

products. A Jicarilla Apache tribal capital improvements tax that qualifies for the credit provided by this section shall constitute an increase in tribal taxes for purposes of Subsection F of Section 7-29C-1 NMSA 1978 only to the extent that it exceeds the amount identified in Paragraph (2) of Subsection C of this section.

G. The taxation and revenue department shall administer and interpret the provisions of this section in accordance with the provisions of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978].

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

History: Laws 2002, ch. 15, § 1.

ANNOTATIONS

Effective dates. — Laws 2002, ch. 15, § 2 made Laws 2002, ch. 15, § 1 effective January 1, 2003.

ARTICLE 32

Oil and Gas Ad Valorem Production Tax

7-32-1. Title.

Chapter 7, Article 32 NMSA 1978 may be cited as the "Oil and Gas Ad Valorem Production Tax Act".

History: 1953 Comp., § 72-22-1, enacted by Laws 1959, ch. 55, § 1; 1985, ch. 65, § 36.

ANNOTATIONS

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

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

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 219, 220.

Effect of severance of fee in oil and gas from fee on surface on taxability of oil and gas rights or privileges, 16 A.L.R. 514, 29 A.L.R. 606, 146 A.L.R. 880.

What property is exempted from ad valorem tax under statute or constitution providing for payment of oil and gas production tax by producers in lieu of other taxes, 77 A.L.R. 1078.

Method or rule for valuation of oil lease for tax purposes, 84 A.L.R. 1310.

84 C.J.S. Taxation § 95 et seq.

7-32-2. Definitions.

As used in the Oil and Gas Ad Valorem Production Tax Act:

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

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

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

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

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

F. "operator" means any person:

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

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

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

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

J. "assessed value" means the value against which tax rates are applied;

K. "tax" means the oil and gas ad valorem production tax; and

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

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

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

History: 1953 Comp., § 72-22-2, enacted by Laws 1959, ch. 55, § 2; 1977, ch. 249, § 56; 1980, ch. 97, § 7; 1986, ch. 20, § 101; 2005, ch. 130, § 9; 2021, ch. 65, § 33.

ANNOTATIONS

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

The 2005 amendment, effective July 1, 2005, in Subsection E, defined "product" to include helium or non-hydrocarbon gas; and Subsection K, defined "tax" to mean the oil and gas ad valorem production tax.

7-32-3. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 65, § 46 repealed 7-32-3 NMSA 1978, as enacted by Laws 1959, ch. 55, § 3, relating to the purpose and declaration of intention of the Oil and Gas Ad Valorem Production Tax Act, effective July 1, 1985.

7-32-4. Ad valorem tax levied; collected by division; rate; interest owner's liability to state; Indian liability.

There is levied and shall be collected by the division an ad valorem tax on the assessed value of products which are severed and sold from each production unit at the rate certified to the division by the department of finance and administration under the provisions of Section 7-37-7 NMSA 1978. Such rate shall be levied for each month following its certification and shall be levied monthly thereafter until a new rate is certified. Every interest owner shall be liable for this tax to the extent of his interest in the value of such products, or to the extent of his interest as may be measured by the value of such products. Provided, any Indian tribe, Indian pueblo or Indian shall be liable for this tax to the extent authorized or permitted by law.

History: 1953 Comp., § 72-22-4, enacted by Laws 1959, ch. 55, § 4; 1981, ch. 37, § 58.

ANNOTATIONS

Law reviews. — For article, "Nonneutral Features of Energy Taxation," see 20 Nat. Resources J. 853 (1980).

7-32-5. Assessed value; method of determining.

A. The taxable value of products is an amount equal to one hundred fifty percent of the value of products after deducting:

- (1) royalties paid or due the United States or the state of New Mexico;
- (2) royalties paid or due any Indian tribe, Indian pueblo or Indian that is a ward of the United States; and
- (3) the reasonable expense of trucking any product from the production unit to the first place of market.

B. The assessed value of products shall be determined by applying the uniform assessment ratio to the taxable value of products. The method prescribed by this section shall be the exclusive method for determining the assessed value of products. The tax imposed by Section 7-32-4 NMSA 1978 of the Oil and Gas Ad Valorem Production Tax Act, together with the tax imposed by Section 7-34-4 NMSA 1978 of the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978], shall be the full and exclusive measure of ad valorem tax liability on the interests of all persons, including the operator and interest owners, in the production unit. Any other ad valorem tax on the production unit or on products severed therefrom is void.

History: 1953 Comp., § 72-22-5, enacted by Laws 1959, ch. 55, § 5; 1972, ch. 59, § 1.

ANNOTATIONS

Cross references. — For exclusive ad valorem taxes on equipment, see 7-34-5 NMSA 1978.

7-32-6. Value may be determined by commission; standard.

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

- A. the operator and purchaser are affiliated persons; or when
- B. the sale and purchase of products is not an arm's length transaction; or when
- C. products are severed and removed from a production unit and a value as defined in this act is not established for such products.

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

History: 1953 Comp., § 72-22-6, enacted by Laws 1959, ch. 55, § 6.

ANNOTATIONS

Compiler's notes. — The term "this act", as it appears in Subsection C, means Laws 1959, ch. 55, compiled as 7-32-1, 7-32-2, 7-32-4 to 7-32-11, and 7-32-13 to 7-32-15 NMSA 1978.

Cross references. — For meaning of "commission", see 7-32-2A NMSA 1978.

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

7-32-7. Price increase subject to approval of agency of United States of America, state of New Mexico or court; refund.

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

History: 1953 Comp., § 72-22-7, enacted by Laws 1959, ch. 55, § 7; 1985, ch. 65, § 37.

7-32-8. Products on which tax has been levied; regulation by commission.

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

History: 1953 Comp., § 72-22-8, enacted by Laws 1959, ch. 55, § 8.

ANNOTATIONS

Cross references. — For meaning of "commission", see 7-32-2A NMSA 1978.

7-32-9. Operator or purchaser to withhold interest owner's tax; commission may require withholding of tax; tax withheld to be remitted to the state; operator or purchaser to be reimbursed.

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

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

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

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

History: 1953 Comp., § 72-22-9, enacted by Laws 1959, ch. 55, § 9.

ANNOTATIONS

Cross references. — For meaning of "commission", see 7-32-2A NMSA 1978.

7-32-10. Operator's report; tax remittance; additional information.

Each operator shall in the form and manner required by the division make a return to the division showing the total value, volume and kind of products sold from each

production unit for each calendar month. All taxes due or to be remitted by the operator shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. Any additional report or information the division may deem necessary for the proper administration of the Oil and Gas Ad Valorem Production Tax Act may be required.

History: 1953 Comp., § 72-22-10, enacted by Laws 1959, ch. 55, § 10; 1986, ch. 5, § 8.

ANNOTATIONS

Cross references. — For meaning of "division", see 7-32-2A NMSA 1978.

7-32-11. Purchaser's report; tax remittance; additional information.

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

History: 1953 Comp., § 72-22-11, enacted by Laws 1959, ch. 55, § 11; 1986, ch. 5, § 9.

ANNOTATIONS

Cross references. — For meaning of "division", see 7-32-2A NMSA 1978.

7-32-12. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 65, § 46 repealed 7-32-12 NMSA 1978, as enacted by Laws 1959, ch. 55, § 12, relating to the oil and gas accounting commission ad valorem tax fund, effective July 1, 1985.

7-32-13. Division shall prepare schedules and forward to assessors; assessor shall deliver schedule to treasurer.

By the last day of each month, the division shall prepare and certify a schedule to the respective counties in which production units are located. The schedules shall reflect the accounting of the preceding month and shall list each production unit, and by production unit show the assessed value, taxing district, extension of tax levies, tax payments and other information as the director of the division deems appropriate. The

schedules shall be forwarded to the assessors of the respective counties who upon receipt thereof shall accept them as the assessment of property as required in the Oil and Gas Ad Valorem Production Tax Act and shall deliver them to the county treasurer as the oil and gas ad valorem schedule for the county.

History: 1953 Comp., § 72-22-13, enacted by Laws 1959, ch. 55, § 13; 1985, ch. 65, § 38.

ANNOTATIONS

Cross references. — For meaning of "division", see 7-32-2A NMSA 1978.

7-32-14. Monthly report to department of finance and administration; remittance to state and county treasurers; state and county treasurers may distribute funds.

A. By the last day of each month, the department shall prepare and certify a report to the secretary of finance and administration. The report shall be for the preceding month and shall show the amount of taxes collected and distributed to the oil and gas production tax fund, the amount due the state and each taxing district imposing a tax as reflected by the schedules prepared pursuant to Section 7-32-13 NMSA 1978 and any other information required by the secretary of finance and administration. The secretary of finance and administration shall forthwith remit the appropriate amounts from the oil and gas production tax fund to the state treasurer and the respective county treasurers. The state treasurer and the county treasurers shall, upon receipt of such remittance, make appropriate distribution of the proceeds thereof, except as provided in Subsection B of this section.

B. If the board of county commissioners notifies the secretary of finance and administration that the county elects not to distribute the proceeds of the oil and gas ad valorem production tax due the municipalities, community college districts and school districts within the county, the secretary of finance and administration shall pay amounts due directly to municipalities, community college districts and school districts within the county.

History: 1953 Comp., § 72-22-14, enacted by Laws 1959, ch. 55, § 14; 1963, ch. 88, § 1; 1977, ch. 247, § 186; 1983, ch. 221, § 1; 1985, ch. 65, § 39; 1993, ch. 131, § 1.

ANNOTATIONS

Cross references. — For the oil and gas production tax fund, see 7-1-6.22 NMSA 1978.

The 1993 amendment, effective March 31, 1993, substituted "department" for "division" in the first sentence of Subsection A and inserted "community college districts" twice in Subsection B.

7-32-15. Determination of assessed values for taxing districts.

To determine for any purpose the total assessed value of property required to be assessed under the Oil and Gas Ad Valorem Production Tax Act for any taxing district, the assessed value of the taxing district as is reflected by the oil and gas ad valorem production tax schedules of the twelve months of the calendar year preceding the determination shall be used.

History: 1953 Comp., § 72-22-15, enacted by Laws 1959, ch. 55, § 15; 1985, ch. 65, § 40.

ANNOTATIONS

7-32-16. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 65, § 46 repealed 7-32-16 NMSA 1978, as enacted by Laws 1959, ch. 55, § 16, relating to tax paid erroneously, refund, effective July 1, 1985.

7-32-17. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 65, § 46 repealed 7-32-17 NMSA 1978, as enacted by Laws 1959, ch. 55, § 17, relating to tax payment under protest, suit authorized, effective July 1, 1985.

7-32-18. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 65, § 46 repealed 7-32-18 NMSA 1978, as enacted by Laws 1959, ch. 55, § 18, relating to interest and penalties, restraint from severing products, effective July 1, 1985.

7-32-19. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 65, § 46 repealed 7-32-19 NMSA 1978, as enacted by Laws 1959, ch. 55, § 19, relating to subpoena power, misdemeanor fine, effective July 1, 1985.

7-32-20. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 65, § 46 repealed 7-32-20 NMSA 1978, as enacted by Laws 1959, ch. 55, § 20, relating to refusal to make return, commission may assess, assessment binding on taxpayer, effective July 1, 1985.

7-32-21. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 65, § 46 repealed 7-32-21 NMSA 1978, as enacted by Laws 1959, ch. 55, § 21, relating to restraining order, injunction, effective July 1, 1985.

7-32-22. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 65, § 46 repealed 7-32-22 NMSA 1978, as enacted by Laws 1959, ch. 55, § 22, relating to personal debt, action in any district court, effective July 1, 1985.

7-32-23. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 65, § 46 repealed 7-32-23 NMSA 1978, as enacted by Laws 1959, ch. 55, § 23, relating to lien against property, notice to be filed, notice to debtor, effective July 1, 1985.

7-32-24. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 65, § 46 repealed 7-32-24 NMSA 1978, as enacted by Laws 1959, ch. 55, § 24, relating to sale of property to satisfy lien, effective July 1, 1985.

7-32-25. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 65, § 46 repealed 7-32-25 NMSA 1978, as enacted by Laws 1959, ch. 55, § 25, relating to payment of taxes to release lien, effective July 1, 1985.

7-32-26. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 65, § 46 repealed 7-32-26 NMSA 1978, as enacted by Laws 1959, ch. 55, § 26, relating to remedies cumulative, effective July 1, 1985.

7-32-27. Repealed.

ANNOTATIONS

Repeals. — Laws 1985, ch. 65, § 46 repealed 7-32-27 NMSA 1978, as enacted by Laws 1959, ch. 55, § 27, relating to limitation of actions, effective July 1, 1985.

7-32-28. Advance payment required.

A. Any person required to make payment of tax pursuant to Section 7-32-10 or 7-32-11 NMSA 1978 shall make the advance payment required by this section.

B. For the purposes of this section:

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

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

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

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

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