

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:

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

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

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

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

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

F. "operator" means any person:

(1) engaged in the severance of products from a production unit; or

(2) owning an interest in any product at the time of severance who receives a portion or all of such product for the person's interest;

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

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

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

J. "stripper well property" means a crude oil or natural gas producing property that is assigned a single production unit number by the department and is certified by the oil conservation division of the energy, minerals and natural resources department pursuant to the Natural Gas and Crude Oil Production Incentive Act [7-29B-1 to 7-29B-6 NMSA 1978] to have produced in the preceding calendar year:

(1) if a crude oil producing property, an average daily production of less than ten barrels of oil per eligible well per day;

(2) if a natural gas producing property, an average daily production of less than sixty thousand cubic feet of natural gas per eligible well per day; or

(3) if a property with wells that produce both crude oil and natural gas, an average daily production of less than ten barrels of oil per eligible well per day, as

determined by converting the volume of natural gas produced by the well to barrels of oil by using a ratio of six thousand cubic feet to one barrel of oil;

K. "average annual taxable value" means as applicable:

(1) the average of the taxable value per one thousand cubic feet, determined pursuant to Section 7-31-5 NMSA 1978, of all natural gas produced in New Mexico for the specified calendar year as determined by the department; or

(2) the average of the taxable value per barrel, determined pursuant to Section 7-31-5 NMSA 1978, of all oil produced in New Mexico for the specified calendar year as determined by the department;

L. "tax" means the oil and gas emergency school tax; and

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

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

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

History: 1953 Comp., § 72-21-2, enacted by Laws 1959, ch. 54, § 2; 1977, ch. 249, § 55; 1980, ch. 97, § 6; 1986, ch. 20, § 100; 1993, ch. 360, § 1; 1999, ch. 256, § 8; 2005, ch. 130, § 7; 2021, ch. 65, § 32.

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, carbon dioxide, helium or a non-hydrocarbon gas" and added the remainder of the subsection; and added Subsection M.

The 2005 amendment, effective July 1, 2005, in Subsection E, defined "product" to include helium or non-hydrocarbon gas.

The 1999 amendment, effective June 18, 1999, added Subsections J and K, and redesignated former Subsection J as Subsection L.

The 1993 amendment, effective June 18, 1993, inserted "limited liability company" in Subsection H; and added Subsection J, making related grammatical changes.

7-31-3. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 65, § 46 repealed 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.

7-31-4. Privilege tax levied; collected by department; rate; interest owner's liability to state; Indian liability.

A. There is levied and shall be collected by the department a privilege tax on the business of every person severing products in this state. The measure of the tax shall be:

(1) on oil and on oil and other liquid hydrocarbons removed from natural gas at or near the wellhead, except as provided in Paragraphs (4) and (5) of this subsection, three and fifteen hundredths percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978;

(2) on carbon dioxide, helium and non-hydrocarbon gases, three and fifteen hundredths percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978;

(3) on natural gas, except as provided in Paragraphs (6) and (7) of this subsection, four percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978;

(4) on the oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead from a stripper well property, one and fifty-eight hundredths percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978, provided that the average annual taxable value of oil was equal to or less than fifteen dollars (\$15.00) per barrel in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed;

(5) on the oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead from a stripper well property, two and thirty-six hundredths percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978, provided that the average annual taxable value of oil was greater than fifteen dollars (\$15.00) per barrel but not more than eighteen dollars (\$18.00) per barrel in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed;

(6) on the natural gas removed from a stripper well property, two percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978, provided that the average annual taxable value of natural gas was equal to or less than one dollar fifteen cents (\$1.15) per thousand cubic feet in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed; and

(7) on the natural gas removed from a stripper well property, three percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978, provided that the average annual taxable value of natural gas was greater than one dollar fifteen cents (\$1.15) per thousand cubic feet but not more than one dollar thirty-five cents (\$1.35) per thousand cubic feet in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed.

B. Every interest owner, for the purpose of levying this tax, is deemed to be in the business of severing products and is liable for this tax to the extent of his interest in the value of the products or to the extent of his interest as may be measured by the value of the products.

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

History: 1953 Comp., § 72-21-4, enacted by Laws 1959, ch. 54, § 4; 1963, ch. 179, § 24; 1983, ch. 213, § 21; 1993, ch. 360, § 2; 1999, ch. 256, § 9; 2005, ch. 130, § 8.

ANNOTATIONS

Cross references. — For natural gas processors tax, see 7-33-1 to 7-33-8 NMSA 1978.

The 2005 amendment, effective July 1, 2005, in Subsection A(2), imposed the privilege tax on helium and non-hydrocarbon gases.

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.

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.

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, were not preempted by federal laws promoting tribal economic self-sufficiency, and may be imposed on the same on-reservation production of oil and gas by non-Indian lessees as is subject to the tribe's own severance tax. *Cotton Petroleum v. State*, 1987-NMCA-121, 106 N.M. 517, 745 P.2d 1170, cert. quashed, 106 N.M. 511, 745 P.2d 1159, *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 §§ 165 et seq.

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

Cross references. — For meaning of "commission", see 7-31-2A NMSA 1978.

Compiler's notes. — The term "this act", referred to in Subsection C, means Laws 1959, ch. 54, compiled as 7-31-1, 7-31-2, and 7-31-4 to 7-31-11 NMSA 1978.

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.

7-31-7. 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

Cross references. — For 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

Cross references. — For 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 may be required.

History: 1953 Comp., § 72-21-10, enacted by Laws 1959, ch. 54, § 10; 1986, ch. 5, § 6.

ANNOTATIONS

Cross references. — For meaning of "division", see 7-31-2A NMSA 1978.

7-31-10.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1999, ch. 218, § 3 repealed 7-31-10.1 NMSA 1978, as enacted by Laws 1999, ch. 218, § 1, relating to one-time tax credit for new wells, effective July 1, 2001. For provisions of former section, see the 1998 NMSA 1978 on *NMOneSource.com*.

7-31-11. Purchaser's report; tax remittance; additional information.

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

History: 1953 Comp., § 72-21-11, enacted by Laws 1959, ch. 54, § 11; 1986, ch. 5, § 7.

ANNOTATIONS

Cross references. — For meaning of "division", see 7-31-2A NMSA 1978.

7-31-12. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 65, § 46 repealed 7-31-12 NMSA 1978, as enacted by Laws 1959, ch. 54, § 12, relating to oil and gas accounting commission emergency school tax fund, refunds and adjustments, effective July 1, 1985.

7-31-13. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 65, § 46 repealed 7-31-13 NMSA 1978, as enacted by Laws 1959, ch. 54, § 13, relating to monthly report to department of finance and administration, transfer to public school equalization fund, effective July 1, 1985.

7-31-14. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 65, § 46 repealed 7-31-14 NMSA 1978, as enacted by Laws 1959, ch. 54, § 14, relating to tax paid erroneously, refund, effective July 1, 1985.

7-31-15. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 65, § 46 repealed 7-31-15 NMSA 1978, as enacted by Laws 1959, ch. 54, § 15, relating to tax payment under protest, suit authorized, effective July 1, 1985.

7-31-16. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 65, § 46 repealed 7-31-16 NMSA 1978, as enacted by Laws 1959, ch. 54, § 16, relating to interest and penalties, restraint from severing products, effective July 1, 1985.

7-31-17. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 65, § 46 repealed 7-31-17 NMSA 1978, as enacted by Laws 1959, ch. 54, § 17, relating to subpoena power, misdemeanor fine, effective July 1, 1985.

7-31-18. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 65, § 46 repealed 7-31-18 NMSA 1978, as enacted by Laws 1959, ch. 54, § 18, relating to refusal to make return, commission may assess, assessment binding on taxpayer, effective July 1, 1985.

7-31-19. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 65, § 46 repealed 7-31-19 NMSA 1978, as enacted by Laws 1959, ch. 54, § 19, relating to restraining order, injunction, effective July 1, 1985.

7-31-20. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 65, § 46 repealed 7-31-20 NMSA 1978, as enacted by Laws 1959, ch. 54, § 20, relating to personal debt, action in any district court, effective July 1, 1985.

7-31-21. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 65, § 46 repealed 7-31-21 NMSA 1978, as enacted by Laws 1959, ch. 54, § 21, relating to lien against property, notice to be filed, notice to debtor, effective July 1, 1985.

7-31-22. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 65, § 46 repealed 7-31-22 NMSA 1978, as enacted by Laws 1959, ch. 54, § 22, relating to sale of property to satisfy lien, effective July 1, 1985.

7-31-23. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 65, § 46 repealed 7-31-23 NMSA 1978, as enacted by Laws 1959, ch. 54, § 23, relating to payment of taxes to release lien, effective July 1, 1985.

7-31-24. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 65, § 46 repealed 7-31-24 NMSA 1978, as enacted by Laws 1959, ch. 54, § 24, relating to remedies cumulative, effective July 1, 1985.

7-31-25. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 65, § 46 repealed 7-31-25 NMSA 1978, as enacted by Laws 1959, ch. 54, § 25, relating to limitation of actions, effective July 1, 1985.

7-31-26. Advance payment required.

A. Any person required to make payment of tax pursuant to Section 7-31-10 or 7-31-11 NMSA 1978 shall make the advance payment required by this section.

B. For the purposes of this section:

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

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

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

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

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

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

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

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

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

History: Laws 1991, ch. 9, § 38.

7-31-27. Jicarilla Apache tribal capital improvements tax credit.

A. A person who is liable for the payment of the oil and gas emergency school tax imposed on products severed from Jicarilla Apache tribal land or imposed on the privilege of severing products from Jicarilla Apache tribal land shall be entitled to a credit to be computed pursuant to this section and to be deducted from the payment of those taxes with respect to products from qualifying wells. The credit provided by this section may be referred to as the "Jicarilla Apache tribal capital improvements tax credit".

B. As used in this section:

(1) "Jicarilla Apache tribal land" means land within the state of New Mexico that on March 1, 2002 was within the exterior boundaries of a Jicarilla Apache reservation or was held in trust by the United States for the Jicarilla Apache Nation;

(2) "product" means oil, natural gas or liquid hydrocarbon, individually or in combination, or carbon dioxide;

(3) "qualifying well" means a well on Jicarilla Apache tribal land; and

(4) "Jicarilla Apache tribal capital improvements tax" means a tax imposed after the effective date of this section by the Jicarilla Apache Nation that is exclusively dedicated to fund capital improvement projects on Jicarilla Apache tribal land and that is not available to finance the construction of buildings used for commercial activity.

C. The Jicarilla Apache tribal capital improvements tax credit shall be determined separately for each calendar month and shall be equal to the lesser of:

(1) the amount of the Jicarilla Apache tribal capital improvements tax imposed by the Jicarilla Apache Nation upon the products severed from qualifying wells or upon the privilege of severing products from qualifying wells; or

(2) seven-tenths of one percent of the taxable value of the products severed from qualifying wells as determined by applicable state law.

D. A credit pursuant to this section shall be allowed by the taxation and revenue department only if the Jicarilla Apache Nation has entered into a cooperative agreement with the secretary of taxation and revenue for the exchange of information necessary for the administration of the Jicarilla Apache tribal capital improvements tax credit.

E. Notwithstanding any other provision of law to the contrary, the amount of credit taken and allowed shall be applied against the amount of the oil and gas emergency school tax due with respect to the products or severance of products taxed.

F. The credit provided by this section shall be in addition to any credit claimed by the taxpayer or allowed by the taxation and revenue department pursuant to Section 7-29C-1 NMSA 1978 with respect to the same products or the severance of the same