

issuance of \$33,000,000 in severance tax bonds the proceeds of which may be expended in fiscal year 2007 and the issuance of \$34,000,000 in severance tax bonds the proceeds of which may be expended in fiscal year 2008.

Laws 2007, ch. 341, §§ 1 to 308, effective April 2, 2007, reauthorize and reappropriate balances, expand of change purposes, extend expenditure periods, change agencies and establish conditions for the reversion of unexpended cash balances of capital outlay projects approved by the legislature in prior years.

Laws 2009, ch. 128, §§ 1 through 556, effective April 7, 2009, reauthorized and reappropriated balances, expanded or changed purposes, extended expenditure periods, changed agencies and established conditions for the reversion of unexpended cash balances of capital outlay projects approved by the legislature in prior years and funded by the severance tax bonding fund, general fund and capital projects fund.

## **ARTICLE 28**

### **Oil and Gas Accounting (Repealed.)**

**7-28-1 to 7-28-13. Repealed.**

#### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-28-1 to 7-28-13 NMSA 1978, relating to the Oil and Gas Accounting Commission Act, effective July 1, 1985.

## **ARTICLE 29**

### **Oil and Gas Severance Tax**

**7-29-1. Title.**

Chapter 7, Article 29 NMSA 1978 may be cited as the "Oil and Gas Severance Tax Act".

**History:** 1953 Comp., § 72-19-1, enacted by Laws 1959, ch. 52, § 1; 1985, ch. 65, § 27.

#### **ANNOTATIONS**

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

**Severance tax is excise, not property, tax.** — A tax upon oil and gas severed from soil under Laws 1933, ch. 72, was an excise tax and not a property tax on tangible property not in proportion to value thereof, and was not unconstitutional. *Flynn, Welch & Yates, Inc. v. State Tax Comm'n*, 1934-NMSC-001, 38 N.M. 131, 28 P.2d 889.

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

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

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 219, 614.

Oil and gas rights or privileges as independent subject of taxation, or as tangible property for purposes of taxation, 16 A.L.R. 513.

Validity of privilege or occupation tax on business of severing natural resources from soil, 32 A.L.R. 827.

84 C.J.S. Taxation §§ 208.

## **7-29-2. Definitions.**

As used in the Oil and Gas Severance Tax Act:

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

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

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

D. "value" means the actual price received for products at the production unit, except as otherwise provided in the Oil and Gas Severance 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. "primary recovery" means the displacement of oil and of other liquid hydrocarbons removed from natural gas at or near the wellhead from an oil well or pool as classified by the oil conservation division of the energy, minerals and natural resources department pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978 into the wellbore by means of the natural pressure of the oil well or pool, including but not limited to artificial lift;

H. "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 Severance Tax Act;

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

J. "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;

K. "new production natural gas well" means a producing crude oil or natural gas well proration unit that begins its initial natural gas production on or after May 1, 1987 as determined by the oil conservation division of the energy, minerals and natural resources department;

L. "qualified enhanced recovery project", prior to January 1, 1994, means the use or the expanded use of carbon dioxide, when approved by the oil conservation division of the energy, minerals and natural resources department pursuant to the Enhanced Oil Recovery Act [Chapter 7, Article 29A NMSA 1978], for the displacement of oil and of other liquid hydrocarbons removed from natural gas at or near the wellhead from an oil well or pool classified by the oil conservation division pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978;

M. "qualified enhanced recovery project", on and after January 1, 1994, means the use or the expanded use of any process approved by the oil conservation division of the energy, minerals and natural resources department pursuant to the Enhanced Oil Recovery Act for the displacement of oil and of other liquid hydrocarbons removed from natural gas at or near the wellhead from an oil well or pool classified by the oil conservation division pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978, other than a primary recovery process; the term includes but is not limited to the use of a pressure maintenance process, a water flooding process and immiscible, miscible, chemical, thermal or biological process or any other related process;

N. "production restoration project" means the use of any process for returning to production a natural gas or oil well that had thirty days or less of production in any period of twenty-four consecutive months beginning on or after January 1, 1993, as

approved and certified by the oil conservation division of the energy, minerals and natural resources department pursuant to the Natural Gas and Crude Oil Production Incentive Act [7-29B-1 to 7-29B-6 NMSA 1978];

O. "well workover project" means any procedure undertaken by the operator of a natural gas or crude oil well that is intended to increase the production from the well and that has been approved and certified by the oil conservation division of the energy, minerals and natural resources department pursuant to the Natural Gas and Crude Oil Production Incentive Act;

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

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

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

(3) if a property with wells that produce both crude oil and natural gas, an average daily production of less than ten barrels of oil per eligible well per day, as determined by converting the volume of natural gas produced by the well to barrels of oil by using a ratio of six thousand cubic feet to one barrel of oil;

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

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

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

R. "tax" means the oil and gas severance tax; and

S. "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., § 72-29-2, enacted by Laws 1959, ch. 52, § 2; 1977, ch. 249, § 53; 1980, ch. 97, § 1; 1986, ch. 20, § 98; 1987, ch. 315, § 2; 1992, ch. 38, § 6; 1995, ch. 15, § 7; 1999, ch. 7, § 1; 1999, ch. 256, § 1; 2005, ch. 130, § 1; 2021, ch. 65, § 30.

## **ANNOTATIONS**

**The 2021 amendment**, effective July 1, 2021, defined "volume" and revised the definition of "product", as used in the Oil and Gas Severance 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 S.

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

**The 1999 amendment**, effective June 18, 1999, added Subsections P and Q, and redesignated former Subsection P as Subsection R.

**The 1995 amendment**, effective June 16, 1995, added Subsections N through P.

**The 1992 amendment**, effective March 6, 1992, added Subsection G and redesignated the subsequent subsections accordingly; in Subsection K, substituted "energy, minerals and natural resources department" for "energy and minerals resources department"; added Subsections L and M; and made stylistic changes.

**Law reviews.** — For comment, "Taxation of the Uranium Industry: An Economic Proposal," see 7 N.M.L. Rev. 69 (1976-77).

## **7-29-3. Repealed.**

## **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-29-3 NMSA 1978, as enacted by Laws 1959, ch. 52, § 3, relating to the purpose and declaration of intention of the Oil and Gas Severance Tax Act, effective July 1, 1985.

## **7-29-4. Oil and gas severance tax imposed; collection; interest owner's liability to state; Indian liability.**

A. There is imposed and shall be collected by the department a tax on all products that are severed and sold, except as provided in Subsection B of this section. The measure of the tax and the rates are:

(1) on natural gas severed and sold, except as provided in Paragraphs (4), (6) and (7) of this subsection, three and three-fourths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978;

(2) on oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead, except as provided in Paragraphs (3), (5), (8) and (9) of this subsection, three and three-fourths percent of taxable value determined pursuant to Section 7-29-4.1 NMSA 1978;

(3) on oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead produced from a qualified enhanced recovery project, one and seven-eighths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to the fiscal year in which the tax rate is to be imposed, was less than twenty-eight dollars (\$28.00) per barrel;

(4) on the natural gas from a well workover project that is certified by the oil conservation division of the energy, minerals and natural resources department in its approval of the well workover project, two and forty-five hundredths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to the fiscal year in which the tax rate is to be imposed, was less than twenty-four dollars (\$24.00) per barrel;

(5) on the oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead from a well workover project that is certified by the oil conservation division of the energy, minerals and natural resources department in its approval of the well workover project, two and forty-five hundredths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to the fiscal year in which the tax rate is to be imposed, was less than twenty-four dollars (\$24.00) per barrel;

(6) on the natural gas from a stripper well property, one and seven-eighths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided the average annual taxable value of natural gas was equal to or less than one dollar fifteen cents (\$1.15) per thousand cubic feet in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed;

(7) on the natural gas from a stripper well property, two and thirteen-sixteenths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided that the average annual taxable value of natural gas was greater than one dollar fifteen cents (\$1.15) per thousand cubic feet but not more than one dollar thirty-five cents (\$1.35) per thousand cubic feet in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed;

(8) on the oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead from a stripper well property, one and seven-eighths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided that the average annual taxable value of oil was equal to or less than fifteen dollars (\$15.00) per barrel in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed;

(9) on the oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead from a stripper well property, two and thirteen-sixteenths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978, provided that the average annual taxable value of oil was greater than fifteen dollars (\$15.00) per barrel but not more than eighteen dollars (\$18.00) per barrel in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed; and

(10) on carbon dioxide, helium and non-hydrocarbon gases, three and three-fourths percent of the taxable value determined pursuant to Section 7-29-4.1 NMSA 1978.

B. The tax imposed in Subsection A of this section shall not be imposed on:

(1) natural gas severed and sold from a production restoration project during the first ten years of production following the restoration of production, provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to each fiscal year in which the tax exemption is to be effective, was less than twenty-four dollars (\$24.00) per barrel; and

(2) oil and other liquid hydrocarbons removed from natural gas at or near the wellhead from a production restoration project during the first ten years of production following the restoration of production, provided that the annual average price of west Texas intermediate crude oil, determined by the department by averaging the posted prices in effect on the last day of each month of the twelve-month period ending on May 31 prior to each fiscal year in which the tax exemption is to be effective, was less than twenty-four dollars (\$24.00) per barrel.

C. Every interest owner shall be liable for the tax to the extent of his interest in such products. Any Indian tribe, Indian pueblo or Indian shall be liable for the tax to the extent authorized or permitted by law.

D. The tax imposed by this section may be referred to as the "oil and gas severance tax".

**History:** 1978 Comp., § 7-29-4, enacted by Laws 1980, ch. 62, §§ 3, 5; 1987, ch. 315, § 3; 1989, ch. 130, § 2; 1992, ch. 38, § 7; 1995, ch. 15, § 8; 1999, ch. 256, § 2; 2005, ch. 130, § 2.

## ANNOTATIONS

**Cross references.** — For the Natural Gas and Crude Oil Production Incentive Act, see 7-29B-1 NMSA 1978.

**The 2005 amendment**, effective July 1, 2005, imposed the severance tax on helium and non-hydrocarbon gases in Subsection A(10).

**The 1999 amendment**, effective June 18, 1999, substituted "pursuant to" for "under" throughout the section; substituted "Paragraphs (4), (6) and (7)" for "Paragraph (4)" in Subsection A(1); inserted "(8) and (9)" in Subsection A(2); deleted "in excess of the production projection" preceding "certified" and substituted "two and forty-five hundredths percent" for "one and seven-eighths percent" in Subsections A(4) and A(5); and added Subsections A(6) through A(9), redesignating former Subsection A(6) as A(10).

**The 1995 amendment**, effective June 16, 1995, in Subsection A, added the exception at the end of the first sentence, rewrote Paragraph (1), substituted "Paragraphs (3) and (5)" for "Paragraph (3)" in Paragraph (2), added Paragraphs (4) and (5), and redesignated former Paragraph (4) as Paragraph (6); added subsection B; and redesignated former Subsections B and C as Subsections C and D.

**The 1992 amendment**, effective March 6, 1992, in Subsection A, inserted "except as provided in Paragraph (3) of this subsection" in Paragraph (2), added Paragraph (3), made a related stylistic change, and redesignated former Paragraph (3) as Paragraph (4); and added Subsection C.

**The 1989 amendment**, effective June 16, 1989, in Subsection A(1) substituted "taxable value determined under Section 7-29-4.1 NMSA 1978" for "value" in Subparagraph (a) and substituted all of the language of Subparagraph (b) beginning with "taxable" for "value of products"; and added Subsection A(3).

**Tribe's power to impose severance tax not limited by federal government.** — The federal interest in interstate commerce, manifested in traditional commerce clause analyses, does not limit the Jicarilla Apache tribe's power to impose an oil and gas severance tax to be measured by production of these products within the reservation. *Merrion v. Jicarilla Apache Tribe*, 617 F.2d 537 (10th Cir. 1980), *aff'd*, 455 U.S. 130, 102 S. Ct. 894, 71 L. Ed. 2d 21 (1982).

**Non-Indian producers operating on reservations.** — Oil and gas taxes imposed by the state against a non-Indian producer whose operations are located on an Indian reservation do not constitute an impermissible burden on interstate commerce, were not preempted by federal laws promoting tribal self-sufficiency, and may be imposed on the same on-reservation production of oil and gas by non-Indian lessees as is subject to the tribe's own severance tax. *Cotton Petroleum v. State*, 1987-NMCA-121, 106 N.M. 517,



745 P.2d 1170, cert. quashed, 106 N.M. 511, 745 P.2d 1159, *aff'd*, 490 U.S. 163, 109 S. Ct. 1698, 104 L. Ed. 2d 209 (1989).

**Tax liability of interest owners.** — Although, pursuant to Subsection C, each interest owner is liable for its proportionate share of the calculated tax, the law does not mandate or even contemplate the determination of different taxable values for each of the various interest owners based on proceeds received downstream from the wellhead. The law is satisfied so long as (1) carbon dioxide production is accurately measured and valued as a whole at the wellhead, (2) the appropriate tax rate is applied to that production to calculate the total tax owed, and (3) the total tax is allocated to the various interest owners in proportion to their fractional interest in that production. Any readjustment in the allocation of the tax burden among working interest owners and royalty interest owners is left to private contract. *Feerer v. Amoco Prod. Co.*, 242 F.3d 1259 (10th Cir. 2001).

**Taxable value of carbon dioxide.** — The calculation of severance taxes under New Mexico law, Subsection A(6) (now Subsection A(10)), is based on a single valuation of a total quantity of carbon dioxide extracted at the wellhead during a given time period. *Feerer v. Amoco Prod. Co.*, 242 F.3d 1259 (10th Cir. 2001).

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

For note, "Court Picks New Test in Cotton Petroleum," see 30 Nat. Resources J. 919 (1990).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 72 Am. Jur. 2d State and Local Taxation §§ 739 to 752.

53 C.J.S. Licenses §§ 65, 70; 85 C.J.S. Taxation §§ 973 to 978.

## **7-29-4.1. Taxable value; method of determining.**

To determine the taxable value of oil and of other liquid hydrocarbons removed from natural gas at or near the wellhead, of carbon dioxide, of helium, of non-hydrocarbon gases, of natural gas from new production natural gas wells and of natural gas severed after June 30, 1990, there shall be deducted from the value of products:

- A. royalties paid or due the United States or the state of New Mexico;
- B. royalties paid or due any Indian tribe, Indian pueblo or Indian that is a ward of the United States of America; and
- C. the reasonable expense of trucking any product from the production unit to the first place of market.

**History:** 1978 Comp., § 7-29-4.1, enacted by Laws 1980, ch. 62, § 6; 1989, ch. 130, § 3; 2005, ch. 130, § 3.

## ANNOTATIONS

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

**The 1989 amendment,** effective June 16, 1989, inserted "of carbon dioxide, of natural gas from new production natural gas wells and of natural gas severed after June 30, 1990" in the undesignated introductory paragraph.

**Transportation adjustment.** — Regulation 3.18.6.9 NMAC required all owners of pipelines at the time of the adoption of the regulation to use the owners' predecessors' depreciation schedule to calculate the transportation adjustment for years subsequent to 1991. *Kinder Morgan CO2 Co. v. N.M. Taxation & Revenue Dep't*, 2009-NMCA-019, 145 N.M. 579, 203 P.3d 110, cert. denied, 2009-NMCERT-001, 145 N.M. 655, 203 P.3d 870.

Where a pipeline was constructed by the first owner prior to 1985 for \$7.9 million; the pipeline was purchased by a second owner in 1985 for \$45 million; and the pipeline was purchased in 1998 by the taxpayer, 3.18.6.9 NMAC, which was adopted in 1991, required the second owner and the taxpayer to calculate the transportation adjustment for years subsequent to 1991 on the basis of the first owner's depreciation schedule which was based on a \$7.9 million cost to construct the pipeline. *Kinder Morgan CO2 Co. v. N.M. Taxation & Revenue Dep't*, 2009-NMCA-019, 145 N.M. 579, 203 P.3d 110, cert. denied, 2009-NMCERT-001, 145 N.M. 655, 203 P.3d 870.

### **7-29-4.2. Value may be determined by department; standard.**

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

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

The value determined by the department shall be commensurate with the actual price received for products of like quality, character and use which are severed in the same field or area. If there are no sales of products of like quality, character and use severed in the same field or area, then the department shall establish a reasonable value.

**History:** 1978 Comp., § 7-29-4.2, enacted by Laws 1980, ch. 62, § 7; 1989, ch. 130, § 4.

## ANNOTATIONS

**Cross references.** — For payments of royalties in oil, see 19-10-64 NMSA 1978 et seq.

**The 1989 amendment,** effective June 16, 1989, substituted "department" for "division" in the catchline, substituted "department" for "oil and gas accounting division" throughout the section, and made minor stylistic changes throughout the section.

**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.

**Burden to prove propriety of regulations.** — An administrative agency does not have the burden to show that its regulations are proper. The department's regulation regarding the presumption of control was rational and valid. *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.

### **7-29-4.3. 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:** 1978 Comp., § 7-29-4.3, enacted by Laws 1980, ch. 62, § 8; 1985, ch. 65, § 28.

## ANNOTATIONS

**Federal class action settlement agreement.** — Where taxpayer was party to a settlement agreement that was approved by a federal district court in a class action involving the underpayment of royalties on the production of carbon dioxide gas; the settlement agreement settled the allegation that taxpayer had suppressed the price of carbon dioxide gas; and part of the proceeds of the settlement agreement were compensation to royalty interest owners for the failure to obtain a reasonable sales price

for the carbon dioxide gas, the settlement agreement constituted an order that increased the value of the carbon dioxide gas previously reported by taxpayer and a taxable event under Section 7-29-4.3 NMSA 1978. *Hess Corp. v. N.M. Taxation & Revenue Dep't*, 2011-NMCA-043, 149 N.M. 527, 252 P.3d 751, cert. denied, 2011-NMCERT-003, 150 N.M. 619, 264 P.3d 520.

#### **7-29-4.4. Repealed.**

##### **ANNOTATIONS**

**Repeals.** — Laws 1989, ch. 130, § 14 repealed 7-29-4.4 NMSA 1978, as enacted by Laws 1980, ch. 97, § 2, relating to carbon dioxide severance tax imposed, collection, interest owner's liability to state, Indian liability, effective June 16, 1989.

#### **7-29-4.5. Repealed.**

##### **ANNOTATIONS**

**Repeals.** — Laws 1989, ch. 130, § 14 repealed 7-29-4.5 NMSA 1978, as enacted by Laws 1980, ch. 97, § 3, relating to method of determining taxable value on carbon dioxide, effective June 16, 1989.

#### **7-29-4.6. Repealed.**

##### **ANNOTATIONS**

**Repeals.** — Laws 1995, ch. 70, § 23 repealed 7-29-4.6 NMSA 1978, as enacted by Laws 1980, ch. 62, § 11, relating to a temporary tax credit for persons liable for payment of taxes imposed by 7-26-9 NMSA 1978 or 7-29-4 NMSA 1978, effective July 1, 1995. For provisions of former section, see the 1994 NMSA 1978 on *NMOneSource.com*.

#### **7-29-4.7. Repealed.**

##### **ANNOTATIONS**

**Repeals.** — Laws 1989, ch. 130, § 14 repealed 7-29-4.7 NMSA 1978, as enacted by Laws 1980, ch. 62, § 13, relating to surtax applicability, effective June 16, 1989.

#### **7-29-5. 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., § 72-19-8, enacted by Laws 1959, ch. 52, § 8.

#### **ANNOTATIONS**

**Compiler's notes.** — For the meaning of "commission", see 7-29-2A NMSA 1978.

#### **7-29-6. 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 the 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., § 72-19-9, enacted by Laws 1959, ch. 52, § 9.

#### **ANNOTATIONS**

**Compiler's notes.** — For the meaning of "commission", see 7-29-2A NMSA 1978.

**Tax liability of interest owners.** — Although, pursuant to Section 7-29-4(C) NMSA 1978, each interest owner is liable for its proportionate share of the calculated tax, the law does not mandate or even contemplate the determination of different taxable values for each of the various interest owners based on proceeds received downstream from the wellhead. The law is satisfied so long as (1) carbon dioxide production is accurately measured and valued as a whole at the wellhead, (2) the appropriate tax rate is applied to that production to calculate the total tax owed, and (3) the total tax is allocated to the various interest owners in proportion to their fractional interest in that production. Any readjustment in the allocation of the tax burden among working interest owners and royalty interest owners is left to private contract. *Feerer v. Amoco Prod. Co.*, 242 F.3d 1259 (10th Cir. 2001).

## **7-29-7. 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 Severance Tax Act may be required.

**History:** 1953 Comp., § 72-19-10, enacted by Laws 1959, ch. 52, § 10; 1986, ch. 5, § 2.

## **7-29-8. 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 Severance Tax Act may be required.

**History:** 1953 Comp., § 72-19-11, enacted by Laws 1959, ch. 52, § 11; 1986, ch. 5, § 3.

### **ANNOTATIONS**

**Cross references.** — For the meaning of "division", see 7-29-2A NMSA 1978.

## **7-29-9 to 7-29-22. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1985, ch. 65, § 46 repealed 7-29-9 to 7-29-22 NMSA 1978, relating to the fund and remedies under the Oil and Gas Severance Tax Act, effective July 1, 1985.

## **7-29-23. Advance payment required.**

A. Any person required to make payment of tax pursuant to Section 7-29-7 or 7-29-8 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 severance 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 Severance 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 Severance 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 Severance 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 Severance Tax Act, no advance payment pursuant to this subsection is due for that return; and

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

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

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

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

**History:** Laws 1991, ch. 9, § 36.

## **ARTICLE 29A**

### **Enhanced Oil Recovery**

#### **7-29A-1. Short title.**

Chapter 7, Article 29A NMSA 1978 may be cited as the "Enhanced Oil Recovery Act".

**History:** Laws 1992, ch. 38, § 1; 1993, ch. 30, § 26.

## **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, substituted "Chapter 7, Article 29A NMSA 1978" for "Sections 1 through 5 of this act".

### **7-29A-2. Definitions.**

As used in the Enhanced Oil Recovery Act:

A. "crude oil" means oil and other liquid hydrocarbons removed from natural gas at or near the wellhead;

B. "division" means the oil conservation division of the energy, minerals and natural resources department;

C. "enhanced recovery project" means the use or the expanded use of any process for the displacement of crude oil from an oil well or pool classified by the division pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978 other than a primary recovery process, including but not limited to the use of a pressure maintenance process, a water flooding process, an immiscible, miscible, chemical, thermal or biological process or any other related process;

D. "expansion or expanded use" means a significant change or modification, as determined by the oil conservation division in:

(1) the technology or process used for the displacement of crude oil from an oil well or pool classified by the division pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978; or

(2) the expansion, extension or increase in size of the geologic area or adjacent geologic area that could reasonably be determined to represent a new or unique area of activity;

E. "operator" means the person responsible for the actual physical operation of an enhanced recovery project;

F. "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;



G. "positive production response" means that the rate of oil production from the wells or pools affected by an enhanced recovery project is greater than the rate that would have occurred without the project;

H. "primary recovery" means the displacement of crude oil from an oil well or pool classified by the division pursuant to Paragraph (11) of Subsection B of Section 70-2-12 NMSA 1978 into the well bore by means of the natural pressure of the oil well or pool, including but not limited to artificial lift;

I. "recovered oil tax rate" means that tax rate, as set forth in Paragraph (3) of Subsection A of Section 7-29-4 NMSA 1978, on crude oil produced from an enhanced recovery project;

J. "secondary recovery project" means an enhanced recovery project that:

(1) occurs subsequent to the completion of primary recovery and is not a tertiary recovery project;

(2) involves the application, in accordance with sound engineering principles, of carbon dioxide miscible fluid displacement, pressure maintenance, water flooding or any other secondary recovery method accepted and approved by the division pursuant to the provisions of Paragraph (14) of Subsection B of Section 70-2-12 NMSA 1978 that can reasonably be expected to result in an increase, determined in light of all facts and circumstances, in the amount of crude oil that may ultimately be recovered; and

(3) encompasses a pool or portion of a pool the boundaries of which can be adequately defined and controlled;

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

L. "termination" means the discontinuance of an enhanced recovery project by the operator; and

M. "tertiary recovery project" means an enhanced recovery project that:

(1) occurs subsequent to the completion of a secondary recovery project;

(2) involves the application, in accordance with sound engineering principles, of carbon dioxide miscible fluid displacement, pressure maintenance, water flooding or any other tertiary recovery method accepted and approved by the division pursuant to the provisions of Paragraph (14) of Subsection B of Section 70-2-12 NMSA 1978 that can reasonably be expected to result in an increase, determined in light of all facts and circumstances, in the amount of crude oil that may ultimately be recovered; and

(3) encompasses a pool or portion of a pool the boundaries of which can be adequately defined and controlled.

**History:** Laws 1992, ch. 38, § 2.

### **7-29A-3. Procedures for qualifying for the recovered oil tax rate.**

A. Crude oil severed and sold from an enhanced recovery project or the expansion of an existing project shall qualify for the recovered oil tax rate if, before the enhanced recovery project or expansion begins operation, the division approves the project or expansion and designates the area to be affected by the project or expansion, but no project or expansion approved by the division prior to the effective date of the Enhanced Oil Recovery Act shall qualify for the recovered oil tax rate.

B. The operator of a proposed enhanced recovery project or expansion shall apply to the division for approval of the proposed enhanced recovery project or expansion and shall provide the division with any relevant information the division requires for that approval.

C. If approval by the division of a unitization agreement as set forth in Chapter 70, Article 7 NMSA 1978 is required for purposes of carrying out the enhanced recovery project or expansion, the division shall not approve the enhanced recovery project or expansion unless it approves the unitization agreement.

D. An operator may apply for approval of a proposed enhanced recovery project or expansion concurrently with an application for approval of a unitization agreement as set forth in Chapter 70, Article 7 NMSA 1978 for the purposes of carrying out the proposed enhanced recovery project or expansion.

E. The division shall only approve a proposed enhanced recovery project or expansion if it determines that the application for approval has not been prematurely filed either for economic or technical reasons and that the area to be affected by the enhanced recovery project or expansion has been so depleted that it is prudent to apply enhanced recovery techniques to maximize the ultimate recovery of crude oil from the well or pool.

F. Upon the approval of the application for an enhanced recovery project or expansion, the division shall issue a certification of approval to the operator and designate the area to be affected by the enhanced recovery project or expansion.

G. The recovered oil tax rate shall apply only to the crude oil produced from the area the division certifies to be affected by the enhanced recovery project or expansion.

H. The operator shall file an application for certification of a positive production response with the division to be eligible to receive the recovered oil tax rate.

I. The recovered oil tax rate shall only apply to crude oil produced from an enhanced recovery project or the expansion of an existing project beginning the first day of the month following the date the division certifies that a positive production response has occurred and if the application for certification of positive production response is filed:

(1) not later than five years from the date the division issues the certification of approval of the enhanced recovery project or expansion if the enhanced recovery project or expansion is designated a secondary recovery project; or

(2) not later than seven years from the date the division issues the certification of approval of the enhanced recovery project or expansion if the enhanced recovery project or expansion is designated a tertiary recovery project.

J. Qualification for the recovered oil tax rate ends on the first day of the first calendar month that begins on or after the ninety-first day following the termination of the enhanced recovery project or expansion.

K. If the active operation of an approved enhanced recovery project or expansion is terminated, the operator shall notify the division and the secretary of taxation and revenue in writing, not later than the thirtieth day after the termination of the enhanced recovery project or expansion.

L. In addition to the powers enumerated in Section 70-2-12 NMSA 1978, the division shall adopt, promulgate and enforce rules and regulations concerning the approval of the applications, the designation of the affected areas and the operation, expansion and termination of the enhanced recovery projects as provided for in the Enhanced Oil Recovery Act.

**History:** Laws 1992, ch. 38, § 3.

## **ANNOTATIONS**

**Compiler's notes.** — The effective date of the Enhanced Oil Recovery Act was March 6, 1992, the effective date of Laws 1992, ch. 38.

### **7-29A-4. Notification to the secretary of taxation and revenue; duties of the secretary.**

A. The division shall immediately notify the secretary of taxation and revenue upon:

(1) certifying that a positive production response has occurred for an enhanced oil recovery project, in which case the notice shall contain the date certification was made and the date positive production response occurred;

(2) receiving notification of termination of an enhanced recovery project, in which case the notice shall contain the date of termination; and

(3) adopting and promulgating rules and regulations pursuant to the provisions of the Enhanced Oil Recovery Act.

B. The secretary of taxation and revenue shall adopt and promulgate rules and regulations to enforce the provisions of the Enhanced Oil Recovery Act.

**History:** Laws 1992, ch. 38, § 4.

### **7-29A-5. Secretary of taxation and revenue approval; refund.**

A. The person responsible for paying the oil and gas severance tax on production from the enhanced recovery project shall not qualify to receive the recovered oil tax rate unless that person:

(1) applies to the secretary of taxation and revenue in the form and manner prescribed by the secretary for approval to pay the oil and gas severance tax on crude oil severed and saved from the enhanced recovery project at the recovered oil tax rate;

(2) includes the certifications from the division of approval and designation of the affected areas of the enhanced recovery project and of a positive production response from the enhanced recovery project; and

(3) provides all relevant material that the secretary of taxation and revenue considers necessary to administer the applicable provisions of the Enhanced Oil Recovery Act.

B. An approval of the secretary of taxation and revenue in accordance with Subsection A of this section shall be applicable to crude oil severed and sold from the enhanced recovery project on and after the first day of the month following the month in which the division certifies that a positive production response with respect to the enhanced recovery project has occurred. If the oil and gas severance tax is paid at a rate imposed in Paragraph (2) of Subsection A of Section 7-29-4 NMSA 1978 on crude oil severed and saved from the enhanced recovery project after the month in which the division certifies that a positive production response with respect to the enhanced recovery project has occurred, a claim for refund may be filed in accordance with Section 7-1-26 NMSA 1978 for the excess in tax over the amount due using the recovered oil tax rate. Notwithstanding the provisions of Subsection E [Subsection F] of Section 7-1-26 NMSA 1978 any such refund granted shall be made in the form of a credit against future oil and gas severance tax liabilities.

**History:** Laws 1992, ch. 38, § 5.

### **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. The reference to Subsection E of 7-1-26 NMSA 1978 in Subsection B should now be a reference to Subsection F in light of the 1997 amendment to 7-1-26 NMSA 1978.

## **ARTICLE 29B**

# **Natural Gas and Crude Oil Production Incentives**

### **7-29B-1. Short title.**

Sections 1 through 6 [7-29B-1 to 7-29B-6 NMSA 1978] of this act may be cited as the "Natural Gas and Crude Oil Production Incentive Act".

**History:** Laws 1995, ch. 15, § 1.

### **7-29B-2. Definitions.**

As used in the Natural Gas and Crude Oil Production Incentive Act:

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

B. "average daily production" means, for any crude oil or natural gas property assigned a single production number by the department, the number derived by dividing the total volume of crude oil or natural gas production from the property reported to the division during a calendar year by the sum of the number of days each eligible well within the property produced or injected during that calendar year;

C. "department" means the taxation and revenue department;

D. "division" means the oil conservation division of the energy, minerals and natural resources department;

E. "eligible well" means a crude oil or natural gas well that produces or an injection well that injects and is integral to production for any period of time during the preceding calendar year;

F. "natural gas" means any combustible vapor composed chiefly of hydrocarbons occurring naturally;

G. "operator" means the person responsible for the actual physical operation of a natural gas or oil well;

H. "person" means any individual or other legal entity, including any group or combination of individuals or other legal entities acting as a unit;

I. "production restoration incentive tax exemption" means the tax exemption set forth in Subsection B of Section 7-29-4 NMSA 1978 for natural gas or oil produced from a production restoration project;

J. "production restoration project" means the use of any process for returning to production a natural gas or oil well that had thirty days or less of production in any period of twenty-four consecutive months beginning on or after January 1, 1993 as approved and certified by the division;

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

L. "stripper well property" means a crude oil or natural gas producing property that is assigned a single production unit number by the department and:

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

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

(3) if a property with wells that produce both crude oil and natural gas, produced an average daily production of less than ten barrels of oil per eligible well per day for the preceding calendar year, as determined by converting the volume of natural gas produced by the well to barrels of oil by using a ratio of six thousand cubic feet to one barrel of oil;

M. "stripper well incentive tax rates" means the tax rates set forth in Paragraphs (6) through (9) of Subsection A of Section 7-29-4 NMSA 1978 and in Paragraphs (4) through (7) of Subsection A of Section 7-31-4 NMSA 1978 for natural gas or oil produced from a well within a stripper well property;

N. "well workover incentive tax rate" means the tax rate set forth in Paragraphs (4) and (5) of Subsection A of Section 7-29-4 NMSA 1978 on the natural gas or oil produced from a well workover project; and

O. "well workover project" means any procedure undertaken by the operator of a natural gas or oil well that is intended to increase the production from the well and that has been approved and certified by the division.

**History:** Laws 1995, ch. 15, § 2; 1999, ch. 7, § 2; 1999, ch. 256, § 3.

## ANNOTATIONS

**The 1999 amendment**, effective June 18, 1999, added Subsections A, B, E, L, and M, and redesignated the remaining subsections accordingly; deleted former Subsection F, which read: "'production projection' means the estimate of the productive capacity of a natural gas or oil well that is certified by the division pursuant to the provisions of the Natural Gas and Crude Oil Production Incentive Act as the future rate of production from the well prior to the operator of the well performing a well workover project on the well"; and deleted "in excess of the production projection" following "produced" in Subsection N.

This section was also amended by Laws 1999, ch. 7, § 2, effective June 18, 1999, which would have substituted "in any period of twenty-four consecutive months beginning on or after January 1, 1993" for "between January 1, 1993 and December 31, 1994" in Subsection H. The section was set out as amended by Laws 1999, ch. 256, § 3. See 12-1-8 NMSA 1978.

### **7-29B-3. Approval of production restoration projects, well workover projects and stripper well properties.**

A. A natural gas or oil well shall be approved by the division as a production restoration project if:

(1) the operator of the well makes application to the division in accordance with the provisions of the Natural Gas and Crude Oil Production Incentive Act and rules adopted pursuant to that act for approval of a production restoration project and the application is made within twelve months of the completion of the production restoration project; and

(2) the division records show that the well had thirty days or less of production in any period of twenty-four consecutive months beginning on or after January 1, 1993.

B. A natural gas or oil well shall be approved by the division as a well workover project if:

(1) the operator of the well makes application to the division in accordance with the provisions of the Natural Gas and Crude Oil Production Incentive Act and rules adopted pursuant to that act for approval of a well workover project;

(2) the division determines that the procedure performed by the operator of the well is a procedure to increase the production from the well, but is not routine maintenance performed by a prudent operator to maintain the well in operation. Such procedures may include, but are not limited to:

(a) re-entry into the well to drill deeper, to sidetrack to a different location or to recompleat for production;

(b) recompletion by reperforation of a zone from which natural gas or oil has been produced or by perforation of a different zone;

(c) repair or replacement of faulty or damaged casing or related downhole equipment;

(d) fracturing, acidizing or installing compression equipment; or

(e) squeezing, cementing or installing equipment necessary for removal of excessive water, brine or condensate from the well bore in order to establish, continue or increase production from the well; and

(3) the operator of the well submits to the division evidence of a positive production increase over the production rate of the well prior to the workover. The operator must submit a production curve or tabulation made up of at least twelve months' production prior to the workover and at least three months' production following the workover that reflects a positive production increase from the workover. The production curve or tabulation must be certified by the operator as that of the well on which a workover was performed.

C. A natural gas or crude oil producing property shall be approved and certified by the division as a stripper well property if the division records show that the property is assigned a single production unit number by the department and:

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

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

(3) if a property with wells that produce both crude oil and natural gas, produced an average daily production of less than ten barrels of oil per eligible well per day for the preceding calendar year, as determined by converting the volume of natural gas produced by the well to barrels of oil by using a ratio of six thousand cubic feet to one barrel of oil.

**History:** Laws 1995, ch. 15, § 3; 1999, ch. 7, § 3; 1999, ch. 256, § 4.

## **ANNOTATIONS**

**The 1999 amendment**, effective June 18, 1999, deleted "and" preceding "well" and added "and stripper well properties" in the section heading; deleted "and regulations" preceding "adopted" in Subsections A(1) and B(1); substituted "performed" for "proposed to be undertaken", deleted "intended" following "procedure" and "that would be" following "performed" in Subsection B(2); rewrote Subsection B(3), which read: "the



operator of the well submits to the division an estimate of the productive capacity of the well based on at least twelve months of established production, and the division, based on its verification of that estimate, determines the future rate of production from the well prior to the operator of the well performing the well workover project on the well and certifies that as the production projection for the project"; and added Subsection C.

This section was also amended by Laws 1999, ch. 7, § 3, effective June 18, 1999, which would have added "and the application" to the end of Paragraph A(1), and substituted "in any period of twenty-four consecutive months beginning on or after January 1, 1993" for "between January 1, 1993 and December 31, 1994" in Paragraph A(2). The section was set out as amended by Laws 1999, ch. 256, § 3. See 12-1-8 NMSA 1978.

#### **7-29B-4. Application procedures; certification of approval; rules; administration.**

A. The operator of a proposed production restoration project or well workover project shall apply to the division for approval of a production restoration project or a well workover project in the form and manner prescribed by the division and shall provide any relevant material and information the division requires for that approval.

B. Upon a determination that the project complies with the provisions of the Natural Gas and Crude Oil Production Incentive Act and rules adopted pursuant to that act, the division shall approve the application and shall issue a certification of approval to the operator and designate the natural gas or oil well as a production restoration project or well workover project, as applicable.

C. In addition to the powers enumerated in Section 70-2-12 NMSA 1978, the division shall adopt, promulgate and enforce rules to carry out the provisions of the Natural Gas and Crude Oil Production Incentive Act.

D. The division shall consider and approve applications for approval of a production restoration project or well workover project without holding hearings on the applications. If the division denies approval of an application pursuant to such a process, the division, upon the request of the applicant, shall set a hearing of the application before an examiner appointed by the division to conduct the hearing. The hearing shall be conducted in accordance with the provisions of the Oil and Gas Act [Chapter 70, Article 2 NMSA 1978] for such hearings.

**History:** Laws 1995, ch. 15, § 4; 1999, ch. 256, § 5.

#### **ANNOTATIONS**

**The 1999 amendment**, effective June 18, 1999, deleted "and regulations" following "rules" in the section heading and throughout the section; deleted former Subsection C which read: "At the time of issuing a certification of approval to an operator of a natural

gas or oil well for a well workover project, the division shall also certify the production projection for that project", and redesignated the remaining subsections accordingly; and deleted "Sections 1 through 5 of" following "provisions of" in Subsection C.

#### **7-29B-5. Notice to secretary of taxation and revenue.**

The division shall notify immediately the secretary of taxation and revenue upon:

A. adoption of rules pursuant to the provisions of the Natural Gas and Crude Oil Production Incentive Act;

B. certification of the date that production has been restored on a production restoration project;

C. certification of the date that a well workover project has been completed; and

D. certification of the stripper well properties for the fiscal year.

**History:** Laws 1995, ch. 15, § 5; 1999, ch. 256, § 6.

#### **ANNOTATIONS**

**The 1999 amendment**, effective June 18, 1999, deleted "and regulations" following "rules" in Subsection A, and added Subsection D.

#### **7-29B-6. Qualification for production restoration incentive tax exemption and well workover and stripper well property incentive tax rate; secretary of taxation and revenue approval; refund.**

A. The person responsible for paying the oil and gas severance tax on natural gas or oil produced from a production restoration project shall qualify to receive a ten-year production restoration incentive tax exemption upon:

(1) application to the department in the form and manner prescribed by the department for approval for the ten-year production restoration incentive tax exemption;

(2) submission of the certification of approval from the division and designation of the natural gas or oil well as a production restoration project; and

(3) submission of any other relevant material that the secretary of taxation and revenue deems necessary to administer the applicable provisions of the Natural Gas and Crude Oil Production Incentive Act.

B. The person responsible for payment of the oil and gas severance tax on natural gas or oil produced from a well workover project shall qualify for the well workover incentive tax rate on all the natural gas or oil produced by that project upon:

(1) application to the department in the form and manner prescribed by the department for approval to apply the well workover incentive tax rate to the natural gas or oil produced from a well workover project;

(2) submission of the certification from the division of approval and designation of the natural gas or oil well as a well workover project; and

(3) any other relevant material that the department considers necessary to administer the applicable provisions of the Natural Gas and Crude Oil Production Incentive Act.

C. The person responsible for paying the oil and gas severance tax and the oil and gas emergency school tax on natural gas and crude oil produced from a stripper well property shall qualify to receive the stripper well property incentive tax rate for the fiscal year following certification by the division in the form and manner agreed to by the division and the department designating the property as a stripper well property. The division shall certify stripper well properties for calendar year 1998 no later than June 30, 1999 and no later than June 1 of each succeeding year for the preceding calendar year.

D. The production restoration incentive tax exemption shall apply to natural gas or oil produced from a production restoration project beginning the first day of the month following the date the division certifies that production has been restored and ending the last day of the tenth year of production following that date. The well workover incentive tax rate applies to the natural gas or oil produced from a well workover project beginning the first day of the month following the date the division certifies that the well workover project has been completed. The stripper well property incentive tax rates apply to the natural gas or oil produced from a stripper well property in the twelve months beginning May 1 prior to July 1 of the fiscal year to which the certification of the property as a stripper well property applies.

E. The person responsible for payment of the oil and gas severance tax on natural gas or oil production from an approved well workover project may file a claim for credit against current tax liability or for refund in accordance with Section 7-1-26 NMSA 1978 for taxes paid in excess of the amount due using the well workover incentive tax rate. Notwithstanding the provisions of Subsection E [F] of Section 7-1-26 NMSA 1978, any such refund granted shall be made in the form of a credit against any future oil and gas severance tax liabilities incurred by the taxpayer.

F. Well workover projects certified prior to July 1, 1999 shall be deemed to be approved and certified in accordance with the provisions of this 1999 act and natural

gas or oil produced from those projects shall be eligible for the well workover incentive tax rate effective beginning July 1, 1999.

G. The secretary of taxation and revenue may adopt and promulgate rules to enforce the provisions of this section.

**History:** Laws 1995, ch. 15, § 6; 1999, ch. 256, § 7.

## **ANNOTATIONS**

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. The reference to Subsection E of 7-1-26 NMSA 1978 should now be a reference to Subsection F in light of the 1997 amendment to 7-1-26 NMSA 1978.

**Compiler's notes.** — The phrase "this 1999 act," referred to in Subsection F, means Laws 1999, Chapter 256, which was compiled as 7-29-2, 7-29-4, 7-29B-2 to 7-29B-6, 7-31-2 and 7-31-4 NMSA 1978.

**The 1999 amendment,** effective June 18, 1999, inserted "and stripper well property" in the section heading; inserted "all" preceding "the natural", substituted "by" for "in excess of the production projection for" in Subsection B; deleted "in excess of the production projection" following "produced" in Subsections B(1) and D; deleted "and of the production projection for the well workover project" following "project" in Subsection B(2); added Subsections C and F, and redesignated the remaining subsections accordingly; added the third sentence of Subsection D; inserted "credit against current tax liability or for" in the first sentence of Subsection E; and deleted "and regulations" following "rules" in Subsection G.

## **ARTICLE 29C**

### **Intergovernmental Tax Credits**

#### **7-29C-1. Intergovernmental tax credits.**

A. Any person who is liable for the payment of the oil and gas severance tax, the oil and gas conservation tax, the oil and gas emergency school tax or the oil and gas ad valorem production tax imposed on products severed from Indian tribal land or imposed on the privilege of severing products from Indian tribal land shall be entitled to a credit to be computed under this section and to be deducted from the payment of the indicated taxes with respect to products from qualifying wells. The credit provided by this subsection may be referred to as the "intergovernmental production tax credit".

B. Any person who is liable for the payment of the oil and gas production equipment ad valorem tax imposed on equipment located on Indian tribal land shall be entitled to a credit to be computed under this section and to be deducted from the payment of the indicated taxes with respect to equipment at qualifying wells. The credit provided by this

subsection may be referred to as the "intergovernmental production equipment tax credit".

C. For the purposes of this section:

(1) "equipment" means wells and nonmobile equipment used at a well in connection with severance, treatment or storage of well products;

(2) "Indian tribal land" means all land that on March 1, 1995 was within the exterior boundaries of an Indian reservation or pueblo grant or held in trust by the United States for an Indian person, nation, tribe or pueblo;

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

(4) "qualifying well" means a well on Indian tribal land, the actual drilling of which commenced on or after July 1, 1995.

D. The intergovernmental production tax credit shall be determined separately for each calendar month and shall be equal to seventy-five percent of the lesser of:

(1) the aggregate amount of severance, privilege, ad valorem or similar tax in effect on March 1, 1995 that is imposed by the Indian nation, tribe or pueblo upon the products severed from qualifying wells or upon the privilege of severing products from qualifying wells; or

(2) the aggregate amount of the oil and gas severance tax, the oil and gas conservation tax, the oil and gas emergency school tax and the oil and gas ad valorem production tax imposed by this state upon the products severed from qualifying wells or upon the privilege of severing products from qualifying wells.

E. The intergovernmental production equipment tax credit shall be determined annually for the equipment at qualifying wells and shall be equal to seventy-five percent of the lesser of:

(1) the amount of ad valorem or similar tax in effect on March 1, 1995 that is imposed by the Indian nation, tribe or pueblo upon the equipment for the calendar year; or

(2) the amount of the oil and gas production equipment ad valorem tax imposed by this state upon the equipment for the calendar year.

F. If, after March 1, 1995, an Indian nation, tribe or pueblo increases any severance, privilege, ad valorem or similar tax applicable to products or equipment to which the tax credits provided by this section apply, the amount of the intergovernmental production tax credit for any month to which the increase applies

shall be reduced by the difference between the aggregate amount of tax due to the Indian nation, tribe or pueblo for the production month and the aggregate amount of tax that would have been imposed by the terms of the tax or taxes in effect on March 1, 1995, and the intergovernmental production equipment tax credit shall be reduced by the difference between the aggregate amount of tax due to the Indian nation, tribe or pueblo for the year and the aggregate amount of tax that would have been imposed for the year by the terms of the tax or taxes in effect on March 1, 1995.

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

H. 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].

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

**History:** Laws 1995, ch. 171, § 1; 1999, ch. 108, § 1.

### **ANNOTATIONS**

**The 1999 amendment**, effective, July 1, 1999, inserted "person" in Paragraph C(2).

### **7-29C-2. Intergovernmental tax credit; severance tax on coal.**

A. Any person who is liable pursuant to Section 7-26-6 NMSA 1978 for the payment of the severance tax on coal severed and saved from tribal land is entitled to a credit to be computed under this section and to be deducted from the payment of the indicated tax. The credit provided by this section may be referred to as the "intergovernmental coal severance tax credit".

B. For the purposes of this section, "tribal land" means all land in New Mexico that, on March 1, 2001, was within the exterior boundaries of the reservation or pueblo grant of an Indian nation, tribe or pueblo, was within a dependent Indian community of the Indian nation, tribe or pueblo or was held in trust by the United States for the Indian nation, tribe or pueblo.

C. The intergovernmental coal severance tax credit shall be determined separately for each calendar month and shall be equal to seventy-five percent of the lesser of: