

Assessor, 1985-NMCA-032, 103 N.M. 65, 702 P.2d 1010 (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 [higher education department] shall submit to the secretary of finance and administration the property tax rates for the succeeding tax year for each technical and vocational district, area vocational school district, junior college district and branch community college district. The rates required to be submitted pursuant to this section shall separately state by county and by school district the rate to be levied for operational purposes and the rate to be levied for payment of principal and interest on general obligation debt issued or entered into by the district.

History: 1978 Comp., § 7-37-8, enacted by Laws 1978, ch. 128, § 1; 1983, ch. 301, § 12; 1988, ch. 64, § 1; 1997, ch. 193, § 17.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 2005, ch. 289, § 29 abolished the commission on higher education and provided that all references in law to the commission on higher education shall be construed to be references to the higher education department.

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.

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*, 1971-NMSC-074, 83 N.M. 90, 488 P.2d 725.

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*, 1958-NMSC-144, 65 N.M. 241, 335 P.2d 567.

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*, 1958-NMSC-144, 65 N.M. 241, 335 P.2d 567.

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, 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 § 462 et seq.

7-38-3. Information reports.

For the purpose of establishing or determining the value of property for property taxation purposes, the director may promulgate regulations requiring any property owner or his authorized agent to report information concerning the property to the department or the county assessor at the times and in the manner required by the director.

History: 1953 Comp., § 72-31-3, enacted by Laws 1973, ch. 258, § 43.

7-38-4. Confidentiality of information.

A. Except as specifically authorized in this section or as otherwise provided by law, it is unlawful for the secretary, any employee or any former employee of the department to reveal to any person other than the secretary, an employee of the department, a county assessor or an employee of a county assessor any information gained during his employment about a specific property or a property taxpayer gained as a result of a report or information furnished the department or a county assessor by a taxpayer or as a result of an examination of property or records of a taxpayer. Except as specifically authorized in this section or as otherwise provided by law, it is unlawful for any county

assessor or any employee or former employee of a county assessor to reveal to any person other than county assessors or their employees or the secretary or an employee of the department any information furnished by the department about a specific property or property owner or any other information gained during that person's employment about a specific property or a property taxpayer gained as a result of a report or information furnished the department or a county assessor by a taxpayer or as a result of an examination of property or records of a taxpayer. Information described in this subsection may be released:

(1) that is limited to the information contained in those valuation records that are public records and the identity of the owner or person in possession of the property;

(2) to an authorized representative of another state; provided that the receiving state has entered into a written agreement with the department to use the information for tax purposes only;

(3) to a state district or appellate court or a federal court or county valuation protests board:

(a) in response to an order made in an action relating to taxation in which the state or a governmental unit is a party and in which the information is material to the inquiry; or

(b) in any action in which the department or a county is attempting to enforce the provisions of the Property Tax Code or to collect a property tax or in any matter in which the taxpayer has put the taxpayer's own property valuation or liability for taxes at issue;

(4) to the property owner or a representative authorized in writing by the owner to obtain the information;

(5) if used for statistical purposes in a way that the information revealed is not identified or identifiable as applicable to any property owner or person in possession of the property;

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

(7) to the multistate tax commission or its authorized representative; provided that the information is used for tax purposes only and is disclosed by the multistate tax commission only to states which have met the requirements of Paragraph (2) of this subsection.

B. The secretary, any employee or any former employee of the department or any other person subject to the provisions of this section who willfully releases information in

violation of this section is guilty of a misdemeanor and shall be fined not more than one thousand dollars (\$1,000) or imprisoned for a definite term of less than one year or both. Any person convicted of a violation of this section shall not be employed by the state for a period of five years after the date of conviction.

History: 1953 Comp., § 72-31-4, enacted by Laws 1973, ch. 258, § 44; 1977, ch. 249, § 61; 1982, ch. 28, § 7; 1986, ch. 20, § 113; 1990, ch. 22, § 2; 1991, ch. 166, § 7.

ANNOTATIONS

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.

The 1990 amendment, effective May 16, 1990, in Paragraph (3) of Subsection A, added the Subparagraph designation "(a)" and added Subparagraph (b).

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, cert. denied, 126 N.M. 532, 972 P.2d 351.

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, cert. denied, 126 N.M. 532, 972 P.2d 351.

7-38-5. Repealed.

ANNOTATIONS

Repeals. — Laws 1982, ch. 28, § 31, repealed 7-38-5 NMSA 1978, as enacted by Laws 1973, ch. 258, § 45, 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 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 Props. v. Valencia Cnty. Valuation Protests Bd.*, 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

Application of presumption. — The question whether property is entitled to the special valuation method in Section 7-36-20 NMSA 1978 is a question of classification; property that is classified as agricultural is entitled to the benefit of that section, whereas other property is not. *Jicarilla Apache Nation v. Rodarte*, 2004-NMSC-035, 136 N.M. 630, 103 P.3d 554, *rev'd* 2004-NMCA-055, 135 N.M. 630, 92 P.3d 642.

Presumption in this section is applicable only to the value of property and inapplicable when the question is whether a taxpayer is entitled to the special method of valuation provided for in 7-36-20 NMSA 1978. *Jicarilla Apache Nation v. Rio Arriba Cnty. Assessor*, 2004-NMCA-055, 135 N.M. 630, 92 P.3d 642, *rev'd* 2004-NMSC-035, 136 N.M. 630, 103 P.3d 554.

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. *Petition of Kinscherff*, 1976-NMCA-097, 89 N.M. 669, 556 P.2d 355, cert. denied, 90 N.M. 8, 558 P.2d 620; *N.M. Baptist Found. v. Bernalillo Cnty. Assessor*, 1979-NMCA-102, 93 N.M. 363, 600 P.2d 309.

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. *N.M. Baptist Found. v. Bernalillo Cnty. Assessor*, 1979-NMCA-102, 93 N.M. 363, 600 P.2d 309; *La Jara Land Developers, Inc. v. Bernalillo County Assessor*, 1982-NMCA-006, 97 N.M. 318, 639 P.2d 605.

Overcoming the statutory presumption of correctness afforded to the assessor's valuation. — Where appellant sought review of the Bernalillo county valuation protests board's (protests board) valuation of appellant's commercial property, where appellant offered evidence of value tending to dispute the factual correctness of the county assessor's method of valuation, where the county assessor did not offer expert testimony disputing that appellant's method of valuation was a generally accepted appraisal technique, and where neither the protests board nor the district court ruled that appellant failed to overcome the statutory presumption of correctness afforded to

the assessor's valuation, the appellant overcame the statutory presumption of correctness and the burden shifted to the assessor to prove that his or her method of valuation utilized a generally accepted appraisal technique. *2727 San Pedro LLC v. Bernalillo Cty. Assessor*, 2017-NMCA-008.

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 Cnty. Valuation Protest Bd.*, 1976-NMCA-116, 89 N.M. 784, 558 P.2d 53.

Since taxpayer overcame presumption, burden rested on assessor. — 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 Cnty. Assessor*, 1980-NMCA-173, 95 N.M. 723, 625 P.2d 1240; *Protest of Plaza Del Sol Ltd. P'ship v. Assessor for Cnty. of Bernalillo*, 1986-NMCA-022, 104 N.M. 154, 717 P.2d 1123.

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*, 1987-NMCA-055, 105 N.M. 774, 737 P.2d 555.

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*, 1987-NMCA-055, 105 N.M. 774, 737 P.2d 555.

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. *Petition of Kinscherff*, 1976-NMCA-097, 89 N.M. 669, 556 P.2d 355, cert. denied, 90 N.M. 8, 558 P.2d 620.

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 Section 7-36-15B NMSA 1978 and the statutory presumption of correctness still stands. *N.M. Baptist Found. v. Bernalillo Cnty. Assessor*, 1979-NMCA-102, 93 N.M. 363, 600 P.2d 309.

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 Section 7-36-15 NMSA 1978, the presumption of the correctness of the assessor's valuation was not overcome. *Peterson Props. v. Valencia Cnty. Valuation Protests Bd.*, 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

Failure to overcome presumption. — 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. *In re Cobb*, 1991-NMCA-122, 113 N.M. 251, 824 P.2d 1053, cert. denied, 113 N.M. 44, 822 P.2d 1127.

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, cert. denied, 126 N.M. 532, 972 P.2d 351.

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

Compiler's notes. — The phrase "this act" at the end of the section refers to Laws 1997, ch. 68, which amended this section.

The 1997 amendment, effective June 20, 1997, substituted "7-36-21" and the language following it for "72-29-10 NMSA 1953" at the end of the section.

Appropriate time period to establish exemption status. — The prior calendar year is the appropriate time period upon which to base a property's exemption status, and January 1 is the appropriate "cutoff date" under Article VIII, Section 3 of the New Mexico Constitution. *CAVU Co. v. Martinez*, 2014-NMSC-029, *aff'g in part, rev'g in part* 2013-NMCA-050, 302 P.3d 126.

Evidence of the use of property on the valuation date. — The valuation date of January 1 sets a cut-off date to avoid reclassification of property throughout the tax year. It does not specify the date on which the property's use defines its status for the remainder of the year and does not limit the evidence that can be considered in determining the status of property to the property's use on January 1. Property does not have to be in active use for exempt purposes on January 1 in order for an exemption to apply and evidence of the prior use of the property should be considered. *CAVU Co. v. Martinez*, 2013-NMCA-050, 302 P.3d 126, cert. granted, 2013-NMCERT-004.

Where the taxpayer's property was used as a school until May 2008, the property ceased to be used actively as a school after May, 2008 and was not used actively as a school again until August 2010 when the fall semester began; the property was not used for educational purposes on January 1, 2010; and the district court held that January 1 is the point at which the status of property is determined for purposes of qualifying for an exemption from taxation and that the taxpayer's property was not exempt for the 2010 tax year because the property was not used for educational purposes on January 1, 2010, the district court erred in interpreting Section 7-38-7 NMSA 1978 too narrowly and should have considered the use of the property prior to January 1, 2010. *CAVU Co. v. Martinez*, 2013-NMCA-050, 302 P.3d 126, cert. granted, 2013-NMCERT-004.

Exclusive reliance on evidence of prior year comparable sales was reasonable. — With respect to comparable sales, the legislature intended assessors and protests boards to consider only data available on January 1 of the tax year of the valuation notice. *AMREP Sw., Inc. v. Sandoval Cnty. Assessor*, 2012-NMCA-082, 284 P.3d 1118.

Where the county valuation protests board refused to consider the taxpayer's comparable 2009 sales evidence and relied exclusively on comparable 2008 sales for the valuation of the taxpayer's property for the 2009 tax year based on the board's interpretation of statutory and administrative code provisions that required property to be valued using only data available on January 1, 2009, the board's interpretation of the statutory and administrative code provisions was reasonable. *AMREP Sw., Inc. v. Sandoval Cnty. Assessor*, 2012-NMCA-082, 284 P.3d 1118.

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. *Petition of Kinscherff*, 1976-NMCA-097, 89 N.M. 669,

556 P.2d 355, cert. denied, 90 N.M. 8, 558 P.2d 620; *Bakel v. Bernalillo Cnty. Assessor*, 1980-NMCA-173, 95 N.M. 723, 625 P.2d 1240.

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 Cnty. Assessor*, 1980-NMCA-088, 95 N.M. 697, 625 P.2d 1214.

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 §§ 436, 437.

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

7-38-8. Reporting of property for valuation; penalties for failure to report.

A. All property subject to valuation for property taxation purposes by the department shall be reported annually to the department. The report required by this subsection shall be made by the owner of the property or such other person as may be authorized by rules of the department. The report shall be in a form and contain the information required by rules of the department. It shall be made not later than the last day of February in the tax year in which the property is subject to valuation. Claims of economic obsolescence or functional obsolescence on properties not regulated by the federal government shall be made at the time the annual report is filed; however, the department shall accept supplements to the annual report containing claims of economic obsolescence or functional obsolescence on properties regulated by the federal energy regulatory commission or its successor agency at the time the annual commission report becomes available, but no later than April 15 of the tax year or at a later time allowed by an extension granted by the department. In the case of the failure or refusal to file the report required under this subsection, the department shall determine the value of the property subject to valuation from the best information available.

B. Except as provided in Subsection D of this section, all property subject to valuation for property taxation purposes by the county assessor shall be reported as follows:

(1) property valued in the 1974 tax year by the county assessor need not be reported for any subsequent tax year unless required to be reported under Paragraph (3) of this subsection;

(2) property not valued in the 1974 tax year by the county assessor but that becomes subject to valuation by the county assessor in any subsequent tax year shall be reported to the county assessor not later than the last day of February of the tax year in which it becomes subject to valuation, but such property need not be reported for any year subsequent to the year in which initially reported unless required to be reported under Paragraph (3) of this subsection;

(3) property once valued by a county assessor in a tax year, but which is not valued for a year subsequent to the year of initial valuation because it is not subject to valuation for that subsequent year by the county assessor, shall be reported to the county assessor not later than the last day of February in a tax year in which it again becomes subject to valuation by the county assessor; and

(4) reports required under Paragraphs (2) and (3) of this subsection shall be in a form and contain the information required by rules of the department.

C. Not later than the last day of February of each tax year, every owner of real property who made, or caused to be made, in the preceding calendar year improvements costing more than ten thousand dollars (\$10,000) to that real property shall report to the county assessor the property improved, the improvements made, the cost of the improvements and such other information as the department may require.

D. Manufactured homes, livestock and land used for agricultural purposes shall be reported for valuation for property taxation purposes to the county assessor at the times and in the manner prescribed under Sections 7-36-26, 7-36-21 and 7-36-20 NMSA 1978 and rules promulgated by the department.

E. Property subject to valuation by the county assessor for property taxation purposes and improvements to such property that are required to be reported under Subsection C of this section shall be reported to the county assessor of the county in which the property is required to be valued under Section 7-36-14 NMSA 1978. Reports shall be made either by the owner of the property, the owner's authorized agent or any person having control or management of the property and shall be in a form and contain the information required by rules of the department.

F. Reports required by this section shall be made by the declarant under oath, and the secretary, employees of the department, the assessor and the assessor's employees are empowered to administer oaths for this purpose.

G. A person who intentionally refuses to make a report required under the provisions of Subsection A, B or C of this section or who knowingly makes a false statement in a report required under the provisions of Subsection A, B or C of this section is guilty of a misdemeanor and upon conviction shall be punished by the imposition of a fine of not more than one thousand dollars (\$1,000).

H. A person who fails to make a report required under the provisions of Subsection A or B of this section is liable for a civil penalty in an amount equal to five percent of the property taxes ultimately determined to be due on the property for the tax year or years for which the person failed to make the required report.

I. A person who intentionally refuses to make a report required under the provisions of Subsection A or B of this section with the intent to evade any tax or who fails to make a report required under the provisions of Subsection A or B of this section with the intent to evade any tax is liable for a civil penalty in an amount equal to twenty-five percent of the property taxes ultimately determined to be due on the property for the tax year or years for which the person refused or failed to make the required report.

J. A person who is required to make a report under the provisions of Subsection C of this section and who fails to do so is personally liable for a civil penalty in an amount equal to the greater of twenty-five dollars (\$25.00) or twenty-five percent of the difference between the property taxes ultimately determined to be due and the property taxes originally paid for the tax year or years for which the person failed to make the required report. This penalty shall not be considered a delinquent property tax, and the provisions of the Property Tax Code for the enforcement and collection of delinquent property taxes through the sale of the property do not apply. However, the county treasurer may use all other methods provided by law to collect the property tax or penalty due. Notwithstanding any other provision of the Property Tax Code, amounts collected pursuant to the penalty provided by this subsection shall be distributed among

jurisdictions imposing tax on the property in the same proportion as the amount of tax ultimately determined to be due for the jurisdiction bears to the total due for all such jurisdictions.

K. The civil penalties authorized under Subsections H and I of this section shall be imposed and collected at the time and in the manner that the tax is imposed and collected. In order to assist in the imposition and collection of the penalties, the persons having responsibility for determining the value of the property shall make an entry in the valuation records indicating the liability for any penalties due under this section.

L. For the purposes of this section:

(1) "improvement" means the construction of any new structure permanently affixed to the land or the repair, rehabilitation or alteration of an existing structure permanently affixed to the land that, for property used for any commercial purpose, is required or allowed to be capitalized under the Internal Revenue Code and, for other properties, any similar construction, repair, rehabilitation or alteration; and

(2) "owner of real property" includes every owner of improvements who does not own the land upon which the improvements are made.

History: 1953 Comp., § 72-31-8, enacted by Laws 1973, ch. 258, § 48; 1974, ch. 92, § 7; 1985, ch. 109, § 8; 1991, ch. 213, § 1; 2007, ch. 273, § 2.

ANNOTATIONS

Cross references. — For county assessors, see Chapter 4, Article 39 NMSA 1978.

The 2007 amendment, effective July 1, 2007, provided that claims of economic obsolescence or functional obsolescence on property not regulated by the federal government shall be made at the time the annual report is filed, except that the department may accept supplements containing such claims on property regulated by the federal energy regulatory commission.

Applicability. — Laws 2007, ch. 273, § 3 provided that Laws 2007, ch. 273, §§ 1 and 2 apply to property tax years beginning on or after January 1, 2008.

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.*, 1982-NMSC-081, 98 N.M. 237, 647 P.2d 870.

Property owner is required to make declaration of all property subject to taxation annually. *Bailey v. Barranca*, 1971-NMSC-074, 83 N.M. 90, 488 P.2d 725.

Duty of property owner. — Property owner has affirmative duty to declare his property. *State ex rel. Prop. Appraisal Dep't v. Sierra Life Ins. Co.*, 1977-NMSC-023, 90 N.M. 268, 562 P.2d 829.

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 Cnty.*, 1974-NMSC-073, 86 N.M. 589, 526 P.2d 183.

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 Cnty. Comm'rs*, 1995-NMCA-047, 119 N.M. 675, 894 P.2d 1031.

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. P'ship v. Assessor for Cnty. of Bernalillo*, 1986-NMCA-022, 104 N.M. 154, 717 P.2d 1123.

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 Cnty.*, 1974-NMSC-073, 86 N.M. 589, 526 P.2d 183.

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.

ANNOTATIONS

Inspection and interviews. — After a private museum claims an exemption from property tax, this section does not require the county tax assessor to conduct an on-site inspection and interviews, relating to the museum's educational programs. *Georgia O'Keeffe Museum v. County of Santa Fe*, 2003-NMCA-003, 133 N.M. 297, 62 P.3d 754.

7-38-9. Description of property for property taxation purposes.

A. Property shall be described for property taxation purposes by a description sufficiently adequate and accurate to identify it. Real property shall be described under a uniform system of real property description in accordance with regulations of the department. The department shall promulgate regulations establishing a uniform system of real property description to be used by the department and all assessors. The system shall include requirements for a comprehensive mapping or geographic information system, the use of uniform property record documents and uniform coding of real property descriptions.

B. Real property that has been valued for property taxation purposes prior to the effective date of the Property Tax Code by a description consisting of a mere reference to the time and place of filing or recording in the office of the county clerk of any map or other instrument describing the property with sufficient preciseness to permit its identification shall be considered to have been sufficiently described for property taxation purposes. All prior assessments, records and instruments maintained or issued by property taxation officers which describe the property by such a reference are validated and given the same force and effect as if a description of the property had been used that would comply with this section.

History: 1953 Comp., § 72-31-9, enacted by Laws 1973, ch. 258, § 49; 1999, ch. 215, § 1.

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*, 1956-NMSC-008, 60 N.M. 444, 292 P.2d 319.

Insufficient description presents jurisdictional defect. — An erroneous description may be corrected, but a totally insufficient description presents a jurisdictional defect. *Otero v. Sandoval*, 1956-NMSC-008, 60 N.M. 444, 292 P.2d 319.

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 Cnty.*, 1974-NMSC-073, 86 N.M. 589, 526 P.2d 183.

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*, 1958-NMSC-144, 65 N.M. 241, 335 P.2d 567.

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*, 1954-NMSC-039, 58 N.M. 429, 272 P.2d 330.

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*, 1956-NMSC-008, 60 N.M. 444, 292 P.2d 319.

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*, 1958-NMSC-144, 65 N.M. 241, 335 P.2d 567.

Phrase "160 acres" does not invalidate a description otherwise sufficient. *McKay v. Espinosa*, 1958-NMSC-144, 65 N.M. 241, 335 P.2d 567.

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*, 1956-NMSC-008, 60 N.M. 444, 292 P.2d 319.

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 § 587 et seq.

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 [Chapter 30 NMSA 1978].

History: Laws 1973, ch. 258, § 52; 1953 Comp., § 72-31-12; Laws 1974, ch. 92, § 8; 1982, ch. 28, § 9.

7-38-12.1. Residential property transfers; affidavit to be filed with assessor.

A. After January 1, 2004, a transferor or the transferor's authorized agent or a transferee or the transferee's authorized agent presenting for recording with a county clerk a deed, real estate contract or memorandum of real estate contract transferring an interest in real property classified as residential property for property taxation purposes shall also file with the county assessor within thirty days of the date of filing with the county clerk an affidavit signed and completed in accordance with the provisions of Subsection B of this section.

B. The affidavit required for submission shall be in a form approved by the department and signed by the transferors or their authorized agents or the transferees or their authorized agents of any interest in residential real property transferred by deed or real estate contract. The affidavit shall contain only the following information to be used only for analytical and statistical purposes in the application of appraisal methods:

- (1) the complete names of all transferors and transferees;
- (2) the current mailing addresses of all transferors and transferees;
- (3) the legal description of the real property interest transferred as it appears in the document of transfer;
- (4) the full consideration, including money or any other thing of value, paid or exchanged for the transfer and the terms of the sale including any amount of seller incentives; and
- (5) the value and a description of personal property that is included in the sale price.

C. Upon receipt of the affidavit required by Subsection A of this section, the county assessor shall place the date of receipt on the original affidavit and on a copy of the affidavit. The county assessor shall retain the original affidavit as a confidential record and as proof of compliance and shall return the copy marked with the date of receipt to the person presenting the affidavit. The assessor shall index the affidavits in a manner that permits cross-referencing to other records in the assessor's office pertaining to the specific property described in the affidavit. The affidavit and its contents are not part of the valuation record of the assessor.

D. The affidavit required by Subsection A of this section shall not be required for:

- (1) a deed transferring nonresidential property;
- (2) a deed that results from the payment in full or forfeiture by a transferee under a recorded real estate contract or recorded memorandum of real estate contract;
- (3) a lease of or easement on real property, regardless of the length of term;

- (4) a deed, patent or contract for sale or transfer of real property in which an agency or representative of the United States, New Mexico or any political subdivision of the state is the named grantor or grantee and authorized transferor or transferee;
- (5) a quitclaim deed to quiet title or clear boundary disputes;
- (6) a conveyance of real property executed pursuant to court order;
- (7) a deed to an unpatented mining claim;
- (8) an instrument solely to provide or release security for a debt or obligation;
- (9) an instrument that confirms or corrects a deed previously recorded;
- (10) an instrument between husband and wife or parent and child with only nominal actual consideration therefor;
- (11) an instrument arising out of a sale for delinquent taxes or assessments;
- (12) an instrument accomplishing a court-ordered partition;
- (13) an instrument arising out of a merger or incorporation;
- (14) an instrument by a subsidiary corporation to its parent corporation for no consideration, nominal consideration or in sole consideration of the cancellation or surrender of the subsidiary's stock;
- (15) an instrument from a person to a trustee or from a trustee to a trust beneficiary with only nominal actual consideration therefor;
- (16) an instrument to or from an intermediary for the purpose of creating a joint tenancy estate or some other form of ownership; or
- (17) an instrument delivered to establish a gift or a distribution from an estate of a decedent or trust.

E. The affidavit required by Subsection A of this section shall not be construed to be a valuation record pursuant to Section 7-38-19 NMSA 1978.

F. Prior to November 1, 2003, the department shall print and distribute to each county assessor affidavit forms for distribution to the public upon request.

History: Laws 2003, ch. 118, § 2; 2005, ch. 24, § 1.

ANNOTATIONS

The 2005 amendment, effective June 17, 2005, provided that a transferor or transferee or their agents who record deeds, real estate contracts and memorandum of real estate contracts that transfer interest in residential property for residential taxation purposes shall file an affidavit with the county assessor in a form approved by the taxation and revenue department, which shall include the terms of the sale, including the amount of seller incentives; provided that the county assessor shall place the date of receipt on a copy of the affidavit and give the copy of the affidavit to the person presenting the affidavit; and provided that this section does not apply to a deed transferring nonresidential property.

7-38-12.2. Penalties.

A. A person who intentionally refuses to make a required report within the time period specified under the provisions of Section 7-38-12.1 NMSA 1978 or who knowingly makes a false statement on an affidavit required under the provisions of Section 7-38-12.1 NMSA 1978 is guilty of a misdemeanor and upon conviction shall be punished by the imposition of a fine of not more than one thousand dollars (\$1,000).

B. The secretary, any employee or any former employee of the department or any other person subject to the provisions of Section 7-38-12.1 NMSA 1978 who willfully releases information in violation of that section, except as provided in Section 7-38-4 NMSA 1978 or as part of a protest proceeding as defined in Section 7-38-24 NMSA 1978, is guilty of a misdemeanor and shall be fined not more than one thousand dollars (\$1,000).

History: Laws 2003, ch. 118, § 3.

ANNOTATIONS

Effective dates. — Laws 2003, ch. 118, contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 20, 2003, 90 days after adjournment of the legislature.

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 [Chapter 60, Article 13 NMSA 1978] shall furnish the assessor of each county with a tabulation of all permits which they have issued in the assessor's county in the previous month for all construction projects, the cost of each of which exceeded one thousand dollars (\$1,000). The tabulation shall include the name of the owner of the property for which a permit was issued, the construction location and the cost of the construction project for which the permit was issued. A copy of the tabulation shall be sent to the department.

B. By the tenth day of each month, each county or municipality issuing building permits shall furnish the assessor of the county issuing the permit or the county in which the municipality is located with a tabulation of all building permits issued in the previous month for all construction projects, the cost of each of which exceeded one thousand dollars (\$1,000). The tabulation shall include the name of the owner of the property for which a permit was issued, the construction location and the cost of the construction project for which the permit was issued. A copy of the tabulation shall be sent to the department.

C. Upon receiving the information required to be furnished under this section, the county assessors and the department shall enter any required changes in their valuation or other records.

History: 1953 Comp., § 72-31-14, enacted by Laws 1973, ch. 258, § 54.

7-38-15. Information on real property sold, purchased, contracted to be sold or purchased, or exchanged by governmental bodies to be sent to or obtained by the department; department to compile and send information to county assessors.

A. By the twentieth day of each month, the department shall obtain from appropriate agencies of the United States the following information relating to real property transactions occurring during the preceding month:

(1) a list by legal description of each parcel of real property in the state that was sold, purchased, contracted to be sold or purchased, or exchanged by agencies of the United States government; and

(2) the names and addresses of each of the transferors and transferees of the property required to be listed under Paragraph (1) of this subsection.

B. By the twentieth day of each month, each state agency and the governing body of each of the state's political subdivisions shall report to the department the following information relating to real property transactions occurring during the preceding month:

(1) a list by legal description of each parcel of real property in the state that was sold, purchased, contracted to be sold or purchased, or exchanged by the state agency or the political subdivisions; and

(2) the names and addresses of each of the transferors and transferees of the property listed under Paragraph (1) of this subsection.

C. The information gathered by the department on real property that is subject to local valuation for property taxation purposes shall be compiled and sent immediately to the county assessors of the counties in which the reported property is located. The county assessor receiving the information shall enter any required changes in the valuation or other records and shall also take any action that is required under the Property Tax Code as a result of the receipt of the information.

D. The information gathered by the department on real property that is subject to valuation for property taxation purposes by the department shall be compiled and retained by the department. The department shall enter any required changes in its valuation or other records and shall also take any action that is required under the Property Tax Code as a result of the receipt of the information.

History: 1953 Comp., § 72-31-15, enacted by Laws 1973, ch. 258, § 55.

7-38-16. Condemnation proceedings; duty of condemning authority to notify county assessor.

A. Upon the issuance of a court order making permanent an order of preliminary entry in any condemnation proceeding brought by any governmental authority in this state exercising the power of eminent domain, or upon the issuance of a final order of condemnation if no order allowing preliminary entry is issued, the condemning authority shall notify the county assessor of the county in which the land subject to condemnation is situated of:

- (1) the fact of the issuance of an order making permanent an order of preliminary entry or an order of final condemnation and the date of the order;
- (2) the description and ownership of the land subject to the order; and
- (3) the date that physical possession of the land was or will be assumed by the condemning authority under a preliminary entry order.

B. Upon receipt of the notification required under Subsection A, the county assessor shall make appropriate changes in his valuation records to indicate as owner of the land for property taxation purposes the condemning authority as of the date of possession or the date of a final order of condemnation. If the land involved is subject to valuation for property taxation purposes by the department, the county assessor shall notify the department of the changes.

C. This section does not authorize the proration of taxes for a tax year in which ownership changes as a result of condemnation proceedings, but a condemning authority may contract or stipulate with an owner of land subject to condemnation for the proration of the owner's tax liability.

History: 1953 Comp., § 72-31-16, enacted by Laws 1973, ch. 258, § 56.

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 E of this section, head-of-family exemptions, veteran exemptions, disabled veteran exemptions or veterans' organization exemptions claimed and allowed in a tax year need not be claimed for subsequent tax years if there is no change in eligibility for the exemption nor any change in ownership of the property against which the exemption was claimed. Head-of-family, veteran and veterans' organization exemptions allowable under this subsection shall be applied automatically by county assessors in the subsequent tax years.

B. Other exemptions of real property specified under Section 7-36-7 NMSA 1978 for nongovernmental entities shall be claimed in order to be allowed. Once such exemptions are claimed and allowed for a tax year, they need not be claimed for subsequent tax years if there is no change in eligibility. Exemptions allowable under this subsection shall be applied automatically by county assessors in subsequent tax years.

C. Except as set forth in Subsection H of this section, an exemption required to be claimed under this section shall be applied for no later than thirty days after the mailing of the county assessor's notices of valuation pursuant to Section 7-38-20 NMSA 1978 in order for it to be allowed for that tax year.

D. A person who has had an exemption applied to a tax year and subsequently becomes ineligible for the exemption because of a change in the person's status or a change in the ownership of the property against which the exemption was applied shall notify the county assessor of the loss of eligibility for the exemption by the last day of February of the tax year immediately following the year in which loss of eligibility occurs.

E. Exemptions may be claimed by filing proof of eligibility for the exemption with the county assessor. The proof shall be in a form prescribed by regulation of the department. Procedures for determining eligibility of claimants for any exemption shall be prescribed by regulation of the department, and these regulations shall include provisions for requiring the veterans' services department to issue certificates of eligibility for veteran and veterans' organization exemptions in a form and with the information required by the department. The regulations shall also include verification procedures to assure that veteran exemptions in excess of the amount authorized under Section 7-37-5 NMSA 1978 are not allowed as a result of multiple claiming in more than one county or claiming against more than one property in a single tax year.

F. The department shall consult and cooperate with the veterans' services department in the development, adoption and promulgation of regulations under Subsection E of this section. The veterans' services department shall comply with the promulgated regulations. The veterans' services department shall collect a fee of five dollars (\$5.00) for the issuance of a duplicate certificate of eligibility to a veteran or to a veterans' organization.

G. A person who violates the provisions of this section by intentionally claiming and receiving the benefit of an exemption to which the person is not entitled or who fails to comply with the provisions of Subsection D of this section is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000). A county assessor or the assessor's employee who knowingly permits a claimant for an exemption to receive the benefit of an exemption to which the claimant is not entitled is guilty of a misdemeanor and shall be punished by a fine of not more than one thousand dollars (\$1,000) and shall also be automatically removed from office or dismissed from employment upon conviction under this subsection.

H. When a disabled veteran or the disabled veteran's unmarried surviving spouse provides proof of eligibility pursuant to Subsection E of this section, the disabled veteran or the disabled veteran's unmarried surviving spouse shall be allowed the exemption for the current tax year; provided that the exemption shall not be allowed for property tax due for previous tax years.

History: 1953 Comp., § 72-31-17, enacted by Laws 1973, ch. 258, §57; 1974, ch. 92, § 9; 1975, ch. 9, § 1; 1982, ch. 28, § 10; 2000, ch. 92, §3; 2000, ch. 94, § 3; 2003, ch. 26, § 1; 2004, ch. 19, § 22; 2005, ch. 230, § 2; 2011, ch. 102, § 2; 2023, ch. 63, § 1.

ANNOTATIONS

Cross references. — For head of family exemption, see 7-37-4 NMSA.

For veteran exemption, see 7-37-5 NMSA 1978.

For disabled veteran exemption, see 7-37-5.1 NMSA 1978.

For constitutional provision as to head of family and veteran exemptions, see N.M. Const., art. VIII, § 5.

For constitutional provision as to disabled veteran exemption, see N.M. Const., art. VIII, § 15.

The 2023 amendment, effective June 16, 2023, removed an obsolete provision, added a provision to provide flexibility regarding the requirement to provide proof of eligibility for a disabled veteran's property tax exemption, and specified that the exemption shall not be allowed for property tax due for previous tax years; and deleted former Subsection H and added a new Subsection H.

The 2011 amendment, effective June 17, 2011, provided the procedure for claiming the veterans' organization property tax exemption.

The 2005 amendment, effective April 6, 2005, in Subsection A, deleted the former provisions that limited exemptions to claimed and allowed after specified dates; added the exception in Subsection C; and added Subsection H to provide that a veteran or a veteran's unmarried surviving spouse shall apply for the exemption authorized in the November 2004 constitutional amendment to Article 8, Section 5 of the New Mexico constitution when the veteran or surviving spouse applies for the 2005 veteran exemption.

The 2004 amendment, effective May 19, 2004, amended Subsections E and F of this section to change "veterans' service commission" to "veterans' services department".

The 2003 amendment, effective March 16, 2003, substituted "thirty days after the mailing of the county assessors' notices of valuation pursuant to Section 7-38-20 NMSA

1978" for "the last day of February of the tax year in which it is required to be claimed" in Subsection C.

The 2000 amendment, effective March 7, 2000, in Subsection A, inserted "or a subsequent" following "1974" and "1982" and inserted "or disabled veteran exemptions claimed and allowed in the 2000 or a subsequent tax year"; deleted Subsection B, relating to unclaimed exemptions and redesignated the remaining subsections and adjusted internal references where appropriate, and substituted "department" for "division" throughout the section.

Regulations of division to be followed to claim exemption. — Failure to comply with the procedures prescribed by regulation of the department, under Subsection E, can result in a denial of a claim for exemption. *Cottonwood Gulch Found. v. Gutierrez*, 1985-NMCA-042, 102 N.M. 667, 699 P.2d 140.

Inspections and interviews. — The provisions of this section do not require any specific investigation or interviews by the county assessor when considering an application for exemption from property tax. *Georgia O'Keeffe Museum v. Cnty. of Santa Fe*, 2003-NMCA-003, 133 N.M. 297, 62 P.3d 754.

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 filing statements of decrease in value of property;

(4) Section 7-38-17 NMSA 1978 relating to requirements for claiming veteran, disabled veteran, head-of-family and other exemptions;

(5) Section 7-38-17.1 NMSA 1978 relating to the requirements for declaring residential property and changes in use of property; and

(6) Section 7-36-21.3 NMSA 1978 relating to requirements for claiming eligibility for the limitation on increases in valuation for property taxation purposes of a single-family dwelling owned and occupied by a person who is sixty-five years of age or older.

B. The department shall develop and issue a uniform form of notice to be used by county assessors to fulfill the requirements of this section.

History: 1953 Comp., § 72-31-18, enacted by Laws 1973, ch. 258, § 58; 1981, ch. 37, § 69; 1982, ch. 28, § 11; 2000, ch. 92, § 4; 2000, ch. 94, § 4; 2001, ch. 321, § 3.

ANNOTATIONS

The 2001 amendment, effective April 5, 2001, deleted "requirements for reporting improvements to real property and to" preceding "filing statements" in Paragraph A(3); and added Paragraph A(6).

Applicability. — Laws 2001, ch. 321, § 6 made the provisions of this act applicable to the 2001 property tax year and succeeding tax years.

The 2000 amendment, effective March 7, 2000, in Subsection A(4), inserted "disabled veteran" and in Subsection B, substituted "department" for "division".

7-38-19. Valuation records.

A. The county assessor shall maintain a record of the values determined for property taxation purposes on all property within the county subject to valuation under the Property Tax Code, whether the values are determined by the county assessor or the department.

B. The department shall maintain, in addition to the county assessors' records, a record of the values determined for property taxation purposes on all property subject to department valuation under the Property Tax Code.

C. Valuation records shall contain the information required by the Property Tax Code and regulations of the department.

D. Except as provided otherwise in Subsection E of this section, valuation records are public records.

E. Valuation records that contain information regarding the income, expenses other than depreciation, profits or losses associated with a specific property or a property owner or that contain diagrams or other depictions of the interior arrangement of buildings, alarm systems or electrical or plumbing systems are not public records and may be released only in accordance with Paragraphs (2) through (7) of Subsection A of Section 7-38-4 NMSA 1978.

History: 1953 Comp., § 72-31-19, enacted by Laws 1973, ch. 258, § 59; 1982, ch. 28, § 12; 1991, ch. 166, § 8.

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.

Public access. — District court's decision ordering a county assessor to provide the taxpayer with the requested uniform property record cards, with any confidential information redacted, was affirmed. *Gordon v. Sandoval Cnty. Assessor*, 2001-NMCA-044, 130 N.M. 573, 28 P.3d 1114.

7-38-20. County assessor and department to mail notices of valuation.

A. By April 1 of each year, the county assessor shall mail a notice to each property owner informing the property owner of the net taxable value of the property owner's property that has been valued for property taxation purposes by the assessor and other related information as required by Subsection D of this section.

B. By May 1 of each year, the department shall mail a notice to each property owner informing the property owner of the net taxable value of the property owner's property that has been valued for property taxation purposes by the department and other related information as required by Subsection D of this section.

C. Failure to receive the notice required by this section does not invalidate the value set on the property, any property tax based on that value or any subsequent procedure or proceeding instituted for the collection of the tax.

D. The notice required by this section shall state:

- (1) the property owner's name and address;
- (2) the description or identification of the property valued;
- (3) the classification of the property valued;
- (4) the value set on the property for property taxation purposes;
- (5) the tax ratio;
- (6) the taxable value of the property for the previous and current tax years;
- (7) the tax rate from the previous tax year;
- (8) the amount of tax from the previous tax year;
- (9) with respect to residential property, instructions for calculating an estimated tax for the current tax year, which shall be prominently displayed on the front of the notice, and a disclaimer for such instructions similar to the following:

"The calculation of property tax may be higher or lower than the property tax that will actually be imposed.";

- (10) the amount of any exemptions allowed and a statement of the net taxable value of the property after deducting the exemptions;
- (11) the allocations of net taxable values to the governmental units;
- (12) briefly, the eligibility requirements and application procedures and deadline for claiming eligibility for a limitation on increases in the valuation for property taxation purposes of a single-family dwelling owned and occupied by a person sixty-five years of age or older; and
- (13) briefly, the procedures for protesting the value determined for property taxation purposes, classification, allocation of values to governmental units or denial of a claim for an exemption or for the limitation on increases in valuation for property taxation purposes.

E. The county assessor may mail the valuation notice required pursuant to Subsection A of this section to taxpayers with the preceding tax year's property tax bills

if the net taxable value of the property has not changed since the preceding taxable year. In this early mailing, the county assessor shall provide clear notice to the taxpayer that the valuation notice is for the succeeding tax year and that the deadlines for protest of the value or classification of the property apply to this mailing date.

History: 1953 Comp., § 72-31-20, enacted by Laws 1973, ch. 258, § 60; 1974, ch. 92, § 10; 1981, ch. 37, § 70; 1996, ch. 39, § 1; 2001, ch. 321, § 4; 2012, ch. 60, § 1.

ANNOTATIONS

Cross references. — For mailing of notices, see 7-38-84 NMSA 1978.

The 2012 amendment, effective July 1, 2012, required the county assessor to include in the notice of valuation of residential property the taxable values and tax rates for the previous and current tax years and instructions for calculating an estimated tax for the current tax year; in Subsection A, after "valued for property taxation purposes by the assessor", added the remainder of the sentence; in Subsection B, after "valued for property taxation purposes by the department", added the remainder of the sentence; and in Subsection D, in Paragraph (6), after "property", added the remainder of the sentence, and added Paragraphs (7), (8) and (9).

The 2001 amendment, effective April 5, 2001, inserted present Paragraph D(9); designated former Paragraph D(9) as (10); and added the language beginning "or for the limitation on increases" at the end of Paragraph D(10).

The 1996 amendment, effective May 15, 1996, substituted "department" for "division" in the section heading and in Subsection B, and added Subsection E.

Notice not intended for relief or advantage of taxpayer. — The requirement that the county treasurer (now the county assessor) 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*, 1954-NMSC-039, 58 N.M. 429, 272 P.2d 330.

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 § 530.

7-38-20.1. Temporary provision; additional instructions to assessors and treasurers; special requirements for 2004 veteran exemption; newly eligible veterans.

A. A county assessor shall include with the notice of valuation distributed to property owners for the 2005 property tax year, a notice to taxpayers informing them that:

(1) a taxpayer who is a veteran or the unmarried surviving spouse of a veteran who was not previously eligible for a veteran property tax exemption may be eligible for that exemption due to the change in Article 8, Section 5 of the constitution of New Mexico adopted in November 2004; and

(2) a taxpayer who is eligible for the veteran tax exemption for the 2005 property tax year may also be eligible for the veteran tax exemption for the 2004 property tax year.

B. The taxpayer shall obtain certification from the veterans' services department verifying that the veteran upon whose service the exemption is claimed is eligible for a tax exemption pursuant to Article 8, Section 5 of the constitution of New Mexico for the 2005 property tax year to present to the county assessor. The veterans' services department shall certify the date on which the veteran became honorably discharged from the armed forces of the United States.

C. The county assessor shall determine from the date of discharge from the armed forces of the United States certified by the veterans' services department if the veteran would have been eligible to receive a tax exemption for the 2004 property tax year based on the veteran's date of discharge from the armed forces of the United States and the dates on which the taxpayer took title to the property. A veteran would be eligible if the veteran were discharged on a date prior to the thirtieth day following the date on which the county assessor mailed the notice of valuation in 2004 and had title to the property to which the veteran tax exemption is applied at that time.

D. If a taxpayer, who became eligible for the veteran exemption due to the approval of the amendment to Article 8, Section 5 of the constitution of New Mexico, qualifies for the 2004 and 2005 veteran exemptions and has paid in full the taxpayer's property tax liability for the 2004 property tax year, for the 2005 property tax year only the county assessor shall combine the total of the veteran exemptions for those two property tax years and deduct the combined total from the taxable value of the taxpayer's property to obtain the net taxable value for the 2005 property tax year.

History: Laws 2005, ch. 230, § 3.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 230, § 5 made Laws 2005, ch. 230, § 3 effective April 6, 2005.

Applicability. — Laws 2005, ch. 230, § 4 provided that Laws 2005, ch. 230, § 3 was applicable only to the veteran exemptions claimed in a timely manner in the 2005 property tax year.

7-38-21. Protests; county-assessed property; election of remedies.

A. A property owner may protest the value or classification determined by the county assessor for the property owner's property for property taxation purposes, the allocation of value of the property to a particular governmental unit or a denial of a claim for an exemption or for a limitation on increase in value either by:

(1) filing a petition with the county assessor as provided in the Property Tax Code; or

(2) filing a claim for refund after paying the property owner's taxes as provided in the Property Tax Code.

B. The initiation of a protest under Paragraph (1) of Subsection A of this section is an election to pursue that remedy and is an unconditional and irrevocable waiver of the right to pursue the remedy provided in Paragraph (2) of Subsection A of this section.

C. A property owner may also protest the application to the property owner's property of any administrative fee adopted pursuant to Section 7-38-36.1 NMSA 1978 by filing a claim for refund after paying the property owner's taxes as provided in the Property Tax Code.

History: 1953 Comp., § 72-31-21, enacted by Laws 1973, ch. 258, § 61; 1978 Comp., § 7-38-21; 1981, ch. 37, § 71; 1983, ch. 215, § 1; 2001, ch. 24, § 1; 2015, ch. 73, § 19; 2023, ch. 36, § 5.

ANNOTATIONS

Cross references. — For definition of "director," see 7-35-2 NMSA 1978.

The 2023 amendment, effective July 1, 2023, clarified the process for protesting the value or classification of property determined by a county assessor; in the section heading, added "county-assessed property"; in Subsection A, after "classification determined", added "by the county assessor", in Paragraph A(1), after "filing", added "a petition with the county assessor", and after "Property Tax Code", deleted "a petition of protest with", and deleted Subparagraphs A(1)(a) and A(1)(b).

The 2015 amendment, effective July 1, 2015, provided for protests of property valuation to be filed with the administrative hearings office; in Subsection A, after "determined for", deleted "his" and added "the property owner's" and after "allocation of value of", deleted "his" and added "the"; in Subsection A, Paragraph (1), after "filing", added "as provided in the Property Tax Code"; in Subsection A, Paragraph (1)(a), after "the", deleted "director" and added "administrative hearings office"; in Subsection A, Paragraph (1)(b), after "county assessor", deleted "as provided in the Property Tax Code"; in Subsection A, Paragraph (2), after "paying", deleted "his" and added "the property owner's"; in Subsection B, after "provided", deleted "under" and added "in"; and in Subsection C, after "application to", deleted "his" and added "the property owner's", and after "paying", deleted "his" and added "the property owner's".

The 2001 amendment, effective June 15, 2001, inserted "or for a limitation on increase in value" in Subsection A.

Protest or refund. — The alternate methods of protesting the rejection of a tax exemption set out in Subsections A(1) and A(2) are separate and distinct. Where a museum files a protest with the county assessor under Subsection A(1) and then pays the disputed tax, in order to avoid interest and penalty assessments, the museum cannot later apply for a refund under Subsection A(2). *Georgia O'Keeffe Museum v. County of Santa Fe*, 2003-NMCA-003, 133 N.M. 297, 62 P.3d 754.

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.

7-38-21.1. Protests; state-assessed property; election of remedies.

A. A property owner may protest the value or classification determined by the department for the property owner's property for property taxation purposes, the allocation of value of the property to a particular governmental unit or a denial of a claim for an exemption by:

(1) filing a petition of protest with the administrative hearings office, as provided in the Property Tax Code; or

(2) filing a claim for refund with a district court after paying the property owner's taxes as provided in the Property Tax Code.

B. The initiation of a protest under Paragraph (1) of Subsection A of this section is an election to pursue that remedy and is an unconditional and irrevocable waiver of the right to pursue the alternative remedy provided in Paragraph (2) of Subsection A of this section.

History: 1978 Comp., § 7-38-21.1, enacted by Laws 2023, ch. 36, § 6.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 36, § 10 made Laws 2023, ch. 36, § 6 effective July 1, 2023.

7-38-22. Protesting values, classification, allocation of values and denial of exemption determined by the department.

A. A property owner may protest the value or classification determined by the department for the property owner's property for property taxation purposes or the department's allocation of value of the property owner's property to a particular

governmental unit or the denial of a claim for an exemption by filing a petition with the administrative hearings office. Filing a petition in accordance with this section entitles a property owner to a hearing on the property owner's protest.

B. Petitions shall:

(1) be filed no later than thirty days after:

(a) the mailing by the department of the notice of valuation; or

(b) the mailing of a property tax bill on omitted property pursuant to Section 7-38-76 NMSA 1978;

(2) state the property owner's name and address and the description of the property;

(3) state why the property owner believes the value, classification, allocation of value or denial of an exemption is incorrect and what the property owner believes the correct value, classification, allocation of value or exemption to be;

(4) state the value, classification, allocation of value or exemption that is not in controversy; and

(5) contain such other information as the administrative hearings office may by rule require.

C. The administrative hearings office shall notify the secretary and the property owner by certified mail of the date, time and place that the parties may appear before the administrative hearings office to present evidence related to the petition; provided that the parties may request, consent or agree to an alternative service method for the notice of hearing. The notice shall be sent at least fifteen days prior to the hearing date.

D. The secretary may provide for an informal conference on the protest before the hearing.

History: 1953 Comp., § 72-31-22, enacted by Laws 1973, ch. 258, § 62; 1974, ch. 92, § 11; 1978 Comp., § 7-38-22; 1981, ch. 37, § 72; 2015, ch. 73, § 20; 2023, ch. 36, § 7.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, revised the process for protesting the value or classification of property determined by the taxation and revenue department; substituted each occurrence of "division" with "department" and substituted each occurrence of "director" with "secretary" throughout the section; in Subsection B, added Subparagraph B(1)(b); and in Subsection C, after "related to the petition", added "provided that the parties may request, consent or agree to an alternative service

method for the notice of hearing", and after "shall be", deleted "mailed" and added "sent".

The 2015 amendment, effective July 1, 2015, provided for filing petitions with the administrative hearings office when a property owner chooses to protest property values; in Subsection A, after "division for", deleted "his" and added "the property owner's", after "allocation of value of", deleted "his" and added "the property owner's", after "petition with the", deleted "director" and added "administrative hearings office", and after "a hearing on", deleted "his" and added "the property owner's"; in Subsection B, Paragraph (1), after "be filed", deleted "with the division"; in Subsection B, Paragraph (3), after "classification,", deleted "the", and after "incorrect and what", deleted "he" and added "the property owner"; in Subsection B, Paragraph (5), after "information as the", deleted "division" and added "administrative hearings office", and after "may by", deleted "regulation" and added "rule"; and in Subsection C, after "The", deleted "division" and added "administrative hearings office", after "time and place that", deleted "he" and added "the parties", after "appear before the", deleted "director" and added "administrative hearings office", and after "to", deleted "support his" and added "present evidence related to the".

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 Ctr. for Health Sciences v. Beach*, 1980-NMCA-004, 93 N.M. 793, 606 P.2d 203.

Denial of charitable property tax exemption upheld. — Where the Santa Fe county assessor appealed the district court's decision that petitioner, a retirement and continuing care community, was improperly denied a charitable property tax exemption, the New Mexico supreme court held that the district court erred in concluding that petitioner fulfilled the charitable use requirements for tax exemption under art. VIII, § 3 of the New Mexico constitution, because petitioner, a self-sustaining community that accepts and benefits only financially and medically screened residents based on requirements calculated in the interests of financial security for itself, did not create any substantial public benefit and therefore cannot be entitled to exemption from taxation under 7-36-7(B)(1)(d) NMSA 1978 or N.M. Const., art. VIII, § 3. *El Castillo Ret. Residences v. Martinez*, 2017-NMSC-026, *aff'g* 2015-NMCA-041, and *overruling La Vida Llena v. Montoya*, 2013-NMCA-048, 299 P.3d 456.

Constitutional issues are outside the county protests board's statutory authority. — It is the duty of the judiciary to interpret the constitution, the supreme law of the land, and to set forth the law; a county protests board does not have jurisdiction to hear constitutional issues which are outside the protests board's statutory authority. *El Castillo Retirement Residences v. Martinez*, 2015-NMCA-041, *overruling In re Miller*, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142, and cert. granted, 2015-NMCERT-004.

Where retirement community was denied a charitable property tax exemption by the county assessor and appealed the county assessor's decision to the Santa Fe county protests board, claiming a charitable property tax exemption under N.M. Const., art. VIII, § 3, it was appropriate for the protests board to decline to hear the constitutional claim, citing a lack of jurisdiction. *El Castillo Retirement Residences v. Martinez*, 2015-NMCA-041, *overruling In re Miller*, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142, and cert. granted, 2015-NMCERT-004.

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. N.M. Tax Comm'n*, 1968-NMSC-117, 79 N.M. 357, 443 P.2d 850.

7-38-23. Protest hearings; verbatim record; action by hearing officer; time limitations.

A. Except for the rules relating to discovery, the technical rules of evidence and the Rules of Civil Procedure for the District Courts do not apply at a protest hearing conducted pursuant to the provisions of the Property Tax Code, but the hearing shall be conducted so that an ample opportunity is provided for the presentation of complaints and defenses. All testimony shall be taken under oath. A verbatim record of the hearings shall be made but need not be transcribed unless required for appeal purposes. A hearing officer shall be designated by the chief hearing officer of the administrative hearings office to conduct the hearing.

B. Final action taken by the hearing officer on a petition shall be by written order. The hearing officer's order shall be made within thirty days after the date of the hearing, but this time limitation may be extended by agreement of the department and the protestant. A copy of the order shall be sent immediately by certified mail to the property owner. A copy of the order shall also be sent to the county assessor.

C. All protests shall be decided within one hundred twenty days of the date the protest is filed unless the parties otherwise agree. The protest shall be denied if the property owner or the property owner's authorized representative fails, without reasonable justification, to appear at the hearing.

D. The hearing officer's order shall be in the name of the chief hearing officer, dated, state the changes to be made in the valuation records, if any, and direct the county assessor to take appropriate action. The department shall make any changes in its valuation records required by the order.

E. Changes in the valuation records shall clearly indicate that the prior entry has been superseded by an order of the hearing officer.

F. The department shall maintain a file of all orders made pursuant to this section. The file shall be open for public inspection.

G. If an order of the hearing officer is appealed under Section 7-38-28 NMSA 1978, the department shall immediately notify the appropriate county assessor of the appeal. Notations shall be made in the valuation records of the assessor and the department indicating the pendency of the appeal.

History: 1953 Comp., § 72-31-23, enacted by Laws 1973, ch. 258, § 63; 1982, ch. 28, § 13; 1986, ch. 20, § 114; 2015, ch. 73, § 21.

ANNOTATIONS

Cross references. — For rules relating to discovery, see Rule 1-026 NMRA et seq.

For the Rules of Civil Procedure for the District Courts see 1-001 NMRA et seq.

The 2015 amendment, effective July 1, 2015, required the chief hearing officer of the administrative hearings office to designate hearing officers to preside over protest hearings conducted pursuant to the Property Tax Code; in Subsection A, after "do not apply at", added "a", after "protest", deleted "hearings before the hearing officer" and added "hearing conducted pursuant to the provisions of the Property Tax Code", after "but the", changed "hearings" to "hearing", and after "designated by the", deleted "secretary" and added "chief hearing officer of the administrative hearings office"; in Subsection C, after "property owner or", deleted "his" and added "the property owner's"; and in Subsection D, after "in the name of the", deleted "secretary" and added "chief hearing officer".

7-38-24. Protesting values, classification, allocation of values and denial of exemption or limitation on increase in value determined by the county assessor.

A. A property owner may protest the value or classification determined by the county assessor for his property for property taxation purposes, the assessor's allocation of value of his property to a particular governmental unit or denial of a claim for an exemption or for a limitation on increase in value by filing a petition with the assessor. Filing a petition in accordance with this section entitles the property owner to a hearing on his protest.

B. Petitions shall:

- (1) be filed with the county assessor on or before:

(a) the later of April 1 of the property tax year to which the notice applies or thirty days after the mailing by the assessor of the notice of valuation if the notice was mailed with the preceding year's tax bill in accordance with Section 7-38-20 NMSA 1978;

(b) thirty days after the mailing of a property tax bill on omitted property pursuant to Section 7-38-76 NMSA 1978; or

(c) in all other cases, thirty days after the mailing by the assessor of the notice of valuation;

(2) state the property owner's name and address and the description of the property;

(3) state why the property owner believes the value, classification, allocation of value or denial of a claim of an exemption or of a limitation on increase in value is incorrect and what he believes the correct value, classification, allocation of value or exemption to be; and

(4) state the value, classification, allocation of value or exemption that is not in controversy.

C. Upon receipt of the petition, the county assessor shall schedule a hearing before the county valuation protests board and notify the property owner by certified mail of the date, time and place that he may appear to support his petition. The notice shall be mailed at least fifteen days prior to the hearing date.

D. The county assessor may provide for an informal conference on the protest before the hearing.

History: 1953 Comp., § 72-31-24, enacted by Laws 1973, ch. 258, § 64; 1974, ch. 92, § 12; 1981, ch. 37, § 73; 1997, ch. 130, § 1; 2001, ch. 24, § 2; 2003, ch. 95, § 1.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, inserted present Subparagraph B(1)(b) and redesignated former Subparagraph (B)(1)(b) as present Subparagraph (B)(1)(c).

The 2001 amendment, effective June 15, 2001, inserted "or limitation on increase in value" in the section heading; inserted "or for a limitation on increase in value" in Subsection A and in Paragraph B(3); and inserted "county" preceding "assessor" in Subsection D.

The 1997 amendment, effective June 20, 1997, in Subsection B, rewrote Paragraph (1) and deleted "the" preceding "allocation" in Paragraph (3).

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 Ctr. for Health Sciences v. Beach*, 1980-NMCA-004, 93 N.M. 793, 606 P.2d 203.

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 Section 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*, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, cert. denied, 89 N.M. 5, 546 P.2d 70, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142.

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 Cnty. Valuation Protest Bd.*, 1980-NMCA-152, 95 N.M. 136, 619 P.2d 581, *overruled on other grounds*, *Jicarilla Apache Nation v. Rodarte*, 2004-NMSC-035, 136 N.M. 630, 103 P.3d 554.

Protest hearing should not be viewed as adversary proceeding with the board arrayed against the taxpayer. *Black v. Bernalillo Cnty. Valuation Protest Bd.*, 1980-NMCA-152, 95 N.M. 136, 619 P.2d 581, *overruled on other grounds*, *Jicarilla Apache Nation v. Rodarte*, 2004-NMSC-035, 136 N.M. 630, 103 P.3d 554.

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 Cnty. Valuation Protest Bd.*, 1980-NMCA-152, 95 N.M. 136, 619 P.2d 581, *overruled on other grounds*, *Jicarilla Apache Nation v. Rodarte*, 2004-NMSC-035, 136 N.M. 630, 103 P.3d 554.

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, effective June 20, 1997, 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.

The county valuation protests board is a quasi-judicial body. *Addis v. Santa Fe Cnty. Valuation Protests Bd.*, 1977-NMCA-122, 91 N.M. 165, 571 P.2d 822.

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. *Petition of Kinscherff*, 1976-NMCA-097, 89 N.M. 669, 556 P.2d 355, cert. denied, 90 N.M. 8, 558 P.2d 620.

Quorum must be present before county valuation protests board can act officially and any act done with less than a quorum present is invalid. *Petition of Kinscherff*, 1976-NMCA-097, 89 N.M. 669, 556 P.2d 355, cert. denied, 90 N.M. 8, 558 P.2d 620.

Acts of majority of quorum are binding on entire body. *Petition of Kinscherff*, 1976-NMCA-097, 89 N.M. 669, 556 P.2d 355, cert. denied, 90 N.M. 8, 558 P.2d 620.

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 Cnty. Valuation Protest Bd.*, 1976-NMCA-116, 89 N.M. 784, 558 P.2d 53.

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. *Petition of Kinscherff*, 1976-NMCA-097, 89 N.M. 669, 556 P.2d 355, cert. denied, 90 N.M. 8, 558 P.2d 620.

Denial of charitable property tax exemption upheld. — Where the Santa Fe county assessor appealed the district court's decision that petitioner, a retirement and continuing care community, was improperly denied a charitable property tax exemption, the New Mexico supreme court held that the district court erred in concluding that petitioner fulfilled the charitable use requirements for tax exemption under art. VIII, § 3 of the New Mexico constitution, because petitioner, a self-sustaining community that accepts and benefits only financially and medically screened residents based on requirements calculated in the interests of financial security for itself, did not create any substantial public benefit and therefore cannot be entitled to exemption from taxation under 7-36-7(B)(1)(d) NMSA 1978 or N.M. Const., art. VIII, § 3. *El Castillo Ret. Residences v. Martinez*, 2017-NMSC-026, *aff'g* 2015-NMCA-041, and *overruling La Vida Llena v. Montoya*, 2013-NMCA-048, 299 P.3d 456.

Constitutional issues are outside the county protests board's statutory authority. — It is the duty of the judiciary to interpret the constitution, the supreme law of the land, and to set forth the law; a county protests board does not have jurisdiction to hear constitutional issues which are outside the protests board's statutory authority. *El Castillo Retirement Residences v. Martinez*, 2015-NMCA-041, *overruling In re Miller*, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142, and cert. granted, 2015-NMCERT-004.

Where retirement community was denied a charitable property tax exemption by the county assessor and appealed the county assessor's decision to the Santa Fe county protests board, claiming a charitable property tax exemption under N.M. Const., art. VIII, § 3, it was appropriate for the protests board to decline to hear the constitutional claim, citing a lack of jurisdiction. *El Castillo Retirement Residences v. Martinez*, 2015-NMCA-041, *overruling In re Miller*, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142, and cert. granted, 2015-NMCERT-004.

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 Section 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. *El Castillo Retirement Residences v. Martinez*, 2015-NMCA-041, *overruling In re Miller*, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142, and cert. granted, 2015-NMCERT-004.

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 hearings; verbatim record; action by county valuation protests board; time limitations.

A. Except for the rules relating to discovery, the technical rules of evidence and the Rules Civil Procedure for the District Courts do not apply at protest hearings before a county valuation protests board, but the hearing shall be conducted so that an ample opportunity is provided for the presentation of complaints and defenses. All testimony shall be taken under oath. A verbatim record of the hearing shall be made but need not be transcribed unless required for appeal purposes.

B. Final action taken by the board on a petition shall be by written order signed by the chairman or a member of the board designated by the chairman. The order shall be made within thirty days after the date of the hearing, but this time limitation may be extended by agreement of the board and the protestant. A copy of the order shall be sent immediately by certified mail to the property owner. A copy of the order shall also be sent to the director and the county assessor.

C. All protests shall be decided within one hundred eighty days of the date the protest is filed. The protest shall be denied if the property owner or his authorized representative fails, without reasonable justification, to appear at the hearing.

D. The board's order shall be dated, state the changes to be made in the valuation records, if any, and direct the county assessor to take appropriate action. The division shall make any changes in its valuation records required by the order.

E. Changes in the valuation records shall clearly indicate that the prior entry has been superseded by an order of the board.

F. The assessor shall maintain a file of all orders made by the county valuation protests board. The file shall be open for public inspection.

G. If an order of a county valuation protests board is appealed under Section 7-38-28 NMSA 1978, the director shall immediately notify the appropriate county assessor of the appeal. Notations shall be made in the valuation records of the assessor and the division indicating the pendency of the appeal.

History: 1953 Comp., § 72-31-27, enacted by Laws 1973, ch. 258, § 67; 1982, ch. 28, § 14.

ANNOTATIONS

Cross references. — For rules relating to discovery, see Rule 1-026 NMRA et seq.

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*, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, cert. denied, 89 N.M. 5, 546 P.2d 70, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142.

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*, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, cert. denied, 89 N.M. 5, 546 P.2d 70, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142.

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*, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, cert. denied, 89 N.M. 5, 546 P.2d 70, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142.

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*, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, cert. denied, 89 N.M. 5, 546 P.2d 70, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142.

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*, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, cert. denied, 89 N.M. 5, 546 P.2d 70, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142.

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*, 1982-NMCA-006, 97 N.M. 318, 639 P.2d 605.

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*, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, cert. denied, 89 N.M. 5, 546 P.2d 70, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142.

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*, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, cert. denied, 89 N.M. 5, 546 P.2d 70, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142.

Administrative Procedures Act (Sections 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*, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, cert. denied, 89 N.M. 5, 546 P.2d 70, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142.

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*, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, cert. denied, 89 N.M. 5, 546 P.2d 70, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142.

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 Cnty. Valuation Protest Bd.*, 1976-NMCA-116, 89 N.M. 784, 558 P.2d 53.

Rules of weight, etc., not necessarily limited. — The rules relating to weight, applicability or materiality of evidence are not limited by the provisions of this section. *Petition of Kinscherff*, 1976-NMCA-097, 89 N.M. 669, 556 P.2d 355, cert. denied, 90 N.M. 8, 558 P.2d 620.

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 Cnty. Valuation Protest Bd.*, 1977-NMCA-005, 90 N.M. 110, 560 P.2d 174 (decided under prior law).

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 Props. v. Valencia Cnty. Valuation Protests Bd.*, 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

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. P'ship v. Assessor for Cnty. of Bernalillo*, 1986-NMCA-022, 104 N.M. 154, 717 P.2d 1123.

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. P'ship v. Assessor for Cnty. of Bernalillo*, 1986-NMCA-022, 104 N.M. 154, 717 P.2d 1123.

Orders invalid when board without quorum. — When the protests board, consisting of three members, instead of the six required by the prior version of Section 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 Cnty. Valuation Protest Bd.*, 1976-NMCA-116, 89 N.M. 784, 558 P.2d 53.

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. *In re Horn*, 1980-NMCA-145, 95 N.M. 38, 618 P.2d 382.

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 Props. v. Valencia Cnty. Valuation Protests Bd.*, 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

7-38-28. Appeals from orders of the county valuation protests boards.

A property owner may appeal an order made by a county valuation protests board by filing an appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 72-31-28, enacted by Laws 1973, ch. 258, § 68; 1978 Comp., § 7-38-28; 1982, ch. 28, § 15; 1990, ch. 22, § 3; 1998, ch. 55, § 19; 1999, ch. 265, § 19; 2015, ch. 73, § 22; 2023, ch. 36, § 8.

ANNOTATIONS

Cross references. — For procedures governing administrative appeals to the district court, see Rule 1-074 NMRA.

The 2023 amendment, effective July 1, 2023, revised the process for appeals from orders of county valuation protests boards; in the section heading, deleted "hearing officer or"; and after "order made by", deleted "a hearing officer or"; and deleted "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."

The 2015 amendment, effective July 1, 2015, authorized property owners to appeal orders made by hearing officers from the administrative hearings office; in the catchline, after "orders of the", deleted "director" and added "hearing officer"; and in Subsection A, after "order made by", deleted "the director" and added "a hearing officer".

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection A.

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 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" 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.

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. *Petition of Kinscherff*, 1976-NMCA-097, 89 N.M. 669, 556 P.2d 355, cert. denied, 90 N.M. 8, 558 P.2d 620.

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*, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, cert. denied, 89 N.M. 5, 546 P.2d 70.

District court acted outside its proper appellate jurisdiction. — Where petitioner, a retirement and continuing care community, appealed to the district court the Santa Fe county valuation protests board's (board) decision upholding the county assessor's denial of petitioner's request for a property tax exemption, the district court erred in exercising its original jurisdiction over the statutory claim and issuing new findings of fact which contradicted the findings of the board; the district court should have exercised its appellate jurisdiction over the board's determination regarding the applicability of 7-36-7(B)(1)(d) NMSA 1978 to petitioner and reviewed whether the board's decision was arbitrary and capricious, unsupported by substantial evidence, or

otherwise contrary to law as required under 39-3-1.1(D) NMSA 1978. *El Castillo Ret. Residences v. Martinez*, 2017-NMSC-026, *aff'g* 2015-NMCA-041, and *overruling La Vida Llena v. Montoya*, 2013-NMCA-048, 299 P.3d 456.

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 Props. v. Valencia Cnty. Valuation Protests Bd.*, 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

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*, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, cert. denied, 89 N.M. 5, 546 P.2d 70.

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 Cnty. Assessor*, 1982-NMCA-006, 97 N.M. 318, 639 P.2d 605.

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 Cnty. Valuation Protest Bd.*, 1976-NMCA-116, 89 N.M. 784, 558 P.2d 53.

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 Props. v. Valencia Cnty. Valuation Protests Bd.*, 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

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*, 1987-NMCA-055, 105 N.M. 774, 737 P.2d 555.

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*, 1987-NMCA-055, 105 N.M. 774, 737 P.2d 555.

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*, 1987-NMCA-081, 106 N.M. 179, 740 P.2d 1163, cert. denied, 106 N.M. 174, 740 P.2d 1158.

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*, 1987-NMCA-055, 105 N.M. 774, 737 P.2d 555.

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.

7-38-28.1. Appeals from decisions and orders of the hearing officer of the administrative hearings office.

A. A property owner or the secretary may appeal a decision and order of a hearing officer of the administrative hearings office to the court of appeals for further relief, but only to the same extent and on the same theory as was asserted in the hearing before the hearing officer. All such appeals shall be on the record made at the hearing and shall not be de novo. All such appeals shall be taken within thirty days of the date of mailing or delivery of the written decision and order of the hearing officer to the property owner, and, if not so taken, the decision and order are conclusive.

B. The procedure for perfecting an appeal pursuant to this section shall be as provided by the Rules of Appellate Procedure.

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

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence in the record; or
- (3) otherwise not in accordance with the law.

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

E. The secretary shall notify the appropriate county assessor of any decision and order or appellate court opinion and shall direct the assessor to take appropriate action to comply with the decision and order.

History: Laws 2023, ch. 36, § 9.

ANNOTATIONS

Effective dates. — Laws 2023, ch. 36, § 10 made Laws 2023, ch. 36, § 9 effective July 1, 2023.

7-38-29. Retention of hearing records.

Untranscribed verbatim records of protest hearings shall be retained until after transcription, if transcription is required to support an appeal, or until the time for a protestant to appeal an order under Section 7-38-28 NMSA 1978 has expired and the protestant has not appealed.

History: 1953 Comp., § 72-31-29, enacted by Laws 1973, ch. 258, § 69.

7-38-30. Department to allocate and certify valuations to county assessors.

By June 1 of each year, the department shall certify to each county assessor the value determined by the department for property taxation purposes of all property allocated to governmental units within the county and subject to departmental valuation. In certifying values, the department shall indicate by appropriate notation all property valuations that are the subject of a pending protest and shall include in the notation a statement of the uncontroverted valuation in the pending protests. The certified values shall be entered by the county assessor in his valuation records.

History: 1953 Comp., § 72-31-30, enacted by Laws 1973, ch. 258, § 70.

7-38-31. County assessor to certify net taxable values to the department.

After receiving the values for property taxation purposes certified to him by the department, the county assessor shall determine the net taxable value for all property allocated to governmental units in the county and subject to valuation for property taxation purposes, whether valued by him or by the department. No later than June 15 of each year, the county assessor shall certify to the department the net taxable values for all property allocated to governmental units in the county and subject to property taxation. The net taxable values of property shall be certified according to governmental units within the county. The assessor's certification shall include a statement of all property valuations that are the subject of a pending protest, whether protested locally or to the department, and a statement of the uncontroverted valuation in the pending protests.

History: 1953 Comp., § 72-31-31, enacted by Laws 1973, ch. 258, § 71.

7-38-32. Department to prepare a compilation of net taxable values to be used for budget making and rate setting.

A. No later than June 30 of each year, the department shall prepare a compilation of all net taxable values certified to it by the county assessors and shall include in the compilation the information regarding protested values required to be furnished by the assessors to the department. The compilation shall be prepared in a form appropriate for use and shall be used for the purpose of making budgets. The compilation of net taxable values shall be sent immediately to the secretary of finance and administration.

B. No later than August 1 of each year, the department shall prepare an amended compilation of net taxable values and send it immediately to the secretary of finance and administration. This amended compilation shall include final valuations resulting from completed protests and information on pending protests. It shall be used by the department of finance and administration in setting property tax rates.

C. In the budget-making process for local units of government, including school districts, the net taxable values from the immediately preceding tax year may be considered for the purpose of estimating available revenue from the current tax year when the compilation of net taxable values certified under Subsection A is incomplete or indefinite due to pending protests.

History: 1953 Comp., § 72-31-32, enacted by Laws 1973, ch. 258, § 72; 1977, ch. 247, § 190.

7-38-33. Department of finance and administration to set tax rates.

A. No later than September 1 of each year, the secretary of finance and administration shall by written order set the property tax rates for the governmental units sharing in the tax in accordance with the Property Tax Code and the budget of each as approved by the department of finance and administration.

B. A copy of the property tax rate-setting order shall be sent to each board of county commissioners, each county assessor and the department within five days of the date the order is made.

C. Net taxable values from the immediately preceding tax year may be used by the department of finance and administration for the purpose of estimating current tax year revenue in connection with setting tax rates when final net taxable values for the current tax year are incomplete or indefinite due to pending protests.

D. When a rate is set for a governmental unit that is imposing a newly authorized rate pursuant to Section 7-37-7 NMSA 1978 or a newly authorized or a reauthorized rate after an election in which the imposition of the tax was approved by the voters of the unit, the rate shall be at a level that will produce in the first year of imposition revenue no greater than that which would have been produced if the valuation of property subject to the imposition had been the valuation in the tax year in which the increased rate pursuant to Section 7-37-7 NMSA 1978 was authorized by the taxing district or the year in which the voters approved the imposition.

History: 1953 Comp., § 72-31-33, enacted by Laws 1973, ch. 258, § 73; 1977, ch. 247, § 191; 1989, ch. 198, § 1.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, added Subsection D.

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 that shall be made available electronically and contain the information required by regulations of the department and shall contain at least the following information:

- (1) the description of the property taxed and, if the property is personal property, its location;
- (2) the property owner's name and address and the name and address of any person other than the owner to whom the tax bill is to be sent;
- (3) the classification of the property;
- (4) the value of the property determined for property taxation purposes;
- (5) the tax ratio;
- (6) the taxable value of the property;
- (7) the amount of any exemption allowed and a statement of the net taxable value of the property after deducting the exemption;
- (8) the allocations of net taxable value to the governmental units;
- (9) the tax rate in dollars per thousand of net taxable value for all taxes imposed on the property;
- (10) the amount of taxes due on the described property; and
- (11) the amount of any penalties and interest already imposed and due on the described property.

B. The property tax schedule is a public record and a part of the valuation records.

History: 1953 Comp., § 72-31-35, enacted by Laws 1973, ch. 258, § 75; 1974, ch. 92, § 13; 1975, ch. 8, § 1; 1977, ch. 211, § 1; 1981, ch. 37, § 75; 2007, ch. 343, § 1.

ANNOTATIONS

The 2007 amendment, effective June 15, 2007, required that the property tax schedule be made available electronically.

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.

7-38-36.2. Procedures to delay the mailing of property tax bills for counties for which a property tax levy is imposed at the November 2019 or 2021 regular local election to put the question of imposing or renewing a levy before the voters.

A. In 2019 and 2021:

(1) if a local government desires to impose or renew a property tax levy, the local government shall file a resolution with the county clerk and the local government division of the department of finance and administration no later than July 15 calling for the imposition or renewal of a property tax levy and indicate the local government's intent to place the question of imposing or renewing the property tax levy on the regular local election ballot in November;

(2) no later than September 1, and following the procedures provided in Section 7-38-33 NMSA 1978, the local government division of the department of finance and administration shall by written order set two property tax rates for the properties under the jurisdiction of the local governments that submitted a resolution pursuant to Paragraph (1) of this subsection. One set of rates shall assume that the question of the property tax levy will be approved by the voters, and a second set of rates shall assume that the question of the property tax levy will not be approved by the voters. A copy of the property tax rate-setting order with both rates shall be sent to each board of county commissioners and each county assessor of each affected county and the taxation and revenue department within five days of the date the order is made;

(3) within five days of receiving the rate-setting order, the board of county commissioners of each affected county shall issue a written order imposing a tax at the rates set on the net taxable value of property allocated to the appropriate governmental units pursuant to Section 7-38-34 NMSA 1978 for both of the property tax rates set pursuant to Paragraph (2) of this subsection. The order shall provide notice of both rates. A copy of each order shall be delivered immediately to the county assessor;

(4) no later than October 1, and following the procedures provided in Section 7-38-35 NMSA 1978, the county assessor for each affected county shall prepare a property tax schedule for all property subject to property taxation in the county for both of the property tax rates set pursuant to Paragraph (2) of this subsection;

(5) pursuant to Section 7-38-36 NMSA 1978, the county assessor shall deliver a copy of the property tax schedule prepared pursuant to Paragraph (4) of this subsection to the county treasurer on October 1, with a notice that the property tax bill for those properties shall be mailed pursuant to Paragraph (6) of this subsection;

(6) after the regular local election is held in November and the voters have answered the question of the property tax levy, the county treasurer for each affected

county shall prepare and mail property tax bills no later than November 24, notwithstanding Section 7-38-36 NMSA 1978, reflecting the appropriate rate and amount due, to either the owner of the property or any person other than the owner to whom the tax bill is to be sent; and

(7) notwithstanding Section 7-38-38 NMSA 1978, the first installment of property taxes is due on December 6, and shall become delinquent if not paid within thirty days pursuant to Section 7-38-49 NMSA 1978.

B. As used in this section:

(1) "affected county" means a county within which a local government is situate that files a resolution indicating the local government's intent to place the question of imposing or renewing a property tax levy on the regular local election ballot in November 2019 or 2021 pursuant to Subsection A of this section; and

(2) "local government" means "local government" as that term is defined in the Local Election Act [Chapter 1, Article 22 NMSA 1978].

History: Laws 2019, ch. 212, § 209.

ANNOTATIONS

Emergency clauses. — Laws 2019, ch. 212, § 286, contained an emergency clause and was approved April 3, 2019.

7-38-37. Contents of property tax bill.

Each property tax bill shall be in a form and contain the information required by regulations of the department and shall contain at least the following:

- A. all of the information required to be contained in the property tax schedule;
- B. the amount of property taxes due on each installment, the due dates of the installments and the dates on which taxes become delinquent;
- C. a brief statement of the option available to make prepayments of the property tax due pursuant to Sections 7-38-38.2 and 7-38-38.3 NMSA 1978;
- D. a brief statement of the procedure under Section 7-38-39 NMSA 1978 for protesting values for property taxation purposes, classification, allocation of values to governmental units or a denial of a claim for an exemption;
- E. a statement of the interest and penalties imposed by law for delinquency in the payment of property taxes and the remedies available against the taxpayer and the property for nonpayment of the amount due;

F. a statement advising the property owner that the property tax bill is the only notice the property owner will receive for payment of both installments of the tax if no separate notice will be sent with respect to the second installment;

G. the amount of any prepayment of the first installment made pursuant to Section 7-38-38.2 NMSA 1978; and

H. the total amount of any monthly payments made pursuant to Section 7-38-38.3 NMSA 1978 and a statement of the amount of the final monthly payment necessary to pay the balance of the tax due.

History: 1953 Comp., § 72-31-37, enacted by Laws 1973, ch. 258, § 77; 1981, ch. 37, § 76; 1987, ch. 166, § 1; 2008, ch. 33, § 1.

ANNOTATIONS

The 2008 amendment, effective May 14, 2008, added the reference to Section 7-38-38.3 NMSA 1978 in Subsection C and added Subsection H.

Applicability. — Laws 2008, ch. 33, § 3 provided that the provisions of Laws 2008, ch. 33, §§ 1 and 2 apply to property tax years beginning on or after January 1, 2009.

7-38-38. Payment of property taxes; installment due dates; refund in cases of overpayments.

A. Unless otherwise provided in the Property Tax Code, property taxes in the amount of ten dollars (\$10.00) or over are payable to the county treasurer in two equal installments due on November 10 of the year in which the tax bill was prepared and mailed and on April 10 of the following year. A board of county commissioners may, by ordinance, provide that property taxes under ten dollars (\$10.00) are due and payable in a single payment on November 10 of the year in which the tax bill was prepared and mailed. No demand for payment of property taxes is necessary.

B. If a taxpayer remits an amount in payment of his property taxes that exceeds the total property tax liability shown on the property tax bill, together with any applicable penalty and interest computed to the date payment is received by the county treasurer, a refund of the amount in excess shall be made to the taxpayer if either of the following conditions are met:

(1) a written request for the refund is made by the taxpayer and received by the county treasurer within sixty days of the date the excess payment is received by the county treasurer; or

(2) the county treasurer on his own initiative determines by June 30 of the year following the year for which taxes are imposed that an excess payment has been made.

History: 1953 Comp., § 72-31-38, enacted by Laws 1973, ch. 258, § 78; 1975, ch. 121, § 1; 1977, ch. 77, § 1; 1982, ch. 28, § 16; 1983, ch. 216, § 1; 1987, ch. 166, § 2.

ANNOTATIONS

Temporary provisions. — Laws 2020 (1st S.S.). ch. 4, § 4, effective June 29, 2020, provided:

A. Notwithstanding Sections 7-1-67 and 7-1-69 NMSA 1978, no interest shall accrue and no penalty shall be assessed to a taxpayer for:

(1) tax liabilities pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act for failure to pay the tax that became due April 15, 2020 through July 15, 2020; provided that the failure to pay the tax was made without intent to evade or defeat the tax; and provided further that payment for the unpaid payments is made in full on or before April 15, 2021;

(2) tax liabilities pursuant to the Withholding Tax Act for failure to pay the tax that became due March 25, 2020 through July 25, 2020; provided that the failure to pay the tax was made without intent to evade or defeat the tax; and provided further that payment for the unpaid taxes is made in full on or before April 25, 2021;

(3) gross receipts tax, local option gross receipts tax or compensating tax liabilities for failure to pay any of those taxes that became due March 25, 2020 through July 25, 2020; provided that the failure to pay the tax was made without intent to evade or defeat the tax; and provided further that payment for the unpaid taxes is made in full on or before April 25, 2021; and

(4) tax liabilities assessed between September 3, 2019 and January 3, 2020 as the result of a managed audit performed in accordance with a managed audit agreement pursuant to Section 7-1-11.1 NMSA 1978; provided that payment for those liabilities is made pursuant to terms of the managed audit agreement on or before December 31, 2020.

B. Notwithstanding Sections 7-38-49 and 7-38-50 NMSA 1978, no interest shall accrue and no penalty shall be assessed to a property owner for unpaid property taxes that became due April 10, 2020 pursuant to Section 7-38-38 NMSA 1978; provided that:

(1) the unpaid property taxes did not become delinquent because of an intent to defraud by the property owner;

(2) payment for the unpaid property taxes is made in full on or before May 10, 2021; and

(3) the subject property does not have property taxes that became delinquent pursuant to Section 7-38-46 NMSA 1978 prior to May 10, 2020.

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.*, 1973-NMCA-032, 84 N.M. 732, 507 P.2d 793.

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, including charter schools, but excluding institutions of higher education located in class

A counties and class B counties having more than three hundred million dollars (\$300,000,000) valuation, that are authorized by law to receive revenue.

B. Prior to the distribution to a revenue recipient of revenue received by a county treasurer, the treasurer shall deduct as an administrative charge an amount equal to one percent of the revenue received.

C. The "county property valuation fund" is created. All administrative charges deducted by the county treasurer shall be distributed to the county property valuation fund.

D. Expenditures from the county property valuation fund shall be made pursuant to a property valuation program presented by the county assessor and approved by the majority of the county commissioners.

History: 1978 Comp., § 7-38-38.1, enacted by Laws 1986, ch. 20, § 116; 1988, ch. 68, § 1; 1990, ch. 125, § 7; 2001, ch. 173, § 1; 2007, ch. 366, § 15.

ANNOTATIONS

Compiler's notes. — Laws 1990, ch. 22, § 12 repealed Laws 1988, ch. 68, § 2, which had specified administrative charges collectible by the county treasurer from "revenue recipients" as defined in this section.

The 2007 amendment, effective July 1, 2007, amended Subsection A to include charter schools in the definition of "revenue recipient".

The 2001 amendment, effective July 1, 2001, rewrote Subsection B, which formerly provided for the billing of revenue recipients, as an administrative charge, an amount equal to a certain percentage, depending on the class of the county, of the revenues received; and in Subsection C, rewrote the last two sentences which formerly read "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."

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.

County property valuation fund. — In creating the county property valuation fund in Subsection C of this section, the legislature created a permanent source of additional revenue to assist county assessors in fulfilling their statutory obligations to maintain current and correct values of all property within their jurisdictions, and directed county assessors to use those funds to achieve fair and timely reappraisal programs. The legislation does not impose any restrictions on the use of the funds other than the use be part of a property valuation program presented by the county assessor and approved

by the county commission. *Robinson v. Board of Comm'rs of the Cty. of Eddy*, 2015-NMSC-035.

Where the Eddy county assessor sought to use funds from the county property valuation fund to contract with a private company for technical assistance in locating and valuing oil and gas property within Eddy county, this section does not prohibit the Eddy county commission from approving a contract with an independent contractor to assist the county assessor in valuing property, because the legislature made no attempt to restrict an assessor's discretion on the use of the fund and thus intended to leave it to the professional discretion of county assessors to decide how best to achieve the statutory goal of current and correct valuation of all property within the county. *Robinson v. Board of Comm'rs of the Cty. of Eddy*, 2015-NMSC-035.

7-38-38.2. Prepayment of certain property tax installments; resolution by board of county commissioners.

A. Each board of county commissioners, by resolution, may as an option to the taxpayer provide for prepayment of property tax due if the tax due is one hundred dollars (\$100) or more.

B. The resolution shall provide for a prepayment of the first installment due pursuant to Section 7-38-38 NMSA 1978 by July 10 in an amount equal to twenty-five percent of the prior year's property tax bill. The amount of prepayment shall be credited against the first installment due.

C. The resolution shall further provide for a prepayment of the second installment due pursuant to Section 7-38-38 NMSA 1978 by January 10 in an amount equal to fifty percent of the second installment due. The amount of the prepayment shall be credited against the second installment due.

D. The resolution shall also provide that persons who are responsible by contract for paying property taxes on behalf of the property owner shall make prepayments as provided in this section if the amount of property tax due for the prior property tax year was at least one hundred dollars (\$100).

E. No penalty and interest shall be applied for failure to pay or for late payment of any optional prepayment of property taxes as authorized by this section. For persons required to make prepayments of property taxes under Subsection D of this section, the date of each prepayment installment shall be deemed to be the date the property tax is due for purposes of applying penalties and interest for failure to pay for late payment of any prepayment.

F. The county treasurer may distribute to the units of government, thirty days following receipt of the prepayment amounts collected, an amount equal to fifty percent of the amounts collected. Distribution shall be made in accordance with the law and regulations of the department of finance and administration.

G. The county shall make a concerted effort to apprise taxpayers of the option provided in this section by publication in a newspaper of general circulation in the county or through other media coverage.

History: 1978 Comp., § 7-38-38.2, enacted by Laws 1987, ch. 166, § 3.

7-38-38.3. Optional prepayment of property taxes in monthly payments.

A board of county commissioners may by resolution provide property owners the option of making prepayments of property taxes in ten monthly payments beginning June 1 of the year in which the tax bill is prepared and ending March 1 of the following year. The first nine monthly payments shall each be in an amount equal to ten percent of the prior year's property tax bill and the final payment on March 1 shall be in an amount equal to the balance of the tax due, as indicated on the tax bill prepared and mailed pursuant to Sections 7-38-36 and 7-38-37 NMSA 1978; provided that an option otherwise allowed pursuant to this section may not be exercised if taxes are escrowed for the property owner and included in the property owner's monthly mortgage payment.

History: Laws 2008, ch. 33, § 2.

ANNOTATIONS

Effective dates. — Laws 2008, ch. 33 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 14, 2008, 90 days after the adjournment of the legislature.

Applicability. — Laws 2008, ch. 33, § 3 provided that the provisions of Laws 2008, ch. 33, §§ 1 and 2 apply to property tax years beginning on or after January 1, 2009.

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 Ctr. for Health Sciences v. Beach*, 1980-NMCA-004, 93 N.M. 793, 606 P.2d 203.

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 Cnty.*, 1973-NMSC-064, 85 N.M. 313, 512 P.2d 73.

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 Cnty.*, 1973-NMSC-064, 85 N.M. 313, 512 P.2d 73.

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 Cnty.*, 1973-NMSC-064, 85 N.M. 313, 512 P.2d 73.

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 § 753 et seq.; 85 C.J.S. Taxation § 910 et seq.

7-38-40. Claims for refund; civil action.

A. Claims for refund shall be filed by the property owner as a civil action in the district court for the county in which the valuation was determined if the property was locally valued or in the district court for Santa Fe county if valued by the department. Claims shall:

- (1) be filed against the director as party defendant if the property was valued by the department or against the county assessor as party defendant if the property was valued by the assessor and shall be filed no later than the sixtieth day after the first installment of the property tax for which a claim for refund is made is due;
- (2) state the property owner's name and address and the name and address of any person other than the property owner to whom the tax bill was sent;
- (3) state the basis of the claim for refund;

(4) state the amount of the refund to which the property owner believes he is entitled, the amount of property taxes admitted as legally due and the property taxes paid; and

(5) demand the refund to him of the amount to which he claims entitlement.

B. The director shall notify the appropriate county treasurer immediately when a claim for refund is filed against the director.

C. The property owner, the county assessor or the director may appeal to the court of appeals from any final decision or order of the district court in a claim for refund case in which they are parties.

D. Upon the final determination of the property owner's claim filed against the director, the director shall send a copy of the final order to the county treasurer and shall order the county assessor to change the valuation records to clearly reflect the final determination of the property owner's claim. The department shall change its valuation records accordingly.

E. Upon the final determination of the property owner's claim filed against the county assessor, the assessor shall send a copy of the final order to the county treasurer and to the director. The county assessor and the department shall change their respective valuation records to clearly reflect the final determination of the property owner's claim.

History: 1953 Comp., § 72-31-40, enacted by Laws 1973, ch. 258, § 80; 1974, ch. 92, § 14; 1982, ch. 28, § 17; 2003, ch. 292, § 1.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003 substituted "department" for "division" throughout the section; inserted "assessor" following "the county" three times; in Subsection E, substituted "assessor" for "treasurer" following "the county assessor" near the middle of the first sentence, and substituted "treasurer" for "assessor" following "The county" near the beginning of the second sentence.

The sixty day period for bringing suit for a property tax refund does not violate due process. *Chan v. Montoya*, 2011-NMCA-072, 150 N.M. 44, 256 P.3d 987, cert. denied, 2011-NMCERT-005, 150 N.M. 666, 265 P.3d 717.

The time limit for filing a property tax refund complaint begins to run on the date the tax payment is due, not the date the payment becomes delinquent. *Chan v. Montoya*, 2011-NMCA-072, 150 N.M. 44, 256 P.3d 987, cert. denied, 2011-NMCERT-005, 150 N.M. 666, 265 P.3d 717.

Time limit for filing complaint for refund. — Where taxpayers received property tax bills which stated that the first of two installments of the annual tax payment was due on November 10, 2007, and that the first installment payment would become delinquent on December 10, 2007; taxpayers paid the installment; and taxpayers filed a complaint for a refund in February 2008, approximately ninety days after the November 10th due date, taxpayers' claims for refund were untimely and barred by the sixty day limitation period. *Chan v. Montoya*, 2011-NMCA-072, 150 N.M. 44, 256 P.3d 987, cert. denied, 2011-NMCERT-005, 150 N.M. 666, 265 P.3d 717.

Refund claims asserted in supplemental complaint. — A claim for subsequent year's taxes, asserted in a supplemental complaint in a tax refund suit, was not timely where the supplemental complaint was filed six weeks after the deadline under Section 7-38-40(A)(1) NMSA 1978 for claiming a refund. *Dale Bellamah Land Co. v. Bernalillo Cnty.*, 1978-NMSC-095, 92 N.M. 615, 592 P.2d 971.

Applicability. — This section applies to property that is subject to valuation. Property constitutionally exempt from property taxes is not to be valued for property tax purposes and therefore refund claims for exempt property are not viable under this section. *Lovelace Ctr. for Health Sciences v. Beach*, 1980-NMCA-004, 93 N.M. 793, 606 P.2d 203.

Because taxpayer's claim was for refund based on incorrect allocation of the value of its property for tax purposes, its remedy was pursuant to this section, not Section 7-38-78 NMSA 1978. *Fed. Express Corp. v. Abeyta*, 2004-NMCA-011, 135 N.M. 37, 84 P.3d 85, cert. granted, 2004-NMCERT-001, 135 N.M. 160, 85 P.3d 802.

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.

85 C.J.S. Taxation § 933 et seq.

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 Ctr. for Health Sciences v. Beach*, 1980-NMCA-004, 93 N.M. 793, 606 P.2d 203.

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 except for the collection of delinquent taxes, penalties and interest authorized to be collected by the department under Section 7-38-62 NMSA 1978.

B. Property taxes, penalties and interest collected shall be receipted and accounted for in accordance with law and regulations of the department of finance and administration.

C. Any payments received by the treasurer or the department as payments for property taxes, penalties or interest shall be first applied to the oldest outstanding unpaid property taxes, penalties or interest accrued in prior property tax years on the property identified and described in the property tax bill for which payment is tendered or, if the payment cannot be identified with a particular year's property tax bill, then the payment shall be applied first to the oldest liability for property taxes, penalties and interest shown in the treasurer's records under the name of the paying taxpayer. In applying the foregoing requirements for applications of payments and in the adoption of any regulations to implement those provisions, the following additional rules shall apply:

(1) applications of payments to a prior year's delinquent taxes, penalties and interest shall not be made for more than ten years prior to the year of payment unless the treasurer's records show that the property for which taxes are delinquent has been deeded to the state of New Mexico and that property has not been sold by the state pursuant to applicable law;

(2) applications of payments to a prior year's delinquent taxes, penalties and interest shall not be made if:

(a) the prior year for which the delinquent taxes, penalties or interest are due is not the immediately preceding tax year;

(b) the delinquent taxes, penalties or interest are the result of real estate improvements that were omitted from property tax schedules in the prior year and listed and billed pursuant to Section 7-38-76 NMSA 1978;

(c) the current owner was not the owner at the time the improvements were omitted and had no actual notice that the improvements were omitted; and

(d) the payments were made by or on behalf of the current owner;

(3) after application of payment received, if all or part of the payment has been applied to a prior year's delinquent taxes, penalties or interest, the receipting authority shall issue a receipt to the paying taxpayer showing the application of the payment and indicating any balance due for taxes, penalties or interest to bring the property tax payment status current; and

(4) the failure of a receipting authority to apply a payment as required under this subsection or the failure to issue a required receipt to the taxpayer of the status of his account shall not relieve the taxpayer of liability for taxes, penalties or interest he would otherwise be required to pay nor does action or inaction by the receipting authority act to estop the collecting authority from taking any action to collect or enforce the payment of taxes, penalties and interest legally due.

History: Laws 1979, ch. 343, § 1; 2003, ch. 95, § 2.

ANNOTATIONS

Repeals and reenactments. — Laws 1973, ch. 343, § 1 repealed 7-38-42, and enacted a new section.

The 2003 amendment, effective June 20, 2003, added Paragraph C(2) and redesignated former Paragraphs C(2) and (3) as present Paragraphs C(3) and (4).

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*, 1984-NMSC-059, 101 N.M. 334, 681 P.2d 1111.

7-38-43. Distribution of receipts from collected property taxes, penalties and interest.

The county treasurer shall distribute the receipts from collected property taxes to each governmental unit in an amount and in a manner determined in accordance with the law and with the regulations of the department of finance and administration. Penalties and interest collected by the county treasurer, other than as an agent of the department under Section 7-38-62 NMSA 1978 and other than penalties and interest on assessments levied by a conservancy district organized under the provisions of The Conservancy Act of New Mexico [73-14-1 NMSA 1978], created prior to 1930 and embracing land situate in four or more counties, shall be deposited in the county general fund at the times and in the manner required by regulations of the department of finance and administration. Penalties and interest collected by the county treasurer as agent of the department under Section 7-38-62 NMSA 1978 shall be remitted to the department at the times and in the manner required by regulations of the department of finance and administration.

History: 1953 Comp., § 72-31-43, enacted by Laws 1973, ch. 258, § 83; 1990, ch. 22, § 4; 1995, ch. 75, § 1.

ANNOTATIONS

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".

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.

7-38-44. Special procedures for administration of taxes on personal property when probable removal of property from state will jeopardize collection of taxes.

A. If the director or a county assessor has reasonable cause to believe that personal property, other than livestock, subject to valuation by him for property taxation purposes in a tax year will be removed from the state or the county, respectively, before the taxes for that year are due and that the removal of the property will jeopardize the collection of the tax, he may, for property subject to valuation by him:

(1) proceed immediately to determine the value of the property and send a notice of valuation to the property owner;

(2) at any time after sending the notice of valuation proceed to determine the taxes due on the property by using the prior year's tax rates if the current year's tax rates have not been set and prepare and mail or deliver a property tax bill to the property owner and proceed to collect the taxes immediately; and

(3) issue a demand warrant and proceed to collect unpaid taxes as delinquent taxes under the provisions of Sections 7-38-53 through 7-38-59 NMSA 1978 if taxes are not paid upon demand.

B. Payment of taxes determined on the basis of the prior year's tax rates under this section constitutes full payment of the taxes on the property involved for the current tax year.

History: 1953 Comp., § 72-31-44, enacted by Laws 1973, ch. 258, § 84; 1974, ch. 92, § 16.

7-38-44.1. Special procedures for administration of taxes on real property divided or combined.

A. For real property subject to valuation for property taxation purposes in a taxable year that is divided or combined, a county shall proceed to determine the taxes due on the property by using the prior year's tax rate, if the current tax rates have not been set, and the prior year's value, if the current year value has not been set, and proceed to

immediately collect the taxes, penalties, interest and fees through the taxable year in which the property is divided or combined.

B. A taxpayer shall pay the taxes, penalties, interest and fees due on real property divided or combined through the taxable year in which the property is divided or combined prior to filing a plat.

History: Laws 2013, ch. 119, § 1.

ANNOTATIONS

Emergency clauses. — Laws 2013, ch. 119, § 2 contained an emergency clause and was approved April 2, 2013.

7-38-45. Special provisions relating to administration of taxes on livestock.

A. The New Mexico livestock board shall furnish to the department who shall forward to the county assessor of each county information obtained by it about the number, name and address of owner, description, movement, origin and destination of livestock being moved into or from any county. All such information shall be sent in duplicate to the county assessor into or from whose county livestock are being moved. Upon receipt of the information, the assessor shall send the duplicate to the department with a notation indicating the date on which it was received. The livestock board report made under this section fulfills the livestock owner's responsibility to make a report of the livestock under Section 7-36-21 NMSA 1978.

B. Notwithstanding any other provision in the Property Tax Code to the contrary, either the county assessor or the director may:

(1) determine the value of livestock for property taxation purposes at any time the livestock are subject to valuation under the Property Tax Code whether or not the owner of the livestock or any other person has reported them for valuation;

(2) issue a notice of valuation of livestock at any time after a determination of valuation has been made of livestock for property taxation purposes;

(3) prepare and deliver a tax bill and collect taxes on livestock at any time after a notice of valuation has been issued when there is reasonable cause to believe that it would jeopardize the collection of the taxes if the regular tax collection cycle in the Property Tax Code was followed; and

(4) issue a demand warrant to enforce collection of taxes on livestock as delinquent taxes if there is reasonable cause to believe that the livestock may be moved out of the state prior to the payment of taxes, and proceed to collect the taxes as

delinquent taxes by sale of the livestock in accordance with Sections 7-38-53 through 7-38-59 NMSA 1978.

C. In the preparation of a tax bill under this section, the assessor or director may determine the tax due on the basis of the prior year's tax rates if the current year's tax rates have not yet been set. Taxes determined on livestock under this section are due when the tax bill is delivered to the owner or the person in charge of the livestock and are delinquent if not paid upon demand. Payment of taxes determined on the basis of the prior year's tax rates constitutes full payment of the taxes on the livestock for the current tax year.

History: 1953 Comp., § 72-31-45, enacted by Laws 1973, ch. 258, § 85; 1974, ch. 92, § 17.

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 Cnty. v. Angel Fire Corp.*, 1993-NMCA-015, 115 N.M. 146, 848 P.2d 532.

Delinquent taxes. — A personal judgment may be rendered against the owners of property for delinquent taxes. *Cordova v. N.M. Taxation & Revenue Dep't.*, 2005-NMCA-009, 136 N.M. 713, 104 P.3d 1104.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation § 836.

85 C.J.S. Taxation § 978.

7-38-48. Property taxes are a lien against real property from January 1; priorities; continuance of taxing process.

A. Except as provided in Subsection B of this section, taxes on real property are a lien against the real property from January 1 of the tax year for which the taxes are imposed. The lien runs in favor of the state and secures the payment of taxes on the real property and any penalty and interest that become due. The lien continues until the taxes and any penalty and interest are paid. The lien created by this section is a first

lien and paramount to any other interest in the property, perfected or unperfected. The annual taxing process provided for in the Property Tax Code shall continue as to any particular property regardless of prior tax delinquencies or of pending protests, actions for refunds or other tax controversies involving the property, including a sale for delinquent taxes.

B. No lien is created pursuant to Subsection A of this section if:

(1) the tax otherwise creating the lien is not due for the current tax year or the immediately preceding property tax year;

(2) the tax otherwise creating the lien is the result of real estate improvements that were omitted from property tax schedules in a prior year and listed and billed pursuant to Section 7-38-76 NMSA 1978; and

(3) the current owner was not the owner at the time the improvements were omitted and had no actual notice that the improvements were omitted.

History: 1953 Comp., § 72-31-48, enacted by Laws 1973, ch. 258, § 88; 1974, ch. 92, § 18; 2003, ch. 95, § 3.

ANNOTATIONS

Cross references. — For property tax liens on mobile homes, see 7-38-52 and 66-3-204 NMSA 1978.

The 2003 amendment, effective June 20, 2003, added the Subsection A designation and, in Subsection A, inserted "Except as provided in Subsection B of this section" at the beginning; and added Subsection B.

Tax liens attach to the interest of the vendee in a conditional sales contract, but terminates if the interest of the vendee is terminated through forfeiture or otherwise. *MGIC Mortgage Corp. v. Bowen*, 1977-NMSC-108, 91 N.M. 200, 572 P.2d 547.

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*, 1986-NMCA-043, 105 N.M. 522, 734 P.2d 762, cert. quashed, 105 N.M. 438, 733 P.2d 1321 (1987).

Lien not governed by recording act. — A tax lien is not within the class of written instruments governed by Section 14-9-3 NMSA 1978, relating to effect of unrecorded instruments. *Cano v. Lovato*, 1986-NMCA-043, 105 N.M. 522, 734 P.2d 762, cert. quashed, 105 N.M. 438, 733 P.2d 1321 (1987).

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 Section 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 Cnty. v. Angel Fire Corp.*, 1993-NMCA-015, 115 N.M. 146, 848 P.2d 532.

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.

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

Recompilations. — Laws 1982, ch. 28, § 22, recompiled former 7-38-60 NMSA 1978, relating to property taxes delinquent for more than two years, as 7-38-61 NMSA 1978.

The 1997 amendment, effective June 20, 1997, substituted "department" for "division" throughout the section and inserted "real property" in Subsection C.

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

Recompilations. — Laws 1982, ch. 28, § 21, recompiled former 7-38-61 NMSA 1978, relating to notification to property owner of delinquent taxes, as 7-38-60 NMSA 1978.

The 1997 amendment, effective June 20, 1997, 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.

7-38-62. Authority of department to collect delinquent property taxes after receipt of tax delinquency list; allowing an authorized county treasurer to act as an agent of the department; use of penalties, interest and costs.

A. After the receipt of the tax delinquency list, the department has the responsibility and exclusive authority to take all action necessary to collect delinquent taxes shown on the list. This authority includes bringing collection actions in the district courts based upon the personal liability of the property owner for taxes as well as the actions authorized in the Property Tax Code for proceeding against the property subject to the tax for collection of delinquent taxes.

B. Payment of delinquent taxes listed and any penalty, interest or costs due in connection with those taxes shall be made to the department if occurring after the

receipt by the department of the tax delinquency list; however, the department may authorize county treasurers to act as its agents in accepting payments of taxes, penalties, interest or costs due to the department, including payments made pursuant to an installment agreement authorized by Section 7-38-68 NMSA 1978.

C. Penalties, interest and costs due received by the department pursuant to Subsection B of this section shall be retained by the department for use, subject to appropriation by the legislature, in the administration of the Property Tax Code.

History: 1953 Comp., § 72-31-62, enacted by Laws 1973, ch. 258, § 102; 1990, ch. 22, § 5; 2015, ch. 44, § 1.

ANNOTATIONS

The 2015 amendment, effective July 1, 2015, allowed the taxation and revenue department to authorize county treasurers to act as agents of the department in accepting payments made pursuant to an installment agreement for the payment of delinquent property taxes; in the catchline, added "allowing an authorized county treasurer to act as an agent of the department"; designated the first two sentences of the section as Subsection A, designated the third sentence of the section as Subsection B, and designated the last sentence of the section as Subsection C; in Subsection B, added "to the department, including payments made pursuant to an installment agreement authorized by Section 7-38-68 NMSA 1978"; in Subsection C, after the first occurrence of "department", deleted "under" and added "pursuant to Subsection B of".

The 1990 amendment, effective May 16, 1990, added "use of penalties, interest and costs" in the catchline and added the final sentence.

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*, 1984-NMSC-059, 101 N.M. 334, 681 P.2d 1111.

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.

7-38-64. Repealed.

ANNOTATIONS

Repeals. — Laws 1997, ch. 124, § 3 repealed 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, effective June 20, 1997. For provisions of former section, see the 1996 NMSA 1978 on *NMOneSource.com*.

7-38-65. Collection of delinquent taxes on real property; sale of real property.

A. If a lien exists by the operation of Section 7-38-48 NMSA 1978, the department may collect delinquent taxes on real property by selling the real property on which the taxes have become delinquent. The sale of real property for delinquent taxes shall be in accordance with the provisions of the Property Tax Code. Real property may be sold for delinquent taxes at any time after the expiration of three years from the first date shown on the tax delinquency list on which the taxes became delinquent. Real property shall be offered for sale for delinquent taxes either within four years after the first date shown on the tax delinquency list on which the taxes became delinquent or, if the department is barred by operation of law or by order of a court of competent jurisdiction from offering the property for sale for delinquent taxes within four years after the first date shown on the tax delinquency list on which the taxes became delinquent, within one year from the time the department determines that it is no longer barred from selling the property, unless:

(1) all delinquent taxes, penalties, interest and costs due are paid by 5:00 p.m. of the day prior to the date of the sale; or

(2) an installment agreement for payment of all delinquent taxes, penalties, interest and costs due is entered into with the department by 5:00 p.m. of the day prior to the date of the sale pursuant to Section 7-38-68 NMSA 1978.

B. Failure to offer property for sale within the time prescribed by Subsection A of this section shall not impair the validity or effect of any sale that does take place.

C. The time requirements of this section are subject to the provisions of Section 7-38-83 NMSA 1978.

D. After January 1, 2014 and subject to the provisions of Subsection A of this section, the department shall annually offer for sale in each county at least one real property listed on that county's property tax delinquency list, unless the director of the property tax division of the department and the county treasurer enter into an agreement to postpone the delinquent property tax sale. The agreement to postpone the delinquent property tax sale shall be executed in writing, and copies shall be sent to the secretary of taxation and revenue and the secretary of finance and administration. That agreement shall state the reason for the postponement and the proposed remedy that will allow the department to conduct the sale in the future.

History: 1953 Comp., § 72-31-65, enacted by Laws 1973, ch. 258, § 105; 1983, ch. 215, § 3; 1985, ch. 109, § 9; 1985, ch. 226, § 1; 1990, ch. 22, § 7; 2001, ch. 253, § 1; 2001, ch. 254, § 1; 2003, ch. 95, § 4; 2013, ch. 155, § 1.

ANNOTATIONS

The 2013 amendment, effective January 1, 2014, required the taxation and revenue department to conduct delinquent property tax sales in each county with delinquent properties at least one time in each calendar year; and added Subsection D.

Applicability. — Laws 2013, ch. 155, § 2 provided that the provisions of Laws 2013, ch. 155, § 2 applies to property tax years beginning on or after January 1, 2014.

The 2003 amendment, effective June 20, 2003, added "If a lien exists by the operation of Section 7-38-48 NMSA 1978" at the beginning of Subsection A.

The 2001 amendment, effective June 15, 2001, in Paragraphs A(1) and (2), substituted "by 5:00 p.m. of the day prior to the date of sale" for "by the date of sale"; and added Paragraph C.

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".

Purpose of statutes on tax deeds is to give a measure of certainty and security to tax titles. *First Nat'l Bank v. State*, 1967-NMSC-097, 77 N.M. 695, 427 P.2d 225.

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*, 1967-NMSC-097, 77 N.M. 695, 427 P.2d 225.

Tax deed issued before period of redemption has expired is void. *First Nat'l Bank v. State*, 1967-NMSC-097, 77 N.M. 695, 427 P.2d 225.

State is not an "owner" neither is it "person entitled to redeem." *First Nat'l Bank v. State*, 1967-NMSC-097, 77 N.M. 695, 427 P.2d 225.

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*, 1967-NMSC-097, 77 N.M. 695, 427 P.2d 225.

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*, 1967-NMSC-097, 77 N.M. 695, 427 P.2d 225.

Action to declare rights under the Property Tax Code. — A claim seeking to invalidate a tax sale due to inadequacy of price may be directed solely at the third-party purchasers of the property. *Valenzuela v. Snyder*, 2014-NMCA-061, cert. granted, 2014-NMCERT-005.

Where plaintiffs owed delinquent property taxes; the department sold the property at auction; the department established the minimum bid as \$215; the fair market value of the property was at least \$25,000; the buyers of the property, who were the only bidders, paid \$215 for the property; the department issued a tax deed to the buyers; and plaintiffs filed suit against the buyers to set aside the sale, the suit against the buyers was permissible. *Valenzuela v. Snyder*, 2014-NMCA-061, cert. granted, 2014-NMCERT-005.

Inadequacy of purchase price. — The inadequacy of the purchase price or gross disproportionality between the purchase price and the property's value are not grounds for setting aside a tax sale. *Valenzuela v. Snyder*, 2014-NMCA-061, cert. granted, 2014-NMCERT-005.

Where plaintiffs owed delinquent property taxes; the department sold the property at auction; the department established the minimum bid as \$215; the fair market value of the property was at least \$25,000; the buyers of the property, who were the only bidders, paid \$215 for the property; the department issued a tax deed to the buyers; and plaintiffs filed suit against the buyers to set aside the sale, the inadequacy of the purchase price or gross disproportionality between the purchase price and the

property's value were not unconscionable and were not grounds for setting aside the tax sale. *Valenzuela v. Snyder*, 2014-NMCA-061, cert. granted, 2014-NMCERT-005.

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*, 1954-NMSC-039, 58 N.M. 429, 272 P.2d 330.

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*, 1954-NMSC-039, 58 N.M. 429, 272 P.2d 330.

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, and, for abandoned real property, an additional letter sent by first class mail, to the address as shown on the most recent property tax schedule, each property owner whose real property will be sold that the owner's real property will be sold to satisfy delinquent taxes, unless:

(1) all delinquent taxes, penalties, interest and costs due are paid by 5:00 p.m. of the day prior to the date of the sale, or, for abandoned real property being sold via an online platform as provided in Subsection D of Section 7-38-67.1 NMSA 1978, all delinquent taxes, penalties, interest and costs due are paid by 5:00 p.m. of the day prior to the date the property is offered on the property tax division's website; or

(2) an installment agreement for payment of all delinquent taxes, penalties, interest and costs due is entered into with the department by 5:00 p.m. of the day prior to the date of sale in accordance with Section 7-38-68 NMSA 1978, or, for abandoned real property sold via an online platform as provided in Subsection D of Section 7-38-67.1 NMSA 1978, an installment agreement for payment of all delinquent taxes, penalties, interest and costs due is entered into with the department in accordance with Section 7-38-68 NMSA 1978 by 5:00 p.m. of the day prior to the date the property is offered on the property tax division's website.

B. The notice shall also:

(1) state the amount of taxes, penalties, interest and costs due;

- (2) state the time and place of the sale;
- (3) if online, state the date and time the sale begins and expires and the web address of the property tax division's website where the property being sold will be listed;
- (4) describe the real property that will be sold;
- (5) inform the property owner of the property owner's right to apply for an installment agreement with the department for payment of delinquent taxes, penalties, interest and costs, in accordance with Section 7-38-68 NMSA 1978;
- (6) provide information on the name and phone number of the individual in the department the owner can contact to arrange for an installment agreement in accordance with Section 7-38-68 NMSA 1978; and
- (7) contain any other information that the department may require by rule.

C. At the same time a notice required by Subsection A of this section is sent to the owner of the real property, a notice containing the information set out in Subsection B of this section shall also be sent to each person holding a lien or security interest of record in the property if an address for such person is reasonably ascertainable through a search of the property records of the county in which the property is located.

D. Failure of the department to mail a required notice by certified mail, return receipt requested, shall invalidate the sale; provided, however, that return to the department of the notice of the return receipt shall be deemed adequate notice and shall not invalidate the sale.

E. Proof that all delinquent taxes, penalties, interest and costs had been paid by 5:00 p.m. of the day prior to the date of sale shall prevent or invalidate the sale.

F. For abandoned real property sold via an online platform as provided in Subsection D of Section 7-38-67.1 NMSA 1978, proof that the owner has paid all delinquent taxes, penalties, interest and costs due by 5:00 p.m. of the day prior to the date the property is offered on the property tax division's website shall invalidate the sale.

G. Proof that the owner has, by 5:00 p.m. of the day prior to the date of sale, entered into an installment agreement to pay all delinquent taxes, penalties, interest and costs as provided in Section 7-38-68 NMSA 1978 and that timely payments under such agreement are being made shall prevent or invalidate the sale.

H. For abandoned real property sold via an online platform as provided in Subsection D of Section 7-38-67.1 NMSA 1978, proof that the owner has entered into an installment agreement with the department for payment of all delinquent taxes,

penalties, interest and costs due in accordance with Section 7-38-68 NMSA 1978 by 5:00 p.m. of the day prior to the date the property is offered on the property tax division's website shall invalidate the sale.

I. The time requirements of this section are subject to the provisions of Section 7-38-83 NMSA 1978.

History: 1953 Comp., § 72-31-66, enacted by Laws 1973, ch. 258, § 106; 1980, ch. 104, § 1; 1982, ch. 28, § 23; 1983, ch. 215, § 4; 1990, ch. 22, § 8; 2001, ch. 253, § 2; 2001, ch. 254, § 2; 2018, ch. 50, § 2.

ANNOTATIONS

The 2018 amendment, effective May 16, 2018, provided procedures for the sale of abandoned real property for which delinquent property tax is due; in Subsection A, in the introductory clause, after "return receipt requested", added "and, for abandoned real property, an additional letter sent by first class mail", in Paragraph A(1), after "date of the sale", added the remainder of the paragraph, and in Paragraph A(2), after "Section 7-38-68 NMSA 1978", added the remainder of the paragraph; in Subsection B, added a new Paragraph B(3) and redesignated former Paragraphs B(3) through B(6) as Paragraphs B(4) through B(7), respectively, in Paragraph B(5), after "property owner of", deleted "his" and added "the property owner's", and after "right to", deleted "enter into" and added "apply for", in Paragraph B(6), after "department the", deleted "taxpayer" and added "owner", and in Paragraph B(7), after "require by", deleted "regulation" and added "rule"; in Subsection C, after "owner of the", added "real"; in Subsection E, after "Proof", deleted "by the taxpayer"; added a new Subsection F and redesignated former Subsection F as Subsection G; in Subsection G, after "Proof", deleted "by the taxpayer", and after "that the", deleted "taxpayer" and added "owner"; and added Subsection H and redesignated former Subsection G as Subsection I.

The 2001 amendment, effective June 15, 2001, in Paragraphs A(1), (2) and Subsection E, substituted "by 5:00 p.m. of the day prior to the date of sale" for "by the date of sale"; added Paragraphs B(4) and (5); in Subsection F, added "by 5:00 p.m. of the day prior to the date of sale" and deleted "prior to the date of sale" following "interests and costs"; and added Subsection G.

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.

Taxpayer testimony insufficient to create issue of material fact. — In the face of documentary evidence establishing that the initial payment made by taxpayer for delinquent taxes corresponded to payment of one-half of his delinquent taxes, penalties, and interest, taxpayer's self-serving testimony as to his subjective belief that he had paid his taxes for certain tax years was insufficient to create a genuine issue of material fact as to prior payment. *Cordova v. N.M. Taxation & Revenue Dep't.*, 2005-NMCA-009, 136 N.M. 713, 104 P.3d 1104.

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*, 1991-NMCA-063, 112 N.M. 285, 814 P.2d 463, cert. denied, 112 N.M. 308, 815 P.2d 161.

Section 7-38-70C NMSA 1978 subject to notice requirements. — The legislature did not intend to apply Section 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.*, 1994-NMCA-032, 117 N.M. 263, 871 P.2d 27.

Due process requirements. — 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*, 1987-NMCA-096, 106 N.M. 202, 740 P.2d 1186, cert. denied, 106 N.M. 174, 740 P.2d 1158.

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*, 1987-NMCA-096, 106 N.M. 202, 740 P.2d 1186, cert. denied, 106 N.M. 174, 740 P.2d 1158.

Indications of ownership. — 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*, 1987-NMCA-096, 106 N.M. 202, 740 P.2d 1186, cert. denied, 106 N.M. 174, 740 P.2d 1158.

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*, 1983-NMSC-107, 101 N.M. 2, 677 P.2d 615.

Reasonable diligence to locate taxpayer contact information. — Where the state failed to contact the utility company that served the nonresident taxpayer's rural property, to red tag the taxpayer's property with a warning of the tax deficiency, and to

access public records in the state where the taxpayer was known to reside; accessed only two internet websites that contained published telephone and address information when the state knew that the contact information listed under the taxpayer's name was unpublished; and although the taxpayer was a prominent businessman and property owner in his home state, failed to use internet websites that would produce information about the taxpayer, the state was not reasonably diligent in attempting to locate the reasonably ascertainable contact information of the deficient taxpayer before selling his property at auction in violation of due process. *Gates v. N.M. Taxation & Revenue Dept.*, 2008-NMCA-023, 143 N.M. 446, 176 P.3d 1178.

Duty to seek correct address. — Subsection A requires the division (department) to send notice to delinquent taxpayers via certified mail, return receipt requested. This requirement implicitly requires the division (department) to send the notice to the correct address. The division (department) 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*, 1991-NMCA-063, 112 N.M. 285, 814 P.2d 463, cert. denied, 112 N.M. 308, 815 P.2d 161.

Incorrect address does not invalidate sale. — The return of a notice of tax sale to the department indicating an incorrect address did not invalidate the tax sale. *Cano v. Lovato*, 1986-NMCA-043, 105 N.M. 522, 734 P.2d 762, cert. quashed, 105 N.M. 438, 733 P.2d 1321 (1987).

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*, 1983-NMSC-087, 100 N.M. 431, 671 P.2d 1142.

Incorrect address immaterial if no challenge on those grounds. — 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*, 1983-NMSC-087, 100 N.M. 431, 671 P.2d 1142.

Intent of 1990 amendment to Subsection D. — Subsection D of this section, as amended in 1990, was intended to legislatively overrule the Supreme Court's decision in *State ex rel. Klineline v. Blackhurst*, 1988-NMSC-015, 106 N.M. 732, 749 P.2d 1111. *Cordova v. N.M. Taxation & Revenue Dep't.*, 2005-NMCA-009, 136 N.M. 713, 104 P.3d 1104.

Receipt of notice of return receipt shall be deemed adequate notice as long as the notice of the tax sale was mailed in compliance with Subsection A of this section. *Cordova v. N.M. Taxation & Revenue Dep't.*, 2005-NMCA-009, 136 N.M. 713, 104 P.3d 1104.

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*, 1988-NMCA-005, 106 N.M. 793, 750 P.2d 1119, cert. denied, 107 N.M. 16, 751 P.2d 700.

A tax sale may be invalidated and rescheduled if not conducted substantially in accordance with the tax code so long as the deed has not yet been issued and delivered to the purchaser. — Where, after a three-year period of nonpayment of delinquent property taxes by the owner of a ten-acre parcel of land located in Santa Fe county, the taxation and revenue department (department) placed the property up for sale at public auction, and where the department complied with the notice requirements of 7-38-66 and 7-38-67(B) NMSA 1978, but on the day before the auction, a department employee mistakenly notified the department personnel charged with preparing the next day's auction that the taxes on the parcel at issue had been paid and that the parcel should be removed from the list of properties for sale, and where, on the day of the auction, certain potential bidders left the auction after they were notified that the property would not be sold that day, and where the parcel was placed on a list of properties removed from the auction for a short period of time, but was returned to the auction list after the county treasurer's office informed the department that payment of delinquent taxes had not been made, and where the property was then sold to purchaser, the sole bidder, for the minimum price of \$17,100, the amount of taxes, penalty, interest and costs owed to the state, and where, two days after the tax sale, the department invalidated the tax sale for not substantially complying with the requirements of the tax code after learning from a potential bidder that she had left the auction in reliance on the department's announcement and subsequent assurances that the parcel would not be sold on the day of the auction, and where purchaser filed a petition for writ of mandamus in district court, asking the court to order the department to issue a tax deed for the parcel, the district erred in entering a peremptory writ of mandamus ordering the department to issue a tax deed, because the parcel was not sold substantially in compliance with the public auction requirement of the tax code when the property was sold without recognizing the property owner's interest and right to receive any amount generated at public auction in excess of the debt to the state, and by announcing at the outset of the auction that the parcel would not be sold that day, the department essentially negated the prior notice to potential purchasers required by 7-38-67(B) NMSA 1978 and undermined the legislature's purpose in requiring a public auction to increase the sale price. *Dearborn v. Clarke*, 2024-NMCA-002.

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 (now 20) 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*, 1971-NMSC-074, 83 N.M. 90, 488 P.2d 725.

Effect of failure of notice. — 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*, 1971-NMSC-074, 83 N.M. 90, 488 P.2d 725; *Worman v. Echo Ridge Homes Coop.*, 1982-NMSC-081, 98 N.M. 237, 647 P.2d 870.

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*, 1954-NMSC-046, 58 N.M. 292, 270 P.2d 706; *Worman v. Echo Ridge Homes Coop.*, 1982-NMSC-081, 98 N.M. 237, 647 P.2d 870.

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.*, 1982-NMSC-081, 98 N.M. 237, 647 P.2d 870.

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 § 1101 et seq.

7-38-67. Real property sale requirements.

A. Real property shall not be sold for delinquent taxes before the expiration of three years from the first date shown on the tax delinquency list on which the taxes on the real property became delinquent.

B. Notice of the sale shall be published in a local newspaper within the county where the real property is located or, if there is no local county or municipal newspaper, then a newspaper published in a county contiguous to or near the county in which the real property is located, at least once a week for the three weeks immediately preceding the week of the sale. For more generalized notice, the department may choose to publish notice of the sale also in a newspaper not published within the county and of more general circulation. The notice shall state the time and place of the sale and shall include a description of the real property sufficient to permit its identification and location by potential purchasers.

C. Real property shall be sold at public auction either by the department or an auctioneer hired by the department. The auction shall be held in the county where the real property is located at a time and place designated by the department.

D. If the real property can be divided so as to enable the department to sell only part of it and pay all delinquent taxes, penalties, interest and costs, the department may, with the consent of the owner, sell only a part of the real property.

E. Before the sale, the department shall determine a minimum sale price for the real property. In determining the minimum price, the department shall consider the value of the property owner's interest in the real property, the amount of all delinquent taxes, penalties and interest for which it is being sold and the costs. The minimum price shall not be less than the total of all delinquent taxes, penalties, interest and costs. Real property shall not be sold for less than the minimum price unless no offer met the minimum price when it was offered at an earlier public auction or the property is sold in accordance with the provisions of Subsection H of this section. A sale properly made under the authority of and in accordance with the requirements of this section constitutes full payment of all delinquent taxes, penalties and interest that are a lien against the property at the time of sale, and the sale extinguishes the lien.

F. Payment shall be made in full by the close of the public auction before an offer may be deemed accepted by the department.

G. Real property not offered for sale may be offered for sale at a later sale, but the requirements of this section and Section 7-38-66 NMSA 1978 shall be met in connection with each sale.

H. The board of trustees of a community land grant-merced governed pursuant to the provisions of Chapter 49, Article 1 NMSA 1978 or by statutes specific to the named land grant-merced shall be allowed to match the highest bid at a public auction, which shall entitle the board of trustees to purchase the property for the amount bid if:

(1) the property is situated within the boundaries of that land grant-merced as shown in the United States patent to the grant;

(2) the bid covers all past taxes, penalties, interest and costs due on the property; and

(3) the land becomes part of the common lands of the land grant-merced.

History: 1953 Comp., § 72-31-67, enacted by Laws 1973, ch. 258, § 107; 1974, ch. 92, § 24; 1982, ch. 28, § 24; 1983, ch. 215, § 5; 1995, ch. 12, § 12; 2001, ch. 253, § 3; 2001, ch. 254, § 3; 2005, ch. 211, § 1.

ANNOTATIONS

Cross references. — For laws relating to land grant-merced, see 49-1-1 to 49-1-22 NMSA 1978.

The 2005 amendment, effective July 1, 2005, in Subsection E, provided that real property shall not be sold for less than the minimum price unless no offer met the minimum price when the property is sold in accordance with Subsection H and added Subsection H to provide that the board of trustees shall be allowed to match the highest bid at a public auction and purchase the property for the amount bid if the property is within a land grant-merced, the bid covers all past taxes, penalties, interest and costs and the land becomes part of the common lands of the land grant-merced.

The 2001 amendment, effective June 15, 2001, in Subsection B, substituted "local newspaper" for "newspaper of general circulation", added "or, if there is no local county or municipal newspaper, then a newspaper published in a county contiguous to or near the county in which the real property is located", and added the second sentence.

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. Assocs. Capital Servs. Corp.*, 1987-NMCA-005, 105 N.M. 380, 733 P.2d 11.

Owner's interest. — Subsection E of this section requires the department to "consider" both the owner's interest and the amount of delinquent taxes, penalties, and costs, but then the department is directed to set the minimum price as not less than the total of the delinquent taxes, penalties, and costs. Thus, the legislature does not appear to have required any definite amount representing the owner's interest as part of the minimum sale price. *Cochrell v. Mitchell*, 2003-NMCA-094, 134 N.M. 180, 75 P.3d 396.

A tax sale may be invalidated and rescheduled if not conducted substantially in accordance with the tax code so long as the deed has not yet been issued and delivered to the purchaser. — Where, after a three-year period of nonpayment of delinquent property taxes by the owner of a ten-acre parcel of land located in Santa Fe county, the taxation and revenue department (department) placed the property up for sale at public auction, and where the department complied with the notice requirements of 7-38-66 and 7-38-67(B) NMSA 1978, but on the day before the auction, a department employee mistakenly notified the department personnel charged with preparing the next day's auction that the taxes on the parcel at issue had been paid and that the parcel should be removed from the list of properties for sale, and where, on the day of the auction, certain potential bidders left the auction after they were notified that the property would not be sold that day, and where the parcel was placed on a list of properties removed from the auction for a short period of time, but was returned to the

auction list after the county treasurer's office informed the department that payment of delinquent taxes had not been made, and where the property was then sold to purchaser, the sole bidder, for the minimum price of \$17,100, the amount of taxes, penalty, interest and costs owed to the state, and where, two days after the tax sale, the department invalidated the tax sale for not substantially complying with the requirements of the tax code after learning from a potential bidder that she had left the auction in reliance on the department's announcement and subsequent assurances that the parcel would not be sold on the day of the auction, and where purchaser filed a petition for writ of mandamus in district court, asking the court to order the department to issue a tax deed for the parcel, the district erred in entering a peremptory writ of mandamus ordering the department to issue a tax deed, because the parcel was not sold substantially in compliance with the public auction requirement of the tax code when the property was sold without recognizing the property owner's interest and right to receive any amount generated at public auction in excess of the debt to the state, and by announcing at the outset of the auction that the parcel would not be sold that day, the department essentially negated the prior notice to potential purchasers required by 7-38-67(B) NMSA 1978 and undermined the legislature's purpose in requiring a public auction to increase the sale price. *Dearborn v. Clarke*, 2024-NMCA-002.

The department is not required to execute and deliver a deed if the property was not sold in substantial compliance with the tax code. — Where, after a three-year period of nonpayment of delinquent property taxes by the owner of a ten-acre parcel of land located in Santa Fe county, the taxation and revenue department (department) placed the property up for sale at public auction, and where the property was sold to purchaser, the sole bidder, for the minimum price of \$17,100, the amount of taxes, penalty, interest and costs owed to the state, and where, two days after the tax sale, the department invalidated the tax sale for not substantially complying with the requirements of the tax code after learning from a potential bidder that she had left the auction in reliance on the department's announcement and subsequent assurances that the parcel would not be sold that day, and where purchaser filed a petition for writ of mandamus in district court, asking the court to order the department to issue a tax deed for the parcel, and where the district court entered a peremptory writ of mandamus ordering the department to issue a tax deed for the parcel of land, finding that even assuming the sale was not conducted substantially in accordance with the tax code, the department had a mandatory duty under the plain language of 7-38-70(A) NMSA 1978 to issue and deliver a tax deed to petitioner upon receiving payment for the property and that the department lacked the authority to invalidate the sale once payment was received, the district court erred in entering a peremptory writ of mandamus, because the legislature intended that the department's authority to invalidate a substantially flawed tax sale to continue until the department has reviewed the conduct of the sale and determined that a valid tax deed can be issued. *Dearborn v. Clarke*, 2024-NMCA-002.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation §§ 931 to 939.

7-38-67.1. Sale of abandoned real property; notice of sale; requirements.

A. Abandoned real property may be sold by special sale.

B. Notice of the sale shall be published in a local newspaper within the county where the abandoned real property is located, or in a newspaper published in a county contiguous to or near the county in which the abandoned real property is located, the week immediately preceding the week of the sale. In cases where abandoned real property is offered for sale via an online platform pursuant to Subsection D of this section, the notice of the sale shall be published in a local newspaper within the county where the abandoned real property is located, or in a newspaper published in a county contiguous to or near the county in which the abandoned real property is located, the week immediately preceding the week of the beginning of the continuous online sale. Online sales notices pursuant to this section shall also be published on the property tax division's website. The notice shall:

- (1) state the time and place of the sale;
- (2) if the sale is made via an online sale pursuant to Subsection D of this section, state the date and time the sale will begin and expire and the property tax division's website where the property being sold will be listed;
- (3) include the name of the subdivision in which the abandoned real property is located;
- (4) state the total minimum bid; and
- (5) provide the phone number of the property tax division and the web address where interested buyers may obtain copies of the list of properties to be sold.

C. Abandoned real property may be sold at public auction either by the department or an auctioneer hired by the department. The auction shall be held in the county where the abandoned real property is located at a time and place designated by the department.

D. Abandoned real property may be offered for sale via an online platform on the property tax division's website, and notice shall be given pursuant to Subsection B of this section. The sales of abandoned real property listed on the property tax division's website may be continuous until December 31 of the tax year in which the abandoned real property is offered for sale. For subsequent tax years, notice shall be given pursuant to Subsection B of this section before the abandoned real property listed on the property tax division's website can be reoffered for sale.

E. Before the sale, the department shall determine a minimum sale price for the abandoned real property. In determining the minimum price, the department shall consider the amount of all delinquent taxes, penalties, interest and costs for which the abandoned real property is being sold. If the department determines the total amount due is in excess of the sale price that could reasonably be made through public auction, the property tax division may offer the abandoned real property for less than the total amount of delinquent taxes, penalties, interest and costs due.

F. A sale properly made under the authority of and in accordance with the requirements of this section constitutes full payment of all delinquent taxes, penalties and interest that are a lien pursuant to Section 7-38-48 NMSA 1978 against the abandoned real property at the time of sale, and the sale extinguishes the lien.

G. Payment shall be made in full by the close of the public auction before an offer may be deemed accepted by the department. For abandoned real property sold via an online platform pursuant to Subsection D of this section, payment shall be made in full within one business day of the bid being accepted by the department before an offer may be deemed accepted by the department. Receipt of a bid from a buyer by the department is not acceptance of the bid by the department. The department shall notify the buyer whose bid is accepted by the department, and the one business day payment requirement begins at the time the buyer received notice of acceptance to the buyer whose bid was accepted by the department. Notice of acceptance of a bid sent to a buyer by the department may be sent via email. Failure of a buyer whose bid was accepted by the department and to whom notice was sent by the department to pay the full sales price within one business day invalidates the sale and the property can be reoffered for sale unless the buyer receives an extension to make payment from the department. Requests for time extensions and approvals of time extensions can be made via email.

H. The board of trustees of a community land grant-merced governed pursuant to the provisions of Chapter 49, Article 1 NMSA 1978, or by statutes specific to the named land grant-merced, shall be allowed to exercise the right of first offer to purchase the abandoned real property if:

- (1) the abandoned real property offered for sale is situated within the boundaries of that land grant-merced as shown in the United States patent to the grant;
- (2) the offer covers all taxes, penalties, interest and costs due on the abandoned real property unless the minimum sales price is reduced below total amounts owed pursuant to Subsection E of this section; and
- (3) the land becomes part of the common lands of the land grant-merced.

I. In the event that there is a competing interest in the abandoned real property by prior landholders, such as land grant owners, pueblos or nontaxable entities, the secretary shall determine who has the prevailing right of first offer.

J. The time requirements of this section are subject to the provisions of Section 7-38-83 NMSA 1978.

K. As used in this section, "right of first offer" means the department is obliged to undergo exclusive good faith negotiations with the rights holder before offering abandoned real property for sale to the public.

History: 1978 Comp., § 7-38-67.1, enacted by Laws 2018, ch. 50, § 3.

ANNOTATIONS

Effective dates. — Laws 2018, ch. 50 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 16, 2018, 90 days after the adjournment of the legislature.

7-38-68. Installment agreements.

A. The division may enter into an installment agreement for the payment of all delinquent property taxes, penalties, interest and costs due with respect to either real property or a manufactured home with the owner of the real property or manufactured home whose taxes have become delinquent and whose account for all or part of the delinquent taxes has been transferred for collection to the division. Execution of an installment agreement under this section by a property owner is an irrevocable admission of liability for all taxes that are the subject of the agreement. The installment agreement shall be in writing and shall not extend for a period of more than thirty-six months. Interest shall accrue on the unpaid balance during the period of the installment agreement. The rate of interest shall be one percent a month, and no other interest on that portion of the principal representing unpaid taxes shall accrue while an installment agreement is in effect. The division shall not enter into an installment agreement with a property owner on or after the date of the initial sale of real property or manufactured home for delinquent taxes whether or not the real property or manufactured home is sold and a deed issued as a result of that sale. The division shall promulgate regulations establishing requirements for a minimum down payment and substantially equal monthly payments for installment agreements.

B. An installment agreement prevents any further action to collect the delinquent taxes stated in the agreement as long as the terms of the agreement are met.

C. The division may proceed under the Property Tax Code to collect the property taxes, penalties, interest and costs due and unpaid if:

(1) installment payments are not made on or before the dates specified in the agreement;

(2) the property owner fails to pay other property taxes when required; or

(3) any other condition contained in the agreement is not met.

D. For the purpose of computing the time when real property or a manufactured home may be sold for delinquent taxes, the date of original delinquency shall be used when the delinquent taxes have been the subject of an installment agreement that was subsequently breached by the property owner.

E. If an owner of real property or a manufactured home enters into an installment agreement and subsequently breaches the agreement under this section, the division shall not enter into another installment agreement with that property owner for the payment of the delinquent taxes that were the subject of the installment agreement.

F. Alphabetically indexed and serially numbered records of installment agreements must be kept in the office of the director and made available for public inspection.

History: 1953 Comp., § 72-31-68, enacted by Laws 1973, ch. 258, § 108; 1985, ch. 109, § 10.

ANNOTATIONS

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 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.

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".

7-38-70. Issuance of deeds as result of sale of real property for delinquent taxes; effect of deeds; limitation of action to challenge conveyance.

A. Upon receiving payment for real property sold for delinquent taxes, the division shall execute and deliver a deed to the purchaser.

B. If the real property was sold substantially in accordance with the Property Tax Code, the deed conveys all of the former property owner's interest in the real property as of the date the state's lien for real property taxes arose in accordance with the Property Tax Code, subject only to perfected interests in the real property existing before the date the property tax lien arose.

C. After two years from the date of sale, neither the former real property owner shown on the property tax schedule as the delinquent taxpayer nor anyone claiming through him may bring an action challenging the conveyance.

D. Subject to the limitation of Subsection C of this section, in all controversies and suits involving title to real property held under a deed from the state issued under this section, any person claiming title adverse to that acquired by the deed from the state must prove, in order to defeat the title, that:

(1) the real property was not subject to taxation for the tax years for which the delinquent taxes for which it was sold were imposed;

(2) the division failed to mail the notice required under Section 7-38-66 NMSA 1978 or to receive any required return receipt;

(3) he, or the person through whom he claims, had title to the real property at the time of the sale and had paid all delinquent taxes, penalties, interest and costs prior to the sale as provided in Subsection E of Section 7-38-66 NMSA 1978; or

(4) he, or the person through whom he claims, had entered into an installment agreement to pay all delinquent taxes, penalties, interest and costs prior to the sale as provided in Section 7-38-68 NMSA 1978 and that all payments due were made timely.

History: 1953 Comp., § 72-31-70, enacted by Laws 1973, ch. 258, § 110; 1982, ch. 28, § 25.

ANNOTATIONS

I. GENERAL CONSIDERATIONS.

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*, 1988-NMCA-071, 107 N.M. 597, 762 P.2d 259.

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*, 1986-NMCA-043, 105 N.M. 522, 734 P.2d 762, cert. quashed, 105 N.M. 438, 733 P.2d 1321.

Applicability of recording act. — Section 14-9-3 NMSA 1978, relating to effect of unrecorded instruments applies to tax deeds. *Cano v. Lovato*, 1986-NMCA-043, 105 N.M. 522, 734 P.2d 762, cert. quashed, 105 N.M. 438, 733 P.2d 1321.

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*, 1967-NMSC-098, 77 N.M. 703, 427 P.2d 230.

Purpose of statutes on tax deeds is to give a measure of certainty and security to tax titles. *First Nat'l Bank v. State*, 1967-NMSC-097, 77 N.M. 695, 427 P.2d 225.

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*, 1958-NMSC-079, 64 N.M. 259, 327 P.2d 326 (decided under prior law).

Power of treasurer (department) to execute tax deed is not exhausted until a deed is made in compliance with law. *Brown v. Gurley*, 1954-NMSC-025, 58 N.M. 153, 267 P.2d 134.

The assessment of property for taxation is one of the essential steps leading up to a sale for taxes. If an assessment is void, it follows inevitably that the sale based upon such assessment is likewise void. *Baltzley v. Lujan*, 1949-NMSC-065, 53 N.M. 502, 212 P.2d 417.

II. CHALLENGES TO TAX SALE.

A. GENERALLY.

Grounds for challenge to tax sale are generally strictly limited to the grounds set forth in Subsection D of this section, but there could be such a degree of noncompliance with other required procedures that a tax sale could be voided on grounds other than those of that subsection. *Cochrell v. Mitchell*, 2003-NMCA-094, 134 N.M. 180, 75 P.3d 396.

Substantial compliance. — Subsection B means that a trial court is empowered to review the sale procedures, but not for the purpose of requiring letter-perfect compliance with each requirement of the statutes. *Cochrell v. Mitchell*, 2003-NMCA-094, 134 N.M. 180, 75 P.3d 396.

A reading of the entirety of this section, together with the cases, indicates that the substantial compliance language of Subsection B of this section must overlay all the other statutes that comprise the Property Tax Code. *Cochrell v. Mitchell*, 2003-NMCA-094, 134 N.M. 180, 75 P.3d 396.

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*, 1971-NMSC-074, 83 N.M. 90, 488 P.2d 725.

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*, 1967-NMSC-097, 77 N.M. 695, 427 P.2d 225.

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*, 1967-NMSC-098, 77 N.M. 703, 427 P.2d 230.

B. STANDING.

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*, 1970-NMSC-021, 81 N.M. 202, 465 P.2d 85.

Mere possession of land is not such substantial right as would constitute "title" required by this section. *Griego v. Roybal*, 1970-NMSC-021, 81 N.M. 202, 465 P.2d 85.

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*, 1967-NMSC-097, 77 N.M. 695, 427 P.2d 225.

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*, 1967-NMSC-097, 77 N.M. 695, 427 P.2d 225.

C. PARTICULAR GROUNDS.

Fraud as grounds for challenge of tax deed. — Prior to 1973, constructive fraud by the officer selling property was a statutory ground for attacking a tax deed but in 1973, the legislature amended the Property Tax Code, omitting fraud by tax officials from the list of statutory grounds for attacking a tax deed. *Cordova v. N.M. Taxation & Revenue Dep't.*, 2005-NMCA-009, 136 N.M. 713, 104 P.3d 1104.

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*, 1956-NMSC-043, 61 N.M. 235, 297 P.2d 1060.

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 Section 7-38-66 NMSA 1978 and federal and state constitutional due process requirements. *Hoffman v. State, Taxation & Revenue Dep't*, 1994-NMCA-032, 117 N.M. 263, 871 P.2d 27.

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*, 1994-NMCA-032, 117 N.M. 263, 871 P.2d 27.

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*, 1956-NMSC-043, 61 N.M. 235, 297 P.2d 1060; *Gallegos v. Quinlan*, 1980-NMSC-065, 94 N.M. 405, 611 P.2d 1099.

Tax deed obtained by fraud may be attacked without regard to statute of limitations. *Gallegos v. Quinlan*, 1980-NMSC-065, 94 N.M. 405, 611 P.2d 1099.

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*, 1958-NMSC-079, 64 N.M. 259, 327 P.2d 326.

III. TITLE.

A. GENERALLY.

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*, 1993-NMSC-072, 116 N.M. 742, 867 P.2d 412.

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*, 1993-NMSC-072, 116 N.M. 742, 867 P.2d 412.

The department is not required to execute and deliver a deed if the property was not sold in substantial compliance with the tax code. — Where, after a three-year period of nonpayment of delinquent property taxes by the owner of a ten-acre parcel of land located in Santa Fe county, the taxation and revenue department (department) placed the property up for sale at public auction, and where the property was sold to purchaser, the sole bidder, for the minimum price of \$17,100, the amount of taxes, penalty, interest and costs owed to the state, and where, two days after the tax sale, the department invalidated the tax sale for not substantially complying with the requirements of the tax code after learning from a potential bidder that she had left the auction in reliance on the department's announcement and subsequent assurances that the parcel would not be sold that day, and where purchaser filed a petition for writ of

mandamus in district court, asking the court to order the department to issue a tax deed for the parcel, and where the district court entered a peremptory writ of mandamus ordering the department to issue a tax deed for the parcel of land, finding that even assuming the sale was not conducted substantially in accordance with the tax code, the department had a mandatory duty under the plain language of 7-38-70(A) NMSA 1978 to issue and deliver a tax deed to petitioner upon receiving payment for the property and that the department lacked the authority to invalidate the sale once payment was received, the district court erred in entering a peremptory writ of mandamus, because the legislature intended that the department's authority to invalidate a substantially flawed tax sale to continue until the department has reviewed the conduct of the sale and determined that a valid tax deed can be issued. *Dearborn v. Clarke*, 2024-NMCA-002.

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*, 1991-NMSC-059, 112 N.M. 137, 812 P.2d 791.

Tax deed subject to subsequent lien under "betterment" statute. — To subject a tax deed to operation of a subsequent lien under the "betterment" statute, Section 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*, 1986-NMCA-043, 105 N.M. 522, 734 P.2d 762, cert. quashed, 105 N.M. 438, 733 P.2d 1321.

Mortgagees cannot extinguish mortgage by tax deed. — When a tax deed grantee is the previous owner of the property, his mortgage is not extinguished. *In re Bouma*, 32 Bankr., 619 (Bank. D.N.M. 1983).

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.*, 1982-NMSC-081, 98 N.M. 237, 647 P.2d 870.

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*, 1977-NMSC-037, 90 N.M. 407, 564 P.2d 612.

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*, 1971-NMSC-074, 83 N.M. 90, 488 P.2d 725.

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*, 1967-NMSC-098, 77 N.M. 703, 427 P.2d 230.

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*, 1955-NMSC-075, 60 N.M. 29, 287 P.2d 229.

B. PROPERTY DESCRIPTION.

The test of validity of a tax deed is whether the description is sufficient, aided by data furnished by it, to identify the property. The substitution of "NE" for "NW" resulted in the identification of an entirely different parcel of property than that which was intended to have been assessed. Ambiguity may not be resolved by reference to the description of the property in the assessment rolls of prior and subsequent years. *Brylinski v. Cooper*, 1981-NMSC-028, 95 N.M. 580, 624 P.2d 522.

Property conveyed. — Lands underlying a dam and reservior and which are budgeted with severed easements for the maintenance and operation of the dam, were not covered by an assessment describing the estate as improvements. The lands were not sold for delinquent taxes and the tax deed, upon which plaintiff based its title, does not cover them. *Rio Costilla Coop. Livestock Ass'n v. W.S. Ranch Co.*, 1970-NMSC-020, 81 N.M. 353, 467 P.2d 19.

The rules regarding sufficiency of descriptions in deeds are applicable to tax deeds. *Hughes v. Meem*, 1962-NMSC-039, 70 N.M. 122, 371 P.2d 235.

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*, 1958-NMSC-079, 64 N.M. 259, 327 P.2d 326.

IV. REDEMPTION.

Tax deed issued before period of redemption has expired is void. *First Nat'l Bank v. State*, 1967-NMSC-097, 77 N.M. 695, 427 P.2d 225.

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*, 1956-NMSC-043, 61 N.M. 235, 297 P.2d 1060.

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*, 1954-NMSC-063, 58 N.M. 379, 271 P.2d 823.

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*, 1954-NMSC-063, 58 N.M. 379, 271 P.2d 823.

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*, 1954-NMSC-025, 58 N.M. 153, 267 P.2d 134 (decided under prior law).

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;

(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 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).

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".

A tax sale may be invalidated and rescheduled if not conducted substantially in accordance with the tax code so long as the deed has not yet been issued and delivered to the purchaser. — Where, after a three-year period of nonpayment of delinquent property taxes by the owner of a ten-acre parcel of land located in Santa Fe county, the taxation and revenue department (department) placed the property up for sale at public auction, and where the department complied with the notice requirements of 7-38-66 and 7-38-67(B) NMSA 1978, but on the day before the auction, a department

employee mistakenly notified the department personnel charged with preparing the next day's auction that the taxes on the parcel at issue had been paid and that the parcel should be removed from the list of properties for sale, and where, on the day of the auction, certain potential bidders left the auction after they were notified that the property would not be sold that day, and where the parcel was placed on a list of properties removed from the auction for a short period of time, but was returned to the auction list after the county treasurer's office informed the department that payment of delinquent taxes had not been made, and where the property was then sold to purchaser, the sole bidder, for the minimum price of \$17,100, the amount of taxes, penalty, interest and costs owed to the state, and where, two days after the tax sale, the department invalidated the tax sale for not substantially complying with the requirements of the tax code after learning from a potential bidder that she had left the auction in reliance on the department's announcement and subsequent assurances that the parcel would not be sold on the day of the auction, and where purchaser filed a petition for writ of mandamus in district court, asking the court to order the department to issue a tax deed for the parcel, the district erred in entering a peremptory writ of mandamus ordering the department to issue a tax deed, because the parcel was not sold substantially in compliance with the public auction requirement of the tax code when the property was sold without recognizing the property owner's interest and right to receive any amount generated at public auction in excess of the debt to the state, and by announcing at the outset of the auction that the parcel would not be sold that day, the department essentially negated the prior notice to potential purchasers required by 7-38-67(B) NMSA 1978 and undermined the legislature's purpose in requiring a public auction to increase the sale price. *Dearborn v. Clarke*, 2024-NMCA-002.

7-38-72. Notation on property tax schedule by county treasurer when property sold for delinquent taxes.

When the county treasurer receives written notification from the division of the sale of property for delinquent taxes, he shall make an entry on the property tax schedule indicating that the delinquent property taxes, penalties and interest are no longer a lien against the property.

History: 1953 Comp., § 72-31-72, enacted by Laws 1973, ch. 258, § 112; 1982, ch. 28, § 27.

7-38-73. Department of finance and administration to promulgate regulations regarding accounting for and distribution of property taxes collected.

The department of finance and administration is authorized and directed to promulgate regulations covering the receipt of, accounting for and distribution of amounts received under the Property Tax Code by county treasurers as taxes. The department of finance and administration may provide in these regulations for the withholding of amounts of taxes to which the state is entitled to distribution in those

instances when delinquent property taxes are paid to the department, but the regulations shall require that withheld taxes must be credited and shown as paid by the county treasurer on the property tax schedule.

History: 1953 Comp., § 72-31-73, enacted by Laws 1973, ch. 258, § 113.

7-38-74. Officers and employees engaged in the administration of the property tax prohibited from buying property sold for delinquent property taxes; penalties for violation; sales of real property in violation declared void.

A. Officers or employees of the state or of any of its political subdivisions engaged in the administration of the property tax may not, directly or indirectly, acquire an interest in, buy or profit from any property sold by the department for delinquent taxes except that an officer or employee may purchase property sold for delinquent taxes if he is the owner of the property and was the owner of the property at the time the taxes became delinquent.

B. Any officer or employee violating this section is guilty of a fourth degree felony and shall be fined not more than five thousand dollars (\$5,000) or imprisoned for not less than one year nor more than five years, or both. He shall also be automatically removed from office or have his employment terminated upon conviction.

C. A real property sale in violation of this section is void.

History: 1953 Comp., § 72-31-74, enacted by Laws 1973, ch. 258, § 114.

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 § 1191.

7-38-75. Exception to property tax due date.

When, because of provisions of the Property Tax Code, a property tax bill is required or authorized to be prepared and mailed or delivered on or by a date other than the date specified in Section 7-38-36 NMSA 1978, the due date of the property taxes involved shall be the date the property tax bill was mailed or delivered.

History: 1953 Comp., § 72-31-75, enacted by Laws 1973, ch. 258, § 115; 1974, ch. 92, § 25.

7-38-76. Property subject to property taxation but omitted from property tax schedules in prior years.

A. Subject to the limitations contained in the Property Tax Code and except as provided in Subsection B of this section, county assessors, treasurers and the department have the authority and the duty to enter in the valuation records, list on the property tax schedules, bill for and collect the taxes for all tax years on property that was subject to property taxation but was omitted from property tax schedules and for which taxes have not been paid but would be due except for the omission. Property tax bills shall be prepared and mailed by the county treasurers within thirty days of the date the omitted property is listed on the property tax schedule, and all taxes on omitted property shall be due the date the property tax bill is mailed.

B. Except for taxes due in the current tax year and the immediately preceding tax year, the current owner of the real estate is not liable for a property tax bill mailed pursuant to Subsection A of this section if:

(1) the omitted property is improvements that were placed on the real estate; and

(2) the current owner was not the owner at the time the improvements were omitted and had no actual notice that the improvements were omitted.

C. Nothing in this section relieves the owner of the property at the time the improvements were omitted from being personally liable for the taxes due pursuant to Section 7-38-47 NMSA 1978.

D. The department shall promulgate regulations for the procedures to be followed and the records to be maintained in the administration and collection of taxes on omitted property. The department of finance and administration shall promulgate regulations covering the receipt of, accounting for and distribution of taxes on omitted property.

History: 1953 Comp., § 72-31-76, enacted by Laws 1973, ch. 258, § 116; 1974, ch. 92, § 26; 2003, ch. 95, § 5.

ANNOTATIONS

The 2003 amendment, effective June 20, 2003, inserted "and except as provided in Subsection B of this section" following "Property Tax Code" in Subsection A; added present Subsections B and C and redesignated former Subsection B as Subsection D.

7-38-77. Authority to make changes in property tax schedule after its delivery to the county treasurer.

A. After delivery of the property tax schedule to the county treasurer, the amounts shown on the schedule as taxes due and other information on the schedule shall not be changed except:

(1) by the county treasurer to correct obvious errors in the mathematical computation of taxes;

(2) by the county treasurer to correct obvious errors by the county assessor in:

(a) the name or address of the property owner or other persons shown on the schedule;

(b) the description of the property subject to property taxation, even if the correction results in a change in the amount shown on the schedule as taxes due;

(c) the data entry of the value, classification, allocation of value and limitation on increases in value pursuant to Sections 7-36-21.2 and 7-36-21.3 NMSA 1978 of property subject to property taxation by the county assessor; or

(d) the application of eligible, documented and qualified exemptions;

(3) by the county treasurer to cancel multiple valuations for property taxation purposes of the same property in a single tax year, but only if:

(a) a taxpayer presents tax receipts showing the payment of taxes by the taxpayer for any year in which multiple valuations for property taxation purposes are claimed to have been made;

(b) a taxpayer presents evidence of ownership of the property, satisfactory to the treasurer, as of January 1 of the year in which multiple valuations for property taxation purposes are claimed to have been made; and

(c) there is no dispute concerning ownership of the property called to the attention of the treasurer, and the treasurer has no actual knowledge of any dispute concerning ownership of the property;

(4) by the county treasurer, to correct the tax schedule so that it no longer contains personal property that is deemed to be unlocatable, unidentifiable or uncollectable, after thorough research with verification by the county assessor or appraiser, with notification to the department and the county clerk;

(5) as a result of a protest, including a claim for refund, in accordance with the Property Tax Code, of values, classification, allocations of values determined for property taxation purposes or a denial of a claim for an exemption;

(6) by the department or the order of a court as a result of any proceeding by the department to collect delinquent property taxes under the Property Tax Code;

(7) by a court order entered in an action commenced by a property owner under Section 7-38-78 NMSA 1978;

(8) by the department as authorized under Section 7-38-79 NMSA 1978;

(9) by the department of finance and administration as authorized under Section 7-38-77.1 NMSA 1978; or

(10) as specifically otherwise authorized in the Property Tax Code.

B. As used in this section, "obvious errors" does not include the method used to determine the valuation for, or a difference of opinion in the value of, the property subject to property taxation.

History: 1953 Comp., § 72-31-77, enacted by Laws 1973, ch. 258, § 117; 1974, ch. 92, § 27; 1981, ch. 37, § 79; 1995, ch. 65, § 1; 2000, ch. 32, § 1; 2015, ch. 39, § 1.

ANNOTATIONS

The 2015 amendment, effective June 19, 2015, designated authority to the county treasurer to correct certain obvious errors in the property tax schedule; designated the previously undesignated introductory sentence as Subsection A; designated former Subsection A as Paragraph (1) of Subsection A, and after "obvious", deleted "clerical"; deleted former Paragraphs (1) and (2) of Subsection A; added the language of former Paragraph (3) of Subsection A to Paragraph (1); added a new Paragraph (2) of Subsection A; redesignated former Subsection B as Paragraph (3) of Subsection A, redesignated former Paragraphs (1), (2) and (3) of Subsection B as Subparagraphs (a), (b) and (c) of Subsection A, respectively; in Subsection A(3)(a), after "taxes by", deleted "him" and added "the taxpayer"; in Subparagraph A(3)(c), after "and", deleted "he" and added "the treasurer"; redesignated former Subsections C, D, E, F, G, H and I as Paragraphs (4), (5), (6), (7), (8), (9) and (10) of Subsection A, respectively; and added a new Subsection B.

Applicability. — Laws 2015, ch. 39, § 3 provided that the provisions of Laws 2015, ch. 39, § 1 apply to taxable years beginning on or after January 1, 2016.

The 2000 amendment, effective July 1, 2000, added present Subsection C and redesignated the remaining subsections accordingly.

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.

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*, 1956-NMSC-043, 61 N.M. 235, 297 P.2d 1060.

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*, 1956-NMSC-043, 61 N.M. 235, 297 P.2d 1060.

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*, 1956-NMSC-043, 61 N.M. 235, 297 P.2d 1060.

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

7-38-78. Action by property owner in district court to change property tax schedule.

A. After the delivery of the property tax schedule to the county treasurer for a particular tax year, a property owner may bring an action in the district court requesting a change in the property tax schedule in connection with any property listed on the schedule for property taxation in which the owner claims an interest. The action shall be brought in the district court for the county for which the property tax schedule in question was prepared.

B. Actions brought under this section may not directly challenge the value, classification, allocations of value determined for property taxation purposes, denial of any exemption claimed or method used to determine the valuation for the property subject to property taxation. Actions brought under this section shall be founded on one or more of the following grounds:

(1) errors in the name or address of the property owner or other person shown on the schedule;

(2) errors in the description of the property for property taxation purposes, even if the correction results in a change in the amount shown on the schedule as taxes due;

(3) errors in the computation of taxes;

(4) errors in the property tax schedule relating to the payment or nonpayment of taxes;

(5) multiple valuations for property taxation purposes for a single tax year of the same property on the property tax schedule; or

(6) errors in the rate of tax set for any governmental unit in which the owner's property is located.

C. Actions brought under this section shall name the county treasurer as defendant. An action brought under Paragraph (6) of Subsection B of this section, shall also name the secretary of finance and administration as a defendant.

History: 1953 Comp., § 72-31-78, enacted by Laws 1973, ch. 258, § 118; 1974, ch. 92, § 28; 1981, ch. 37, § 80; 2015, ch. 39, § 2.

ANNOTATIONS

The 2015 amendment, effective June 19, 2015, amended the grounds for which a property owner may request a change to a property tax schedule; in the introductory paragraph of Subsection B, after "purposes", deleted "or", after "claimed", deleted "and must" and added "or method used to determine the valuation for the property subject to property taxation. Actions brought under this section shall"; in Paragraph (2) of Subsection B, after "purposes", added "even if the correction results in a change in the amount shown on the schedule as taxes due"; and in Subsection C, after "defendant.", deleted "and, if the" and added "An", and after "action", deleted "is".

Applicability. — Laws 2015, ch. 39, § 3 provided that the provisions of Laws 2015, ch. 39, § 2 apply to taxable years beginning on or after January 1, 2016.

General statute of limitations applicable. — Because this section does not contain a time limit for filing the request for a change in the property tax schedule, the general statute of limitations of four years pursuant to Section 37-1-4 NMSA 1978 applies. *Fed. Express Corp. v. Abeyta*, 2004-NMCA-011, 135 N.M. 37, 84 P.3d 85, cert. granted, 2004-NMCERT-001, 135 N.M. 160, 85 P.3d 802.

When taxpayer makes computational errors in documents submitted to enable the taxing authorities to determine valuation, it is a case of error in valuation, and not computation, and therefore the sixty-day limit applies. *Fed. Express Corp. v. Abeyta*,

2004-NMCA-011, 135 N.M. 37, 84 P.3d 85, cert. granted, 2004-NMCERT-001, 135 N.M. 160, 85 P.3d 802.

Because taxpayer's claim was for refund based on incorrect allocation of the value of its property for tax purposes, its remedy was pursuant to Section 7-38-40 NMSA 1978, not this section. *Fed. Express Corp. v. Abeyta*, 2004-NMCA-011, 135 N.M. 37, 84 P.3d 85, cert. granted, 2004-NMCERT-001, 135 N.M. 160, 85 P.3d 802.

Authorized district court action limited to changes in property tax schedule and does not apply to refunds. *Lovelace Ctr. for Health Sciences v. Beach*, 1980-NMCA-004, 93 N.M. 793, 606 P.2d 203.

7-38-79. Changes in property tax schedule ordered by the division; action by the division in district court to enforce ordered changes.

A. After the delivery of the property tax schedule to the county treasurer but before the tax bill is mailed for a particular tax year, the division may order the county assessor or county treasurer, or both, to make changes in the property tax schedule in connection with any property listed on the schedule if any of the following actions have been taken in a manner that is not in compliance with the provisions of law or applicable regulations of the division:

- (1) an unprotested determination of value for property taxation purposes;
- (2) an unprotested allocation of values to governmental units;
- (3) an unprotested determination of classification; or
- (4) the application of the tax rates.

B. After the delivery of the property tax schedule to the county treasurer for a particular tax year, the division may order the county assessor or county treasurer, or both, to make changes in the property tax schedule in connection with any property listed on the schedule:

- (1) for any of the reasons for which a county treasurer could change the property tax schedule under Section 7-38-77 NMSA 1978; or
- (2) for any of the reasons for which a district court could order changes in the property tax schedule at the request of a property owner under Section 7-38-78 NMSA 1978 except for the reason specified in Paragraph (6) of Subsection B of that section.

C. Any action taken by the division under this section shall be by written order of the director. Copies of the order shall be mailed by certified mail to the property owner, the county assessor and the county treasurer.

D. If the county assessor or county treasurer refuses to make any changes ordered by the division under this section, the division may bring an action to enforce its order in the district court for the county involved.

History: 1953 Comp., § 72-31-79, enacted by Laws 1973, ch. 258, § 119; 1981, ch. 37, § 81.

7-38-80. Changes in property tax schedules as result of treasurer's action, department order or court order; collection of any additional property taxes due as result; refund of property taxes paid erroneously.

A. If, as a result of actions authorized under Sections 7-38-77 through 7-38-79 NMSA 1978, the county assessor or county treasurer makes changes in the property tax schedule that result in an increase in the tax liability of the property owner and, if a tax bill has already been mailed to the property owner for collection of the taxes on the property in question for the tax year involved, then an additional tax bill shall be prepared and mailed by the county treasurer to the property owner. The date the supplemental tax bill is mailed shall be used for determining the due dates for the collection of any additional property taxes.

B. If, as a result of actions authorized under Sections 7-38-77 through 7-38-79 NMSA 1978, the county assessor or county treasurer makes changes in the property tax schedule that result in a decrease in the property tax liability of the property owner and, if the property taxes on the property for the tax year involved have already been paid, then a refund of any excess property taxes paid shall be made to the property owner. Refunds under this section shall be made by the county treasurer in accordance with regulations of the department of finance and administration.

History: 1953 Comp., § 72-31-80, enacted by Laws 1973, ch. 258, § 120.

7-38-81. Limitation on actions for collection of property taxes; presumption of payment of property taxes after ten years.

A. Property may not be sold and proceedings may not be initiated for the collection of property taxes that have been delinquent for more than ten years.

B. Property that has not been included on a property tax schedule may not be subjected to the imposition of property taxes for more than ten tax years immediately preceding the date of its entry on the property tax schedule.

C. Property taxes that have been delinquent for more than ten years, together with any penalties and interest, are presumed to have been paid. The county treasurer shall indicate on the property tax schedule that all such property taxes and any penalties and interest have been "presumed paid by act of the legislature."

History: 1953 Comp., § 72-31-81, enacted by Laws 1973, ch. 258, § 121.

7-38-81.1. Limitation on actions for collection of any levy or assessment in the form of property taxes; presumption of payment after ten years.

A. Property may not be sold and proceedings may not be initiated for the collection of any levy or assessment in the form of property taxes levied or assessed under the provisions of Sections 73-14-1 through 73-18-43 NMSA 1978 that have been delinquent for more than ten years.

B. Property that has not been included on a property tax schedule or a levy or assessment schedule may not be subjected to the imposition of any levy or assessment in the form of property taxes levied or assessed under the provisions of Sections 73-14-1 through 73-18-43 NMSA 1978 for more than ten tax years immediately preceding the date of its entry on the property tax schedule or levy or assessment schedule.

C. Any levy or assessment in the form of property taxes levied or assessed under the provisions of Sections 73-14-1 through 73-18-43 NMSA 1978 that has been delinquent for more than ten years, together with any penalties and interest, is presumed to have been paid. The county treasurer or appropriate conservancy district officer shall indicate on the property tax schedule or levy or assessment schedule that all such levies or assessments in the form of property taxes and any penalties and interest have been "presumed paid by act of the legislature".

D. The county treasurer may correct the tax schedule so that it no longer contains personal property that is deemed to be unlocatable, unidentifiable or uncollectable, after thorough research with verification by the county assessor or appraiser, with notification to the department and the county clerk.

History: Laws 1983, ch. 109, § 1; 2000, ch. 32, § 2.

ANNOTATIONS

The 2000 amendment, effective July 1, 2000, added Subsection D.

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

Duty of department. — The division (department) 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*, 1991-NMCA-063, 112 N.M. 285, 814 P.2d 463, cert. denied, 112 N.M. 308, 815 P.2d 161.

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*, 1988-NMCA-057, 107 N.M. 362, 758 P.2d 312.

7-38-83. Timeliness.

A. When the last day for performing an act falls on Saturday, Sunday or a legal state or national holiday, the performance of the act is timely if performed on the next succeeding day which is not a Saturday, Sunday or a legal state or national holiday.

B. All acts required or permitted to be done by mail are timely if postmarked on the required date.

History: 1953 Comp., § 72-31-83, enacted by Laws 1973, ch. 258, § 123.

7-38-84. Notices; mailing.

A. Any notice that is required to be made to a property owner by the Property Tax Code is effective if mailed by regular first class mail to the property owner's last address or to the address of any person other than the owner to whom the tax bill is to be sent as shown by the valuation records unless the provisions of that code require a different method of notification or mailing, in which case the notice is effective if given in accordance with the provisions of that code.

B. If a property owner notifies, in writing or by electronic mail, the county assessor or the county treasurer that the property owner wants to receive notices pursuant to the Property Tax Code by electronic mail rather than by regular first class mail, the county assessor or the county treasurer may thereafter provide such notices to the property owner using an electronic mail address provided by the property owner; provided that the notice is consistent with the requirements of the Electronic Authentication of Documents Act [14-15-1 to 14-15-6 NMSA 1978] and the Uniform Electronic Transactions Act [Chapter 14, Article 16 NMSA 1978]. A property owner's request to receive notices by electronic mail shall be effective until revoked in writing or by electronic mail to the county assessor and the county treasurer. Wherever the Property Tax Code requires a method of notification or mailing done only by the county assessor or county treasurer, other than by regular first class mail, the notice is effective if given in accordance with the provisions of that code.

C. An electronic mail address provided by a property owner pursuant to this section shall not be considered a valuation record pursuant to Section 7-38-19 NMSA 1978 and shall be retained by the county assessor as a confidential record that is not subject to inspection pursuant to the Inspection of Public Records Act [Chapter 14, Article 2 NMSA 1978].

History: 1953 Comp., § 72-31-84, enacted by Laws 1973, ch. 258, § 124; 1974, ch. 92, § 29; 2015, ch. 2, § 1.

ANNOTATIONS

The 2015 amendment, effective July 1, 2015, provided property owners the option of receiving notices under this section via electronic mail rather than by first class mail, set forth the election procedure, and provided that electronic mail addresses be retained by the county assessor as confidential records; designated the previously undesignated paragraph as Subsection A, and after "the provisions of", deleted "the" and added "that" in two places; and added Subsections B and C.

7-38-85. Extension of deadlines; general provision.

The director may extend any deadline in the Property Tax Code for a period of time not in excess of six months. However, this section does not permit the extension of deadlines for an individual property owner nor does it permit successive extensions of a deadline for a cumulative period of more than six months. Extensions may be made applicable to one or more counties. Extension of deadlines authorized by this section shall be made by written order of the director and notice of the extension shall be published in a newspaper of general circulation in each county in the state to which the extension applies once each week for a period of three weeks immediately succeeding the week in which the deadline being extended occurs. When more than one deadline is extended under this section, the notice required to be published may include all extensions, and publication need only be made for the three weeks immediately succeeding the week in which the first deadline being extended occurs.

History: 1953 Comp., § 72-31-85, enacted by Laws 1973, ch. 258, § 125; 1979, ch. 59, § 1.

7-38-86. Extension of deadlines at request of property owners.

The director may extend the time by which reports are required to be filed under Subsection A of Section 7-38-8 NMSA 1978 at the written request of the property owner. The request must be received by the department prior to the date by which the required report must be made. Extensions granted under this section shall be by written order of the director and shall be for a period of not more than thirty days. The director shall not grant more than one extension in a tax year for a property owner in respect to the same property.

History: 1953 Comp., § 72-31-86, enacted by Laws 1973, ch. 258, § 126.

7-38-87. Administrative regulations; promulgation; general provisions.

A. Except for regulations promulgated by the department, regulations authorized or directed to be promulgated under the Property Tax Code may be promulgated by the authorized governmental agency without prior notice or hearing and shall become effective when filed in accordance with the State Rules Act [Chapter 14, Article 4 NMSA 1978].

B. All regulations promulgated under the Property Tax Code shall be applied prospectively only unless there is a statement in the regulation that it is to have retroactive effect and a statement of the extent of any retroactive effect.

History: 1953 Comp., § 72-31-87, enacted by Laws 1973, ch. 258, § 127; 1974, ch. 92, § 30; 1982, ch. 28, § 28; 1991, ch. 166, § 10.

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 repealed 7-38-88 NMSA 1978, as enacted by Laws 1973, ch. 258, § 128, relating to procedures for adopting, amending or repealing certain department regulations, effective June 14, 1991. For provisions of former section, see the 1990 NMSA 1978 on *NMOneSource.com*.

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.

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. Repealed.

ANNOTATIONS

Repeals. — Laws 1995, ch. 31, § 7 repealed 7-38-90 NMSA 1978, as enacted by Laws 1973, ch. 258, § 130, relating to administrative regulations, rulings, instructions and orders, presumption of correctness, effective July 1, 1995. For provisions of the former sections, see the 1994 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, see 9-11-6.2 NMSA 1978.

7-38-91. Repealed.

ANNOTATIONS

Repeals. — Laws 1995, ch. 31, § 7 repealed 7-38-91 NMSA 1978, as enacted by Laws 1973, ch. 258, § 131, relating to publication and distribution of regulations and rulings, effective July 1, 1995. For provisions of the former sections, see the 1994 NMSA 1978 on *NMOneSource.com*. For present comparable provisions, see 9-11-6.2 NMSA 1978.