey, 439 F. Supp. 1063 (D.N.M. 1977), aff'd, 625 F.2d 967 (10th Cir. 1980), cert. denied, 450 U.S. 959, 101 S. Ct. 1417, 67 L. Ed. 2d 383 (1981), rehearing denied, 455 U.S. 929, 102 S. Ct. 1296, 71 L. Ed. 2d 474 (1982).

Educational and instructional materials. - Contracts between taxpayer and certain government agencies for the creation, production and delivery of reproducible originals of instructional books, manuals, films, magnetic audio tapes and other items constitute sales of tangible personal property within the contemplation of this section, despite the fact that the value of the instructional materials produced depended largely upon the skills, learning and technical abilities of the taxpayer, rather than tangible materials which went into their makeup. Evco v. Jones, 81 N.M. 724, 472 P.2d 987 (Ct. App.), cert. denied, 81 N.M. 772, 473 P.2d 911 (1970), vacated and remanded for

reconsideration on other grounds, 83 N.M. 110, 488 P.2d 1214 (Ct. App.), cert. denied Griego v. Grieco, 90 N.M. 174, 561 P.2d 36 (Ct. App.), cert. denied, 90 N.M. 254, 561 P.2d 1347 (1977), rev'd on other grounds.

Telephone service. - Decision that a telephone company was not entitled to a deduction under this section for receipts collected for intrastate toll charges and local phone calls from certain government organizations and organizations which had been granted federal income tax exemptions would be held, since there was a reasonable basis for differentiating between electricity (declared to be tangible personalty at 7-9-3I NMSA 1978) and telephone communications where the evidence showed that more was involved in the telephone business than the selling of electricity. Leaco Rural Tel. Coop. v. Bureau of Revenue, 86 N.M. 629, 526 P.2d 426 (Ct. App. 1974).

7-9-54.1. Deduction; gross receipts from sale of aerospace services to certain organizations.

A. As used in this section:

(1) "aerospace services" means research and development services sold to or for resale to an organization for resale by the organization to the United States air force; and

(2) "organization" means an organization described in Subsection A of Section 7-9-29 NMSA 1978 other than a prime contractor operating facilities in New Mexico designated as a national laboratory by act of congress.

B. Receipts from performing or selling, on or after October 1, 1995, an aerospace service for resale may be deducted from gross receipts if the sale is made to a buyer who delivers a nontaxable transaction certificate. The buyer delivering the nontaxable transaction certificate shall separately state the value of the aerospace service purchased in the buyer's charge for the aerospace service on its subsequent sale to an organization or, if the buyer is an organization, on the organization's subsequent sale to the United States, and the subsequent sale shall be in the ordinary course of business of selling aerospace services to an organization or to the United States.

C. A percentage of the receipts from selling aerospace services to or for resale to an organization may be deducted from gross receipts in accordance with the following table:

Deductible Receipts During the Period	Percentage
October 1, 1995 through September 30, 1996	10%

October 1, 1996 through September 30, 1997 25%
October 1, 1997 through September 30, 1999 50%
October 1, 1999 and thereafter 100%.

History: Laws 1992, ch. 40, § 1; 1993, ch. 310, § 1; 1994, ch. 45, § 5; 1995, ch. 183, § 1.

ANNOTATIONS

Cross references. - For Spaceport Development Act, see 9-15-41 to 9-15-47 NMSA 1978.

The 1993 amendement, effective July 1, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

The 1994 amendment, effective July 1, 1994, substituted "sold to or for resale to" for "performed or sold by" in Subparagraph A(1)(a) and inserted "performing or" in the first sentence in Subsection B.

The 1995 amendment, effective July 1, 1995, rewrote Subsection A, inserted "if the buyer is an organization, on the organization's subsequent sale" in Subsection B, and substituted "or for resale to an organization" for "the United States or any agency or instrumentality thereof" in Subsection C.

Compiler's notes. - Laws 1992, ch. 40, § 4, as amended by Laws 1993, ch. 310, § 2, provided that the effective date of the provisions of 7-9-54.1 NMSA 1978 was October 1, 1995. Laws 1994, ch. 45, § 8 repeals Laws 1992, ch. 40, § 4 and Laws 1993, ch. 310, § 2.

Laws 1993, ch. 31, § 13D and Laws 1993, ch. 310, § 3, both repeal Laws 1992, ch. 40, § 3, which provided for the repeal of ch. 40 of Laws 1993 on August 1, 1995, if the United States has not announced prior to July 1, 1995, that the space systems division of the department of the air force will be relocated to New Mexico.

7-9-54.2. Gross receipts; deduction; spaceport operation; launching and recovery of space launch vehicles; payload services. (Effective until June 30, 2001.)

A. Receipts from launching or recovering space launch vehicles or payloads in New Mexico may be deducted from gross receipts.

B. Receipts from preparing a payload for launching in New Mexico are deductible from gross receipts.

C. Receipts from operating a spaceport in New Mexico are deductible from gross receipts.

D. As used in this section:

(1) "payload" includes systems, subsystems and mechanical structures required to perform or conduct research and development on or to conduct operations of space functions, such as reconnaissance, communications, navigation and target simulations, but does not include weapons;

(2) "space" means any location beyond altitudes of sixty thousand feet above the earth's mean sea level; and

(3) "spaceport" means an installation and related facilities used for the launching, landing, recovery, servicing and monitoring of vehicles capable of entering or returning from space.

E. 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.

ANNOTATIONS

Delayed repeals. - Laws 1997, ch. 73, § 2 repeals 7-9-54.2, effective June 30, 2001.

The 1997 amendment, in Subsection A, substituted "launching or recovering space launch vehicles or payloads" for "operating a spaceport"; in Subsection B, inserted "preparing a payload for" preceding "launching" and deleted "or recovering space launch vehicles or payloads from a spaceport" following "launching"; in Subsection C, substituted "operating" for "preparing a payload for launching at"; designated former Subsection D as Paragraph D(3) and rewrote that paragraph and added Paragraphs D(1) and D(2). Laws 1997, ch. 73 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

7-9-55. Deduction; gross receipts tax; governmental gross receipts tax; transaction in interstate commerce.

A. Receipts from transactions in interstate commerce may be deducted from gross receipts to the extent that the imposition of the gross receipts tax would be unlawful under the United States constitution.

B. Receipts from transactions in interstate commerce may be deducted from governmental gross receipts.

C. Receipts from transmitting messages or conversations by radio other than from one point in this state to another point in this state and receipts from the sale of radio or television broadcast time when the advertising message is supplied by or on behalf of a national or regional seller or advertiser not having its principal place of business in or being incorporated under the laws of this state, may be deducted from gross receipts. Commissions of advertising agencies from performing services in this state may not be deducted from gross receipts under this section.

History: 1953 Comp., § 72-16A-14.10, enacted by Laws 1969, ch. 144, § 45; Laws 1986, ch. 20, § 65; Laws 1986, ch. 52, § 2; 1993, ch. 31, § 12.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, inserted "governmental gross receipts tax" in the section heading; inserted the subsection designations A and C; and added Subsection B.

Compiler's notes. - Laws 1988, ch. 19, § 5, effective July 1, 1988, repeals Laws 1986, ch. 20, § 129 and Laws 1986, ch. 52, § 5, which amended versions of this section which were to take effect July 1, 1988.

Laws 1988, ch. 19, § 2 repealed and reenacted 7-9-55 NMSA as amended by Laws 1986, ch. 20, § 65 and Laws 1986, ch. 52, § 2, effective July 1, 1990; however, Laws 1990, ch. 27, § 2A repealed Laws 1988, ch. 19, § 2, effective May 16, 1990.

Constitutionality. - The New Mexico gross receipts tax did not violate the commerce clause of the United States constitution, as applied to a California corporation which owned and operated a food and restaurant supply business with a warehouse located in Texas, and which sold food and other restaurant supplies to restaurants for use in New Mexico by obtaining orders for deliveries by telephoning the restaurants and taking down the orders over the phone, then delivering the goods in its own trucks from its warehouse in Texas to the restaurants in New Mexico. Proficient Food Co. v. New Mexico Taxation & Revenue Dep't, 107 N.M. 392, 758 P.2d 806 (Ct. App. 1988).

All interstate commerce is not per se immune from taxation. Spillers v. Commissioner of Revenue, 82 N.M. 41, 475 P.2d 41 (Ct. App.), cert. denied, 82 N.M. 81, 475 P.2d 778 (1970).

Scope of deduction. - This section permits deduction from gross receipts to the extent that the imposition of gross receipts tax would be unlawful under the United States constitution. If imposition of the tax upon the particular gross receipts is constitutionally lawful then such receipts are not deductible hereunder. Spillers v. Commissioner of

Revenue, 82 N.M. 41, 475 P.2d 41 (Ct. App.), cert. denied, 82 N.M. 81, 475 P.2d 778 (1970).

Immunity from undue burdens. - To attain immunity a showing must be made of multiple taxation or the lack of a local taxable incident. Such showing is essential to classify the tax as one unduly burdensome to interstate commerce. Spillers v. Commissioner of Revenue, 82 N.M. 41, 475 P.2d 41 (Ct. App.), cert. denied, 82 N.M. 81, 475 P.2d 778 (1970).

Multiple taxation. - If compensation received under advertising contracts is not protected by the commerce clause, then multiple taxation of the receipts would not bring them within such protection. New Mexico Newspapers, Inc. v. Bureau of Revenue, 82 N.M. 436, 483 P.2d 317 (Ct. App. 1971).

Classification pursuant to constitutional mandate not violative of equal protection. - Granting a deduction, whether in accordance with statute or administrative regulations, of gross receipts which are not taxable by the state under the commerce clause, and denying such deduction with respect to receipts which are subject to state taxation, although the receipts in each instance are produced by comparable activities, is a reasonable and proper basis for classification. New Mexico Newspapers, Inc. v. Bureau of Revenue, 82 N.M. 436, 483 P.2d 317 (Ct. App. 1971).

Imposition of tax upon receipts derived by newspaper from advertising, while receipts of radio and television broadcasters are not taxed, does not constitute arbitrary and discriminatory treatment or classification in violation of the equal protection clauses of the federal and state constitutions. New Mexico Newspapers, Inc. v. Bureau of Revenue, 82 N.M. 436, 483 P.2d 317 (Ct. App. 1971).

Educational materials. - Tax levied on gross receipts from out-of-state sales of tangible personal property in the nature of reproducible educational materials is an impermissible burden on commerce. Evco v. Jones, 409 U.S. 91, 93 S. Ct. 349, 34 L. Ed. 2d 325 (1972).

Interstate telegraph messages. - Employee who transmitted telegraph messages both interstate and intrastate is allowed to deduct receipts derived from interstate messages from gross receipts under this section. Ealey v. Bureau of Revenue, 89 N.M. 160, 548 P.2d 440 (1976).

Access charges and telephone carriers. - Since the access charge is for the service of transmitting the telephone signal between the inter-local access and transport areas carrier's switching center and the local phone customer, such taxation of access charge receipts is barred by this section. GTE S.W. Inc. v. Taxation & Revenue Dep't, 113 N.M. 610, 830 P.2d 162 (Ct. App. 1992).

Ancillary services and telephone carriers. - Gross receipts tax imposed on receipts for ancillary services performed for interstate carriers is proper even though these

services are related to the provision of interstate telephone service; the receipts are not receipts from transmitting messages or conversations by telephone. GTE S.W. Inc. v. Taxation & Revenue Dep't, 113 N.M. 610, 830 P.2d 162 (Ct. App. 1992).

Newspaper advertising. - Assessment of gross receipts tax against receipts of taxpayer derived from out-of-state advertising published in its newspaper was not violative of the commerce clause. New Mexico Newspapers, Inc. v. Bureau of Revenue, 82 N.M. 436, 483 P.2d 317 (Ct. App. 1971).

Commissions for booking transportation services. - Imposition of gross receipts tax upon commissions paid to a resident agent of an interstate carrier of household goods for initiating or booking interstate transportation of such goods does not violate the federal constitution, and consequently such receipts are not properly deductible. Spillers v. Commissioner of Revenue, 82 N.M. 41, 475 P.2d 41 (Ct. App.), cert. denied, 82 N.M. 81, 475 P.2d 778 (1970).

Burden on taxpayer. - Even if multiple taxation could be treated as invoking the protection of the commerce clause, the taxpayer, nevertheless, would have the burden of establishing his right to immunity from taxation. New Mexico Newspapers, Inc. v. Bureau of Revenue, 82 N.M. 436, 483 P.2d 317 (Ct. App. 1971).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 68 Am. Jur. 2d Sales and Use Taxes §§ 37, 38.

7-9-56. Deduction; gross receipts tax; intrastate transportation and services in interstate commerce. (Effective until July 1, 2001.)

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 of a public distribution warehouse center from handling, storage, finished goods mixing, physical distribution, drayage or packing of property or any other accessorial services on property that has moved or will move in interstate or foreign commerce, including subsequent or related intrastate transportation of that property by a carrier provided or contracted for by the public distribution warehouse center, may be deducted from gross receipts.

D. 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: 1953 Comp., § 72-16A-14.11, enacted by Laws 1969, ch. 144, § 46; 1971, ch. 166, § 1; 1986, ch. 20, §§ 66, 130; 1986, ch. 52, §§ 3, 6; 1988, ch. 19, § 3; 1992, ch. 50, § 16; 1992, ch. 67, § 16; 1994, ch. 112, § 1.

ANNOTATIONS

Delayed repeals. - Laws 1994, ch. 112, § 2 repeals 7-9-56 NMSA 1978, as amended by Laws 1994, ch. 112, § 1, and enacts a new section, effective July 1, 2001.

1992 amendments. - Laws 1992, ch. 50, § 16, effective July 1, 1992, inserting "by" preceding "a carrier" in Subsection B and, in Subsection C, substituting "that" for "which" near the beginning of the subsection and deleting "and thirty percent of the receipts of persons providing interstate and foreign telephone or telegraph services from transmitting interstate messages or conversations" following "final user", was approved on March 6, 1992. However, Laws 1992, ch. 67, § 16, also effective July 1, 1992, making the same change to Subsection C but none of the other changes, was approved on March 9, 1992. The section is set out as amended by Laws 1992, ch. 67, § 16. See 12-1-8 NMSA 1978.

The 1994 amendment, effective July 1, 1994, substituted "is" for "are" in Subsection A, added Subsection C, and redesignated former Subsection C as Subsection D.

Compiler's notes. - Laws 1988, ch. 19, § 5, effective July 1, 1990, repeals Laws 1986, ch. 20, § 130 and Laws 1986, ch. 52, § 6, which enacted delayed versions of this section which were to take effect July 1, 1988.

Laws 1990, ch. 27, § 2A, effective May 16, 1990, repeals Laws 1988, ch. 19, § 4 which had repealed and reenacted this section effective July 1, 1990.

To deduct receipts under Subsection A, taxpayer is required to show three items: (1) the receipts must be from transporting persons from one point to another in this state, (2) the transportation must have been in interstate commerce and (3) the transportation must have been under a single contract. McKinley Ambulance Serv. v. Bureau of Revenue, 92 N.M. 599, 592 P.2d 515 (Ct. App. 1979).

Intrastate transportation receipts not deductible. - Transportation into one state from another is the indispensable test of interstate commerce. That there is both intrastate and interstate transportation under a single contract does not authorize a deduction under Subsection A for receipts attributable to the intrastate transportation. McKinley Ambulance Serv. v. Bureau of Revenue, 92 N.M. 599, 592 P.2d 515 (Ct. App. 1979).

7-9-56. Deduction; gross receipts tax; intrastate transportation and services in interstate commerce. (Effective July 1, 2001.)

A. Receipts from transporting persons or property from one point to another in this state may be deducted from gross receipts when such persons or property, including any special or extra service reasonably necessary in connection therewith, is being transported in interstate or foreign commerce under a single contract.

B. Receipts from handling, storage, drayage or packing of property or any other accessorial services on property, which property has moved or will move in interstate or foreign commerce, when such services are performed by a local agent for a carrier or by a carrier and when such services are performed under a single contract in relation to transportation services, may be deducted from gross receipts.

C. Receipts from providing telephone or telegraph services in this state that will be used by other persons in providing telephone or telegraph services to the final user may be deducted from gross receipts.

History: 1978 Comp., § 7-9-56, enacted by Laws 1994, ch. 112, § 2.

ANNOTATIONS

Repeals and reenactments. - Laws 1994, ch. 112, § 2 repeals 7-9-56 NMSA 1978, as amended by Laws 1994, ch. 112, § 1, and enacts the above section, effective July 1, 2001.

7-9-56.1. Deduction; gross receipts tax; internet services.

During the period July 1, 1998 through June 30, 2000, 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.

ANNOTATIONS

Effective dates. - Laws 1998, ch. 92, § 7 makes the act effective on July 1, 1998.

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.

ANNOTATIONS

Effective dates. - Laws 1998, ch. 92, § 7 makes the act effective on July 1, 1998.

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 a 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.

ANNOTATIONS

The 1989 amendment, effective July 1, 1989, in Subsection C substituted all of the present language of the introductory paragraph following "buyer of the service" for ", any of his employees or any person in privity with him", and deleted former Paragraph (3) which read: "concurrent with the performance of the service, has a regular place of work in New Mexico or spends more than brief and occasional periods of time in New Mexico and: (a) has any communication in New Mexico related in any way to the subject matter, performance or administration of the service with the person performing the service; or (b) himself performs work in New Mexico related to the subject matter of the service".

The 1998 amendment, effective July 1, 1998, substituted "for export" for "to an out-of-state buyer" in the section heading; rewrote Subsection A; deleted former Subsections B and C; redesignated Subsection D as Subsection B; and added Subsection C.

Compiler's notes. - Laws 1993, ch. 31, § 13A, effective July 1, 1993, repeals Laws 1989, ch. 262, § 7, which provided for the repeal and reenactment of 7-9-57 NMSA 1978 effective July 1, 1993.

"Initial use" following repair. - Mechanic was not entitled to a deduction with respect to repairs made on a truck brought into New Mexico for such repairs and then driven back to Texas for use exclusively as a delivery truck within that state, because the return of the truck to Texas constituted an "initial use" after repair in New Mexico. Reed v. Jones, 81 N.M. 481, 468 P.2d 882 (Ct. App. 1970).

7-9-57.1. Deduction; gross receipts tax; sales through world wide web sites.

Receipts of any person derived from the sale of a service or property made through a world wide web site to a person with a billing address outside New Mexico may be deducted from gross receipts.

History: Laws 1998, ch. 92, § 3.

ANNOTATIONS

Effective dates. - Laws 1998, ch. 92, § 7 makes the act effective on July 1, 1998.

7-9-58. Deduction; gross receipts tax; feed; fertilizers.

A. Receipts from selling feed for livestock, fish raised for human consumption, poultry or for 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 the raising of 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.

ANNOTATIONS

1991 amendments. - Laws 1991, ch. 9, § 30, effective January 1, 1992, designating the formerly undesignated first and second sentences as Subsections A and B and, in Subsection A, substituting "and from selling" for "fish raised for human consumption, poultry or for animals raised for their hides or pelts", inserting "germicides", and deleting "states in writing that he" following "person who" near the end, was approved on March 15, 1991. However, Laws 1991, ch. 203, § 6, effective July 1, 1991, inserting "germicides" in the first sentence, was approved on April 4, 1991. The section is set out as amended by Laws 1991, ch. 203, § 6. See 12-1-8 NMSA 1978.

The 1992 amendment, effective July 1, 1992, added the subsection designations and inserted "and from selling" near the beginning of Subsection A.

7-9-59. Deduction; gross receipts tax; warehousing, threshing, harvesting, growing, cultivating and processing agricultural products.

A. Receipts from warehousing grain or other agricultural products may be deducted from gross receipts.

B. Receipts from threshing, cleaning, growing, cultivating or harvesting agricultural products, including the ginning of cotton or processing for growers, producers or nonprofit marketing associations of other agricultural products raised for food and fiber, including livestock, may be deducted from gross receipts.

History: 1953 Comp., § 72-16A-14.14, enacted by Laws 1969, ch. 144, § 49; 1970, ch. 27, § 1.

7-9-60. Deduction; gross receipts tax; 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 organizations that have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended or renumbered, may be deducted from gross receipts or from governmental gross receipts if the sale is made to an organization that delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate shall employ the tangible personal property in the conduct of functions described in Section 501(c)(3) and shall not employ the tangible personal property in the conduct of an unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code of 1986, as amended or renumbered.

B. The deduction provided by this section does not apply to receipts from selling tangible personal property that will become an ingredient or component part of a construction project or from selling metalliferous mineral ore.

History: 1953 Comp., § 72-16A-14.15; Laws 1970, ch. 12, § 4; 1992, ch. 100, § 8; 1995, ch. 50, § 4.

ANNOTATIONS

Repeals and reenactments. - Laws 1970, ch. 12, § 4 repealed former 7-9-60 NMSA 1978, as enacted by Laws 1969, ch. 144, § 50.

The 1992 amendment, effective July 1, 1992, inserted "governmental gross receipts" in the section heading; inserted "or from governmental gross receipts" near the end of the first sentence; and twice substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

The 1995 amendment, effective July 1, 1995, added "tax" following "governmental growth receipts" in the section heading; designated the existing provisions as Subsection A and added Subsection B; and, in Subsection A, added the exception at the beginning, deleted "other than metalliferous mineral ore" following "personal property" near the beginning of the first sentence, substituted "shall" for "must" in two places in the second sentence, and deleted the former third sentence which read "Receipts from selling tangible personal property that will become an ingredient or component part of a construction project are not receipts from selling tangible personal property for purposes of this section".

Internal Revenue Code. - Sections 501(c)(3) and 513 of the United States Internal Revenue Code of 1986 appear as 26 U.S.C. §§ 501(c)(3) and 513, respectively.

Telephone services not tangible personalty. - Decision that a telephone company was not entitled to a deduction under this section for receipts collected for intrastate toll charges and local phone calls from certain government organizations and organizations which had been granted federal income tax exemptions would be upheld, since there was a reasonable basis for differentiating between electricity (declared to be tangible personalty at 7-9-3I NMSA 1978) and telephone communications where the evidence showed that more was involved in the telephone business than the selling of electricity. Leaco Rural Tel. Coop. v. Bureau of Revenue, 86 N.M. 629, 526 P.2d 426 (Ct. App. 1974).

Erection of fences not construction. - Since the construction of fences does not come within the definition of "construction" in 7-9-3C NMSA 1978, fencing material sold with or without setting of the posts did not become a component part of a construction project and receipts from such sales were deductible. Cardinal Fence Co. v. Commissioner of Bureau of Revenue, 84 N.M. 314, 502 P.2d 1004 (Ct. App. 1972).

7-9-61. Repealed.

ANNOTATIONS

Repeals. - Laws 1981, ch. 37, § 97, repeals 7-9-61 NMSA 1978, relating to the deduction from the gross receipts tax of the sale of tangible personal property to banks and financial corporations, effective January 1, 1982.

7-9-61.1. Deductions; gross receipts tax; certain receipts.

Receipts from charges made in connection with the origination, making or assumption of a loan or from charges made for handling loan payments may be deducted from gross receipts.

History: 1978 Comp., § 7-9-61.1, enacted by Laws 1981, ch. 37, § 52.

ANNOTATIONS

"Charges made for handling loan payments". - The phrase "charges made for handling loan payments", as used in this section, does not encompass charges made by taxpayers for their escrow services in connection with installment payments on real estate contracts. The legislature intended to allow the deduction from gross receipts only for typical loan transactions involving both a traditional lender and borrower. Any processing or collection charges typically made by either independent escrow agents, or banks acting as escrow agents, are not properly deductible from gross receipts. Security Escrow Corp. v. State Taxation & Revenue Dep't, 107 N.M. 540, 760 P.2d 1306 (Ct. App. 1988).

7-9-62. Deduction; gross receipts tax; agricultural implements; aircraft; vehicles that are not required to be registered.

A. 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 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 section is computed.

B. As used in this section, "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.

History: 1953 Comp., § 72-16A-14.17, enacted by Laws 1969, ch. 144, § 52; 1975, ch. 159, § 1; 1998, ch. 89, § 5.

ANNOTATIONS

The 1998 amendment, effective July 1, 1998, designated the existing material as Subsection A, added the proviso at the end of the first sentence and substituted "7-9-71 NMSA 1978" for "72-16A-14.28 NMSA 1978" in the second sentence; and added Subsection B.

Lease-purchase transaction. - Lease agreement providing that upon full payment of rentals lessee would become owner of equipment in question constituted a sale with reservation of security interest, for which seller-secured party was to pay gross receipts tax at the rate specified for transactions covering vehicles not registered under the Motor Vehicle Code. Rust Tractor Co. v. Bureau of Revenue, 82 N.M. 82, 475 P.2d 779 (Ct. App.), cert. denied, 82 N.M. 81, 475 P.2d 778 (1970).

7-9-63. Deduction; gross receipts tax; publication sales.

Receipts from publishing newspapers or magazines, except from selling advertising space, may be deducted from gross receipts.

Receipts from selling magazines at retail may not be deducted from gross receipts.

History: 1953 Comp., § 72-16A-14.18, enacted by Laws 1969, ch. 144, § 53.

ANNOTATIONS

Advertising inserts purchased by a New Mexico retailer from out-of-state advertising coordinators were not "newspapers" within the meaning of this section. Phillips Mercantile Co. v. New Mexico Taxation & Revenue Dep't, 109 N.M. 487, 786 P.2d 1221 (Ct. App. 1990).

Royalties from advertising. - Since taxpayer's receipts were a royalty paid to it from advertising revenues and not receipts from publishing the magazine, there would be no deduction under this section. New Mexico Sheriffs & Police Ass'n v. Bureau of Revenue, 85 N.M. 565, 514 P.2d 616 (Ct. App. 1973).

No double taxation shown. - Since, aside from the tax paid on the taxpayer association's royalty receipts from advertising revenue, the only other tax involved was the tax asserted to have been paid by the publisher on his receipts, there was no factual basis for a claim of double taxation. New Mexico Sheriffs & Police Ass'n v. Bureau of Revenue, 85 N.M. 565, 514 P.2d 616 (Ct. App. 1973).

7-9-64. Deduction; gross receipts tax; newspaper sales.

Receipts from selling newspapers, except from selling advertising space, may be deducted from gross receipts.

History: 1953 Comp., § 72-16A-14.19, enacted by Laws 1969, ch. 144, § 54.

ANNOTATIONS

Advertising inserts purchased by a New Mexico retailer from out-of-state advertising coordinators were not "newspapers" within the meaning of this section. Phillips Mercantile Co. v. New Mexico Taxation & Revenue Dep't, 109 N.M. 487, 786 P.2d 1221 (Ct. App. 1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. - What constitutes newspapers, magazines, periodicals, or the like, under sales or use tax law exemption, 25 A.L.R.4th 750.

7-9-65. Deduction; gross receipts tax; chemicals and reagents.

Receipts from selling chemicals or reagents to any mining, milling or oil company for use in processing ores or oil in a mill, smelter or refinery or in acidizing oil wells, and receipts from selling chemicals or reagents in lots in excess of eighteen tons may be deducted from gross receipts. Receipts from selling explosives, blasting powder or dynamite may not be deducted from gross receipts.

History: 1953 Comp., § 72-16A-14.21, enacted by Laws 1969, ch. 144, § 56.

ANNOTATIONS

Words used in this section are not ambiguous, and the issue of legislative intent does not arise. Runco Acidizing & Fracturing Co. v. Bureau of Revenue, 87 N.M. 146, 530 P.2d 410 (Ct. App. 1974).

Aggregation of deliveries not authorized. - Since no single delivery or single day's delivery of chemicals or reagents to a well ever amounted to 18 tons or more, although the amount specified in a purchase order might aggregate that much, taxpayer was not entitled to a deduction under this section, since the wording of taxpayer's purchase orders and contract, supported inference that a purchase order was not a transfer for consideration and therefore not a sale. Runco Acidizing & Fracturing Co. v. Bureau of Revenue, 87 N.M. 146, 530 P.2d 410 (Ct. App. 1974).

7-9-66. Deduction; gross receipts tax; commissions.

A. Receipts derived from commissions on sales of tangible personal property which are not subject to the gross receipts tax may be deducted from gross receipts.

B. Receipts of the owner of a dealer store derived from commissions received for performing the service of selling from the owner's dealer store a principal's tangible personal property may be deducted from gross receipts.

C. As used in this section, "dealer store" means a merchandise facility open to the public that is owned and operated by a person who contracts with a principal to act as an agent for the sale from that facility of merchandise owned by the principal.

History: 1953 Comp., § 72-16A-14.22, enacted by Laws 1969, ch. 144, § 57; 1999, ch. 169, § 1.

ANNOTATIONS

The 1999 amendment, effective July 1, 1999, added Subsections B and C.

7-9-66.1. Deduction; gross receipts tax; certain real estate transactions.

A. Receipts from real estate commissions on that portion of the transaction subject to gross receipts tax pursuant to Subsection A of Section 7-9-53 NMSA 1978 may be deducted from gross receipts if the person claiming the deduction submits to the department evidence that the secretary finds substantiates the deduction.

B. For the purposes of this section, "commissions on that portion of the transaction subject to gross receipts tax" means that portion of the commission that bears the same relationship to the total commission as the amount of the transaction subject to gross receipts tax does to the total purchase price.

History: 1978 Comp., § 7-9-76.2, enacted by Laws 1984, ch. 129, § 2; 1990, ch. 41, § 8.

ANNOTATIONS

The 1990 amendment, effective July 1, 1990, substituted "department evidence that the secretary" for "division evidence which the director" in Subsection A and made a minor stylistic change in Subsection B.

Compiler's notes. - This section was enacted as 7-9-76.2 NMSA 1978 by Laws 1984, ch. 129, § 2, but was redesignated as 7-9-66.1 NMSA 1978, as another 7-9-76.2 NMSA 1978 had previously been enacted by Laws 1984, ch. 2, § 6.

7-9-67. Deduction; gross receipts tax; governmental gross receipts tax; refunds; uncollectible debts.

A. Refunds and allowances made to buyers or amounts written off the books as an uncollectible debt by a person reporting gross receipts tax on an accrual basis may be deducted from gross receipts. If debts reported uncollectible are subsequently collected, such receipts shall be included in gross receipts in the month of collection.

B. Refunds and allowances made to buyers or amounts written off the books as an uncollectible debt by a person reporting governmental gross receipts tax on an accrual basis may be deducted from governmental gross receipts. If debts reported uncollectible are subsequently collected, such receipts shall be included in governmental gross receipts in the month of collection.

History: 1953 Comp., § 72-16A-14.23, enacted by Laws 1969, ch. 144, § 58; 1994, ch. 45, § 6.

ANNOTATIONS

The 1994 amendment, effective July 1, 1994, inserted "governmental gross receipts tax" in the section heading, designated the previously undesignated language as Subsection A and added Subsection B.

7-9-68. Deduction; gross receipts tax; warranty obligations.

Receipts of a dealer from furnishing goods or services to the purchaser of tangible personal property to fulfill a warranty obligation of the manufacturer of the property may be deducted from gross receipts.

History: 1953 Comp., § 72-16A-14.25, enacted by Laws 1969, ch. 144, § 60.

7-9-69. Deduction; gross receipts tax; administrative and accounting services.

A. Receipts of a corporation or an affiliate for administrative, managerial, accounting and customer services performed by it for the corporation or an affiliate upon a nonprofit or cost basis and receipts from the corporation or 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, "an affiliate" means a corporation or a limited partnership that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the subject corporation or limited partnership. For purposes of this subsection, "control" means ownership of stock in a corporation or of an interest in a limited partnership that:

(1) represents at least fifty percent of the total voting power of that corporation or limited partnership; and

(2) has a value equal to at least fifty percent of the total value of the stock of that corporation or limited partnership.

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.

ANNOTATIONS

The 1990 amendment, effective July 1, 1990, designated the former section as Subsection A, inserted "managerial" and substituted "an affiliated" and "an affiliated corporation" for "a wholly-owned subsidiary" in Subsection A, and added Subsection B.

The 1993 amendment, effective June 18, 1993, substituted "fifty percent" for "eighty percent" in Paragraphs (1) and (2) of Subsection B.

The 1998 amendment, effective July 1, 1998, in Subsection A, inserted "or an affiliate" following "corporation" near the beginning, inserted "customer" preceding "services" and substituted "the corporation or an affiliate" for "an affiliated corporation", twice; in Subsection B, substituted "'an affiliate'" for "'affiliated corporation'" and inserted "or a limited partnership" and "or limited partnership" in the first sentence, and substituted "or of an interest in a limited partnership that" for "which" in the second sentence; and inserted "or limited partnership" at the end of Paragraphs B(1) and (2).

Applicability. - Laws 1998, ch. 112, § 2, makes the provisions of the act applicable to receipts received after July 1, 1998.

Scope of deduction. - This section is purely exclusionary and limited to machines of a general administrative nature, and heavy construction equipment exchanged by taxpayers in no way qualifies for this exemption. Co-Con, Inc. v. Bureau of Revenue, 87 N.M. 118, 529 P.2d 1239 (Ct. App.), cert. denied, 87 N.M. 111, 529 P.2d 1232 (1974).

7-9-70. Deduction; gross receipts tax; rental or lease of vehicles used in interstate commerce.

Receipts from the rental or leasing of vehicles used in the transportation of passengers or property for hire in interstate commerce under the regulations or authorization of any agency of the United States may be deducted.

History: 1953 Comp., § 72-16A-14.27, enacted by Laws 1969, ch. 144, § 62.

7-9-71. Deduction; gross receipts tax; trade-in allowance.

That portion of the receipts of a seller that is represented by a trade-in of tangible personal property of the same type being sold, except for the receipts represented by a trade-in of a manufactured home, may be deducted from gross receipts.

History: 1953 Comp., § 72-16A-14.28, enacted by Laws 1969, ch. 144, § 63; 1979, ch. 338, § 6; 1991, ch. 203, § 7.

ANNOTATIONS

The 1991 amendment, effective July 1, 1991, substituted "manufactured" for "mobile".

7-9-72. Repealed.

ANNOTATIONS

Repeals. - Laws 1993, ch. 30, § 28 repeals 7-9-72 NMSA 1978, as amended by Laws 1992, ch. 100, § 9, relating deductions for special fuel receipts, effective June 18, 1993. For provisions of former section, see 1992 Cumulative Supplement.

7-9-73. Deduction; gross receipts tax; governmental gross receipts; sale of prosthetic devices.

Receipts from selling prosthetic devices may be deducted from gross receipts or from governmental gross receipts if the sale is made to a person who is licensed to practice medicine, osteopathic medicine, dentistry, podiatry, optometry, chiropractic or professional nursing and who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must deliver the prosthetic device incidental to the performance of a service and must include the value of the prosthetic device in his charge for the service.

History: 1953 Comp., § 72-16A-14.30, enacted by Laws 1970, ch. 78, § 2; 1992, ch. 100, § 10.

ANNOTATIONS

The 1992 amendment, effective July 1, 1992, inserted "governmental gross receipts" in the section heading, and inserted "or from governmental gross receipts" in the first sentence while therein substituting "osteopathic medicine" for "osteopathy".

7-9-73.1. Deduction; gross receipts; hospitals.

Fifty percent of the receipts of hospitals licensed by the department of health may be deducted from gross receipts; provided, this deduction may be applied only to the taxable gross receipts remaining after all other appropriate deductions have been taken.

History: Laws 1991, ch. 8, § 3; 1993, ch. 56, § 1; 1995, ch. 50, § 5.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, deleted "tax" following "receipts" and "general" preceding "hospitals" in the section heading and rewrote this section which read "Fifty percent of the receipts of general hospitals may be deducted from gross receipts."

The 1995 amendment, effective July 1, 1995, added the proviso at the end.

7-9-73.2. Deduction; gross receipts tax and governmental gross receipts tax; prescription drugs.

Receipts from the sale of prescription drugs may be deducted from gross receipts and governmental gross receipts.

History: Laws 1998, ch. 95, § 2; Laws 1998, ch. 99, § 4.

ANNOTATIONS

Effective dates. - Laws 1998, ch. 99, § 4, makes the act effective on January 1, 1999.

Compiler's notes. - Laws 1998, ch. 95, § 2 and Laws 1998, ch. 99, § 4 enact identical provisions of law. This section, as set out above, is Laws 1998, ch. 99, § 4. See 12-1-8 NMSA 1978.

7-9-74. Deduction; gross receipts tax; sale of property used in the manufacture of jewelry.

Receipts from selling tangible personal property may be deducted from gross receipts if the sale is made to a person who states in writing that he will use the property so purchased in manufacturing jewelry. The buyer must incorporate the tangible personal property as an ingredient or component part of the jewelry that he is in the business of manufacturing. The deduction allowed a seller under this section shall not exceed five thousand dollars ($5,000) during any twelve-month period attributable to purchases by a single purchaser.

History: 1953 Comp., § 72-16A-14.31, enacted by Laws 1971, ch. 217, § 2; 1975, ch. 322, § 1; 1994, ch. 94, § 2.

ANNOTATIONS

The 1994 amendment, effective April 1, 1994, deleted the former third sentence which read, "The deduction allowed a seller under this section shall not exceed the sum of one thousand dollars ($1,000) during any twelve month period attributable to purchases by a single purchaser".

7-9-75. Deduction; gross receipts tax; sale of certain services performed directly on product manufactured.

Receipts from selling the service of combining or processing components or materials may be deducted from gross receipts if the sale is made to a person engaged in the business of manufacturing who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must have the service

performed directly upon tangible personal property which he is in the business of manufacturing or upon ingredients or component parts thereof.

History: 1953 Comp., § 72-16A-14.32, enacted by Laws 1972, ch. 39, § 2.

7-9-76. Deduction; gross receipts tax; travel agents' commissions paid by certain entities.

Receipts of travel agents derived from commissions paid by maritime transportation companies and interstate airlines, railroads and passenger buses for booking, referral, reservation or ticket services may be deducted from gross receipts.

History: 1953 Comp., § 72-16A-14.33, enacted by Laws 1977, ch. 288, § 2.

7-9-76.1. Deduction; gross receipts tax; certain manufactured homes.

Receipts from the resale of a manufactured home may be deducted from gross receipts if the sale is made of a manufactured home that was subject to the gross receipts, compensating or motor vehicle excise tax upon its initial sale or use in New Mexico. The seller shall retain and furnish proof satisfactory to the department that a gross receipts, compensating or motor vehicle excise tax was paid upon the initial sale or use in New Mexico of a manufactured home, and in the absence of such proof, it is presumed that the tax was not paid. Proof that a New Mexico certificate of title was issued for a manufactured home in 1972 or a prior year or proof that a manufactured home for which a New Mexico certificate of title has been issued was manufactured in 1967 or a prior year is proof that a motor vehicle excise tax was paid on the initial sale or use in New Mexico of that manufactured home.

History: 1978 Comp., § 7-9-76.1, enacted by Laws 1979, ch. 338, § 7; 1980, ch. 103, § 1; 1990, ch. 41, § 9; 1991, ch. 203, § 8.

ANNOTATIONS

The 1990 amendment, effective July 1, 1990, substituted "department" for "director" and made a minor stylistic change in the second sentence.

The 1991 amendment, effective July 1, 1991, substituted "manufactured" for "mobile" in the section heading and throughout the section.

7-9-76.2. Deduction; gross receipts tax; films and tapes.

Receipts from the leasing or licensing of theatrical and television films and tapes to a person engaged in the business of providing public or commercial entertainment from which gross receipts are derived may be deducted from gross receipts.

History: 1978 Comp., § 7-9-76.2, enacted by Laws 1984, ch. 2, § 6.

ANNOTATIONS

Compiler's notes. - Laws 1984, ch. 129, § 2, also enacted a 7-9-76.2 NMSA 1978, but that section, which relates to a deduction of real estate commissions from the gross receipts tax, has been redesignated as 7-9-66.1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Applicability of sales or use taxes to motion pictures and video tapes, 10 A.L.R.4th 1209.

7-9-77. Deductions; compensating tax.

A. Fifty percent of the value of agricultural implements, farm tractors, aircraft not exempted under Section 7-9-30 NMSA 1978 or vehicles that are not required to be registered under the Motor Vehicle Code [Articles 1 to 8, Chapter 66 NMSA 1978] may be deducted from the value in computing the compensating tax due; provided that, with respect to use of agricultural implements, the person using the property is regularly engaged in the business of farming or ranching. Any deduction allowed under Subsection B of this section is to be taken before the deduction allowed by this subsection is computed. As used in this subsection, "agricultural implement" means a tool, utensil or instrument that is:

(1) designed primarily for use with a source of motive power, such as a tractor, in planting, growing, cultivating, harvesting or processing agricultural produce at the place where the produce is grown; in raising poultry or livestock; or in obtaining or processing food or fiber, such as eggs, milk, wool or mohair, from living poultry or livestock at the place where the poultry or livestock are kept for this purpose; and

(2) depreciable for federal income tax purposes.

B. That portion of the value of tangible personal property on which an allowance was granted to the buyer for a trade-in of tangible personal property of the same type that was bought may be deducted from the value in computing the compensating tax due.

History: 1953 Comp., § 72-16A-15, enacted by Laws 1966, ch. 47, § 15; 1969, ch. 144, § 64; 1975, ch. 159, § 2; 1988, ch. 148, § 2; 1998, ch. 89, § 6.

ANNOTATIONS

The 1998 amendment, effective July 1, 1998, in Subsection A, added the proviso at the end of the first sentence, added the last sentence and added Paragraphs A(1) and (2).

"Vehicle" construed. - To be a "vehicle" within the meaning of Subsection A, a machine must be capable of being utilized as a means of carrying people or other

property over the highways. Kaiser Steel Corp. v. Revenue Div. 96 N.M. 117, 628 P.2d 687 (Ct. App. 1981).

Neither dragline nor continuous miner within scope of section. - Because neither a dragline nor a continuous miner can be classified as a vehicle under 66-1-4B NMSA 1978 (see now 66-1-4.11 NMSA 1978), neither is in the category of "vehicles not required to be registered" within the meaning of this section. Kaiser Steel Corp. v. Revenue Div. 96 N.M. 117, 628 P.2d 687 (Ct. App. 1981); Pittsburgh & Midway Coal Mining Co. v. Revenue Div. 99 N.M. 545, 660 P.2d 1027 (Ct. App.), appeal dismissed, 464 U.S. 923, 104 S. Ct. 323, 78 L. Ed. 2d 296 (1983).

7-9-77.1. Deduction; gross receipts tax; certain medical and health care services.

A. Thirty-three and one-third percent of receipts, on or after July 1, 1998 and before July 1, 1999, from payments by the United States government or any agency thereof for provision of medical and other health services by medical doctors and osteopaths to medicare beneficiaries pursuant to the provisions of Title XVIII of the federal Social Security Act may be deducted from gross receipts.

B. Sixty-six and two-thirds percent of receipts, on or after July 1, 1999 and before July 1, 2000, from payments by the United States government or any agency thereof for provision of medical and other health services by medical doctors and osteopaths to medicare beneficiaries pursuant to the provisions of Title XVIII of the federal Social Security Act may be deducted from gross receipts.

C. Receipts, on or after July 1, 2000, from payments by the United States government or any agency thereof for provision of medical and other health services by medical doctors and osteopaths to medicare beneficiaries pursuant to the provisions of Title XVIII of the federal Social Security Act may be deducted from gross receipts.

D. For the purposes of this section, "medical doctors and osteopaths" means persons licensed to practice under Section 61-6-11 or 61-10-11 NMSA 1978.

History: 1978 Comp., § 7-9-77.1, enacted by Laws 1998, ch. 96, § 1.

ANNOTATIONS

Effective dates. - Laws 1998, ch. 96, § 2 makes the act effective on July 1, 1998.

Social Security Act. - The provisions of the federal Social Security Act, referred to in this section, appear as 42 U.S.C. § 301 et seq.

7-9-78. Deductions; compensating tax; use of tangible personal property for leasing.

A. Except as provided otherwise in Subsection B of this section, the value of tangible personal property may be deducted in computing the compensating tax due if the person using the tangible personal property:

(1) is engaged in a business which derives a substantial portion of its receipts from leasing or selling tangible personal property of the type leased;

(2) does not use the tangible personal property in any manner other than holding it for lease or sale or leasing or selling it either by itself or in combination with other tangible personal property in the ordinary course of business; and

(3) does not use the tangible personal property in a manner incidental to the performance of a service.

B. The deduction provided by this section shall not apply to the value of:

(1) furniture or appliances furnished as part of a leased or rented dwelling house or apartment by the landlord or lessor;

(2) coin-operated machines; or

(3) manufactured homes.

History: 1953 Comp., § 72-16A-15.1, enacted by Laws 1969, ch. 144, § 65; 1973, ch. 245, § 1; 1975, ch. 160, § 4; 1979, ch. 338, § 8; 1981, ch. 184, § 3; 1984, ch. 2, § 7; 1991, ch. 203, § 9.

ANNOTATIONS

The 1991 amendment, effective July 1, 1991, inserted the subsection designation A at the beginning of the section and redesignated former Subsections A to C as Paragraphs (1) to (3) of Subsection A; rewrote the introductory paragraph of Subsection A which read "The value of tangible personal property other than furniture or appliances furnished as part of a leased or rented dwelling house or apartment by the landlord or lessor, other than coin-operated machines and other than mobile homes may be deducted in computing the compensating tax due if the person using the tangible personal property" and added Subsection B.

Determining character of transaction. - The characterization of a transaction as a lease may be determined by looking to the intentions of the parties as evidenced by their actions with respect to the leased property. Music Serv. Co. v. Bureau of Revenue, 88 N.M. 432, 540 P.2d 1321 (Ct. App. 1975).

Lease and bailment distinguished. - Since taxpayer, which was in the business of providing coin-operated, amusement and vending equipment for use by business establishments for the pleasure or amusement of their patrons, utilized two types of

agreements, one of which was a lease under which payment was made to taxpayer by a flat fee, whereas in the other type of agreement payment was made by a division of the proceeds from the machines under an oral agreement based on a document called "Agreement for Joint Operation of Amusement Devices," it was held that the taxpayer knew the difference between a lease agreement and a bailment for the mutual benefit of itself and a business establishment, supporting the inference that the relationship between taxpayer and establishment was not a lease. Music Serv. Co. v. Bureau of Revenue, 88 N.M. 432, 540 P.2d 1321 (Ct. App. 1975).

Laundry transactions are leasings. - Since the taxpayer's coin-operated laundry business is used for a consideration by persons other than the owner, the transactions are "leasings" as defined in 7-9-3J NMSA 1978, and the taxpayer is entitled to a deduction from compensating tax liability for the value of the washers and dryers. Strebeck Properties, Inc. v. New Mexico Bureau of Revenue, 93 N.M. 262, 599 P.2d 1059 (Ct. App. 1979).

Construction of temporary provision. - Temporary provision enacted by Laws 1977, ch. 144, § 66, providing for exemption from higher tax rate for certain contracts "entered into prior to the passage of this act," necessarily referred to contracts entered into prior to July 1, 1969, the date on which, pursuant to N.M. Const., art. IV, § 23, the bill became law, and an attempt by the commissioner (now the secretary of the taxation and revenue department) to set by regulation an earlier cutoff date (the date on which the bill was signed by the governor) was invalid. R.H. Fulton, Inc. v. New Mexico Bureau of Revenue, 85 N.M. 583, 514 P.2d 1079 (Ct. App. 1973).

Exemption not waived. - Failure to register pursuant to the terms of a regulation promulgated under a temporary exemption provision which was invalid because it set a cutoff date contrary to that provided by the legislature was not a waiver by the taxpayer of his rights under the statute. R.H. Fulton, Inc. v. New Mexico Bureau of Revenue, 85 N.M. 583, 514 P.2d 1079 (Ct. App. 1973).

Constitutionality of former temporary exemption. - Former 72-16-5D, 1953 Comp., which exempted lump-sum or unit-price contracts entered into prior to the effective date of the act, which by their terms would not permit a price increase in the event of imposition of additional tax, from the operation of the gross receipts tax, did not amount to an arbitrary or unreasonable distinction violative of principles of equal protection and uniform taxation. Gruschus v. Bureau of Revenue, 74 N.M. 775, 399 P.2d 105 (1965).

7-9-78.1. Deduction; compensating tax; uranium enrichment plant equipment.

The value of equipment and replacement parts for that equipment may be deducted in computing the compensating tax due if the person uses the equipment and replacement parts to enrich uranium in a uranium enrichment plant.

History: Laws 1999, ch. 231, § 4.

ANNOTATIONS

Cross references. - For deduction of receipts from enriched uranium and enrichment of uranium, see 7-9-90 NMSA 1978.

Effective dates. - Laws 1999, ch. 231, § 5, makes the act effective on July 1, 1999.

7-9-79. Credit; compensating tax.

A. If on property bought outside this state, a gross receipts, sales, compensating or similar tax has been levied by another state or political subdivision thereof on the transaction by which the person using the property in New Mexico acquired the property or a compensating, use or similar tax has been levied by another state on the use of the property subsequent to its acquisition by the person using the property in New Mexico and such tax has been paid, the amount of such tax paid may be credited against any compensating tax due this state on the same property.

B. When the receipts from the sale of real property constructed by a person in the ordinary course of his construction business are subject to the gross receipts tax, the amount of compensating tax previously paid by the person on materials which became an ingredient or component part of the construction project and on construction services performed upon the construction project may be credited against the gross receipts tax due on the sale.

History: 1953 Comp., § 72-16A-16, enacted by Laws 1966, ch. 47, § 16; 1973, ch. 342, § 1; 1991, ch. 203, § 10.

ANNOTATIONS

The 1991 amendment, effective July 1, 1991, inserted "or a compensating, use or similar tax has been levied by another state on the use of the property subsequent to its acquisition by the person using the property in New Mexico" in Subsection A.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Validity and construction of provisions allowing use tax credit for tax paid in other state, 31 A.L.R.4th 1206.

7-9-79.1. Credit; gross receipts tax; services.

If on services performed outside the state a gross receipts sales or similar tax has been levied by another state or a political subdivision thereof and such tax has been paid, the amount of the tax paid may be credited against any gross receipts tax due this state on the receipts after July 1, 1989 from the sale in New Mexico of the product of the services performed outside this state. The amount of credit shall not exceed an amount equal to the rate of tax imposed under Section 7-9-4 NMSA 1978 multiplied by the amount subject to tax by both New Mexico and the other state or political subdivision of that state.

History: 1978 Comp., § 7-9-79.1, enacted by Laws 1989, ch. 262, § 8; 1994, ch. 45, § 7.

ANNOTATIONS

The 1994 amendment, effective July 1, 1994, added the second sentence and substituted "after July 1, 1989" for "during the period July 1, 1989 through June 30, 1993" in the first sentence.

7-9-80 to 7-9-81. Repealed.

ANNOTATIONS

Repeals. - Laws 1982, ch. 18, § 27, repeals 7-9-80 NMSA 1978, relating to a credit for electrical energy tax or similar tax on generation of electricity which may be applied against any gross receipts tax due, effective July 1, 1982.

Laws 1989, ch. 115, § 6A repeals 7-9-80.1 and 7-9-81 NMSA 1978, as enacted by Laws 1981, ch. 39, § 114, and Laws 1966, ch. 47, § 19, relating to tax credit during period of economic adjustment and cross references, respectively, effective July 1, 1989. For provisions of former sections, see 1988 Replacement Pamphlet.

7-9-82. Credit; gross receipts tax; municipal gross receipts tax paid.

A credit shall be allowed for each reporting period against the gross receipts tax for:

A. an amount of the municipal gross receipts tax equal to one-half of one percent of the taxable gross receipts for which the taxpayer is liable for that reporting period imposed by a municipality pursuant to Section 7-19D-4 NMSA 1978 if that municipality has imposed a total municipal gross receipts tax rate of at least one-half of one percent; or

B. an amount of the municipal gross receipts tax equal to one-fourth of one percent of the taxable gross receipts for which the taxpayer is liable for that reporting period imposed by a municipality pursuant to Section 7-19D-4 NMSA 1978 if that municipality has imposed a total municipal gross receipts tax rate of one-fourth of one percent.

History: 1978 Comp., § 7-9-82, enacted by Laws 1986, ch. 20, § 68; 1995, ch. 70, § 6.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, substituted references to § 7-19D-4 for references to § 7-19-4 in Subsections A and B, and substituted "taxable gross receipts" for "taxable receipts" in Subsection B.

Compiler's notes. - Laws 1986, ch. 20, § 68 compiled this section as 7-9-80 NMSA 1978; however, as that section had previously been compiled with a different subject, since repealed, the section was compiled here.

7-9-83. Deduction; gross receipts tax; jet fuel.

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.

ANNOTATIONS

Compiler's notes. - Laws 1995, ch. 36, § 2, effective June 16, 1995, repeals Laws 1993, ch. 364, § 4, as amended by Laws 1994, ch. 5, § 26, which had provided for the repeal of 7-9-83 NMSA 1978, as enacted by Laws 1993, ch. 364, § 1, effective July 1, 1995.

7-9-84. Deduction; compensating tax; jet fuel.

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 from the value of such fuel in computing the compensating tax due.

History: Laws 1993, ch. 364, § 2.

ANNOTATIONS

Compiler's notes. - Laws 1995, ch. 36, § 2, effective June 16, 1995, repeals Laws 1993, ch. 364, § 4, as amended by Laws 1994, ch. 5, § 26, which had provided for the repeal of 7-9-84 NMSA 1978, as enacted by Laws 1993, ch. 364, § 2, effective July 1, 1995.

7-9-85. Deduction; gross receipts tax; certain organization fundraisers.

Receipts from not more than two fundraising events annually conducted by an organization that is exempt from the federal income tax as an organization described in Section 501(c), other than an organization described in Section 501(c)(3), of the United States Internal Revenue Code of 1986, as amended may be deducted from gross receipts.

History: Laws 1994, ch. 43, § 1.

ANNOTATIONS

Internal Revenue Code. - Section 501 of the Internal Revenue Code is codified as 26 U.S.C. § 501.

7-9-86. Deduction; gross receipts tax; sales to qualified film production company.

A. Receipts from selling or leasing property and from performing services may be deducted from gross receipts or from governmental gross receipts if the sale, lease or performance is made to a qualified production company who delivers a nontaxable transaction certificate to the seller, lessor or performer.

B. For the purposes of this section:

(1) "film" means a single media or multimedia program, including 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 which is 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;

(2) "production company" means a person that produces films for exhibition in theaters, on television or elsewhere;

(3) "production costs" include:

(a) the cost of a story and scenario to be used for a film;

(b) salaries of talent, management and labor, including payments to personal services corporations with respect to the services of qualified performing artists, as determined under Section 62b(1)(A) of the Internal Revenue Code of 1986;

(c) cost of set construction and operations, wardrobe, accessories and related services;

(d) costs of sound synchronization, lighting and related services;

(e) costs of editing and related services;

(f) rental of facilities and equipment; or

(g) other direct costs of producing the film; and

(4) "qualified production company" means a production company that produces a film or films, meets the provisions of this section and has registered or will register with the New Mexico film division of the economic development department.

C. A qualified production company may deliver the nontaxable transaction certificates authorized by this section only with respect to production costs.

History: Laws 1995, ch. 80, § 1.

ANNOTATIONS

Internal Revenue Code. - Section 62b of the Internal Revenue Code, referred to in Subparagraph B(3)(b), is codified as 26 U.S.C. § 62b.

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 [6-24-1 to 6-24-34 NMSA 1978] may be deducted from gross receipts.

History: Laws 1995, ch. 155, § 35.

7-9-88. Credit; gross receipts tax; tax paid to Santa Clara pueblo.

A. If on a taxable transaction taking place on land owned by or for the benefit of Santa Clara pueblo and located within the exterior boundaries of Santa Clara pueblo a qualifying gross receipts, sales or similar tax has been levied by the pueblo, the amount of the pueblo tax may be credited against any gross receipts tax due this state or its political subdivisions under the Gross Receipts and Compensating Tax Act [this article] and any local option gross receipts tax on the same transaction; provided that no credit shall be allowed against any gross receipts tax due on a transaction subject to the taxing authority of a municipality pursuant to a local option gross receipts tax act or distribution to a municipality from gross receipts taxes pursuant to Section 7-1-6.4 NMSA 1978, except that credit shall be allowed for such taxable transactions, and related distributions, reported from business locations on Santa Clara pueblo land annexed by the municipality after January 1, 1997. The amount of the credit shall be equal to the lesser of seventy- five percent of the tax imposed by the pueblo on the receipts from the transaction or seventy-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 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 distributions of those taxes pursuant to Section 7-1-6.1 NMSA 1978.

B. A qualifying gross receipts, sales or similar tax levied by Santa Clara pueblo 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 pueblo;

(3) is levied on the taxable transaction at a rate not greater than the total of the gross receipts tax rate and local option gross receipts tax rates imposed by this state and its political subdivisions located within the exterior boundaries of Santa Clara pueblo;

(4) provides a credit against the pueblo tax equal to the lesser of twenty-five percent of the tax imposed by the pueblo on the receipts from the transaction or twenty-five percent of the tax revenue produced by the sum of the rate of tax imposed under 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 transaction; and

(5) is subject to a cooperative agreement between the pueblo and the secretary entered into pursuant to Section 9-11-12.1 NMSA 1978 and in effect at the time of the taxable transaction.

History: Laws 1997, ch. 64, § 2.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 64 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

7-9-88.1. Credit; gross receipts tax; tax paid to Santa Ana pueblo or Laguna pueblo.

A. If on a taxable transaction taking place on Santa Ana pueblo land or on Laguna pueblo land a qualifying gross receipts, sales or similar tax has been levied by the pueblo, the amount of the pueblo tax may be credited against any gross receipts tax due this state or its political subdivisions pursuant to the Gross Receipts and Compensating Tax Act [this article] and any 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 pueblo 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 pueblo 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 pueblo;

(3) is levied on the taxable transaction at a rate not greater than the total of the gross receipts tax rate and local option gross receipts tax rates imposed by this state and its political subdivisions located within the exterior boundaries of the pueblo;

(4) provides a credit against the pueblo tax equal to the lesser of twenty-five percent of the tax imposed by the pueblo on the receipts from the transactions or twenty-five percent of the tax revenue produced by the sum of the rate of tax imposed pursuant to the Gross Receipts and Compensating Tax Act and the total of the rates of the local option gross receipts taxes imposed on the receipts from the same transactions; and

(5) is subject to a cooperative agreement between the pueblo 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, "Santa Ana pueblo land" means all land located within the exterior boundaries of the Santa Ana reservation or pueblo grant and all land held by the United States in trust for Santa Ana pueblo, and "Laguna pueblo land" means all land located within the exterior boundaries of the Laguna reservation or pueblo grant and all land held by the United States in trust for Laguna pueblo.

History: Laws 1999, ch. 223, § 2.

ANNOTATIONS

Effective dates. - Laws 1999, ch. 223, § 3, makes the act effective on July 1, 1999.

7-9-89. Deduction; 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.

ANNOTATIONS

Effective dates. - Laws 1998, ch. 89, § 2 makes the act effective on July 1, 1998.

7-9-90. Deductions; gross receipts tax; sales of enriched uranium and enrichment of uranium.

Receipts from selling enriched uranium and from providing the service of enriching uranium may be deducted from gross receipts.

History: Laws 1999, ch. 231, § 3.

ANNOTATIONS

Cross references. - For deduction of value of equipment and its replacement parts from compensating tax, see 7-9-78.1 NMSA 1978.

Effective dates. - Laws 1999, ch. 231, § 5, makes the act effective on July 1, 1999.

ARTICLE 9A
INVESTMENT CREDIT

7-9A-1. Short title.

Chapter 7, Article 9A NMSA 1978 may be cited as the "Investment Credit Act".

History: Laws 1979, ch. 347, § 1; 1991, ch. 159, § 1; 1991, ch. 162, § 1.

ANNOTATIONS

1991 amendments. - Identical amendments to this section were enacted by Laws 1991, ch. 159, § 1 approved April 3, 1991, and Laws 1991, ch. 162, § 1, approved later on April 3, 1991, both effective June 14, 1991, which substituted "Chapter 7, Article 9A NMSA 1978" for "Sections 1 through 11 of this Act". The section is treated as amended by Laws 1991, ch. 162, § 1. See 12-1-8 NMSA 1978.

7-9A-2. Purpose of act.

It is the purpose of the Investment Credit Act [this article] 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-3. Definitions.

As used in the Investment Credit Act [this article]:

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

B. "equipment" means an essential machine, mechanism or tool, or a component or fitting thereof, used directly and exclusively in a manufacturing operation and subject to depreciation for purposes of the Internal Revenue Code by the taxpayer carrying on the manufacturing operation. "Equipment" does not include any vehicle that leaves the site of the manufacturing operation for purposes of transporting persons or property or any property for which the taxpayer claims the credit pursuant to Section 7-9-79 NMSA 1978;

C. "manufacturing" means combining or processing components or materials, including recyclable materials, to increase their value for sale in the ordinary course of business, including genetic testing and production, but not including:

(1) construction;

(2) farming;

(3) power generation; or

(4) processing natural resources, including hydrocarbons;

D. "manufacturing operation" means a plant, including a genetic testing and production facility employing personnel to perform production tasks, in conjunction with equipment not previously existing at the site, to produce goods;

E. "recyclable materials" means materials that would otherwise become solid waste if not recycled and that can be collected, separated or processed and placed in use in the form of raw materials or products; and

F. "taxpayer" means a person liable for payment of any tax, a person responsible for withholding and payment over or for collection and payment over of any tax, or a person to whom an assessment has been made, if the assessment remains unabated or the amount thereof has not been paid.

History: Laws 1979, ch. 347, § 3; 1983, ch. 206, § 2; 1986, ch. 20, § 69; 1990, ch. 3, § 1; 1991, ch. 159, § 2; 1991, ch. 162, § 2.

ANNOTATIONS

The 1990 amendment, effective January 1, 1991, in Subsection B, rewrote the first sentence which read: " 'equipment' means an essential machine, or tool, used directly

and exclusively in a manufacturing process, and subject to depreciation for purposes of the Internal Revenue Code" and added the language beginning "or any property" at the end of the second sentence.

1991 amendments. - Identical amendments to this section were enacted by Laws 1991, ch. 159, § 2 approved April 3, 1991, and Laws 1991, ch. 162, § 2, approved later on April 3, 1991, both effective June 14, 1991, which deleted " 'director' or 'division' " following " 'department' " in Subsection A; in the introductory paragraph of Subsection C, inserted "including recyclable materials" and substituted "including genetic testing and production, but not including" for "but does not include"; inserted "including a genetic testing and production facility" in Subsection D; added Subsection E; and redesignated former Subsection E as Subsection F. The section is treated as amended by Laws 1991, ch. 162, § 2. See 12-1-8 NMSA 1978.

Internal Revenue Code. - The Internal Revenue Code, referred to in Subsection B, is codified as 26 U.S.C. § 1 et seq.

7-9A-4. Administration of the act.

The department is charged with the administration of the Investment Credit Act [this article].

History: Laws 1979, ch. 347, § 4; 1991, ch. 159, § 3; 1991, ch. 162, § 3.

ANNOTATIONS

1991 amendments. - Identical amendments to this section were enacted by Laws 1991, ch. 159, § 3 approved April 3, 1991, and Laws 1991, ch. 162, § 3, approved later on April 3, 1991, both effective June 14, 1991, which substituted "department" for "division". The section is treated as amended by Laws 1991, ch. 162, § 3. See 12-1-8 NMSA 1978.

7-9A-5. Investment credit; amount; claimant.

The investment credit provided for in the Investment Credit Act [this article] is an amount equal to the percent of the compensating tax rate provided for in the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] applied to the value of the qualified equipment and may be claimed by the taxpayer carrying on a manufacturing operation in New Mexico.

History: Laws 1979, ch. 347, § 5; 1983, ch. 206, § 3; 1990, ch. 3, § 2; 1991, ch. 159, § 4; 1991, ch. 162, § 4.

ANNOTATIONS

1991 amendments. - Identical amendments to this section were enacted by Laws 1991, ch. 159, § 4, approved April 3, 1991, and Laws 1991, ch. 162, § 4, approved later on April 3, 1991, both effective June 14, 1991, which deleted former Subsections B and C, relating to limitations on claims for investment credit, and made a related stylistic change. The section is treated as amended by Laws 1991, ch. 162, § 4. See 12-1-8 NMSA 1978.

Compiler's notes. - Laws 1991, ch. 159, § 8 and Laws 1991, ch. 162, § 8, effective June 14, 1991, repeal 7-9A-5 NMSA 1978, as enacted by Laws 1990, ch. 3, § 3, which was to become effective on January 1, 1994.

7-9A-6. Qualified equipment.

Equipment not previously used in New Mexico and not previously approved for a credit under the Investment Credit Act that is owned by the taxpayer or owned by the United States or an agency or instrumentality thereof or the state or a political subdivision thereof and leased or subleased to the taxpayer is qualified equipment if it is in New Mexico and is incorporated or to be incorporated within one year into a manufacturing operation.

History: Laws 1979, ch. 347, § 6; 1983, ch. 206, § 4; 1990, ch. 3, § 4.

ANNOTATIONS

Cross references. - For definition of "equipment", see 7-9A-3B NMSA 1978.

The 1990 amendment, effective January 1, 1991, rewrote this section which read: "Equipment not previously used in New Mexico which is owned and used by a taxpayer in a manufacturing process in New Mexico is qualified equipment if it is incorporated into a manufacturing operation and if the taxpayer does not claim the credit pursuant to Section 7-9-79 NMSA 1978."

7-9A-7. Value of qualified equipment. (Effective until January 1, 2004.)

The value of qualified equipment shall be the adjusted basis established for the equipment under the applicable provisions of the Internal Revenue Code.

History: Laws 1979, ch. 347, § 7; 1983, ch. 206, § 5; 1990, ch. 3, § 5; 1991, ch. 159, § 5; 1991, ch. 162, § 5.

ANNOTATIONS

The 1990 amendment, effective January 1, 1991, deleted "provided that no taxpayer shall for any taxable year claim a value of qualified equipment greater than two million dollars ($2,000,000)" at the end of the section.

1991 amendments. - Identical amendments to this section were enacted by Laws 1991, ch. 159, § 5, approved April 3, 1991, and Laws 1991, ch. 162, § 5, approved later on April 3, 1991, both effective June 14, 1991, which rewrote this section which read "The value of qualified equipment shall be the purchase price of the equipment unless the equipment is introduced into New Mexico and has been owned for more than one year prior to its introduction into New Mexico by the taxpayer applying for the credit, in which case the value shall be the reasonable value of the equipment at the time of its introduction into New Mexico." The section is treated as amended by Laws 1991, ch. 162, § 5. See 12-1-8 NMSA 1978.

Compiler's notes. - Laws 1999, ch. 36, § 1 amends Laws 1990, ch. 3, § 10, as amended by Laws 1992, ch. 17, § 1, Laws 1992, ch. 104, § 1, and Laws 1997, ch. 62, § 3, to change the effective date of Laws 1990, ch. 3, § 6 from January 1, 2000 to January 1, 2004.

7-9A-7. Value of qualified equipment. (Effective January 1, 2004.)

The value of qualified equipment shall be the purchase price of the equipment unless the equipment is introduced into New Mexico and has been owned for more than one year prior to its introduction into New Mexico by the taxpayer applying for the credit, in which case the value shall be the reasonable value of the equipment at the time of its introduction into New Mexico; provided that no taxpayer shall for any taxable year claim a value of qualified equipment greater than two million dollars ($2,000,000).

History: 1978 Comp., § 7-9A-7, enacted by Laws 1990, ch. 3, § 6.

ANNOTATIONS

Repeals and reenactments. - Laws 1990, ch. 3, § 6 repeals former 7-9A-7 NMSA 1978, as amended by Laws 1990, ch. 3, § 5, and enacts the above section, effective January 1, 2004.

Compiler's notes. - Laws 1999, ch. 36, § 1 amends Laws 1990, ch. 3, § 10, as amended by Laws 1992, ch. 17, § 1, Laws 1992, ch. 104, § 1, and Laws 1997, ch. 62, § 3, to change the effective date of Laws 1990, ch. 3, § 6 from January 1, 2000 to January 1, 2004.

7-9A-7.1. Employment requirements. (Effective until January 1, 2004.)

A. To be eligible to claim a credit pursuant to the Investment Credit Act [this article], the taxpayer shall employ the equivalent of one full-time employee who has not been counted to meet this employment requirement for any prior claim in addition to the number of full-time employees employed on the day one year prior to the day on which the taxpayer applies for the credit for every:

(1) two hundred fifty thousand dollars ($250,000), or portion of that amount, in value of qualified equipment claimed by the taxpayer in a taxable year in the same claim, up to a value of two million dollars ($2,000,000);

(2) five hundred thousand dollars ($500,000), or portion of that amount, in value of qualified equipment over two million dollars ($2,000,000) claimed by the taxpayer in a taxable year in the same claim, up to a value of thirty million dollars ($30,000,000); and

(3) one million dollars ($1,000,000), or portion of that amount, in value of qualified equipment over thirty million dollars ($30,000,000) claimed by the taxpayer in a taxable year in the same claim.

B. The department may require evidence showing compliance with this section. The department may find that an additional employee meets the requirements of this section, although employed earlier than one year prior to the day on which the taxpayer applies for the credit, if he was only being trained prior to that date or his employment is necessitated by the use of the qualified equipment.

History: 1978 Comp., § 7-9A-7.1, as enacted by Laws 1983, ch. 206, § 6; 1990, ch. 3, § 7; 1991, ch. 159, § 6; 1991, ch. 162, § 6.

ANNOTATIONS

1991 amendments. - Identical amendments to this section were enacted by Laws 1991, ch. 159, § 6, approved April 3, 1991, and Laws 1991, ch. 162, § 6, approved later on April 3, 1991, both effective June 14, 1991, which rewrote this section to the extent that a detailed analysis is impracticable. The section is treated as amended by Laws 1991, ch. 162, § 6. See 12-1-8 NMSA 1978.

Compiler's notes. - Laws 1999, ch. 36, § 1 amends Laws 1990, ch. 3, § 10, as amended by Laws 1992, ch. 17, § 1, Laws 1992, ch. 104, § 1, and Laws 1997, ch. 62, § 3, to change the effective date of Laws 1990, ch. 3, § 8 from January 1, 2000 to January 1, 2004.

7-9A-7.1. Employment requirements. (Effective January 1, 2004.)

For every one hundred thousand dollars ($100,000) in value of qualified equipment claimed by a taxpayer in a taxable year, the taxpayer shall employ the equivalent of one full-time employee in addition to the number of full-time employees employed on the first day of January of the calendar year or the taxable year for which the credit is claimed is a part. The department may require other evidence showing compliance with this section. The department may find that an additional employee meets the requirements of this section, although employed before the first of January, if he was only being trained prior to that date and his employment is necessitated by the use of the qualified equipment after the first of January.

History: 1978 Comp., § 7-9A-7.1, enacted by Laws 1990, ch. 3, § 8.

ANNOTATIONS

Repeals and reenactments. - Laws 1990, ch. 3, § 8 repeals former 7-9A-7.1 NMSA 1978, as amended by Laws 1990, ch. 3, § 7, and enacts the above section, effective January 1, 2004.

Compiler's notes. - Laws 1999, ch. 36, § 1 amends Laws 1990, ch. 3, § 10, as amended by Laws 1992, ch. 17, § 1, Laws 1992, ch. 104, § 1, and Laws 1997, ch. 62, § 3, to change the effective date of Laws 1990, ch. 3, § 8 from January 1, 2000 to January 1, 2004.

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 [this article] may claim an amount of available credit against the taxpayer's compensating tax, gross receipts tax or withholding tax due to the state of New Mexico, provided that no taxpayer may claim an amount of available credit for any reporting period that exceeds eighty-five percent of the sum of the taxpayer's gross receipts tax, compensating tax and withholding tax due for that reporting period. Any amount of available credit not claimed against the taxpayer's gross receipts tax, compensating tax or withholding tax due for a reporting period may be claimed in subsequent reporting periods.

History: Laws 1979, ch. 347, § 8; 1983, ch. 206, § 7; 1988, ch. 123, § 1; 1990, ch. 3, § 9; 1997, ch. 62, § 1.

ANNOTATIONS

Cross references. - For withholding tax, see Chapter 7, Article 3 NMSA 1978.

For gross receipts tax, see Chapter 7, Article 9 NMSA 1978.

The 1990 amendment, effective January 1, 1991, in the first sentence in Subsection A, substituted "following the end of the calendar year" for "after" and added "into New Mexico" at the end and rewrote Subsection B which read "A taxpayer having applied for and been granted approval for an investment credit pursuant to the Investment Credit Act may claim a refund in an amount equal to the investment credit upon evidence satisfactory to the secretary of taxation and revenue that the taxpayer has paid an element of the price denominated a gross receipts tax on the qualified equipment for which a claim for refund is made."

The 1997 amendment redesignated the second sentence in Subsection A as the first sentence of Subsection B and rewrote the remainder of Subsection B. Laws 1997, ch. 62 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

No offset for prior years investment credits. - A taxpayer was not entitled to an offset in the amount it owed for compensating taxes for investment credits it had made in previous years, because it had not claimed the credits within the one-year statute of limitations period. Although the taxpayer argued that it was entitled to an offset under the doctrine of equitable recoupment, a taxpayer is not entitled to seek a credit after the statute-of-limitations period has expired unless the state is imposing a tax on the same taxable event on a ground that is inconsistent with the original payment by the taxpayer. Vivigen, Inc. v. Minzner, 117 N.M. 224, 870 P.2d 1382 (Ct. App. 1994).

7-9A-9. Credit claim forms.

The department shall provide credit claim forms. A credit claim shall accompany any return to which the taxpayer wishes to apply an approved credit, and the claim shall specify the amount of credit intended to apply to each return.

History: Laws 1979, ch. 347, § 9; 1991, ch. 159, § 7; 1991, ch. 162, § 7.

ANNOTATIONS

1991 amendments. - Identical amendments to this section were enacted by Laws 1991, ch. 159, § 7, approved April 3, 1991, and Laws 1991, ch. 162, § 7, approved later on April 3, 1991, both effective June 14, 1991, which substituted "department" for "division" in the first sentence and "shall" for "must" in two places in the second sentence. The section is treated as amended by Laws 1991, ch. 162, § 7. See 12-1-8 NMSA 1978.

7-9A-10. Repealed.

ANNOTATIONS

Repeals. - Laws 1981, ch. 177, § 1, repeals 7-9A-10 NMSA 1978, relating to the inapplicability of the Investment Credit Act for equipment introduced or purchased after January 1, 1982, effective June 19, 1981.

7-9A-11. Transition provisions.

A. The provisions of this section apply on the date that changes to the provisions in the Investment Credit Act [this article] 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.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 62 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

ARTICLE 9B
FILMMAKER'S CREDIT

(Repealed by Laws 1995, ch. 80, § 2.)

7-9B-1 to 7-9B-7. Repealed.

ANNOTATIONS

Repeals. - Laws 1995, ch. 80, § 2, repeals 7-9B-1 to 7-9B-7 NMSA 1978, the Filmmaker's Credit Act, as enacted by Laws 1992, ch. 47 §§ 1 to 7 and as amended by Laws 1993, ch. 30, § 14, effective July 1, 1996. For provisions of the former sections, see 1995 Replacement Pamphlet.

ARTICLE 9C
INTERSTATE TELECOMMUNICATIONS GROSS RECEIPTS TAX

7-9C-1. Short title.

Chapter 7, Article 9C NMSA 1978 may be cited as the "Interstate Telecommunications Gross Receipts Tax Act".

History: Laws 1992, ch. 50, § 1 and Laws 1992, ch. 67, § 1; 1993, ch. 30, § 15.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "Chapter 7, Article 9C NMSA 1978" for "Sections 1 through 11 of this act".

Duplicate laws. - Laws 1992, ch. 50, § 1 and Laws 1992, ch. 67, § 1 enacted identical versions of this section.

7-9C-2. Definitions.

As used in the Interstate Telecommunications Gross Receipts Tax Act [this article]:

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

B. "engaging in interstate telecommunications business" means carrying on or causing to be carried on the business of providing interstate telecommunications service;

C. "interstate telecommunications gross receipts" means the total amount of money or the value of other consideration received from providing interstate 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, but excludes 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;

D. "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;

E. "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;

F. "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

G. "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.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, inserted "limited liability company" in Subsection E.

Duplicate laws. - Laws 1992, ch. 50, § 2 and Laws 1992, ch. 67, § 2 enacted identical versions of this section.

7-9C-3. Imposition and rate of tax; denomination as interstate telecommunications gross receipts tax.

A. For the privilege of engaging in interstate telecommunications business, an excise tax equal to four and one-fourth percent of interstate telecommunications gross receipts is imposed upon any person engaging in interstate telecommunications business in New Mexico.

B. The tax imposed by this section shall be referred to as the "interstate telecommunications gross receipts tax".

History: Laws 1992, ch. 50, § 3 and Laws 1992, ch. 67, § 3.

ANNOTATIONS

Duplicate laws. - Laws 1992, ch. 50, § 3 and Laws 1992, ch. 67, § 3 enacted identical versions of this section.

7-9C-4. Presumption of taxability.

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.

History: Laws 1992, ch. 50, § 4 and Laws 1992, ch. 67, § 4.

ANNOTATIONS

Duplicate laws. - Laws 1992, ch. 50, § 4 and Laws 1992, ch. 67, § 4 enacted identical versions of this section.

7-9C-5. Date payment due.

The interstate telecommunications gross receipts tax is to be paid to the department on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

History: Laws 1992 ch. 50, § 5 and Laws 1992, ch. 67, § 5.

ANNOTATIONS

Duplicate laws. - Laws 1992, ch. 50, § 5 and Laws 1992, ch. 67, § 5 enacted identical versions of this section.

7-9C-6. Deduction; certain telephone services.

Receipts from the provision of wide-area telephone service and private communications service in this state may be deducted from interstate telecommunications gross receipts.

History: Laws 1992, ch. 50, § 6 and Laws 1992, ch. 67, § 6; 1993, ch. 30, § 17.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "Deduction" for "Exemption" in the section heading; and rewrote this section, which read "Exempted from the interstate telecommunications gross receipts tax are receipts from the provision of wide-area telephone service and private communications service."

Duplicate laws. - Laws 1992, ch. 50, § 6 and Laws 1992, ch. 67, § 6 enacted identical versions of this section.

7-9C-7. Deduction; sale of a service for resale.

A. Receipts from providing an interstate telecommunications service in this state that will be used by other persons in providing telephone or telegraph services to the final user may be deducted from interstate telecommunications gross receipts if the sale is made to a person who is subject to the interstate telecommunications gross receipts tax or to the gross receipts tax or the compensating tax.

B. Receipts during the period July 1, 1998 through June 30, 2000 from providing leased telephone lines, telecommunications services, internet access services or computer programming that will be used by other persons in providing internet access and related services to the final user may be deducted from interstate telecommunications gross receipts if the sale is made to a person who is subject to the interstate telecommunications gross receipts tax, the gross receipts tax or the compensating tax.

History: Laws 1992, ch. 50, § 7 and Laws 1992, ch. 67, § 7; 1998, ch. 92, § 6.

ANNOTATIONS

The 1998 amendment, effective July 1, 1998, designated Subsection A, and added Subsection B.

Duplicate laws. - Laws 1992, ch. 50, § 7 and Laws 1992, ch. 67, § 7 enacted identical versions of this section.

7-9C-8. Deductions; telecommunications providers.

A. Receipts from interstate telecommunications services that are provided by a corporation to itself or to an affiliated corporation may be deducted from interstate telecommunications gross receipts.

B. For the purposes of this section:

(1) "affiliated corporation" means a corporation that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the subject corporation; and

(2) "control" means ownership of stock in a corporation that represents at least eighty percent of the total voting power of the corporation and has a value equal to at least eighty percent of the total value of the stock of that corporation.

History: Laws 1992, ch. 50, § 8 and Laws 1992, ch. 67, § 8; 1993, ch. 30, § 18.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, inserted "interstate telecommunications" in Subsection A.

Duplicate laws. - Laws 1992, ch. 50, § 8 and Laws 1992, ch. 67, § 8 enacted identical versions of this section.

7-9C-9. Deduction; bad debts.

Refunds and allowances made to buyers of interstate telecommunications services or amounts written off the books as an uncollectible debt by a person reporting interstate telecommunications gross receipts tax on an accrual basis may be deducted from interstate telecommunications gross receipts. If debts reported as uncollectible are subsequently collected, such receipts shall be included in interstate telecommunications gross receipts in the month of collection.

History: Laws 1992, ch. 50, § 9 and Laws 1992, ch. 67, § 9.

ANNOTATIONS

Duplicate laws. - Laws 1992, ch. 50, § 9 and Laws 1992, ch. 67, § 9 enacted identical versions of this section.

7-9C-10. Credit; services performed outside the state.

To prevent actual multi-jurisdictional taxation of the privilege of engaging in business of providing interstate telecommunications services, any taxpayer, upon proof that the taxpayer has paid a sales, use, gross receipts or similar tax on the same interstate telecommunications gross receipts subject to the interstate telecommunications gross receipts tax, shall be allowed a credit against the interstate telecommunications gross receipts tax to the extent of the amount of sales, use, gross receipts or similar tax properly due and paid to such other state or political subdivision of that state.

History: Laws 1992, ch. 50, § 10 and Laws 1992, ch. 67, § 10.

ANNOTATIONS

Duplicate laws. - Laws 1992, ch. 50, § 10 and Laws 1992, ch. 67, § 10 enacted identical versions of this section.

7-9C-11. Administration.

A. The department shall interpret the provisions of the interstate telecommunications gross receipts tax.

B. The department shall administer and enforce the collection of the interstate telecommunications gross receipts tax, and the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] applies to the administration and enforcement of the tax.

History: Laws 1992, ch. 50, § 11 and Laws 1992, ch. 67, § 11.

ANNOTATIONS

Duplicate laws. - Laws 1992, ch. 50, § 11 and Laws 1992, ch. 67, § 11 enacted identical versions of this section.

ARTICLE 9D
CAPITAL EQUIPMENT TAX CREDIT

7-9D-1. Short title (Repealed effective July 1, 2004.)

This act [7-9D-1 to 7-9D-9 NMSA 1978] may be cited as the "Capital Equipment Tax Credit Act".

History: Laws 1999, ch. 178, § 1.

ANNOTATIONS

Delayed repeals. - Laws 1999, ch. 178, § 10 repeals 7-9D-1 to 7-9D-9 NMSA, as enacted by Laws 1999, ch. 178, §§ 1 to 9, effective July 1, 2004.

Effective dates. - Laws 1999, ch. 178, § 11, makes the act effective on July 1, 1999.

7-9D-2. Findings and purpose. (Repealed effective July 1, 2004.)

The legislature finds that New Mexico's tax treatment of the purchase of capital equipment by businesses makes New Mexico less attractive than other states for business expansion and relocation. It is the purpose of the Capital Equipment Tax Credit Act [7-9D-1 to 7-9D-9 NMSA 1978] to induce call center operations to make major expansions and relocate facilities in New Mexico by providing tax relief on the purchase of capital equipment for such facilities.

History: Laws 1999, ch. 178, § 2.

ANNOTATIONS

Delayed repeals. - Laws 1999, ch. 178, § 10 repeals 7-9D-1 to 7-9D-9 NMSA, as enacted by Laws 1999, ch. 178, §§ 1 to 9, effective July 1, 2004.

Effective dates. - Laws 1999, ch. 178, § 11, makes the act effective on July 1, 1999.

7-9D-3. Definitions. (Repealed effective July 1, 2004.)

As used in the Capital Equipment Tax Credit Act [7-9D-1 to 7-9D-9 NMSA 1978]:

A. "call center" means a business that is principally engaged in taking inbound telephone calls initiated by consumers for the purpose of obtaining goods or services;

B. "capital equipment" means equipment that is depreciable for federal income tax purposes;

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. "rural area" means any area of the state other than a class A county, a class B county that has a net taxable value for rate-setting purposes for any property tax year of more than three billion dollars ($3,000,000,000) and the municipality of Rio Rancho and the area within five miles of the exterior boundaries of Rio Rancho;

E. "tax credit" means the capital equipment tax credit provided in the Capital Equipment Tax Credit Act; 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 of the assessment has not been paid.

History: Laws 1999, ch. 178, § 3.

ANNOTATIONS

Delayed repeals. - Laws 1999, ch. 178, § 10 repeals 7-9D-1 to 7-9D-9 NMSA, as enacted by Laws 1999, ch. 178, §§ 1 to 9, effective July 1, 2004.

Effective dates. - Laws 1999, ch. 178, § 11, makes the act effective on July 1, 1999.

7-9D-4. Capital equipment tax credit authorized. (Repealed effective July 1, 2004.)

A capital equipment tax credit may be claimed pursuant to the Capital Equipment Tax Credit Act [7-9D-1 to 7-9D-9 NMSA 1978] in an amount equal to the gross receipts tax

rate or the compensating tax rate imposed pursuant to the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9], whichever is applicable, applied to the value of capital equipment purchased by a taxpayer for use in an eligible call center in New Mexico. For the purpose of applying the tax credit, the value of capital equipment purchased is the price or the value of other consideration on which the gross receipts or compensating tax was imposed and paid.

History: Laws 1999, ch. 178, § 4.

ANNOTATIONS

Delayed repeals. - Laws 1999, ch. 178, § 10 repeals 7-9D-1 to 7-9D-9 NMSA, as enacted by Laws 1999, ch. 178, §§ 1 to 9, effective July 1, 2004.

Effective dates. - Laws 1999, ch. 178, § 11, makes the act effective on July 1, 1999.

Temporary provisions. - Laws 1999, ch. 179, § 30, effective July 1, 1999 , provides that on July 1, 1999 all personnel, money, appropriations, property, records and other things of value of the New Mexico state board of public accountancy shall be transferred to the New Mexico public accountancy board; all contracts, including certificates and registrations, in effect for the New Mexico state board of public accountancy shall be binding on the New Mexico public accountancy board; all references in law to the New Mexico state board of public accountancy shall be construed as references to the New Mexico public accountancy board. Nothing in the 1999 Public Accountancy Act shall invalidate or affect any action taken or any prodeeding instituted pursuant to a law in effect prior to the effective date of that act. A disciplinary action taken by the board and any delinquency fee or penalty owed pursuant to the Public Accountancy Act shall remain in effect and due unless reviewed and rescinded by the board pursuant to procedures provided in the Uniform Licensing Act and the 1999 Public Accountancy Act. A certificate, permit or firm registration issued pursuant to the Public Accountancy Act that is current on the effective date of the the 1999 Public Accountancy Act shall remain current until June 30, 2000. A rule in effect as of June 30, 1999, and not in direct conflict with the 1999 Public Accountancy Act, shall remain in effect until amended or repealed by the New Mexico public accountary board.

7-9D-5. Capital equipment eligible for tax credit. (Repealed effective July 1, 2004.)

A taxpayer that owns or operates an eligible call center may claim a tax credit for capital equipment that is purchased for use in the call center and on which the gross receipts tax or compensating tax has been paid if the taxpayer applies for the credit and provides evidence satisfactory to the department that:

A. the equipment purchased is capital equipment on which the gross receipts tax or compensating tax was paid;

B. the equipment is purchased on or after July 1, 1999 and was not previously used in New Mexico; and

C. the equipment is used directly in or is an integral part of taking inbound telephone calls or recording or processing messages and is or will be used in a call center that is eligible pursuant to the provisions of the Capital Equipment Tax Credit Act [7-9D-1 to 7-9D-9 NMSA 1978].

History: Laws 1999, ch. 178, § 5.

ANNOTATIONS

Delayed repeals. - Laws 1999, ch. 178, § 10 repeals 7-9D-1 to 7-9D-9 NMSA, as enacted by Laws 1999, ch. 178, §§ 1 to 9, effective July 1, 2004.

Effective dates. - Laws 1999, ch. 178, § 11, makes the act effective on July 1, 1999.

7-9D-6. Eligible call center. (Repealed effective July 1, 2004.)

A call center in New Mexico shall be approved by the department as an eligible call center if:

A. the business meets either of the following requirements:

(1) the call center first located in New Mexico after July 1, 1999 and is not related by ownership or control to a business performing similar functions at the same or an adjacent location within the state; or

(2) the call center is an expansion after July 1, 1999 of an existing call center that certifies to the department that the expansion will result in an increase of not less than twenty percent in the value of the call center facility for property tax purposes over three tax years;

B. the call center is located in a rural area; and

C. the owner or operator certifies to the department that the total value over three years of capital equipment purchased for use in the call center will total at least two hundred fifty thousand dollars ($250,000).

History: Laws 1999, ch. 178, § 6.

ANNOTATIONS

Delayed repeals. - Laws 1999, ch. 178, § 10 repeals 7-9D-1 to 7-9D-9 NMSA, as enacted by Laws 1999, ch. 178, §§ 1 to 9, effective July 1, 2004.

Effective dates. - Laws 1999, ch. 178, § 11, makes the act effective on July 1, 1999.

7-9D-7. Claiming the tax credit. (Repealed effective July 1, 2004.)

A taxpayer having applied for and been granted approval for a tax credit by the department pursuant to the Capital Equipment Tax Credit Act [7-9D-1 to 7-9D-9 NMSA 1978] may claim an amount of available tax credit against the taxpayer's compensating tax, gross receipts tax or withholding tax due to the state of New Mexico, provided that no taxpayer may claim an amount of available tax credit for any reporting period that exceeds the taxpayer's gross receipts tax, compensating tax or withholding tax due for that reporting period. Any amount of available tax credit not claimed against the taxpayer's gross receipts tax or compensating tax due for a reporting period may be claimed in subsequent reporting periods.

History: Laws 1999, ch. 178, § 7.

ANNOTATIONS

Delayed repeals. - Laws 1999, ch. 178, § 10 repeals 7-9D-1 to 7-9D-9 NMSA, as enacted by Laws 1999, ch. 178, §§ 1 to 9, effective July 1, 2004.

Effective dates. - Laws 1999, ch. 178, § 11, makes the act effective on July 1, 1999.

7-9D-8. Reporting requirements; when taxpayer liable for repayment of tax credit. (Repealed effective July 1, 2004.)

A. Every eligible call center claiming a tax credit pursuant to the Capital Equipment Tax Credit Act [7-9D-1 to 7-9D-9 NMSA 1978] shall report annually to the department the following information for the prior calendar year:

(1) the total value of capital equipment purchased during that year;

(2) the total amount of tax credit claimed; and

(3) the value of the call center facility for property tax purposes for the year.

B After claiming a tax credit pursuant to the Capital Equipment Tax Credit Act, if any of the following occur, the taxpayer who owns or operates the business shall be liable for repayment of an amount of the credit claimed pursuant to that act as provided in Subsection C of this section:

(1) the call center no longer meets the requirements of the Capital Equipment Tax Credit Act for qualifying as an eligible call center;

(2) the taxpayer who owns or operates the business closes the call center; or

(3) capital equipment that has not been fully depreciated and for which the tax credit was claimed is moved from the call center.

C. If the provisions of Paragraph (1), (2) or (3) of Subsection B of this section occur within twenty-four months of the date a tax credit pursuant to the Capital Equipment Tax Credit Act is approved, the taxpayer who owns or operates the business shall be liable for repayment of the amount of all credit claimed pursuant to that act. If any of those provisions occur after twenty-four months but before forty-eight months after the date a tax credit is approved, the taxpayer who owns or operates the business shall be liable for repayment of one-half of the amount of all credit claimed.

History: Laws 1999, ch. 178, § 8.

ANNOTATIONS

Delayed repeals. - Laws 1999, ch. 178, § 10 repeals 7-9D-1 to 7-9D-9 NMSA, as enacted by Laws 1999, ch. 178, §§ 1 to 9, effective July 1, 2004.

Effective dates. - Laws 1999, ch. 178, § 11, makes the act effective on July 1, 1999.

7-9D-9. Administration of act. (Repealed effective July 1, 2004.)

The department shall administer the Capital Equipment Tax Credit Act [7-9D-1 to 7-9D-9 NMSA 1978] in accordance with the provisions of the Tax Administration Act [Chapter 7, Article 1, NMSA 1978.

History: Laws 1999, ch. 178, § 9.

ANNOTATIONS

Delayed repeals. - Laws 1999, ch. 178, § 10 repeals 7-9D-1 to 7-9D-9 NMSA, as enacted by Laws 1999, ch. 178, §§ 1 to 9, effective July 1, 2004.

Effective dates. - Laws 1999, ch. 178, § 11, makes the act effective on July 1, 1999.

ARTICLE 10
GROSS RECEIPTS TAX REGISTRATION

7-10-1. Short title.

Chapter 7, Article 10 NMSA 1978 may be cited as the "Gross Receipts Tax Registration Act".

History: 1953 Comp., § 72-16A-30, enacted by Laws 1970, ch. 26, § 1; 1995, ch. 70, § 7.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, substituted "Chapter 7, Article 10 NMSA 1978" for "This act" in this section.

7-10-2. Purpose of act.

The purpose of the Gross Receipts Tax Registration Act [this article] is to ensure that all persons doing business with the state, whether leasing property employed in New Mexico, performing services in New Mexico or selling property in New Mexico, are registered with the department for payment of the gross receipts tax.

History: 1953 Comp., § 72-16A-31, enacted by Laws 1970, ch. 26, § 2; 1995, ch. 70, § 8.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, substituted "ensure" for "insure" and "department" for "bureau" in this section.

7-10-3. Definitions.

As used in the Gross Receipts Tax Registration Act [this article]:

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

B. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity; and

C. "state" means any state agency, department or office that has authority to contract in the name of the state or to make payments from state funds.

History: 1953 Comp., § 72-16A-32, enacted by Laws 1970, ch. 26, § 3; 1977, ch. 249, § 51; 1986, ch. 20, § 70; 1995, ch. 70, § 9.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, deleted '"bureau' or" at the beginning of Subsection A.

7-10-4. Persons doing business with the state; registration to pay the gross receipts tax required.

Any person leasing or selling property to the state or performing services for the state, as those terms are used in the Gross Receipts and Compensating Tax Act [this article], shall be registered with the department to pay the gross receipts tax unless that person has no business location, employees or property in New Mexico and does not conduct business in New Mexico through agents or contractors.

History: 1953 Comp., § 72-16A-33, enacted by Laws 1970, ch. 26, § 4; 1995, ch. 70, § 10.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, substituted "shall' for "must" and"department" for "bureau", and added the language beginning "unless that person".

7-10-5. Penalty for noncompliance.

If any person required to register under the provisions of Section 7-10-4 NMSA 1978 is not registered to pay the gross receipts tax, the state shall withhold payment of the amount due until the person has presented evidence of registration with the department to pay the gross receipts tax.

History: 1953 Comp., § 72-16A-34, enacted by Laws 1970, ch. 26, § 5; 1995, ch. 70, § 11.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, substituted "required to register under the provisions of Section 7-10-4 NMSA 1978" for "who leases or sells property to or performs services for the state", and "department" for "bureau".

ARTICLE 11
RAILROAD CAR COMPANY TAX

7-11-1. Short title.

Chapter 7, Article 11 NMSA 1978 may be cited as the "Railroad Car Company Tax Act".

History: 1978 Comp., § 7-11-1, enacted by Laws 1982, ch. 18, § 17.

ANNOTATIONS

Repeals and reenactments. - Laws 1982, ch. 18, § 17, repeals former 7-11-1 NMSA 1978, relating to definitions, and enacts the above section. For present provisions relating to definitions, see 7-11-2 NMSA 1978.

7-11-2. Definitions.

As used in the Railroad Car Company Tax Act [this article]:

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

B. "gross earnings" means the total income received from all sources by an organization from the use or operation of railway cars within the state;

C. "organization" means every foreign or domestic car or car line company, every foreign or domestic joint-stock company, every foreign or domestic mercantile company, every foreign or domestic corporation of any other class, every foreign organization classed as a New England, Massachusetts or business trust, every association for profit, every partnership and every individual who owns one or more railway cars other than a railroad company operating its own or leased lines; and

D. "railway car" means any passenger, sleeping, parlor, refrigerator, tank, observation, dining, freight or coal car.

History: 1978 Comp., § 7-11-1; reenacted as 1978 Comp., § 7-11-2, enacted by Laws 1982, ch. 18, § 18; 1986, ch. 20, § 71; 1988, ch. 95, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 392 to 395.

84 C.J.S. Taxation § 176.

7-11-3. Imposition of tax; tax rate; tax in lieu of property taxes.

A. There is imposed on the gross earnings of each organization for the 1996 and subsequent calendar years a tax of one and one-half percent.

B. The tax imposed in Subsection A of this section is in lieu of all property taxes on railway cars owned by an organization.

History: 1978 Comp., § 7-11-3, enacted by Laws 1982, ch. 18, § 19; 1987, ch. 108, § 1; 1997, ch. 92, § 1.

ANNOTATIONS

The 1997 amendment, effective April 8, 1997, in Subsection A, substituted "1996" for "1987" and "one and one-half percent" for "three and one-half percent".

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 127, 291, 392 to 395, 399, 402, 405, 427, 438.

7-11-4. Situs of railway cars; gross earnings.

A. For the purpose of taxation, any railway car owned by an organization and used exclusively within this state or used partially within and partially without this state has situs within this state.

B. The term "gross earnings" shall be construed to mean all earnings on business beginning and ending within this state and on a proportion, based on the division of mileage in this state by the entire mileage over which business is done, of all interstate business passing through, into or out of this state.

History: 1978 Comp., § 7-11-4, enacted by Laws 1982, ch. 18, § 20.

ANNOTATIONS

Repeals and reenactments. - Laws 1982, ch. 18, § 20, repeals former 7-11-4 NMSA 1978, relating to the inspection and verification of filed reports by the revenue division of the taxation and revenue department, and enacts the above section.

7-11-5. Withholding and payment of tax; duty of railroads using or leasing cars to make reports.

Every railroad company using or leasing the railway cars of any organization, upon making payment to such organization for the use or lease of railway cars, shall withhold from such payment an amount equal to the product of the tax rate specified in Subsection A of Section 7-11-3 NMSA 1978 multiplied by the gross earnings. On or before March 1 of each year, such railroad company shall report to the department on a form prescribed by the department the amounts of such payments and the amounts withheld for the preceding calendar year. The amounts withheld shall be remitted with the report.

History: Laws 1982, ch. 18, § 21; 1988, ch. 95, § 2.

7-11-6. Liability of organizations.

Every organization is liable for any difference between an amount equal to the product of the tax rate specified in Subsection A of Section 7-11-3 NMSA 1978 multiplied by its gross earnings and the sum of withheld taxes remitted for that organization by one or more railroad companies for that year.

History: 1978 Comp., § 7-11-6, enacted by Laws 1982, ch. 18, § 22; 1988, ch. 95, § 3.

ANNOTATIONS

Repeals and reenactments. - Laws 1982, ch. 18, § 22, repeals former 7-11-6 NMSA 1978, relating to limitations on the amount of tax to be imposed on railroad car companies such that it shall not exceed the ad valorem rate, and enacts the above section.

7-11-7 to 7-11-12. Repealed.

ANNOTATIONS

Repeals. - Laws 1982, ch. 18, § 27, repeals 7-11-7 to 7-11-12 NMSA 1978, relating to imposition of tax upon railroad car companies or similar organizations, penalties for failure to pay tax and limitations on opportunity to contest tax determinations, effective July 1, 1982.

ARTICLE 12
CIGARETTE TAX

7-12-1. Cigarette Tax Act; short title.

Chapter 7, Article 12 NMSA 1978 may be cited as the "Cigarette Tax Act".

History: 1953 Comp., § 72-14-1, enacted by Laws 1971, ch. 77, § 1; 1985, ch. 25, § 1.

ANNOTATIONS

Cross references. - For applicability of the Tax Administration Act to the Cigarette Tax Act, see 7-1-2 NMSA 1978.

Repeals and reenactments. - Laws 1971, ch. 77, § 1, repealed 72-14-1, 1953 Comp., relating to definitions applicable to the cigarette and tobacco tax, and enacted a new 7-12-1 NMSA 1978. For present provisions relating to definitions, see 7-12-2 NMSA 1978.

Determining validity of former law. - If doubt existed with respect to an issue of existing danger to the public health which the legislature sought to forestall by means of former law imposing an excise tax on cigars and cigarettes, supreme court had a duty to resolve that doubt in favor of the legislative determination and constitutionality. State ex rel. Hughes v. Cleveland, 47 N.M. 230, 141 P.2d 192 (1943).

Exemption of former law from referendum. - Former act relating to cigarette and tobacco tax was exempt from referendum under constitutional provision which exempts measures providing for preservation of public peace, health or safety. State ex rel. Hughes v. Cleveland, 47 N.M. 230, 141 P.2d 192 (1943).

In pari materia. - Insofar as former act allocated proceeds of the excise tax on cigars and cigarettes to old-age assistance, it was to be read in pari materia with the Public Welfare Act. State ex rel. Hughes v. Cleveland, 47 N.M. 230, 141 P.2d 192 (1943).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation § 615.

Specific tax imposed on goods in stock of tobacco dealers as excise tax, 173 A.L.R. 1324.

Tobacco: validity, construction and application of state statutes forbidding possession, transportation or sale of unstamped or unlicensed cigarettes or other tobacco products, 46 A.L.R.3d 1342.

7-12-2. Definitions.

As used in the Cigarette Tax Act [this article]:

A. "cigarette" means any roll of tobacco or any substitute therefor wrapped in paper or any substance other than tobacco;

B. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity;

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

E. "stamp" means any authorized label which is issued to cover the tax in multiples of five cigarettes and upon which is printed the words "State of New Mexico" and "tobacco tax" and which is coated with an adhesive to affix the stamp to a package so that the stamp, once affixed, cannot be removed without destroying it;

F. "stamped" means a package or container of cigarettes to which a cigarette tax stamp has been affixed as provided in the Cigarette Tax Act; and

G. "unstamped" means a package or container of cigarettes to which the cigarette tax stamp provided for in the Cigarette Tax Act has not been affixed.

History: Laws 1943, ch. 95, § 1; 1941 Comp. Supp., § 76-1601; Laws 1947, ch. 84, § 1; 1949, ch. 180, § 1; 1953 Comp., § 72-14-1; Laws 1957, ch. 28, § 1; 1970, ch. 70, § 1; reenacted as 1953 Comp., § 72-14-2 by Laws 1971, ch. 77, § 2; 1977, ch. 249, § 43; 1984, ch. 51, § 1; 1986, ch. 20, § 72; 1995, ch. 70, § 12.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, substituted "'department' means" for "'bureau', 'department' or 'division' means" in Subsection C, and in Subsection D substituted "'secretary' means" for "'commissioner', 'director' or" and deleted "or the secretary's delegate" following "revenue".

7-12-3. Excise tax on cigarettes; rates.

A. For the privilege of selling, giving or consuming cigarettes in New Mexico, there is levied an excise tax at the rate of one and five hundredths cents ($.0105) 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".

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.

ANNOTATIONS

1993 amendments. - Laws 1993, ch. 30, § 19, effective June 18, 1993, substituting "this section" for "the Cigarette Tax Act" in Subsection B, was approved March 16, 1993. However, Laws 1993, ch. 358, § 2, effective July 1, 1993, substituting "one and five hundredths cents ($.0105)" for "seventy-five one-hundredths of one cent ($.0075)" in Subsection A, but not giving effect to the changes made by the first 1993 amendment, was approved April 8, 1993. The section is set out as amended by Laws 1993, ch. 358, § 2. See 12-1-8 NMSA 1978.

The 1995 amendment, effective July 1, 1995, substituted "this section" for "the Cigarette Tax Act" in Subsection B.

7-12-3.1. Cigarette inventory tax; imposition of tax; date payment of tax due.

A. A cigarette inventory tax is imposed, measured by the quantity of cigarette stamps, whether or not affixed to packages of cigarettes, in the possession of a person who is required by Subsection C of Section 7-12-5 NMSA 1978 to affix stamps on the date on which an increase in the excise tax imposed by Section 7-12-3 NMSA 1978 is effective. The taxable event is the existence of an inventory of cigarette stamps, whether or not affixed to packages of cigarettes, in the possession of a person who is required by Subsection C of Section 7-12-5 NMSA 1978 to affix stamps on the date on which an increase in the excise tax imposed by Section 7-12-3 NMSA 1978 is effective. The rate

of the cigarette inventory tax to apply to cigarette stamps held in inventory shall be the amount of the increase in the cigarette tax imposed by Section 7-12-3 NMSA 1978.

B. The cigarette inventory tax is to be paid to the department on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

History: 1978 Comp., § 7-12-3.1, enacted by Laws 1986, ch. 13, § 3; 1995, ch. 70, § 14.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, substituted "department" for "division" in Subsection B.

7-12-3.2. Cigarette [stamp] inventories.

A. On any date on which the excise tax imposed by Section 7-12-3 NMSA 1978 is increased, each person who is required by Subsection C of Section 7-12-5 NMSA 1978 to affix stamps shall take inventory of cigarette stamps on hand, including stamps affixed to packages of cigarettes.

B. Each person required to take an inventory by Subsection A of this section shall report the total number of cigarette stamps in inventory on the date on which the tax imposed by Section 7-12-3 NMSA 1978 changes and pay any tax due imposed by Section 7-12-3.1 NMSA 1978.

History: 1978 Comp., § 7-12-3.2, enacted by Laws 1986, ch. 13, § 4.

7-12-4. Exemption.

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 the governing body or to any enrolled tribal member licensed by the governing body of any Indian nation, tribe or pueblo for use or sale on that reservation or pueblo grant; and

(3) sales which the state is prohibited from taxing by a provision of the United States constitution or the constitution of the state of New Mexico.

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.

ANNOTATIONS

The 1992 amendment, effective May 20, 1992, added the subsection designations; in Subsection A, added the paragraph designations, added "to the governing body or to any enrolled tribal member licensed by the governing body of any Indian nation, tribe or pueblo for use or sale on that reservation or pueblo grant; and" at the beginning of Paragraph (2), added "sales" at the beginning of Paragraph (3), and made a stylistic change; and, in Subsection B, substituted "As used in this section" for "As used herein".

7-12-5. Affixing stamps; license fee.

A. All cigarettes, the sale, gift or consumption of which is subject to the cigarette tax, shall be placed in packages or containers to which a stamp may be affixed.

B. Packages or containers to which a stamp is required to be affixed and which contain cigarettes that are not in multiples of five cigarettes shall have affixed a stamp of the next higher multiple of five cigarettes.

C. Unless the requirements of this section are waived pursuant to Section 7-12-6 NMSA 1978, a stamp shall be affixed to each package or container of cigarettes the sale, gift or consumption of which is subject to the cigarette tax. The stamp shall be affixed by any person who sells in New Mexico cigarettes manufactured by that person or who receives on consignment or buys unstamped cigarettes for sale, gift or consumption in New Mexico.

D. Stamps shall be affixed inside the boundaries of New Mexico unless the department has granted a license allowing a person to affix stamps outside New Mexico. The license fee shall be one-eighth of one percent of the gross receipts derived from selling cigarettes stamped outside New Mexico. The license fee imposed by this subsection is to be paid on or before the twenty-fifth day of the month following the month in which sales of cigarettes stamped outside New Mexico are made.

History: Laws 1943, ch. 95, § 3; 1941 Comp. Supp., § 76-1603; Laws 1949, ch. 180, § 3; 1953 Comp., § 72-14-3; reenacted as 1953 Comp., § 72-14-5 by Laws 1971, ch. 77, § 5; 1984, ch. 51, § 2; 1988, ch. 95, § 4.

7-12-6. Waiver of requirement that stamps be affixed.

The requirement imposed in Section 7-12-5 NMSA 1978 that stamps be affixed to packages or containers of cigarettes is waived if:

A. the cigarettes are sold on railroad passenger trains in New Mexico. When unstamped cigarettes are sold on railroad passenger trains in New Mexico, the seller shall remit to

the department the tax imposed in Section 7-12-3 NMSA 1978 on or before the twenty-fifth day of the month following the month in which sales of unstamped cigarettes are made on railroad passenger trains in New Mexico; or

B. the cigarettes are distributed by a cigarette manufacturer to consumers within the state of New Mexico as free samples. When unstamped cigarettes are distributed by a cigarette manufacturer in New Mexico as free samples, the manufacturer shall remit to the department the tax imposed in Section 7-12-3 NMSA 1978 on or before the twenty-fifth day of the month following the month in which distributions of unstamped cigarettes are made.

History: Laws 1943, ch. 95, § 6; 1947, ch. 84, § 4; 1949, ch. 180, § 6; 1941 Comp. Supp., § 76-1606; 1953 Comp., § 72-14-6; Laws 1955, ch. 263, § 2; 1957, ch. 166, § 1; 1962 (S.S.), ch. 14, § 1; 1970, ch. 70, § 4; reenacted by Laws 1971, ch. 77, § 6; 1984, chs. 51, 63; 1995, ch. 70, § 15.

ANNOTATIONS

The 1995 amendment, effective July 15, 1995, substituted "department" for "bureau" in the second sentences of Subsections A and B.

7-12-7. Sale of stamps; prices.

A. The department shall sell stamps to any person who sells in New Mexico cigarettes manufactured by that person and to any person who receives on consignment or buys unstamped cigarettes for sale, gift or consumption in New Mexico, provided such persons are registered with the department under the provisions of Section 7-1-12 NMSA 1978. Stamps shall be sold at their face value with the following discounts:

(1) four percent less than the face value of the first thirty thousand dollars ($30,000) of stamps purchased in one calendar month;

(2) three percent less than the face value of the second thirty thousand dollars ($30,000) of stamps purchased in one calendar month; and

(3) two percent less than the face value of all stamps purchased in excess of sixty thousand dollars ($60,000) in one calendar month.

B. If the face value of stamps sold in a single sale is less than one thousand dollars ($1,000), the discount provided for in this section shall not be allowed.

C. Payment for stamps shall be made on or before the twenty-fifth day of the month following the month in which the sale of stamps by the department is made.

History: Laws 1943, ch. 95, § 5; 1941 Comp. Supp., § 76-1605; Laws 1947, ch. 84, § 3; 1949, ch. 180, § 5; 1953 Comp., § 72-14-5; Laws 1963, ch. 106, § 1; 1968, ch. 50, § 3;

1970, ch. 70, § 3; reenacted as 1953 Comp., § 72-14-7 by Laws 1971, ch. 77, § 7; 1988, ch. 95, § 5.

7-12-8. Redemption of stamps.

The department shall redeem unused or destroyed stamps at the price paid by the buyer, provided acceptable proof of such destruction is provided the department. It is presumed that the stamps presented for redemption were the last stamps bought in the month in which the sale of the stamps was made. If the month in which the sale was made is unknown, the amount to be paid by the department upon redemption shall be computed as if the stamps presented for redemption were the last stamps bought in the average monthly number of stamps bought during the preceding calendar year.

History: Laws 1943, ch. 95, § 12; 1941 Comp. Supp., § 76-1612; 1953 Comp., § 72-14-12; Laws 1970, ch. 70, § 6; reenacted as 1953 Comp., § 72-14-8 by Laws 1971, ch. 77, § 8; 1988, ch. 95, § 6.

7-12-9. License necessary to engage in business of selling cigarettes in New Mexico.

Each person engaged in the business of selling cigarettes in New Mexico shall register and comply with the provisions of Section 7-1-12 NMSA 1978. Every person selling cigarettes in New Mexico shall furnish such information as may be requested by the department concerning that person's vending machines or other places of business where cigarettes are sold.

History: Laws 1943, ch. 95, § 4; 1941 Comp. Supp., § 76-1604; Laws 1947, ch. 84, § 4; 1949, ch. 180, § 4; 1953 Comp., § 72-14-4; Laws 1970, ch. 70, § 2; reenacted as 1953 Comp., § 72-14-9 by Laws 1971, ch. 77, § 9; 1988, ch. 95, § 7.

7-12-10. Retention of invoices and records; inspection by department.

A. Each person who sells cigarettes in New Mexico for resale in New Mexico shall maintain a file of copies of the invoices of sale for three years from the end of the year in which the sale was made. The invoices shall indicate the date of sale, quantity of cigarettes sold, the price received and the name and address of the buyer.

B. Each person who sells cigarettes in New Mexico shall maintain a file of copies of the invoices under which the cigarettes were purchased for three years from the end of the year during which cigarettes were purchased. The invoices shall indicate the date of purchase, the quantity of cigarettes purchased, the price paid and the name and address of the seller.

C. All invoices required to be kept under this section may be inspected by the department along with any stock of cigarettes in the possession of the seller.

History: Laws 1943, ch. 95, § 7; 1941 Comp. Supp., § 76-1607; 1953 Comp., § 72-14-7; reenacted as 1953 Comp., § 72-14-10 by Laws 1971, ch. 77, § 10; 1988, ch. 95, § 8.

7-12-11. Export sellers; physical segregation of cigarettes to be exported.

Any person selling and shipping cigarettes outside New Mexico may maintain unstamped cigarettes on his premises if the unstamped cigarettes to be shipped outside the state are kept in a separate part of his place of business, physically segregated from cigarettes to be sold inside New Mexico and clearly identified as cigarettes for shipment outside the state. If cigarettes to be sold outside New Mexico are intermingled with cigarettes to be sold inside New Mexico, they shall be stamped and treated for purposes of the Cigarette Tax Act [Chapter 7, Article 12 NMSA 1978] as cigarettes to be sold inside New Mexico.

History: 1953 Comp., § 72-14-11, enacted by Laws 1971, ch. 77, § 11.

ANNOTATIONS

Repeals and reenactments. - Laws 1971, ch. 77, § 11, repeals 72-14-11, 1953 Comp., relating to revenue stamps, and enacts the above section.

7-12-12. Shipment of unstamped cigarettes in New Mexico.

The secretary may, by regulation, require and prescribe the contents of reports to be filed with the department by persons transporting unstamped cigarettes in New Mexico.

History: 1953 Comp., § 72-14-12, enacted by Laws 1971, ch. 77, § 12; 1988, ch. 95, § 9.

ANNOTATIONS

Repeals and reenactments. - Laws 1971, ch. 77, § 12, repealed former 72-14-12, 1953 Comp., relating to the redemption of stamps, and enacted a new 72-14-12, 1953 Comp.

7-12-13. Penalties.

A. Any person selling cigarettes in New Mexico and required by the provisions of Section 7-12-10 NMSA 1978 to retain invoices who willfully fails to retain such invoices shall, upon conviction, be fined not less than twenty-five dollars ($25.00) or more than

two hundred dollars ($200). Jurisdiction over such actions is granted to the magistrate courts.

B. Any person not a manufacturer of cigarettes who sells cigarettes in New Mexico without the stamps required by Section 7-12-5 NMSA 1978 affixed thereto and without that requirement having been waived under Section 7-12-6 NMSA 1978 shall, upon conviction, be fined not less than one hundred dollars ($100) or more than five hundred dollars ($500) or imprisoned not more than ninety days in the county jail, or both. Jurisdiction over such actions is granted to the magistrate courts.

C. The department shall seize and sell cigarettes which are not stamped as required by the Cigarette Tax Act. The sale shall be made pursuant to the provisions of Sections 7-1-41 through 7-1-49 and 7-1-51 NMSA 1978. The department shall collect the amount of cigarette tax due on such unstamped cigarettes, plus fifty percent thereof as penalty, from the proceeds of sale.

History: Laws 1943, ch. 95, § 8; 1941 Comp. Supp., § 76-1608; Laws 1949, ch. 180, § 7; 1953 Comp., § 72-14-8; Laws 1970, ch. 70, § 5; reenacted as 1953 Comp., § 72-14-13 by Laws 1971, ch. 77, § 13; 1988, ch. 95, § 10.

7-12-14. Repealed.

ANNOTATIONS

Repeals. - Laws 1983, ch. 211, § 42, repeals 7-12-14 NMSA 1978, relating to the distribution of cigarette tax revenues, effective July 1, 1983.

7-12-15. County and municipality recreational fund; distribution.

A. There is created in the state treasury a fund to be known as the "county and municipality recreational fund." At the end of each month the state treasurer shall distribute all sums remaining in the county and municipality recreational fund to each county and municipality in the state as follows:

(1) to each county in the proportion that the sales of cigarettes made within the county borders, exclusive of sales within any municipality in that county, bears to the total sales of cigarettes in the state during such month; and

(2) to each municipality in the proportion that the sales of cigarettes made within the municipality during such month bears to the total sales of cigarettes in the state for such month.

B. The funds distributed to the counties and municipalities under this section shall be used for recreational facilities and salaries of instructors and other employees necessary to the operation of such facilities. Such recreational facilities shall be for the use of all persons, and juveniles and elderly persons shall not be excluded. Each county

or municipality shall establish a fund to be known as the "recreational fund" into which all moneys received from the county and municipality recreational fund shall be deposited. As used in this section, "juvenile" means every person under the age of majority and "elderly person" means every person over the age of sixty years.

History: 1953 Comp., § 72-14-14.1, enacted by Laws 1968, ch. 50, § 5; 1969, ch. 23, § 2; 1973, ch. 138, § 28.

7-12-16. County and municipal cigarette tax fund; distribution.

A. There is created in the state treasury a fund to be known as the "county and municipal cigarette tax fund." At the end of each month the state treasurer shall distribute all sums remaining in the county and municipal cigarette tax fund to each county and municipality in the state as follows:

(1) to each county in the proportion that the sales of cigarettes made within the county borders, exclusive of the sales within any municipality in that county, bears to the total sales of cigarettes in the state during such month; and

(2) to each municipality in the proportion that the sales of cigarettes made within the municipality during such month bears to the total sales of cigarettes in the state for such month.

B. The funds so distributed to the counties and municipalities under this section shall be deposited in the general fund of such counties and municipalities; provided, the cigarette tax revenues distributed under the provision of this section shall not be earmarked or otherwise obligated under the terms or provisions of any prior law, prior local ordinance or prior bond agreement which pledges cigarette tax revenues to the payment of any principal or interest of revenue bonds issued pursuant to such prior law, prior local ordinance or prior bond agreement.

History: 1953 Comp., § 72-14-14.2, enacted by Laws 1968, ch. 50, § 6.

7-12-17. Reporting requirements; penalty.

A. Each person who sells in New Mexico cigarettes manufactured by that person or who receives on consignment or buys cigarettes either directly from the manufacturer or from any out-of-state person for resale in New Mexico shall report to the department by the twenty-fifth day of each month that person's sales of cigarettes during the preceding month in each municipality and within that portion of each county outside of the municipalities located in that county. The department shall then advise the state treasurer of the proportion of the total sales of cigarettes for the month within each municipality and within that portion of each county outside of municipalities. The reports of such persons shall, upon receipt by the department, become public records.

B. Any person who sells in New Mexico cigarettes manufactured by that person or who receives on consignment or buys cigarettes for resale in New Mexico who willfully fails to render accurately the reports required by this section and any municipal or county officer who approves any expenditure or expends funds distributed from the county and municipality recreational fund for any purposes other than permitted by Section 7-12-15 NMSA 1978 is guilty of a petty misdemeanor.

History: Laws 1971, ch. 77, § 14; 1988, ch. 95, § 11.

ARTICLE 12A
TOBACCO PRODUCTS TAX

7-12A-1. Short title.

Chapter 7, Article 12A NMSA 1978 may be cited as the "Tobacco Products Tax Act".

History: 1978 Comp., § 7-12A-1, enacted by Laws 1986, ch. 112, § 2.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation § 615.

7-12A-2. Definitions.

As used in the Tobacco Products Tax Act [this article]:

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

B. "engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit;

C. "first purchaser" means a person engaging in business in New Mexico who manufactures tobacco products or who purchases or receives on consignment tobacco products from any person outside of New Mexico, which tobacco products are to be sold in New Mexico in the ordinary course of business;

D. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity or the state of New Mexico or any political subdivision thereof;

E. "product value" means the amount paid, net of any discounts taken and allowed, for tobacco products or, in the case of tobacco products received on consignment, the

value of the tobacco products received or, in the case of tobacco products manufactured and sold in New Mexico, the proceeds from the sale by the manufacturer of the tobacco products; and

F. "tobacco product" means any product, other than cigarettes, made from or containing tobacco.

History: 1978 Comp., § 7-12A-2, enacted by Laws 1986, ch. 112, § 3; 1988, ch. 95, § 12.

7-12A-3. Imposition and rate of tax; denomination as "tobacco products tax"; date payment of tax due.

A. For the manufacture or acquisition of tobacco products in New Mexico for sale in the ordinary course of business, there is imposed an excise tax at the rate of twenty-five percent of the product value of the tobacco products.

B. The tax imposed by Subsection A of this section may be referred to as the "tobacco products tax."

C. The tobacco products tax shall be paid by the first purchaser on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

History: 1978 Comp., § 7-12A-3, enacted by Laws 1986, ch. 112, § 4; 1988, ch. 95, § 13.

7-12A-4. Exemption; tobacco products tax.

Exempted from the tobacco products tax is the product value of tobacco products sold to or by the United States or any agency or instrumentality thereof or the state of New Mexico or any political subdivision thereof. As used in this section, the term "agency or instrumentality" does not include persons who are agents or instrumentalities of the United States for a particular purpose or only when acting in a particular capacity or corporate agencies or instrumentalities.

History: 1978 Comp., § 7-12A-4, enacted by Laws 1986, ch. 112, § 5.

7-12A-5. Deduction; interstate sales.

The product value of tobacco products sold and shipped or given and shipped to a person in another state may be deducted from the product value subject to the tax imposed by the Tobacco Products Tax Act [this article]; provided that the department may require the person to submit proof satisfactory to the department that the tobacco products have been sold and shipped or given and shipped to a person in another state.

History: 1978 Comp., § 7-12A-5, enacted by Laws 1986, ch. 112, § 6.

7-12A-6. Refund or credit of tax.

The department shall allow a claim for refund or credit, as provided in Sections 7-1-26 and 7-1-29 NMSA 1978, for tobacco products tax paid on tobacco products destroyed or returned to the seller by the first purchaser as spoiled or otherwise unfit for sale or consumption; provided that the department may require proof satisfactory to the department that the tobacco products have been destroyed or returned and that the person claiming the refund is the person who paid the tobacco products tax on the destroyed or returned tobacco products.

History: 1978 Comp., § 7-12A-6, enacted by Laws 1986, ch. 112, § 7; 1988, ch. 95, § 14.

7-12A-7. Registration necessary to engage in business of selling tobacco products in New Mexico.

Each person engaged in the business of selling tobacco products in New Mexico shall register and comply with the provisions of Section 7-1-12 NMSA 1978. Every person selling tobacco products in New Mexico shall furnish such information as may be requested by the department concerning the person's vending machines or other places of business where tobacco products are sold.

History: 1978 Comp., § 7-12A-7, enacted by Laws 1986, ch. 112, § 8.

7-12A-8. Retention of invoices and records; inspection by department.

A. Each person who sells tobacco products in New Mexico for resale in New Mexico shall maintain a file of copies of the invoices of sale for three years from the end of the year the sale was made. The invoices shall indicate the date of sale of the tobacco products, quantity of tobacco products sold, the price received and the name and address of the purchaser.

B. Each person who sells tobacco products in New Mexico shall maintain a file of copies of invoices under which the person purchased tobacco products for three years from the end of the year during which tobacco products were purchased. The invoices shall indicate the date of purchase, the quantity of tobacco products purchased, the price paid and the name and address of the seller.

C. All invoices required to be kept under this section may be inspected by the department along with any stock of tobacco products in the possession of the purchaser or seller.

History: 1978 Comp., § 7-12A-8, enacted by Laws 1986, ch. 112, § 9; 1988, ch. 95, § 15.

7-12A-9. Penalties.

Any person selling tobacco products in New Mexico and required by the provisions of Section 7-12A-8 NMSA 1978 to retain invoices who willfully fails to retain the invoices shall, upon conviction thereof, be fined not less than fifty dollars ($50.00) or more than five hundred dollars ($500). Jurisdiction over such actions is hereby granted to the magistrate courts.

History: 1978 Comp., § 7-12A-9, enacted by Laws 1986, ch. 112, § 10.

7-12A-10. Prohibition.

The provisions of the Tobacco Products Tax Act [this article] shall not apply in any case in which New Mexico is prohibited from taxing under the constitution of New Mexico or the constitution or laws of the United States.

History: 1978 Comp., § 7-12A-10, enacted by Laws 1986, ch. 112, § 11.

ARTICLE 13
GASOLINE TAX

7-13-1. Gasoline tax; short title.

Chapter 7, Article 13 NMSA 1978 may be cited as the "Gasoline Tax Act".

History: 1953 Comp., § 72-27-1, enacted by Laws 1971, ch. 207, § 1; 1983, ch. 204, § 1.

ANNOTATIONS

Cross references. - For applicability of the Tax Administration Act to the Gasoline Tax Act, see 7-1-2 NMSA 1978.

For the Special Fuels Act, see 7-16-1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 616 to 634.

53 C.J.S. Licenses § 34.

7-13-2. Definitions.

As used in the Gasoline Tax Act [this article]:

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, issued by the United States or any state, identifying the motor vehicle as belonging to the United States or any of its agencies or instrumentalities or an Indian nation, tribe or pueblo or any of its political subdivisions, agencies or instrumentalities;

J. "highway" means every road, highway, thoroughfare, street or way, including toll roads, generally open to the use of the public as a matter of right for the purpose of

motor vehicle travel regardless of whether it is temporarily closed for the purpose of construction, reconstruction, maintenance or repair;

K. "motor vehicle" means any self-propelled vehicle or device that is either subject to registration under Section 66-3-1 NMSA 1978 or used or that may be used on the public highways in whole or in part for the purpose of transporting persons or property and includes any connected trailer or semitrailer;

L. "person" means an individual or any other entity, including, to the extent permitted by law, any federal, state or other government or any department, agency, instrumentality or political subdivision of any federal, state or other government;

M. "rack operator" means the operator of a refinery in this state or the owner of gasoline stored at a pipeline terminal in this state;

N. "registered Indian tribal distributor" means an Indian nation, tribe or pueblo recognized by the United States whose reservation or pueblo grant lies wholly or partly in this state, a corporation or other enterprise wholly owned by that Indian nation, tribe or pueblo or a corporation or other enterprise wholly owned by one or more members of that Indian nation, tribe or pueblo that is registered with the department as a distributor pursuant to the Gasoline Tax Act; provided that the department shall register a corporation or other enterprise as an Indian tribal distributor only upon certification by the Indian nation, tribe or pueblo that the corporation or other enterprise is wholly owned by that nation, tribe or pueblo or wholly owned by one or more of its members;

O. "retailer" means a person who sells gasoline generally in quantities of thirty-five gallons or less and delivers such gasoline into the fuel supply tanks of motor vehicles. "Retailer" shall be construed so that a person simultaneously may be both a retailer and a distributor or wholesaler;

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

Q. "taxpayer" means a person required to pay gasoline tax;

R. "unloaded" means removal of gasoline from tank cars, tank trucks, tank wagons or other types of transportation equipment into a nonmobile container at the place at which the unloading takes place; and

S. "wholesaler" means a person who is not a distributor and who sells gasoline in quantities of thirty-five gallons or more and does not deliver such gasoline into the fuel supply tanks of motor vehicles. "Wholesaler" shall be construed so that a person simultaneously may be a wholesaler and a retailer.

History: 1953 Comp., § 72-27-2, enacted by Laws 1971, ch. 207, § 2; 1977, ch. 249, § 59; 1979, ch. 166, § 5; 1983, ch. 204, § 2; 1986, ch. 20, § 73; 1987, ch. 46, § 1; 1993, ch. 32, § 1; 1997, ch. 192, § 1; 1999, ch. 190, § 1.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, deleted " 'division' or" at the beginning of Subsection B and " 'director' or" at the beginning of Subsection C; inserted "limited liability company, limited liability partnership," in Paragraph (1) of Subsection J; deleted "manufactured exclusively in New Mexico" following both "fuel" and "ethanol" in Subsection N; and made minor stylistic changes in Subsections D, E, and M.

The 1997 amendment, effective June 1, 1997, rewrote this section to the extent that a detailed comparison is impracticable.

The 1999 amendment, effective July 1, 1999, substituted present Subsection N for former Subsection N which defined "received".

Emergency clauses. - Laws 1997, ch. 192, § 17 makes the act effective immediately. Approved April 10, 1997.

Motor Vehicle Code. - See 66-1-1 NMSA 1978 and notes thereto.

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 [this article], 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.

ANNOTATIONS

Effective dates. - Laws 1999, ch. 190, § 4 makes the act effective on July 1, 1999.

7-13-3. Imposition and rate of tax; denomination as "gasoline tax". (Effective until July 1, 2003.)

A. For the privilege of receiving gasoline in this state, there is imposed an excise tax at a rate provided in Subsection B of this section on each gallon of gasoline received in New Mexico.

B. The tax imposed by Subsection A of this section shall be seventeen cents ($.17) per gallon received in New Mexico.

C. The tax imposed by this section may be called the "gasoline tax".

History: 1953 Comp., § 72-27-3, enacted by Laws 1971, ch. 207, § 3; 1978, ch. 182, § 23; 1979, ch. 166, § 6; 1985, ch. 35, § 1; 1987, ch. 347, § 12; 1989, ch. 356, § 9; 1993, ch. 32, § 2; 1993, ch. 357, § 9; 1994, ch. 5, § 22; 1995, ch. 6, § 10.

ANNOTATIONS

The 1989 amendment, effective July 1, 1989, in Subsection B, substituted "sixteen cents ($.16) per gallon" for "fourteen cents ($.14) per gallon".

1993 amendments. - Laws 1993, ch. 32, § 2, effective June 18, 1993, which inserted "and in the Special County Hospital Gasoline Tax Act" in the second sentence of Subsection A; deleted former Subsection C, relating to inclusion of the excise tax in the selling price of gasoline; and redesignated former Subsection D as current Subsection

C, was approved March 16, 1993. However, Laws 1993, ch. 357, § 9, effective July 1, 1993 amending this section by rewriting it to the extent that a detailed comparison is impracticable, was approved April 8, 1993. The section is set out as amended by Laws 1993, ch. 357, § 9. See 12-1-8 NMSA 1978.

The 1994 amendment, effective July 1, 1994, substituted "twenty cents ($.20)" for "twenty-two cents ($.22)" in Subsection B.

The 1995 amendment, effective July 1, 1995, substituted "seventeen cents ($.17)" for "twenty cents ($.20)" in Subsection B.

Temporary provisions. - Laws 1997, ch. 192, § 15, effective June 1, 1997, provides that gasoline received by a distributor pursuant to the Gasoline Tax Act or special fuel received by a supplier pursuant to the Special Fuels Supplier Tax Act prior to the effective date of this act shall be subject to gasoline tax or special fuel excise tax, as appropriate, pursuant to the provisions of the Gasoline Tax Act or Special Fuels Supplier Tax Act in effect immediately prior to the effective date of this act.

Compiler's notes. - Subsection B of Laws 1995, ch. 6, § 20 repeals 7-13-3 NMSA 1978, as enacted by Laws 1994, ch. 5, § 23, relating to the imposition and rate of the gasoline tax and which was to become effective August 1, 1997, effective June 16, 1995. For provisions of section, see 1994 Cumulative Supplement.

Right to impose tax. - A state may impose a license tax upon the distribution and sale of gasoline in domestic commerce if it does not make its payment a condition of carrying on interstate or foreign commerce; gasoline imported from another state and used to conduct the business of the distributor may be taxed, for it loses its interstate character and the tax is an excise tax on its use. Bowman v. Continental Oil Co. 256 U.S. 642, 41 S. Ct. 606, 65 L. Ed. 1139 (1921).

Preemption by Self-Determination Act. - To the extent that the Gasoline Tax Act imposes a tax on Indian entities, where that tax would not be imposed if the gasoline were sold to a federal agency providing the same services as the Indian entity, the tax imposed is preempted by the Self-Determination Act, 25 U.S.C.A. §§ 450-458. Ramah Navajo Sch. Bd., Inc. v. New Mexico Taxation & Revenue Dep't, 1999-NMCA-050, 127 N.M. 101, 977 P.2d 1021 (Ct. App. 1999), cert. denied, N.M. , 981 P.2d 1207 (1999).

Former excise tax on use of gasoline offended commerce clause of the federal constitution and could not be enforced in the case of one purchasing gasoline in another state and using it in this state as fuel for interstate air commerce. Transcontinental & W. Air, Inc. v. Lujan, 36 N.M. 64, 8 P.2d 103 (1931).

7-13-3. Imposition and rate of tax; denomination as "gasoline tax". (Effective July 1, 2003.)

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 sixteen cents ($.16) per gallon received in New Mexico.

C. The tax imposed by this section may be called the "gasoline tax".

History: 1978 Comp., § 7-13-3, enacted by Laws 1995, ch. 6, § 11.

ANNOTATIONS

Repeals and reenactments. - Laws 1995, ch. 6, § 11, repeals 7-13-3 NMSA 1978, as amended by Laws 1995, ch. 6, § 10, and enacts the above section, effective July 1, 2003 or the July 1 or January 1 immediately following any earlier date on which the obligations for payment of principal and interest on the series 1993 state highway debentures have been defeased.

7-13-3.1. Gasoline inventory tax; imposition of tax; date payment of tax due.

A. A gasoline inventory tax is imposed measured by the quantity of gallons of gasoline in the possession of a distributor or wholesaler on the day in which an increase in the excise tax imposed by Section 7-13-3 NMSA 1978 is effective. The taxable event is the existence of an inventory in the possession of a distributor or wholesaler on the day prior to the day in which an increase in the excise tax imposed by Section 7-13-3 NMSA 1978 is effective. The rate of the gasoline inventory tax to apply on each gallon of gasoline held in inventory by a distributor or wholesaler, as provided in Section 7-13-3.2 NMSA 1978, shall be the difference between the gasoline excise tax rate imposed on the day prior to the day in which the gasoline excise tax is increased subtracted from the gasoline excise tax rate imposed on the day that the gasoline excise tax rate increase is effective, expressed in cents per gallon.

B. The gasoline inventory tax is to be paid to the department on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

History: 1978 Comp., § 7-13-3.1, enacted by Laws 1979, ch. 166, § 7; 1993, ch. 32, § 3.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, in Subsection A, substituted "the day" for "July 1 of the calendar year" in the first sentence and "the day prior to the day" for "July 1 of the calendar year" in the second sentence, and in the third sentence, substituted "on the day prior to the day" for "through June of the calendar year", deleted

"increased" following "subtracted from the", and substituted "the day that the gasoline excise tax rate increase is effective" for "July 1 of that same calendar year"; deleted former Subsection B, pertaining to inclusion in the inventory tax of the selling price of gasoline; redesignated former Subsection C as current Subsection B; and substituted "department" for "division" in current Subsection B.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation § 632.

7-13-3.2. Gasoline inventories.

A. On the day prior to the day that the excise tax imposed by Section 7-13-3 NMSA 1978 is increased, each distributor, wholesaler and retailer shall take inventory of the gallons of gasoline on hand.

B. Distributors and wholesalers shall report total gallons of gasoline in inventory on the day prior to the day that an increase in the gasoline tax rate is effective and pay any tax due imposed by Section 7-13-3.1 NMSA 1978.

C. Retailers shall maintain a record of the total gallons of gasoline in inventory on the day prior to the day that an increase in the gasoline tax rate is effective and shall not increase the price of the gasoline sold until the inventory is disposed of in the ordinary course of business.

History: 1978 Comp., § 7-13-3.2, enacted by Laws 1979, ch. 166, § 8; 1985, ch. 35, § 2; 1993, ch. 32, § 4; 1994, ch. 5, § 24; 1995, ch. 70, § 16.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "On the day prior to the day that the excise tax imposed by Section 7-13-3 NMSA 1978 is increased or decreased" for "On July 1 of the calendar year in which the excise tax is imposed by Section 7-13-3 NMSA 1978" in Subsection A, "the day prior to the day that an increase or decrease in the gasoline excise tax rate is effective" for July 1" in Subsections B and C, and "department" for "division" in Subsection D.

The 1994 amendment, effective May 18, 1994, deleted "or decreased" following "increased" in Subsection A, "or decrease" following "increase" and "excise" following "the gasoline" in Subsection B, and "excise" following "in the gasoline" and "or reduce" following "not increase" in Subsection C.

The 1995 amendment, effective July 1, 1995, deleted Subsection D which read: "The department shall promulgate regulations required to administer this section."

7-13-3.3, 7-13-3.4. Repealed.

ANNOTATIONS

Repeals. - Laws 1994, ch. 5, § 27, repeals 7-13-3.3 NMSA 1978, as amended by Laws 1993, ch. 32 § 5, relating to the gasoline inventory tax rebate, effective May 18, 1994. For provisions of former section, see 1993 Replacement Pamphlet.

Laws 1990, ch. 124, § 23 repeals 7-13-3.4 NMSA 1978, as enacted by Laws 1988, ch. 70, § 10, relating to petroleum storage cleanup fund surcharge, effective July 1, 1990. For provisions of former section, see 1988 Replacement Pamphlet.

7-13-3.5. 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 [this article], together with all applicable penalties and interest thereon.

B. In lieu of the bond, the taxpayer may elect to file with the department cash or bonds of the United States or New Mexico or of any political subdivision of the state.

C. The total amount of the bond, cash or securities required of any taxpayer shall be fixed by the department and may be increased or reduced by the department at any time, subject to the limitations provided in this section.

D. In fixing the total amount of the bond, cash or securities required of any taxpayer required to post bond, the department shall require an equivalent in total amount to at least two times the amount of the department's estimate of the taxpayer's monthly gasoline tax, determined in such manner as the secretary may deem proper; provided, however, the total amount of bond, cash or securities required of a taxpayer shall never be less than one thousand dollars ($1,000).

E. In the event the department decides that the amount of the existing bond, cash or securities is insufficient to insure payment to this state of the amount of the gasoline tax and any penalties and interest for which the taxpayer is or may at any time become liable, then the taxpayer, upon written demand of the department mailed to the last known address of the taxpayer as shown on the records of the department, shall file an additional bond, cash or securities in the manner, form and amount determined by the department to be necessary to secure at all times the payment by the taxpayer of all taxes, penalties and interest due under the Gasoline Tax Act.

F. A surety on a bond furnished by a taxpayer as required by this section shall be released and discharged from all liability accruing on the bond after the expiration of

ninety days from the date upon which the surety files with the department a written request to be released and discharged; provided, however, that such request shall not operate to release or discharge the surety from any liability already accrued or that shall accrue before the expiration of the ninety-day period, unless a new bond is filed during the ninety-day period, in which case the previous bond may be canceled as of the effective date of the new bond. On receipt of notice of such request, the department promptly shall notify the taxpayer who furnished the bond that the taxpayer, on or before the expiration of the ninety-day period, shall file with the department a new bond with a surety satisfactory to the department in the amount and form required in this section.

G. The taxpayer required to file bond with or provide cash or securities to the department in accordance with this section and who is required by another state law to file another bond with or provide cash or securities to the department may elect to file a combined bond or provide cash or securities applicable to the provisions of both this section and the other law, with the approval of the secretary. The amount of the combined bond, cash or securities shall be determined by the department, and the form of the combined bond shall be approved by the attorney general.

H. Every taxpayer who, for the twenty-four month period immediately preceding July 1, 1994, has not been a delinquent taxpayer pursuant to the Gasoline Tax Act is exempt from the requirement pursuant to this section to file a bond. A taxpayer required to file a bond pursuant to the provisions of this section who, for a twenty-four consecutive month period ending after July 1, 1994, has not been a delinquent taxpayer pursuant to the Gasoline Tax Act may request to be exempt from the requirement to file a bond beginning with the first day of the first month following the end of the twenty-four month period. If a taxpayer exempted pursuant to this subsection subsequently becomes a delinquent taxpayer under the Gasoline Tax Act, the department may terminate the exemption and require the filing of a bond in accordance with this section. If the department terminates the exemption, the termination shall not be effective any earlier than ten days after the date the department notifies the taxpayer in writing of the termination.

History: Laws 1997, ch. 192, § 3.

ANNOTATIONS

Cross references. - For references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

Effective dates. - Laws 1997, ch. 192, § 16 makes the act effective on June 1, 1997.

Emergency clauses. - Laws 1997, ch. 192, § 17 makes the act effective immediately. Approved April 10, 1997.

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 any agency or instrumentality thereof for the exclusive use of the United States or any 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 any political subdivision, agency or instrumentality of that Indian nation, tribe or pueblo for the exclusive use of the Indian nation, tribe or pueblo or any 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 any 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 [this article], but if the fraction exceeds one, it shall be one for purposes of determining the deduction; and

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.

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.

ANNOTATIONS

Repeals and reenactments. - Laws 1991, ch. 9, § 32 repeals 7-13-4 NMSA 1978, as amended by Laws 1991, ch. 9, § 31 and enacts the above section, effective July 1, 1992.

The 1997 amendment, effective June 1, 1997, rewrote Subsection A, added the second sentence of Subsection B, and added Subsection C.

The 1998 amendment, deleted "that" following "provided" in the introductory language and added Subsection D, making minor punctuation and stylistic changes. Laws 1998, ch. 44, contains no effective date provision, but, pursuant to N.M. Const. art. IV, § 23, iseffective May 20, 1998, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

The 1999 amendment, effective July 1, 1999, added Subsections E and F and made a related stylistic change.

Emergency clauses. - Laws 1997, ch. 192, § 17 makes the act effective immediately. Approved April 10, 1997.

Preemption by Self-Determination Act. - To the extent that the Gasoline Tax Act imposes a tax on Indian entities, where that tax would not be imposed if the gasoline were sold to a federal agency providing the same services as the Indian entity, the tax imposed is preempted by the Self-Determination Act, 25 U.S.C.A. §§ 450-458. Ramah Navajo Sch. Bd., Inc. v. New Mexico Taxation & Revenue Dep't, 1999-NMCA-050, 127 N.M. 101, 977 P.2d 1021 (Ct. App. 1999), cert. denied, N.M. , 981 P.2d 1207 (1999).

7-13-4.1 to 7-13-4.3. Repealed.

ANNOTATIONS

Repeals. - Laws 1993, ch. 32, § 13 repeals 7-13-4.1 through 7-13-4.3 NMSA 1978, as enacted by Laws 1980, ch. 105, § 1, and as last amended by Laws 1983, ch. 225, § 2, and Laws 1988, ch. 165, § 1, relating to deductions for ethanol blended fuels, deductions for ethanol blended fuels using New Mexico agricultural products, and findings and declaration of purpose, effective June 18, 1993. For provisions of former sections, see 1990 Replacement Pamphlet.

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.

History: 1953 Comp., § 72-27-5, enacted by Laws 1971, ch. 207, § 5; 1983, ch. 204, § 5; 1993, ch. 32, § 6.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "secretary" for "director" in the first sentence.

7-13-6. Returns by wholesalers; exception.

Wholesalers shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which gasoline is sold in New Mexico. 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.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "department" for "director" in two places.

7-13-7. Registration necessary to engage in business as distributor, wholesaler or retailer.

Each person engaged in the business of selling gasoline in New Mexico as a distributor, wholesaler or retailer shall register as such under the provisions of Section 7-1-12 NMSA 1978.

History: 1953 Comp., § 72-27-7, enacted by Laws 1971, ch. 207, § 7; 1983, ch. 204, § 7.

7-13-8. Misdemeanor for anyone other than producer, refiner or pipeline company to transport or store drip gasoline; misdemeanor to use drip gasoline in vehicle operated on highways of this state; enforcement by state police; magistrate court jurisdiction.

A. Any person other than a recognized producer, refiner or pipeline company who transports or stores drip gasoline in New Mexico without having in his possession an instrument in writing issued and signed by a recognized seller of gasoline stating the names and addresses of the seller and purchaser, the date of sale and the amount sold and price paid therefor shall, upon conviction thereof, be fined not less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000) or confined in the county jail for a period of not longer than six months, or both, together with costs of prosecution.

B. Whoever uses drip gasoline in a motor vehicle operated on the highways of this state shall, upon conviction thereof, be fined not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) or confined in the county jail for a period of not longer than six months, or both, together with costs of prosecution.

C. The New Mexico state police shall have the responsibility of enforcing the provisions of this section.

D. Jurisdiction over actions brought under this section is granted to magistrate courts.

History: 1953 Comp., § 72-27-8, enacted by Laws 1971, ch. 207, § 8; 1974, ch. 14, § 1.

7-13-9. Repealed.

ANNOTATIONS

Repeals. - Laws 1983, ch. 211, § 42, repeals 7-13-9 NMSA 1978, relating to the distribution of tax revenues, effective July 1, 1983.

7-13-10. Validation of pledges.

All prior pledges of any amounts distributed to municipalities and counties pursuant to Section 64-26-19 NMSA 1953 (being Laws 1967, Chapter 170, Section 8 repealed by Laws 1971, Chapter 207, Section 16) which heretofore have been made to the payment of bonds of municipalities and counties pursuant to Sections 3-31-1, 3-33-24, 3-34-1 through 3-34-4 or 3-39-12 NMSA 1978 or any other statute, and all action of the governing bodies of such municipalities and counties preliminary to and in the authorization of such pledges are validated, ratified, approved and confirmed.

History: 1953 Comp., § 72-27-9.1, enacted by Laws 1977, ch. 342, § 5; 1983, ch. 204, § 8.

7-13-11. Claim for refund or credit of gasoline tax paid on gasoline destroyed by fire, accident or acts of God before retail sale.

Upon the submission of proof satisfactory to 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.

History: 1953 Comp., § 72-27-10, enacted by Laws 1971, ch. 207, § 10; 1983, ch. 204, § 9; 1993, ch. 32, § 8.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "to the department" and "department" for "to him" and "director", respectively.

7-13-12. Manifest or bill of lading required when transporting gasoline.

Every person transporting gasoline from a refinery or pipeline terminal in this state, importing gasoline into this state or exporting gasoline from this state, other than by pipeline or in the fuel supply tanks of motor vehicles, shall carry a manifest or bill of lading in form and content as prescribed by or acceptable to the department. The manifest or bill of lading shall be signed by the consignor and by every person accepting the gasoline or any part of it, with a notation as to the amount accepted. If a manifest or bill of lading is not required to be carried by the terms of this section, any person transporting gasoline without such a manifest or bill of lading shall, upon demand, furnish proof acceptable to the department that the gasoline so transported was legally acquired by a registered distributor who assumed liability for payment of the tax imposed by the Gasoline Tax Act [this article].

History: 1953 Comp., § 72-27-11, enacted by Laws 1971, ch. 207, § 11; 1983, ch. 204, § 10; 1993, ch. 32, § 9.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "department" for "director" in the first and last sentences and "shall" for "must" in the last sentence.

7-13-13 to 7-13-16. Repealed.

ANNOTATIONS

Repeals. - Laws 1998, ch. 44, § 6 repeals 7-13-13 to 7-13-16 NMSA 1978, as amended by Laws 1993, ch. 32, §§ 10-12, relating to permit to purchase dyed gasoline or apply for refund not used in motor boats or motor vehicles, claim of refund of gasoline tax, and gasoline wholesalers and distributors, effective July 1, 1998. For former provisions, see 1995 Replacement pamphlet.

Laws 1983, ch. 211, § 42, repeals 7-13-16 NMSA 1978, relating to the refund gasoline suspense fund, effective July 1, 1983.

7-13-17. Permit to purchase undyed gasoline for certain off-road use and to claim refund of tax.

A. Any person using gasoline in the operation of a clothes cleaning establishment, in stoves or other appliances burning gasoline, or operators of aircraft using aviation gasoline exclusively in the operation of aircraft, upon proper showing of the permit provided for in this section, may purchase gasoline to which dye has not been added and may claim a refund thereon under the provisions of this section.

B. Upon submission of proof satisfactory to the department that the requirements of this subsection have been met, the department shall allow a claim for refund of gasoline tax paid on gasoline purchased and used in the manner described in Subsection A of this section by holders of permits issued under this section. The individual purchases of gasoline, other than that used for aviation fuel, must have been made in quantities of fifty gallons or more. Purchasers of aviation fuel may accumulate invoices to reach the fifty gallon minimum. No claim for refund may be presented or allowed on less than one hundred gallons so purchased. The secretary may prescribe by regulation or instruction the documents necessary to support a claim for refund made pursuant to the provisions of this subsection.

C. The department shall create permits, in form and content as the secretary may prescribe, that will allow persons to purchase gasoline to which dye has not been added for the uses specified in Subsection A of this section. The secretary shall prescribe the method by which a person may apply for a permit.

D. The secretary, upon notice and after hearing, may suspend for a period of up to one year or revoke the gasoline tax refund permit of any person who makes any false statement on an application for a permit or on a claim for refund made pursuant to the provisions of this section, who uses the gasoline in a motor boat or in a vehicle registered to operate on the highways of this state or who violates any other provision of the Gasoline Tax Act [this article].

History: Laws 1998, ch. 44, § 2.

ANNOTATIONS

Effective dates. - Laws 1998, ch. 44, § 7 makes the act effective on July 1, 1998.

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.

ANNOTATIONS

Effective dates. - Laws 1998, ch. 44, § 7 makes the act effective July 1, 1998.

ARTICLE 13A
PETROLEUM PRODUCTS LOADING FEE

7-13A-1. Short title.

Chapter 7, Article 13A NMSA 1978 may be cited as the "Petroleum Products Loading Fee Act".

History: 1978 Comp., § 7-13A-1, enacted by Laws 1990, ch. 124, § 14.

ANNOTATIONS

Cross references. - For the Natural Gas and Crude Oil Production Incentive Act, see Chapter 7, Article 29B NMSA 1978.

7-13A-2. Definitions.

As used in the Petroleum Products Loading Fee Act [this article]:

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

B. "distributor" means any person registered or required to be registered as a rack operator or distributor for purposes of the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978] and any person registered or required to be registered as a rack operator or special fuel supplier for purposes of the Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978];

C. "gallon" means the quantity of liquid necessary to fill a standard United States gallon liquid measure, which is approximately 3.785 liters, or that same quantity adjusted to a temperature of sixty degrees fahrenheit at the election of any distributor, but a distributor shall report on the same basis for a period of at least one year;

D. "load" means eight thousand gallons of petroleum product;

E. "loading" means the act of placing or causing to be placed any petroleum product that is produced, refined, manufactured, blended or compounded at a refinery in this state or stored at a pipeline terminal in this state into tank cars, tank trucks, tank wagons or other types of transportation equipment or into any tank or other container from which sales or deliveries not involving transportation are made;

F. "person" means an individual or any other legal entity, including any gas, water or electric utility owned or operated by a county, municipality or other political subdivision of the state. "Person" also means, to the extent permitted by law, any federal, state or other government or any department, agency or instrumentality of the state, county, municipality or any political subdivision thereof;

G. "petroleum product" means gasoline as defined in the Gasoline Tax Act and special fuel as defined in the Special Fuels Supplier Tax Act; and

H. "secretary" means, unless the context indicates another meaning, the secretary of taxation and revenue or the secretary's delegate; and

I. "unobligated balance of the corrective action fund" means corrective action fund equity less all known or anticipated liabilities against the fund.

History: 1978 Comp., § 7-13A-2, enacted by Laws 1990, ch. 124, § 15; 1995, ch. 16, § 13; 1997, ch. 192, § 4.

ANNOTATIONS

The 1995 amendment, effective January 1, 1996, inserted "which is approximately 3.785 liters" in Subsection C; rewrote Subsection E which read "'highway' means every way or place, including toll roads, generally open to or intended to be used for public travel by motor vehicles, regardless of whether it is temporarily closed"; rewrote Subsection F which read "'motor vehicle' means any self-propelled vehicle suitable for operation on highways"; rewrote Subsection G; and, in Subsection K, added Paragraph (2) and redesignated former Paragraphs (2) and (3) as Paragraphs (3) and (4).

The 1997 amendment, effective June 1, 1997, rewrote this section to the extent that a detailed comparison is impracticable.

Emergency clauses. - Laws 1997, ch. 192, § 17 makes the act effective immediately. Approved April 10, 1997.

7-13A-3. Imposition and rate of fee; denomination as "petroleum products loading fee".

A. For the privilege of loading gasoline or special fuel from a rack at a refinery or pipeline terminal in this state into a cargo tank, there is imposed a fee on the distributor at a rate provided in Subsection C of this section on each gallon of gasoline or special fuel loaded in New Mexico on which the petroleum products loading fee has not been previously paid.

B. For the privilege of importing gasoline or special fuel into this state for resale or consumption in this state there is imposed a fee determined as provided in Subsection C of this section on each load of gasoline or special fuel imported into New Mexico for resale or consumption on which the petroleum products loading fee has not been previously paid. For the purposes of this section, "load" means eight thousand gallons of gasoline or special fuel. To determine how many loads a person is to report under the provisions of this section, the person shall divide by eight thousand the total gallons of gasoline reported for the purposes of Section 7-13-3 NMSA 1978 as adjusted under the provisions of Section 7-13-4 NMSA 1978 and the total gallons of special fuels received in New Mexico less any gallons exempted under Section 7-13A-4 NMSA 1978. Loads shall be calculated to the nearest one-hundredth of a load.

C. The fee imposed by this section is and may be referred to as the "petroleum products loading fee" and shall be one hundred fifty dollars ($150) per load or whichever of the following applies:

(1) in the event the secretary of environment certifies that the unobligated balance of the corrective action fund at the end of the prior fiscal year equals or exceeds eighteen million dollars ($18,000,000) the fee shall be set at forty dollars ($40.00) per load;

(2) in the event the secretary of environment certifies that the unobligated balance of the corrective action fund at the end of the prior fiscal year exceeds twelve million dollars ($12,000,000) but is less than eighteen million dollars ($18,000,000) the fee shall be set at eighty dollars ($80.00) per load;

(3) in the event the secretary of environment certifies that the unobligated balance of the corrective action fund at the end of the prior fiscal year exceeds six million dollars ($6,000,000) but is less than twelve million dollars ($12,000,000) the fee shall be set at one hundred twenty dollars ($120) per load; and

(4) in the event the secretary of environment certifies that the unobligated balance of the corrective action fund at the end of the prior fiscal year is less than six million dollars ($6,000,000) the fee shall be set at one hundred fifty dollars ($150) per load.

D. The amount of the petroleum products loading fee set pursuant to Paragraph (1), (2), (3) or (4) of Subsection C of this section shall be imposed on the first day of the month following expiration of ninety days after the end of the fiscal year for which the certification was made.

E. As used in this section, "unobligated balance of the corrective action fund" means corrective action fund equity less all known or anticipated liabilities against the fund."

History: 1978 Comp., § 7-13A-3, enacted by Laws 1990, ch. 124, § 16; 1996, ch. 82, § 2.

ANNOTATIONS

Cross references. - For distribution of petroleum products loading fee, see 7-1-6.25 NMSA 1978.

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

The 1996 amendment, effective July 1, 1996, rewrote Subsection C and added Subsections D and E.

7-13A-4. Exemptions.

A. Petroleum products that are either loaded into cargo tanks in New Mexico and exported for resale and consumption outside of New Mexico or are imported into New Mexico and subsequently exported for resale and consumption outside of New Mexico are exempt from the imposition of the petroleum products loading fee.

B. Petroleum products sold to the United States or any agency or instrumentality thereof for the exclusive use of the United States or any agency or instrumentality thereof are exempt from the imposition of the petroleum products loading fee.

History: 1978 Comp., § 7-13A-4, enacted by Laws 1991, ch. 9, § 34.

ANNOTATIONS

Repeals and reenactments. - Laws 1991, ch. 9, § 34 repeals 7-13A-4 NMSA 1978, as amended by Laws 1991, ch. 9, § 33 and enacts the above section, effective July 1, 1992.

7-13A-5. Deduction; gasoline or special fuels returned.

Refunds and allowances made to buyers for gasoline or special fuels returned to the refiner, pipeline terminal operator or distributor or amounts of gasoline or special fuels, the payment for which has not been collected and has been determined to be uncollectible pursuant to provisions of regulations issued by the secretary may be deducted from gallons used to determine loads for the purposes of calculating the petroleum products loading fee. If such a payment is subsequently collected, the gallons represented shall be included in determining loads. The deduction under the provisions of this section shall not be allowed if the petroleum products loading fee has not been paid previously on the petroleum products that were returned to the seller or the sale of which created an uncollectible debt.

History: 1978 Comp., § 7-13A-5, enacted by Laws 1990, ch. 124, § 18.

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.

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 [this article]:

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

B. "manufactured home" means a structure that exceeds either a width of eight feet or a length of thirty-two feet, when equipped for the road;

C. "motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from batteries or from overhead trolley wires but not operated upon rails;

D. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture or syndicate; "person" also means, to the extent permitted by law, any federal, state or other governmental unit or subdivision or an agency, department or instrumentality thereof;

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

F. "tax" means the motor vehicle excise tax imposed under the Motor Vehicle Excise Tax Act; and

G. "vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, including any frame, chassis or body of any vehicle or motor vehicle, except devices moved by human power or used exclusively upon stationary rails or tracks.

History: 1978 Comp., § 7-14-2, enacted by Laws 1988, ch. 73, § 12.

7-14-3. Imposition of motor vehicle excise tax.

An excise tax, subject to the credit provided by Section 7-14-7.l, is imposed upon the sale in this state of every vehicle, except as otherwise provided in Section 7-14-7.1 NMSA 1978 and manufactured homes, required under the Motor Vehicle Code [Articles 1 to 8, Chapter 66 NMSA 1978] to be registered in this state. To prevent evasion of the excise tax imposed by the Motor Vehicle Excise Tax Act [this article] and the duty to collect it, it is presumed that the issuance of every original and subsequent certificate of title for vehicles of a type required to be registered under the provisions of the Motor Vehicle Code constitutes a sale for tax purposes, unless specifically exempted by the Motor Vehicle Excise Tax Act or unless there is shown proof satisfactory to the department that the vehicle for which the certificate of title is sought came into the

possession of the applicant as a voluntary transfer without consideration or as a transfer by operation of law. The excise tax imposed by this section shall be known as the "motor vehicle excise tax".

History: 1978 Comp., § 7-14-3, enacted by Laws 1988, ch. 73, § 13; 1991, ch. 197, § 3.

ANNOTATIONS

The 1991 amendment, effective July 1, 1991, inserted "subject to the credit provided by Section 7-14-7.1" and "as otherwise provided in Section 7-14-7.1 NMSA 1978" in the first sentence.

7-14-4. Determination of amount of motor vehicle excise tax.

The rate of the motor vehicle excise tax is three percent and is applied to the price paid for the vehicle. If the price paid does not represent the value of the vehicle in the condition that existed at the time it was acquired, the tax rate shall be applied to the reasonable value of the vehicle in such condition at such time. However, allowances granted for vehicle trade-ins may be deducted from the price paid or the reasonable value of the vehicle purchased.

History: 1978 Comp., § 7-14-4, enacted by Laws 1988, ch. 73, § 14.

7-14-5. Time of payment of tax.

The tax shall be paid to the department by the applicant for the certificate of title at the time of application for issuance of the certificate.

History: 1978 Comp., § 7-14-5, enacted by Laws 1988, ch. 73, § 15.

7-14-6. Exemptions from tax.

A. Persons who acquire a vehicle out of state thirty or more days before establishing a domicile in this state are exempt from the tax if the vehicle was acquired for personal use.

B. Persons applying for a certificate of title for a vehicle registered in another state are exempt from the tax if they have previously registered and titled the vehicle in New Mexico and have owned the vehicle continuously since that time.

C. Certificates of title for all vehicles owned by this state or any political subdivision are exempt from the tax.

D. A vehicle subject to registration under Section 66-3-16 NMSA 1978 is exempt from the tax.

E. Persons who acquire vehicles 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.

ANNOTATIONS

The 1990 amendment, effective June 1, 1990, deleted former Subsection A relating to the exemption for the person on active duty in the military service or as officers of the public health service and redesignated former Subsections B to E as present Subsections A to D.

The 1994 amendment, effective May 18, 1994, added Subsection E.

7-14-7. Credit against tax.

If a vehicle has been acquired through an out-of-state transaction upon which a gross receipts, sales, compensating or similar tax was levied by another state or political subdivision thereof, the amount of the tax paid may be credited against the tax due this state on the same vehicle.

History: 1978 Comp., § 7-14-7, enacted by Laws 1988, ch. 73, § 17.

7-14-7.1. Credit; vehicles used for short-term leasing; requirements; reports.

A. Upon application of the owner, the secretary shall suspend payment of the tax and issue a certificate of title without payment of the tax for any vehicle the leasing of which is subject to the Leased Vehicle Gross Receipts Tax Act [Chapter 7, Article 14A NMSA 1978], if:

(1) the vehicle is acquired by the owner on or after July 1, 1991;

(2) the vehicle is required to be registered in this state;

(3) the owner presents proof satisfactory to the secretary that the owner is registered with the department to pay the leased vehicle gross receipts tax; and

(4) the owner declares that the vehicle for which issuance of a certificate of title is being applied will be part of a vehicle fleet of at least five vehicles, will be used primarily as a short-term rental vehicle and that each period of rental or lease will not exceed six months.

B. If an owner has paid the motor vehicle excise tax after July 1, 1991 with respect to a vehicle that qualifies for suspension of the motor vehicle excise tax pursuant to Subsection A of this section, the owner may apply for a refund of the motor vehicle excise tax paid, but the application for refund must be made within one year of the date certificate of title was issued to the owner for the vehicle. If application is made after that time, the claim for refund is not timely and the motor vehicle excise tax paid shall not be refunded.

C. On or before the twenty-fifth day of the month following the close of the calendar year, the owner shall submit to the department in a form prescribed by the secretary a report indicating the total collections of leased vehicle gross receipts tax collected in lieu of the tax. The report shall also indicate the amount of tax that would have been paid in the state of New Mexico for the preceding calendar year.

D. If the total amount of leased vehicle gross receipts tax is less than the amount of tax that would have been collected, the owner shall pay the difference to the department at the time of filing the report required by Subsection B of this section.

E. Once the total amount of leased vehicle gross receipts tax credited with respect to a vehicle for which payment of the motor vehicle excise tax is suspended pursuant to Subsection A of this section equals or exceeds the amount of motor vehicle excise tax due on that vehicle, or the owner has paid the difference pursuant to Subsection D of this section, the secretary shall cause the records of the department to indicate that the motor vehicle excise tax due with respect to that vehicle is paid in full and that payment is no longer suspended.

History: 1978 Comp., § 7-14-7.1, enacted by Laws 1991, ch. 197, § 4; 1993, ch. 347, § 1; 1994, ch. 104, § 1.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, inserted present Subsection B, redesignated former Subsections B to F as present Subsections C to G, and inserted "the vehicle identification number" near the middle of the second sentence of Subsection C.

The 1994 amendment, effective May 18, 1994, deleted "motor vehicle excise" preceding "tax" twice in Subsection A, deleted former Subsections C, D, E, F and G,

concerning reports of suspended taxes, crediting of suspended taxes against taxes due on the vehicle, adjustment of department records to reflect payments, and payments by vehicle owners of amounts due on the vehicles; and added Subsections C, D and E.

Applicability. - Laws 1994, ch. 104, § 3 makes the provisions of §§ 1 and 2 of the act applicable to vehicle registered on or after January 1, 1994, and to vehicles registered during 1993 and for which the motor vehicle excise tax was suspended during the last six months of the year.

7-14-8. Imposition of penalty for failure to make timely application.

A penalty of fifty percent of the tax is imposed on any person who is:

A. domiciled in this state and accepts transfer in this state, but fails to apply for a certificate of title within ninety days of the date on which ownership of the vehicle was transferred to the person; or

B. domiciled in this state but accepts transfer outside this state and fails to apply for a certificate of title within ninety days of the date on which the vehicle is brought into this state.

History: 1978 Comp., § 7-14-8, enacted by Laws 1988, ch. 73, § 18.

7-14-9. Refunds; procedures.

A. If any person believes that the person has made payment of any motor vehicle excise tax in excess of that for which the person was liable or has been denied any credit against motor vehicle excise tax, that person may claim a refund by directing to the secretary a claim for refund in accordance with the provisions of Section 7-1-26 NMSA 1978.

B. The department may authorize refunds of the motor vehicle excise tax in accordance with the provisions of Section 7-1-29 NMSA 1978.

History: 1978 Comp., § 7-14-9, enacted by Laws 1988, ch. 73, § 19; 1993, ch. 347, § 2.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, deleted "protests" following "Refunds" in the catchline; deleted former Subsection B, pertaining to the procedure for protests of denial of a claim for refund; redesignated former Subsection C as present Subsection B; and made minor stylistic changes in Subsection A.

7-14-9.1. Protests.

A. Any person upon whom a penalty is imposed by the Motor Vehicle Excise Tax Act [this article] may protest the imposition of the penalty in accordance with the provisions of Sections 7-1-24 and 7-1-25 NMSA 1978.

B. Any person whose claim for refund of motor vehicle excise tax is denied in whole or in part may protest the denial in accordance with the provisions of Sections 7-1-24 and 7-1-25 NMSA 1978.

History: Laws 1993, ch. 347, § 4.

7-14-9.2. Penalties for failure to submit report or to pay; interest.

A. Any person required to submit the report required by Subsection C of Section 7-14-7.1 NMSA 1978 who does not file the report in the manner and by the date required shall pay a penalty in an amount equal to five percent of the total amount of tax suspended pursuant to Subsection A of Section 7-14-7.1 NMSA 1978 for vehicles required to be included in the report.

B. Any person required to pay any amount pursuant to Subsection D of Section 7-14-7.1 NMSA 1978 who fails to pay the amount by the date required is liable for penalty in an amount equal to the greater of five dollars ($5.00) or two percent per month or any fraction of a month from the date the amount was due multiplied by the amount of tax due but not paid, not to exceed a maximum of ten percent of the tax due but not paid.

C. If any person required to pay any amount pursuant to Subsection D of Section 7-14-7.1 NMSA 1978 fails to pay the amount by the date required, interest shall be paid to the state on such amount in accordance with the provisions of Section 7-1-67 NMSA 1978.

History: Laws 1993, ch. 347, § 5; 1994, ch. 104, § 2.

ANNOTATIONS

The 1994 amendment, effective May 18, 1994, deleted "motor vehicle excise" preceding "tax" in Subsection A; in Subsection B, deleted "of motor vehicle tax" following "any amount," substituted "D" for "F or G," substituted "amount" for "tax" preceding "was due," and deleted "motor vehicle excise" preceding the first occurrence of "tax due"; and in Subsection C, substituted "pursuant to Subsection D" for "of motor vehicle excise tax pursuant to Subsection F or G."

Applicability. - Laws 1994, ch. 104, § 3 makes the provisions of §§ 1 and 2 of the act applicable to vehicle registered on or after January 1, 1994, and to vehicles registered during 1993 and for which the motor vehicle excise tax was suspended during the last six months of the year.

7-14-10. Distribution of proceeds.

The receipts from the tax and any associated interest and penalties shall be deposited in the "motor vehicle suspense fund", hereby created in the state treasury. As of the end of each month, the net receipts attributable to the tax and associated penalties and interest shall be distributed to the general fund.

History: 1978 Comp., § 7-14-10, enacted by Laws 1988, ch. 73, § 20; 1991, ch. 9, § 35; 1993, ch. 347, § 3; 1994, ch. 5, § 25.

ANNOTATIONS

The 1991 amendment, effective July 1, 1991, deleted former Subsection A which read "five-twelfths to the state road fund"; redesignated former Subsections B and C as Subsections A and B; substituted "three-fourths" for "one-third" in Subsection A; and substituted "one-fourth" for "the remainder" in Subsection B.

The 1993 amendment, effective July 1, 1993, substituted "governments" for "government's" in Subsection B.

The 1994 amendment, effective August 1, 1994, deleted former Subsections A and B, relating to distribution of receipts, deleted "motor vehicle excise" preceding "tax" in both sentences, and substituted "to the general fund" for "as follows" in the second sentence.

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 [this article] and to impose, collect and enforce the motor vehicle excise tax.

B. The department has the authority to interpret the provisions of the Motor Vehicle Excise Tax Act and to promulgate regulations with respect to that act. The extent to which regulations will have retroactive effect shall be stated and, if no such statement is made, they will be applied prospectively only.

History: 1978 Comp., § 7-14-11, enacted by Laws 1988, ch. 73, § 21.

ARTICLE 14A
LEASED VEHICLE GROSS RECEIPTS TAX

7-14A-1. Short title.

Chapter 7, Article 14A NMSA 1978 may be cited as the "Leased Vehicle Gross Receipts Tax Act".

History: Laws 1991, ch. 197, § 5; 1993, ch. 30, § 20.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "Chapter 7, Article 14A NMSA 1978" for "Sections 5 through 15 of this Act".

7-14A-2. Definitions.

As used in the Leased Vehicle Gross Receipts Tax Act [this article]:

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

B. "engaging in business" means carrying on or causing to be carried on the leasing of vehicles with the purpose of direct or indirect benefit;

C. "gross receipts" means the total amount of money or the value of other consideration received from leasing vehicles used in New Mexico, but excludes cash discounts allowed and taken, leased vehicle gross receipts tax payable on transactions for the reporting period, gross receipts tax payable pursuant to the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] on transactions for the reporting period and taxes imposed pursuant to the provisions of any local option gross receipts tax, as that term is defined in the Tax Administration Act [Chapter 7, Article 1 NMSA 1978], that is payable on transactions for the reporting period and any type of time-price differential. Also excluded from "gross receipts" are any gross receipts or sales taxes imposed by an Indian nation, tribe or pueblo, provided that the tax is approved, if approval is required by federal law or regulation, by the secretary of the interior of the United States, and provided further that the gross receipts or sales tax imposed by the Indian nation, tribe or pueblo provides a reciprocal exclusion for gross receipts, sales or gross receipts-based excise taxes imposed by the state or its political subdivisions. In an exchange in which the money or other consideration received does not represent the value of the lease of the vehicle, "gross receipts" means the reasonable value of the lease of the vehicle. When the leasing of vehicles is made under a leasing contract, the seller or lessor may elect to treat all receipts under those contracts as gross receipts as and when the payments are actually received. "Gross receipts" also includes amounts paid by members of any cooperative association or similar organization for the lease of vehicles by that organization;

D. "leasing" means any arrangement whereby, for a consideration, a vehicle without a driver furnished by the lessor or owner is employed for or by any person other than the owner of the vehicle for a period of not more than six months;

E. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity; and

F. "vehicle" means a passenger automobile designed to accommodate six or fewer adlt [adult] human beings that is part of a fleet of five or more passenger automobiles owned by the same person.

History: Laws 1991, ch. 197, § 6; 1995, ch. 70, § 17.

ANNOTATIONS

Bracketed material. - The bracketed word "adult" in Subsection F was inserted by the compiler to correct an apparent misspelling. It was not enacted by the legislature and is not a part of the law.

The 1995 amendment, effective July 1, 1995, deleted "or 'division'" following "'department'" in Subsection A, and in Subsection C, substituted "any local option gross receipts tax, as that term is defined in the Tax Administration Act" for "the County Fire Protection Excise Tax Act or any municipality or county sales or gross receipts tax" in the first sentence, and inserted "nation" in two places in the second sentence.

7-14A-3. Imposition and rate of tax; denomination as "leased vehicle gross receipts tax".

A. For the privilege of engaging in business, an excise tax equal to five percent of gross receipts is imposed on any person engaging in business in New Mexico.

B. The tax imposed by this section shall be referred to as the "leased vehicle gross receipts tax".

History: Laws 1991, ch. 197, § 7.

7-14A-3.1. Imposition and rate; leased vehicle surcharge.

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 each vehicle is leased by the person. The surcharge may be referred to as the "leased vehicle surcharge".

History: Laws 1993, ch. 359, § 1.

7-14A-4. Presumption of taxability.

To prevent evasion of the leased vehicle gross receipts tax and the leased vehicle surcharge and to aid in their administration, it is presumed that all receipts of a person engaging in business are subject to the leased vehicle gross receipts tax and that all vehicles leased by that person are subject to the leased vehicle surcharge.

History: Laws 1991, ch. 197, § 8; 1993, ch. 359, § 2.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, inserted "and the leased vehicle surcharge", added the language beginning "and that all vehicles" at the end of the section, and made a minor stylistic change.

7-14A-5. Separately stating the leased vehicle gross receipts tax.

When the leased vehicle gross receipts tax is stated separately on the books of the lessor and if the total amount of tax that is stated separately on transactions reportable within one reporting period is in excess of the amount of leased vehicle gross receipts tax otherwise payable on the transactions on which the tax was separately stated, the excess amount of tax stated on the transactions within that reporting period shall be included in gross receipts.

History: Laws 1991, ch. 197, § 9.

7-14A-6. Date payment due.

The tax and the surcharge imposed by the Leased Vehicle Gross Receipts Tax Act [this article] are to be paid on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

History: Laws 1991, ch. 197, § 10; 1993, ch. 359, § 3.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, inserted "and the surcharge" and made a minor stylistic change.

7-14A-7. Deduction; transactions in interstate commerce.

Receipts from transactions in interstate commerce may be deducted from gross receipts to the extent that the imposition of the leased vehicle gross receipts tax would be unlawful under the United States constitution.

History: Laws 1991, ch. 197, § 11.

7-14A-8. Deduction; trade-in allowance.

Receipts represented by allowances granted for vehicle trade-ins may be deducted from gross receipts.

History: Laws 1991, ch. 197, § 12.

7-14A-9. Exemption; vehicles titled before July 1, 1991.

The receipts from the leasing by the owner of vehicles that were acquired by the owner prior to July 1, 1991 and with respect to which the excise tax pursuant to Section 7-14-3 NMSA 1978 was paid and a certificate of title issued prior to July 1, 1991 are exempt from the tax imposed by Section 7 [7-14A-3 NMSA 1978] of this act.

History: Laws 1991, ch. 197, § 13.

7-14A-10. Distribution of proceeds.

At the end of each month, the net receipts attributable to the leased vehicle gross receipts tax and any associated penalties and interest shall be distributed as follows:

A. one-fourth to the local governments road fund; and

B. three-fourths to the highway infrastructure fund.

History: Laws 1991, ch. 197, § 14; 1999 (1st S.S.), ch. 9, § 1.

ANNOTATIONS

The 1999 amendment, effective July 1, 1999, substituted present Subsections A and B for former Subsections A and B, relating to the manner of distribution of the net receipts.

7-14A-11. Administration.

A. The department shall interpret the provisions of the Leased Vehicle Gross Receipts Tax Act [this article].

B. The department shall administer and enforce the collection of the leased vehicle gross receipts tax and the leased vehicle surcharge, and the Tax Administration Act applies to the administration and enforcement of the tax and the surcharge.

History: Laws 1991, ch. 197, § 15; 1993, ch. 359, § 4.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, inserted "and the leased vehicle surcharge" near the middle and added "and the surcharge" at the end, in Subsection B.

ARTICLE 15
TRIP TAX

7-15-1. Recompiled.

ANNOTATIONS

Recompilations. - Laws 1988, ch. 73, § 24 recompiles 7-15-1 NMSA 1978, relating to computation of the trip tax, as 7-15-3.1 NMSA 1978, effective July 1, 1988.

7-15-1.1. Short title.

Chapter 7, Article 15 NMSA 1978 may be cited as the "Trip Tax Act".

History: 1978 Comp., § 7-15-1.1, enacted by Laws 1988, ch. 73, § 22.

7-15-2. Repealed.

ANNOTATIONS

Repeals. - Laws 1988, ch. 73, § 56A, repeals 7-15-2 NMSA 1978, as enacted by Laws 1943, ch. 125, § 13, relating to exemption from mileage tax of certain vehicles transporting farm products, effective July 1, 1988. For provisions of former section, see 1986 Replacement Pamphlet.

7-15-2.1. Definitions.

As used in the Trip Tax Act [this article]:

A. "combination gross vehicle weight" means the sum total of the gross vehicle weights of all units of a combination;

B. "commercial motor carrier vehicle" means any motor vehicle with a gross weight of twelve thousand pounds or more used or reserved for use in the transportation of persons, property or merchandise for hire, compensation or profit or in the furtherance of a commercial enterprise or any vehicle used or maintained primarily for the transportation of property or merchandise or for drawing other vehicles so used or maintained;

C. "department" means the department of public safety, the secretary of public safety and any employee of that department exercising authority lawfully delegated to that employee by the secretary;

D. "gross vehicle weight" means the weight of a vehicle without load, plus the weight of any load thereon;

E. "motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from batteries or from overhead trolley wires, but not operated upon rails;

F. "registrant" means the person who has registered the vehicle pursuant to the laws of this state or another state;

G. "trip tax" means the use fee imposed under the Trip Tax Act; and

H. "vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, including any frame, chassis or body of any vehicle or motor vehicle, except devices moved by human power or used exclusively upon stationary rails or tracks.

History: 1978 Comp., § 7-15-2.1, enacted by Laws 1988, ch. 73, § 23; 1998 (1st S.S.), ch. 10, § 1.

ANNOTATIONS

The 1998 amendment, effective July 1, 1998, substituted "department of public safety" and "secretary of public safety" for "taxation and revenue department" and "secretary of revenue", respectively, in Subsection C.

Appropriations. - Laws 1998 (1st S.S.), ch. 10, § 12, effective July 1, 1998, appropriates $1,200,000 from the general fund and $2,070,000 from the state road fund to the department of public safety for expenditure in fiscal year 1999 to carry out the provisions of that act. Any unexpended or unencumbered balances remaining at the end of fiscal year 1999 shall revert to the general fund.

7-15-3. Repealed.

ANNOTATIONS

Repeals. - Laws 1988, ch. 73, § 56A repeals 7-15-3 NMSA 1978, as enacted by Laws 1943, ch. 125, § 14, relating to exemption from mileage tax of retail merchants doing business outside of state when transporting farm products to wholesalers or manufacturers, effective July 1, 1988. For provisions of former section, see 1986 Replacement Pamphlet.

7-15-3.1. Trip tax; computation.

A. For the purpose of providing funds for the construction, maintenance, repair and reconstruction of this state's public highways, a use fee, to be known as the "trip tax", is imposed in lieu of registration fees and the weight distance tax on the registrant, owner or operator of any foreign-based commercial motor carrier vehicle 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, five cents ($.05) a mile for mileage to be traveled on the public highways within New Mexico, measured from the point of entering the state to the point of destination or place of leaving the state;

(2) when the gross vehicle weight or combination gross vehicle weight exceeds twenty-six thousand pounds and does not exceed fifty-four thousand pounds, nine cents ($.09) a mile for mileage to be traveled on the public highways within New Mexico, measured from the point of entering the state to the point of destination or place of leaving the state;

(3) when the gross vehicle weight or combination gross vehicle weight exceeds fifty-four thousand pounds and does not exceed seventy-two thousand pounds, eleven cents ($.11) a mile for mileage to be traveled on the public highways within New Mexico, measured from the point of entering the state to the point of destination or place of leaving the state; and

(4) when the gross vehicle weight or combination gross vehicle weight exceeds seventy-two thousand pounds, twelve cents ($.12) a mile for mileage to be traveled on the public highways within New Mexico, measured from the point of entering the state to the point of destination or place of leaving the state.

C. The department, by regulation, 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.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "fuel excise tax" for "fuel tax" and "Section 7-16A-3" for "Section 7-16-3" near the end of Subsection C and made a minor stylistic change.

The 1994 amendment, effective July 1, 1994, substituted "Subsections C and D" for "Subsection C" in the introductory language of Subsection B; and substituted Subsections C and D for former Subsection C, relating to flat fee permits.

Temporary provisions. - Laws 1988, ch. 73, § 57E, effective July 1, 1988, provides that all valid existing orders, rulings, rules and regulations promulgated by the secretary or any other competent official of the taxation and revenue department for the administration and enforcement of the trip tax, the Special Fuels Act and Sections 66-6-27 and 66-6-28 NMSA 1978, as those sections were in effect immediately prior to July 1, 1988, shall remain in full force and effect until repealed, replaced, superseded or amended.

Laws 1988, ch. 73, § 57F, effective July 1, 1988, provides that any protests, claims for refund, court proceedings or other actions ongoing under the provisions of Sections 7-15-1 to 7-15-4 NMSA 1978, the Special Fuels Act or the Motor Vehicle Code with respect to the provisions of Section 66-6-27 and 66-6-28 NMSA 1978 on July 1, 1988, will be finally determined under the provisions of the applicable law in force at the time the tax or fee was due or action was taken.

Am. Jur. 2d, A.L.R. and C.J.S. references. - State taxation of motor carriers as affected by commerce clause, 17 A.L.R.2d 421.

7-15-4. Interest; penalties.

A. If any trip tax is not paid when due, interest shall be paid to the state on such amount from the date on which the trip tax becomes due until it is paid. Interest shall be due to the state at the rate of fifteen percent a year, computed at the rate of one and one-quarter percent per month or any fraction thereof, except that, if the amount of interest

due at the time payment is made is less than one dollar ($1.00), then no interest shall be due. Nothing in this subsection shall be construed to impose interest on interest or interest on penalty.

B. In the case of failure, due to negligence or disregard of rules and regulations, but without intent to defraud, to pay when due any amount of trip tax required to be paid, there shall be added to the amount as penalty two percent per month, or any fraction thereof, from the date on which the trip tax becomes due until the time payment is made, provided that the total penalty shall not exceed ten percent of the amount nor shall it be less than a minimum of five dollars ($5.00).

C. In the case of failure to pay when due any amount of trip tax required to be paid, with intent to defraud the state, there shall be added to the amount fifty percent thereof or a minimum of twenty-five dollars ($25.00), whichever is greater, as penalty.

History: 1978 Comp., § 7-15-4, enacted by Laws 1988, ch. 73, § 25.

ANNOTATIONS

Repeals and reenactments. - Laws 1988, ch. 73, § 25 repeals former 7-15-4 NMSA 1978, as enacted by Laws 1943, ch. 125, § 15, relating to exemption from mileage tax of vehicles of public utilities, corporations, companies, or individuals used in regular course of business, and enacts the above section, effective July 1, 1988. For provisions of former section, see 1986 Replacement Pamphlet.

7-15-5. Distribution of proceeds.

The receipts from permit fees established pursuant to Subsection C of Section 7-15-3.1 NMSA 1978, the trip tax and any associated interest and penalties shall be deposited into the "motor vehicle suspense fund", hereby created in the state treasury. As of the end of each month, the net receipts attributable to the permit fees established pursuant to Subsection C of Section 7-15-3.1 NMSA 1978, trip tax and penalties and interest associated with the trip tax shall be distributed to the state road fund.

History: 1978 Comp., § 7-15-5, enacted by Laws 1988, ch. 73, § 26.

7-15-6. Administration by department; authority of department.

A. The department has the authority and duty to administer the Trip Tax Act [Chapter 7, Article 15 NMSA 1978] and to impose, collect and enforce the trip tax.

B. The department has the authority to interpret the provisions of the Trip Tax Act and to promulgate regulations with respect to the Trip Tax Act. The extent to which regulations will have retroactive effect shall be stated and, if no such statement is made, they will be applied prospectively only.

History: 1978 Comp., § 7-15-6, enacted by Laws 1988, ch. 73, § 27.

ARTICLE 15A
WEIGHT DISTANCE TAX

7-15A-1. Short title.

Chapter 7, Article 15A NMSA 1978 may be cited as the "Weight Distance Tax Act".

History: 1978 Comp., § 7-15A-1, enacted by Laws 1988, ch. 73, § 28.

7-15A-2. Definitions.

As used in the Weight Distance Tax Act [this article]:

A. "bus" means every motor vehicle designed and used for the transportation of persons and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation;

B. "declared gross weight" means the declared gross weight for purposes of the Motor Transportation Act;

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

D. "gross vehicle weight" means the weight of a vehicle without load, plus the weight of any load thereon;

E. "motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from batteries or from overhead trolley wires but not operated upon rails;

F. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other association; "person" also means, to the extent permitted by law, any federal, state or other governmental unit or subdivision or an agency, department or instrumentality thereof;

G. "registrant" means any person who has registered the vehicle pursuant to the laws of this state or another state;

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

I. "tax" means the weight distance tax imposed by the Weight Distance Tax Act; and

J. "vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a highway, including any frame, chassis or body of any vehicle or motor vehicle, except devices moved by human power or used exclusively upon stationary rails or tracks.

History: 1978 Comp., § 7-15A-2, enacted by Laws 1988, ch. 73, § 29.

7-15A-3. Imposition of weight distance tax.

A tax is imposed upon the registrants, owners and operators for the use of the highways of this state by all motor vehicles having a declared gross weight or gross vehicle weight in excess of twenty-six thousand pounds and registered in this state, registered under proportional registration or qualified under the provisions of Sections 65-1-32 and 65-1-33 NMSA 1978. This tax shall be known as the "weight distance tax".

History: 1978 Comp., § 7-15A-3, enacted by Laws 1988, ch. 73, § 30.

7-15A-4. Responsibility for payment of tax.

The tax shall be paid by the registrant, owner or operator of a motor vehicle registered in this state to which the tax applies.

History: 1978 Comp., § 7-15A-4, enacted by Laws 1988, ch. 73, § 31.

7-15A-5. Exemption from tax.

Exempted from imposition of the weight distance tax is the use of the highways of this state by:

A. school buses;

B. buses used exclusively for the transportation of agricultural laborers; and

C. buses operated by religious or nonprofit charitable organizations.

History: 1978 Comp., § 7-15A-5, enacted by Laws 1988, ch. 73, § 32.

7-15A-6. Tax rate for motor vehicles other than buses; reduction of rate for one-way hauls.

A. For on-highway operations of motor vehicles other than buses, the weight distance tax shall be computed in accordance with the following schedule:

Declared Gross Weight (Gross Vehicle Weight)	Tax Rate (Mills per Mile)
26,000 to 28,000	7.97
28,001 to 30,000	8.60
30,001 to 32,000	9.24
32,001 to 34,000	9.87
34,001 to 36,000	10.51
36,001 to 38,000	11.14
38,001 to 40,000	12.11
40,001 to 42,000	13.06
42,001 to 44,000	14.01
44,001 to 46,000	14.97
46,001 to 48,000	15.93
48,001 to 50,000	16.88
50,001 to 52,000	17.84
52,001 to 54,000	18.79
54,001 to 56,000	19.75
56,001 to 58,000	20.71
58,001 to 60,000	21.66
60,001 to 62,000	22.61
62,001 to 64,000	23.58
64,001 to 66,000	24.53
66,001 to 68,000	25.48
68,001 to	

70,000	26.43
70,001 to 72,000	27.40
72,001 to 74,000	28.41
74,001 to 76,000	29.46
76,001 to 78,000	30.55
78,001 and over	31.68.

B. All motor vehicles for which the tax is computed under Subsection A of this section shall pay a tax which is two-thirds of the tax computed under Subsection A of this section if:

(1) the motor vehicle is customarily used for one-way haul;

(2) forty-five percent or more of the mileage traveled by the motor vehicle for a registration year is mileage which is traveled empty of all load; and

(3) the registrant, owner or operator of the vehicle attempting to qualify under this subsection has made a sworn application to the department to be classified under this subsection for a registration year, has given whatever information is required by the department to determine the eligibility of the vehicle to be classified under this subsection and the vehicle has been so classified.

History: 1978 Comp., § 7-15A-6, enacted by Laws 1988, ch. 73, § 33.

7-15A-7. Tax rate for buses.

For all buses, the weight distance tax shall be computed in accordance with the following schedule:

Declared Gross Weight (Gross Vehicle Weight)	Tax Rate (Mills per Mile)
26,000 to 28,000	7.97
28,001 to 30,000	8.60
30,001 to 32,000	9.24

32,001 to 34,000	9.87
34,001 to 36,000	10.52
36,001 to 38,000	11.15
38,001 to 40,000	12.12
40,001 to 42,000	13.07
42,001 to 44,000	14.02
44,001 to 46,000	14.97
46,001 to 48,000	15.94
48,001 to 50,000	16.89
50,001 to 52,000	17.85
52,001 to 54,000	18.80
54,001 and over	19.76.

History: 1978 Comp., § 7-15A-7, enacted by Laws 1988, ch. 73, § 34.

7-15A-8. Mileage and weights to be used for computing tax.

A. The total number of miles traveled on New Mexico highways during the tax payment period by the motor vehicle subject to the tax shall be used in computing the tax.

B. Registrants, owners and operators of all motor vehicles to which the tax applies shall report to the department, in the manner required by the department, the total mileage traveled in New Mexico and the total mileage traveled in all states during the tax payment period applicable to that registrant, owner or operator.

C. All motor vehicles subject to the tax shall be registered in accordance with law at the highest gross vehicle weight or combined gross vehicle weight at which the vehicle will be operated for that registration year in this state.

D. It is unlawful and a violation of the Weight Distance Tax Act [this article] for any motor vehicle to be operated on New Mexico highways at a gross vehicle weight higher than that at which the registrant declared for registration purposes pursuant to either the Motor Vehicle Code [Articles 1 to 8 of Chapter 66 NMSA 1978, except 66-7-102.1 NMSA 1978] or the Motor Transportation Act [Chapter 65, Article 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.

ANNOTATIONS

Motor Transportation Act. - See 65-1-1 NMSA 1978 and notes thereto.

7-15A-9. Weight distance tax; payment to department; record-keeping requirements.

A. Except as provided in Subsection B of this section, the weight distance tax shall be paid to the department by April 30 for the first quarterly period of January 1 through March 31, by July 31 for the second quarterly period of April 1 through June 30, by October 31 for the third quarterly period of July 1 through September 30 and by January 31 for the fourth quarterly period of October 1 through December 31 of each year.

B. Any registrant, owner or operator not liable for the special fuel tax whose total weight distance tax for the previous calendar year was less than five hundred dollars ($500) may elect to pay the tax on an annual basis. Any registrant, owner or operator liable for the special fuel tax whose total combined liability for the weight distance tax and the special fuel tax for the previous calendar year was less than five hundred dollars ($500) may elect to pay the weight distance tax on an annual basis. Election shall be made by filing a written statement of such election with the department on or before April 1 of the first year in which the election is made. Upon filing the written election with the department, the total weight distance tax due for the current calendar year shall be paid to the department by January 31 of the following year. If, however, any registrant, owner or operator is or becomes delinquent in excess of thirty days in any payment of the weight distance tax, that person shall make all future payments according to the schedule of Subsection A of this section. If any person who has made an election under this subsection has a liability for total weight distance tax or total combined weight distance tax and special fuel tax, as applicable, of five hundred dollars ($500) or more for any calendar year, that person shall make the succeeding year's payments pursuant to Subsection A of this section.

C. Any registrant, owner or operator not liable for the special fuel tax who has not previously been liable for the weight distance tax and whose liability for the weight distance tax is expected to be less than five hundred dollars ($500) annually may, with the approval of the secretary, pay the weight distance tax as provided in Subsection B of this section. Any registrant, owner or operator liable for the special fuel tax who has not previously been liable for the weight distance tax and whose total combined liability for the special fuel tax and weight distance tax is expected to be less than five hundred dollars ($500) annually may, with the approval of the secretary, pay the weight distance tax as provided in Subsection B of this section. If, however, the total annual liability or combined liability, as applicable, is expected to be five hundred dollars ($500) or more,

the registrant, owner or operator shall make payments pursuant to Subsection A of this section.

D. All registrants, owners or operators required to pay the weight distance tax shall preserve the records upon which the periodic payments required by Subsections A and B of this section are based for four years following the period for which a payment is made. Upon request of the department, the registrant, owner or operator shall make the records available to the department at the owner's office for audit as to accuracy of computations and payments. If the registrant, owner or operator keeps the records at any place outside this state, the department or the department's authorized agent may examine them at the place where they are kept. The department may make arrangements with agencies of other jurisdictions administering motor vehicle laws for joint audits of any such registrants, owners or operators.

History: 1953 Comp., § 64-6-30, enacted by Laws 1978, ch. 35, § 365; 1987 Comp., § 66-6-30, recompiled as 1978 Comp., § 7-15A-9 by Laws 1988, ch. 73, § 36; 1989, ch. 148, § 1; 1999, ch. 200, § 1.

ANNOTATIONS

The 1989 amendment, effective July 1, 1990, in Subsection D deleted "and the registrant, owner or operator shall pay all necessary traveling expenses and subsistence incurred" at the end of the third sentence.

The 1999 amendment, effective June 18, 1999, substituted "for" for "to" throughout the section; substituted "April 30" for "April 25", "July 31" for "July 25", "October 31" for "October 25", and "January 31" for "January 25" in Subsection A; in Subsection B, substituted "January 31" for "January 25" in the fourth sentence and substituted "has a liability for" for "should pay a" and substituted "pursuant to" for "according to the schedule of" in the fifth sentence; in Subsection C, inserted "for the weight distance tax" in the first sentence and substituted "pursuant to" for "according to the schedule of" in the last sentence.

Applicability. - Laws 1999, ch. 200, § 2 makes the provisions of the act applicable to reporting periods beginning on or after January 1, 1999.

7-15A-10. Annual filing fee.

In addition to any weight distance tax, special fuel excise tax or other use fee for the use of the public highways, every person required to pay during the prior calendar year a weight distance tax for the use of the public highways of this state with respect to any commercial motor carrier vehicle shall pay an annual fee of five dollars ($5.00) for each commercial motor carrier vehicle. This fee is required to be paid to the department by January 31 of each year in the manner required by the department.

History: Laws 1988, ch. 24, § 9; 1993, ch. 272, § 2.

ANNOTATIONS

The 1993 amendment, inserted "special fuel excise tax" and "other" near the beginning, deleted "or a use fee" following "distance tax" and "in January" following "shall pay" and substituted "five dollars ($5.00)" for "three dollars ($3.00)" in the first sentence, and rewrote the second sentence, which read "In each year, this fee is required to be paid with the report required to be submitted in January in connection with any weight distance tax or use fee for the use of the public highways of this state."

Compiler's notes. - Laws 1993, ch. 272 includes both an emergency clause making the act effective immediately and an effective date provision providing that the act is effective on January 1, 1993. See N.M. Const., Art. IV, § 23.

7-15A-11. Repealed.

ANNOTATIONS

Repeals. - Laws 1996, ch. 37, § 10 repeals 7-15A-11 NMSA 1978, as amended by Laws 1991, ch. 44, § 1, relating to annual safety and training fee and schedule, effective July 1, 1996. For provisions of former section, see 1995 Replacement Pamphlet.

ARTICLE 16
SPECIAL FUELS TAX

(Repealed by Laws 1980, ch. 98, § 15; 1988, ch. 73, § 56; 1990, ch. 124, § 23; 1992, ch. 51, § 23.)

7-16-1 to 7-16-26. Repealed.

ANNOTATIONS

Repeals. - Laws 1992, ch. 51, § 23 repeals 7-16-1 to 7-16-3; 7-16-3.2 to 7-16-7; 7-16-8.1, 7-16-8.2, 7-16-10 to 7-16-13; 7-16-15 and 7-16-18 NMSA 1978, relating to the special fuels tax, effective January 1, 1993. For provisions of former sections, see 1990 Replacement Pamphlet. For present comparable provisions, see Chapter 7, Article 16A NMSA 1978.

Laws 1990, ch. 124, § 23 repeals 7-16-3.1, as enacted by Laws 1988, ch. 70, § 11, relating to petroleum storage cleanup fund surcharge, effective July 1, 1990. For provisions of former section, see 1988 Replacement Pamphlet.

Laws 1980, ch. 98, § 15, repeals 7-16-8 and 7-16-9 NMSA 1978, relating to exemptions to temporary user permits and who qualifies to pay special fuel tax, effective July 1, 1980.

Laws 1988, ch. 73, § 56 repeals 7-16-14 NMSA 1978, as amended by Laws 1983, ch. 133, § 5, relating to retention of records by special fuel dealers, effective July 1, 1988. For provisions of former section, see 1986 Replacement Pamphlet.

Laws 1988, ch. 73, § 56 repeals 7-16-16 and 7-16-17 NMSA 1978, as amended by Laws 1977, ch. 250, § 82, and Laws 1987, ch. 347, § 16 relating to falsification of statements, doing business without a license, and distribution of tax and license fee revenue, effective July 1, 1988. For provisions of former sections, see 1986 and 1988 Replacement Pamphlets.

Laws 1988, ch. 73, § 56 repeals 7-16-19 to 7-16-26 NMSA 1978, as amended by Laws 1977, ch. 250, §§ 84, 86; 1978, ch. 56, § 1; 1978, ch. 57, § 1; 1983, ch. 133, §§ 7, 8; 1985, ch. 45, § 1; and as enacted by Laws 1983, ch. 133, § 9, effective July 1, 1988. For provisions of former sections, see 1986 Replacement Pamphlet.

ARTICLE 16A
SPECIAL FUELS SUPPLIER TAX

7-16A-1. Short title.

Chapter 7, Article 16A NMSA 1978 may be cited as the "Special Fuels Supplier Tax Act".

History: Laws 1992, ch. 51, § 1; 1993, ch. 272, § 3.

ANNOTATIONS

Cross references. - For the Natural Gas and Crude Oil Production Incentive Act, see Chapter 7, Article 29B NMSA 1978.

The 1993 amendment, substituted "Chapter 7, Article 16A NMSA 1978" for "This act".

Compiler's notes. - Laws 1993, ch. 272 includes both an emergency clause making the act effective immediately and an effective date provision providing that the act is effective on January 1, 1993. See N.M. Const., Art. IV, § 23.

7-16A-2. Definitions.

As used in the Special Fuels Supplier Tax Act [this article]:

A. "bulk storage" means the storage of special fuels in any tank or receptacle, other than a supply tank, for the purpose of sale by a dealer or for use by a user or for any other purpose;

B. "bulk storage user" means a 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;

C. "dealer" means any person who sells and delivers special fuel to a user;

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. "government-licensed vehicle" means a motor vehicle lawfully displaying a registration plate, as defined in the Motor Vehicle Code 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;

F. "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;

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 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;

I. "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;

J. "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;

K. "registrant" means any person who has registered a motor vehicle pursuant to the laws of this state or of another state;

L. "sale" means any delivery, exchange, gift or other disposition;

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

N. "special fuel" means diesel-engine fuel or kerosene used for the generation of power to propel a motor vehicle;

O. "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;

P. "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;

Q. "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;

R. "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;

S. "tax" means the special fuel excise tax imposed pursuant to the Special Fuels Supplier Tax Act; and

T. "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.

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.

ANNOTATIONS

The 1993 amendment, inserted "limited liability company" in Subsection I; substituted "twenty-six thousand pounds" for "twelve thousand pounds" in Subsection O; added "and any activity ancillary to that propulsion" at the end of Paragraph (2) of Subsection T; rewrote Subsection U, which read " 'user' means any person other than the United States government or an Indian nation, tribe or pueblo who uses special fuel to propel a motor vehicle on the highways"; and made minor stylistic changes throughout the section.

The 1995 amendment, effective January 1, 1996, substituted "motor vehicle or combination motor vehicle" for "vehicle" in Subsection F; inserted "including toll roads" near the beginning of Subsection G; substituted "or any other legal entity" for "firm, partnership, company, corporation, cooperative association, receiver, estate, joint venture, syndicate, limited liability company or other association" in Subsection I; in Subsection N, deleted "kerosene, all other liquid fuels, including liquified petroleum gases and natural gas" following "diesel-engine fuel" and added the language beginning "or alternative fuel" at the end; and inserted "vehicle" in Subsection O.

The 1997 amendment, effective June 1, 1997, redesignated former Paragraphs E(1) and (2) as Paragraphs E(1) to (3), inserted "identifying the vehicle as belonging to the state of New Mexico" in Paragraph E(2), inserted "either subject to registration pursuant to Section 66-3-1 NMSA 1978 or is" in Subsection H, rewrote Subsections J and N, inserted "a rack operator or" in Subsection Q, deleted "within the meaning of 'received' as defined in this section" from the end of Subsection Q, deleted former Subsection T defining "use", redesignated former Subsection U as Subsection T, and made minor stylistic changes throughout the section.

Emergency clauses. - Laws 1997, ch. 192, § 17 makes the act effective immediately. Approved April 10, 1997.

Motor Vehicle Code. - See 66-1-1 NMSA and notes thereto.

7-16A-2.1. When special fuel received or used; who is required to pay tax.

A. A rack operator receives special fuel at the time and place when the rack operator first loads the special fuel at the refinery or pipeline terminal into tank cars, tank trucks, tank wagons or any other type of transportation equipment or when the rack operator places the special fuel into any tank or other container in this state from which sales or deliveries not involving transportation are made. A rack operator who receives special fuel is required to pay special fuel excise tax on the special fuel received, except as provided otherwise in Subsection B of this section. Special fuel is not received when it is shipped from one refinery or pipeline terminal to another refinery or pipeline terminal.

B. When the rack operator first loads special fuel at the refinery or pipeline terminal into tank cars, tank trucks, tank wagons or any other type of transportation equipment for the account of another person who is registered with the department as a supplier and is taxable under the Special Fuels Supplier Tax Act [this article], however, that person receives the special fuel and is required to pay the special fuel excise tax.

C. Special fuel imported into New Mexico by any means other than in the supply tank of a motor vehicle or by pipeline is received at the time and place it is imported into this state. The person who owns the special fuel at the time of importation receives the special fuel and is required to pay the special fuel excise tax.

D. If special fuel is received within the exterior boundaries of an Indian reservation or pueblo grant and the person required to pay the special fuel excise tax is immune from state taxation, the special fuel is also received when the special fuel is transported off the reservation or pueblo grant by any means other than in the fuel supply tank of a motor vehicle or by pipeline. Any person who owns special fuel after the special fuel is transported off the reservation or pueblo grant receives the special fuel and is the person required to pay the special fuel excise tax, unless the special fuel excise tax has been paid by a previous owner.

E. Special fuel is used in New Mexico when it is put into the supply tank of any motor vehicle registered, owned or operated by a special fuel user, consumed by a special fuel user in the propulsion of a motor vehicle on the highways of this state or any activity ancillary to that propulsion, or imported into the state in the fuel supply tank of any motor vehicle for the propulsion of the motor vehicle on New Mexico highways.

History: 1978 Comp., § 7-16A-2.1, enacted by Laws 1997, ch. 192, § 6.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 192, § 16 makes the act effective on June 1, 1997.

Emergency clauses. - Laws 1997, ch. 192, § 17 makes the act effective immediately. Approved April 10, 1997.

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 eighteen cents ($.18) 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.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, substituted "eighteen cents ($.18)" for "sixteen cents ($.16)" in Subsection B.

7-16A-4. Special fuel inventory tax; imposition of tax; date payment of tax due.

A. A "special fuel inventory tax" is imposed measured by the quantity of gallons of special fuel in the possession of a supplier or bulk storage user on the day in which an increase in the special fuel excise tax rate is effective. The taxable event is the existence of an inventory in the possession of a supplier or bulk storage user on the day prior to the day in which an increase in the special fuel excise tax rate is effective. The rate of the special fuel inventory tax applicable to each gallon of special fuel held in inventory by a supplier or bulk storage use, as provided in Section 5 [7-16A-5 NMSA 1978] of the Special Fuels Supplier Tax Act, shall be the difference between the special fuel excise tax rate imposed on the day prior to the day in which the special fuel excise tax rate is increased, subtracted from the special fuel excise tax rate imposed on the day in which the special fuel excise tax rate increase is effective, expressed in cents per gallon.

B. The special fuel inventory tax is to be paid to the department on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

History: Laws 1992, ch. 51, § 4.

7-16A-5. Special fuel inventories.

A. On the day prior to the day in which the special fuel excise tax rate is increased or decreased, each supplier, dealer and bulk storage user shall take inventory of the gallons of special fuel on hand.

B. Suppliers and bulk storage users shall report total gallons of special fuel in inventory on the day prior to the day in which an increase in the special fuel excise tax rate is effective and pay any special fuel inventory tax due.

C. Dealers shall maintain a record of the total gallons of special fuel in inventory on the day prior to the day in which an increase or decrease in the special fuel excise tax rate is effective and shall not increase or reduce the price of the special fuel sold until the inventory is disposed of in the ordinary course of business.

History: Laws 1992, ch. 51, § 5.

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 [this article].

History: Laws 1997, ch. 192, § 14.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 192, § 16 makes the act effective on June 1, 1997.

Emergency clauses. - Laws 1997, ch. 192, § 17 makes the act effective immediately. Approved April 10, 1997.

7-16A-6. Special fuel inventory tax refund.

A "special fuel inventory tax refund" is established measured by the quantity of gallons of special fuel in the possession of a supplier or bulk storage user on the day in which a decrease in the special fuel excise tax rate is effective. The refund event is the existence of an inventory in the possession of a supplier or bulk storage user on the day prior to the day in which a decrease in the special fuel excise tax rate is effective. The refund is to be calculated by determining the difference between the special fuel excise tax rate imposed on the day prior to the day in which the special fuel excise tax rate is decreased, subtracted from the special fuel excise tax rate imposed on the day in which the special fuel excise tax rate decrease is effective, expressed in cents per gallon. The refund rate so determined is then multiplied by each gallon in inventory as determined under Section 5 [7-16A-5 NMSA 1978] of the Special Fuels Supplier Tax Act.

History: Laws 1992, ch. 51, § 6.

7-16A-7. Repealed.

ANNOTATIONS

Repeals. - Laws 1995, ch. 16, § 16 repeals 7-16A-7 NMSA 1978, as enacted by Laws 1992, ch. 51, § 7, relating to flat tax for liquefied petroleum gas-powered and natural gas-powered vehicles, effective January 1, 1996. For provisions of former section, see 1995 Replacement Pamphlet. For present comparable provisions, see 7-16B-4 NMSA 1978.

7-16A-8. Special bulk storage user permit.

A. The department may issue to a user a special bulk storage user permit that shall entitle that user to own, operate, utilize or maintain bulk storage for the sole purpose of placing special fuel from it into the supply tank of an allowable motor vehicle registered, owned or operated by that user. The fee for the special bulk storage user permit shall

be ten dollars ($10.00) per year. Permits shall be issued on a calendar year basis but may be issued for one, two or three years at a time.

B. To secure a special bulk storage user permit, an applicant shall:

(1) file with the department upon a form furnished by the department an application for a special bulk storage user permit;

(2) indicate on the application the number of years, to a maximum of three, for which the applicant requests the permit to be valid;

(3) accompany the application with payment of the special bulk storage user permit fee in the amount of ten dollars ($10.00) per year requested; and

(4) accompany the application with a signed affidavit to the effect that the signer shall use the special fuel from the special bulk storage only for the purpose of placing it into the supply tanks of specified allowable motor vehicles registered, owned or operated by the signer.

C. It is a violation of the Special Fuels Supplier Tax Act [this article] for any special bulk storage user to:

(1) sell special fuel from the user's special bulk storage to any other person; or

(2) deliver special fuel from the user's special bulk storage into the supply tank of any motor vehicle except specified allowable motor vehicles registered, owned or operated by the special bulk storage user.

D. "Allowable motor vehicles", for the purposes of this section, includes but is not limited to motor vehicles used primarily for or suitable for use in construction or farming, such as road graders, backhoes, rubber-tired rollers, front loaders, rubber-tired draglines, farm tractors, self-propelled combines or self-propelled reapers.

E. The department may revoke, after due notice and hearing as provided in Section 7-1-24 NMSA 1978, the special bulk storage user permit of any user found to be in violation of any provision of the Special Fuels Supplier Tax Act.

F. Special fuel purchased for bulk storage under a special bulk storage user permit shall not be subject to the special fuel excise tax at the time of purchase, but special fuel excise tax shall be due on any special fuel removed from bulk storage if delivered into the supply tank of a motor vehicle that is operated on the highways of this state.

G. All special fuel acquired, purchased or received under a special bulk storage user permit shall be acquired, purchased or received from a registered supplier. It is unlawful for any person to sell special fuel in bulk quantities to special bulk storage users unless that person is registered pursuant to the Special Fuels Supplier Tax Act.

History: Laws 1992, ch. 51, § 8; 1993, ch. 272, § 5; 1997, ch. 192, § 7.

ANNOTATIONS

The 1993 amendment, made minor stylistic changes throughout the section.

The 1997 amendment, effective June 1, 1997, substituted "a special bulk storage user permit" for "an annual special bulk storage user permit" near the beginning of Subsection A, added the second and third sentences in Subsection A, added Paragraph B(2), redesignated former Paragraphs B(2) and (3) as Paragraphs B(3) and (4), deleted "dealer or" preceding "supplier" at the end of the first sentence of Subsection G, and made minor stylistic changes throughout the section.

Emergency clauses. - Laws 1997, ch. 192, § 17 makes the act effective immediately. Approved April 10, 1997.

7-16A-9. Tax returns; payment of tax.

Rack operators and special fuel suppliers shall file special 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 special fuel is received in New Mexico. Payment of the special fuel excise tax shall be made with or prior to filing of the return.

History: Laws 1992, ch. 51, § 9; 1997, ch. 192, § 8.

ANNOTATIONS

The 1997 amendment, effective June 1, 1997, deleted "special fuel suppliers" from the end of the section heading and inserted "Rack operators and" at the beginning of the section.

Emergency clauses. - Laws 1997, ch. 192, § 17 makes the act effective immediately. Approved April 10, 1997.

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 sold to the holder of a special bulk storage user permit and delivered into special bulk storage pursuant to the provisions of Section 7-16A-8 NMSA 1978; and

F. special fuel dyed in accordance with federal regulations and used in any manner other than for propulsion of motor vehicles on the highways of this state or activities ancillary to that propulsion.

History: Laws 1992, ch. 51, § 10; 1993, ch. 272, § 6; 1997, ch. 192, § 9; 1998, ch. 44, § 4.

ANNOTATIONS

The 1993 amendment, added current Subsection C and Subsections E and F; redesignated former Subsection C as Subsection D; and made a minor stylistic change.

The 1997 amendment, effective June 1, 1997, rewrote Subsections A and F, and made a minor stylistic change in Subsection E.

The 1998 amendment, effective July 1, 1998, in the introductory language deleted "special fuel excise" preceding "tax" and in Subsection F, inserted "dyed in accordance with federal regulations and".

Emergency clauses. - Laws 1997, ch. 192, § 17 makes the act effective immediately. Approved April 10, 1997.

7-16A-11. Tax returns; payment of tax; special fuel users.

A. Except as otherwise provided in this section, special fuel users shall file special 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 last day of each calendar quarter in which special fuel is used in New Mexico. Payment of the special fuel excise tax shall be made with or prior to filing of the return.

B. Subject to the provisions of Subsection D of this section, a special fuel user may elect to report and pay the special fuel excise tax annually if the special fuel user was not liable for the weight distance tax and either:

(1) had a total special fuel excise tax liability for the previous calendar year of less than five hundred dollars ($500); or

(2) has not previously been liable for the special fuel excise tax and expects a liability of less than five hundred dollars ($500) annually.

C. Subject to the provisions of Subsection D of this section, a special fuel user must report and pay the special fuel excise tax annually if the special fuel user is liable for the weight distance tax and has elected to pay the weight distance tax annually and either:

(1) had a total special fuel excise tax liability for the previous calendar year of less than five hundred dollars ($500); or

(2) has not previously been liable for the special fuel excise tax and expects a liability of less than five hundred dollars ($500) annually.

D. Any special fuel user described in Subsection B or C of this section shall file a written statement with the department on or before April 1 of the first year in which annual reporting and paying will be effective. Upon filing the written statement with the department, the total tax due for the current calendar year shall be paid to the department by January 25 of the following year. If, however, any special fuel user is or becomes delinquent in excess of thirty days in any payment of the special fuel excise tax, the user shall report and pay according to the provisions of Subsection A of this section. If any special fuel user who has filed a written statement under Subsection B or C of this section pays a total special fuel excise tax or total combined special fuel excise tax and weight distance tax of five hundred dollars ($500) or more for any calendar year, the user shall report and pay under the provisions of Subsection A of this section.

History: Laws 1992, ch. 51, § 11.

ANNOTATIONS

Temporary provisions. - Laws 1992, ch. 51, § 21, effective January 1, 1993, provides that all taxes due but unpaid under the Special Fuel Tax Act on January 1, 1993, remain due until paid or until a final determination is made that the taxes are not due, and further provides that any protests, claims for refund, court proceedings or other actions ongoing with respect to the provisions of the Special Fuel Tax Act on January 1, 1993, shall be finally determined with respect to the applicable provisions of the Special Fuel Tax Act.

7-16A-12. Credit; special fuel excise tax; special fuel users.

In computing any special fuel excise tax due, all special fuel excise tax paid on special fuel used during the reporting period may be credited against the calculated special fuel excise tax due for that reporting period, provided that satisfactory proof of the special fuel excise tax paid is furnished to the department.

History: Laws 1992, ch. 51, § 12; 1997, ch. 192, § 10.

ANNOTATIONS

The 1997 amendment, effective June 1, 1997, deleted "or weight distance tax due" preceding "for that reporting period, provided".

Emergency clauses. - Laws 1997, ch. 192, § 17 makes the act effective immediately. Approved April 10, 1997.

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.

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.

History: Laws 1992, ch. 51, § 13.

7-16A-14. Registration necessary to engage in business as rack operator, special fuel supplier or dealer.

Each person engaged in the business of selling special fuel in New Mexico as a rack operator, special fuel supplier or dealer shall register as such under the provisions of Section 7-1-12 NMSA 1978.

History: Laws 1992, ch. 51, § 14; 1997, ch. 192, § 11.

ANNOTATIONS

The 1997 amendment, effective June 1, 1997, inserted "rack operator" in the section heading, and near the middle of the section.

Emergency clauses. - Laws 1997, ch. 192, § 17 makes the act effective immediately. Approved April 10, 1997.

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 [this article], 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 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 may request to be exempt from the requirement to file a bond beginning with the first day of the first month following the end of the twenty-four month period. If a supplier exempted pursuant to this subsection subsequently becomes a delinquent taxpayer pursuant to the Special Fuels Supplier Tax Act, the department may terminate the exemption and require the filing of a bond in accordance with this section. If the department terminates the exemption, the termination shall not be effective any earlier than ten days after the date the department notifies the supplier in writing of the termination.

History: Laws 1992, ch. 51, § 15; 1994, ch. 7, § 1; 1997, ch. 192, § 12.

ANNOTATIONS

Cross references. - For references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

The 1994 amendment, effective July 1, 1994, added the exception clause at the beginning of the first sentence in Subsection A; in Subsection D, inserted "required to post bond", and substituted "two times" for "one and one-half times" and "quarterly" for "monthly"; deleted "any any" preceding "and all" near the beginning of the first sentence in Subsection F; and added Subsection H.

The 1997 amendment, effective June 1, 1997, deleted "or dealer" following "supplier" in the section heading and throughout the section, substituted "supplier's monthly special fuel excise tax" for "supplier's or dealer's quarterly special fuel excise tax" in Subsection D and rewrote the first three sentences in Subsection H.

Emergency clauses. - Laws 1997, ch. 192, § 17 makes the act effective immediately. Approved April 10, 1997.

7-16A-16. Delivery and use of special fuel prohibited in certain cases.

It is a violation of the Special Fuels Supplier Tax Act [this article] to do any of the following acts:

A. operate any motor vehicle upon the highways of this state with a connection between a cargo or other tank or container, not considered in the Special Fuels Supplier Tax Act as being the motor vehicle's fuel supply tank, and a carburetor or other fuel supplying device; fuel supply tanks, including auxiliary fuel supply tanks, shall be separate and apart from cargo tanks or other containers, with no connection by pipe, tube, valve or otherwise;

B. sell or deliver to any person or motor vehicle special fuel from any special fuel supply tank or auxiliary special fuel supply tank; or

C. deliver special fuel from a cargo tank into the special fuel supply tank of a motor vehicle; provided, however, delivery of liquefied petroleum gases may be made into the special fuel supply tank of a motor vehicle carrying a valid permit under the Special Fuels Supplier Tax Act by a registered and licensed liquefied petroleum gas dealer who is also a special fuel dealer when made by that dealer from the cargo tank of a vehicle operated by that dealer, which tank is specially designed to make this type of special fuel delivery.

History: Laws 1992, ch. 51, § 16.

7-16A-17, 7-16A-18. Repealed.

ANNOTATIONS

Repeals. - Laws 1993, ch. 272, § 8 repeals 7-16A-17 and 7-16A-18 NMSA 1978, as enacted by Laws 1992, ch. 51, §§ 17 and 18, concerning violations of the Special Fuels Supplier Tax Act. For provisions of former sections, see 1992 Cumulative Supplement.

Laws 1993, ch. 272 includes both an emergency clause making the act effective immediately and an effective date provision providing that the act is effective on January 1, 1993. See N.M. Const., Art. IV, § 23.

7-16A-19. Temporary special fuel user permits.

A. To prevent evasion of the special fuel excise tax, special fuel users whose vehicles are not registered with the department shall acquire a temporary special fuel user permit from the department before operating the unregistered motor vehicle on the highways of New Mexico. The temporary special fuel user permit shall be valid for one entrance and one exit of the state, within a period that shall not exceed forty-eight hours from the time of issuance.

B. The fee for a temporary special fuel user permit is five dollars ($5.00) for each motor vehicle.

C. It is a violation of the Special Fuels Supplier Tax Act [this article] for any person to act as a temporary special fuel user without obtaining a valid temporary special fuel user permit from the department.

History: Laws 1992, ch. 51, § 19; 1993, ch. 272, § 7; 1997, ch. 192, § 13.

ANNOTATIONS

The 1993 amendment, deleted "temporary highway user permits" at the end of the catchline and deleted former Subsections E to G, pertaining to issuance, use and requirements for temporary highway user permits.

The 1997 amendment, effective June 1, 1997, rewrote the first sentence in Subsection A, deleted Subsection B, and redesignated former Subsections C and D as Subsections B and C.

Emergency clauses. - Laws 1997, ch. 192, § 17 makes the act effective immediately. Approved April 10, 1997.

7-16A-20. Administration and enforcement of act.

The department shall interpret the provisions of the Special Fuels Supplier Tax Act [this article]. 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-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 [this article] on the effective date of the Alternative Fuel Tax Act [7-16B-1 to 7-16B-10 NMSA 1978] remain due until paid or until a final determination is made that the taxes are not due.

B. Any protests, claims for refund, court proceedings or other actions ongoing with respect to liquefied petroleum gas or natural gas or to motor vehicles propelled by such a fuel pursuant to the provisions of the Special Fuels Supplier Tax Act on the effective date of the Alternative Fuel Tax Act shall be finally determined with respect to the applicable provisions of the Special Fuels Supplier Tax Act.

History: Laws 1995, ch. 16, § 15.

ANNOTATIONS

Cross references. - For the Alternative Fuel Tax Act, see 7-16B-1 NMSA 1978.

For provisions regarding the alternative fuel excise tax, see 7-16B-6 NMSA 1978.

For provisions regarding alternative fuel user permits, see 7-16B-7 NMSA 1978.

Effective date of Alternative Fuel Tax Act. - The effective date of the Alternative Fuel Tax Act is January 1, 1996.

ARTICLE 16B
ALTERNATIVE FUEL TAX

7-16B-1. Short title.

Sections 1 through 10 [7-16B-1 to 7-16B-10 NMSA 1978] of this act may be cited as the "Alternative Fuel Tax Act".

History: Laws 1995, ch. 16, § 1.

ANNOTATIONS

Cross references. - For the Petroleum Products Loading Fee Act see Chapter 7, Article 13A NMSA 1978.

For the Special Fuel Suppliers Tax Act see Chapter 7, Article 16A NMSA 1978.

7-16B-2. Purpose.

To encourage the use of alternative fuel for the propulsion of motor vehicles on the roads of New Mexico, thereby increasing the market for supplies of New Mexico natural gas and reducing harmful environmental emissions, it is the purpose of the Alternative Fuel Tax Act [7-16B-1 to 7-16B-10 NMSA 1978] 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 [7-16B-1 to 7-16B-10 NMSA 1978]:

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 the quantity of liquid necessary to fill a standard United States gallon liquid measure, which is approximately 3.785 liters for liquid alternative fuel; provided, however, that 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, or one hundred fourteen cubic feet for nonliquid alternative fuel;

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.

ANNOTATIONS

The 1997 amendment, in Subsection A, added the language beginning "or a water-phased hydrocarbon" and ending "which may be", and in Subsection B added the language beginning "provided, however," and ending "water base portion" and made minor stylistic changes. Laws 1997, ch. 24 contains no effective date provision, but, pursuant to N.M. Const. art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

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; and

(4) for the period beginning January 1, 2002 and thereafter, twelve cents ($0.12) per gallon.

D. In lieu of the rates provided in Subsection C of this section, any user who registers, owns or operates a motor vehicle whose gross vehicle weight does not exceed fifty-four thousand pounds that is propelled by alternative fuel may pay the alternative fuel excise tax on an annual basis as follows:

(1) for the period beginning January 1, 1996 and ending December 31, 1997, the following schedule shall apply:

Gross Vehicle Weight	Annual Tax
0 to 6,000 pounds	$ 15.00

6,001 to 16,000 pounds	25.00
16,001 to 26,000 pounds	75.00
26,001 to 40,000 pounds	175.00
40,001 to 54,000 pounds	275.00;

(2) for the period beginning January 1, 1998 and ending December 31, 1999, the following schedule shall apply:

Gross Vehicle Weight	Annual Tax
0 to 6,000 pounds	$ 30.00
6,001 to 16,000 pounds	50.00
16,001 to 26,000 pounds	150.00
26,001 to 40,000 pounds	350.00
40,001 to 54,000 pounds	550.00;

(3) for the period beginning January 1, 2000 and ending December 31, 2001, the following schedule shall apply:

Gross Vehicle Weight	Annual Tax
0 to 6,000 pounds	$ 45.00
6,001 to 16,000 pounds	75.00
16,001 to 26,000 pounds	225.00
26,001 to 40,000 pounds	525.00
40,001 to 54,000 pounds	825.00; and

(4) for the period beginning January 1, 2002 and thereafter, the following schedule shall apply:

Gross Vehicle Weight	Annual Tax
0 to 6,000 pounds	$ 60.00
6,001 to 16,000 pounds	100.00

16,001 to 26,000 pounds	300.00
26,001 to 40,000 pounds	700.00
40,001 to 54,000 pounds	1,100.00.

E. To facilitate administration of the Alternative Fuel Tax Act [7-16B-1 to 7-16B-10 NMSA 1978], the annual tax provided for in Subsection D of this section may be prorated for periods of less than one year at the discretion of the secretary.

F. 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.

ANNOTATIONS

Temporary provisions. - Laws 1995, ch. 16, § 15, effective January 1, 1996, provides that all taxes due but not paid on liqufied petroleum gas or natural gas or on motor vehicles propelled by such a fuel under the Special Fuels Supplier Tax Act on January 1, 1996 remained due until paid or until a final determination is made that the taxes are not due and any protests, claims for refund, court proceedings or other actions ongoing with respect to liquified 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 January 1, 1996 shall be finally determined with respect to the applicable provisions of the Special Fuels Supplier Tax Act.

7-16B-5. Exemptions; alternative fuel excise tax.

A. Alternative fuel distributed to or used by the United States or any agency or instrumentality thereof for the exclusive use of the United States or any agency or instrumentality thereof is exempt from the imposition of the alternative fuel excise tax.

B. Alternative fuel distributed to or used by the state of New Mexico or any political subdivision, agency or instrumentality thereof for the exclusive use of the state of New Mexico or any political subdivision, agency or instrumentality thereof is exempt from the imposition of the alternative fuel excise tax.

C. Alternative fuel distributed to or used by an Indian nation, tribe or pueblo or any agency or instrumentality thereof for the exclusive use of the Indian nation, tribe or pueblo or any agency or instrumentality thereof is exempt from the imposition of the alternative fuel excise tax.

History: Laws 1995, ch. 16, § 5.

7-16B-6. Tax returns; payment of tax; alternative fuel distributors.

A. Alternative fuel distributors shall file alternative fuel excise tax returns in form and content as prescribed by the secretary on or before the twenty-fifth day of the month following the month in which alternative fuel is distributed in New Mexico. Payment of the alternative fuel excise tax shall be made with or prior to filing of the return.

B. In computing the alternative fuel excise tax due, amounts of alternative fuel distributed to an alternative fuel user may be deducted from the total amount of alternative fuel distributed in New Mexico during the tax period provided the alternative fuel user can establish proof of compliance with the provisions of Section 7 [7-16B-7 NMSA 1978] of the Alternative Fuel Tax Act.

History: Laws 1995, ch. 16, § 6.

ANNOTATIONS

Cross references. - For provisions regarding continuity of actions brought under the Special Fuels Supplier Tax Act, see 7-16A-21 NMSA 1978.

7-16B-7. Tax returns; payment of tax; alternative fuel user permit.

A. Alternative fuel users who elect to be subject to the provisions of Subsection D of Section 4 [7-16B-4 NMSA 1978] of the Alternative Fuel Tax Act shall pay the annual tax concurrent with vehicle registration.

B. The department shall issue an alternative fuel user permit in a form designed by the department valid for one year from the month of issuance to each alternative fuel user upon the filing of an application by the alternative fuel user acceptable to the department.

C. The department may revoke, after due notice and hearing, the alternative fuel user permit of any alternative fuel user found to be in violation of any provision of the Alternative Fuel Tax Act [7-16B-1 to 7-16B-10 NMSA 1978].

History: Laws 1995, ch. 16, § 7.

ANNOTATIONS

Cross references. - For provisions regarding continuity of actions brought under the Special Fuels Supplier Tax Act, see 7-16A-21 NMSA 1978.

7-16B-8. Alternative fuel distributor license required.

A. The department shall issue a license valid for up to three years to each alternative fuel distributor upon the filing of an application by the alternative fuel distributor acceptable to the department.

B. To secure an alternative fuel distributor license, an applicant shall:

(1) register as an alternative fuel distributor under the provisions of Section 7-1-12 NMSA 1978;

(2) file with the department on a form furnished by the department an application for an alternative fuel distributor license; and

(3) accompany the application with payment of an alternative fuel distributor fee in the amount of twenty-five dollars ($25.00).

C. The department may revoke, after due notice and hearing, the alternative fuel distributor license of any alternative fuel distributor found to be in violation of any provision of the Alternative Fuel Tax Act [7-16B-1 to 7-16B-10 NMSA 1978].

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 [7-16B-1 to 7-16B-10 NMSA 1978] 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 [7-16B-1 to 7-16B-10 NMSA 1978]. The department shall administer and enforce the collection of the alternative fuel excise tax, and the Tax Administration Act applies to the administration and enforcement of the tax.

History: Laws 1995, ch. 16, § 10.

ARTICLE 17
LIQUOR EXCISE TAX

7-17-1. Short title.

Chapter 7, Article 17 NMSA 1978 may be cited as the "Liquor Excise Tax Act".

History: 1953 Comp., § 46-7-15, enacted by Laws 1966, ch. 49, § 1; recompiled as 1953 Comp., § 72-32-1, by Laws 1973, ch. 166, § 2; 1984, ch. 85, § 1.

ANNOTATIONS

Cross references. - For duty of successor in business, see 7-1-61 NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors §§ 203 to 219.

48 C.J.S. Intoxicating Liquors §§ 199 to 212.

7-17-2. Definitions.

As used in the Liquor Excise Tax Act [this article]:

A. "alcoholic beverages" means distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin and aromatic bitters or any similar alcoholic beverage, including blended or fermented beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half of one percent alcohol, but excluding medicinal bitters:

(1) "spirituous liquors" means alcoholic beverages, except fermented beverages such as wine, beer, cider and ale;

(2) "beer" means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt and hops or other cereals in water and includes porter, beer, ale and stout;

(3) "cider" means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe apples that contains not less than one-half of one percent of alcohol by volume and not more than seven percent of alcohol by volume;

(4) "fortified wine" means wine containing more than fourteen percent alcohol by volume when bottled or packaged by the manufacturer, but does not include:

(a) wine that is sealed or capped by cork closure and aged two years or more;

(b) wine that contains more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and has not been produced with the addition of wine spirits, brandy or alcohol; or

(c) vermouth and sherry; and

(5) "wine" includes the words "fruit juices" and means alcoholic beverages, other than cider, obtained by the fermentation of the natural sugar contained in fruit or other agricultural products, with or without the addition of sugar or other products, that do not contain less than one-half of one percent nor more than twenty-one percent alcohol by volume;

B. "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. "microbrewer" means any person who produces fewer than five thousand barrels of beer in a year;

D. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other association; "person" also means, to the extent permitted by law, any federal, state or other governmental unit or subdivision or agency, department or instrumentality thereof;

E. "small winer or winegrower" means any person who produces fewer than three hundred seventy-five thousand liters of wine in a year; and

F. "wholesaler" means any person holding a license issued under Section 60-6A-1 NMSA 1978 or any person selling alcoholic beverages that were not purchased from a person holding a license issued under Section 60-6A-1 NMSA 1978.

History: 1953 Comp., § 46-7-16, enacted by Laws 1966, ch. 49, § 2; recompiled as 1953 Comp., § 72-32-2, by Laws 1973, ch. 166, § 2; 1984, ch. 85, § 2; 1986, ch. 20, § 74; 1991, ch. 161, § 1; 1993, ch. 65, § 6; 1994, ch. 52, § 1; 1995, ch. 70, § 18; 1995, ch. 74, § 1; 1996, ch. 49, § 1; 1997, ch. 143, § 1.

ANNOTATIONS

The 1991 amendment, effective July 1, 1987, added Subsection E; redesignated former Subsection E as Subsection F; and made minor stylistic changes in Subsections A and B.

The 1993 amendment, effective July 1, 1993, in Subsection A, added Paragraph (3) and redesignated former Paragraph (3) as Paragraph (4); added Subsection D and redesignated former Subsections D through F as Subsections E through G; and deleted provisions in Subsection F, pertaining to persons designated as small domestic producers for purposes of Section 5041 of the Internal Revenue Code.

The 1994 amendment, effective July 1, 1994, in Paragraph A(3), substituted "and aged two years of more" for "aged two years or more and sold only in 750 milliliter bottles or" in Subparagraph (a) and "or" for "and" at the end of Subparagraph (b), and added Subparagraph (c).

1995 amendments. - Laws 1995, ch. 70, § 18, effective July 1, 1995, deleting "'director' or 'division'" following "'department'" in Subsection C, was approved April 5, 1995. However, Laws 1995, ch. 74, § 1, effective July 1, 1995, also amending this section by deleting former Subsection B, redesignating the remaining sections appropriately, and deleting "'director' or 'division'" following "'department'" in Subsection B, but not giving effect to the changes made by the first 1995 amendment, was approved April 5, 1995. The section is set out as amended by Laws 1995, ch. 74, § 1. See 12-1-8 NMSA 1978.

The 1996 amendment, effective July 1, 1996, inserted "cider" in Paragraph A(1), added Paragraph A(3) and redesignated the following paragraphs accordingly, and inserted "other than cider" near the beginning of Paragraph A(5).

The 1997 amendment, effective July 1, 1997, made several stylistic changes throughout the section and substituted "three hundred seventy-five thousand" for "two hundred twenty thousand" in Subsection E.

7-17-3. Repealed.

ANNOTATIONS

Repeals. - Laws 1982, ch. 111, § 2, repealed 7-17-3 NMSA 1978, relating to the imposition of a wholesaler's tax and the rate thereof.

Laws 1982, ch. 111, § 3, provided that § 2 of the act would become effective on the day when the supreme court found the tax credit provisions of 7-9-80.1 NMSA 1978 to be less than fully enforceable and effective.

Laws 1983, ch. 213, § 38, repeals 7-17-3 NMSA 1978, relating to the imposition and rate of the wholesalers tax, and Laws 1982, ch. 111, § 2, effective July 1, 1983.

7-17-4. Repealed.

ANNOTATIONS

Repeals. - Laws 1984, ch. 85, § 12, repeals 7-17-4 NMSA 1978, as enacted by Laws 1966, ch. 49, § 4, and recompiled by Laws 1973, ch. 166, § 2, relating to presumption of taxability under the Liquor Control Act, effective July 1, 1984.

7-17-5. Imposition and rate of liquor excise tax.

There is imposed on any wholesaler who sells 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:

A. on spirituous liquors, one dollar sixty cents ($1.60) per liter;

B. on beer, except as provided in Subsection E of this section, forty-one cents ($.41) per gallon;

C. on wine, except as provided in Subsections D and F of this section, forty-five cents ($.45) per liter;

D. on fortified wine, one dollar fifty cents ($1.50) per liter;

E. 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, twenty-five cents ($.25) per gallon;

F. on wine manufactured or produced by a small winer or winegrower and sold in this state, provided that proof is furnished to the department that the wine was manufactured or produced by a small winer or winegrower, ten cents ($.10) per liter on the first eighty thousand liters sold and twenty cents ($.20) per liter on all liters sold over eighty thousand liters but less than three hundred seventy-five thousand liters; and

G. on cider, forty-one cents ($.41) per gallon.

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.

ANNOTATIONS

Repeals and reenactments. - Laws 1993, ch. 65, § 8 repeals former 7-17-5 NMSA 1978, as amended by Laws 1993, ch. 65, § 7, and enacts the above section, effective July 1, 1994.

The 1994 amendment, effective July 1, 1994, substituted "one dollar sixty cents ($1.60)" for "one dollars sixty cents ($1.60)" in Subsection A; inserted "except as provided in Subsection E of this section" in Subsection B; substituted "a micro brewer

and" and "each micro brewer" in Subsection E; and, in Subsection F, deleted former Paragraph (2), which read: 'after June 30, 1994, twenty-five cents ($.25) per liter on all liters sold", combined together the former introductory language and former Paragraph (1) into one present paragraph, substituted "a small winer or winegrower and" for "each small winer or winegrower", and deleted "from July 1, 1992 to June 30, 1994" preceding "ten cents" and "and" at the end.

The 1995 amendment, effective June 16, 1995, deleted "or distributes" following "sells" and "or distributed" following "sold" in the introductory paragraph.

The 1996 amendment, effective July 1, 1996, added Subsection G.

The 1997 amendment, effective July 1, 1997, substituted "three hundred seventy-five thousand" for "two hundred twenty thousand" in Subsection F.

7-17-5.1. Repealed.

ANNOTATIONS

Repeals. - Laws 1983, ch. 213, § 38, repeals 7-17-5.1 NMSA 1978, relating to the effective date of Laws 1982, ch. 111, §§ 1 and 2, effective July 1, 1983.

7-17-6. Deduction; interstate sales.

A wholesaler may deduct the liters of spirituous liquors, gallons of beer and liters of wine sold and shipped to a person in another state from the units of alcoholic beverages subject to the tax imposed by the Liquor Excise Tax Act [this article]; 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.

History: 1978 Comp., § 7-17-6, enacted by Laws 1984, ch. 85, § 4; 1995, ch. 70, § 19.

ANNOTATIONS

Repeals and reenactments. - Laws 1984, ch. 85, § 4, repeals former 7-17-6 NMSA 1978, as amended by Laws 1973, ch. 166, § 2, relating to a deduction from gross receipts of receipts from selling beer to certain instrumentalities of the armed forces of the United States, and enacts the above section. For provisions of former section, see 1983 Replacement Pamphlet. For present comparable provisions, see 7-17-9 NMSA 1978.

The 1995 amendment, effective July 1, 1995, substituted "department" for "director" in two places.

7-17-7, 7-17-8. Repealed.

ANNOTATIONS

Repeals. - Laws 1984, ch. 85, § 12, repeals 7-17-7 and 7-17-8 NMSA 1978, as enacted by Laws 1971, ch. 22, §§ 1 and 2, and recompiled by Laws 1973, ch. 166, § 2, relating to deductions from gross receipts for uncollectible debts and for sales to wholesalers, effective July 1, 1984.

7-17-9. Exemption; certain sales to or by instrumentalities of armed forces.

Exempted from the tax imposed by Section 7-17-5 NMSA 1978 are alcoholic beverages sold to or by any instrumentality of the armed forces of the United States engaged in resale activities.

History: 1953 Comp., § 46-7-21, enacted by Laws 1966, ch. 49, § 7; recompiled as 1953 Comp., § 72-32-9, by Laws 1973, ch. 166, § 2; 1984, ch. 85, § 5; 1985, ch. 57, § 1.

7-17-10. Date payment due.

The tax imposed by the Liquor Excise Tax Act [this article] is to be paid on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

History: 1953 Comp., § 46-7-22, enacted by Laws 1966, ch. 49, § 8; 1971, ch. 22, § 3; recompiled as 1953 Comp., § 72-32-10, by Laws 1973, ch. 166, § 2; 1984, ch. 85, § 6.

7-17-11. Refund or credit of tax.

The department shall allow a claim for refund or credit as provided in Sections 7-1-26 and 7-1-29 NMSA 1978 for the tax imposed by Section 7-17-5 NMSA 1978 and paid on alcoholic beverages destroyed in shipment, spoiled or otherwise damaged as to be unfit for sale or consumption upon submission of proof satisfactory to the department of such destruction, spoilage or damage.

History: Laws 1968, ch. 22, § 1; 1953 Comp., § 46-7-23; reenacted by Laws 1969, ch. 80, § 1; 1971, ch. 22, § 4; recompiled as 1953 Comp., § 72-32-11 and amended by Laws 1973, ch. 166, § 1; 1977, ch. 249, § 62; 1984, ch. 85, § 7; 1995, ch. 70, § 20.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, substituted "department" for "director" in two places.

7-17-12. Interpretation of act; administration and enforcement of tax.

A. The department shall interpret the provisions of the Liquor Excise Tax Act [this article].

B. The department shall administer and enforce the collection of the liquor excise tax, and the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] applies to the administration and enforcement of the tax.

History: 1978 Comp., § 71-7-12, enacted by Laws 1984, ch. 85, § 8; 1995, ch. 70, § 21.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, substituted "department" for "division" in Subsections A and B.

ARTICLE 18
ELECTRICAL ENERGY TAX

(Repealed by Laws 1982, ch. 18, § 27.)

7-18-1 to 7-18-6. Repealed.

ANNOTATIONS

Repeals. - Laws 1982, ch. 18, § 27, repeals 7-18-1 to 7-18-6 NMSA 1978, relating to imposition and rate of tax on generation of electricity and reports or remittances required of persons subject to such a tax, effective July 1, 1982.

ARTICLE 18A
CONTROLLED SUBSTANCE TAX

(Repealed by Laws 1994, ch. 101, § 1.)

7-18A-1 to 7-18A-7. Repealed.

ANNOTATIONS

Repeals. - Laws 1995, ch. 101, § 1 repeals former 7-18A-1 through 7-18A-7 NMSA 1978, as enacted by Laws 1989, ch. 327, §§ 3 through 8 and as last amended by Laws 1993, ch. 30, § 2, relating to the taxation of controlled substances, effective July 1, 1995. For provisions of former sections, see 1993 Replacement Pamphlet.

ARTICLE 19
MUNICIPAL GROSS RECEIPTS TAX

7-19-1 to 7-19-3. Repealed.

ANNOTATIONS

Repeals. - Laws 1993, ch. 346, § 12A repeals 7-19-1 and 7-19-2 NMSA 1978, as amended by Laws 1983, ch. 211, § 29 and Laws 1986, ch. 20, § 75, relating to short title and defining terms, effective July 1, 1993. For provisions of former sections, see 1990 Replacement Pamphlet.

Laws 1981, ch. 37, § 95, repeals 7-19-3 NMSA 1978, relating to the authority to impose a municipal gross receipts tax and establishing its initial rate, effective July 1, 1981.

7-19-4. Recompiled.

ANNOTATIONS

Recompilations. - Laws 1993, ch. 346, § 9 recompiles 7-19-4 NMSA 1978 as amended by Laws 1988, ch. 120, § 1, relating to authority to impose rate, as 7-19D-9 NMSA 1978, effective July 1, 1993.

7-19-4.1 to 7-19-9. Repealed.

ANNOTATIONS

Repeals. - Laws 1993, ch. 346, § 12A repeals 7-19-4.1 to 7-19-9 NMSA 1978, as enacted by Laws 1975 (S.S.), ch. 16, § 8 and Laws 1979, ch. 397, §§ 4 and 7 and as amended by Laws 1979, ch. 155, § 3, Laws 1981, ch. 37, § 12, Laws 1983, ch. 211, §§ 30 and 32 to 34, Laws 1983, ch. 213, § 20, Laws 1986, ch. 6, §§ 2 and 3, and Laws 1986, ch. 20, §§ 77, 79, and 80, relating to municipal gross receipts tax and supplemental municipal gross receipts tax, effective July 1, 1993. For provisions of former sections, see 1990 Replacement Pamphlet.

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 [7-19-10 to 7-19-18 NMSA 1978]:

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

B. "governing body" means the city council or city commission of a municipality;

C. "municipality" means any incorporated city, town or village having previously qualified to impose and did impose the tax pursuant to the provisions of the Supplemental Municipal Gross Receipts Tax Act in effect prior to this 1997 act;

D. "person" means an individual or any other legal entity;

E. "refunding bonds" means bonds issued pursuant to the provisions of the Supplemental Municipal Gross Receipts Tax Act to refund supplemental municipal gross receipts tax bonds issued pursuant to the provisions of that act;

F. "state gross receipts tax" means the gross receipts tax imposed under the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978]; and

G. "supplemental municipal gross receipts tax" means the tax authorized to be imposed under the Supplemental Municipal Gross Receipts Tax Act.

History: Laws 1979, ch. 397, § 2; 1980, ch. 106, § 1; 1986, ch. 20, § 79; 1997, ch. 219, § 1.

ANNOTATIONS

The 1997 amendment rewrote Subsection C, added Subsection E, and redesignated the remaining subsections accordingly. Laws 1997, ch. 219 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Compiler's notes. - The phrase "this 1997 act" in Subsection C refers to Laws 1997, ch. 219, which amended this section.

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 [7-19-10 to 7-19-18 NMSA 1978] shall become effective on either July 1 or January 1, after the expiration of at least five months from the date the ordinance is repealed by the governing body.

G. Nothing in this section is intended to or does alter the effectiveness or validity of any actions taken in accordance with Subsection G of Section 80 of Chapter 20 of Laws 1986.

History: Laws 1979, ch. 397, § 3; 1980, ch. 106, § 2; 1986, ch. 6, § 1; 1986, ch. 20, § 80; 1997, ch. 219, § 2.

ANNOTATIONS

The 1997 amendment deleted "authorization removed" at the end of the section heading, deleted "registered" preceding "electors" near the end of Subsection B and in the introductory paragraph of Subsection C, and made a minor stylistic change in Subsection C, inserted "municipal" preceding "gross receipts tax" in the first sentence of Subsection E, and rewrote Subsection G. Laws 1997, ch. 219 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Compiler's notes. - Laws 1986, ch. 20, § 80, referred to in Subsection G, amended this section. The reference to Subsection G of that law is a reference to Subsection G of this section as it read prior to the 1997 amendment by Laws 1997, ch. 219, § 2, when Subsection G provided that no ordinance would be effective under this article unless the ordinance is enacted and the required election is held prior to February 1, 1986.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 68 Am. Jur. 2d Sales and Use Taxes § 8.

7-19-13. Ordinance must conform to certain provisions of the Gross Receipts and Compensating Tax Act and requirements of the division.

A. Any ordinance imposing a supplemental municipal gross receipts tax shall adopt by reference the same definitions and the same provisions relating to exemptions and deductions as are contained in the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] then in effect and as it may be amended from time to time.

B. The governing body of any municipality imposing or increasing the supplemental municipal gross receipts tax must adopt the language of the model ordinance furnished to the municipality by the division for the portion of the ordinance relating to the tax.

History: Laws 1979, ch. 397, § 4.

7-19-14. Specific exemptions.

No supplemental municipal gross receipts tax shall be imposed on the gross receipts arising from:

A. transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the municipality to another point outside the municipality; or

B. a business located outside the boundaries of a municipality on land owned by that municipality for which a gross receipts tax distribution is made pursuant to Section 7-1-6.4 NMSA 1978.

History: Laws 1979, ch. 397, § 5; 1983, ch. 211, § 33; 1994, ch. 101, § 1.

ANNOTATIONS

The 1994 amendment, - effective July 1, 1994, deleted former Subsection A, which read: "the transmission of messages by wire or other means from one point within the municipality to another point outside the municipality;" and redesignated former Subsections B and C as Subsections A and B; and in Subsection B, deleted "Subsection C of" following "pursuant to."

7-19-15. Collection by department; transfer of proceeds; deductions.

A. The department shall collect the supplemental municipal gross receipts tax in the same manner and at the same time it collects the state gross receipts tax.

B. The department shall withhold an administrative fee pursuant to Section 1 [7-1-6.41 NMSA 1978] of this 1997 act. The department shall transfer to each municipality for which it is collecting a supplemental municipal gross receipts tax the amount of the tax collected less the administrative fee withheld and less any disbursements for tax credits, refunds and the payment of interest applicable to the supplemental municipal gross receipts tax. Transfer of the tax to a municipality shall be made within the month following the month in which the tax is collected.

History: Laws 1979, ch. 397, § 6; 1983, ch. 211, § 34; 1997, ch. 125, § 6.

ANNOTATIONS

The 1997 amendment, effective July 1, 1997, substituted "department" for "division" throughout the section and in the section heading, and in Subsection B, substituted "shall withhold an administrative fee pursuant to Section 1 of this 1997 act" for "may

deduct an amount not to exceed three percent of the suppplemental municipal gross receipts tax collected as a charge for the administrative costs of collection, which amount shall be remitted to the state treasurer for deposit in the state general fund each month" in the first sentence, and substituted "less the administrative fee withheld" for "less any deduction for administrative cost" in the second sentence.

Compiler's notes. - The phrase "this 1997 act" in Subsection B refers to Laws 1997, ch. 125, which amended this section.

7-19-16. Interpretation of act; administration and enforcement of tax.

A. The division shall interpret the provisions of the Supplemental Municipal Gross Receipts Tax Act [7-19-10 to 7-19-18 NMSA 1978].

B. The division shall administer and enforce the collection of the supplemental municipal gross receipts tax, and the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] applies to the administration and enforcement of the tax.

History: Laws 1979, ch. 397, § 7.

7-19-17. Issuance of bonds; purposes.

A. If the ordinance imposing the supplemental municipal gross receipts tax is approved as provided in Subsection E of Section 7-19-12 NMSA 1978, the governing body of a municipality may issue bonds pursuant to the Supplemental Municipal Gross Receipts Tax Act [7-19-10 to 7-19-18 NMSA 1978] in an amount not to exceed nine million dollars ($9,000,000). The supplemental municipal gross receipts bonds shall be issued for the purpose of constructing and equipping and otherwise acquiring a municipal water supply system, including the purchase of water rights and easements, equipment and professional fees related thereto, to be paid back from the proceeds of the supplemental municipal gross receipts tax imposed.

B. Supplemental municipal gross receipts bonds shall be issued and sold as provided in the Supplemental Municipal Gross Receipts Tax Act. The governing body of the municipality shall determine at its discretion the terms, covenants and conditions of the supplemental municipal gross receipts bonds, including but not limited to, date of issuance, denomination, maturity, coupon rates, call features, premium, registration, refundability and other matters covering the general and technical aspects of their issuance. These bonds may be either serial or term and may be sold by the governing body of the municipality at the time and in the manner as the governing body may elect, at either public or private sale. The supplemental municipal gross receipts bonds shall not be considered or held to be general obligations of the municipality issuing them and are payable solely from the revenue accruing from the revenue of the supplemental municipal gross receipts tax. The ordinance authorizing the tax shall be irrepealable until these bonds are fully paid.

History: Laws 1979, ch. 397, § 8; 1980, ch. 106, § 3; 1986, ch. 6, § 2.

7-19-17.1. 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 [7-19-10 to 7-19-18 NMSA 1978]. 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.

ANNOTATIONS

Bracketed material. - The bracketed word "at" in Subsection F was inserted by the compiler; it was not enacted by the legislature and is not a part of the law.

Effective dates. - Laws 1997, ch. 219 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

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 [7-19-10 to 7-19-18 NMSA 1978];

(2) the funding of any reserves and other accounts in connection with such bonds;

(3) refunding bonds; and

(4) to the extent not needed for those purposes, the improvement of the municipality's water system.

B. When any issue of supplemental municipal gross receipts bonds is fully paid, the supplemental municipal gross receipts tax shall cease to be imposed for that issue, but may continue to be imposed for bonds enacted and approved pursuant to Section 7-19-12 NMSA 1978 and thereafter issued, or for refunding bonds issued pursuant to Section 4 [7-19-17.1 NMSA 1978] of this 1997 act. Any money remaining in a special improvement account after the obligations for supplemental municipal gross receipts bonds and refunding bonds, are fully paid may be transferred to any other fund of the municipality.

History: Laws 1979, ch. 397, § 9; 1980, ch. 106, § 4; 1986, ch. 6, § 3; 1997, ch. 219, § 3.

ANNOTATIONS

The 1997 amendment designated the former first sentence as Paragraphs A(1), (2) and (4), and added Paragraph A(3); designated the former second and third sentences as Subsection B, and in Subsection B, inserted "any issue of" near the beginning of the subsection, added the language beginning "for that issue, but may continue to be

imposed for bonds" at the end of the first sentence, inserted "and refunding bonds," in the second sentence, and made minor stylistic changes throughout the section. Laws 1997, ch. 219 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Compiler's notes. - The phrase "this 1997 act" in Subsection B refers to Laws 1997, ch. 219, which amended this section.

ARTICLE 19A
SPECIAL MUNICIPAL GROSS RECEIPTS TAX

(Repealed by Laws 1986, ch. 20, § 136E.

7-19A-1 to 7-19A-7. Repealed.

ANNOTATIONS

Repeals. - Laws 1986, ch. 20, § 136E repeals 7-19A-1 to 7-19A-7 NMSA 1978, as enacted by Laws 1984, ch. 3, §§ 1 to 7 and as amended by Laws 1986, ch. 20, §§ 81 and 82 and by Laws 1994, ch. 101, § 2, the Special Municipal Gross Receipts Tax Act, effective July 1, 1996. For provisions of the former sections, see 1995 Replacement Pamphlet.

ARTICLE 19B
MUNICIPAL ENVIRONMENTAL SERVICES GROSS RECEIPTS TAX

(Repealed and Recompiled by Laws 1993, ch. 346, §§ 10 and 12.)

7-19B-1, 7-19B-2. Repealed.

ANNOTATIONS

Repeals. - Laws 1993, ch. 346, § 12B repeals 7-19B-1 and 7-19B-2 NMSA 1978 as enacted by Laws 1990, ch. 99, §§ 49 and 50, relating to short title and defining terms, effective July 1, 1993. For provisions of former sections, see 1990 Replacement Pamphlet.

7-19B-3. Recompiled.

ANNOTATIONS

Recompilations. - Laws 1993, ch. 346, § 10 recompiles 7-19B-3 NMSA 1978 as enacted by Laws 1990, ch. 99, § 51, relating to authority to impose tax, as 7-19D-10 NMSA 1978, effective July 1, 1993.

7-19B-4 to 7-19B-7. Repealed.

ANNOTATIONS

Repeals. - Laws 1993, ch. 346, § 12B repeals 7-19B-4 to 7-19B-7 NMSA 1978, as enacted by Laws 1990, ch. 99, §§ 52 to 55, relating to municipal environmental services gross receipts tax, effective July 1, 1993. For provisions of former sections, see 1990 Replacement Pamphlet.

ARTICLE 19C
MUNICIPAL INFRASTRUCTURE GROSS RECEIPTS TAX

(Repealed and Recompiled by Laws 1993, ch. 346, §§ 11 and 12.)

7-19C-1, 7-19C-2. Repealed.

ANNOTATIONS

Repeals. - Laws 1993, ch. 346, § 12C repeals 7-19C-1 and 7-19C-2 NMSA 1978, as enacted by Laws 1991, ch. 9, §§ 1 and 2, relating to short title and defining terms, effective July 1, 1993. For provisions of former sections, see 1992 Cumulative Supplement.

7-19C-3. Recompiled.

ANNOTATIONS

Recompilations. - Laws 1993, ch. 346, § 11 recompiles 7-19C-3 NMSA 1978, as amended by Laws 1992, ch. 98, § 2, relating to authority to impose tax, as 7-19D-11 NMSA 1978, effective July 1, 1993.

7-19C-4 to 7-19C-7. Repealed.

ANNOTATIONS

Repeals. - Laws 1993, ch. 346, § 12C repeals 7-19C-4 to 7-19C-7 NMSA 1978, as enacted by Laws 1991, ch. 9, §§ 4 to 7, relating to municipal infrastructure gross receipts tax, effective July 1, 1993. For provisions of former sections, see 1990 Replacement Pamphlet.

ARTICLE 19D
MUNICIPAL LOCAL OPTION GROSS RECEIPTS TAXES

7-19D-1. Short title.

Chapter 7, Article 19D NMSA 1978 may be cited as the "Municipal Local Option Gross Receipts Taxes Act".

History: 1978 Comp., § 7-19D-1, enacted by Laws 1993, ch. 346, § 1.

7-19D-2. Definitions.

As used in the Municipal Local Option Gross Receipts Taxes Act [this article]:

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

B. "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 [this article] 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 [this article] shall adopt by reference the same definitions and the same provisions relating to exemptions and deductions as are contained in the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] then in effect and as it may be amended from time to time.

B. The governing body of any municipality imposing a tax under the Municipal Local Option Gross Receipts Taxes Act shall impose the tax by adopting the model ordinance with respect to the tax furnished to the municipality by the department. An ordinance that does not conform substantially to the model ordinance of the department is not valid.

History: 1978 Comp., § 7-19D-4, enacted by Laws 1993, ch. 346, § 4.

7-19D-5. Specific exemptions.

No tax authorized by the provisions of the Municipal Local Option Gross Receipts Taxes Act [this article] shall be imposed on the gross receipts arising from:

A. transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the municipality to another point outside the municipality; or

B. a business located outside the boundaries of a municipality on land owned by that municipality for which a state gross receipts tax distribution is made pursuant to Section 7-1-6.4 NMSA 1978.

History: 1978 Comp., § 7-19D-5, enacted by Laws 1993, ch. 346, § 5; 1994, ch. 101, § 3.

ANNOTATIONS

The 1994 amendment, effective July 1, 1994, substituted "by" for "under" in the undesignated paragraph; deleted former Subsection A, which read: "the transmission of messages by wire or other means from one point within the municipality to another point outside the municipality;" and redesignated former Subsections B and C as Subsections A and B; and in Subsection B, deleted "Subsection C of" following "pursuant to."

7-19D-6. Copy of ordinance to be submitted to department.

A certified copy of the ordinance imposing or repealing a tax authorized under the Municipal Local Option Gross Receipts Taxes Act [this article] or changing the tax rate imposed shall be mailed or delivered to the department within five days after the later of the date the ordinance is adopted or the date the results of any election held with respect to the ordinance are certified to be in favor of the ordinance.

History: 1978 Comp., § 7-19D-6, enacted by Laws 1993, ch. 346, § 6.

7-19D-7. Collection by department; transfer of proceeds; deductions.

A. The department shall collect each tax imposed pursuant to the provisions of the Municipal Local Option Gross Receipts Taxes Act [this article] in the same manner and at the same time it collects the state gross receipts tax.

B. Except as provided in Subsection C of this section, the department shall withhold an administrative fee pursuant to Section 1 [7-1-6.41 NMSA 1978] of this 1997 act. The department shall transfer to each municipality for which it is collecting a tax pursuant to the provisions of the Municipal Local Option Gross Receipts Taxes Act the amount of each tax collected for that municipality, less the administrative fee withheld and less any disbursements for tax credits, refunds and the payment of interest applicable to the tax. The transfer to the municipality shall be made within the month following the month in which the tax is collected.

C. With respect to the municipal gross receipts tax imposed by a municipality pursuant to Section 7-19D-9 NMSA 1978, the department shall withhold the administrative fee pursuant to Section 1 of this 1997 act only on that portion of the municipal gross receipts tax arising from a municipal gross receipts tax rate in excess of one-half of one percent.

History: 1978 Comp., § 7-19D-7, enacted by Laws 1993, ch. 346, § 7; 1997, ch. 125, § 7.

ANNOTATIONS

The 1997 amendment, effective July 1, 1997, substituted "pursuant to" for "under" in Subsection A; in Subsection B, substituted "shall withhold an administrative fee pursuant to Section 1 of this 1997 act" for "may deduct an amount not to exceed three percent of each tax collected under the provisions of the Municipal Local Option Gross Receipts Taxes Act as a charge for the administrative costs of collection, which amount shall be remitted to the state treasurer for deposit in the state general fund each month", and in the second sentence, substituted "pursuant" for "under" and substituted "the administrative fee withheld and less any disbursements for" for "any disbursement for administrative charges made pursuant to this section"; and substituted "shall withhold the administrative fee pursuant to Section 1 of this 1997 act only on that" for "may deduct as a charge for administration an amount equal to three percent of the" in Subsection C.

Emergency clauses. - Laws 1997, ch. 125, § 14 makes the act effective immediately. Approved April 9, 1997.

Compiler's notes. - The phrase "this 1997 act" in Subsection B refers to Laws 1997, ch. 125, which amended this section.

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 [this article].

B. The department shall administer and enforce the collection of each tax authorized under the provisions of the Municipal Local Option Gross Receipts Taxes Act, and the Tax Administration Act [Chapter 7, Article 1 NMSA 1978] applies to the administration and enforcement of each tax.

History: 1978 Comp., § 7-19D-8, enacted by Laws 1993, ch. 346, § 8.

7-19D-9. Municipal gross receipts tax; authority to impose rate.

A. The majority of the members of the governing body of any municipality may impose by ordinance an excise tax not to exceed a rate of one and one-fourth percent of the gross receipts of any person engaging in business in the municipality for the privilege of engaging in business in the municipality. A tax imposed pursuant to this section shall be imposed by the enactment of one or more ordinances, each imposing any number of municipal gross receipts tax rate increments, but the total municipal gross receipts tax rate imposed by all ordinances shall not exceed an aggregate rate of one and one-fourth percent of the gross receipts of a person engaging in business. Municipalities with a population of at least forty-five thousand according to the last federal decennial census may impose increments of one-eighth of one percent. All other municipalities may impose increments of one-fourth of one percent.

B. The tax imposed pursuant to Subsection A of this section may be referred to as the "municipal gross receipts tax".

C. The governing body of a municipality may, at the time of enacting an ordinance imposing the tax authorized in Subsection A of this section, dedicate the revenue for a specific purpose or area of municipal government services, including but not limited to police protection, fire protection, public transportation or street repair and maintenance. If the governing body proposes to dedicate such revenue, the ordinance and, if any election is held, the ballot shall clearly state the purpose to which the revenue will be dedicated, and any revenue so dedicated shall be used by the municipality for that purpose unless a subsequent ordinance is adopted to change the purpose to which dedicated or to place the revenue in the general fund of the municipality.

D. An election shall be called on the questions of disapproval or approval of any ordinance enacted pursuant to Subsection A of this section or any ordinance amending such ordinance:

(1) if the governing body chooses to provide in the ordinance that it shall not be effective until the ordinance is approved by the majority of the registered voters voting on the question at an election to be held pursuant to the provisions of a home-rule charter or on a date set by the governing body and pursuant to the provisions of the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978] governing special elections; or

(2) if the ordinance does not contain a mandatory election provision as provided in Paragraph (1) of this subsection, upon the filing of a petition requesting such an election if the petition is filed:

(a) pursuant to the requirements of a referendum provision contained in a municipal home-rule charter and signed by the number of registered voters in the municipality equal to the number of registered voters required in its charter to seek a referendum; or

(b) in all other municipalities, with the municipal clerk within thirty days after the adoption of such ordinance and the petition has been signed by a number of registered voters in the municipality equal to at least five percent of the number of the voters in the municipality who were registered to vote in the most recent regular municipal election.

E. The signatures on the petition filed in accordance with Subsection D of this section shall be verified by the municipal clerk. If the petition is verified by the municipal clerk as containing the required number of signatures of registered voters, the governing body shall adopt an election resolution calling for the holding of a special election on the question of approving or disapproving the ordinance unless the ordinance is repealed before the adoption of the election resolution. An election held pursuant to Subparagraph (a) or (b) of Paragraph 2 of Subsection D of this section shall be called, conducted and canvassed as provided in the Municipal Election Code for special elections, and the election shall be held within seventy-five days after the date the petition is verified by the municipal clerk or it may be held in conjunction with a regular municipal election if such election occurs within seventy-five days after the date of verification by the municipal clerk.

F. If at an election called pursuant to Subsection D of this section a majority of the registered voters voting on the question approves the ordinance imposing the tax, then the ordinance shall become effective in accordance with the provisions of the Municipal Local Option Gross Receipts Taxes Act [this article]. If at such an election a majority of the registered voters voting on the question disapproves the ordinance, then the ordinance imposing the tax shall be deemed repealed, and the question of imposing any increment of the municipal gross receipts tax authorized in this section shall not be considered again by the governing body for a period of one year from the date of the election.

G. Any municipality that has lawfully imposed by the requirements of the Special Municipal Gross Receipts Tax Act [7-19A-1 to 7-19A-7 NMSA 1978] a rate of at least one-fourth of one percent shall be deemed to have imposed one-fourth of one percent municipal gross receipts tax pursuant to this section. Any rate of tax deemed to be

imposed pursuant to this subsection shall continue to be dedicated to the payment of outstanding bonds issued by the municipality that pledged the tax revenues by ordinance until such time as the bonds are fully paid. A municipality may by ordinance change the purpose for any rate of tax deemed to be imposed at any time the revenues are not committed to payment of bonds.

H. Any law which imposes or authorizes the imposition of a municipal gross receipts tax or which affects the municipal gross receipts tax, or any law supplemental thereto or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any outstanding revenue bonds which may be secured by a pledge of such municipal gross receipts tax unless such outstanding revenue bonds have been discharged in full or provision has been fully made therefor.

History: Laws 1978, ch. 151, § 1; 1979, ch. 155, § 1; 1981, ch. 37, § 11; 1982, ch. 3, § 2; 1983, ch. 213, § 18; 1985, ch. 208, § 121; 1986, ch. 20, § 76; 1987, ch. 323, § 26; 1988, ch. 120, § 1; 1978, Comp., § 7-19-4, amended and recompiled as 1978 Comp., § 7-19D-9 by Laws 1993, ch. 346, § 9.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, renumbered this section and rewrote it to the extent that a detailed comparison is impracticable.

7-19D-10. Municipal environmental services gross receipts tax; authority to impose; ordinance requirements.

A. The majority of the members of the governing body of a municipality may enact an ordinance imposing an excise tax on any person engaging in business in the municipality for the privilege of engaging in business. The rate of the tax shall be one-sixteenth of one percent of the gross receipts of the person engaging in business. The imposition of this tax is not subject to referendum of any kind unless required by a municipal charter.

B. The tax imposed in accordance with Subsection A of this section may be referred to as the "municipal environmental services gross receipts tax".

C. The governing body of a municipality shall, at the time of enacting an ordinance imposing the rate of the tax authorized in Subsection A of this section, dedicate the revenue for acquisition, construction, operation and maintenance of solid waste facilities, water facilities, wastewater facilities, sewer systems and related facilities.

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.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, renumbered this section, deleted "authorization removed" at the end of the catchline; deleted the former second sentence of Subsection A which read "This tax is to be referred to as the 'municipal environmental services gross receipts tax' "; added current Subsection B; redesignated former Subsection B as Subsection C; and deleted former Subsections C to E, pertaining to the effective dates of enactments or repeals of ordinances and the time for mailing ordinances to the department.

7-19D-11. Municipal infrastructure gross receipts tax; authority by municipality to impose; ordinance requirements; election.

A. A majority of the members of the governing body of a municipality may enact an ordinance imposing an excise tax on any person engaging in business in the municipality for the privilege of engaging in business. The rate of the tax shall not exceed one-fourth of one percent of the gross receipts of the person engaging in business and may be imposed in one-sixteenth of one percent increments by separate ordinances. Any ordinance enacting any increment of the first one-eighth of one percent of the tax is not subject to a referendum of any kind, notwithstanding any requirement of any charter municipality, except that an increment that is imposed after July 1, 1998 for economic development purposes set forth in Paragraph (5) of Subsection C of this section shall be subject to a referendum as provided in Subsection D of this section.

B. The tax imposed pursuant to Subsection A of this section may be referred to as the "municipal infrastructure gross receipts tax".

C. The governing body of a municipality, at the time of enacting any ordinance imposing the rate of the tax authorized in Subsection A of this section, may dedicate the revenue for:

(1) payment of special obligation bonds issued pursuant to a revenue bond act;

(2) repair, replacement, construction or acquisition of infrastructure improvements, including but not limited to sanitary sewer lines, storm sewers and other drainage improvements, water, water rights, water lines and utilities, streets, alleys, rights of way, easements, international ports of entry and land within the municipality or within the extraterritorial zone of the municipality;

(3) municipal general purposes;

(4) acquiring, constructing, extending, bettering, repairing or otherwise improving or operating or maintaining public transit systems or regional transit systems or authorities; and

(5) furthering or implementing economic development plans and projects as defined in the Local Economic Development Act[5-10-1 to 5-10-13 NMSA 1978], and use of not more than the greater of fifty thousand dollars ($50,000) or ten percent of the revenue

collected for promotion and administration of or professional services contracts related to implementation of an economic development plan adopted by the governing body pursuant to the Local Economic Development Act and in accordance with law.

D. An ordinance imposing any increment of the municipal infrastructure gross receipts tax in excess of the first one-eighth of one percent or any increment imposed after July 1, 1998 for economic development purposes set forth in Paragraph (5) of Subsection C of this section shall not go into effect until after an election is held and a majority of the voters of the municipality voting in the election votes in favor of imposing the tax. The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is adopted on the question of imposing the tax. The question shall be submitted to the voters of the municipality as a separate question at a regular municipal election or at a special election called for that purpose by the governing body. A special municipal election shall be called, conducted and canvassed as provided in the Municipal Election Code [Chapter 3, Articles 8 and 9 NMSA 1978]. If a majority of the voters voting on the question approves the ordinance imposing the municipal infrastructure gross receipts tax, then the ordinance shall become effective in accordance with the provisions of the Municipal Local Option Gross Receipts Taxes Act [Chapter 7, Article 19D NMSA 1978]. If the question of imposing the municipal infrastructure gross receipts tax fails, the governing body shall not again propose the imposition of any increment of the tax in excess of the first one-eighth of one percent for a period of one year from the date of the election.

History: Laws 1991, ch. 9, § 3; 1992, ch. 98, § 2; 1978 Comp., § 7-19C-3, amended and recompiled as 1978 Comp., § 7-19D-11 by Laws 1993, ch. 346, § 11; 1998, ch. 90, § 6.

ANNOTATIONS

The 1992 amendment, effective July 1, 1992, in Subsection A, deleted "Subject to the provisions of Subsection C of this section" at the beginning of the first sentence and substituted "may be imposed in one-sixteenth of one percent increments" for "shall be imposed in one-sixteenth increments" in the second sentence; deleted former Subsection C, relating to enactment of ordinance imposing a second one-sixteenth of one percent tax; redesignated former Subsections D through G as Subsections C through F; and substituted "may" for "shall" near the beginning of Subsection C, while adding "or may use the revenue for municipal general purposes" at the end of that subsection.

The 1993 amendment, effective July 1, 1993, renumbered this section, inserted "prior to July 1, 1993" in the first sentence of Subsection A; substituted "may be referred" for "shall be referred" in Subsection B; deleted former Subsections D to F, pertaining to the effective dates of enactments or repeals of ordinances and the time for mailing ordinances to the department; and made minor stylistic changes.

The 1998 amendment, added "election" to the end of the section heading; in Subsection A, substituted "one-fourth" for "one-eighth" and deleted "prior to July 1, 1993" in the second sentence, and in the last sentence, substituted "enacting any increment of the first one-eighth of one percent of the tax" for "enacted" and added the provisio at the end; in Subscection C, deleted "either" near the end of the introductory language, designated Paragraphs C(1) to (3), deleted "or for" at the end of Paragraph C(1) and " or may use the revenue for" at the end of Paragraph C(2), and added Paragraphs C(4) and (5); and added Subsection D. Laws 1998, ch. 90, contains no effective date provision, but pursuant to N.M. Const., art. IV, § 23, is effective May 20, 1998, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for 'Adjournment Dates of Sessions of Legislature" table.

ARTICLE 20
COUNTY GROSS RECEIPTS TAX

(Repealed and Recompiled by Laws 1979, ch. 88, § 1 and by Laws 1993, ch. 354, §§ 9 to 14 and 19.)

7-20-1, 7-20-2. Repealed.

ANNOTATIONS

Repeals. - Laws 1993, ch. 354, § 19A repeals 7-20-1 and 7-20-2 NMSA 1978, as enacted by Laws 1983, ch. 213, § 28 and amended by Laws 1986, ch. 20, § 83, containing the title of the County Gross Receipts Tax Act and definitions, effective July 1, 1993. For provisions of former sections, see 1990 Replacement Pamphlet.

7-20-3, 7-20-3.1. Recompiled.

ANNOTATIONS

Recompilations. - Laws 1993, ch. 354, § 9 recompiles 7-20-3 NMSA 1978 as amended by Laws 1991, ch. 212, § 16, relating to authority to impose tax, as 7-20E-9 NMSA 1978, effective July 1, 1993.

Laws 1993, ch. 354, § 12 recompiles 7-20-3.1 NMSA 1978 as enacted by Laws 1989, ch. 239, § 1, relating to authority to impose additional rate in lieu of property tax, as 7-20E-12 NMSA 1978.

7-20-4. Repealed.

ANNOTATIONS

Repeals. - Laws 1993, ch. 354, § 19A repeals 7-20-4 NMSA 1978, as enacted by Laws 1983, ch. 213, § 31, requiring an ordinance imposing a county gross receipts tax to

conform to certain provisions of the Gross Receipts and Compensating Tax Act and requirements of the division, effective July 1, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

7-20-5. Recompiled.

ANNOTATIONS

Recompilations. - Laws 1993, ch. 354, § 10 recompiles 7-20-5 NMSA 1978 as amended by Laws 1986, ch. 20, § 85, relating to referendum requirements, as 7-20E-10 NMSA 1978, effective July 1, 1993.

7-20-6, 7-20-7. Repealed.

ANNOTATIONS

Repeals. - Laws 1993, ch. 354, § 19A repeals 7-20-6 and 7-20-7 NMSA 1978, as enacted by Laws 1983, ch. 213, §§ 33 and 34, containing exemptions from the county gross receipts tax and providing for collection of the tax and distribution of proceeds, effective July 1, 1993. For provisions of former sections, see 1990 Replacement Pamphlet.

7-20-8. Recompiled.

ANNOTATIONS

Recompilations. - Laws 1993, ch. 354, § 11 recompiles 7-20-8 NMSA 1978 as amended by Laws 1986, ch. 20, § 87, relating to use of tax, as 7-20E-11 NMSA 1978, effective July 1, 1993.

7-20-9. Repealed.

ANNOTATIONS

Repeals. - Laws 1993, ch. 354, § 19A repeals 7-20-9 NMSA 1978, as enacted by Laws 1983, ch. 213, § 36, concerning interpretation of the County Gross Receipts Tax Act and administration and enforcement of the tax, effective July 1, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

7-20-10 to 7-20-18. Repealed.

ANNOTATIONS

Repeals. - Laws 1979, ch. 88, § 1, repeals 7-20-10 to 7-20-18 NMSA 1978, relating to the county gross receipts tax, effective June 15, 1979.

7-20-19, 7-20-20. Repealed.

ANNOTATIONS

Repeals. - Laws 1993, ch. 354, § 19B repeals 7-20-19 and 7-20-20 NMSA 1978, as enacted by Laws 1987, ch. 45, § 1 and amended by Laws 1992, ch. 80, § 1, the title of the Special County Hospital Gross Receipts Tax Act and definitions, effective July 1, 1993. For provisions of former sections, see 1990 Replacement Pamphlet and 1992 Cumulative Supplement.

7-20-21. Recompiled.

ANNOTATIONS

Recompilations. - Laws 1993, ch. 354, § 13 recompiles 7-20-21 NMSA 1978 as amended by Laws 1992, ch. 80, § 2, relating to special county hospital gross receipts tax, as 7-20E-13, effective July 1, 1993.

7-20-22 to 7-20-25. Repealed.

ANNOTATIONS

Repeals. - Laws 1993, ch. 354, § 19B repeals 7-20-22 to 7-20-25 NMSA 1978, as enacted by Laws 1987, ch. 45, §§ 4 to 7, requiring an ordinance imposing a special hospital gross receipts tax to conform to certain provisions of the Gross Receipts and Compensating Tax Act and requirements of the department; providing exemptions from the act; providing for collection of the tax and distribution of proceeds; and concerning interpretation of the act and administration and enforcement of the tax, effective July 1, 1993. For provisions of former sections, see 1990 Replacement Pamphlet.

7-20-26. Recompiled.

ANNOTATIONS

Recompilations. - Laws 1993, ch. 354, § 14 recompiles 7-20-26 NMSA 1978, as enacted by Laws 1987, ch. 45, § 8, relating to distribution, as 7-20E-14, effective July 1, 1993.

ARTICLE 20A
COUNTY FIRE PROTECTION EXCISE TAX

(Repealed and Recompiled by Laws 1993, ch. 354, §§ 15, 16, and 19.)

7-20A-1, 7-20A-2. Repealed.

ANNOTATIONS

Repeals. - Laws 1993, ch. 354, § 19C repeals 7-20A-1 and 7-20A-2 NMSA 1978, as enacted by Laws 1979, ch. 398, § 1 and amended by Laws 1986, ch. 20, § 88, containing the title of the County Fire Protection Excise Tax Act and definitions, effective July 1, 1993. For provisions of former sections, see 1990 Replacement Pamphlet.

7-20A-3. Recompiled.

ANNOTATIONS

Recompilations. - Laws 1993, ch. 354, § 15 recompiles 7-20A-3 NMSA 1978 as amended by Laws 1983, ch. 222, § 2, relating to authority to impose tax, as 7-20E-15, effective July 1, 1993.

7-20A-4 to 7-20A-7. Repealed.

ANNOTATIONS

Repeals. - Laws 1993, ch. 354, § 19C repeals 7-20A-4 to 7-20A-7 NMSA 1978, as enacted by Laws 1979, ch. 398, §§ 4, 5 and 7 and amended by Laws 1983, ch. 211, § 35, requiring an ordinance imposing a county fire protection excise tax to conform to certain provisions of the Gross Receipts and Compensating Tax Act and requirements of the division; providing exemptions from the act; providing for collection of the tax and transfer of proceeds; and concerning interpretation of the act and administration and enforcement of the tax, effective July 1, 1993. For provisions of former sections, see 1990 Replacement Pamphlet.

7-20A-8. Recompiled.

ANNOTATIONS

Recompilations. - Laws 1993, ch. 354, § 16 recompiles 7-20A-8 NMSA 1978 as amended by Laws 1983, ch. 222, § 4, relating to distribution, as 7-20E-16, effective July 1, 1993.

7-20A-9. Repealed.

ANNOTATIONS

Repeals. - Laws 1993, ch. 354, § 19C repeals 7-20A-9 NMSA 1978, as amended by Laws 1983, ch. 222, § 4, containing a budgetary limitation, effective July 1, 1993. For provisions of former section, see 1990 Replacement Pamphlet.

ARTICLE 20B
COUNTY ENVIRONMENTAL SERVICES GROSS RECEIPTS TAX

(Repealed and Recompiled by Laws 1993, ch. 354, §§ 17 and 19.)

7-20B-1, 7-20B-2. Repealed.

ANNOTATIONS

Repeals. - Laws 1993, ch. 354, § 19D repeals 7-20B-1 and 7-20B-2 NMSA 1978, as enacted by Laws 1990, ch. 99, §§ 56 and 57, containing the title of the County Environmental Services Gross Receipts Tax Act and definitions, effective July 1, 1993. For provisions of former sections, see 1990 Replacement Pamphlet.

7-20B-3. Recompiled.

ANNOTATIONS

Recompilations. - Laws 1993, ch. 354, § 17 recompiles 7-20B-3 NMSA 1978 as enacted by Laws 1990, ch. 99, § 58, relating to authority to impose tax, as 7-20E-17, effective July 1, 1993.

7-20B-4 to 7-20B-7. Repealed.

ANNOTATIONS

Repeals. - Laws 1993, ch. 354, § 19D repeals 7-20B-4 to 7-20B-7 NMSA 1978, as enacted by Laws 1990, ch. 99, §§ 59 to 62, requiring an ordinance imposing a county environmental services gross receipts tax to conform to certain provisions of the Gross Receipts and Compensating Tax Act and requirements of the department; providing for collection of the tax and transfer of proceeds; providing exemptions from the tax; and concerning interpretation of the act and administration and enforcement of the tax, effective July 1, 1993. For provisions of former sections, see 1990 Replacement Pamphlet.

ARTICLE 20C
LOCAL HOSPITAL GROSS RECEIPTS TAX

7-20C-1. Short title.

Sections 1 through 15 [7-20C-1 to 7-20C-17 NMSA 1978] of this act may be cited as the "Local Hospital Gross Receipts Tax Act".

History: Laws 1991, ch. 176, § 1.

ANNOTATIONS

Compiler's notes. - Sections 7-20C-16 and 7-20C-17 NMSA 1978 were enacted as part of the Local Hospital Gross Receipts Tax Act in 1996.

7-20C-2. Definitions.

As used in the Local Hospital Gross Receipts Tax Act [7-20C-1 to 7-20C-17 NMSA 1978]:

A. "county" means:

(1) a class B county having a population of less than twenty-five thousand according to the most recent federal decennial census and having a net taxable value for rate-setting purposes for the 1990 property tax year or any subsequent year of more than two hundred fifty million dollars ($250,000,000);

(2) a class B county having a population of less than forty-seven thousand but more than forty-four thousand according to the 1990 federal decennial census and having a net taxable value for rate-setting purposes for the 1992 property tax year of more than three hundred million dollars ($300,000,000) but less than six hundred million dollars ($600,000,000);

(3) a class B county having a population of less than ten thousand according to the most recent federal decennial census and having a net taxable value for rate-setting purposes for the 1990 property tax year or any subsequent year of more than one hundred million dollars ($100,000,000);

(4) a class B county having a population of less than twenty-five thousand according to the 1990 federal decennial census and having a net taxable value for rate-setting purposes for the 1993 property tax year of more than ninety-one million dollars ($91,000,000) but less than one hundred twenty-five million dollars ($125,000,000); or

(5) a class B county having a population of more than seventeen thousand but less than twenty thousand according to the 1990 federal decennial census and having a net taxable value for rate-setting purposes for the 1993 property tax year of more than one hundred fifty-three million dollars ($153,000,000) but less than one hundred fifty-six million dollars ($156,000,000);

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

C. "governing body" means the board of county commissioners of a county;

D. "hospital facility revenues" means all or a portion of the revenues derived from a lease of a hospital facility acquired, constructed or equipped pursuant to and operated in accordance with the Local Hospital Gross Receipts Tax Act;

E. "local hospital gross receipts tax" means the tax authorized to be imposed under the Local Hospital Gross Receipts Tax Act;

F. "person" means an individual or any other legal entity; and

G. "state gross receipts tax" means the gross receipts tax imposed under the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978].

History: Laws 1991, ch. 176, § 2; 1993, ch. 306, § 1; 1996, ch. 18, § 1; 1996 (1st S.S.), ch. 6, § 1; 1997, ch. 54, § 1; 1997, ch. 129, § 1.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, in Subsection A, inserted the paragraph designation "(1)", added Paragraphs (2) and (3), and made a minor stylistic change.

1996 amendments. - Laws 1996, ch. 18, § 1, effective March 4, 1996, making a stylistic change in Subsection A(3), adding a new Subsection D defining hospital facility revenues, and redesignating former Subsections D through F accordingly, was approved March 4, 1996. However, Laws 1996 (1st S.S.), ch. 6, § 1, also amending this section by adding Paragraphs A(4) and A(5) and making minor stylistic changes throughout Subsection A, was approved March 29, 1996. The 1996 Special Session amendment to this section did not include the amendments made by Laws 1996, ch. 18, § 1. The section is set out as amended by Laws 1996 (1st S.S.), ch. 6, § 1. Laws 1996 (1st S.S.), ch. 6 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 21, 1996, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

The 1997 amendments. - Laws 1997, ch. 54, § 1, amending this section effective July 1, 1997 by substituting $153,000,000 for $125,000,000 in Paragraph A(4), adding Paragraph A(6) relating to a class B county with a population of more than 15,000 and a net taxable value for 1996 taxable year purposes of more than $150,000,000 but less than $175,000,000, and adding new Subsections D and E defining "health care facilities contract" and "hospital facility revenues" and redesignating the remaining subsections, was approved April 8, 1997. However, Laws 1997, ch. 129, § 1, also amending this section effective July 1, 1997 by adding Subsection D and redesignating the remaining subsections accordingly but not giving effect to the changes made by the first 1997 amendment, was approved April 9, 1997. This section is set out as amended by Laws 1997, ch. 129, § 1. See 12-1-8 NMSA 1978.

7-20C-3. Local hospital gross receipts tax; authority to impose; ordinance requirements.

A. A majority of the members elected to the governing body of a county may enact an ordinance imposing an excise tax on any person engaging in business in the county for the privilege of engaging in business. This tax is to be referred to as the "local hospital gross receipts tax". The rate of the tax shall be:

(1) one-half of one percent of the gross receipts of the person engaging in business if the tax is initially imposed before January 1, 1993;

(2) one-eighth of one percent of the gross receipts of the person engaging in business if the tax is initially imposed after January 1, 1993; and

(3) a rate not to exceed one-half of one percent of the gross receipts of the person engaging in business if the tax is imposed after July 1, 1996 in a county described in Paragraph (4) or (6) of Subsection A of Section 7-20C-2 NMSA 1978; provided, the tax may be imposed in any number of increments of one-eighth percent not to exceed an aggregate rate of one-half of one percent of gross receipts.

B. The local hospital gross receipts tax imposed initially before January 1, 1993 shall be imposed only once for the period necessary for payment of the principal and interest on revenue bonds issued to accomplish the purpose for which the revenue is dedicated, but the period shall not exceed ten years from the effective date of the ordinance imposing the tax. The local hospital gross receipts tax imposed after July 1, 1996 in a county described in Paragraph (4) of Subsection A of Section 7-20C-2 NMSA 1978 shall be imposed only once for the period necessary for payment of the principal and interest on revenue bonds issued to accomplish the purpose for which the revenue is dedicated, but the period shall not exceed twenty years from the effective date of the ordinance imposing the tax.

C. No local hospital gross receipts tax authorized in Subsection A of this section shall be imposed initially after January 1, 1993 unless:

(1) in a county described in Paragraph (2) of Subsection A of Section 7-20C-2 NMSA 1978, the voters of the county have approved the issuance of general obligation bonds of the county sufficient to pay at least one-half of the costs of the county hospital facility or county twenty-four hour urgent care or emergency facility for which the local hospital gross receipts tax revenues are dedicated, including the costs of all acquisition, renovation and equipping of the facility; or

(2) in a county described in Paragraph (3) or (5) of Subsection A of Section 7-20C-2 NMSA 1978, the county will not have in effect at the same time a county hospital emergency gross receipts tax and the voters of the county have approved the imposition of a property tax at a rate of one dollar ($1.00) on each one thousand dollars ($1,000) of taxable value of property in the county for the purpose of operation and maintenance of a hospital owned by the county and operated and maintained either by the county or by another party pursuant to a lease with the county.

D. The governing body of a county enacting an ordinance imposing a local hospital gross receipts tax shall dedicate the revenue from the tax as provided in this subsection. In any election held, the ballot shall clearly state the purpose to which the revenue will be dedicated and the revenue shall be used by the county for that purpose. The revenues shall be dedicated as follows:

(1) prior to January 1, 1993, the governing body, at the time of enacting an ordinance imposing the rate of the tax authorized in Subsection A of this section, shall dedicate the revenue for acquisition of land for and the design, construction, equipping and furnishing of a county hospital facility to be operated by the county or operated and maintained by another party pursuant to a lease with the county;

(2) if the governing body of a county described in Paragraph (2), (3) or (5) of Subsection A of Section 7-20C-2 NMSA 1978 is enacting the ordinance imposing the tax after July 1, 1993, the governing body shall dedicate the revenue for acquisition, renovation and equipping of a building for a county hospital facility or a county twenty-four hour urgent care or emergency facility or for operation and maintenance of that facility, whether operated and maintained by the county or by another party pursuant to a lease or management contract with the county, for the period of time the tax is imposed not to exceed ten years;

(3) if the governing body of a county described in Paragraph (4) of Subsection A of Section 7-20C-2 NMSA 1978 is enacting the ordinance imposing the tax after July 1, 1995, the governing body shall dedicate the revenue for acquisition of land or buildings for and the renovation, design, construction, equipping or furnishing of a county hospital facility or health clinic to be operated by the county or operated and maintained by another party pursuant to a lease or management contract with the county; and

(4) if the governing body of a county described in Paragraph (6) of Subsection A of Section 7-20C-2 NMSA 1978 is enacting the ordinance imposing the tax after July 1, 1997, the governing body shall dedicate the revenue for either or a combination of the following:

(a) acquisition of land or buildings for and the design, construction, renovation, equipping or furnishing of a hospital facility or health clinic owned by the county or a hospital or health clinic with whom the county has entered into a health care facilities contract; or

(b) operations and maintenance of a hospital or health clinic owned by the county or a hospital or health clinic with whom the county has entered into a health care facilities contract.

E. The ordinance shall not go into effect until after an election is held and a simple majority of the qualified electors of the county voting in the election votes in favor of imposing the local hospital gross receipts tax and, in the case of a county described in Paragraph (3) or (5) of Subsection A of Section 7-20C-2 NMSA 1978, also votes in

favor of a property tax at a rate of one dollar ($1.00) for each one thousand dollars ($1,000) of taxable value of property in the county. The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is adopted on the question of imposing the tax. The question may be submitted to the qualified electors and voted upon as a separate question in a general election or in any special election called for that purpose by the governing body. A special election upon the question shall be called, held, conducted and canvassed in substantially the same manner as provided by law for general elections. If the question of imposing a local hospital gross receipts tax fails or if the question of imposing both a local hospital gross receipts tax and a property tax fails, the governing body shall not again propose a local hospital gross receipts tax for a period of one year after the election. A certified copy of any ordinance imposing a local hospital gross receipts tax shall be mailed to the department within five days after the ordinance is adopted in any election called for that purpose.

F. Any ordinance enacted pursuant to the provisions of Subsection A of this section shall include an effective date of either July 1 or January 1, whichever date occurs first after the expiration of at least three months from the date the ordinance is approved by the electorate.

G. Any ordinance repealed under the provisions of the Local Hospital Gross Receipts Tax Act [7-20C-1 to 7-20C-17 NMSA 1978] shall be repealed effective on either July 1 or January 1.

H. As used in this section, "taxable value of property" means the sum of:

(1) the net taxable value, as that term is defined in the Property Tax Code [Articles 35 to 38, Chapter 7 NMSA 1978], of property subject to taxation under the Property Tax Code;

(2) the assessed value of products, as those terms are defined in the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978];

(3) the assessed value of equipment, as those terms are defined in the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978]; and

(4) the taxable value of copper mineral property, as those terms are defined in the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978], subject to taxation under the Copper Production Ad Valorem Tax Act.

History: Laws 1991, ch. 176, § 3; 1993, ch. 306, § 2; 1994, ch. 14, § 2; 1994, ch. 101, § 4; 1995, ch. 70, § 22; 1996 (1st S.S.), ch. 6, § 2; 1997, ch. 54, § 2.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, rewrote the section to such an extent that a detailed comparison would be impracticable.

The 1996 amendment, in Subsection A, divided the subsection into paragraphs, deleted "The rate of the tax shall be" at the end of Paragraph (1), and added Paragraph (3); in Subsection B, added the second sentence; in Subsection D, added the introductory language, inserted "of a county described in Paragraph (2), (3), or (5) of Subsection A of Section 7-20C-2 NMSA 1978" and deleted the last sentence which provided that the ballot should clearly state the purpose of the revenue in Paragraph (2), and added Paragraph (3); and made minor stylistic changes throughout the section. Laws 1996 (1st S.S.), ch. 6 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 21, 1996, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

The 1997 amendment, effective July 1, 1997, in Paragraph A(3), inserted "or (6)" following "Paragraph (4)", and added Paragraph D(4) and made related stylistic changes.

Compiler's notes. - Laws 1997, ch. 54, § 1 amended 7-20C-2 NMSA 1978 to add Paragraph A(6), referred to in Paragraphs A(3) and D(4) of this section. However, since 7-20C-2 NMSA 1978 was also amended by Laws 1997, ch. 129, § 1, a later enactment, the version of 7-20C-2 NMSA 1978 that is compiled does not reflect the amendment by Laws 1997, ch. 54 and therefore does not contain a Paragraph A(6). See 12-1-8 NMSA 1978.

7-20C-4. Ordinance shall conform to certain provisions of the Gross Receipts and Compensating Tax Act and requirements of the department.

A. Any ordinance imposing the local hospital gross receipts tax shall adopt by reference the same definitions and the same provisions relating to exemptions and deductions as are contained in the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] then in effect and as it may be amended from time to time.

B. The governing body of any county imposing the tax shall adopt the model ordinances furnished to the county by the department.

History: Laws 1991, ch. 176, § 4.

7-20C-5. Specific exemptions.

No local hospital gross receipts tax shall be imposed on the gross receipts arising from transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the county to another point outside the county.

History: Laws 1991, ch. 176, § 5; 1994, ch. 101, § 5.

ANNOTATIONS

The 1994 amendment, effective July 1, 1994, deleted former Subsection A, which read: "the transmission of messages by wire or other means from one point within the county to another point outside the county;" and deleted the subsection designation "B," appending that subsection to the end of the undesignated paragraph.

7-20C-6. Collection by department; transfer of proceeds; deductions.

A. The department shall collect the local hospital gross receipts tax in the same manner and at the same time it collects the state gross receipts tax.

B. The department shall withhold an administrative fee pursuant to Section 1 [7-1-6.41 NMSA 1978] of this 1997 act. The department shall transfer to each county for which it is collecting such tax the amount of the tax collected less the administrative fee withheld and less any disbursements for tax credits, refunds and the payment of interest applicable to the tax. Transfer of the tax to a county shall be made within the month following the month in which the tax is collected.

History: Laws 1991, ch. 176, § 6; 1997, ch. 125, § 8.

ANNOTATIONS

The 1997 amendment, effective July 1, 1997, in Subsection B, substituted "shall withhold an administrative fee pursuant to Section 1 of this 1997 act" for "may deduct an amount not to exceed three percent of the local hospital gross receipts tax collected as a charge for the administrative costs of collection, which amount shall be remitted to the state treasurer for deposit in the state general fund each month" in the first sentence, and in the second sentence, substituted "the" for "any deduction for" and substituted "fee withheld" for "costs".

Emergency clauses. - Laws 1997, ch. 125, § 14 makes the act effective immediately. Approved April 9, 1997.

Compiler's notes. - The phrase "this 1997 act" in Subsection B refers to Laws 1997, ch. 125, which amended this section.

7-20C-7. Interpretation of act; administration and enforcement of tax.

A. The department shall interpret the provisions of the Local Hospital Gross Receipts Tax Act [7-20C-1 to 7-20C-17 NMSA 1978].

B. The department shall administer and enforce the collection of the local hospital gross receipts tax, and the Tax Administration Act [7-1-1 to 7-1-82 NMSA 1978] applies to the administration and enforcement of the tax.

History: Laws 1991, ch. 176, § 7.

7-20C-8. Distribution.

The net receipts from the local hospital gross receipts tax shall be administered by the governing body and disbursed by the county treasurer subject to the approval by the governing body in accordance with the provisions of the Local Hospital Gross Receipts Tax Act [7-20C-1 to 7-20C-17 NMSA 1978].

History: Laws 1991, ch. 176, § 8.

7-20C-9. Local hospital revenue bonds; authority to issue; pledge of revenues.

A. A county, other than a county described in Paragraph (2) of Subsection A of Section 7-20C-2 NMSA 1978, may issue local hospital revenue bonds pursuant to the Local Hospital Gross Receipts Tax Act [7-20C-1 to 7-20C-17 NMSA 1978] for the purpose of acquiring land for and designing, constructing, equipping and furnishing a county hospital facility or health clinic to be operated by the county or by another party pursuant to a lease or management contract with the county, or a hospital facility or health clinic with whom the county has entered into a health care facilities contract.

B. The county issuing the local hospital revenue bonds pursuant to the Local Hospital Gross Receipts Tax Act shall pledge irrevocably all of the net receipts derived from the imposition of the local hospital gross receipts tax and may pledge irrevocably any combination of hospital facility revenues and any other revenues as necessary for the payment of principal and interest on the revenue bonds.

History: Laws 1991, ch. 176, § 9; 1993, ch. 306, § 3; 1996, ch. 18, § 2; 1996 (1st S.S.), ch. 6, § 3; 1997, ch. 54, § 3.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, inserted ", other than a county described in Paragraph (2) of Section 7-20C-2 NMSA 1978" near the beginning of Subsection A.

1996 amendments. - Laws 1996, ch. 18, § 2, effective March 4, 1996, inserting "Subsection A of" in Subsection A, and inserting "may pledge irrevocably any combination of hospital facility revenues and" in Subsection B, was approved March 4, 1996. However, Laws 1996 (1st S.S.), ch. 6, § 3, also amending this section by inserting "or management contract" preceding "with the county" at the end of Subsection A, and giving effect to the changes made by the first 1996 amendment, was approved March

29, 1996. Laws 1996 (1st S.S.), ch. 6 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 21, 1996, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

The 1997 amendment, effective July 1, 1997, in Subsection A, inserted "or health care clinic" following "county hospital facility", and added "or a hospital facility or health clinic with whom the county has entered into a health care facilities contract" at the end of the section.

7-20C-9.1. New Mexico finance authority; revenue bonds.

A. For a county described in Paragraph (2) of Subsection A of Section 7-20C-2 NMSA 1978, the provisions of this section shall govern the financing of the acquisition, renovation or equipping of a building for a county hospital facility or a county twenty-four-hour urgent care or emergency facility.

B. Upon approval of the voters pursuant to Section 7-20C-3 NMSA 1978, the county shall determine if the issuance of revenue bonds is necessary to finance that portion of the local hospital facility that will not otherwise be financed with general obligation bonds and local revenues. Upon a determination that the issuance of revenue bonds is necessary, the county shall enter into an agreement with the New Mexico finance authority for issuance and sale of New Mexico finance authority revenue bonds for the purpose of the acquisition, renovation or equipping of a county hospital facility or twenty-four-hour urgent care or emergency care facility in that county and for transfer of local hospital gross receipts tax proceeds to the authority in the amount necessary for that purpose.

C. Local hospital gross receipts tax proceeds transferred to the authority shall be pledged irrevocably for the payment of principal, interest, any premiums and the expenses related to issuance and sale of the bonds and shall be deposited into a special bond fund or account of the authority. To the extent such revenues are not needed to meet current debt service requirements, including any reserve fund requirements, the authority shall transfer such excess to the county to be used for the purpose for which the local hospital gross receipts tax is dedicated. The legislature shall not repeal, amend or otherwise modify any law that affects or impairs any revenue bonds of the New Mexico finance authority secured by a pledge of local hospital gross receipts tax revenues.

History: 1978 Comp., § 7-20C-9.1, enacted by Laws 1993, ch. 306, § 4.

7-20C-10. Ordinance authorizing revenue bonds.

At a regular or special meeting called for the purpose of issuing revenue bonds as authorized pursuant to the Local Hospital Gross Receipts Tax Act [7-20C-1 to 7-20C-17 NMSA 1978], the governing body may adopt an ordinance that:

A. declares the necessity for issuing revenue bonds;

B. authorizes the issuance of revenue bonds by an affirmative vote of a majority of the governing body; and

C. designates the source of the pledged revenues.

History: Laws 1991, ch. 176, § 10.

7-20C-11. Revenue bonds; terms.

Local hospital revenue bonds:

A. may have interest, appreciated principal value or any part thereof payable at intervals or at maturity as may be determined by the governing body in the ordinance;

B. may be subject to a prior redemption at the option of the county at such times and upon such terms and conditions, with or without the payment of such premiums, as may be provided by the ordinance authorizing the bonds;

C. may mature at any time not exceeding twenty years after the date of issuance;

D. may be serial in form and maturity or may consist of one bond payable at one time or in installments or may be in any other form as may be provided in the ordinance authorizing the bonds;

E. shall be sold for cash at, above or below par and at a price that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978]; and

F. may be sold at a public or negotiated sale.

History: Laws 1991, ch. 176, § 11; 1994, ch. 4, § 1; 1996 (1st S.S.), ch. 6, § 4.

ANNOTATIONS

The 1994 amendment, effective February 9, 1994, rewrote Subsection A, which formerly related to payment of interest, and substituted "the ordinance authorizing the bonds" for "resolution" in Subsection B, "ordinance" for "resolution" in Subsection D and "negotiated" for "private" in Subsection F.

The 1996 amendment, in Subsection B, deleted "time or" preceding "times" and deleted "premium or" preceding "premiums"; and in Subsection C, substituted "twenty years" for "ten years". Laws 1996 (1st S.S.), ch. 6 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 21, 1996, 90 days after

adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

7-20C-12. Local hospital revenue bonds not general county obligations.

Revenue bonds issued by a county under the authority of the Local Hospital Gross Receipts Tax Act [7-20C-1 to 7-20C-17 NMSA 1978] shall not be the general obligation of the county within the meaning of Article 9, Sections 10 and 13 of the constitution of New Mexico. The bonds shall be payable solely out of all or a portion of the net revenues derived from the imposition of the local hospital gross receipts tax. Revenue bonds and interest coupons issued under authority of that act shall never constitute an indebtedness of the county within the meaning of any state constitutional provision or statutory limitation and shall never constitute or give rise to a pecuniary liability of the county or a charge against its general credit or taxing powers, and this fact shall be plainly stated on the face of each bond.

History: Laws 1991, ch. 176, § 12.

7-20C-13. Revenue bonds; exemption from taxation.

The local hospital revenue bonds issued under authority of the Local Hospital Gross Receipts Tax Act [7-20C-1 to 7-20C-17 NMSA 1978] and the income from the bonds shall be exempt from all taxation by the state or any political subdivision of the state.

History: Laws 1991, ch. 176, § 13.

7-20C-14. Use of proceeds of bond issue.

It is unlawful to divert, use or expend any money received from the issuance of local hospital revenue bonds for any purpose other than the purpose for which the bonds were issued.

History: Laws 1991, ch. 176, § 14.

7-20C-15. No notice or publication required.

No notice, consent or approval by any governmental body or public officer shall be required as a prerequisite to the sale or issuance of any local hospital revenue bonds under the authority of the Local Hospital Gross Receipts Tax Act [7-20C-1 to 7-20C-17 NMSA 1978], except as provided in that act.

History: Laws 1991, ch. 176, § 15.

7-20C-16. Revenue bonds; refunding authorization.

A. Any county having issued revenue bonds as authorized in the Local Hospital Gross Receipts Tax Act [7-20C-1 to 7-20C-17 NMSA 1978] may issue refunding revenue bonds pursuant to an ordinance adopted by majority vote of the governing body for the purpose of refinancing, paying and discharging all or any part of such outstanding revenue bonds of any one or more or all outstanding issues:

(1) for the acceleration, deceleration or other modification of the payment of such obligations, including without limitation any capitalization of any interest thereon in arrears or about to become due for any period not exceeding one year from the date of the refunding bonds;

(2) for the purpose of reducing interest costs or effecting other economies;

(3) for the purpose of modifying or eliminating restrictive contractual limitations pertaining to the issuance of additional bonds, otherwise concerning the outstanding bonds or to any facilities relating thereto; or

(4) for any combination of such purposes.

B. To pay the principal and interest on refunding bonds, the county may pledge irrevocably revenues authorized to be pledged to revenue bonds issued pursuant to the Local Hospital Gross Receipts Tax Act.

C. Bonds for refunding and bonds for any purpose permitted by the Local Hospital Gross Receipts Tax Act may be issued separately or issued in combination in one series or more.

History: Laws 1996, ch. 18, § 3.

ANNOTATIONS

Emergency clauses. - Laws 1996, ch. 18, § 5 makes the act effective immediately. Approved March 4, 1996.

7-20C-17. Refunding bonds; escrow; detail.

A. Refunding bonds issued pursuant to the provisions of the Local Hospital Gross Receipts Tax Act [7-20C-1 to 7-20C-17 NMSA 1978] shall be authorized by ordinance. Any revenue bonds that are refunded under the provisions of this section shall be paid at maturity or on any permitted prior redemption date in the amounts, at the time and places, and if called prior to maturity, in accordance with any applicable notice provisions, all as provided in the proceedings authorizing the issuance of the refunded bonds or otherwise appertaining thereto, except for any such bond that is voluntarily surrendered for exchange or payment by the holder or owner.

B. Provision shall be made for paying the bonds refunded at the time or places provided in Subsection A of this section. The principal amount of the refunding bonds may exceed, be less than or be the same as the principal amount of the bonds being refunded as long as provision is duly and sufficiently made for the payment of the refunded bonds.

C. The proceeds of refunding bonds, including any accrued interest and premium appertaining to the sale of refunding bonds, shall either be immediately applied to the retirement of the bonds being refunded or be placed in escrow in a commercial bank or trust company that possesses and is exercising trust powers and that is a member of the federal deposit insurance corporation, to be applied to the payment of the principal of, interest on and any prior redemption premium due in connection with the bonds being refunded; provided that such refunding bond proceeds, including any accrued interest and any premium appertaining to a sale of refunding bonds, may be applied to the establishment and maintenance of a reserve fund and to the payment of expenses incidental to the refunding and the issuance of the refunding bonds, the interest on the refunding bonds and the principal of the refunding bonds or both interest and principal as the county may determine. Nothing in this section requires the establishment of an escrow if the refunded bonds become due and payable within one year from the date of the refunding bonds and if the amounts necessary to retire the refunded bonds within that time are deposited with the paying agent for the refunded bonds. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other money available to retire the refunded bonds. Any proceeds in escrow pending such use may be invested in bills, certificates of indebtedness, notes or bonds that are direct obligations of, or the principal and interest of which obligations are unconditionally guaranteed by the United States of America or in certificates of deposit of banks that are members of the federal deposit insurance corporation, the par value of which certificates of deposit is collateralized by a pledge of obligations of, or the payment of which is unconditionally guaranteed by, the United States of America, the par value of which obligations is at least seventy-five percent of the par value of the certificates of deposit. Such proceeds and investments in escrow together with any interest or other income to be derived from any such investment shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable therefrom to pay the bonds being refunded as they become due at their respective maturities or due at any designated prior redemption date or dates in connection with which the county shall exercise a prior redemption option. Any purchaser of any refunding bond issued pursuant to the provisions of the Local Hospital Gross Receipts Tax Act is in no manner responsible for the application of the proceeds thereof by the county or any of its officers, agents or employees.

D. Refunding bonds may be sold at a public or negotiated sale and may bear such additional terms and provisions as may be determined by the county subject to the limitations in the Local Hospital Gross Receipts Tax Act. The terms, provisions and authorization of the refunding bonds are not subject to the provisions of any other statute, provided that the Public Securities Limitation of Action Act [6-14-4 to 6-14-7 NMSA 1978] shall be fully applicable to the issuance of refunding bonds.

History: Laws 1996, ch. 18, § 4.

ANNOTATIONS

Emergency clauses. - Laws 1996, ch. 18, § 5 makes the act effective immediately. Approved March 4, 1996.

ARTICLE 20D
COUNTY HEALTH CARE GROSS RECEIPTS TAX

(Repealed and Recompiled by Laws 1993, ch. 354, §§ 18 and 19.)

7-20D-1, 7-20D-2. Repealed.

ANNOTATIONS

Repeals. - Laws 1993, ch. 354, § 19E repeals 7-20D-1 and 7-20D-2 NMSA 1978, as enacted by Laws 1991, ch. 212, §§ 5 and 6, containing the title of the County Health Care Gross Receipts Tax Act and definitions, effective July 1, 1993. For provisions of former sections, see 1992 Cumulative Supplement.

7-20D-3. Recompiled.

ANNOTATIONS

Recompilations. - Laws 1993, ch. 354, § 18 recompiles 7-20D-3 NMSA 1978 as enacted by Laws 1991, ch. 212, § 7, relating to authority to impose tax, as 7-20E-18 NMSA 1978, effective July 1, 1993.

7-20D-4 to 7-20D-7. Repealed.

ANNOTATIONS

Repeals. - Laws 1993, ch. 354, § 19E repeals 7-20D-4 to 7-20D-7 NMSA 1978, as enacted by Laws 1991, ch. 212, §§ 8 to 11, requiring an ordinance imposing a county health care gross receipts tax to conform to certain provisions of the Gross Receipts and Compensating Tax Act and requirements of the department; providing exemptions from the act; providing for collection of the tax and distribution of proceeds; and concerning interpretation of the act and administration and enforcement of the tax, effective July 1, 1993. For provisions of former sections, see 1992 Cumulative Supplement.

ARTICLE 20E
COUNTY LOCAL OPTION GROSS RECEIPTS TAXES

7-20E-1. Short title.

Chapter 7, Article 20E NMSA 1978 may be cited as the "County Local Option Gross Receipts Taxes Act".

History: 1978 Comp., § 7-20E-1, enacted by Laws 1993, ch. 354, § 1.

7-20E-2. Definitions.

As used in the County Local Option Gross Receipts Taxes Act [this article]:

A. "county" means, unless specifically defined otherwise in the County Local Option Gross Receipts Taxes Act, a county, including an H class county;

B. "county area" means that portion of a county located outside the boundaries of any municipality, except that for H class counties, "county area" means the entire county;

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

D. "governing body" means the county commission of the county or the county council of an H class county;

E. "person" means an individual or any other legal entity; and

F. "state gross receipts tax" means the gross receipts tax imposed under the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978].

History: 1978 Comp., § 7-20E-2, enacted by Laws 1993, ch. 354, § 2; 1994, ch. 93, § 1; 1994, ch. 97, § 1.

ANNOTATIONS

1994 Amendments. - Identical amendments to this section were enacted by Laws 1994, ch. 93, § 1, effective July 1, 1994, approved March 7, 1994, and Laws 1994, ch. 97, § 1, also effective July 1, 1994 and also approved March 7, 1994, which added the language following "municipality" in Subsection B and added "or the county council of an H class county" in Subsection D. The section is set out as amended by Laws 1994, ch. 97, § 1. See 12-1-8 NMSA 1978.

7-20E-3. Effective date of ordinance.

An ordinance imposing, amending or repealing a tax or an increment of tax authorized by the County Local Option Gross Receipts Taxes Act [this article] 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.

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 [this article] shall adopt by reference the same definitions and the same provisions relating to exemptions and deductions as are contained in the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] then in effect and as it may be amended from time to time.

B. The governing body of any county imposing a tax under the County Local Option Gross Receipts Taxes Act shall impose the tax by adopting the model ordinance with respect to the tax furnished to the county by the department. An ordinance that does not conform substantially to the model ordinance of the department is not valid.

History: 1978 Comp., § 7-20E-4, enacted by Laws 1993, ch. 354, § 4.

7-20E-5. Specific exemptions.

No tax authorized under the provisions of the County Local Option Gross Receipts Taxes Act [this article] shall be imposed on the gross receipts arising from transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the county to another point outside the county.

History: 1978 Comp., § 7-20E-5, enacted by Laws 1993, ch. 354, § 5; 1994, ch. 101, § 6.

ANNOTATIONS

The 1994 amendment, effective July 1, 1994, rewrote the section to delete former Subsection A, which read: "the transmission of messages by wire or other means from one point within the county to another point outside the county".

7-20E-6. Copy of ordinance to be submitted to department.

A certified copy of any ordinance imposing or repealing a tax or an increment of a tax authorized under the County Local Option Gross Receipts Taxes Act [this article] or changing the tax rate imposed shall be mailed or delivered to the department within five days after the later of the date the ordinance is adopted or the date the results of any election held with respect to the ordinance are certified to be in favor of the ordinance.

History: 1978 Comp., § 7-20E-6, enacted by Laws 1993, ch. 354, § 6.

7-20E-7. Collection by department; transfer of proceeds; deductions.

A. The department shall collect each tax imposed pursuant to the provisions of the County Local Option Gross Receipts Taxes Act [this article] 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 county for which it is collecting a tax pursuant to the provisions of the County Local Option Gross Receipts Taxes Act the amount of each tax collected for that county, less the administrative fee withheld and less any disbursements for tax credits, refunds and the payment of interest applicable to the tax. The transfer to the county shall be made within the month following the month in which the tax is collected.

History: 1978 Comp., § 7-20E-7, enacted by Laws 1993, ch. 354, § 7; 1997, ch. 125, § 9.

ANNOTATIONS

The 1997 amendment, effective July 1, 1997, substituted "pursuant to" for "under" in Subsection A, and in Subsection B, substituted "shall withhold an administrative fee pursuant to Section 1 of this 1997 act" for "may deduct an amount not to exceed three percent of the local hospital gross receipts tax collected as a charge for the administrative costs of collection, which amount shall be remitted to the state treasurer for deposit in the state general fund each month" in the first sentence, and in the second sentence, substituted "pursuant to" for "under" and substituted "the administrative fee withheld and less any disbursements for" for "any disbursement for the administrative charge provided by this section".

Compiler's notes. - The phrase "this 1997 act" in Subsection B refers to Laws 1997, ch. 125, which amended this section.

7-20E-8. Interpretation of act; administration and enforcement of act.

A. The department shall interpret the provisions of the County Local Option Gross Receipts Taxes Act [this article].

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; indigent fund requirements.

A. A majority of the members of the governing body of a county may enact an ordinance imposing an excise tax not to exceed a rate of three-eighths of one percent of the gross receipts of any person engaging in business in the county for the privilege of engaging in business in the county. An ordinance imposing an excise tax pursuant to this section shall impose the tax in independent increments of one-eighth percent, which shall be separately denominated as "first one-eighth", "second one-eighth" and "third one-eighth", respectively, not to exceed an aggregate amount of three-eighths percent.

B. The tax authorized in Subsection A of this section is to be referred to as the "county gross receipts tax".

C. A class A county with a county hospital operated and maintained pursuant to a lease with a state educational institution named in Article 12, Section 11 of the constitution of New Mexico enacting the second one-eighth increment of county gross receipts tax shall provide, each year that the tax is in effect, not less than one million dollars ($1,000,000) in funds, and that amount shall be dedicated to the support of indigent patients who are residents of that county. Funds for indigent care shall be made available each month of each year the tax is in effect in an amount not less than eighty-three thousand three hundred thirty-three dollars thirty-three cents ($83,333.33). The interest from the investment of county funds for indigent care may be used for other assistance to indigent persons, not to exceed twenty thousand dollars ($20,000) for all other assistance in any year.

D. A county, except a class A county with a county hospital operated and maintained pursuant to a lease with a state educational institution named in Article 12, Section 11 of the constitution of New Mexico, imposing the second one-eighth increment of county gross receipts tax shall be required to dedicate the entire amount of revenue produced by the imposition of the second one-eighth increment for the support of indigent patients who are residents of that county. The revenue produced by the imposition of the third one-eighth increment may be used for general purposes. Any county that has imposed the second one-eighth increment or the third one-eighth increment, or both, on January 1, 1996 for support of indigent patients in the county or after January 1, 1996 imposes the second one- eighth increment or imposes the third one-eighth increment and dedicates one-half of that increment for county indigent patient purposes shall deposit the revenue dedicated for county indigent purposes in the county indigent hospital claims 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.

ANNOTATIONS

The 1991 amendment, effective July 1, 1991, substituted "independent increments of one-eighth percent which shall be separately denominated as 'first one-eighth', 'second one-eighth' and 'third one-eighth', respectively" for "any number of increments of one-eighth percent" in the second sentence in Subsection A; in Subsections B and D, inserted "with a county hospital operated and maintained pursuant to a lease with a state educational institution named in Article 12, Section 11 of the constitution of New Mexico" and deleted "in excess of one-eighth percent" following "gross receipts tax" in the first sentence; in Subsection B, inserted "the second or third one-eighth percent increment of " in the first sentence, inserted "county" preceeding "funds" in the final sentence and made a related stylistic change; in Subsection D, substituted "the second one-eighth percent increment" for "an increment" in the first sentence, inserted "one-eighth percent" in the final sentence and made a minor stylistic change; in Subsection E, substituted "the first one-eighth percent increment" for "one-eighth percent" in three places; and deleted former Subsection G, relating to counties that had lawfully imposed a county sales tax pursuant to the County Sales Tax Act prior to the effective date of the 1986 act.

The 1993 amendment, effective July 1, 1993, renumbered this section, deleted "percent" following "one-eighth" throughout the section; designated the former final sentence of Subsection A as Subsection B; redesignated former Subsection B as Subsection C; deleted former Subsection C, stating that imposition of the county gross receipts tax shall not be subject to referendum; and deleted former Subsection F, pertaining to the effective date of any ordinance enacted under the provisions of Subsection A.

The 1996 amendment, made a stylistic change in Subsection A, rewrote the second sentence and added the fourth sentence in Subsection D, and deleted former Subsection E relating to counties that provided for indigent care in an amount equal to or greater than the amount anticipated in Subsection D. Laws 1996, ch. 29 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

The 1998 amendment, in Subsection B, inserted " authorized in Subsection A of this section" at the beginning; in Subsection C in the first sentence, deleted 'or third" following "second" and "for each additional increment of one-eighth percent enacted" following "in funds"; in Subsection D, deleted "Fifty percent of" at the beginning of the second sentence, deleted the former third sentence, rewrote the last sentence and made minor stylistic changes throughout the section. Laws 1998, ch. 90, contains no effective date provision, but pursuant to N.M. Const., art. IV, § 23, is effective May 20, 1998, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for 'Adjournment Dates of Sessions of Legislature" table.

7-20E-10. County gross receipts tax; referendum requirements.

A. An ordinance enacting the first one-eighth increment of county gross receipts tax pursuant to Section 7-20E-9 NMSA 1978 shall go into effect on July 1 or January 1 in accordance with the provisions of the County Local Option Gross Receipts Taxes Act [this article], but an election may be called in the county on the question of approving or disapproving that ordinance as follows:

(1) an election shall be called when:

(a) 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

(b) in all other counties, a petition requesting such an election is filed with the county clerk within thirty 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;

(2) 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

(3) if a majority of the registered voters voting on the question approves the ordinance imposing the first one-eighth increment of county gross receipts tax, 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 first one-eighth increment of the county gross receipts tax shall not be considered again by the governing body for a period of one year from the date of the election.

B. Imposition by any county of the second one-eighth increment of county gross receipts tax shall not be subject to a referendum of any kind unless prescribed by the county charter or the governing body of the county.

C. An ordinance imposing the third one-eighth increment of the county gross receipts tax by any county shall not go into effect until after an election is held and a simple majority of the registered voters of the county voting on the question votes in favor of imposing the third one-eighth increment. The governing body shall adopt a resolution

calling for an election within seventy-five days of the date the ordinance is adopted on the question of imposing the tax. Such question may be submitted to the 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 third one-eighth increment of the county gross receipts tax fails, the governing body shall not again propose a third one-eighth increment of the county gross receipts tax for a period of one year after the election.

History: Laws 1983, ch. 213, § 32; 1986, ch. 20, § 85; 1978 Comp., § 7-20-5, amended and recompiled as 1978 Comp., § 7-20E-10 by Laws 1993, ch. 354, § 10; 1994, ch. 101, § 7.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, renumbered this section and rewrote it to the extent that a detailed comparison is impracticable.

The 1994 amendment, effective July 1, 1994, substituted "votes" for "vote" in the first sentence in Subsection C; and in the second sentence in Subsection C, substituted language from "adopt" to the end of the sentence for "provide for an election on the question of imposing a county gross receipts tax within sixty days after the date the ordinance is adopted."

7-20E-11. County gross receipts tax; use of proceeds from first one-eighth increment.

A. Each county shall establish a reserve fund to be known as the "county reserve fund". From the net receipts from the county gross receipts tax attributable to the first one-eighth increment imposed pursuant to Subsection A of Section 7-20E-9 NMSA 1978, one-fourth of the net receipts each month shall be deposited in the county reserve fund. The balance of the monthly net receipts shall be placed in either the general fund or road fund, or both, of the county. Except as provided in Subsections B through D of this section, the portions of the net receipts deposited in the county reserve fund shall remain on deposit in that fund until the sixteenth day of the month following the end of the state fiscal year in which the deposits were made, at which time the amount deposited from net receipts for the previous fiscal year shall be placed in either the general fund or road fund, or both, of the county.

B. If the actual amount of the distribution to a county in any state fiscal year of federal in lieu of taxes payments under the provisions of Sections 6901 through 6906 of Title 31 of the United States Code, as amended or renumbered, is less than the actual distribution to that county in the seventy-first state fiscal year or is no longer available to that county, the county may transfer from its reserve fund to its general fund or road fund, or both, an amount equal to the difference between the actual federal in lieu of taxes

payments received in the seventy-first fiscal year and the payments received in the year in which the reduction occurred. The local government division of the department of finance and administration shall certify the amount to be transferred from the reserve fund.

C. If the actual amount of the distribution to a county in any state fiscal year of national forest reserves receipts under the provisions of Section 500 of Title 16 of the United States Code, as amended or renumbered, is less than the actual amount distributed to that county in the seventy-first state fiscal year, the county may transfer from its reserve fund to its general fund or road fund, or both, an amount equal to the difference between the actual national forest reserves receipts distributed to the county in the seventy-first fiscal year and the receipts distributed in the year in which the reduction occurred. The local government division of the department of finance and administration shall certify the amount to be transferred from the reserve fund.

D. If the actual amount of any quarterly distribution to a county in any state fiscal year of federal revenue sharing entitlement payments made under the provisions of Sections 6701 through 6724 of Title 31 of the United States Code, as amended or renumbered, is less than the actual quarterly amount distributed to that county in the first federal quarter of the federal 1982-83 fiscal year, the county may transfer from its reserve fund to its general fund or road fund, or both, an amount equal to the difference between the actual federal revenue sharing quarterly entitlement payment distributed to the county in the first federal quarter of the federal 1982-83 fiscal year and the entitlement payment distributed to the county in the quarter in which the reduction occurred. The local government division of the department of finance and administration shall certify the amount to be transferred from the reserve fund.

History: Laws 1983, ch. 213, § 35; 1986, ch. 20, § 87; 1978 Comp., § 7-20-8, amended and recompiled as 1978 Comp., § 7-20E-11 by Laws 1993, ch. 354, § 11.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, renumbered this section, rewrote the section heading, which read "Use of county gross receipts tax" and, in the second sentence of Subsection A, deleted "percent" following "one-eighth" and substituted "7-20E-9" for "7-20-3".

7-20E-12. County emergency gross receipts tax; authority to impose in lieu of property tax.

A. The majority of the members of the governing body of any county may enact an ordinance or ordinances imposing an excise tax not to exceed a rate of three-eighths of one percent of the gross receipts of any person engaging in business in the county for the privilege of engaging in business in the county. Any ordinance imposing an excise tax pursuant to this section shall impose the tax in any number of increments of one-eighth percent not to exceed an aggregate amount of three-eighths of one percent. Any

ordinance adopted under this section shall be in effect only for the twelve-month period beginning with the effective date of the ordinance and shall expire on the date one year after its effective date.

B. The tax imposed by this section may be referred to as the "county emergency gross receipts tax".

C. The tax authorized by this section may be imposed only in a property tax year for which the property taxes not admitted to be due in the aggregate claims for refund filed under the provisions of Section 7-38-40 NMSA 1978 for property taxes imposed in the county under the provisions of Paragraph (1) of Subsection B of Section 7-37-7 NMSA 1978 for that property tax year are more than ten percent of property taxes imposed in the county under the cited provisions for that property tax year.

D. As used in this section, "county" means a class B county of the state with:

(1) a population of not less than thirty thousand and not more than thirty thousand seven hundred according to the most recent federal decennial census and a net taxable value for rate-setting purposes for the 1988 property tax year or any subsequent year of more than ninety-two million dollars ($92,000,000) but less than one hundred twenty-five million dollars ($125,000,000);

(2) a population of not less than fifty-six thousand and not more than fifty-six thousand seven hundred according to the most recent federal decennial census and a net taxable value for rate-setting purposes for the 1988 property tax year or any subsequent year of more than five hundred million dollars ($500,000,000) but less than five hundred fifty million dollars ($550,000,000); and

(3) a population of not less than eighty-one thousand and not more than eighty-one thousand seven hundred according to the most recent federal decennial census and a net taxable value for rate-setting purposes for the 1988 property tax year or any subsequent year of more than one billion five hundred million dollars ($1,500,000,000) but less than two billion dollars ($2,000,000,000).

E. The governing body prior to the month in which the proceeds of this tax will first be distributed may request the department to make an advance distribution. Upon concurrence of the department of finance and administration, the department shall make the advance distribution. An advance distribution is an amount equal to the product of the net receipts with respect to the gross receipts tax reported from business locations in the county for the month multiplied by a fraction the numerator of which is the rate imposed by the county under this section and the denominator of which is the rate imposed for the month by Section 7-9-4 NMSA 1978. The aggregate amount of advance distributions made to the county shall be recovered by the department by reducing the monthly amount transferable to the county as a result of the imposition of a tax under this section by one-twelfth of the aggregate amount of advance distributions made.

History: 1978 Comp., § 7-20-3.1, enacted by Laws 1989, ch. 239, § 1; 1978 Comp., § 7-20-3.1, amended and recompiled as 1978 Comp., § 7-20E-12 by Laws 1993, ch. 354, § 12.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, renumbered this section and rewrote it to the extent that a detailed comparison is impracticable.

7-20E-12.1. County hospital emergency gross receipts tax; authority to impose; use of proceeds.

A. A majority of the members of a governing body may enact an ordinance imposing an excise tax on any 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, the tax may be imposed for an additional period necessary for payment of bonds or a loan for acquisition, 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.

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 whom 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, 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, the governing body 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.

D. As used in this section, "county" means 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).

History: Laws 1994, ch. 14, § 1; 1996, ch. 34, § 1; 1997, ch. 20, § 2.

ANNOTATIONS

The 1996 amendment, effective March 4, 1996, in Subsection A deleted "only once" in the third sentence and added the last sentence.

The 1997 amendment, effective July 1, 1997, added the fifth sentence of Subsection A, divided former Subsection C and added the Paragraph C(1) designation, inserted "if the effective date of the tax is prior to July 1, 1997," at the beginning of Paragraph C(1), added the language beginning "provided that" at the end of Paragraph C(1), and added Paragraph C(2).

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 [this article] 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 [Articles 35 to 38 of Chapter 7 NMSA 1978] for property taxation purposes in the county and to each one thousand dollars ($1,000) of the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978] and the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978] or has made an appropriation of

funds or has imposed another tax 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 most recent federal decennial census and having a net taxable value for property tax rate-setting purposes of under two hundred million dollars ($200,000,000).

D. The governing body of a county shall, at the time of enacting an ordinance imposing the rate of the tax authorized in Subsection A of this section, dedicate the revenue for current operations and maintenance of a hospital owned and operated by the county or operated and maintained by another party pursuant to a lease with the county, and the use of these proceeds shall be for the care and maintenance of sick and indigent persons and shall be an expenditure for a public purpose. In any election held, the ballot shall clearly state the purpose to which the revenue will be dedicated and the revenue shall be used by the county for that purpose.

E. Any ordinance enacted under the provisions of Subsection A of this section shall include an effective date of either July 1 or January 1 in accordance with the provisions of the County Local Option Gross Receipts Taxes Act.

F. 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.

G. 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 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.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, renumbered this section and rewrote it to the extent that a detailed comparison is impracticable.

The 1994 amendment, effective July 1, 1994, substituted "votes" for "vote" in the first sentence in Subsection F; and in the second sentence in Subsection F, substituted language from "adopt" to the end of the sentence for "provide for an election on the question of imposing the tax within sixty days after the date the ordinance is adopted."

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 and disbursed by the county treasurer to a hospital within the county, subject to the approval by the governing body of a budget or plan for use of the funds submitted by that hospital's governing board.

History: Laws 1987, ch. 45, § 8; 1978 Comp., § 7-20-26, amended and recompiled as 1978 Comp., § 7-20E-14 by Laws 1993, ch. 354, § 14.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, renumbered this section, rewrote the section heading which read "Distribution", and inserted "of the county" near the middle of the section.

7-20E-15. County fire protection excise tax; authority to impose; ordinance requirements.

A. The majority of the members of the governing body may enact an ordinance imposing an excise tax on any person engaging in business in the county area for the privilege of engaging in business. The rate of the tax shall be one-fourth of one percent or one-eighth of one percent of the gross receipts of the person engaging in business. The tax provided in this section shall be imposed for a period of not more than ten 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 each such ordinance meets the requirements of the County Local Option Gross Receipts Taxes Act [this article] with respect to the tax imposed by this section.

B. This tax is to be referred to as the "county fire protection excise tax".

C. The governing body of a county shall, at the time of enacting an ordinance imposing the rate of the tax authorized in Subsection A of this section, dedicate the revenue for the purpose of financing the operational expenses, ambulance services or capital outlay costs of independent fire districts or ambulance services provided by the county. In any election held, the ballot shall clearly state the purpose to which the revenue will be dedicated and shall be used by the county for that purpose.

D. Any ordinance enacted under the provisions of Subsection A of this section shall include an effective date of either July 1 or January 1 in accordance with the provisions of the County Local Option Gross Receipts Taxes Act.

E. The ordinance shall not go into effect until after an election is held and a simple majority of the qualified electors of the county area voting in the election votes in favor of imposing the county fire protection excise tax. The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is adopted on the question of imposing the tax. Such question may be submitted to the qualified electors and voted upon as a separate question at any special election called for that purpose by the governing body. The election upon the question shall be called, held, conducted and canvassed in substantially the same manner as provided by law for general elections. If the question of imposing a county fire protection excise tax fails, the governing body shall not again propose a county fire protection excise tax for a period of one year after the election.

History: Laws 1979, ch. 398, § 3; 1983, ch. 222, § 2; 1993, ch. 302, § 1; 1978 Comp., § 7-20A-3, amended and recompiled as 1978 Comp., § 7-20E-15 by Laws 1993, ch. 354, § 15; 1994, ch. 101, § 9.

ANNOTATIONS

1993 amendments. - Laws 1993, ch. 302, § 1, effective June 18, 1993, substituting "ten years" for "five years" in the last sentence of Subsection A and making minor stylistic changes, was approved April 8, 1993. However, Laws 1993, ch. 354, § 15, also amending this section effective July 1, 1993, by renumbering and rewriting this section to the extent that a detailed comparison is impracticable, was also approved April 8, 1993. This section is set out as amended by Laws 1993, ch. 354. See 12-1-8 NMSA 1978.

The 1994 amendment, effective July 1, 1994, substituted "votes" for "vote" in the first sentence in Subsection E; and in the second sentence in Subsection E, substituted language from "adopt" to the end of the sentence for "provide for an election on the question of imposing a county fire protection excise tax within sixty days after the date the ordinance is adopted."

7-20E-16. County fire protection excise tax; use of proceeds; budget limitation.

A. The money provided through passage of the county fire protection excise tax shall be disbursed and allotted through the governing body to the county fire districts within the county; provided that no part of any distribution shall be used to pay any salary, compensation or remuneration to any employee of the state, the county or the independent fire district.

B. The governing body of any county adopting a county fire protection excise tax shall not reduce the level of funding of any independent fire district more than ten percent from the approved budget of such fire district for the prior year. The department of finance and administration shall not approve the budget of any county which violates the provisions of this subsection.

History: Laws 1979, ch. 398, § 8; 1983, ch. 222, § 3; 1978 Comp., § 7-20A-8, amended and recompiled as 1978 Comp., § 7-20E-16 by Laws 1993, ch. 354, § 16.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, renumbered this section, rewrote the section heading, which read "Distribution"; designated the formerly undesignated provisions as Subsection A; and added Subsection B.

7-20E-17. County environmental services gross receipts tax; authority to impose rate; use of funds.

A. The majority of the members of the governing body of any county may enact an ordinance imposing an excise tax at a rate of one-eighth of one percent of the gross receipts of any person engaging in business in the county area for the privilege of engaging in business.

B. This tax is to be referred to as the "county environmental services gross receipts tax".

C. Imposition by any county of the county environmental services gross receipts tax shall not be subject to a referendum of any kind unless prescribed by the county charter.

D. Any county, at the time of enacting an ordinance imposing a county environmental services gross receipts tax, shall dedicate the entire amount of revenue produced by the tax for the acquisition, construction, operation and maintenance of solid waste facilities, water facilities, wastewater facilities, sewer systems and related facilities.

E. Any ordinance enacted under the provisions of Subsection A of this section shall include an effective date of either July 1 or January 1 in accordance with the provisions of the County Local Option Gross Receipts Taxes Act [this article].

History: Laws 1990, ch. 99, § 58; 1978 Comp., § 7-20B-3, amended and recompiled as 1978 Comp., § 7-20E-17 by Laws 1993, ch. 354, § 17.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, renumbered this section and rewrote it to the extent that a detailed comparison is impracticable.

7-20E-18. County health care gross receipts tax; authority to impose rate.

A. The majority of the members of the governing body of any county may enact an ordinance imposing an excise tax at a rate of one-sixteenth of one percent of the gross receipts of any person engaging in business in the county for the privilege of engaging in business in the county. Any ordinance imposing an excise tax pursuant to this section shall not be subject to a referendum. 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.

B. This tax is to be referred to as the "county health care gross receipts tax".

C. Any ordinance enacted under the provisions of Subsection A of this section shall include an effective date of either July 1 or January 1 in accordance with the provisions of the County Local Option Gross Receipts Taxes Act [this article].

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.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, renumbered this section and rewrote it to the extent that a detailed comparison is impracticable.

7-20E-19. County infrastructure gross receipts tax; authority to impose rate; use of funds; election.

A. The majority of the members of the governing body of a county may enact an ordinance imposing an excise tax at a rate not to exceed one-eighth of one percent of the gross receipts of any person engaging in business in the county area for the privilege of engaging in business. The tax may be imposed in increments of one-sixteenth of one percent not to exceed an aggregate rate of one-eighth of one percent.

B. The tax imposed pursuant to Subsection A of this section may be referred to as the "county infrastructure gross receipts tax".

C. The governing body, at the time of enacting an ordinance imposing a rate of tax authorized in Subsection A of this section, may dedicate the revenue for:

(1) county general purposes;

(2) payment of gross receipts tax revenue bonds issued pursuant to Chapter 4, Article 62 NMSA 1978;

(3) repair, replacement, construction or acquisition of any county infrastructure improvements;

(4) acquisition, construction, operation or maintenance of solid waste facilities, water facilities, wastewater facilities, sewer systems and related facilities;

(5) acquiring, constructing, extending, bettering, repairing or otherwise improving or operating or maintaining public transit systems or regional transit systems or authorities;

(6) planning, design, construction, equipping, maintenance or operation of a county jail or juvenile detention facility; planning, assessment, design or operation of a regional system of juvenile services, including secure detention and nonsecure alternatives, that serves multiple contiguous counties; planning, design, construction, maintenance or operation of multipurpose regional adult jails or juvenile detention facilities; housing of county prisoners or juvenile offenders in any county jail or detention facility; or substance abuse, mental health or other programs for county prisoners or other inmates in county jails or for juvenile offenders in county or regional detention facilities; and

(7) furthering or implementing economic development plans and projects as defined in the Local Economic Development Act [5-10-1 to 5-10-13 NMSA 1978], and use of not more than the greater of fifty thousand dollars ($50,000) or ten percent of the revenue collected for promotion and administration of or professional services contracts related to implementation of an economic development plan adopted by the governing body pursuant to the Local Economic Development Act and in accordance with law.

D. An ordinance imposing the county infrastructure gross receipts tax shall not go into effect until after an election is held and a majority of the voters in the county area voting in the election votes in favor of imposing the tax. The governing body shall adopt a resolution calling for an election within seventy-five days of the date the ordinance is

adopted on the question of imposing the tax. The question shall be submitted to the voters of the county area as a separate question at a general election or at a special election called for that purpose by the governing body. A special election shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections. If a majority of the voters voting on the question approves the ordinance imposing the county infrastructure gross receipts tax, then the ordinance shall become effective in accordance with the provisions of the County Local Option Gross Receipts Taxes Act [Chapter 7, Article 20E NMSA 1978]. If the question of imposing the county infrastructure gross receipts tax fails, the governing body shall not again propose the imposition of the tax for a period of one year from the date of the election.

History: Laws 1998, ch. 90, § 7.

ANNOTATIONS

Effective dates. - Laws 1998, ch. 90, contains no effective date provision, but pursuant to N.M. Const., art. IV, § 23, is effective May 20, 1998, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

ARTICLE 20F
COUNTY CORRECTIONAL FACILITY GROSS RECEIPTS TAX

7-20F-1. Short title.

Sections 3 through 14 [7-20F-3 to 7-20F-12 NMSA 1978] of this act may be cited as the "County Correctional Facility Gross Receipts Tax Act".

History: Laws 1993, ch. 303, § 1.

ANNOTATIONS

Compiler's notes. - Notwithstanding the language "Sections 3 through 14" in this section, Chapter 303 of Laws 1993 contained only twelve sections; thus the last section of the County Correctional Facility Gross Receipts Tax Act is compiled as 7-20F-12 NMSA 1978.

7-20F-2. Definitions.

As used in the County Correctional Facility Gross Receipts Tax Act [7-20F-3 to 7-20F-12 NMSA 1978]:

A. "county" means:

(1) a class A county, the population of which does not exceed one hundred fifty thousand people as determined by the 1990 federal decennial census;

(2) a class B county with a population of at least fifty-seven thousand people but less than sixty thousand as determined by the 1990 federal decennial census; or

(3) a class B county with a population of at least forty-five thousand people but less than forty-seven thousand as determined by the 1990 federal decennial census;

B. "county board" means the board of county commissioners of a county;

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

D. "judicial-correctional facility" means a facility for housing and use by judicial and corrections agencies, including housing for persons confined in county corrections facilities; however, none of the facilities are required to be located on the same or contiguous parcels of land;

E. "municipality" means any incorporated city, town or village, whether incorporated under general act, special act or special charter;

F. "person" means an individual or any other legal entity;

G. "pledged revenues" means the revenue, net income or net revenues authorized to be pledged to the payment of revenue bonds issued pursuant to the provisions of the County Correctional Facility Gross Receipts Tax Act;

H. "refunding bond" means a refunding revenue bond issued pursuant to the provisions of the County Correctional Facility Gross Receipts Tax Act to refund revenue bonds issued pursuant to the provisions of that act; and

I. "revenue bond" means a county correctional facility gross receipts tax revenue bond.

History: Laws 1993, ch. 303, § 2; 1998, ch. 65, § 2.

ANNOTATIONS

The 1998 amendment, effective March 9, 1998, in Paragraph A(1), inserted "people" following "thousand" and "federal" following "1990"; in Paragraph A(2), inserted "people" following "thousand" and substituted "as deremined by" for "according to"; added Paragraph A(3), and made minor stylistic changes.

7-20F-3. County correctional facility gross receipts tax; authority to impose; rate; ordinance requirements; referendum.

A. The majority of the members elected to the county board may enact an ordinance imposing on a county-wide basis an excise tax not to exceed a rate of one-eighth of one percent of the gross receipts of any person engaging in business in the county, including all municipalities within the county; provided that the voters of:

(1) a class A county described in Paragraph (1) of Subsection A of Section 7-20F-2 NMSA 1978 or a class B county described in Paragraph (2) of Subsection A of Section 7-20F-2 NMSA 1978 have approved the issuance of general obligation bonds of the county sufficient to pay at least one-half of the costs of the construction and equipping of the new county judicial-correctional facility for which the county correctional facility gross receipts tax revenue is dedicated; or

(2) a class B county described in Paragraph (3) of Subsection A of Section 7-20F-2 NMSA 1978 have approved the issuance of bonds by the New Mexico finance authority sufficient to pay at least one-half of the costs of designing, constructing, equipping, furnishing and otherwise improving the new county correctional facility for which the county correctional facility gross receipts tax revenue is dedicated.

B. The tax imposed pursuant to Subsection A of this section may be referred to as the "county correctional facility gross receipts tax". The county correctional facility gross receipts tax shall be imposed only once for the period necessary for payment of the principal and interest on revenue bonds issued pursuant to the County Correctional Facility Gross Receipts Tax Act [7-20F-3 to 7-20F-12 NMSA 1978], but the period shall not exceed ten years from the effective date of the ordinance imposing the tax.

C. Any ordinance imposing a county correctional facility gross receipts tax pursuant to this section shall:

(1) impose the tax in any number of increments of one-sixteenth of one percent not to exceed an aggregate amount of one-eighth of one percent;

(2) specify that the imposition of the tax will begin on either July 1 or January 1, whichever occurs first after the expiration of at least three months from the date that the department is notified personally or by mail by the county that imposition of the county correctional facility gross receipts tax has been approved by a majority of the registered voters in the county voting on the question; and

(3) dedicate the revenue from the county correctional facility gross receipts tax for the purpose of constructing, purchasing, furnishing, equipping, rehabilitating, expanding or improving a judicial-correctional or a county correctional facility or the grounds of a judicial-correctional or county correctional facility, including but not limited to acquiring and improving parking lots, landscaping or any combination of the foregoing or to payment of principal and interest on revenue bonds or refunding bonds issued pursuant to the provisions of the County Correctional Facility Gross Receipts Tax Act.

D. An ordinance imposing a county correctional facility gross receipts tax pursuant to this section shall not become effective 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 tax.

E. 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, and:

(1) in a class A county described in Paragraph (1) of Subsection A of Section 7-20F-2 NMSA 1978 or a class B county described in Paragraph (2) of Subsection A of Section 7-20F-2 NMSA 1978, if a property tax at a rate necessary to comply with the provisions of Subsection A of this section has not been approved by the voters of the county, the question submitted to the voters shall be the question of imposing a county correctional facility gross receipts tax and a property tax at a rate necessary for the issuance of general obligation bonds of the county sufficient to comply with the provisions of the County Correctional Facility Gross Receipts Tax Act; or

(2) in a class B county described in Paragraph (3) of Subsection A of Section 7-20F-2 NMSA 1978, the question to be submitted to the voters is "Shall a county correctional facility gross receipts tax be imposed to repay bonds that will be issued by the New Mexico finance authority in an amount sufficient to pay at least one-half of the costs of designing, constructing, equipping, furnishing and otherwise improving the new county correctional facility?".

F. The question shall be submitted to the voters at any general election or special election called for that purpose by the board.

G. 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.

H. If the question of imposing the county correctional facility gross receipts tax and a property tax, if the question includes a property tax, fails, the board shall not again propose imposition of a county correctional facility gross receipts tax for a period of one year after the election.

I. Revenue produced by the imposition of a county correctional facility gross receipts tax that is in excess of the annual principal and interest due on bonds secured by a pledge of the county correctional facility gross receipts tax may be accumulated in a debt service reserve account until an amount equal to the maximum amount permitted pursuant to the provisions of the United States treasury regulations is accumulated in the debt service reserve account. After the debt service reserve account requirements have been met, the excess revenue shall be accumulated in an extraordinary mandatory redemption fund and annually used to redeem the bonds prior to their stated maturity date.

J. When all outstanding bonds have been paid, whether from the debt service reserve, the redemption fund or maturity, the ordinance shall be repealed if the county correctional facility gross receipts tax revenue is no longer required for the purposes for which it may be used pursuant to the provisions of the County Correctional Facility Gross Receipts Tax Act.

K. The repeal of an ordinance imposing a county correctional facility gross receipts tax shall state that the repeal shall be effective on January 1 or July 1, whichever occurs first following the date the department is notified personally or by mail by the county of the repeal.

History: Laws 1993, ch. 303, § 3; 1994, ch. 101, § 10; 1998, ch. 65, § 3.

ANNOTATIONS

The 1994 amendment, effective July 1, 1994, in the first sentence in Subsection C, substituted language from "after" to the end of the sentence for "approved by a majority of the registered voters in the county voting on the question at an election to be held within sixty days after the date that the ordinance is adopted by the board" and added the second sentence in Subsection C.

The 1998 amendment, effective March 9, 1998, deleted "'the county" at the end of the introductory language of Subsection A; designated Paragraph A(1) and added the language "a class A county described in Paragraph (1) of Subsection A of Section 7-20F-2 NMSA 1978 or a class B county described in Paragraph (2) of Subsection A of Section 7-20F-2 NMSA 1978" at the beginning; added Paragraph A(2); designated Subsection B and inserted "imposed pursuant to Subsection A of this section" in the first sentence; redesignated former Subsections B and C as Subsections C and D; in Paragraph C(3), inserted "or a county correctional" preceding "facility", twice; designated Subsection E; in Paragraph E(1), inserted "in a class A county described in" preceding ", if a property tax" at the beginning; added Paragraph E(2); designated Subsections F, G and H; and redesignated former Subsections D, E and F as Subsections I, J and K.

7-20F-4. Ordinance shall conform to certain provisions of the Gross Receipts and Compensating Tax Act and requirements of the department.

A. Any ordinance imposing the county correctional facility gross receipts tax shall adopt by reference the same definitions and the same provisions relating to exemptions and deductions as are contained in the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] then in effect and as it may be amended from time to time.

B. The governing body of any county imposing the county correctional facility gross receipts tax shall adopt the model ordinances furnished to the county by the department.

History: Laws 1993, ch. 303, § 4.

7-20F-5. Collection by department; transfer of proceeds; deductions.

A. The department shall collect the county correctional facility gross receipts tax in the same manner and at the same time it collects the state gross receipts tax.

B. The department shall remit to each county for which it is collecting a county correctional facility gross receipts tax the amount of the tax collected, less any disbursement for tax credits, refunds and the payment of interest applicable to the county correctional facility gross receipts tax. Transfer of the tax to a county shall be made within the month following the month in which the tax is collected.

History: Laws 1993, ch. 303, § 5.

7-20F-6. Specific exemptions.

No county correctional facility gross receipts tax shall be imposed on the gross receipts arising from transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from one point within the county to another point outside the county.

History: Laws 1993, ch. 303, § 6; 1994, ch. 101, § 11.

ANNOTATIONS

The 1994 amendment, effective July 1, 1994, deleted former Subsection A, and deleted the subsection designation "B" appending that subsection to the end of the undesignated paragraph.

7-20F-7. Revenue bonds; authority to issue; ordinance authorizing issue; pledge of revenue.

A. In addition to any other law authorizing a county to issue revenue bonds, a county may issue revenue bonds pursuant to the County Correctional Facility Gross Receipts Tax Act [7-20F-3 to 7-20F-12 NMSA 1978], for the purposes specified in that act. Revenue bonds issued pursuant to the County Correctional Facility Gross Receipts Tax Act may be referred to as "county correctional facility gross receipts tax revenue bonds".

B. A county board, by majority vote, may adopt an ordinance providing for issuance of revenue bonds pursuant to the provisions of the County Correctional Facility Gross Receipts Tax Act, the principal and interest of which shall be paid from the revenue derived by the county from the county correctional facility gross receipts tax and any other revenue that the county may dedicate to the payment of the revenue bonds.

C. Revenue bonds or refunding revenue bonds issued as authorized pursuant to the County Correctional Facility Gross Receipts Tax Act are:

(1) not general obligations of the county; and

(2) collectible only from the county correctional facility gross receipts tax and, if authorized, other properly pledged revenues, and each bond shall be payable solely from the properly pledged revenues and the bondholders shall not look to any other county fund for the payment of the interest and principal of the bonds.

History: Laws 1993, ch. 303, § 7.

7-20F-8. Revenue bonds; execution; nonrepealable; issuance time limitation.

A. The revenue bonds authorized pursuant to the County Correctional Facility Gross Receipts Tax Act [7-20F-3 to 7-20F-12 NMSA 1978] shall be executed by the chairman of the county board and either the county treasurer or the county clerk and may be authenticated by any public or private transfer agent or registrar, or its successor, named or otherwise designated by the governing body. The bonds may be executed as provided under the Uniform Facsimile Signature of Public Officials Act [6-9-1 to 6-9-6 NMSA 1978], and the coupons, if any, shall bear the facsimile signature of the county treasurer.

B. Any law that authorizes the pledge of any or all of the pledged revenues to the payment of any revenue bonds issued pursuant to the County Correctional Facility Gross Receipts Tax Act or that affects the pledged revenues, or any law supplemental thereto or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any such outstanding revenue bonds, unless such outstanding revenue bonds have been discharged in full or provision for full discharge has been made.

C. Except for the purpose of refunding previous revenue bond issues, no county shall sell revenue bonds payable from pledged revenues after the expiration of two years from the date of the ordinance authorizing the issuance of the bonds. However, any period of time during which a particular revenue bond issue is in litigation shall not be counted in determining the expiration date of that issue.

History: Laws 1993, ch. 303, § 8.

7-20F-9. Revenue bonds; purpose of issue; use of proceeds.

A. Revenue bonds may be issued pursuant to the provisions of the County Correctional Facility Gross Receipts Tax Act [7-20F-3 to 7-20F-12 NMSA 1978] for the purposes of constructing, purchasing, furnishing, equipping, rehabilitating, expanding or improving a judicial-correctional facility or the grounds of a judicial-correctional facility, including but

not limited to acquiring and improving parking lots, landscaping or any combination of the foregoing.

B. No county shall divert, use or expend any money received from the issuance of bonds for any purpose other than the purpose for which the bonds were issued.

History: Laws 1993, ch. 303, § 9.

7-20F-10. Revenue bonds; terms.

Revenue bonds:

A. may have interest, appreciated principal value or any part thereof payable at intervals or at maturity as may be determined by the county board in the ordinance;

B. shall be subject to a prior redemption at the county's option at such time or times and upon such terms and conditions without the payment of premiums;

C. may mature at any time or times not exceeding ten years after the date of issuance;

D. may be serial in form and maturity or may consist of one bond payable at one time or in installments or may be in such other form as may be determined by the county board;

E. shall be sold for cash at above or below par and at a price that results in a net effective interest rate that does not exceed the maximum permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978]; and

F. may be sold at public or negotiated sale.

History: Laws 1993, ch. 303, § 10.

7-20F-11. Revenue bonds; refunding authorization.

A. Any county having issued revenue bonds as authorized in the County Correctional Facility Gross Receipts Tax Act [7-20F-3 to 7-20F-12 NMSA 1978] may issue refunding revenue bonds pursuant to an ordinance adopted by majority vote of the county board for the purpose of refinancing, paying and discharging all or any part of such outstanding revenue bonds of any one or more or all outstanding issues:

(1) for the acceleration, deceleration or other modification of the payment of such obligations, including without limitation any capitalization of any interest thereon in arrears or about to become due for any period not exceeding one year from the date of the refunding bonds;

(2) for the purpose of reducing interest costs or effecting other economies;

(3) for the purpose of modifying or eliminating restrictive contractual limitations pertaining to the issuance of additional bonds, otherwise concerning the outstanding bonds or to any facilities relating thereto; or

(4) for any combination of such purposes.

B. To pay the principal and interest on refunding bonds, the county may pledge irrevocably the pledged revenues from the revenue bonds originally issued pursuant to the County Correctional Facility Gross Receipts Tax Act.

C. Bonds for refunding and bonds for any purpose permitted by the County Correctional Facility Gross Receipts Tax Act may be issued separately or issued in combination in one series or more.

History: Laws 1993, ch. 303, § 11.

7-20F-12. Refunding bonds; escrow; detail.

A. Refunding bonds issued pursuant to the provisions of the County Correctional Facility Gross Receipts Tax Act [7-20F-3 to 7-20F-12 NMSA 1978] shall be authorized by ordinance. Any revenue bonds that are refunded under the provisions of this section shall be paid at maturity or on any permitted prior redemption date in the amounts, at the time and places and, if called prior to maturity, in accordance with any applicable notice provisions, all as provided in the proceedings authorizing the issuance of the refunded bonds or otherwise appertaining thereto, except for any such bond that is voluntarily surrendered for exchange or payment by the holder or owner.

B. Provision shall be made for paying the bonds refunded at the time or times provided in Subsection A of this section. The principal amount of the refunding bonds may exceed the principal amount of the refunded bonds and may also be less than or the same as the principal amount of the bonds being refunded so long as provision is duly and sufficiently made for the payment of the refunded bonds.

C. The proceeds of refunding bonds, including any accrued interest and premium appertaining to the sale of refunding bonds, shall either be immediately applied to the retirement of the bonds being refunded or be placed in escrow in a commercial bank or trust company that possesses and is exercising trust powers and that is a member of the federal deposit insurance corporation, to be applied to the payment of the principal of, interest on and any prior redemption premium due in connection with the bonds being refunded; provided that such refunding bond proceeds including any accrued interest and any premium appertaining to a sale of refunding bonds may be applied to the establishment and maintenance of a reserve fund and to the payment of expenses incidental to the refunding and the issuance of the refunding bonds, the interest on the refunding bonds and the principal of the refunding bonds or both interest and principal as the county may determine. Nothing in this section requires the establishment of an escrow if the refunded bonds become due and payable within one year from the date of

the refunding bonds and if the amounts necessary to retire the refunded bonds within that time are deposited with the paying agent for the refunded bonds. Any such escrow shall not necessarily be limited to proceeds of refunding bonds but may include other money available to retire the refunded bonds. Any proceeds in escrow pending such use may be invested or reinvested in bills, certificates of indebtedness, notes or bonds that are direct obligations of or the principal and interest of which obligations are unconditionally guaranteed by the United States of America or in certificates of deposit of banks that are members of the federal deposit insurance corporation, the par value of which certificates of deposit is collateralized by a pledge of obligations of or the payment of which is unconditionally guaranteed by the United States of America, the par value of which obligations is at least seventy-five percent of the par value of the certificates of deposit. Such proceeds and investments in escrow together with any interest or other income to be derived from any such investment shall be in an amount at all times sufficient as to principal, interest, any prior redemption premium due and any charges of the escrow agent payable therefrom to pay the bonds being refunded as they become due at their respective maturities or due at any designated prior redemption date or dates in connection with which the county shall exercise a prior redemption option. Any purchaser of any refunding bond issued pursuant to the provisions of the County Correctional Facility Gross Receipts Tax Act is in no manner responsible for the application of the proceeds thereof by the county or any of its officers, agents or employees.

D. Refunding bonds may be sold at a public or private sale and may bear such additional terms and provisions as may be determined by the county subject to the limitations in the County Correctional Facility Gross Receipts Tax Act. Refunding bonds are not subject to the provisions of any other statute.

History: Laws 1993, ch. 303, § 12.

ARTICLE 21
COUNTY SALES TAX

(Repealed by Laws 1986, ch. 20, § 136A.)

7-21-1 to 7-21-7. Repealed.

ANNOTATIONS

Repeals. - Laws 1986, ch. 20, § 136A repeals former 7-21-1 through 7-21-7, relating to the county sales tax, effective July 1, 1986. For provisions of former sections, see 1983 Replacement Pamphlet.

ARTICLE 22
OCCUPATIONAL LICENSES

(Repealed by Laws 1979, ch. 161, § 1.)

7-22-1 to 7-22-14. Repealed.

ANNOTATIONS

Repeals. - Laws 1979, ch. 161, § 1, repeals 7-22-1 to 7-22-14 NMSA 1978, relating to occupational licenses, effective June 30, 1979.

ARTICLE 23
EXEMPTION OF PRODUCERS FROM LICENSES

7-23-1. [Producers exempt from license or occupation tax; sellers of meat; keeping of hides; notification of intent to slaughter.]

That any resident of this state, selling wood, fruits, farm and garden produce of his own raising, exclusively, or fresh meats, butchered from animals of his own raising only, shall not be required to pay an occupation tax or to obtain a peddler's or itinerant vendor's license to engage in such sales; provided, that when beef, veal or mutton is offered for sale the person so offering such beef, veal or mutton for sale shall have in his immediate possession at the time and place of offering such meat for sale the hide or pelt of the slaughtered animal, the meat of which is being offered for sale, so that such hide may be examined and inspected by any authorized cattle inspector, peace officer, or any other person demanding to inspect the same. The provisions of this section, relative to the sale of fresh meat shall apply only to owners of livestock who do not make a business of peddling; provided that any person desiring to slaughter any meat animal for the purpose of selling the meat thereof, shall before slaughtering notify in writing the nearest justice of the peace [magistrate] or brand inspector of the New Mexico cattle sanitary board [livestock board] of such intent, giving descriptions of brand, sex, color and age of such animal.

History: Laws 1915, ch. 83, § 1; 1927, ch. 58, § 1; C.S. 1929, § 81-116; Laws 1933, ch. 90, § 1; 1941 Comp., § 62-301; 1953 Comp., § 60-3-1.

ANNOTATIONS

Cross references. - For livestock code, see 77-2-1 NMSA 1978.

For inspection of slaughterhouses and hides, see 77-9-33 NMSA 1978.

For licensing of butchers and slaughterers, see 77-17-1 NMSA 1978 et seq.

For retention of hides for inspection by persons not licensed as meat retailers, see 77-17-16 NMSA 1978.

Bracketed material. - The bracketed reference in this section to the livestock board was inserted by the compiler, as the cattle sanitary board was replaced by the livestock board. See 77-2-1 NMSA 1978 et seq.

The bracketed reference to "magistrate" in this section was inserted by the compiler as justices of the peace have been abolished and replaced by magistrate courts. See 35-1-38 NMSA 1978.

The bracketed material was not enacted by the legislature and is not part of the law.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Exemption of agricultural activities or occupations from business or occupation license or tax, 38 A.L.R.4th 1074.

7-23-2. [Penalty for violation.]

The penalty for the violation of this act [7-23-1, 7-23-2 NMSA 1978] shall be a fine of not less than fifty dollars ($50.00) nor more than one hundred dollars ($100.00), or not more than six (6) months in jail, or both such fine and imprisonment in the discretion of the court.

History: Laws 1927, ch. 58, § 2; C.S. 1929, § 81-117; 1941 Comp., § 62-302; 1953 Comp., § 60-3-2.

ARTICLE 24
MUNICIPAL AND COUNTY GROSS RECEIPTS TAX ON LIQUOR

7-24-1. License tax imposed by municipalities.

Municipalities within or composing local option districts may, by duly adopted ordinance, impose an annual, nonprohibitive municipal license tax upon the privilege of persons holding state licenses under the provisions of the Liquor Control Act to operate within such municipalities as retailers, dispensers, canopy licensees, restaurant licensees or club licensees. The amount of the license tax, which shall not exceed two hundred fifty dollars ($250), and the dates and manner of payment shall be fixed on or before June 1 of each year by the ordinance imposing the tax. In case any municipality permits the payment in installments, no bond shall be required to secure the payment of the deferred installments, but the remedy for the collection shall be that provided in Section 7-24-3 NMSA 1978.

History: Laws 1939, ch. 236, § 1103; 1941 Comp., § 61-402; 1953 Comp., § 46-4-2; Laws 1969, ch. 163; 1981, ch. 39, § 124; 1990, ch. 76, § 1; 1993, ch. 68, § 1.

ANNOTATIONS

Cross references. - For municipal local option gross receipts tax generally, see Chapter 7, Article 19D NMSA 1978.

For state licensing requirements relating to alcoholic beverages generally, see Chapter 60-3A-1 et seq. NMSA 1978.

The 1990 amendment, effective March 2, 1990, designated the existing language as Subsection A; added Subsection B; and, in Subsection A, added "Except as provided in Subsection B of this section" at the beginning and made minor stylistic changes.

The 1993 amendment, effective July 1, 1993, deleted the Subsection A designation; deleted "Except as provided in Subsection B of this section" at the beginning; substituted "two hundred fifty dollars ($250)" for "one thousand dollars ($1,000)" in the second sentence; and deleted former Subsection B, pertaining to allocation of a portion of the license tax for purposes of funding a home free program to provide free rides home when requested by intoxicated persons.

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

Section empowers municipalities by ordinance to impose an annual license tax upon the privilege of persons holding state licenses to operate within a municipality as retailers, dispensers or clubs. Sunset Package Store, Inc. v. City of Carlsbad, 79 N.M. 260, 442 P.2d 572 (1968).

Tax imposed by the ordinance is a privilege tax imposed on a certain class of persons for the privilege of carrying on businesses for which a license is required. Sunset Package Store, Inc. v. City of Carlsbad, 79 N.M. 260, 442 P.2d 572 (1968).

Section does not require adoption of new ordinance each year in order to impose a valid license tax. Eddie's Inferno, Inc. v. City of Albuquerque, 79 N.M. 512, 445 P.2d 389 (1968).

Amount, date and manner of payment fixed by ordinance remain from year to year until such time as ordinance is modified or repealed by an ordinance of the legislative body enacting the same. Sunset Package Store, Inc. v. City of Carlsbad, 79 N.M. 260, 442 P.2d 572 (1968).

Maximum tax rate applicable to preexisting ordinances. - The City of Albuquerque was without authority to impose or collect any liquor license tax over $1,000 after July 1, 1981, the effective date of the amendment of this section limiting such license taxes, notwithstanding the fact that an ordinance providing for a higher tax was enacted prior to July 1, 1981. Waksman v. City of Albuquerque, 102 N.M. 41, 690 P.2d 1035 (1984).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors § 208.

Effect of state regulation of liquor sales on municipal power to impose occupation license or tax for revenue, 6 A.L.R.2d 737.

48 C.J.S. Intoxicating Liquors § 91.

7-24-2. License tax imposed by boards of county commissioners.

The boards of county commissioners of counties composing local option districts are 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 to operate within such counties, outside of the municipalities that are local option districts, as retailers, dispensers, canopy licensees, restaurant licensees or club licensees. The amount of the license tax, which shall not exceed two hundred fifty dollars ($250), and the dates and manner of the payment shall be fixed by the resolution imposing the tax; provided, that in case the county permits the payment in installments, no bond shall be required to secure the payment of the deferred installments, but the remedy for the collection shall be that provided in Section 7-24-3 NMSA 1978.

History: Laws 1939, ch. 236, § 1104; 1941 Comp., § 61-403; 1953 Comp., § 46-4-3; Laws 1981, ch. 39, § 125; 1994, ch. 46, § 1.

ANNOTATIONS

The 1994 amendment, effective July 1, 1994, in the first sentence, deleted "hereby" preceding "empowered", and substituted "the Liquor Control Act" for "this act" and "that are local option districts" for "contemplated by Section 60-6-1 NMSA 1978"; and, in the second sentence, substituted "the license tax, which shall not exceed two hundred fifty dollars ($250)" for "such license tax, which shall not exceed one thousand dollars ($1,000)" and "the tax" for "the same", and made a series of minor stylistic changes throughout.

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

Am. Jur. 2d, A.L.R. and C.J.S. references. - 48 C.J.S. Intoxicating Liquors § 91.

7-24-3. [Payment of municipal or county tax required; closing establishment.]

This act shall not be construed as permitting any retailer, dispenser or club to operate in any county or municipality without having paid the municipality or county, whichever the case may be, the license tax according to the provisions of the ordinance or resolution imposing the same; and the sheriff of any county upon the written order of the board of county commissioners, duly entered of record, shall close up the place of business of any retailer, dispenser or club who has not paid or tendered the county license tax according to the resolution imposing the same; and any police officer of any

municipality, upon the written order of the city council or city commissioners, duly entered, shall forthwith close up the place of business of any retailer, dispenser or club who has not paid or tendered the municipal license tax according to the terms of the ordinance imposing the same.

History: Laws 1939, ch. 236, § 1105; 1941 Comp., § 61-404; 1953 Comp., § 46-4-4.

ANNOTATIONS

Meaning of "this act". - The phrase "this act" refers to Laws 1939, ch. 236, which enacted 7-24-1 to 7-24-5 NMSA 1978. Laws 1939, ch. 236 also enacted the former statutes relating to alcohol, compiled mainly at Chapter 60 NMSA 1978. Those sections were repealed by Laws 1981, ch. 39, § 128.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 48 C.J.S. Intoxicating Liquors §§ 205, 206.

7-24-4. [License tax period; revocation or suspension of license; effect.]

The license tax period contemplated by Sections 1102 and 1103 shall begin July first of each year and end June thirtieth of the following year, and such tax may not be prorated except in the manner and for the periods set out in Section 704 as applicable to state licenses; and the revocation or suspension of any retail, dispensary or club license shall not entitle the licensee to the refund of any portion of any municipal or county license tax which such licensee has paid or relieve such licensee of the obligation for the payment of any deferred installment thereof.

History: Laws 1939, ch. 236, § 1106; 1941 Comp., § 61-405; 1953 Comp., § 46-4-5.

ANNOTATIONS

Compiler's notes. - The reference to "Sections 1102 and 1103" in this section may be intended as references to Sections 1103 and 1104 of Laws 1939, ch. 236, compiled as 7-24-1 and 7-24-2 NMSA 1978; Section 1102, compiled as 60-6-1 NMSA 1978, was repealed by Laws 1981, ch. 39, § 128.

Section 704, compiled as 60-7-22 NMSA 1978, was repealed by Laws 1981, ch. 39, § 128.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 48 C.J.S. Intoxicating Liquors § 193.

7-24-5. [Assignment and transfer of license; effect.]

In case of the assignment and transfer of any license under the provisions of Section 702 (c) or 702 (f) of this act, no refund shall be made by any municipality or county to

the original licensee for the unexpired portion of such license, but such assignment and transfer shall vest in the assignee and transferee the right to operate under the license tax so paid by the original licensee for the period covered by the paid license tax and to pay the balance of such license tax upon the same terms and conditions as if such assignee or transferee were the original licensee.

History: Laws 1939, ch. 236, § 1108; 1941 Comp., § 61-406; 1953 Comp., § 46-4-6.

ANNOTATIONS

Compiler's notes. - The reference to sections 702 (c) and 702 (f) in this section are apparently to Section 702 of Laws 1939, ch. 236, which was compiled as 60-7-18 NMSA 1978, and was repealed by Laws 1981, ch. 39, § 128.

For meaning of "this act," see note under 7-24-2 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 45 Am. Jur. 2d Intoxicating Liquors §§ 177, 178.

7-24-6, 7-24-7. Repealed.

ANNOTATIONS

Repeals. - Laws 1979, ch. 201, § 6, repeals 7-24-6 and 7-24-7 NMSA 1978, relating to hearings and procedures for hearings upon application for liquor licenses effective June 15, 1979.

7-24-8. Short title.

Sections 7-24-8 through 7-24-16 NMSA 1978 may be cited as the "Local Liquor Excise Tax Act".

History: Laws 1989, ch. 326, § 1; 1993, ch. 30, § 23.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "Sections 7-24-8 through 7-24-16 NMSA 1978" for "Sections 1 through 9 of this act".

7-24-9. Definitions.

As used in the Local Liquor Excise Tax Act [7-24-8 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 five percent, provided that any lower rate shall be an even multiple of one percent. The tax imposed under this section may be referred to as the "local liquor excise tax". Any tax imposed under this section shall be for a period of not more than three years from the effective date of the ordinance imposing the tax.

B. The governing body at the time of enacting an ordinance imposing the tax authorized in Subsection A of this section shall dedicate the revenue to fund educational programs and prevention and treatment of alcoholism and drug abuse within the county and for no

other purpose. After approval of the imposition of a local liquor excise tax by the voters but before the effective date of the ordinance, the governing body shall hold a public meeting for the purpose of inviting comment on and suggestions for the most appropriate programs on which to expend the revenue produced by the tax. The governing body shall invite representatives from the appropriate Indian tribes, nations and pueblos to the meeting. If the governing body awards any contract using funds derived from the local liquor excise tax, it shall do so only through a selection process requiring submission of sealed bids or proposals after public notice of the opportunity to submit the sealed bids or proposals.

C. The governing body enacting an ordinance imposing the local liquor excise tax shall submit the question of imposing the tax to the qualified voters of the county at a regular or special election.

D. Only those voters who are registered within the county shall be permitted to vote. The election shall be called, conducted and canvassed in substantially the same manner as provided by law for general elections.

E. If at an election called pursuant to this section a majority of the voters voting on the question vote in the affirmative on the question, then the ordinance imposing the local liquor excise tax shall be approved. If at such an election a majority of the voters voting on the question fail to approve the question, then the ordinance shall be disapproved and the question required to be submitted by Subsection B of this section shall not be submitted to the voters for a period of at least one year from the date of the election.

F. Any ordinance enacted under the provisions of this section which imposes a local liquor excise tax or changes the rate of tax imposed shall include an effective date which is the first day of any month which begins no earlier than ninety days after the date of the election. A certified copy of any ordinance imposing a local liquor excise tax shall be mailed or personally delivered to the department within five days after the ordinance is certified to have been approved by the voters.

G. Any ordinance repealing the imposition of a tax under the provisions of this section shall contain an effective date which is the first day of any month beginning no earlier than sixty days from the date the ordinance repealing the tax is adopted by the governing body. A certified copy of any ordinance repealing a local liquor excise tax shall be mailed or personally delivered to the department within five days of the date the ordinance is adopted.

History: Laws 1989, ch. 326, § 3.

7-24-10.1. Use of tax proceeds; local liquor excise tax committee; joint powers agreement; community participation.

A. Prior to the election on the question of imposing a local liquor excise tax pursuant to 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 a county and the governing bodies that are parties to the agreement on the use of the tax proceeds and may include agreements that:

(1) clearly specify the use 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; and

(2) determine the allocation of election expenses among the parties to the agreement.

B. Prior to any agreement by the governing body of a county and the municipal governing bodies for use of the tax proceeds, the local liquor excise tax committee established pursuant to the joint powers agreement in 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 a county and municipal governing bodies.

History: 1978 Comp., § 7-24-10.1, enacted by Laws 1992, ch. 35, § 1.

ANNOTATIONS

Temporary provisions. - Laws 1992, ch. 35, § 2, effective March 6, 1992, provides that a local liquor excise tax imposed by a county prior to March 6, 1992 shall remain in effect until the expiration date of the tax and that the tax may then be reimposed and resubmitted to the voters of the county in accordance with the provisions of this 1992 act.

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.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, substituted "Chapter 7, Article 24A NMSA 1978" for "Sections 1 through 21 of this act".

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 616 to 634.

7-24A-2. Definitions.

As used in the County and Municipal Gasoline Tax Act [this article]:

A. "county" means a class A county or an H class county;

B. "governing body" means the city council or city commission of a city, the board of trustees of a town or village or the board of county commissioners of a class A county or an H class county;

C. "municipality" means any incorporated city, town or village, whether incorporated under general act, special act or special charter located within a class A county or an H class county;

D. "person" means:

(1) any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity, including any utility owned or operated by a county, municipality or other political subdivision of the state; or

(2) to the extent permitted by law, the United States or any agency or instrumentality thereof or the state of New Mexico or any political subdivision thereof;

E. "transit route" means a road, highway or street normally used in the operation of a public transportation system; and

F. "vehicle emission inspection program" means a vehicle emission inspection program designed to reduce pollutants emitted by motor vehicles of less than ten thousand pounds pursuant to a county or municipal ordinance.

History: 1978 Comp., § 7-24A-2, enacted by Laws 1991, ch. 156, § 2.

ANNOTATIONS

Cross references. - For county classifications, see 4-44-1 NMSA 1978.

Repeals and reenactments. - Laws 1991, ch. 156, § 2 repeals 7-24A-2 NMSA 1978, as amended by Laws 1991, ch. 156, § 1, relating to definitions in the County and Municipal Gasoline Tax Act, and enacts the above section, effective July 1, 1996.

The 1990 amendment, effective May 16, 1990, deleted former Subsection B which defined " 'department' or 'division' ", redesignated former Subsections C and D as present Subsections B and C, and added present Subsection D.

The 1991 amendment, effective July 1, 1991, added "or a class B county having a population of more than fifty-six thousand but less than sixty thousand according to the 1990 federal decennial census" in Subsections A, B and C; added the exception in Subsection E and made related stylistic changes.

7-24A-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 [this article], for operation of a vehicle emission inspection program or for road, street or highway construction, repair or maintenance in the county or municipality. The proceeds of a county or municipal gasoline tax may be pledged for the payment of bonds issued pursuant to the County and Municipal Gasoline Tax Act. A county or municipality may engage in the business of transportation of passengers and property within the political subdivision by whatever means it may decide and may acquire cars, motor buses and other equipment necessary for carrying on the business. It may acquire land and erect buildings and equip them with all necessary machinery and facilities for operation, maintenance, modification, repair and storage of any buses, cars, trucks or other equipment needed. It may do all things necessary for the acquisition and conduct of the business of public transportation.

B. A governing body may enact ordinances and resolutions and promulgate rules as it may deem necessary and proper for the conduct of the business of transportation and for fixing and collecting all fares, rates and charges for services rendered.

C. Any county or municipality engaging in the business of transportation may extend any system of transportation to points outside its boundaries where necessary and incidental to furnishing efficient transportation to points within the county or municipality.

D. A governing body may lease any system of transportation in whole or in part to any person who will contract to operate it according to the rules, time tables and other requirements established by the governing body.

E. Any county or municipality may furnish transportation service to areas located outside its boundaries, provided that prior contracts have been entered into with the county or municipality in which the areas are located covering the schedules, rates, service and other pertinent matters before initiation of such service.

F. The power of eminent domain is granted to a participating county or municipality for the purpose of acquiring lands and buildings necessary to provide efficient public transit or a vehicle emission inspection program to be exercised in the manner provided by law.

G. A county or municipality, as an operating entity, may enter into contracts for special transportation service, charter buses, advertising and any other function that a private enterprise operating a public transit facility could do or perform for revenue.

H. A governing body may spend any public funds to pay the costs of operation of public transit or a vehicle emission inspection program if revenues of the system prove to be insufficient.

I. A county or municipality is authorized to enter into binding agreements with the United States or any of its officers or agencies or the state or any of its officers or agencies or any combination of agencies, departments or officers of both the United States and the state for planning, developing, modernizing, studying, improving, financing, operating or otherwise affecting public transit; to accept any loans, grants or payments from any of these agencies; and to make any commitments or assume any obligations required by any of these agencies as a condition of receiving the benefits thereof.

History: 1978 Comp., § 7-24A-3, enacted by Laws 1978, ch. 182, § 3; 1985, ch. 196, § 2; 1993, ch. 190, § 1; 1999, ch. 226, § 1.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, inserted "or public transportation related trails" near the beginning of the first sentence of Subsection A and made a minor stylistic change in Subsection G.

The 1999 amendment, effective July 1, 1999, in Subsection A, inserted the second sentence, and made stylistic changes throughout.

7-24A-4. Limitations on power.

A. All contracts for work, material or labor in connection with such transportation shall be let in the manner provided by law for the letting of other contracts by the county or municipality.

B. Transit service may not be extended to points outside the county in which a city is located or outside the boundaries of the county unless prior approval is obtained from the state corporation commission [public regulation commission] and other regulatory bodies having jurisdiction in the matter.

History: 1978 Comp., § 7-24A-4, enacted by Laws 1978, ch. 182, § 4.

ANNOTATIONS

Cross references. - For references to state corporation commission being construed as references to the public regulation commission, see 8-8-21 NMSA 1978.

Bracketed material. - The bracketed material in this section was inserted by the compiler. It was not enacted by the legislature and is not part of the law.

7-24A-5. County gasoline tax; authorization; imposition; rate.

A. The majority of the members of the governing body of a county may adopt an ordinance imposing a tax of up to two cents ($.02) a gallon on all gasoline sold at retail within the boundaries of the county on all property not lying within the boundaries of a municipality and upon which gasoline taxes are imposed in accordance with the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978]. The tax imposed by this section is to be referred to as the "county gasoline tax" and is in addition to the tax imposed in the Gasoline Tax Act.

B. If the governing body of a county adopts an ordinance imposing a county gasoline tax, the governing body shall submit the question of levying the tax to the qualified electors in the county residing outside the boundaries of a municipality.

C. The gasoline tax may be imposed in increments of one cent ($.01) per gallon up to a maximum of two cents ($.02) per gallon. The amount of the tax and the specific purposes for which the proceeds shall be used shall be stated in the ordinance adopted by the governing body of the county as provided in Subsection A of this section. The gasoline tax shall not be imposed for the purpose of funding a vehicle emissions inspection program if a re-registration fee that funds a vehicle emissions inspection and maintenance program has been imposed pursuant to Subsection C of Section 74-2-4 NMSA 1978.

History: 1978 Comp., § 7-24A-5, enacted by Laws 1978, ch. 182, § 5; 1985, ch. 196, § 3; 1990, ch. 88, § 4.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, substituted "sold at retail" for "received in New Mexico and distributed" in the first sentence of Subsection A and made a minor stylistic change in Subsection C.

7-24A-6. County gasoline tax; procedure for adoption of ordinance; election.

A. The ordinance imposing a county gasoline tax shall not go into effect until after an election is held and a simple majority of the qualified electors of the county residing outside the boundaries of a municipality vote in favor of imposing the county gasoline tax. The governing body of the county shall provide for an election on the question of imposing a county gasoline tax within sixty days after the day the ordinance is adopted. Such question may be submitted to the electors and voted upon as a separate question at any general election or at any special election called for that purpose by the governing body. The election upon the question shall be called, held, conducted and canvassed in substantially the same manner as provided by law for general elections. If the question of imposing a county gasoline tax fails, the governing body shall not again propose a county gasoline tax ordinance for a period of one year after the election.

B. Within five days after passage of a county gasoline tax ordinance, the governing body of the county shall submit a certified copy of the ordinance to the taxation and revenue department.

History: 1978 Comp., § 7-24A-6, enacted by Laws 1978, ch. 182, § 6; 1985, ch. 196, § 4; 1990, ch. 88, § 5.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, added "County gasoline tax" at the beginning and deleted "effective date" at the end of the section heading; deleted former Subsection A, relating to notice to and action by the division on a proposed ordinance; designated former Subsection B as Subsection A and inserted "imposing a county gasoline tax" in the first sentence thereof; deleted former Subsection C, relating to the effective date of the ordinance; and redesignated former Subsection D as Subsection B, adding "Within five days" at the beginning, and substituted "taxation and revenue department" for "division" at the end thereof.

7-24A-6.1. County-wide gasoline tax; authorization; imposition; rate; election.

A. A county-wide gasoline tax may be imposed on each gallon of gasoline sold at retail within the county in increments of one cent ($.01) per gallon up to a maximum of two cents ($.02) per gallon for the purpose of funding a vehicle emissions inspection

program and other programs as specified in Subsection D of this section when the governing bodies of a county and a municipality adopt identical ordinances submitting the question to the qualified electors in the county in a joint election.

B. The procedures of the County and Municipal Gasoline Tax Act [this article] shall apply unless otherwise provided in this section.

C. The ordinance shall not go into effect until after a joint election is held pursuant to Section 7-24A-21 NMSA 1978 and a simple majority of the qualified electors of the county voting on the issue vote in favor of imposing a county-wide gasoline tax. If the ordinance is approved by a majority of the qualified electors of the county voting on the issue, the gasoline tax shall be imposed county-wide, both within and outside the boundaries of any municipality within the county.

D. If the qualified electors of the county vote in favor of an ordinance imposing a county-wide gasoline tax pursuant to Subsection C of Section 7-24A-21 NMSA 1978 and any proceeds of the tax are dedicated by the ordinance to a vehicle emissions inspection program, then the proceeds of the tax imposed shall be used first for the vehicle emissions inspection program and the balance shall be used for other environmental programs such as water quality or air quality programs. That balance shall be distributed to the municipality and the county based on the proportions that the population of the municipality and the population of the county outside the boundaries of the municipality bear to the total population of the county. The municipality and county shall reimburse the motor vehicle division of the taxation and revenue department for actual costs incurred in administering any plan that involves the motor vehicle division in the enforcement of denial of motor vehicle registration for noncompliance with a vehicle emissions inspection program. The costs reimbursed are appropriated to the motor vehicle division for that purpose.

History: 1978 Comp., § 7-24A-6.1, enacted by Laws 1986, ch. 74, § 1; 1990, ch. 88, § 6.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, added "imposition," "rate" and "election" in the section heading, inserted "on each gallon of gasoline sold at retail within the county" near the beginning of Subsection A and, in Subsection D, inserted "of the taxation and revenue department" in the second sentence and made a minor stylistic change.

7-24A-7. Ordinance must conform to certain provisions of the Gasoline Tax Act.

Any ordinance imposing a county, county-wide or municipal gasoline tax shall contain or adopt by reference the same definitions and the same provisions relating to deductions,

refunds and credits as are contained in the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978].

History: 1978 Comp., § 7-24A-7, enacted by Laws 1978, ch. 182, § 7; 1990, ch. 88, § 7.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, inserted "county-wide" and "or adopt by reference".

7-24A-7.1. Registration required.

Each person selling gasoline at retail in a county which imposes a county or county-wide gasoline tax or in a municipality which imposes a municipal gasoline tax shall register with the county or the municipality, as appropriate, as a seller of gasoline at retail.

History: 1978 Comp., § 7-24A-7.1, enacted by Laws 1990, ch. 88, § 8.

7-24A-8. Collection of county gasoline tax.

The county shall collect the county gasoline tax imposed by the County and Municipal Gasoline Tax Act [this article]. Every person subject to the imposition of the county gasoline tax shall file a return on forms provided by and with the information required by the county and shall pay the tax due on or before the twenty-fifth day of the month following the month in which the gasoline is sold at retail within the boundaries of the county.

History: 1978 Comp., § 7-24A-8, enacted by Laws 1978, ch. 182, § 8; 1983, ch. 211, § 36; 1990, ch. 88, § 9.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, deleted "by division" following "gasoline tax" and "Transfer of proceeds" at the end of the section heading; deleted the subsection designation "A" and former Subsection B, relating to the deduction of administrative costs of collection and the transfer of tax proceeds by the division; in the present section, substituted "county" for "division" in two places, and, in the second sentence, deleted "second" preceding "month following" and substituted "sold at retail" for "received in New Mexico and distributed".

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation § 632.

7-24A-9. Repealed.

ANNOTATIONS

Repeals. - Laws 1990, ch. 88, § 21 repeals 7-24A-9 NMSA 1978, as enacted by Laws 1978, ch. 182, § 9, relating to interpretation of County and Municipal Gasoline Tax Act, effective May 16, 1990. For provisions of former section, see 1988 Replacement Pamphlet.

7-24A-10. Municipal gasoline tax; authorization; imposition; rate.

A. The majority of the members of the governing body of a municipality may adopt an ordinance imposing a tax of up to two cents ($.02) a gallon on all gasoline sold at retail within the boundaries of the municipality and upon which gasoline taxes are imposed in accordance with the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978]. The tax imposed by this section is to be referred to as the "municipal gasoline tax" and is in addition to the tax imposed in the Gasoline Tax Act.

B. If the governing body of a municipality adopts an ordinance imposing a municipal gasoline tax, the governing body shall submit the question of levying the tax to the qualified electors in the municipality.

C. The gasoline tax may be imposed in increments of one cent ($.01) per gallon up to a maximum of two cents ($.02) per gallon. The amount of the tax and the specific purposes for which the proceeds shall be used shall be stated in the ordinance adopted by the governing body of the municipality as provided in Subsection A of this section. The gasoline tax shall not be imposed for the purpose of funding a vehicle emissions inspection program if a re-registration fee that funds a vehicle emissions inspection and maintenance program has been imposed pursuant to Subsection C of Section 74-2-4 NMSA 1978.

History: 1978 Comp., § 7-24A-10, enacted by Laws 1978, ch. 182, § 10; 1985, ch. 196, § 5; 1990, ch. 88, § 10.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, substituted "sold at retail" for "received in New Mexico and distributed" in the first sentence of Subsection A and made a minor stylistic change in Subsection C.

7-24A-11. Municipal gasoline tax; procedure for adoption of ordinance; election.

A. The ordinance imposing a municipal gasoline tax shall not go into effect until after an election is held and a simple majority of the qualified electors of the municipality voting on the question vote in favor of imposing the municipal gasoline tax. The governing body of the municipality shall provide for an election on the question of imposing the municipal gasoline tax within sixty days after the day the ordinance is adopted. Such

question may be submitted to the electors and voted upon as a separate question at any regular or special election or at any special election called for that purpose by the governing body. The election upon the question shall be called, held, conducted and canvassed in substantially the same manner as provided by law for special municipal elections as provided in the Municipal Election Code [Articles 8 and 9 of Chapter 3 NMSA 1978]. If the question of imposing a municipal gasoline tax fails, the governing body shall not again propose a municipal gasoline tax ordinance for a period of one year after the election.

B. After passage of a municipal gasoline tax ordinance, the governing body of the municipality shall submit a certified copy of the ordinance to the taxation and revenue department.

History: 1978 Comp., § 7-24A-11, enacted by Laws 1978, ch. 182, § 11; 1985, ch. 196, § 6; 1985, ch. 208, § 123; 1986, ch. 74, § 2; 1990, ch. 88, § 11.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, added "Municipal gasoline tax" at the beginning and deleted "effective date" at the end of the section heading; deleted former Subsection A, relating to notice to and approval by the division of the proposed ordinance; designated former Subsection A as present Subsection B and inserted "imposing a municipal gasoline tax" in the first sentence thereof; deleted former Subsection C, relating to the effective date of the ordinance; and designated former Subsection D as present Subsection B, substituting "taxation and revenue department" for "division" at the end thereof.

7-24A-12. Collection of municipal gasoline tax.

The municipality shall collect the municipal gasoline tax imposed by the County and Municipal Gasoline Tax Act [this article]. Every person subject to the imposition of the municipal gasoline tax shall file a return on forms provided by and with the information required by the municipality and shall pay the tax due on or before the twenty-fifth day of the month following the month in which the gasoline is sold at retail within the boundaries of the municipality.

History: 1978 Comp., § 7-24A-12, enacted by Laws 1978, ch 182, § 12; 1983, ch. 211, § 37; 1990, ch. 88, § 12.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, deleted "by division" following "gasoline tax" and "Transfer of proceeds" at the end of the section heading; deleted the subsection designation "A" and former Subsection B, relating to the charge for costs of collection and the transfer of proceeds of the tax by the division; and, in the present section, substituted "municipality" for "division" in two places and, in the second

sentence, deleted "second" preceding "month following" and substituted "sold at retail" for "received in New Mexico and distributed".

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation § 632.

7-24A-13. Repealed.

ANNOTATIONS

Repeals. - Laws 1990, ch. 88, § 21 repeals 7-24A-13 NMSA 1978, as enacted by Laws 1978, ch. 182, § 13, relating to imposition of federal regulations, effective May 16, 1990. For provisions of former section, see 1988 Replacement Pamphlet.

7-24A-14. Bond ordinance.

A. The governing body may adopt an ordinance providing for issuance of bonds to enable the county or municipality to acquire land, buildings, buses or other equipment required for public transit, a vehicle emission inspection program or for road, street or highway construction, repair or maintenance or for refunding bonds previously issued for such purpose or any such purposes.

B. The bonds are payable solely from a pledge of:

(1) gross income derived by the county or municipality from the transit facilities or vehicle emission inspection facilities financed with the proceeds and other transit facilities not so financed; provided that when gross revenues are so pledged, the county or municipality may apply to the payment of the expense of maintaining and operating the transit facilities, the gross revenues of which are so pledged, the county's or municipality's revenues derived from sources other than the proceeds of ad valorem taxes and may, in the proceedings authorizing the issue of bonds, covenant and agree to apply to the payment of the maintenance and operation expenses so much of the revenues as may be necessary for such purposes or as may be specified in the proceedings;

(2) income derived from franchises granted by the governing body of a county or municipality;

(3) contributions, grants or other financial assistance from the state or federal government or any other source;

(4) county or municipal gasoline tax revenue; or

(5) any one or a combination of these sources.

C. The ordinance is irrepealable as long as any indebtedness on the bonds is unpaid by the county or municipality.

History: 1978 Comp., § 7-24A-14, enacted by Laws 1978, ch. 182, § 14; 1985, ch. 196, § 7; 1999, ch. 226, § 2.

ANNOTATIONS

The 1999 amendment, effective July 1, 1999, made stylistic changes in Subsection A, redesignated former Subsection B(5) as B(4), added Subsection B(4) and in Subsection B(5), substituted "any one or a combination" for "any combination".

7-24A-15. Terms of bonds.

A. The ordinance authorizing issuance of bonds shall specify:

(1) issuance in any number of series;

(2) maturity dates;

(3) interest payable on the bonds;

(4) denominations;

(5) form, either coupon or registered;

(6) conversion or registration privileges;

(7) rank or priority;

(8) manner of execution;

(9) if desirable, features of redemption, prior to maturity with or without premium; and

(10) the terms, manner and medium of payment and redemption.

B. No member of the governing body or any person executing bonds is personally liable on any bond. All bonds are payable solely from the sources specified in the authorizing ordinance. No bond is a debt, liability or general obligation of the issuing county or municipality.

C. The terms prescribed by the authorizing ordinance and by this section shall be carried on the face of each bond.

History: 1978 Comp., § 7-24A-15, enacted by Laws 1978, ch. 182, § 15; 1985, ch. 196, § 8.

7-24A-16. Sale of bonds.

A. Bonds may be sold at either public or private sale; provided that no such bonds may be sold at any price which does not result in an actual net interest cost to maturity, computed on the basis of standard tables of bond values, in excess of the maximum net effective interest rate permitted by the Public Securities Act [6-14-1 to 6-14-3 NMSA 1978] or the Public Securities Short-term Interest Rate Act [6-18-1 to 6-18-16 NMSA 1978], as applicable.

B. If any county or municipal officer whose signature appears on any bond ceases to be an officer before delivery of the bonds, the signature is valid for all purposes as if the officer had remained in office until delivery.

C. All bonds are fully negotiable.

History: 1978 Comp., § 7-24A-16, enacted by Laws 1978, ch. 182, § 16; 1985, ch. 196, § 9.

7-24A-17. Construction.

The County and Municipal Gasoline Tax Act [this article] is full authority for authorization and issuance of bonds. If [In] any proceeding involving the validity and enforceability of any bond or its security, any bond reciting in substance that it was issued by the county or municipality to aid in financing public transit or transportation projects or any other purpose authorized by the County and Municipal Gasoline Tax Act is conclusively presumed to have been issued for a county or municipal transit or transportation project or other purpose in accordance with that act.

History: 1978 Comp., § 7-24A-17, enacted by Laws 1978, ch. 182, § 17.

ANNOTATIONS

Bracketed material. - The bracketed word "In" in the second sentence was inserted by the compiler. It was not enacted by the legislature and is not a part of the law.

7-24A-18. Additional security.

To further the marketability of bonds, the ordinance authorizing their issue may:

A. secure their payment by deed of trust or mortgage conveying county or municipally owned land and improvements acquired for the public transit facility operation or use from the proceeds of the bonds to a trustee for the benefit and security of the bondholders; and

B. authorize any other security agreement not in conflict with law.

History: 1978 Comp., § 7-24A-18, enacted by Laws 1978, ch. 182, § 18.

7-24A-19. Foreclosure.

If the interest or any serial maturity of any bond is in default, any obligee may foreclose against the county or municipality under the same procedure provided for foreclosure of real estate mortgages. The district court may appoint a receiver to operate the transit facilities or operation in default.

History: 1978 Comp., § 7-24A-19, enacted by Laws 1978, ch. 182, § 19.

7-24A-20. Legal investments.

Bonds are legal investments for savings banks and insurance companies under the laws of this state. They are bonds, notes or other obligations of a county or municipality of this state, issued pursuant to a law of this state, for the purposes of investment or purchase by the state investment officer.

History: 1978 Comp., § 7-24A-20, enacted by Laws 1978, ch. 182, § 20.

7-24A-21. Joint election.

A. If an election is held by one or more municipalities within a county or a municipality and the county concerning adoption of the county and municipal gasoline taxes, such election may be held jointly by such county and municipality, or municipalities, and may be held at any election except a primary election.

B. The election may be conducted using paper ballots. Consolidated voter precincts may be used if the board of county commissioners determines that such a consolidation would provide for a cost-effective and efficient election process and such consolidation would insure the integrity of the election process.

C. If a joint election is held by a municipality and a county pursuant to Section 7-24A-6.1 NMSA 1978 and a simple majority of the qualified electors of the county voting on the issue vote in favor of imposing the county-wide gasoline tax, the tax shall be imposed by the division and collected pursuant to the County and Municipal Gasoline Tax Act [Chapter 7, Article 24A NMSA 1978].

History: 1978 Comp., § 7-24A-21, enacted by Laws 1978, ch. 182, § 21; 1985, ch. 196, § 10; 1986, ch. 74, § 3.

ARTICLE 24B
SPECIAL COUNTY HOSPITAL GASOLINE TAX

7-24B-1. Short title.

Chapter 7, Article 24B NMSA 1978 may be cited as the "Special County Hospital Gasoline Tax Act".

History: Laws 1987, ch. 45, § 10; 1990, ch. 88, § 13.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, substituted "Chapter 7, Article 24B NMSA 1978" for "Sections 10 through 19 of this act".

7-24B-2. Definitions.

As used in the Special County Hospital Gasoline Tax Act [this article]:

A. "county" means:

(1) a county of the state of New Mexico having a population of more than ten thousand but less than ten thousand six hundred, according to the last federal decennial census or any subsequent decennial census, and having a net taxable value for rate-setting purposes for the 1986 property tax year or any subsequent year of more than eighty-two million dollars ($82,000,000) but less than eighty-two million three hundred thousand dollars ($82,300,000); and

(2) a county that has imposed a rate of one dollar fifty cents ($1.50) to each one thousand dollars ($1,000) of net taxable value of property as defined in the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] for property taxation purposes in the county and to each one thousand dollars ($1,000) of the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978] and the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978] or has made an appropriation of funds or has imposed another tax which produces an amount not less than the revenue that would be produced by applying a rate of one dollar fifty cents ($1.50) to each one thousand dollars ($1,000) of net taxable value of property as defined in the Property Tax Code for property taxation purposes in the school district and to each one thousand dollars ($1,000) of the assessed value of products severed and sold in the school district as determined under the Oil and Gas Ad Valorem Production Tax Act and the Oil and Gas Production Equipment Ad Valorem Tax Act. The proceeds of any tax imposed or appropriation made shall be dedicated for current operations and maintenance of a hospital owned and operated by the county or operated and maintained by another party pursuant to a lease with the county.

A county qualifying at any time under this definition shall continue to be qualified as a county and authorized to implement the provisions of the Special County Hospital Gasoline Tax Act;

B. "governing body" means the board of county commissioners of a county; and

C. "person" means:

(1) any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity, including any utility owned or operated by a county, municipality or other political subdivision of the state; or

(2) to the extent permitted by law, the United States or any agency or instrumentality thereof or the state of New Mexico or any political subdivision thereof.

History: Laws 1987, ch. 45, § 11; 1990, ch. 88, § 14.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, in Subsection A, substituted "Special County Hospital Gasoline Tax Act" for "Special County Hospital Gross Receipts Tax Act" in the second paragraph; deleted former Subsection B which defined " 'department' "; designated former Subsection C as present Subsection B; added present Subsection C; and made a stylistic change.

7-24B-3. Use of proceeds.

The proceeds of the special county hospital gasoline tax shall be used for current operations and maintenance of a hospital owned and operated by the county or operated and maintained by another party pursuant to a lease with the county and the use of these proceeds shall be for the care and maintenance of sick and indigent persons and shall be an expenditure for a public purpose.

History: Laws 1987, ch. 45, § 12.

7-24B-4. Special county hospital gasoline tax; authorization; imposition; rate.

A. The majority of the members of the governing body of a county may adopt an ordinance imposing a tax of up to two cents ($.02) a gallon on all gasoline sold at retail in the county and upon which gasoline taxes are imposed in accordance with the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978]. The tax imposed by this section is to be referred to as the "special county hospital gasoline tax" and is in addition to the tax imposed in the Gasoline Tax Act.

B. The special county hospital gasoline tax may be imposed by the governing body of a county regardless of whether the county has imposed a tax on gasoline pursuant to the County and Municipal Gasoline Tax Act [Chapter 7, Article 24A NMSA 1978].

C. The special county hospital gasoline tax may be imposed in increments of one cent ($.01) per gallon up to a maximum of two cents ($.02) per gallon. The amount of the tax and the specific purposes for which the proceeds shall be used shall be stated in the ordinance adopted by the governing body of the county.

D. The special county hospital gasoline tax shall be imposed for a period of not more than five years from the effective date of the ordinance imposing the tax. This authorization may be extended for additional five-year periods provided all requirements for enactment of the first ordinance are met.

History: Laws 1987, ch. 45, § 13; 1990, ch. 88, § 15.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, substituted "sold at retail in the county" for "received in New Mexico and distributed within the boundaries of the county" in the first sentence of Subsection A.

7-24B-5. Repealed.

ANNOTATIONS

Repeals. - Laws 1990, ch. 88, § 21 repeals 7-24B-5 NMSA 1978, as enacted by Laws 1987, ch. 45, § 14, relating to procedure for adoption of ordinance, effective May 16, 1990. For provisions of former section, see 1989 Cumulative Supplement.

7-24B-5.1. Registration required.

Each person selling gasoline at retail in a county that imposes a special county hospital gasoline tax shall register with the county as a seller of gasoline at retail.

History: 1978 Comp., § 7-24B-5.1, enacted by Laws 1990, ch. 88, § 16.

7-24B-6. Ordinance shall conform to certain provisions of the Gasoline Tax Act.

Any ordinance imposing a special county hospital gasoline tax shall contain or adopt by reference the same definitions and the same provisions relating to deductions, refunds and credits as are contained in the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978].

History: Laws 1987, ch. 45, § 15; 1990, ch. 88, § 17.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, substituted "shall conform" for "must conform" in the section heading and inserted "or adopt by reference".

7-24B-7. Referendum requirements.

A. The ordinance shall not go into effect until after an election is held and a simple majority of the qualified electors of the county voting in the election vote in favor of imposing the special county hospital gasoline tax. The governing body shall provide for an election on the question of imposing the tax within sixty days after the date the ordinance is adopted. The question may be submitted to the qualified electors and voted upon as a separate question in a general election or in any special election called for that purpose by the governing body. A special election upon the question shall be called, held, conducted and canvassed in substantially the same manner as provided by law for general elections. If the question of imposing a special county hospital gasoline tax fails, the governing body shall not again propose a special county hospital gasoline tax for a period of one year after the election.

B. A single election may be held on the question of imposing a special county hospital gasoline tax as authorized in the Special County Hospital Gasoline Tax Act [this article], on the question of imposing a special county hospital gross receipts tax as authorized in the Special County Hospital Gross Receipts Tax Act and on the question of imposing a mill levy pursuant to the Hospital Funding Act [Chapter 4, Article 48B NMSA 1978].

History: Laws 1987, ch. 45, § 16; 1990, ch. 88, § 18; 1993, ch. 30, § 24.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, substituted "Special County Hospital Gasoline Tax Act" for "Special County Gasoline Tax Act" in Subsection B and deleted former Subsection C which read "Any ordinance repealed under the provisions of the Special County Hospital Gasoline Tax Act shall be repealed effective on either July 1, or January 1".

The 1993 amendment, effective June 18, 1993, deleted the former final sentence of Subsection A which read "A certified copy of any ordinance imposing a special county hospital gasoline tax shall be mailed to the department within five days after the ordinance is adopted in any election called for that purpose."

Special County Hospital Gross Receipts Tax Act. - The Special County Hospital Gross Receipts Tax Act, referred to in Subsection B, consisted of former 7-20-19 to 7-20-26 NMSA 1978. Laws 1993, ch. 354, § 13, 14, and 19 recompiled or repealed 7-20-19 to 7-20-26 NMSA 1978.

7-24B-8. Collection of special county hospital gasoline tax.

The county shall collect the special county hospital gasoline tax imposed by the Special County Hospital Gasoline Tax Act [this article]. Every person subject to the imposition of the special county hospital gasoline tax shall file a return on forms provided by and with the information required by the county and shall pay the tax due on or before the twenty-fifth day of the month following the month in which the gasoline is sold at retail within the county.

History: Laws 1987, ch. 45, § 17; 1990, ch. 88, § 19.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, deleted "by department" following "gasoline tax" and "Transfer of proceeds" at the end of the section heading; deleted the subsection designation "A" and former Subsection B, relating to the charge for administrative costs of collection and the transfer of proceeds of the tax by the department; and, in the present section, substituted "county" for "department" in two places and, in the second sentence, deleted "second" preceding "month following" and substituted "sold at retail within" for "received in New Mexico and distributed within the boundaries of".

7-24B-9. Interpretation of Special County Hospital Gasoline Tax Act.

The county shall interpret the provisions of the Special County Hospital Gasoline Tax Act [this article].

History: Laws 1987, ch. 45, § 18; 1990, ch. 88, § 20.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, substituted "county" for "department".

7-24B-10. Repealed.

ANNOTATIONS

Repeals. - Laws 1990, ch. 88, § 21 repeals 7-24B-10 NMSA 1978, as enacted by Laws 1987, ch. 45, § 19, relating to imposition of federal regulations, effective May 16, 1990. For provisions of former section, see 1989 Cumulative Supplement.

ARTICLE 25
RESOURCES EXCISE TAX

7-25-1. Short title.

Chapter 7, Article 25 NMSA 1978 may be cited as the "Resources Excise Tax Act".

History: 1953 Comp., § 72-16A-20, enacted by Laws 1966, ch. 48, § 1; 1985, ch. 65, § 21.

ANNOTATIONS

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

For duty of successor in business with respect to this act, see 7-1-61 NMSA 1978 et seq.

Law reviews. - For comment, "Approaches to State Taxation of the Mining Industry," see 10 Nat. Resources J. 156 (1970).

For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

For comment, "Coal Taxation in the Western States: The Need for a Regional Tax Policy," see 16 Nat. Resources J. 415 (1976).

For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M. L. Rev. 69 (1976-77).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 28 to 30, 614.

84 C.J.S. Taxation § 170.

7-25-2. Purpose.

The purpose of the Resources Excise Tax Act [this article] is to provide revenue for public purposes by levying a tax on the privilege of severing and processing natural resources within New Mexico.

History: 1953 Comp., § 72-16A-21, enacted by Laws 1966, ch. 48, § 2.

ANNOTATIONS

Primary purpose of Resources Excise Tax Act is to encourage the development of the extractive industries of this state through the imposition of rates that are a fraction of the gross receipts tax (see 7-9-1 to 7-9-81 NMSA 1978). Carter & Sons v. New Mexico Bureau of Revenue, 92 N.M. 591, 592 P.2d 191 (Ct. App. 1978).

Taxation of lumber business activities. - "Road maintenance" and "hauling" are an integral and indispensable part of a taxpayer's activity of severing timber and delivering it to a lumber mill and as such are exempt from the gross receipts tax (see 7-9-1 to 7-9-

81 NMSA 1978) by the provisions of 7-9-35 NMSA 1978, while being taxable under the Resources Excise Tax Act. Carter & Sons v. New Mexico Bureau of Revenue, 92 N.M. 591, 592 P.2d 191 (Ct. App. 1979).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 84 C.J.S. Taxation § 170.

7-25-3. Definitions.

As used in the Resources Excise Tax Act [this article]:

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

B. "natural resource" means timber and any product thereof and any metalliferous or nonmetalliferous mineral product, combination or compound thereof, severed in New Mexico but does not include oil, natural gas, liquid hydrocarbon individually or any combination thereof or carbon dioxide;

C. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity;

D. "processing" means smelting, leaching, refining, reducing, compounding or otherwise preparing for sale or commercial use any natural resource so that its character or condition is materially changed in mills or plants located in New Mexico;

E. "processor" means any person engaging in the business of processing natural resources that the person owns, or any person who is the owner of natural resources and who has another person perform the processing of such natural resources;

F. "service charge" means the total amount of money or the reasonable value of other consideration received for severing or processing any natural resource by any person who is not the owner of the natural resource. However, if the money received does not represent the value of the severing or processing performed, "service charge" means the reasonable value of the severing or processing performed;

G. "severer" means any person engaging in the business of severing natural resources that the person owns, or any person who is the owner of natural resources and who has another person perform the severing of such natural resources;

H. "severing" means mining, quarrying, extracting, felling or producing any natural resource in New Mexico for sale, profit or commercial use; and

I. "taxable value" means the value after severing or processing, without deduction of any kind other than specified in this subsection, of any natural resource severed or processed in New Mexico. It is presumed, in the absence of preponderant evidence of

another value, that the taxable value means the total amount of money or the reasonable value of other consideration received for the severed or processed natural resource. However, if the amount of money received does not represent the value of the severed or processed natural resource or if the severed or processed natural resource is not sold, the taxable value shall be the reasonable value of the severed or processed natural resource. All natural resources severed or processed in New Mexico shall be included in determining taxable value, regardless of the place of sale or the fact that delivery may be made to points outside of New Mexico. If any person shall ship, transmit or transport natural resources out of New Mexico without making sale of them or shall ship, transmit or transport natural resources out of New Mexico in an unfinished condition, the value of the natural resources in the condition in which they existed when shipped, transmitted or transported out of New Mexico and before they enter interstate commerce, without deduction of any kind other than specified in this subsection, shall be the basis for determining the taxable value. Amounts received from selling natural resources, other than metalliferous mineral ores, whether processed or unprocessed, to the United States or any agency or instrumentality thereof, the state of New Mexico or any political subdivision thereof, or to organizations that have demonstrated to the department that they have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended or renumbered, which employ the natural resource in the conduct of functions described in Section 501(c)(3) and not in the conduct of an unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code of 1954, as amended or renumbered, may be deducted from taxable value. Any royalty or other similar interest, whether payable in cash or in kind, paid to the United States or any agency or instrumentality thereof, or the state of New Mexico or any political subdivision thereof, or any Indian tribe, Indian pueblo or Indian that is a ward of the United States may be deducted from taxable value. In computing taxable value, any owner of natural resources may deduct any service charge on which the service tax imposed by Section 7-25-6 NMSA 1978 is payable.

History: 1953, Comp., § 72-16A-22, enacted by Laws 1966, ch. 48, § 3; 1968, ch. 58, § 1; 1969, ch. 267, § 1; 1970, ch. 14, § 1; 1971, ch. 23, § 1; 1972, ch. 37, § 1; 1977, ch. 249, § 50; 1979, ch. 255, § 1; 1985, ch. 65, § 22; 1986, ch. 20, § 91.

ANNOTATIONS

Internal Revenue Code. - Sections 501(c)(3) and 513 of the United States Internal Revenue Code of 1954, referred to in Subsection I, appear as 26 U.S.C. §§ 501(c)(3) and 513, respectively.

"Severing" includes incidental development work. - The exemption from the gross receipts tax provided by 7-9-35 NMSA 1978 applies when severing was taking place as the development work was performed and none of taxpayer's work was preliminary to or preparatory for severing; receipts from development work, which includes construction, are exempted from the gross receipts tax and taxable under the service tax provided by

7-25-6 NMSA 1978 when such construction work is incidental to the severing. Patten v. Bureau of Revenue, 86 N.M. 355, 524 P.2d 527 (Ct. App. 1974).

Highway department owns sand and gravel severed from leased pits. - Highway department is owner of sand and gravel processed or severed from pits it leases from others. J.W. Jones Constr. Co. v. Revenue Div. 94 N.M. 39, 607 P.2d 126 (Ct. App. 1979).

"Taxable value" includes reimbursements for tax increases. - When a severer is reimbursed for the amount of a severance tax increase, it must include the reimbursed amount in "taxable value" in figuring the resources tax. Ranchers-Tufco Limestone Project Joint Venture v. Revenue Div. 100 N.M. 632, 674 P.2d 522 (Ct. App. 1983).

Law reviews. - For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M. L. Rev. 69 (1976-77).

7-25-4. Rate and measure of tax; denomination as "resources tax". (Effective until July 1, 2002.)

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, molybdenum and copper, three-fourths of one percent;

(2) potash, one-half of one percent;

(3) molybdenum, one-eighth of one percent; and

(4) copper, one-fourth 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.

ANNOTATIONS

Cross references. - For exemption of natural resource on which processors tax is paid, see 7-25-7 NMSA 1978.

The 1999 amendment, effective July 1, 1999, in Subsection A substituted "and copper, three-fourths" for "three-quarters" in Paragraph (1), added Paragraph (4), and made minor stylistic changes.

Applicability. - Laws 1999, ch. 177, § 5 makes the provisions of §§ 1 and 3 of the act applicable to taxable events occurring on and after July 1, 1999 and prior to July 1, 2002.

"Severing" includes incidental development work. - The exemption from the gross receipts tax provided by 7-9-35 NMSA 1978 applies when severing was taking place as the development work was performed and none of taxpayer's work was preliminary to or preparatory for severing; receipts from development work, which includes construction, are exempted from the gross receipts tax and taxable under the service tax provided by 7-25-6 NMSA 1978 when such construction work is incidental to the severing. Patten v. Bureau of Revenue, 86 N.M. 355, 524 P.2d 527 (Ct. App. 1974).

Resources tax not based on value of property used for severance. - The resources tax is based on the taxable value of natural resources; it is not based on the component parts of the property used in severing the natural resources. Ranchers-Tufco Limestone Project Joint Venture v. Revenue Div. 100 N.M. 632, 674 P.2d 522 (Ct. App. 1983).

Law reviews. - For comment, "Approaches to State Taxation of the Mining Industry," see 10 Nat. Resources J. 156 (1970).

For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M. L. Rev. 69 (1976-77).

For article, "Evaluating Congressional Limits on a State's Severance Tax Equity Interest in Its Natural Resources: An Essential Responsibility for the Supreme Court," see 22 Nat. Resources J. 673 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 218, 614.

84 C.J.S. Taxation § 170.

7-25-4. Rate and measure of tax; denomination as "resources tax" (Effective July 1, 2002.)

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: 1978 Comp., § 7-25-4, enacted by Laws 1999, ch. 177, § 2.

ANNOTATIONS

Repeals and reenactments. - Laws 1999, ch. 177, § 2 repeals 7-25-4 NMSA 1978, as amended by Laws 1999, ch. 177, § 1, and enacts the above section, effective July 1, 2002. For provisions effective until July 1, 2002, see version set out before this version.

Applicability. - Laws 1999, ch. 177, § 5 makes the provisions of §§ 2 and 4 of the act applicable to taxable events occurring on and after July 1, 2002.

7-25-5. Rate and measure of tax; denomination as "processors tax". (Effective until July 1, 2002.)

A. For the privilege of processing natural resources, there is imposed on any processor of natural resources in New Mexico an excise tax at the following rates on the taxable value of the natural resource:

(1) all natural resources except timber, potash, molybdenum and copper, three-fourths of one percent;

(2) timber, three-eighths of one percent;

(3) potash, one-eighth of one percent;

(4) molybdenum, one-eighth of one percent; and

(5) copper, one-fourth 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.

ANNOTATIONS

The 1999 amendment, effective July 1, 1999, in Subsection A substituted "and copper, three-fourths" for "three-quarters" in Paragraph (1), added Paragraph (5), and made minor stylistic changes.

Applicability. - Laws 1985 (1st S.S.), ch. 3, § 3 makes the provisions of § 2 of the act applicable to taxable events occurring on and after July 1, 1988.

Laws 1999, ch. 177, § 5 makes the provisions of §§ 1 and 3 of the act applicable to taxable events occurring on and after July 1, 1999 and prior to July 1, 2002.

Law reviews. - For comment, "Approaches to State Taxation of the Mining Industry," see 10 Nat. Resources J. 156 (1970).

For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M. L. Rev. 69 (1976-77).

For article, "Evaluating Congressional Limits on a State's Severance Tax Equity Interest in Its Natural Resources: An Essential Responsibility for the Supreme Court," see 22 Nat. Resources J. 673 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 218, 614.

84 C.J.S. Taxation § 170.

7-25-5. Rate and measure of tax; denomination as "processors tax". (Effective July 1, 2002.)

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 1999, ch. 177, § 4.

ANNOTATIONS

Repeals and reenactments. - Laws 1999, ch. 177, § 4 repeals 7-25-5 NMSA 1978, as amended by Laws 1999, ch. 177, § 3, and enacts the above section, effective July 1, 2002. For provisions effective until July 1, 2002, see version set out before this version.

Applicability. - Laws 1999, ch. 177, § 5 makes the provisions of §§ 2 and 4 of the act applicable to taxable events occurring on and after July 1, 2002.

7-25-6. Rate and measure of tax; denomination as "service tax".

A. For the privilege of severing or processing in New Mexico natural resources that are owned by another person and are not otherwise taxed by Sections 7-25-4 and 7-25-5 NMSA 1978, there is imposed on the service charge of any person severing or processing natural resources that are owned by another person an excise tax at the same rate that would be imposed on an owner of natural resources for performing the same function.

B. The tax imposed by this section shall be referred to as the "service tax".

History: 1953 Comp., § 72-16A-25, enacted by Laws 1966, ch. 48, § 6; 1993, ch. 30, § 25.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "Sections 7-25-4 and 7-25-5 NMSA 1978" for "Sections 4 and 5 of the Resources Excise Tax Act" in Subsection A.

Severance alone does not give rise to taxable event. Yankee Atomic Elec. Co. v. New Mexico & Ariz. Land Co. 632 F.2d 855 (10th Cir. 1980).

Severance and sale, transportation or consumption triggers tax. - Severance, coupled with the sale, transportation out of New Mexico, or consumption thereof triggers the imposition of the tax. Yankee Atomic Elec. Co. v. New Mexico & Ariz. Land Co. 632 F.2d 855 (10th Cir. 1980).

Receipts from development work incidental to severing taxable under this section. - The exemption from the gross receipts tax provided by 7-9-35 NMSA 1978 applies when severing was taking place as the development work was performed and none of taxpayer's work was preliminary to or preparatory for severing; receipts from development work, which includes construction, are exempted from the gross receipts tax and taxable under the service tax provided by this section when such construction work is incidental to the severing. Patten v. Bureau of Revenue, 86 N.M. 355, 524 P.2d 527 (Ct. App. 1974).

Law reviews. - For comment, "Approaches to State Taxation of the Mining Industry," see 10 Nat. Resources J. 156 (1970).

For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M.L. Rev. 69 (1976-77).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 218, 614.

84 C.J.S. Taxation § 170.

7-25-7. Exemption; resources tax.

Exempted from the resources tax is the taxable value of any natural resource that is processed in New Mexico and on whose taxable value the processors tax is paid.

History: 1953 Comp., § 72-16A-26, enacted by Laws 1966, ch. 48, § 7.

ANNOTATIONS

Cross references. - For resources tax, see 7-25-4 NMSA 1978.

For processors tax, see 7-25-5 NMSA 1978.

7-25-8. Sales of natural resources subject to Gross Receipts and Compensating Tax Act.

In addition to being subject to the Resources Excise Tax Act [this article], any person who sells nonfissionable natural resources other than for subsequent sale in the ordinary course of business or for use as an ingredient or component part of a manufactured product is also subject to the provisions of the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] on such sales.

History: 1953 Comp., § 72-16A-27, enacted by Laws 1966, ch. 48, § 8; 1984, ch. 2, § 8.

ANNOTATIONS

Cross references. - For exception to exemption from gross receipts tax of persons liable for resources excise tax, see 7-9-35 NMSA 1978.

Applicability. - Laws 1984, ch. 2, § 13, makes the provisions of §§ 2 to 5, 8 and 9 of that act applicable to taxable events occurring on or after January 1, 1980.

7-25-9. Date payment due.

The taxes imposed by the Resources Excise Tax Act [this article] are to be paid on or before the twenty-fifth day of the month following the month in which the first of the following occurs: sale, transportation out of New Mexico or consumption.

History: 1953 Comp., § 72-16A-28, enacted by Laws 1966, ch. 48, § 9; 1970, ch. 43, § 1; 1977, ch. 235, § 1.

ANNOTATIONS

Cross references. - For deposit of receipts in suspense fund, see 7-1-6 NMSA 1978.

ARTICLE 26
SEVERANCE TAX

7-26-1. Short title.

Sections 7-26-1 through 7-26-8 NMSA 1978 may be cited as the "Severance Tax Act".

History: Laws 1971, ch. 65, § 1; 1953 Comp., § 72-18-1; Laws 1977, ch. 102, § 3; 1985, ch. 65, § 23.

ANNOTATIONS

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

For oil and gas severance tax, see 7-29-1 to 7-29-23 NMSA 1978.

Law reviews. - For comment, "Approaches to State Taxation of the Mining Industry," see 10 Nat. Resources J. 156 (1970).

For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

For comment, "Coal Taxation in the Western States: The Need for a Regional Tax Policy," see 16 Nat. Resources J. 415 (1976).

For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M.L. Rev. 69 (1976-77).

For comment, "Constitutional Limitations On State Severance Taxes," see 20 Nat. Resources J. 887 (1980).

For comment, "An Outline For Development of Cost-Based State Severance Taxes," see 20 Nat. Resources J. 913 (1980).

For article, "Evaluating Congressional Limits on a State's Severance Tax Equity Interest in Its Natural Resources: An Essential Responsibility for the Supreme Court," see 22 Nat. Resources J. 673 (1982).

For article, "State Policies and Practices in Coal Severance Taxation," see 27 Nat. Resources J. 591 (1987).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation § 614.

Tax on severance of natural resources from soil, 32 A.L.R. 827.

Severance tax as property tax or privilege tax, 103 A.L.R. 35.

7-26-2. Definitions.

As used in the Severance Tax Act [7-26-1 to 7-26-8 NMSA 1978]:

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

B. "natural resource" means timber and any metalliferous or nonmetalliferous mineral product, combination or compound thereof but does not include oil, natural gas, liquid hydrocarbon, individually or any combination thereof, or carbon dioxide;

C. "severer" means any person engaging in the business of severing natural resources that the person owns or any person who is the owner of natural resources and has another person perform the severing of such natural resources;

D. "severing" means mining, quarrying, extracting, felling or producing any natural resources in New Mexico;

E. "owner", when used in connection with the severing of any of the natural resources covered by the Severance Tax Act under any lease or contract with the state or United States, includes any person having the right to sever those resources; and

F. "director" or "secretary" means the secretary of taxation and revenue.

History: Laws 1937, ch. 103, § 2; C.S. 1929, § 97-4A-102; 1941 Comp., § 76-1302; Laws 1949, ch. 65, § 2; 1951, ch. 24, § 1; 1953 Comp., § 72-18-2; 1957, ch. 79, § 1; 1959, ch. 52, § 27; 1961, ch. 98, § 2; 1970, ch. 8, § 2; 1974, ch. 61, § 1; 1977, ch. 102, § 4; 1985, ch. 65, § 24; 1986, ch. 20, § 92.

ANNOTATIONS

Law reviews. - For comment, "Constitutional Limitations On State Severance Taxes," see 20 Nat. Resources J. 887 (1980).

For comment, "An Outline For Development of Cost-Based State Severance Taxes," see 20 Nat. Resources J. 913 (1980).

For article, "State Policies and Practices in Coal Severance Taxation," Nat. Resources J. 591 (1987).

7-26-3. Imposition of tax; denomination as "severance tax".

For the privilege of severing natural resources, there is imposed on any severer of natural resources in New Mexico an excise tax on the taxable value or the quantity of natural resources severed and saved by or for him as determined under, and at the rates provided in the Severance Tax Act [7-26-1 to 7-26-8 NMSA 1978]. The tax imposed by this section shall be known as the "severance tax".

History: 1953 Comp., § 72-18-3, enacted by Laws 1971, ch. 65, § 5; 1977, ch. 102, § 5.

ANNOTATIONS

Responsibility for payment attaches at time of sale. - The legal incidence or the responsibility for the payment of the severence tax attaches at the time that a sale is made. United Nuclear Corp. v. Revenue Div. 98 N.M. 296, 648 P.2d 335 (Ct. App. 1982).

Responsibility for payment falls upon severer of resource. - The legal incidence or the responsibility for the payment of the tax falls on the taxpayer who is the severer of the natural resource. United Nuclear Corp. v. Revenue Div. 98 N.M. 296, 648 P.2d 335 (Ct. App. 1982).

Law reviews. - For comment, "Approaches to State Taxation of the Mining Industry," see 10 Nat. Resources J. 156 (1970).

For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M.L. Rev. 69 (1976-77).

For article, " 'New Mexican Nationalism' and the Evolution of Energy Policy in New Mexico," see 17 Nat. Resources J. 283 (1977).

For comment, "Constitutional Limitations On State Severance Taxes," see 20 Nat. Resources J. 887 (1980).

For comment, "An Outline For Development of Cost-Based State Severance Taxes," see 20 Nat. Resources J. 913 (1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation § 614.

Tax on severance of natural resources from soil, 32 A.L.R. 827.

Severance tax as property tax or privilege tax, 103 A.L.R. 35.

7-26-4. Determination of taxable value of natural resources.

A. Except as otherwise provided in Subsections C, E, F and G of this section, the "taxable event" is the severance of a natural resource whose taxable value is determined under the provisions of this section.

B. For all natural resources except potash or potash products described under Subsection C of this section, molybdenum or molybdenum products described under Subsection D of this section, copper, lead or zinc described in Subsection E of this section, gold described in Subsection F of this section, silver described in Subsection G of this section, coal and uranium, the gross value of the natural resource is the sales value of the severed and saved product at the first marketable point without any deductions, except that:

(1) for those products having a posted field or market price at the point of production, the gross value is its posted field or market price, except that the gross value of potash is forty percent of the posted field or market price, less those expenses of hoisting, crushing and loading necessary to place the severed product in marketable form and at a marketable place, but the allowable deductions for hoisting, loading and crushing shall not exceed fifty percent of the posted field or market price; and

(2) for those products that must be processed or beneficiated before sale, the gross value is the sales value after deducting freight charges from the point of severance to the point of first sale and the cost of processing or beneficiation.

C. The gross value for each type of potash and potash product requiring processing or beneficiation (other than sizing), regardless of the form in which the product is actually sold, shall be thirty-three and one-third percent of the proceeds realized from the sale of muriate of potash and sulphate of potash magnesia, as standard grades, and thirty-three and one-third percent of the value of such products consumed in the production of other potash products, less fifty percent of such reported value as a deduction for expenses of hoisting, loading, crushing, processing and beneficiation. For purposes of this subsection, the taxable event occurs when products are sold or consumed. Any potash or potash products, the value of which is computed under this subsection, shall not also have their value computed by the use of any of the provisions of Subsection B of this section.

D. The gross value for each type of molybdenum and molybdenum product requiring processing or beneficiation, regardless of the form in which the product is actually sold, shall be the value of molybdenum contained in concentrates shipped or sold from a mine site, but in no event a value less than the value that bona fide sales which reflect current market conditions would yield for the same quantity of molybdenum products contained in concentrates at the mine site, less fifty percent of that value as a deduction for the expenses of hoisting, loading, crushing, processing and beneficiation.

E. The gross value for copper, lead and zinc shall be sixty-six and two-thirds percent of the sales value established from published price data, as further described in this subsection, of the quantity of copper, lead or zinc recoverable from the concentrate or other product which is sold or is shipped, transmitted or transported out of New Mexico without sale, less fifty percent of the sales value as a deduction for the expenses of hoisting, loading, crushing, processing and beneficiation. For purposes of this subsection, the taxable event occurs when the severer sells copper, lead or zinc in New Mexico or when the severer ships, transmits or transports copper, lead or zinc out of New Mexico without first making sale of it. The secretary shall designate by regulation which published price index shall be used to establish the sales value for each resource. The sales value for each resource shall be the monthly average price published for each resource for the month in which the taxable event occurs. When the taxable event is sale, the recoverable quantity of copper, lead or zinc shall be reported as the provisional quantity determined by presale assay, and the reported quantity may be adjusted in a report filed after final assay, if necessary. When the taxable event is shipment, transmission or transportation out of New Mexico without sale, the recoverable quantity of copper, lead or zinc shall be reported as the provisional quantity determined after preshipment assay. Copper, lead or zinc shall not be considered saved for the purposes of the Severance Tax Act [7-26-1 to 7-26-8 NMSA 1978] unless the copper, lead or zinc can economically be separated and saved from the dominant resource, which is the resource subject to sale by the severer. Any copper, lead or zinc the value of which is computed under this subsection shall not also have its value computed by the use of any of the provisions of Subsection B of this section.

F. The gross value for gold shall be the sales value established from published price data, as further described in this subsection, of the quantity of gold recoverable from the concentrate or other product which is sold or is shipped, transmitted or transported out of New Mexico without sale, less fifty percent of the sales value as a deduction for the expenses of hoisting, loading, crushing, processing and beneficiation. For purposes of this subsection, the taxable event occurs when the severer sells gold in New Mexico or when the severer ships, transmits or transports gold out of New Mexico without first making sale of it. The secretary shall designate by regulation which published price index shall be used to establish the sales value for gold. The sales value for gold shall be the monthly average price published for gold for the month in which the taxable event occurs. When the taxable event is sale, the recoverable quantity of gold shall be reported as the provisional quantity determined by presale assay, and the reported quantity may be adjusted in a report filed after final assay, if necessary. When the taxable event is shipment, transmission or transportation out of New Mexico without

sale, the recoverable quantity of gold shall be reported as the provisional quantity determined after preshipment assay. For purposes of the Severance Tax Act, gold shall not be considered saved unless the gold can economically be separated and saved from the dominant resource, which is the resource subject to sale by the severer. Any gold the value of which is computed under this subsection shall not also have its value computed by the use of any of the provisions of Subsection B of this section.

G. The gross value for silver shall be eighty percent of the sales value established from published price data, as further described in this subsection, of the quantity of silver recoverable from the concentrate or other product which is sold or is shipped, transmitted or transported out of New Mexico without sale, less fifty percent of the sales value as a deduction for the expenses of hoisting, loading, crushing, processing and beneficiation. For purposes of this subsection, the taxable event occurs when the severer sells silver in New Mexico or when the severer ships, transmits or transports silver out of New Mexico without first making sale of it. The secretary shall designate by regulation which published price index shall be used to establish the sales value for silver. The sales value for silver shall be the monthly average price published for silver for the month in which the taxable event occurs. When the taxable event is sale, the recoverable quantity of silver shall be reported as the provisional quantity determined by presale assay, and the reported quantity may be adjusted in a report filed after final assay, if necessary. When the taxable event is shipment, transmission or transportation out of New Mexico without sale, the recoverable quantity of silver shall be reported as the provisional quantity determined after preshipment assay. For purposes of the Severance Tax Act, silver shall not be considered saved unless the silver can economically be separated and saved from the dominant resource, which is the resource subject to sale by the severer. Any silver the value of which is computed under this subsection shall not also have its value computed by the use of any of the provisions of Subsection B of this section.

H. The taxable value of all severed natural resources except coal and uranium is the gross value of the severed resource determined under this section less rental or royalty payments belonging to the United States or the state.

I. The taxable value to be reported for severed and saved uranium-bearing material is the sales price per pound of the content of U3O8 contained in the severed and saved or processed uranium, regardless of the form in which the product is actually disposed of, reduced by fifty percent for the purposes of Section 7-26-7 NMSA 1978. It is presumed, in the absence of preponderant evidence of another value, that the sales price means the total amount of money and the reasonable value of other consideration received, or either of them, for the severed and saved uranium ore or processed uranium "yellowcake" concentrate without deduction of any kind. However, if the severed and saved uranium ore or "yellowcake" concentrate is not sold as ore or concentrate, the sales price shall be the value of U3O8 in ore or "yellowcake" concentrate represented in the final product.

History: Laws 1971, ch. 65, § 6; 1953 Comp., § 72-18-4; Laws 1972, ch. 47, § 2; 1977, ch. 102, § 6; 1981, ch. 169, § 1; 1983, ch. 210, § 1; 1984, ch. 84, § 1; 1986, ch. 20, § 93.

ANNOTATIONS

Taxable value of uranium-bearing material not affected by results of milling. - Taxable value of severed, uranium-bearing material should be determined on the basis of the U3O8 content of severed and saved raw ore when raw ore is sold; the U3O8 later lost in the milling process is not involved. Ranchers-Tufco Limestone Project Joint Venture v. Revenue Div. 100 N.M. 632, 674 P.2d 522 (Ct. App. 1983).

Responsibility for payment attaches at time of sale. - The legal incidence or the responsibility for the payment of the severance tax attaches at the time that a sale is made. United Nuclear Corp. v. Revenue Div. 98 N.M. 296, 648 P.2d 335 (Ct. App. 1982).

"Taxable value" includes all monies received. - The taxpayer must include in the taxable value all monies received, including the amount of severance tax that it has billed its customers. United Nuclear Corp. v. Revenue Div. 98 N.M. 296, 648 P.2d 335 (Ct. App. 1982).

Tax assessment to include reimbursements for tax increases. - A severance tax assessment should include any amount that is reimbursed to the severer due to an increase in the severance tax. Ranchers-Tufco Limestone Project Joint Venture v. Revenue Div. 100 N.M. 632, 674 P.2d 522 (Ct. App. 1983).

Oil and gas taxes imposed by the state against a non-Indian producer whose operations are located on an Indian Reservation do not constitute an impermissible burden on interstate commerce. Cotton Petroleum v. State, 106 N.M. 517, 745 P.2d 1170 (Ct. App. 1987), aff'd, 490 U.S. 163, 109 S. Ct. 1698, 104 L. Ed. 2d 209 (1989).

Law reviews. - For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M.L. Rev. 69 (1976-77).

For comment, "Constitutional Limitations On State Severance Taxes," see 20 Nat. Resources J. 887 (1980).

For comment, "An Outline For Development of Cost-Based State Severance Taxes," see 20 Nat. Resources J. 913 (1980).

7-26-5. Tax rates on severed natural resources except coal and uranium.

The severance tax is imposed at the following rates on the taxable value determined under Section 7-26-4 NMSA 1978 of the

following natural resources:

A. potash 2 1/2%

B. copper 1/2%

C. timber 1/8%

D. pumice, gypsum, sand, gravel, clay, fluorspar and other nonmetallic minerals 1/8%

E. lead, zinc, thorium, molybdenum, manganese, rare earth and other metals 1/8%

F. gold and silver .....1/5%.

History: 1953 Comp., § 72-18-5, enacted by Laws 1977, ch. 102, § 7; 1984, ch. 84, § 2.

ANNOTATIONS

Repeals. - Laws 1971, ch. 65, § 7, repeals former 72-18-5, 1953 Comp., relating to security to insure compliance with severance tax provisions.

Law reviews. - For comment, "Constitutional Limitations On State Severance Taxes," see 20 Nat. Resources J. 887 (1980).

For comment, "An Outline for Development of Cost-Based State Severance Taxes," see 20 Nat. Resources J. 913 (1980).

7-26-6. Severance tax on coal; surtax.

A. The severance tax on coal is measured by the quantity of coal severed and saved. The taxable event is sale, transportation out of New Mexico or consumption of the coal, whichever first occurs. Upon each short ton (two thousand pounds) of coal severed and saved, there shall be imposed on the severer a severance tax. For the period commencing on July 1, 1982, the severance tax rate shall be:

(1) surface coal, fifty-seven cents ($.57); and

(2) underground coal, fifty-five cents ($.55).

B. The severance tax on coal shall be increased by a surtax, hereby imposed. The surtax shall be imposed on the unit of quantity of such product or natural resource at the following rates:

(1) surface coal, sixty cents ($.60); and

(2) underground coal, fifty-eight cents ($.58).

C. The surtax rate on coal shall be increased on July 1, 1994, and on July 1 of each succeeding year by an amount equal to the product of the dollar amount of the severance tax imposed on each ton of coal by a percentage equal to the percentage rise in the producer price index for coal from the calendar year 1992 to the calendar year just prior to the year in which the surtax rates are computed, but in no case shall the surtax rate be decreased. The rates so computed shall be computed by the department in April of 1994 and in April of each year thereafter and published on or before May 1, 1994 and on or before May 1 of each year thereafter.

If the producer price index for coal is substantially revised or if the base year used as an index of one hundred is changed, the department shall make an adjustment in the percentage used to compute the surtax rates that would produce results equivalent, as nearly as possible, to those that would have been obtained if the producer price index for coal had not been so revised or if the base year had not been changed. If this index ceases to become available, then a comparable index based upon changes in the price of coal shall be adopted by the department by regulation.

D. As used in this section:

(1) "producer price index for coal" means the commodity code 05-1 as reported annually by the bureau of labor statistics at the United States department of labor in their annual producer price indexes data;

(2) "surface coal" means coal that is severed using surface mining methods;

(3) "surface mining" means the extraction of coal from the earth by removing the material overlying a coal seam and then removing the coal by common methods,

including, but not limited to, contour mining, strip mining, mountain top removal mining, box cut mining, open pit mining and area mining; and

(4) "underground coal" means all coal that is not surface coal.

History: 1978 Comp., § 7-26-6, enacted by Laws 1982, ch. 77, § 1; 1989, ch. 261, § 1; 1993, ch. 89, § 1.

ANNOTATIONS

Cross references. - For conservation tax on coal, see 7-30-1 to 7-30-27 NMSA 1978.

The 1989 amendment, effective July 1, 1989, added "; surtax" to the section heading; in Subsection A deleted former Paragraph (1) which read: "for the period ending June 30, 1982, the tax rate shall be fifty-seven cents ($.57)", restructured former Paragraph (2) as the fourth sentence, redesignated former Subparagraphs (a) and (b) as Paragraphs (1) and (2), and made minor stylistic changes; added Subsections B and C; and redesignated former Subsection C as Subsection D.

The 1993 amendment, effective June 18, 1993, substituted "1994" for "1993" in three places and "1992" for "1991" in one place in the first paragraph of Subsection C; substituted "producer price index for coal" for "consumer price index" in the first and second paragraphs of Subsection C; deleted the former first sentence of the second paragraph of Subsection C defining "consumer price index" and substituted "If the producer price index for coal" for "If the manner in which the consumer price index is determined" at the beginning of the current second paragraph of Subsection C; inserted current Paragraph (1) and redesignated former Paragraphs (1) to (3) as Paragraphs (2) to (4) in Subsection D; deleted "auger mining" following "strip mining" in Paragraph (3) of Subsection D; and made minor stylistic changes.

Law reviews. - For comment, "Constitutional Limitations On State Severance Taxes," see 20 Nat. Resources J. 887 (1980).

For comment, "An Outline For Development of Cost-Based State Severance Taxes," see 20 Nat. Resources J. 913 (1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Classification of coal for purposes of taxation, 24 A.L.R. 1225.

7-26-6.1. Repealed.

ANNOTATIONS

Repeals. - Laws 1985, ch. 65, § 46 repeals 7-26-6.1 NMSA 1978, as enacted by Laws 1980, ch. 62, § 9, relating to a credit for the payment of additional coal severance taxes,

effective July 1, 1985. For provisions of former section, see 1983 Replacement Pamphlet.

7-26-6.2. Coal surtax exemption; qualification requirements.

A. The following coal is exempt from the surtax imposed on coal under the provisions of Section 7-26-6 NMSA 1978:

(1) coal sold and delivered pursuant to coal sales contracts that are entered into on or after July 1, 1990, under which deliveries start after July 1, 1990, if the sales contracts are not the result of:

(a) a producer and purchaser mutually rescinding an existing contract and negotiating a revised contract under substantially similar terms and conditions;

(b) a purchaser establishing an affiliated company to purchase coal on behalf of the purchaser; or

(c) a purchaser independently abrogating a contract that was in effect on July 1, 1990 with a producer for the purpose of securing the benefits of the exemption granted by this section; and

(2) coal sold and delivered pursuant to a contract in effect on July 1, 1990 that exceeds the average calendar year deliveries under the contract during production years 1987, 1988 and 1989 or the highest contract minimum during 1987, 1988 and 1989, whichever is greater.

B. If a contract existing on July 1, 1990 is renegotiated between a producer and a purchaser after May 20, 1992 and if that renegotiated contract requires the purchaser to take annual coal deliveries in excess of the greater of the average calendar year deliveries under the contract during production years 1987, 1988 and 1989 or the highest contract minimum during 1987, 1988 and 1989, the surtax imposed by Subsection B of Section 7-26-6 NMSA 1978 shall not apply to such excess deliveries for the remaining term of the renegotiated contract.

C. For coal exempt under the provisions of Paragraph (2) of Subsection A of this section, if the contract involved was for a lesser term during the production years specified, then actual deliveries shall be annualized to establish average calendar year deliveries, and in the event that coal sold and delivered in a calendar year after June 30, 2009 falls below the average calendar year deliveries during 1987, 1988 and 1989, the exemption shall no longer apply unless the deliveries are reduced due to causes beyond the reasonable control of either party to the contract.

D. The taxpayer, prior to taking the exemption provided by this section, shall register any contract for the sale of coal that qualifies for the exemption from the surtax under the provisions of this section with the department on forms provided by the secretary. If

upon examination of the contract or upon audit or inspection of transactions occurring under the contract the secretary or the secretary's delegate determines that a person who is a party to the contract has taken an action to circumvent the intent and purpose of this section, the exemption shall be disallowed.

History: 1978 Comp., § 7-26-6.2, enacted by Laws 1990, ch. 83, § 1 and Laws 1990, ch. 84, § 1; 1992, ch. 65, § 1; 1992, ch. 115, § 1; 1994, ch. 73, § 1; 1995, ch. 53, § 1; 1997, ch. 61, § 1; 1999, ch. 86, § 1.

ANNOTATIONS

1992 amendments. - Identical amendments to this section were enacted by Laws 1992, ch. 65, § 1 and Laws 1992, ch. 115, § 1, both effective May 20, 1992, which substituted "highest contract minimum during 1987, 1988 and 1989, whichever is greater" for "contract minimum, whichever is greater" in Subsection A(2) and rewrote Subsection B. The section is set out as amended by Laws 1992, ch. 115, § 1. See 12-1-8 NMSA 1978.

The 1994 amendment, effective July 1, 1994, substituted "1995" for "1994" in Paragraph A(1), in the first sentence of Subsection B, and in Subsection C; substituted "May 20, 1992" for "effective date of this 1992 act" in Subsection B; and deleted "taxation and revenue" preceding "department" in the first sentence of Subsection D.

The 1995 amendment, effective June 16, 1995, substituted "June 30, 1997" for "June 30, 1995" in Paragraph (1) of Subsection A and in Subsections B and C.

The 1997 amendment substituted "1999" for "1997" following "June 30," in Subsection B. Laws 1997, ch. 61 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

The 1999 amendment, effective June 18, 1999, in Subsection A, deleted "until July 1, 2009" following "is exempt" in the introductory language, and "and before June 30, 1999" following "July 1, 1990" in Paragraph (1); in Subsection B, deleted "prior to June 30, 1999 and" following "a purchaser" near the beginning and "or until July 1, 2009, whichever occurs first" at the end; in Subsection C, substituted "June 30, 2009" for "June 30, 1999"; and made minor stylistic changes.

Duplicate laws. - Laws 1990, ch. 83, § 1 and Laws 1990, ch. 84, § 1 enacted identical versions of this section.

7-26-7. Severance tax on uranium.

The severance tax on uranium is measured by the quantity of U_3O_8 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 U_3O_8 contained in severed uranium-bearing material, there shall be collected from the severer a severance tax equal to three and one-half percent of taxable value.

History: 1953 Comp., § 72-18-7, enacted by Laws 1977, ch. 102, § 9; 1980, ch. 62, § 2; 1981, ch. 169, § 2; 1983, ch. 210, § 2; 1985, ch. 65, § 25.

ANNOTATIONS

Cross references. - For conservation tax on uranium, see 7-30-1 to 7-30-27 NMSA 1978.

Repeals. - Laws 1971, ch. 65, § 7, repeals former 72-18-7, 1953 Comp., relating to deducting severance taxes from royalties, etc.

Severance alone does not give rise to taxable event. Yankee Atomic Elec. Co. v. New Mexico & Ariz. Land Co. 632 F.2d 855 (10th Cir. 1980).

Severance coupled with sale, transportation or consumption triggers tax. - Severance, coupled with the "sale, transportation out of New Mexico, or consumption" triggers the imposition of the tax. Yankee Atomic Elec. Co. v. New Mexico & Ariz. Land Co. 632 F.2d 855 (10th Cir. 1980).

"Taxable value" includes all moneys received. - The taxpayer must include in the taxable value all moneys received, including the amount of severance tax that it has billed its customers. United Nuclear Corp. v. Revenue Div. 98 N.M. 296, 648 P.2d 335 (Ct. App. 1982).

Taxable value of uranium-bearing material not affected by results of milling. - Taxable value of severed uranium-bearing material should be determined on the basis of the U_3O_8 content of severed and saved raw ore when raw ore is sold; the U_3O_8 later lost in the milling process is not involved. Ranchers-Tufco Limestone Project Joint Venture v. Revenue Div. 100 N.M. 632, 674 P.2d 522 (Ct. App. 1983).

Law reviews. - For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M.L. Rev. 69 (1976-77).

For article, "Nonneutral Features of Energy Taxation," see 20 Nat. Resources J. 853 (1980).

For comment, "Constitutional Limitations On State Severance Taxes," see 20 Nat. Resources J. 887 (1980).

For comment, "An Outline For Development of Cost-Based State Severance Taxes," see 20 Nat. Resources J. 913 (1980).

7-26-7.1. Repealed.

ANNOTATIONS

Repeals. - Laws 1985, ch. 65, § 46 repeals 7-26-7.1 NMSA 1978, as enacted by Laws 1980, ch. 62, § 10, relating to temporary credit for a uranium producer, effective July 1, 1985. For provisions of former section, see 1983 Replacement Pamphlet.

7-26-8. Date payment of tax due.

The severance tax is to be paid on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

History: 1953 Comp., § 72-18-8, enacted by Laws 1977, ch. 102, § 10.

ANNOTATIONS

Cross references. - For deposit of receipts from taxes in severance tax bonding fund, see 7-27-2 NMSA 1978.

Repeals. - Laws 1971, ch. 65, § 7, repeals former 72-18-8, 1953 Comp., relating to deduction of severance taxes by purchasers.

Law reviews. - For comment, "Constitutional Limitations On State Severance Taxes," see 20 Nat. Resources J. 887 (1980).

For comment, "An Outline For Development of Cost-Based State Severance Taxes," see 20 Nat. Resources J. 913 (1980).

7-26-9. Repealed.

ANNOTATIONS

Repeals. - Laws 1989, ch. 261, § 2 repeals 7-26-9 NMSA 1978, as amended by Laws 1987, ch. 315, § 1, relating to severance tax surtax, effective July 1, 1989. For provisions of former section, see 1988 Cumulative Supplement.

Laws 1971, ch. 65, § 7, repeals former 72-18-9, 1953 Comp., relating to deduction of severance taxes by purchasers and requiring reports and payment of deductions.

7-26-10, 7-26-11. Repealed.

ANNOTATIONS

Repeals. - Laws 1995, ch. 70, § 23 repeals 7-26-10 and 7-26-11 NMSA 1978, as enacted by Laws 1977, ch. 102, § 1 and Laws 1980, ch. 62, § 12, relating to the purpose of this article and a temporary provision prohibiting double taxation under the provisions of this article, effective July 1, 1995. For provisions of former sections, see 1993 Replacement Pamphlet.

ARTICLE 27
SEVERANCE TAX BONDING ACT

7-27-1. Short title.

This act may be cited as the "Severance Tax Bonding Act".

History: 1953 Comp., § 72-18-29, enacted by Laws 1961, ch. 5, § 2.

ANNOTATIONS

Meaning of "this act". - Laws 1961, ch. 5, § 1, repealed former 72-18-29 to 72-18-47, 1953 Comp. Laws 1961, ch. 5, §§ 2 to 27, enact the Severance Tax Bonding Act, presently compiled as 7-27-1, 7-27-2, 7-27-5.18, 7-27-5.19, 7-27-5.20, 7-27-6 to 7-27-11, 7-27-12, and 7-27-14 to 7-27-27 NMSA 1978.

Reappropriation of unexpended severance tax bond proceeds. - The legislature can reappropriate the balance of unexpended severance tax bond proceeds for purposes other than the purpose specified in the legislation originally authorizing the issuance and sale of the bonds, but only if the proceeds have not reverted to the severance tax bond fund and it is determined by bond counsel that the bondholders are not adversely affected by the reappropriation. 1991 Op. Att'y Gen. No. 91-01.

Law reviews. - For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

7-27-2. Severance tax bonding fund created.

There is created the "severance tax bonding fund" into which shall be distributed, in accordance with the Tax Administration Act [Chapter 7, Article 1 NMSA 1978], the net receipts from taxes levied upon natural resource products severed and saved from the soil in accordance with the provisions of the Severance Tax Act [7-26-1 to 7-26-8 NMSA 1978] and the Oil and Gas Severance Tax Act [Chapter 7, Article 29 NMSA 1978] and into which shall be deposited such other money as the legislature may from time to time determine.

History: 1953 Comp., § 72-18-30, enacted by Laws 1961, ch. 5, § 3; 1973, ch. 294, § 1; 1985, ch. 65, § 26.

ANNOTATIONS

Cross references. - For transfers from severance tax bonding fund to severance tax permanent fund, see 7-27-8 NMSA 1978.

7-27-3. Severance tax permanent fund created.

There is created in the state treasury the "severance tax permanent fund".

History: 1953 Comp., § 72-18-30.1, enacted by Laws 1973, ch. 294, § 2; 1996, ch. 3, § 1.

ANNOTATIONS

The 1996 amendment, effective upon certification by the secretary of state that the proposed amendments to art. 8, § 10 and art. 12, §§ 2, 4, and 7 of the New Mexico Constitution have passed, substituted "fund created" for "and income funds" in the section heading, substituted "is" for "are" preceding "created in", and deleted "and the 'severance tax income fund'" from the end of the section. Those constitutional amendments, proposed by S.J.R. No. 2 (Laws 1996), were adopted at the general election held November 5, 1996, by a vote of 307,442 for and 153,021 against.

Temporary provisions. - Laws 1996, ch. 3, § 2 provides that on the effective date of this act, the severance tax income fund is abolished and all money in that fund is transferred to the severance tax permanent fund.

Compiler's notes. - Laws 1994, ch. 138, § 1 proposed to amend this section by substituting "fund" for "and income funds" in the section heading, and rewriting the section to read: "There is created in the state treasury the 'severance tax permanent fund'." Laws 1994, ch. 138, § 4 provided that the amendment shall become effective upon certification by the secretary of state that the Constitution of New Mexico has been amended as proposed by a joint resolution of the 41st Legislature, Second Session, entitled "A joint resolution proposing an amendment to Article 8, Section 10 of the Constitution of New Mexico to increase the severance tax permanent fund by requiring earnings of the fund to be deposited in it and providing for limited distributions from the fund" (Laws 1994, H.J.R. No. 7). The constitutional amendment was submitted to the people at the general election held on November 8, 1994, but was defeated by a vote of 173,924 for and 208,556 against.

7-27-3.1. Transfer of investment powers.

The functions, powers and duties vested by law relating to the investment or reinvestment of money and the purchase, sale or exchange of investments or securities

of the severance tax permanent fund are transferred to the council. The state treasurer shall maintain custody of the severance tax permanent fund but shall at all times render the fund or any part of it available for investment in accordance with the provisions of Sections 7-27-1 through 7-27-48 NMSA 1978.

History: 1978 Comp., § 7-27-3.1, enacted by Laws 1983, ch. 306, § 5.

7-27-3.2. Definition.

As used in Sections 7-27-1 through 7-27-48 NMSA 1978, "council" means the state investment council.

History: 1978 Comp., § 7-27-3.2, enacted by Laws 1983, ch. 306, § 6.

7-27-3.3. Severance tax permanent fund; annual distributions.

The secretary of finance and administration shall make annual distributions from the severance tax permanent fund in the amount authorized by and calculated pursuant to the provisions of Article 8, Section 10 of the constitution of New Mexico. One-twelfth of the amount authorized to be distributed in a fiscal year shall be distributed each month to the general fund.

History: Laws 1999, ch. 88, § 1.

ANNOTATIONS

Emergency clauses. - Laws 1999, ch. 88, § 3 makes the act effective immediately. Approved March 19, 1999.

7-27-4. Repealed.

ANNOTATIONS

Repeals. - Laws 1996, ch. 3, § 3, repeals 7-27-4 NMSA 1978, as amended by Laws 1986, ch. 20, § 94, relating to disposition of income from the severance tax permanent fund, effective upon certification by the secretary of state that the proposed amendments to art. 8, § 10 and art. 12, §§ 2, 4, and 7 of the New Mexico Constitution have passed. Those constitutional amendments, proposed by S.J.R. No. 2 (Laws 1996), were adopted at the general election held November 5, 1996, by a vote of 307,442 for and 153,021 against. For provisions of former section, see 1995 Replacement Pamphlet.

7-27-5. Investment of severance tax permanent fund.

The severance tax permanent fund shall be invested for two general purposes, to provide income to the fund and to stimulate the economy of New Mexico, preferably on a continuing basis. The investments in Sections 7-27-5.1 and 7-27-5.6 NMSA 1978 shall be those intended to provide maximum income to the fund and shall be referred to as the market rate investments. The investments permitted in Sections 7-27-5.3 through 7-27-5.5, 7-27-5.13 through 7-27-5.17, 7-27-5.22 and 7-27-5.24 NMSA 1978 shall be those intended to stimulate the economy of New Mexico and shall be referred to as the differential rate investments. The prudent man rule shall be applied to the market rate investments, and the state investment officer shall keep separate records of the earnings of the market rate investments. All transactions entered into on or after July 1, 1991 shall be accounted for in accordance with generally accepted accounting principles.

History: 1978 Comp., § 7-27-5, enacted by Laws 1983, ch. 306, § 7; 1987, ch. 219, § 1; 1988, ch. 133, § 2; 1988, ch. 134, § 6; 1989, ch. 265, § 2; 1990, ch. 126, § 2; 1990, ch. 127, § 9; 1990 (2nd S.S.), ch. 3, § 1; 1991, ch. 83, § 2; 1995, ch. 215, § 1; 1997, ch. 178, § 2.

ANNOTATIONS

Cross references. - For investment of state funds generally, see 6-8-1 to 6-8-18, 6-10-10 NMSA 1978.

The 1989 amendment, effective April 5, 1989, added "7-27-5.13" in the third sentence.

1990 amendments. - Laws 1990, ch. 126, § 2, effective May 16, 1990, inserting a reference to 7-27-5.15 NMSA 1978 in the third sentence, was approved March 7, 1990. However, Laws 1990, ch. 127, § 9, effective March 30, 1990, inserting the reference to 7-27-5.14 NMSA 1978 in the third sentence, was approved later on March 7, 1990. The section is set out as amended by Laws 1990, ch. 127, § 9. See 12-1-8 NMSA 1978.

The 1990 (2nd S.S.) amendment, effective January 1, 1991, substituted "through 7-27-5.17 NMSA 1978" for "and 7-27-5.14 NMSA 1978" in the third sentence.

The 1991 amendment, effective July 1, 1991, substituted the final sentence of the section for a sentence which read "The full cost pass-through accounting method shall be used to account for exchanges of fixed-income securities".

The 1995 amendment, effective June 16, 1995, substituted "Sections 7-27-5.3 through 7-27-5.5, 7-27-5.7, 7-27-5.13 through 7-27-5.17 and 7-27-5.21 NMSA 1978" for "Sections 7-27-5.2 through 7-27-5.5, 7-27-5.7 and 7-27-5.13 through 7-27-5.17 NMSA 1978" in the second sentence.

The 1997 amendment, in the third sentence, deleted "7-27-5.7" following "7-27-5.5" and substituted "7-27-5.22 and 7-27-5.24 NMSA 1978" for "and 7-27-5.21 NMSA 1978" at the end. Laws 1997, ch. 178 contains no effective date provision, but, pursuant to

N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature, See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

7-27-5.1. Market rate investments.

A. Money made available from the severance tax permanent fund for investment for a period in excess of one year in market rate investments may be invested in the following classes of securities and investments:

(1) bonds, notes or other obligations of the United States government, its agencies, government-sponsored enterprises, corporations or instrumentalities and that portion of bonds, notes or other obligations guaranteed as to principal and interest and issued by the United States government, its agencies, government-sponsored enterprises, corporations or instrumentalities or issued pursuant to acts or programs authorized by the United States government;

(2) bonds, notes, debentures and other obligations issued by the state of New Mexico or a municipality or other political subdivision of the state that are secured by an investment grade bond rating from a national rating service, pledged revenue or other collateral or insurance necessary to satisfy the standard of prudence set forth in Section 6-8-10 NMSA 1978;

(3) bonds, notes, debentures, instruments, conditional sales agreements, securities or other evidences of indebtedness of any corporation, partnership or trust organized and operating within the United States rated not less that Baa or BBB or the equivalent by a national rating service;

(4) notes or obligations securing loans or participation in loans to business concerns or other organizations that are obligated to use the loan proceeds within New Mexico, to the extent that loans are secured by first mortgages on real estate located in New Mexico and are further secured by an assignment of rentals, the payment of which is fully guaranteed by the United States in an amount sufficient to pay all principal and interest on the mortgage;

(5) common and preferred stocks and convertible issues of any corporation; provided that it has securities listed on one or more national stock exchanges or included in a nationally recognized list of stocks; and provided further that the fund shall not own more than five percent of the voting stock of any company;

(6) securities of non-United States governmental, quasi-governmental, partnership, trust or corporate entities, and these may be denominated in foreign currencies; provided:

(a) aggregate non-United States investments shall not exceed fifteen percent of the book value of the severance tax permanent fund;

(b) for non-United States stocks and non-United States bonds and notes, issues permitted for purchase shall be limited to those issues traded on a national stock exchange or included in a nationally recognized list of stocks or bonds;

(c) currency contracts may be used for investing in non-United States securities only for the purpose of hedging foreign currency risk and not for speculation;

(d) the investment management services of a trust company or national bank exercising trust powers or of an investment counseling firm may be employed; and

(e) reasonable compensation for investment management services and other administrative and investment expenses related to these investments shall be paid directly from the assets of the fund, subject to budgeting and appropriation by the legislature;

(7) stocks or shares of a diversified investment company registered under the federal Investment Company Act of 1940, as amended, and listed securities of long-term unit investment trusts or individual, common or collective trust funds of banks or trust companies that invest primarily in equity securities authorized in Paragraphs (5) and (6) of this subsection; provided that the investment company has total assets under management of at least one hundred million dollars ($100,000,000); and provided further that the council may allow reasonable administrative and investment expenses to be paid directly from the assets derived from these investments, subject to budgeting and appropriation by the legislature; and

(8) participation interests in New Mexico real-property-related business loans. The actual amount invested under this paragraph shall not exceed ten percent of the severance tax permanent fund and shall be included in any minimum amount of severance tax permanent fund investments required to be placed in New Mexico certificates of deposit. Investments authorized in this paragraph are subject to the following:

(a) the state investment officer may purchase from eligible institutions a participation interest of up to eighty percent in any loan secured by a first mortgage or a deed of trust on the real property located in New Mexico of an eligible business entity, or its subsidiary, that is operating or shall use loan proceeds to commence operations within New Mexico plus any other guarantees or collateral that may be judged by the eligible institution or the state investment officer to be prudent. To be eligible for investment the following minimum requirements shall be met: 1) the loan proceeds shall be used exclusively for the purpose of expanding or establishing businesses in New Mexico, including the refinancing of such businesses for expansion purposes only. If a portion of the loan proceeds were used for refinancing or repaying an existing loan and payment of principal and interest to the state has not been made within ninety days from the due date, unless extended pursuant to agreement between the originating institution and the state investment officer, the originating institution shall buy back the state's participation interest in the loan and begin foreclosure proceedings; 2) eligible business entities shall

not include public utilities or financial institutions or shopping centers, apartment buildings or other such passive investments; 3) the minimum loan amount shall be two hundred fifty thousand dollars ($250,000) and may be met by packaging up to ten separate loans satisfying the requirements of this paragraph. The maximum loan amount shall be two million dollars ($2,000,000); 4) the loan maturity shall be not less than five years or more than thirty years; 5) the maximum loan-to-value ratio shall be seventy-five percent and based on current appraisal of the real property by an appraiser who is licensed or certified in New Mexico and approved by the state investment officer, which shall be made not more than one hundred eighty days from the loan origination date; 6) the interest rate of the loan shall be fixed for five years and shall be adjusted at every fifth anniversary of the note to the rate specified in Item 7) of this subparagraph; 7) the yield on the state's participation interest shall in no case be less than the greater of the then-prevailing yield on United States treasury securities of five-year maturity plus two and one-half percent or the yield received by the lending institution calculated exclusive of servicing fees; 8) if payment of principal or interest has not been made within one hundred eighty days from the due date, unless extended pursuant to agreement between the originating institution and the state investment officer, the originating institution shall buy back the state's participation interest in the loan, substitute another qualifying loan or begin foreclosure proceedings; and 9) if foreclosure proceedings are commenced, the state and the originating institution shall share in proportion to their participation interest, as provided in this subparagraph, in the legal and other foreclosure expenses and in any loss incurred as a result of a foreclosure sale;

(b) a standardized participation agreement, the form of which shall be approved by the attorney general's office, shall be executed between the investment office and each eligible originating institution. The participation agreement shall provide that the originating institution shall not assign its interest in any loan covered by the agreement without the prior written consent of the state investment officer;

(c) a formal forward commitment program may be instituted by the state investment officer with the approval of the council;

(d) the council shall adopt regulations: 1) defining passive investments; 2) establishing underwriting guidelines; 3) ensuring diversification across a variety of types of collateral, types of businesses and regions of the state; and 4) providing for the review by the state investment officer of servicing and other fees that may be charged by the eligible institution;

(e) eligible institutions include banks, savings and loan associations and credit unions operating in the state; and

(f) real property is defined as land and attached buildings, but excludes all interests that may be secured by a security interest under Article 9 of the Uniform Commercial Code [Chapter 55, Article 9 NMSA 1978], and mineral resource values.

B. Not more than sixty-five percent of the book value of the severance tax permanent fund shall be invested at any given time in securities described in Paragraphs (5), (6) and (7) of Subsection A of this section, and no more than ten percent of the book value of the severance tax permanent fund shall be invested at any given time in securities described in Paragraph (3) of Subsection A of this section that are rated Baa or BBB. Assets of the severance tax permanent fund may be combined for investment in common pooled funds to effectuate efficient management.

C. Commissions paid for the purchase and sale of any security shall not exceed brokerage rates prescribed and approved by national stock exchanges or by industry practice.

History: 1978 Comp., § 7-27-5.1, enacted by Laws 1983, ch. 306, § 8; 1987, ch. 306, § 1; 1988, ch. 132, § 1; 1988, ch. 133, § 1; 1989, ch. 98, § 3; 1990, ch. 91, § 2; 1992, ch. 101, § 1; 1994, ch. 121, § 1; 1996, ch. 31, § 3; 1997, ch. 45, § 1; 1998, ch. 19, § 2.

ANNOTATIONS

Bracketed material. - The bracketed phrase "state investment" in Paragraph A(7) was inserted by the compiler; it was not enacted by the legislature and is not a part of the law.

The 1997 amendment, effective April 8, 1997, rewrote this section to the extent that a detailed comparison would be impracticable.

The 1998 amendment, in Paragraph A(3), substituted "instruments" for "equipment trust certificates" near the beginning of the paragraph and inserted "securities" and "partnership or trust" near the middle of the paragraph; deleted "a minimum net worth of twenty-five million dollars ($25,000,000) and" preceding "securities" in Paragraph A(5); and inserted "partnership, trust" near the middle of Paragraph A(6). Laws 1998, ch. 19 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1998, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Investment Company Act of 1940. - The federal Investment Company Act, referred to in Paragraph A(7), is codified as 15 U.S.C. § 80a-1 et seq.

7-27-5.2. Repealed.

ANNOTATIONS

Repeals. - Laws 1993, ch. 267, § 5 repeals 7-27-5.2 NMSA 1978, as amended by Laws 1991, ch. 83, § 2, concerning investment of the severance tax permanent fund, effective July 1, 1993. For provisions of former section, see 1992 Cumulative Supplement.

7-27-5.3. Conventional mortgage pass-through securities.

A. The severance tax permanent fund may be invested in conventional mortgage pass-through securities secured by real estate situated in New Mexico. In the initial twelve-month period, the aggregate face amount of such securities shall not exceed one hundred million dollars ($100,000,000), and in no succeeding fiscal year shall the face amount of pass-through securities authorized by the council in that fiscal year exceed one hundred million dollars ($100,000,000).

B. The council shall establish the yield on investments in conventional mortgage pass-through securities, which yield shall be in effect from the effective date of this act until July 1, 1986. After that date, the yield shall not be less than one-half of one percent of the investment below, and shall be determined by reference to, the yield on comparable term and type government national mortgage association securities. Such yield shall not be less than one-half of one percent of the investment below, and shall be determined by reference to, the yield on comparable term and type government national mortgage association securities.

C. The council may purchase conventional mortgage pass-through securities created and issued by a mortgage pooling corporation which has purchased eligible mortgages from mortgage lenders authorized to originate mortgages in New Mexico and which maintains a permanent manned office within New Mexico; provided, however, the council may, in its discretion, purchase such conventional mortgage pass-through securities directly from such qualified mortgage lenders.

D. Conventional mortgage pass-through securities eligible for purchase by the council shall be limited to such securities issued by the federal national mortgage association or issued by a governmental agency, representing an undivided ownership interest in a pool of mortgage loans.

E. The mortgage pooling corporation and the qualified mortgage lender shall be subject to such regulations as the council may promulgate and shall enter into written agreements specifying the powers and duties of the respective parties. The council shall further establish guidelines for mortgage loans eligible for inclusion in the pass-through security, provided such guidelines do not contradict the eligibility requirements set forth in Subsection F of this section.

F. To be eligible for inclusion in a conventional mortgage pass-through security, the mortgage loan shall:

(1) be originated by a qualified mortgage lender;

(2) be secured by a single-family dwelling to be occupied by the owner;

(3) be a conventional mortgage, deed of trust or other security instrument creating a first lien against the fee simple in real estate situated in New Mexico upon which there is constructed a permanent structure;

(4) have a maximum original term not to exceed thirty years;

(5) be made to a person domiciled in New Mexico who is eighteen years of age or older;

(6) contain no prepayment penalties; and

(7) not exceed the dollar limit for federal national mortgage association approved mortgages.

G. To be eligible for purchase by the council, the securities shall be based on mortgage loans on new construction for at least sixty percent of the dollar amount of the securities.

History: 1978 Comp., § 7-27-5.3, enacted by Laws 1983, ch. 306, § 10; 1984, ch. 131, § 2; 1985, ch. 222, § 1; 1987, ch. 229, § 1.

ANNOTATIONS

Cross references. - For the severance tax permanent fund, see 7-27-3 NMSA 1978.

7-27-5.4. New Mexico business investments.

No more than twenty percent of the book value of the severance tax permanent fund may be invested in the following investments and in the following amounts:

A. no more than ten percent of the book value of the severance tax permanent fund may be invested in notes or obligations securing loans to New Mexico businesses made by farm credit entities, banks and savings and loan associations and mortgages approved by the department of housing and urban development pursuant to the act of congress of July 30, 1953 known as the Small Business Act of 1953, as amended, and notes or obligations pursuant to the act of congress of August 14, 1946 known as the Farmers' Home Administration Act of 1946, as amended, only to the extent that both principal and interest are guaranteed by the United States government. The effective yield of these loans shall be a market rate not less than the yield available on the planned amortized class tranche of collateralized mortgage obligations guaranteed by the federal national mortgage association or the federal home loan mortgage corporation with an average life comparable to the maturity of the loan. The state investment officer may enter into conventional agreements for the servicing of the loans and the administration of the receipts therefrom. Any servicing agreement may contain reasonable and customary provisions, including servicing fees not to exceed one hundred fifty basis points, as may be agreed upon; provided, in no event shall the rate paid by the borrower on the loan, together with servicing fees, exceed the maximum rate permitted by the applicable federal guarantee program; and

B. no more than ten percent of the book value of the fund may be invested in bonds, notes, debentures or other evidence of indebtedness, excluding commercial paper rated

not less than Baa or BBB or the equivalent by a national rating service of any corporation organized and operating within the United States, excluding regulated public utility corporations, which as a condition of receiving the proceeds of such evidence of indebtedness will use such proceeds to establish or expand business outlets or ventures in New Mexico, provided that:

(1) the investment in the bonds, notes or debentures or other evidence of indebtedness of any one corporation shall not exceed one hundred percent of the cost of the expansion venture or new outlet or twenty million dollars ($20,000,000), whichever is less;

(2) the rate of interest to be paid on the bonds, notes or debentures or other evidence of indebtedness shall be established by the council, but shall not be less than the equivalent yield available on United States treasury issues of a comparable maturity plus one hundred basis points;

(3) the indebtedness shall be approved prior to purchase by the council; and

(4) the guidelines for initiation of the purchase by the council of the bonds, notes, debentures or other evidence of indebtedness and the terms thereof shall be established by the council.

History: 1978 Comp., § 7-27-5.4, enacted by Laws 1983, ch. 306, § 11; 1984, ch. 131, § 3; 1987, ch. 306, § 2; 1988, ch. 132, § 2; 1989, ch. 271, § 1; 1990, ch. 68, § 1; 1994, ch. 78, § 1; 1999, ch. 88, § 2.

ANNOTATIONS

Cross references. - For creation of severance tax permanent fund, see 7-27-3 NMSA 1978.

The 1989 amendment, effective June 16, 1989, inserted "or guaranteed by an irrevocable letter of credit to the state of New Mexico issued by a financial institution or corporation rated a or A or the equivalent" in Subsection B.

The 1990 amendment, effective May 16, 1990, inserted "farm credit entities" in the first sentence of Subsection A.

The 1994 amendment, effective March 7, 1994, in Subsection A, substituted the language following "loans shall be" in the second sentence for "equivalent to the yield available on United States treasury issues of comparable maturity", inserted "including servicing fees not to exceed one hundred basis points" in the third sentence, and added the language following "agreed upon" at the end of the section.

The 1999 amendment, effective March 19, 1999, in Subsection B, deleted "or guaranteed by an irrevocable letter of credit to the state of New Mexico issued by a

financial institution or corporation rated a or A or the equivalent" following "or the equivalent" in the introductory language, in Paragraph (2), inserted "established by the council, but shall not be less than the" and deleted "fifty to" following "maturity plus", and made minor stylistic changes.

Small Business Act. - The Small Business Act of 1953 is codified as 15 U.S.C. § 631 et seq.

Farmers Home Administration Act of 1946. - The Farmers Home Administration Act of 1946 was the popular name of the amendments of 7 U.S.C. § 1001 et seq. and 12 U.S.C. § 371 by P.L. 79-731. Most of the provisions of 7 U.S.C. § 1001 et seq. have been repealed. See 7 U.S.C. § 1921 et seq.

7-27-5.5. Educational loan notes.

The severance tax permanent fund may be invested in educational loan notes issued pursuant to the Educational Assistance Act [21-21A-1 to 21-21A-23 NMSA 1978]; provided that in no event shall the principal amount of such notes purchased in any twelve-month period exceed ten million dollars ($10,000,000), and in no event shall the total amount of such notes held by the severance tax permanent fund exceed ten percent of the book value of the severance tax permanent fund. If any educational loan note is sold by the severance tax permanent fund, the sale shall be without recourse to the fund or the state.

History: 1978 Comp., § 7-27-5.5, enacted by Laws 1983, ch. 306, § 12.

7-27-5.6. Venture capital investments.

A. The state investment officer may make commitments to venture capital funds to invest up to three percent of the market value of the severance tax permanent fund in accordance with the provisions of this section. If invested capital should at any time exceed three percent of the market value of the severance tax permanent fund, no further commitments shall be made until the invested capital is less than three percent of the market value of the severance tax permanent fund.

B. Not more than ten percent of the amount authorized for investment pursuant to Subsection A of this section shall be invested in any one venture capital fund. The amount invested in any one venture capital fund shall not exceed twenty percent of the committed capital of that fund.

C. In making investments pursuant to this section, the state investment officer and the council shall give consideration to investments in venture capital funds whose investments enhance the economic development objectives of the state, provided such investments offer a rate of return and safety comparable to other venture capital investments currently available.

D. The state investment officer shall make investments pursuant to this section only upon approval of the council and upon review of the recommendation of the venture capital investment advisory committee.

E. As used in this section:

(1) "committed capital" means the sum of the fixed amounts of money that accredited investors have obligated for investment in a venture capital fund and which fixed amounts may be invested in that fund in one or more payments over time; and

(2) "venture capital fund" means a limited partnership, limited liability company or corporation that:

(a) has as its primary business activity the investment of funds in return for equity in businesses for the purpose of providing capital for start-up, expansion, new product development or similar business purposes;

(b) holds out the prospects for capital appreciation from such investments comparable to similar investments made by other professionally managed venture capital funds;

(c) has a minimum committed capital of ten million dollars ($10,000,000);

(d) accepts investments only from accredited investors, as that term is defined in Section 2 of the Federal Securities Act of 1933, as amended, 15 U.S.C. Section 77(b), and rules and regulations promulgated pursuant to that section; and

(e) has full-time management with at least five years of experience in managing venture capital funds.

History: 1978 Comp., § 7-27-5.6, enacted by Laws 1987, ch. 219, § 2; 1990, ch. 126, § 3; 1997, ch. 45, § 2.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, substituted "one and one-half percent" for "two percent" and inserted "under this section" in Subsection A and made several minor stylistic changes.

The 1997 amendment, effective April 8, 1997, rewrote Subsection A; in Subsection B, substituted "Not more than ten percent" for "If an investment is made under this section, not less than one million dollars ($1,000,000) or more than four million dollars ($4,000,000)" in the first sentence, and deleted the former third sentence, which read: "Investments shall be made only in the initial offering of a venture capital fund, provided such investment may be made in one or more stages"; deleted former Subsection C, relating to the maximum amount that may be invested in any one venture capital fund and redesignated the remaining subsections accordingly; inserted "the state investment

officer and" in Subsection C; in Subsection E, in Paragraph (2), substituted "a limited partnership, limited liability company or corporation" for "any limited partnership, or corporation organized and operating in the United States" in the introductory language, substituted "ten million dollars ($10,000,000)" for "five million dollars ($5,000,000)" in Subparagraph (c), deleted former Subparagraph (f), which read: "receives at least forty percent of the fund's capital from institutional investors. For purposes of this section, 'institutional investors' includes pension funds, insurance companies, trust funds and financial institutions", and made stylistic changes throughout the paragraph.

7-27-5.7. Repealed.

ANNOTATIONS

Repeals. - Subsection F of former 7-27-5.7 NMSA 1978, as enacted by Laws 1988, ch. 134, § 7, relating to oil and gas production investments, repealed that section effective July 1, 1991. For provisions of former section, see 1990 Replacement Pamphlet.

7-27-5.8 to 7-27-5.12. Repealed.

ANNOTATIONS

Repeals. - Laws 1999, ch. 57, § 1 repeals 7-27-5.8 to 7-27-5.12 NMSA 1978, as enacted by Laws 1988, ch. 134, §§ 1 to 5, relating to oil and gas production in the state, effective June 18, 1999. For provisions of former section, see 1998 Replacement Pamphlet.

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 venture capital is an impediment to the start-up and growth of businesses in the state. The legislature further finds that the commercialization of technology conceived in the universities and the federal scientific and engineering laboratories and test facilities in the state is likely to occur elsewhere unless sources of local venture capital are developed. The purpose of this act is to provide a mechanism whereby the establishment of locally managed venture capital funds, whose investment policies are supportive of the economic welfare of New Mexico, will be stimulated.

History: 1978 Comp., § 7-27-5.14, enacted by Laws 1990, ch. 126, § 4.

7-27-5.15. New Mexico venture capital fund investments.

A. No more than one percent of the market value of the severance tax permanent fund may be invested in New Mexico venture capital funds under this section.

B. If an investment is made under this section, not more than seven million five hundred thousand dollars ($7,500,000) of the amount authorized for investment pursuant to Subsection A of this section shall be invested in any one New Mexico venture capital fund. The amount invested in any one New Mexico venture capital fund shall not exceed fifty percent of the committed capital of that fund.

C. In making investments pursuant to this section, the [state investment] council shall give consideration to investments in New Mexico venture capital funds whose investments enhance the economic development objectives of the state.

D. The state investment officer shall make investments pursuant to this section only upon approval of the council and upon review of the recommendation of the venture capital investment advisory committee. The state investment officer is authorized to make investments pursuant to this section contingent upon a New Mexico venture capital fund securing paid-in investments from other accredited investors for the balance of the minimum committed capital of the fund.

E. As used in this section:

(1) "committed capital" means the sum of the fixed amounts of money which accredited investors have obligated for investment in a New Mexico venture capital fund and which fixed amounts may be invested in that fund on one or more payments over time; and

(2) "New Mexico venture capital fund" means any limited partnership, limited liability company or corporation organized and operating in the United States and maintaining an office staffed by a full-time investment officer in New Mexico that:

(a) has as its primary business activity the investment of funds in return for equity in businesses for the purpose of providing capital for start-up, expansion, product or market development or similar business purposes;

(b) holds out the prospects for capital appreciation from such investments;

(c) has a minimum committed capital of five million dollars ($5,000,000);

(d) 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 and who has established permanent residency in the state;

(e) 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 the state and that hold promise for attracting additional capital from individual or institutional investors nationwide for businesses in the state; and

(f) accepts investments only from accredited investors as that term is defined in Section 2 of the federal Securities Act of 1933, as amended, (15 U.S.C. Section 77(b)) and rules and regulations promulgated pursuant to that section.

History: 1978 Comp., § 7-27-5.15, enacted by Laws 1990, ch. 126, § 5; 1997, ch. 70, § 1.

ANNOTATIONS

Bracketed material. - The bracketed phrase "state investment" in Subsection C was inserted by the compiler; it was not enacted by the legislature and is not a part of the law.

The 1997 amendment, in Subsection A, deleted "one half of" preceding "one percent" and substituted "market" for "book" preceding "value"; in Subsection B, deleted "less than five hundred thousand dollars ($500,000) or" preceding "more than", substituted "seven million five hundred thousand dollars ($7, 500,000)" for "three million dollars ($3,000,000)" following "more than", substituted "fifty" for "forty" in the second sentence, and deleted the fourth sentence; in Paragraph E(2), substituted "limited partnership, limited liability company" for "limited partnership", substituted "an" for "its principal active" preceding "office", and inserted "staffed by a full-time investment officer" following "office"; in Subparagraph E(2)(c), substituted "five million dollars ($5,000,000)" for "one million two hundred fifty thousand dollars ($1,250,000)"; in Subparagraph E(2)(d), substituted "at least one full-time manager" for "full-time management"; rewrote Subparagraph E(2)(e); and deleted Subparagraph E(2)(g) and made related stylistic changes. Laws 1997, ch. 66 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

7-27-5.16. ONGARD system revenue bonds.

Subject to the approval of the state investment council, the severance tax permanent fund may be invested in revenue bonds issued by the commissioner of public lands under the authority of the ONGARD System Development Act [19-10B-1 to 19-10B-8 NMSA 1978].

History: 1978 Comp., § 7-27-5.14, enacted by Laws 1990, ch. 127, § 10.

ANNOTATIONS

Compiler's notes. - Laws 1990, ch. 127, § 10 enacted this section as 7-27-5.14 NMSA 1978, but, since Laws 1990, ch. 126, § 4 had already enacted a section designated 7-27-5.14 NMSA 1978, and since Laws 1990, ch. 126, § 5 had already enacted a section designated 7-27-5.15 NMSA 1978, this section has been compiled as 7-27-5.16 NMSA 1978.

7-27-5.17. Employers mutual company revenue bonds.

The severance tax permanent fund may be invested in revenue bonds issued by the employers mutual company under the authority of the Employers Mutual Company Act, provided that the amount invested shall not exceed ten million dollars ($10,000,000) and provided further that the bonds shall bear interest at a market rate not less than the

existing rate of return for ten-year United States treasury bonds on the date of the bond sale.

History: 1978 Comp., § 7-27-5.17, enacted by Laws 1990 (2nd S.S.), ch. 3, § 2.

ANNOTATIONS

Employers Mutual Company Act. - See 52-9-1 NMSA 1978 and notes thereto.

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 [state investment] 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, is secured by real estate and is held and serviced by the original lending financial institution in New Mexico. For purposes of this paragraph, "business" includes but is not limited to manufacturing; construction; transportation;

communications; publishing; wholesale or retail business; restaurants; entertainment; architectural, engineering and other professional services; medical and health services; food processing; farming or ranching; mining and natural resource exploration and development; and research and technology development.

History: Laws 1993, ch. 267, § 2; 1997, ch. 220, § 1.

ANNOTATIONS

Bracketed material. - The bracketed phrase "state investment" in Subsection A was inserted by the compiler; it was not enacted by the legislature and is not a part of the law.

The 1997 amendment inserted "a branch of a bank doing business in New Mexico" in Paragraph E(1), and made minor stylistic changes throughout the section. Laws 1997, ch. 220 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Saving clauses. - Laws 1993, ch. 267, § 4 provides that, notwithstanding provisions of the act to the contrary, on July 1, 1993, the state investment counsel may hold to maturity or renew any certificates of deposits in financial institutions, provided such renewals mature on or before January 1, 1994, and that the provisions of 2-27-5.2 NMSA 1978 governing deposits in New Mexico financial institutions shall apply to such certificates prior to maturity and to that renewal and provides that the provisions of the act shall not apply to those certificates of deposit.

7-27-5.20. Deposits in New Mexico credit unions.

The severance tax permanent fund may be invested in deposits in New Mexico credit unions, provided each deposit is insured by an agency of the United States and the credit union offers interest on such deposits at least equal to that offered to its members for similar deposits. Such deposits may be invested for a term of maturity of eight years or less at an interest rate to be set by the council. Such deposits shall be made and administered by the council and state investment officer in accordance with the law governing deposits of public money, including, but not limited to, Sections 6-10-10, 6-10-16, 6-10-24.1 and 6-10-29 NMSA 1978. As used in this section, "deposit" includes share, share certificate and share draft.

History: Laws 1993, ch. 267, § 3.

ANNOTATIONS

Saving clauses. - Laws 1993, ch. 267, § 4 provides that, notwithstanding provisions of the act to the contrary, on July 1, 1993, the state investment counsel may hold to maturity or renew any certificates of deposits in financial institutions, provided such

renewals mature on or before January 1, 1994, and that the provisions of 2-27-5.2 NMSA 1978 governing deposits in New Mexico financial institutions shall apply to such certificates prior to maturity and to that renewal and provides that the provisions of the act shall not apply to those certificates of deposit.

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 [6-24-1 to 6-24-34 NMSA 1978]. The amount invested shall not exceed three million dollars ($3,000,000).

History: Laws 1995, ch. 155, § 36.

ANNOTATIONS

Cross references. - For authorization to issue revenue bonds, see 6-24-26 NMSA 1978.

7-27-5.22. Severance tax permanent fund; investment in obligations issued under Section 33-1-19 NMSA 1978 for corrections facilities.

Subject to the approval of the state investment council, the severance tax permanent fund may be invested in bonds, certificates of participation or other obligations issued pursuant to Section 33-1-19 NMSA 1978 for corrections related facilities.

History: 1978 Comp., § 7-27-5.22, enacted by Laws 1995, ch. 215, § 2.

7-27-5.23. Short-term investments; repurchase agreements and securities lending.

A. Money in or derived from the severance tax permanent fund made available for investment for a period of less than one year may be invested in:

(1) contracts for the present purchase and resale at a specified time in the future, not to exceed one year, of specific securities at specified prices at a price differential representing the interest income to be earned by the state. No such contract shall be invested in unless the contract is fully secured by:

(a) obligations of the United States or other securities backed by the United States if the obligations or securities have a market value of at least one hundred two percent of the amount of the contract; or

(b) A1 or P1 commercial paper, corporate obligations rated AA or better and maturing in five years or less or asset-backed securities rated AAA if the commercial paper,

corporate obligations or asset-backed securities have a market value of a [at] least one hundred two percent of the market value of the contract;

(2) securities-lending contracts for the temporary exchange of state-owned securities for the use of broker-dealers, banks or other recognized institutional investors in securities, for periods not to exceed one year, for a specified fee rate. No such contract shall be invested in unless the contract is fully secured by exchange of an irrevocable letter of credit running to the state, cash or equivalent collateral of at least one hundred two percent of the market value of the securities plus accrued interest temporarily exchanged. Such contracts may authorize the state investment officer to invest cash collateral in instruments or securities that are authorized investments for the funds and may authorize payment of a fee from the funds, or from income generated by the investment of cash collateral, to the borrower of securities providing cash as collateral. The state investment officer may enter into a contract that apportions income derived from the investment of cash to pay its agent in securities-lending transactions;

(3) commercial paper issued by corporations organized and operating within the United States and rated "prime" quality by a national rating service; and

(4) prime bankers' acceptances issued by money center banks.

B. The collateral required for either of the forms of investment specified in Paragraph (1) or (2) of Subsection A of this section shall be delivered to the state fiscal agent or its designee contemporaneously with the transfer of funds or delivery of the securities at the earliest time industry practice permits, but in all cases settlement shall be on a same-day basis.

C. Neither of the contracts specified in Paragraphs (1) and (2) of Subsection A of this section shall be invested in unless the contracting bank, brokerage firm or recognized institutional investor has a net worth in excess of five hundred million dollars ($500,000,000) or is a primary broker or primary dealer.

History: 1978 Comp., § 7-27-5.23, enacted by Laws 1997, ch. 45, § 3.

ANNOTATIONS

Bracketed material. - The bracketed word "at" in Subparagraph A(1)(b) was inserted by the compiler; it was not enacted by the legislature and is not a part of the law.

Emergency clauses. - Laws 1997, ch. 45, § 4 makes the act effective immediately. Approved April 8, 1997.

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.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 178 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on June 20, 1997, 90 days after adjournment of the legislature, See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

7-27-6. Severance tax bonding fund pledged.

A. The money in the severance tax bonding fund is first pledged for the payment of principal and interest on all severance tax bonds issued after the enactment of the Severance Tax Bonding Act.

B. The money in the severance tax bonding fund is second pledged, on a basis subordinate to any severance tax bonds then or thereafter outstanding, for the payment of principal and interest on all supplemental severance tax bonds issued after the enactment of the Severance Tax Bonding Act.

History: 1953 Comp., § 72-18-31, enacted by Laws 1961, ch. 5, § 4; 1999 (1st S.S.), ch. 6, § 1.

ANNOTATIONS

The 1999 amendment, effective July 1, 1999, deleted the former first sentence, relating to the first pledging of the severance tax bonding fund moneys, added the Subsection A designation, substituted "first" for "further" and made a minor stylistic change, and added Subsection B.

Compiler's notes. - The reference to 72-18-1 to 72-18-27, 1953 Comp., in this section means the Severance Tax Act as it existed when this section was enacted in 1961. For the present provisions of the Severance Tax Act, see 7-26-1 to 7-26-8 NMSA 1978.

Severance Tax Bonding Act. - See 7-27-1 NMSA 1978 and notes thereto.

7-27-7. Special income to retire bonds.

When a law authorizing a severance tax bond issue or supplemental severance tax bond issue contemplates the income of money for the retirement of the bond issue other

than or in addition to the money in the severance tax bonding fund, then the money derived from such income shall be paid to the state treasurer and be credited to the specific bond issue account and deposited in the severance tax bonding fund.

History: 1953 Comp., § 72-18-32, enacted by Laws 1961, ch. 5, § 5; 1999 (1st S.S.), ch. 6, § 2.

ANNOTATIONS

Cross references. - For laws authorizing severance tax bond issues, see appendix to this article.

The 1999 amendment, effective July 1, 1999, inserted "or supplemental severance tax bond issue" and substituted "state treasurer" for "state board of finance".

7-27-8. Transfer of money to severance tax permanent fund.

On each December 31 and each June 30 the state treasurer shall transfer to the severance tax permanent fund all money in the severance tax bonding fund except the amount necessary to meet all principal and interest payments on bonds payable from the severance tax bonding fund on the next two ensuing semiannual payment dates.

History: 1953 Comp., § 72-18-33, enacted by Laws 1961, ch. 5, § 6; 1973, ch. 294, § 3.

7-27-9. Bonds to be known as severance tax bonds and supplemental severance tax bonds.

A. Prior to July 1, 1999, all bonds issued wherein the money in the severance tax bonding fund is pledged for their retirement shall be known as "New Mexico severance tax bonds".

B. After July 1, 1999, there shall be two categories of bonds issued by the state board of finance wherein the money in the severance tax bonding fund is pledged for their retirement. Those bonds shall be known as "New Mexico severance tax bonds" and as "New Mexico supplemental severance tax bonds".

History: 1953 Comp., § 72-18-34, enacted by Laws 1961, ch. 5, § 7; 1999 (1st S.S.), ch. 6, § 3.

ANNOTATIONS

The 1999 amendment, effective July 1, 1999, added "and supplemental severance tax bonds" to the catchline; added the Subsection A designation, added "Prior to July 1, 1999" to the beginning, and made a stylistic change; and added Subsection B.

7-27-10. State board of finance shall issue bonds.

A. The state board of finance is authorized to issue and sell severance tax bonds within the provisions of the Severance Tax Bonding Act, and no other agency of the state is authorized to issue or sell severance tax bonds.

B. The state board of finance may issue and sell supplemental severance tax bonds within the provisions of the Severance Tax Bonding Act, and no other agency of the state is authorized to issue or sell supplemental severance tax bonds.

History: 1953 Comp., § 72-18-35, enacted by Laws 1961, ch. 5, § 8; 1999 (1st S.S.), ch. 6, § 4.

ANNOTATIONS

The 1999 amendment, effective July 1, 1999, added the Subsection A designation, added Subsection B, and made a minor stylistic change.

Severance Tax Bonding Act. - See 7-27-1 NMSA 1978 and notes thereto.

7-27-11. Authority to refund bonds.

A. The state board of finance may issue and sell at public or private sale severance tax bonds to refund outstanding severance tax bonds by exchange, immediate or prospective redemption, cancellation or escrow, including the escrow of debt service funds accumulated for payment of outstanding bonds, or any combination thereof when, in its opinion, such action will be beneficial to the state.

B. The state board of finance may issue and sell at public or private sale supplemental severance tax bonds to refund outstanding supplemental severance tax bonds by exchange, immediate or prospective redemption, cancellation or escrow, including the escrow of debt service funds accumulated for payment of outstanding supplemental severance tax bonds, or any combination thereof when, in its opinion, such action will be beneficial to the state.

History: 1953 Comp., § 72-18-36, enacted by Laws 1961, ch. 5, § 9; 1985 (1st S.S.), ch. 15, § 13; 1999 (1st S.S.), ch. 6, § 5.

ANNOTATIONS

Cross references. - For the state board of finance, see 6-1-1 NMSA 1978.

The 1999 amendment, effective July 1, 1999, deleted "and other bonds payable from the severance tax bonding fund" preceding "by exchange" near the middle of Subsection A; deleted former Subsections B and C, relating to use of the level savings

method of advance refunding and prohibiting issuance of certain bonds to refund outstanding severance tax bonds; and added present Subsection B.

Compiler's notes. - In approving Laws 1985 (1st S.S.), ch. 15, the governor vetoed a Subsection D in this section, relating to additional bonding capacity realized from the level savings method of advance refunding.

7-27-11.1. Repealed.

ANNOTATIONS

Repeals. - Laws 1999 (1st S.S.), ch. 6, § 20 repeals 7-27-11.1 NMSA 1978, as enacted by Laws 1985 (1st S.S.), ch. 15, § 15, relating to declaration of legislative intent in enacting 7-27-11 NMSA 1978, effective July 1, 1999. For provisions of former section, see 1998 Replacement pamphlet.

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 executive head of the recipient of the bond money.

C. Proceeds from supplemental severance tax bonds shall be used only for public school critical capital outlay projects pursuant to the Public School Capital Outlay Act [22-24-1 to 22-24-6 NMSA 1978] or for infrastructure renovation and expansion at the state's public post-secondary educational institutions and other institutions confirmed as state educational institutions in Article 12, Section 11 of the constitution of New Mexico pursuant to a plan developed and approved by the commission on higher education to fund the highest priority significant needs identified by the commission.

D. The state board of finance shall issue and sell all supplemental severance tax bonds when authorized to do so by any law that sets out the amount of the issue and names the public school capital outlay council or the commission on higher education as the recipient of the money. The state board of finance shall issue and sell supplemental severance tax bonds only when so instructed by resolution of the public school capital outlay council or by resolution of the commission on higher education pursuant to certification by the governing bodies of the appropriate educational institutions.

History: 1953 Comp., § 72-18-37, enacted by Laws 1961, ch. 5, § 10; 1984, ch. 4, § 2; 1999 (1st S.S.), ch. 6, § 6.

ANNOTATIONS

Cross references. - For laws authorizing severance tax bond issues, see the appendix to this article.

For state board of finance, see 6-1-1 NMSA 1978.

For interstate stream commission, see 72-14-1 NMSA 1978.

The 1999 amendment, effective July 1, 1999, added the Subsection A and B designations and added Subsection C; inserted "or executive head" in the second sentence in Subsection B; and made minor stylistic changes.

7-27-12.1. Severance tax bonds; purpose for which issued; appropriation of proceeds.

The state board of finance may issue and sell severance tax bonds in fiscal years 2001 through 2010 in compliance with the Severance Tax Bonding Act in an amount not exceeding a total of twenty million dollars ($20,000,000) when the local government division of the department of finance and administration certifies the need for the issuance of the bonds; provided that no more than two million dollars ($2,000,000) may be issued in any one fiscal year. 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 four 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 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.

ANNOTATIONS

Effective dates. - Laws 1999 (1st S.S.), ch. 5 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on August 11, 1999, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Severance Tax Bonding Act. - See 7-27-1 NMSA 1978 and notes thereto.

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. 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 fifty percent of the annual deposits into the severance tax bonding fund, as determined by the deposits during the preceding fiscal year.

C. The state board of finance shall issue no supplemental severance tax bonds 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 sixty-two and one-half percent of the annual deposits into the severance tax bonding fund, as determined by the deposits during the preceding fiscal year.

D. The provisions of this section shall not be modified by the terms of any severance tax bonds or supplemental severance tax bonds hereafter issued.

History: 1953 Comp., § 72-18-38, enacted by Laws 1961, ch. 5, § 11; 1999 (1st S.S.), ch. 6, § 7.

ANNOTATIONS

The 1999 amendment, effective July 1, 1999, added "and supplemental severance tax bonds" at the end of Subsection A; in Subsection B inserted "of severance tax bonds" and deleted "including any severance tax bonds authorized prior to the enactment of this Severance Tax Bonding Act, but not yet issued" preceding "and including"; added

present Subsection C; redesignated former Subsection C as Subsection D; and in Subsection D inserted "severance tax" and "or supplemental severance tax bonds".

7-27-15. Majority approval necessary for board action.

Any action taken hereunder by the state board of finance must be approved by a majority of its members.

History: 1953 Comp., § 72-18-39, enacted by Laws 1961, ch. 5, § 12.

7-27-16. Form of bonds.

A. The state board of finance, except as otherwise specifically provided in the Severance Tax Bonding Act, shall determine at its discretion the terms, covenants and conditions of severance tax bonds and supplemental severance tax bonds, including but not limited to: date of issue, denominations, maturities, rate or rates of interest, call features, call premiums, registration, refundability and other covenants covering the general and technical aspects of the issuance of the bonds.

B. The bonds shall be in such form as the state board of finance may determine, and successive issues shall be identified by alphabetical, numerical or other proper series designation.

History: 1953, Comp., § 72-18-40, enacted by Laws 1961, ch. 5, § 13; 1983, ch. 265, § 31; 1999 (1st S.S.), ch. 6, § 8.

ANNOTATIONS

The 1999 amendment, effective July 1, 1999, added the subsection designations and inserted "and supplemental severance tax bonds" near the middle of Subsection A.

Compiler's notes. - In approving Laws 1985 (1st S.S.), ch. 15, the governor vetoed an amendment of this section by § 14 of the act.

Severance Tax Bonding Act. - See 7-27-1 NMSA 1978 and notes thereto.

7-27-17. Execution of bonds.

Severance tax bonds 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.

ANNOTATIONS

The 1999 amendment, effective July 1, 1999, inserted "and supplemental severance tax bonds" near the beginning of the first sentence.

7-27-18. Procedure for sale of bonds.

A. Severance tax bonds and supplemental severance tax bonds shall be sold by the state board of finance at such times and in such manner as the board may elect, consistent with the need of the board, commission or agency that is the recipient of the bond money, to the highest bidder for cash at not less than par and accrued interest.

B. The state board of finance shall publish a notice of the time and place of sale in a newspaper of general circulation in the state, and also in a recognized financial journal outside the state. Such publication shall be made once each week for two consecutive weeks prior to the date fixed for such sale, the last publication to be at least ten days prior to the date of sale. Such notice shall specify the amount, denomination, maturity and description of the bonds to be offered for sale and the place, day and hour at which sealed bids therefor shall be received. All bids, except that of the state, shall be accompanied by a deposit of two percent of the bid price. Deposits of unsuccessful bidders shall be returned upon rejection of the bid.

C. At the time and place specified in such notice, the state board of finance shall open the bids in public and shall award the bonds, or any part thereof, to the bidder or bidders offering the best price therefor. Before delivering any bonds sold, the state treasurer shall detach therefrom and cancel all interest coupons which may have matured prior to the date of delivery. The state board of finance may reject any or all bids and readvertise. The state board of finance may sell a severance tax bond 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.

ANNOTATIONS

The 1999 amendment, effective July 1, 1999, added the subsection designations; inserted "and supplemental severance tax bonds" in Subsection A; substituted "two percent" for "five percent" in the next-to-last sentence in Subsection B; inserted "or supplemental severance tax bond" in the last sentence in Subsection C; and made minor stylistic changes.

7-27-19. Severance tax bonds and supplemental severance tax bonds legal investments.

Severance tax bonds and supplemental severance tax bonds are legal investments for any person or board charged with the investment of any public funds and are acceptable as security for any deposit of public money.

History: 1953 Comp., § 72-18-43, enacted by Laws 1961, ch. 5, § 16; 1999 (1st S.S.), ch. 6, § 11.

ANNOTATIONS

The 1999 amendment, effective July 1, 1999, inserted "and supplemental severance tax bonds" in the catchline and near the beginning of the section.

7-27-20. Expenses paid from severance tax bonding fund.

The expense incurred in the issuance of severance tax bonds and supplemental severance tax bonds shall be paid from the severance tax bonding fund.

History: 1953 Comp., § 72-18-44, enacted by Laws 1961, ch. 5, § 17; 1999 (1st S.S.), ch. 6, § 12.

ANNOTATIONS

The 1999 amendment, effective July 1, 1999, inserted "and supplemental severance tax bonds".

7-27-21. Treasurer to make bond payments and keep records.

Severance tax bonds and supplemental severance tax bonds payable from the severance tax bonding fund shall be paid by the state treasurer who shall keep a complete bond register showing severance tax bonds and supplemental severance tax bonds, coupons paid and outstanding on the bonds and such other records as the state board of finance shall require.

History: 1953 Comp., § 72-18-45, enacted by Laws 1961, ch. 5, § 18; 1999 (1st S.S.), ch. 6, § 13.

ANNOTATIONS

The 1999 amendment, effective July 1, 1999, inserted "severance tax" and "and supplemental severance tax bonds", each in two places, and inserted "on the bonds" near the end.

7-27-22. Severance tax bonding act to be full authority for issuance of bonds.

The Severance Tax Bonding Act shall, without reference to any other act of the legislature, be full authority for the issuance and sale of severance tax bonds and supplemental severance tax bonds, which bonds and the coupons attached thereto shall have all the qualities of investment securities under the Uniform Commercial Code [Chapter 55 NMSA 1978] and shall not be invalid for any irregularity or defect or be contestable in the hands of bona fide purchasers or holders thereof for value.

History: 1953 Comp., § 72-18-46, enacted by Laws 1961, ch. 5, § 19; 1961, ch. 79, § 2; 1984, ch. 4, § 4; 1999 (1st S.S.), ch. 6, § 14.

ANNOTATIONS

Cross references. - For investment securities under the Uniform Commercial Code, see Chapter 55, Article 8 NMSA 1978.

The 1999 amendment, effective July 1, 1999, inserted "and supplemental severance tax bonds" near the middle.

Severance Tax Bonding Act. - See 7-27-1 NMSA 1978 and notes thereto.

7-27-23. Suit may be brought to compel performance of officers.

Any holder of severance tax bonds or supplemental severance tax bonds or any person or officer being a party in interest may sue to enforce and compel the performance of the provisions of the Severance Tax Bonding Act.

History: 1953 Comp., § 72-18-47, enacted by Laws 1961, ch. 5, § 20; 1999 (1st S.S.), ch. 6, § 15.

ANNOTATIONS

The 1999 amendment, effective July 1, 1999, inserted "or supplemental severance tax bonds" and made a minor stylistic change.

Severance Tax Bonding Act. - See 7-27-1 NMSA 1978 and notes thereto.

7-27-24. Bonds tax free.

All severance tax bonds and supplemental severance tax bonds shall be exempt from taxation by the state or any of its political subdivisions.

History: 1953 Comp., § 72-18-48, enacted by Laws 1961, ch. 5, § 21; 1999 (1st S.S.), ch. 6, § 16.

ANNOTATIONS

The 1999 amendment, effective July 1, 1999, inserted "and supplemental severance tax bonds".

7-27-25. No impairment of obligation of contract.

Nothing in this Severance Tax Bonding Act shall be construed as impairing or authorizing the impairment of the contract between the state and the holders of the outstanding Building and Institution Severance Tax Bonds, Series July 1, 1955.

History: 1953 Comp., § 72-18-49, enacted by Laws 1961, ch. 5, § 25.

ANNOTATIONS

Severance Tax Bonding Act. - See 7-27-1 NMSA 1978 and notes thereto.

7-27-26. Severance tax bonding fund continued.

The severance tax bonding fund created by Laws 1959, Chapter 323 is hereby continued as the severance tax bonding fund created by and referred to in the Severance Tax Bonding Act.

History: 1953 Comp., § 72-18-50, enacted by Laws 1961, ch. 5, § 26; 1986, ch. 20, § 95.

ANNOTATIONS

Compiler's notes. - Laws 1959, ch. 323, §§ 1, 2 and 5 to 21, were repealed by Laws 1961, ch. 5, § 1. Laws 1959, ch. 323, § 3, was repealed by Laws 1971, ch. 65, § 7. Laws 1959, ch. 323, § 4, was repealed by Laws 1985, ch. 65, § 46.

Severance Tax Bonding Act. - See 7-27-1 NMSA 1978 and notes thereto.

7-27-27. Purpose and intent.

The purpose of the Severance Tax Bonding Act is to establish the authority who shall issue and sell all severance tax bonds and supplemental severance tax bonds for financing specific projects authorized by the legislature and to guarantee redemption of such bonds by revenue derived from the receipts from taxes levied upon natural resource products severed and saved from the soil and such other money as the legislature may from time to time determine. It is intended that projects to be financed from the fund shall include but not be limited to the construction of buildings for state

institutions and water resource projects; and it is further intended that the income from water resource projects in excess of the amount required for operation and maintenance of the project shall be used to repay the severance tax bonding fund.

History: 1953 Comp., § 72-18-51, enacted by Laws 1961, ch. 5, § 27; 1986, ch. 20, § 96; 1999 (1st S.S.), ch. 6, § 17.

ANNOTATIONS

The 1999 amendment, effective July 1, 1999, inserted "and supplemental severance tax bonds" in the first sentence.

Severability clauses. - Laws 1961, ch. 5, § 24, provides for the severability of the act if any part or application thereof is held invalid.

Severance Tax Bonding Act. - See 7-27-1 NMSA 1978 and notes thereto.

7-27-28 to 7-27-30. Repealed.

ANNOTATIONS

Repeals. - Laws 1986, ch. 20, § 136C repeals former 7-27-28 through 7-27-30 NMSA 1978, as enacted by Laws 1981 (1st S.S.), ch. 9, relating to the Severance Tax Income Bonding Act, effective May 21, 1986. For provisions of former sections, see 1983 Replacement Pamphlet and 1985 Cumulative Supplement.

7-27-31. Severance tax income bond retirement fund created.

There is created the "severance tax income bond retirement fund." Transfers from the severance tax income fund shall be made monthly to the severance tax income bond retirement fund in an amount sufficient, when added to the balance in the fund, to meet all principal and interest payments on bonds payable from the severance tax income bond retirement fund during the next twelve months.

History: Laws 1981 (1st S.S.), ch. 9, § 4.

7-27-32. Severance tax income bond retirement fund pledged.

The money in the severance tax income bond retirement fund is pledged for the principal and interest on all severance tax income bonds issued after the effective date of the Severance Tax Income Bonding Act.

History: Laws 1981 (1st S.S.), ch. 9, § 5.

ANNOTATIONS

Compiler's notes. - Pursuant to Laws 1981 (1st S.S.), ch. 9, § 23, the effective date of the Severance Tax Income Bonding Act is July 1, 1981.

Severance Tax Income Bonding Act. - The Severance Tax Income Bonding Act, referred to in this section, is presently compiled as 7-27-4, 7-27-31, 7-27-32, 7-27-42 to 7-27-44, 7-27-46, and 7-27-47 NMSA 1978.

7-27-33 to 7-27-41. Repealed.

ANNOTATIONS

Repeals. - Laws 1986, ch. 20, § 136C repeals former 7-27-33 through 7-27-41 NMSA 1978, as enacted by Laws 1981 (1st S.S.), ch. 9, relating to the Severance Tax Income Bonding Act, effective May 21, 1986. For provisions of former sections, see 1983 Replacement Pamphlet and 1985 Cumulative Supplement.

7-27-42. Severance tax income bonds; legal investments.

Severance tax income bonds are legal investments for any person or board charged with the investment of any public funds and are acceptable as security for any deposit of public money.

History: Laws 1981 (1st S.S.), ch. 9, § 15.

7-27-43. Expenses paid from severance tax income bond retirement fund.

The expense incurred in the issuance of severance tax income bonds shall be paid from the severance tax income bond retirement fund.

History: Laws 1981 (1st S.S.), ch. 9, § 16.

7-27-44. Treasurer to make bond payments and keep records.

Bonds payable from the severance tax income bond retirement fund shall be paid by the state treasurer who shall keep a complete bond register showing bonds and coupons paid and outstanding and such other records as the state board of finance requires.

History: Laws 1981 (1st S.S.), ch. 9, § 17; 1986, ch. 20, § 97.

7-27-45. Repealed.

ANNOTATIONS

Repeals. - Laws 1986, ch. 20, § 136C repeals former 7-27-45 NMSA 1978, as enacted by Laws 1981, ch. 9, § 18, making the Severance Tax Income Bonding Act the full authority for issuance of bonds, effective May 21, 1986. For provisions of former section, see 1983 Replacement Pamphlet.

7-27-46. Suit may be brought to compel performance of officers.

Any holder of severance tax income bonds, or any person or officer being a party in interest, may sue to enforce and compel the performance of the provisions of the Severance Tax Income Bonding Act.

History: Laws 1981 (1st S.S.), ch. 9, § 19.

ANNOTATIONS

Severance Tax Income Bonding Act. - The Severance Tax Income Bonding Act, referred to in this section, is presently compiled as 7-27-4, 7-27-31, 7-27-32, 7-27-42 to 7-27-44, 7-27-46, and 7-27-47 NMSA 1978.

7-27-47. Bonds tax-free.

Interest earned on all severance tax income bonds shall be exempt from taxation by the state or any of its political subdivisions.

History: Laws 1981 (1st S.S.), ch. 9, § 20.

7-27-48. Temporary provision; no impairment of obligation of contract.

Nothing in this act shall be construed as impairing or authorizing the impairment of the contract between the state and the holders of severance tax bonds authorized or issued, or both, prior to the effective date of this act.

History: Laws 1981 (1st S.S.), ch. 9, § 22.

ANNOTATIONS

Compiler's notes. - Pursuant to Laws 1981 (1st S.S.), ch. 9, § 23, the effective date of the act is July 1, 1981.

Meaning of "this act". - The term "this act", referred to in this section, means Laws 1981 (1st S.S.), ch. 9, which is presently compiled as 7-27-4, 7-27-31, 7-27-32, 7-27-42 to 7-27-44, 7-27-46, and 7-27-47 NMSA 1978.

7-27-1000.

Appendix to Article 27.

Authorized Severance Tax Bonds

The New Mexico Legislature has, since 1968, authorized issuance of the following severance tax bonds:

Laws 1968, ch. 15, $1,000,000, state park and recreation projects.

Laws 1968, ch. 16, $2,500,000, state police facilities.

Laws 1968, ch. 31, $3,000,000, state capitol facilities.

Laws 1968, ch. 33, $840,000, microwave circuits.

Laws 1968, ch. 34, $100,000, boy's school at Springer.

Laws 1969, ch. 64, $3,000,000, state capitol facilities.

Laws 1969, ch. 127, $2,121,000, state park and recreation projects.

Laws 1970, ch. 35, cultural properties review commission (now committee), various amounts for four projects.

Laws 1970, ch. 67, hospitals and institutions department and state commission of public records, various amounts for seven projects.

Laws 1970, ch. 84, $1,000,000, sewerage treatment facilities.

Laws 1971, ch. 257, $2,500,000, sewerage treatment facilities.

Laws 1971, ch. 262, $1,000,000, vocational training facilities.

Laws 1971, ch. 272, $374,000, botanical/zoological gardens.

Laws 1971, ch. 321, $1,000,000, medical school facilities.

Laws 1972, ch. 74, $3,000,000, state capitol facilities.

Laws 1973, ch. 396, amending Laws 1970, ch. 35.

Laws 1973, ch. 402, amending Laws 1970, ch. 84, and Laws 1971, ch. 257.

Laws 1974, ch. 44, $1,500,000, state park and recreation facilities.

Laws 1974, ch. 74, $3,795,000, employment security commission (now employment services division) office building.

Laws 1975, ch. 43, $7,500,000, Ute dam and reservoir.

Laws 1975, ch. 48, $2,000,000, Red Rock state park.

Laws 1975, ch. 110, $2,500,000, sewage treatment facilities.

Laws 1976, ch. 45, $2,013,000, institute of mining and technology.

Laws 1976 (S.S.), ch. 30, $600,000, rehabilitation center at Las Vegas.

Laws 1976 (S.S.), ch. 40, $400,000, Rio Grande Valley state park.

Laws 1976 (S.S.), ch. 41, $1,225,000, Brantley Dam state park.

Laws 1976 (S.S.), ch. 48, $7,000,000, natural gas pipeline, gathering and storage systems.

Laws 1976 (S.S.), ch. 56, $3,267,000, sewage treatment facilities.

Laws 1976 (S.S.), ch. 57, $2,475,000, water supply systems for communities.

Laws 1977, ch. 91, various amounts authorized for numerous state agencies.

Laws 1977, ch. 302, amending Laws 1970, ch. 35.

Laws 1978 (S.S.), ch. 2, §§ 1, 2, $6,000,000, Albuquerque independent community college.

Laws 1978, ch. 136, § 1, $10,500,000, Ute dam and reservoir.

Laws 1978, ch. 144, § 1, $3,200,000, New Mexico state university (New Mexico solar institute engineering laboratory building).

Laws 1978, ch. 157, §§ 1, 2, modifies Laws 1977, ch. 91, § 1.

Laws 1978, ch. 176, §§ 1 to 3, $18,000,000, improvement of energy resource development roads in northwest quadrant of the state and improvement of bridges and other highway structures within state.

Laws 1979, ch. 166, §§ 1 to 3 and 16, $35,000,000, improvement of certain highways, roads and streets and other community assistance purposes.

Laws 1979, ch. 210, § 1, $136,000, construction of livestock insect research laboratory building at New Mexico state university.

Laws 1979, ch. 211, § 2, $1,000,000, purchase of water rights to acquire water from any available source for use in Elephant Butte reservoir to replace the annual loss by evaporation and other causes of water in the recreation pool.

Laws 1979, ch. 309, § 1, various amounts for capital improvements for certain institutions of higher education and post-secondary academic and vocational institutions.

Laws 1980, ch. 19, § 1, $2,472,000, for the completion and improvement of various state parks.

Laws 1980, ch. 24, § 1, $10,000,000, for the restoration and improvement of the state penitentiary.

Laws 1980, ch. 34, § 1, $5,000,000, for acquisition of engineering and science equipment for certain four-year institutions of higher learning.

Laws 1980, ch. 60, § 1, $25,000,000, for highways and roads and related purposes.

Laws 1980, ch. 128, § 10, $8,000,000, for construction of a natural history museum facility.

Laws 1980, ch. 146, § 1, $5,000,000, for project grants pursuant to the New Mexico Community Assistance Act.

Laws 1980, ch. 154, § 1, $1,607,000, for improvements of various state parks.

Laws 1981, ch. 54, § 1, modifies Laws 1977, ch. 91, § 1.

Laws 1981, ch. 55, § 1, $517,800, for campus improvements at western New Mexico university.

Laws 1981, ch. 58, § 1, $2,843,000, for equipment for the university of New Mexico hospital.

Laws 1981, ch. 129, § 1, various amounts for capital outlay projects for certain institutions of higher education and post-secondary academic and vocational institutions.

Laws 1981, ch. 134, § 1, $5,000,000, for acquisition of engineering and science equipment for certain four-year institutions of higher learning.

Laws 1981, ch. 207, § 1, $6,300,000, for constructing, improving and developing Ute reservoir.

Laws 1981, ch. 240, §§ 2, 3, $80,000,000, for construction, reconstructing, improving and replacement of highways and bridges.

Laws 1981, ch. 346, § 1, amending Laws 1980, ch. 24, § 1.

Laws 1981, ch. 346, § 10, $25,500,000, for construction of medium security facility.

Laws 1981, ch. 363, § 1, amending Laws 1977, ch. 91, § 1.

Laws 1981, ch. 363, § 2, repeals Laws 1977, ch. 91, § 8.

Laws 1981 (1st S.S.), ch. 8, § 1, $3,652,200, to provide matching funds under the federal Clean Water Act of 1977.

Laws 1981 (1st S.S.), ch. 11, § 6, amending Laws 1979, ch. 166, § 16.

Laws 1981 (1st S.S.), ch. 11, § 7, $10,000,000, for project grants pursuant to the New Mexico Community Assistance Act.

Laws 1982, ch. 6, § 1, $1,580,000, for construction at the New Mexico state hospital in Las Vegas.

Laws 1982, ch. 33, § 1, $1,100,000, for making a grant to the city of Albuquerque for constructing a system to provide domestic water service.

Laws 1982, ch. 45, § 1, $2,636,500, for the purpose of reconstruction at the Lisboa Springs fish hatchery.

Laws 1982, ch. 47, § 1, $4,200,000, for constructing, improving and developing Ute reservoir.

Laws 1982, ch. 48, § 1, $1,125,000, for construction at the Grants branch of New Mexico state university.

Laws 1982, ch. 49, § 1, $6,450,000, for construction of facilities at certain vocational schools.

Laws 1982, ch. 50, § 1, $750,000, to provide funds to improve the road to Sims Mesa recreation area at Navajo Lake state park.

Laws 1982, ch. 58, § 1, $1,600,000, for construction and equipment at the Clovis branch of eastern New Mexico university.

Laws 1982, ch. 63, § 1, $2,250,000, for construction at the Roswell campus of eastern New Mexico university.

Laws 1982, ch. 64, § 1, $3,600,000, for constructing a music building at New Mexico state university.

Laws 1982, ch. 65, § 1, $500,000, for expansion of the bureau of mines and mineral resources.

Laws 1982, ch. 66, § 1, $1,600,000, for conversion of the communications building into a student services building on the main campus of eastern New Mexico university.

Laws 1982, ch. 67, § 1, $2,300,000, for renovation and construction at New Mexico highlands university.

Laws 1982, ch. 69, § 1, $2,600,000, for construction at the main campus of western New Mexico university.

Laws 1982, ch. 70, § 1, $1,600,000, for an amphitheater at San Jon.

Laws 1982, ch. 71, § 1, $6,400,000, for construction of a student services building at the university of New Mexico.

Laws 1982, ch. 74, § 1, $400,000, for upgrading the electrical system at Fort Bayard hospital.

Laws 1982, ch. 75, § 1, $5,000,000, for acquiring engineering and science equipment for certain four-year institutions of higher learning.

Laws 1982, ch. 76, § 5, amending Laws 1981, ch. 346, § 10.

Laws 1982, ch. 79, § 1, $2,651,500, for acquiring land and constructing a state office building in Farmington.

Laws 1982, ch. 80, § 1, $2,440,100, for the construction of office buildings for New Mexico state police district headquarters.

Laws 1982, ch. 84, § 1, $1,419,000, to the capital program fund for various projects.

Laws 1982, ch. 85, § 1, $6,025,000, for construction of phase two of the medium male security facility.

Laws 1982, ch. 94, § 1, $1,521,000, for construction at New Mexico state hospital and Fort Stanton hospital.

Laws 1982, ch. 95, § 1, $2,000,000, for repairing and maintaining school bus routes.

Laws 1982, ch. 96, § 2, $579,050, for construction, alteration and renovation of senior citizen centers.

Laws 1982, ch. 104, § 1, $14,733,800, for constructing a state office building in Santa Fe.

Laws 1982, ch. 112, § 1, $1,437,500, for constructing sewage treatment facilities.

Laws 1982, ch. 113, § 1, $1,400,200, for various corrections industries programs.

Laws 1983, ch. 67, § 1, $950,000, to the state corporation commission for purchasing a replacement airplane.

Laws 1983, ch. 118, § 1, $35,000,000, for construction of New Mexico highways and $20,000,000, for the continuation of the state penitentiary rebuilding and improvement program initiated pursuant to Laws 1980, ch. 24, and Laws 1981, ch. 346.

Laws 1983, ch. 120, § 1, $1,262,000, for improving and expanding the sewer system in Anthony, New Mexico.

Laws 1983, ch. 125, § 1, $300,000, for a drilling program to determine the suitability of a dam and reservoir at the Connor site on the Gila river.

Laws 1983, ch. 274, § 1, $1,000,000, for preliminary engineering, including right-of-way, mapping and design, for improving and upgrading state highway 264 in McKinley county to a four-lane highway.

Laws 1983, ch. 287, § 1, various amounts for various capital improvements.

Laws 1983, ch. 287, § 4, amending Laws 1979, ch. 211, § 2.

Laws 1983, ch. 287, § 5, amending Laws 1981, ch. 240, § 2.

Laws 1983, ch. 287, § 6, amending Laws 1982, ch. 84, § 1.

Laws 1983, ch. 287, § 9, repealing Laws 1982, ch. 72, § 1.

Laws 1983, ch. 298, § 4, $10,000,000, for the purpose of making project grants pursuant to the New Mexico Community Assistance Act.

Laws 1983, ch. 313, § 1, $300,000, for constructing a water transmission line together with the acquisition and installation of a pump and controls to connect a water well with the Hatch water system.

Laws 1983, ch. 316, § 7, $3,750,000, to the two-year college maintenance fund for the purposes of the Two-Year College Maintenance Act.

Laws 1983, ch. 326, § 1, $6,600,000, to the state highway department for the purpose of constructing the Rio Bravo bridge and access roads.

Laws 1983, ch. 329, § 8, $1,610,000, to the New Mexico veterans' service commission for the purpose of remodeling and improving the former Carrie Tingley crippled children's hospital at Truth or Consequences to convert it for use as a veterans' home.

Laws 1984, ch. 11, § 1, amending Laws 1983, ch. 287, § 1.

Laws 1984, ch. 12, § 3, amending Laws 1982, ch. 76, § 5.

Laws 1984, ch. 12, § 4, amending Laws 1982, ch. 85, § 1.

Laws 1984 (1st S.S.), ch. 10, §§ 1, 8, various amounts for various capital improvements.

Laws 1985, ch. 10, § 1, funds for El Pueblo bridge in Albuquerque.

Laws 1985, ch. 199, § 1, funds for the development of a wastewater system in Sunland Park.

Laws 1985 (1st S.S.), ch. 15, § 1, various amounts for various capital improvements.

Laws 1985 (1st S.S.), ch. 15, § 7, $376,750 for the construction of a state office building in Santa Fe.

Laws 1985 (1st S.S.), ch. 15, § 8, funds to expand Albuquerque's water system so as to provide a water supply to the east Mountainview area.

Laws 1985 (1st S.S.), ch. 15, § 9 voids tax bond authorizations for natural gas pipeline systems, for residential sewer connections and for solar heating incentives.

Laws 1986, ch. 14, § 1, amending Laws 1985 (1st S.S.), ch. 15, § 1.

Laws 1986, ch. 115, § 7, appropriates the balance of the proceeds from the sale of severance tax bonds authorized by Laws 1985, ch. 15, § 1Q(2) to the state highway department for the purpose of paving county roads in eligible counties.

Laws 1986, ch. 115, § 8, appropriates the proceeds from the sale of severance tax bonds authorized pursuant to Laws 1985, ch. 15, § 1T to the local government division of the department of finance and administration.

Laws 1987, ch. 354, §§ 1, 7, various amounts for various capital improvements.

Laws 1987, ch. 354, § 5, amending Laws 1983, ch. 287, § 1, Subsection Q and Laws 1986, ch. 115, § 1, Subsection H.

Laws 1987, ch. 354, §§ 1, 7, various amounts for various capital improvements.

Laws 1987, ch. 354, § 5, amending Laws 1983, ch. 287, § 1, Subsection Q and Laws 1986, ch. 115, § 1, Subsection H.

Laws 1988 (2nd S.S.), ch. 3, §§ 1, 3, 5, various amounts for various capital improvements.

Laws 1989, ch. 315, § 9, effective April 7, 1989, various amounts for various capital improvements.

Laws 1989, ch. 335, § 1, amending Laws 1988 (2nd S.S.), ch. 3, § 1, Subsection H.

Laws 1989, ch. 342, § 1, amending Laws 1987, ch. 354, § 1, Subsection H(13).

Laws 1989, ch. 364, § 1, amending Laws 1987, ch. 354, § 1, Subsection I(6).

Laws 1989, ch. 391, § 1, amending Laws 1987, ch. 354, § 1, Subsection E(6).

Laws 1990 (1st S.S.), ch. 6, § 5, various amounts for various capital improvements.

Laws 1990, ch. 129, § 1, amending Laws 1986, ch. 115, § 1C(4).

Laws 1990, ch. 132, § 12, various amounts for various capital improvements.

Laws 1990, ch. 132, § 13, amending Laws 1988 (2nd S.S.), ch. 3, § 1D(2) and Laws 1987, ch. 354, § 1H(13).

Laws 1990, ch. 132, § 14, amending Laws 1988 (2nd S.S.), ch. 3, § 1D(2).

Laws 1990, ch. 132, § 15, amending Laws 1988 (2nd S.S.), ch. 3, § 4.

Laws 1991, ch. 215, § 2, to the infrastructure revolving loan fund for the purposes of the Rural Infrastructure Act.

Laws 1991, ch. 259, various sections amending the purposes of the proceeds of various severance tax bond sales for various capital improvements authorized by different prior laws.

Laws 1991, ch. 261, §§ 1 to 13, various amounts for various capital improvements.

Laws 1991, ch. 261, § 14, amending Laws 1989, ch. 315, § 9.

Laws 1992, ch. 53, § 1, to the electronic voting machine revolving fund for the purpose of purchasing needed electronic voting machines and equipment throughout the state.

Laws 1992, ch. 113, §§ 1 to 27, various amounts for various capital improvements.

Laws 1992, ch. 113, § 32, amending Laws 1990, ch. 132, § 12.

Laws 1992, ch. 113, § 33, amending Laws 1990 (1st S.S.), ch. 6, § 2C(24).

Laws 1992, ch. 113, §§ 36, 37, and 39, amending Laws 1988 (2nd S.S.), ch. 3, § 1E(4), Laws 1989, ch. 315, § 2(I)(26), and Laws 1990, ch. 132, § 12I, respectively.

Laws 1993, ch. 60, § 1, amending Laws 1992, ch. 113, § 4Q.

Laws 1993, ch. 63, § 1, amending Laws 1990 (1st S.S.), ch. 6, § 2H(1).

Laws 1993, ch. 74, § 1, amending Laws 1992, ch. 113, § 5ZZZ.

Laws 1993, ch. 205, § 1, amending Laws 1992, ch. 113, § 5NNN.

Laws 1993, ch. 339, §§ 1 and 2, amending Laws 1990 (1st S.S.), ch. 6, § 2U and Laws 1992, ch. 113, § 20, respectively.

Laws 1993, ch. 367, §§ 1 to 38, various amounts for various capital improvements.

Laws 1993, ch. 367, §§ 49 to 52, amending Laws 1990, ch. 132, § 12H, Laws 1990 (1st S.S.), ch. 6, § 2C, Laws 1992, ch. 113, § 18KK, and Laws 1992, ch. 113, § 36, respectively.

Laws 1993, ch. 367, §§ 57, 59 to 61 and 63 to 71, amending Laws 1990 (1st S.S.), ch. 6, § 2Q, Laws 1989, ch. 315, § 2F, Laws 1992, ch. 113, § 5, Laws 1986, ch. 115, § 1R(2), Laws 1991, ch. 261, § 5, Laws 1990, ch. 132, § 12E(4), Laws 1990, ch. 132, § 12E(4), Laws 1992, ch. 113, § 5AAAA, Laws 1992, ch. 113, § 11BB, Laws 1992, ch. 113, §§ 18MM and 11E, Laws 1986, ch. 115, § 1W, Laws 1990 (1st S.S.), ch. 6, § 5C, Laws 1990 (1st S.S.), ch. 6, § 5C, and Laws 1992, ch. 113, § 5Q, respectively.

Laws 1994, ch. 81, § 1, amending Subsections B and C of Laws 1992, ch. 113, § 16.

Laws 1994, ch. 8 § 1, amending Laws 1993, ch. 367, § 8B, to change the purpose of the appropriation for the expansion of water systems for the town of Bernalillo in Sandoval county.

Laws 1994, ch. 148, § 4, $6,073,000 for state agency on aging capital projects including senior citizen centers and vans.

Laws 1994, ch. 148 § 5, $150,000 for an agricultural pavilion at New Mexico state fair.

Laws 1994, ch. 148 § 6, $7,841,000 for office of cultural affairs capital projects, including $7,000,000 for a comprehensive farm and ranch heritage museum.

Laws 1994, ch. 148, § 7, $101,000 for capital projects at Clovis community college.

Laws 1994, ch. 148, § 8, $90,000 for capital projects of the Cumbres and Toltec scenic railroad.

Laws 1994, ch. 148, § 9, $24,979,270 for various local capital projects.

Laws 1994, ch. 148, § 10, $8,963,000 for department of environment capital projects.

Laws 1994, ch. 148, § 11, $675,000 for department of health capital projects.

Laws 1994, ch. 148, § 12, $480,000 for energy, minerals and natural resources department capital projects.

Laws 1994, ch. 148, § 13, $22,762,000 for general services department capital projects, including construction of a multipurpose recreational center at the Sequoyah adolescent treatment center in Bernalillo county, construction of a visitor, control and administrative center and improve security at the New Mexico boys' school in Springer in Colfax county, renovation of the old national guard site in Santa Fe county, continuation of phase two of construction of state library, archives and records center in Santa Fe county, expansion of the New Mexico law enforcement academy in Santa Fe County, and construction of a minimum security unit and a building to house the corrections industries programs near the southern New Mexico correctional facility in Dona Ana county.

Laws 1994, ch. 148, § 14, $4,868,500 for state highway and transportation department capital projects.

Laws 1994, ch. 148, § 15, $150,000 for a visitors center at the national solar observatory at Sacramento peak in Otero county.

Laws 1994, ch. 148, § 16, $2,044,564 for New Mexico office of Indian affairs capital projects.

Laws 1994, ch. 148, § 17, $560,400 for a center for instructional programs at the main campus of the Luna vocational-technical institute in San Miguel county.

Laws 1994, ch. 148, § 18, $2,639,000 for capital projects of the community college board of New Mexico junior college in Hobbs in Lea county, including $2,500,000 for construction of new classroom and laboratory facilities.

Laws 1994, ch. 148, § 19, $2,146,000 for New Mexico state university capital projects.

Laws 1994, ch. 148, § 20, $330,000 for northern New Mexico state school capital projects.

Laws 1994, ch. 148, § 21, $1,539,000 for department of public safety capital projects.

Laws 1994, ch. 148, § 22, $590,000 for public school capital improvement fund capital projects.

Laws 1994, ch. 148, § 23, $10,909,000 for state department of public education capital projects.

Laws 1994, ch. 148, § 24, $550,000 for state engineer capital projects.

Laws 1994, ch. 148, § 25, $386,500 for a fine arts center at Santa Fe community college in Santa Fe county.

Laws 1994, ch. 148, § 26, $667,000 for a computer center addition at San Juan college in San Juan county.

Laws 1994, ch. 148, § 27, $16,500 for a maintenance building at Tucumcari area vocational school in Quay county.

Laws 1994, ch. 148, § 28, $1,500,000 for data processing equipment for the taxation and revenue department.

Laws 1994, ch. 148, § 29, $236,000 for eastern New Mexico university capital projects.

Laws 1994, ch. 148, § 30, $5,857,000 for university of New Mexico capital projects, including $2,000,000 for hospital equipment for the university of New Mexico medical center.

Laws 1994, ch. 148, § 31, $1,000,000 for construction of a branch of Navajo community college in Crownpoint in McKinley county.

Laws 1994, ch. 148, § 32, $200,000 for a feasibility study for a research park in Albuquerque in support of federal technology transfer efforts in Bernalillo county.

Laws 1994, ch. 148, § 33, $712,000 for construction of a national guard armory in or near the town of Taos in Taos county.

Laws 1994, ch. 148, § 34, $410,000 for juvenile services in McKinley, Cibola and San Juan counties and construction of a multipurpose regional juvenile facility in Gallup in McKinley county.

Laws 1994, ch. 148, § 35, $3,500,000 for acquiring water rights within the Pecos river basin.

Laws 1994, ch. 148, § 36, $2,000,000 for the wastewater facility construction loan fund.

Laws 1994, ch. 148, § 37, $170,000 for improvements to Albuquerque technical-vocational institute.

Laws 1994, ch. 148, § 38, $718,000 for administrative office of the courts capital projects.

Laws 1994, ch. 148, § 39, $35,000 for construction of a child visitation facility at the women's correctional institution in Cibola county.

Laws 1994, ch. 148, § 40, $400,000 for additional parking and future expansion at western New Mexico university.

Laws 1994, ch. 148, § 76, $4,000,000 for establishing a Hispanic cultural center in the southwest portion of Albuquerque in Bernalillo county.

Laws 1994, ch. 148, §§ 60 to 70, amending Laws 1990, ch. 132, § 13, Laws 1991, ch. 259, § 22, Laws 1992, ch. 113, § 4, and Laws 1993, ch. 367, §§ 7, 8, 14 to 16, and 26.

Laws 1994, ch. 148, § 74, amending Laws 1993 ch. 367, § 7RRR.

Laws 1995, ch. 3, § 1, appropriates $140,000 from the proceeds of severance tax bonds authorized by Laws 1994 ch. 148, § 9, Subsection PPPP, for renovation and construction of an expansion of the dental clinic in Loving in Eddy county.

Laws 1995, ch. 30, § 4, as added by Laws 1996, ch. 5, § 1, appropriates the unexpended or unencumbered balances from the appropriation made in Laws 1994, ch. 148, § 13H, to the general services department to remodel and convert the Socorro cottage at Fort Stanton hospital and training school to a long-term care nursing facility.

Laws 1995, ch. 105, § 1, amending Laws 1993, ch. 367, § 2, to change the purpose of the appropriation in order to construct and renovate meal sites for senior citizens in Artesia in Eddy county.

Laws 1995, ch. 109, § 1, amending Laws 1994, ch. 148, § 4, to change the purpose of the appropriation in order to make improvements to the building and the parking lot of the Silver City senior center.

Laws 1995, ch. 214, § 3, $16,000,000 for correctional facilities.

Laws 1995, ch. 218, §§ 1 to 3, amending Laws 1993, ch. 367, § 2O and Subsections V and CC of Laws 1994, ch. 148, § 4.

Laws 1995, ch. 218, §§ 8 to 10, amending Subsections J, AA, and BBBBBBB of Laws 1994, ch. 148, § 9.

Laws 1995, ch. 218, §§ 15 to 21, amending Laws 1993, ch. 367, § 14, and Laws 1994, ch. 147, §§ 10, 11, 13, and 14.

Laws 1995, ch. 218, § 25, amending Laws 1994, ch. 148, § 38A.

Laws 1995, ch. 218, § 27, amending Laws 1992, ch. 113, § 20.

Laws 1995, ch. 218, §§ 29 to 40, amending Laws 1986, ch. 115, § 1C(2), Laws 1992, ch. 113, §§ 10A and 18J, Laws 1993, ch. 367, §§ 7 and 61A(2), and Laws 1994, ch. 148, §§ 9, 22B, and 64A(1).

Laws 1995, ch. 218, §§ 42 and 43, amending Laws 1993, ch. 367, § 4, and Laws 1994, ch. 148, § 9.

Laws 1995, ch. 218, §§ 45 to 52, amending Laws 1992, ch. 113, § 4, Laws 1993, ch. 367, § 16, Laws 1994, ch. 147, § 6, and Laws 1994, ch. 148, §§ 4, 6, 9, and 33.

Laws 1995, ch. 222, § 2, $427,700 for kitchen equipment for meal programs.

Laws 1995, ch. 222, § 3, $580,500 to replace equipment for construction industries programs at correctional facilities.

Laws 1995, ch. 222, § 4, $1,700,000 to make improvements to higher education facilities, in order to comply with the Americans with Disabilities Act of 1990 and with life saving codes.

Laws 1995, ch. 222, § 5, $2,750,000 to the department of environment for various purposes.

Laws 1995, ch. 222, § 6, $1,000,000 for the acquisition of water rights within the Pecos river basin.

Laws 1995, ch. 222, § 7, $20,000,000 to the public school outlay fund.

Laws 1995, ch. 222, § 8, $2,200,000 to the office of cultural affairs for various purposes.

Laws 1995, ch. 222, § 9, $2,121,600 to the general services department for various penitentiary and correctional facility improvements.

Laws 1995, ch. 222, § 10, $600,000 for the construction of armories in Union and Colfax counties.

Laws 1995, ch. 222, § 11, $1,950,000 to the local government division of the department of finance and administration for various purposes.

Laws 1995, ch. 222, § 12, $200,000 to the office of Indian affairs for building construction.

Laws 1995, ch. 222, § 13, $300,000 for road improvements and traffic signals.

Laws 1995, ch. 222, § 14, $700,000 to the New Mexico institute of mining and technology.

Laws 1995, ch. 222, § 15, $500,000 to New Mexico highlands university for renovation and improvement of the Douglas school building in Las Vegas.

Laws 1995, ch. 222, § 16, $350,000 to the Albuquerque technical-vocational institute for the purchase and renovation of Pajarito elementary school.

Laws 1995, ch. 222, § 17, $400,000 to New Mexico state university for improvements to athletic facilities.

Laws 1995, ch. 222, § 18, $295,000 to San Juan college for a child and family development center classroom addition.

Laws 1995, ch. 222, § 19, $250,000 to the state department of public education for various purposes.

Laws 1996, ch. 14, § 1, amending Laws 1992, ch. 113, § 4F.

Laws 1996, ch. 14, §§ 2 to 5, amending Laws 1993, ch. 367, § 8.

Laws 1996, ch. 14, §§ 13 and 14, amending Laws 1993, ch. 367, § 14.

Laws 1996, ch. 14, § 15, amending Laws 1994, ch. 148, § 13H.

Laws 1996, ch. 14, § 22, amending Laws 1995, ch. 222, § 9D.

Laws 1996, ch. 14, § 23, amending Laws 1995, ch. 214, § 3.

Laws 1996, ch. 14, § 24, amending Laws 1995, ch. 222, § 11E.

Laws 1996, ch. 14, §§ 27, 28, amending Laws 1994, ch. 148, § 9.

Laws 1996, ch. 14, § 29, amending Laws 1994, ch. 148, § 66.

Laws 1996, ch. 14, § 30, amending Laws 1994, ch. 148, § 9FF.

Laws 1996, ch. 14, § 31, amending Laws 1992, ch. 113, § 6A.

Laws 1996, ch. 14, § 32, amending Laws 1993, ch. 367, § 16E.

Laws 1996, ch. 14, § 33, amending Laws 1994, ch. 148, § 10D.

Laws 1996, ch. 14, § 35, amending Laws 1994, ch. 148, § 9RR.

Laws 1996, ch. 14, § 40, amending Laws 1993, ch. 367, § 14Z.

Laws 1996, ch. 14, § 41, amending Laws 1993, ch. 367, § 11C.

Laws 1996, ch. 14, § 42, amending Laws 1993, ch. 367, § 7VVV.

Laws 1996, ch. 14, § 43, repealing Laws 1995, ch. 218, § 40, which reauthorized appropriations for the purpose of conducting a needs assessment study for a community center in Taos.

Laws 1996, ch. 22, § 1, amending Laws 1993, ch. 367, § 7YYY.

Laws 1996, ch. 22, § 2, amending Laws 1993, ch. 367 § 4H and Laws 1995, ch. 218, § 43.

Laws 1996, ch. 24, § 1 amending Laws 1994, ch. 148, § 9YYYY.

Laws 1996, ch. 26, § 2, effective March 4, 1996, reappropriates the balance of the proceeds from severance tax bonds appropriated pursuant to Laws 1992, ch. 113, § 20 for the New Day shelter for troubled youth in Albuquerque located in Bernalillo county. Notwithstanding the provisions of Laws 1995, ch. 218, § 27, any unexpended or unencumbered balance remaining at the end of fiscal year 1999 shall revert to the severance tax bonding fund.

Laws 1996 (1st S.S.), ch. 4, § 2, $1,631,000 to the state agency on aging for various purposes.

Laws 1996 (1st S.S.), ch. 4, § 3, $290,000 to the office of cultural affairs for the purpose of constructing El Camino Real state monument for the museum of New Mexico located in Socorro county, planning or designing a cultural museum in the city of Santa Fe, and making renovations addressing accessibility concerns at the New Mexico museum of natural history and science in Albuquerque.

Laws 1996 (1st S.S.), ch. 4, § 4, $100,000 to the commission on higher education for the purpose of planning, designing or constructing a Navajo community college in Shiprock.

Laws 1996 (1st S.S.), ch. 4, § 5, $11,175,000 to the local government division of the department of finance and administration for various purposes and making some appropriations contingent upon matching funds.

Laws 1996 (1st S.S.), ch. 4, § 6, $3,439,000 to the department of environment for various purposes.

Laws 1996 (1st S.S.), ch. 4, § 7, $12,312,750 to the property control division of the general services department for various purposes.

Laws 1996 (1st S.S.), ch. 4, § 8, $2,973,000 to the state highway and transportation department for various purposes and making some appropriations contingent upon matching funds.

Laws 1996 (1st S.S.), ch. 4, § 9, $735,000 to the New Mexico office of Indian affairs for various purposes.

Laws 1996 (1st S.S.), ch. 4, § 10, $100,000 to the board of regents of the New Mexico school for the deaf for the purpose of reroofing or refinishing floors in Larson gym located in Santa Fe county.

Laws 1996 (1st S.S.), ch. 4, § 11, $50,000 to the board of regents of New Mexico state university for the purpose of repairing, renovating or equipping the Clayton livestock research center in Union county.

Laws 1996 (1st S.S.), ch. 4, § 12, $3,716,000 to the state department of public education for various purposes.

Laws 1996 (1st S.S.), ch. 4, § 13, $450,000 to the governing board of San Juan college for the purpose of designing, constructing or equipping an advanced technology center at San Juan college, and making improvements to the San Juan college west campus at Kirtland.

Laws 1996 (1st S.S.), ch. 4, § 14, $247,000 to the board of regents of the university of New Mexico for the purpose of constructing an education center on the north side of the city of Gallup for the Gallup branch of the university of New Mexico, and making improvements and repairs to the existing soccer field on the university of New Mexico campus in Bernalillo county.

Laws 1996 (1st S.S.), ch. 4, § 15, $140,000 to the community college board of Santa Fe community college for the purpose of purchasing instructional equipment for the manufacturing technology program.

Laws 1996 (1st S.S.), ch. 4, § 16, $100,000 to the state fair commission for the purpose of constructing bathrooms or making improvements to the Indian village at the state fair in the city of Albuquerque.

Laws 1996 (1st S.S.), ch. 4, § 17, $20,000 to the interstate stream commission for the purpose of making improvements to the Ponderosa-Vallecitos dam and reservoir located in Sandoval county.

Laws 1996 (1st S.S.), ch. 4, § 18, $20,000 to the board of regents of eastern New Mexico university for renovations and improvements to classrooms and an instructional complex in the university center on the Ruidoso campus.

Laws 1996 (1st S.S.), ch. 4, § 19, $65,000 to the office of the state engineer for various purposes.

Laws 1996 (1st S.S.), ch. 4, § 42, $100,000 of the proceeds appropriated to the corrections department pursuant to Laws 1995, ch. 214, § 3 is reappropriated to the local government division of the department of finance and administration for the Tom Bell and Dennis Chavez community centers in the city of Albuquerque to be used for various purchases and improvements.

Laws 1997, ch. 81, § 1, the balance of the proceeds from severance tax bonds appropriated to the department of environment pursuant to Subsection X of Section 6 of Chapter 4 of Laws 1996 (1st S.S.), to the state engineer for the purpose of installing a supplemental well and pipeline for the acequia de La Cienega.

Laws 1998, ch. 7, § 2, $1,237,400 to the state agency on aging for various purposes.

Laws 1998, ch. 7, § 3, $1,144,300 to the state armory board to construct an armory near Clayton in Union county and to renovate, repair or make improvements to various armories located throughout the state.

Laws 1998, ch. 7, § 4, $1,970,000 to the office of cultural affairs for various purposes throughout the state.

Laws 1998, ch. 7, § 5, $50,000 to the Cumbres and Toltec scenic railroad commission for renovations of the Chama engine house, the Osier facility or the Antonito depot in Rio Arriba county in order to comply with the provisions of the federal Americans with Disabilities Act of 1990.

Laws 1998, ch. 7, § 6, $100,000 to the state housing authority of the economic development department to plan, construct or equip a child-care training center located within a one-hundred-twenty-unit affordable housing project in the city of Santa Fe in Santa Fe county.

Laws 1998, ch. 7, § 7, $108,040 to the office of the state engineer for siphons for acequias near Hernandez located in Rio Arriba county and for improvements to the irrigation system of the Manzano spring and ditch commission in Torrance county.

Laws 1998, ch. 7, § 8, $2,540,250 to the department of environment for various improvements and installations of wells, water and wastewater systems and water filtration systems throughout the state.

Laws 1998, ch. 7, § 9, $13,761,800 to the local government division of the department of finance and administration for various purposes throughout the state.

Laws 1998, ch. 7, § 10, $18,620,700 to the capital program fund for renovations and improvements to various facilities and buildings throughout the state.

Laws 1998, ch. 7, § 11, $5,232,950 to the state highway and transportation department for improvements to certain streets, roads and highways throughout the state.

Laws 1998, ch. 7, § 12, $1,633,000 to New Mexico office of Indian affairs for various purposes.

Laws 1998, ch. 7, § 13, $8,290,410 to the state department of public education, contingent upon some matching funds, to be used for purchasing equipment for and improvements to certain schools throughout the state.

Laws 1998, ch. 7, § 14, $20,000 to the department of public safety to purchase and install communications technology for Mesilla in Dona Ana county.

Laws 1998, ch. 7, § 15, $20,000 to the state land office to clean up illegal landfill sites on state land in Luna county.

Laws 1998, ch. 7, § 16, $300,000 to the governing board of Albuquerque technical-vocational institute to renovate an existing building for the work force training center in Albuquerque in Bernalillo county.

Laws 1998, ch. 7, § 17, $121,250 to the community college board of Clovis community college for infrastructure renovation and expansion of aging centralized systems on the Clovis campus in Curry county.

Laws 1998, ch. 7, § 18, $322,500 to the board of regents of eastern New Mexico university to fund renovations, expansions, watering systems, and a minibus for eastern New Mexico university in Roosevelt county and for a Greyhound arena scoreboard.

Laws 1998, ch. 7, § 19, $300,000 to the governing board of Luna vocational-technical institute for the purpose of completing construction of a health care training facility at the main campus of the institute in San Miguel county.

Laws 1998, ch. 7, § 20, $200,000 to the board of regents of New Mexico highlands university for infrastructure renovation and expansion on the campus in San Miguel county.

Laws 1998, ch. 7, § 21, $100,000 to the governing board of New Mexico junior college for renovation and expansion of aging centralized systems on the campus in Lea county.

Laws 1998, ch. 7, § 22, $200,000 to the board of regents of New Mexico military institute to renovate and upgrade Wilson hall in Chaves county.

Laws 1998, ch. 7, § 23, $250,000 to the board of regents of New Mexico institute of mining and technology for infrastructure renovation and expansion of aging centralized systems on the campus in Socorro county.

Laws 1998, ch. 7, § 24, $1,147,500 to the board of regents of New Mexico state university for funding infrastructure renovations, expansions and improvements on various university campuses throughout the state.

Laws 1998, ch. 7, § 25, $285,000 to the board of regents of northern New Mexico state school for funding various infrastructure renovations, expansions, and installation of library and educational technology in state schools in Rio Arriba county.

Laws 1998, ch. 7, § 26, $150,000 to the board of regents of New Mexico school for the deaf for campus improvements, for purchasing vehicles for student transportation or for maintenance at New Mexico school for the deaf located in Santa Fe county.

Laws 1998, ch. 7, § 27, $1,208,000 to the governing board of San Juan college for campus improvements and additions at San Juan college west center in Kirtland located in San Juan county and San Juan college in San Juan county.

Laws 1998, ch. 7, § 28, $1,630,000 to the board of regents of the university of New Mexico for improvements and renovations to the university of New Mexico in Bernalillo county, the Los Alamos branch in Los Alamos county, the Gallup branch in McKinley county and at the main campus in Albuquerque in Bernalillo county.

Laws 1998, ch. 7, § 29, $200,000 to the board of regents of western New Mexico university for infrastructure renovation and expansion of aging centralized systems on the western New Mexico university campus in Grant county.

Laws 1998, ch. 7, § 34, amending Laws 1996 (1st S.S.), ch. 4, § 9B and appropriating the balance of the proceeds to the New Mexico office of Indian affairs.

Laws 1998, ch. 7, § 35, amending Laws 1994, ch. 148, § 16S and appropriating the balance of the proceeds to the New Mexico office of Indian affairs.

Laws 1998, ch. 7, § 27, $1,208,000 to the governing board of San Juan college for various improvements, equipment, and to construct a library and student center addition.

Laws 1998, ch. 7, § 36, amending Laws 1996 (1st S.S.), ch. 4, § 6TT and appropriating the balance of the proceeds to the department of environment.

Laws 1998, ch. 7, § 37, amending Laws 1994, ch. 148, § 9II and GGGGG and extending the time period through fiscal year 2002.

Laws 1998, ch. 7, § 39, amending Laws 1996 (1st S.S.), ch. 4, § 12V and appropriating the balance of the proceeds to the state department of public education.

Laws 1998, ch. 7, § 40, amending Laws 1996 (1st S.S.), ch. 4, § 5G, and appropriating the balance of the proceeds to the local government division of the department of finance.

Laws 1998, ch. 7, § 41, notwithstanding Laws 1994, ch. 148, § 1D, amends Laws 1994, ch. 148, § 13C and appropriates the balance of the proceeds to the capital program fund.

Laws 1998, ch. 7, § 42, notwithstanding Laws 1994, ch. 148, § 1D, amends Laws 1994, ch. 148, § 13D and appropriates the balance of the proceeds to the capital program fund.

Laws 1998, ch. 7, § 45, notwithstanding Laws 1992, ch. 113, § 1D, amends Laws 1992, ch. 113, § 18V, and appropriates the balance of the proceeds to the capital program fund.

Laws 1998, ch. 7, § 46, amending Laws 1995, ch. 214, § 3 and appropriating the balance of the proceeds to the capital program fund.

Laws 1998, ch. 7, § 48, amending Laws 1992, ch. 113, § 4M, and Laws 1994, ch. 148, § 60 and appropriating the balance of the proceeds to the department of environment.

Laws 1998, ch. 7, § 50, amending Laws 1995, ch. 214, § 3 and Laws 1996, ch. 14, § 23A(17) and appropriating the balance of the proceeds to the local government division.

Laws 1998, ch. 7, § 51, amending Laws 1996 (1st S.S.), ch. 4, § 8Y and appropriating the balance of the proceeds to the state highway and transportation department.

Laws 1998, ch. 7, § 56, amending Laws 1993, ch. 367, § 14Z, Laws 1996, ch. 14, §§ 13A(13), 39A(2) and 40, and appropriating the balance of the proceeds to the local government division.

Laws 1998, ch. 7, § 64, reappropriates $19,534 remaining of the proceeds of the sale of severance tax bonds authorized in Laws 1994, ch. 148, § 49B(30) to the local government division of the department of finance and administration to plan, design, construct and equip the Chamisal fire substation.

Laws 1998, ch. 7, § 65, amending Laws 1993, ch. 367, § 16M and appropriating the proceeds to the office of Indian affairs.

Laws 1998, ch. 118, § 2, $1,647,000 to the state agency on aging to be used by various senior citizen centers throughout the state.

Laws 1998, ch. 118, § 3, $1,050,000 to the state armory board to construct an armory near Taos in Taos county.

Laws 1998, ch. 118, § 4, $3,785,000 to the office of cultural affairs for various purposes throughout the state.

Laws 1998, ch. 118, § 5, $139,700 to the Cumbres and Toltec scenic railroad commission for various renovation projects.

Laws 1998, ch. 118, § 6, $1,910,000 to the office of the state engineer for water, sanitation and irrigation improvements and to develop a state water plan and provide regional planning grants throughout the state.

Laws 1998, ch. 118, § 7, $5000 to the interstate stream commission to repair the river bank about one hundred yards upstream from the San Miguel community dam in San Miguel county.

Laws 1998, ch. 118, § 8, $500,000 to the energy, minerals and natural resources department to renovate and provide storage facilities at forestry headquarters and other facilities located throughout the state.

Laws 1998, ch. 118, § 9, $6,103,000 to the department of environment for various water and sewer construction and improvement projects throughout the state, and to carry out the purposes of the Wastewater Facility Construction Loan Act.

Laws 1998, ch. 118, § 10, $1,800,000 to the state fair commission for site drainage improvements and renovations and improvements to various facilities located at the New Mexico state fairgrounds in Bernalillo county.

Laws 1998, ch. 118, § 11, $21,595,600 to the local government division of the department of finance and administration for construction of new public service centers and parks, and equipment, improvements and additions to various existing parks, community service centers, and various other community facilities throughout the state.

Laws 1998, ch. 118, § 12, $50,000 to the state fire marshal to purchase dry fire hydrants for Taos, Rio Arriba and Santa Fe counties.

Laws 1998, ch. 118, § 13, $2,000,000 to the department of game and fish to plan, design, construct, furnish and equip a new headquarters facility in Santa Fe county.

Laws 1998, ch. 118, § 14, $10,697,300 to the capital program fund for various purposes.

Laws 1998, ch. 118, § 15, $1,000,000 to the general services department to upgrade the state's communication system to digital.

Laws 1998, ch. 118, § 16, $140,000 to the department of health for the purpose of purchasing and installation of medical and office equipment for various public facilities.

Laws 1998, ch. 118, § 17, $3,195,000 to the state highway and transportation department for construction of and improvements to, various streets and roads throughout the state, with one appropriation of $200,000 for phase B storm drainage improvements at Adobe Acres in Bernalillo county being contingent upon a matching fund of $1,221,600.

Laws 1998, ch. 118, § 18, $3,408,000 to the New Mexico office of Indian affairs for various purposes

Laws 1998, ch. 118, § 19, $13,209,175 to the state department of public education for construction of and various improvements and equipment for schools, including installation of educational technology, throughout the state.

Laws 1998, ch. 118, § 20, $1,310,000 to the taxation and revenue department for the purpose of purchasing equipment for that department.

Laws 1998, ch. 118, § 21, $200,000 to the board of regents of eastern New Mexico university for the purpose of constructing and equipping a facility for the university's truck driving school as a joint project with the city of Artesia in Eddy county.

Laws 1998, ch. 118, § 22, $1,200,000 to the governing board of Albuquerque technical-vocational institute for the purpose of remodeling, equipping, and operating a work force development center for the Albuquerque technical-vocational institute located in Bernalillo county.

Laws 1998, ch. 118, § 23, $400,000 to the governing board of New Mexico junior college to construct a western museum on the campus of the New Mexico junior college in Hobbs in Lea county.

Laws 1998, ch. 118, § 24, $200,00 to the board of regents of New Mexico military institute to design and construct renovations to Wilson hall on the main campus of the New Mexico military institute in Chaves county.

Laws 1998, ch. 118, § 25, $840,000 to the board of regents of New Mexico state university for renovations, repairs, improvements, and equipment.

Laws 1998, ch. 118, § 26, $520,000 to the governing board of San Juan college for design and construction of the health and human performance center at San Juan college and to equip and furnish the computer center in San Juan county.

Laws 1998, ch. 118, § 27, $790,000 to the board of regents of the university of New Mexico for repairs and upgrades to sports arenas and related buildings and areas, and to the school of law library in Albuquerque.

Laws 1998, ch. 118, § 28, $2,000,000 to the public school capital outlay fund to be allocated by the public school capital outlay council to carry out the provisions of the Public School Capital Outlay Act.

Laws 1998, ch. 118, § 30, $1,500,000 from the game and fish bond retirement fund to the department of game and fish for expenditure in fiscal years 1998 through 2002 for the purpose of constructing and equipping a new headquarters facility in Santa Fe county.

Laws 1998, ch. 118, § 31, $1,500,000 from the game protection fund to the department of game and fish for expenditure in fiscal years 1998 through 2002 to construct and equip a new headquarters facility in Santa Fe county.

Laws 1998, ch. 118, § 32, $474,600 from the miners' trust fund for expenditure in fiscal years 1998 through 2002 to the miners' Colfax medical center for various purposes.

Laws 1998, ch. 118, § 34, $850,000 from specified sources to the state highway and transportation department to construct a public use loop road at the soccer field complex in Sandoval county.

Laws 1998, ch. 118, § 35, $1,000,000 from cash balances of the legislative council service to the legislative council service for expenditure in fiscal year 1999 and subsequent fiscal years for renovation of the state library and related renovations of the state capitol.

Laws 1998, ch. 118, § 36, $596,000 from the New Mexico irrigation works construction fund to the office of the state engineer for expenditure in fiscal year 1999 for water meters on the Rio Costilla system and irrigation system improvements at the Bluewater-Toltec district.

Laws 1998, ch. 118, § 37, $467,000 from the state lands maintenance fund to the state land office for expenditure in fiscal year 1999 for renovations and improvements at the state land office building in Santa Fe in Santa Fe county.

Laws 1998, ch. 118, § 38, $3,587,000 from the state road fund to the state highway and transportation department for expenditure in fiscal years 1998 through 2002 for engineering, design, environmental assessments and construction of roads in four counties and the purchase of a building in Raton for use as a project office.

Laws 1998, ch. 118, § 39, $100,000, the proceeds appropriated pursuant to Laws 1996 (S.S.), ch.4, § 2C is reappropriated to the state agency on aging for expansion and

improvements to the Barelas senior multiservice center and for purchasing and equipping a van for the Atrisco mealsite program in Albuquerque in Bernalillo county.

Laws 1998, ch. 118, § 39, amends Laws 1996 (S.S.), ch. 4, § 2C, and reappropriates $100,000 to the state agency on aging.

Laws 1998, ch. 118, § 40, amends Laws 1994, ch. 148, § 4B, and extends the period of time through fiscal year 1999.

Laws 1998, ch. 118, § 41, amends Laws 1996 (S.S.), ch. 4, § 3A, to include the El Camino Real state monument project and extends the time period through fiscal year 2002.

Laws 1998, ch. 118, § 42, amends Laws 1994, ch. 148, § 10S, extending the period of time through fiscal year 2002.

Laws 1998, ch. 118, § 43, amends Laws 995, ch. 222, § 12B, extending the period of time through fiscal year 2000.

Laws 1998, ch. 118, § 44, amends Laws 1996 (S.S.), ch. 4, § 5JJJ, and reappropriates proceeds to the local government division for paving for the detoxification center.

Laws 1998, ch. 118, § 45, amends Laws 1996 (S.S.), ch. 4, § 5TT, to extend the period of time to the end of fiscal year 1999 to the local government division for the purpose of determining the need for issuance of severance bonds for the El Cerro community center.

Laws 1998, ch. 118, § 46, amends Laws 1994, ch. 148, § 9NNNN and Laws 1996 (S.S.), ch. 4, § 5RRRRR, and reappropriates the combined balances to the local government division.

Laws 1998, ch. 118, § 47, amends Laws 1996 (S.S.), ch. 4, § 5G, and reappropriates the balance to the local government division.

Laws 1998, ch. 118, § 48, notwithstanding the provisions of Laws 1996, ch. 14, §§ 14 and 15, amends Laws 1993, ch. 367, § 14 and Laws 1994, ch. 148, § 13; and also, notwithstanding the provisions of Laws 1994, ch. 148, § 1, amends Laws 1994, ch. 148, § 13.

Laws 1998, ch. 118, § 50, amends Laws 1996 (S.S.), ch. 4, § 6, and appropriates the balance of the proceeds to the New Mexico office of Indian affairs.

Laws 1998, ch. 118, § 51, amending Laws 1996, ch. 4, § 9B, the balance of severance tax bonds to the New Mexico office of Indian affairs.

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Laws 1998, ch. 118, § 52, amending Laws 1994, ch. 148, §§ F-N, appropriating severance tax bond proceeds to the New Mexico office of Indian affairs.

Laws 1998, ch. 118, § 53, amends Laws 1992, ch. 113, § 11, appropriating the balance of severance tax bond proceeds to the state department of public education.

Laws 1998, ch. 118, § 54, amends Laws 1998, ch. 7, § 24A, and appropriates the proceeds from the sale of severance tax bonds to the board of regents of New Mexico state university.

Laws 1998, ch. 118, § 55, amends Laws 1998, ch. 7, § 9KK, and appropriates the severance tax bonds proceeds to the state highway and transportation department.

Laws 1998, ch. 118, § 56, amends Laws 1996 (S.S.), ch. 4, § 24B, extending the period of time through fiscal year 2000.

Laws 1998, ch. 118, § 57, amends Laws 1996, ch. 4, § 33B-33J, extending the period of time through fiscal year 2002.

Laws 1998, ch. 118, § 58, amends Laws 1995, ch. 222, § 24CCC, and appropriates the balance of the general fund to the department of finance and administration for the museum complex in Lovington.

Laws 1998, ch. 118, § 59, the balance of general funds of $50,000 to the local government division for a swimming pool for the Los Padillas area, by amendment of Laws 1995, ch. 222, § 33JJ.

Laws 1998, ch. 118, § 60, amends Laws 1996, ch.4, § 21LL, and reappropriates the balance of the proceeds of the general fund to the local government division of the department of finance and administration for the Ruidoso youth center complex.

Laws 1998, ch. 118, § 61, amends Laws 1995, ch. 222, § 24MMM, Laws 1996 (S.S.), ch. 4, § 21J, and Laws 1995, ch. 222, § 24VVVVV, and reappropriates the balances of the general funds to the local government division for projects in Torrance county.

Laws 1998, ch. 118, § 62, amends Laws 1996 (S.S.), ch. 4, § 34Q, and reappropriates the general fund to the state highway and transportation department.

Laws 1998, ch. 118, § 63, amends Laws 1995, ch. 222, § 28V, and reappropriates the balance of the general fund to the New Mexico office of Indian affairs.

Laws 1998, ch. 118, § 64, amends Laws 1995, ch. 222, § 42, and reappropriates the balance of the general fund to the governing board of Mesa technical college.

Laws 1998, ch. 118, § 65, amends Laws 1994, ch. 148, § 76, Laws 1995, ch. 222, § 8A, Laws 1995, ch. 222, § 22D, Laws 1996, ch. 14, § 23A(9), and Laws 1994, ch. 147, § 3K, extending the time period through fiscal year 2001.

Laws 1998, ch. 118, § 66, amends Laws 1994 (S.S.), ch. 148, § 9UUU, and appropriates the balance of the proceeds to the local government division of the department of finance and administration.

Laws 1998, ch. 118, § 67, amends Laws l996 (S.S.), ch. 4, § 8M, and reappropriates the balance of the proceeds to the state highway and transportation department.

Laws 1998, ch. 118, § 69, amending Laws 1996 (S.S.), ch. 4, § 5TT and extending the time period through fiscal year 1999.

Laws 1998, ch. 118, § 71, amending Laws 1996 (S.S.), ch. 4, § 6FF and appropriating the balance of the proceeds to the department of environment.

Laws 1998, ch. 118, § 74 makes the issuance of severance tax bonds pursuant to Laws 1998, ch. 7, § 11HHH void and upon certification of the state highway and transportation department, appropriates $400,000 to the department for improvements to Lea county roads.

Laws 1998, ch. 118, § 76, amending Laws 1998, ch. 7, § 13HH and appropriating and expanding the proceeds to include making improvements to the Pojoaque valley schools in Santa Fe county.

Laws 1998 (1st S.S.), ch. 7, § 1, $4,400,000, for critical capital outlay projects pursuant to the Public School Capital Outlay Act.

Laws 1999 (1st S.S.), ch. 2, § 2, $1,463,500 to the state agency on aging for various senior centers throughout the state.

Laws 1999 (1st S.S.), ch. 2, § 3, $1,320,000 to the state armory board for water drainage improvements at the Onate complex infrastructure in Santa Fe county and for improvements to various armories throughout the state.

Laws 1999 (1st S.S.), ch. 2, § 4, $33,250 to the state auditor to purchase furniture and signage for the state auditor's office in Santa Fe.

Laws 1999 (1st S.S.), ch. 2, § 5, $6,245,000 to the capital program fund for various purposes.

Laws 1999 (1st S.S.), ch. 2, § 6, $3,236,500 to the office of cultural affairs for various purposes throughout the state.

Laws 1999 (1st S.S.), ch. 2, § 7, $80,300 to the Cumbres and Toltec scenic railroad commission to replace the Osier water tank and install a gantry crane in the Cumbres and Toltec scenic railroad shop in Chama in Rio Arriba county.

Laws 1999 (1st S.S.), ch. 2, § 8, $118,750 to the energy, minerals and natural resources department to purchase a Black Jack historical exhibit in Pancho Villa state park in Luna county.

Laws 1999 (1st S.S.), ch. 2, § 9, $647,500 to the office of the state engineer for various improvements throughout the state.

Laws 1999 (1st S.S.), ch. 2, § 10, $4,953,188 to the department of environment for various water and sewer construction and improvement projects throughout the state.

Laws 1999 (1st S.S.), ch. 2, § 11, $5,000,000 to the state fair commission for renovations and improvements to Tingley coliseum and various other facilities at the state fairgrounds in Albuquerque in Bernalillo county.

Laws 1999 (1st S.S.), ch. 2, § 12, $1,750,000 to the department of game and fish to renovate and make improvements to two fish hatcheries.

Laws 1999 (1st S.S.), ch. 2, § 13, $335,000 to the department of health to purchase equipment and make capital improvements throughout the state.

Laws 1999 (1st S.S.), ch. 2, § 14, $5,978,321 to the state highway and transportation department for road improvements throughout the state.

Laws 1999 (1st S.S.), ch. 2, § 15, $2,790,901 to New Mexico office of Indian affairs to purchase equipment and make improvements at various sites throughout the state.

Laws 1999 (1st S.S.), ch. 2, § 16, $17,500 to the interstate stream commission to repair the dam in Los Cerrillos in Santa Fe county.

Laws 1999 (1st S.S.), ch. 2, § 17, $18,920,170 to the local government division for the purchase of equipment, new construction, and to make improvements to various sites throughout the state.

Laws 1999 (1st S.S.), ch. 2, § 18, $369,000 to the state parks division for improvements and new building at parks in Bernalillo county and Lincoln county.

Laws 1999 (1st S.S.), ch. 2, § 19, $12,670,326 to the state department of public education for educational technology and improvements at various schools throughout the state.

Laws 1999 (1st S.S.), ch. 2, § 20, $5,000,000 to the public buildings repair fund for various capital projects throughout the state.

Laws 1999 (1st S.S.), ch. 2, § 21, $620,000 to the taxation and revenue department for extraction equipment and an auto-dialer system.

Laws 1999 (1st S.S.), ch. 2, § 22, $65,000 to the board of regents of eastern New Mexico university for resurfacing the parking lot of greyhound arena and purchasing a scrum machine in Portales in Roosevelt county.

Laws 1999 (1st S.S.), ch. 2, § 23, $357,000 to the board of regents of New Mexico state university to purchase equipment and make improvements in Dona Ana county.

Laws 1999 (1st S.S.), ch. 2, § 24, $750,000 to the board of regents of the university of New Mexico for the purchase of equipment and for improvements at various locations within Bernalillo county.

Laws 1999 (1st S.S.), ch. 2, § 25, $183,000 to the board of regents of western New Mexico university for the construction of the center for information technology at western New Mexico university in Silver City in Grant county.

Laws 1999 (1st S.S.), ch. 2, § 26, $50,000 to the governing board of Mesa technical college to plan, design, construct, equip and furnish a dinosaur museum in Tucumcari in Quay county.

Laws 1999 (1st S.S.), ch. 2, § 27, $1,439,000 to the governing board of San Juan college for construction of buildings, purchase of equipment, and improvements in San Juan county.

Laws 1999 (1st S.S.), ch. 2, § 28, $1,320,000 to the wastewater facility construction loan fund to carry out the provisions of the Wastewater Facility Construction Loan Act.

Laws 1999 (1st S.S.), ch. 2, § 29, $2,510,000 to the office of the state engineer to make improvements and provide a hydrographic survey for various areas throughout the state.

Laws 1999 (1st S.S.), ch. 2, § 30, $400,000 to the capital program fund to renovate and make improvements to Allen dam at the New Mexico boys' school in Colfax county.

Laws 1999 (1st S.S.), ch. 2, § 31, $4,000,000 to the capital program fund for improvements at correctional and other facilities throughout the state.

Laws 1999 (1st S.S.), ch. 2, § 32, $2,043,000 to the state highway and transportation department to acquire land, plan, design, make site improvements, construct, and equip maintenance patrol facilities at various sites throughout the state.

Laws 1999 (1st S.S.), ch. 2, § 33, $465,000 to the miners' Colfax medical center to purchase equipment and make improvements.

Laws 1999 (1st S.S.), ch. 2, § 34, $1,127,400 to the state land office for mechanical improvements at the state land office building.

Laws 1999 (1st S.S.), ch. 2, § 35, amends Laws 1998, ch. 118, § 11J and HHHHHHHH and reappropriates $500,000 to the local government division to plan, remediate, renovate or construct the old Jones motor building for a route 66 community cultural center in Albuquerque in the county of Bernalillo.

Laws 1999 (1st S.S.), ch. 2, § 36, amends Laws 1998, ch. 7, § 9KKKKKKK and appropriates the severance tax bond proceeds to improve the parking lot and to landscape the site of a community clinic parking lot in Bernalillo county.

Laws 1999 (1st S.S.), ch. 2, § 37A, amends Laws 1998, ch. 118, § 11NNNNNNN and reappropriates the severance tax bond proceeds to the local government division for construction costs of the Pecos River Village multipurpose building in Carlsbad in Eddy county.

Laws 1999 (1st S.S.), ch. 2, § 37B, amends Laws 1998, ch. 118, § 11PPPPPPPand reappropriates the severance tax bond proceeds to the local government division for construction costs of the Pecos River Village multipurpose building in Carlsbad in Eddy county.

Laws 1999 (1st S.S.), ch. 2, § 38, amends Laws 1996 (1st S.S.), ch. 4, § 31D and appropriates the balance of the proceeds to the state agency on aging to plan, design and construct a senior center in Central in Grant county.

Laws 1999 (1st S.S.), ch. 2, § 39, amends Laws 1998, ch. 118, § 9PPand provides that the severance tax bond proceeds be expended for purchasing a holding tank and expanding the water system in Chacon in Mora county.

Laws 1999 (1st S.S.), ch. 2, § 40, amends Laws 1998, ch. 7, § 35 to allow expenditure of the proceeds through fiscal year 2002.

Laws 1999 (1st S.S.), ch. 2, § 41, amends Laws 1998, ch. 7, § 9II and RRRRR and reappropriates the severance tax bond proceeds to the state agency on aging to plan, design, and construct a senior center in Cimarron in Colfax county.

Laws 1999 (1st S.S.), ch. 2, § 42, amends Laws 1998, ch. 7, § 8HH and Laws 1998, ch. 118, § 9CC and CCC to provide that the proceeds may also be expended for acquisition of easements and needed property for water system improvements in Clayton in Union county.

Laws 1999 (1st S.S.), ch. 2, § 43, amends Laws 1995, ch. 222, § 41A and reappropriates the severance tax bond proceeds to the local government division to plan, design and construct a recreational facility in Clayton in Union county.

Laws 1999 (1st S.S.), ch. 2, § 44, amends Laws 1998, ch. 7, § 12C and Laws 1998, ch. 118, § 18I to provide that the severance tax bond proceeds may also be expended to purchase a van for head start and youth activities at pueblo of Cochiti in Sandoval county.

Laws 1999 (1st S.S.), ch. 2, § 45, amends Laws 1998, ch. 7, § 9ZZZZZZ to reappropriate the severance tax bond proceeds to construct a fire station in the Gila-Neblett fire district.

Laws 1999 (1st S.S.), ch. 2, § 46, amends Laws 1996 (1st S.S.), ch. 4, § 5JJJJ to reappropriate the severance tax bond proceeds to renovate the Cibola senior center and construct a parking lot.

Laws 1999 (1st S.S.), ch. 2, § 47, amends Laws 1998, ch. 7, § 50 to reappropriate the severance tax bond proceeds for the dinamation project in Grants in Cibola county.

Laws 1999 (1st S.S.), ch. 2, § 48, amends Laws 1996 (1st S.S.), ch. 4, § 5HHHH to reappropriate the severance tax bond proceeds to renovate and paint the city police department in Grants in Cibola county.

Laws 1999 (1st S.S.), ch. 2, § 49, amends Laws 1994, ch. 148, § 16D to reappropriate the severance tax bond proceeds to the New Mexico office of Indian affairs to purchase and install eqipment and to activate satellite uplinks and downlinks for distance learning and to plan, design and engineer an education facility for the Jicarilla Apache department of education in Dulce in Rio Arriba county and extends the period of time for which the appropriation may be expended through fiscal year 2003.

Laws 1999 (1st S.S.), ch. 2, § 50, amends Laws 1998, ch. 118, § 18T to reappropriate the severance tax bond proceeds for Laguna pueblo in Cibola county to renovate and make repairs to the Laguna rainbow center intermediate care facility for compliance with safety regulations and the requirements of the Americans with Disabilities Act of 1990.

Laws 1999 (1st S.S.), ch. 2, § 51, amends Laws 1994, ch. 148, § 9VVV to reappropriate $200,000 of the severance tax bond proceeds to the state highway and transportation department to make improvements on Trinity avenue in unit 19 in Elephant Butte in Sierra county and to the local government division to purchase and construct or renovate and equip a municipal building for Elephant Butte in Sierra county.

Laws 1999 (1st S.S.), ch. 2, § 52, amends Laws 1998, ch. 7, §§ 55-57 and Laws 1998, ch. 118, § 75 to additionally allow expenditure of the proceeds for the purchase of land in Lovington in Lea county and allows expenditure through fiscal year 2001.

Laws 1999 (1st S.S.), ch. 2, § 53, amends Laws 1998, ch. 118, § 2U to reappropriate the severance tax bond proceeds to the state agency on aging to purchase, install, equip, and furnish a modular building and to construct the needed infrastructure for a senior center in Ojo Encino in McKinley county.

Laws 1999 (1st S.S.), ch. 2, § 54, amends Laws 1998, ch. 118, § 9YY to reappropriate the severance tax bond proceeds to the department of environment to replace and lay water pipeline from the Sacramento mountains to Oro Grande in Otero county.

Laws 1999 (1st S.S.), ch. 2, § 55, amends Laws 1998, ch. 7, § 12D to reappropriate the severance tax bond proceeds to the New Mexico office of Indian affairs to plan, design, and construct wastewater facilities for the Red Rock chapter in McKinley county.

Laws 1999 (1st S.S.), ch. 2, § 56, amends Laws 1998, ch. 7, § 9PPPPto reappropriate the severance tax bond proceeds to the local government division to develop Arroyo de Desportes park and softball fields in Rio Rancho in Sandoval county.

Laws 1999 (1st S.S.), ch. 2, § 57, amends Laws 1994, ch. 148, § 49B(2) and Laws 1995, ch. 218, § 26A(1) to extend the time for expenditure through fiscal year 2001.

Laws 1999 (1st S.S.), ch. 2, § 58, amends Laws 1996 (1st S.S.), ch. 4, § 8EE to provide that the severance tax bond proceeds may be expended to repave and make improvements to a portion of Agua Fria road within the county of Santa Fe.

Laws 1999 (1st S.S.), ch. 2, § 59, amends Laws 1996 (1st S.S.), ch. 4, § 5ZZZ to provide that the severance tax bond proceeds may also be expended to acquire land in Santa Rosa in Guadalupe county.

Laws 1999 (1st S.S.), ch. 2, § 60, amends Laws 1998, ch. 118, § 25G to reappropriate the severance tax bond proceeds for various local projects to divide them equally among the Lea soil and water conservation district, the Curry soil and water conservation district and the Roosevelt soil and water conservation district.

Laws 1999 (1st S.S.), ch. 2, § 61, amends Laws 1998, ch. 7, § 9DDDDDDD to reappropriate the severance tax bond proceeds to plan, design, construct, equip and furnish an east mountain visitors center in Tijeras in Bernalillo county and to extend the time for expenditure through fiscal year 2003.

Laws 1999 (1st S.S.), ch. 2, § 62, amends Laws 1995, ch. 222, § 25K and appropriates the balance of the severance tax bond proceeds to the department of environment to plan, design, construct or purchase improvements to the water or wastewater system in Tijeras in Bernalillo county.

Laws 1999 (1st S.S.), ch. 2, § 63, amends Laws 1998, ch. 118, § 11J and HHHHHHHH to reappropriate $250,000 of the severance tax bond proceeds to the state department of public education for various improvements at schools in Albuquerqe in Bernalillo county.

Laws 1999 (1st S.S.), ch. 2, § 64, amends Laws 1998, ch. 7, § 13DD to reappropriate the severance tax bond proceeds to the local government division of the deaprtment of finance and administration to construct a new facility or purchase an existing facility for

phase 1 of an intergovernmental community center in the New Kimo neighborhood in Albuquerque in Bernalillo county.

Laws 1999 (1st S.S.), ch. 2, § 65, amends Laws 1998, ch. 118, § 22A to reappropriate the severance tax bond proceeds to the governing board of the Albuquerque technical-vocational institute to design, construct, equip, and furnish a work force training center in Bernalillo county.

Laws 1999 (1st S.S.), ch. 2, § 66, amends Laws 1998, ch. 7, § 16 to reappropriate the severance tax bond proceeds to the governing board of the Albuquerque technical-vocational institute to design, construct, equip, and furnish a work force training center in Bernalillo county.

Laws 1999 (1st S.S.), ch. 2, § 67, amends Laws 1996 (1st S.S.), ch. 4, § 31E to reappropriate the severance tax bond proceeds to purchase a van, furnishings and equipment for the Atrisco mealsite program in Bernalillo county and extends the period of time for expenditure through fiscal year 2001.

Laws 1999 (1st S.S.), ch. 2, § 68, amends Laws 1998, ch. 118, § 19F to reappropriate the severance tax bond proceeds for storage units and football equipment at Valley high school in Albuquerque in Bernalillo county.

Laws 1999 (1st S.S.), ch. 2, § 69, amends Laws 1996 (1st S.S.), ch. 4, § 9A to reappropriate the severance tax bond proceeds to renovate or improve the multipurpose building at the Canoncito chapter in Bernalillo county and to extend the time for expenditure through fiscal year 2002.

Laws 1999 (1st S.S.), ch. 2, § 70, declares void the severance tax bond authorization in Laws 1998, ch. 118, § 11LLL and provides that the state board of finance may issue and sell severance tax bonds pursuant to Section 1 of this act in an amount not to exceed $100,000, and the proceeds are appropriated to the local government division of the department of finance and administration for improvements to the river walk recreation center in the city of Carlsbad in Eddy county.

Laws 1999 (1st S.S.), ch. 2, § 71, amends Laws 1998, ch. 118, § 11MMM to reappropriate the severance tax bond proceeds to the local government division for equipment and furnishings at the river walk recreation center in Carlsbad in Eddy county.

Laws 1999 (1st S.S.), ch. 2, § 72, amends Laws 1998, ch. 7, § 9II to reappropriate the severance tax bond proceeds to the state agency on aging to plan, design, construct and equip a community and senior center in Cimarron in Colfax county.

Laws 1999 (1st S.S.), ch. 2, § 73, amends Laws 1998, ch. 7, § 8M to reappropriate the severance tax bond proceeds for engineering for lagoon repair at the Clovis wastewater treatment plant in Curry county.

Laws 1999 (1st S.S.), ch. 2, § 74, amends Laws 1998, ch. 118, § 19SS to provide that the severance tax bond proceeds may also be expended for classroom areas at La Casita elementary school in Clovis in Curry County.

Laws 1999 (1st S.S.), ch. 2, § 75, amends Laws 1998, ch. 118, § 17I to provide that the severance tax bond proceeds may also be expended to improve Los Alturas road in Dona Ana county.

Laws 1999 (1st S.S.), ch. 2, § 76, amends Laws 1996 (1st S.S.), ch. 4, § 21F to reappropriate the balance of the severance tax bond proceeds to the local government division to equip a multipurpose field in Eldorado in Santa Fe county and to extend the time for expenditure through fiscal year 2001.

Laws 1999 (1st S.S.), ch. 2, § 77, amends Laws 1998, ch. 118, § 9HHH to reappropriate the severance tax bond proceeds to the department of environment for the drilling and equipping of drinking water wells on the west side of the city of Espanola in Rio Arriba county.

Laws 1999 (1st S.S.), ch. 2, § 78, amends Laws 1998, ch. 118, § 10A to authorize the balance of the severance tax bond proceeds for other infrastructure improvements at the New Mexico state fairgrounds in Bernalillo county.

Laws 1999 (1st S.S.), ch. 2, § 79, amends Laws 1998, ch. 7, § 10H to additionally allow expenditure of the severance tax bond proceeds to make improvements to existing facilities at the African-American Village at the state fair as well as for the other purposes specified in that section.

Laws 1999 (1st S.S.), ch. 2, § 80, amends Laws 1998, ch. 7, § 2G to reappropriate the severance tax bond proceeds to the state department of public education for school building improvements in the Floyd school district in Roosevelt county.

Laws 1999 (1st S.S.), ch. 2, § 81, amends Laws 1998, ch. 7, § 7A to reappropriate the severance tax bond proceeds to the local government division of the department of finance and administration for acequias near Hernandez in Rio Arriba county.

Laws 1999 (1st S.S.), ch. 2, § 82, amends Laws 1998, ch. 118, § 18D to reappropriate the severance tax bond proceeds to plan and design a youth center for the Jicarilla Apache tribe and to extend the time for expenditure through fiscal year 2003.

Laws 1999 (1st S.S.), ch. 2, § 83, amends Laws 1998, ch. 7, § 9CC to reappropriate the severance tax bond proceeds to roof or make other improvements to the city hall in the village of Magdalena in Socorro county.

Laws 1999 (1st S.S.), ch. 2, § 84, amends Laws 1998, ch. 81, § 3 to extend the period of time for expenditure through fiscal year 2001.

Laws 1999 (1st S.S.), ch. 2, § 85, amends Laws 1995, ch. 222, § 6 to extend the time for expenditure through fiscal year 2001.

Laws 1999 (1st S.S.), ch. 2, § 86, amends Laws 1995, ch. 222, § 9C to authorize the balance of the severance tax bond proceeds for mechanical, electrical and security upgrades at the penitentiary of New Mexico complex and to extend the time for expenditure through fiscal year 2003.

Laws 1999 (1st S.S.), ch. 2, § 87, amends Laws 1998, ch. 118, § 19CCCCC to reappropriate the severance tax bond proceeds for sodding the outfield or other improvements at Ruidoso municipal schools in Lincoln county.

Laws 1999 (1st S.S.), ch. 2, § 88, amends Laws 1998, ch. 7, § 8U to reappropriate the severance tax bond proceeds for water line extensions in Ruidoso Downs in Lincoln county.

Laws 1999 (1st S.S.), ch. 2, § 89, amends Laws 1995, ch. 218, § 19 to reappropriate the severance tax bond proceeds to additionally allow expenditure to plan or design an alcohol rehabilitation and detention center to serve all Indian pueblos in Sandoval county and to extend the time for expenditure through fiscal year 2003.

Laws 1999 (1st S.S.), ch. 2, § 90, amends Laws 1998, ch. 118, § 18N to reappropriate the severance tax bond proceeds to the New Mexico office of Indian affairs to plan, design and construct new buildings in San Ildefonso pueblo in Santa Fe county.

Laws 1999 (1st S.S.), ch. 2, § 91, amends Laws 1998, ch. 7, § 9KKK to reappropriate the severance tax bond proceeds to plan, design, construct or equip a detoxification center to be built near the law enforcement complex in Santa Fe county.

Laws 1999 (1st S.S.), ch. 2, § 92, amends Laws 1998, ch. 148, § 9NNNNN to reappropriate the severance tax bond proceeds to continue construction of the Santa Fe river channel and to improve the parkway between Saint Francis drive and Camino Alire in the city of Santa Fe in Santa Fe county.

Laws 1999 (1st S.S.), ch. 2, § 93, amends Laws 1996 (1st S.S.), ch. 4, § 5 to reappropriate the severance tax bond proceeds to acquire land and construct a public safety building in Santa Rosa in Guadalupe county and extends the time for expenditure through fiscal year 2002.

Laws 1999 (1st S.S.), ch. 2, § 94, amends Laws 1996, ch. 14, § 40 to reappropriate the balance of the severance tax bond proceeds to complete the police complex in Tatum in Lea county.

Laws 1999 (1st S.S.), ch. 2, § 95, amends Laws 1995, ch. 222, § 28E to reappropriate the severance tax bond proceeds to plan, design, develop the site for, construct, equip

or furnish a multipurpose building in Thoreau in McKinley county and extends the time for expenditure through fiscal year 2002.

Laws 1999 (1st S.S.), ch. 2, § 96, voids the authorization for severance tax bonds pursuant to Laws 1998, ch. 118, § 10KKKKK, and provides that the state board of finance may issue and sell severance tax bonds in an amount up to $125,000 with the proceeds appropriated to the local government division of the department of finance and administration to plan, design, construct and equip sheriff substations in Valencia county.

Laws 1999 (1st S.S.), ch. 2, § 97, amends Laws 1996 (1st S.S.), ch. 4, § 7A to reappropriate the severance tax bond proceeds to plan, design and construct a child visitation facility for women at the penitentiary of New Mexico south in Santa Fe county.

Laws 1999 (1st S.S.), ch. 2, § 98, amends Laws 1998, ch. 118, § 11XXXXX to reappropriate the severance tax bond proceeds to design and construct improvements to Grant middle school park, which will serve as a community center in Albuquerque in Bernalillo county.

Laws 1999 (1st S.S.), ch. 2, § 99, amends Laws 1998, ch. 118, § 2O to reappropriate balance of the severance tax bond proceeds to expand the garage that houses the Dora senior center vehicles in Roosevelt county.

Laws 1999 (1st S.S.), ch. 2, § 100, amends Laws 1998, ch. 118, § 19AAAA to reappropriate the balance of the severance tax bond proceeds to remodel the Alta Vista campus in the Questa independent school district in Taos county.

Laws 1999 (1st S.S.), ch. 2, § 101, amends Laws 1998, ch. 118, § 14A to reappropriate the balance of the severance tax bond proceeds to plan, design and construct a child visitation facility for women at the penitentiary of New Mexico south in Santa Fe county.

Authorized Supplemental Severance Tax Bonds

The New Mexico Legislature has, since 1999, authorized issuance of the following supplemental severance tax bonds:

Laws 1999 (1st S.S.), ch. 6, § 19A(1), $100,000,000 for public school critical capital outlay projects pursuant to the Public School Capital Outlay Act.

Laws 1999 (1st S.S.), ch. 6, § 19A(2), $25,000,000 for infrastructure renovation and expansion of the state's public post-secondary educational institutions or other educational institutions confirmed in N.M. Const., art. XII, § 11 pursuant to a plan developed and approved by the commission on higher education to fund the highest priority significant needs identified by the commission.

ARTICLE 28
OIL AND GAS ACCOUNTING

(Repealed by Laws 1985, ch. 65, § 46.)

7-28-1 to 7-28-13. Repealed.

ANNOTATIONS

Repeals. - Laws 1985, ch. 65, § 46 repeals 7-28-1 to 7-28-13 NMSA 1978, relating to the Oil and Gas Accounting Commission Act, effective July 1, 1985. For provisions of former sections, see 1983 Replacement Pamphlet.

ARTICLE 29
OIL AND GAS SEVERANCE TAX

7-29-1. Title.

Chapter 7, Article 29 NMSA 1978 may be cited as the "Oil and Gas Severance Tax Act".

History: 1953 Comp., § 72-19-1, enacted by Laws 1959, ch. 52, § 1; 1985, ch. 65, § 27.

ANNOTATIONS

Cross references. - For intergovernmental tax credits, see 7-29C-1 NMSA 1978.

Severance tax is excise, not property, tax. - A tax upon oil and gas severed from soil under Laws 1933, ch. 72, was an excise tax and not a property tax on tangible property not in proportion to value thereof, and was not unconstitutional. Flynn, Welch & Yates, Inc. v. State Tax Comm'n, 38 N.M. 131, 28 P.2d 889 (1934).

Law reviews. - For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

For note, "Tribal Severance Taxes - Outside the Purview of the Commerce Clause," see 21 Nat. Resources J. 405 (1981).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 219, 614.

Oil and gas rights or privileges as independent subject of taxation, or as tangible property for purposes of taxation, 16 A.L.R. 513.

Validity of privilege or occupation tax on business of severing natural resources from soil, 32 A.L.R. 827.

84 C.J.S. Taxation §§ 161, 170.

7-29-2. Definitions.

As used in the Oil and Gas Severance Tax Act [this article]:

A. "commission", "department", "division" or "oil and gas accounting division" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "production unit" means a unit of property designated by the department from which products of common ownership are severed;

C. "severance" means the taking from the soil of any product in any manner whatsoever;

D. "value" means the actual price received for products at the production unit, except as otherwise provided in the Oil and Gas Severance Tax Act;

E. "product" or "products" means oil, natural gas or liquid hydrocarbon, individually or any combination thereof, or carbon dioxide;

F. "operator" means any person:

(1) engaged in the severance of products from a production unit; or

(2) owning an interest in any product at the time of severance who receives a portion or all of such product for his interest;

G. "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 pursuant to the Natural Gas and Crude Oil Production Incentive Act to have produced in the preceding calendar year:

(1) if a crude oil producing property, an average daily production of less than ten barrels of oil per eligible well per day;

(2) if a natural gas producing property, an average daily production of less than sixty thousand cubic feet of natural gas per eligible well per day; or

(3) if a property with wells that produce both crude oil and natural gas, an average daily production of less than ten barrels of oil per eligible well per day, as determined by converting the volume of natural gas produced by the well to barrels of oil by using a ratio of six thousand cubic feet to one barrel of oil;

Q. "average annual taxable value" means as applicable:

(1) the average of the taxable value per one thousand cubic feet, determined pursuant to Section 7-31-5 NMSA 1978, of all natural gas produced in New Mexico for the specified calendar year as determined by the department; or

(2) the average of the taxable value per barrel, determined pursuant to Section 7-31-5 NMSA 1978, of all oil produced in New Mexico for the specified calendar year as determined by the department; and

R. "tax" means the oil and gas severance tax.

History: 1953 Comp., § 72-29-2, enacted by Laws 1959, ch. 52, § 2; 1977, ch. 249, § 53; 1980, ch. 97, § 1; 1986, ch. 20, § 98; 1987, ch. 315, § 2; 1992, ch. 38, § 6; 1995, ch. 15, § 7; 1999, ch. 7, § 1; 1999, ch. 256, § 1.

ANNOTATIONS

The 1992 amendment, effective March 6, 1992, added Subsection G and redesignated the subsequent subsections accordingly; in Subsection K, substituted "energy, minerals and natural resources department" for "energy and minerals resources department"; added Subsections L and M; and made stylistic changes.

The 1995 amendment, effective June 16, 1995, added Subsections N through P.

1999 amendments. - Laws 1999, ch. 7, § 1, effective June 18, 1999, substituting "in any period of twenty-four consecutive months beginning on or after January 1, 1993" for "between January 1, 1993 and December 31, 1994" in Subsection N, was approved on March 5, 1999. However, Laws 1999, ch. 256, § 1, effective June 18, 1999, adding Subsections P and Q, and redesignating former Subsection P as Subsection R, was approved on April 7, 1999. The section is set out as amended by Laws 1999, ch. 256, § 1. See 12-1-8 NMSA 1978.

Law reviews. - For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M.L. Rev. 69 (1976-77).

7-29-3. Repealed.

ANNOTATIONS

Repeals. - Laws 1985, ch. 65, § 46 repeals 7-29-3 NMSA 1978, as enacted by Laws 1959, ch. 52, § 3, relating to the purpose and declaration of intention of the Oil and Gas Severance Tax Act, effective July 1, 1985. For provisions of former section, see 1983 Replacement Pamphlet.

7-29-4. Oil and gas severance tax imposed; collection; interest owner's liability to state; indian liability.

A. There is imposed and shall be collected by the department a tax on all products that are severed and sold, 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, 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.

ANNOTATIONS

Cross references. - For the Natural Gas and Crude Oil Production Incentive Act, see Chapter 7, Article 29B NMSA 1978.

The 1989 amendment, effective June 16, 1989, in Subsection A(1) substituted "taxable value determined under Section 7-29-4.1 NMSA 1978" for "value" in Subparagraph (a) and substituted all of the language of Subparagraph (b) beginning with "taxable" for "value of products"; and added Subsection A(3).

The 1992 amendment, effective March 6, 1992, in Subsection A, inserted "except as provided in Paragraph (3) of this subsection" in Paragraph (2), added Paragraph (3), made a related stylistic change, and redesignated former Paragraph (3) as Paragraph (4); and added Subsection C.

The 1995 amendment, effective June 16, 1995, in Subsection A, added the exception at the end of the first sentence, rewrote Paragraph (1), substituted "Paragraphs (3) and (5)" for "Paragraph (3)" in Paragraph (2), added Paragraphs (4) and (5), and redesignated former Paragraph (4) as Paragraph (6); added subsection B; and redesignated former Subsections B and C as Subsections C and D.

The 1999 amendment, effective June 18, 1999, substituted "pursuant to" for "under" throughout the section; substituted "Paragraphs (4), (6) and (7)" for "Paragraph (4)" in Subsection A(1); inserted "(8) and (9)" in Subsection A(2); deleted "in excess of the production projection" preceding "certified" and substituted "two and forty-five

hundredths percent" for "one and seven-eighths percent" in Subsections A(4) and A(5); and added Subsections A(6) through A(9), redesignating former Subsection A(6) as A(10).

Tribe's power to impose severance tax not limited by federal government. - The federal interest in interstate commerce, manifested in traditional commerce clause analyses, does not limit the Jicarilla Apache tribe's power to impose an oil and gas severance tax to be measured by production of these products within the reservation. Merrion v. Jicarilla Apache Tribe, 617 F.2d 537 (10th Cir. 1980), aff'd, 455 U.S. 130, 102 S. Ct. 894, 71 L. Ed. 2d 21 (1982), aff'd, 455 U.S. 130, 102 S. Ct. 894, 71 L. Ed. 2d 21 (1982).

Non-Indian producers operating on reservations. - Oil and gas taxes imposed by the state against a non-Indian producer whose operations are located on an Indian Reservation do not constitute an impermissible burden on interstate commerce. Cotton Petroleum v. State, 106 N.M. 517, 745 P.2d 1170 (Ct. App. 1987), aff'd, 490 U.S. 163, 109 S. Ct. 1698, 104 L. Ed. 2d 209 (1989).

Law reviews. - For article, "Nonneutral Features of Energy Taxation," see 20 Nat. Resources J. 853 (1980).

For note, "Court Picks New Test in Cotton Petroleum," see 30 Nat. Resources J. 919 (1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 739 to 752.

53 C.J.S. Licenses §§ 65, 70; 84 C.J.S. Taxation §§ 640 to 643.

7-29-4.1. Taxable value; method of determining.

To determine the taxable value of oil and of other liquid hydrocarbons removed from natural gas at or near the wellhead, of carbon dioxide, of natural gas from new production natural gas wells and of natural gas severed after June 30, 1990, there shall be deducted from the value of products:

A. royalties paid or due the United States or the state of New Mexico;

B. royalties paid or due any Indian tribe, Indian pueblo or Indian that is a ward of the United States of America; and

C. the reasonable expense of trucking any product from the production unit to the first place of market.

History: 1978 Comp., § 7-29-4.1, enacted by Laws 1980, ch. 62, § 6; 1989, ch. 130, § 3.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, inserted "of carbon dioxide, of natural gas from new production natural gas wells and of natural gas severed after June 30, 1990" in the undesignated introductory paragraph.

7-29-4.2. Value may be determined by department; standard.

The department may determine the value of products severed from a production unit when:

A. the operator and purchaser are affiliated persons;

B. the sale and purchase of products is not an arm's length transaction; or when

C. products are severed and removed from a production unit and a value as defined in the Oil and Gas Severance Tax Act [this article] is not established for such products.

The value determined by the department shall be commensurate with the actual price received for products of like quality, character and use which are severed in the same field or area. If there are no sales of products of like quality, character and use severed in the same field or area, then the department shall establish a reasonable value.

History: 1978 Comp., § 7-29-4.2, enacted by Laws 1980, ch. 62, § 7; 1989, ch. 130, § 4.

ANNOTATIONS

Cross references. - For payments of royalties in oil, see 19-10-64 NMSA 1978 et seq.

The 1989 amendment, effective June 16, 1989, substituted "department" for "division" in the catchline, substituted "department" for "oil and gas accounting division" throughout the section, and made minor stylistic changes throughout the section.

7-29-4.3. Price increase subject to approval of agency of United States of America, state of New Mexico or court; refund.

When an increase in the value of any product is subject to the approval of any agency of the United States of America or the state of New Mexico or any court, the increased value shall be subject to this tax. In the event the increase in value is disapproved, either in whole or in part, then the amount of tax which has been paid on the disapproved part of the value shall be considered excess tax. Any person who has paid any such excess tax may apply for a refund of that excess tax in accordance with the provisions of Section 7-1-26 NMSA 1978.

History: 1978 Comp., § 7-29-4.3, enacted by Laws 1980, ch. 62, § 8; 1985, ch. 65, § 28.

7-29-4.4, 7-29-4.5. Repealed.

ANNOTATIONS

Repeals. - Laws 1989, ch. 130, § 14 repeals 7-29-4.4 and 7-29-4.5 NMSA 1978, as enacted by Laws 1980, ch. 97, §§ 2 and 3, relating to collection of carbon dioxide severance tax and method of determining taxable value on carbon dioxide, effective June 16, 1989. For provisions of former sections, see 1986 Replacement Pamphlet.

7-29-4.6. Repealed.

ANNOTATIONS

Repeals. - Laws 1995, ch. 70, § 23 repeals 7-29-4.6 NMSA 1978, as amended by Laws 1985, ch. 65, § 29, relating to a temporary tax credit for persons liable for payment of taxes imposed by 7-26-9 NMSA 1978 or 7-29-4 NMSA, effective July 1, 1995. For provisions of former section, see 1993 Replacement Pamphlet.

7-29-4.7. Repealed.

ANNOTATIONS

Repeals. - Laws 1989, ch. 130, § 14 repeals 7-29-4.7 NMSA 1978, as enacted by Laws 1980, ch. 62, § 13, relating to surtax applicability, effective June 16, 1989. For provisions of former section, see 1986 Replacement Pamphlet.

7-29-5. Products on which tax has been levied; regulation by commission.

This tax shall not be levied more than once on the same product. Reporting of products on which this tax has been paid shall be subject to the regulation of the commission.

History: 1953 Comp., § 72-19-8, enacted by Laws 1959, ch. 52, § 8.

ANNOTATIONS

Meaning of "commission". - See 7-29-2A NMSA 1978.

7-29-6. Operator or purchaser to withhold interest owner's tax; commission may require withholding of tax; tax withheld to be remitted to the state; operator or purchaser to be reimbursed.

Any operator making a monetary payment to an interest owner for his portion of the value of products from a production unit shall withhold from such payment the amount of tax due from the interest owner.

Any purchaser who, by express or implied agreement with the operator, makes a monetary payment to an interest owner for his portion of the value of products from a production unit, shall withhold from such payment the amount of tax due from the interest owner.

The commission may require any purchaser making a monetary payment to an interest owner for his portion of the value of products from a production unit to withhold from such payment the amount of tax due from the interest owner.

Any operator or purchaser who pays any tax due from an interest owner shall be entitled to reimbursement from the interest owner for the tax so paid and may take credit for such amount from any monetary payment to the interest owner for the value of products.

History: 1953 Comp., § 72-19-9, enacted by Laws 1959, ch. 52, § 9.

ANNOTATIONS

Meaning of "commission". - See 7-29-2A NMSA 1978.

7-29-7. Operator's report; tax remittance; additional information.

Each operator shall, in the form and manner required by the division, make a return to the division showing the total value, volume and kind of products sold from each production unit for each calendar month. All taxes due, or to be remitted, by the operator shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. Any additional report or information the division may deem necessary for the proper administration of the Oil and Gas Severance Tax Act [Chapter 7, Article 29 NMSA 1978] may be required.

History: 1953 Comp., § 72-19-10, enacted by Laws 1959, ch. 52, § 10; 1986, ch. 5, § 2.

7-29-8. Purchaser's report; tax remittance; additional information.

Each purchaser shall in the form and manner required by the division make a return to the division showing the total value, volume and kind of products purchased by him from each production unit for each calendar month. All taxes due, or to be remitted, by the purchaser shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. Any additional reports or information the division may deem necessary for the proper

administration of the Oil and Gas Severance Tax Act [Chapter 7, Article 29 NMSA 1978] may be required.

History: 1953 Comp., § 72-19-11, enacted by Laws 1959, ch. 52, § 11; 1986, ch. 5, § 3.

ANNOTATIONS

Meaning of "division". - See 7-29-2A NMSA 1978.

7-29-9 to 7-29-22. Repealed.

ANNOTATIONS

Repeals. - Laws 1985, ch. 65, § 46 repeals 7-29-9 to 7-29-22 NMSA 1978, relating to the fund and remedies under the Oil and Gas Severance Tax Act, effective July 1, 1985. For provisions of former sections, see 1983 Replacement Pamphlet.

7-29-23. Advance payment required.

A. Any person required to make payment of tax pursuant to Section 7-29-7 or 7-29-8 NMSA 1978 shall make the advance payment required by this section.

B. For the purposes of this section:

(1) "advance payment" means the payment required to be made by this section in addition to any oil and gas severance tax, penalty or interest due; and

(2) "average tax" means the aggregate amount of tax, net of any refunds or credits, paid by a person during the twelve-month period ending March 31 pursuant to the Oil and Gas Severance Tax Act [Chapter 7, Article 29 NMSA 1978] divided by the number of months during that period for which the person made payment.

C. Each year, prior to July 1, each person required to pay tax pursuant to the Oil and Gas Severance Tax Act shall compute the average tax for the period ending March 31 of that year. The average tax calculated for a year shall be used during the twelve-month period beginning with July of that year and ending with June of the following year as the basis for making the advance payments required by Subsection D of this section.

D. Every month, beginning with July 1991, every person required to pay tax in a month pursuant to the Oil and Gas Severance Tax Act shall pay, in addition to any amount of tax, interest or penalty due, an advance payment in an amount equal to the applicable average tax, except:

(1) if the person is making a final return under the Oil and Gas Severance Tax Act, no advance payment pursuant to this subsection is due for that return; and

(2) as provided in Subsection F of this section.

E. Every month, beginning with tax payments due in August 1991, every person required to pay tax pursuant to the Oil and Gas Severance Tax Act may claim a credit equal to the amount of advance payment made in the previous month, except as provided in Subsection F of this section.

F. If, in any month, a person is not required to pay tax pursuant to the Oil and Gas Severance Tax Act, that person is not required to pay the advance payment and may not claim a credit pursuant to Subsection E of this section provided that, in any succeeding month when the person has liability under the Oil and Gas Severance Tax Act, the person may claim a credit for any advance payment made and not credited.

G. In the event that the date by which a person is required to pay the tax pursuant to the Oil and Gas Severance Tax Act is accelerated to a date earlier than the twenty-fifth day of the second month following the month of production, the advance payment provision contained in this section is null and void and any money held as advance payments shall be credited to the taxpayers' accounts.

History: Laws 1991, ch. 9, § 36.

ARTICLE 29A
ENHANCED OIL RECOVERY

7-29A-1. Short title.

Chapter 7, Article 29A NMSA 1978 may be cited as the "Enhanced Oil Recovery Act".

History: Laws 1992, ch. 38, § 1; 1993, ch. 30, § 26.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "Chapter 7, Article 29A NMSA 1978" for "Sections 1 through 5 of this act".

7-29A-2. Definitions.

As used in the Enhanced Oil Recovery Act [this article]:

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 [Chapter 7, Article 29A NMSA 1978].

History: Laws 1992, ch. 38, § 3.

ANNOTATIONS

"Effective date of the Enhanced Oil Recovery Act". - The phrase "effective date of the Enhanced Oil Recovery Act", referred to in Subsection A, means March 6, 1992, the effective date of Laws 1992, ch. 38.

7-29A-4. Notification to the secretary of taxation and revenue; duties of the secretary.

A. The division shall immediately notify the secretary of taxation and revenue upon:

(1) certifying that a positive production response has occurred for an enhanced oil recovery project, in which case the notice shall contain the date certification was made and the date positive production response occurred;

(2) receiving notification of termination of an enhanced recovery project, in which case the notice shall contain the date of termination; and

(3) adopting and promulgating rules and regulations pursuant to the provisions of the Enhanced Oil Recovery Act [this article].

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 [this article].

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 of Section 7-1-26 NMSA 1978 any such refund granted shall be made in the form of a credit against future oil and gas severance tax liabilities.

History: Laws 1992, ch. 38, § 5.

ANNOTATIONS

Compiler's notes. - The reference to Subsection E of 7-1-26 NMSA 1978 in Subsection B should now be a reference to Subsection F in light of the 1997 amendment to 7-1-26 NMSA 1978.

ARTICLE 29B
NATURAL GAS AND CRUDE OIL PRODUCTION INCENTIVES

7-29B-1. Short title.

Sections 1 through 6 [7-29B-1 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 [7-29B-1 to 7-29B-6 NMSA 1978]:

A. "average annual taxable value" means the average of the taxable value per barrel, determined pursuant to Section 7-31-5 NMSA 1978, of all oil produced in New Mexico for the specified calendar year as determined by the department;

B. "average daily production" means, for any crude oil or natural gas property assigned a single production number by the department, the number derived by dividing the total volume of crude oil or natural gas production from the property reported to the division during a calendar year by the sum of the number of days each eligible well within the property produced or injected during that calendar year;

C. "department" means the taxation and revenue department;

D. "division" means the oil conservation division of the energy, minerals and natural resources department;

E. "eligible well" means a crude oil or natural gas well that produces or an injection well that injects and is integral to production for any period of time during the preceding calendar year;

F. "natural gas" means any combustible vapor composed chiefly of hydrocarbons occurring naturally;

G. "operator" means the person responsible for the actual physical operation of a natural gas or oil well;

H. "person" means any individual or other legal entity, including any group or combination of individuals or other legal entities acting as a unit;

I. "production restoration incentive tax exemption" means the tax exemption set forth in Subsection B of Section 7-29-4 NMSA 1978 for natural gas or oil produced from a production restoration project;

J. "production restoration project" means the use of any process for returning to production a natural gas or oil well that had thirty days or less of production in any period of twenty-four consecutive months beginning on or after January 1, 1993 as approved and certified by the division;

K. "severance" means the taking from the soil of any product in any manner whatsoever;

L. "stripper well property" means a crude oil or natural gas producing property that is assigned a single production unit number by the department and:

(1) if a crude oil producing property, produced an average daily production of less than ten barrels of oil per eligible well per day for the preceding calendar year;

(2) if a natural gas producing property, produced an average daily production of less than sixty thousand cubic feet of natural gas per eligible well per day during the preceding calendar year; or

(3) if a property with wells that produce both crude oil and natural gas, produced an average daily production of less than ten barrels of oil per eligible well per day for the preceding calendar year, as determined by converting the volume of natural gas produced by the well to barrels of oil by using a ratio of six thousand cubic feet to one barrel of oil;

M. "stripper well incentive tax rates" means the tax rates set forth in Paragraphs (6) through (9) of Subsection A of Section 7-29-4 NMSA 1978 and in Paragraphs (4) through (7) of Subsection A of Section 7-31-4 NMSA 1978 for natural gas or oil produced from a well within a stripper well property;

N. "well workover incentive tax rate" means the tax rate set forth in Paragraphs (4) and (5) of Subsection A of Section 7-29-4 NMSA 1978 on the natural gas or oil produced from a well workover project; and

O. "well workover project" means any procedure undertaken by the operator of a natural gas or oil well that is intended to increase the production from the well and that has been approved and certified by the division.

History: Laws 1995, ch. 15, § 2; 1999, ch. 7, § 2; 1999, ch. 256, § 3.

ANNOTATIONS

1999 amendments. - Laws 1999, ch. 7, § 2, effective June 18, 1999, substituting "in any period of twenty-four consecutive months beginning on or after January 1, 1993" for "between January 1, 1993 and December 31, 1994" in Subsection H, was approved on March 5, 1999. However, Laws 1999, ch. 256, § 3, effective June 18, 1999, adding Subsections A, B, E, L, and M, and redesignating the remaining subsections accordingly; deleting former Subsection F which read: "'production projection' means the estimate of the productive capacity of a natural gas or oil well that is certified by the division pursuant to the provisions of the Natural Gas and Crude Oil Production Incentive Act as the future rate of production from the well prior to the operator of the well performing a well workover project on the well"; and deleting "in excess of the production projection" following "produced" in Subsection N, was approved on April 7, 1999. The section is set out as amended by Laws 1999, ch. 256, § 3. See 12-1-8 NMSA 1978.

7-29B-3. Approval of production restoration projects, well workover projects and stripper well properties.

A. A natural gas or oil well shall be approved by the division as a production restoration project if:

(1) the operator of the well makes application to the division in accordance with the provisions of the Natural Gas and Crude Oil Production Incentive Act [7-29B-1 to 7-29B-6 NMSA 1978] and rules adopted pursuant to that act for approval of a production restoration project and the application is made within twelve months of the completion of the production restoration project; and

(2) the division records show that the well had thirty days or less of production in any period of twenty-four consecutive months beginning on or after January 1, 1993.

B. A natural gas or oil well shall be approved by the division as a well workover project if:

(1) the operator of the well makes application to the division in accordance with the provisions of the Natural Gas and Crude Oil Production Incentive Act and rules adopted pursuant to that act for approval of a well workover project;

(2) the division determines that the procedure performed by the operator of the well is a procedure to increase the production from the well, but is not routine maintenance performed by a prudent operator to maintain the well in operation. Such procedures may include, but are not limited to:

(a) re-entry into the well to drill deeper, to sidetrack to a different location or to recomplete for production;

(b) recompletion by reperforation of a zone from which natural gas or oil has been produced or by perforation of a different zone;

(c) repair or replacement of faulty or damaged casing or related downhole equipment;

(d) fracturing, acidizing or installing compression equipment; or

(e) squeezing, cementing or installing equipment necessary for removal of excessive water, brine or condensate from the well bore in order to establish, continue or increase production from the well; and

(3) the operator of the well submits to the division evidence of a positive production increase over the production rate of the well prior to the workover. The operator must submit a production curve or tabulation made up of at least twelve months' production prior to the workover and at least three months' production following the workover that reflects a positive production increase from the workover. The production curve or tabulation must be certified by the operator as that of the well on which a workover was performed.

C. A natural gas or crude oil producing property shall be approved and certified by the division as a stripper well property if the division records show that the property is assigned a single production unit number by the department and:

(1) if a crude oil producing property, produced an average daily production of less than ten barrels of oil per eligible well per day for the preceding calendar year;

(2) if a natural gas producing property, produced an average daily production of less than sixty thousand cubic feet of natural gas per eligible well per day during the preceding calendar year; or

(3) if a property with wells that produce both crude oil and natural gas, produced an average daily production of less than ten barrels of oil per eligible well per day for the preceding calendar year, as determined by converting the volume of natural gas produced by the well to barrels of oil by using a ratio of six thousand cubic feet to one barrel of oil.

History: Laws 1995, ch. 15, § 3; 1999, ch. 7, § 3; 1999, ch. 256, § 4.

ANNOTATIONS

1999 amendments. - Laws 1999, ch. 7, § 3, effective June 18, 1999, adding the language beginning "and the application" to the end of Paragraph A(1), and substituting "in any period of twenty-four consecutive months beginning on or after January 1, 1993" for "between January 1, 1993 and December 31, 1994" in Paragraph A(2), was approved on March 5, 1999. However, Laws 1999, ch. 256, § 3, effective June 18, 1999, deleting "and" preceding "well" and adding "and stripper well properties" in the section heading; deleting "and regulations" preceding "adopted" in Subsections A(1) and B(1); substituting "performed" for "proposed to be undertaken", deleting "intended" following "procedure" and "that would be" following "performed" in Subsection B(2); rewriting Subsection B(3) which read: "the operator of the well submits to the division an estimate of the productive capacity of the well based on at least twelve months of established production, and the division, based on its verification of that estimate, determines the future rate of production from the well prior to the operator of the well performing the well workover project on the well and certifies that as the production projection for the project", and adding Subsection C, was approved on April 7, 1999. The section is set out as amended by Laws 1999, ch. 256, § 3. See 12-1-8 NMSA 1978.

7-29B-4. Application procedures; certification of approval; rules; administration.

A. The operator of a proposed production restoration project or well workover project shall apply to the division for approval of a production restoration project or a well workover project in the form and manner prescribed by the division and shall provide any relevant material and information the division requires for that approval.

B. Upon a determination that the project complies with the provisions of the Natural Gas and Crude Oil Production Incentive Act [7-29B-1 to 7-29B-6 NMSA 1978] and rules adopted pursuant to that act, the division shall approve the application and shall issue a certification of approval to the operator and designate the natural gas or oil well as a production restoration project or well workover project, as applicable.

C. In addition to the powers enumerated in Section 70-2-12 NMSA 1978, the division shall adopt, promulgate and enforce rules to carry out the provisions of the Natural Gas and Crude Oil Production Incentive Act.

D. The division shall consider and approve applications for approval of a production restoration project or well workover project without holding hearings on the applications. If the division denies approval of an application pursuant to such a process, the division, upon the request of the applicant, shall set a hearing of the application before an examiner appointed by the division to conduct the hearing. The hearing shall be conducted in accordance with the provisions of the Oil and Gas Act [Chapter 70, Article 2 NMSA 1978] for such hearings.

History: Laws 1995, ch. 15, § 4; 1999, ch. 256, § 5.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, deleted "and regulations" following "rules" in the section heading and throughout the section; deleted former Subsection C which read: "At the time of issuing a certification of approval to an operator of a natural gas or oil well for a well workover project, the division shall also certify the production projection for that project", and redesignated the remaining subsections accordingly; and deleted "Sections 1 through 5 of" following "provisions of" in Subsection C.

7-29B-5. Notice to secretary of taxation and revenue.

The division shall notify immediately the secretary of taxation and revenue upon:

A. adoption of rules pursuant to the provisions of the Natural Gas and Crude Oil Production Incentive Act [7-29B-1 to 7-29B-6 NMSA 1978];

B. certification of the date that production has been restored on a production restoration project;

C. certification of the date that a well workover project has been completed; and

D. certification of the stripper well properties for the fiscal year.

History: Laws 1995, ch. 15, § 5; 1999, ch. 256, § 6.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, deleted "and regulations" following "rules" in Subsection A, and added Subsection D.

7-29B-6. Qualification for production restoration incentive tax exemption and well workover and stripper well property incentive tax rate; secretary of taxation and revenue approval; refund.

A. The person responsible for paying the oil and gas severance tax on natural gas or oil produced from a production restoration project shall qualify to receive a ten-year production restoration incentive tax exemption upon:

(1) application to the department in the form and manner prescribed by the department for approval for the ten-year production restoration incentive tax exemption;

(2) submission of the certification of approval from the division and designation of the natural gas or oil well as a production restoration project; and

(3) submission of any other relevant material that the secretary of taxation and revenue deems necessary to administer the applicable provisions of the Natural Gas and Crude Oil Production Incentive Act [7-29B-1 to 7-29B-6 NMSA 1978].

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 of Section 7-1-26 NMSA 1978, any such refund granted shall be made in the form of a credit against any future oil and gas severance tax liabilities incurred by the taxpayer.

F. Well workover projects certified prior to July 1, 1999 shall be deemed to be approved and certified in accordance with the provisions of this 1999 act and natural gas or oil produced from those projects shall be eligible for the well workover incentive tax rate effective beginning July 1, 1999.

G. The secretary of taxation and revenue may adopt and promulgate rules to enforce the provisions of this section.

History: Laws 1995, ch. 15, § 6; 1999, ch. 256, § 7.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, inserted "and stripper well property" in the section heading; inserted "all' preceding "the natural", substituted "by" for "in excess of the production projection for" in Subsection B; deleted "in excess of the production projection" following "produced" in Subsections B(1) and D; deleted "and of the production projection for the well workover project" following "project" in Subsection B(2); added Subsections C and F, and redesignated the remaining subsections accordingly; added the third sentence of Subsection D; inserted "credit against current tax liability or for" in the first sentence of Subsection E; and deleted "and regulations" following "rules" in Subsection G.

Compiler's notes. - The reference to Subsection E of 7-1-26 NMSA 1978 in Subsection D should now be a reference to Subsection F in light of the 1997 amendment to 7-1-26 NMSA 1978.

ARTICLE 29C
INTERGOVERNMENTAL TAX CREDITS

7-29C-1. Intergovernmental tax credits.

A. Any person who is liable for the payment of the oil and gas severance tax, the oil and gas conservation tax, the oil and gas emergency school tax or the oil and gas ad valorem production tax imposed on products severed from Indian tribal land or imposed on the privilege of severing products from Indian tribal land shall be entitled to a credit to be computed under this section and to be deducted from the payment of the indicated taxes with respect to products from qualifying wells. The credit provided by this subsection may be referred to as the "intergovernmental production tax credit".

B. Any person who is liable for the payment of the oil and gas production equipment ad valorem tax imposed on equipment located on Indian tribal land shall be entitled to a credit to be computed under this section and to be deducted from the payment of the indicated taxes with respect to equipment at qualifying wells. The credit provided by this subsection may be referred to as the "intergovernmental production equipment tax credit".

C. For the purposes of this section:

(1) "equipment" means wells and nonmobile equipment used at a well in connection with severance, treatment or storage of well products;

(2) "Indian tribal land" means all land that on March 1, 1995 was within the exterior boundaries of an Indian reservation or pueblo grant or held in trust by the United States for an Indian person, nation, tribe or pueblo;

(3) "product" means oil, natural gas or liquid hydrocarbon, individually or in combination, or carbon dioxide; and

(4) "qualifying well" means a well on Indian tribal land, the actual drilling of which commenced on or after July 1, 1995.

D. The intergovernmental production tax credit shall be determined separately for each calendar month and shall be equal to seventy-five percent of the lesser of:

(1) the aggregate amount of severance, privilege, ad valorem or similar tax in effect on March 1, 1995 that is imposed by the Indian nation, tribe or pueblo upon the products severed from qualifying wells or upon the privilege of severing products from qualifying wells; or

(2) the aggregate amount of the oil and gas severance tax, the oil and gas conservation tax, the oil and gas emergency school tax and the oil and gas ad valorem production tax imposed by this state upon the products severed from qualifying wells or upon the privilege of severing products from qualifying wells.

E. The intergovernmental production equipment tax credit shall be determined annually for the equipment at qualifying wells and shall be equal to seventy-five percent of the lesser of:

(1) the amount of ad valorem or similar tax in effect on March 1, 1995 that is imposed by the Indian nation, tribe or pueblo upon the equipment for the calendar year; or

(2) the amount of the oil and gas production equipment ad valorem tax imposed by this state upon the equipment for the calendar year.

F. If, after March 1, 1995, an Indian nation, tribe or pueblo increases any severance, privilege, ad valorem or similar tax applicable to products or equipment to which the tax credits provided by this section apply, the amount of the intergovernmental production tax credit for any month to which the increase applies shall be reduced by the difference between the aggregate amount of tax due to the Indian nation, tribe or pueblo for the production month and the aggregate amount of tax that would have been imposed by the terms of the tax or taxes in effect on March 1, 1995, and the intergovernmental production equipment tax credit shall be reduced by the difference between the aggregate amount of tax due to the Indian nation, tribe or pueblo for the year and the aggregate amount of tax that would have been imposed for the year by the terms of the tax or taxes in effect on March 1, 1995.

G. Notwithstanding any other provision of law to the contrary, the amount of credit taken and allowed shall be applied proportionately against the amount of oil and gas severance tax, oil and gas conservation tax, oil and gas emergency school tax, oil and gas ad valorem production tax and oil and gas production equipment ad valorem tax due with respect to the products, severance of products or equipment taxed.

H. The taxation and revenue department shall administer and interpret the provisions of this section in accordance with the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

I. The burden of showing entitlement to a credit authorized by this section is on the taxpayer claiming it, and he shall furnish to the appropriate tax collecting agency, in the manner determined by the taxation and revenue department, proof of payment of any tribal tax on which the credit is based.

History: Laws 1995, ch. 171, § 1; 1999, ch. 108, § 1.

ANNOTATIONS

The 1999 amendment, effective, July 1, 1999, inserted "person" in Paragraph C(2).

ARTICLE 30
OIL AND GAS CONSERVATION TAX

7-30-1. Title.

Chapter 7, Article 30 NMSA 1978 may be cited as the "Oil and Gas Conservation Tax Act".

History: 1953 Comp., § 72-20-1, enacted by Laws 1959, ch. 53, § 1; 1985, ch. 65, § 30.

ANNOTATIONS

Cross references. - For intergovernmental tax credits, see 7-29C-1 NMSA 1978.

Law reviews. - For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

For note, "Tribal Severance Taxes - Outside the Purview of the Commerce Clause," see 21 Nat. Resources J. 405 (1981).

7-30-2. Definitions.

As used in the Oil and Gas Conservation Tax Act [this article]:

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

B. "production unit" means a unit of property designated by the department from which products of common ownership are severed;

C. "severance" means the taking from the soil any product in any manner whatsoever;

D. "value" means the actual price received for products at the production unit, except as otherwise provided in the Oil and Gas Conservation Tax Act;

E. "product" or "products" means oil, natural gas or liquid hydrocarbon, individually or any combination thereof, uranium, coal, geothermal energy or carbon dioxide;

F. "operator" means any person:

(1) engaged in the severance of products from a production unit; or

(2) owning an interest in any product at the time of severance who receives a portion or all of such product for his interest;

G. "purchaser" means a person who is the first purchaser of a product after severance from a production unit, except as otherwise provided in the Oil and Gas Conservation Tax Act;

H. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, copartnership, cooperative, joint venture, association or other group or combination acting as a unit, and the plural as well as the singular number; and

I. "interest owner" means a person owning an entire or fractional interest of whatsoever kind or nature in the products at the time of severance from a production unit, or who has a right to a monetary payment which is determined by the value of such products.

History: 1953 Comp., § 72-20-2, enacted by Laws 1959, ch. 53, § 2; 1975, ch. 289, § 14; 1977, ch. 249, § 54; 1980, ch. 97, § 4; 1986, ch. 20, § 99; 1989, ch. 130, § 5.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, substituted "'department'" for "'commission,' 'department' or 'division'" in Subsection A.

Law reviews. - For article, " 'New Mexican Nationalism' and the Evolution of Energy Policy in New Mexico," see 17 Nat. Resources J. 283 (1977).

7-30-3. Repealed.

ANNOTATIONS

Repeals. - Laws 1985, ch. 65, § 46 repeals 7-30-3 NMSA 1978, as enacted by Laws 1959, ch. 53, § 3, relating to the purpose and declaration of intention of the Oil and Gas Conservation Tax Act, effective July 1, 1985. For provisions of former section, see 1983 Replacement Pamphlet.

7-30-4. Oil and gas conservation tax levied; collected by department; rate; interest owner's liability to state; Indian liability.

A. There is levied and shall be collected by the department a tax on all products that are severed and sold. The measure and rate of the tax shall be nineteen one-hundredths of one percent of the taxable value of sold products. Every interest owner shall be liable for this tax to the extent of the owner's interest in the value of such products or to the extent of the owner's interest as may be measured by the value of such products. Any Indian tribe, Indian pueblo or Indian shall be liable for this tax to the extent authorized or permitted by law.

B. In the event the unencumbered balance in the oil and gas reclamation fund equals or exceeds one million dollars ($1,000,000) for any one-month period computed after receipt of the tax for that month, then the rate of the tax levied by this section shall be eighteen one-hundredths of one percent beginning with the first day of the second month following the month in which the unencumbered balance equaled or exceeded one million dollars ($1,000,000), and no funds collected by the tax with respect to any period for which the rate is eighteen one-hundredths of one percent shall be distributed

to the oil and gas reclamation fund. After having been reduced to eighteen one-hundredths of one percent, the rate of the tax imposed by this section shall remain at that rate until the unencumbered balance in the oil and gas reclamation fund is less than or equal to five hundred thousand dollars ($500,000) for any one-month period computed after receipt of the tax for that month, in which event the rate of the tax levied by this section shall be increased to nineteen one-hundredths of one percent beginning with the first day of the second month following the month in which the unencumbered balance equaled or was less than five hundred thousand dollars ($500,000), and the additional funds with respect to any period for which the rate is nineteen one-hundredths of one percent shall be distributed to the oil and gas reclamation fund in accordance with the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

C. The department shall notify taxpayers of any change in the rate of tax imposed by this section.

History: 1953 Comp., § 72-20-4, enacted by Laws 1959, ch. 53, § 4; 1975, ch. 289, § 15; 1977, ch. 237, § 6; 1985, ch. 65, § 31; 1989, ch. 130, § 6; 1996, ch. 72, § 1.

ANNOTATIONS

Cross references. - For the oil and gas reclamation fund, see 70-2-37 NMSA 1978.

The 1989 amendment, effective June 16, 1989, substituted "department" for "division" in the catchline; in Subsection A substituted "department" for "division" in the first sentence, inserted "and rate" in the second sentence, and made minor stylistic changes in the third sentence; rewrote the first and second sentences of Subsection B; and designated the former third sentence of Subsection B as Subsection C.

The 1996 amendment, made stylistic changes in Subsection A. Laws 1996, ch. 72 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Severance alone does not give rise to taxable event. Yankee Atomic Elec. Co. v. New Mexico & Ariz. Land Co. 632 F.2d 855 (10th Cir. 1980).

Severance, coupled with sale, triggers imposition of tax. Yankee Atomic Elec. Co. v. New Mexico & Ariz. Land Co. 632 F.2d 855 (10th Cir. 1980).

Indian right to tax oil production not preempted by congress. - Although it granted to the states the right to tax the production of oil and gas on Indian reservations, congress did not preempt similar tribal taxation. Merrion v. Jicarilla Apache Tribe, 617 F.2d 537 (10th Cir. 1980), aff'd, 455 U.S. 130, 102 S. Ct. 894, 71 L. Ed. 2d 21 (1982).

Law reviews. - For article, " 'New Mexican Nationalism' and the Evolution of Energy Policy in New Mexico," see 17 Nat. Resources J. 283 (1977).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 84 C.J.S. Taxation §§ 121, 123, 126.

7-30-5. Taxable value; method of determining.

A. To determine the taxable value of oil, natural gas or liquid hydrocarbon, individually or any combination thereof, or carbon dioxide, there shall be deducted from the value of products:

(1) royalties paid or due the United States or the state of New Mexico;

(2) royalties paid or due any Indian tribe, Indian pueblo or Indian that is a ward of the United States; and

(3) the reasonable expense of trucking any product from the production unit to the first place of market.

B. The taxable value of coal shall be the taxable value determined under Section 7-25-3 NMSA 1978, less royalties paid or due any Indian tribe, Indian pueblo or Indian that is a ward of the United States.

C. The taxable value of uranium shall be twenty-five percent of an amount equal to the difference between:

(1) the taxable value determined under Section 7-25-3 NMSA 1978; and

(2) royalties paid or due any Indian tribe, Indian pueblo or Indian that is a ward of the United States.

D. The taxable value of geothermal energy shall be the value at the point of first sale, less the cost of transporting it from the point of severance to the point of the first sale, less the royalties paid or due the United States or the state of New Mexico or any Indian tribe, Indian pueblo or Indian that is a ward of the United States.

History: 1953 Comp., § 72-20-5, enacted by Laws 1959, ch. 53, § 5; 1975, ch. 289, § 16; 1977, ch. 102, § 2; 1980, ch. 97, § 5; 1985, ch. 65, § 32.

ANNOTATIONS

Law reviews. - For article, " 'New Mexican Nationalism' and the Evolution of Energy Policy in New Mexico," see 17 Nat. Resources J. 283 (1977).

7-30-6. Value may be determined by department; standard.

The department may determine the value of products severed from a production unit when:

A. the operator and purchaser are affiliated persons;

B. the sale and purchase of products is not an arm's length transaction; or when

C. products are severed and removed from a production unit and a value as defined in this act is not established for such products.

The value determined by the department shall be commensurate with the actual price received for products of like quality, character and use which are severed in the same field or area.

History: 1953 Comp., § 72-20-6, enacted by Laws 1959, ch. 53, § 6; 1989, ch. 130, § 7.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, substituted "department" for "commission" in the section heading and throughout the section, and made minor stylistic changes.

7-30-7. Price increase subject to approval of agency of United States of America, state of New Mexico or court; refund.

When an increase in the value of any product is subject to the approval of any agency of the United States of America or the state of New Mexico, or any court, the increased value shall be subject to this tax. In the event the increase in value is disapproved, either in whole or in part, then the amount of tax which has been paid on the disapproved part of the value shall be considered excess tax. Any person who has paid any such excess tax may apply for a refund of that excess tax in accordance with the provisions of Section 7-1-26 NMSA 1978.

History: 1953 Comp., § 72-20-7, enacted by Laws 1959, ch. 53, § 7; 1985, ch. 65, § 33.

7-30-8. Products on which tax has been levied; regulation by department.

This tax shall not be levied more than once on the same product. Reporting of products on which this tax has been paid shall be subject to the regulation of the department.

History: 1953 Comp., § 72-20-8, enacted by Laws 1959, ch. 53, § 8; 1989, ch. 130, § 8.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, substituted "department" for "commission" in the section heading and in the second sentence.

7-30-9. Operator or purchaser to withhold interest owner's tax; department may require withholding of tax; tax withheld to be remitted to the state; operator or purchaser to be reimbursed.

A. Any operator making a monetary payment to an interest owner for his portion of the value of products from a production unit shall withhold from such payment the amount of tax due from the interest owner.

B. Any purchaser who, by express or implied agreement with the operator, makes a monetary payment to an interest owner for his portion of the value of products from a production unit, shall withhold from such payment the amount of tax due from the interest owner.

C. The department may require any purchaser making a monetary payment to an interest owner for his portion of the value of products from a production unit to withhold from such payment the amount of tax due from the interest owner.

D. Any operator or purchaser who pays any tax due from an interest owner shall be entitled to reimbursement from the interest owner for the tax so paid, and may take credit for such amount from any monetary payment to the interest owner for the value of products.

History: 1953 Comp., § 72-20-9, enacted by Laws 1959, ch. 53, § 9; 1989, ch. 130, § 9.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, added the subsection designations, and substituted "department" for "commission" in the section heading and in Subsection C.

7-30-10. Operator's report; tax remittance; additional information.

Each operator shall, in the form and manner required by the department, make a return to the department showing the total value, volume and kind of products sold from each production unit for each calendar month. All taxes due or to be remitted by the operator shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. Any additional report or information the department may deem necessary for the proper administration of the Oil and Gas Conservation Tax Act [this article] may be required.

History: 1953 Comp., § 72-20-10, enacted by Laws 1959, ch. 53, § 10; 1986, ch. 5, § 4; 1989, ch. 130, § 10.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, substituted "department" for "division" throughout the section.

7-30-11. Purchaser's report; tax remittance; additional information.

Each purchaser shall, in the form and manner required by the department, make a return to the department showing the total value, volume and kind of products purchased by him from each production unit for each calendar month. All taxes due or to be remitted by the purchaser shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. Any additional reports or information the department may deem necessary for the proper administration of the Oil and Gas Conservation Tax Act [this article] may be required.

History: 1953 Comp., § 72-20-11, enacted by Laws 1959, ch. 53, § 11; 1986, ch. 5, § 5; 1989, ch. 130, § 11.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, substituted "department" for "division" throughout the section.

7-30-12, 7-30-13. Repealed.

ANNOTATIONS

Repeals. - Laws 1985, ch. 65, § 46 repeals 7-30-12 and 7-30-13 NMSA 1978, as amended by Laws 1977, ch. 59, § 1, and by Laws 1977, ch. 247, § 184, relating to the oil and gas accounting commission conservation tax fund and the monthly report to the department of finance and administration, effective July 1, 1985. For provisions of former sections, see 1983 Replacement Pamphlet.

7-30-14. Recompiled.

ANNOTATIONS

Recompilations. - Laws 1989, ch. 130, § 12 recompiles 7-30-14 NMSA 1978, relating to disposition of oil conservation fund, as 70-2-36.1 NMSA 1978, effective June 16, 1989.

7-30-15 to 7-30-26. Repealed.

ANNOTATIONS

Repeals. - Laws 1985, ch. 65, § 46 repeals 7-30-15 to 7-30-26 NMSA 1978, as enacted by Laws 1959, ch. 53, §§ 15 to 26, relating to the remedies under the Oil and Gas Conservation Tax Act, effective July 1, 1985. For provisions of former sections, see 1983 Replacement Pamphlet.

7-30-27. Advance payment required.

A. Any person required to make payment of tax pursuant to Section 7-30-10 or 7-30-11 NMSA 1978 shall make the advance payment required by this section.

B. For the purposes of this section:

(1) "advance payment" means the payment required to be made by this section in addition to any oil and gas conservation tax, penalty or interest due; and

(2) "average tax" means the aggregate amount of tax, net of any refunds or credits, paid by a person during the twelve-month period ending March 31 pursuant to the Oil and Gas Conservation Tax Act [this article] divided by the number of months during that period for which the person made payment.

C. Each year, prior to July 1, each person required to pay tax pursuant to the Oil and Gas Conservation Tax Act shall compute the average tax for the period ending March 31 of that year. The average tax calculated for a year shall be used during the twelve-month period beginning with July of that year and ending with June of the following year as the basis for making the advance payments required by Subsection D of this section.

D. Every month, beginning with July 1991, every person required to pay tax in a month pursuant to the Oil and Gas Conservation Tax Act shall pay, in addition to any amount of tax, interest or penalty due, an advance payment in an amount equal to the applicable average tax, except:

(1) if the person is making a final return under the Oil and Gas Conservation Tax Act, no advance payment pursuant to this subsection is due for that return; and

(2) as provided in Subsection F of this section.

E. Every month, beginning with tax payments due in August 1991, every person required to pay tax pursuant to the Oil and Gas Conservation Tax Act may claim a credit equal to the amount of advance payment made in the previous month, except as provided in Subsection F of this section.

F. If, in any month, a person is not required to pay tax pursuant to the Oil and Gas Conservation Tax Act, that person is not required to pay the advance payment and may not claim a credit pursuant to Subsection E of this section provided that, in any succeeding month when the person has liability under the Oil and Gas Conservation

Tax Act, the person may claim a credit for any advance payment made and not credited.

G. In the event that the date by which a person is required to pay the tax pursuant to the Oil and Gas Conservation Tax Act is accelerated to a date earlier than the twenty-fifth day of the second month following the month of production, the advance payment provision contained in this section is null and void and any money held as advance payments shall be credited to the taxpayers' accounts.

History: Laws 1991, ch. 9, § 37.

ARTICLE 31
OIL AND GAS EMERGENCY SCHOOL TAX

7-31-1. Title.

Chapter 7, Article 31 NMSA 1978 may be cited as the "Oil and Gas Emergency School Tax Act".

History: 1953 Comp., § 72-21-1, enacted by Laws 1959, ch. 54, § 1; 1985, ch. 65, § 34.

ANNOTATIONS

Cross references. - For intergovernmental tax credits, see 7-29C-1 NMSA 1978.

Law reviews. - For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

For note, "Tribal Severance Taxes - Outside the Purview of the Commerce Clause," see 21 Nat. Resources J. 405 (1981).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 219, 614.

84 C.J.S. Taxation §§ 161, 170.

7-31-2. Definitions.

As used in the Oil and Gas Emergency School Tax Act [this article]:

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

B. "production unit" means a unit of property designated by the department from which products of common ownership are severed;

C. "severance" means the taking from the soil of any product in any manner whatsoever;

D. "value" means the actual price received from products at the production unit, except as otherwise provided in the Oil and Gas Emergency School Tax Act;

E. "product" or "products" means oil, natural gas or liquid hydrocarbon, individually or any combination thereof, or carbon dioxide;

F. "operator" means any person:

(1) engaged in the severance of products from a production unit; or

(2) owning an interest in any product at the time of severance who receives a portion or all of such product for his interest;

G. "purchaser" means a person who is the first purchaser of a product after severance from a production unit, except as otherwise provided in the Oil and Gas Emergency School Tax Act;

H. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, copartnership, cooperative, joint venture, association, 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 which 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; and

K. "average annual taxable value" means as applicable:

(1) the average of the taxable value per one thousand cubic feet, determined pursuant to Section 7-31-5 NMSA 1978, of all natural gas produced in New Mexico for the specified calendar year as determined by the department; or

(2) the average of the taxable value per barrel, determined pursuant to Section 7-31-5 NMSA 1978, of all oil produced in New Mexico for the specified calendar year as determined by the department; and

L. "tax" means the oil and gas emergency school tax.

History: 1953 Comp., § 72-21-2, enacted by Laws 1959, ch. 54, § 2; 1977, ch. 249, § 55; 1980, ch. 97, § 6; 1986, ch. 20, § 100; 1993, ch. 360, § 1; 1999, ch. 256, § 8.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, inserted "limited liability company" in Subsection H; and added Subsection J, making related grammatical changes.

The 1999 amendment. effective June 18, 1999, added Subsections J and K, and redesignated former Subsection J as Subsection L.

7-31-3. Repealed.

ANNOTATIONS

Repeals. - Laws 1985, ch. 65, § 46 repeals 7-31-3 NMSA 1978, as amended by Laws 1975, ch. 133, § 3, relating to the purpose and declaration of intention of the Oil and Gas Emergency School Tax Act, effective July 1, 1985. For provisions of former section, see 1983 Replacement Pamphlet.

7-31-4. Privilege tax levied; collected by 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, 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.

ANNOTATIONS

Cross references. - For natural gas processors tax, see 7-33-1 to 7-33-8 NMSA 1978.

The 1993 amendment, effective June 18, 1993, inserted the subsection designations; substituted "department" for "division" in the catchline and in the first sentence of Subsection A; deleted "three and fifteen one-hundredths percent of the taxable value of such products" at the end of the introductory paragraph of Subsection A; and added paragraphs (1) to (3) of Subsection A.

The 1999 amendment, effective June 18, 1999, inserted "except as provided in Paragraphs (4) and (5) of this subsection" in Subsection A(1), substituted "fifteen hundredths" for "fifteen one-hundredths" and "pursuant to" for "under" in Subsections A(1) and A(2), inserted "except as provided in Paragraphs (6) and (7) of this subsection" in Subsection A(3); added Subsections (A)(4) through A(7), and made minor stylistic changes.

Applicability. - Laws 1993, ch. 360, § 3 makes the provisions of the act applicable to products severed on or after July 1, 1993.

Indian right to tax oil production not preempted by congress. - Although it granted to the states the right to tax the production of oil and gas on Indian reservations, congress did not preempt similar tribal taxation. Merrion v. Jicarilla Apache Tribe, 617 F.2d 537 (10th Cir. 1980), aff'd, 455 U.S. 130, 102 S. Ct. 894, 71 L. Ed. 2d 21 (1982).

Non-Indian producers operating on reservations. - Oil and gas taxes imposed by the state against a non-Indian producer whose operations are located on an Indian Reservation do not constitute an impermissible burden on interstate commerce. Cotton Petroleum v. State, 106 N.M. 517, 745 P.2d 1170 (Ct. App. 1987), aff'd, 490 U.S. 163, 109 S. Ct. 1698, 104 L. Ed. 2d 209 (1989).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 84 C.J.S. Taxation §§ 121, 123, 126.

7-31-5. Taxable value; method of determining.

To determine the taxable value there shall be deducted from the value of products:

A. royalties paid or due the United States or the state of New Mexico;

B. royalties paid or due any Indian tribe, Indian pueblo or Indian that is a ward of the United States of America; and

C. the reasonable expense of trucking any product from the production unit to the first place of market.

History: 1953 Comp., § 72-21-5, enacted by Laws 1959, ch. 54, § 5; 1963, ch. 179, § 25.

7-31-6. Value may be determined by commission; standard.

The commission may determine the value of products severed from a production unit when:

A. the operator and purchaser are affiliated persons; or when

B. the sale and purchase of products is not an arm's length transaction; or when

C. products are severed and removed from a production unit and a value as defined in this act is not established for such products.

The value determined by the commission shall be commensurate with the actual price received for products of like quality, character and use which are severed in the same field or area.

History: 1953 Comp., § 72-21-6, enacted by Laws 1959, ch. 54, § 6.

ANNOTATIONS

Meaning of "commission". - See 7-31-2A NMSA 1978.

Meaning of "this act". - The term "this act", referred to in Subsection C, means Laws 1959, ch. 54, which is presently compiled as 7-31-1, 7-31-2, and 7-31-4 to 7-31-11 NMSA 1978.

7-31-7. Price increase subject to approval of agency of United States of America, state of New Mexico or court; refund.

When an increase in the value of any product is subject to the approval of any agency of the United States of America or the state of New Mexico or any court, the increased value shall be subject to this tax. In the event the increase in value is disapproved, either in whole or in part, then the amount of tax which has been paid on the disapproved part of the value shall be considered excess tax. Any person who has paid any such excess tax may apply for a refund of that excess tax in accordance with the provisions of Section 7-1-26 NMSA 1978.

History: 1953 Comp., § 72-21-7, enacted by Laws 1959, ch. 54, § 7; 1985, ch. 65, § 35.

7-31-8. Products on which tax has been levied; regulation by commission.

This tax shall not be levied more than once on the same product. Reporting of products on which this tax has been paid shall be subject to the regulation of the commission.

History: 1953 Comp., § 72-21-8, enacted by Laws 1959, ch. 54, § 8.

ANNOTATIONS

Meaning of "commission". - See 7-31-2A NMSA 1978.

7-31-9. Operator or purchaser to withhold interest owner's tax; commission may require withholding of tax; tax withheld to be remitted to the state; operator or purchaser to be reimbursed.

Any operator making a monetary payment to an interest owner for his portion of the value of products from a production unit shall withhold from such payment the amount of tax due from any interest owner.

Any purchaser, who, by express or implied agreement with the operator, makes a monetary payment to an interest owner for his portion of the value of products from a production unit, shall withhold from such payment the amount of tax due from the interest owner.

The commission may require any purchaser making a monetary payment to an interest owner for his portion of the value of products from a production unit to withhold from such payment the amount of tax due from the interest owner.

Any operator or purchaser who pays any tax due from an interest owner shall be entitled to reimbursement from the interest owner for the tax so paid, and may take credit for such amount from any monetary payment to the interest owner for the value of products.

History: 1953 Comp., § 72-21-9, enacted by Laws 1959, ch. 54, § 9.

ANNOTATIONS

Meaning of "commission". - See 7-31-2A NMSA 1978.

7-31-10. Operator's report; tax remittance; additional information.

Each operator shall in the form and manner required by the division make a return to the division showing the total value, volume and kind of products sold from each production unit for each calendar month. All taxes due or to be remitted by the operator shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. Any additional report or information the division may deem necessary for the proper administration of the Oil and Gas Emergency School Tax Act [Chapter 7, Article 31, NMSA 1978] may be required.

History: 1953 Comp., § 72-21-10, enacted by Laws 1959, ch. 54, § 10; 1986, ch. 5, § 6.

ANNOTATIONS

Meaning of "division". - See 7-31-2A NMSA 1978.

7-31-10.1. One-time tax credit for new wells; fund created (Effective until July 1, 2001.)

A. To stimulate economic development and provide jobs, the operator of a new crude oil or natural gas well may upon completion of the new well apply for and receive a one-time credit against the tax imposed pursuant to the Oil and Gas Emergency School Tax Act [this article] of fifteen thousand dollars ($15,000) subject to the provisions of this section.

B. A new well shall qualify for the tax credit in this section if the oil conservation division of the energy, minerals and natural resources department certifies to the taxation and revenue department that:

(1) the operator applying for the tax credit commenced drilling the new well after January 1, 1999 and prior to July 1, 2000;

(2) the new well was completed; and

(3) the new well is one of the first six hundred new wells drilled in the period from January 1, 1999 to July 1, 2000.

C. The tax credit may be applied only to the operator's oil and gas emergency school tax liability. If the credit exceeds the taxpayer's liability for a reporting period, the credit may be applied to the operator's tax liability in succeeding reporting periods prior to July 1, 2001.

D. The "oil and gas tax credit fund" is created in the state treasury. The fund shall be administered by the department. Money in the fund shall be used to pay for the tax credit provided in this section. The department shall transfer monthly from the oil and gas tax credit fund to the general fund an amount equal to the amount of tax credit claimed and applied to the oil and gas emergency school tax in that month.

E. As used in this section, "new well" means a crude oil or natural gas producing well for which drilling commenced after January 1, 1999 and before July 1, 2000 or a horizontal crude oil or natural gas well that was recompleted from a vertical well by drilling operations that commenced after January 1, 1999 and before July 1, 2000 and that has been approved and certified as such by the oil conservation division of the energy, minerals and natural resources department.

History: Laws 1999, ch. 218, § 1.

ANNOTATIONS

Delayed repeals. - Laws 1999, ch. 218, § 3 repeals this section, as enacted by Laws 1999, ch. 218, § 1, effective July 1, 2001.

Emergency clauses. - Laws 1999, ch. 218, § 4 makes the act effective immediately. Approved April 6, 1999.

Appropriations. - Laws 1999, ch. 218, § 2 appropriates $9,000,000 from the general fund to the oil and gas tax credit fund for expenditure in fiscal years 1999 through 2001 to carry out the provisions of the act; and further provides that any unexpended or unencumbered balance remaining at the end of fiscal year 2001 shall revert to the general fund.

7-31-11. Purchaser's report; tax remittance; additional information.

Each purchaser shall in the form and manner required by the division make a return to the division showing the total value, volume and kind of products purchased by him from each production unit for each calendar month. All taxes due or to be remitted by the purchaser shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. Any additional reports or information the division may deem necessary for the proper administration of the Oil and Gas Emergency School Tax Act [Chapter 7, Article 31 NMSA 1978] may be required.

History: 1953 Comp., § 72-21-11, enacted by Laws 1959, ch. 54, § 11; 1986, ch. 5, § 7.

ANNOTATIONS

Meaning of "division". - See 7-31-2A NMSA 1978.

7-31-12 to 7-31-25. Repealed.

ANNOTATIONS

Repeals. - Laws 1985, ch. 65, § 46 repeals 7-31-12 to 7-31-25 NMSA 1978 relating to the fund and remedies under the Oil and Gas Emergency School Tax Act, effective July 1, 1985. For provisions of former sections, see 1983 Replacement Pamphlet.

7-31-26. Advance payment required.

A. Any person required to make payment of tax pursuant to Section 7-31-10 or 7-31-11 NMSA 1978 shall make the advance payment required by this section.

B. For the purposes of this section:

(1) "advance payment" means the payment required to be made by this section in addition to any oil and gas emergency school tax, penalty or interest due; and

(2) "average tax" means the aggregate amount of tax, net of any refunds or credits, paid by a person during the twelve-month period ending March 31, pursuant to the Oil and Gas Emergency School Tax Act [this article] divided by the number of months during that period for which the person made payment.

C. Each year, prior to July 1, each person required to pay tax pursuant to the Oil and Gas Emergency School Tax Act shall compute the average tax for the period ending March 31 of that year. The average tax calculated for a year shall be used during the twelve-month period beginning with July of that year and ending with June of the following year as the basis for making the advance payments required by Subsection D of this section.

D. Every month, beginning with July 1991, every person required to pay tax in a month pursuant to the Oil and Gas Emergency School Tax Act shall pay, in addition to any amount of tax, interest or penalty due, an advance payment in an amount equal to the applicable average tax, except:

(1) if the person is making a final return under the Oil and Gas Emergency School Tax Act, no advance payment pursuant to this subsection is due for that return; and

(2) as provided in Subsection F of this section.

E. Every month, beginning with tax payments in August 1991, every person required to pay tax pursuant to the Oil and Gas Emergency School Tax Act may claim a credit equal to the amount of advance payment made in the previous month, except as provided in Subsection F of this section.

F. If, in any month, a person is not required to pay tax pursuant to the Oil and Gas Emergency School Tax Act, that person is not required to pay the advance payment and may not claim a credit pursuant to Subsection E of this section provided that, in any succeeding month when the person has liability under the Oil and Gas Emergency School Tax Act, the person may claim a credit for any advance payment made and not credited.

G. In the event that the date by which a person is required to pay the tax pursuant to the Oil and Gas Emergency School Tax Act is accelerated to a date earlier than the twenty-fifth day of the second month following the month of production, the advance payment provision contained in this section is null and void and any money held as advance payments shall be credited to the taxpayers' accounts.

History: Laws 1991, ch. 9, § 38.

ARTICLE 32
OIL AND GAS AD VALOREM PRODUCTION TAX

7-32-1. Title.

Chapter 7, Article 32 NMSA 1978 may be cited as the "Oil and Gas Ad Valorem Production Tax Act".

History: 1953 Comp., § 72-22-1, enacted by Laws 1959, ch. 55, § 1; 1985, ch. 65, § 36.

ANNOTATIONS

Cross references. - For intergovernmental tax credits, see 7-29C-1 NMSA 1978.

Law reviews. - For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

For note, "Tribal Severance Taxes - Outside the Purview of the Commerce Clause," see 21 Nat. Resources J. 405 (1981).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 219, 220.

Effect of severance of fee in oil and gas from fee on surface on taxability of oil and gas rights or privileges, 16 A.L.R. 514, 29 A.L.R. 606, 146 A.L.R. 880.

What property is exempted from ad valorem tax under statute or constitution providing for payment of oil and gas production tax by producers in lieu of other taxes, 77 A.L.R. 1078.

Method or rule for valuation of oil lease for tax purposes, 84 A.L.R. 1310.

84 C.J.S. Taxation § 68.

7-32-2. Definitions.

As used in the Oil and Gas Ad Valorem Production Tax Act [this article]:

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

B. "production unit" means a unit of property designated by the department from which products of common ownership are severed;

C. "severance" means the taking from the soil any product in any manner whatsoever;

D. "value" means the actual price received for products at the production unit, except as otherwise provided in the Oil and Gas Ad Valorem Production Tax Act;

E. "product" or "products" means oil, natural gas or liquid hydrocarbon, individually or any combination thereof, or carbon dioxide;

F. "operator" means any person:

(1) engaged in the severance of products from a production unit; or

(2) owning an interest in any product at the time of severance who receives a portion or all of such product for his interest;

G. "purchaser" means a person who is the first purchaser of a product after severance from a production unit, except as otherwise provided in the Oil and Gas Ad Valorem Production Tax Act;

H. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, copartnership, cooperative, joint venture, association or other group or combination acting as a unit, and the plural as well as the singular number;

I. "interest owner" means a person owning an entire or fractional interest of whatsoever kind or nature in the products at the time of severance from a production unit or who has a right to a monetary payment which is determined by the value of such products; and

J. "assessed value" means the value against which tax rates are applied.

History: 1953 Comp., § 72-22-2, enacted by Laws 1959, ch. 55, § 2; 1977, ch. 249, § 56; 1980, ch. 97, § 7; 1986, ch. 20, § 101.

7-32-3. Repealed.

ANNOTATIONS

Repeals. - Laws 1985, ch. 65, § 46 repeals 7-32-3 NMSA 1978, as enacted by Laws 1959, ch. 55, § 3, relating to the purpose and declaration of intention of the Oil and Gas Ad Valorem Production Tax Act, effective July 1, 1985. For provisions of former section, see 1983 Replacement Pamphlet.

7-32-4. Ad valorem tax levied; collected by division; rate; interest owner's liability to state; Indian liability.

There is levied and shall be collected by the division an ad valorem tax on the assessed value of products which are severed and sold from each production unit at the rate certified to the division by the department of finance and administration under the provisions of Section 7-37-7 NMSA 1978. Such rate shall be levied for each month following its certification and shall be levied monthly thereafter until a new rate is certified. Every interest owner shall be liable for this tax to the extent of his interest in the value of such products, or to the extent of his interest as may be measured by the value of such products. Provided, any Indian tribe, Indian pueblo or Indian shall be liable for this tax to the extent authorized or permitted by law.

History: 1953 Comp., § 72-22-4, enacted by Laws 1959, ch. 55, § 4; 1981, ch. 37, § 58.

ANNOTATIONS

Law reviews. - For article, "Nonneutral Features of Energy Taxation," see 20 Nat. Resources J. 853 (1980).

7-32-5. Assessed value; method of determining.

A. The taxable value of products is an amount equal to one hundred fifty percent of the value of products after deducting:

(1) royalties paid or due the United States or the state of New Mexico;

(2) royalties paid or due any Indian tribe, Indian pueblo or Indian that is a ward of the United States; and

(3) the reasonable expense of trucking any product from the production unit to the first place of market.

B. The assessed value of products shall be determined by applying the uniform assessment ratio to the taxable value of products. The method prescribed by this section shall be the exclusive method for determining the assessed value of products. The tax imposed by Section 7-32-4 NMSA 1978 of the Oil and Gas Ad Valorem Production Tax Act [this article], together with the tax imposed by Section 7-34-4 NMSA 1978 of the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978], shall be the full and exclusive measure of ad valorem tax liability on the interests of all persons, including the operator and interest owners, in the production unit. Any other ad valorem tax on the production unit or on products severed therefrom is void.

History: 1953 Comp., § 72-22-5, enacted by Laws 1959, ch. 55, § 5; 1972, ch. 59, § 1.

ANNOTATIONS

Cross references. - For exclusive ad valorem taxes on equipment, see 7-34-5 NMSA 1978.

7-32-6. Value may be determined by commission; standard.

The commission may determine the value of products severed from a production unit when:

A. the operator and purchaser are affiliated persons; or when

B. the sale and purchase of products is not an arm's length transaction; or when

C. products are severed and removed from a production unit and a value as defined in this act [7-32-1 to 7-32-27 NMSA 1978] is not established for such products.

The value determined by the commission shall be commensurate with the actual price received for products of like quality, character and use which are severed in the same field or area.

History: 1953 Comp., § 72-22-6, enacted by Laws 1959, ch. 55, § 6.

ANNOTATIONS

Meaning of "commission". - See 7-32-2A NMSA 1978.

Meaning of "this act". - The term "this act", as it appears in Subsection C, means Laws 1959, ch. 55, which is presently compiled as 7-32-1, 7-32-2, 7-32-4 to 7-32-11, and 7-32-13 to 7-32-15 NMSA 1978.

7-32-7. Price increase subject to approval of agency of United States of America, state of New Mexico or court; refund.

When an increase in the value of any product is subject to the approval of any agency of the United States of America or the state of New Mexico or any court, the increased value shall be subject to this tax. In the event the increase in value is disapproved, either in whole or in part, then the amount of tax which has been paid on the disapproved part of the value shall be considered excess tax. Any person who has paid any such excess tax may apply for a refund of that excess tax in accordance with the provisions of Section 7-1-26 NMSA 1978.

History: 1953 Comp., § 72-22-7, enacted by Laws 1959, ch. 55, § 7; 1985, ch. 65, § 37.

7-32-8. Products on which tax has been levied; regulation by commission.

This tax shall not be levied more than once on the same product. Reporting of products on which this tax has been paid shall be subject to the regulation of the commission.

History: 1953 Comp., § 72-22-8, enacted by Laws 1959, ch. 55, § 8.

ANNOTATIONS

Meaning of "commission". - See 7-32-2A NMSA 1978.

7-32-9. Operator or purchaser to withhold interest owner's tax; commission may require withholding of tax; tax withheld to be remitted to the state; operator or purchaser to be reimbursed.

Any operator making a monetary payment to an interest owner for his portion of the value of products from a production unit shall withhold from such payment the amount of tax due from any interest owner.

Any purchaser, who, by express or implied agreement with the operator, makes a monetary payment to an interest owner for his portion of the value of products from a production unit, shall withhold from such payment the amount of tax due from the interest owner.

The commission may require any purchaser making a monetary payment to an interest owner for his portion of the value of products from a production unit to withhold from such payment the amount of tax due from the interest owner.

Any operator or purchaser who pays any tax due from an interest owner shall be entitled to reimbursement from the interest owner for the tax so paid, and may take credit for such amount from any monetary payment to the interest owner for the value of products.

History: 1953 Comp., § 72-22-9, enacted by Laws 1959, ch. 55, § 9.

ANNOTATIONS

Meaning of "commission". - See 7-32-2A NMSA 1978.

7-32-10. Operator's report; tax remittance; additional information.

Each operator shall in the form and manner required by the division make a return to the division showing the total value, volume and kind of products sold from each production unit for each calendar month. All taxes due or to be remitted by the operator shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. Any additional report or information the division may deem necessary for the proper

administration of the Oil and Gas Ad Valorem Production Tax Act [this article] may be required.

History: 1953 Comp., § 72-22-10, enacted by Laws 1959, ch. 55, § 10; 1986, ch. 5, § 8.

ANNOTATIONS

Meaning of "division". - See 7-32-2A NMSA 1978.

7-32-11. Purchaser's report; tax remittance; additional information.

Each purchaser shall in the form and manner required by the division make a return to the division showing the total value, volume and kind of products purchased by him from each production unit for each calendar month. All taxes due or to be remitted by the purchaser shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. Any additional reports or information the division may deem necessary for the proper administration of the Oil and Gas Ad Valorem Production Tax Act [this article] may be required.

History: 1953 Comp., § 72-22-11, enacted by Laws 1959, ch. 55, § 11; 1986, ch. 5, § 9.

ANNOTATIONS

Meaning of "division". - See 7-32-2A NMSA 1978.

7-32-12. Repealed.

ANNOTATIONS

Repeals. - Laws 1985, ch. 65, § 46 repeals 7-32-12 NMSA 1978, as enacted by Laws 1959, ch. 55, § 12, relating to the oil and gas accounting commission ad valorem tax fund, effective July 1, 1985. For provisions of former section, see 1983 Replacement Pamphlet.

7-32-13. Division shall prepare schedules and forward to assessors; assessor shall deliver schedule to treasurer.

By the last day of each month, the division shall prepare and certify a schedule to the respective counties in which production units are located. The schedules shall reflect the accounting of the preceding month and shall list each production unit, and by production unit show the assessed value, taxing district, extension of tax levies, tax payments and other information as the director of the division deems appropriate. The schedules shall be forwarded to the assessors of the respective counties who upon receipt thereof shall accept them as the assessment of property as required in the Oil

and Gas Ad Valorem Production Tax Act [this article] and shall deliver them to the county treasurer as the oil and gas ad valorem schedule for the county.

History: 1953 Comp., § 72-22-13, enacted by Laws 1959, ch. 55, § 13; 1985, ch. 65, § 38.

ANNOTATIONS

Meaning of "division". - See 7-32-2A NMSA 1978.

7-32-14. Monthly report to department of finance and administration; remittance to state and county treasurers; state and county treasurers may distribute funds.

A. By the last day of each month, the department shall prepare and certify a report to the secretary of finance and administration. The report shall be for the preceding month and shall show the amount of taxes collected and distributed to the oil and gas production tax fund, the amount due the state and each taxing district imposing a tax as reflected by the schedules prepared pursuant to Section 7-32-13 NMSA 1978 and any other information required by the secretary of finance and administration. The secretary of finance and administration shall forthwith remit the appropriate amounts from the oil and gas production tax fund to the state treasurer and the respective county treasurers. The state treasurer and the county treasurers shall, upon receipt of such remittance, make appropriate distribution of the proceeds thereof, except as provided in Subsection B of this section.

B. If the board of county commissioners notifies the secretary of finance and administration that the county elects not to distribute the proceeds of the oil and gas ad valorem production tax due the municipalities, community college districts and school districts within the county, the secretary of finance and administration shall pay amounts due directly to municipalities, community college districts and school districts within the county.

History: 1953 Comp., § 72-22-14, enacted by Laws 1959, ch. 55, § 14; 1963, ch. 88, § 1; 1977, ch. 247, § 186; 1983, ch. 221, § 1; 1985, ch. 65, § 39; 1993, ch. 131, § 1.

ANNOTATIONS

Cross references. - For the oil and gas production tax fund, see 7-1-6.22 NMSA 1978.

The 1993 amendment, effective March 31, 1993, substituted "department" for "division" in the first sentence of Subsection A and inserted "community college districts" twice in Subsection B.

7-32-15. Determination of assessed values for taxing districts.

To determine for any purpose the total assessed value of property required to be assessed under the Oil and Gas Ad Valorem Production Tax Act [this article] for any taxing district, the assessed value of the taxing district as is reflected by the oil and gas ad valorem production tax schedules of the twelve months of the calendar year preceding the determination shall be used.

History: 1953 Comp., § 72-22-15, enacted by Laws 1959, ch. 55, § 15; 1985, ch. 65, § 40.

ANNOTATIONS

Severability clauses. - Laws 1959, ch. 55, § 29, provides for the severability of the act if any part or application thereof is held invalid.

7-32-16 to 7-32-27. Repealed.

ANNOTATIONS

Repeals. - Laws 1985, ch. 65, § 46 repeals 7-32-16 to 7-32-27 NMSA 1978, as enacted by Laws 1959, ch. 55, §§ 16 to 23 and 25 to 27 and as amended by Laws 1963, ch. 88, § 2, relating to the remedies under the Oil and Gas Ad Valorem Production Tax Act, effective July 1, 1985. For provisions of former sections, see 1983 Replacement Pamphlet.

7-32-28. Advance payment required.

A. Any person required to make payment of tax pursuant to Section 7-32-10 or 7-32-11 NMSA 1978 shall make the advance payment required by this section.

B. For the purposes of this section:

(1) "advance payment" means the payment required to be made by this section in addition to any oil and gas ad valorem production tax, penalty or interest due; and

(2) "average tax" means the aggregate amount of tax, net of any refunds or credits, paid by a person during the twelve-month period ending March 31 pursuant to the Oil and Gas Ad Valorem Production Tax Act [this article] divided by the number of months during that period for which the person made payment.

C. Each year, prior to July 1, each person required to pay tax pursuant to the Oil and Gas Ad Valorem Production Tax Act shall compute the average tax for the period ending March 31 of that year. The average tax calculated for a year shall be used during the twelve-month period beginning with July of that year and ending with June of the following year as the basis for making the advance payments required by Subsection D of this section.

D. Every month, beginning with July 1991, every person required to pay tax in a month pursuant to the Oil and Gas Ad Valorem Production Tax Act shall pay, in addition to any amount of tax, interest or penalty due, an advance payment in an amount equal to the applicable average tax, except:

(1) if the person is making a final return under the Oil and Gas Ad Valorem Production Tax Act, no advance payment pursuant to this subsection is due for that return; and

(2) as provided in Subsection F of this section.

E. Every month, beginning with tax payments due in August 1991, every person required to pay tax pursuant to the Oil and Gas Ad Valorem Production Tax Act may claim a credit equal to the amount of advance payment made in the previous month, except as provided in Subsection F of this section.

F. If, in any month, a person is not required to pay tax pursuant to the Oil and Gas Ad Valorem Production Tax Act, that person is not required to pay the advance payment and may not claim a credit pursuant to Subsection E of this section provided that, in any succeeding month when the person has liability under the Oil and Gas Ad Valorem Production Tax Act, the person may claim a credit for any advance payment made and not credited.

G. In the event that the date by which a person is required to pay the tax pursuant to the Oil and Gas Ad Valorem Production Tax Act is accelerated to a date earlier than the twenty-fifth day of the second month following the month of production, the advance payment provision contained in this section is null and void and any money held as advance payments shall be credited to the taxpayers' accounts.

History: Laws 1991, ch. 9, § 39.

ARTICLE 33
NATURAL GAS PROCESSORS TAX

7-33-1. Short title.

Chapter 7, Article 33 NMSA 1978 may be cited as the "Natural Gas Processors Tax Act".

History: 1953 Comp., § 72-23-1, enacted by Laws 1963, ch. 179, § 1; 1970, ch. 13, § 2; 1985, ch. 65, § 41.

ANNOTATIONS

Law reviews. - For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

For note, "Tribal Severance Taxes - Outside the Purview of the Commerce Clause," see 21 Nat. Resources J. 405 (1981).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 218, 219.

84 C.J.S. Taxation §§ 161, 170.

7-33-2. Definitions.

As used in the Natural Gas Processors Tax Act [this article]:

A. "average annual taxable value" means the average of the taxable value per mcf, determined pursuant to Section 7-31-5 NMSA 1978, of all natural gas produced in New Mexico for the specified calendar year as determined by the department;

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

C. "fiscal year" means the period starting July 1 and ending June 30 of the succeeding calendar year;

D. "mcf" means one thousand cubic feet;

E. "mmbtu" means one million British thermal units;

F. "natural gas" means any hydrocarbon that at atmospheric conditions of temperature and pressure is in a gaseous state, and includes non-hydrocarbon gases that are in combination with hydrocarbon gases;

G. "natural gas processing plant" means a facility used to extract liquid hydrocarbons and non-hydrocarbon gaseous or liquid substances, individually or in any combination, from natural gas, but does not include a facility that refines or processes oil, natural gas or liquid hydrocarbons or that extracts substances from natural gas through a field or lease operation;

H. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, copartnership, cooperative, joint venture, association or other group or combination acting as a unit;

I. "processor" means a person who operates a natural gas processing plant; and

J. "tax" means the natural gas processors tax.

History: 1953 Comp., § 72-23-2, enacted by Laws 1963, ch. 179, § 2; 1970, ch. 13, § 3; 1977, ch. 249, § 57; 1986, ch. 20, § 102; 1998, ch. 102, § 1.

ANNOTATIONS

The 1998 amendment, effective January 1, 1999, rewrote the section to the extent that a detailed comparison is impracticable.

State courts may determine if additional tax was imposed increasing gas price. - Whether an additional tax was imposed on gas company's sale of natural gas to other company so as to provide contractual basis for increased price is within state courts' jurisdiction. Pan American Petroleum Corp. v. El Paso Natural Gas Co. 82 N.M. 193, 477 P.2d 827 (1970).

7-33-3. Repealed.

ANNOTATIONS

Repeals. - Laws 1989, ch. 115, § 6B repeals 7-33-3 NMSA 1978, as amended by Laws 1975, ch. 133, § 4, relating to purpose of Natural Gas Processors Tax Act, effective July 1, 1989. For provisions of former section, see 1986 Replacement Pamphlet.

7-33-4. Privilege tax levied; collected by department; rate.

A. There is levied and shall be collected by the department a privilege tax on processors for the privilege of operating a natural gas processing plant in New Mexico. This tax may be referred to as the "natural gas processors tax".

B. The tax shall be imposed on the amount of mmbtus of natural gas delivered to the processor at the inlet of the natural gas processing plant after subtracting the mmbtu deductions authorized in Subsection E of this section. The tax shall be imposed at the rate per mmbtu determined in Subsection C or D of this section, as applicable.

C. The tax rate for the six-month period beginning on January 1, 1999 shall be determined by multiplying the rate of sixty-five hundredths of one cent ($.0065) per mmbtu by a fraction, the numerator of which is the annual average taxable value per mcf of natural gas produced in New Mexico during the 1997 calendar year and the denominator of which is one dollar thirty-three cents ($1.33) per mcf. The resulting tax rate shall be rounded to the nearest one-hundredth of one cent per mmbtu.

D. The tax rate for each fiscal year beginning on or after July 1, 1999 shall be determined by multiplying the rate of sixty-five hundredths of one cent ($.0065) per mmbtu by a fraction, the numerator of which is the annual average taxable value per mcf of natural gas produced in New Mexico during the preceding calendar year and the denominator of which is one dollar thirty-three cents ($1.33) per mcf. The resulting tax rate shall be rounded to the nearest one-hundredth of one cent per mmbtu.

E. A processor may deduct from the amount of mmbtus of natural gas subject to the tax the mmbtus of natural gas that are:

(1) used for natural gas processing by the processor;

(2) returned to the lease from which it is produced;

(3) legally flared by the processor; or

(4) lost as a result of natural gas processing plant malfunctions or other incidences of force majeur.

F. On or before June 15, 1999 and June 15 of each succeeding year, the department shall inform each processor in writing of the tax rate applicable for the succeeding fiscal year.

G. Any Indian nation, tribe or pueblo or Indian is liable for the tax to the extent authorized or permitted by law.

History: 1953 Comp., § 72-23-4, enacted by Laws 1963, ch. 179, § 4; 1970, ch. 13, § 5; 1984, ch. 2, § 9; 1998, ch. 102, § 2.

ANNOTATIONS

The 1998 amendment, effective January 1, 1999, deleted "oil and gas accounting division of the taxation and revenue" from the section heading and rewrote the section to the extent that a detailed comparison is impracticable.

Temporary provisions. - Laws 1998, ch. 102, § 6 provides that on or before November 30, 1998, the taxation and revenue department shall inform each processor in writing of the natural gas processors tax rate applicable pursuant to the Natural Gas Processors Tax Act for the six-month period beginning January 1, 1999.

"Interest owners" liable under former section. - Under the version of this section in effect prior to its 1998 amendment, the "interest owner" of the natural gas was liable for the privilege tax on processing natural gas. Blackwood & Nichols Co. v. New Mexico Taxation & Revenue Dep't, 1998-NMCA-113, 125 N.M. 576, 964 P.2d 137 (Ct. App. 1998), cert. denied, N.M. , 967 P.2d 447 (1998).

Severability clauses. - Laws 1984, ch. 2, § 12, provides for the severability of that act, if any part or application thereof is held invalid.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 84 C.J.S. Taxation §§ 121, 123, 126.

Severability clauses. - Laws 1984, ch. 2, § 12, provides for the severability of that act, if any part or application thereof is held invalid.

84 C.J.S. Taxation §§ 121, 123, 126.

7-33-5. Repealed.

ANNOTATIONS

Repeals. - Laws 1998, ch. 102, § 7, repeals 7-33-5 NMSA 1978, as amended by Laws 1970, ch. 13, § 6, relating to valuing the products of a processor, effective January 1, 1999.

7-33-6. Refund.

Any person who has overpaid the tax may apply for a refund of that overpayment in accordance with the provisions of Section 7-1-26 NMSA 1978.

History: 1953 Comp., § 72-23-6, enacted by Laws 1963, ch. 179, § 6; 1985, ch. 65, § 42; 1998, ch. 102, § 3.

ANNOTATIONS

The 1998 amendment, effective January 1, 1999, deleted "Price increase subject to approval of agency of United States of America, state of New Mexico or court" in the section heading, deleted the first two sentences of the section pertaining to product value being subject to tax, and in the last sentence substituted "overpaid the tax" for "paid any such excess tax" and "overpayment" for "excess tax".

7-33-7. Natural gas on which tax has been levied; regulation by department.

The tax shall not be levied more than once on the same natural gas. Reporting of natural gas on which the tax has been paid is subject to the regulation of the department.

History: 1953 Comp., § 72-23-7, enacted by Laws 1963, ch. 179, § 7; 1998, ch. 102, § 4.

ANNOTATIONS

The 1998 amendment, effective January 1, 1999, substituted "Natural gas" for "Products" and "department" for "commission" in the section heading; substituted "natural gas" for "product" at the end of the first sentence; in the last sentence substituted "natural gas" for "products" and "department" for "commission", and made a minor stylistic change.

7-33-8. Tax return; tax remittance; additional information.

A. Each processor shall submit a return monthly to the department in the form and manner required by the department showing for the month the total mmbtus of natural gas received by the processor at the inlet of the natural gas processing plant and the total mmbtus of natural gas deducted pursuant to the Natural Gas Processors Tax Act [this article]. All tax due or to be remitted by the processor shall accompany the return.

B. The return required by this section shall be filed on or before the twenty-fifth day of the month after the calendar month for which the return is required.

C. The department may require additional reports or information as necessary for the proper administration of the Natural Gas Processors Tax Act.

History: 1953 Comp., § 72-23-8, enacted by Laws 1963, ch. 179, § 8; 1970, ch. 13, § 7; 1998, ch. 102, § 5.

ANNOTATIONS

The 1998 amendment, effective January 1, 1999, substituted "return" for "report" in the section heading and rewrote the section to the extent that a detailed comparison is impracticable.

Temporary provisions. - Laws 1998, ch. 102, § 6 provides that on or before November 30, 1998, the taxation and revenue department shall inform each processor in writing of the natural gas processors tax rate applicable pursuant to the Natural Gas Processors Tax Act for the six-month period beginning January 1, 1999.

"Interest owners" liable under former article. - Under the version of this article in effect prior to the 1998 amendment of 7-33-4 NMSA 1978, the "interest owner" of the natural gas was liable for the privilege tax on processing natural gas. Blackwood & Nichols Co. v. New Mexico Taxation & Revenue Dep't, 1998-NMCA-113, 125 N.M. 576, 964 P.2d 137 (Ct. App. 1998), cert. denied, N.M. , 967 P.2d 447 (1998).

7-33-9 to 7-33-22. Repealed.

ANNOTATIONS

Repeals. - Laws 1985, ch. 65, § 46 repeals 7-33-9 to 7-33-22 NMSA 1978, relating to the fund and remedies under the Natural Gas Processors Tax Act, effective July 1, 1985. For provisions of former sections, see 1983 Replacement Pamphlet.

ARTICLE 34
OIL AND GAS PRODUCTION EQUIPMENT AD VALOREM TAX

7-34-1. Short title.

Chapter 7, Article 34 NMSA 1978 may be cited as the "Oil and Gas Production Equipment Ad Valorem Tax Act".

History: 1953 Comp., § 72-24-1, enacted by Laws 1969, ch. 119, § 1; 1985, ch. 65, § 43.

ANNOTATIONS

Temporary provisions. - Laws 1985, ch. 65, §§ 51 and 52 provide that any protests, claims for refund, court proceedings or other actions ongoing under the provisions of the Oil and Gas Production Equipment Ad Valorem Tax Act on July 1, 1985, will be finally determined under the provisions of the tax act in force at the time the tax was due and that the provisions of the Tax Administration Act regarding protests and claims for refund with respect to taxes due in accordance with the Oil and Gas Production Equipment Ad Valorem Tax Act shall apply only to taxes due under the provisions of that act on or after July 1, 1985, and that any protest or claim for refund initiated on or after July 1, 1985, with respect to taxes due in accordance with the Oil and Gas Production Equipment Ad Valorem Tax Act prior to July 1, 1985, shall be made in accordance with the provisions of that as if those provisions had remained in full force and effect.

Law reviews. - For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

For note, "Tribal Severance Taxes - Outside the Purview of the Commerce Clause," see 21 Nat. Resources J. 405 (1981).

7-34-2. Definitions.

As used in the Oil and Gas Production Equipment Ad Valorem Tax Act [this article]:

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

B. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, copartnership, cooperative, joint venture, association or other group or combination acting as a unit;

C. "operator" means any person engaged in the severance of products from a production unit;

D. "product" means oil, natural gas or liquid hydrocarbon, individually or any combination thereof, or carbon dioxide;

E. "severance" means taking any product from the soil in any manner;

F. "production unit" means a unit of property designated by the department from which products of common ownership are severed;

G. "equipment" means wells and nonmobile equipment used at a production unit in connection with severance, treatment or storage of production unit products;

H. "value" means the actual price received for products at the production unit as established under the Oil and Gas Ad Valorem Production Tax Act; and

I. "assessed value" means the value against which tax rates are applied.

History: 1953 Comp., § 72-24-2, enacted by Laws 1969, ch. 119, § 2; 1977, ch. 249, § 58; 1980, ch. 97, § 8; 1986, ch. 20, § 103.

7-34-3. Method of determining assessed value.

A. Annually the commission shall compute the value of products of each production unit for the previous calendar year.

B. The taxable value of equipment of each production unit is an amount equal to twenty-seven percent of the value of products of each production unit.

C. The assessed value of equipment of each production unit shall be determined by applying the uniform assessment ratio to the taxable value of equipment of each production unit.

History: 1953 Comp., § 72-24-3, enacted by Laws 1969, ch. 119, § 3; 1972, ch. 60, § 1.

ANNOTATIONS

Meaning of "commission". - See 7-34-2A NMSA 1978.

7-34-4. Ad valorem tax levied.

An ad valorem tax is levied on the assessed value of the equipment at each production unit. The tax shall be at the rate certified to the division by the department of finance and administration under the provisions of Section 7-37-7 NMSA 1978.

History: 1953 Comp., § 72-24-4, enacted by Laws 1969, ch. 119, § 4; 1981, ch. 37, § 59.

ANNOTATIONS

Meaning of "commission". - See 7-34-2A NMSA 1978.

Indian right to tax oil production not preempted by congress. - Although it granted to the states the right to tax the production of oil and gas on Indian reservations, congress did not preempt similar tribal taxation. Merrion v. Jicarilla Apache Tribe, 617 F.2d 537 (10th Cir. 1980), aff'd, 455 U.S. 130, 102 S. Ct. 894, 71 L. Ed. 2d 21 (1982).

7-34-5. Oil and gas production equipment ad valorem tax to be exclusive measure of ad valorem tax liability.

The tax levied by Section 7-34-4 NMSA 1978 shall be the full and exclusive measure of ad valorem tax liability for equipment used at a production unit for the calendar year 1969 and all subsequent years. Any other ad valorem tax on equipment used at a production unit is void.

History: 1953 Comp., § 72-24-5, enacted by Laws 1969, ch. 119, § 5; 1985, ch. 65, § 44.

ANNOTATIONS

Cross references. - For taxes being exclusive of any other ad valorem taxes, see 7-32-5 NMSA 1978.

7-34-6. Tax statement; tax due date.

Annually the commission shall compute the assessed value of equipment for each production unit and extend the applicable rates against the assessed value to determine the amount of tax due. The commission shall prepare a tax statement for each production unit showing the production unit identification, the taxing district in which it is located, calendar-year value, assessed value, district rates and the amount of tax due. The tax statement shall be sent to the operator on or before October 15th and payment shall be made to the commission on or before November 30.

History: 1953 Comp., § 72-24-6, enacted by Laws 1969, ch. 119, § 6.

ANNOTATIONS

Meaning of "commission". - See 7-34-2A NMSA 1978.

7-34-7. Commission shall report to county; tax roll.

On or before December 30, the commission shall deliver a report to each county in which production units are located, identifying each production unit, the taxing district in which it is located, the value, assessed value, district rates and the amount of tax paid.

History: 1953 Comp., § 72-24-7, enacted by Laws 1969, ch. 119, § 7.

ANNOTATIONS

Meaning of "commission". - See 7-34-2A NMSA 1978.

7-34-8. Repealed.

ANNOTATIONS

Repeals. - Laws 1985, ch. 65, § 46 repeals 7-34-8 NMSA 1978, as enacted by Laws 1969, ch. 119, § 8, relating to the oil and gas accounting commission ad valorem equipment tax fund, effective July 1, 1985. For provisions of former section, see 1983 Replacement Pamphlet.

7-34-9. Monthly report to department of finance and administration; remittances to state and county treasurers; state and county treasurers may distribute funds.

A. By the last day of each month, the department shall prepare and certify a report to the secretary of finance and administration. The report shall be for the preceding month and shall show the amount of taxes distributed to the oil and gas equipment tax fund, the amount due the state and each taxing district imposing a tax and any other information required by the secretary of finance and administration. The secretary of finance and administration shall forthwith remit the appropriate amounts from the oil and gas equipment tax fund to the state treasurer and the county treasurers who shall make the appropriate distribution, except as provided in Subsection B of this section.

B. If the board of county commissioners notifies the secretary of finance and administration that the county elects not to distribute the proceeds of the oil and gas ad valorem production equipment tax due the municipalities, community college districts and school districts in the county, the secretary of finance and administration shall pay amounts due directly to municipalities, community college districts and school districts within the county.

History: 1953 Comp., § 72-24-9, enacted by Laws 1969, ch. 119, § 9; 1977, ch. 247, § 188; 1983, ch. 221, § 2; 1985, ch. 65, § 45; 1993, ch. 131, § 2.

ANNOTATIONS

Cross references. - For the oil and gas equipment tax fund, see 7-1-6.22 NMSA 1978.

The 1993 amendment, effective March 31, 1993, substituted "department" for "division" in Subsection A and inserted "community college districts" twice in Subsection B.

7-34-10 to 7-34-20. Repealed.

ANNOTATIONS

Repeals. - Laws 1985, ch. 65, § 46 repeals 7-34-10 to 7-34-20 NMSA 1978, as enacted by Laws 1969, ch. 119, §§ 10 to 20, relating to the remedies under the Oil and Gas Production Equipment Ad Valorem Tax Act, effective July 1, 1985. For provisions of former sections, see 1983 Replacement Pamphlet.

ARTICLE 35
PROPERTY TAX DEPARTMENT

7-35-1. Short title.

Articles 35 through 38 of Chapter 7 NMSA 1978 may be cited as the "Property Tax Code".

History: 1953 Comp., § 72-28-1, enacted by Laws 1973, ch. 258, § 1; 1982, ch. 28, § 1.

ANNOTATIONS

Cross references. - For constitutional provision as to equality in ad valorem taxation, see N.M. Const., art. VIII, § 1.

For constitutional provision as to property tax limits and exceptions, see N.M. Const., art. VIII, § 2.

For constitutional provision as to tax exempt property, see N.M. Const., art. VIII, § 3.

For constitutional provision as to assessment of lands, see N.M. Const., art. VIII, § 6.

Severability clauses. - Laws 1973, ch. 258, § 157, provides for the severability of the act if any part or application thereof is held invalid.

Construction of Property Tax Code. - The Property Tax Code, 7-35-1 to 7-38-93 NMSA 1978, must be read and construed in its entirety. Brown v. Greig, 106 N.M. 202, 740 P.2d 1186 (Ct. App. 1987).

Law reviews. - For comment, "Coal Taxation in the Western States: The Need for a Regional Tax Policy," see 16 Nat. Resources J. 415 (1976).

For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M.L. Rev. 69 (1976-77).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 24 to 27.

84 C.J.S. Taxation §§ 94 to 106.

7-35-2. Definitions. (Effective until January 1, 2001.)

As used in the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978]:

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

B. "director" means the secretary;

C. "livestock" means cattle, buffalo, horses, mules, sheep, goats, swine and other domestic animals useful to man, excluding ratites;

D. "manufactured home" means a manufactured home as that term is defined in Section 66-1-4.11 NMSA 1978;

E. "net taxable value" means the value of property upon which the tax is imposed and is determined by deducting from taxable value the amount of any exemption authorized by the Property Tax Code;

F. "nonresidential property" means property that is not residential property;

G. "owner" means the person in whom is vested any title to property;

H. "person" means an individual or any other legal entity;

I. "property" means tangible property, real or personal;

J. "residential property" means property consisting of one or more dwellings together with appurtenant structures, the land underlying both the dwellings and the appurtenant structures and a quantity of land reasonably necessary for parking and other uses that facilitate the use of the dwellings and appurtenant structures; as used in this subsection, "dwellings" includes both manufactured homes and other structures when used primarily for permanent human habitation, but the term does not include structures when used primarily for temporary or transient human habitation such as hotels, motels and similar structures;

K. "secretary" means the secretary of taxation and revenue and, except for purposes of Section 7-35-6 NMSA 1978 and Paragraphs (1) and (2) of Subsection B of Section 7-38-90 NMSA 1978, also includes the deputy secretary or a division director or deputy division director delegated by the secretary;

L. "tax" means the property tax imposed under the Property Tax Code;

M. "taxable value" means the value of property determined by applying the tax ratio to the value of the property determined for property taxation purposes;

N. "tax rate" means the rate of the tax expressed in terms of dollars per thousand dollars of net taxable value of property;

O. "tax ratio" means the percentage established under the Property Tax Code that is applied to the value of property determined for property taxation purposes in order to derive taxable value; and

P. "tax year" means the calendar year.

History: 1953 Comp., § 72-28-2, enacted by Laws 1973, ch. 258, § 2; 1977, ch. 249, § 60; 1981, ch. 37, § 60; 1985, ch. 109, § 1; 1986, ch. 20, § 104; 1991, ch. 166, § 1; 1993, ch. 39, § 1; 1994, ch. 9, § 1.

ANNOTATIONS

The 1991 amendment, effective June 14, 1991, deleted "or, when delegated authority by the secretary, the director of the property tax division of the department" at the end of Subsection B; added Subsection D; redesignated former Subsections D to O as Subsections E to P; deleted "as defined in Section 66-1-4 NMSA 1978" following "manufactured homes" near the beginning of Subsection J; and added the language beginning "and, except for" at the end of Subsection K.

The 1993 amendment, effective June 18, 1993, inserted "ratites" in Subsection C.

The 1994 amendment, effective February 15, 1994, in Subsection C, inserted "buffalo", deleted "ratites" following "swine" and added "excluding ratites" at the end.

Applicability. - Laws 1994, ch. 5, § 3 makes the provisions of § 1 of the act applicable to 1994 and subsequent tax years.

Compiler's notes. - Section 7-38-90 NMSA 1978, referred to in Subsection K, was repealed in 1995. For present comparable provisions, see 9-11-6.2 NMSA 1978.

Vendor is an "owner." - Because a vendor holds legal title and because the Property Tax Code defines "owner" as the holder of any title, the vendor under a real estate contract is an "owner" under the code. Southwest Land Inv., Inc. v. Hubbart, 116 N.M. 742, 867 P.2d 412 (1993).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Oil and gas royalty as real or personal property, 56 A.L.R.4th 539.

7-35-2. Definitions. (Effective January 1, 2001.)

As used in the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978]:

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

B. "director" means the secretary;

C. "livestock" means cattle, buffalo, horses, mules, sheep, goats, swine, ratites and other domestic animals useful to man;

D. "manufactured home" means a manufactured home as that term is defined in Section 66-1-4.11 NMSA 1978;

E. "net taxable value" means the value of property upon which the tax is imposed and is determined by deducting from taxable value the amount of any exemption authorized by the Property Tax Code;

F. "nonresidential property" means property that is not residential property;

G. "owner" means the person in whom is vested any title to property;

H. "person" means an individual or any other legal entity;

I. "property" means tangible property, real or personal;

J. "residential property" means property consisting of one or more dwellings together with appurtenant structures, the land underlying both the dwellings and the appurtenant structures and a quantity of land reasonably necessary for parking and other uses that facilitate the use of the dwellings and appurtenant structures; as used in this subsection, "dwellings" includes both manufactured homes and other structures when used primarily for permanent human habitation, but the term does not include structures when used primarily for temporary or transient human habitation such as hotels, motels and similar structures;

K. "secretary" means the secretary of taxation and revenue and, except for purposes of Section 7-35-6 NMSA 1978 and Paragraphs (1) and (2) of Subsection B of Section 7-38-90 NMSA 1978, also includes the deputy secretary or a division director or deputy division director delegated by the secretary;

L. "tax" means the property tax imposed under the Property Tax Code;

M. "taxable value" means the value of property determined by applying the tax ratio to the value of the property determined for property taxation purposes;

N. "tax rate" means the rate of the tax expressed in terms of dollars per thousand dollars of net taxable value of property;

O. "tax ratio" means the percentage established under the Property Tax Code that is applied to the value of property determined for property taxation purposes in order to derive taxable value; and

P. "tax year" means the calendar year.

History: 1953 Comp., § 72-28-2, enacted by Laws 1973, ch. 258, § 2; 1977, ch. 249, § 60; 1981, ch. 37, § 60; 1985, ch. 109, § 1; 1986, ch. 20, § 104; 1991, ch. 166, § 1; 1993, ch. 39, § 1; 1994, ch. 9, § 1; 1994, ch. 9, § 2.

ANNOTATIONS

The 1994 amendment, effective January 1, 2001, in Subsection C, inserted "buffalo" and "ratites", and deleted "excluding ratites" at the end.

7-35-2.1. Additional definition.

As used in the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978], "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 [Articles 35 through 38 of Chapter 7 NMSA 1978] and applicable regulations, orders, rulings and instructions of the department. He shall implement procedures for evaluation of the performance of county assessors' functions on a regular basis and shall also provide, subject to the availability of resources within the department and from the property valuation fund created in Subsection B of this section, appropriate technical assistance to county assessors.

B. A revolving fund, to be called the "property valuation fund", is created.

(1) The fund shall consist of:

(a) all money which on January 1, 1975 remained in the special reappraisal fund which was created pursuant to Section 72-2-21.1 NMSA 1953 and the reappraisal loan fund which was created pursuant to Section 72-2-21.11 NMSA 1953;

(b) all repayments of outstanding loans made or committed to be made from the special reappraisal fund and the reappraisal loan fund; and

(c) all money appropriated to the fund.

(2) The fund shall not be used to supplement the general operating budget of the department. The fund may be used by the department for:

(a) providing a county with technical assistance services pursuant to Section 7-36-19 NMSA 1978 in the valuation of major industrial or commercial properties subject to valuation by the assessor;

(b) providing a county with technical assistance services in keeping appraised values current for valuation purposes;

(c) providing other major technical assistance to a county;

(d) installing necessary maps and other increments of the property description system in a county pursuant to Section 7-38-10 NMSA 1978; and

(e) meeting prior commitments for loans of money in the reappraisal loan fund for assistance to a county in which reappraisal has not been completed.

(3) Amounts from the property valuation fund may be expended by the director only after approval by the state board of finance. Approval by the state board of finance, fully setting forth the reasons for the expenditure, must be requested in writing by either the director or the county assessor of the county requesting department assistance. A request by the county assessor must be concurred in by the board of county commissioners and the director.

(4) Any amount in the property valuation fund not currently needed for the purpose of the fund shall be invested by the state treasurer in such manner and for such times as will make the funds available when needed for the purposes of the fund.

(5) Any amount expended from the property valuation fund shall be reimbursed in full to the fund by the county requesting assistance or to which assistance has been provided; the reimbursement shall not be reduced by the director pursuant to Section 7-35-8 NMSA 1978; and the reimbursement shall be upon terms and conditions prescribed by the director and approved by the state board of finance.

(6) In any county which has not completed reappraisal by June 30, 1977, no political subdivision shall be eligible to receive any funds distributed from the following unless specific appropriations are made by the legislature:

(a) public school fund, supplemental distributions pursuant to Section 22-8-30 NMSA 1978; or

(b) any discretionary distributions made by the board of finance.

(7) There is appropriated to the property valuation fund all money which on January 1, 1975 remained in the special reappraisal fund and the reappraisal loan fund and all repayments of outstanding loans made or committed to be made from the special reappraisal fund and the reappraisal loan fund.

History: 1953 Comp., § 72-28-6, enacted by Laws 1973, ch. 258, § 6; 1975, ch. 153, § 1; 1989, ch. 324, § 2.

ANNOTATIONS

Cross references. - For appraisers' certificates, property valuation and tax administration courses, see 4-39-2 to 4-39-5 NMSA 1978.

The 1989 amendment, effective April 7, 1989, in Subsection B, deleted former Paragraph (1)(c), which read "all money earned by the investment or loan of the money in the property valuation fund; and" and redesignated former Paragraph (1)(d) as Paragraph (1)(c), in Paragraph (2)(a), substituted "Section 7-36-19 NMSA 1978" for "Section 72-29-8 NMSA 1953", in Paragraph (2)(d), substituted "Section 7-38-10 NMSA 1978; and" for "Section 72-31-10 NMSA 1953", deleted former Paragraph (2)(e), which read "carrying out the functions from which a county assessor has been suspended pursuant to Section 72-28-9 NMSA 1953; and", redesignated former Paragraph (2)(f) as Paragraph (2)(e), in Paragraph (4) deleted "in such a manner and for such times as will make the funds available when needed for the purposes of the fund, and earnings from such investment shall be retained in the fund" from the end of the paragraph, in Paragraph (5), substituted "Section 7-35-8 NMSA 1978" for "Section 72-28-11 NMSA 1953", and in Paragraph (6)(a), substituted "Section 22-8-30 NMSA 1978" for "Section 77-6-29 NMSA 1953".

Compiler's notes. - Sections 72-2-21.1 and 72-2-21.11, 1953 Comp., referred to in Subsection B(1)(a), were repealed by Laws 1974, ch. 92, § 34 (amending Laws 1973, ch. 258, § 156).

7-35-4. Department to provide manuals and other materials.

The department shall prepare, issue and periodically revise valuation manuals, cost and valuation schedules, bulletins and annotated digests of property tax laws and regulations in handbook form for the use of its employees, the county assessors and

their employees and other persons involved in the administration and collection of the property tax. The department shall make the foregoing materials available to members of the public and may charge a fee for the materials to offset the cost of physical preparation. Any amounts collected are appropriated to the department for its operation.

History: 1953 Comp., § 72-28-7, enacted by Laws 1973, ch. 258, § 7.

7-35-5. Training programs; attendance by assessor.

A. The department shall conduct or sponsor special courses of instruction and in-service and intern training programs on the technical, legal and administrative aspects of property taxation. The department may cooperate with educational institutions and appropriate organizations interested in the property valuation or taxation field in the conduct or sponsorship of training programs. The department may reimburse the expenses incurred by assessors and employees of the state and its political subdivisions who attend training programs with the approval of the department.

B. The department shall establish a training program for persons elected or appointed as county assessors who have not held office as a county assessor within the ten years prior to the beginning of the term for which the person was elected or from the date of appointment. The department shall require attendance and satisfactory completion of such a program by such persons elected or appointed after the effective date of this 1991 act.

History: 1953 Comp., § 72-28-8, enacted by Laws 1973, ch. 258, § 8; 1991, ch. 166, § 2.

ANNOTATIONS

Cross references. - For courses in property valuation and property tax administration, see 4-39-2 NMSA 1978.

The 1991 amendment, effective June 14, 1991, added "Attendance by assessor" in the section heading; designated the existing language as Subsection A; and added Subsection B.

"Effective date of this 1991 act". - The phrase "effective date of this 1991 act", referred to in Subsection B, means June 14, 1991, the effective date of Laws 1991, ch. 166.

7-35-6. Suspension of county assessor's functions; department's performance of county assessor's functions.

A. If the secretary finds after informal efforts to obtain compliance have failed that a county assessor is not complying with the Property Tax Code or with the regulations, orders, rulings or other administrative directives of the department under the Property

Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978], the secretary shall notify the county assessor and the board of county commissioners of the county involved by certified mail of the noncompliance and of the action required to remedy the noncompliance.

B. If the failure has not been remedied within sixty days after the notice is mailed, the secretary shall issue an order requiring the county assessor and the board of county commissioners to show cause why the county assessor's functions should not be suspended. The secretary shall set a time and place for a hearing on the order and shall send by certified mail to the county assessor and to the board of county commissioners copies of the order and the notice of hearings.

C. If the secretary determines after a hearing that a county assessor has failed to comply with the Property Tax Code or regulations, orders, rulings or instructions of the department or of the department of finance and administration pursuant to the Property Tax Code, the secretary may suspend in whole or in part any of the county assessor's functions. The suspension shall be by written order of the secretary and shall continue until the secretary finds that the county assessor is both willing and able to comply with the Property Tax Code and the regulations, orders, rulings or instructions of the department or of the department of finance and administration pursuant to the Property Tax Code.

D. During a suspension, the department succeeds to and shall carry out the functions from which the county assessor has been suspended. The county shall reimburse the department for all costs incurred in performing the functions. In the event that the county does not make reimbursement within a reasonable time, the department, notwithstanding any other provision of law, may obtain reimbursement by retaining ten percent of each distribution or transfer required by law to be made to the county from money collected by the department until the total retained equals the amount to be reimbursed. All amounts received or retained by the department under this subsection are appropriated to the department for its use in carrying out its duties under the Property Tax Code.

E. No less than thirty days after the date of any suspension order, the board of county commissioners may make a written request to the secretary to terminate the suspension order on the grounds that it is no longer justified because of the county assessor's willingness and ability to comply with the Property Tax Code or regulations, orders, rulings or instructions of the department or of the department of finance and administration pursuant to the Property Tax Code. Upon receipt of a request to terminate a suspension order, the secretary shall set a time and place for a hearing on the request. The date of the hearing shall be not more than thirty days after the receipt of the request, and the secretary shall notify the board of county commissioners and the county assessor of the time and place of the hearing by certified mail. If the secretary determines after a hearing that the county assessor is both willing and able to comply with the Property Tax Code and the regulations, orders, rulings or instructions of the department or of the department of finance and administration pursuant to the Property

Tax Code, the secretary shall terminate the suspension by written order, which order must be made within ten days of the hearing. In the absence of such a finding, the secretary shall deny the request for termination of the suspension, which denial must be made by written order within ten days of the hearing. Nothing in this subsection prohibits the secretary from terminating an order of suspension issued in accordance with Subsection C of this section without a request for a hearing, or a hearing, on the issue of termination of suspension. Repeated requests for the termination of a suspension may be made, but no request may be made less than thirty days after the date of the secretary's denial of a previous request for termination of a suspension.

History: Laws 1981, ch. 37, § 61; 1991, ch. 166, § 3.

ANNOTATIONS

The 1991 amendment, effective June 14, 1991, rewrote the section heading which read "Division to seek compliance by assessors and county commissioners"; in Subsection A, substituted "secretary" for "director" in two places and substituted "department under the Property Tax Code" for "division"; rewrote Subsection B; and added Subsections C to E.

Prior history. - In 1981, Section 7-35-6 NMSA 1978 was repealed and reenacted by Laws 1981, Chapter 37, Section 61. For prior history, see 1953 Comp., § 72-28-9, enacted by Laws 1973, ch. 258, § 9; 1974, ch. 92, § 2.

7-35-7. Suspension of county treasurer's functions; department of finance and administration's performance of county treasurer's functions.

A. If the secretary of finance and administration finds that a county treasurer has failed to comply with the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] or regulations, orders, rulings or instructions of the department or of the department of finance and administration, he shall notify the county treasurer and the board of county commissioners by certified mail of the fact and nature of the failure.

B. If the failure has not been remedied within sixty days after the notice is mailed, the secretary of finance and administration shall issue an order requiring the county treasurer and the board of county commissioners to show cause why the county treasurer's functions should not be suspended. The secretary of finance and administration shall set a time and place for a hearing on the order and shall send by certified mail to the county treasurer and to the board of county commissioners copies of the order and the notice of the hearing.

C. If the secretary of finance and administration determines after a hearing that a county treasurer has failed to comply with the Property Tax Code or regulations, orders, rulings or instructions of the department or of the department of finance and administration, the secretary of finance and administration may suspend in whole or in part any of the

county treasurer's functions. The suspension shall be by written order of the secretary of finance and administration and shall continue until he finds that the county treasurer is both willing and able to comply with the Property Tax Code and the regulations, orders, rulings or instructions of the department or of the department of finance and administration.

D. During a suspension, the department of finance and administration succeeds to and shall carry out the functions from which the county treasurer has been suspended. The county shall reimburse the department of finance and administration for all costs incurred in performing the functions. All amounts received by the department of finance and administration under this subsection shall be deposited with the state treasurer for credit to the state general fund.

E. No less than thirty days after the date of any suspension order, the board of county commissioners may make a written request to the secretary of finance and administration to terminate the suspension order on the grounds that it is no longer justified because of the county treasurer's willingness and ability to comply with the Property Tax Code or regulations, orders, rulings or instructions of the department or of the department of finance and administration. Upon receipt of a request to terminate a suspension order, the secretary of finance and administration shall set a time and place for a hearing on the request. The date of the hearing shall be not more than thirty days after the receipt of the request, and the secretary of finance and administration shall notify the board of county commissioners and the county treasurer of the time and place of the hearing by certified mail. If the secretary of finance and administration determines after a hearing that the county treasurer is both willing and able to comply with the Property Tax Code and the regulations, orders, rulings or instructions of the department or of the department of finance and administration, he shall terminate the suspension by written order, which must be made within ten days of the hearing. In the absence of such a finding, he shall deny the request for termination of the suspension, which denial must be made by written order within ten days of the hearing. Nothing in this subsection prohibits the secretary of finance and administration from terminating an order of suspension in accordance with Subsection C of this section without a request for a hearing, or a hearing, on the issue of termination of suspension. Repeated requests for the termination of a suspension may be made, but no request may be made less than thirty days after the date of the secretary of finance and administration's denial of a previous request for termination of a suspension.

F. Copies of suspension orders and orders terminating suspensions shall be sent to the department at the time they are made.

History: 1953 Comp., § 72-28-10, enacted by Laws 1973, ch. 258, § 10; 1974, ch. 92, § 3; 1977, ch. 247, § 189.

7-35-8. Authority for director to reduce amount required to be reimbursed to department by counties for services provided by department.

When any provision of the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] requires a county to reimburse the department for the costs of services provided by the department, the director may reduce the amount required to be reimbursed to less than actual costs of the services.

History: 1953 Comp., § 72-28-11, enacted by Laws 1973, ch. 258, § 11.

7-35-9. Repealed.

ANNOTATIONS

Repeals. - Laws 1982, ch. 28, § 31, repeals 7-35-9 NMSA 1978, relating to the furnishing of annual reports by the property tax division of the taxation and revenue department effective May 19, 1982.

7-35-10. Division to furnish valuation services to state agencies and political subdivisions of the state.

The division shall provide, subject to the availability of resources within the division, assistance services to state agencies and political subdivisions in the valuation of property owned or being considered for purchase by the state or by political subdivisions. Agencies and political subdivisions that are not funded from the state general fund shall reimburse the division for the actual cost incurred in the valuation of the property.

History: 1953 Comp., § 72-28-13, enacted by Laws 1975, ch. 172, § 1; 1982, ch. 28, § 2.

ARTICLE 36
VALUATION OF PROPERTY

7-36-1. Provisions for valuation of property; applicability.

The provisions of this article apply to and govern the determination of value of all property subject to valuation for property taxation purposes under the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978].

History: 1953 Comp., § 72-29-1, enacted by Laws 1973, ch. 258, § 13.

ANNOTATIONS

Cross references. - For constitutional provision as to equality of ad valorem taxation, see N.M. Const., art. VIII, § 1.

For constitutional provision as to property tax limits and exceptions, see N.M. Const., art. VIII, § 2.

For constitutional provision as to assessment of lands, see N.M. Const., art. VIII, § 6.

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

For comment, "Coal Taxation in the Western States: The Need for a Regional Tax Policy," see 16 Nat. Resources J. 415 (1976).

7-36-2. Allocation of responsibility for valuation and determining classification of property for property taxation purposes; county assessor and department.

A. The county assessor is responsible and has the authority for the valuation of all property subject to valuation for property taxation purposes in the county except the property specified by Subsections B and C of this section.

B. The department is responsible and has the authority for the valuation of all property subject to valuation for property taxation purposes and used in the conduct of the following businesses:

(1) railroad;

(2) communications system as that term is defined in Section 7-36-30 NMSA 1978;

(3) pipeline;

(4) public utility; and

(5) airline.

C. The department is responsible and has the authority for the valuation of property subject to valuation for property taxation purposes when that property is:

(1) an electricity generating plant, whether or not owned by a public utility, if all or part of the electricity is generated for ultimate sale to the consuming public;

(2) mineral property and property held or used in connection with mineral property as defined in Sections 7-36-22 through 7-36-25 NMSA 1978; or

(3) machinery, equipment and other personal property of all resident and nonresident persons customarily engaged in construction that involves the use during a tax year of the machinery, equipment and other personal property in more than one county. For the purposes of this paragraph, "construction" means leveling or clearing land, excavating

earth, drilling wells of any type, including seismograph shot holes or core drilling, or similar work, or building, altering, repairing or demolishing any:

(a) road, highway, bridge, parking area or related project;

(b) building, fence, stadium or other structure;

(c) airport, subway or similar facility;

(d) park, trail, athletic field, golf course or similar facility;

(e) dam, reservoir, canal, ditch or similar facility;

(f) sewerage or water treatment facility, power generating plant, pump station, natural gas compressing station, gas processing plant, coal gasification plant, refinery, distillery or similar facility;

(g) sewerage, water, gas or other pipeline;

(h) transmission line;

(i) radio, television or other tower;

(j) water, oil or other storage tank;

(k) shaft, tunnel or other mining appurtenance; or

(l) similar work.

D. The entity having responsibility and authority for valuing the property described in Subsections A through C of this section shall also have responsibility and authority for classifying that property as either residential or nonresidential under the provisions of Section 7-36-2.1 NMSA 1978.

E. The secretary by regulation may delegate authority to the county assessor for the valuation and classification of property subject to valuation for property taxation purposes for which the department is responsible pursuant to Subsections B through D of this section only if:

(1) the property is held or used in connection with the transmission, storage, measurement or distribution of water and the transmission, storage, measurement and distribution is conducted by a single person entirely within a single county; or

(2) the property is held or used in connection with a communications system as defined in Section 7-36-30 NMSA 1978 and the system operates entirely within a single county.

F. The department is authorized to enter into one or more agreements with each county assessor, subject to approval of each agreement by the appropriate board of county commissioners, under which the county assessor agrees to perform the valuation of property for which the department is responsible under Subsection B of this section but which property is not subject to the special methods of valuation set forth in Sections 7-36-27, 7-36-28 and 7-36-30 through 7-36-32 NMSA 1978.

History: 1953 Comp., § 72-29-2, enacted by Laws 1973, ch. 258, § 14; 1974, ch. 92, § 5; 1975, ch. 156, § 1; 1975, ch. 165, § 1; 1981, ch. 37, § 62; 1985, ch. 109, § 2; 1995, ch. 12, § 6.

ANNOTATIONS

Cross references. - For county assessors, see Chapter 4, Article 39 NMSA 1978.

The 1995 amendment, effective June 16, 1995, substituted "department" for "division" in the section heading and in Subsections B, C, and E; inserted "gas processing plant, coal gasification plant, refinery, distillery" in Subparagraph C(3)(f); substituted "secretary" for "director" near the beginning of Subsection E; and added Subsection F.

Applicability. - Laws 1995, ch. 12, § 16 makes the amendment by that act applicable to the 1996 and subsequent property tax years.

Different tax treatment based on use of contractor's equipment unconstitutional. - Since the effect of former 7-36-9 NMSA 1978 and 72-6-4A(1)(c), 1953 Comp. (predecessor of this section), was that contractors whose machinery and equipment was used in more than one county were subject to property tax on sales inventories, and contractors whose machinery and equipment was not used in more than one county were not subject to property tax on sales inventories, this difference in tax treatment based solely on whether a contractor uses his equipment in more than one county was arbitrary and resulted in a denial of equal protection of the law; therefore, to the extent that valuation by the property appraisal department deprives the taxpayer of the exemption in former 7-36-9 NMSA 1978, that section is unconstitutional. Halliburton Co. v. Property Appraisal Dep't, 88 N.M. 476, 542 P.2d 56 (Ct. App. 1975).

Use of equipment in multiple counties cannot be defended on basis of administrative convenience. - A classification based solely on the use of machinery and equipment in more than one county is patently unreasonable, and cannot be defended on the basis of assessment procedures. Administrative convenience in arriving at a valuation of the property involved does not show a rational basis for taxing inventories of contractors who report value to the property appraisal department rather than to the county assessor. The fact that taxpayers may reasonably be required to report their property values to different government offices because of differences in geographic operations does not provide a reasonable basis for a difference in tax treatment on the values reported. Halliburton Co. v. Property Appraisal Dep't, 88 N.M. 476, 542 P.2d 56 (Ct. App. 1975).

Mineral value taxed centrally. - In New Mexico, any mineral value, whether held in fee or as severed minerals, may only be classified and valued by the state tax commission (now property tax division of taxation and revenue department). Gerner v. State Tax Comm'n, 71 N.M. 385, 378 P.2d 619 (1963).

Director, not court, to choose between conflicting inferences. - Decision of the director supported by substantial evidence that taxpayer contractor's activities, which were performed prior to production from a well, in the usual course of business, involving the use of machinery and equipment commonly used in the course of drilling an oil and gas well came within 72-6-4A(1)(c), 1953 Comp., was affirmed since although there was conflicting evidence and it was for the director to choose between conflicting inferences. Halliburton Co. v. Property Appraisal Dep't, 88 N.M. 476, 542 P.2d 56 (Ct. App. 1975).

Use of machinery and equipment sufficient. - Section 72-6-4A(1)(c), 1953 Comp., by its terms, did not require a company to be the drilling contractor; the contractor's work must involve the use of, but not be limited to, machinery and equipment commonly used in oil and gas well drilling. Halliburton Co. v. Property Appraisal Dep't, 88 N.M. 476, 542 P.2d 56 (Ct. App. 1975).

Assessed value is not competent direct evidence of value for purposes other than taxation. Gomez v. Board of Educ. 76 N.M. 305, 414 P.2d 522 (1966).

Valuation of livestock. - Subsection D of 7-36-21 NMSA 1978 does not allocate valuation of livestock responsibility to the division; instead, that section simply requires the division to supervise the assessor by establishing classes of livestock and values for those classes of livestock. While the division must establish general criteria for valuing livestock, the county assessor does the actual valuation. Zwaagstra v. DelCurto, 114 N.M. 263, 837 P.2d 457 (Ct. App. 1992).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Method of rule for valuation of leasehold interest for purpose of property taxation, 84 A.L.R. 1310.

Price paid or received by taxpayer for property as evidence of its value for tax purposes, 160 A.L.R. 684.

Method of calculating value of stock of goods or the like for purposes of tangible personal property tax, 66 A.L.R.2d 833.

Separate assessment and taxation of air rights, 56 A.L.R.3d 1300.

7-36-2.1. Classification of property.

A. Property subject to valuation for property taxation purposes shall be classified as either residential property or nonresidential property.

B. The department by regulation, ruling, order or other directive shall provide for the implementation of a classification system and shall include a method for apportioning the value of multiple-use properties between residential and nonresidential components.

History: 1978 Comp., § 7-36-2.1, enacted by Laws 1981, ch. 37, § 63; 1995, ch. 12, § 7.

ANNOTATIONS

Cross references. - For general methods of valuation of property, see 7-36-15 NMSA 1978.

For limitations on tax rates on residential property, see 7-37-7.1 NMSA 1978.

For presumption of nonresidential classification, see 7-38-17.1 NMSA 1978.

The 1995 amendment, effective June 16, 1995, substituted "department" for "division" and made a minor stylistic change in Subsection B.

7-36-3. Industrial revenue bond and pollution control bond project property; tax status.

A. Property interests of a lessee in project property held under a lease from a county or a municipality under authority of an industrial revenue bond or pollution control revenue bond act are exempt from property taxation for as long as there is an outstanding bonded indebtedness under the terms of the revenue bonds issued for the acquisition of the project property, but in no event for a period of more than thirty years from the date of execution of the first lease of the project to the lessee by the county or municipality.

B. Property interests of a person, other than a public utility, arising out of the purchase of a project authorized by the Industrial Revenue Bond Act [3-32-1 to 3-32-16 NMSA 1978], the County Industrial Revenue Bond Act [Chapter 4, Article 59 NMSA 1978] or the Pollution Control Revenue Bond Act [3-59-1 to 3-59-14 NMSA 1978] are exempt from property taxation for as long as the project purchaser remains liable to the project seller for any part of the purchase price, but not to exceed thirty years from the date of execution of the sale agreement.

C. The exemptions from property taxation under Subsections A and B of this section are not cumulative.

History: 1953 Comp., § 72-29-2.1, enacted by Laws 1975, ch. 218, § 1; 1977, ch. 137, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - Pollution control: validity and construction of statute or ordinance allowing tax exemption for property used in pollution control, 65 A.L.R.3d 434.

7-36-3.1. Metropolitan redevelopment property; tax status of lessee's interests.

Property interests of a lessee in project property held under a lease with respect to a project authorized by the Metropolitan Redevelopment Code and acquired or held by a municipality prior to January 1, 1986 under the provisions of that code are exempt from property taxation for as long as there is an outstanding bonded indebtedness, but in any event for a period not to exceed ten years from the date of execution of the first lease of the project by the municipality. Property interests of a lessee of or an owner of a substantial beneficial interest in project property acquired or held by a municipality on or after January 1, 1986 with respect to a project authorized by the Metropolitan Redevelopment Code are exempt from property taxation for a period extending from the date of acquisition of the project property by the municipality through December 31 of the year in which the seventh anniversary of that acquisition date occurs.

History: 1978 Comp., § 7-36-3.1, enacted by Laws 1979, ch. 56, § 2; 1985, ch. 225, § 5.

ANNOTATIONS

Cross references. - For Development Incentive Act, see ch. 3, art. 64 NMSA 1978.

Metropolitan Redevelopment Code. - See 3-60A-1 NMSA 1978 and notes thereto.

7-36-3.2. 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.

ANNOTATIONS

Cross references. - For the Enterprise Zone Act, see 5-9-1 NMSA 1978 et seq.

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 [3-45-1 to 3-45-25 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 [Articles 35 to 38 of Chapter 7 NMSA 1978], but this exemption shall not apply to the following property:

(1) improvements of land of an exempt entity if the improvements are owned or leased by a nonexempt entity; these improvements are subject to valuation for property taxation purposes and to property taxation to be paid by the nonexempt entity; and

(2) property interests of nonexempt entities held under equitable title in the property of exempt entities.

C. When fractional interests are created in property:

(1) fractional interests that are nonexempt property shall be reported to the appropriate valuation authority by the fractional interest owners for valuation for property tax purposes if the owner is a nonexempt entity; and

(2) except for fractional interests owned by the United States, an Indian nation, tribe or pueblo, the state of New Mexico or a political subdivision of the state, fractional interests that are owned by a nonexempt entity but are claimed to be exempt property shall be reported by the owner to the appropriate valuation authority for a determination of exemption status and valuation if determined to be nonexempt property.

D. Fractional interests that are nonexempt property shall be valued by the applicable method of valuation pursuant to the Property Tax Code, and if fractional interests that are exempt property have been created, the value of the remaining nonexempt fractional interests shall be determined in the property tax year following the creation of the interests as the value of the property in the property tax year immediately prior to the year in which creation of the fractional interests occurred, increased or decreased by the value directly attributable to the creation of the fractional interests that are exempt property. For subsequent property tax years, the nonexempt fractional interests shall be valued pursuant to the applicable methods of valuation.

History: 1953 Comp., § 72-29-2.2, enacted by Laws 1976, ch. 61, § 1; 1977, ch. 285, § 1; 1985, ch. 109, § 3; 1985, ch. 225, § 6; 1995, ch. 12, § 8; 1998, ch. 49, § 1.

ANNOTATIONS

Cross references. - For constitutional provision as to tax exempt property, see N.M. Const., art. VIII, § 3.

For constitutional provision as to head of family and veteran exemption, see N.M. Const., art. VIII, § 5.

The 1995 amendment, effective June 16, 1995, designated the existing introductory language as Subsection A and redesignated former Subsections A through D as Paragraphs A(1) through A(4); deleted "and Sections 7-36-5 and 7-36-6 NMSA 1978" following "section" in the introductory phrase of Subsection A; inserted references to Section 7-36-3.2 in Paragraph A(1) and Subparagraph A(3)(c); added Subsection B; and made related stylistic changes.

The 1998 amendment, in the section heading, inserted "taxation and valuation of fractional interests"; added new Paragraphs A(3) and A(6) and redesignated the remaining Paragraphs in Subsection A accordingly; substituted "subject" for "hereby subjected" in Paragraph B(1); and added a new Subsection C. Laws 1998, ch. 49 contains no effective date provision, but, pursuant to N.M. Const. art. IV, § 23, is

effective May 20, 1998, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Applicability. - Laws 1995, ch. 12, § 16 makes the amendment by that act applicable to the 1996 and subsequent property tax years.

Enabling Act. - The Enabling Act for New Mexico, referred to in Subsection B, is set forth in Pamphlet 3 in Volume 1 NMSA 1978.

Constitutional. - Constitutional guarantees of equal protection and uniform taxation are not violated by the provision of this section for a 75-year limitation on leases qualifying for exemption. Welch v. Sandoval County Valuation Protests Bd. 1997-NMCA-086, 123 N.M. 722, 945 P.2d 452 (Ct. App. 1997).

License, not constituting interest in real property, does not meet definition of "fractional interest" set forth in Subsection A of this section. Cutter Flying Serv., Inc. v. Property Tax Dep't, 91 N.M. 215, 572 P.2d 943 (Ct. App. 1977).

"Term of the lease" means the original term; thus, where a lease had an original term of more than 75 years but had less than 75 years remaining, the leasehold was not a "fractional interest" under Paragraph A(1). Welch v. Sandoval County Valuation Protests Bd. 1997-NMCA-086, 123 N.M. 722, 945 P.2d 452 (Ct. App. 1997).

"Real property" is generally understood to mean a parcel of land together with all structures, fixtures and improvements upon it. Cutter Flying Serv., Inc. v. Property Tax Dep't, 91 N.M. 215, 572 P.2d 943 (Ct. App. 1977).

7-36-5, 7-36-6. Repealed.

ANNOTATIONS

Repeals. - Laws 1995, ch. 12, § 15, repeals 7-36-5 and 7-36-6 NMSA 1978, as enacted by Laws 1976, ch. 61, §§ 2 and 3, relating to fractional property interests, effective June 16, 1995. For provisions of former sections, see 1993 Replacement Pamphlet. For present comparable provisions, see 7-36-4 NMSA 1978.

7-36-7. Property subject to valuation for property taxation purposes.

A. Except for the property listed in Subsection B of this section or exempt pursuant to Section 7-36-8 NMSA 1978, all property is subject to valuation for property taxation purposes under the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] if it has a taxable situs in the state.

B. The following property is not subject to valuation for property taxation purposes under the Property Tax Code:

(1) property exempt from property taxation under the federal or state constitution, federal law, the Property Tax Code or other laws, but this does not include property all or a part of the value of which is exempt because of the application of a veteran or head-of-family exemption nor does this provision excuse an owner from any obligations to report his property as required by regulation of the department adopted under Section 7-38-8.1 NMSA 1978 or to claim its exempt status under Subsection C of Section 7-38-17 NMSA 1978;

(2) oil and gas property subject to valuation and taxation under the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978] and the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978]; and

(3) productive copper mineral property subject to valuation and taxation under the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978]; for the purposes of this section, "copper mineral property" means all mineral property and property held in connection with mineral property when seventy-five percent or more, by either weight or value, of the salable mineral extracted from or processed by the mineral property is copper."

History: 1953 Comp., § 72-29-3, enacted by Laws 1973, ch. 258, § 15; 1981, ch. 37, § 53; 1982, ch. 28, § 3; 1990, ch. 125, § 3; 1995, ch. 12, § 9.

ANNOTATIONS

Cross references. - For constitutional provision as to equality in ad valorem taxation, see N.M. Const., art. VIII, § 1.

For constitutional provision as to tax exempt property, see N.M. Const., art. VIII, § 3.

For constitutional provision as to head of family and veteran exemptions, see N.M. Const., art. VIII, § 5.

For constitutional provision as to assessment of lands, see N.M. Const., art. VIII, § 6.

For tax assessment of land by reference to numbers given by county surveyor, see 4-42-13 NMSA 1978.

The 1990 amendment, effective March 7, 1990, in Subsection B, substituted "department" for "division" in Paragraph (1), added Paragraph (3), and made related stylistic changes.

The 1995 amendment, effective June 16, 1995, inserted "or exempt pursuant to Section 7-36-8 NMSA 1978" in Subsection A.

Applicability. - Laws 1995, ch. 12, § 16 makes the amendment by that act applicable to the 1996 and subsequent property tax years.

Nonseverability. - Laws 1990, ch. 125, § 19 provides that the provisions of the Copper Production Ad Valorem Tax Act and the corresponding amendments made in that act to the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] are not severable.

Indian lands and property exempt. - New Mexico Const., art. XXI, § 2, clearly precludes state from taxing Indian lands and Indian property on the reservation. Prince v. Board of Educ. 88 N.M. 548, 543 P.2d 1176 (1975).

Private non-Indian corporations cannot escape obligation to pay state taxes by locating their property on Indian reservations. Nothing forbids the imposition of such a tax, since it does not in any way infringe on the right of reservation Indians to make their own laws and be ruled by them. Prince v. Board of Educ. 88 N.M. 548, 543 P.2d 1176 (1975).

State may tax property of corporation leasing land from Indian tribe. - Nothing prevents New Mexico from imposing a tax on the property of non-Indian corporations leasing land from the Navajo tribe, despite the fact that the property might be located on the reservation, because although the land itself cannot be taxed, the non-Indian property, which does not belong to and may not be acquired by the United States or reserved for its use, can. As private property owned by non-Indians who are not performing a federal function, it is subject to the taxing powers of this state. Prince v. Board of Educ. 88 N.M. 548, 543 P.2d 1176 (1975).

Lease to construct housing on federal land subject to tax. - Congress having explicitly removed the bar of sovereign immunity as it applied to property belonging to the United States, the immunity granted the federal government by N.M. Const., art. VIII, § 3, and art. XXI, § 2, clearly was not available to one who had lease to construct military housing on federal land. It was his interest that was subject to taxation. Kirtland Heights, Inc. v. Board of County Comm'rs, 64 N.M. 179, 326 P.2d 672 (1958).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 191 to 220.

Duty to pay real-property taxes as affected by time of commencement or termination of life estate, 8 A.L.R.4th 643.

Exemption of nonprofit theater or concert hall from local property taxation, 42 A.L.R.4th 614.

Property tax: effect of tax-exempt lessor's reversionary interest on valuation of nonexempt lessee's interest, 57 A.L.R.4th 950.

Exemption from real-property taxation of residential facilities maintained by hospital for patients, staff, or others, 61 A.L.R.4th 1105.

Nursing homes as exempt from property taxation, 34 A.L.R.5th 529.

84 C.J.S. Taxation §§ 57 to 125.

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 [Articles 35 to 38 of Chapter 7 NMSA 1978]:

(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 [7-11-1 to 7-11-12 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 [Articles 1 to 8 NMSA 1978, except 66-7-102.1 NMSA 1978] and for which the owner has claimed a deduction for depreciation for federal income tax purposes during any federal income taxable year occurring in whole or in part during the twelve months immediately preceding the first day of the property tax year; and

(7) other tangible personal property not specified in Paragraphs (1) through (6) of this subsection:

(a) that is used, produced, manufactured, held for sale, leased or maintained by a person for purposes of the person's profession, business or occupation; and

(b) for which the owner has claimed a deduction for depreciation for federal income tax purposes during any federal income taxable year occurring in whole or in part during the twelve months immediately preceding the first day of the property tax year.

History: 1953 Comp., § 72-1-21, enacted by Laws 1973, ch. 373, § 1 and recompiled as § 72-29-3.1 by Laws 1974, ch. 92, § 35; 1975, ch. 53, § 1; 1983, ch. 295, § 1; 1991, ch. 166, § 4; 1992, ch. 34, § 1; 1993, ch. 8, § 1; 1995, ch. 12, § 10.

ANNOTATIONS

Cross references. - For constitutional provision as to tax exempt property, see N.M. Const., art. VIII, § 3.

For constitutional provision as to head of family and veteran exemptions, see N.M. Const., art. VIII, § 5.

The 1995 amendment, effective June 16, 1995, substituted "Tangible" for "Certain" and added "exceptions" in the section heading and rewrote the section to such an extent that a detailed comparison would be impracticable.

Applicability. - Laws 1995, ch. 12, § 16 makes the amendment by that act applicable to the 1996 and subsequent property tax years.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Classification, as real estate or personal property, of mobile homes or trailers for purposes of state or local taxation, 7 A.L.R.4th 1016.

7-36-9, 7-36-10. Repealed.

ANNOTATIONS

Repeals. - Laws 1993, ch. 8, § 2 repeals 7-36-9 and 7-36-10 NMSA 1978, as amended by Laws 1986, ch. 20, § 108 and Laws 1991, ch. 166, § 5, relating to exemptions for inventories of personal property and motor vehicles registered under Motor Vehicle Code, effective June 18, 1993. For provisions of former sections, see 1990 Replacement Pamphlet and 1992 Cumulative Supplement.

7-36-11. Reserved.

7-36-12, 7-36-13. Repealed.

ANNOTATIONS

Repeals. - Laws 1993, ch. 8, § 2 repeals 7-36-12 and 7-36-13 NMSA 1978, as enacted by Laws 1973, ch. 10, § 1 and Laws 1973, ch. 9, § 1 and as recompiled by Laws 1974, ch. 92, § 35, relating to exemptions for aircraft registered under the Aircraft Registration Act and private railroad cars whose earnings are subject to tax under § 7-11-3 NMSA 1978, effective June 18, 1993. For provisions of former sections, see 1990 Replacement Pamphlet.

7-36-14. Taxable situs; allocation of value of property.

A. Property has a taxable situs in the state if:

(1) it is real property and is located in the state;

(2) it is an interest in real property and the real property is located in the state;

(3) it is personal property and is physically present in the state on the date when it is required to be valued for property taxation purposes except for:

(a) property being transported in interstate commerce that is physically present in the state only while being transported through or over the state;

(b) property that is consigned to a warehouse or factory in the state from outside the state for the purpose of storage, manufacturing, processing or fabricating and which is in transit to a final destination outside the state, whether the destination is specified before or after the original transportation begins; or

(c) wool, mohair, hides, pelts and farm crops when owned by the person that originally produced them, but only during the tax year in which produced and the following tax year;

(4) it is personal property that is a part of a communications system as that term is defined in Section 7-36-30 NMSA 1978 and, even though not physically present in the state on the date when it is required to be valued for property taxation purposes, it is an integral part of the system and substantial property that is on that date a part of the communications system is physically present in New Mexico; or

(5) it is personal property and, even though not physically present in the state on the date when it is required to be valued for property taxation purposes, it is subject to valuation in accordance with the provisions of Section 7-36-31 or 7-36-32 NMSA 1978.

B. Real property and interests in real property having a taxable situs in the state shall be valued in and have their value allocated to the governmental units in which the real property is located unless a different method of allocation is specified under the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] or by regulation of the department.

C. Personal property having a taxable situs in the state shall be valued in and have its value allocated to the governmental units in which the property is located on the date it is required to be valued unless a different method of allocation is specified under the Property Tax Code or by regulation of the department.

History: 1953 Comp., § 72-29-4, enacted by Laws 1973, ch. 258, § 16; 1985, ch. 109, § 4.

ANNOTATIONS

The 1985 amendment added Subsections A(4) and A(5).

Applicability. - Laws 1985, ch. 109, § 12 makes the provisions of the act applicable to the 1985 and subsequent property tax years.

Am. Jur. 2d, A.L.R. and C.J.S. references. - Situs of tangible personal property for purposes of property taxation, 2 A.L.R.4th 432.

Situs of aircraft, rolling stock and vessels for purposes of property taxation, 3 A.L.R.4th 837.

7-36-15. Methods of valuation for property taxation purposes; general provisions.

A. Property subject to valuation for property taxation purposes under this article of the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] shall be valued by the methods required by this article of the Property Tax Code whether the determination of value is made by the department or the county assessor. The same or similar methods of valuation shall be used for valuation of the same or similar kinds of property for property taxation purposes.

B. Unless a method or methods of valuation are authorized in Sections 7-36-20 through 7-36-33 NMSA 1978, the value of property for property taxation purposes shall be its market value as determined by 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 shall apply generally accepted appraisal techniques.

C. Dams, reservoirs, tanks, canals, irrigation wells, installed irrigation pumps, stock-watering wells and pumps, similar structures and equipment used for irrigation or stock-watering purposes, water rights and private roads shall not be valued separately from the land they serve. The foregoing improvements and rights shall be considered as appurtenances to the land they serve, and their value shall be included in the determination of value of the land.

D. The department shall adopt regulations in accordance with the procedures in Section 7-38-90 NMSA 1978 to implement the methods of valuation authorized in this article of the Property Tax Code.

History: Laws 1973, ch. 258, § 17; 1953 Comp., § 72-29-5; reenacted by Laws 1975, ch. 165, § 2; 1995, ch. 12, § 11.

ANNOTATIONS

Cross references. - For constitutional provision as to equality in ad valorem taxation, see N.M. Const., art. VIII, § 1.

For constitutional provision as to assessment of lands, see N.M. Const., art. VIII, § 6.

The 1995 amendment, effective June 16, 1995, in Subsection B, substituted "Sections 7-36-20 through 7-36-33 NMSA 1978" for "Sections 72-29-9 through 72-29-22 NMSA 1953", and substituted the language beginning "by application of the" for "by sales of comparable property, or, if that method cannot be used due to the lack of comparable sales data for the property being valued, then its value shall be determined using an income method or cost methods of valuation" at the end of the first sentence; and substituted "Section 7-38-90 NMSA 1978" for "72-31-88 NMSA 1953" in Subsection D.

Applicability. - Laws 1995, ch. 12, § 16 makes amendment by that act applicable to the 1996 and subsequent property tax years.

Compiler's notes. - Section 7-38-90 NMSA 1978, referred to in Subsection D, was repealed in 1995. For present comparable provisions, see 9-11-6.2 NMSA 1978.

"Market value" means a price which a purchaser, willing but not obliged to buy, would pay an owner, willing but not obliged to sell, taking into consideration all uses to which the property is adapted and might in reason be applied. Peterson Properties v. Valencia County Valuation Protests Bd. 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

"Comparable property" is property similar to the property being appraised, which has been recently sold or is currently being offered for sale in the same or competing areas. Peterson Properties v. Valencia County Valuation Protests Bd. 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976); New Mexico Baptist Found. v. Bernalillo County Assessor, 93 N.M. 363, 600 P.2d 309 (Ct. App. 1979).

"Comparable" is defined as capable of being compared with, worthy of comparison, and thus must necessarily include dissimilarities as well as similarities. Peterson Properties v. Valencia County Valuation Protests Bd. 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

"To compare". - In reviewing sales of other properties, "to compare" means to examine the characteristics or qualities of one or more properties for the purpose of discovering their resemblances or differences; the aim is to show relative values by bringing out characteristic qualities, whether similar or divergent, and thus, comparisons based on sales may be made according to location, age and condition of improvements, income and expense, use, size, type of construction and in numerous other ways. Peterson Properties v. Valencia County Valuation Protests Bd. 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

Usual factors which are considered in ascertaining fair market value of any given tract of land are its size, shape, location, topography, accessibility to roads, availability of public utilities and comparable sales, and, in a given instance, one factor may far outweigh all the rest in importance. In re Kinscherff, 89 N.M. 669, 556 P.2d 355 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976).

Legislature gave priority to first method of valuation, a valuation determined by sales of comparable property. It did not do so with reference to the succeeding methods. If the legislature intended to give priority to the second method, the "income method," over the third method, the "cost method," for any reason, it would have phrased the section in language similar to the priority established in the first method of valuation. First Nat'l Bank v. Bernalillo County Valuation Protest Bd. 90 N.M. 110, 560 P.2d 174 (Ct. App. 1977).

Best method is use of comparable sales. - The best method of ascertaining what a willing and informed buyer would pay a willing and informed seller in usual circumstances in light of the highest and best use to which the property may be put in the not too distant future is through the use of comparable sales. Peterson Properties v. Valencia County Valuation Protests Bd. 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

Reasonable cash market value, reflected by comparable property sales, is relevant for determining the correct valuation of a piece of property, if there have been such sales. Peterson Properties v. Valencia County Valuation Protests Bd. 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

When comparable sales evidence not presented. - Since the documents relied upon by a taxpayer as evidence of comparable sales are documents dealing with the sale of that very improvement whose valuation is the subject of the present dispute and the only evidence submitted by the taxpayer is the purchase price of the land in question, the taxpayer failed to present any evidence of sales of comparable property and the evidence submitted does not establish a market value under Subsection B and the statutory presumption of correctness of valuation for tax purposes still stands. New Mexico Baptist Found. v. Bernalillo County Assessor, 93 N.M. 363, 600 P.2d 309 (Ct. App. 1979).

Test of comparable sales relevancy left to court's discretion. - The rule regarding comparable sales is one of relevancy and, not unlike the general evidentiary rule applied in all proceedings, requiring similarity of conditions. The test is usually left to the discretion of the court in light of the circumstances of each case. Peterson Properties v. Valencia County Valuation Protests Bd. 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

Proof of purchase price alone is not sufficient to fix market value without evidence of the details of the sale. Cobb v. Otero County Assessor, 100 N.M. 207, 668 P.2d 323 (Ct. App. 1983).

Market value not an absolute. - Subsection B makes it clear that market value is not a given or an absolute, it is only a method of determining value. National Potash Co. v. Property Tax Div. 101 N.M. 404, 683 P.2d 521 (Ct. App. 1984).

Explanation necessary when market value not used for valuation. - If market value is not used as the basis for calculating assessed valuation, the assessor must explain why that approach is not appropriate, or that there is a lack of adequate market data.

Protest of Plaza Del Sol Ltd. Partnership v. Assessor for County of Bernalillo, 104 N.M. 154, 717 P.2d 1123 (Ct. App. 1986).

Past or future value not to serve as basis. - What the fair market value of a tract may have been in the past or speculation as to what it might be in the future cannot serve as the basis for valuation. In re Kinscherff, 89 N.M. 669, 556 P.2d 355 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976); Bakel v. Bernalillo County Assessor, 95 N.M. 723, 625 P.2d 1240 (Ct. App. 1980).

Evidence of what the fair market value of a tract may have been in the past cannot properly be utilized as the sole basis for valuation of the property for tax purposes. La Jara Land Developers, Inc. v. Bernalillo County Assessor, 97 N.M. 318, 639 P.2d 605 (Ct. App. 1982).

Assessor's valuation sufficient evidence. - Since the assessor's valuation is presumed to be correct it is sufficient evidence, where uncontradicted, to support the board's decision. Peterson Properties v. Valencia County Valuation Protests Bd. 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

When income or cost method of valuation utilized. - Since, if reliable comparable sales data can be reasonably obtained, the comparable sales method must be used, the taxpayer has the burden to demonstrate either that comparable sales data is not reasonably obtainable or that it would be unreliable. To demonstrate a lack of reliability, the taxpayer might show that the location, access, utilities or other such factors distinguish his property from other such properties. If the taxpayer is able to show that the comparable sales method should not be utilized, then the income method or cost method must be used. Bakel v. Bernalillo County Assessor, 95 N.M. 723, 625 P.2d 1240 (Ct. App. 1980).

If the "cost method" or "income method" is employed as the primary mode of ascertaining the value of property for tax purposes, the appraiser must determine that there is a lack of comparable sales data precluding utilization of the first method of valuation and support this determination by substantial evidence. La Jara Land Developers, Inc. v. Bernalillo County Assessor, 97 N.M. 318, 639 P.2d 605 (Ct. App. 1982).

Use of mass appraisal method upheld. - The use by the county assessor of the mass appraisal methodology to value plaintiffs' undeveloped property for tax assessment purposes was permissible under this statute when the method was based on standard appraisal procedure, such as comparable sales, and the resulting valuation bore a reasonable relationship to the market value. Cobb v. Otero County Assessor, 113 N.M. 251, 824 P.2d 1053 (Ct. App. 1991).

How presumption of assessor's valuation may be overcome. - The statutory presumption of correctness of the value of property by the county assessor for tax purposes can be overcome by a taxpayer showing that the assessor did not follow the

applicable statutory provisions, or by presenting evidence tending to dispute the factual correctness of the valuation. La Jara Land Developers, Inc. v. Bernalillo County Assessor, 97 N.M. 318, 639 P.2d 605 (Ct. App. 1982).

Admission of taxpayer's evidence when market value indeterminable. - The protests board could not rely exclusively on the county assessor's valuation of property even though, according to 72-2-3, 1953 Comp., the assessment must be at "full actual value," and neither could it rely on comparable sales or sales of comparable lands where none have occurred; accordingly, the board should have allowed the admission of the only available relevant evidence which the taxpayer had. In situations where cash market value could not be determined, earning capacity, cost of reproduction and original cost less depreciation furnished relevant considerations for determining "value." In re Miller, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

Presumption of assessor's valuation not overcome. - Since taxpayer failed to present any evidence of sales of comparable property or evidence of value based on generally accepted appraisal techniques, and its only evidence, the purchase price of its land in question, did not establish a market value under Subsection B, the presumption of the correctness of the assessor's valuation was not overcome. Peterson Properties v. Valencia County Valuation Protests Bd. 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

The presumption of the correctness of the assessor's valuation was not overcome by the taxpayers' offer, as evidence of market value, the price for which they purchased the property, where the sales price was not the result of an arms'-length transaction because of the taxpayers' mailing campaign to convince landowners to sell their property to the taxpayers at below market prices. Cobb v. Otero County Assessor, 113 N.M. 251, 824 P.2d 1053 (Ct. App. 1991).

Taxpayer rebutted presumption of assessor's valuation. - Since taxpayers presented uncontradicted evidence that access to their property was physically blocked and also offered the only substantial evidence of the fair market value of the property in the form of testimony by a real estate appraiser that because of the lack of access the highest and best use that the property could be put to was as grazing land by one of the adjoining landowners, and that as such it had a fair market value of $18.00 per acre, or $2034 and $5022 respectively for the two tracts, they effectively rebutted the presumption of 7-38-6 NMSA 1978 that the county assessor's valuations of $313,875 and $169,500 were correct. In re Kinscherff, 89 N.M. 669, 556 P.2d 355 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976).

Taxing authority may rely on any relevant evidence. - In assessing property for taxation the taxing authority may rely on any evidence that is relevant. Assessor's evidence of a sale of a smaller tract of land in the same vicinity was substantial and supported the board's decision. Peterson Properties v. Valencia County Valuation Protests Bd. 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

Relevant evidence includes that of ratios of assessed value to market value. - To arrive at uniformity in the assessment of property for taxation, as provided in N.M. Const., art. VIII, §§ 1 and 2, the taxing authority and the taxpayer can introduce evidence regarding the ratios of assessed values to market values as the latter are reflected in actual sales of any other real estate in the taxing district for a reasonable period prior to the assessment date. Peterson Properties v. Valencia County Valuation Protests Bd. 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

Using one uniform percentage depreciation factor for property valuation improper. - Any property valuation method which uses one uniform percentage depreciation factor, regardless of the age of the property, is an improper method of determining property value; such a method would not, except by mere coincidence, yield a value consistent with the fair market value of the property. Anaconda Co. v. Property Tax Dep't, 94 N.M. 202, 608 P.2d 514 (Ct. App. 1979), cert. denied, 94 N.M. 628, 614 P.2d 545 (1980).

No denial of due process in exclusion of irrelevant evidence. - Since former Subsection B of this section fixed two methods of determining market value, namely sales of comparable property and the application of generally accepted appraisal techniques, taxpayer's offer of evidence of a valuation of comparable property was not relevant and exclusion of such evidence did not deny taxpayer of due process. Peterson Properties v. Valencia County Valuation Protests Bd. 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

Appraiser's acceptance of hearsay destroys weight of his opinions. - An expert appraiser's blanket acceptance of hearsay information and his failure to consider influencing facts in so-called "comparable sales" all but destroys any weight that might be given to his opinions. Four Hills Country Club v. Bernalillo County Property Tax Protest Bd. 94 N.M. 709, 616 P.2d 422 (Ct. App. 1979).

Section does not give taxpayers right to determine method of valuation, but gives the county assessor the right to use either the "income method or cost methods of valuation." First Nat'l Bank v. Bernalillo County Valuation Protest Bd. 90 N.M. 110, 560 P.2d 174 (Ct. App. 1977).

Taxpayer has right to discover method of valuation used and has a right to discovery similar in scope to that granted by Rules 26 to 37 of the Rules of Civil Procedure. First Nat'l Bank v. Bernalillo County Valuation Protest Bd. 90 N.M. 110, 560 P.2d 174 (Ct. App. 1977).

When county assessor did not follow any statutory method of valuation in 1976, but simply set the valuation of a shopping center back up to the 1972 figure, the decisions of the board were arbitrary and capricious, not supported by substantial evidence in the record taken as a whole, and otherwise not in accordance with law, and its orders were vacated. San Pedro S. Group v. Bernalillo County Valuation Protest Bd. 89 N.M. 784, 558 P.2d 53 (Ct. App. 1976).

Scope of "structures and equipment" in Subsection C. - The inclusion of Subsection C indicated that the exemption from separate valuation for the structures and equipment listed in Subsection C is not limited to structures and equipment used for the purposes of irrigation or stock-watering, but applies to all such structures and equipment. Kerr-McGee Nuclear Corp. v. Property Tax Div. 95 N.M. 685, 625 P.2d 1202 (Ct. App. 1980).

No denial of due process in failure to adopt regulations. - Taxpayer was not denied due process because the property tax department did not adopt regulations that listed the procedures to be followed, and identified the methods of valuation in general use by the department and the applicable factors to be included in determining the value of property, since the amended statute did not require regulations, and taxpayer had the right of discovery by deposition of all the facts necessary to defend the assessed valuation of its property. Peterson Properties v. Valencia County Valuation Protests Bd. 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

Failure to require equalization does not establish official interpretation. - The fact that state officials have, for years, known that there are inequalities or lack of uniformity in tax assessments and have done nothing about it does not establish this as official "long-standing interpretation." It is, in essence, merely long-standing failure by respondents and their predecessors to require equalization as plainly required by the constitution and the legislative enactments. State ex rel. Castillo Corp. v. New Mexico State Tax Comm'n, 79 N.M. 357, 443 P.2d 850 (1968).

Honest judgment most important. - What is most important is that the appraisers, the assessor and the protest board exercise an honest judgment based upon the information they possess or are able to acquire. First Nat'l Bank v. Bernalillo County Valuation Protest Bd. 90 N.M. 110, 560 P.2d 174 (Ct. App. 1977).

Sovereign immunity not applicable in mandamus of assessment ratio. - In a mandamus proceeding to require the performance of a duty plainly required under the constitution, i.e., to prescribe an assessment ratio so that property shall be uniformly assessed in proportion to its value, the sovereign immunity doctrine is not applicable. State ex rel. Castillo Corp. v. New Mexico State Tax Comm'n, 79 N.M. 357, 443 P.2d 850 (1968).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Requirement of full-value real property taxation assessments, 42 A.L.R.4th 676.

7-36-16. Responsibility of county assessors to determine and maintain current and correct values of property.

A. County assessors shall determine values of property for property taxation purposes in accordance with the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] and the regulations, orders, rulings and instructions of the department. They shall also implement a program of updating property values so that current and correct values of property are maintained and shall have sole responsibility and authority at the county

level for property valuation maintenance, subject only to the general supervisory powers of the director.

B. The director shall implement a program of regular evaluation of county assessors' valuation activities with particular emphasis on the maintenance of current and correct values.

C. Upon request of the county assessor, the director may contract with a board of county commissioners for the department to assume all or part of the responsibilities, functions and authority of a county assessor to establish or operate a property valuation maintenance program in the county. The contract shall be in writing and shall include provisions for the sharing of the program costs between the county and the department. The contract must include specific descriptions of the objectives to be reached and the tasks to be performed by the contracting parties. The initial term of any contract authorized under this subsection shall not extend beyond the end of the fiscal year following the fiscal year in which it is executed, but contracts may be renewed for additional one-year periods for succeeding years.

D. The department of finance and administration shall not approve the operating budget of any county in which there is not an adequate allocation of funds to the county assessor for the purpose of fulfilling his responsibilities for property valuation maintenance under this section. If the department of finance and administration questions the adequacy of any allocation of funds for this purpose, it shall consult with the department, the board of county commissioners and the county assessor in making its determination of adequacy.

E. To aid the board of county commissioners in determining whether a county assessor is operating an efficient program of property valuation maintenance and in determining the amount to be allocated to him for this function, the county assessor must present with his annual budget request a written report setting forth improvements of property added to valuation records during the year, additions of new property to valuation records during the year, increases and decreases of valuation during the year, the relationship of sales prices of property sold to values of the property for property taxation purposes and the current status of the overall property valuation maintenance program in the county. The county assessor shall send a copy of this report to the department.

History: 1953 Comp., § 72-29-6, enacted by Laws 1973, ch. 258, § 18.

ANNOTATIONS

Reappraisal of all comparable properties in same year not required. - Section 72-2-21.1, 1953 Comp., et seq., did not require that reappraisal of all comparable properties within each county be completed within the same year. In re Miller, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

Duty of assessor to view property. - It is the duty of the assessor to make a reasonable and diligent effort to view the property in order to see that the property is adequately valued. Bloch Pitt Invs. v. Assessor of Bernalillo County, 86 N.M. 589, 526 P.2d 183 (1974).

Value is a matter of opinion, and, when the law has provided officers upon whom the duty is imposed to make the valuation, it is the opinion of those officers to which the interests of the parties are referred. The court cannot sit in judgment upon their errors, or substitute its own opinion for the conclusions the officers of the law have reached. In re Trinchera Ranch, 85 N.M. 557, 514 P.2d 608 (1973).

Notice as to amount of taxation is essential due process requirement in the collection of property taxes. In re Miller, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

7-36-17. Repealed.

ANNOTATIONS

Repeals. - Laws 1979, ch. 268, § 3, repeals 7-36-17 NMSA 1978, relating to limitation on increases in valuation of certain property for property taxation purposes.

7-36-18. Collection and publication of property valuation data.

To promote uniformity and measure overall compliance by each county with the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] and department valuation regulations, orders, rulings, instructions, schedules and other directives, the department shall prepare and publish annually comprehensive sales-ratio studies comparing the values of property determined for property taxation purposes by each county assessor with the values of the same property as established by sales prices.

History: 1953 Comp., § 72-29-7, enacted by Laws 1973, ch. 258, § 19.

7-36-19. Valuation of major industrial and commercial properties; specialists' services furnished to county assessor by department.

At the request of a county assessor, concurred in by the board of county commissioners, the director may provide a county assessor with technical assistance services in the valuation of major industrial or commercial properties subject to valuation by the assessor. The director shall take into account the ability of the county assessor to value the property with the resources at his disposal when deciding whether the requested services should be furnished. The county shall reimburse the department for the costs incurred in the valuation of the property.

History: 1953 Comp., § 72-29-8, enacted by Laws 1973, ch. 258, § 20.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 254 to 284.

84 C.J.S. Taxation §§ 421 to 453.

7-36-20. Special method of valuation; land used primarily for agricultural purposes.

A. The value of land used primarily for agricultural purposes shall be determined on the basis of the land's capacity to produce agricultural products. Evidence of bona fide primary agricultural use of land for the tax year preceding the year for which determination is made of eligibility for the land to be valued under this section creates a presumption that the land is used primarily for agricultural purposes during the tax year in which the determination is made. If the land was valued under this section in one or more of the three tax years preceding the year in which the determination is made and the use of the land has not changed since the most recent valuation under this section, a presumption is created that the land continues to be entitled to that valuation.

B. For the purpose of this section, "agricultural use" means the use of land for the production of plants, crops, trees, forest products, orchard crops, livestock, poultry or fish. The term also includes the use of land that meets the requirements for payment or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government.

C. The department shall adopt regulations for determining whether or not land is used primarily for agricultural purposes.

D. The department shall adopt regulations for determining the value of land used primarily for agricultural purposes. The regulations shall:

(1) specify procedures to use in determining the capacity of land to produce agricultural products and the derivation of value of the land based upon its production capacity;

(2) establish carrying capacity as the measurement of the production capacity of land used for grazing purposes, develop a system of determining carrying capacity through the use of an animal unit concept and establish carrying capacities for the land in the state classified as grazing land;

(3) provide for the consideration of determinations of any other governmental agency concerning the capacity of the same or similar lands to produce agricultural products;

(4) assure that land determined under the regulations to have the same or similar production capacity shall be valued uniformly throughout the state; and

(5) provide for the periodic review by the department of determined production capacities and capitalization rates used for determining annually the value of land used primarily for agricultural purposes.

E. All improvements, other than those specified in Section 7-36-15 NMSA 1978, on land used primarily for agricultural purposes shall be valued separately for property taxation purposes and the value of these improvements shall be added to the value of the land determined under this section.

F. The owner of the land must make application to the county assessor in 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 regulations and must be made no later than the last day of February of the tax year. 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 regulations 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 year or 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.

ANNOTATIONS

Cross references. - For agriculture generally, see Chapter 76 NMSA 1978.

The 1997 amendment rewrote Subsection A; substituted "7-36-15 NMSA 1978" for "72-29-5 NMSA 1953" in Subsection E; deleted the last sentence in the introductory paragraph of Subsection F; deleted Paragraphs F(1) and (2); deleted the closing paragraph of Subsection F; and added Subsections G and H. Laws 1997, ch. 162 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Applicability. - Laws 1997, ch. 162, § 2 makes the provisions of this act applicable to 1998 and subsequent property tax years.

Distinction between subdivided agricultural lands not unconstitutional. - Distinction drawn by 72-2-14.1, 1953 Comp., between subdivided and unsubdivided agricultural land, for tax purposes, did not offend N.M. Const., art. VIII, § 1 and did not violate due process. Property Appraisal Dep't v. Ransom, 84 N.M. 637, 506 P.2d 794 (Ct. App. 1973).

This section establishes special method of valuation for land used primarily for agricultural purposes, determined on the basis of the land's capacity to produce agricultural products. This "Green Belt" law is clearly an exception to the general mode of property valuation for tax purposes established by the Property Tax Code and the New Mexico constitution, i.e., market value. County of Bernalillo v. Ambell, 94 N.M. 395, 611 P.2d 218 (1980).

Legislative intent behind this special method of property tax valuation is to aid the small subsistence farmers in the state. County of Bernalillo v. Ambell, 94 N.M. 395, 611 P.2d 218 (1980).

A broad reading of "agricultural use" so as to entitle owners of residential, yet pastoral, lands generally to tax relief is inconsistent with the plain language of this section; the section evinces a legislative intent to deny tax relief to those who demonstrate mere passive or incidental cultivation of their lands. Alexander v. Anderson, 1999-NMCA-021, 126 N.M. 632, 973 P.2d 884 (Ct. App. 1998).

Crops produced for sale or home consumption. - While growing alfalfa, fruits, nuts, and vegetables may constitute producing crops, an applicant for exemption is required to demonstrate an objective intent to produce a crop for sale or home consumption. Alexander v. Anderson, 1999-NMCA-021, 126 N.M. 632, 973 P.2d 884 (Ct. App. 1998).

Grazing of recreational horses on taxpayers' property did not satisfy the regulatory provision for "home consumption." Alexander v. Anderson, 1999-NMCA-021, 126 N.M. 632, 973 P.2d 884 (Ct. App. 1998).

Regulation upheld. - Promulgation of a regulation (3 NMAC 6.5.27.1.1) to implement the "agricultural use" exemption of this section is a legal exercise of delegated legislative authority and the regulation is consistent with this section's manifest intent. Alexander v. Anderson, 1999-NMCA-021, 126 N.M. 632, 973 P.2d 884 (Ct. App. 1998).

Comparable sales wrong criteria under this section. - County assessors using comparable sales instead of agricultural purposes were using the wrong criteria for determining tax on grazing land under this section. In re Armijo, 89 N.M. 131, 548 P.2d 93 (Ct. App. 1976).

Special valuation not applicable once land changed to nonagricultural use. - Once a property's use has changed from agricultural to nonagricultural, there is no longer the need to give the property owner special tax treatment; the legislature did not desire to give special treatment to former owners of agricultural land even after they voluntarily submit to reclassification of their land for property tax purposes. County of Bernalillo v. Ambell, 94 N.M. 395, 611 P.2d 218 (1980).

Hypothetical or speculative values not basis. - Classification or assessment of property for tax purposes premised upon hypothetical or speculative values believed, ultimately or at some later time, to be or become the true market value of such land cannot legitimately be the basis of determining its value. Gerner v. State Tax Comm'n, 71 N.M. 385, 378 P.2d 619 (1963).

Grazing land being held for lots. - Classification and valuation of property suitable for grazing purposes at 10 times the valuation of other property of the same character and quality and similarly situated because of its classification as lots held for speculation for oil or other purposes, absent any evidence of such speculative purposes, was so excessive and discriminatory as to entitle taxpayer to relief, despite fact that some other owners of like tracts were similarly assessed or that these lands, while similar to grazing lands, were not actually used for grazing purposes. Gerner v. State Tax Comm'n, 71 N.M. 385, 378 P.2d 619 (1963).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Validity, construction and effect of state statutes affording preferential property tax treatment to land use for agricultural purposes, 98 A.L.R.3d 916.

7-36-21. Special method of valuation; livestock.

A. All livestock located in the state on January 1 of the tax year shall be valued for property taxation purposes as of January 1.

B. All livestock not located in the state on January 1 but brought into the state and located there for more than twenty days subsequent to January 1 shall be valued for property taxation purposes as of the first day of the month following the month in which they have remained in the state for more than twenty days.

C. The owner of livestock subject to valuation for property taxation purposes shall report the livestock for valuation to the county assessor of the county in which they are located on the valuation date specified in Subsection A or B of this section. However, if an importation or movement report is made by the livestock board under the provisions of Section 7-38-45 NMSA 1978, the owner of livestock is relieved of his responsibility to report the livestock covered by the livestock board report, and that report fulfills the owner's responsibility for reporting the livestock under this section. The owner's report shall be in a form and contain the information required by department regulations and shall be made no later than:

(1) the last day of February for livestock required to be valued as of the first day of January or February of the tax year; or

(2) ten days after the valuation date determined under Subsection B of this section for livestock required to be valued as of dates other than those in Paragraph (1) of this subsection.

D. The department shall establish for each tax year the various classes of livestock and the value of each class. This determination shall be implemented by an order of the director, and the order shall be made no later than December 1 of the year prior to the tax year to which the classification and values apply.

E. The department shall adopt regulations for the allocation of value of livestock, which regulations shall provide for:

(1) a basic allocation formula that prorates value on the basis of the amount of time that livestock are in the state and subject to valuation for property taxation purposes;

(2) determining proration of value under Paragraph (1) of this subsection using estimates of the amount of time that livestock will be in the state to cover those situations in which livestock are imported for an indeterminate time during a tax year or in which resident livestock are exported for an indeterminate time during a tax year but are returned during the same tax year; and

(3) a method of allocating value of livestock, both resident and transient, among different governmental units when the livestock range on land in more than one governmental unit.

F. Any person who intentionally refuses to make a report required of him under this section or who knowingly makes a false statement in a report required under this section is guilty of a misdemeanor and shall be punished by the imposition of a fine of not more than one thousand dollars ($1,000).

G. Any person who fails to make a report required of him under this section is liable for a civil penalty in an amount equal to five percent of the property taxes ultimately determined to be due on the property for the tax year or years for which he failed to make the required report.

H. Any person who intentionally refuses to make a report required of him under this section with the intent to evade any tax or who fails to make a report required of him under this section with the intent to evade any tax is liable for a civil penalty in an amount equal to twenty-five percent of the property taxes ultimately determined to be due on the property for the tax year or years for which he refused or failed to make the required report.

I. The civil penalties authorized under Subsections G and H of this section shall be imposed and collected at the time and in the manner that the tax is imposed and collected. In order to assist in the imposition and collection of the penalties, the person having responsibility for determining the value of the property shall make an entry in the valuation records indicating the liability for any penalties due under this section.

History: 1953 Comp., § 72-29-10, enacted by Laws 1973, ch. 258, § 22; 1975, ch. 115, § 1.

ANNOTATIONS

Cross references. - For animals and animal industry, see 77-1-1 NMSA 1978 et seq.

Responsibility for valuation. - Subsection D of this section does not allocate valuation of livestock responsibility to the division; instead, that section simply requires the division to supervise the assessor by establishing classes of livestock and values for those classes of livestock. While the division must establish general criteria for valuing livestock, the county assessor does the actual valuation. Zwaagstra v. DelCurto, 114 N.M. 263, 837 P.2d 457 (Ct. App. 1992).

7-36-21.1. Repealed.

ANNOTATIONS

Repeals. - Laws 1985 (1st S.S.), ch. 12, § 2 repeals 7-36-21.1, as amended by Laws 1983, ch. 213, § 22, relating to the special method of valuation for residential property, effective on January 1, 1986. For provisions of former section, see 1983 Replacement Pamphlet. For present provisions on limitations on property tax rates on residential property, see 7-37-7.1 NMSA 1978.

7-36-22. Mineral property; definitions and classifications for valuation purposes.

As used in this article, "mineral property" does not include oil and gas property or productive copper mineral property and means:

A. "class one productive mineral property", which means mineral lands, all mineral reserves and interests in minerals in mineral lands and all severed mineral products from mineral lands when the mineral lands are held under private ownership in fee and the property is mined or operated in good faith for its mineral values with a reasonable degree of continuity during the year preceding the tax year in which its value is determined and to an extent in keeping with the market demand and conditions affecting the extraction and disposition of the product;

B. "class one nonproductive mineral property", which means mineral lands, all mineral reserves and interests in minerals in mineral lands and all severed mineral products

from mineral lands when the mineral lands are held under private ownership in fee and the property is known to contain minerals in commercially workable quantities of such a character as add present value to the land in addition to its values for other purposes but is not operated so as to fall in the class of class one productive mineral property;

C. "class two mineral property", which means the severed mineral products from mineral lands held by possessory title under the laws of the United States; and

D. "class three mineral property", which means severed mineral products from leasehold or contract mineral rights in mineral lands, the fee of which is vested in the United States or the state.

History: 1953 Comp., § 72-29-11, enacted by Laws 1973, ch. 258, § 23; 1975, ch. 218, § 2; 1990, ch. 125, § 4.

ANNOTATIONS

Cross references. - For mines and mining, see Chapter 69, NMSA 1978.

The 1990 amendment, effective March 7, 1990, inserted "for productive copper mineral property" in the introductory language.

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

Nonseverability. - Laws 1990, ch. 125, § 19 provides that the provisions of the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978] and the corresponding amendments made in that act to the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] are not severable.

Neither supreme court nor district court may reclassify, revalue or reassess property improperly classified by taxing officials and, consequently, assess at an excessive valuation. Gerner v. State Tax Comm'n, 71 N.M. 385, 378 P.2d 619 (1963).

Negative mineral property production figure disallowed. - The statutory requirement of allocating the net taxable value of each item of property used in connection with mineral property prevents the use of the negative value for mineral property production to reduce the valuation of property valued under 7-36-33 NMSA 1978; therefore, the taxpayer cannot use a negative figure for mineral property production to reduce the positive value of property used in connection with mineral property. U.V. Indus., Inc. v. Property Tax Div. of Taxation & Revenue Dep't, 93 N.M. 651, 603 P.2d 1108 (Ct. App. 1979).

Valuation to be fixed by standards. - To have uniformity and equality in a form of tax, the valuations must be established by some standard; and after valuations are fixed, the taxes based upon such valuations must be levied by a standard. It is only thus that each

taxpayer may bear his fair share of the burden of government. Gerner v. State Tax Comm'n, 71 N.M. 385, 378 P.2d 619 (1963).

Regulation based upon taxpayer's federal tax treatment of property. - Regulation providing that, if a taxpayer attributed development expenditures to a particular piece of property under Section 616 of the Internal Revenue Code, the property was rebuttably presumed, for the next 10 years, to contain minerals in such quantities and character so as to classify the property as class one nonproductive mineral property under Subsection B, was a valid regulation in that it was not arbitrary because the taxpayer would have opportunity to present facts to rebut the presumption; in that there was substantial evidence to support the regulation; and in that the regulation was not substantive, since it announced a procedure for classifying the property based upon the taxpayer's treatment of the property for federal tax purposes. Santa Fe P.R.R. v. Property Tax Dep't, 89 N.M. 446, 553 P.2d 726 (Ct. App. 1976).

Law reviews. - For comment, "Approaches to State Taxation of the Mining Industry," see 10 Nat. Resources J. 156 (1970).

For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M.L. Rev. 69 (1976-77).

7-36-23. Special method of valuation; mineral property and property used in connection with mineral property; exception for potash and uranium mineral property and property used in connection with potash and uranium mineral property.

A. The provisions of this section apply to the valuation of all mineral property and property used in connection with mineral property except potash and uranium mineral property and property used in connection with potash and uranium mineral property, the methods of valuation for which are provided in Sections 7-36-24 and 7-36-25 NMSA 1978.

B. The following kinds of property held or used in connection with mineral property shall be valued under the methods of valuation required by the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978]:

(1) improvements, equipment, materials, supplies and other personal property held or used in connection with all classes of mineral property; "improvements" as used in this section includes surface and subsurface structures, but does not include pits, shafts, drifts and other similar artificial changes in the physical condition of the surface or subsurface of the earth produced solely by the removal or rearrangement of earth or minerals for the purpose of exposing or removing ore from a mine; and

(2) the surface value for agricultural or other purposes of class one productive or nonproductive mineral property when the surface interest is held in the same ownership as the mineral interests.

C. The value for property taxation purposes of class one productive mineral property is an amount equal to three hundred percent of the annual net production value of the mineral property.

D. The value for property taxation purposes of class two and class three mineral property is an amount equal to three hundred percent of the annual net production value.

E. The value for property taxation purposes of class one nonproductive mineral property shall be determined by applying a per acre value to the surface acres of the property being valued. The per acre value of class one nonproductive mineral property shall be determined under regulations adopted by the department, which regulations shall establish a per acre value based upon bonus bids accepted by the commissioner of public lands for the latest one year period in which bonus bids were accepted for the sale of mineral leases, which per acre value may be determined by geographical areas.

F. For purposes of this section, "annual net production value" means either:

(1) the average of five years' net production value from the mineral property for the five years immediately preceding the tax year in which value is being determined, or so much of the period during which the property has been in operation, with each year's net production value being determined by taking the year's market value of production of all minerals, including any bonus or subsidy payments, and deducting from that value:

(a) any royalties paid or due the United States, the state or any Indian tribe, Indian pueblo or Indian who is a ward of the United States;

(b) the direct costs, exclusive of depreciation, determined under generally accepted accounting principles consistently applied by the taxpayer, of extracting, milling, treating, reducing, transporting and selling the minerals; and

(c) the costs of depreciation, determined under generally accepted accounting principles consistently applied by the taxpayer, of property actually used in the extracting, milling, treating, reducing and transporting of the minerals; or

(2) the net production value from the mineral property for the year immediately preceding the tax year in which value is being determined, with that year's net production value being determined by taking the year's market value of production of all minerals, including any bonus or subsidy payments, and deducting from that value:

(a) any royalties paid or due the United States, the state or any Indian tribe, Indian pueblo or Indian who is a ward of the United States;

(b) the direct costs, exclusive of depreciation, determined under generally accepted accounting principles consistently applied by the taxpayer, of extracting, milling, treating, reducing, transporting and selling the minerals; and

(c) the cost of depreciation, determined under generally accepted accounting principles consistently applied by the taxpayer, of property actually used in the extracting, milling, treating, reducing and transporting of the minerals.

G. Annual net production value shall be determined under Paragraph (1) of Subsection F of this section unless the taxpayer elects to have it determined under Paragraph (2) of that subsection. To be effective, an election must be exercised by written notification to the department at the time the mineral property is reported to the department for valuation in a tax year. Once an election is exercised, a taxpayer may not change from the elected method without the prior approval of the department.

H. The department shall adopt regulations specifying procedures to be followed under, and the details of, the method for valuation of mineral property specified in this section.

History: 1953 Comp., § 72-29-12, enacted by Laws 1973, ch. 258, § 24; 1975, ch. 165, § 4.

ANNOTATIONS

Cross references. - For mines and mining, see Chapter 69 NMSA 1978.

Fair market value is theoretically what a willing seller would take and a willing buyer offer. Kaiser Steel Corp. v. Property Appraisal Dep't, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

Payments to be included in market value. - Portions of former 72-6-7(6), 1953 Comp., are pertinent as the market value is to include bonus or subsidy payments and there is evidence that the royalty payments fall into that category; however, amounts paid for improvements are not to be included as part of the costs, and depreciation on such improvements should also not be included. Kaiser Steel Corp. v. Property Appraisal Dep't, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

Market price as exchange value. - As to the price between a fictional seller and buyer, the market price of a commodity is the exchange value and it is determined by the demand for it in relation to the supply and is proved, when possible, by actual sales. Kaiser Steel Corp. v. Property Appraisal Dep't, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

Essential factors in determining market value are the existence of a demand and the accessibility of a market. Without a demand a rich natural resource may lie dormant and be commercially valueless. Create an active demand and the same deposit may find a ready market. Similarly, proximity to market may be a determining factor. Kaiser Steel Corp. v. Property Appraisal Dep't, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

Determination of market value of average annual output, less the actual cost, over the period of years involved requires an averaging of the costs. Kaiser Steel Corp. v. Property Appraisal Dep't, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

Legislative intention to authorize deduction must be clearly and unambiguously expressed in the statute. Kaiser Steel Corp. v. Property Appraisal Dep't, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

Separate taxation of severed mineral estates required. - Former New Mexico statutory provisions required the separate taxation of severed mineral estates and the public policy of this state was to tax separately the severed mineral rights from the remainder of the fee when in different ownerships. Kaye v. Cooper Grocery Co. 63 N.M. 36, 312 P.2d 798 (1957).

Even after conveyance of fractional undivided interest in the minerals, the entire mineral estate should be separately assessed and taxed as a unit. Kaye v. Cooper Grocery Co. 63 N.M. 36, 312 P.2d 798 (1957).

Partial severance considered complete severance. - For assessment purposes, a partial severance conveyance is to be considered a complete severance of the mineral estate. Kaye v. Cooper Grocery Co. 63 N.M. 36, 312 P.2d 798 (1957).

Duty of tenant in common to pay entire assessment. - The surface owner who has retained an undivided mineral interest becomes a tenant in common as to the mineral estate with his transferee of an undivided mineral interest, and as tenants in common each had the duty to pay the entire assessment on the mineral estate with a right of contribution against his cotenant for a proportionate part. Kaye v. Cooper Grocery Co. 63 N.M. 36, 312 P.2d 798 (1957).

Owner of mineral estate will not lose interest through tax sale. - When the entire mineral estate has been conveyed by the surface owner and the mineral deed has been recorded prior to the assessment for the tax year, the owner of the mineral estate will not lose his interest through a tax sale unless the mineral estate has been separately assessed and the sale is had for the purpose of recovering delinquent taxes assessed against the mineral estate. Kaye v. Cooper Grocery Co. 63 N.M. 36, 312 P.2d 798 (1957).

Negative mineral property production figure disallowed. - The statutory requirement of allocating the net taxable value of each item of property used in connection with mineral property prevents the use of the negative value for mineral property production to reduce the valuation of property valued under 7-36-33 NMSA 1978; therefore, the taxpayer cannot use a negative figure for mineral property production to reduce the positive value of property used in connection with mineral property. U.V. Indus., Inc. v. Property Tax Div. of Taxation & Revenue Dep't, 93 N.M. 651, 603 P.2d 1108 (Ct. App. 1979).

Regulation modifying statutory determination of annual net production contrary to section. - Regulation providing that the property tax department would not permit the use of minus figures for a particular year's net production value in calculating the average of five years' net production value was contrary to the provisions of Subsection F because the property tax department had no authority to adopt regulations modifying the statutory provision for determining the annual net production value. Santa Fe P.R.R. v. Property Tax Dep't, 89 N.M. 446, 553 P.2d 726 (Ct. App. 1976).

Regulation for geographical variance multiplier set aside. - Regulation providing for the use of a multiplier of 100 and of a quotient derived by dividing the total of the bonus bids by the number of acres leased by competitive bidding within a county was set aside since the provision in Subsection E for geographical variance did not support use of such multiplier because the evidence was that procedures for implementing such a variance had not been developed by property tax department. Santa Fe P.R.R. v. Property Tax Dep't, 89 N.M. 446, 553 P.2d 726 (Ct. App. 1976).

Burden of proof was on contestant and was both the burden of producing evidence and the burden of persuasion which was, in this case, where the validity of the state's valuation is in issue, not the burden of showing the correct valuation but to show the state's valuation was erroneous. However, an asserted failure in contestant's burden of persuasion does not require that the court uphold the state's valuation when that valuation is not supported by substantial evidence. Kaiser Steel Corp. v. Property Appraisal Dep't, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

Finding not supported by evidence inference. - Since the market value of the mine run coal was based on evidence of sales of 4% and 9% of production at $8.50 per ton, this evidence did not support an inference that 96% and 91% of production had a market value of $8.50 per ton absent evidence of a market at that price and, therefore, the finding utilizing a market value of $8.50 per ton for all mine run coal was not supported by substantial evidence. Kaiser Steel Corp. v. Property Appraisal Dep't, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

Law reviews. - For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M.L. Rev. 69 (1976-77).

For article, "Nonneutral Features of Energy Taxation," see 20 Nat. Resources J. 853 (1980).

7-36-24. Special method of valuation; mineral property and property used in connection with mineral property when the primary production from the mineral property is potash.

A. The provisions of this section apply to valuation of all mineral property and property used in connection with mineral property when the primary production from the mineral property is potash.

B. The value for property taxation purposes of improvements, equipment, materials, supplies and other personal property held or used in connection with all classes of potash mineral property is an amount equal to the market value of all mineral production from the potash mineral property for the prior year, less any royalties paid or due the United States, the state or any Indian tribe, Indian pueblo or Indian who is a ward of the United States. "Improvements" as used in this section includes surface and subsurface structures, but does not include pits, shafts, drifts and other similar artificial changes in the physical condition of the surface or subsurface of the earth produced solely by the removal or rearrangement of earth or minerals for the purpose of exposing or removing ore from a mine.

C. The value for property taxation purposes of the surface value for agricultural or other purposes held in connection with class one productive or nonproductive potash mineral property, when the surface interest is held in the same ownership as the mineral interests, shall be determined under the methods of valuation required by the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978].

D. The value for property taxation purposes of class one productive potash mineral property is an amount equal to fifty percent of the market value of all mineral production from the potash mineral property for the prior year.

E. The value for property taxation purposes of class two and class three potash mineral property is an amount equal to fifty percent of the amount derived by deducting from the market value of all mineral production from the potash mineral property for the prior year any royalties paid or due the United States, the state or any Indian tribe, Indian pueblo or Indian who is a ward of the United States.

F. The value for property taxation purposes of class one nonproductive potash mineral property shall be determined under Subsection E of Section 7-36-23 NMSA 1978.

G. If a taxpayer severs potash in one or more governmental units and processes the severed potash in another governmental unit, the value of all interests in minerals shall be allocated to the governmental unit or units in which the potash is severed, and the value of improvements, equipment, materials, supplies and personal property shall be

allocated among the governmental units in which the property is located on the basis of the original cost of the property.

H. The department shall adopt regulations specifying procedures to be followed under, and the details of, the method for valuation of potash mineral property specified in this section. The department shall also adopt regulations for the allocation of values of potash mineral property among the governmental units.

History: 1953 Comp., § 72-29-13, enacted by Laws 1973, ch. 258, § 25; 1975, ch. 165, § 5.

ANNOTATIONS

Cross references. - For gross value of potash for severance tax, see 7-26-4 NMSA 1978.

For mines and mining, see Chapter 69 NMSA 1978.

Constitutionality. - This section does not violate N.M. Const., art. VIII, § 1 by using production of previous year as base value of mineral property to calculate present year's taxes, nor does it create an irrebutable presumption of value in violation of federal due process clause. National Potash Co. v. Property Tax Div. 101 N.M. 404, 683 P.2d 521 (Ct. App. 1984).

Fair market value is theoretically what a willing seller would take and a willing buyer offer. Kaiser Steel Corp. v. Property Appraisal Dep't, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

Market price as exchange value. - As to the price between a fictional seller and buyer, the market price of a commodity is the exchange value and it is determined by the demand for it in relation to the supply, and is proved, when possible, by actual sales. Kaiser Steel Corp. v. Property Appraisal Dep't, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

Essential factors in determining market value are the existence of a demand and the accessibility of a market. Kaiser Steel Corp. v. Property Appraisal Dep't, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

Valuation of potash fines when no commercial market. - Although without commercial market, potash fines were to be valued for tax purposes and market value was exchange value of fines between corporation which produced fines and subsequent processor of fines. International Minerals & Chem. Corp. v. Property Appraisal Dep't, 83 N.M. 402, 492 P.2d 1265 (Ct. App. 1971), cert. denied, 83 N.M. 395, 492 P.2d 1258 (1972).

Burden of proof was on contestant and was both the burden of producing evidence and the burden of persuasion which was, in this case, where the validity of the state's valuation is in issue, not the burden of showing the correct valuation but to show the state's valuation was erroneous. However, an asserted failure in contestant's burden of persuasion does not require that the court uphold the state's valuation when that valuation is not supported by substantial evidence. Kaiser Steel Corp. v. Property Appraisal Dep't, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

Finding not supported by evidence inference. - Since the market value of the mine run coal was based on evidence of sales of 4% and 9% of production at $8.50 per ton, this evidence did not support an inference that 96% and 91% of production had a market value of $8.50 per ton absent evidence of a market at that price and, therefore, the finding utilizing a market value of $8.50 per ton for all mine run coal was not supported by substantial evidence. Kaiser Steel Corp. v. Property Appraisal Dep't, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

7-36-25. Special method of valuation; mineral property and property used in connection with mineral property when the primary production from the mineral property is uranium.

A. The provisions of this section apply to the valuation of all mineral property and property used in connection with mineral property when the primary production from the mineral property is uranium.

B. The following kinds of property held or used in connection with uranium mineral property shall be valued under the methods of valuation required by the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978]:

(1) improvements, equipment, materials, supplies and other personal property held or used in connection with all classes of uranium mineral property; "improvements" as used in this section includes surface and subsurface structures, but does not include pits, shafts, drifts or other similar artificial changes in the physical condition of the surface or subsurface of the earth produced solely by the removal or rearrangement of earth or minerals for the purpose of exposing or removing ore from a mine; and

(2) the surface value for agricultural or other purposes of class one productive or nonproductive uranium mineral property when the surface interest is held in the same ownership as the mineral interests.

C. The value for property taxation purposes of class one productive, class two and class three uranium mineral property is the annual net production value of the uranium mineral property.

D. The value for property taxation purposes of class one nonproductive uranium mineral property shall be determined under Subsection E of Section 7-36-23 NMSA 1978.

E. For the purposes of this section, the "annual net production value" means:

(1) the sales price of uranium-bearing material disposed of as ore or solution, less fifty percent of that sales price as a deduction for the cost of producing and bringing the output to the surface and of transporting and selling it; or

(2) in the case of uranium-bearing material not disposed of as ore or solution but processed or beneficiated (other than by sizing and blending), regardless of the form in which the product is actually disposed of, the value of U_3O_8 contained in ore or solution determined on the basis of the U_3O_8 content of the ore or solution at fifty percent of the taxpayer's average unit sales price during the preceding calendar year of U_3O_8 contained in the concentrate form commonly known as "yellowcake" (or if the uranium concentrate has not been sold in the preceding calendar year, at fifty percent of the representative sales price for U_3O_8 contained in the concentrate form commonly known as "yellowcake" at the place and time of processing or beneficiation into that concentrate), plus fifty percent of the representative sales price of all other minerals produced and saved from such uranium-bearing material, less fifty percent of the value as a deduction for the cost of producing and bringing the output to the surface from an underground mine.

F. In determining annual net production value of class two and class three uranium mineral property, a deduction may be taken for royalties paid or due the United States, the state or any Indian tribe, Indian pueblo or Indian who is a ward of the United States, but the deduction allowed by this subsection must be subtracted from one hundred percent of the applicable sales price before applying any other reductions in or deductions from that sales price.

History: 1953 Comp., § 72-29-14, enacted by Laws 1973, ch. 258, § 26; 1975, ch. 165, § 6; 1982, ch. 29, § 1.

ANNOTATIONS

Cross references. - For severance tax on uranium, see 7-26-7 NMSA 1978.

For mines and mining, see Chapter 69 NMSA 1978.

Section deemed constitutional. - Since the classification, in Subsection E, distinguishing open-pit mines from underground mines is reasonable and the tax imposed by this section is uniform and equal on all subjects of a class, this section is constitutional. Anaconda Co. v. Property Tax Dep't, 94 N.M. 202, 608 P.2d 514 (Ct. App. 1979), cert. denied, 94 N.M. 628, 614 P.2d 545 (1980).

There is reasonable basis for division of mines for tax purposes into the classes of underground and open-pit mines: the basis for the classification is the difference between the cost of producing and bringing uranium ore to the surface in the two types of mines; since this cost is greater in underground than in open-pit mines, it was within

the legislature's power to provide a tax deduction to underground mines that it did not grant to open-pit mines. Anaconda Co. v. Property Tax Dep't, 94 N.M. 202, 608 P.2d 514 (Ct. App. 1979), cert. denied, 94 N.M. 628, 614 P.2d 545 (1980).

Fair market value is theoretically what a willing seller would take and a willing buyer offer. Kaiser Steel Corp. v. Property Appraisal Dep't, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

Market price as exchange value. - As to the price between a fictional seller and buyer, the market price of a commodity is the exchange value and it is determined by the demand for it in relation to the supply and is proved, when possible, by actual sales. Kaiser Steel Corp. v. Property Appraisal Dep't, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

Essential factors in determining market value are the existence of a demand and the accessibility of a market. Kaiser Steel Corp. v. Property Appraisal Dep't, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

Materials incorporated into underground mining structures included in valuation base. - Tangible materials incorporated into underground mining structures, such as roof bolts, concrete, steel mesh, timbers and reinforcing rods, are materials included in the valuation base. Kerr-McGee Nuclear Corp. v. Property Tax Div. 95 N.M. 685, 625 P.2d 1202 (Ct. App. 1980).

Materials in shafts and drifts necessary to extraction of minerals not included in valuation. - The lining or bracing of shafts and drifts in a mine, as well as ventilation air shafts, leach holes and other shafts necessary to the extraction of minerals, are exempt from valuation under Subsection B(1). Kerr-McGee Nuclear Corp. v. Property Tax Div. 95 N.M. 685, 625 P.2d 1202 (Ct. App. 1980).

Burden of proof was on contestant and was both the burden of producing evidence and the burden of persuasion which was, in this case, where the validity of the state's valuation is in issue, not the burden of showing the correct valuation but to show that the state's valuation was erroneous. However, an asserted failure in contestant's burden of persuasion does not require that the court uphold the state's valuation when that valuation is not supported by substantial evidence. Kaiser Steel Corp. v. Property Appraisal Dep't, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

Finding not supported by evidence inference. - Since the market value of the mine run coal was based on evidence of sales of 4% and 9% of production at $8.50 per ton, this evidence did not support an inference that 96% and 91% of production had a market value of $8.50 per ton absent evidence of a market at that price and, therefore, the finding utilizing a market value of $8.50 per ton for all mine run coal was not supported by substantial evidence. Kaiser Steel Corp. v. Property Appraisal Dep't, 83 N.M. 251, 490 P.2d 968 (Ct. App.), cert. denied, 83 N.M. 258, 490 P.2d 975 (1971).

Law reviews. - For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M.L. Rev. 69 (1976-77).

For article, "Nonneutral Features of Energy Taxation," see 20 Nat. Resources J. 853 (1980).

For article, "Evaluating Congressional Limits on a State's Severance Tax Equity Interest in Its Natural Resources: An Essential Responsibility for the Supreme Court," see 11 Nat. Resources J. 673 (1982).

7-36-26. Special method of valuation; manufactured homes.

A. The owner of a manufactured home subject to valuation for property taxation purposes shall report the manufactured home annually for valuation to the county assessor of the county in which the manufactured home is located on January 1. The report shall be in a form and contain the information required by department regulation and shall be made no later than the last day of February of the tax year in which the property is subject to valuation.

B. The valuation method used for determining the value of manufactured homes for property taxation purposes shall be a cost method applying generally accepted appraisal techniques and shall generally provide for:

(1) the determination of initial cost of a manufactured home based upon classifications of manufactured homes and sales prices for the various classifications;

(2) deductions from initial cost for allowable depreciation, which allowances for depreciation shall be developed by the division; and

(3) deduction from initial cost of other justifiable factors, including but not limited to functional and economic obsolescence.

C. Whether or not the presence of a manufactured home is declared and reported by the owner to a county assessor as required by this section, the county assessor shall determine the value for property taxation purposes of each manufactured home located in the county and subject to valuation. County assessors shall use the information required to be furnished them under Sections 66-6-10 and 66-7-413 NMSA 1978 to assure that accurate records of locations of manufactured homes are maintained.

D. Any person who intentionally refuses to make a report required of him under this section or who knowingly makes a false statement in a report required under this section is guilty of a misdemeanor and shall be punished by the imposition of a fine of not more than one thousand dollars ($1,000).

E. Any person who fails to make a report required of him under this section is liable for a civil penalty in an amount equal to five percent of the property taxes ultimately

determined to be due on the property for the tax year or years for which he failed to make the required report.

F. Any person who intentionally refuses to make a report required of him under this section with the intent to evade any tax or who fails to make a report required of him under this section with the intent to evade any tax is liable for a civil penalty in an amount equal to twenty-five percent of the property taxes ultimately determined to be due on the property for the tax year or years for which he refused or failed to make the required report.

G. The civil penalties authorized under Subsections E and F of this section shall be imposed and collected at the time and in the manner that the tax is imposed and collected. In order to assist in the imposition and collection of the penalties, the assessor having responsibility for determining the value of the property shall make an entry in the valuation records indicating the liability for any penalties due under this section.

History: 1953 Comp., § 72-29-15, enacted by Laws 1973, ch. 258, § 27; 1975, ch. 165, § 7; 1983, ch. 295, § 2; 1991, ch. 166, § 6.

ANNOTATIONS

Cross references. - For deduction from gross receipts tax of receipts for lease of mobile home, see 7-9-53 NMSA 1978.

For definition of "division," see 7-35-2 NMSA 1978.

For notification to department of motor vehicles of unpaid property tax on mobile homes, see 7-38-52 NMSA 1978.

The 1991 amendment, effective June 14, 1991, in Subsection A, deleted "as defined in Section 66-1-4 NMSA 1978" following "manufactured home" the first time the reference appears in the first sentence and substituted "department" for "division" in the second sentence.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation § 211.

Classification, as real estate or personal property, of mobile homes or trailers for purposes of state or local taxation, 7 A.L.R.4th 1016.

7-36-27. Special method of valuation; pipelines, tanks, sales meters and plants used in the processing, gathering, transmission, storage, measurement or distribution of oil, natural gas, carbon dioxide or liquid hydrocarbons.

A. All pipelines, tanks, sales meters and plants used in the processing, gathering, transmission, storage, measurement or distribution of oil, natural gas, carbon dioxide or liquid hydrocarbons subject to valuation for property taxation purposes shall be valued in accordance with the provisions of this section.

B. As used in this section:

(1) "depreciation" means straight line depreciation over the useful life of the item of property;

(2) "direct customer distribution pipeline" means low or intermediate pressure distribution system pipeline of four inches or smaller diameter situated in urban areas;

(3) "large industrial sales meter" means a sales meter having an installed tangible property cost in excess of two thousand five hundred dollars ($2,500);

(4) "other justifiable factors" includes, but is not limited to, functional and economic obsolescence;

(5) "pipeline" means all pipe, appurtenances and devices used in systems for gathering, transmission or distribution, but excludes sales meters, pipeline operated exclusively for and constituting a part of a plant and direct customer distribution pipeline;

(6) "plant" means any refinery, gasoline plant, extraction plant, purification plant, compressor or pumping station or similar plant including all structures, equipment, pipes and other related facilities, excluding residential housing, office buildings and warehouses;

(7) "sales meter" means the meter, regulator and all appurtenances and devices used for measuring sales to customers and includes the service pipe to the customer's property line from the point of connection with the pipeline;

(8) "schedule value" means a fixed value of an individual property unit within a mass of similar or like units established by determining the total tangible property cost of a substantial sample of such property and deducting therefrom an average related accumulated provision for depreciation and allocating a proportionate part of the remainder to individual taxable property units;

(9) "tangible property cost" means the actual cost of acquisition or construction of property, excluding construction work in progress, including additions, retirements, adjustments and transfers, but without deduction of related accumulated provision for depreciation, amortization or other purposes and excluding any amount attributable to oil or gas reserves dedicated to such item of property;

(10) "tank" means any storage tank or container, other than a natural reservoir, for storage that is not a component part of any plant; and

(11) "construction work in progress" means the total of the balances of work orders for pipelines, plants, large industrial sales meters and tanks in the process of construction on the last day of the preceding calendar year, exclusive of land and land rights and equipment, machinery or devices used or available to construct pipelines, plants, large industrial sales meters and tanks but which are not incorporated therein.

C. Sales meters, other than large industrial sales meters, shall be valued as follows:

(1) the division may periodically determine the average tangible property cost of a substantial sample of sales meters in general use in the state;

(2) such average tangible property cost shall then be reduced by the average related accumulated provision for depreciation applicable to the sample of sales meters; and

(3) from the foregoing determinations a schedule of value for sales meters for property taxation purposes shall be determined and set forth in a regulation adopted pursuant to Section 7-38-88 NMSA 1978.

D. Pipelines, direct customer distribution pipelines, large industrial sales meters, tanks and plants shall be valued as follows:

(1) the valuation authority shall first establish the tangible property cost of each item of property;

(2) from such tangible property cost shall be deducted the related accumulated provision for depreciation and any other justifiable factors which further affect the tangible property value of each item of property; and

(3) notwithstanding the foregoing determination of value for property taxation purposes, the value for property taxation purposes of each item of property valued under this subsection shall not be less than twenty percent of the tangible property cost of such item of property.

E. Construction work in progress shall be valued at fifty percent of the amount expended and entered upon the accounting records of the taxpayer as of December 31 of the preceding year as construction work in progress.

F. Each item of property having a taxable situs in the state and valued under this section shall have its net taxable value allocated to the governmental units in which the property is located.

G. The division shall adopt regulations under Section 7-38-88 NMSA 1978 to implement the provisions of this section.

History: Laws 1973, ch. 258, § 28; 1953 Comp., § 72-29-16; Laws 1975, ch. 165, § 8; 1982, ch. 28, § 4; 1985, ch. 109, § 5.

ANNOTATIONS

Cross references. - For pipelines generally, see 70-3-1 to 70-3-20 NMSA 1978.

For liens on wells and pipelines, see 70-4-1 to 70-4-15 NMSA 1978.

Applicability. - Laws 1985, ch. 109, § 12 makes the provisions of the act applicable to the 1985 and subsequent property tax years.

Compiler's notes. - Section 7-38-88 NMSA 1978, referred to in Paragraph (3) of Subsection C and Subsection G, was repealed by Laws 1991, ch. 166, § 14. For present comparable provisions, see 9-11-6.2 NMSA 1978.

7-36-28. Special method of valuation; pipelines, tanks, sales meters, plants and hydrants used in the transmission, storage, measurement or distribution of water.

A. All pipelines, tanks, sales meters, plants and hydrants used in the transmission, storage, measurement or distribution of water subject to valuation for property taxation purposes shall be valued in accordance with the provisions of this section.

B. As used in this section:

(1) "commercial water property" means privately owned pipelines, tanks, sales meters, plants, hydrants, materials and supplies, whether in service, in stock, or under construction, owned and operated as a utility for the purpose of transmitting, storing, measuring or distributing water for sale to the consuming public, excluding general buildings and improvements;

(2) "depreciation" means straight line depreciation over the useful life of the item of property;

(3) "general buildings and improvements" means buildings of the nature of offices, residential housing, warehouses, shops and associated improvements in general use by the taxpayer but not directly associated with the transmission, storage, measurement or distribution of water;

(4) "gallons" means the measurement of water sold;

(5) "revenue" means gross utility operating revenue;

(6) "closed system" means a commercial water system in which water is gathered primarily by wells and stored in closed reservoirs and tanks; and

(7) "combination system" means a commercial water system in which water is gathered both in open reservoirs and by wells and is stored both in open reservoirs and closed reservoirs and tanks.

C. The value of commercial water property shall be determined as follows:

(1) a factor of two and forty-nine one hundredths per thousand gallons is to be used for a closed system and three and twenty-five one hundredths is to be used for a combination system;

(2) the department shall determine the type of system into which the taxpayer's commercial water properties should be categorized;

(3) the department shall then ascertain the number of thousand gallons sold to consumers by the taxpayer during each of the three immediately preceding calendar years and the taxpayer's revenue from the immediately preceding calendar year;

(4) a simple average of the three-year thousand gallon sales shall be computed and compared to the actual thousand gallons sold to consumers during the immediately preceding calendar year. The higher of the average thousand gallons or the immediately preceding year's actual thousand gallons shall be the basis for value calculations;

(5) the thousand gallon figure determined in Paragraph (4) of this subsection shall then be multiplied by the appropriate per thousand gallon factor from Paragraph (1) of this subsection. The result of this calculation is the value of commercial water property for property taxation purposes;

(6) notwithstanding the calculations provided for above, the value of the taxpayer's commercial water property shall not be greater than four and one-half times the revenue derived during the immediately preceding calendar year from the operation of the commercial water property.

D. Each item of property having a taxable situs in the state and valued under this section shall have its net taxable value allocated to the governmental units in which the property is located on the basis of the percentage of the taxpayer's total investment in each governmental unit.

E. The department shall adopt regulations under Section 7-38-88 NMSA 1978 to implement the provisions of this section.

History: Laws 1973, ch. 258, § 29; 1953 Comp., § 72-29-17; Laws 1975, ch. 165, § 9.

ANNOTATIONS

Compiler's notes. - Section 7-38-88 NMSA 1978, referred to in Subsection E, was repealed by Laws 1991, ch. 166, § 14. For present comparable provisions, see 9-11-6.2 NMSA 1978.

7-36-29. Special method of valuation; property used for the generation, transmission or distribution of electrical power or energy.

A. All property used for the generation, transmission or distribution of electrical power or energy subject to valuation for property taxation purposes shall be valued in accordance with the provisions of this section.

B. As used in this section:

(1) "depreciation" means straight line depreciation over the useful life of the item of property;

(2) "electric plant" means all property situated in this state used or useful for the generation, transmission or distribution of electric power or energy, but does not include land, land rights, general buildings and improvements, construction work in progress, materials and supplies and licensed vehicles;

(3) "construction work in progress" means the total of the balances of work orders for electric plant in process of construction on the last day of the preceding calendar year exclusive of land, land rights and licensed vehicles;

(4) "general buildings and improvements" means buildings of the nature of offices, residential housing, warehouses, shops and associated improvements in general use by the taxpayer, and not directly associated with generation, transmission or distribution of electrical power or energy;

(5) "materials and supplies" means the cost, including sales, use and excise taxes, and transportation costs to point of delivery in this state, less purchases and trade discounts, of all unapplied material and supplies on hand in this state as of December 31, of the preceding calendar year;

(6) "other justifiable factors" includes, but is not limited to, functional and economic obsolescence, such as the limitation upon the use of the property based upon the available reserves committed to the property; and

(7) "tangible property cost" means the actual cost of acquisition or construction of property including additions, retirements, adjustments and transfers, but without deduction of related accumulated provision for depreciation, amortization or other purposes.

C. Electric plant shall be valued as follows:

(1) the department shall determine the tangible property cost of electric plant;

(2) such tangible property cost shall then be reduced by the related accumulated provision for depreciation and any other justifiable factors; and

(3) notwithstanding the foregoing determination of value for property taxation purposes, the value for property taxation purposes of electric plant shall not be less than twenty percent of the tangible property cost of the electric plant.

D. The value of construction work in progress shall be fifty percent of the amount expended and entered upon the accounting records of the taxpayer as of December 31 of the preceding calendar year as construction work in progress.

E. The value of materials and supplies shall be the tangible property cost for such property as of December 31 of the preceding calendar year.

F. Each item of property having a taxable situs in the state and valued under this section shall have its net taxable value allocated to the governmental units in which the property is located.

G. The department shall adopt regulations under Section 7-38-88 NMSA 1978 to implement the provisions of this section.

History: Laws 1973, ch. 258, § 30; 1953 Comp., § 72-29-18; Laws 1975, ch. 165, § 10.

ANNOTATIONS

Compiler's notes. - Section 7-38-88 NMSA 1978, referred to in Subsection G, was repealed by Laws 1991, ch. 166, § 14. For present comparable provisions, see 9-11-6.2 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 439 to 442.

84 C.J.S. Taxation § 159.

7-36-30. Special methods of valuation; property that is part of a communications system.

A. All property that is part of a communications system and is subject to valuation for property taxation purposes shall be valued in accordance with the provisions of this section.

B. As used in this section:

(1) "communications system" means a system for the transmission and reception of information by the use of electronic, magnetic or optical means or any combination thereof and which system or any portion thereof is available for use by another person for consideration;

(2) "depreciation" means straight line depreciation over the useful life of the item of property;

(3) "other justifiable factors" includes but is not limited to wear and tear of the property not covered by depreciation, inadequacy, changes in demand and requirements of public authorities attributable to the applicable decrease in value and functional or economic obsolescence;

(4) "plant" means all tangible property located in this state and used or useful for the provision of communication service as reflected by the uniform system of accounting in use by the taxpayer, but does not include construction work in progress or materials and supplies;

(5) "construction work in progress" means the total of the balance of work orders for plant in process of construction on the last day of the preceding calendar year, exclusive of land and land rights;

(6) "tangible property cost" means the actual cost of acquisition or construction of property, including additions, retirements, adjustments and transfers, but without deduction of related accumulated provision for depreciation, amortization or other purposes; and

(7) "materials and supplies" means the cost, including sales, use and excise taxes, and transportation costs to point of delivery in this state, less purchases and trade discounts, of all unapplied materials and supplies on hand in this state as of December 31 of the preceding calendar year.

C. Each taxpayer having property subject to valuation under this section shall elect to have that property valued by the department in accordance with either Subsection D or Subsection F of this section. The election shall be effective for subsequent property tax years unless prior permission of the secretary is obtained to change the election for good cause shown. A taxpayer may not seek permission to change an election unless the prior election has been effective for at least three consecutive property tax years. The secretary shall find that good cause exists to change the election upon a showing satisfactory to the secretary by the taxpayer that:

(1) the net result of all amendments to the property tax statutes and regulations with effective dates commencing within the property tax year has a substantial adverse effect on the valuation for property tax purposes under the alternative elected for the property for that year relative to what the valuation for property tax purposes would have been under the other alternative in the absence of the amendments;

(2) the net result of all changes in law or circumstances but excluding acquisition or sale of property subject to valuation under this section, including changes which do not affect property tax liability, occurring within the property tax year has a substantial adverse effect on the valuation for property tax purposes under the alternative elected for the property for that year relative to what the valuation for property tax purposes for the property would have been under the other alternative in the absence of the changes; or

(3) changes in property tax statutes or regulations which are effective prior to the property tax year have a substantial adverse effect on the valuation for property tax purposes under the alternative elected for the property relative to what the valuation for property tax purposes would have been under the other alternative.

D. Communications system property valued under this subsection shall be valued in accordance with Paragraphs (1), (2) and (3) of this subsection:

(1) plant shall be valued in the following manner:

(a) the department shall first establish the tangible property cost of the plant;

(b) from such tangible property cost shall be deducted the related accumulated provision for depreciation and other justifiable factors; and

(c) notwithstanding the foregoing determination of value for property taxation purposes, the value for property taxation purposes of the plant shall not be less than twenty percent of the tangible property cost of the plant;

(2) construction work in progress shall have a value for property taxation purposes equal to fifty percent of the actual amounts expended and entered upon the accounting records of the taxpayer as of December 31 of the preceding calendar year for construction work in progress; and

(3) the value of materials and supplies shall be the tangible property cost for such property as of December 31 of the preceding calendar year.

E. Each item of property having a taxable situs in the state and valued under this section shall have its net taxable value allocated to the governmental units in which the property is located.

F. Communications system property valued under this subsection shall be valued using one or more or a combination of the following methods of valuation and applying the unit rule of appraisal to the property:

(1) capitalization of earnings;

(2) market value of stock and debt; or

(3) cost less depreciation and obsolescence.

G. The department shall adopt regulations under Section 7-38-88 NMSA 1978 to implement the provisions of this section.

History: 1978 Comp., § 7-36-30, enacted by Laws 1975, ch. 165, § 11; 1985, ch. 109, § 6; 1987, ch. 206, § 1; 1989, ch. 112, § 1.

ANNOTATIONS

The 1989 amendment, effective January 1, 1990, added Subsection C; added the introductory paragraph of Subsection D; designated the introductory paragraph of former Subsection C as Subsection D(1); redesignated former Subsections C(1) through C(3) as Subparagraphs (a) through (c) of Subsection D(1); redesignated former Subsections D through F as Subsections D(2), D(3) and E; deleted former Subsection G, relating to election of alternate valuation; redesignated former Subsection H as Subsection F, while substituting all of the language of the introductory paragraph preceding "using" for "The department shall, at the election of a taxpayer value communications system property"; deleted former Subsection I, relating to adoption of regulations providing for allocation of net taxable values of communications system property to the state and governmental units; and redesignated former Subsection J as Subsection G.

Compiler's notes. - Section 7-38-88 NMSA 1978, referred to in Subsection G, was repealed by Laws 1991, ch. 166, § 14. For present comparable provisions, see 9-11-6.2 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 416 to 420.

84 C.J.S. Taxation § 183.

7-36-31. Special method of valuation; operating railroad property.

A. All property owned or leased and used by an operating railroad in its operation if the operating railroad has operations in New Mexico is subject to valuation for property taxation purposes and shall be valued in accordance with the provisions of this section, except for land and land rights other than operating railroad rights-of-way, sidings and marshalling yards and general buildings and improvements determined not to be an active part of an operating railroad.

B. The division shall value operating railroad property using the following methods of valuation and applying the unit rule of appraisal to the property:

(1) capitalization of earnings;

(2) market value of stock and debt; or

(3) original cost less depreciation and obsolescence.

C. The division may use one or more, or a combination of, the methods of valuation specified in Paragraphs (1), (2) and (3) of Subsection B of this section in valuing operating railroad property.

D. Land, land rights other than operating railroad rights-of-way, sidings and marshalling yards, general buildings and improvements determined not to be an active part of an operating railroad shall be valued under the provisions of this article of the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] applicable to the property.

E. The division shall adopt regulations providing for the allocation of net taxable values of operating railroad property to New Mexico and to the governmental units within the state.

F. The division shall adopt regulations pursuant to Section 7-38-88 NMSA 1978 to implement the methods of valuation for operating railroad property specified in this section.

History: Laws 1973, ch. 258, § 32; 1953 Comp., § 72-29-20; Laws 1985, ch. 109, § 7.

ANNOTATIONS

Cross references. - For tax levied in lieu of property taxes on railroad car companies, see 7-11-3 NMSA 1978.

Applicability. - Laws 1985, ch. 109, § 12 makes the provisions of the act applicable to the 1985 and subsequent property tax years.

Compiler's notes. - Section 7-38-88 NMSA 1978, referred to in Subsection F, was repealed by Laws 1991, ch. 166, § 14. For present comparable provisions, see 7-88-90 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation §§ 402 to 405.

84 C.J.S. Taxation §§ 171 to 182.

7-36-32. Special method of valuation; commercial aircraft.

A. All commercial aircraft used by commercial airline companies in the operation of their businesses and subject to valuation for property taxation purposes shall be valued in accordance with the provisions of this section.

B. The department shall value commercial aircraft as follows:

(1) all gasoline engine propeller driven aircraft shall be valued at ten percent of original cost regardless of age; and

(2) all jet propelled aircraft shall have an assumed life of twelve years and shall be valued by deducting from eighty percent of the original cost of the aircraft depreciation computed on a monthly basis, but no aircraft valued under this paragraph shall have computed a value of less than twenty percent of its original cost.

C. The department shall adopt regulations providing for the allocation of net taxable values of commercial aircraft to New Mexico and to the governmental units in the state, which regulations shall include allocation factors related to ground time in New Mexico compared to total ground time within the airline system and flight time over New Mexico compared to total flight time within the airline system, exclusive of flight time outside the continental limits of the United States.

D. The department shall adopt regulations pursuant to Section 7-38-88 NMSA 1978 to implement the method of valuation of commercial aircraft specified in this section.

History: Laws 1973, ch. 258, § 33; 1953 Comp., § 72-29-21; Laws 1975, ch. 165, § 13.

ANNOTATIONS

Compiler's notes. - Section 7-38-88 NMSA 1978, referred to in Subsection D, was repealed by Laws 1991, ch. 166, § 14. For present comparable provisions, see 9-11-6.2 NMSA 1978.

7-36-33. Special method of valuation; certain industrial and commercial personal property.

A. The following kinds of property shall be valued for property taxation purposes in accordance with the provisions of this section;

(1) all property used in connection with mineral property and defined in Paragraph (1) of Subsection B of Section 7-36-23 NMSA 1978 and Paragraph (1) of Subsection B of Section 7-36-25 NMSA 1978;

(2) all industrial, manufacturing, construction and commercial machinery, equipment, furniture, materials and supplies subject to valuation for property taxation purposes and not subject to valuation under the provisions of Sections 7-36-22 through 7-36-32 NMSA 1978;

(3) all other business personal property subject to valuation for property taxation purposes and not subject to valuation under the provisions of Sections 7-36-22 through 7-36-32 NMSA 1978; and

(4) construction work in progress that includes any of the items of property specified in Paragraphs (1), (2) or (3) of this subsection.

B. As used in this section:

(1) "depreciation" means the straight line method of computing the depreciation allowance over the useful life of the item of property;

(2) "useful life of the item of property" means the "class life" for same or similar kinds of property as defined and used in Section 167 of the United States Internal Revenue Code of 1954, as amended or renumbered;

(3) "other justifiable factors" includes, but is not limited to, functional and economic obsolescence;

(4) "schedule value" means a fixed value of an individual property unit within a mass of similar or like units established by determining the average unit tangible property cost of a substantial sample of such property and deducting therefrom an average related accumulated provision for depreciation per unit and an average of other justifiable factors per unit;

(5) "tangible property cost" means the actual cost of acquisition or construction of property including additions, retirements, adjustments and transfers, but without deduction of related accumulated provision for depreciation, amortization or other purposes; and

(6) "construction work in progress" means the total of the balance of work orders for property in process of construction on the last day of the preceding calendar year but does not include the equipment, machinery or devices used or available to construct such property but not incorporated therein.

C. The value of individual items of property subject to valuation under this section, except construction work in progress, shall be determined as follows:

(1) the valuation authority shall first establish the tangible property cost of each item of property;

(2) from the tangible property cost shall be deducted the related accumulated provision for depreciation and any other justifiable factors; and

(3) notwithstanding the foregoing determination of value for property taxation purposes, the value for property taxation purposes of each item of property valued under this subsection shall never be less than twelve and one-half percent of the tangible property cost of such item of property so long as the property is used and useful in a business activity.

D. Construction work in progress shall be valued at fifty percent of the actual amounts expended and entered upon the accounting records of the taxpayer as of December 31 of the preceding calendar year as construction work in progress.

E. The division may establish a schedule value for the same or similar kinds of property to be valued under Subsection C of this section for property taxation purposes. In arriving at a schedule value, the division shall:

(1) determine the average unit tangible property cost of a substantial sample of the same or similar kinds of property;

(2) such unit average tangible property cost shall then be reduced by the average related accumulated provision for depreciation per unit applicable to the sample of the same or similar kinds of property and shall then be further reduced by an average of other justifiable factors per unit applicable to the same or similar kinds of property; and

(3) from the foregoing determination a schedule value for the same or similar kinds of property shall be determined and set forth in a regulation adopted pursuant to Section 7-38-88 NMSA 1978.

F. The division shall adopt a schedule value for the following kinds of property:

(1) drilling rigs; and

(2) large off-the-road highway construction equipment.

G. Each item of property having a taxable situs in the state and valued under this section shall have its net taxable value allocated to the governmental unit in which the property is located.

H. The division shall adopt regulations under Section 7-38-88 NMSA 1978 to implement the provisions of this section.

History: 1953 Comp., § 72-29-22, enacted by Laws 1975, ch. 165, § 14; 1982, ch. 28, § 5.

ANNOTATIONS

Applicability. - Laws 1982, ch. 28, § 32, makes the provisions of §§ 3, 4, 5, 7 and 11 of the act applicable to the 1983 and subsequent tax years.

Compiler's notes. - Section 167 of the Internal Revenue Code, cited in Subsection B(2), is compiled as 26 U.S.C. § 167.

Section 7-38-88 NMSA 1978, referred to in Paragraph (3) of Subsection E and Subsection H, was repealed by Laws 1991, ch. 166, § 14. For present comparable provisions, see 9-11-6.2 NMSA 1978.

Uranium mine development costs are tangible property costs subject to taxation. Kerr-McGee Nuclear Corp. v. Property Tax Div. 95 N.M. 685, 625 P.2d 1202 (Ct. App. 1980).

Such things as labor, engineer and geological analysis, utility bills and equipment rental fees relating to the development and operation of a uranium mine are tangible property costs under this section. Kerr-McGee Nuclear Corp. v. Property Tax Div. 95 N.M. 685, 625 P.2d 1202 (Ct. App. 1980).

Negative mineral property production figure disallowed. - The statutory requirement of allocating the net taxable value of each item of property used in connection with mineral property prevents the use of the negative value for mineral property production to reduce the valuation of property valued under this section; therefore, the taxpayer cannot use a negative figure for mineral property production to reduce the positive value of property used in connection with mineral property. U.V. Indus., Inc. v. Property Tax Div. of Taxation & Revenue Dep't, 93 N.M. 651, 603 P.2d 1108 (Ct. App. 1979).

Showing required for claim of obsolescence. - Not every decision to abandon property gives rise to a claim for obsolescence: a taxpayer must show that ordinary depreciation will not sufficiently restore the cost of the property before its usefulness is over. Anaconda Co. v. Property Tax Dep't, 94 N.M. 202, 608 P.2d 514 (Ct. App. 1979), cert. denied, 94 N.M. 628, 614 P.2d 545 (1980).

Burden is on taxpayer to prove amount of deduction for obsolescence to which it is entitled; such a deduction will not be granted when the taxpayer fails to prove the connection between the degree of obsolescence and the amount of the deduction claimed. Anaconda Co. v. Property Tax Dep't, 94 N.M. 202, 608 P.2d 514 (Ct. App. 1979), cert. denied, 94 N.M. 628, 614 P.2d 545 (1980).

ARTICLE 37
IMPOSITION OF PROPERTY TAX

7-37-1. Provisions for imposition of tax; applicability.

The provisions of Chapter 7, Article 37 NMSA 1978 apply to and govern the imposition of the property tax. Except for Sections 7-37-7 and 7-37-7.1 NMSA 1978, the provisions of that article do not apply to:

A. impositions or levies of taxes on specific classes of property authorized by laws outside of the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978]; and

B. special benefit assessments authorized by laws outside of the Property Tax Code.

History: 1953 Comp., § 72-30-1, enacted by Laws 1973, ch. 258, § 34; 1986, ch. 32, § 7.

ANNOTATIONS

Cross references. - For elderly homeowners' maximum property tax liability and income tax credit or refund for excess, see 7-2-18 NMSA 1978.

For exclusive ad valorem taxes on interests in oil, natural gas or liquid hydrocarbon production units, see 7-32-5, 7-34-5 NMSA 1978.

Law reviews. - For comment, "Coal Taxation in the Western States: The Need for a Regional Tax Policy," see 16 Nat. Resources J. 415 (1976).

Am. Jur. 2d, A.L.R. and C.J.S. references. - What are educational institutions or schools within state property tax exemption provisions, 34 A.L.R.4th 698.

7-37-2. Imposition of the tax.

A tax is imposed upon all property subject to valuation for property taxation purposes under Article 36 of Chapter 7 NMSA 1978. The tax shall be imposed at the rates authorized and in the manner and for the purposes specified in this article.

History: 1953 Comp., § 72-30-2, enacted by Laws 1973, ch. 258, § 35; 1982, ch. 28, § 6.

7-37-3. Tax ratio established.

The tax ratio is thirty-three and one-third percent.

History: 1953 Comp., § 72-30-3, enacted by Laws 1973, ch. 258, § 36.

7-37-4. Head-of-family exemption.

A. Up to two thousand dollars ($2,000) of the taxable value of residential property subject to the tax is exempt from the imposition of the tax if the property is owned by the head of a family who is a New Mexico resident or if the property is held in a grantor trust established under Sections 671 through 677 of the Internal Revenue Code, as those sections may be amended or renumbered, by a head of a family who is a New Mexico resident. The exemption allowed shall be in the following amounts for the specified property tax years:

(1) for the property tax years 1989 and 1990, the exemption shall be eight hundred dollars ($800);

(2) for the property tax years 1991 and 1992, the exemption shall be one thousand four hundred dollars ($1,400); and

(3) for the 1993 and subsequent tax years, the exemption shall be two thousand dollars ($2,000).

B. The exemption shall be deducted from taxable value of property to determine net taxable value of property.

C. The head-of-family exemption shall be applied only if claimed and allowed in accordance with Section 7-38-17 NMSA 1978 and regulations of the department.

D. As used in this section, "head of a family" means an individual New Mexico resident who is either:

(1) a married person, but only one spouse in a household may qualify as a head of a family;

(2) a widow or a widower;

(3) a head of household furnishing more than one-half the cost of support of any related person;

(4) a single person, but only one person in a household may qualify as a head of family; or

(5) a member of a condominium association or like entity who pays property tax through the association.

E. A head of a family is entitled to the exemption allowed by this section only once in any tax year and may claim the exemption in only one county in any tax year even though the claimant may own property subject to valuation for property taxation purposes in more than one county.

History: 1953 Comp., § 72-30-4, enacted by Laws 1973, ch. 258, § 37; 1983, ch. 219, § 1; 1989, ch. 81, § 1; 1991, ch. 228, § 1; 1993, ch. 343, § 1.

ANNOTATIONS

Cross references. - For constitutional provision as to head of family exemption, see N.M. Const., art. VIII, § 5.

The 1989 amendment, effective June 16, 1989, in Subsection A substituted "up to two thousand dollars ($2,000)" for "Two hundred dollars ($200)" in the first sentence of the introductory paragraph, added the second sentence of the introductory paragraph, and added Paragraphs (1) and (3); designated the former second sentence of Subsection A

as Subsection B; redesignated former Subsection B as Subsection C, while substituting "department" for "division"; and redesignated former Subsections C and D as Subsections D and E.

The 1991 amendment, effective June 14, 1991, added the language beginning "or if the property" at the end of the first sentence in Subsection A.

The 1993 amendment, effective June 18, 1993, added Paragraph (5) of Subsection D.

Internal Revenue Code. - Sections 671 to 677 of the Internal Revenue Code, referred to in Subsection A, appear as 26 U.S.C. §§ 671 to 677.

7-37-5. Veteran exemption.

A. Two thousand dollars ($2,000) of the taxable value of property, including the community or joint property of husband and wife, subject to the tax is exempt from the imposition of the tax if the property is owned by a veteran or the veteran's unmarried surviving spouse if the veteran or surviving spouse is a New Mexico resident or if the property is held in a grantor trust established under Sections 671 through 677 of the Internal Revenue Code, as those sections may be amended or renumbered, by a veteran or the veteran's unmarried surviving spouse if the veteran or surviving spouse is a New Mexico resident. The exemption shall be deducted from taxable value of property to determine net taxable value of property.

B. The veteran exemption shall be applied only if claimed and allowed in accordance with Section 7-38-17 NMSA 1978 and regulations of the department.

C. As used in this section, "veteran" means an individual who:

(1) has been honorably discharged from membership in the armed forces of the United States;

(2) served in the armed forces of the United States on active duty continuously for ninety days, any part of which occurred during a period specified in Paragraph (3) of this subsection; and

(3) served in the armed forces of the United States during one or more of the following periods of armed conflict under orders of the president:

(a) any armed conflict prior to World War I;

(b) World War I which, for the purposes of this section, is defined as the period April 6, 1917 through April 1, 1920;

(c) World War II which, for the purposes of this section, is defined as the period December 7, 1941 through December 31, 1946;

(d) the Korean conflict which, for the purposes of this section, is defined as the period June 27, 1950 through January 31, 1955;

(e) the Vietnam conflict which, for the purposes of this section, is defined as the period August 5, 1964 through May 7, 1975; or

(f) the Persian gulf conflict which, for the purposes of this section, is defined as the period August 2, 1990 through the date upon which the president of the United States or a competent military authority declares the conflict to be ended, but in no case earlier than July 1, 1992.

D. For the purposes of Subsection C of this section, a person who would otherwise be entitled to status as a veteran except for failure to have served in the armed forces continuously for ninety days is considered to have met that qualification if he served during the applicable period for less than ninety days and the reason for not having served for ninety days was a discharge brought about by service-connected disablement.

E. For the purposes of Paragraph (1) of Subsection C of this section, a person has been "honorably discharged" unless he received either a dishonorable discharge or a discharge for misconduct.

F. For the purposes of this section, a person whose civilian service has been recognized as service in the armed forces of the United States under federal law and who has been issued a discharge certificate by a branch of the armed forces of the United States shall be considered to have served in the armed forces of the United States.

History: 1953 Comp., § 72-30-5, enacted by Laws 1973, ch. 258, § 38; 1975, ch. 3, § 1; 1975, ch. 77, § 1; 1977, ch. 140, § 1; 1977, ch. 168, § 1; 1981, ch. 187, § 1; 1983, ch. 330, § 1; 1986, ch. 104, § 1; 1989, ch. 236, § 1; 1989, ch. 353, § 1; 1991, ch. 228, § 2; 1992, ch. 68, § 1.

ANNOTATIONS

Cross references. - For definition of "department," see 7-35-2 NMSA 1978.

For constitutional provision as to veteran exemption, see N.M. Const., art. VIII, § 5.

The 1989 amendments. - Identical amendments to this section were enacted by Laws 1989, ch. 236, § 1 and Laws 1989, ch. 353, § 1, both effective June 16, 1989, which, in Subsection B, substituted "department" for "division"; in Subsection C, corrected a misspelling in Paragraph (2); and added Subsection F. The section is set out above as amended by Laws 1989, ch. 353, § 1. See 12-1-8 NMSA 1978.

The 1991 amendment, effective June 14, 1991, added the language beginning "or if the property" at the end of the first sentence in Subsection A.

The 1992 amendment, effective May 20, 1992, added Subsection C(3)(f).

Applicability. - Laws 1986, ch. 104, § 3 makes the provisions of that act applicable to the 1986 and subsequent property tax years.

Internal Revenue Code. - Sections 671 to 677 of the Internal Revenue Code, referred to in Subsection A, appear as 26 U.S.C. §§ 671 to 677.

This section violates equal protection clause of the fourteenth amendment by limiting a tax exemption to those Vietnam veterans who resided in the state before May 8, 1976. Hooper v. Bernalillo County Assessor, 472 U.S. 612, 105 S. Ct. 2862, 86 L. Ed. 2d 487 (1985) (decided under prior law).

Law reviews. - For note, "New Mexico Vietnam Veterans' Property Tax Exemption and Judicial Review in Equal Protection Analysis: Hooper v. Bernalillo County Assessor," see 15 N.M.L. Rev. 389 (1985).

For article, "More Equal Than Others: The Burger Court and the Newly Arrived State Resident," see 19 N.M.L. Rev. 329 (1989).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 71 Am. Jur. 2d State and Local Taxation § 334.

Constitutionality, construction and application of state statutes relating to exemption from taxation of amounts paid as pensions, car risk insurance, compensation, bonus or other relief for veterans of World War, 116 A.L.R. 1437.

84 C.J.S. Taxation § 241.

7-37-6. Rate of tax cumulative; determination; governmental units' entitlement to tax.

A. The rate of the tax is cumulative and shall be determined for application against any property in a tax year by adding all of the rates authorized by this article and set by the department of finance and administration for the use of the governmental units to which the net taxable value of the property is allocated.

B. Each governmental unit that is authorized a rate under this article is entitled to that portion of the tax collected by applying the governmental unit's rate set for the tax year to the net taxable value of property allocated to the governmental unit.

C. For the purposes of this section and Section 7-37-7 NMSA 1978, the net taxable value of all property subject to the tax is considered allocated to the state when determining or applying tax rates authorized for the use of the state.

History: 1953 Comp., § 72-30-6, enacted by Laws 1973, ch. 258, § 39.

ANNOTATIONS

Law reviews. - For comment, "Coal Taxation in the Western States: The Need for a Regional Tax Policy," see 16 Nat. Resources J. 415 (1976).

7-37-7. Tax rates authorized; limitations.

A. The tax rates specified in Subsection B of this section are the maximum rates that may be set by the department of finance and administration for the use of the stated governmental units for the purposes stated in that subsection. The tax rates set for residential property for county, school district or municipal general purposes or for the purposes authorized in Paragraph (2) of Subsection C of this section shall be the same as the tax rates set for nonresidential property for those governmental units for those purposes unless different rates are required because of limitations imposed by Section 7-37-7.1 NMSA 1978. The department of finance and administration may set a rate at less than the maximum in any tax year. In addition to the rates authorized in Subsection B of this section, the department of finance and administration shall also determine and set the necessary rates authorized in Subsection C of this section. The tax rates authorized in Paragraphs (1) and (3) of Subsection C of this section shall be set at the same rate for both residential and nonresidential property. Rates shall be set after the governmental units' budget-making and approval process is completed and shall be set in accordance with Section 7-38-33 NMSA 1978. Orders imposing the rates set for all units of government shall be made by the boards of county commissioners after rates are set and certified to the boards by the department of finance and administration. The department of finance and administration shall also certify the rates set for nonresidential property in governmental units to the department for use in collecting taxes imposed under the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978], the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978] and the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978].

B. The following tax rates for the indicated purposes are authorized:

(1) for the use of each county for general purposes for the 1987 and subsequent property tax years, a rate of eleven dollars eighty-five cents ($11.85) for each one thousand dollars ($1,000) of net taxable value of both residential and nonresidential property allocated to the county;

(2) for the use of each school district for general operating purposes, a rate of fifty cents ($.50) for each one thousand dollars ($1,000) of net taxable value of both residential and nonresidential property allocated to the school district; and

(3) for the use of each municipality for general purposes for the 1987 and subsequent property tax years, a rate of seven dollars sixty-five cents ($7.65) for each one thousand dollars ($1,000) of net taxable value of both residential and nonresidential property allocated to the municipality.

C. In addition to the rates authorized in Subsection B of this section, there are also authorized:

(1) those rates or impositions authorized under provisions of law outside of the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] that are for the use of the governmental units indicated in those provisions and are for the stated purpose of paying principal and interest on a public general obligation debt incurred under those provisions of law;

(2) those rates or impositions authorized under provisions of law outside of the Property Tax Code that are for the use of the governmental units indicated in those provisions, are for the stated purposes authorized by those provisions and have been approved by the voters of the governmental unit in the manner required by law; and

(3) those rates or impositions necessary for the use of a governmental unit to pay a tort or workers' compensation judgment for which a county, municipality or school district is liable, subject to the limitations in Subsection B of Section 41-4-25 NMSA 1978, but no rate or imposition shall be authorized to pay any judgment other than one arising from a tort or workers' compensation claim.

D. The rates and impositions authorized under Subsection C of this section shall be on the net taxable value of both residential and nonresidential property allocated to the unit of government specified in the provisions of the other laws.

History: 1953 Comp., § 72-30-7, enacted by Laws 1973, ch. 258, § 40; 1974, ch. 92, § 6; 1975, ch. 132, § 1; 1981, ch. 176, § 2; 1986, ch. 20, § 110; 1990, ch. 125, § 5.

ANNOTATIONS

Cross references. - For constitutional provision as to property tax limits and exceptions, see N.M. Const., art. VIII, § 2.

The 1990 amendment, effective March 7, 1990, in Subsection A, inserted "school district" and "or for the purposes authorized in Paragraph (2) of Subsection C of this section" in the second sentence, "Paragraphs (1) and (3) of" in the fifth sentence, and "and the Copper Production Ad Valorem Tax Act" in the last sentence; in Paragraphs (1) and (3) of Subsection B, deleted former Subparagraph (a) in both paragraphs,

relating to the tax rate for the 1986 property tax year and deleted the former Subparagraph (b) designations; and, in Subsection C, substituted "workers' compensation" for "workmen's compensation" in two places in Paragraph (3).

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

Nonseverability. - Laws 1990, ch. 125, § 19 provides that the provisions of the Copper Production Ad Valorem Tax Act and the corresponding amendments made in that act to the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] are not severable.

Law reviews. - For article, "An Inter-governmental Approach to Tax Reform," see 4 N.M. L. Rev. 189 (1974).

7-37-7.1. Additional limitations on property tax rates.

A. Except as provided in Subsections D and E of this section, in setting the general property tax rates for residential and nonresidential property authorized in Subsection B of Section 7-37-7 NMSA 1978, the other rates and impositions authorized in Paragraphs (2) and (3) of Subsection C of Section 7-37-7 NMSA 1978, except the portion of the rate authorized in Paragraph (1) of Subsection A of Section 4-48B-12 NMSA 1978 used to meet the requirements of Section 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 [Articles 35 to 38 of Chapter 7 NMSA 1978] in the governmental unit for the specified purpose in the prior property tax year;

(3) "net new value" means the additional value of residential or nonresidential property, as appropriate, for property taxation purposes placed on the property tax schedule in the current year resulting from the elements in Subparagraphs (a) through (d) of this paragraph reduced by the value of residential or nonresidential property, as appropriate, removed from the property tax schedule in the current year and, if applicable, the reductions described in Subparagraph (e) of this paragraph:

(a) residential or nonresidential property, as appropriate, valued in the current year that was not valued at all in the prior year;

(b) improvements to existing residential or nonresidential property, as appropriate;

(c) additions to residential or nonresidential property, as appropriate, or values that were omitted from previous years' property tax schedules even if part or all of the property was included on the schedule, but no additions of values attributable to valuation maintenance programs or reappraisal programs shall be included;

(d) additions to nonresidential property due to increases in annual net production values of mineral property valued in accordance with Section 7-36-23 or 7-36-25 NMSA 1978 or due to increases in market value of mineral property valued in accordance with Section 7-36-24 NMSA 1978; and

(e) reductions to nonresidential property due to decreases in annual net production values of mineral property valued in accordance with Section 7-36-23 or 7-36-25 NMSA 1978 or due to decreases in market value of mineral property valued in accordance with Section 7-36-24 NMSA 1978; and

(4) "percent change I" means a percent not in excess of five percent that is derived by dividing the annual implicit price deflator index for state and local government

purchases of goods and services, as published in the United States department of commerce monthly publication entitled "survey of current business" or any successor publication, for the calendar year next preceding the prior calendar year into the difference between the prior year's comparable annual index and that next preceding year's annual index if that difference is an increase, and if the difference is a decrease, the "percent change I" is zero. In the event that the annual implicit price deflator index for state and local government purchases of goods and services is no longer prepared or published by the United States department of commerce, the department shall adopt by regulation the use of any comparable index prepared by any agency of the United States.

B. If, as a result of the application of the limitation imposed under Subsection A of this section, a property tax rate for residential or nonresidential property, as appropriate, authorized in Subsection B of Section 7-37-7 NMSA 1978 is reduced below the maximum rate authorized in that subsection, no governmental unit or entity authorized to impose a tax rate under Paragraph (2) of Subsection C of Section 7-37-7 NMSA 1978 shall impose any portion of the rate representing the difference between a maximum rate authorized under Subsection B of Section 7-37-7 NMSA 1978 and the reduced rate resulting from the application of the limitation imposed under Subsection A of this section.

C. If the net new values necessary to make the computation required under Subsection A of this section are not available for any governmental unit at the time the calculation must be made, the department of finance and administration shall use a zero amount for net new values when making the computation for the governmental unit.

D. Any part of the maximum tax rate authorized for each governmental unit for residential and nonresidential property by Subsection B of Section 7-37-7 NMSA 1978 that is not imposed for a governmental unit for any property tax year for reasons other than the limitation required under Subsection A of this section may be authorized by the department of finance and administration to be imposed for that governmental unit for residential and nonresidential property for the following tax year subject to the restriction of Subsection D of Section 7-38-33 NMSA 1978.

E. If the base year value necessary to make the computation required under Subsection A of this section is not available for any governmental unit at the time the calculation must be made, the department of finance and administration shall set a rate for residential and nonresidential property that will produce in that governmental unit a dollar amount that is not in excess of the property tax revenue due for all property for the prior property tax year for the specified purpose of that rate in that governmental unit.

F. For the purposes of this section:

(1) "nonresidential property" does not include any property upon which taxes are imposed pursuant to the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article

32 NMSA 1978], the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978] or the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978]; and

(2) "tax rebate adjustment" means, for those counties that have an ordinance in effect providing the property tax rebate pursuant to the Income Tax Act [Chapter 7, Article 2 NMSA 1978] for the property tax year and that have not imposed for the property tax year either a property tax, the revenue from which is pledged for payment of the income tax revenue reduction resulting from the provision of the property tax rebate, or a property transfer tax, the estimated amount of the property tax rebate to be allowed with respect to the property tax year, and for any other governmental unit or purpose, zero; provided that any estimate of property tax rebate to be allowed is subject to review for appropriateness and approval by the department of finance and administration.

History: 1978 Comp., § 7-37-7.1, enacted by Laws 1979, ch. 268, § 1; 1981, ch. 37, § 66; 1983, ch. 213, § 23; 1985 (1st S.S.), ch. 12, § 1; 1986, ch. 32, § 8; 1989, ch. 198, § 2; 1990, ch. 125, § 6; 1991, ch. 212, § 17; 1994, ch. 111, § 4.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, in Subsection A substituted "the rates for nonresidential property" for "those" in the fourth sentence of the introductory paragraph, rewrote the former fifth and sixth sentences of the introductory paragraph so as to constitute the fifth sentence and Paragraph (1), redesignated former Paragraphs (1) through (3) as Paragraphs (2) through (4), in Paragraph (3) inserted "if applicable, the reductions described in" in the introductory paragraph, and in Paragraph (4) substituted "implicit price deflator" for "general business indicator" in the first and second sentences and substituted "department" for "division" in the second sentence; twice substituted "impose" for "levy" in Subsection B; and added all of the language of Subsection D beginning with "subject".

The 1990 amendment, effective March 7, 1990, inserted "or the Copper Production Ad Valorem Tax Act" in Subsection F and made several minor stylistic changes throughout the section.

The 1991 amendment, effective July 1, 1991, inserted "except the portion of the rate authorized in Paragraph (1) of Subsection A of Section 4-48B-12 NMSA 1978 used to meet the requirements of Section 4 of the Statewide Health Care Act" in the first sentence in Subsection A.

The 1994 amendment, effective July 1, 1994, in Subsection A, substituted "27-10-4 NMSA 1978" for "4 of the Statewide Health Care Act," substituted "either residential or" for "residential and," added "the sum of" preceding "a dollar amount," added "appropriate" preceding "growth control factor," substituted "or nonresidential property, as appropriate" for "and nonresidential property," added language from "plus, for" to the end of the first sentence, and substituted "made for" for "applied to" in the second

sentence; substituted "or nonresidential property, as appropriate" for "and nonresidential property," in Paragraph A(2), twice in Paragraph A(3), and once each in Subparagraphs A(3)(a), A(3)(b) and A(3)(c); added "to nonresidential property" in Subparagraphs A(3)(d) and A(3)(e); substituted "or nonresidential property, as appropriate" for "and nonresidential property," in Paragraph B; redesignated language in Subsection F as Paragraph F(1) and added "; and" at the end of the paragraph; and added Paragraph F(2).

Applicability. - Laws 1991, ch. 212, § 23 makes the provisions of §§ 12 to 14 and 17 of the act applicable to 1991 and subsequent property tax years.

Nonseverability. - Laws 1990, ch. 125, § 19 provides that the provisions of the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978] and the corresponding amendments made in that act to the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] are not severable.

Application to 1979 tax year not unconstitutionally retroactive. - Application of this section, which became law on April 4, 1979, to the 1979 tax year, when notice of taxes due and payable were required to be mailed by April 1, 1979, is not unconstitutionally retroactive. Hansman v. Bernalillo County Assessor, 95 N.M. 697, 625 P.2d 1214 (Ct. App. 1980).

Comparative sales of nonresidential properties not basis for valuation. - This section precludes valuation of residential property for tax purposes based on comparative sales of nonresidential properties. Landmark, Ltd. v. Bernalillo County Assessor, 103 N.M. 65, 702 P.2d 1010 (Ct. App. 1985) (decided under former 7-36-21.1 NMSA 1978).

7-37-8. School tax rates.

No later than August 15 of each year, the state department of public education shall submit to the secretary of finance and administration the property tax rates for the succeeding tax year for each school district and the commission on higher education shall submit to the secretary of finance and administration the property tax rates for the succeeding tax year for each technical and vocational district, area vocational school district, junior college district and branch community college district. The rates required to be submitted pursuant to this section shall separately state by county and by school district the rate to be levied for operational purposes and the rate to be levied for payment of principal and interest on general obligation debt issued or entered into by the district.

History: 1978 Comp., § 7-37-8, enacted by Laws 1978, ch. 128, § 1; 1983, ch. 301, § 12; 1988, ch. 64, § 1; 1997, ch. 193, § 17.

ANNOTATIONS

Cross references. - For the Education Technology Equipment Act, see Chapter 6, Article 15A NMSA 1978.

The 1997 amendment, effective April 10, 1997, substituted "payment of principal and interest on general obligation debt issued or entered into by the district" for "principal and interest on general obligation bonds issued by the district" at the end of the section.

ARTICLE 38
ADMINISTRATION AND ENFORCEMENT OF PROPERTY TAXES

7-38-1. Applicability.

This article applies to the administration and enforcement of all taxes imposed under the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978].

History: 1953 Comp., § 72-31-1, enacted by Laws 1973, ch. 258, § 41.

ANNOTATIONS

Ultimate responsibility for taxes rests upon property owner. - A review of New Mexico statutes pertaining to assessment and collection of taxes demonstrates that the ultimate responsibility for payment rests upon the property owner. Bailey v. Barranca, 83 N.M. 90, 488 P.2d 725 (1971).

Duty on assessor where owner refuses to declare property. - In the event of a refusal of any person, owning or in control of any property, to declare the same as required, the duty then rests upon the assessor to make a true and complete list of the property. McKay v. Espinosa, 65 N.M. 241, 335 P.2d 567 (1958).

Assumption is that owner made assessment. - Only when the owner fails to make a declaration of all his property is the assessor given the duty of supplying one for him. There being no evidence to the contrary, it will be assumed in compliance with the law that the questioned assessment was not made by the assessor but was actually made by the assessee. McKay v. Espinosa, 65 N.M. 241, 335 P.2d 567 (1958).

Law reviews. - For comment, "Coal Taxation in the Western States: The Need for a Regional Tax Policy," see 16 Nat. Resources J. 415 (1976).

For 1986-88 survey of New Mexico law of real property, 19 N.M.L. Rev. 751 (1990).

7-38-2. Investigative authority and powers.

A. The director may issue subpoenas, returnable in not less than ten days, to require the production of any pertinent records or to require any person to appear and testify under oath concerning the subject matter of an inquiry for the purposes of:

(1) determining whether property is subject to property taxation;

(2) establishing or determining the value of any property for property taxation purposes;

(3) determining the extent of liability for and the amount of any property tax due from any person; and

(4) enforcing any statute administered by the department or administered by county officers under the supervision of the department.

B. At any time after the service of a subpoena and prior to its return date, a person to whom a subpoena is issued may file an action in the district court to quash the subpoena on the grounds that it was improperly issued.

C. In order to carry out their respective responsibilities under the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978], county assessors and their employees, and the director and employees of the department may at reasonable times and after displaying identity credentials:

(1) with the permission of a property owner or his authorized agent, examine those records that relate to the valuation of the property; and

(2) with the permission of a property owner or his authorized agent, enter or inspect any property that is subject to valuation for property taxation purposes.

D. If a person fails to appear, produce records or refuses to testify in response to a subpoena issued under Subsection A, or if a person refuses permission to allow examination of records, entry or inspection of property authorized under Subsection C, the director, or the county assessor in the case where he or his employees have been refused examination, entry or inspection, may invoke the aid of the district court by filing an action to require appearance or testimony or to allow examination, entry or inspection. The court may, after notice, hearing and good cause shown, require the person to appear and testify, to produce records, to allow examination of records or to allow entry or inspection of property. If the person fails to comply with the court's order, the court may punish him for contempt.

History: 1953 Comp., § 72-31-2, enacted by Laws 1973, ch. 258, § 42.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 704 to 752.

84 C.J.S. Taxation §§ 373 to 420.

7-38-3. Information reports.

For the purpose of establishing or determining the value of property for property taxation purposes, the director may promulgate regulations requiring any property owner or his authorized agent to report information concerning the property to the department or the county assessor at the times and in the manner required by the director.

History: 1953 Comp., § 72-31-3, enacted by Laws 1973, ch. 258, § 43.

7-38-4. Confidentiality of information.

A. Except as specifically authorized in this section or as otherwise provided by law, it is unlawful for the secretary, any employee or any former employee of the department to reveal to any person other than the secretary, an employee of the department, a county assessor or an employee of a county assessor any information gained during his employment about a specific property or a property taxpayer gained as a result of a report or information furnished the department or a county assessor by a taxpayer or as a result of an examination of property or records of a taxpayer. Except as specifically authorized in this section or as otherwise provided by law, it is unlawful for any county assessor or any employee or former employee of a county assessor to reveal to any person other than county assessors or their employees or the secretary or an employee of the department any information furnished by the department about a specific property or property owner or any other information gained during that person's employment about a specific property or a property taxpayer gained as a result of a report or information furnished the department or a county assessor by a taxpayer or as a result of an examination of property or records of a taxpayer. Information described in this subsection may be released:

(1) that is limited to the information contained in those valuation records that are public records and the identity of the owner or person in possession of the property;

(2) to an authorized representative of another state; provided that the receiving state has entered into a written agreement with the department to use the information for tax purposes only;

(3) to a state district or appellate court or a federal court or county valuation protests board:

(a) in response to an order made in an action relating to taxation in which the state or a governmental unit is a party and in which the information is material to the inquiry; or

(b) in any action in which the department or a county is attempting to enforce the provisions of the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] or to

collect a property tax or in any matter in which the taxpayer has put the taxpayer's own property valuation or liability for taxes at issue;

(4) to the property owner or a representative authorized in writing by the owner to obtain the information;

(5) if used for statistical purposes in a way that the information revealed is not identified or identifiable as applicable to any property owner or person in possession of the property;

(6) to a representative of the secretary of the treasury or the secretary's delegate pursuant to the terms of a reciprocal agreement entered into with the federal government for exchange of such information; or

(7) to the multistate tax commission or its authorized representative; provided that the information is used for tax purposes only and is disclosed by the multistate tax commission only to states which have met the requirements of Paragraph (2) of this subsection.

B. The secretary, any employee or any former employee of the department or any other person subject to the provisions of this section who willfully releases information in violation of this section is guilty of a misdemeanor and shall be fined not more than one thousand dollars ($1,000) or imprisoned for a definite term of less than one year or both. Any person convicted of a violation of this section shall not be employed by the state for a period of five years after the date of conviction.

History: 1953 Comp., § 72-31-4, enacted by Laws 1973, ch. 258, § 44; 1977, ch. 249, § 61; 1982, ch. 28, § 7; 1986, ch. 20, § 113; 1990, ch. 22, § 2; 1991, ch. 166, § 7.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, in Paragraph (3) of Subsection A, added the Subparagraph designation "(a)" and added Subparagraph (b).

The 1991 amendment, effective June 14, 1991, in Subsection A, rewrote the second sentence which read "Except as specifically authorized in this section or as otherwise provided by law, it is unlawful for county assessors and their employees and former employees to reveal to any person other than county assessors or their employees any information furnished by the department about a specific property or property owner" and, in Paragraph (1), inserted "that are public records" and made a minor stylistic change.

Nondisclosure held proper. - Board did not err in failing to sanction assessor who refused to comply with taxpayers' discovery request, where the assessor showed that such discovery might have compromised confidential data about other property owners, and where it did not appear that taxpayers' protest proceedings were prejudiced by

assessor's refusal to grant them access to the information. Hannahs v. Anderson, 1998-NMCA-152, 126 N.M. 1, 966 P.2d 168 (Ct. App.), cert. denied, N.M. , 972 P.2d 351 (1998).

Remedy for denial of access to assessment records. - Taxpayers who believed that assessor wrongfully denied them access to public records should have pursued the remedies provided in this section. Hannahs v. Anderson, 1998-NMCA-152, 126 N.M. 1, 966 P.2d 168 (Ct. App.), cert. denied, N.M. , 972 P.2d 351 (1998).

7-38-5. Repealed.

ANNOTATIONS

Repeals. - Laws 1982, ch. 28, § 31, repeals 7-38-5 NMSA 1978, relating to the allocation of responsibility for the valuation of property. For present provisions, see 7-36-2 NMSA 1978, effective May 15, 1982.

7-38-6. Presumption of correctness.

Values of property for property taxation purposes determined by the division or the county assessor are presumed to be correct. Determinations of tax rates, classification, allocations of net taxable values of property to governmental units and the computation and determination of property taxes made by the officer or agency responsible therefor under the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] are presumed to be correct.

History: 1953 Comp., § 72-31-6, enacted by Laws 1973, ch. 258, § 46; 1981, ch. 37, § 67.

ANNOTATIONS

Assessor's valuation sufficient evidence to support decision. - Since the assessor's valuation is presumed to be correct, it is sufficient evidence, where uncontradicted, to support the board's decision. Peterson Properties v. Valencia County Valuation Protests Bd. 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

Presumption is rebuttable and is best characterized as a prima facie inference in that it shifts the burden of going forward with the evidence to the taxpayer to prove the contrary. In re Kinscherff, 89 N.M. 669, 556 P.2d 355 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976); New Mexico Baptist Found. v. Bernalillo County Assessor, 93 N.M. 363, 600 P.2d 309 (Ct. App. 1979).

Presumption of correctness can be overcome by taxpayer's showing that an assessor did not follow the statutory provisions of the act or by presenting evidence tending to dispute the factual correctness of the valuation. New Mexico Baptist Found. v. Bernalillo County Assessor, 93 N.M. 363, 600 P.2d 309 (Ct. App. 1979); La Jara Land

Developers, Inc. v. Bernalillo County Assessor, 97 N.M. 318, 639 P.2d 605 (Ct. App. 1982).

Since taxpayer overcame presumption, burden rested on assessor. - This presumption is rebuttable and is best characterized as a prima facie inference in that it shifts the burden of going forward with the evidence to the taxpayer to prove the contrary; where taxpayer's protest and evidence overcame the presumption the burden rested on the county assessor to meet the contentions of the taxpayer. San Pedro S. Group v. Bernalillo County Valuation Protest Bd. 89 N.M. 784, 558 P.2d 53 (Ct. App. 1976).

While the county assessor's valuation is presumed to be correct, this presumption is rebuttable, and, once rebutted, the burden shifts to the county assessor to show the correct valuation. Bakel v. Bernalillo County Assessor, 95 N.M. 723, 625 P.2d 1240 (Ct. App. 1980); Protest of Plaza Del Sol Ltd. Partnership v. Assessor for County of Bernalillo, 104 N.M. 154, 717 P.2d 1123 (Ct. App. 1986).

This section places the burden on the taxpayer to overcome the presumption of correctness, but, the burden shifted to the county assessor to show a correct valuation once that burden of correctness is overcome. Cibola Energy Corp. v. Roselli, 105 N.M. 774, 737 P.2d 555 (Ct. App. 1987).

Since taxpayer's valuation is supported by the whole record in that after rebutting the assessor's valuation and presenting a prima facie case for its own valuation the board failed to rebut taxpayer's appraisal, the decision of the board will be reversed and remanded with instructions that the board enter judgment for taxpayer in favor of its valuations. Cibola Energy Corp. v. Roselli, 105 N.M. 774, 737 P.2d 555 (Ct. App. 1987).

Taxpayer effectively rebutted presumption. - Since taxpayers presented uncontradicted evidence that access to their property was physically blocked and also offered the only substantial evidence of the fair market value of the property in the form of testimony by a real estate appraiser that because of the lack of access the highest and best use that the property could be put to was as grazing land by one of the adjoining landowners, and that as such it had a fair market value of $18.00 per acre, or $2034 and $5022 respectively for the two tracts, they effectively rebutted the presumption of this section that the county assessor's valuations of $313,875 and $169,500 were correct. In re Kinscherff, 89 N.M. 669, 556 P.2d 355 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976).

When presumption unrebutted by lack of comparable sales evidence. - Since the documents relied upon by a taxpayer as evidence of comparable sales are documents dealing with the sale of that very improvement whose valuation is the subject of the present dispute and the only evidence submitted by the taxpayer failed to present any evidence of sales of comparable property and the evidence submitted does not establish a market value under 7-36-15B NMSA 1978 and the statutory presumption of

correctness still stands. New Mexico Baptist Found. v. Bernalillo County Assessor, 93 N.M. 363, 600 P.2d 309 (Ct. App. 1979).

Presumption of assessor's valuation not overcome. - Since taxpayer failed to present any evidence of sales of comparable property or evidence of value based on generally accepted appraisal techniques, and its only evidence, the purchase price of its land in question, did not establish a market value under 7-36-15 NMSA 1978, the presumption of the correctness of the assessor's valuation was not overcome. Peterson Properties v. Valencia County Valuation Protests Bd. 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

Taxpayers' offer of the price for which they had purchased the property in question as evidence of fair market value failed to overcome the presumption of the correctness of the assessor's valuation where the sales price was not the result of an arms'-length transaction because of the taxpayers' mailing campaign to convince landowners to sell their property to the taxpayers at below market prices. Cobb v. Otero County Assessor, 113 N.M. 251, 824 P.2d 1053 (Ct. App. 1991).

Taxpayers challenge of their property assessment, which proposed an alternative assessment method, failed to present sufficient evidence to overcome the presumption that the original assessment was correct. Hannahs v. Anderson, 1998-NMCA-152, 126 N.M. 1, 966 P.2d 168 (Ct. App.), cert. denied, N.M. , 972 P.2d 351 (1998).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 713, 780.

7-38-7. Valuation date.

All property subject to valuation for property taxation purposes shall be valued as of January 1 of each tax year, except that livestock shall be valued as of the date and in the manner prescribed under Section 7-36-21 NMSA 1978 and tangible personal property of construction contractors shall be valued as of the date and in the manner prescribed under Section 1 [7-38-7.1 NMSA 1978] of this act.

History: 1953 Comp., § 72-31-7, enacted by Laws 1973, ch. 258, § 47; 1997, ch. 68, § 2.

ANNOTATIONS

The 1997 amendment substituted "7-36-21" and the language following it for "72-29-10 NMSA 1953" at the end of the section. Laws 1997, ch. 68 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Applicability. - Laws 1997, ch. 68, § 3 makes the provisions of the act applicable to 1998 and subsequent property tax years.

Compiler's notes. - The phrase "this act" at the end of the section refers to Laws 1997, ch. 68, which amended this section.

Past or future value not to serve as basis. - What the fair market value of a tract may have been in the past or speculation as to what it might be in the future cannot serve as the basis for valuation. In re Kinscherff, 89 N.M. 669, 556 P.2d 355 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976); Bakel v. Bernalillo County Assessor, 95 N.M. 723, 625 P.2d 1240 (Ct. App. 1980).

Tax liability whether or not property evaluation done on time. - When property is evaluated in accordance with the law, the taxpayer is liable for payment, whether or not the evaluation is done on time, just so long as the value determined reflects the value as of January 1st of the tax year. Hansman v. Bernalillo County Assessor, 95 N.M. 697, 625 P.2d 1214 (Ct. App. 1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation § 753.

Sale price of real property as evidence in determining value for tax assessment purpose, 89 A.L.R.3d 1126.

84 C.J.S. Taxation § 357.

7-38-7.1. Valuation date; tangible personal property; construction contractors.

A. All tangible personal property of construction contractors located in the state shall be valued for property taxation purposes as of January 1, except as provided in Subsection B of this section.

B. All tangible personal property of construction contractors not located in the state on January 1 but brought into the state and located there for more than twenty days subsequent to January 1 shall be valued for property taxation purposes as of the first day of the month following the month in which they have remained in the state for more than twenty days.

C. The construction contractor whose tangible personal property is subject to valuation for property taxation purposes shall report the property for valuation to the entity having responsibility for valuation of the property in accordance with Section 7-36-2 NMSA 1978 on the valuation date specified in Subsection A or B of this section and shall include in the report the actual or estimated time period during which the property has been and will be located in the state. The contractor's report shall be in a form and

contain the information required by the department regulations and shall be made no later than:

(1) the last day of February for tangible personal property required to be valued as of the first day of January of the tax year; or

(2) ten days after the valuation date determined under Subsection B of this section for tangible personal property required to be valued as of a date other than that in Paragraph (1) of this subsection.

D. The department shall adopt regulations for the allocation of the value of tangible personal property of construction contractors, which regulations shall provide for:

(1) a basic allocation formula that prorates value on the basis of the amount of time that the tangible personal property is in the state and subject to valuation for property taxation purposes;

(2) determining proration of value under Paragraph (1) of this subsection using estimates of the amount of time that the tangible personal property will be in the state to cover those situations in which tangible personal property is imported for an indeterminate time during a tax year; and

(3) a method of allocating the value of the tangible personal property among different governmental units when the tangible personal property is located in more than one governmental unit.

E. Any person who intentionally refuses to make a report required of him under this section or who knowingly makes a false statement in a report required under this section is guilty of a misdemeanor and shall be punished by imposition of a fine of not more than one thousand dollars ($1,000).

F. Any person who fails to make a report required of him under this section is liable for a civil penalty in an amount equal to five percent of the property taxes ultimately determined to be due on the property for the tax year or years for which he failed to make the required report.

G. Any person who intentionally refuses to make a report required of him under this section with the intent to evade any tax or who fails to make a report required of him under this section with the intent to evade any tax is liable for a civil penalty in an amount equal to twenty-five percent of the property taxes ultimately determined to be due on the property for the tax year or years for which he refused or failed to make the required report.

H. The civil penalties authorized under Subsections F and G of this section shall be imposed and collected at the time and in the manner that the tax is imposed and collected. In order to assist in the imposition and collection of the penalties, the person

having responsibility for determining the value of the property shall make an entry in the valuation records indicating the liability for any penalties due under this section.

History: Laws 1997, ch. 68, § 1.

ANNOTATIONS

Effective dates. - Laws 1997, ch. 68 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Applicability. - Laws 1997, ch. 68, § 3 makes the provisions of the act applicable to 1998 and subsequent property tax years.

7-38-8. Reporting of property for valuation; penalties for failure to report.

A. All property subject to valuation for property taxation purposes by the department shall be reported annually to the department. The report required by this subsection shall be made by the owner of the property or such other person as may be authorized by regulations of the department. The report shall be in a form and contain the information required by regulations of the department. It shall be made not later than the last day of February in the tax year in which the property is subject to valuation. In the case of the failure or refusal to file the report required under this subsection, the department shall determine the value of the property subject to valuation from the best information available.

B. Except as provided in Subsection D of this section, all property subject to valuation for property taxation purposes by the county assessor shall be reported as follows:

(1) property valued in the 1974 tax year by the county assessor need not be reported for any subsequent tax year unless required to be reported under Paragraph (3) of this subsection;

(2) property not valued in the 1974 tax year by the county assessor but that becomes subject to valuation by the county assessor in any subsequent tax year shall be reported to the county assessor not later than the last day of February of the tax year in which it becomes subject to valuation, but such property need not be reported for any year subsequent to the year in which initially reported unless required to be reported under Paragraph (3) of this subsection;

(3) property once valued by a county assessor in a tax year, but which is not valued for a year subsequent to the year of initial valuation because it is not subject to valuation for that subsequent year by the county assessor, shall be reported to the county assessor

not later than the last day of February in a tax year in which it again becomes subject to valuation by the county assessor; and

(4) reports required under Paragraphs (2) and (3) of this subsection shall be in a form and contain the information required by regulations of the department.

C. Not later than the last day of February of each tax year, every owner of real property who made, or caused to be made, in the preceding calendar year improvements costing more than ten thousand dollars ($10,000) to that real property shall report to the county assessor the property improved, the improvements made, the cost of the improvements and such other information as the department may require.

D. Manufactured homes, livestock and land used for agricultural purposes shall be reported for valuation for property taxation purposes to the county assessor at the times and in the manner prescribed under Sections 7-36-26, 7-36-21 and 7-36-20 NMSA 1978 and regulations promulgated by the department.

E. Property subject to valuation by the county assessor for property taxation purposes and improvements to such property that are required to be reported under Subsection C of this section shall be reported to the county assessor of the county in which the property is required to be valued under Section 7-36-14 NMSA 1978. Reports shall be made either by the owner of the property, the owner's authorized agent or any person having control or management of the property and shall be in a form and contain the information required by regulations of the department.

F. Reports required by this section shall be made by the declarant under oath, and the director, employees of the department, the assessor and his employees are empowered to administer oaths for this purpose.

G. Any person who intentionally refuses to make a report required of him under the provisions of Subsection A, B or C of this section or who knowingly makes a false statement in a report required under the provisions of Subsection A, B or C of this section is guilty of a misdemeanor and upon conviction shall be punished by the imposition of a fine of not more than one thousand dollars ($1,000).

H. Any person who fails to make a report required of him under the provisions of Subsection A or B of this section is liable for a civil penalty in an amount equal to five percent of the property taxes ultimately determined to be due on the property for the tax year or years for which he failed to make the required report.

I. Any person who intentionally refuses to make a report required of him under the provisions of Subsection A or B of this section with the intent to evade any tax or who fails to make a report required of him under the provisions of Subsection A or B of this section with the intent to evade any tax is liable for a civil penalty in an amount equal to twenty-five percent of the property taxes ultimately determined to be due on the

property for the tax year or years for which he refused or failed to make the required report.

J. Any person who is required to make a report under the provisions of Subsection C of this section and who fails to do so is personally liable for a civil penalty in an amount equal to the greater of twenty-five dollars ($25.00) or twenty-five percent of the difference between the property taxes ultimately determined to be due and the property taxes originally paid for the tax year or years for which the person failed to make the required report. This penalty shall not be considered a delinquent property tax, and the provisions of the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] for the enforcement and collection of delinquent property taxes through the sale of the property do not apply. However, the county treasurer may use all other methods provided by law to collect the property tax or penalty due. Notwithstanding any other provision of the Property Tax Code, amounts collected pursuant to the penalty provided by this subsection shall be distributed among jurisdictions imposing tax on the property in the same proportion as the amount of tax, ultimately determined to be due for the jurisdiction bears to the total due for all such jurisdictions.

K. The civil penalties authorized under Subsections H and I of this section shall be imposed and collected at the time and in the manner that the tax is imposed and collected. In order to assist in the imposition and collection of the penalties, the persons having responsibility for determining the value of the property shall make an entry in the valuation records indicating the liability for any penalties due under this section.

L. For the purposes of this section:

(1) "improvements" means the construction of any new structure permanently affixed to the land or the repair, rehabilitation or alteration of an existing structure permanently affixed to the land that, for property used for any commercial purpose, is required or allowed to be capitalized under the Internal Revenue Code and, for other properties, any similar construction, repair, rehabilitation or alteration; and

(2) "owner of real property" includes every owner of improvements who does not own the land upon which the improvements are made.

History: 1953 Comp., § 72-31-8, enacted by Laws 1973, ch. 258, § 48; 1974, ch. 92, § 7; 1985, ch. 109, § 8; 1991, ch. 213, § 1.

ANNOTATIONS

Cross references. - For county assessors, see Chapter 4, Article 39 NMSA 1978.

The 1991 amendment, effective January 1, 1992, substituted "department" for "division" throughout the section; added Subsections C, J and L; redesignated former Subsections C to H as Subsections D to I and Subsection I as K; inserted "and improvements to such property that are required to be reported under Subsection C of

this section" in the first sentence in Subsection E; inserted "upon conviction" near the end of Subsection G; and made related and minor stylistic changes throughout the section.

Property owner's responsibility to pay tax. - The ultimate responsibility for the payment of property taxes rests upon the property owner. Worman v. Echo Ridge Homes Coop. 98 N.M. 237, 647 P.2d 870 (1982).

Property owner is required to make declaration of all property subject to taxation annually. Bailey v. Barranca, 83 N.M. 90, 488 P.2d 725 (1971).

Property owner has affirmative duty to declare his property. State ex rel. Property Appraisal Dep't v. Sierra Life Ins. Co. 90 N.M. 268, 562 P.2d 829 (1977).

Description of property in declaration. - In declaring his real property, the taxpayer is required to describe the property in such a manner as would be sufficient in a deed to identify the property so that title thereto would pass. Bloch Pitt Invs. v. Assessor of Bernalillo County, 86 N.M. 589, 526 P.2d 183 (1974).

Applicability of nonrendition penalty. - When the taxpayer failed to report a complete list of all taxable personal property, the 25% nonrendition penalty provided in Subsection I could only be imposed on the property the taxpayer failed to report, not on the portion that was properly reported. Zwaagstra v. Board of County Comm'rs, 119 N.M. 675, 894 P.2d 1031 (Ct. App. 1995).

Stipulation fixes property values for one year only. - A stipulation fixing property tax values for a specific year is not binding for any following tax year; it is res judicata only for the year in question. Protest of Plaza Del Sol Ltd. Partnership v. Assessor for County of Bernalillo, 104 N.M. 154, 717 P.2d 1123 (Ct. App. 1986).

Statutes relating to undeclared property not applicable to that inadequately valued. - Since property was declared and listed on the tax rolls by proper description and was valued, although the value fixed by the assessor was inadequate, sections of the statutes which relate to property which has not been declared, listed on the tax rolls and valued have no application. Bloch Pitt Invs. v. Assessor of Bernalillo County, 86 N.M. 589, 526 P.2d 183 (1974).

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

7-38-8.1. Division to adopt regulations to require reporting of exempt property.

The division shall adopt regulations to insure that all real property owned by any nongovernmental entity and claimed to be exempt from property taxation under the provisions of Paragraph (1) of Subsection B of Section 7-36-7 NMSA 1978 shall be

reported for valuation purposes to the appropriate valuation authority. These regulations shall include provisions for initial reporting of the property and claiming of the exempt status pursuant to Subsection C of Section 7-38-17 NMSA 1978.

History: 1978 Comp., § 7-38-8.1, enacted by Laws 1982, ch. 28, § 8.

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 [Articles 35 to 38 of Chapter 7 NMSA 1978] by a description consisting of a mere reference to the time and place of filing or recording in the office of the county clerk of any map or other instrument describing the property with sufficient preciseness to permit its identification shall be considered to have been sufficiently described for property taxation purposes. All prior assessments, records and instruments maintained or issued by property taxation officers which describe the property by such a reference are validated and given the same force and effect as if a description of the property had been used that would comply with this section.

History: 1953 Comp., § 72-31-9, enacted by Laws 1973, ch. 258, § 49; 1999, ch. 215, § 1.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, in the last sentence in Subsection A substituted "shall" for "must" and inserted "or geographic information system".

Adequate and proper description of real estate is essential to taxation. Otero v. Sandoval, 60 N.M. 444, 292 P.2d 319 (1956).

Insufficient description presents jurisdictional defect. - An erroneous description may be corrected, but a totally insufficient description presents a jurisdictional defect. Otero v. Sandoval, 60 N.M. 444, 292 P.2d 319 (1956).

Description in declaration must be sufficient to pass title. - In declaring his real property, the taxpayer is required to describe the property in such a manner as would be sufficient in a deed to identify the property so that title thereto would pass. Bloch Pitt Invs. v. Assessor of Bernalillo County, 86 N.M. 589, 526 P.2d 183 (1974).

Must be able to locate property by description. - The property must be so described that it would enable one to locate it on the ground without resort to or aid of data other than that contained in and pointed to by the description itself. McKay v. Espinosa, 65 N.M. 241, 335 P.2d 567 (1958).

Incorrect notation of land in certain school district not essential. - A notation on the tax roll, indicating that the land was in a particular school district, was not an essential part of the listing of the property for taxation and did not affect the validity of the tax sale, though the land was not in fact in such school district. Greene v. Esquibel, 58 N.M. 429, 272 P.2d 330 (1954).

Aid of extrinsic evidence makes description sufficient. - When there is uncertainty in description, if through the aid of extrinsic evidence, together with data afforded by the description itself such uncertainty is resolved, the description will be considered sufficient. Otero v. Sandoval, 60 N.M. 444, 292 P.2d 319 (1956).

Judicial notice that half section contains 320 acres. - Supreme court will take judicial notice that half section of land according to congressional subdivisions contains 320 acres instead of 160 acres. McKay v. Espinosa, 65 N.M. 241, 335 P.2d 567 (1958).

Phrase "160 acres" does not invalidate a description otherwise sufficient. McKay v. Espinosa, 65 N.M. 241, 335 P.2d 567 (1958).

Description of land only as "NE 1/4 160 acres" without mention of section, township, range or school district formed no basis for assessment and levy under statute requiring description which would form basis in deed to pass title and no title could pass by the tax deed description. Otero v. Sandoval, 60 N.M. 444, 292 P.2d 319 (1956).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation § 734.

84 C.J.S. Taxation §§ 462 to 470.

7-38-10. Department may insure compliance with mapping and description of real property regulations by departmental installation of required system; reimbursement by county of costs incurred.

Whenever the director determines that it is necessary to insure compliance with departmental regulations relating to comprehensive mapping or geographic information systems and real property description or to correct county deficiencies in this regard, he shall order the installation by the department of the necessary maps and other increments of the property description system in the county. The director may require the county to reimburse the department for costs incurred by the department in the installation or correction of a property description system.

History: 1953 Comp., § 72-31-10, enacted by Laws 1973, ch. 258, § 50; 1999, ch. 215, § 2.

ANNOTATIONS

The 1999 amendment, effective June 18, 1999, inserted "or geographic information systems" in the first sentence.

7-38-11. Property reported in the wrong county.

If property is reported for valuation for property taxation purposes in a county different from the county in which it is required to be reported by law and the regulations of the department, the county assessor to whom the erroneous report is made shall send a copy of the report to the county assessor of the county in which the report is required to be made and shall, at the same time, notify the person making the erroneous report of his obligation to make the required report to the appropriate county. A person making a report to the wrong county assessor is not relieved of his responsibility to make the required report to the correct county assessor because of the provisions of this section.

History: 1953 Comp., § 72-31-11, enacted by Laws 1973, ch. 258, § 51.

7-38-12. Property transfers; copies of documents to be furnished to assessor; penalty for violation.

A. Whenever a deed or real estate contract transferring an interest in real property is received by a county clerk for recording, a copy of the deed or real estate contract shall be given to the county assessor by the clerk.

B. A county clerk who willfully fails to comply with this section is guilty of a petty misdemeanor, punishable in accordance with the Criminal Code.

History: Laws 1973, ch. 258, § 52; 1953 Comp., § 72-31-12; Laws 1974, ch. 92, § 8; 1982, ch. 28, § 9.

ANNOTATIONS

Criminal Code. - See 30-1-1 NMSA 1978 and notes thereto.

7-38-13. Statement of decrease in value of property subject to local valuation.

A. No later than the last day of February of a tax year, any owner of property subject to valuation by the county assessor who believes that the value of his property has decreased in the previous tax year may file with the county assessor a signed statement describing the property affected, the cause and nature of the decrease in value and the

amount by which the owner contends the valuation of the property has been decreased. Prior to determining the value of the property, the county assessor or an employee of the assessor must view the property described in the statement. The county assessor shall note on the back of the statement the date the property was viewed, by whom it was viewed and any action taken or to be taken as a result. The provisions of this subsection include a decrease in valuation of property due to a change in ownership, location or existence of personal property subject to local valuation, and in those cases the assessor or his employee shall verify the alleged change and make an appropriate notation of the date of verification, the person who made it and any action taken or to be taken as a result.

B. Reports required or authorized under this section to be filed by the owner of property may be filed by the owner's authorized agent.

History: 1953 Comp., § 72-31-13, enacted by Laws 1973, ch. 258, § 53; 1991, ch. 213, § 2.

ANNOTATIONS

The 1991 amendment, effective January 1, 1992, deleted "Statement of improvements to real property subject to local valuation" in the section heading; deleted former Subsection A, relating to filing a statement of improvements to real property subject to local valuation; designated former Subsections B and C as Subsections A and B; and made minor stylistic changes in Subsection A.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 765, 766.

7-38-14. Tabulation of construction permits; information required to be furnished to county assessors.

A. By the tenth day of each month, the trade boards operating under the Construction Industries Licensing Act 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.

ANNOTATIONS

Construction Industries Licensing Act. - See 60-13-1 NMSA 1978 and notes thereto.

7-38-15. Information on real property sold, purchased, contracted to be sold or purchased, or exchanged by governmental bodies to be sent to or obtained by the department; department to compile and send information to county assessors.

A. By the twentieth day of each month, the department shall obtain from appropriate agencies of the United States the following information relating to real property transactions occurring during the preceding month:

(1) a list by legal description of each parcel of real property in the state that was sold, purchased, contracted to be sold or purchased, or exchanged by agencies of the United States government; and

(2) the names and addresses of each of the transferors and transferees of the property required to be listed under Paragraph (1) of this subsection.

B. By the twentieth day of each month, each state agency and the governing body of each of the state's political subdivisions shall report to the department the following information relating to real property transactions occurring during the preceding month:

(1) a list by legal description of each parcel of real property in the state that was sold, purchased, contracted to be sold or purchased, or exchanged by the state agency or the political subdivisions; and

(2) the names and addresses of each of the transferors and transferees of the property listed under Paragraph (1) of this subsection.

C. The information gathered by the department on real property that is subject to local valuation for property taxation purposes shall be compiled and sent immediately to the county assessors of the counties in which the reported property is located. The county assessor receiving the information shall enter any required changes in the valuation or other records and shall also take any action that is required under the Property Tax

Code [Articles 35 to 38 of Chapter 7 NMSA 1978] as a result of the receipt of the information.

D. The information gathered by the department on real property that is subject to valuation for property taxation purposes by the department shall be compiled and retained by the department. The department shall enter any required changes in its valuation or other records and shall also take any action that is required under the Property Tax Code as a result of the receipt of the information.

History: 1953 Comp., § 72-31-15, enacted by Laws 1973, ch. 258, § 55.

7-38-16. Condemnation proceedings; duty of condemning authority to notify county assessor.

A. Upon the issuance of a court order making permanent an order of preliminary entry in any condemnation proceeding brought by any governmental authority in this state exercising the power of eminent domain, or upon the issuance of a final order of condemnation if no order allowing preliminary entry is issued, the condemning authority shall notify the county assessor of the county in which the land subject to condemnation is situated of:

(1) the fact of the issuance of an order making permanent an order of preliminary entry or an order of final condemnation and the date of the order;

(2) the description and ownership of the land subject to the order; and

(3) the date that physical possession of the land was or will be assumed by the condemning authority under a preliminary entry order.

B. Upon receipt of the notification required under Subsection A, the county assessor shall make appropriate changes in his valuation records to indicate as owner of the land for property taxation purposes the condemning authority as of the date of possession or the date of a final order of condemnation. If the land involved is subject to valuation for property taxation purposes by the department, the county assessor shall notify the department of the changes.

C. This section does not authorize the proration of taxes for a tax year in which ownership changes as a result of condemnation proceedings, but a condemning authority may contract or stipulate with an owner of land subject to condemnation for the proration of the owner's tax liability.

History: 1953 Comp., § 72-31-16, enacted by Laws 1973, ch. 258, § 56.

ANNOTATIONS

Cross references. - For condemnation proceedings generally, see Chapter 42A NMSA 1978.

7-38-17. Claiming exemptions; requirements; penalties.

A. Subject to the requirements of Subsection F of this section, head-of-family exemptions claimed and allowed in the 1974 tax year or veteran exemptions claimed and allowed in the 1982 tax year need not be claimed for subsequent tax years if there is no change in eligibility for the exemption nor any change in ownership of the property against which the exemption was claimed. Head-of-family and veteran exemptions allowable under this subsection shall be applied automatically by county assessors in the subsequent tax years.

B. Subject to the requirements of Subsection F of this section, head-of-family exemptions not claimed and allowed in the 1974 tax year or veteran exemptions not claimed and allowed in the 1982 tax year must be claimed in a subsequent tax year in order to be allowed, but once an exemption is claimed and allowed in a subsequent tax year, it shall apply to all subsequent tax years without further claiming as long as there is no change in eligibility for the exemption and no change in the ownership of the property.

C. Beginning with the 1983 tax year, other exemptions of real property specified under Section 7-36-7 NMSA 1978 for nongovernmental entities must be claimed in order to be allowed. Once such exemptions are claimed and allowed for a tax year, they need not be claimed for subsequent tax years if there is no change in eligibility. Exemptions allowable under this subsection shall be applied automatically by county assessors in subsequent tax years.

D. Any exemption required to be claimed under this section must be applied for no later than the last day of February of the tax year in which it is required to be claimed in order for it to be allowed for that tax year.

E. Any person who has had an exemption applied to a tax year and subsequently becomes ineligible for the exemption because of a change in the person's status or a change in the ownership of the property against which the exemption was applied shall notify the county assessor of the loss of eligibility for the exemption by the last day of February of the tax year immediately following the year in which loss of eligibility occurs.

F. Exemptions may be claimed by filing proof of eligibility for the exemption with the county assessor. The proof shall be in a form prescribed by regulation of the division. Procedures for determining eligibility of claimants for any exemption shall be prescribed by regulation of the division, and these regulations shall include provisions for requiring the New Mexico veterans' service commission to issue certificates of eligibility for veteran exemptions in a form and with the information required by the division. The regulations shall also include verification procedures to assure that veteran exemptions in excess of the amount authorized under Section 7-37-5 NMSA 1978 are not allowed

as a result of multiple claiming in more than one county or claiming against more than one property in a single tax year.

G. The division shall consult and cooperate with the New Mexico veterans' service commission in the development and promulgation of regulations under Subsection F of this section. The commission shall comply with the promulgated regulations. The commission shall collect a fee of five dollars ($5.00) for the issuance of a duplicate certificate of eligibility to a veteran.

H. Any person who violates the provisions of this section by intentionally claiming and receiving the benefit of an exemption to which he is not entitled or who fails to comply with the provisions of Subsection E of this section is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000). Any county assessor or his employee who knowingly permits a claimant for an exemption to receive the benefit of an exemption to which he is not entitled is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000) and shall also be automatically removed from office or dismissed from employment upon conviction under this subsection.

History: 1953 Comp., § 72-31-17, enacted by Laws 1973, ch. 258, § 57; 1974, ch. 92, § 9; 1975, ch. 9, § 1; 1982, ch. 28, § 10.

ANNOTATIONS

Cross references. - For head of family exemption, see 7-37-4 NMSA.

For veteran exemption, see 7-37-5 NMSA 1978.

For constitutional provision as to head of family and veteran exemptions, see N.M. Const., art. VIII, § 5.

Regulations of division to be followed to claim exemption. - Failure to comply with the procedures "prescribed by regulation of the division" under Subsection F can result in a denial of a claim for exemption. Cottonwood Gulch Found. v. Gutierrez, 102 N.M. 667, 699 P.2d 140 (Ct. App. 1985).

7-38-17.1. Presumption of nonresidential classification; declaration of residential classification.

A. Property subject to valuation for property taxation purposes for the 1982 and succeeding tax years is presumed to be nonresidential and will be so recorded by the appropriate valuation authority unless the property owner declares the property to be residential. This declaration will be made on a form prescribed by the division, signed by the owner or his agent and mailed to the valuation authority not later than the last day of February of the property tax year to which it applies. The form for the declaration shall be mailed by the valuation authority to property owners no later than January 31 of each

property tax year and shall include the property owner's name and address and the description or identification of the property. It may be included as part of a preliminary notice of valuation form or any other similar form mailed to property owners during the appropriate time period. The valuation authority will take reasonable steps to verify any such declaration. Once the declaration is accepted, the valuation authority will make appropriate entries on the valuation records. Declarations, once accepted by the valuation authority, need not be made in subsequent tax years if there is no change in the use of the property.

B. No later than the last day of February of each tax year, every owner of property subject to valuation for property taxation purposes shall report to the appropriate valuation authority as set out in Section 7-36-2 NMSA 1978 whenever the use of the property changes from residential to nonresidential or from nonresidential to residential. This report will be made on a form prescribed by the division and will be signed by the owner of the property or his agent.

C. Any person who violates Subsection A of this section by declaring a property which is nonresidential to be residential or who violates Subsection B of this section by failing to report a change of use from residential to nonresidential shall be liable, for each tax year to which declaration or failure to report applies, for:

(1) any additional taxes because of a difference in tax rates imposed against residential and nonresidential property;

(2) interest, calculated as provided under Section 7-38-49 NMSA 1978, on any additional taxes determined to be due under Paragraph (1) of this subsection; and

(3) a civil penalty of five percent of any additional taxes determined to be due under Paragraph (1) of this subsection.

D. Any person who violates Subsection A of this section by declaring a property which is nonresidential to be residential with the intent to evade any tax or who violates Subsection B of this section by refusing or failing to report a change of use from residential to nonresidential with the intent to evade any tax is guilty of a misdemeanor and shall be punished by the imposition of a fine of not more than one thousand dollars ($1,000). Any director, employee of the division, county assessor or employee of any assessor who knowingly records a property which is nonresidential to be residential is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars ($1,000) and shall be automatically removed from office or dismissed from employment upon conviction under this subsection.

E. The civil penalties authorized in Subsection C of this section shall be imposed and collected at the same time and in the same manner that the tax and interest are imposed and collected. The county treasurer is responsible for making entries on the appropriate records indicating amounts due and the date of payment.

History: 1978 Comp., § 7-38-17.1, enacted by Laws 1981, ch. 37, § 68.

ANNOTATIONS

Cross references. - For classification of residential and nonresidential property, see 7-36-2.1 NMSA 1978.

For limitations on tax rates on residential property, see 7-37-7.1 NMSA 1978.

7-38-18. Publication of notice of certain provisions relating to reporting property for valuation and claiming of exemptions.

A. Each county assessor shall have a notice published in a newspaper of general circulation within the county at least once a week during the first three full weeks in January of each tax year, which notice shall include a brief statement of the provisions of:

(1) Section 7-38-8 NMSA 1978 relating to requirements for reporting property for valuation for property taxation purposes;

(2) Section 7-38-8.1 NMSA 1978 relating to requirements for reporting exempt property;

(3) Section 7-38-13 NMSA 1978 relating to requirements for reporting improvements to real property and to filing statements of decrease in value of property;

(4) Section 7-38-17 NMSA 1978 relating to requirements for claiming veteran, head-of-family and other exemptions; and

(5) Section 7-38-17.1 NMSA 1978 relating to the requirements for declaring residential property and changes in use of property.

B. The division shall develop and issue a uniform form of notice to be used by county assessors to fulfill the requirements of this section.

History: 1953 Comp., § 72-31-18, enacted by Laws 1973, ch. 258, § 58; 1981, ch. 37, § 69; 1982, ch. 28, § 11.

7-38-19. Valuation records.

A. The county assessor shall maintain a record of the values determined for property taxation purposes on all property within the county subject to valuation under the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978], whether the values are determined by the county assessor or the department.

B. The department shall maintain, in addition to the county assessors' records, a record of the values determined for property taxation purposes on all property subject to department valuation under the Property Tax Code.

C. Valuation records shall contain the information required by the Property Tax Code and regulations of the department.

D. Except as provided otherwise in Subsection E of this section, valuation records are public records.

E. Valuation records that contain information regarding the income, expenses other than depreciation, profits or losses associated with a specific property or a property owner or that contain diagrams or other depictions of the interior arrangement of buildings, alarm systems or electrical or plumbing systems are not public records and may be released only in accordance with Paragraphs (2) through (7) of Subsection A of Section 7-38-4 NMSA 1978.

History: 1953 Comp., § 72-31-19, enacted by Laws 1973, ch. 258, § 59; 1982, ch. 28, § 12; 1991, ch. 166, § 8.

ANNOTATIONS

The 1991 amendment, effective June 14, 1991, substituted "department" for "division" throughout the section; deleted "but shall not include the income, expenses other than depreciation, profits or losses associated with a specific property or property owner" at the end of Subsection C; added the exception at the beginning of Subsection D; and added Subsection E.

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 him of the net taxable value of his property that has been valued for property taxation purposes by the assessor.

B. By May 1 of each year, the department shall mail a notice to each property owner informing him of the net taxable value of his property that has been valued for property taxation purposes by the department.

C. Failure to receive the notice required by this section does not invalidate the value set on the property, any property tax based on that value or any subsequent procedure or proceeding instituted for the collection of the tax.

D. The notice required by this section shall state:

(1) the property owner's name and address;

(2) the description or identification of the property valued;

(3) the classification of the property valued;

(4) the value set on the property for property taxation purposes;

(5) the tax ratio;

(6) the taxable value of the property;

(7) the amount of any exemptions allowed and a statement of the net taxable value of the property after deducting the exemptions;

(8) the allocations of net taxable values to the governmental units; and

(9) briefly, the procedures for protesting the value determined for property taxation purposes, classification, allocation of values to governmental units or denial of a claim for an exemption.

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.

ANNOTATIONS

Cross references. - For mailing of notices, see 7-38-84 NMSA 1978.

The 1996 amendment, substituted "department" for "division" in the section heading and in Subsection B, and added Subsection E. Laws 1996, ch. 39 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective May 15, 1996, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Applicability. - Laws 1996, ch. 39, § 2 makes the provisions of § 1 of the act applicable to notices of valuation for the 1997 and subsequent property tax years.

Notice not intended for relief or advantage of taxpayer. - The requirement that the county treasurer give written notice to each taxpayer of the amount of his tax adds nothing to the definite imposition of the tax and the equally definite imposition of a penalty to follow upon delinquency. It is intended for the benefit and convenience of the

taxpayer, but certainly not for his relief or advantage. Greene v. Esquibel, 58 N.M. 429, 272 P.2d 330 (1954).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 782 to 785.

84 C.J.S. Taxation § 420.

7-38-21. Protests; election of remedies.

A. A property owner may protest the value or classification determined for his property for property taxation purposes, the allocation of value of his property to a particular governmental unit or a denial of a claim for an exemption either by:

(1) filing a petition of protest with the director or the county assessor as provided in the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978]; or

(2) filing a claim for refund after paying his taxes as provided in the Property Tax Code.

B. The initiation of a protest under Paragraph (1) of Subsection A of this section is an election to pursue that remedy and is an unconditional and irrevocable waiver of the right to pursue the remedy provided under Paragraph (2) of Subsection A of this section.

C. A property owner may also protest the application to his property of any administrative fee adopted pursuant to Section 7-38-36.1 NMSA 1978 by filing a claim for refund after paying his taxes as provided in the Property Tax Code.

History: 1953 Comp., § 72-31-21, enacted by Laws 1973, ch. 258, § 61; 1981, ch. 37, § 71; 1983, ch. 215, § 1.

ANNOTATIONS

Cross references. - For definition of "director," see 7-35-2 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 795 to 816.

84 C.J.S. Taxation §§ 512 to 559.

7-38-22. Protesting values, classification, allocation of values and denial of exemption determined by the division.

A. A property owner may protest the value or classification determined by the division for his property for property taxation purposes or the division's allocation of value of his property to a particular governmental unit or the denial of a claim for an exemption by

filing a petition with the director. Filing a petition in accordance with this section entitles a property owner to a hearing on his protest.

B. Petitions shall:

(1) be filed with the division no later than thirty days after the mailing by the division of the notice of valuation;

(2) state the property owner's name and address and the description of the property;

(3) state why the property owner believes the value, classification, the allocation of value or denial of an exemption is incorrect and what he believes the correct value, classification, allocation of value or exemption to be;

(4) state the value, classification, allocation of value or exemption that is not in controversy; and

(5) contain such other information as the division may by regulation require.

C. The division shall notify the property owner by certified mail of the date, time and place that he may appear before the director to support his petition. The notice shall be mailed at least fifteen days prior to the hearing date.

D. The director may provide for an informal conference on the protest before the hearing.

History: 1953 Comp., § 72-31-22, enacted by Laws 1973, ch. 258, § 62; 1974, ch. 92, § 11; 1981, ch. 37, § 72.

ANNOTATIONS

Provision not applicable when refund sought for taxes erroneously paid on constitutionally exempt property, because such property is not subject to valuation for property tax purposes. Lovelace Center for Health Sciences v. Beach, 93 N.M. 793, 606 P.2d 203 (Ct. App. 1980).

Failure of officials to equalize assessments does not establish interpretation. - The fact that state officials have, for years, known that there are inequalities or lack of uniformity in tax assessments, and have done nothing about it, does not establish this as official "long-standing interpretation." It is, in essence, merely long-standing failure by respondents and their predecessors to require equalization as plainly required by the constitution and the legislative enactments. State ex rel. Castillo Corp. v. New Mexico State Tax Comm'n, 79 N.M. 357, 443 P.2d 850 (1968).

7-38-23. Protest hearings; verbatim record; action by hearing officer; time limitations'.

A. Except for the rules relating to discovery, the technical rules of evidence and the Rules of Civil Procedure for the District Courts do not apply at protest hearings before the hearing officer, but the hearings shall be conducted so that an ample opportunity is provided for the presentation of complaints and defenses. All testimony shall be taken under oath. A verbatim record of the hearings shall be made but need not be transcribed unless required for appeal purposes. A hearing officer shall be designated by the secretary to conduct the hearing.

B. Final action taken by the hearing officer on a petition shall be by written order. The hearing officer's order shall be made within thirty days after the date of the hearing, but this time limitation may be extended by agreement of the department and the protestant. A copy of the order shall be sent immediately by certified mail to the property owner. A copy of the order shall also be sent to the county assessor.

C. All protests shall be decided within one hundred twenty days of the date the protest is filed unless the parties otherwise agree. The protest shall be denied if the property owner or his authorized representative fails, without reasonable justification, to appear at the hearing.

D. The hearing officer's order shall be in the name of the secretary, dated, state the changes to be made in the valuation records, if any, and direct the county assessor to take appropriate action. The department shall make any changes in its valuation records required by the order.

E. Changes in the valuation records shall clearly indicate that the prior entry has been superseded by an order of the hearing officer.

F. The department shall maintain a file of all orders made pursuant to this section. The file shall be open for public inspection.

G. If an order of the hearing officer is appealed under Section 7-38-28 NMSA 1978, the department shall immediately notify the appropriate county assessor of the appeal. Notations shall be made in the valuation records of the assessor and the department indicating the pendency of the appeal.

History: 1953 Comp., § 72-31-23, enacted by Laws 1973, ch. 258, § 63; 1982, ch. 28, § 13; 1986, ch. 20, § 114.

7-38-24. Protesting values, classification, allocation of values and denial of exemption determined by the county assessor.

A. A property owner may protest the value or classification determined by the county assessor for his property for property taxation purposes, the assessor's allocation of value of his property to a particular governmental unit or denial of a claim for an exemption by filing a petition with the assessor. Filing a petition in accordance with this section entitles the property owner to a hearing on his protest.

B. Petitions shall:

(1) be filed with the county assessor 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; or

(b) 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 is incorrect and what he believes the correct value, classification, allocation of value or exemption to be; and

(4) state the value, classification, allocation of value or exemption that is not in controversy.

C. Upon receipt of the petition, the county assessor shall schedule a hearing before the county valuation protests board and notify the property owner by certified mail of the date, time and place that he may appear to support his petition. The notice shall be mailed at least fifteen days prior to the hearing date.

D. The assessor may provide for an informal conference on the protest before the hearing.

History: 1953 Comp., § 72-31-24, enacted by Laws 1973, ch. 258, § 64; 1974, ch. 92, § 12; 1981, ch. 37, § 73; 1997, ch. 130, § 1.

ANNOTATIONS

The 1997 amendment, in Subsection B, rewrote Paragraph (1) and deleted "the" preceding "allocation" in Paragraph (3). Laws 1997, ch. 130 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Applicability. - Laws 1997, ch. 130, § 2 makes the act applicable to 1997 and subsequent property tax years.

Provision not applicable when refund sought for taxes erroneously paid on constitutionally exempt property, because such property is not subject to valuation for property tax purposes. Lovelace Center for Health Sciences v. Beach, 93 N.M. 793, 606 P.2d 203 (Ct. App. 1980).

Protests board to hear any grounds for protest. - When the language of a statute is clear and unambiguous, the statute must be given its literal meaning. The language of this section and 7-38-25 NMSA 1978 (formerly 72-2-37 and 72-2-38, 1953 Comp.) clearly and unambiguously gives to the county valuation protests boards the duty to hear a protest of the valuation of a taxpayer's property on any grounds whatsoever, including the grounds of allegedly unconstitutional discrimination in comparison with assessments of other properties. In re Miller, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

Board's duty to protect taxpayers from delinquent appraisers and assessors. - The board was not created for the purpose of burdening the people; its duty is to protect taxpayers from appraisers and county assessors who are delinquent in the performance of their work. Black v. Bernalillo County Valuation Protest Bd. 95 N.M. 136, 619 P.2d 581 (Ct. App. 1980).

Protest hearing should not be viewed as adversary proceeding with the board arrayed against the taxpayer. Black v. Bernalillo County Valuation Protest Bd. 95 N.M. 136, 619 P.2d 581 (Ct. App. 1980).

Court intervention required upon board's lack of reasoned decision-making. - A court's supervisory function calls on it to intervene with the protest board not merely in case of procedural inadequacies, or a bypassing of the mandate in the legislative charter, but more broadly if the court becomes aware, especially from a combination of danger signals, that the board has not really taken a hard look at the salient problems and has not genuinely engaged in reasoned decision-making. Black v. Bernalillo County Valuation Protest Bd. 95 N.M. 136, 619 P.2d 581 (Ct. App. 1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Standing of one taxpayer to complain of underassessment or nonassessment of property of another for state and local taxation, 9 A.L.R.4th 428.

7-38-25. County valuation protests boards; creation; duties; funding.

A. There is created in each county a "county valuation protests board". Each board shall consist of three voting members. Three alternates shall also be appointed to serve as voting members in the absence of a voting member. Voting members and alternates shall be appointed as follows:

(1) one member and one alternate shall be a qualified elector of the county and shall be appointed by the board of county commissioners for a term of two years;

(2) one member and one alternate shall be a qualified elector of the county, shall have demonstrated experience in the field of valuation of property and shall be appointed by the board of county commissioners for a term of two years; and

(3) one member and one alternate shall be a property appraisal officer employed by the department, assigned by the director and shall be the chairman of the board.

B. Members of the board and alternates appointed under Paragraph (1) or (2) of Subsection A of this section shall not hold any elective public office during the term of their appointment nor shall any such member or alternate be employed by the state, a political subdivision or a school district during the term of his appointment.

C. Vacancies occurring on the board shall be filled by the authority making the original appointment and shall be for the unexpired term of the vacated membership.

D. The county valuation protests board shall hear and decide protests of determinations made by county assessors and protested under Section 7-38-24 NMSA 1978.

E. Members of the board and alternates when serving as voting members appointed under Paragraphs (1) and (2) of Subsection A of this section shall be paid as independent contractors at the rate of eighty dollars ($80.00) a day for each day of actual service. The payment of board members and alternates and all other actual and direct expenses incurred in connection with protest hearings shall be paid by the department.

History: 1953 Comp., § 72-31-25, enacted by Laws 1973, ch. 258, § 65; 1977, ch. 129, § 1; 1981, ch. 37, § 74; 1982, ch. 25, § 1; 1997, ch. 159, § 1.

ANNOTATIONS

The 1997 amendment inserted "Three alternates shall also be appointed to serve as voting members in the absence of a voting member. Voting members and alternates shall be" in the introductory paragraph of Subsection A; inserted "and one alternate" following "one member" in Paragraphs A(1), (2), and (3); and made related stylistic changes throughout the section. Laws 1997, ch. 159 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Board must act in session with quorum. - When a duty is entrusted to a board composed of different individuals, that board can act officially only as such, in convened session, with the members, or a quorum thereof, present. In re Kinscherff, 89 N.M. 669, 556 P.2d 355 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976).

Quorum must be present before county valuation protests board can act officially and any act done with less than a quorum present is invalid. In re Kinscherff, 89 N.M. 669, 556 P.2d 355 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976).

Acts of majority of quorum are binding on entire body. In re Kinscherff, 89 N.M. 669, 556 P.2d 355 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976).

Quorum not present when not enough members on board. - When the protests board, consisting of three members, instead of the six required by the prior version of this section, heard the protests and entered the orders, a quorum was not present, and the orders of the board were invalid. San Pedro S. Group v. Bernalillo County Valuation Protest Bd. 89 N.M. 784, 558 P.2d 53 (Ct. App. 1976).

Common-law rule of quorum applies in absence of statute. - Under the former version of this section a quorum of the voting members present was not sufficient for the hearing to be the official act of the board since absent any such statutory provisions the common-law rule that a majority of all of the members of a board or commission shall constitute a quorum applied. In re Kinscherff, 89 N.M. 669, 556 P.2d 355 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976).

Protests board to hear any grounds for protest. - When the language of a statute is clear and unambiguous, the statute must be given its literal meaning. The language of 7-38-24 NMSA 1978 and this section (formerly 72-2-37 and 72-2-38, 1953 Comp.) clearly and unambiguously gives to the county valuation protests boards the duty to hear a protest of the valuation of a taxpayer's property on any grounds whatsoever, including the grounds of allegedly unconstitutional discrimination in comparison with assessments of other properties. In re Miller, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Standing of one taxpayer to complain of underassessment or nonassessment of property of another for state and local taxation, 9 A.L.R.4th 428.

7-38-26. Scheduling of protest hearings.

Before scheduling a protest hearing, the county assessor shall notify the director and assure that the assigned property appraisal officer board member will be made available. The director may assign a property appraisal officer to act as a member of more than one county valuation protests board. He also may establish and publish schedules for hearings on protests in the various counties to make the most efficient use of assigned property appraisal officers and assure the expeditious determination of protests.

History: 1953 Comp., § 72-31-26, enacted by Laws 1973, ch. 258, § 66.

7-38-27. Protest hearing; verbatim record; action by county valuation protests board; time limitations.

A. Except for the rules relating to discovery, the technical rules of evidence and the Rules Civil Procedure for the District Courts do not apply at protest hearings before a county valuation protests board, but the hearing shall be conducted so that an ample opportunity is provided for the presentation of complaints and defenses. All testimony

shall be taken under oath. A verbatim record of the hearing shall be made but need not be transcribed unless required for appeal purposes.

B. Final action taken by the board on a petition shall be by written order signed by the chairman or a member of the board designated by the chairman. The order shall be made within thirty days after the date of the hearing, but this time limitation may be extended by agreement of the board and the protestant. A copy of the order shall be sent immediately by certified mail to the property owner. A copy of the order shall also be sent to the director and the county assessor.

C. All protests shall be decided within one hundred eighty days of the date the protest is filed. The protest shall be denied if the property owner or his authorized representative fails, without reasonable justification, to appear at the hearing.

D. The board's order shall be dated, state the changes to be made in the valuation records, if any, and direct the county assessor to take appropriate action. The division shall make any changes in its valuation records required by the order.

E. Changes in the valuation records shall clearly indicate that the prior entry has been superseded by an order of the board.

F. The assessor shall maintain a file of all orders made by the county valuation protests board. The file shall be open for public inspection.

G. If an order of a county valuation protests board is appealed under Section 7-38-28 NMSA 1978, the director shall immediately notify the appropriate county assessor of the appeal. Notations shall be made in the valuation records of the assessor and the division indicating the pendency of the appeal.

History: 1953 Comp., § 72-31-27, enacted by Laws 1973, ch. 258, § 67; 1982, ch. 28, § 14.

ANNOTATIONS

Procedural due process denied when board excluded evidence. - By unlawfully excluding evidence and denying the right to discovery, the county valuation protests boards curtailed taxpayers' right to be heard and to present any defense, and, in so doing, they deprived appellants of their constitutionally guaranteed right to procedural due process. Taxpayers are entitled to new hearings, at which evidence of valuation of comparable properties or other properties of the same class may be admissible in evidence and are to be weighed by the boards in arriving at their decisions. In re Miller, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

Refusal to allow witnesses. - A notion of fairness is included within the concept of procedural due process, and accordingly in a hearing before an administrative agency, the agency must examine both sides of the controversy taking and weighing the

evidence that is offered and finding facts based on a consideration of the evidence, in order to fairly protect the interests and rights of all who are involved; a refusal to allow witnesses to be called is a denial of procedural due process. In re Miller, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

Denial of right to take depositions. - To deny the taxpayer the right to take depositions at county valuation protests board hearings denies him the right to a fair hearing. Such denial constitutes a denial of due process under U.S. Const., amend. XIV. In re Miller, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

Arbitrary for board to reach decision without considering all evidence. - The state has not given administrative boards the authority to catalogue which evidence shall be considered in deciding a protest, and when the administrative board has reached a decision and promulgated an order without considering all the evidence presented at the hearing, its decision and order is arbitrary and should be reversed. In re Miller, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

Full opportunity to be heard required. - Administrative proceedings must conform to fundamental principles of justice and the requirements of due process of law; a litigant must be given a full opportunity to be heard with all rights related thereto. In re Miller, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

Rulings void if not in accord with statute. - Rulings by an administrative agency not in accord with the basic statutory requirements relating to the agency will render its decision void. La Jara Land Developers, Inc. v. Bernalillo County Assessor, 97 N.M. 318, 639 P.2d 605 (Ct. App. 1982).

Administrative law rules of evidence govern admissions. - While neither the rules of evidence, the rules of civil procedure nor the rules provided by the Administrative Procedures Act apply, there must be some rules to govern admission of evidence in proceedings before the county valuation protests boards, and these rules must be found in the body of administrative law that has grown up in the courts. In re Miller, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

Wide latitude allowed in admission of evidence. - The rationale for stating that the technical rules of evidence do not apply at protest hearings before a county valuation protests board is to allow wide latitude in the admission of evidence before an administrative board. In re Miller, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

Administrative Procedures Act (12-8-1 to 12-8-25 NMSA 1978) demonstrates that depositions are permissible under administrative law, to assist the agency and other parties in obtaining a fair hearing. In re Miller, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

Taxpayer's evidence should be admitted to prove value. - The protests board could not rely exclusively on the county assessor's valuation of property even though according to former 72-2-3, 1953 Comp., the assessment must be at "full actual value," and neither could it rely on comparable sales or sales of comparable lands where none have occurred; accordingly, the board should have allowed the admission of the only available relevant evidence which the taxpayer had. In situations where cash market value could not be determined, earning capacity, cost of reproduction and original cost less depreciation furnished relevant considerations for determining "value." In re Miller, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

Rules of weight, etc., not necessarily limited. - Although the technical rules of evidence and the rules of civil procedure do not apply at protest hearings before a county valuation protests board, the rules relating to weight, applicability or materiality of evidence are not thus limited. San Pedro S. Group v. Bernalillo County Valuation Protest Bd. 89 N.M. 784, 558 P.2d 53 (Ct. App. 1976).

The rules relating to weight, applicability or materiality of evidence are not limited by the provisions of this section. In re Kinscherff, 89 N.M. 669, 556 P.2d 355 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976).

Requirement for findings. - By inadvertence, the legislature omitted the requirement of a "decision" by the board under this section. However, the practical reasons for requiring administrative findings are so powerful that the requirement has been imposed with remarkable uniformity by virtually all federal and state courts, irrespective of a statutory requirement. First Nat'l Bank v. Bernalillo County Valuation Protest Bd. 90 N.M. 110, 560 P.2d 174 (Ct. App. 1977).

Pronouncement not final order subject to review on appeal. - Statements of a judge as to reasons for the judgment, made before the judgment is entered, which statements are not embodied therein, cannot be considered as a part of the judgment but are merely evidence of what the court had decided to do, a decision that the trial court can change at any time before the entry of a final judgment and an order of a protest board is analogous to the judgment of a court. Therefore, a pronouncement of a county protests board did not constitute its duly entered final order and was not subject to review on appeal of its final order. Peterson Properties v. Valencia County Valuation Protests Bd. 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

Board must show good cause for delay in hearing. - When taxpayers show that the statutory time constraints have not been complied with and the taxpayer and board have not agreed to extend the time, the burden shifts to the board to establish good cause for the delay. Protest of Plaza Del Sol Ltd. Partnership v. Assessor for County of Bernalillo, 104 N.M. 154, 717 P.2d 1123 (Ct. App. 1986).

Settlement negotiations do not toll time requirements. - Mere settlement negotiations, without more, are insufficient as a matter of law to toll the statutory time

requirements. Protest of Plaza Del Sol Ltd. Partnership v. Assessor for County of Bernalillo, 104 N.M. 154, 717 P.2d 1123 (Ct. App. 1986).

Orders invalid when board without quorum. - When the protests board, consisting of three members, instead of the six required by the prior version of 7-38-25 NMSA 1978, heard the protests and entered the orders, a quorum was not present, and the orders of the board were invalid. San Pedro S. Group v. Bernalillo County Valuation Protest Bd. 89 N.M. 784, 558 P.2d 53 (Ct. App. 1976).

Protests board without authority to reject agreement between assessor and landowner. - A county valuation protests board does not have authority to reject an agreement between an assessor and a landowner concerning the land value. Horn v. Bernalillo County Valuation Protests Bd. 95 N.M. 38, 618 P.2d 382 (Ct. App. 1980).

Decisions have force and effect of judgments. - The decisions rendered by an officer or a board legally constituted and empowered to settle the question submitted to it, when acting judicially, have the force and effect of a judgment. Peterson Properties v. Valencia County Valuation Protests Bd. 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

7-38-28. Appeals from orders of the director or county valuation protests boards.

A. A property owner may appeal an order made by the director or a county valuation protests board by filing an appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

B. The director shall notify the appropriate county assessor of the decision and order of the district court and shall direct the assessor to take appropriate action to comply with the decision and order.

History: 1953 Comp., § 72-31-28, enacted by Laws 1973, ch. 258, § 68; 1982, ch. 28, § 15; 1990, ch. 22, § 3; 1998, ch. 55, § 19; 1999, ch. 265, § 19.

ANNOTATIONS

Cross references. - For procedures governing administrative appeals to the district court, see Rule 1-074 NMRA.

For appeal of final decisions by agencies to district court, see Section 39-3-1.1 NMSA 1978.

The 1990 amendment, effective May 16, 1990, in Subsection A, substituted "thirty days" for "forty-five days" and inserted "or such other time prescribed by the Rules of Appellate Procedure, NMRA 1997" in the first sentence, substituted "shall be" for "must be" and added "and shall not be de novo" at the end of the second sentence and added

the third sentence; deleted former Subsections B and C, relating to the record on appeal; and redesignated former Subsections D and E as Subsections B and C.

The 1998 amendment, effective September 1, 1998, rewrote Subsection A, deleted former Subsection B and redesignated former Subsection C as Subsection B; and in present Subsection B, inserted "district" and deleted "of appeals" following "court".

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection A.

Applicability. - Laws 1990, ch. 22, § 13 makes the provisions of the act applicable to the 1990 and subsequent property tax years.

Compiler's notes. - For scope of review of the district court, see *Zamora v. Village of Ruidoso Downs,* 120 N.M. 778, 907 P.2d 182 (1995).

Lack of jurisdiction at any stage of the proceedings is a controlling consideration which must be resolved before going further, and an appellate court may raise the question of jurisdiction on its own motion. In re Kinscherff, 89 N.M. 669, 556 P.2d 355 (Ct. App.), cert. denied, 90 N.M. 8, 558 P.2d 620 (1976).

Court bound by substantial evidence of record. - If there is substantial evidence in the record to support a decision of a county valuation protests board, the appellate court is bound thereby, and, in deciding if there is substantial evidence to support the decision, it must view the evidence in the most favorable light to support the finding, reversing only if convinced that the evidence thus viewed, together with all reasonable inferences to be drawn therefrom, cannot sustain the finding. Further, only favorable evidence and the inferences to be drawn therefrom will be considered, and any evidence unfavorable to the findings will not be considered. In re Miller, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

Pronouncement of board not subject to review on appeal. - Statements of a judge as to reasons for the judgment, made before the judgment is entered, which statements are not embodied therein, cannot be considered as a part of the judgment, but are merely evidence of what the court had decided to do, a decision that the trial court can change at any time before the entry of a final judgment, and an order of a protest board is analogous to the judgment of a court; therefore, a pronouncement of a county protests board did not constitute its duly entered final order and was not subject to review on appeal of its final order. Peterson Properties v. Valencia County Valuation Protests Bd. 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

Decision arbitrary if board has not considered all evidence. - The state has not given administrative boards the authority to catalogue which evidence shall be considered in deciding a protest, and when the administrative board has reached a decision and promulgated an order without considering all the evidence presented at

the hearing, its decision and order is arbitrary and should be reversed. In re Miller, 88 N.M. 492, 542 P.2d 1182 (Ct. App.), cert. denied, 89 N.M. 5, 546 P.2d 70 (1975).

Rulings void if not in accord with statute. - Rulings by an administrative agency not in accord with the basic statutory requirements relating to the agency will render its decision void. La Jara Land Developers, Inc. v. Bernalillo County Assessor, 97 N.M. 318, 639 P.2d 605 (Ct. App. 1982).

When county assessor did not follow any statutory method of valuation in 1976, but simply set the valuation of a shopping center back up to the 1972 figure, it was held that the decisions of the board were arbitrary and capricious, not supported by substantial evidence in the record taken as a whole, and otherwise not in accordance with law, and its orders were vacated. San Pedro S. Group v. Bernalillo County Valuation Protest Bd. 89 N.M. 784, 558 P.2d 53 (Ct. App. 1976).

Court has no duty to search for authority supporting argument. - When taxpayer cited no authority to support its argument that the assessor's evidence of sales of certain property did not involve comparable sales, the appellate court had no duty to search for authority or consider taxpayer's claim unless it was apparent on the face of the claimed error that it had merit. Peterson Properties v. Valencia County Valuation Protests Bd. 89 N.M. 239, 549 P.2d 1074 (Ct. App. 1976).

Judicial review based on whole record. - Judicial review of decisions by agencies are based on the whole record. This requires the courts to review and consider not only evidence in support of one party's contention, but also to look at evidence which is contrary to the finding; the reviewing court must then decide whether, on balance, the agency's decision was supported by substantial evidence. Cibola Energy Corp. v. Roselli, 105 N.M. 774, 737 P.2d 555 (Ct. App. 1987).

Necessity of findings of fact and conclusions of law. - For purposes of judicial review, the order must, at least, indicate the reasoning of the board and the basis on which it acted; the expense incurred by having findings of fact and conclusions of law would be repaid 10-fold by the expense and energy saved on judicial review. Cibola Energy Corp. v. Roselli, 105 N.M. 774, 737 P.2d 555 (Ct. App. 1987).

Exhaustion of administrative remedies. - The legislature, in enacting a comprehensive scheme for administrative and judicial review, has provided the exclusive remedy for claims presented to the district court that property owned by all masonic lodges is exempt for taxation under N.M. Const., art. VIII, § 3, and the administrative remedies provided by the legislature must be exhausted before a declaratory judgment action will lie. Grand Lodge of Ancient & Accepted Masons v. Taxation & Revenue Dep't, 106 N.M. 179, 740 P.2d 1163 (Ct. App. 1987).

Taxpayer effectively rebutted presumption. - When taxpayer's valuation is supported by the whole record in that after rebutting the assessor's valuation and presenting a prima facie case for its own valuation the board failed to rebut taxpayer's appraisal, the

decision of the board will be reversed and remanded with instructions that the board enter judgment for taxpayer in favor of its valuations. Cibola Energy Corp. v. Roselli, 105 N.M. 774, 737 P.2d 555 (Ct. App. 1987).

Law reviews. - For article, "Substantial Evidence Reconsidered: The Post-Duke City Difficulties and Some Suggestions for Their Resolution," see 18 N.M.L. Rev. 525 (1988).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Standing of one taxpayer to complain of underassessment or nonassessment of property of another for state and local taxation, 9 A.L.R.4th 428.

7-38-29. Retention of hearing records.

Untranscribed verbatim records of protest hearings shall be retained until after transcription, if transcription is required to support an appeal, or until the time for a protestant to appeal an order under Section 7-38-28 NMSA 1978 has expired and the protestant has not appealed.

History: 1953 Comp., § 72-31-29, enacted by Laws 1973, ch. 258, § 69.

7-38-30. Department to allocate and certify valuations to county assessors.

By June 1 of each year, the department shall certify to each county assessor the value determined by the department for property taxation purposes of all property allocated to governmental units within the county and subject to departmental valuation. In certifying values, the department shall indicate by appropriate notation all property valuations that are the subject of a pending protest and shall include in the notation a statement of the uncontroverted valuation in the pending protests. The certified values shall be entered by the county assessor in his valuation records.

History: 1953 Comp., § 72-31-30, enacted by Laws 1973, ch. 258, § 70.

7-38-31. County assessor to certify net taxable values to the department.

After receiving the values for property taxation purposes certified to him by the department, the county assessor shall determine the net taxable value for all property allocated to governmental units in the county and subject to valuation for property taxation purposes, whether valued by him or by the department. No later than June 15 of each year, the county assessor shall certify to the department the net taxable values for all property allocated to governmental units in the county and subject to property taxation. The net taxable values of property shall be certified according to governmental units within the county. The assessor's certification shall include a statement of all

property valuations that are the subject of a pending protest, whether protested locally or to the department, and a statement of the uncontroverted valuation in the pending protests.

History: 1953 Comp., § 72-31-31, enacted by Laws 1973, ch. 258, § 71.

7-38-32. Department to prepare a compilation of net taxable values to be used for budget making and rate setting.

A. No later than June 30 of each year, the department shall prepare a compilation of all net taxable values certified to it by the county assessors and shall include in the compilation the information regarding protested values required to be furnished by the assessors to the department. The compilation shall be prepared in a form appropriate for use and shall be used for the purpose of making budgets. The compilation of net taxable values shall be sent immediately to the secretary of finance and administration.

B. No later than August 1 of each year, the department shall prepare an amended compilation of net taxable values and send it immediately to the secretary of finance and administration. This amended compilation shall include final valuations resulting from completed protests and information on pending protests. It shall be used by the department of finance and administration in setting property tax rates.

C. In the budget-making process for local units of government, including school districts, the net taxable values from the immediately preceding tax year may be considered for the purpose of estimating available revenue from the current tax year when the compilation of net taxable values certified under Subsection A is incomplete or indefinite due to pending protests.

History: 1953 Comp., § 72-31-32, enacted by Laws 1973, ch. 258, § 72; 1977, ch. 247, § 190.

7-38-33. Department of finance and administration to set tax rates.

A. No later than September 1 of each year, the secretary of finance and administration shall by written order set the property tax rates for the governmental units sharing in the tax in accordance with the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] and the budget of each as approved by the department of finance and administration.

B. A copy of the property tax rate-setting order shall be sent to each board of county commissioners, each county assessor and the department within five days of the date the order is made.

C. Net taxable values from the immediately preceding tax year may be used by the department of finance and administration for the purpose of estimating current tax year

revenue in connection with setting tax rates when final net taxable values for the current tax year are incomplete or indefinite due to pending protests.

D. When a rate is set for a governmental unit that is imposing a newly authorized rate pursuant to Section 7-37-7 NMSA 1978 or a newly authorized or a reauthorized rate after an election in which the imposition of the tax was approved by the voters of the unit, the rate shall be at a level that will produce in the first year of imposition revenue no greater than that which would have been produced if the valuation of property subject to the imposition had been the valuation in the tax year in which the increased rate pursuant to Section 7-37-7 NMSA 1978 was authorized by the taxing district or the year in which the voters approved the imposition.

History: 1953 Comp., § 72-31-33, enacted by Laws 1973, ch. 258, § 73; 1977, ch. 247, § 191; 1989, ch. 198, § 1.

ANNOTATIONS

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

Applicability. - Laws 1989, ch. 198, § 3, effective June 16, 1989, makes the provisions of the act applicable to the 1989 and subsequent property tax years.

Law reviews. - For comment, "Coal Taxation in the Western States: The Need for a Regional Tax Policy," see 16 Nat. Resources J. 415 (1976).

7-38-34. Board of county commissioners to order imposition of the tax.

Within five days of receipt of the property tax rate-setting order from the department of finance and administration, each board of county commissioners shall issue its written order imposing the tax at the rates set on the net taxable value of property allocated to the appropriate governmental units. A copy of this order shall be delivered immediately to the county assessor.

History: 1953 Comp., § 72-31-34, enacted by Laws 1973, ch. 258, § 74.

7-38-35. Preparation of property tax schedule by assessor.

A. After receipt of the rate-setting order and the order imposing the tax, but no later than October 1 of each tax year, the county assessor shall prepare a property tax schedule for all property subject to property taxation in the county. This schedule shall be in a form and contain the information required by regulations of the division and shall contain at least the following information:

(1) the description of the property taxed and, if the property is personal property, its location;

(2) the property owner's name and address and the name and address of any person other than the owner to whom the tax bill is to be sent;

(3) the classification of the property;

(4) the value of the property determined for property taxation purposes;

(5) the tax ratio;

(6) the taxable value of the property;

(7) the amount of any exemption allowed and a statement of the net taxable value of the property after deducting the exemption;

(8) the allocations of net taxable value to the governmental units;

(9) the tax rate in dollars per thousand of net taxable value for all taxes imposed on the property;

(10) the amount of taxes due on the described property; and

(11) the amount of any penalties and interest already imposed and due on the described property.

B. The property tax schedule is a public record and a part of the valuation records.

History: 1953 Comp., § 72-31-35, enacted by Laws 1973, ch. 258, § 75; 1974, ch. 92, § 13; 1975, ch. 8, § 1; 1977, ch. 211, § 1; 1981, ch. 37, § 75.

7-38-36. Preparation and mailing of property tax bills.

A. A copy of the property tax schedule prepared by the assessor shall be delivered to the county treasurer on October 1 of each tax year.

B. Upon receipt of the property tax schedule, the county treasurer shall prepare and mail property tax bills to either the owner of the property or any person other than the owner to whom the tax bill is to be sent. Tax bills shall be mailed no later than November 1 of each tax year. The validity of the tax, the time at which the tax is payable or any subsequent proceeding instituted for the collection of the tax is not affected by the failure of a person to receive his tax bill.

C. To obtain the maximum efficiency and coordination between their offices, a county treasurer and a county assessor may stipulate by written agreement that property tax bills be prepared or mailed, or both, by the county assessor. An agreement authorized under this subsection shall include provisions for the allocation of costs of the functions

delegated to the county assessor and must be approved by the board of county commissioners.

History: 1953 Comp., § 72-31-36, enacted by Laws 1973, ch. 258, § 76; 1977, ch. 211, § 2.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 782 to 787.

84 C.J.S. Taxation §§ 607, 608.

7-38-36.1. Administrative fee to be charged if property tax is less than five dollars ($5.00).

A. If the property tax on property for which a property tax bill is prepared is less than five dollars ($5.00), the board of county commissioners may, by resolution, charge an administrative fee equal to the difference between the amount of the property tax and five dollars ($5.00), but no administrative fee shall be charged if there is no tax due. A copy of the resolution shall be sent to the county treasurer who shall collect the fee. This administrative fee shall be separately identified and stated in the property tax bill and shall be included in the total shown in the bill as due.

B. The administrative fee authorized by this section shall be collected and its collection enforced as if the fee were a property tax except that no interest or penalty shall accrue or be charged because of its nonpayment.

C. The administrative fee authorized by this section shall be distributed to the county general fund when collected and shall not be distributed to the governmental units to which the property tax is distributed pursuant to Section 7-38-43 NMSA 1978.

History: 1978 Comp., § 7-38-36.1, enacted by Laws 1982, ch. 21, § 1.

7-38-37. Contents of property tax bill.

Each property tax bill shall be in a form and contain the information required by regulations of the department and shall contain at least the following:

A. all of the information required to be contained in the property tax schedule;

B. the amount of property taxes due on each installment, the due dates of the installments and the dates on which taxes become delinquent;

C. a brief statement of the option available to make prepayments of the property tax due pursuant to Section 7-38-38.2 NMSA 1978;

D. a brief statement of the procedure under Section 7-38-39 NMSA 1978 for protesting values for property taxation purposes, classification, allocation of values to governmental units for a denial of a claim for an exemption;

E. a statement of the interest and penalties imposed by law for delinquency in the payment of property taxes and the remedies available against the taxpayer and the property for nonpayment of the amount due;

F. a statement advising the property owner that the property tax bill is the only notice he will receive for payment of both installments of the tax if no separate notice will be sent with respect to the second installment; and

G. the amount of any prepayment of the first installment made pursuant to Section 7-38-38.2 NMSA 1978.

History: 1953 Comp., § 72-31-37, enacted by Laws 1973, ch. 258, § 77; 1981, ch. 37, § 76; 1987, ch. 166, § 1.

7-38-38. Payment of property taxes; installment due dates; refund in cases of overpayments.

A. Unless otherwise provided in the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978], property taxes in the amount of ten dollars ($10.00) or over are payable to the county treasurer in two equal installments due on November 10 of the year in which the tax bill was prepared and mailed and on April 10 of the following year. A board of county commissioners may, by ordinance, provide that property taxes under ten dollars ($10.00) are due and payable in a single payment on November 10 of the year in which the tax bill was prepared and mailed. No demand for payment of property taxes is necessary.

B. If a taxpayer remits an amount in payment of his property taxes that exceeds the total property tax liability shown on the property tax bill, together with any applicable penalty and interest computed to the date payment is received by the county treasurer, a refund of the amount in excess shall be made to the taxpayer if either of the following conditions are met:

(1) a written request for the refund is made by the taxpayer and received by the county treasurer within sixty days of the date the excess payment is received by the county treasurer; or

(2) the county treasurer on his own initiative determines by June 30 of the year following the year for which taxes are imposed that an excess payment has been made.

History: 1953 Comp., § 72-31-38, enacted by Laws 1973, ch. 258, § 78; 1975, ch. 121, § 1; 1977, ch. 77, § 1; 1982, ch. 28, § 16; 1983, ch. 216, § 1; 1987, ch. 166, § 2.

ANNOTATIONS

Payment of taxes by mortgagee. - Since mortgage contained provision stating that monthly payments were to be applied to taxes before being applied to interest or the mortgage loan, and that mortgagor would pay to mortgagee any amount necessary to make up the deficiency between balance of escrow account for payment of taxes and amount of taxes owed, on or before date when taxes become due, mortgagee who applied entire amount of January monthly payment to taxes due and payable, under 72-5-1, 1953 Comp., on November 1, was not liable for conversion of that payment even though such taxes would not become delinquent under 72-7-3, 1953 Comp., until May 1. Evans v. Mortgage Inv. Co. 84 N.M. 732, 507 P.2d 793 (Ct. App. 1973).

Law reviews. - For article, "Constitutional Limitations on the Exercise of Judicial Functions by Administrative Agencies," see 7 Nat. Resources J. 599 (1967).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 834, 835, 1074, 1075.

When right to refund of state or local taxes accrues, within statute limiting time for applying for refund, 46 A.L.R.2d 1350.

Mistake: right of property taxpayer to recover back taxes voluntarily but mistakenly paid a second or successive time, 84 A.L.R.2d 1133.

84 C.J.S. Taxation §§ 607, 608, 624, 631, 632.

7-38-38.1. Recipients of revenue produced through ad valorem levies required to pay counties administrative charge to offset collection costs.

A. As used in this section:

(1) "revenue" means money for which a county treasurer has the legal responsibility for collection and which is owed to a revenue recipient as a result of an imposition authorized by law of a rate expressed in mills per dollar or dollars per thousands of dollars of net taxable value of property, assessed value of property or a similar term, including but not limited to money resulting from the authorization of rates and impositions under Subsection B and Paragraphs (1) and (2) of Subsection C of Section 7-37-7 NMSA 1978, special levies for special purposes and benefit assessments, but the term does not include any money resulting from the imposition of taxes imposed under the provisions of the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978], the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978] or the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978] or money resulting from impositions under Paragraph (3) of Subsection C of Section 7-37-7 NMSA 1978; and

(2) "revenue recipient" means the state and any of its political subdivisions, excluding institutions of higher education located in class "A" counties and class "B" counties having more than three hundred million dollars ($300,000,000) valuation, that are authorized by law to receive revenue.

B. Prior to the distribution to a revenue recipient of revenue received by a county treasurer, the treasurer shall bill the revenue recipient as an administrative charge an amount equal to:

(1) in class "A" counties, three-fourths of one percent of the revenue received, but not to exceed forty percent of the budget of the county assessor for the current fiscal year as approved by the department of finance and administration; and

(2) in all other counties, one percent of the revenue received, but not to exceed forty percent of the budget of the county assessor for the current fiscal year as approved by the department of finance and administration.

C. The "county property valuation fund" is created. All administrative charges shall be collected by the county treasurer and distributed to the county property valuation fund. The revenue recipient may pay the administrative charge from any fund unless otherwise prohibited by law.

D. Expenditures from the county property valuation fund may be made pursuant to a property valuation program presented by the county assessor and approved by the majority of the county commissioners.

History: 1978 Comp., § 7-38-38.1, enacted by Laws 1986, ch. 20, § 116; 1988, ch. 68, § 1; 1990, ch. 125, § 7.

ANNOTATIONS

The 1990 amendment, effective March 7, 1990, in Subsection A, inserted "or the Copper Production Ad Valorem Tax Act" in Paragraph (1) and made a related stylistic change.

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

Nonseverability. - Laws 1990, ch. 125, § 19 provides that the provisions of the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978] and the corresponding amendments made in that act to the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] are not severable.

Compiler's notes. - Laws 1990, ch. 22, § 12 repeals Laws 1988, ch. 68, § 2, which had specified administrative charges collectible by the county treasurer from "revenue recipients" as defined in this section.

7-38-38.2. Prepayment of certain property tax installments; resolution by board of county commissioners.

A. Each board of county commissioners, by resolution, may as an option to the taxpayer provide for prepayment of property tax due if the tax due is one hundred dollars ($100) or more.

B. The resolution shall provide for a prepayment of the first installment due pursuant to Section 7-38-38 NMSA 1978 by July 10 in an amount equal to twenty-five percent of the prior year's property tax bill. The amount of prepayment shall be credited against the first installment due.

C. The resolution shall further provide for a prepayment of the second installment due pursuant to Section 7-38-38 NMSA 1978 by January 10 in an amount equal to fifty percent of the second installment due. The amount of the prepayment shall be credited against the second installment due.

D. The resolution shall also provide that persons who are responsible by contract for paying property taxes on behalf of the property owner shall make prepayments as provided in this section if the amount of property tax due for the prior property tax year was at least one hundred dollars ($100).

E. No penalty and interest shall be applied for failure to pay or for late payment of any optional prepayment of property taxes as authorized by this section. For persons required to make prepayments of property taxes under Subsection D of this section, the date of each prepayment installment shall be deemed to be the date the property tax is due for purposes of applying penalties and interest for failure to pay for late payment of any prepayment.

F. The county treasurer may distribute to the units of government, thirty days following receipt of the prepayment amounts collected, an amount equal to fifty percent of the amounts collected. Distribution shall be made in accordance with the law and regulations of the department of finance and administration.

G. The county shall make a concerted effort to apprise taxpayers of the option provided in this section by publication in a newspaper of general circulation in the county or through other media coverage.

History: 1978 Comp., § 7-38-38.2, enacted by Laws 1987, ch. 166, § 3.

7-38-39. Protesting values; claim for refund.

After receiving his property tax bill and after making payment prior to the delinquency date of all property taxes due in accordance with the bill, a property owner may protest the value or classification determined for his property for property taxation purposes, the allocation of value of his property to a particular governmental unit, the application to his

property of an administrative fee adopted pursuant to Section 7-38-36.1 NMSA 1978 or a denial of a claim for an exemption by filing a claim for refund in the district court.

History: 1953 Comp., § 72-31-39, enacted by Laws 1973, ch. 258, § 79; 1981, ch. 37, § 77; 1983, ch. 203, § 1; 1983, ch. 215, § 2.

ANNOTATIONS

This section requires property that is subject to valuation; property constitutionally exempt from property taxes is not to be valued for property tax purposes. Lovelace Center for Health Sciences v. Beach, 93 N.M. 793, 606 P.2d 203 (Ct. App. 1980).

Electric transmission equipment not real estate for tax purposes. - Electric transmission and distribution substation equipment, consisting of transformers, switches and circuit breakers, is not real estate for taxation purposes since it is readily portable and has very little, if any, annexation or adaptation. Southwestern Pub. Serv. Co. v. Chaves County, 85 N.M. 313, 512 P.2d 73 (1973).

Electric transmission lines, poles, line transformers, meters and such equipment frequently located on easements and public rights-of-way are not real estate for taxation purposes since they are changed or relocated frequently and are located on unowned land. Southwestern Pub. Serv. Co. v. Chaves County, 85 N.M. 313, 512 P.2d 73 (1973).

Steam production equipment as real estate for tax purposes. - Steam production equipment, consisting of turbines, boilers, pumps and fans, is real estate for taxation purposes since the utility company installed and maintained such equipment on special foundations and could not foresee moving it because of its huge size and weight and such equipment was the very heart of the company's business. Southwestern Pub. Serv. Co. v. Chaves County, 85 N.M. 313, 512 P.2d 73 (1973).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation § 1082.

Recovery of tax paid on exempt property, 25 A.L.R.4th 186.

84 C.J.S. Taxation § 638.

7-38-40. Claims for refund; civil action.

A. Claims for refund shall be filed by the property owner as a civil action in the district court for the county in which the valuation was determined if the property was locally valued or in the district court for Santa Fe county if valued by the division. Claims shall:

(1) be filed against the director as party defendant if the property was valued by the division or against the county as party defendant if the property was valued by the

assessor and shall be filed no later than the sixtieth day after the first installment of the property tax for which a claim for refund is made is due;

(2) state the property owner's name and address and the name and address of any person other than the property owner to whom the tax bill was sent;

(3) state the basis of the claim for refund;

(4) state the amount of the refund to which the property owner believes he is entitled, the amount of property taxes admitted as legally due and the property taxes paid; and

(5) demand the refund to him of the amount to which he claims entitlement.

B. The director shall notify the appropriate county treasurer immediately when a claim for refund is filed against the director.

C. The property owner, the county or the director may appeal to the court of appeals from any final decision or order of the district court in a claim for refund case in which they are parties.

D. Upon the final determination of the property owner's claim filed against the director, the director shall send a copy of the final order to the county treasurer and shall order the county assessor to change the valuation records to clearly reflect the final determination of the property owner's claim. The division shall change its valuation records accordingly.

E. Upon the final determination of the property owner's claim filed against the county, the treasurer shall send a copy of the final order to the county assessor and to the director. The county assessor and the division shall change their respective valuation records to clearly reflect the final determination of the property owner's claim.

History: 1953 Comp., § 72-31-40, enacted by Laws 1973, ch. 258, § 80; 1974, ch. 92, § 14; 1982, ch. 28, § 17.

ANNOTATIONS

This section requires property that is subject to valuation; property constitutionally exempt from property taxes is not to be valued for property tax purposes. Lovelace Center for Health Sciences v. Beach, 93 N.M. 793, 606 P.2d 203 (Ct. App. 1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 1077 to 1079.

Propriety of class action in state courts to recover taxes, 10 A.L.R.4th 655.

Recovery of tax paid on exempt property, 25 A.L.R.4th 186.

84 C.J.S. Taxation §§ 633, 639.

7-38-41. Protested property taxes; suspense fund; refunds; interest.

A. Each county treasurer shall establish a fund to be known as the "property tax suspense fund." The portion of any property taxes paid to the county treasurer that is not admitted to be due and is the subject of a claim for refund shall be deposited in this fund.

B. The fund shall be invested in interest-earning securities, accounts or deposits that are legal investments for county funds under the law and regulations of the department of finance and administration. The county treasurer shall keep records of interest earned by the investment of the fund.

C. If a property owner's property taxes are reduced as a result of a decrease in value of the property taxed, a change in the classification, a change in the allocation of the value of the property to a particular governmental unit or granting of a claim for an exemption ordered by a court after a claim for refund, the portion of the property taxes in controversy found to be in excess of the amount legally due and paid shall be refunded by the county treasurer to the property owner. The refund shall be made within fifteen days after the county treasurer receives a copy of the final order relating to the protest. The amount of property taxes in controversy found to be legally due and paid shall be distributed to the appropriate governmental units in accordance with the distribution regulations of the department of finance and administration. All payments authorized under this section shall be made from the property tax suspense fund.

D. In addition to the payments authorized under Subsection C of this section, the county treasurer shall pay to the property owner and the governmental units their pro rata share of interest earned by the protested taxes computed by applying the earned interest rate of the fund to the principal amounts of refund and distribution for the period of time from the date of payment into the fund until a date not more than thirty days prior to the date the actual refund payment and distribution payment are made. Payments are considered made on the date a refund payment is mailed or delivered to the property owner and on the date a transfer occurs on the county treasurer's books showing a distribution payment.

E. The department of finance and administration may authorize the transfer of any surplus interest accruing in the property tax suspense fund to the county general fund at the close of the fiscal year.

History: 1953 Comp., § 72-31-41, enacted by Laws 1973, ch. 258, § 81; 1974, ch. 92, § 15; 1981, ch. 37, § 78.

ANNOTATIONS

Section authorizes refunds upon decrease or change in property value. - This section authorizes refunds only when property taxes are reduced as a result of a decrease in value of the property taxed or a change in the allocation of the value of the property to a particular governmental unit. It does not authorize a refund of property taxes paid on property that was constitutionally exempt from taxation and, thus, was not to be valued for property tax purposes. Lovelace Center for Health Sciences v. Beach, 93 N.M. 793, 606 P.2d 203 (Ct. App. 1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Interest on tax refunds: right to, 88 A.L.R.2d 823.

7-38-42. Collection and receipt of and accounting for property taxes; application of receipts to delinquent taxes.

A. The county treasurer has the responsibility and authority for collection of taxes and any penalties or interest due under the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] except for the collection of delinquent taxes, penalties and interest authorized to be collected by the department under Section 7-38-62 NMSA 1978.

B. Property taxes, penalties and interest collected shall be receipted and accounted for in accordance with law and regulations of the department of finance and administration.

C. Any payments received by the treasurer or the department as payments for property taxes, penalties or interest shall be first applied to the oldest outstanding unpaid property taxes, penalties or interest accrued in prior property tax years on the property identified and described in the property tax bill for which payment is tendered or, if the payment cannot be identified with a particular year's property tax bill, then the payment shall be applied first to the oldest liability for property taxes, penalties and interest shown in the treasurer's records under the name of the paying taxpayer. In applying the foregoing requirements for applications of payments and in the adoption of any regulations to implement those provisions the following additional rules shall apply:

(1) applications of payments to prior year's [years'] delinquent taxes, penalties and interest shall not be made for more than ten years prior to the year of payment unless the treasurer's records show that the property for which taxes are delinquent has been deeded to the state of New Mexico and that property has not been sold by the state pursuant to applicable law;

(2) after application of payment received, if all or part of the payment has been applied to a prior year's delinquent taxes, penalties or interest, the receipting authority shall issue a receipt to the paying taxpayer showing the application of the payment and indicating any balance due for taxes, penalties or interest to bring the property tax payment status current; and

(3) the failure of a receipting authority to apply a payment as required under this subsection or the failure to issue a required receipt to the taxpayer of the status of his

account shall not relieve the taxpayer of liability for taxes, penalties or interest he would otherwise be required to pay nor does action or inaction by the receipting authority act to estop the collecting authority from taking any action to collect or enforce the payment of taxes, penalties and interest legally due.

History: Laws 1979, ch. 343, § 1.

ANNOTATIONS

Prior history. - In 1979, Section 7-38-42 NMSA 1979 was repealed and reenacted by Laws 1979, Chapter 343, § 1. For prior history, see 1953 Comp., § 72-31-42, enacted by Laws 1973, ch. 258, § 2.

Payment to county treasurer constitutes payment to state. - Timely payments of delinquent tax to the county treasurer constituted payment to the state since treasurer had apparent if not statutory authority to accept payment of delinquent taxes on property deeded to, but not yet sold by, the state. Tabet v. Campbell, 101 N.M. 334, 681 P.2d 1111 (1984).

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, created prior to 1930 and embracing land situate in four or more counties, shall be deposited in the county general fund at the times and in the manner required by regulations of the department of finance and administration. Penalties and interest collected by the county treasurer as agent of the department under Section 7-38-62 NMSA 1978 shall be remitted to the department at the times and in the manner required by regulations of the department of finance and administration.

History: 1953 Comp., § 72-31-43, enacted by Laws 1973, ch. 258, § 83; 1990, ch. 22, § 4; 1995, ch. 75, § 1.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, inserted "with the" preceding "regulations" in the first sentence, substituted "other than as an agent of the department under Section 7-38-62 NMSA 1978" for "or received by him as a distribution under 72-31-63 NMSA 1953" in the second sentence, and added the third sentence.

The 1995 amendment, effective June 16, 1995, inserted the language in the second sentence beginning "and other than penalties and interest" and ending "four or more counties".

Applicability. - Laws 1995, ch. 75, § 3 makes the provisions of this act applicable to penalties and interest collected in the 1994 and subsequent property tax years.

Conservancy Act of New Mexico. - See 73-14-1 NMSA 1978 and notes thereto.

7-38-44. Special procedures for administration of taxes on personal property when probable removal of property from state will jeopardize collection of taxes.

A. If the director or a county assessor has reasonable cause to believe that personal property, other than livestock, subject to valuation by him for property taxation purposes in a tax year will be removed from the state or the county, respectively, before the taxes for that year are due and that the removal of the property will jeopardize the collection of the tax, he may, for property subject to valuation by him:

(1) proceed immediately to determine the value of the property and send a notice of valuation to the property owner;

(2) at any time after sending the notice of valuation proceed to determine the taxes due on the property by using the prior year's tax rates if the current year's tax rates have not been set and prepare and mail or deliver a property tax bill to the property owner and proceed to collect the taxes immediately; and

(3) issue a demand warrant and proceed to collect unpaid taxes as delinquent taxes under the provisions of Sections 7-38-53 through 7-38-59 NMSA 1978 if taxes are not paid upon demand.

B. Payment of taxes determined on the basis of the prior year's tax rates under this section constitutes full payment of the taxes on the property involved for the current tax year.

History: 1953 Comp., § 72-31-44, enacted by Laws 1973, ch. 258, § 84; 1974, ch. 92, § 16.

7-38-45. Special provisions relating to administration of taxes on livestock.

A. The New Mexico livestock board shall furnish to the department who shall forward to the county assessor of each county information obtained by it about the number, name and address of owner, description, movement, origin and destination of livestock being moved into or from any county. All such information shall be sent in duplicate to the

county assessor into or from whose county livestock are being moved. Upon receipt of the information, the assessor shall send the duplicate to the department with a notation indicating the date on which it was received. The livestock board report made under this section fulfills the livestock owner's responsibility to make a report of the livestock under Section 7-36-21 NMSA 1978.

B. Notwithstanding any other provision in the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] to the contrary, either the county assessor or the director may:

(1) determine the value of livestock for property taxation purposes at any time the livestock are subject to valuation under the Property Tax Code whether or not the owner of the livestock or any other person has reported them for valuation;

(2) issue a notice of valuation of livestock at any time after a determination of valuation has been made of livestock for property taxation purposes;

(3) prepare and deliver a tax bill and collect taxes on livestock at any time after a notice of valuation has been issued when there is reasonable cause to believe that it would jeopardize the collection of the taxes if the regular tax collection cycle in the Property Tax Code was followed; and

(4) issue a demand warrant to enforce collection of taxes on livestock as delinquent taxes if there is reasonable cause to believe that the livestock may be moved out of the state prior to the payment of taxes, and proceed to collect the taxes as delinquent taxes by sale of the livestock in accordance with Sections 7-38-53 through 7-38-59 NMSA 1978.

C. In the preparation of a tax bill under this section, the assessor or director may determine the tax due on the basis of the prior year's tax rates if the current year's tax rates have not yet been set. Taxes determined on livestock under this section are due when the tax bill is delivered to the owner or the person in charge of the livestock and are delinquent if not paid upon demand. Payment of taxes determined on the basis of the prior year's tax rates constitutes full payment of the taxes on the livestock for the current tax year.

History: 1953 Comp., § 72-31-45, enacted by Laws 1973, ch. 258, § 85; 1974, ch. 92, § 17.

ANNOTATIONS

Compiler's notes. - Pursuant to Laws 1977, ch. 256, § 3, the livestock board is attached to the New Mexico department of agriculture.

7-38-46. Delinquent property taxes.

A. Property taxes that are not paid within thirty days after the date on which they are due are delinquent unless a timely protest has been made under Sections 7-38-22 and 7-38-24 NMSA 1978, and in that case the amount of taxes attributable to the net taxable value of the property that is not in controversy becomes delinquent if not paid within thirty days after the due date.

B. If property taxes would have otherwise been delinquent but for a timely protest having been made under Sections 7-38-22 and 7-38-24 NMSA 1978, property taxes are also delinquent if the property owner:

(1) fails to pay his taxes or to appeal after a decision of a county valuation protests board, the director or a court within the time allowed for an appeal; or

(2) fails to pay his taxes as ordered within ten days after the entry of a final order resulting from a timely protest when that order is not appealable.

C. If a timely protest has been made under Sections 7-38-22 and 7-38-24 NMSA 1978, property taxes are also delinquent if the property owner fails to pay his taxes within thirty days after the date on which they are due if that date is later than the dates determined under Paragraph (1) or (2) of Subsection B of this section.

D. Notice of the date when taxes become delinquent must be published in a newspaper of general circulation within the county at least once a week for the three weeks immediately preceding the week in which the delinquency date for first and second installments of property taxes due occurs. Each county treasurer shall cause the notice to be published for his county.

History: 1953 Comp., § 72-31-46, enacted by Laws 1973, ch. 258, § 86; 1982, ch. 28, § 18.

7-38-47. Property taxes are personal obligation of owner of property.

Property taxes imposed are the personal obligation of the person owning the property on the date on which the property was subject to valuation for property taxation purposes and a personal judgment may be rendered against him for the payment of property taxes that are delinquent together with any penalty and interest on the delinquent taxes. The sale or transfer of property after its valuation date does not relieve the former owner of personal liability for the property taxes imposed for that tax year.

History: 1953 Comp., § 72-31-47, enacted by Laws 1973, ch. 258, § 87.

ANNOTATIONS

County treasurer has no authority to enforce property tax lien. - A county treasurer does not have the authority to file suit to enforce a personal obligation of owners of real

property for the collection of delinquent property taxes. The intent of the legislature is to place the authority to enforce the personal obligation provision of this section and the authority to proceed against property subject to a statutorily created tax lien in the taxation and revenue department only. Colfax County v. Angel Fire Corp. 115 N.M. 146, 848 P.2d 532 (1993).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation § 836.

84 C.J.S. Taxation § 643.

7-38-48. Property taxes are a lien against real property from January 1; priorities; continuance of taxing process.

Taxes on real property are a lien against the real property from January 1 of the tax year for which the taxes are imposed. The lien runs in favor of the state and secures the payment of taxes on the real property and any penalty and interest that becomes due. The lien continues until the taxes and any penalty and interest are paid. The lien created by this section is a first lien and paramount to any other interest in the property, perfected or unperfected. The annual taxing process provided for in the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] shall continue as to any particular property regardless of prior tax delinquencies or of pending protests, actions for refunds or other tax controversies involving the property, including a sale for delinquent taxes.

History: 1953 Comp., § 72-31-48, enacted by Laws 1973, ch. 258, § 88; 1974, ch. 92, § 18.

ANNOTATIONS

Cross references. - For property tax liens on mobile homes, see 7-38-52 and 66-3-204 NMSA 1978.

Lien arises by operation of law. - The lien under this section arises by operation of law and is not dependent upon a filing of notice of lien for its creation and effect against purchasers. Cano v. Lovato, 105 N.M. 522, 734 P.2d 762 (Ct. App. 1986).

Lien not governed by recording act. - A tax lien is not within the class of written instruments governed by 14-9-3 NMSA 1978, relating to effect of unrecorded instruments. Cano v. Lovato, 105 N.M. 522, 734 P.2d 762 (Ct. App. 1986).

County treasurer has no authority to enforce property tax lien. - A county treasurer does not have the authority to file suit to enforce a personal obligation of owners of real property for the collection of delinquent property taxes. The intent of the legislature is to place the authority to enforce the personal obligation provision of 7-38-47 NMSA 1978 and the authority to proceed against property subject to a statutorily created tax lien in

the taxation and revenue department only. Colfax County v. Angel Fire Corp. 115 N.M. 146, 848 P.2d 532 (1993).

7-38-49. Unpaid property taxes; imposition of interest.

If property taxes are not paid for any reason within thirty days after the date they are due, interest on the unpaid taxes shall accrue from the thirtieth day after they are due until the date they are paid. Interest shall accrue at the rate of one percent a month or any fraction of a month. Interest shall accrue whether or not protests have been resolved. However, in the case of a timely protest, interest payable shall be computed on a principal amount equal to the unpaid taxes finally determined to be due upon resolution of the protest. Interest shall not be imposed on interest or on any penalty.

History: 1953 Comp., § 72-31-49, enacted by Laws 1973, ch. 258, § 89.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 856, 858, 891 to 903.

Interest of spouse in estate by entireties as subject to satisfaction of his or her individual debt, 75 A.L.R.2d 1172.

84 C.J.S. Taxation §§ 585 to 606.

7-38-50. Delinquent taxes; civil penalties.

A. If property taxes become delinquent, a penalty of one percent of the delinquent taxes for each month or any portion of a month they remain unpaid shall be imposed, but the total penalty shall not exceed five percent of the delinquent taxes except that, when the penalty determined under the foregoing provisions of this subsection is less than five dollars ($5.00), the penalty to be imposed shall be five dollars ($5.00). A county may suspend for a particular tax year application of the minimum penalty requirements of this subsection by resolution of its county commissioners adopted not later than September 1 of that tax year. A copy of any such resolution shall be forwarded to the county treasurer.

B. If property taxes become delinquent because of an intent to defraud by the property owner, fifty percent of the property taxes due or fifty dollars ($50.00), whichever is greater, shall be added as a penalty.

History: 1953 Comp., § 72-31-50, enacted by Laws 1973, ch. 258, § 90; 1975, ch. 20, § 1; 1976, ch. 14, § 1; 1982, ch. 28, § 19.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation § 856.

7-38-51. Notification to property owner of delinquent property taxes.

A. In respect to any tax that is delinquent for more than thirty days as of June 30 of each year, the county treasurer shall mail a notice of delinquency to:

(1) the owner of the property as shown on the property tax schedule at the address of the owner as shown on the most recent property tax schedule; and

(2) any person other than the owner to whom the tax bill on the property was sent.

B. The notice required by this section shall be in a form and contain the information prescribed by division regulations and shall include at least the following:

(1) a description of the property upon which the property taxes are due;

(2) a statement of the amount of property taxes due, the date on which they became delinquent, the rate of accrual of interest and any penalties that may be charged;

(3) a statement that if the property taxes due on real property are not paid within three years from the date of delinquency, the real property will be sold and a deed issued by the division; and

(4) a statement that if property taxes due on personal property are not paid, the personal property may be seized and sold for taxes under authority of a demand warrant.

History: 1953 Comp., § 72-31-51, enacted by Laws 1973, ch. 258, § 91; 1974, ch. 92, § 19; 1982, ch. 28, § 20.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation § 860.

7-38-52. Notification to motor vehicle division of unpaid property taxes on manufactured homes; notice of filing constitutes lien on vehicle.

A. In the preparation of the tax delinquency notices, the county treasurer shall ascertain those persons who have failed to pay taxes on manufactured homes.

B. In addition to the information required under Section 7-38-51 NMSA 1978, delinquency notices sent to the persons determined under Subsection A of this section shall include the location and vehicle identification number of the manufactured home.

C. A copy of the delinquency notice of unpaid taxes on a manufactured home shall be sent to the motor vehicle division of the department. Upon receipt and filing of the notice by the motor vehicle division, the unpaid taxes, penalty and interest constitute a security interest in and a lien on the vehicle in accordance with Section 66-3-204 NMSA 1978. The delinquency notice sent to the owner of the manufactured home shall notify the owner of the mailing of the copy of the notification to the motor vehicle division and of the legal effect of the filing of the notice by that division.

D. When the delinquent taxes, penalty and interest are fully paid, the county treasurer shall certify the fact of payment and shall prepare a notification of certified payment. The original notification shall be sent to the motor vehicle division of the department, and a copy shall be sent to the owner of the manufactured home.

E. The lien provided for in this section is in addition to any other remedy available to the state for the collection of delinquent property taxes.

History: 1953 Comp., § 72-31-52, enacted by Laws 1973, ch. 258, § 92; 1974, ch. 92, § 20; 1983, ch. 295, § 3; 1991, ch. 166, § 9.

ANNOTATIONS

The 1991 amendment, effective June 14, 1991, deleted "transportation" preceding "department" in the first sentence in Subsection C and in the second sentence in Subsection D and made a minor stylistic change in Subsection C.

7-38-53. Collection of delinquent property taxes on personal property; assertion of claim against personal property.

A county treasurer may collect delinquent property taxes on personal property by asserting a claim against the owner's personal property for which taxes are delinquent. A claim shall be asserted by service of a demand warrant by the county treasurer, an employee of his office designated by him or the county sheriff upon any person in possession of the personal property subject to the claim.

History: 1953 Comp., § 72-31-53, enacted by Laws 1973, ch. 258, § 93.

7-38-54. Demand warrant; contents.

A demand warrant shall:

A. contain a statement of the authority for its issuance and service;

B. identify the property owner, the amount of the delinquent taxes on his personal property and the date on which the taxes were due;

C. describe the personal property subject to the tax and the demand warrant;

D. order the person on whom it is served to:

(1) reveal the amount of personal property in his possession that is described in the demand warrant;

(2) state the extent of his and any other person's interest in the personal property;

(3) reveal the amount and kind of the property owner's personal property described in the demand warrant that are in the possession of other persons; and

(4) surrender the personal property described in the demand warrant and in his possession;

E. state the penalties for failure to comply with the terms of the warrant; and

F. be signed by the county treasurer.

History: 1953 Comp., § 72-31-54, enacted by Laws 1973, ch. 258, § 94; 1974, ch. 92, § 21.

7-38-55. Surrender of personal property; penalty for refusal.

A. Any person in the possession of personal property subject to claim for delinquent taxes and upon whom service of a demand warrant has been made must surrender the personal property to the county treasurer. However, that part of the personal property which is the subject of a bona fide attachment, execution or other similar process need not be surrendered unless the property is released from the attachment, execution or other similar process.

B. Any person who wrongfully fails or refuses to surrender personal property is personally liable for an amount equal to the value of the personal property not surrendered or the amount of the delinquent taxes, penalties and interest on that property, whichever is less.

History: 1953 Comp., § 72-31-55, enacted by Laws 1973, ch. 258, § 95.

7-38-56. Release of personal property seized.

The county treasurer may release all or part of the personal property seized if he determines that the release will facilitate the collection of the delinquent taxes. However,

the release does not prevent the assertion of any subsequent claim against the property owner's personal property.

History: 1953 Comp., § 72-31-56, enacted by Laws 1973, ch. 258, § 96.

7-38-57. Notice of sale of personal property.

A. As soon as practical after the seizure of personal property, but at least ten days before any proposed sale, the county treasurer shall notify the property owner by certified mail of the amount and kind of personal property seized and that the personal property will be sold for delinquent taxes on his personal property unless the taxes, penalties and interest are paid prior to the time of the sale.

B. The notice shall also state the amount of taxes, penalties and interest due, the time and place of the sale and any other information the department may require by regulation.

C. The treasurer shall make a diligent inquiry as to the identity and whereabouts of other persons having an interest in the property seized and provide them with the same notice given the property owner.

D. Failure to receive the notice of sale does not affect the validity of the sale.

History: 1953 Comp., § 72-31-57, enacted by Laws 1973, ch. 258, § 97; 1974, ch. 92, § 22.

ANNOTATIONS

Cross references. - For mailing of notices, see 7-38-84 NMSA 1978.

7-38-58. Personal property sale requirements.

A. The county treasurer must offer for sale all personal property seized by a demand warrant within sixty days of the date it is seized.

B. Notice of the sale must be published in a newspaper of general circulation within the county where the personal property is to be sold at least once a week for the three weeks immediately preceding the week of the sale. The notice shall state the time and place of the sale and describe the personal property to be sold. The treasurer shall make a special effort to give notice of the sale to persons with a particular interest in special property and, apart from the requirements stated above, shall advertise the sale in a manner appropriate to the kind of property being sold.

C. Personal property must be sold at public auction either by the treasurer or an auctioneer hired by him. The auction shall be held at a time and place designated by the treasurer.

D. If a property owner's personal property is not sufficiently divisible to enable the treasurer to sell part of it and extinguish the tax delinquency, the treasurer may sell all of the personal property to extinguish the delinquency and return the remaining proceeds to the property owner.

E. Before the sale, the treasurer shall determine a minimum sale price for the personal property. In determining the minimum price, the treasurer shall consider the value of the property owner's interest in the personal property, the amount of delinquent taxes, penalties and interest for which it is being sold and the expenses of the sale. Personal property may not be sold for less than the minimum price unless no offer met the minimum price when it was offered at an earlier public auction.

F. Payment must be made in full and must be made immediately after an offer is accepted.

G. If, prior to the time of the sale, the property owner pays his personal property taxes, penalties and interest due and any costs incurred in preparing for the sale, or makes satisfactory arrangements with the treasurer for the payment of these amounts, the treasurer shall return his personal property to him.

History: 1953 Comp., § 72-31-58, enacted by Laws 1973, ch. 258, § 98; 1974, ch. 92, § 23.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - Effect of misnomer of landowner or delinquent taxpayer in notice, advertisement, etc., of tax foreclosure or sale, 43 A.L.R.2d 967.

Omissions: validity of notice of tax sale or of tax sale proceeding which fails to state tax year or kind or type of taxes covered by tax assessments, 43 A.L.R.2d 988.

Inclusion or exclusion of first and last days in computing the time for performance of an act or event which must take place a certain number of days before a known future date, 98 A.L.R.2d 1331.

84 C.J.S. Taxation § 695.

7-38-59. Certificates of sale; effect of certificates of sale.

A. Upon receiving payment for the personal property sold, the county treasurer shall execute and deliver a certificate of sale to the purchaser.

B. A certificate of sale:

(1) is prima facie evidence of the treasurer's right to make the sale and conclusive evidence of the regularity of all proceedings relating to the sale;

(2) transfers all of the former property owner's interest in the personal property as of the date of sale. The purchaser takes the personal property free of any unrecorded or unfiled interests unknown to him at the time of sale; and

(3) shall be in a form prescribed by regulation of the department.

History: 1953 Comp., § 72-31-59, enacted by Laws 1973, ch. 258, § 99.

7-38-60. Notification to property owner of delinquent taxes.

By June 10 of each year, the county treasurer shall mail a notice to each property owner of property for which taxes have been delinquent for more than two years. The notice shall be in a form and contain the information prescribed by department regulations and shall include the following:

A. a description of the property upon which the taxes are due;

B. a statement of the amount of property taxes due, the date on which they became delinquent, the rate of accrual of interest and any penalties or costs that may be charged;

C. a statement that the delinquent tax account on real property will be transferred to the department for collection;

D. a statement that if taxes due on real property are not paid within three years from the date of delinquency, the real property will be sold and a deed issued; and

E. a statement that if taxes due on personal property are not paid, the personal property may be seized and sold for taxes under authority of a demand warrant.

History: 1953 Comp., § 72-31-61, enacted by Laws 1973, ch. 258, § 101; 1978 Comp., § 7-38-61, recompiled as 1978 Comp., § 7-38-60 by Laws 1982, ch. 28, § 21; 1997, ch. 124, § 1.

ANNOTATIONS

The 1997 amendment substituted "department" for "division" throughout the section and inserted "real property" in Subsection C. Laws 1997, ch. 124 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Recompilations. - Laws 1982, ch. 28, § 22, recompiles former 7-38-60 NMSA 1978, relating to property taxes delinquent for more than two years, as 7-38-61 NMSA 1978.

Applicability. - Laws 1997, ch. 124, § 4 makes the act applicable to 1998 and subsequent tax years.

7-38-61. Real property taxes delinquent for more than two years; treasurer to prepare delinquency list; notation on property tax schedule.

A. By July 1 of each year, the county treasurer shall prepare a property tax delinquency list of all real property for which taxes have been delinquent for more than two years. The tax delinquency list shall contain the information and be in a form prescribed and submitted by the date required by department regulations. The county treasurer shall record the tax delinquency list in the office of the county clerk. There shall be no recording fee for recordation of the tax delinquency list. The updated final property tax sale list shall be recorded with the office of the county clerk the day following the sale of the property. There shall be no recording fee for recordation of the final property tax sale list.

B. The county treasurer shall make a notation on the property tax schedule indicating that the account has been transferred to the department for collection at the time the tax delinquency list is mailed to the department.

History: 1953 Comp., § 72-31-60, enacted by Laws 1973, ch. 258, § 100; 1977, ch. 177, § 1; 1980 ch. 100, § 1; 1978 Comp., § 7-38-60, recompiled as 1978 Comp., § 7-38-61 by Laws 1982, ch. 28, § 22; 1997, ch. 124, § 2.

ANNOTATIONS

The 1997 amendment substituted "department" for "division" throughout the section, added "Real" at the beginning of the section heading, and in Subsection A, inserted "real" in the first sentence and added the third sentence. Laws 1997, ch. 124 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Recompilations. - Laws 1982, ch. 28, § 21, recompiles former 7-38-61 NMSA 1978, relating to notification to property owner of delinquent taxes, as 7-38-60 NMSA 1978.

Applicability. - Laws 1997, ch. 124, § 4 makes the act applicable to 1998 and subsequent tax years.

7-38-62. Authority of department to collect delinquent property taxes after receipt of tax delinquency list; use of penalties, interest and costs.

After the receipt of the tax delinquency list, the department has the responsibility and exclusive authority to take all action necessary to collect delinquent taxes shown on the list. This authority includes bringing collection actions in the district courts based upon the personal liability of the property owner for taxes as well as the actions authorized in the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] for proceeding against the property subject to the tax for collection of delinquent taxes. Payment of delinquent taxes listed and any penalty, interest or costs due in connection with those taxes shall be made to the department if occurring after the receipt by the department of the tax delinquency list; however, the department may authorize county treasurers to act as its agents in accepting payments of taxes, penalties, interest or costs due. Penalties, interest and costs due received by the department under this section shall be retained by the department for use, subject to appropriation by the legislature, in the administration of the Property Tax Code.

History: 1953 Comp., § 72-31-62, enacted by Laws 1973, ch. 258, § 102; 1990, ch. 22, § 5.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, added "use of penalties, interest and costs" in the catchline and added the final sentence.

Applicability. - Laws 1990, ch. 22, § 13 makes the provisions of the act applicable to the 1990 and subsequent property tax years.

Payment to county treasurer constitutes payment to state. - Timely payments of delinquent tax to the county treasurer constituted payment to the state since treasurer had apparent if not statutory authority to accept payment of delinquent taxes on property deeded to, but not yet sold by, the state. Tabet v. Campbell, 101 N.M. 334, 681 P.2d 1111 (1984).

7-38-63. Payment of delinquent taxes to the department; distribution.

At the time of payment to the department of delinquent taxes, interest and penalties, the department shall issue a receipt to the property owner for the payment of delinquent taxes, penalties and interest. A duplicate of the receipt shall be mailed to the county treasurer together with a remittance of the property taxes paid. When the county treasurer receives the remittance of the taxes and the duplicate receipt, the treasurer shall make a notation of the payment of the property taxes, penalties and interest on the property tax schedule and shall distribute the property taxes to the appropriate

governmental units in accordance with the regulations of the department of finance and administration.

History: 1953 Comp., § 72-31-63, enacted by Laws 1973, ch. 258, § 103; 1979, ch. 373, § 1; 1990, ch. 22, § 6.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, substituted "department" for "division" in the section heading and in two places in the first sentence, deleted "penalties and interests" following "taxes" in the second and third sentences and, in the third sentence, inserted "of the property taxes, penalties and interests" and made a minor stylistic change.

Applicability. - Laws 1990, ch. 22, § 13 makes the provisions of the act applicable to the 1990 and subsequent property tax years.

7-38-64. Repealed.

ANNOTATIONS

Repeals. - Laws 1997, ch. 124, § 3 repeals 7-38-64 NMSA 1978, as enacted by Laws 1973, ch. 258, § 104, relating to the authority of the department to sell personal property for delinquent taxes. For provisions of former section, see 1995 Replacement Pamphlet. Laws 1997, ch. 124 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective June 20, 1997, 90 days after adjournment of the legislature. See Volume 14 NMSA 1978 for "Adjournment Dates of Sessions of Legislature" table.

Applicability. - Laws 1997, ch. 124, § 4 makes the act applicable to 1998 and subsequent tax years.

7-38-65. Collection of delinquent taxes on real property; sale of real property.

A. The department may collect delinquent taxes on real property by selling the real property on which the taxes have become delinquent. The sale of real property for delinquent taxes shall be in accordance with the provisions of the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978]. Real property may be sold for delinquent taxes at any time after the expiration of three years from the first date shown on the tax delinquency list on which the taxes became delinquent. Real property shall be offered for sale for delinquent taxes either within four years after the first date shown on the tax delinquency list on which the taxes became delinquent or, if the department is barred by operation of law or by order of a court of competent jurisdiction from offering the property for sale for delinquent taxes within four years after the first date shown on the tax delinquency list on which the taxes became delinquent, within one year from the

time the department determines that it is no longer barred from selling the property, unless:

(1) all delinquent taxes, penalties, interest and costs due are paid by the date of the sale; or

(2) an installment agreement for payment of all delinquent taxes, penalties, interests and costs due is entered into with the department by the date of the sale pursuant to Section 7-38-68 NMSA 1978.

B. Failure to offer property for sale within the time prescribed by Subsection A of this section shall not impair the validity or effect of any sale which does take place.

History: 1953 Comp., § 72-31-65, enacted by Laws 1973, ch. 258, § 105; 1983, ch. 215, § 3; 1985, ch. 109, § 9; 1985, ch. 226, § 1; 1990, ch. 22, § 7.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, in Subsection A, substituted "department" for "division" in the first sentence and in Paragraph (2) and rewrote the fourth sentence which read "Real property must be offered for sale for delinquent taxes within four years after the first date shown on the tax delinquency list on which the taxes became delinquent, unless".

Applicability. - Laws 1990, ch. 22, § 13 makes the provisions of the act applicable to the 1990 and subsequent property tax years.

Validating clauses. - Laws 1985, ch. 226, § 2 declares that any sale of real property for delinquent taxes which would have been valid had this act been in effect at the time of the sale is validated, and the sale shall be deemed in compliance with 7-38-65 NMSA 1978.

Purpose of statutes on tax deeds is to give a measure of certainty and security to tax titles. First Nat'l Bank v. State, 77 N.M. 695, 427 P.2d 225 (1967).

Tax deeds prima facie valid. - Since tax deeds attacked were signed by the proper officials, they were prima facie valid unless some departure from statutory mandates, which made the conveyance a nullity and void, was established. The burden in this respect was on the state in order to overcome the prima facie effect granted the deeds by former 72-8-43, 1953 Comp. First Nat'l Bank v. State, 77 N.M. 695, 427 P.2d 225 (1967).

Tax deed issued before period of redemption has expired is void. First Nat'l Bank v. State, 77 N.M. 695, 427 P.2d 225 (1967).

State is not an "owner" neither is it "person entitled to redeem." First Nat'l Bank v. State, 77 N.M. 695, 427 P.2d 225 (1967).

State has no standing to assert rights of owner. - The rights preserved in the statutes are rights of "owners" as that term is interpreted, and the state cannot bring itself within the protection of the sections. Unless the conveyances were void and a nullity, the state has no standing to assert rights given by statute to "owners" or "persons entitled to redeem." First Nat'l Bank v. State, 77 N.M. 695, 427 P.2d 225 (1967).

State in no better position than other strangers. - The state is in no better position to avoid its tax deeds or to claim deprivation of rights guaranteed by statute to the prior owner than would be some other stranger to the right. First Nat'l Bank v. State, 77 N.M. 695, 427 P.2d 225 (1967).

Failure of proper notice would not invalidate sale. - If a valid assessment and levy had been made of the taxes, the county treasurer's failure to give a proper notice would not invalidate the tax sales. The neglect to give a proper notice or failure to give any notice at all would not discharge the tax or present a valid obstacle to the collection thereof. Greene v. Esquibel, 58 N.M. 429, 272 P.2d 330 (1954).

Continuity of adverse possession interrupted where land forfeited for taxes. - If, during the running of the statute of limitations in favor of the adverse occupant of land, the land is forfeited to the state for taxes, the general rule is that continuity of possession is interrupted for the reason that the statute of limitations does not run against the state in the absence of some special provision to that effect. Greene v. Esquibel, 58 N.M. 429, 272 P.2d 330 (1954).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Easement, servitude, or covenant as affected by sale for taxes, 7 A.L.R.5th 187.

7-38-66. Sale of real property for delinquent taxes; notice of sale.

A. At least twenty days but not more than thirty days before the date of the sale for delinquent taxes, the department shall notify by certified mail, return receipt requested, to the address as shown on the most recent property tax schedule, each property owner whose real property will be sold that the owner's real property will be sold to satisfy delinquent taxes unless:

(1) all delinquent taxes, penalties, interest and costs due are paid by the date of the sale; or

(2) an installment agreement for payment of all delinquent taxes, penalties, interest and costs due is entered into with the department by the date of sale in accordance with Section 7-38-68 NMSA 1978.

B. The notice shall also:

(1) state the amount of taxes, penalties, interest and costs due;

(2) state the time and place of the sale;

(3) describe the real property that will be sold; and

(4) contain any other information that the department may require by regulation.

C. At the same time a notice required by Subsection A of this section is sent to the owner of the property, a notice containing the information set out in Subsection B of this section shall also be sent to each person holding a lien or security interest of record in the property if an address for such person is reasonably ascertainable through a search of the property records of the county in which the property is located.

D. Failure of the department to mail a required notice by certified mail, return receipt requested, shall invalidate the sale; provided, however, that return to the department of the notice of the return receipt shall be deemed adequate notice and shall not invalidate the sale.

E. Proof by the taxpayer that all delinquent taxes, penalties, interest and costs had been paid prior to the date of sale shall prevent or invalidate the sale.

F. Proof by the taxpayer that the taxpayer has entered into an installment agreement to pay all delinquent taxes, penalties, interest and costs prior to the date of sale as provided in Section 7-38-68 NMSA 1978 and that timely payments under such agreement are being made shall prevent or invalidate the sale.

History: 1953 Comp., § 72-31-66, enacted by Laws 1973, ch. 258, § 106; 1980, ch. 104, § 1; 1982, ch. 28, § 23; 1983, ch. 215, § 4; 1990, ch. 22, § 8.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, substituted "department" for "division" throughout the section; added Subsection C; redesignated former Subsections C to E as Subsections D to F; rewrote the provisions of Subsection D which read "Failure of the division to mail the notice by certified mail, return receipt requested, or failure of the division to receive the return receipt shall invalidate the sale; provided, however, that the receipt by the division of a return receipt indicating that the taxpayer does not reside at the address shown on the most recent property tax schedule shall be deemed adequate notice and shall not invalidate the sale"; and made numerous minor stylistic changes.

Applicability. - Laws 1990, ch. 22, § 13 makes the provisions of the act applicable to the 1990 and subsequent property tax years.

Due process required. - A tax sale by the division is a taking of property by the government, and the notice of such taking must comply with minimum due process standards under the United States and New Mexico Constitutions. Patrick v. Rice, 112 N.M. 285, 814 P.2d 463 (Ct. App. 1991).

Section 7-38-70C NMSA 1978 subject to notice requirements. - The legislature did not intend to apply 7-38-70C NMSA 1978 (limitation period to challenge tax sale) when the state fails to comply with the notice requirements of this section and federal and state constitutional due process requirements. Hoffman v. State, Taxation & Revenue Dep't, 117 N.M. 263, 871 P.2d 27 (Ct. App. 1994).

Persons to whom notice is necessary. - In keeping with the intent of the legislature to notify "each property owner" of an impending sale of his property, it is implicit that the legislature also intended that holders of record title be notified of the same thing. Brown v. Greig, 106 N.M. 202, 740 P.2d 1186 (Ct. App. 1987).

Due process requires that the state must provide notice of sale to parties whose interest in property would be affected by a tax sale, as long as that information is reasonably ascertainable. Brown v. Greig, 106 N.M. 202, 740 P.2d 1186 (Ct. App. 1987).

When the record owner of three lots orally notified the county assessor that he no longer owned the lots and would not be responsible for the property taxes, that notice did not constitute a waiver of his right to be notified of the subsequent delinquency prior to the tax sales, where the purchaser never recorded his deeds, record owner repurchased the properties, and no documentation, other than the grant of an easement, appeared of record which would have indicated purchaser's interest in the property. Brown v. Greig, 106 N.M. 202, 740 P.2d 1186 (Ct. App. 1987).

Notice requirements in effect at time of sale apply. - A tax sale is controlled by the notice requirements in effect at the time of the sale, not by those in effect when the tax lien arose. Buescher v. Jaquez, 101 N.M. 2, 677 P.2d 615 (1983).

Duty to seek correct address. - Subsection A requires the division to send notice to delinquent taxpayers via certified mail, return receipt requested. This requirement implicitly requires the division to send the notice to the correct address. The division has an affirmative duty to seek out, by "diligent search and inquiry", the correct address of each property owner, and failure to do so may violate due process. Patrick v. Rice, 112 N.M. 285, 814 P.2d 463 (Ct. App. 1991).

Incorrect address immaterial if notice received. - The incorrect address on the envelope is immaterial if the notice actually got to the right address. The statute does not turn on the technical accuracy of the address typed on the envelope, which is merely a delivery vehicle, but upon mailing the notice "to the address" shown on the latest tax schedule. Wine v. Neal, 100 N.M. 431, 671 P.2d 1142 (1983).

There is no basis for voiding a tax sale merely because the proper address was not correctly printed on the notice envelope, where there is no challenge as to whether the notice actually reached the correct address. Wine v. Neal, 100 N.M. 431, 671 P.2d 1142 (1983).

Delivery to be evidenced by verification. - The legislature not only contemplated the giving of notice under Subsection C [now see Subsection D], but, at the very least, actual delivery of such notice to the taxpayer or someone authorized to accept delivery, with such delivery being evidenced by a receipt verifying that some person signed for the letter and received it. This requirement is not met where the division receives the return receipt form marked "unclaimed". State ex rel. Klineline v. Blackhurst, 106 N.M. 732, 749 P.2d 1111 (1988).

Failure to notify rendering sale invalid. - Tax sale was invalid since the owner had sent the county a change of address and the division's attempt to notify the owner of delinquent taxes and of the tax sale failed, due primarily to the county treasurer's initial failure to properly record the owner's new address. Chavez v. Sharvelle, 106 N.M. 793, 750 P.2d 1119 (Ct. App. 1988).

Validity of sale not affected by failure to deliver notice. - Since party did not receive the notices required by former 72-8-30, 1953 Comp., to be mailed to him by the tax commission at least 30 days prior to the actual sale, if such notice was mailed, it was specifically provided in that section that the fact that the notice was not delivered to the addressee would not affect the validity of any subsequent sale. Bailey v. Barranca, 83 N.M. 90, 488 P.2d 725 (1971).

A tax sale will not be invalidated under the curative act for failure to give, or of the taxpayer to receive, notice of taxes due or that redemption time is about to expire. Bailey v. Barranca, 83 N.M. 90, 488 P.2d 725 (1971); Worman v. Echo Ridge Homes Coop. 98 N.M. 237, 647 P.2d 870 (1982).

Failure to give notice does not constitute constructive fraud. - Failure to give notice of a tax sale of land or the failure of taxpayer to receive such notice, standing alone, does not constitute constructive fraud invalidating the tax sale. Lamb v. Manley, 58 N.M. 292, 270 P.2d 706 (1954); Worman v. Echo Ridge Homes Coop. 98 N.M. 237, 647 P.2d 870 (1982).

The failure to send notice of a delinquent tax sale to the record owner, and to red tag the land, does not amount to constructive fraud. Worman v. Echo Ridge Homes Coop. 98 N.M. 237, 647 P.2d 870 (1982).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 904 to 930.

Effect of misnomer of landowner or delinquent taxpayer in notice, advertisement, etc. of tax foreclosure or sale, 43 A.L.R.2d 967.

Omissions: validity of notice of tax sale or of tax sale proceeding which fails to state tax year or kind or type of taxes covered by tax assessments, 43 A.L.R.2d 988.

Inclusion or exclusion of first and last days in computing the time for performance of an act or event which must take place a certain number of days before a known future date, 98 A.L.R.2d 1331.

85 C.J.S. Taxation §§ 744 to 797.

7-38-67. Real property sale requirements.

A. Real property may not be sold for delinquent taxes before the expiration of three years from the first date shown on the tax delinquency list on which the taxes on the real property became delinquent.

B. Notice of the sale must be published in a newspaper of general circulation within the county where the real property is located at least once a week for the three weeks immediately preceding the week of the sale. The notice shall state the time and place of the sale and shall include a description of the real property sufficient to permit its identification and location by potential purchasers.

C. Real property shall be sold at public auction either by the 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 may not be sold for less than the minimum price unless no offer met the minimum price when it was offered at an earlier public auction. A sale properly made under the authority of and in accordance with the requirements of this section constitutes full payment of all delinquent taxes, penalties and interest that are a lien against the property at the time of sale, and the sale extinguishes the lien.

F. Payment 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.

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.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, substituted "department" for "division" throughout the section and substituted "costs" for "expenses of the sale" in Subsection D and in two places in Subsection E.

Notice by publication inadequate for mortgagee. - Notice by publication, in compliance with this section, does not provide a mortgagee of real property with constitutionally adequate notice of a proceeding to sell the mortgaged property for nonpayment of taxes. Macaron v. Associates Capital Servs. Corp. 105 N.M. 380, 733 P.2d 11 (Ct. App. 1987).

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 931 to 939.

85 C.J.S. Taxation §§ 798 to 808.

7-38-68. Installment agreements.

A. The division may enter into an installment agreement for the payment of all delinquent property taxes, penalties, interest and costs due with respect to either real property or a manufactured home with the owner of the real property or manufactured home whose taxes have become delinquent and whose account for all or part of the delinquent taxes has been transferred for collection to the division. Execution of an installment agreement under this section by a property owner is an irrevocable admission of liability for all taxes that are the subject of the agreement. The installment agreement shall be in writing and shall not extend for a period of more than thirty-six months. Interest shall accrue on the unpaid balance during the period of the installment agreement. The rate of interest shall be one percent a month, and no other interest on that portion of the principal representing unpaid taxes shall accrue while an installment agreement is in effect. The division shall not enter into an installment agreement with a property owner on or after the date of the initial sale of real property or manufactured home for delinquent taxes whether or not the real property or manufactured home is sold and a deed issued as a result of that sale. The division shall promulgate regulations establishing requirements for a minimum down payment and substantially equal monthly payments for installment agreements.

B. An installment agreement prevents any further action to collect the delinquent taxes stated in the agreement as long as the terms of the agreement are met.

C. The division may proceed under the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] to collect the property taxes, penalties, interest and costs due and unpaid if:

(1) installment payments are not made on or before the dates specified in the agreement;

(2) the property owner fails to pay other property taxes when required; or

(3) any other condition contained in the agreement is not met.

D. For the purpose of computing the time when real property or a manufactured home may be sold for delinquent taxes, the date of original delinquency shall be used when the delinquent taxes have been the subject of an installment agreement that was subsequently breached by the property owner.

E. If an owner of real property or a manufactured home enters into an installment agreement and subsequently breaches the agreement under this section, the division shall not enter into another installment agreement with that property owner for the payment of the delinquent taxes that were the subject of the installment agreement.

F. Alphabetically indexed and serially numbered records of installment agreements must be kept in the office of the director and made available for public inspection.

History: 1953 Comp., § 72-31-68, enacted by Laws 1973, ch. 258, § 108; 1985, ch. 109, § 10.

ANNOTATIONS

Applicability. - Laws 1985, ch. 109, § 12 makes the provisions of the act applicable to the 1985 and subsequent property tax years.

7-38-69. Distribution of amounts collected under installment agreements.

Amounts collected under installment agreements entered into by the department that represent delinquent taxes shall be remitted to the county treasurer of the county to which the net taxable value of the property is allocated for distribution to the governmental units. Amounts collected that represent penalties, interest and costs shall be retained by the department in accordance with Section 7-38-71 NMSA 1978. Money collected shall be remitted at the times and in the manner required by regulations of the department of finance and administration. When the department has received payment in full of delinquent taxes, penalties, interest and costs paid under an installment agreement, the department shall notify the county treasurer of that fact, and the county treasurer shall make an entry on the property tax schedule indicating that the delinquent property taxes, penalties and interest have been paid.

History: 1953 Comp., § 72-31-69, enacted by Laws 1973, ch. 258, § 109; 1985, ch. 109, § 11; 1990, ch. 22, § 9; 1995, ch. 12, § 13.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, substituted "department" for "division" in the first sentence, rewrote the second sentence which read "Amounts collected that represent penalties and interests shall be remitted to the appropriate county treasurer for deposit in the county general fund" and, in the final sentence, substituted "department has received" for "county treasurer has received" and "the department shall notify the county treasurer of that fact and the county treasurer shall make an entry" for "he shall make an entry".

The 1995 amendment, effective June 16, 1995, substituted the language beginning "interest and costs" for "and interest shall be retained by the department for use, subject to appropriation by the legislature, in the administration of the Property Tax Code" at the end of the second sentence, deleted the former third sentence which read "Amounts collected that represent costs shall be remitted to the state treasurer for deposit in the state general fund", and inserted "and costs" near the beginning of the fourth sentence.

Applicability. - Laws 1990, ch. 22, § 13 makes the provisions of the act applicable to the 1990 and subsequent property tax years.

7-38-70. Issuance of deeds as result of sale of real property for delinquent taxes; effect of deeds; limitation of action to challenge conveyance.

A. Upon receiving payment for real property sold for delinquent taxes, the division shall execute and deliver a deed to the purchaser.

B. If the real property was sold substantially in accordance with the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978], the deed conveys all of the former property owner's interest in the real property as of the date the state's lien for real property taxes arose in accordance with the Property Tax Code, subject only to perfected interests in the real property existing before the date the property tax lien arose.

C. After two years from the date of sale, neither the former real property owner shown on the property tax schedule as the delinquent taxpayer nor anyone claiming through him may bring an action challenging the conveyance.

D. Subject to the limitation of Subsection C of this section, in all controversies and suits involving title to real property held under a deed from the state issued under this section, any person claiming title adverse to that acquired by the deed from the state must prove, in order to defeat the title, that:

(1) the real property was not subject to taxation for the tax years for which the delinquent taxes for which it was sold were imposed;

(2) the division failed to mail the notice required under Section 7-38-66 NMSA 1978 or to receive any required return receipt;

(3) he, or the person through whom he claims, had title to the real property at the time of the sale and had paid all delinquent taxes, penalties, interest and costs prior to the sale as provided in Subsection E of Section 7-38-66 NMSA 1978; or

(4) he, or the person through whom he claims, had entered into an installment agreement to pay all delinquent taxes, penalties, interest and costs prior to the sale as provided in Section 7-38-68 NMSA 1978 and that all payments due were made timely.

History: 1953 Comp., § 72-31-70, enacted by Laws 1973, ch. 258, § 110; 1982, ch. 28, § 25.

ANNOTATIONS

Purpose of statutes on tax deeds is to give a measure of certainty and security to tax titles. First Nat'l Bank v. State, 77 N.M. 695, 427 P.2d 225 (1967).

This section is "curative" statute that stringently limits the grounds upon which a successful attack upon a tax deed issued by the state may be made. It also limits the time for bringing such action. Bailey v. Barranca, 83 N.M. 90, 488 P.2d 725 (1971).

Tax title is in nature of new and independent grant from the sovereign authority and is a new and paramount title in fee simple absolute, striking down all previous titles and interests in the property. Bailey v. Barranca, 83 N.M. 90, 488 P.2d 725 (1971).

Tax deed grants fee simple absolute. - Once land is sold by the state for delinquent taxes, the tax deed issued becomes a new and paramount title in fee simple absolute, striking down all previous titles and interests in the property. This is to ensure certainty and stability in tax titles, and to promote important social and economic objectives such as raising state revenues and promoting land improvement. Worman v. Echo Ridge Homes Coop. 98 N.M. 237, 647 P.2d 870 (1982).

Constitutional and statutory notice requirements applicable to Subsection C. - The legislature did not intend to apply Subsection C when the state fails to comply with the notice requirements of 7-38-66 NMSA 1978 and federal and state constitutional due process requirements. Hoffman v. State, Taxation & Revenue Dep't, 117 N.M. 263, 871 P.2d 27 (Ct. App. 1994).

Effect of multiple tax sale certificates. - Although a tax sale certificate to which the deed in question could be traced was issued at a time when the state already had title pursuant to an earlier certificate and tax deed, the state's conveyance to the property owner was nonetheless valid. Deeds from the state do not purport to convey interests acquired by the state under any particular tax deed, regardless of certain tax sale certificates or deeds that are referenced in the conveyance. A deed from the state is a

conveyance of its interest in land, not its interest in a particular tax deed or tax sale certificate. Johnson v. Rodgers, 112 N.M. 137, 812 P.2d 791 (1991).

Former vendor's interest transferred. - Under Subsection B, all of the former vendor's interests in the real property were conveyed to the defendants by the tax deed because the vendor is a "former property owner." Thus, the vendor's legal title to the property was conveyed to the defendants because legal title is clearly an interest in real property. Further, the vendor lost its reversionary interest in the property because it lost legal title to the land. Southwest Land Inv., Inc. v. Hubbart, 116 N.M. 742, 867 P.2d 412 (1993).

Former vendor's perfected interest does not survive. - The Property Tax Code states that "all of the former property owner's interest in the real property" is conveyed. The legislature did not limit the word "all". The second phrase states that the tax deed is accepted "subject only to perfected interests in the real property." The legislature chose to use the same language in both the first and second clauses. Reading these clauses together and giving them their plain meaning, the vendor's perfected security interest in the property did not survive the conveyance by the tax deed. The vendor was an owner under the code and its perfected security interest was an interest "in the real property." Even though the interest may have been perfected, because the interest was "in the real property" and because the vendor was an owner, the interest was conveyed along with all of the vendor's other interests in the property. Southwest Land Inv., Inc. v. Hubbart, 116 N.M. 742, 867 P.2d 412 (1993).

Appellants without color of title have no standing to contest deed. - Since appellants could show no color of title, they did not have title to the land at the time of the sale and were not the owners of the land sold for taxes and, therefore, could not claim fraud nor contest appellee's tax deed under provisions of former version of this section. Griego v. Roybal, 81 N.M. 202, 465 P.2d 85 (1970).

Mere possession of land is not such substantial right as would constitute "title" required by this section. Griego v. Roybal, 81 N.M. 202, 465 P.2d 85 (1970).

Time of delivery of deed. - This section does not mandate immediate delivery of the deed at the time of sale; thus, a deed delivered one month after the tax sale was issued pursuant to statutory authority, and the sale and deed could not be invalidated on the basis of a claimed jurisdictional defect. Cano v. Lovato, 105 N.M. 522, 734 P.2d 762 (Ct. App. 1986).

Tax deed subject to subsequent lien under "betterment" statute. - To subject a tax deed to operation of a subsequent lien under the "betterment" statute, 42-4-18 NMSA 1978, is not in conflict with Subsection B of this section, governing the issuance and effect of tax deeds - to preclude such a lien would foreclose an avenue of security for those performing services upon the property and allow unjust enrichment. Cano v. Lovato, 105 N.M. 522, 734 P.2d 762 (Ct. App. 1986).

Applicability of recording act. - Section 14-9-3 NMSA 1978, relating to effect of unrecorded instruments applies to tax deeds. Cano v. Lovato, 105 N.M. 522, 734 P.2d 762 (Ct. App. 1986).

Perpetual grazing right extinguished by tax sale. - Alleged perpetual grazing right which arose either by express reservation in the deed or by prescription was extinguished by tax sale by the state. Huning v. Potts, 90 N.M. 407, 564 P.2d 612 (1977).

Tax deed prima facie valid. - Since tax deeds attacked were signed by the proper officials, they were prima facie valid unless some departure from statutory mandates, which made the conveyance a nullity and void, was established. The burden in this respect was on the state in order to overcome the prima facie effect granted the deeds by former 72-8-43, 1953 Comp. First Nat'l Bank v. State, 77 N.M. 695, 427 P.2d 225 (1967).

Tax titles subject to attack for failure of procedure. - While the title received from the state is a new and paramount title in fee simple absolute, tax titles are commonly subject to attack for failure to comply with statutory procedures in the assessment and collection of taxes, in the sale of properties because of failure to pay taxes and in the redemption from tax sale. State ex rel. State Tax Comm'n v. Garcia, 77 N.M. 703, 427 P.2d 230 (1967).

Suing to quiet title within two years of tax sale. - Section 42-6-1 NMSA 1978, which provides that "Title may be quieted against the owner or holder of any mortgage, claim of lien or other encumbrance, where the owner or holder of such mortgage, lien or encumbrance has permitted [the encumbrance] to become barred by the statute of limitations," does not bar a plaintiff from initiating a suit to quiet title to clear a cloud against the title within the two-year period following a tax sale, provided in Subsection D of this section. Bentz v. Peterson, 107 N.M. 597, 762 P.2d 259 (Ct. App. 1988).

Clear evidence necessary to set aside tax deed for fraud. - One seeking to set aside a tax title on the ground of fraud, actual or constructive, in giving out erroneous information, has the burden of establishing such fact by clear and convincing evidence, a mere preponderance will not suffice. Trujillo v. Dimas, 61 N.M. 235, 297 P.2d 1060 (1956); Gallegos v. Quinlan, 94 N.M. 405, 611 P.2d 1099 (1980).

Tax deed obtained by fraud may be attacked without regard to statute of limitations. Gallegos v. Quinlan, 94 N.M. 405, 611 P.2d 1099 (1980).

Tax deed issued before period of redemption has expired is void. First Nat'l Bank v. State, 77 N.M. 695, 427 P.2d 225 (1967).

Fraudulent tax deed passes good title to bona fide purchaser. - A tax deed fraudulently obtained from the state is not void, but simply voidable, and there can be no

cancellation when there has been a sale to a bona fide purchaser. State ex rel. State Tax Comm'n v. Garcia, 77 N.M. 703, 427 P.2d 230 (1967).

Grantees in quitclaim deed from purchaser of property sold for taxes would take subject to all defects therein of which they knew, or which an examination of the record would disclose. State ex rel. State Tax Comm'n v. Garcia, 77 N.M. 703, 427 P.2d 230 (1967).

Mortgagee cannot extinguish mortgage by tax deed. - When a tax deed grantee is the previous owner of the property, his mortgage is not extinguished. American Fed. Sav. & Loan Ass'n v. Bouma, 32 Bankr. 619 (Bankr. D.N.M. 1983).

Tenant may buy tax title. - A tenant who owes no duty to pay taxes for his landlord and who has not withheld rents due, or in some other manner lulled his landlord into tax delinquency, may, while in possession of the property, both buy a tax title and assert it. Gore v. Cone, 60 N.M. 29, 287 P.2d 229 (1955).

Power of treasurer to execute tax deed is not exhausted until a deed is made in compliance with law. Brown v. Gurley, 58 N.M. 153, 267 P.2d 134 (1954).

Fraud by county treasurer avoids tax title. - Fraud on the part of the county treasurer, either actual or constructive, will suffice to avoid a tax title and save property from forfeiture. Trujillo v. Dimas, 61 N.M. 235, 297 P.2d 1060 (1956).

State in no better position than other stranger. - The state is in no better position to avoid its deeds or to claim deprivation of rights guaranteed by statute to the prior owner than would be some other stranger to the right. First Nat'l Bank v. State, 77 N.M. 695, 427 P.2d 225 (1967).

State has no standing to assert rights of owners. - The rights preserved in the statutes are rights of "owners" as that term is interpreted, and the state cannot bring itself within the protection of those statutes. Unless the conveyances were void and a nullity, the state has no standing to assert rights given by statute to "owners" or "persons entitled to redeem." First Nat'l Bank v. State, 77 N.M. 695, 427 P.2d 225 (1967).

Effect of redemption will not be a transfer of the inchoate title of the purchaser at tax sale but will be to extinguish the tax sale; and, as to all other persons who might have had a right to redeem, the redemption is in their interest and, consequently, they are not adversely affected. Morris v. Ross, 58 N.M. 379, 271 P.2d 823 (1954).

Failure of notice to redeem. - The failure of the treasurer to send notice that the property had been sold for taxes and of the tax commission to advise of the sale and of the preferential right of redemption or repurchase were at most irregularities which were covered by the curative provisions of this article. Brown v. Gurley, 58 N.M. 153, 267 P.2d 134 (1954).

Notice of tax sale constitutionally inadequate. - The notice of a tax sale was constitutionally inadequate under both the United States and New Mexico Constitutions, since the notice was mailed only to the taxpayer's old address, the notice was returned with a stamp indicating that the forwarding address had expired, and the new location of the taxpayer was reasonably ascertainable since she had submitted a change of address to the county assessor. Hoffman v. State, Taxation & Revenue Dep't, 117 N.M. 263, 871 P.2d 27 (Ct. App. 1994).

Original owner's right to purchase. - Former statutory language gave the original owner of the land the preferential right to purchase the property upon the payment of the full amount of taxes, penalties, interest and costs for which the property was sold by the tax sale proceedings. The purpose of the legislature was to grant a preference to the original property owner to become reinvested of his property upon payment of taxes, penalties, interest and costs. Trujillo v. Montano, 64 N.M. 259, 327 P.2d 326 (1958).

Payment of taxes under erroneous assessment good defense to sale. - When the owner of land who in good faith paid taxes under an erroneous assessment, thinking and intending the payment to cover the tax on his land, such payment constituted a good defense against the sale and tax deed based upon a second assessment of the same land with a proper description. Trujillo v. Montano, 64 N.M. 259, 327 P.2d 326 (1958).

Sale not affected by error in survey number. - When the tax deed issued to the plaintiff described the land as being located in homestead entry survey 370, instead of 378, the error was so manifestly clerical that the validity of the sale could not be affected by it. Trujillo v. Montano, 64 N.M. 259, 327 P.2d 326 (1958).

Contention plaintiff prevented right of redemption unfounded. - Plaintiff's contention that he was prevented from exercising his right of redemption on property sold to state for delinquent taxes by fraud of county tax assessor is unfounded where fraud is based on assessor's refusal to alter the description on tax rolls in the absence of a court order. Trujillo v. Dimas, 61 N.M. 235, 297 P.2d 1060 (1956).

Adverse possession protected by redemption. - The right to acquire title by adverse possession is capable of protection by means of redemption from a tax sale. Morris v. Ross, 58 N.M. 379, 271 P.2d 823 (1954).

Am. Jur. 2d, A.L.R. and C.J.S. references. - Easement, servitude, or covenant as affected by sale for taxes, 7 A.L.R.5th 187.

7-38-71. Distribution of amounts received from sale of property.

A. Money received by the department from the sale of real or personal property for delinquent property taxes shall be deposited in a suspense fund and distributed as follows:

(1) first, that portion equal to the costs shall be retained by the department for use, subject to appropriation by the legislature, in administration of the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978];

(2) second, that portion equal to the penalties and interest due shall be retained by the department for use, subject to appropriation by the legislature, by the department in administration of the Property Tax Code;

(3) third, that portion equal to the delinquent taxes due shall be remitted by the department to the appropriate county treasurer for distribution by the treasurer to the governmental units in accordance with the law and the regulations of the department of finance and administration; and

(4) the balance shall be paid to the former owner of the property sold or to any other person designated by order directed to the department by a court of competent jurisdiction, provided that the department may first apply all or any portion of the balance to be paid against the amount of any property tax, including any penalty and interest related thereto, owed by the person to whom the balance would otherwise be paid.

B. As a condition precedent to payment of the balance of the sale amount received to the former owner of the property, the department may require any person claiming to be entitled to that payment to present sufficient evidence of proof of former ownership of the property to the department. The department shall adopt regulations providing for the procedures to be followed by persons claiming sale proceeds as former owners in those instances where conflicting claims exist or the department requires proof of ownership.

C. If no person claims the balance of sale proceeds, whether the property was sold under the provisions of the Property Tax Code or prior law, as the former owner of the property within two years of the date of the sale and after a reasonable search to determine the former owner is made by the department and no former owner is found, the balance of the sale proceeds shall be considered abandoned property and deposited in accordance with the provisions of the Uniform Unclaimed Property Act [Chapter 7, Article 8A NMSA 1978].

D. If the balance of proceeds from the sale after paying a higher priority claim under Subsection A of this section is insufficient to pay all of the next priority claim, then the complete balance shall be applied to that next priority claim as partial payment.

History: 1953 Comp., § 72-31-71, enacted by Laws 1973, ch. 258, § 111; 1979, ch. 61, § 1; 1982, ch. 28, § 26; 1986, ch. 20, § 117; 1990, ch. 22, § 10; 1995, ch. 12, § 14.

ANNOTATIONS

The 1990 amendment, effective May 16, 1990, in Subsection A, rewrote Paragraph (2) which read "second, that portion equal to the penalties and interests due shall be

remitted by the department, to the appropriate county treasurer for deposit in the county general fund" and added the proviso at the end of Paragraph (4) and, in Subsection C, substituted "Uniform Unclaimed Property Act" for "Uniform Disposition of Unclaimed Property Act".

The 1995 amendment, effective June 16, 1995, rewrote Paragraph A(1) which read "first, that portion equal to the expenses of seizure and sale shall be retained by the department and these amounts are appropriated to the department for use in administration of the Property Tax Code" and made stylistic changes in Paragraph A(2).

Applicability. - Laws 1990, ch. 22, § 13 makes the provisions of the act applicable to the 1990 and subsequent property tax years.

7-38-72. Notation on property tax schedule by county treasurer when property sold for delinquent taxes.

When the county treasurer receives written notification from the division of the sale of property for delinquent taxes, he shall make an entry on the property tax schedule indicating that the delinquent property taxes, penalties and interest are no longer a lien against the property.

History: 1953 Comp., § 72-31-72, enacted by Laws 1973, ch. 258, § 112; 1982, ch. 28, § 27.

7-38-73. Department of finance and administration to promulgate regulations regarding accounting for and distribution of property taxes collected.

The department of finance and administration is authorized and directed to promulgate regulations covering the receipt of, accounting for and distribution of amounts received under the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] by county treasurers as taxes. The department of finance and administration may provide in these regulations for the withholding of amounts of taxes to which the state is entitled to distribution in those instances when delinquent property taxes are paid to the department, but the regulations shall require that withheld taxes must be credited and shown as paid by the county treasurer on the property tax schedule.

History: 1953 Comp., § 72-31-73, enacted by Laws 1973, ch. 258, § 113.

7-38-74. Officers and employees engaged in the administration of the property tax prohibited from buying property sold for delinquent property taxes; penalties for violation; sales of real property in violation declared void.

A. Officers or employees of the state or of any of its political subdivisions engaged in the administration of the property tax may not, directly or indirectly, acquire an interest in, buy or profit from any property sold by the department for delinquent taxes except that an officer or employee may purchase property sold for delinquent taxes if he is the owner of the property and was the owner of the property at the time the taxes became delinquent.

B. Any officer or employee violating this section is guilty of a fourth degree felony and shall be fined not more than five thousand dollars ($5,000) or imprisoned for not less than one year nor more than five years, or both. He shall also be automatically removed from office or have his employment terminated upon conviction.

C. A real property sale in violation of this section is void.

History: 1953 Comp., § 72-31-74, enacted by Laws 1973, ch. 258, § 114.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 72 Am. Jur. 2d State and Local Taxation §§ 940 to 946.

85 C.J.S. Taxation § 809.

7-38-75. Exception to property tax due date.

When, because of provisions of the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978], a property tax bill is required or authorized to be prepared and mailed or delivered on or by a date other than the date specified in Section 7-38-36 NMSA 1978, the due date of the property taxes involved shall be the date the property tax bill was mailed or delivered.

History: 1953 Comp., § 72-31-75, enacted by Laws 1973, ch. 258, § 115; 1974, ch. 92, § 25.

7-38-76. Property subject to property taxation but omitted from property tax schedules in prior years.

A. Subject to the limitations contained in the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978], county assessors, treasurers and the department have the authority and the duty to enter in the valuation records, list on the property tax schedules, bill for and collect the taxes for all tax years on property that was subject to property taxation but was omitted from property tax schedules and for which taxes have not been paid but would be due except for the omission. Property tax bills shall be prepared and mailed by the county treasurers within thirty days of the date the omitted property is listed on the property tax schedule, and all taxes on omitted property shall be due the date the property tax bill is mailed.

B. The department shall promulgate regulations for the procedures to be followed and the records to be maintained in the administration and collection of taxes on omitted property. The department of finance and administration shall promulgate regulations covering the receipt of, accounting for and distribution of taxes on omitted property.

History: 1953 Comp., § 72-31-76, enacted by Laws 1973, ch. 258, § 116; 1974, ch. 92, § 26.

7-38-77. Authority to make changes in property tax schedule after its delivery to the county treasurer.

After delivery of the property tax schedule to the county treasurer, the amounts shown on the schedule as taxes due and other information on the schedule shall not be changed except:

A. by the county treasurer to correct obvious clerical errors in:

(1) the name or address of the property owner or other persons shown on the schedule;

(2) the description of the property subject to property taxation; or

(3) the mathematical computation of taxes;

B. by the county treasurer to cancel multiple valuations for property taxation purposes of the same property in a single tax year, but only if:

(1) a taxpayer presents tax receipts showing the payment of taxes by him for any year in which multiple valuations for property taxation purposes are claimed to have been made;

(2) a taxpayer presents evidence of his ownership of the property, satisfactory to the treasurer, as of January 1 of the year in which multiple valuations for property taxation purposes are claimed to have been made; and

(3) there is no dispute concerning ownership of the property called to the attention of the treasurer, and he has no actual knowledge of any dispute concerning ownership of the property;

C. as a result of a protest, including a claim for refund, in accordance with the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978], of values, classification, allocations of values determined for property taxation purposes or a denial of a claim for an exemption;

D. by the department or the order of a court as a result of any proceeding by the division to collect delinquent property taxes under the Property Tax Code;

E. by a court order entered in an action commenced by a property owner under Section 7-38-78 NMSA 1978;

F. by the department as authorized under Section 7-38-79 NMSA 1978;

G. by the department of finance and administration as authorized under Section 7-38-77.1 NMSA 1978; or

H. as specifically otherwise authorized in the Property Tax Code.

History: 1953 Comp., § 72-31-77, enacted by Laws 1973, ch. 258, § 117; 1974, ch. 92, § 27; 1981, ch. 37, § 79; 1995, ch. 65, § 1.

ANNOTATIONS

The 1995 amendment, effective June 16, 1995, substituted "department" for "division" in Subsections D and F, added Subsection G, redesignated former Subsection G as Subsection H, and made a minor stylistic change in Subsection F.

Applicability. - Laws 1995, ch. 65, § 3 makes the act applicable to 1995 and subsequent property tax years.

Treasurer authorized to make corrections. - The treasurer is authorized, upon finding any property upon which taxes have become delinquent to be erroneously described or omitted from tax rolls, to correct any errors of description. Trujillo v. Dimas, 61 N.M. 235, 297 P.2d 1060 (1956).

Inadequacy of description. - If the description on the assessment rolls for any one of the years involved was sufficient, any inadequacy of description in any other of the years would be immaterial. Trujillo v. Dimas, 61 N.M. 235, 297 P.2d 1060 (1956).

Such as failure to say whether township was north or south is not fatal since all townships are north and all ranges east in Santa Fe county. Trujillo v. Dimas, 61 N.M. 235, 297 P.2d 1060 (1956).

7-38-77.1. Changes in property tax schedule ordered by the department of finance and administration.

After the delivery of the property tax schedule to the county treasurer for any tax year, the department of finance and administration may order the county treasurer to make changes in the property tax schedule in connection with any property listed on the schedule if the department of finance and administration determines that an error was made in the certification of the tax rates.

History: 1978 Comp., § 7-38-77.1, enacted by Laws 1995, ch. 65, § 2.

ANNOTATIONS

Applicability. - Laws 1995, ch. 65, § 3 makes the act applicable to 1995 and subsequent property tax years.

7-38-78. Action by property owner in district court to change property tax schedule.

A. After the delivery of the property tax schedule to the county treasurer for a particular tax year, a property owner may bring an action in the district court requesting a change in the property tax schedule in connection with any property listed on the schedule for property taxation in which the owner claims an interest. The action shall be brought in the district court for the county for which the property tax schedule in question was prepared.

B. Actions brought under this section may not directly challenge the value, classification, allocations of value determined for property taxation purposes or denial of any exemption claimed and must be founded on one or more of the following grounds:

(1) errors in the name or address of the property owner or other person shown on the schedule;

(2) errors in the description of the property for property taxation purposes;

(3) errors in the computation of taxes;

(4) errors in the property tax schedule relating to the payment or nonpayment of taxes;

(5) multiple valuations for property taxation purposes for a single tax year of the same property on the property tax schedule; or

(6) errors in the rate of tax set for any governmental unit in which the owner's property is located.

C. Actions brought under this section shall name the county treasurer as defendant, and if the action is brought under Paragraph (6) of Subsection B of this section shall also name the secretary of finance and administration as a defendant.

History: 1953 Comp., § 72-31-78, enacted by Laws 1973, ch. 258, § 118; 1974, ch. 92, § 28; 1981, ch. 37, § 80.

ANNOTATIONS

Authorized district court action limited to changes in property tax schedule and does not apply to refunds. Lovelace Center for Health Sciences v. Beach, 93 N.M. 793, 606 P.2d 203 (Ct. App. 1980).

7-38-79. Changes in property tax schedule ordered by the division; action by the division in district court to enforce ordered changes.

A. After the delivery of the property tax schedule to the county treasurer but before the tax bill is mailed for a particular tax year, the division may order the county assessor or county treasurer, or both, to make changes in the property tax schedule in connection with any property listed on the schedule if any of the following actions have been taken in a manner that is not in compliance with the provisions of law or applicable regulations of the division:

(1) an unprotested determination of value for property taxation purposes;

(2) an unprotested allocation of values to governmental units;

(3) an unprotested determination of classification; or

(4) the application of the tax rates.

B. After the delivery of the property tax schedule to the county treasurer for a particular tax year, the division may order the county assessor or county treasurer, or both, to make changes in the property tax schedule in connection with any property listed on the schedule:

(1) for any of the reasons for which a county treasurer could change the property tax schedule under Section 7-38-77 NMSA 1978; or

(2) for any of the reasons for which a district court could order changes in the property tax schedule at the request of a property owner under Section 7-38-78 NMSA 1978 except for the reason specified in Paragraph (6) of Subsection B of that section.

C. Any action taken by the division under this section shall be by written order of the director. Copies of the order shall be mailed by certified mail to the property owner, the county assessor and the county treasurer.

D. If the county assessor or county treasurer refuses to make any changes ordered by the division under this section, the division may bring an action to enforce its order in the district court for the county involved.

History: 1953 Comp., § 72-31-79, enacted by Laws 1973, ch. 258, § 119; 1981, ch. 37, § 81.

7-38-80. Changes in property tax schedules as result of treasurer's action, department order or court order; collection of any additional property taxes due as result; refund of property taxes paid erroneously.

A. If, as a result of actions authorized under Sections 7-38-77 through 7-38-79 NMSA 1978, the county assessor or county treasurer makes changes in the property tax schedule that result in an increase in the tax liability of the property owner and, if a tax bill has already been mailed to the property owner for collection of the taxes on the property in question for the tax year involved, then an additional tax bill shall be prepared and mailed by the county treasurer to the property owner. The date the supplemental tax bill is mailed shall be used for determining the due dates for the collection of any additional property taxes.

B. If, as a result of actions authorized under Sections 7-38-77 through 7-38-79 NMSA 1978, the county assessor or county treasurer makes changes in the property tax schedule that result in a decrease in the property tax liability of the property owner and, if the property taxes on the property for the tax year involved have already been paid, then a refund of any excess property taxes paid shall be made to the property owner. Refunds under this section shall be made by the county treasurer in accordance with regulations of the department of finance and administration.

History: 1953 Comp., § 72-31-80, enacted by Laws 1973, ch. 258, § 120.

7-38-81. Limitation on actions for collection of property taxes; presumption of payment of property taxes after ten years.

A. Property may not be sold and proceedings may not be initiated for the collection of property taxes that have been delinquent for more than ten years.

B. Property that has not been included on a property tax schedule may not be subjected to the imposition of property taxes for more than ten tax years immediately preceding the date of its entry on the property tax schedule.

C. Property taxes that have been delinquent for more than ten years, together with any penalties and interest, are presumed to have been paid. The county treasurer shall indicate on the property tax schedule that all such property taxes and any penalties and interest have been "presumed paid by act of the legislature."

History: 1953 Comp., § 72-31-81, enacted by Laws 1973, ch. 258, § 121.

7-38-81.1. Limitation on actions for collection of any levy or assessment in the form of property taxes; presumption of payment after ten years.

A. Property may not be sold and proceedings may not be initiated for the collection of any levy or assessment in the form of property taxes levied or assessed under the provisions of Section 73-14-1 through 73-18-43 NMSA 1978 that have been delinquent for more than ten years.

B. Property that has not been included on a property tax schedule or a levy or assessment schedule may not be subjected to the imposition of any levy or assessment in the form of property taxes levied or assessed under the provisions of Sections 73-14-1 through 73-18-43 NMSA 1978 for more than ten tax years immediately preceding the date of its entry on the property tax schedule or levy or assessment schedule.

C. Any levy or assessment in the form of property taxes levied or assessed under the provisions of Sections 73-14-1 through 73-18-43 NMSA 1978 that has been delinquent for more than ten years, together with any penalties and interest, is presumed to have been paid. The county treasurer or appropriate conservancy district officer shall indicate on the property tax schedule or levy or assessment schedule that all such levies or assessments in the form of property taxes and any penalties and interest have been "presumed paid by act of the legislature."

History: Laws 1983, ch. 109, § 1.

7-38-82. Duty of persons responsible for administration of property tax to ascertain the names of owners of property; use of term "unknown owner" prohibited except in certain cases; validity of procedures when name of owner is incorrect or unknown.

A. It is the duty of all persons charged with the administration and collection of the property tax to make diligent search and inquiry to determine the correct name and address of the owner of property subject to valuation for property taxation purposes and the imposition of the property tax.

B. The use of the term "unknown owner" in valuation records is prohibited except in those instances where diligent search and inquiry fail to result in the determination of the name of the owner of property.

C. Proceedings for the collection of delinquent property taxes are valid as to property sold for delinquent taxes even though the property owner's name or address shown on the valuation records was incorrect or the property was shown on the valuation records as owned by an "unknown owner."

History: 1953 Comp., § 72-31-82, enacted by Laws 1973, ch. 258, § 122.

ANNOTATIONS

Failure to notify of tax sale. - Since county tax officials and the property tax division were placed on notice that notices to a taxpayer were returned as undeliverable, but they did not check the estate tax records on file in the division's office, which would have indicated that the taxpayer had died and that a personal representative of the decedent's estate had been appointed, along with sufficient information whereby the name and address of the representative were readily ascertainable, the failure of the

division to notify the representative invalidated the subsequent tax sale. Fulton v. Cornelius, 107 N.M. 362, 758 P.2d 312 (Ct. App. 1988).

7-38-83. Timeliness.

A. When the last day for performing an act falls on Saturday, Sunday or a legal state or national holiday, the performance of the act is timely if performed on the next succeeding day which is not a Saturday, Sunday or a legal state or national holiday.

B. All acts required or permitted to be done by mail are timely if postmarked on the required date.

History: 1953 Comp., § 72-31-83, enacted by Laws 1973, ch. 258, § 123.

7-38-84. Notices; mailing.

Any notice that is required to be made to a property owner by the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] is effective if mailed by regular first class mail to the property owner's last address or to the address of any person other than the owner to whom the tax bill is to be sent as shown by the valuation records unless the provisions of the code require a different method of notification or mailing, in which case the notice is effective if given in accordance with the provisions of the code.

History: 1953 Comp., § 72-31-84, enacted by Laws 1973, ch. 258, § 124; 1974, ch. 92, § 29.

7-38-85. Extension of deadlines; general provision.

The director may extend any deadline in the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] for a period of time not in excess of six months. However, this section does not permit the extension of deadlines for an individual property owner nor does it permit successive extensions of a deadline for a cumulative period of more than six months. Extensions may be made applicable to one or more counties. Extension of deadlines authorized by this section shall be made by written order of the director and notice of the extension shall be published in a newspaper of general circulation in each county in the state to which the extension applies once each week for a period of three weeks immediately succeeding the week in which the deadline being extended occurs. When more than one deadline is extended under this section, the notice required to be published may include all extensions, and publication need only be made for the three weeks immediately succeeding the week in which the first deadline being extended occurs.

History: 1953 Comp., § 72-31-85, enacted by Laws 1973, ch. 258, § 125; 1979, ch. 59, § 1.

7-38-86. Extension of deadlines at request of property owners.

The director may extend the time by which reports are required to be filed under Subsection A of Section 7-38-8 NMSA 1978 at the written request of the property owner. The request must be received by the department prior to the date by which the required report must be made. Extensions granted under this section shall be by written order of the director and shall be for a period of not more than thirty days. The director shall not grant more than one extension in a tax year for a property owner in respect to the same property.

History: 1953 Comp., § 72-31-86, enacted by Laws 1973, ch. 258, § 126.

7-38-87. Administrative regulations; promulgation; general provisions.

A. Except for regulations promulgated by the department, regulations authorized or directed to be promulgated under the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] may be promulgated by the authorized governmental agency without prior notice or hearing and shall become effective when filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

B. All regulations promulgated under the Property Tax Code shall be applied prospectively only unless there is a statement in the regulation that it is to have retroactive effect and a statement of the extent of any retroactive effect.

History: 1953 Comp., § 72-31-87, enacted by Laws 1973, ch. 258, § 127; 1974, ch. 92, § 30; 1982, ch. 28, § 28; 1991, ch. 166, § 10.

ANNOTATIONS

The 1991 amendment, effective June 14, 1991, in Subsection A, added the exception at the beginning and deleted "except for those regulations required to be promulgated by the division under the provisions of Section 7-38-88 NMSA 1978" at the end.

7-38-88. Repealed.

ANNOTATIONS

Repeals. - Laws 1991, ch. 166, § 14 repeals 7-38-88 NMSA 1978, as amended by Laws 1986, ch. 20, § 120, relating to procedures for adopting, amending or repealing certain department regulations, effective June 14, 1991. For provisions of former section, see 1990 Replacement Pamphlet.

7-38-89. Validity of certain regulations; judicial review.

A. Any person who is or may be adversely affected by the adoption, amendment or repeal of a regulation promulgated by an authorized governmental agency other than the department under Section 7-38-87 NMSA 1978 may appeal that action to the court of appeals. All appeals shall be on the record made at the hearing and must be perfected by filing a notice of appeal in the court of appeals within thirty days after the adoption, amendment or repeal of a regulation is filed pursuant to law.

B. The notice of appeal required to be filed under this section shall include a concise statement of the facts upon which jurisdiction is based, the grounds upon which relief is sought and the relief requested. The notice shall also include a statement that arrangements have been made with the governmental agency for preparation of the record to support his appeal to the court and to provide the governmental agency with a copy. Costs of appeal, including cost of the record, may be charged against the parties by order of the court of appeals in its discretion.

C. Copies of the notice of appeal shall be served upon the governmental agency and proof of service shall be filed with the court in the manner and within the time prescribed by the rules of appellate procedure.

D. The filing of a notice of appeal does not stay the effective date of the action appealed from, but the governmental agency may grant, or the court may order, a stay upon appropriate terms.

E. Within thirty days after the service of the notice of appeal or within such greater time as the court may allow, the governmental agency shall file in the court the original or a certified copy of the record of the proceedings appealed from. The record shall consist of:

(1) the entire proceedings;

(2) portions of the proceedings to which the governmental agency and the appellant stipulate; or

(3) a statement of the case agreed to by the governmental agency and the appellant.

F. If the record is to be of the entire proceedings or portions of the proceedings, it shall be a verbatim written transcript or, if permitted by the court of appeals, it may be an electronic recording. It shall also include copies of documentary evidence admitted at the hearing or during those portions of the hearing that are stipulated to as the record.

G. In any proceeding for judicial review of the adoption, amendment or repeal of a regulation, the court may set aside the action or remand the case to the governmental agency for further proceedings only if it determines that the action is:

(1) arbitrary, capricious or an abuse of discretion;

(2) not supported by substantial evidence in the record taken as a whole; or

(3) otherwise not in accordance with law.

H. If the court determines that the action appealed is free from the errors specified under Paragraphs (1) through (3) of Subsection G of this section, it shall affirm the action.

History: 1953 Comp., § 72-31-89, enacted by Laws 1973, ch. 258, § 129; 1982, ch. 28, § 29; 1983, ch. 215, § 7; 1991, ch. 166, § 11.

ANNOTATIONS

Cross references. - For jurisdiction of court of appeals, see N.M. Const., art. VI, § 29.

For special statutory proceedings, see Rule 12-601 NMRA 1997.

The 1991 amendment, effective June 14, 1991, substituted "governmental agency" for "division" throughout the section; inserted "promulgated by an authorized governmental agency other than the department" and substituted "7-38-87" for "7-38-88" in the first sentence in Subsection A; and rewrote Subsection C which read "Copies of the notice of appeal shall be served personally or by certified mail upon the division no later than ten days after the filing of the notice of appeal and proof of service shall be filed with the court within twenty days after the filing of a notice of appeal."

7-38-90, 7-38-91. Repealed.

ANNOTATIONS

Repeals. - Laws 1995, ch. 31, § 7 repeals 7-38-90 and 7-38-91 NMSA 1978, as amended by Laws 1991, ch. 166, §§ 12 and 13, relating to issuance of administrative regulations, rulings, instructions and orders by the secretary and publication thereof, effective July 1, 1995. For provisions of the former sections, see the 1993 Replacement Pamphlet. For present comparable provisions, see 9-11-6.2 NMSA 1978.

7-38-92. Attempts to evade or defeat the property tax.

Any person who willfully attempts to evade the payment of any property tax is guilty of a fourth degree felony. He shall be fined not more than five thousand dollars ($5,000), or imprisoned for not less than one year nor more than five years, or both.

History: 1953 Comp., § 72-31-92, enacted by Laws 1973, ch. 258, § 132.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 85 C.J.S. Taxation § 1056.

7-38-93. Interference with the administration of the Property Tax Code.

Any person who by force, bribe, threat or other corrupt practice obstructs or impedes the administration of the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] is guilty of a misdemeanor. He shall be fined not less than two hundred fifty dollars ($250) nor more than ten thousand dollars ($10,000), or imprisoned for not less than three months nor more than one year, or both.

History: 1953 Comp., § 72-31-93, enacted by Laws 1973, ch. 258, § 133.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. - 85 C.J.S. Taxation § 1056.

ARTICLE 39
COPPER PRODUCTION AD VALOREM TAX

7-39-1. Short title.

Chapter 7, Article 39 NMSA 1978 may be cited as the "Copper Production Ad Valorem Tax Act".

History: 1978 Comp., § 7-39-1, enacted by Laws 1990, ch. 125, § 8.

ANNOTATIONS

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

7-39-2. Definitions.

As used in the Copper Production Ad Valorem Tax Act [this article]:

A. "average price" means for any mineral the average price for the appropriate period determined from published price data in the manner specified by regulation;

B. "copper mineral property" means all mineral property and property held in connection with mineral property when seventy-five percent or more, by either weight or value, of the salable mineral produced from or by the mineral property is copper;

C. "copper production ad valorem tax" means the tax imposed by the Copper Production Ad Valorem Tax Act;

D. "department" means, unless the context requires otherwise, the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

E. "new copper mineral property" means either a copper mineral property that began operations on a commercial basis within the three-year period immediately preceding the tax year for which value is being determined or a copper mineral property that was valued and taxed under the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] for any tax year subsequent to the 1990 property tax year within the three-year period immediately preceding the tax year for which value is being determined;

F. "produced" means the altered form, character or condition of a mineral that is the product of a particular process;

G. "taxable value" means the value of property determined by applying the tax ratio to the valuation of the copper mineral property determined for purposes of the Copper Production Ad Valorem Tax Act;

H. "tax ratio" means the percentage established under the Property Tax Code that is applied to the value of property determined for property taxation purposes to derive taxable value, as that term is defined in the Property Tax Code; and

I. "value of salable copper and other minerals" means:

(1) for new copper mineral properties, the sum, for copper and each other mineral produced, of the product of the salable amount of the mineral produced during the interval beginning with the month in which operations on a commercial basis began or recommenced and ending with the last month of production preceding the tax year for which valuation is being determined; multiplied by the normalization factor which is a fraction, the numerator of which is twelve and the denominator of which is the number of months within the interval beginning with the month in which operations on a commercial basis began or recommenced and ending with the last month of production preceding the tax year for which valuation is being determined; further multiplied by the average price for the interval beginning with the month in which operations on a commercial basis began or recommenced and ending with the last month of production preceding the tax year for which valuation is being determined; and

(2) for all other copper mineral properties the sum, for copper and each other mineral produced, of the product of the quotient of the salable amount of the mineral produced during the three calendar years immediately preceding the year for which valuation is being determined divided by three; multiplied by the average price for the three-year period.

History: 1978 Comp., § 7-39-2, enacted by Laws 1990, ch. 125, § 9.

ANNOTATIONS

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

7-39-3. Application of act.

The provisions of the Copper Production Ad Valorem Tax Act [this article] apply to the valuation of all productive copper mineral property.

History: 1978 Comp., § 7-39-3, enacted by Laws 1990, ch. 125, § 10.

ANNOTATIONS

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

7-39-4. Valuation of copper mineral property.

A. The valuation for purposes of the Copper Production Ad Valorem Tax Act [this article] of copper mineral property of the following types shall be determined annually, except as provided otherwise in Subsection B, C or D of this section, as follows:

(1) the value of any mine and all real property and personal property held or used for the mining of ore from the mine:

(a) any part of which is mined for processing in a concentrator shall be thirty percent of the value of salable copper and other minerals contained in concentrate produced from the ore produced from the mine; or

(b) which is mined solely for solvent extraction or electrowinning shall be twenty percent of the value of salable copper and other minerals produced through solvent extraction or electrowinning from the ore produced from the mine;

(2) the value of a concentrator and all real property and personal property held or used in connection with the concentrator shall be twenty-five percent of the value of salable copper and other minerals contained in concentrate produced in the concentrator;

(3) the value of a precipitation plant and all real property and personal property held or used in connection with the precipitation plant shall be twenty-five percent of the value of salable copper and other minerals contained in precipitate produced in the precipitation plant;

(4) the value of the solvent extraction or electrowinning plant and all real property and personal property held or used in connection with the solvent extraction or electrowinning plant shall be one hundred thirty-five percent of the value of salable copper and other minerals produced through the solvent extraction or electrowinning

process, less four times the value of property determined for the same tax year under Subparagraph (b) of Paragraph (1) of this subsection; and

(5) the value of a smelter and all real property and personal property held or used in connection with the smelter shall be twenty-one percent of the value of salable copper and other minerals produced in the smelter.

B. A property, which has been valued in accordance with the Copper Production Ad Valorem Tax Act in any preceding year and which is permanently shut down on or before January 1 of any year for which a valuation is to be made under the Copper Production Ad Valorem Tax Act, is no longer subject to the Copper Production Ad Valorem Tax Act and is subject instead to the provisions of the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978].

C. A copper mineral property from which no copper or other minerals were mined or processed during a period of at least twelve months immediately prior to the beginning of the tax year for which valuation is being determined is not subject to the Copper Production Ad Valorem Tax Act and is subject instead to the provisions of the Property Tax Code.

D. This subsection applies only to copper mineral properties with respect to which the owner, as part of the annual report to the department, declares for the tax year for which valuation is being determined or has declared for any prior tax year that a copper mineral property will remain in operation for a period less than four years and will not be replaced or reconstructed:

(1) the valuation of a copper mineral property subject to this subsection shall be the value determined under Subsection A of this section for that property multiplied by:

(a) twenty-five percent for properties with an anticipated operating period of less than one year as of the beginning of the tax year for which valuation is being determined;

(b) forty-five percent for properties with an anticipated operating period of at least one year but less than two years as of the beginning of the tax year for which valuation is being determined;

(c) sixty percent for properties with an anticipated operating period of at least two years but less than three years as of the beginning of the tax year for which valuation is being determined; and

(d) seventy-five percent for properties with an anticipated operating period of at least three years but less than four years as of the beginning of the tax year for which valuation is being determined; and

(2) if the owner declared in a prior annual report that the copper mineral property would remain in operation for a period less than four years and the owner, in the annual report

for the tax year for which valuation is being determined, does not declare that the property will remain in operation for a period less than four years, declares that permanent shutdown is not anticipated within four years or declares that permanent shutdown is anticipated in a year subsequent to the year declared in the prior tax year, there shall be added to the property's valuation determined under Subsection A of this section or Paragraph (1) of this subsection, as appropriate, one hundred percent of:

(a) if the owner fails to make a declaration or declares that the property will remain in operation for a period of at least four years, the difference between the valuation for the property determined solely under Subsection A of this section for each prior tax year in which the owner had declared the property would remain in operation for a period less than four years and the respective valuations in those prior tax years determined under this subsection; or

(b) if the year of anticipated permanent shutdown declared in the prior tax year annual report is earlier than that in the subsequent annual report, the difference between the valuation for the prior tax year determined under this subsection using the later date of anticipated permanent shutdown and the valuation for that prior tax year determined under this subsection in that prior tax year; and

(3) when value is added pursuant to Paragraph (2) of this subsection to the valuation otherwise determined for the copper mineral property, the property owner shall pay interest at the rate determined under Section 7-1-67 NMSA 1978 on the additional taxes due and penalty at the rate determined under Subsection A of Section 7-1-69 NMSA 1978. The interest and penalty shall be measured from the dates that the taxes were due to have been paid for the tax year from which the additional valuation derived.

History: 1978 Comp., § 7-39-4, enacted by Laws 1990, ch. 125, § 11.

ANNOTATIONS

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

7-39-5. Annual report of value.

Each tax year the owner of a copper mineral property shall report to the department on the forms and in the manner prescribed by the department the value, for purposes of the Copper Production Ad Valorem Tax Act [this article], of each copper mineral property owned and the taxing jurisdictions in which each property is located. The report shall also contain a declaration of the year in which the owner expects the copper mineral property to be permanently shut down if permanent shutdown is expected within four years. A declaration shall be made in each annual report subsequent to an annual report in which such a declaration is first made for the copper mineral property. The report shall be submitted on or before March 31 of the tax year for which value is being

determined. The report required by this subsection may be referred to as the "annual report".

History: 1978 Comp., § 7-39-5, enacted by Laws 1990, ch. 125, § 12.

ANNOTATIONS

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

7-39-6. Notification to department of finance and administration and counties.

By August 1 of each year, the department shall prepare and send to the department of finance and administration schedules of the taxable value and taxing jurisdictions of each copper mineral property. The taxable values shown on the schedules shall be used by the department of finance and administration in setting property tax rates. A copy of the schedule for the county shall be sent to the assessors of the respective counties in which copper mineral property is located, who shall accept the schedules as the assessment of copper mineral property required under the Copper Production Ad Valorem Tax Act [this article].

History: 1978 Comp., § 7-39-6, enacted by Laws 1990, ch. 125, § 13.

ANNOTATIONS

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

7-39-7. Determination of taxable values for taxing districts.

To determine for any purpose the total taxable value of property required to be taxed under the Copper Production Ad Valorem Tax Act [this article] for any taxing jurisdiction for any year after 1990, the taxable value of copper mineral property for the taxing jurisdiction entered upon the schedules prepared under the Copper Production Ad Valorem Tax Act for the tax year preceding the determination shall be used.

History: 1978 Comp., § 7-39-7, enacted by Laws 1990, ch. 125, § 14.

ANNOTATIONS

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

7-39-8. Ad valorem tax levied.

An ad valorem tax is levied upon the owner of each copper mineral property that is not subject to valuation and taxation under the provisions of the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978]. The amount of the tax shall be equal to the product of the taxable value determined for each copper mineral property owned multiplied by the rate certified to the department by the department of finance and administration for nonresidential property under the provisions of Sections 7-37-7 and 7-37-7.1 NMSA 1978 for the taxing jurisdictions in which the copper mineral property is located.

History: 1978 Comp., § 7-39-8, enacted by Laws 1990, ch. 125, § 15.

ANNOTATIONS

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

7-39-9. Notification of tax rate; due date.

A. On or before November 1 of each tax year the department shall notify the owner or operator of each copper mineral property, to which the Copper Production Ad Valorem Tax Act [this article] applies, of the tax rates that have been established for the taxing jurisdictions in which the copper mineral property is located, the taxable value of the copper mineral property and the amount of the copper production ad valorem tax due.

B. The copper production ad valorem tax is payable in two equal installments due on December 10 of the year for which tax is assessed and on May 10 of the following year. Payment shall be made to the department. No demand for payment of the copper production ad valorem tax is necessary.

History: 1978 Comp., § 7-39-9, enacted by Laws 1990, ch. 125, § 16.

ANNOTATIONS

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

7-39-10. Monthly report to department of finance and administration; remittances to state and county treasurers; state and county treasurers may distribute funds.

A. By the last day of each month, the department shall prepare and certify a report to the secretary of finance and administration. The report shall be for the preceding month and shall show the amount of copper production ad valorem tax distributed to the copper production tax fund, the amount due the state and each taxing district imposing a tax and any other information required by the secretary of finance and administration. The secretary of finance and administration shall forthwith remit the appropriate

amounts from the copper production tax fund to the state treasurer and the county treasurers who shall make the appropriate distribution, except as provided in Subsection B of this section.

B. If the board of county commissioners notifies the secretary of finance and administration that the county elects not to distribute the proceeds of the copper production ad valorem tax due to the municipalities and school districts in the county, the secretary of finance and administration shall pay amounts due directly to municipalities and school districts within the county.

History: 1978 Comp., § 7-39-10, enacted by Laws 1990, ch. 125, § 17.

ANNOTATIONS

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

Nonseverability. - Laws 1990, ch. 125, § 19 provides that the provisions of the Copper Production Ad Valorem Tax Act [this article] and the corresponding amendments made in that act to the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] are not severable.