

(1) the aggregate amount of tax due under one or more taxes in effect on March 1, 2001 imposed by the Indian nation, tribe or pueblo upon coal severed and saved from the tribal land of that Indian nation, tribe or pueblo, the value of coal severed and saved, the privilege of severing coal or the value of the leasehold interest; or

(2) the aggregate amount of severance tax and surtax due the state pursuant to Section 7-26-6 NMSA 1978 upon coal severed and saved from the tribal land of the Indian nation, tribe or pueblo.

D. If, after March 1, 2001, an Indian nation, tribe or pueblo increases any severance, privilege, possessory interest or similar tax applicable to coal to which the tax credits provided by this section apply, the amount of the intergovernmental coal severance tax credit for any month to which the increase applies shall be reduced by the difference between the aggregate amount of tax due to the Indian nation, tribe or pueblo for the month and the aggregate amount of tax that would have been imposed by the terms of the tax or taxes in effect on March 1, 2001. The expiration of a partial or total waiver from the tribal tax granted prior to March 1, 2001 does not constitute an increase in the tribal tax.

E. Notwithstanding any other provision of law to the contrary, the amount of credit taken and allowed shall be applied proportionately against the amount of severance tax and the amount of surtax due.

F. The burden of showing entitlement to a credit authorized by this section is on the taxpayer claiming it, and the taxpayer shall furnish to the appropriate tax collecting agency, in the manner determined by the taxation and revenue department, proof of payment of any tribal tax on which the credit is based.

G. The taxation and revenue department is authorized to promulgate rules or instructions prescribing the method by which a taxpayer may allocate credit for a tax imposed by the Indian nation, tribe or pueblo on a basis other than monthly against the monthly amounts of severance tax and surtax due.

**History:** 1978 Comp., § 7-29C-2, enacted by Laws 2001, ch. 134, § 2.

### **ANNOTATIONS**

**Effective dates.** — Laws 2001, ch. 134, § 4 made Laws 2001, ch. 134, § 2 effective July 1, 2001.

## **ARTICLE 30**

### **Oil and Gas Conservation Tax**

#### **7-30-1. Title.**

Chapter 7, Article 30 NMSA 1978 may be cited as the "Oil and Gas Conservation Tax Act".

**History:** 1953 Comp., § 72-20-1, enacted by Laws 1959, ch. 53, § 1; 1985, ch. 65, § 30.

## **ANNOTATIONS**

**Cross references.** — For intergovernmental tax credits, see 7-29C-1 NMSA 1978.

**Law reviews.** — For article, "New Mexico's Effort at Rational Taxation of Hard-Minerals Extraction," see 10 Nat. Resources J. 415 (1970).

For note, "Tribal Severance Taxes - Outside the Purview of the Commerce Clause," see 21 Nat. Resources J. 405 (1981).

### **7-30-2. Definitions.**

As used in the Oil and Gas Conservation Tax Act:

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

B. "production unit" means a unit of property designated by the department from which products of common ownership are severed;

C. "severance" means the taking from the soil of any product in any manner whatsoever;

D. "value" means the actual price received for products at the production unit, except as otherwise provided in the Oil and Gas Conservation Tax Act;

E. "product" or "products" means oil, including crude, slop or skim oil and condensate; natural gas; liquid hydrocarbon, including ethane, propane, isobutene, normal butane and pentanes plus, individually or any combination thereof; and non-hydrocarbon gases, including carbon dioxide and helium;

F. "operator" means any person:

- (1) engaged in the severance of products from a production unit; or
- (2) owning an interest in any product at the time of severance who receives a portion or all of such product for the person's interest;

G. "purchaser" means a person who is the first purchaser of a product after severance from a production unit, except as otherwise provided in the Oil and Gas Conservation Tax Act;

H. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, copartnership, cooperative, joint venture, association or other group or combination acting as a unit, and the plural as well as the singular number;

I. "interest owner" means a person owning an entire or fractional interest of whatsoever kind or nature in the products at the time of severance from a production unit or who has a right to a monetary payment that is determined by the value of such products;

J. "tax" means the oil and gas conservation tax; and

K. "volume" means the quantity of product severed reported using:

(1) oil, condensate and slop oil in barrels; and

(2) natural gas, liquid hydrocarbons, helium and carbon dioxide in thousand cubic feet at a pressure base of fifteen and twenty-five thousandths pounds per square inch.

**History:** 1953 Comp., § 72-20-2, enacted by Laws 1959, ch. 53, § 2; 1975, ch. 289, § 14; 1977, ch. 249, § 54; 1980, ch. 97, § 4; 1986, ch. 20, § 99; 1989, ch. 130, § 5; 2005, ch. 130, § 4; 2021, ch. 65, § 31.

## ANNOTATIONS

**The 2021 amendment**, effective July 1, 2021, defined "volume" and revised the definition of "product", as used in the Oil and Gas Conservation Tax Act; in Subsection E, after "means oil", deleted "natural gas or liquid hydrocarbon, individually or any combination thereof, uranium, coal, geothermal energy, carbon dioxide, helium or a non-hydrocarbon gas" and added the remainder of the subsection; and added Subsection K.

**The 2005 amendment**, effective July 1, 2005, defined "product" in Subsection E to include helium or non-hydrocarbon gas and defines "tax" in Subsection J to mean the oil and gas conservation tax.

**The 1989 amendment**, effective June 16, 1989, substituted "'department'" for "'commission', 'department' or 'division'" in Subsection A.

**Law reviews.** — For article, " 'New Mexican Nationalism' and the Evolution of Energy Policy in New Mexico," see 17 Nat. Resources J. 283 (1977).

### **7-30-3. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-30-3 NMSA 1978, as enacted by Laws 1959, ch. 53, § 3, relating to the purpose and declaration of intention of the Oil and Gas Conservation Tax Act, effective July 1, 1985.

### **7-30-4. Oil and gas conservation tax levied; collected by department; rate; interest owner's liability to state; Indian liability.**

A. There is levied and shall be collected by the department a tax on all products that are severed and sold. The measure and rate of the tax shall be nineteen-hundredths percent of the taxable value of sold products. Every interest owner shall be liable for this tax to the extent of the owner's interest in the value of the products or to the extent of the owner's interest as may be measured by the value of the products. An Indian tribe, Indian pueblo or Indian shall be liable for this tax to the extent authorized or permitted by law.

B. When the average price of west Texas intermediate crude in the previous quarter exceeds seventy dollars (\$70.00) per barrel, an additional tax to that provided pursuant to Subsection A of this section is levied and shall be collected by the department on oil that is severed and sold in the ensuing quarter. The measure and rate of the total tax on oil shall be twenty-four hundredths percent of the taxable value of the sold product. Every interest owner shall be liable for this tax to the extent of the owner's interest in the value of the products or to the extent of the owner's interest as may be measured by the value of the products. An Indian tribe, Indian pueblo or Indian shall be liable for this tax to the extent authorized or permitted by law.

**History:** 1953 Comp., § 72-20-4, enacted by Laws 1959, ch. 53, § 4; 1975, ch. 289, § 15; 1977, ch. 237, § 6; 1985, ch. 65, § 31; 1989, ch. 130, § 6; 1996, ch. 72, § 1; 2003, ch. 433, § 2; 2007, ch. 97, § 1; 2010, ch. 98, § 2.

#### **ANNOTATIONS**

**Cross references.** — For the oil and gas reclamation fund, see 70-2-37 NMSA 1978.

**The 2010 amendment**, effective May 19, 2010, in Subsection A, in the second sentence, deleted "Except as provided in Subsections B and C of this section"; deleted former Subsection B, which provided that if the unencumbered balance of the oil and gas reclamation fund equals or exceeds \$2,500,000 the tax rate shall be eighteen-hundredths percent; deleted former Subsection C, which provided that if the unencumbered balance of the oil and gas reclamation fund is less than or equal to \$500,000, the tax rate shall be nineteen-hundredths percent; deleted former Subsection D, which provided that the department shall notify taxpayers of changes in the tax rate; and added a new Subsection B.

**The 2007 amendment**, effective June 15, 2007, in Subsection B, increased the maximum amount to be held in the oil and gas reclamation fund from \$1,150,000 to \$2,500,000.

**The 2003 amendment**, effective July 1, 2003, inserted the exception near the beginning of Subsection A; rewrote Subsection B designating part of former Subsection B as present Subsection C and redesignating former Subsection C as Subsection D; and deleted the last phrase of Subsection C, concerning distribution to the oil and gas reclamation fund.

**The 1996 amendment**, effective May 15, 1996, made stylistic changes in Subsection A.

**The 1989 amendment**, effective June 16, 1989, substituted "department" for "division" in the catchline; in Subsection A substituted "department" for "division" in the first sentence, inserted "and rate" in the second sentence, and made minor stylistic changes in the third sentence; rewrote the first and second sentences of Subsection B; and designated the former third sentence of Subsection B as Subsection C.

**Severance alone does not give rise to taxable event.** *Yankee Atomic Elec. Co. v. N.M. & Ariz. Land Co.*, 632 F.2d 855 (10th Cir. 1980).

**Severance, coupled with sale, triggers imposition of tax.** *Yankee Atomic Elec. Co. v. N.M. & Ariz. Land Co.*, 632 F.2d 855 (10th Cir. 1980).

**Indian right to tax oil production not preempted by congress.** — Although it granted to the states the right to tax the production of oil and gas on Indian reservations, congress did not preempt similar tribal taxation. *Merrion v. Jicarilla Apache Tribe*, 617 F.2d 537 (10th Cir. 1980), *aff'd*, 455 U.S. 130, 102 S. Ct. 894, 71 L. Ed. 2d 21 (1982).

**Law reviews.** — For article, " 'New Mexican Nationalism' and the Evolution of Energy Policy in New Mexico," see 17 Nat. Resources J. 283 (1977).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 84 C.J.S. Taxation §§ 165 et seq.

## **7-30-5. Taxable value; method of determining.**

A. To determine the taxable value of oil, natural gas or liquid hydrocarbon, individually or any combination thereof, carbon dioxide, helium or non-hydrocarbon gases, there shall be deducted from the value of products:

- (1) royalties paid or due the United States or the state of New Mexico;
- (2) royalties paid or due any Indian tribe, Indian pueblo or Indian that is a ward of the United States; and

(3) the reasonable expense of trucking any product from the production unit to the first place of market.

B. The taxable value of coal shall be the taxable value determined under Section 7-25-3 NMSA 1978, less royalties paid or due any Indian tribe, Indian pueblo or Indian that is a ward of the United States.

C. The taxable value of uranium shall be twenty-five percent of an amount equal to the difference between:

(1) the taxable value determined under Section 7-25-3 NMSA 1978; and

(2) royalties paid or due any Indian tribe, Indian pueblo or Indian that is a ward of the United States.

D. The taxable value of geothermal energy shall be the value at the point of first sale, less the cost of transporting it from the point of severance to the point of the first sale, less the royalties paid or due the United States or the state of New Mexico or any Indian tribe, Indian pueblo or Indian that is a ward of the United States.

**History:** 1953 Comp., § 72-20-5, enacted by Laws 1959, ch. 53, § 5; 1975, ch. 289, § 16; 1977, ch. 102, § 2; 1980, ch. 97, § 5; 1985, ch. 65, § 32; 2005, ch. 130, § 5.

## ANNOTATIONS

**The 2005 amendment**, effective July 1, 2005, provided the method to determine the taxable value of helium and non-hydrocarbon gases.

**Law reviews.** — For article, " 'New Mexican Nationalism' and the Evolution of Energy Policy in New Mexico," see 17 Nat. Resources J. 283 (1977).

### **7-30-6. Value may be determined by department; standard.**

The department may determine the value of products severed from a production unit when:

A. the operator and purchaser are affiliated persons;

B. the sale and purchase of products is not an arm's length transaction; or when

C. products are severed and removed from a production unit and a value as defined in this act is not established for such products.

The value determined by the department shall be commensurate with the actual price received for products of like quality, character and use which are severed in the same field or area.

**History:** 1953 Comp., § 72-20-6, enacted by Laws 1959, ch. 53, § 6; 1989, ch. 130, § 7.

### ANNOTATIONS

**The 1989 amendment**, effective June 16, 1989, substituted "department" for "commission" in the section heading and throughout the section, and made minor stylistic changes.

**Determination of value.** — The statute does not mandate the way in which the department must calculate processing costs, whether by a comparable value or by some other method. Rather, the final value of natural gas calculated by the department must be commensurate with similar products. *Chevron U.S.A., Inc. v. State ex rel. Taxation and Revenue Dep't*, 2006-NMCA-050, 139 N.M. 498, 134 P.3d 785, cert. denied, 2006-NMCERT-005, 139 N.M. 567, 136 P.3d 568.

### **7-30-7. Price increase subject to approval of agency of United States of America, state of New Mexico or court; refund.**

When an increase in the value of any product is subject to the approval of any agency of the United States of America or the state of New Mexico, or any court, the increased value shall be subject to this tax. In the event the increase in value is disapproved, either in whole or in part, then the amount of tax which has been paid on the disapproved part of the value shall be considered excess tax. Any person who has paid any such excess tax may apply for a refund of that excess tax in accordance with the provisions of Section 7-1-26 NMSA 1978.

**History:** 1953 Comp., § 72-20-7, enacted by Laws 1959, ch. 53, § 7; 1985, ch. 65, § 33.

### **7-30-8. Products on which tax has been levied; regulation by department.**

This tax shall not be levied more than once on the same product. Reporting of products on which this tax has been paid shall be subject to the regulation of the department.

**History:** 1953 Comp., § 72-20-8, enacted by Laws 1959, ch. 53, § 8; 1989, ch. 130, § 8.

### ANNOTATIONS

**The 1989 amendment**, effective June 16, 1989, substituted "department" for "commission" in the section heading and in the second sentence.

### **7-30-9. Operator or purchaser to withhold interest owner's tax; department may require withholding of tax; tax withheld to be remitted to the state; operator or purchaser to be reimbursed.**

A. Any operator making a monetary payment to an interest owner for his portion of the value of products from a production unit shall withhold from such payment the amount of tax due from the interest owner.

B. Any purchaser who, by express or implied agreement with the operator, makes a monetary payment to an interest owner for his portion of the value of products from a production unit, shall withhold from such payment the amount of tax due from the interest owner.

C. The department may require any purchaser making a monetary payment to an interest owner for his portion of the value of products from a production unit to withhold from such payment the amount of tax due from the interest owner.

D. Any operator or purchaser who pays any tax due from an interest owner shall be entitled to reimbursement from the interest owner for the tax so paid, and may take credit for such amount from any monetary payment to the interest owner for the value of products.

**History:** 1953 Comp., § 72-20-9, enacted by Laws 1959, ch. 53, § 9; 1989, ch. 130, § 9.

#### **ANNOTATIONS**

**The 1989 amendment**, effective June 16, 1989, added the subsection designations, and substituted "department" for "commission" in the section heading and in Subsection C.

#### **7-30-10. Operator's report; tax remittance; additional information.**

Each operator shall, in the form and manner required by the department, make a return to the department showing the total value, volume and kind of products sold from each production unit for each calendar month. All taxes due or to be remitted by the operator shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. A uranium or a coal return shall be filed on or before the twenty-fifth day of the month following the month in which the taxable event occurs pursuant to Section 7-26-6 or 7-26-7 NMSA 1978. Any additional report or information the department may deem necessary for the proper administration of the Oil and Gas Conservation Tax Act may be required.

**History:** 1953 Comp., § 72-20-10, enacted by Laws 1959, ch. 53, § 10; 1986, ch. 5, § 4; 1989, ch. 130, § 10; 2005, ch. 130, § 6.

#### **ANNOTATIONS**

**The 2005 amendment**, effective July 1, 2005, provided the deadline for filing uranium and coal returns.



**The 1989 amendment**, effective June 16, 1989, substituted "department" for "division" throughout the section.

### **7-30-11. Purchaser's report; tax remittance; additional information.**

Each purchaser shall, in the form and manner required by the department, make a return to the department showing the total value, volume and kind of products purchased by him from each production unit for each calendar month. All taxes due or to be remitted by the purchaser shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. Any additional reports or information the department may deem necessary for the proper administration of the Oil and Gas Conservation Tax Act may be required.

**History:** 1953 Comp., § 72-20-11, enacted by Laws 1959, ch. 53, § 11; 1986, ch. 5, § 5; 1989, ch. 130, § 11.

#### **ANNOTATIONS**

**The 1989 amendment**, effective June 16, 1989, substituted "department" for "division" throughout the section.

### **7-30-12. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-30-12 NMSA 1978, as enacted by Laws 1959, ch. 53, § 12, relating to the oil and gas accounting commission conservation tax fund, refunds and adjustments, effective July 1, 1985.

### **7-30-13. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-30-13 NMSA 1978, as enacted by Laws 1959, ch. 53, § 13, relating to monthly report to department of finance and administration, transfer to oil conservation fund, effective July 1, 1985.

### **7-30-14. Recompiled.**

#### **ANNOTATIONS**

**Recompilations.** — Laws 1989, ch. 130, § 12 recompiled former 7-30-14 NMSA 1978, relating to disposition of oil conservation fund, as 70-2-36.1 NMSA 1978, effective June 16, 1989.

Laws 1991, ch. 9, § 45A repealed 70-2-36.1 NMSA 1978, effective July 1, 1991.

### **7-30-15. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-30-15 NMSA 1978, as enacted by Laws 1959, ch. 53, § 15, relating to tax paid erroneously, refund, effective July 1, 1985.

### **7-30-16. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-30-16 NMSA 1978, as enacted by Laws 1959, ch. 53, § 16, relating to tax payment under protest, suit authorized, effective July 1, 1985.

### **7-30-17. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-30-17 NMSA 1978, as enacted by Laws 1959, ch. 53, § 17, relating to interest and penalties, restraint from severing products, effective July 1, 1985.

### **7-30-18. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-30-18 NMSA 1978, as enacted by Laws 1959, ch. 53, § 18, relating to subpoena power, misdemeanor, fine, effective July 1, 1985.

### **7-30-19. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-30-19 NMSA 1978, as enacted by Laws 1959, ch. 53, § 19, relating to refusal to make return, commission may assess, assessment binding on taxpayer, effective July 1, 1985.

### **7-30-20. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-30-20 NMSA 1978, as enacted by Laws 1959, ch. 53, § 20, relating to restraining order, injunction, effective July 1, 1985.

### **7-30-21. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-30-21 NMSA 1978, as enacted by Laws 1959, ch. 53, § 21, relating to personal debt, action in any district court, effective July 1, 1985.

### **7-30-22. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-30-22 NMSA 1978, as enacted by Laws 1959, ch. 53, § 22, relating to lien against property, notice to be filed, notice to debtor, effective July 1, 1985.

### **7-30-23. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-30-23 NMSA 1978, as enacted by Laws 1959, ch. 53, § 23, relating to sale of property to satisfy lien, effective July 1, 1985.

### **7-30-24. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-30-24 NMSA 1978, as enacted by Laws 1959, ch. 53, § 24, relating to the remedies under the Oil and Gas Conservation Tax Act, effective July 1, 1985.

### **7-30-25. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-30-25 NMSA 1978, as enacted by Laws 1959, ch. 53, § 25, relating to remedies cumulative, effective July 1, 1985.

### **7-30-26. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-30-26 NMSA 1978, as enacted by Laws 1959, ch. 53, § 26, relating to limitation of actions, effective July 1, 1985.

## **7-30-27. Advance payment required.**

A. Any person required to make payment of tax pursuant to Section 7-30-10 or 7-30-11 NMSA 1978 shall make the advance payment required by this section.

B. For the purposes of this section:

(1) "advance payment" means the payment required to be made by this section in addition to any oil and gas conservation tax, penalty or interest due; and

(2) "average tax" means the aggregate amount of tax, net of any refunds or credits, paid by a person during the twelve-month period ending March 31 pursuant to the Oil and Gas Conservation Tax Act divided by the number of months during that period for which the person made payment.

C. Each year, prior to July 1, each person required to pay tax pursuant to the Oil and Gas Conservation Tax Act shall compute the average tax for the period ending March 31 of that year. The average tax calculated for a year shall be used during the twelve-month period beginning with July of that year and ending with June of the following year as the basis for making the advance payments required by Subsection D of this section.

D. Every month, beginning with July 1991, every person required to pay tax in a month pursuant to the Oil and Gas Conservation Tax Act shall pay, in addition to any amount of tax, interest or penalty due, an advance payment in an amount equal to the applicable average tax, except:

(1) if the person is making a final return under the Oil and Gas Conservation Tax Act, no advance payment pursuant to this subsection is due for that return; and

(2) as provided in Subsection F of this section.

E. Every month, beginning with tax payments due in August 1991, every person required to pay tax pursuant to the Oil and Gas Conservation Tax Act may claim a credit equal to the amount of advance payment made in the previous month, except as provided in Subsection F of this section.

F. If, in any month, a person is not required to pay tax pursuant to the Oil and Gas Conservation Tax Act, that person is not required to pay the advance payment and may not claim a credit pursuant to Subsection E of this section provided that, in any succeeding month when the person has liability under the Oil and Gas Conservation Tax Act, the person may claim a credit for any advance payment made and not credited.