

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

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

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

G. In the event that the date by which a person is required to pay the tax pursuant to the Oil and Gas Ad Valorem Production Tax Act is accelerated to a date earlier than the twenty-fifth day of the second month following the month of production, the advance payment provision contained in this section is null and void and any money held as advance payments shall be credited to the taxpayers' accounts.

**History:** Laws 1991, ch. 9, § 39.

## **ARTICLE 33**

### **Natural Gas Processors Tax**

#### **7-33-1. Short title.**

Chapter 7, Article 33 NMSA 1978 may be cited as the "Natural Gas Processors Tax Act".

**History:** 1953 Comp., § 72-23-1, enacted by Laws 1963, ch. 179, § 1; 1970, ch. 13, § 2; 1985, ch. 65, § 41.

#### **ANNOTATIONS**

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

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

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 218, 219.

84 C.J.S. Taxation § 208.

## 7-33-2. Definitions.

As used in the Natural Gas Processors Tax Act:

A. "average annual taxable value" means the average of the taxable value per mcf, determined pursuant to Section 7-31-5 NMSA 1978, of all natural gas produced in New Mexico for the specified calendar year as determined by the department;

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

C. "fiscal year" means the period starting July 1 and ending June 30 of the succeeding calendar year;

D. "mcf" means one thousand cubic feet;

E. "mmbtu" means one million British thermal units;

F. "natural gas" means any hydrocarbon that at atmospheric conditions of temperature and pressure is in a gaseous state, and includes non-hydrocarbon gases that are in combination with hydrocarbon gases;

G. "natural gas processing plant" means a facility used to extract liquid hydrocarbons and non-hydrocarbon gaseous or liquid substances, individually or in any combination, from natural gas, but does not include a facility that refines or processes oil, natural gas or liquid hydrocarbons or that extracts substances from natural gas through a field or lease operation;

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

I. "processor" means a person who operates a natural gas processing plant; and

J. "tax" means the natural gas processors tax.

**History:** 1953 Comp., § 72-23-2, enacted by Laws 1963, ch. 179, § 2; 1970, ch. 13, § 3; 1977, ch. 249, § 57; 1986, ch. 20, § 102; 1998, ch. 102, § 1.

### ANNOTATIONS

**The 1998 amendment**, effective January 1, 1999, rewrote the section to the extent that a detailed comparison is impracticable.

**Removal of carbon dioxide was not a field or lease operation.** — Where taxpayer, which was a producer of coal seam gas, had carbon dioxide removed from the gas at a processing plant to make the gas marketable or acceptable to interstate pipelines, the taxpayer was subject to the natural gas processors tax, because the removal of carbon dioxide constituted a processing operation that was not exempt as a field or lease operation. *Amoco Production Co. v. N.M. Taxation and Revenue Dep't*, 2003-NMCA-092, 134 N.M. 162, 74 P.3d 96.

**State courts may determine if additional tax was imposed increasing gas price.** — Whether an additional tax was imposed on gas company's sale of natural gas to other company so as to provide contractual basis for increased price is within state courts' jurisdiction. *Pan Am. Petroleum Corp. v. El Paso Natural Gas Co.*, 1970-NMSC-156, 82 N.M. 193, 477 P.2d 827.

### **7-33-3. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1989, ch. 115, § 6B repealed 7-33-3 NMSA 1978, as enacted by Laws 1963, ch. 179, § 3, relating to purpose of Natural Gas Processors Tax Act, effective July 1, 1989.

### **7-33-4. Privilege tax levied; collected by department; rate.**

A. There is levied and shall be collected by the department a privilege tax on processors for the privilege of operating a natural gas processing plant in New Mexico. This tax may be referred to as the "natural gas processors tax".

B. The tax shall be imposed on the amount of mmbtus of natural gas delivered to the processor at the inlet of the natural gas processing plant after subtracting the mmbtu deductions authorized in Subsection E of this section. The tax shall be imposed at the rate per mmbtu determined in Subsection C or D of this section, as applicable.

C. The tax rate for the six-month period beginning on January 1, 1999 shall be determined by multiplying the rate of sixty-five hundredths of one cent (\$.0065) per mmbtu by a fraction, the numerator of which is the annual average taxable value per mcf of natural gas produced in New Mexico during the 1997 calendar year and the denominator of which is one dollar thirty-three cents (\$1.33) per mcf. The resulting tax rate shall be rounded to the nearest one-hundredth of one cent per mmbtu.

D. The tax rate for each fiscal year beginning on or after July 1, 1999 shall be determined by multiplying the rate of sixty-five hundredths of one cent (\$.0065) per mmbtu by a fraction, the numerator of which is the annual average taxable value per mcf of natural gas produced in New Mexico during the preceding calendar year and the denominator of which is one dollar thirty-three cents (\$1.33) per mcf. The resulting tax rate shall be rounded to the nearest one-hundredth of one cent per mmbtu.

E. A processor may deduct from the amount of mmbtus of natural gas subject to the tax the mmbtus of natural gas that are:

- (1) used for natural gas processing by the processor;
- (2) returned to the lease from which it is produced;
- (3) legally flared by the processor; or
- (4) lost as a result of natural gas processing plant malfunctions or other incidences of force majeure.

F. On or before June 15, 1999 and June 15 of each succeeding year, the department shall inform each processor in writing of the tax rate applicable for the succeeding fiscal year.

G. Any Indian nation, tribe or pueblo or Indian is liable for the tax to the extent authorized or permitted by law.

**History:** 1953 Comp., § 72-23-4, enacted by Laws 1963, ch. 179, § 4; 1970, ch. 13, § 5; 1984, ch. 2, § 9; 1998, ch. 102, § 2.

## ANNOTATIONS

**The 1998 amendment**, effective January 1, 1999, deleted "oil and gas accounting division of the taxation and revenue" from the section heading and rewrote the section to the extent that a detailed comparison is impracticable.

**"Interest owners" liable under former section.** — Under the version of this section in effect prior to its 1998 amendment, the "interest owner" of the natural gas was liable for the privilege tax on processing natural gas. *Blackwood & Nichols Co. v. N.M. Taxation & Revenue Dep't*, 1998-NMCA-113, 125 N.M. 576, 964 P.2d 137, cert. denied, 126 N.M. 107, 967 P.2d 447 (decided under prior law).

**Marketable condition rule does not apply in New Mexico.** — Where Appellants, several living trusts that held royalty interests on oil and gas leases (Trusts), brought a putative class action against Defendant, the owner and operator of natural gas wells on the leases, claiming that Defendant was systematically underpaying royalties by improperly deducting from their royalties their proportionate share of the costs incurred to place the gas produced from the wells in a marketable condition (post-production costs), the district court did not err in dismissing the Trusts' claims, because under New Mexico law, Defendant had a duty to diligently market the gas for the benefit of the Trusts but that duty did not prohibit it from deducting from royalty payments the Trusts' proportionate share of post-production costs, those costs necessary to make the gas marketable. The marketable condition rule, which requires the lessor to market gas, but

to do so solely at its expense, does not apply in New Mexico. *Anderson Living Trust v. Energen Resources Corp.*, 886 F.3d 826 (10th Cir. 2018).

**Third-party gas processors may pass tax onto owner and operator of natural gas well who may in turn pass tax onto interest owners.** — Where Appellants, several living trusts that held royalty interests on oil and gas leases (Trusts), brought a putative class action against Defendant, the owner and operator of natural gas wells on the leases, claiming that Defendant was systematically underpaying royalties by improperly deducting from their royalties a privilege tax the State of New Mexico imposes on natural gas processors (the natural gas processors tax), the district court did not err in granting Defendant's motion for summary judgment, because Subsection A of this section places the responsibility for paying the tax on natural gas processors, but there is nothing in this section that prohibits the processors from passing the tax onto Defendant, the owner and operator of the gas wells, or from Defendant passing the tax onto the interest owners. *Anderson Living Trust v. Energen Resources Corp.*, 886 F.3d 826 (10th Cir. 2018).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 85 C.J.S. Taxation § 973 et seq.

## **7-33-5. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1998, ch. 102, § 7, repealed 7-33-5 NMSA 1978, as enacted by Laws 1963, ch. 179, § 5, relating to valuing the products of a processor, effective January 1, 1999. For provisions of former section, see the 1997 NMSA 1978 on *NMOneSource.com*.

## **7-33-6. Refund.**

Any person who has overpaid the tax may apply for a refund of that overpayment in accordance with the provisions of Section 7-1-26 NMSA 1978.

**History:** 1953 Comp., § 72-23-6, enacted by Laws 1963, ch. 179, § 6; 1985, ch. 65, § 42; 1998, ch. 102, § 3.

### **ANNOTATIONS**

**The 1998 amendment**, effective January 1, 1999, deleted "Price increase subject to approval of agency of United States of America, state of New Mexico or court" in the section heading, deleted the first two sentences of the section pertaining to product value being subject to tax, and in the last sentence substituted "overpaid the tax" for "paid any such excess tax" and "overpayment" for "excess tax".

### **7-33-7. Natural gas on which tax has been levied; regulation by department.**

The tax shall not be levied more than once on the same natural gas. Reporting of natural gas on which the tax has been paid is subject to the regulation of the department.

**History:** 1953 Comp., § 72-23-7, enacted by Laws 1963, ch. 179, § 7; 1998, ch. 102, § 4.

#### **ANNOTATIONS**

**The 1998 amendment**, effective January 1, 1999, substituted "Natural gas" for "Products" and "department" for "commission" in the section heading; substituted "natural gas" for "product" at the end of the first sentence; in the last sentence substituted "natural gas" for "products" and "department" for "commission", and made a minor stylistic change.

### **7-33-8. Tax return; tax remittance; additional information.**

A. Each processor shall submit a return monthly to the department in the form and manner required by the department showing for the month the total mmbtus of natural gas received by the processor at the inlet of the natural gas processing plant and the total mmbtus of natural gas deducted pursuant to the Natural Gas Processors Tax Act. All tax due or to be remitted by the processor shall accompany the return.

B. The return required by this section shall be filed on or before the twenty-fifth day of the month after the calendar month for which the return is required.

C. The department may require additional reports or information as necessary for the proper administration of the Natural Gas Processors Tax Act.

**History:** 1953 Comp., § 72-23-8, enacted by Laws 1963, ch. 179, § 8; 1970, ch. 13, § 7; 1998, ch. 102, § 5.

#### **ANNOTATIONS**

**The 1998 amendment**, effective January 1, 1999, substituted "return" for "report" in the section heading and rewrote the section to the extent that a detailed comparison is impracticable.

**"Interest owners" liable under former article.** — Under the version of this article in effect prior to the 1998 amendment of 7-33-4 NMSA 1978, the "interest owner" of the natural gas was liable for the privilege tax on processing natural gas. *Blackwood & Nichols Co. v. N.M. Taxation & Revenue Dep't*, 1998-NMCA-113, 125 N.M. 576, 964 P.2d 137, cert. denied, 126 N.M. 107, 967 P.2d 447 (decided under prior law).

## **7-33-9. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-33-9 NMSA 1978, as enacted by Laws 1963, ch. 179, § 9, relating to oil and gas manufacturers privilege tax fund, refunds and adjustments, effective July 1, 1985.

## **7-33-10. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-33-10 NMSA 1978, as enacted by Laws 1963, ch. 179, § 10, relating to monthly report to department of finance and administration, transfer to state general fund, effective July 1, 1985.

## **7-33-11. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-33-11 NMSA 1978, as enacted by Laws 1963, ch. 179, § 11, relating to tax paid erroneously, refund, effective July 1, 1985.

## **7-33-12. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-33-12 NMSA 1978, as enacted by Laws 1963, ch. 179, § 12, relating to tax paid under protest, suit authorized, effective July 1, 1985.

## **7-33-13. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-33-13 NMSA 1978, as enacted by Laws 1963, ch. 179, § 13, relating to interest and penalties, effective July 1, 1985.

## **7-33-14. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-33-14 NMSA 1978, as enacted by Laws 1963, ch. 179, § 14, relating to subpoena power, misdemeanor, effective July 1, 1985.

### **7-33-15. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-33-15 NMSA 1978, as enacted by Laws 1963, ch. 179, § 15, relating to refusal to make return, commission may assess, assessment binding on manufacturer, effective July 1, 1985.

### **7-33-16. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-33-16 NMSA 1978, as enacted by Laws 1963, ch. 179, § 16, relating to restraining order, injunction, effective July 1, 1985.

### **7-33-17. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-33-17 NMSA 1978, as enacted by Laws 1963, ch. 179, § 17, relating to personal debt, action in any district court, effective July 1, 1985.

### **7-33-18. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-33-18 NMSA 1978, as enacted by Laws 1963, ch. 179, § 18, relating to lien against property, notice to be filed, notice to debtor, effective July 1, 1985.

### **7-33-19. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-33-19 NMSA 1978, as enacted by Laws 1963, ch. 179, § 19, relating to sale of property to satisfy lien, effective July 1, 1985.

### **7-33-20. Repealed.**