F. Copies of suspension orders and orders terminating suspensions shall be sent to the department at the time they are made.

History: 1953 Comp., § 72-28-10, enacted by Laws 1973, ch. 258, § 10; 1974, ch. 92, § 3; 1977, ch. 247, § 189.

7-35-8. Authority for director to reduce amount required to be reimbursed to department by counties for services provided by department.

When any provision of the Property Tax Code requires a county to reimburse the department for the costs of services provided by the department, the director may reduce the amount required to be reimbursed to less than actual costs of the services.

History: 1953 Comp., § 72-28-11, enacted by Laws 1973, ch. 258, § 11.

7-35-9. Repealed.

ANNOTATIONS

Repeals. — Laws 1982, ch. 28, § 31, repealed 7-35-9 NMSA 1978, as enacted by Laws 1973, ch. 258, § 12, relating to the furnishing of annual reports by the property tax division of the taxation and revenue department, effective May 19, 1982.

7-35-10. Division to furnish valuation services to state agencies and political subdivisions of the state.

The division shall provide, subject to the availability of resources within the division, assistance services to state agencies and political subdivisions in the valuation of property owned or being considered for purchase by the state or by political subdivisions. Agencies and political subdivisions that are not funded from the state general fund shall reimburse the division for the actual cost incurred in the valuation of the property.

History: 1953 Comp., § 72-28-13, enacted by Laws 1975, ch. 172, § 1; 1982, ch. 28, § 2.

ARTICLE 36
Valuation of Property

7-36-1. Provisions for valuation of property; applicability.

The provisions of this article apply to and govern the determination of value of all property subject to valuation for property taxation purposes under the Property Tax Code.

History: 1953 Comp., § 72-29-1, enacted by Laws 1973, ch. 258, § 13.

ANNOTATIONS

Cross references. — For constitutional provision as to equality of ad valorem taxation, *see* N.M. Const., art. VIII, § 1.

For constitutional provision as to property tax limits and exceptions, *see* N.M. Const., art. VIII, § 2.

For constitutional provision as to assessment of lands, *see* N.M. Const., art. VIII, § 6.

Law reviews. — For comment, "Ad Valorem Taxes - Omitted Property and Improvements - Assessments," see 6 Nat. Resources J. 105 (1966).

For comment, "Coal Taxation in the Western States: The Need for a Regional Tax Policy," see 16 Nat. Resources J. 415 (1976).

For article, "New Mexico Taxes: Taking Another Look," see 32 N.M.L. Rev. 351 (2002).

7-36-2. Allocation of responsibility for valuation and determining classification of property for property taxation purposes; county assessor and department.

A. The county assessor is responsible and has the authority for the valuation of all property subject to valuation for property taxation purposes in the county except the property specified by Subsections B and C of this section.

B. The department is responsible and has the authority for the valuation of all property subject to valuation for property taxation purposes and used in the conduct of the following businesses:

(1) railroad;

(2) communications system as that term is defined in Section 7-36-30 NMSA 1978;

(3) pipeline;

(4) public utility; and

(5) airline.

C. The department is responsible and has the authority for the valuation of property subject to valuation for property taxation purposes when that property is:

(1) an electricity generating plant, whether or not owned by a public utility, if all or part of the electricity is generated for ultimate sale to the consuming public;

(2) mineral property and property held or used in connection with mineral property as defined in Sections 7-36-22 through 7-36-25 NMSA 1978; or

(3) machinery, equipment and other personal property of all resident and nonresident persons customarily engaged in construction that involves the use during a tax year of the machinery, equipment and other personal property in more than one county. For the purposes of this paragraph, "construction" means leveling or clearing land, excavating earth, drilling wells of any type, including seismograph shot holes or core drilling, or similar work, or building, altering, repairing or demolishing any:

(a) road, highway, bridge, parking area or related project;

(b) building, fence, stadium or other structure;

(c) airport, subway or similar facility;

(d) park, trail, athletic field, golf course or similar facility;

(e) dam, reservoir, canal, ditch or similar facility;

(f) sewerage or water treatment facility, power generating plant, pump station, natural gas compressing station, gas processing plant, coal gasification plant, refinery, distillery or similar facility;

(g) sewerage, water, gas or other pipeline;

(h) transmission line;

(i) radio, television or other tower;

(j) water, oil or other storage tank;

(k) shaft, tunnel or other mining appurtenance; or

(l) similar work.

D. The entity having responsibility and authority for valuing the property described in Subsections A through C of this section shall also have responsibility and authority for classifying that property as either residential or nonresidential under the provisions of Section 7-36-2.1 NMSA 1978.

E. The secretary by regulation may delegate authority to the county assessor for the valuation and classification of property subject to valuation for property taxation purposes for which the department is responsible pursuant to Subsections B through D of this section only if:

(1) the property is held or used in connection with the transmission, storage, measurement or distribution of water and the transmission, storage, measurement and distribution is conducted by a single person entirely within a single county; or

(2) the property is held or used in connection with a communications system as defined in Section 7-36-30 NMSA 1978 and the system operates entirely within a single county.

F. The department is authorized to enter into one or more agreements with each county assessor, subject to approval of each agreement by the appropriate board of county commissioners, under which the county assessor agrees to perform the valuation of property for which the department is responsible under Subsection B of this section but which property is not subject to the special methods of valuation set forth in Sections 7-36-27, 7-36-28 and 7-36-30 through 7-36-32 NMSA 1978.

History: 1953 Comp., § 72-29-2, enacted by Laws 1973, ch. 258, § 14; 1974, ch. 92, § 5; 1975, ch. 156, § 1; 1975, ch. 165, § 1; 1981, ch. 37, § 62; 1985, ch. 109, § 2; 1995, ch. 12, § 6.

ANNOTATIONS

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

The 1995 amendment, effective June 16, 1995, substituted "department" for "division" in the section heading and in Subsections B, C, and E; inserted "gas processing plant, coal gasification plant, refinery, distillery" in Subparagraph C(3)(f); substituted "secretary" for "director" near the beginning of Subsection E; and added Subsection F.

Different tax treatment based on use of contractor's equipment unconstitutional. — Since the effect of former 7-36-9 NMSA 1978 and 72-6-4A(1)(c), 1953 Comp. (predecessor of this section), was that contractors whose machinery and equipment was used in more than one county were subject to property tax on sales inventories, and contractors whose machinery and equipment was not used in more than one county were not subject to property tax on sales inventories, this difference in tax treatment based solely on whether a contractor uses his equipment in more than one county was arbitrary and resulted in a denial of equal protection of the law; therefore, to the extent that valuation by the property appraisal department deprives the taxpayer of the exemption in former 7-36-9 NMSA 1978, that section is unconstitutional. *Halliburton Co. v. Property Appraisal Dep't*, 1975-NMCA-123, 88 N.M. 476, 542 P.2d 56.

Use of equipment in multiple counties cannot be defended on basis of administrative convenience. — A classification based solely on the use of machinery and equipment in more than one county is patently unreasonable, and cannot be defended on the basis of assessment procedures. Administrative convenience in arriving at a valuation of the property involved does not show a rational basis for taxing inventories of contractors who report value to the property appraisal department rather than to the county assessor. The fact that taxpayers may reasonably be required to report their property values to different government offices because of differences in geographic operations does not provide a reasonable basis for a difference in tax treatment on the values reported. *Halliburton Co. v. Property Appraisal Dep't*, 1975-NMCA-123, 88 N.M. 476, 542 P.2d 56.

Mineral value taxed centrally. — In New Mexico, any mineral value, whether held in fee or as severed minerals, may only be classified and valued by the state tax commission (now taxation and revenue department). *Gerner v. State Tax Comm'n*, 1963-NMSC-022, 71 N.M. 385, 378 P.2d 619.

Director, not court, to choose between conflicting inferences. — Decision of the director supported by substantial evidence that taxpayer contractor's activities, which were performed prior to production from a well, in the usual course of business, involving the use of machinery and equipment commonly used in the course of drilling an oil and gas well came within 72-6-4A(1)(c), 1953 Comp. (now Section 7-36-2C(3) NMSA 1978), was affirmed since although there was conflicting evidence and it was for the director to choose between conflicting inferences. *Halliburton Co. v. Prop. Appraisal Dep't*, 1975-NMCA-123, 88 N.M. 476, 542 P.2d 56.

Use of machinery and equipment sufficient. — Section 72-6-4A(1)(c), 1953 Comp. (now Section 7-36-2C(3) NMSA 1978), by its terms, did not require a company to be the drilling contractor; the contractor's work must involve the use of, but not be limited to, machinery and equipment commonly used in oil and gas well drilling. *Halliburton Co. v. Prop. Appraisal Dep't*, 1975-NMCA-123, 88 N.M. 476, 542 P.2d 56.

Assessed value is not competent direct evidence of value for purposes other than taxation. *Gomez v. Board of Educ*., 1966-NMSC-095, 76 N.M. 305, 414 P.2d 522.

Valuation of livestock. — Subsection D of Section 7-36-21 NMSA 1978 does not allocate valuation of livestock responsibility to the division (department); instead, that section simply requires the division (department) to supervise the assessor by establishing classes of livestock and values for those classes of livestock. While the division (department) must establish general criteria for valuing livestock, the county assessor does the actual valuation. *Zwaagstra v. DelCurto*, 1992-NMCA-087, 114 N.M. 263, 837 P.2d 457.

Department found in contempt for failing to value and assess high-voltage transmission lines for property taxes. — Where petitioners petitioned for a writ of mandamus to compel the New Mexico taxation and revenue department (department)

to establish values for two high-voltage transmission lines in Harding county and report those values to the Harding county assessor so that property taxes could be assessed on the lines, and where the district court issued the peremptory writ, determining that the transmission lines were taxable, and ordered the department to complete the valuation processes for the two transmission lines, timely conclude any protests, and certify the values to the county assessor for preparation of a bill for the property tax due, and where, following an administrative hearing officer's conclusion that the transmission lines did not have any value for tax assessment purposes, the department certified that the transmission were not taxable, which was contrary to the district court's order, and certified to the district court that the department complied with the court's order, and where petitioners then filed a motion for an order to show cause, arguing that the department had not complied with the peremptory writ, the district court did not abuse its discretion in holding the department in contempt and in awarding petitioners attorney fees as sanctions, because the department admittedly failed to act in accordance with the dictates of the law after the district court ordered the department to act and after the department was given notice and an opportunity to be heard. *Harding Cnty. Bd. of Comm'rs v. N.M. Tax'n & Revenue Dep't*, 2021-NMSC-007, *aff'g* A-1-CA-36305, mem. op. (May 24, 2019) (nonprecedential).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Method of rule for valuation of leasehold interest for purpose of property taxation, 84 A.L.R. 1310.

Price paid or received by taxpayer for property as evidence of its value for tax purposes, 160 A.L.R. 684.

Method of calculating value of stock of goods or the like for purposes of tangible personal property tax, 66 A.L.R.2d 833.

Separate assessment and taxation of air rights, 56 A.L.R.3d 1300.

7-36-2.1. Classification of property.

A. Property subject to valuation for property taxation purposes shall be classified as either residential property or nonresidential property.

B. The department by regulation, ruling, order or other directive shall provide for the implementation of a classification system and shall include a method for apportioning the value of multiple-use properties between residential and nonresidential components.

History: 1978 Comp., § 7-36-2.1, enacted by Laws 1981, ch. 37, § 63; 1995, ch. 12, § 7.

ANNOTATIONS

Cross references. — For general methods of valuation of property, *see* 7-36-15 NMSA 1978.

For limitations on tax rates on residential property, *see* 7-37-7.1 NMSA 1978.

For presumption of nonresidential classification, *see* 7-38-17.1 NMSA 1978.

The 1995 amendment, effective June 16, 1995, substituted "department" for "division" and made a minor stylistic change in Subsection B.

7-36-3. Industrial revenue bond, pollution control bond, economic development bond and regional air center special economic district bond project property; health-related equipment; tax status.

A. Property interests of a lessee in project property held under a lease from a county or a municipality under authority of an industrial revenue bond or pollution control revenue bond act, the Statewide Economic Development Finance Act [Chapter 6, Article 25 NMSA 1978] or the Regional Air Center Special Economic District Act [5-20-1 to 5-20-10 NMSA 1978] are exempt from property taxation for as long as there is an outstanding bonded indebtedness under the terms of the revenue bonds issued for the acquisition of the project property, but in no event for a period of more than thirty years from the date of execution of the first lease of the project to the lessee by the county or municipality.

B. Property interests of a person, other than a public utility, arising out of the purchase of a project authorized by the Industrial Revenue Bond Act [Chapter 3, Article 32 NMSA 1978], the County Industrial Revenue Bond Act [Chapter 4, Article 59 NMSA 1978], the Pollution Control Revenue Bond Act [3-59-1 to 3-59-14 NMSA 1978], the Statewide Economic Development Finance Act or the Regional Air Center Special Economic District Act are exempt from property taxation for as long as the project purchaser remains liable to the project seller for any part of the purchase price, but not to exceed thirty years from the date of execution of the sale agreement.

C. Property interests of a participating health facility in health-related equipment purchased, acquired, leased, financed or refinanced with the proceeds of bonds issued under the Hospital Equipment Loan Act [Chapter 58, Article 23 NMSA 1978] are exempt from property taxation for as long as the participating health facility remains liable for any amount under any lease, loan or other agreement securing the bonds, but not to exceed thirty years from the date the bonds were issued for the health-related equipment.

D. The exemptions from property taxation under this section are not cumulative; provided, however, that the exemptions may be applied consecutively if subsequent exemptions relate to the financing of a new project or new health-related equipment.

History: 1953 Comp., § 72-29-2.1, enacted by Laws 1975, ch. 218, § 1; 1977, ch. 137, § 1; 2003, ch. 349, § 20; 2006, ch. 90, § 1; 2006, ch. 92, § 1; 2019, ch. 13, § 11.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, provided that property within a district held under a lease from a county or municipality is exempt from property tax as long as there is outstanding bond indebtedness in the same way industrial revenue bonds are exempt from property tax; in the section heading, added "and regional air center special economic district bond"; and in Subsections A and B, added "or the Regional Air Center Special Economic District Act".

The 2006 amendment, effective May 17, 2006, added a new Subsection C, to provide a property tax exemption for property interests in health-related equipment; and in Subsection D (formerly Subsection C), provided that the exemption may be applied consecutively if subsequent exemption relate to the financing of a new project or new health-related equipment.

Duplicate laws. — Laws 2006, ch. 90, § 1 and Laws 2006, ch. 92, § 1 enacted identical amendments to this section. The section was set out as amended by Laws 2006, ch. 92, §1. *See* 12-1-8 NMSA 1978.

Applicability. — Laws 2006, ch. 92, § 4 made the provisions of Laws 2006, ch. 92, § 1 applicable to property tax years beginning on or after January 1, 2006.

The 2003 amendment, effective June 20, 2003, inserted "or the Statewide Economic Development Finance Act" in Subsections A and B.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Pollution control: validity and construction of statute or ordinance allowing tax exemption for property used in pollution control, 65 A.L.R.3d 434.

7-36-3.1. Metropolitan redevelopment property; tax status of lessee's interests.

Property interests of a lessee in project property held under a lease with respect to a project authorized by the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978] and acquired or held by a municipality prior to January 1, 1986 under the provisions of that code are exempt from property taxation for as long as there is an outstanding bonded indebtedness, but in any event for a period not to exceed ten years from the date of execution of the first lease of the project by the municipality. Property interests of a lessee of or an owner of a substantial beneficial interest in project property acquired or held by a municipality on or after January 1, 1986 with respect to a project authorized by the Metropolitan Redevelopment Code are exempt from property taxation for a period extending from the date of acquisition of the project property by the municipality through December 31 of the year in which the seventh anniversary of that acquisition date occurs.

History: 1978 Comp., § 7-36-3.1, enacted by Laws 1979, ch. 56, § 2; 1985, ch. 225, § 5.

ANNOTATIONS

Cross references. — For Community Development Incentive Act, *see* 3-64-1 NMSA 1978 et seq.

7-36-3.2. Enterprise zone property; tax status of lessee's interests.

Property interests of a lessee in project property held under a lease with respect to a project authorized by the Enterprise Zone Act [5-9-1 to 5-9-15 NMSA 1978] and acquired or held by a local government are exempt from property taxation for a period not to exceed ten years from the date of execution of the first lease of the project by the local government.

History: 1978 Comp., § 7-36-3.2, enacted by Laws 1993, ch. 33, § 16.

ANNOTATIONS

7-36-4. Fractional property interests; definitions; taxation and valuation of fractional interests.

A. As used in this section:

(1) "fractional interest" means a tangible interest in real property, except for mineral property as defined in Section 7-36-22 NMSA 1978, that is less than the total of the interests existing in the property, but "fractional interest" does not include those property interests described in Sections 7-36-3, 7-36-3.1 and 7-36-3.2 NMSA 1978 nor does it include the lessee's interest under a lease when the term of the lease is more than seventy-five years;

(2) "exempt entity" means any person whose real property is exempt from taxation under the constitution of New Mexico or the Enabling Act (36 Stat. 557, as amended) by reason of ownership;

(3) "exempt property" means property that is exempt from property taxation pursuant to Article 8, Section 3 of the constitution of New Mexico by reason of use;

(4) "improvements" includes surface and subsurface structures, fixtures, transmission lines, pipelines and other works, but "improvements" does not include:

(a) that property either included or specifically excluded under the terms "property used in connection with mineral property" under Section 7-36-23 NMSA 1978, "property used in connection with potash mineral property" under Section 7-36-24 NMSA 1978 and "property used in connection with uranium mineral property" under Section 7-36-25 NMSA 1978;

(b) a dwelling occupied by a low-income resident in a housing project authorized under the provisions of the Municipal Housing Law [Chapter 3, Article 45 NMSA 1978]; and

(c) those property interests described in Sections 7-36-3, 7-36-3.1 and 7-36-3.2 NMSA 1978;

(5) "nonexempt entity" means any person that is not an exempt entity; and

(6) "nonexempt property" means property that is not exempt property.

B. Fractional interests of nonexempt entities in real property of exempt entities are exempt from property taxation under the Property Tax Code, but this exemption shall not apply to the following property:

(1) improvements of land of an exempt entity if the improvements are owned or leased by a nonexempt entity; these improvements are subject to valuation for property taxation purposes and to property taxation to be paid by the nonexempt entity; and

(2) property interests of nonexempt entities held under equitable title in the property of exempt entities.

C. When fractional interests are created in property:

(1) fractional interests that are nonexempt property shall be reported to the appropriate valuation authority by the fractional interest owners for valuation for property tax purposes if the owner is a nonexempt entity; and

(2) except for fractional interests owned by the United States, an Indian nation, tribe or pueblo, the state of New Mexico or a political subdivision of the state, fractional interests that are owned by a nonexempt entity but are claimed to be exempt property shall be reported by the owner to the appropriate valuation authority for a determination of exemption status and valuation if determined to be nonexempt property.

D. Fractional interests that are nonexempt property shall be valued by the applicable method of valuation pursuant to the Property Tax Code, and if fractional interests that are exempt property have been created, the value of the remaining nonexempt fractional interests shall be determined in the property tax year following the creation of the interests as the value of the property in the property tax year immediately prior to the year in which creation of the fractional interests occurred, increased or decreased by the value directly attributable to the creation of the fractional interests that are exempt property. For subsequent property tax years, the nonexempt fractional interests shall be valued pursuant to the applicable methods of valuation.

History: 1953 Comp., § 72-29-2.2, enacted by Laws 1976, ch. 61, § 1; 1977, ch. 285, § 1; 1985, ch. 109, § 3; 1985, ch. 225, § 6; 1995, ch. 12, § 8; 1998, ch. 49, § 1.

ANNOTATIONS

Cross references. — For constitutional provision as to tax exempt property, *see* N.M. Const., art. VIII, § 3.

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

For the Enabling Act, *see* the New Mexico Territorial Laws and Treaties on *NMOneSource.com*.

The 1998 amendment, effective May 20, 1998, in the section heading, inserted "taxation and valuation of fractional interests"; added new Paragraphs A(3) and A(6) and redesignated the remaining Paragraphs in Subsection A accordingly; substituted "subject" for "hereby subjected" in Paragraph B(1); and added a new Subsection C.

The 1995 amendment, effective June 16, 1995, designated the existing introductory language as Subsection A and redesignated former Subsections A through D as Paragraphs A(1) through A(4); deleted "and Sections 7-36-5 and 7-36-6 NMSA 1978" following "section" in the introductory phrase of Subsection A; inserted references to Section 7-36-3.2 in Paragraph A(1) and Subparagraph A(3)(c); added Subsection B; and made related stylistic changes.

Constitutional. — Constitutional guarantees of equal protection and uniform taxation are not violated by the provision of this section for a 75-year limitation on leases qualifying for exemption. *Welch v. Sandoval Cnty. Valuation Protests Bd*., 1997-NMCA-086, 123 N.M. 722, 945 P.2d 452, cert. denied, 123 N.M. 627, 944 P.2d 275.

License, not constituting interest in real property, does not meet definition of "fractional interest" set forth in Subsection A of this section. *Cutter Flying Serv., Inc. v. Property Tax Dep't*, 1977-NMCA-105, 91 N.M. 215, 572 P.2d 943.

"Term of the lease" means the original term; thus, where a lease had an original term of more than 75 years but had less than 75 years remaining, the leasehold was not a "fractional interest" under Paragraph A(1). *Welch v. Sandoval Cnty. Valuation Protests Bd*., 1997-NMCA-086, 123 N.M. 722, 945 P.2d 452, cert. denied, 123 N.M. 627, 944 P.2d 275.

"Real property" is generally understood to mean a parcel of land together with all structures, fixtures and improvements upon it. *Cutter Flying Serv., Inc. v. Property Tax Dep't*, 1977-NMCA-105, 91 N.M. 215, 572 P.2d 943.

7-36-5. Repealed.

ANNOTATIONS

Repeals. — Laws 1995, ch. 12, § 15, repealed 7-36-5 NMSA 1978, as enacted by Laws 1976, ch. 61, § 2, relating to fractional interests, legislative findings and purposes, effective June 16, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 7-36-4 NMSA 1978.

7-36-6. Repealed.

ANNOTATIONS

Repeals. — Laws 1995, ch. 12, § 15, repealed 7-36-6 NMSA 1978, as enacted by Laws 1976, ch. 61, § 3, relating to fractional interests, improvement, property tax status, effective June 16, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 7-36-4 NMSA 1978.

7-36-7. Property subject to valuation for property taxation purposes.

A. Except for the property listed in Subsection B of this section or exempt pursuant to Section 7-36-8 NMSA 1978, all property is subject to valuation for property taxation purposes under the Property Tax Code if it has a taxable situs in the state.

B. The following property is not subject to valuation for property taxation purposes under the Property Tax Code:

(1) property exempt from property taxation under the federal or state constitution, federal law, the Property Tax Code or other laws, but:

(a) this does not include property all or a part of the value of which is exempt because of the application of the veteran, disabled veteran or head-of-family exemption;

(b) this provision does not excuse an owner from obligations to report the owner's property as required by regulation of the department adopted under Section 7-38-8.1 NMSA 1978 or to claim its exempt status under Subsection C of Section 7-38-17 NMSA 1978;

(c) this includes property of a museum that: 1) has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended or renumbered; 2) is used to provide educational services; and 3) grants free admission to each student who attends a public school in the county in which the museum is located; and

(d) this includes property that is operated either as a community to which the Continuing Care Act [Chapter 24, Article 17 NMSA 1978] applies or as a facility licensed

by the department of health to operate as a nursing facility, a skilled nursing facility, an adult residential care facility, an intermediate care facility or an intermediate care facility for the developmentally disabled; and is owned by a charitable nursing, retirement or long-term care organization that: 1) has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended or renumbered; 2) donates or renders gratuitously a portion of its services or facilities; and 3) uses all funds remaining after payment of its usual and necessary expenses of operation, including the payment of liens and encumbrances upon its property, to further its charitable purpose, including the maintenance, improvement or expansion of its facilities;

(2) oil and gas property subject to valuation and taxation under the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978] and the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978]; and

(3) productive copper mineral property subject to valuation and taxation under the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978]; for the purposes of this section, "copper mineral property" means all mineral property and property held in connection with mineral property when seventy-five percent or more, by either weight or value, of the salable mineral extracted from or processed by the mineral property is copper.

History: 1953 Comp., § 72-29-3, enacted by Laws 1973, ch. 258, § 15; 1981, ch. 37, § 53; 1982, ch. 28, § 3; 1990, ch. 125, § 3; 1995, ch. 12, § 9; 2000, ch. 92, § 2; 2000, ch. 94, § 2; 2001, ch. 217, § 1; 2008, ch. 46, § 1.

ANNOTATIONS

Cross references. — For constitutional provision as to equality in ad valorem taxation, *see* N.M. Const., art. VIII, § 1.

For constitutional provision as to tax exempt property, *see* N.M. Const., art. VIII, § 3.

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

For constitutional provision as to assessment of lands, *see* N.M. Const., art. VIII, § 6.

For tax assessment of land by reference to numbers given by county surveyor, *see* 4-42-13 NMSA 1978.

For Section 501(c)(3) of the Internal Revenue Code of 1986, *see* 26 USCS § 501(c)(3).

The 2008 amendment, effective February 28, 2008, added Subparagraph (d) of Paragraph (1) of Subsection B.

Applicability. — Laws 2008, ch. 46, § 2 provided that Laws 2008, ch. 46, § 1 was applicable to taxable years beginning on or after January 1, 2008.

The 2001 amendment, effective June 15, 2001, added Paragraph B(1)(c).

The 2000 amendment, effective March 7, 2000, inserted "disabled veteran" in Subsection B(1) and made minor stylistic changes.

The 1995 amendment, effective June 16, 1995, inserted "or exempt pursuant to Section 7-36-8 NMSA 1978" in Subsection A.

The 1990 amendment, effective March 7, 1990, in Subsection B, substituted "department" for "division" in Paragraph (1), added Paragraph (3), and made related stylistic changes.

Assessor's standing to raise the constitutionality of this section. — Where the Santa Fe county assessor appealed the district court's decision that petitioner, a retirement and continuing care community, was improperly denied a charitable property tax exemption on the grounds that by meeting the plain language requirements of 7-36-7(B)(1)(d) NMSA 1978, petitioner had also fulfilled the charitable use requirements for tax exemption under art. VIII, § 3 of the New Mexico constitution, the county assessor had standing to challenge the constitutionality of 7-36-7(B)(1)(d) NMSA 1978, because a justiciable controversy existed with regard to petitioner's claim of entitlement to a tax exemption and the county assessor is responsible and has the authority for the valuation of all property subject to valuation for property tax purposes. *El Castillo Ret. Residences v. Martinez*, 2017-NMSC-026, ***aff'g*** 2015-NMCA-041, and *overruling La Vida Llena v. Montoya*, 2013-NMCA-048, 299 P.3d 456.

Constitutional limitation on the legislature's power. — N.M. Const., art. VIII, § 3 operates as a limit on the legislature's power to redefine categories of property which will be exempt from taxation, and 7-36-7(B)(1)(d) NMSA 1978 may not be interpreted or applied to grant exemptions that are not authorized by art. VIII, § 3. *El Castillo Ret. Residences v. Martinez*, 2017-NMSC-026, ***aff'g*** 2015-NMCA-041, and *overruling La Vida Llena v. Montoya*, 2013-NMCA-048, 299 P.3d 456.

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

Department found in contempt for failing to value and assess high-voltage transmission lines for property taxes. — Where petitioners petitioned for a writ of mandamus to compel the New Mexico taxation and revenue department (department) to establish values for two high-voltage transmission lines in Harding county and report those values to the Harding county assessor so that property taxes could be assessed on the lines, and where the district court issued the peremptory writ, determining that the transmission lines were taxable, and ordered the department to complete the valuation processes for the two transmission lines, timely conclude any protests, and certify the values to the county assessor for preparation of a bill for the property tax due, and where, following an administrative hearing officer's conclusion that the transmission lines did not have any value for tax assessment purposes, the department certified that the transmission lines were not taxable, which was contrary to the district court's order, and certified to the district court that the department complied with the court's order, and where petitioners then filed a motion for an order to show cause, arguing that the department had not complied with the peremptory writ, the district court did not abuse its discretion in holding the department in contempt and in awarding petitioners attorney fees as sanctions, because the department admittedly failed to act in accordance with the dictates of the law after the district court ordered the department to act and after the department was given notice and an opportunity to be heard. *Harding Cnty. Bd. of Comm'rs v. N.M. Tax'n & Revenue Dep't*, 2021-NMSC-007, *aff'g* A-1-CA-36305, mem. op. (May 24, 2019) (nonprecedential).

Property operated under the Continuing Care Act. — Section 7-36-7(B)(1)(d) NMSA 1978 does not require a minimum amount of donated or gratuitously rendered services or facilities for charitable purposes in order for a continuing care facility to receive the property tax exemption. *La Vida Llena v. Montoya*, 2013-NMCA-048, 299 P.3d 456.

Where protestant operated a continuing care facility pursuant to the Continuing Care Act, Section 24-17-1 NMSA 1978 et seq., had been granted an exemption from federal taxes, used all funds remaining after payment of its usual and necessary expenses of operation to further its charitable purpose, provided services to some medicare residents when the cost of their care exceeded medicare reimbursement, permitted its staff time to serve other charitable organizations, provided services for its foundation, and did not terminate resident agreements when residents did not pay, protestant donated or rendered gratuitously some part of its facilities and services for charitable services and was entitled to receive the property tax exemption. *La Vida Llena v. Montoya*, 2013-NMCA-048, 299 P.3d 456.

Property to provide educational services. — Property devoted primarily and substantially to traditional museum functions of: (1) the preservation and exhibition of significant aspects, artifacts, and works of our lives and history for the benefit of the general public's appreciation, study, and knowledge; and (2) the carrying on of museum-related educational programs and activities such as lectures, studies, publishing scholarly materials, and creating instructional materials, is property with uses and purposes that ought to be considered for educational purposes tax exemption

pursuant to the state constitution. *Georgia O'Keefe Museum v. County of Santa Fe*, 2003-NMCA-003, 133 N.M. 297, 62 P.3d 754.

To qualify for the educational purposes tax exemption, a museum must adhere to a systematic approach to learning. This requires an ordered, methodical, structured, and regular learning opportunity provided by the museum owner whose primary goal and major purpose through the museum is to impart knowledge and information in order to educate the public in respect to a branch of learning and it requires substantial public benefit. *Georgia O'Keefe Museum v. County of Santa Fe*, 2003-NMCA-003, 133 N.M. 297, 62 P.3d 754.

Indian lands and property exempt. — New Mexico Const., art. XXI, § 2, clearly precludes state from taxing Indian lands and Indian property on the reservation. *Prince v. Board of Educ*., 1975-NMSC-068, 88 N.M. 548, 543 P.2d 1176.

Private non-Indian corporations cannot escape obligation to pay state taxes by locating their property on Indian reservations. Nothing forbids the imposition of such a tax, since it does not in any way infringe on the right of reservation Indians to make their own laws and be ruled by them. *Prince v. Board of Educ*., 1975-NMSC-068, 88 N.M. 548, 543 P.2d 1176.

State may tax property of corporation leasing land from Indian tribe. — Nothing prevents New Mexico from imposing a tax on the property of non-Indian corporations leasing land from the Navajo tribe, despite the fact that the property might be located on the reservation, because although the land itself cannot be taxed, the non-Indian property, which does not belong to and may not be acquired by the United States or reserved for its use, can. As private property owned by non-Indians who are not performing a federal function, it is subject to the taxing powers of this state. *Prince v. Board of Educ*., 1975-NMSC-068, 88 N.M. 548, 543 P.2d 1176.

Lease to construct housing on federal land subject to tax. — Congress having explicitly removed the bar of sovereign immunity as it applied to property belonging to the United States, the immunity granted the federal government by N.M. Const., art. VIII, § 3, and art. XXI, § 2, clearly was not available to one who had lease to construct military housing on federal land. It was his interest that was subject to taxation. *Kirtland Heights, Inc. v. Board of Cnty. Comm'rs*, 1958-NMSC-066, 64 N.M. 179, 326 P.2d 672.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 191 to 220.

Duty to pay real-property taxes as affected by time of commencement or termination of life estate, 8 A.L.R.4th 643.

Exemption of nonprofit theater or concert hall from local property taxation, 42 A.L.R.4th 614.

Property tax: effect of tax-exempt lessor's reversionary interest on valuation of nonexempt lessee's interest, 57 A.L.R.4th 950.

Exemption from real-property taxation of residential facilities maintained by hospital for patients, staff, or others, 61 A.L.R.4th 1105.

Nursing homes as exempt from property taxation, 34 A.L.R.5th 529.

84 C.J.S. Taxation § 120.

7-36-8. Tangible personal property exempt from property tax; exceptions.

A. Except as provided in Subsection B of this section, tangible personal property owned by a person is exempt from property taxation.

B. The following tangible personal property owned by a person is subject to valuation and taxation under the Property Tax Code:

(1) livestock;

(2) manufactured homes;

(3) aircraft not registered under the Aircraft Registration Act [64-4-1 to 64-4-15 NMSA 1978];

(4) private railroad cars, the earnings of which are not taxed under the provisions of the Railroad Car Company Tax Act [Chapter 7, Article 11 NMSA 1978];

(5) tangible personal property subject to valuation under Sections 7-36-22 through 7-36-25 and 7-36-27 through 7-36-32 NMSA 1978;

(6) vehicles not registered under the provisions of the Motor Vehicle Code [Chapter 66, Articles 1 through 8 NMSA 1978] and for which the owner has claimed a deduction for depreciation for federal income tax purposes during any federal income taxable year occurring in whole or in part during the twelve months immediately preceding the first day of the property tax year; and

(7) other tangible personal property not specified in Paragraphs (1) through (6) of this subsection:

(a) that is used, produced, manufactured, held for sale, leased or maintained by a person for purposes of the person's profession, business or occupation; and

(b) for which the owner has claimed a deduction for depreciation for federal income tax purposes during any federal income taxable year occurring in whole or in

part during the twelve months immediately preceding the first day of the property tax year.

History: 1953 Comp., § 72-1-21, enacted by Laws 1973, ch. 373, § 1 and recompiled as § 72-29-3.1 by Laws 1974, ch. 92, § 35; 1975, ch. 53, § 1; 1983, ch. 295, § 1; 1991, ch. 166, § 4; 1992, ch. 34, § 1; 1993, ch. 8, § 1; 1995, ch. 12, § 10.

ANNOTATIONS

Cross references. — For constitutional provision as to tax exempt property, *see* N.M. Const., art. VIII, § 3.

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

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

The 1995 amendment, effective June 16, 1995, substituted "Tangible" for "Certain" and added "exceptions" in the section heading and rewrote the section to such an extent that a detailed comparison would be impracticable.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Classification, as real estate or personal property, of mobile homes or trailers for purposes of state or local taxation, 7 A.L.R.4th 1016.

7-36-9. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 8, § 2 repealed 7-36-9 NMSA 1978, as enacted by Laws 1973, ch. 374, § 2, relating to inventories of personal property exempt from property taxation, exceptions, effective June 18, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

7-36-10. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 8, § 2 repealed 7-36-10 NMSA 1978, as enacted by Laws 1973, ch. 11, § 1, relating to inventories of personal property exempt from property taxation, exceptions, effective June 18, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

7-36-11. Reserved.

7-36-12. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 8, § 2 repealed 7-36-12 NMSA 1978, as enacted by Laws 1973, ch. 10, § 1, relating to exemption from property tax, aircraft registered under the Aircraft Registration Act, effective June 18, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

7-36-13. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 8, § 2 repealed 7-36-13 NMSA 1978, as enacted by Laws 1973, ch. 9, § 1, relating to exemption from property tax, private railroad cars, the earnings of which are subject to taxation under provisions of Section § 7-11-3 NMSA 1978, effective June 18, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

7-36-14. Taxable situs; allocation of value of property.

A. Property has a taxable situs in the state if:

(1) it is real property and is located in the state;

(2) it is an interest in real property and the real property is located in the state;

(3) it is personal property and is physically present in the state on the date when it is required to be valued for property taxation purposes except for:

(a) property being transported in interstate commerce that is physically present in the state only while being transported through or over the state;

(b) property that is consigned to a warehouse or factory in the state from outside the state for the purpose of storage, manufacturing, processing or fabricating and which is in transit to a final destination outside the state, whether the destination is specified before or after the original transportation begins; or

(c) wool, mohair, hides, pelts and farm crops when owned by the person that originally produced them, but only during the tax year in which produced and the following tax year;

(4) it is personal property that is a part of a communications system as that term is defined in Section 7-36-30 NMSA 1978 and, even though not physically present in the state on the date when it is required to be valued for property taxation purposes, it

is an integral part of the system and substantial property that is on that date a part of the communications system is physically present in New Mexico; or

(5) it is personal property and, even though not physically present in the state on the date when it is required to be valued for property taxation purposes, it is subject to valuation in accordance with the provisions of Section 7-36-31 or 7-36-32 NMSA 1978.

B. Real property and interests in real property having a taxable situs in the state shall be valued in and have their value allocated to the governmental units in which the real property is located unless a different method of allocation is specified under the Property Tax Code or by regulation of the department.

C. Personal property having a taxable situs in the state shall be valued in and have its value allocated to the governmental units in which the property is located on the date it is required to be valued unless a different method of allocation is specified under the Property Tax Code or by regulation of the department.

History: 1953 Comp., § 72-29-4, enacted by Laws 1973, ch. 258, § 16; 1985, ch. 109, § 4.

ANNOTATIONS

The 1985 amendment added Subsections A(4) and A(5).

Department found in contempt for failing to value and assess high-voltage transmission lines for property taxes. — Where petitioners petitioned for a writ of mandamus to compel the New Mexico taxation and revenue department (department) to establish values for two high-voltage transmission lines in Harding county and report those values to the Harding county assessor so that property taxes could be assessed on the lines, and where the district court issued the peremptory writ, determining that the transmission lines were taxable, and ordered the department to complete the valuation processes for the two transmission lines, timely conclude any protests, and certify the values to the county assessor for preparation of a bill for the property tax due, and where, following an administrative hearing officer's conclusion that the transmission lines did not have any value for tax assessment purposes, the department certified that the transmission lines were not taxable, which was contrary to the district court's order, and certified to the district court that the department complied with the court's order, and where petitioners then filed a motion for an order to show cause, arguing that the department had not complied with the peremptory writ, the district court did not abuse its discretion in holding the department in contempt and in awarding petitioners attorney fees as sanctions, because the department admittedly failed to act in accordance with the dictates of the law after the district court ordered the department to act and after the department was given notice and an opportunity to be heard. *Harding Cnty. Bd. of Comm'rs v. N.M. Tax'n & Revenue Dep't*, 2021-NMSC-007, *aff'g* A-1-CA-36305, mem. op. (May 24, 2019) (nonprecedential).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Situs of tangible personal property for purposes of property taxation, 2 A.L.R.4th 432.

Situs of aircraft, rolling stock and vessels for purposes of property taxation, 3 A.L.R.4th 837.

7-36-15. Methods of valuation for property taxation purposes; general provisions.

A. Property subject to valuation for property taxation purposes under this article of the Property Tax Code shall be valued by the methods required by this article of the Property Tax Code whether the determination of value is made by the department or the county assessor. The same or similar methods of valuation shall be used for valuation of the same or similar kinds of property for property taxation purposes.

B. Unless a method or methods of valuation are authorized in Sections 7-36-20 through 7-36-33 NMSA 1978, the value of property for property taxation purposes shall be its market value as determined by application of the sales of comparable property, income or cost methods of valuation or any combination of these methods. In using any of the methods of valuation authorized by this subsection, the valuation authority:

(1) shall apply generally accepted appraisal techniques; and

(2) in determining the market value of residential housing, shall consider any decrease in the value that would be realized by the owner in a sale of the property because of the effects of any affordable housing subsidy, covenant or encumbrance imposed pursuant to a federal, state or local affordable housing program that restricts the future use of the property or the resale price of the property or would otherwise prohibit the owner from fully benefitting from any enhanced value of the property. As used in this paragraph:

(a) "subsidy, covenant or encumbrance imposed pursuant to a federal, state or local affordable housing program" includes those imposed by a nonprofit entity approved by a governmental entity as a qualifying grantee pursuant to the Affordable Housing Act [6-27-1 to 6-27-8 NMSA 1978]; and

(b) "residential housing" means any building, structure or portion thereof that is primarily occupied, or designed or intended primarily for occupancy, as a residence by one or more households and any real property that is offered for sale or lease for the construction or location thereon of such a building, structure or portion thereof. "Residential housing" includes congregate housing, manufactured homes, housing intended to provide or providing transitional or temporary housing for homeless persons and common health care, kitchen, dining, recreational and other facilities primarily for use by residents of a residential housing project.

C. Dams, reservoirs, tanks, canals, irrigation wells, installed irrigation pumps, stock-watering wells and pumps, similar structures and equipment used for irrigation or stock-watering purposes, water rights and private roads shall not be valued separately from the land they serve. The foregoing improvements and rights shall be considered as appurtenances to the land they serve, and their value shall be included in the determination of value of the land.

D. The department shall adopt regulations to implement the methods of valuation authorized in this article of the Property Tax Code.

History: Laws 1973, ch. 258, § 17; 1953 Comp., § 72-29-5; reenacted by Laws 1975, ch. 165, § 2; 1995, ch. 12, § 11; 2008, ch. 77, § 1.

ANNOTATIONS

Cross references. — For constitutional provision as to equality in ad valorem taxation, *see* N.M. Const., art. VIII, § 1.

For constitutional provision as to assessment of lands, *see* N.M. Const., art. VIII, § 6.

The 2008 amendment, effective February 29, 2008, added Paragraph (2) of Subsection B.

Applicability. — Laws 2008, ch. 77, § 2 provided that the provisions of Laws 2008, ch. 77, § 1 apply to the 2008 and subsequent property tax years.

The 1995 amendment, effective June 16, 1995, in Subsection B, substituted "Sections 7-36-20 through 7-36-33 NMSA 1978" for "Sections 72-29-9 through 72-29-22 NMSA 1953", and substituted the language beginning "by application of the" for "by sales of comparable property, or, if that method cannot be used due to the lack of comparable sales data for the property being valued, then its value shall be determined using an income method or cost methods of valuation" at the end of the first sentence; and substituted "Section 7-38-90 NMSA 1978" for "72-31-88 NMSA 1953" in Subsection D.

I. GENERAL CONSIDERATION.

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

Where the county valuation protests board refused to consider the taxpayer's comparable 2009 sales evidence and relied exclusively on comparable 2008 sales for the valuation of the taxpayer's property for the 2009 tax year based on the board's interpretation of statutory and administrative code provisions that required property to be valued using only data available on January 1, 2009, the board's interpretation of the

statutory and administrative code provisions was reasonable. *AMREP Sw., Inc. v. Sandoval Cnty. Assessor*, 2012-NMCA-082, 284 P.3d 1118.

Assessor's valuation sufficient evidence. — Since the assessor's valuation is presumed to be correct it is sufficient evidence, where uncontradicted, to support the board's decision. *Peterson Props. v. Valencia Cnty. Valuation Protests Bd*., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

How presumption of assessor's valuation may be overcome. — The statutory presumption of correctness of the value of property by the county assessor for tax purposes can be overcome by a taxpayer showing that the assessor did not follow the applicable statutory provisions, or by presenting evidence tending to dispute the factual correctness of the valuation. *La Jara Land Developers, Inc. v. Bernalillo Cnty. Assessor*, 1982-NMCA-006, 97 N.M. 318, 639 P.2d 605.

Admission of taxpayer's evidence when market value indeterminable. — The protests board could not rely exclusively on the county assessor's valuation of property even though, according to 72-2-3, 1953 Comp., the assessment must be at "full actual value," and neither could it rely on comparable sales or sales of comparable lands where none have occurred; accordingly, the board should have allowed the admission of the only available relevant evidence which the taxpayer had. In situations where cash market value could not be determined, earning capacity, cost of reproduction and original cost less depreciation furnished relevant considerations for determining "value." *In re Miller*, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, cert. denied, 89 N.M. 5, 546 P.2d 70, *rev'd on other grounds*, 89 N.M. 547, 555 P.2d 142 (1976) (decided under prior law).

Presumption of assessor's valuation not overcome. — Since taxpayer failed to present any evidence of sales of comparable property or evidence of value based on generally accepted appraisal techniques, and its only evidence, the purchase price of its land in question, did not establish a market value under Subsection B, the presumption of the correctness of the assessor's valuation was not overcome. *Peterson Props. v. Valencia Cnty. Valuation Protests Bd*., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

Presumption of assessor's valuation not overcome. — The presumption of the correctness of the assessor's valuation was not overcome by the taxpayers' offer, as evidence of market value, the price for which they purchased the property, where the sales price was not the result of an arms'-length transaction because of the taxpayers' mailing campaign to convince landowners to sell their property to the taxpayers at below market prices. *In re Cobb*, 1991-NMCA-122, 113 N.M. 251, 824 P.2d 1053, cert. denied, 113 N.M. 44, 822 P.2d 1127 (1992).

Taxpayer rebutted presumption of assessor's valuation. — Since taxpayers presented uncontradicted evidence that access to their property was physically blocked and also offered the only substantial evidence of the fair market value of the property in the form of testimony by a real estate appraiser that because of the lack of access the

highest and best use that the property could be put to was as grazing land by one of the adjoining landowners, and that as such it had a fair market value of $18.00 per acre, or $2034 and $5022 respectively for the two tracts, they effectively rebutted the presumption of 7-38-6 NMSA 1978 that the county assessor's valuations of $313,875 and $169,500 were correct. *Petition of Kinscherff*, 1976-NMCA-097, 89 N.M. 669, 556 P.2d 355, cert. denied, 90 N.M. 8, 558 P.2d 620.

When county assessor did not follow any statutory method of valuation in 1976, but simply set the valuation of a shopping center back up to the 1972 figure, the decisions of the board were arbitrary and capricious, not supported by substantial evidence in the record taken as a whole, and otherwise not in accordance with law, and its orders were vacated. *San Pedro S. Group v. Bernalillo Cnty. Valuation Protest Bd*., 1976-NMCA-116, 89 N.M. 784, 558 P.2d 53.

Scope of "structures and equipment" in Subsection C. — The inclusion of Subsection C indicated that the exemption from separate valuation for the structures and equipment listed in Subsection C is not limited to structures and equipment used for the purposes of irrigation or stock-watering, but applies to all such structures and equipment. *Kerr-McGee Nuclear Corp. v. Property Tax Div*., 1980-NMCA-063, 95 N.M. 685, 625 P.2d 1202.

No denial of due process in failure to adopt regulations. — Taxpayer was not denied due process because the property tax department did not adopt regulations that listed the procedures to be followed, and identified the methods of valuation in general use by the department and the applicable factors to be included in determining the value of property, since the amended statute did not require regulations, and taxpayer had the right of discovery by deposition of all the facts necessary to defend the assessed valuation of its property. *Peterson Props. v. Valencia Cnty. Valuation Protests Bd*., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

Failure to require equalization does not establish official interpretation. — The fact that state officials have, for years, known that there are inequalities or lack of uniformity in tax assessments and have done nothing about it does not establish this as official "long-standing interpretation." It is, in essence, merely long-standing failure by respondents and their predecessors to require equalization as plainly required by the constitution and the legislative enactments. *State ex rel. Castillo Corp. v. N.M. Tax Comm'n*, 1968-NMSC-117, 79 N.M. 357, 443 P.2d 850.

Honest judgment most important. — What is most important is that the appraisers, the assessor and the protest board exercise an honest judgment based upon the information they possess or are able to acquire. *First Nat'l Bank v. Bernalillo Cnty. Valuation Protest Bd*., 1977-NMCA-005, 90 N.M. 110, 560 P.2d 174.

Sovereign immunity not applicable in mandamus of assessment ratio. — In a mandamus proceeding to require the performance of a duty plainly required under the constitution, i.e., to prescribe an assessment ratio so that property shall be uniformly

assessed in proportion to its value, the sovereign immunity doctrine is not applicable. *State ex rel. Castillo Corp. v. N.M. Tax Comm'n*, 1968-NMSC-117, 79 N.M. 357, 443 P.2d 850.

II. MARKET VALUE.

A. IN GENERAL.

"Market value" means a price which a purchaser, willing but not obliged to buy, would pay an owner, willing but not obliged to sell, taking into consideration all uses to which the property is adapted and might in reason be applied. *Peterson Props. v. Valencia Cnty. Valuation Protests Bd*., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

Usual factors which are considered in ascertaining fair market value of any given tract of land are its size, shape, location, topography, accessibility to roads, availability of public utilities and comparable sales, and, in a given instance, one factor may far outweigh all the rest in importance. *Petition of Kinscherff*, 1976-NMCA-097, 89 N.M. 669, 556 P.2d 355, cert. denied, 90 N.M. 8, 558 P.2d 620.

Legislature gave priority to first method of valuation, a valuation determined by sales of comparable property. It did not do so with reference to the succeeding methods. If the legislature intended to give priority to the second method, the "income method," over the third method, the "cost method," for any reason, it would have phrased the section in language similar to the priority established in the first method of valuation. *First Nat'l Bank v. Bernalillo Cnty. Valuation Protest Bd*., 1977-NMCA-005, 90 N.M. 110, 560 P.2d 174.

Proof of purchase price alone is not sufficient to fix market value without evidence of the details of the sale. *Cobb v. Otero Cnty. Assessor*, 1983-NMCA-090, 100 N.M. 207, 668 P.2d 323.

Market value not an absolute. — Subsection B makes it clear that market value is not a given or an absolute, it is only a method of determining value. *National Potash Co. v. Property Tax Div*., 1984-NMCA-055, 101 N.M. 404, 683 P.2d 521.

Explanation necessary when market value not used for valuation. — If market value is not used as the basis for calculating assessed valuation, the assessor must explain why that approach is not appropriate, or that there is a lack of adequate market data. *Protest of Plaza Del Sol Ltd. P'ship v. Assessor for Cnty. of Bernalillo*, 1986-NMCA-022, 104 N.M. 154, 717 P.2d 1123.

Past or future value not to serve as basis. — What the fair market value of a tract may have been in the past or speculation as to what it might be in the future cannot serve as the basis for valuation. *Petition of Kinscherff*, 1976-NMCA-097, 89 N.M. 669, 556 P.2d 355, cert. denied, 90 N.M. 8, 558 P.2d 620; *Bakel v. Bernalillo Cnty. Assessor*, 1980-NMCA-173, 95 N.M. 723, 625 P.2d 1240.

Past market value. — Evidence of what the fair market value of a tract may have been in the past cannot properly be utilized as the sole basis for valuation of the property for tax purposes. *La Jara Land Developers, Inc. v. Bernalillo Cnty. Assessor*, 1982-NMCA-006, 97 N.M. 318, 639 P.2d 605.

Use of mass appraisal method upheld. — The use by the county assessor of the mass appraisal methodology to value plaintiffs' undeveloped property for tax assessment purposes was permissible under this statute when the method was based on standard appraisal procedure, such as comparable sales, and the resulting valuation bore a reasonable relationship to the market value. *In re Cobb*, 1991-NMCA-122, 113 N.M. 251, 824 P.2d 1053, cert. denied, 113 N.M. 44, 822 P.2d 1127.

Using one uniform percentage depreciation factor for property valuation improper. — Any property valuation method which uses one uniform percentage depreciation factor, regardless of the age of the property, is an improper method of determining property value; such a method would not, except by mere coincidence, yield a value consistent with the fair market value of the property. *Anaconda Co. v. Prop. Tax Dep't*, 1979-NMCA-158, 94 N.M. 202, 608 P.2d 514, cert. denied, 94 N.M. 628, 614 P.2d 545.

Insufficient evidence to support county assessor's method of valuation. — Where appellant sought review of the Bernalillo county valuation protests board's valuation of appellant's commercial property, and where the county assessor testified that the assessor applies a forty-five percent limitation on operating expenses rather than applying the taxpayer's actual reported expenses, but absent data that forty-five percent is an appropriate limitation on operating expenses in this market, for this property type, and during this time period, there was insufficient evidence such that a reasonable person could conclude that the county assessor's application of the income valuation method utilized generally accepted appraisal techniques. *2727 San Pedro LLC v. Bernalillo Cty. Assessor*, 2017-NMCA-008.

B. COMPARABLE SALES METHOD.

"Comparable property" is property similar to the property being appraised, which has been recently sold or is currently being offered for sale in the same or competing areas. *Peterson Props. v. Valencia Cnty. Valuation Protests Bd*., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074; *New Mexico Baptist Found. v. Bernalillo Cnty. Assessor*, 1979-NMCA-102, 93 N.M. 363, 600 P.2d 309.

"Comparable" is defined as capable of being compared with, worthy of comparison, and thus must necessarily include dissimilarities as well as similarities. *Peterson Props. v. Valencia Cnty. Valuation Protests Bd*., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

"To compare". — In reviewing sales of other properties, "to compare" means to examine the characteristics or qualities of one or more properties for the purpose of

discovering their resemblances or differences; the aim is to show relative values by bringing out characteristic qualities, whether similar or divergent, and thus, comparisons based on sales may be made according to location, age and condition of improvements, income and expense, use, size, type of construction and in numerous other ways. *Peterson Props. v. Valencia Cnty. Valuation Protests Bd*., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

Best method is use of comparable sales. — The best method of ascertaining what a willing and informed buyer would pay a willing and informed seller in usual circumstances in light of the highest and best use to which the property may be put in the not too distant future is through the use of comparable sales. *Peterson Props. v. Valencia Cnty. Valuation Protests Bd*., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

Reasonable cash market value, reflected by comparable property sales, is relevant for determining the correct valuation of a piece of property, if there have been such sales. *Peterson Props. v. Valencia Cnty. Valuation Protests Bd*., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

When comparable sales evidence not presented. — Since the documents relied upon by a taxpayer as evidence of comparable sales are documents dealing with the sale of that very improvement whose valuation is the subject of the present dispute and the only evidence submitted by the taxpayer is the purchase price of the land in question, the taxpayer failed to present any evidence of sales of comparable property and the evidence submitted does not establish a market value under Subsection B and the statutory presumption of correctness of valuation for tax purposes still stands. *N.M. Baptist Found. v. Bernalillo Cnty. Assessor*, 1979-NMCA-102, 93 N.M. 363, 600 P.2d 309.

Test of comparable sales relevancy left to court's discretion. — The rule regarding comparable sales is one of relevancy and, not unlike the general evidentiary rule applied in all proceedings, requiring similarity of conditions. The test is usually left to the discretion of the court in light of the circumstances of each case. *Peterson Props. v. Valencia Cnty. Valuation Protests Bd*., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

C. INCOME OR COST METHOD.

When income or cost method of valuation utilized. — Since, if reliable comparable sales data can be reasonably obtained, the comparable sales method must be used, the taxpayer has the burden to demonstrate either that comparable sales data is not reasonably obtainable or that it would be unreliable. To demonstrate a lack of reliability, the taxpayer might show that the location, access, utilities or other such factors distinguish his property from other such properties. If the taxpayer is able to show that the comparable sales method should not be utilized, then the income method or cost method must be used. *Bakel v. Bernalillo Cnty. Assessor*, 1980-NMCA-173, 95 N.M. 723, 625 P.2d 1240.

Methods of valuation. — If the "cost method" or "income method" is employed as the primary mode of ascertaining the value of property for tax purposes, the appraiser must determine that there is a lack of comparable sales data precluding utilization of the first method of valuation and support this determination by substantial evidence. *La Jara Land Developers, Inc. v. Bernalillo Cnty. Assessor*, 1982-NMCA-006, 97 N.M. 318, 639 P.2d 605.

Income method inapplicable to agricultural land. — By its plain terms, the income method set forth in this section does not apply to land classified as agricultural. Agricultural land is to be valued based on its capacity to produce, not on its actual production. *Jicarilla Apache Nation v. Rio Arriba Cnty. Assessor*, 2004-NMCA-055, 135 N.M. 630, 92 P.3d 642, *rev'd*, 2004-NMSC-035, 136 N.M. 630, 103 P.3d 554.

III. EVIDENCE.

Taxing authority may rely on any relevant evidence. — In assessing property for taxation the taxing authority may rely on any evidence that is relevant. Assessor's evidence of a sale of a smaller tract of land in the same vicinity was substantial and supported the board's decision. *Peterson Props. v. Valencia Cnty. Valuation Protests Bd*., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

Relevant evidence includes that of ratios of assessed value to market value. — To arrive at uniformity in the assessment of property for taxation, as provided in N.M. Const., art. VIII, §§ 1 and 2, the taxing authority and the taxpayer can introduce evidence regarding the ratios of assessed values to market values as the latter are reflected in actual sales of any other real estate in the taxing district for a reasonable period prior to the assessment date. *Peterson Props. v. Valencia Cnty. Valuation Protests Bd*., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

No denial of due process in exclusion of irrelevant evidence. — Since former Subsection B of this section fixed two methods of determining market value, namely sales of comparable property and the application of generally accepted appraisal techniques, taxpayer's offer of evidence of a valuation of comparable property was not relevant and exclusion of such evidence did not deny taxpayer of due process. *Peterson Props. v. Valencia Cnty. Valuation Protests Bd*., 1976-NMCA-043, 89 N.M. 239, 549 P.2d 1074.

Appraiser's acceptance of hearsay destroys weight of his opinions. — An expert appraiser's blanket acceptance of hearsay information and his failure to consider influencing facts in so-called "comparable sales" all but destroys any weight that might be given to his opinions. *Four Hills Country Club v. Bernalillo Cnty. Property Tax Protest Bd*., 1979-NMCA-141, 94 N.M. 709, 616 P.2d 422.

Section does not give taxpayers right to determine method of valuation, but gives the county assessor the right to use either the "income method or cost methods of

valuation." *First Nat'l Bank v. Bernalillo Cnty. Valuation Protest Bd*., 1977-NMCA-005, 90 N.M. 110, 560 P.2d 174.

Taxpayer has right to discover method of valuation used and has a right to discovery similar in scope to that granted by Rules 26 to 37 of the Rules of Civil Procedure. *First Nat'l Bank v. Bernalillo Cnty. Valuation Protest Bd*., 1977-NMCA-005, 90 N.M. 110, 560 P.2d 174.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Requirement of full-value real property taxation assessments, 42 A.L.R.4th 676.

7-36-16. Responsibility of county assessors to determine and maintain current and correct values of property.

A. County assessors shall determine values of property for property taxation purposes in accordance with the Property Tax Code and the regulations, orders, rulings and instructions of the department. Except as limited in Section 7-36-21.2 NMSA 1978, they shall also implement a program of updating property values so that current and correct values of property are maintained and shall have sole responsibility and authority at the county level for property valuation maintenance, subject only to the general supervisory powers of the director.

B. The director shall implement a program of regular evaluation of county assessors' valuation activities with particular emphasis on the maintenance of current and correct values.

C. Upon request of the county assessor, the director may contract with a board of county commissioners for the department to assume all or part of the responsibilities, functions and authority of a county assessor to establish or operate a property valuation maintenance program in the county. The contract shall be in writing and shall include provisions for the sharing of the program costs between the county and the department. The contract must include specific descriptions of the objectives to be reached and the tasks to be performed by the contracting parties. The initial term of any contract authorized under this subsection shall not extend beyond the end of the fiscal year following the fiscal year in which it is executed, but contracts may be renewed for additional one-year periods for succeeding years.

D. The department of finance and administration shall not approve the operating budget of any county in which there is not an adequate allocation of funds to the county assessor for the purpose of fulfilling his responsibilities for property valuation maintenance under this section. If the department of finance and administration questions the adequacy of any allocation of funds for this purpose, it shall consult with the department, the board of county commissioners and the county assessor in making its determination of adequacy.

E. To aid the board of county commissioners in determining whether a county assessor is operating an efficient program of property valuation maintenance and in determining the amount to be allocated to him for this function, the county assessor shall present with his annual budget request a written report setting forth improvements of property added to valuation records during the year, additions of new property to valuation records during the year, increases and decreases of valuation during the year, the relationship of sales prices of property sold to values of the property for property taxation purposes and the current status of the overall property valuation maintenance program in the county. The county assessor shall send a copy of this report to the department.

History: 1953 Comp., § 72-29-6, enacted by Laws 1973, ch. 258, § 18; 2000, ch. 10, § 1.

ANNOTATIONS

The 2000 amendment, effective May 17, 2000 inserted "Except as limited in Section 7-36-21.2 NMSA 1978" at the beginning of the second sentence in Subsection A and substituted "shall present" for "must present" in the first sentence in Subsection E.

Reappraisal of all comparable properties in same year not required. — Section 72-2-21.1, (since repealed) 1953 Comp., et seq., did not require that reappraisal of all comparable properties within each county be completed within the same year. *In re Miller*, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, cert. denied, 89 N.M. 5, 546 P.2d 70, *rev'd on other grounds*, 1976-NMSC-039, 89 N.M. 547, 555 P.2d 142 (decided under prior law).

Duty of assessor to view property. — It is the duty of the assessor to make a reasonable and diligent effort to view the property in order to see that the property is adequately valued. *Bloch Pitt Invs. v. Assessor of Bernalillo Cnty.*, 86 N.M. 589, 526 P.2d 183 (1974).

Value is a matter of opinion, and, when the law has provided officers upon whom the duty is imposed to make the valuation, it is the opinion of those officers to which the interests of the parties are referred. The court cannot sit in judgment upon their errors, or substitute its own opinion for the conclusions the officers of the law have reached. *In re 1971 Assessment of Trinchera Ranch*, 1973-NMSC-094, 85 N.M. 557, 514 P.2d 608.

Notice as to amount of taxation is essential due process requirement in the collection of property taxes. *In re Miller*, 1975-NMCA-116, 88 N.M. 492, 542 P.2d 1182, cert. denied, 89 N.M. 5, 546 P.2d 70.

County property valuation fund. — In creating the county property valuation fund in 7-38-38.1C NMSA 1978, the legislature created a permanent source of additional revenue to assist county assessors in fulfilling their statutory obligations to maintain current and correct values of all property within their jurisdictions, and directed county assessors to

use those funds to achieve fair and timely reappraisal programs. The legislation does not impose any restrictions on the use of the funds other than the use be part of a property valuation program presented by the county assessor and approved by the county commission. *Robinson v. Board of Comm'rs of the Cty. of Eddy*, 2015-NMSC-035.

Where the Eddy county assessor sought to use funds from the county property valuation fund, 7-38-38.1C NMSA 1978, to contract with a private company for technical assistance in locating and valuing oil and gas property within Eddy county, the Eddy county commission was not prohibited from approving a contract with an independent contractor to assist the county assessor in valuing property, because the legislature, in creating the county property valuation fund, made no attempt to restrict an assessor's discretion on the use of the fund and thus intended to leave it to the professional discretion of county assessors to decide how best to achieve the statutory goal of current and correct valuation of all property within the county. *Robinson v. Board of Comm'rs of the Cty. of Eddy*, 2015-NMSC-035.

7-36-17. Repealed.

ANNOTATIONS

Repeals. — Laws 1979, ch. 268, § 3, repealed 7-36-17 NMSA 1978, as enacted by Laws 1977, ch. 361, § 1, relating to limitation on increases in valuation of certain property for property taxation purposes.

7-36-18. Collection and publication of property valuation data.

To promote uniformity and measure overall compliance by each county with the Property Tax Code and department valuation regulations, orders, rulings, instructions, schedules and other directives, the department shall prepare and publish annually comprehensive sales-ratio studies comparing the values of property determined for property taxation purposes by each county assessor with the values of the same property as established by sales prices.

History: 1953 Comp., § 72-29-7, enacted by Laws 1973, ch. 258, § 19.

7-36-19. Valuation of major industrial and commercial properties; specialists' services furnished to county assessor by department.

At the request of a county assessor, concurred in by the board of county commissioners, the director may provide a county assessor with technical assistance services in the valuation of major industrial or commercial properties subject to valuation by the assessor. The director shall take into account the ability of the county assessor to value the property with the resources at his disposal when deciding whether the

requested services should be furnished. The county shall reimburse the department for the costs incurred in the valuation of the property.

History: 1953 Comp., § 72-29-8, enacted by Laws 1973, ch. 258, § 20.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 254 to 284.

84 C.J.S. Taxation §§ 421 to 453.

7-36-20. Special method of valuation; land used primarily for agricultural purposes.

A. The value of land used primarily for agricultural purposes shall be determined on the basis of the land's capacity to produce agricultural products. Evidence of bona fide primary agricultural use of land for the tax year preceding the year for which determination is made of eligibility for the land to be valued under this section creates a presumption that the land is used primarily for agricultural purposes during the tax year in which the determination is made. If the land was valued under this section in one or more of the three tax years preceding the year in which the determination is made and the use of the land has not changed since the most recent valuation under this section, a presumption is created that the land continues to be entitled to that valuation.

B. For the purpose of this section:

(1) "agricultural products" means plants, crops, trees, forest products, orchard crops, livestock, poultry, captive deer or elk, or fish; and

(2) "agricultural use" means the:

(a) use of land for the production of agricultural products;

(b) use of land that meets the requirements for payment or other compensation pursuant to a soil conservation program under an agreement with an agency of the federal government;

(c) resting of land to maintain its capacity to produce agricultural products; or

(d) resting of land as the direct result of at least moderate drought conditions as designated by the United States department of agriculture, if the drought conditions occurred in the county within which the land is located for at least eight consecutive weeks during the previous tax year; provided that the land was used in the tax year immediately preceding the previous tax year primarily for a purpose identified pursuant to this paragraph.

C. The department shall adopt rules for determining whether land is used primarily for agricultural purposes. The rules shall provide that the use of land for the lawful taking of game shall not be considered in determining whether land is used primarily for agricultural purposes.

D. The department shall adopt rules for determining the value of land used primarily for agricultural purposes. The rules shall:

(1) specify procedures to use in determining the capacity of land to produce agricultural products and the derivation of value of the land based upon its production capacity;

(2) establish carrying capacity as the measurement of the production capacity of land used for grazing purposes, develop a system of determining carrying capacity through the use of an animal unit concept and establish carrying capacities for the land in the state classified as grazing land;

(3) provide that land the bona fide and primary use of which is the production of captive deer or elk shall be valued as grazing land and that captive deer shall be valued and taxed as sheep and captive elk shall be valued and taxed as cattle;

(4) provide for the consideration of determinations of any other governmental agency concerning the capacity of the same or similar lands to produce agricultural products;

(5) assure that land determined under the rules to have the same or similar production capacity shall be valued uniformly throughout the state; and

(6) provide for the periodic review by the department of determined production capacities and capitalization rates used for determining annually the value of land used primarily for agricultural purposes.

E. All improvements, other than those specified in Section 7-36-15 NMSA 1978, on land used primarily for agricultural purposes shall be valued separately for property taxation purposes, and the value of these improvements shall be added to the value of the land determined under this section.

F. The owner of the land shall make application to the county assessor in a tax year in which the valuation method of this section is first claimed to be applicable to the land or in a tax year immediately subsequent to a tax year in which the land was not valued under this section. Application shall be made under oath, shall be in a form and contain the information required by department rules and shall be made no later than thirty days after the date of mailing by the assessor of the notice of valuation. Once land is valued under this section, application need not be made in subsequent tax years as long as there is no change in the use of the land.

G. The owner of land valued under this section shall report to the county assessor whenever the use of the land changes so that it is no longer being used primarily for agricultural purposes. This report shall be made on a form prescribed by department rules and shall be made by the last day of February of the tax year immediately following the year in which the change in the use of the land occurs.

H. Any person who is required to make a report under the provisions of Subsection G of this section and who fails to do so is personally liable for a civil penalty in an amount equal to the greater of twenty-five dollars ($25.00) or twenty-five percent of the difference between the property taxes ultimately determined to be due and the property taxes originally paid for the tax years for which the person failed to make the required report.

History: 1953 Comp., § 72-29-9, enacted by Laws 1973, ch. 258, § 21; 1975, ch. 165, § 3; 1997, ch. 162, § 1; 2005, ch. 231, § 1; 2013, ch. 219, § 1; 2015, ch. 92, § 1.

ANNOTATIONS

Cross references. — For agriculture generally, *see* Chapter 76 NMSA 1978.

The 2015 amendment, effective June 19, 2015, defined "agricultural products" and expanded the definition of "agricultural use" for property taxes; in Subsection B, added Paragraph (1); redesignated the remainder of Subsection B as Paragraph (2); in Subsection B, Paragraph (2), after "'agricultural use' means the", added the designation Subsection B, Paragraph (2)(a); after "use of land for the production of", deleted "plants, crops, trees, forest products, orchard crops, livestock, poultry, captive deer or elk, or fish. The term also includes the" and added "agricultural products"; added the designation Subsection B, Paragraph (2)(b) to the remaining language of former Subsection B; added Subsection B, Paragraphs (2)(c) and (2)(d); and in Subsection F, after "owner of the land", deleted "must" and added "shall", and after "department rules and", deleted "must" and added "shall".

Applicability. — Laws 2015, ch. 92, § 2 provided that the provisions of Laws 2015, ch. 92, § 1 apply to the 2016 and subsequent property tax years.

The 2013 amendment, effective June 14, 2013, provided that an application to use the valuation method for land used primarily for agricultural purposes be made no later than thirty days after the date of mailing by the assessor of the notice of valuation; and in Subsection F, in the second sentence, after "and must be made no later than", deleted "the last day of February of the tax year" and added "thirty days after the date of mailing by the assessor of the notice of valuation".

The 2005 amendment, effective April 6, 2005, in Subsection B, defined "agricultural use" to include production of captive deer or elk; in Subsection C, provided that the rules shall provide that the use of land for lawful taking of game shall not be considered in determining whether land is used primarily for agricultural purposes; and added

Subsection D(3) to provide that the rules shall provide that land primarily used for the production of captive deer or elk shall be valued as grazing land, that captive deer shall be valued as sheep and that captive elk shall be valued as cattle.

Saving clauses. — Laws 2005, ch. 231, § 2, provided that nothing in this 2005 act shall affect the authority of the state game commission or the director of the department of game and fish.

The 1997 amendment, June 20, 1997, rewrote Subsection A; substituted "7-36-15 NMSA 1978" for "72-29-5 NMSA 1953" in Subsection E; deleted the last sentence in the introductory paragraph of Subsection F; deleted Paragraphs F(1) and (2); deleted the closing paragraph of Subsection F; and added Subsections G and H.

Elk herd was not livestock for purposes of agricultural classification of property, and, although petitioner's agreement with federal government was proper soil conservation agreement, comparisons of income from multiple uses of property was reasonable proxy for determining that agricultural use was not primary. *Jicarilla Apache Nation v. Rodarte*, 2004-NMSC-035, 136 N.M. 630, 103 P.3d 554, *rev'g* 2004-NMCA-055, 135 N.M. 630, 92 P.3d 642.

Distinction between subdivided agricultural lands not unconstitutional. — Distinction drawn by 72-2-14.1, 1953 Comp., between subdivided and unsubdivided agricultural land, for tax purposes, did not offend N.M. Const., art. VIII, § 1 and did not violate due process. *Property Appraisal Dep't v. Ransom*, 1973-NMCA-015, 84 N.M. 637, 506 P.2d 794 (decided under prior law).

This section establishes special method of valuation for land used primarily for agricultural purposes, determined on the basis of the land's capacity to produce agricultural products. This "Green Belt" law is clearly an exception to the general mode of property valuation for tax purposes established by the Property Tax Code and the New Mexico constitution, *i.e.*, market value. *County of Bernalillo v. Ambell*, 1980-NMSC-062, 94 N.M. 395, 611 P.2d 218.

Agricultural land is to be valued based on its capacity to produce, not on its actual production. *Jicarilla Apache Nation v. Rio Arriba Cnty. Assessor*, 2004-NMCA-055, 135 N.M. 630, 92 P.3d 642, *rev'd* 2004-NMSC-035, 136 N.M. 630, 103 P.3d 554.

Legislative intent behind this special method of property tax valuation is to aid the small subsistence farmers in the state. *County of Bernalillo v. Ambell*, 1980-NMSC-062, 94 N.M. 395, 611 P.2d 218.

Legislative intent. — A broad reading of "agricultural use" so as to entitle owners of residential, yet pastoral, lands generally to tax relief is inconsistent with the plain language of this section; the section evinces a legislative intent to deny tax relief to those who demonstrate mere passive or incidental cultivation of their lands. *Alexander v. Anderson*, 1999-NMCA-021, 126 N.M. 632, 973 P.2d 884.

Crops produced for sale or home consumption. — While growing alfalfa, fruits, nuts, and vegetables may constitute producing crops, an applicant for exemption is required to demonstrate an objective intent to produce a crop for sale or home consumption. *Alexander v. Anderson*, 1999-NMCA-021, 126 N.M. 632, 973 P.2d 884.

"Home consumption" construed. — Grazing of recreational horses on taxpayers' property did not satisfy the regulatory provision (3 NMAC 6.5.27.1.1) for "home consumption." *Alexander v. Anderson*, 1999-NMCA-021, 126 N.M. 632, 973 P.2d 884.

Regulation upheld. — Promulgation of a regulation (3 NMAC 6.5.27.1.1) to implement the "agricultural use" exemption of this section is a legal exercise of delegated legislative authority and the regulation is consistent with this section's manifest intent. *Alexander v. Anderson*, 1999-NMCA-021, 126 N.M. 632, 973 P.2d 884.

Comparable sales wrong criteria under this section. — County assessors using comparable sales instead of agricultural purposes were using the wrong criteria for determining tax on grazing land under this section. *In re Armijo*, 1976-NMCA-032, 89 N.M. 131, 548 P.2d 93.

Special valuation not applicable once land changed to nonagricultural use. — Once a property's use has changed from agricultural to nonagricultural, there is no longer the need to give the property owner special tax treatment; the legislature did not desire to give special treatment to former owners of agricultural land even after they voluntarily submit to reclassification of their land for property tax purposes. *County of Bernalillo v. Ambell*, 1980-NMSC-062, 94 N.M. 395, 611 P.2d 218.

Hypothetical or speculative values not basis. — Classification or assessment of property for tax purposes premised upon hypothetical or speculative values believed, ultimately or at some later time, to be or become the true market value of such land cannot legitimately be the basis of determining its value. *Gerner v. State Tax Comm'n*, 1963-NMSC-022, 71 N.M. 385, 378 P.2d 619.

Grazing land being held for lots. — Classification and valuation of property suitable for grazing purposes at 10 times the valuation of other property of the same character and quality and similarly situated because of its classification as lots held for speculation for oil or other purposes, absent any evidence of such speculative purposes, was so excessive and discriminatory as to entitle taxpayer to relief, despite fact that some other owners of like tracts were similarly assessed or that these lands, while similar to grazing lands, were not actually used for grazing purposes. *Gerner v. State Tax Comm'n*, 1963-NMSC-022, 71 N.M. 385, 378 P.2d 619.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity, construction and effect of state statutes affording preferential property tax treatment to land use for agricultural purposes, 98 A.L.R.3d 916.

7-36-21. Special method of valuation; livestock.

A. All livestock located in the state on January 1 of the tax year shall be valued for property taxation purposes as of January 1.

B. All livestock not located in the state on January 1 but brought into the state and located there for more than twenty days subsequent to January 1 shall be valued for property taxation purposes as of the first day of the month following the month in which they have remained in the state for more than twenty days.

C. The owner of livestock subject to valuation for property taxation purposes shall report the livestock for valuation to the county assessor of the county in which they are located on the valuation date specified in Subsections A or B of this section. However, if an importation or movement report is made by the livestock board under the provisions of Section 7-38-45 NMSA 1978, the owner of livestock is relieved of his responsibility to report the livestock covered by the livestock board report, and that report fulfills the owner's responsibility for reporting the livestock under this section. The owner's report shall be in a form and contain the information required by department regulations and shall be made no later than:

(1) the last day of February for livestock required to be valued as of the first day of January or February of the tax year; or

(2) ten days after the valuation date determined under Subsection B of this section for livestock required to be valued as of dates other than those in Paragraph (1) of this subsection.

D. The department shall establish for each tax year the various classes of livestock and the value of each class. This determination shall be implemented by an order of the director, and the order shall be made no later than December 1 of the year prior to the tax year to which the classification and values apply.

E. The department shall adopt regulations for the allocation of value of livestock, which regulations shall provide for:

(1) a basic allocation formula that prorates value on the basis of the amount of time that livestock are in the state and subject to valuation for property taxation purposes;

(2) determining proration of value under Paragraph (1) of this subsection using estimates of the amount of time that livestock will be in the state to cover those situations in which livestock are imported for an indeterminate time during a tax year or in which resident livestock are exported for an indeterminate time during a tax year but are returned during the same tax year; and

(3) a method of allocating value of livestock, both resident and transient, among different governmental units when the livestock range on land in more than one governmental unit.

F. Any person who intentionally refuses to make a report required of him under this section or who knowingly makes a false statement in a report required under this section is guilty of a misdemeanor and shall be punished by the imposition of a fine of not more than one thousand dollars ($1,000).

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

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

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

History: 1953 Comp., § 72-29-10, enacted by Laws 1973, ch. 258, § 22; 1975, ch. 115, § 1.

ANNOTATIONS

Cross references. — For animals and animal industry, *see* 77-1-1 NMSA 1978 et seq.

Responsibility for valuation. — Subsection D of this section does not allocate valuation of livestock responsibility to the division; instead, that section simply requires the division to supervise the assessor by establishing classes of livestock and values for those classes of livestock. While the division must establish general criteria for valuing livestock, the county assessor does the actual valuation. *Zwaagstra v. DelCurto*, 1992-NMCA-087, 114 N.M. 263, 837 P.2d 457.

7-36-21.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1985 (1st S.S.), ch. 12, § 2 repealed 7-36-21.1, as enacted by Laws 1981, ch. 37, § 64, relating to the special method of valuation for residential property, effective January 1, 1986. For present provisions on limitations on property tax rates on residential property, *see* 7-37-7.1 NMSA 1978.

7-36-21.2. Limitation on increases in valuation of residential property.

A. Residential property shall be valued at its current and correct value in accordance with the provisions of the Property Tax Code; provided that for the 2001 and subsequent tax years, the value of a property in any tax year shall not exceed the higher of one hundred three percent of the value in the tax year prior to the tax year in which the property is being valued or one hundred six and one-tenth percent of the value in the tax year two years prior to the tax year in which the property is being valued. This limitation on increases in value does not apply to:

(1) a residential property in the first tax year that it is valued for property taxation purposes;

(2) any physical improvements, except for solar energy system installations, made to the property during the year immediately prior to the tax year or omitted in a prior tax year; or

(3) valuation of a residential property in any tax year in which:

(a) a change of ownership of the property occurred in the year immediately prior to the tax year for which the value of the property for property taxation purposes is being determined; or

(b) the use or zoning of the property has changed in the year prior to the tax year.

B. If a change of ownership of residential property occurred in the year immediately prior to the tax year for which the value of the property for property taxation purposes is being determined, the value of the property shall be its current and correct value as determined pursuant to the general valuation provisions of the Property Tax Code.

C. To assure that the values of residential property for property taxation purposes are at current and correct values in all counties prior to application of the limitation in Subsection A of this section, the department shall determine for the 2000 tax year the sales ratio pursuant to Section 7-36-18 NMSA 1978 or, if a sales ratio cannot be determined pursuant to that section, conduct a sales-ratio analysis using both independent appraisals by the department and sales. If the sales ratio for a county for the 2000 tax year is less than eighty-five, as measured by the median ratio of value for property taxation purposes to sales price or independent appraisal by the department, the county shall not be subject to the limitations of Subsection A of this section and shall conduct a reassessment of residential property in the county so that by the 2003 tax year, the sales ratio is at least eighty-five. After such reassessment, the limitation on increases in valuation in this section shall apply in those counties in the earlier of the 2004 tax year or the first tax year following the tax year that the county has a sales ratio of eighty-five or higher, as measured by the median ratio of value for property taxation

purposes to sales value or independent appraisal by the department. Thereafter, the limitation on increases in valuation of residential property for property taxation purposes in this section shall apply to subsequent tax years in all counties.

D. The provisions of this section do not apply to residential property for any tax year in which the property is subject to the valuation limitation in Section 7-36-21.3 NMSA 1978.

E. As used in this section, "change of ownership" means a transfer to a transferee by a transferor of all or any part of the transferor's legal or equitable ownership interest in residential property except for a transfer:

(1) to a trustee for the beneficial use of the spouse of the transferor or the surviving spouse of a deceased transferor;

(2) to the spouse of the transferor that takes effect upon the death of the transferor;

(3) that creates, transfers or terminates, solely between spouses, any co-owner's interest;

(4) to a child of the transferor, who occupies the property as that person's principal residence at the time of transfer; provided that the first subsequent tax year in which that person does not qualify for the head of household exemption on that property, a change of ownership shall be deemed to have occurred;

(5) that confirms or corrects a previous transfer made by a document that was recorded in the real estate records of the county in which the real property is located;

(6) for the purpose of quieting the title to real property or resolving a disputed location of a real property boundary;

(7) to a revocable trust by the transferor with the transferor, the transferor's spouse or a child of the transferor as beneficiary; or

(8) from a revocable trust described in Paragraph (7) of this subsection back to the settlor or trustor or to the beneficiaries of the trust.

F. As used in this section, "solar energy system installation" means an installation that is used to provide space heat, hot water or electricity to the property in which it is installed and is:

(1) an installation that uses solar panels that are not also windows;

(2) a dark-colored water tank exposed to sunlight; or

(3) a non-vented trombe wall.

History: Laws 2000, ch. 10, § 2; 2001, ch. 321, § 1; 2003, ch. 118, § 1; 2010, ch. 30, § 1.

ANNOTATIONS

The 2010 amendment, effective May 19, 2010, in Subsection A(2), added "except for solar energy system installations,"; in Subsection E(4), after "who occupies the property as", changed "his" to "that person's"; and added Subsection F.

Applicability. — Laws 2010, ch. 30, § 1 provided that the provisions of Laws 2010, ch. 30, § 1 are applicable to property tax years beginning on or after January 1, 2010.

The 2003 amendment, effective June 20, 2003, deleted former Paragraphs (2) and (3) from Subsection E, defining "net new value" and "prior year value", and redesignated the remaining Paragraphs of Subsection E.

The 2001 amendment, effective April 5, 2001, inserted "or omitted in a prior tax year" in Paragraph A(2); In Subsection C, substituted the language beginning "the department shall determine for the 2000 tax year" to the end of the subsection for that former language that provided for the method of determination if a county was not subject to the limitation in Subsection A; added Subsection D; and redesignated Subsection D as E.

Constitutional valuation limitations. — Article VIII, Section 1 of the New Mexico Constitution limits the legislature’s existing plenary authority to impose valuation limitations based on taxpayer characteristics to the three enumerated characteristics of age, income, and owner-occupancy. It does not impose any restrictions on the legislature’s authority to impose limitations in valuation increases based on its classification of residential property. *Zhao v. Montoya*, 2014-NMSC-025, *aff'g in part*, *rev'g in part* 2012-NMCA-056, 280 P.3d 918.

Statute does not violate the New Mexico Constitution. — Section 7-36-21.2 NMSA 1978 does not violate the New Mexico Constitution because it creates an authorized class based on the nature of the property and not on the taxpayer and it does not violate the equal and uniform clause of Article VIII, Section 1 of the New Mexico Constitution because it furthers the legitimate state interest of fostering neighborhood preservation and stability by permitting older owners to pay progressively less taxes than new owners. *Zhao v. Montoya*, 2014-NMSC-025, *aff'g in part*, *rev'g in part* 2012-NMCA-056, 280 P.3d 918.

Where a property owner purchased a residential property in 2007 that had been assessed and valued at $243,786; in 2008 the property was valued at $362,600; another property owner purchased a new home "around the corner" from the owner’s old home; in 2009, the old home was valued at $553,700 and the new home was valued

at $902,500; and the owners claimed that they were entitled to the three percent limitation on increase in valuation that applied to other properties in the area that had not changed ownership, that 7-36-21.2 NMSA 1978 was unconstitutional because it created an unauthorized class of residential property taxpayers based solely upon the time of acquisition, not on the constitutionally permissible classifications of owner-occupancy, age or income, and violated the equal and uniform clause of Article VIII, Section 1 of the New Mexico Constitution, 7-36-21.2 NMSA 1978 was not unconstitutional because it created an authorized class based on the nature of property and not the taxpayer and because it furthered the legitimate state interest of fostering neighborhood preservation and stability by permitting older owners to pay progressively less taxes than new owners. *Zhao v. Montoya*, 2014-NMSC-025, *aff'g in part*, *rev'g in part* 2012-NMCA-056, 280 P.3d 918.

Valuation methods did not create a new class of taxpayers. — The different valuation methods under 7-36-21.2 NMSA 1978 for newly sold residential property and residential property owned more than a year do not create a new class of taxpayer in violation of Paragraph B of Article VIII, Section 1 of the constitution of New Mexico because 7-36-21.2 NMSA 1978 limits revaluation for taxation purposes based on owner-occupant status. *Zhao v. Montoya*, 2012-NMCA-056, 280 P.3d 918, *aff'd in part*, *rev'd in part*, 2014-NMSC-025.

Where homeowners bought and occupied new homes and in the year following their purchase, the county valued their property at significantly greater amounts for tax purposes than the county had valued the property for the previous owners; as a result of the revaluation, the property tax assessment for the property significantly increased; and the homeowners claimed that 7-36-21.2 NMSA 1978 was unconstitutional because it created a new class of taxpayer based on the time of acquisition of property, 7-36-21.2 NMSA 1978 did not create a new class of taxpayer because the homeowners did not obtain the benefit of the limitation of increases in assessed value until they purchased the property, at which time, the homeowners became members of the class of owner-occupants to whom the limitation applies. *Zhao v. Montoya*, 2012-NMCA-056, 280 P.3d 918, *aff'd in part, rev'd in part*, 2014-NMSC-025.

Change of ownership. — Where respondents made property transfers between individuals or their trusts and wholly-owned limited liability companies (LLC), the Bernalillo county valuation protest board erred in determining that the transfers did not constitute a change of ownership on the grounds that the property had the same ultimate owner owning the property, because this section expressly carves out eight exceptions to the definition of "change of ownership," none of which includes transfers between individuals or their trusts and LLCs formed to hold title to their properties. A transfer of residential property between an LLC's members and the LLC itself constitutes a change of ownership, subjecting the property to a valuation based upon its current and correct value, regardless of whether the proportional beneficial interests remain intact. *Giddings v. SRT-Mountain Vista, LLC*, 2019-NMCA-025.

7-36-21.3. Limitation on increase in value for single-family dwellings occupied by low-income owners who are sixty-five years of age or older or disabled; requirements; penalties.

A. The valuation for property taxation purposes of a single-family dwelling owned and occupied by a person who is sixty-five years of age or older or disabled and whose modified gross income for the prior taxable year did not exceed the greater of thirty-five thousand dollars ($35,000) or the amount calculated pursuant to Subsection F of this section shall not be greater than the assessed valuation of the property for property taxation purposes:

(1) for a person sixty-five years of age or older in the tax year in which the owner qualifies and files an application; or

(2) for a person who is disabled in the tax year in which the owner qualified and files an application for the limitation provided by this section.

B. The limitation provided by this section may be claimed by filing proof of eligibility with the county assessor on an application form furnished by the assessor. The application shall be filed no later than thirty days after the date of mailing by the assessor of the notice of valuation. The application form shall be designed by the department and shall provide for proof of age or disability, occupancy and income eligibility. An owner who applies for the limitation of value specified in this section and files proof of income eligibility for the three consecutive years immediately subsequent to the tax year for which the application is made need not claim the limitation for subsequent tax years if there is no change in eligibility. The county assessor shall apply the limitation automatically in subsequent tax years until a change in eligibility occurs.

C. An owner who has claimed and been allowed the limitation of value specified in this section for the three consecutive tax years immediately prior to the 2020 tax year is not required to claim the limitation for subsequent tax years if there is no change in eligibility, unless the county assessor requests updated information on the owner's modified gross income. The county assessor shall apply the limitation automatically in subsequent tax years until a change in eligibility occurs.

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

E. A person who knowingly violates the provisions of this section by intentionally claiming and receiving the benefit of a limitation to which the person is not entitled or who fails to comply with the provisions of Subsection D of this section shall be liable for all taxes due, interest and a civil penalty of one thousand dollars ($1,000).

F. For the 2020 tax year and each subsequent tax year, the maximum amount of modified gross income in Subsection A of this section shall be adjusted to account for inflation. The department shall make the adjustment by multiplying thirty-five thousand dollars ($35,000) by a fraction, the numerator of which is the consumer price index ending during the prior tax year and the denominator of which is the consumer price index ending in tax year 2019. The result of the multiplication shall be rounded down to the nearest one hundred dollars ($100), except that if the result would be an amount less than the corresponding amount for the preceding tax year, then no adjustment shall be made.

G. The department shall publish annually the amount determined by the calculation made pursuant to Subsection F of this section and provide the calculated amount to each county assessor no later than December 1 of each tax year.

H. The limitation of value specified in Subsection A of this section does not apply to:

(1) a change in valuation resulting from any physical improvements made to the property during the year immediately prior to the tax year or a change in the permitted use or zoning of the property during the year immediately prior to the tax year; or

(2) a residential property in the first tax year that is valued for property taxation purposes.

I. As used in this section:

(1) "consumer price index" means the consumer price index for all urban consumers published by the United States department of labor for the month ending September 30;

(2) "disabled" means a person who has been determined to be blind or permanently disabled with medical improvement not expected pursuant to 42 USCA 421 for purposes of the federal Social Security Act or is determined to have a permanent total disability pursuant to the Workers' Compensation Act [Chapter 52, Article 1 NMSA 1978]; and

(3) "modified gross income" means "modified gross income" as used in the Income Tax Act [Chapter 7, Article 2 NMSA 1978].

History: Laws 2000, ch. 21, § 1; 2001, ch. 321, § 2; 2003, ch. 78, § 1; 2008, ch. 26, § 1; 2013, ch. 161, § 1; 2019, ch. 140, § 1; 2020, ch. 73, § 1.

ANNOTATIONS

The 2020 amendment, effective May 20, 2020, clarified the limitation on valuation increases for low-income disabled persons; in Subsection A, in the introductory clause,

after "greater than the", added "assessed", in Paragraph A(1), added "for a person sixty-five years of age or older in the", and after "in which the", deleted "owner's sixty-fifth birthday occurs, if the owner owns and occupies that property" and added "owner qualifies and files an application", and completely rewrote Paragraph A(2); and in Subsection B, added "The application shall be filed no later than thirty days after the date of mailing by the assessor of the notice of valuation.".

The 2019 amendment, effective June 14, 2019, increased the income limit for eligibility for a limitation on property tax valuation of a dwelling occupied by a person who is sixty-five years of age or older or disabled; deleted former Subsections A through D, added a new Subsection A and redesignated former Subsections E through I as Subsections B through F, respectively; in Subsection B, added "The limitation provided by this section", and after "an application form", deleted "for the limitation"; in Subsection C, after "prior to the", deleted "2014" and added "2020", after "tax year is not", added "required to", and after "change in eligibility", added "unless the county assessor requests updated information on the owner's modified gross income"; in Subsection E, after "civil penalty of", deleted "no more than three times the amount of additional taxes due" and added "one thousand dollars ($1,000)"; in Subsection F, after "For the", deleted "2002" and added "2020", after "modified gross income in", deleted "Subsections A, B and C" and added "Subsection A", after "by multiplying", deleted "the maximum amount for tax year 2000" and added "thirty-five thousand dollars ($35,000)", after "ending in tax year", deleted "2000" and added "2019", and deleted "for purpose of this subsection, 'consumer price index' means the consumer price index for all urban consumers published by the United States department of labor for the month ending September 30"; redesignated former Subsections J and K as Subsections H and I, respectively; in Subsection G, after "calculation", added "made pursuant to Subsection F of this section", and after "and", deleted "distribute it" and added "provide the calculated amount"; in Subsection H, in the introductory clause, after "specified in", deleted "Subsections A, B and C" and added "Subsection A"; and in Subsection I, added Paragraphs I(1) and I(3) and new paragraph designation "(2)".

Applicability. — Laws 2019, ch. 140, § 2 provided that the provisions of Laws 2019, ch. 140, § 1 apply to the 2020 and subsequent property tax years.

The 2013 amendment, effective June 14, 2013, provided for an automatic application of the limitation on increase in value for single-family dwellings occupied by low-income owners sixty-five years of age or disabled; provides for penalties; in the title, added "requirements; penalties"; deleted former Subsection E, which provided for the application for the limitation of value; and added Subsections E through H.

The 2008 amendment, effective May 14, 2008, added Subsections B and D.

The 2003 amendment, effective June 20, 2003, in the section heading, substituted "low-income owners" for "owner" near the middle and added "or disabled" at the end; added present Subsection B and redesignated subsequent subsections accordingly; in present Subsection C, substituted "Subsections A and B" for "Subsection A" near the

beginning and inserted "or disability" following "proof of age" near the end; substituted "Subsections A and B" for "Subsection A" near the beginning of Subsection D and near the middle of Subsection E; and added present Subsection F.

The 2001 amendment, effective April 5, 2001; in Subsection A, substituted "did not exceed the greater of eighteen thousand dollars ($18,000) or the amount calculated pursuant to Subsection C of this section" for "did not exceed eighteen thousand dollars ($18,000)" added Paragraph A(3); deleted "at the time notices of valuation are sent out by the assessor pursuant to Section 7-38-20 NMSA 1978" at the end of the first sentence in Subsection B and added Subsections C and D.

7-36-22. Mineral property; definitions and classifications for valuation purposes.

As used in this article, "mineral property" does not include oil and gas property or productive copper mineral property and means:

A. "class one productive mineral property", which means mineral lands, all mineral reserves and interests in minerals in mineral lands and all severed mineral products from mineral lands when the mineral lands are held under private ownership in fee and the property is mined or operated in good faith for its mineral values with a reasonable degree of continuity during the year preceding the tax year in which its value is determined and to an extent in keeping with the market demand and conditions affecting the extraction and disposition of the product;

B. "class one nonproductive mineral property", which means mineral lands, all mineral reserves and interests in minerals in mineral lands and all severed mineral products from mineral lands when the mineral lands are held under private ownership in fee and the property is known to contain minerals in commercially workable quantities of such a character as add present value to the land in addition to its values for other purposes but is not operated so as to fall in the class of class one productive mineral property;

C. "class two mineral property", which means the severed mineral products from mineral lands held by possessory title under the laws of the United States; and

D. "class three mineral property", which means severed mineral products from leasehold or contract mineral rights in mineral lands, the fee of which is vested in the United States or the state.

History: 1953 Comp., § 72-29-11, enacted by Laws 1973, ch. 258, § 23; 1975, ch. 218, § 2; 1990, ch. 125, § 4.

ANNOTATIONS

Cross references. — For mines and mining, *see* Chapter 69 NMSA 1978.

The 1990 amendment, effective March 7, 1990, inserted "for productive copper mineral property" in the introductory language.

Nonseverability. — Laws 1990, ch. 125, § 19 provided that the provisions of the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978] and the corresponding amendments made in that act to the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978] are not severable.

Neither supreme court nor district court may reclassify, revalue or reassess property improperly classified by taxing officials and, consequently, assess at an excessive valuation. *Gerner v. State Tax Comm'n*, 1963-NMSC-022, 71 N.M. 385, 378 P.2d 619.

Negative mineral property production figure disallowed. — The statutory requirement of allocating the net taxable value of each item of property used in connection with mineral property prevents the use of the negative value for mineral property production to reduce the valuation of property valued under Section 7-36-33 NMSA 1978; therefore, the taxpayer cannot use a negative figure for mineral property production to reduce the positive value of property used in connection with mineral property. *U.V. Indus., Inc. v. Property Tax Div. of Taxation & Revenue Dep't*, 1979-NMCA-147, 93 N.M. 651, 603 P.2d 1108.

Valuation to be fixed by standards. — To have uniformity and equality in a form of tax, the valuations must be established by some standard; and after valuations are fixed, the taxes based upon such valuations must be levied by a standard. It is only thus that each taxpayer may bear his fair share of the burden of government. *Gerner v. State Tax Comm'n*, 1963-NMSC-022, 71 N.M. 385, 378 P.2d 619.

Regulation based upon taxpayer's federal tax treatment of property. — Regulation providing that, if a taxpayer attributed development expenditures to a particular piece of property under 26 USCS § 616, the property was rebuttably presumed, for the next 10 years, to contain minerals in such quantities and character so as to classify the property as class one nonproductive mineral property under Subsection B, was a valid regulation in that it was not arbitrary because the taxpayer would have opportunity to present facts to rebut the presumption; in that there was substantial evidence to support the regulation; and in that the regulation was not substantive, since it announced a procedure for classifying the property based upon the taxpayer's treatment of the property for federal tax purposes. *Santa Fe Pac.R.R. v. Property Tax Dep't*, 1976-NMCA-071, 89 N.M. 446, 553 P.2d 726 (Ct. App. 1976).

Law reviews. — For comment, "Approaches to State Taxation of the Mining Industry," see 10 Nat. Resources J. 156 (1970).

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

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

7-36-23. Special method of valuation; mineral property and property used in connection with mineral property; exception for potash and uranium mineral property and property used in connection with potash and uranium mineral property.

A. The provisions of this section apply to the valuation of all mineral property and property used in connection with mineral property except potash and uranium mineral property and property used in connection with potash and uranium mineral property, the methods of valuation for which are provided in Sections 7-36-24 and 7-36-25 NMSA 1978.

B. The following kinds of property held or used in connection with mineral property shall be valued under the methods of valuation required by the Property Tax Code:

(1) improvements, equipment, materials, supplies and other personal property held or used in connection with all classes of mineral property; "improvements" as used in this section includes surface and subsurface structures, but does not include pits, shafts, drifts and other similar artificial changes in the physical condition of the surface or subsurface of the earth produced solely by the removal or rearrangement of earth or minerals for the purpose of exposing or removing ore from a mine; and

(2) the surface value for agricultural or other purposes of class one productive or nonproductive mineral property when the surface interest is held in the same ownership as the mineral interests.

C. The value for property taxation purposes of class one productive mineral property is an amount equal to three hundred percent of the annual net production value of the mineral property.

D. The value for property taxation purposes of class two and class three mineral property is an amount equal to three hundred percent of the annual net production value.

E. The value for property taxation purposes of class one nonproductive mineral property shall be determined by applying a per acre value to the surface acres of the property being valued. The per acre value of class one nonproductive mineral property shall be determined under regulations adopted by the department, which regulations shall establish a per acre value based upon bonus bids accepted by the commissioner of public lands for the latest one year period in which bonus bids were accepted for the sale of mineral leases, which per acre value may be determined by geographical areas.

F. For purposes of this section, "annual net production value" means either:

(1) the average of five years' net production value from the mineral property for the five years immediately preceding the tax year in which value is being determined, or so much of the period during which the property has been in operation, with each year's net production value being determined by taking the year's market value of production of all minerals, including any bonus or subsidy payments, and deducting from that value:

(a) any royalties paid or due the United States, the state or any Indian tribe, Indian pueblo or Indian who is a ward of the United States;

(b) the direct costs, exclusive of depreciation, determined under generally accepted accounting principles consistently applied by the taxpayer, of extracting, milling, treating, reducing, transporting and selling the minerals; and

(c) the costs of depreciation, determined under generally accepted accounting principles consistently applied by the taxpayer, of property actually used in the extracting, milling, treating, reducing and transporting of the minerals; or

(2) the net production value from the mineral property for the year immediately preceding the tax year in which value is being determined, with that year's net production value being determined by taking the year's market value of production of all minerals, including any bonus or subsidy payments, and deducting from that value:

(a) any royalties paid or due the United States, the state or any Indian tribe, Indian pueblo or Indian who is a ward of the United States;

(b) the direct costs, exclusive of depreciation, determined under generally accepted accounting principles consistently applied by the taxpayer, of extracting, milling, treating, reducing, transporting and selling the minerals; and

(c) the cost of depreciation, determined under generally accepted accounting principles consistently applied by the taxpayer, of property actually used in the extracting, milling, treating, reducing and transporting of the minerals.

G. Annual net production value shall be determined under Paragraph (1) of Subsection F of this section unless the taxpayer elects to have it determined under Paragraph (2) of that subsection. To be effective, an election must be exercised by written notification to the department at the time the mineral property is reported to the department for valuation in a tax year. Once an election is exercised, a taxpayer may not change from the elected method without the prior approval of the department.

H. The department shall adopt regulations specifying procedures to be followed under, and the details of, the method for valuation of mineral property specified in this section.

History: 1953 Comp., § 72-29-12, enacted by Laws 1973, ch. 258, § 24; 1975, ch. 165, § 4.

ANNOTATIONS

Cross references. — For mines and mining, *see* Chapter 69 NMSA 1978.

Fair market value is theoretically what a willing seller would take and a willing buyer offer. *Kaiser Steel Corp. v. Property Appraisal Dep't*, 1976-NMCA-071, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

Payments to be included in market value. — Portions of former 72-6-7(6), 1953 Comp., are pertinent as the market value is to include bonus or subsidy payments and there is evidence that the royalty payments fall into that category; however, amounts paid for improvements are not to be included as part of the costs, and depreciation on such improvements should also not be included. *Kaiser Steel Corp. v. Property Appraisal Dep't*, 1976-NMCA-071, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

Market price as exchange value. — As to the price between a fictional seller and buyer, the market price of a commodity is the exchange value and it is determined by the demand for it in relation to the supply and is proved, when possible, by actual sales. *Kaiser Steel Corp. v. Property Appraisal Dep't*, 1976-NMCA-071, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

Essential factors in determining market value are the existence of a demand and the accessibility of a market. Without a demand a rich natural resource may lie dormant and be commercially valueless. Create an active demand and the same deposit may find a ready market. Similarly, proximity to market may be a determining factor. *Kaiser Steel Corp. v. Property Appraisal Dep't*, 1976-NMCA-071, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

Determination of market value of average annual output, less the actual cost, over the period of years involved requires an averaging of the costs. *Kaiser Steel Corp. v. Property Appraisal Dep't*, 1976-NMCA-071, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

Legislative intention to authorize deduction must be clearly and unambiguously expressed in the statute. *Kaiser Steel Corp. v. Property Appraisal Dep't*, 1976-NMCA-071, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

Separate taxation of severed mineral estates required. — Former New Mexico statutory provisions required the separate taxation of severed mineral estates and the public policy of this state was to tax separately the severed mineral rights from the remainder of the fee when in different ownerships. *Kaye v. Cooper Grocery Co*., 1957-NMSC-049, 63 N.M. 36, 312 P.2d 798.

Even after conveyance of fractional undivided interest in the minerals, the entire mineral estate should be separately assessed and taxed as a unit. *Kaye v. Cooper Grocery Co*., 1957-NMSC-049, 63 N.M. 36, 312 P.2d 798.

Partial severance considered complete severance. — For assessment purposes, a partial severance conveyance is to be considered a complete severance of the mineral estate. *Kaye v. Cooper Grocery Co*., 1957-NMSC-049, 63 N.M. 36, 312 P.2d 798.

Duty of tenant in common to pay entire assessment. — The surface owner who has retained an undivided mineral interest becomes a tenant in common as to the mineral estate with his transferee of an undivided mineral interest, and as tenants in common each had the duty to pay the entire assessment on the mineral estate with a right of contribution against his cotenant for a proportionate part. *Kaye v. Cooper Grocery Co*., 1957-NMSC-049, 63 N.M. 36, 312 P.2d 798.

Owner of mineral estate will not lose interest through tax sale. — When the entire mineral estate has been conveyed by the surface owner and the mineral deed has been recorded prior to the assessment for the tax year, the owner of the mineral estate will not lose his interest through a tax sale unless the mineral estate has been separately assessed and the sale is had for the purpose of recovering delinquent taxes assessed against the mineral estate. *Kaye v. Cooper Grocery Co*., 1957-NMSC-049, 63 N.M. 36, 312 P.2d 798.

Negative mineral property production figure disallowed. — The statutory requirement of allocating the net taxable value of each item of property used in connection with mineral property prevents the use of the negative value for mineral property production to reduce the valuation of property valued under Section 7-36-33 NMSA 1978; therefore, the taxpayer cannot use a negative figure for mineral property production to reduce the positive value of property used in connection with mineral property. *U.V. Indus., Inc. v. Prop. Tax Div. of Taxation & Revenue Dep't*, 1979-NMCA-147, 93 N.M. 651, 603 P.2d 1108.

Regulation modifying statutory determination of annual net production contrary to section. — Regulation providing that the property tax department would not permit the use of minus figures for a particular year's net production value in calculating the average of five years' net production value was contrary to the provisions of Subsection F because the property tax department had no authority to adopt regulations modifying the statutory provision for determining the annual net production value. *Santa Fe Pac.R.R. v. Prop. Tax Dep't*, 1976-NMCA-071, 89 N.M. 446, 553 P.2d 726.

Regulation for geographical variance multiplier set aside. — Regulation providing for the use of a multiplier of 100 and of a quotient derived by dividing the total of the bonus bids by the number of acres leased by competitive bidding within a county was set aside since the provision in Subsection E for geographical variance did not support use of such multiplier because the evidence was that procedures for implementing such

a variance had not been developed by property tax department. *Santa Fe Pac.R.R. v. Prop. Tax Dep't*, 1976-NMCA-071, 89 N.M. 446, 553 P.2d 726.

Burden of proof was on contestant and was both the burden of producing evidence and the burden of persuasion which was, in this case, where the validity of the state's valuation is in issue, not the burden of showing the correct valuation but to show the state's valuation was erroneous. However, an asserted failure in contestant's burden of persuasion does not require that the court uphold the state's valuation when that valuation is not supported by substantial evidence. *Kaiser Steel Corp. v. Property Appraisal Dep't*, 1971-NMCA-131, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

Finding not supported by evidence inference. — Since the market value of the mine run coal was based on evidence of sales of 4% and 9% of production at $8.50 per ton, this evidence did not support an inference that 96% and 91% of production had a market value of $8.50 per ton absent evidence of a market at that price and, therefore, the finding utilizing a market value of $8.50 per ton for all mine run coal was not supported by substantial evidence. *Kaiser Steel Corp. v. Property Appraisal Dep't*, 1971-NMCA-131, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

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

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

7-36-24. Special method of valuation; mineral property and property used in connection with mineral property when the primary production from the mineral property is potash.

A. The provisions of this section apply to valuation of all mineral property and property used in connection with mineral property when the primary production from the mineral property is potash.

B. The value for property taxation purposes of improvements, equipment, materials, supplies and other personal property held or used in connection with all classes of potash mineral property is an amount equal to the market value of all mineral production from the potash mineral property for the prior year, less any royalties paid or due the United States, the state or any Indian tribe, Indian pueblo or Indian who is a ward of the United States. "Improvements" as used in this section includes surface and subsurface structures, but does not include pits, shafts, drifts and other similar artificial changes in the physical condition of the surface or subsurface of the earth produced solely by the removal or rearrangement of earth or minerals for the purpose of exposing or removing ore from a mine.

C. The value for property taxation purposes of the surface value for agricultural or other purposes held in connection with class one productive or nonproductive potash mineral property, when the surface interest is held in the same ownership as the mineral interests, shall be determined under the methods of valuation required by the Property Tax Code.

D. The value for property taxation purposes of class one productive potash mineral property is an amount equal to fifty percent of the market value of all mineral production from the potash mineral property for the prior year.

E. The value for property taxation purposes of class two and class three potash mineral property is an amount equal to fifty percent of the amount derived by deducting from the market value of all mineral production from the potash mineral property for the prior year any royalties paid or due the United States, the state or any Indian tribe, Indian pueblo or Indian who is a ward of the United States.

F. The value for property taxation purposes of class one nonproductive potash mineral property shall be determined under Subsection E of Section 7-36-23 NMSA 1978.

G. If a taxpayer severs potash in one or more governmental units and processes the severed potash in another governmental unit, the value of all interests in minerals shall be allocated to the governmental unit or units in which the potash is severed, and the value of improvements, equipment, materials, supplies and personal property shall be allocated among the governmental units in which the property is located on the basis of the original cost of the property.

H. The department shall adopt regulations specifying procedures to be followed under, and the details of, the method for valuation of potash mineral property specified in this section. The department shall also adopt regulations for the allocation of values of potash mineral property among the governmental units.

History: 1953 Comp., § 72-29-13, enacted by Laws 1973, ch. 258, § 25; 1975, ch. 165, § 5.

ANNOTATIONS

Cross references. — For gross value of potash for severance tax, *see* 7-26-4 NMSA 1978.

For mines and mining, *see* Chapter 69 NMSA 1978.

Constitutionality. — This section does not violate N.M. Const., art. VIII, § 1 by using production of previous year as base value of mineral property to calculate present year's taxes, nor does it create an irrebutable presumption of value in violation of federal due

process clause. *Nat'l Potash Co. v. Property Tax Div*., 1984-NMCA-055, 101 N.M. 404, 683 P.2d 521.

Fair market value is theoretically what a willing seller would take and a willing buyer offer. *Kaiser Steel Corp. v. Property Appraisal Dep't*, 1971-NMCA-131, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

Market price as exchange value. — As to the price between a fictional seller and buyer, the market price of a commodity is the exchange value and it is determined by the demand for it in relation to the supply, and is proved, when possible, by actual sales. *Kaiser Steel Corp. v. Property Appraisal Dep't*, 1971-NMCA-131, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

Essential factors in determining market value are the existence of a demand and the accessibility of a market. *Kaiser Steel Corp. v. Prop. Appraisal Dep't*, 1971-NMCA-131, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

Valuation of potash fines when no commercial market. — Although without commercial market, potash "fines" were to be valued for tax purposes and market value was exchange value of "fines" between corporation which produced "fines" and subsequent processor of fines. *International Minerals & Chem. Corp. v. Property Appraisal Dep't*, 1971-NMCA-170, 83 N.M. 402, 492 P.2d 1265, cert. denied, 83 N.M. 395, 492 P.2d 1258.

Burden of proof was on contestant and was both the burden of producing evidence and the burden of persuasion which was, in this case, where the validity of the state's valuation is in issue, not the burden of showing the correct valuation but to show the state's valuation was erroneous. However, an asserted failure in contestant's burden of persuasion does not require that the court uphold the state's valuation when that valuation is not supported by substantial evidence. *Kaiser Steel Corp. v. Property Appraisal Dep't*, 1971-NMCA-131, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

Finding not supported by evidence inference. — Since the market value of the mine run coal was based on evidence of sales of 4% and 9% of production at $8.50 per ton, this evidence did not support an inference that 96% and 91% of production had a market value of $8.50 per ton absent evidence of a market at that price and, therefore, the finding utilizing a market value of $8.50 per ton for all mine run coal was not supported by substantial evidence. *Kaiser Steel Corp. v. Property Appraisal Dep't*, 1971-NMCA-131, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

7-36-25. Special method of valuation; mineral property and property used in connection with mineral property when the primary production from the mineral property is uranium.

A. The provisions of this section apply to the valuation of all mineral property and property used in connection with mineral property when the primary production from the mineral property is uranium.

B. The following kinds of property held or used in connection with uranium mineral property shall be valued under the methods of valuation required by the Property Tax Code:

(1) improvements, equipment, materials, supplies and other personal property held or used in connection with all classes of uranium mineral property; "improvements" as used in this section includes surface and subsurface structures, but does not include pits, shafts, drifts or other similar artificial changes in the physical condition of the surface or subsurface of the earth produced solely by the removal or rearrangement of earth or minerals for the purpose of exposing or removing ore from a mine; and

(2) the surface value for agricultural or other purposes of class one productive or nonproductive uranium mineral property when the surface interest is held in the same ownership as the mineral interests.

C. The value for property taxation purposes of class one productive, class two and class three uranium mineral property is the annual net production value of the uranium mineral property.

D. The value for property taxation purposes of class one nonproductive uranium mineral property shall be determined under Subsection E of Section 7-36-23 NMSA 1978.

E. For the purposes of this section, the "annual net production value" means:

(1) the sales price of uranium-bearing material disposed of as ore or solution, less fifty percent of that sales price as a deduction for the cost of producing and bringing the output to the surface and of transporting and selling it; or

(2) in the case of uranium-bearing material not disposed of as ore or solution but processed or beneficiated (other than by sizing and blending), regardless of the form in which the product is actually disposed of, the value of U3O8 contained in ore or solution determined on the basis of the U3O8 content of the ore or solution at fifty percent of the taxpayer's average unit sales price during the preceding calendar year of U3O8 contained in the concentrate form commonly known as "yellowcake" (or if the uranium concentrate has not been sold in the preceding calendar year, at fifty percent of the representative sales price for U3O8 contained in the concentrate form commonly known as "yellowcake" at the place and time of processing or beneficiation into that concentrate), plus fifty percent of the representative sales price of all other minerals produced and saved from such uranium-bearing material, less fifty percent of the value as a deduction for the cost of producing and bringing the output to the surface from an underground mine.

F. In determining annual net production value of class two and class three uranium mineral property, a deduction may be taken for royalties paid or due the United States, the state or any Indian tribe, Indian pueblo or Indian who is a ward of the United States, but the deduction allowed by this subsection must be subtracted from one hundred percent of the applicable sales price before applying any other reductions in or deductions from that sales price.

History: 1953 Comp., § 72-29-14, enacted by Laws 1973, ch. 258, § 26; 1975, ch. 165, § 6; 1982, ch. 29, § 1.

ANNOTATIONS

Cross references. — For severance tax on uranium, *see* 7-26-7 NMSA 1978.

For mines and mining, *see* Chapter 69 NMSA 1978.

Section deemed constitutional. — Since the classification, in Subsection E, distinguishing open-pit mines from underground mines is reasonable and the tax imposed by this section is uniform and equal on all subjects of a class, this section is constitutional. *Anaconda Co. v. Property Tax Dep't*, 1979-NMCA-158, 94 N.M. 202, 608 P.2d 514, cert. denied, 94 N.M. 628, 614 P.2d 545.

There is reasonable basis for division of mines for tax purposes into the classes of underground and open-pit mines: the basis for the classification is the difference between the cost of producing and bringing uranium ore to the surface in the two types of mines; since this cost is greater in underground than in open-pit mines, it was within the legislature's power to provide a tax deduction to underground mines that it did not grant to open-pit mines. *Anaconda Co. v. Property Tax Dep't*, 1979-NMCA-158, 94 N.M. 202, 608 P.2d 514, cert. denied, 94 N.M. 628, 614 P.2d 545.

Fair market value is theoretically what a willing seller would take and a willing buyer offer. *Kaiser Steel Corp. v. Property Appraisal Dep't*, 1971-NMCA-131, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

Market price as exchange value. — As to the price between a fictional seller and buyer, the market price of a commodity is the exchange value and it is determined by the demand for it in relation to the supply and is proved, when possible, by actual sales. *Kaiser Steel Corp. v. Property Appraisal Dep't*, 1971-NMCA-131, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

Essential factors in determining market value are the existence of a demand and the accessibility of a market. *Kaiser Steel Corp. v. Property Appraisal Dep't*, 1971-NMCA-131, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

Materials incorporated into underground mining structures included in valuation base. — Tangible materials incorporated into underground mining structures, such as

roof bolts, concrete, steel mesh, timbers and reinforcing rods, are materials included in the valuation base. *Kerr-McGee Nuclear Corp. v. Property Tax Div*., 1980-NMCA-063, 95 N.M. 685, 625 P.2d 1202.

Materials in shafts and drifts necessary to extraction of minerals not included in valuation. — The lining or bracing of shafts and drifts in a mine, as well as ventilation air shafts, leach holes and other shafts necessary to the extraction of minerals, are exempt from valuation under Subsection B(1). *Kerr-McGee Nuclear Corp. v. Property Tax Div*., 1980-NMCA-063, 95 N.M. 685, 625 P.2d 1202.

Burden of proof was on contestant and was both the burden of producing evidence and the burden of persuasion which was, in this case, where the validity of the state's valuation is in issue, not the burden of showing the correct valuation but to show that the state's valuation was erroneous. However, an asserted failure in contestant's burden of persuasion does not require that the court uphold the state's valuation when that valuation is not supported by substantial evidence. *Kaiser Steel Corp. v. Property Appraisal Dep't*, 1971-NMCA-131, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

Finding not supported by evidence inference. — Since the market value of the mine run coal was based on evidence of sales of 4% and 9% of production at $8.50 per ton, this evidence did not support an inference that 96% and 91% of production had a market value of $8.50 per ton absent evidence of a market at that price and, therefore, the finding utilizing a market value of $8.50 per ton for all mine run coal was not supported by substantial evidence. *Kaiser Steel Corp. v. Property Appraisal Dep't*, 1971-NMCA-131, 83 N.M. 251, 490 P.2d 968, cert. denied, 83 N.M. 258, 490 P.2d 975.

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

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

For article, "Evaluating Congressional Limits on a State's Severance Tax Equity Interest in Its Natural Resources: An Essential Responsibility for the Supreme Court," see 11 Nat. Resources J. 673 (1982).

7-36-26. Special method of valuation; manufactured homes.

A. The owner of a manufactured home subject to valuation for property taxation purposes shall report the manufactured home annually for valuation to the county assessor of the county in which the manufactured home is located on January 1. The report shall be in a form and contain the information required by department regulation and shall be made no later than the last day of February of the tax year in which the property is subject to valuation.

B. The valuation method used for determining the value of manufactured homes for property taxation purposes shall be a cost method applying generally accepted appraisal techniques and shall generally provide for:

(1) the determination of initial cost of a manufactured home based upon classifications of manufactured homes and sales prices for the various classifications;

(2) deductions from initial cost for allowable depreciation, which allowances for depreciation shall be developed by the division; and

(3) deduction from initial cost of other justifiable factors, including but not limited to functional and economic obsolescence.

C. Whether or not the presence of a manufactured home is declared and reported by the owner to a county assessor as required by this section, the county assessor shall determine the value for property taxation purposes of each manufactured home located in the county and subject to valuation. County assessors shall use the information required to be furnished them under Sections 66-6-10 and 66-7-413 NMSA 1978 to assure that accurate records of locations of manufactured homes are maintained.

D. Any person who intentionally refuses to make a report required of him under this section or who knowingly makes a false statement in a report required under this section is guilty of a misdemeanor and shall be punished by the imposition of a fine of not more than one thousand dollars ($1,000).

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

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

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

History: 1953 Comp., § 72-29-15, enacted by Laws 1973, ch. 258, § 27; 1975, ch. 165, § 7; 1983, ch. 295, § 2; 1991, ch. 166, § 6.

ANNOTATIONS

Cross references. — For deduction from gross receipts tax of receipts for lease of mobile home, *see* 7-9-53 NMSA 1978.

For definition of "division," *see* 7-35-2 NMSA 1978.

For notification to department of motor vehicles of unpaid property tax on mobile homes, *see* 7-38-52 NMSA 1978.

The 1991 amendment, effective June 14, 1991, in Subsection A, deleted "as defined in Section 66-1-4 NMSA 1978" following "manufactured home" the first time the reference appears in the first sentence and substituted "department" for "division" in the second sentence.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation § 211.

Classification, as real estate or personal property, of mobile homes or trailers for purposes of state or local taxation, 7 A.L.R.4th 1016.

7-36-27. Special method of valuation; pipelines, tanks, sales meters and plants used in the processing, gathering, transmission, storage, measurement or distribution of oil, natural gas, carbon dioxide or liquid hydrocarbons.

A. All pipelines, tanks, sales meters and plants used in the processing, gathering, transmission, storage, measurement or distribution of oil, natural gas, carbon dioxide or liquid hydrocarbons subject to valuation for property taxation purposes shall be valued in accordance with the provisions of this section.

B. As used in this section:

(1) "construction work in progress" means the total of the balances of work orders for pipelines, plants, large industrial sales meters and tanks, in the process of construction on the last day of the preceding calendar year, exclusive of land and land rights and equipment, machinery or devices that are used or are available for use to construct pipelines, plants, large industrial sales meters and tanks but that are not incorporated into the pipelines, plants, large industrial sales meters or tanks;

(2) "depreciation" means straight line depreciation over the useful life of the item of property;

(3) "direct customer distribution pipeline" means a low or intermediate pressure distribution system pipeline of four inches or smaller diameter situated in urban areas;

(4) "economic obsolescence" means, with respect to valuation for property taxation purposes, loss in value of a property caused by unfavorable economic influences or factors outside of the property; "economic obsolescence" is a loss in value in addition to a loss in value attributable to physical depreciation;

(5) "functional obsolescence" means, with respect to valuation for property taxation purposes, loss in value of a property caused by functional inadequacies or deficiencies caused by factors within the property; "functional obsolescence" is a loss in value in addition to a loss in value attributable to physical depreciation;

(6) "large industrial sales meter" means a sales meter having an installed tangible property cost in excess of two thousand five hundred dollars ($2,500);

(7) "other justifiable factors" includes, but is not limited to, functional obsolescence and economic obsolescence;

(8) "pipeline" means all pipe, appurtenances and devices used in systems for gathering, transmission or distribution, but excludes sales meters, a pipeline operated exclusively for and constituting a part of a plant and a direct customer distribution pipeline;

(9) "plant" means any refinery, gasoline plant, extraction plant, purification plant, compressor or pumping station or similar plant, including all structures, equipment, pipes and other related facilities, excluding residential housing, office buildings and warehouses;

(10) "sales meter" means the meter, regulator and all appurtenances and devices used for measuring sales to customers and includes the service pipe to the customer's property line from the point of connection with the pipeline;

(11) "schedule value" means a fixed value of an individual property unit within a mass of similar or like units established by determining the total tangible property cost of a substantial sample of such property and deducting therefrom an average related accumulated provision for depreciation and allocating a proportionate part of the remainder to individual taxable property units;

(12) "tangible property cost" means the actual cost of acquisition or construction of property, excluding construction work in progress, including additions, retirements, adjustments and transfers, but without deduction of related accumulated provision for depreciation, amortization or other purposes and excluding any amount attributable to oil or gas reserves dedicated to such item of property; and

(13) "tank" means any storage tank or container, other than a natural reservoir, for storage that is not a component part of a plant.

C. Sales meters, other than large industrial sales meters, shall be valued as follows:

(1) the department may periodically determine the average tangible property cost of a substantial sample of sales meters in general use in the state;

(2) such average tangible property cost shall then be reduced by the average related accumulated provision for depreciation applicable to the sample of sales meters; and

(3) from the determinations pursuant to Paragraphs (1) and (2) of this subsection, a schedule of value for sales meters for property taxation purposes shall be determined and set forth in a rule adopted by the department.

D. Pipelines, direct customer distribution pipelines, large industrial sales meters, tanks and plants shall be valued as follows:

(1) the valuation authority shall first establish the tangible property cost of each item of property;

(2) from such tangible property cost shall be deducted the related accumulated provision for depreciation and any other justifiable factors that further affect the tangible property value of each item of property; and

(3) notwithstanding the determination of value for property taxation purposes in Paragraphs (1) and (2) of this subsection, the value for property taxation purposes of each item of property valued under this subsection shall not be less than twenty percent of the tangible property cost of such item of property.

E. Construction work in progress shall be valued at fifty percent of the amount expended and entered upon the accounting records of the taxpayer as of December 31 of the preceding year as construction work in progress.

F. Each item of property having a taxable situs in the state and valued under this section shall have its net taxable value allocated to the governmental units in which the property is located.

G. A reduction in value asserted by a taxpayer as attributable to economic obsolescence or functional obsolescence shall contain an obsolescence factor along with a brief statement of the facts that support the reduction, together with supporting documentation. The documentation may include items such as monthly throughput volumes from the prior year; comparisons to a documented industry standard; comparisons to a close competitor; and an engineer's or appraiser's valuation. The

department may adopt rules that include other types of objective evidence of functional obsolescence or economic obsolescence.

H. If the department determines that a taxpayer has not established, based on the brief statement of facts and the supporting documentation provided, that the reduction for functional obsolescence or economic obsolescence is in accordance with the law or rules adopted by the department, the department shall notify the taxpayer of the department's determination in writing setting forth the reasons for its determination and specifying the supporting information that the department requires. The department shall provide the notice by April 1 or thirty days after the return is filed but no later than April 15 of the tax year. If the taxpayer does not file the report by March 15 of the property tax year, the department shall not be required to furnish a timely notice of deficiency by April 15 of the property tax year. In the case of properties regulated by the federal energy regulatory commission, the notice of deficiency shall be provided to the taxpayer within fifteen days after the filing of the report and the taxpayer shall then have ten days within which to correct the deficiency.

I. The department shall adopt rules to implement the provisions of this section.

History: Laws 1973, ch. 258, § 28; 1953 Comp., § 72-29-16; Laws 1975, ch. 165, § 8; 1982, ch. 28, § 4; 1985, ch. 109, § 5; 2007, ch. 273, § 1.

ANNOTATIONS

Cross references. — For pipelines generally, *see* 70-3-1 to 70-3-20 NMSA 1978.

For liens on wells and pipelines, *see* 70-4-1 to 70-4-15 NMSA 1978.

The 2007 amendment, effective July 1, 2007, added new definitions for "economic obsolescence" and "functional obsolescence" in Paragraphs (4) and (5) of Subsection B and added Subsections G and H.

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

7-36-28. Special method of valuation; pipelines, tanks, collection systems, meters, plants and hydrants used in the collection, transmission, storage, treatment, discharge, measurement or distribution of water or wastewater.

A. Except as provided in Subsection F [G] of this section, all pipelines, tanks, meters, lift stations, treatment facilities, plants and hydrants used in the collection, transmission, storage, measurement, treatment, discharge or distribution of water or wastewater subject to valuation for property taxation purposes shall be valued in accordance with the provisions of this section.

B. As used in this section:

(1) "commercial water property" means privately owned pipelines, tanks, meters, plants, hydrants, materials and supplies, whether in service, in stock or under construction, owned and operated as a utility for the purpose of transmitting, storing, measuring or distributing water for sale to the consuming public, excluding general buildings and improvements;

(2) "commercial wastewater property" means privately owned pipelines, collection systems, lift stations, meters, treatment facilities, materials and supplies, whether in service, in stock or under construction, owned and operated as a utility for the purpose of collecting, transmitting, measuring, treating or discharging wastewater used for the purpose of providing wastewater service to the public, excluding general buildings and improvements;

(3) "depreciation" means straight line depreciation over the useful life of the item of property;

(4) "general buildings and improvements" means buildings of the nature of offices, residential housing, warehouses, shops and associated improvements in general use by the taxpayer but not directly associated with the collection, transmission, storage, measurement, treatment, discharge or distribution of water or wastewater;

(5) "gallons" means the measurement of water sold or the measurement of wastewater discharged to a third party's treatment facility or the measurement of wastewater treated and discharged;

(6) "revenue" means gross utility operating revenue;

(7) "closed system" means a commercial water system in which water is gathered primarily by wells and stored in closed reservoirs and tanks; and

(8) "combination system" means a commercial water system in which water is gathered both in open reservoirs and by wells and is stored both in open reservoirs and closed reservoirs and tanks.

C. The value of commercial water property shall be determined as follows:

(1) a factor of two and forty-nine one hundredths per thousand gallons is to be used for a closed system and three and twenty-five one hundredths is to be used for a combination system;

(2) the department shall determine the type of system into which the taxpayer's commercial water properties should be categorized;

(3) the department shall then ascertain the number of thousand gallons sold to consumers by the taxpayer during each of the three immediately preceding calendar years and the taxpayer's water revenue from the immediately preceding calendar year;

(4) a simple average of the three-year thousand gallon sales shall be computed and compared to the actual thousand gallons sold to consumers during the immediately preceding calendar year. The higher of the average thousand gallons or the immediately preceding year's actual thousand gallons shall be the basis for value calculations;

(5) the thousand gallon figure determined in Paragraph (4) of this subsection shall then be multiplied by the appropriate per thousand gallon factor from Paragraph (1) of this subsection. The result of this calculation is the value of commercial water property for property taxation purposes; and

(6) notwithstanding the calculations provided for in Paragraphs (1) through (5) of this subsection, the value of the taxpayer's commercial water property shall not be greater than four and one-half times the revenue derived during the immediately preceding calendar year from the operation of the commercial water property.

D. The value of commercial wastewater property shall be determined as follows:

(1) a factor of two and forty-nine one hundredths per thousand gallons shall be used;

(2) the department shall then ascertain the number of thousand gallons wastewater discharged to a third party's treatment facility or the number of thousand gallons wastewater treated and discharged during each of the three immediately preceding calendar years and the taxpayer's wastewater revenue from the immediately preceding calendar year;

(3) a simple average of the three-year thousand gallons shall be computed and compared to the actual thousand gallons during the immediately preceding calendar year. The higher of the average thousand gallons or the immediately preceding year's actual thousand gallons shall be the basis for value calculations;

(4) the thousand gallon figure determined in Paragraph (3) of this subsection shall then be multiplied by the factor provided in Paragraph (1) of this subsection. The result of this calculation is the value of commercial wastewater property for property taxation purposes; and

(5) notwithstanding the calculations provided for in this subsection, the value of the taxpayer's commercial wastewater property shall not be greater than four and one-half times the revenue derived during the immediately preceding calendar year from the operation of the commercial wastewater property.

E. Each item of property having a taxable situs in the state and valued pursuant to this section shall have its net taxable value allocated to the governmental units in which the property is located on the basis of the percentage of the taxpayer's total investment in each governmental unit.

F. The department shall adopt regulations to implement the provisions of this section.

G. Commercial water property owned or sold by a nonprofit mutual domestic water association is exempt from valuation for property taxation purposes.

History: Laws 1973, ch. 258, § 29; 1953 Comp., § 72-29-17; Laws 1975, ch. 165, § 9; 1978 Comp., § 7-36-28; 2009, ch. 246, § 1; 2009, ch. 247, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. The reference to "Subsection F" in Subsection A, appears to refer to Subsection G, which was former Subsection F prior to the 2009 amendment.

2009 Multiple Amendments. — Laws 2009, ch. 246, § 1 and Laws 2009, ch. 247, § 1 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2009, ch. 247, § 1, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2009, ch. 246, § 1 and Laws 2009, ch. 247, § 1 are described below. To view the session laws in their entirety, *see* the 2009 session laws on *NMOneSource.com*.

Laws 2009, ch. 247, § 1, effective April 7, 2009, in Subsection A, after "tanks", deleted "sales", after "meters", added "lift stations, treatment facilities"; after "used in the", added "collection"; after "measurement", added "treatment, discharge"; and after "distribution of water", added "or wastewater"; added Paragraph (2) of Subsection B; in Paragraph (4) of Subsection B, after "associated with the", added "collection"; after "measurement", added "treatment, discharge"; and after "distribution of water", added "or wastewater"; in Paragraph (5) of Subsection B, after "water sold", added the remainder of the sentence; in Paragraph (3) of Subsection C, after “taxpayer's, added "water"; in Paragraph (5) of Subsection C, after "purposes;", added "and"; in Paragraph (6) of Subsection C, after "provided for", deleted "above" and added "in Paragraphs (1) through (5) of this subsection"; added Subsection D; in Subsection E, after "valued", deleted "under" and added "pursuant to"; and in Subsection F, after "regulations", deleted "under Section 72-31-88 NMSA 1953".

Laws 2009, ch. 246, § 1, effective June 19, 2009, in Subsection A, added "Except as provided in Subsection F of this section"; in Paragraph (5) of Subsection C, after "purposes;", added "and"; in Subsection E, after "regulations", deleted "under Section 72-31-88 NMSA 1953"; and added Subsection F.

Mutual domestic water consumers associations are municipal corporations and are therefore exempt from property taxes. — Article VIII, § 3 of the New Mexico Constitution exempts from property taxes the property of municipal corporations, and under current law mutual domestic water consumers associations (MDWCA), organized pursuant to the Sanitary Projects Act, NMSA 1978, §§ 3-29-1 to 3-29-21, are municipal corporations, as they are local political entities created pursuant to statute and authorized to manage community water systems, and therefore the property of MDWCAs is constitutionally exempt from property taxation. 2024 Op. Att'y Gen. No. 24-06.

7-36-29. Special method of valuation; property used for the generation, transmission or distribution of electric power or energy.

A. All property used for the generation, transmission or distribution of electric power or energy subject to valuation for property taxation purposes shall be valued in accordance with the provisions of this section.

B. As used in this section:

(1) "depreciation" means straight line depreciation over the useful life of the item of property;

(2) "electric plant" means all property situated in this state used or useful for the generation, transmission or distribution of electric power or energy, but does not include land, land rights, general buildings and improvements, construction work in progress, materials and supplies and licensed vehicles;

(3) "construction work in progress" means the total of the balances of work orders for an electric plant in process of construction on the last day of the preceding calendar year exclusive of land, land rights and licensed vehicles;

(4) "general buildings and improvements" means buildings of the nature of offices, residential housing, warehouses, shops and associated improvements in general use by the taxpayer and not directly associated with generation, transmission or distribution of electric power or energy;

(5) "materials and supplies" means the cost, including sales, use and excise taxes, and transportation costs to point of delivery in this state, less purchases and trade discounts, of all unapplied material and supplies on hand in this state as of December 31 of the preceding calendar year; and

(6) "tangible property cost" means the actual cost of acquisition or construction of property, including additions, retirements, adjustments and transfers, but without deduction of related accumulated provision for depreciation, amortization or other purposes; "tangible property cost" excludes the cost of property contributed to, or

acquired with funds contributed to, a utility by or on behalf of a ratepayer or potential ratepayer for the expansion, improvement or replacement of property used for the transmission or distribution of electric power of the utility.

C. An electric plant shall be valued as follows:

(1) the department shall determine the tangible property cost of the electric plant;

(2) such tangible property cost shall then be reduced by the related accumulated provision for depreciation and any other justifiable factors, including functional and economic obsolescence, such as the limitation on the use of the property based on the available reserves committed to the property; and

(3) notwithstanding the foregoing determination of value for property taxation purposes, the value for property taxation purposes of an electric plant shall not be less than twenty percent of the tangible property cost of the electric plant.

D. The value of construction work in progress shall be fifty percent of the amount expended and entered upon the accounting records of the taxpayer as of December 31 of the preceding calendar year as construction work in progress.

E. The value of materials and supplies shall be the tangible property cost for such property as of December 31 of the preceding calendar year.

F. Each item of property having a taxable situs in the state and valued under this section shall have its net taxable value allocated to the governmental units in which the property is located.

G. The department shall adopt regulations under Section 7-38-88 NMSA 1978 [repealed] to implement the provisions of this section.

History: Laws 1973, ch. 258, § 30; 1953 Comp., § 72-29-18, repealed and reenacted by Laws 1975, ch. 165, § 10; 2016, ch. 49, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 1991, ch. 166, § 14 repealed 7-38-88 NMSA 1978, effective June 14, 1991.

The 2016 amendment, effective May 18, 2016, provided that a contribution made to a utility for the expansion, improvement or replacement of service or a facility of the utility is not subject to valuation for property tax purposes; in the catchline, deleted "electrical" and added "electric"; in Subsection A, after "transmission or distribution of", deleted "electrical" and added "electric"; in Subsection B, Paragraph (4), after "transmission or

distribution of", deleted "electrical" and added "electric", deleted former Paragraph 6 and redesignated former Paragraph (7) as Paragraph (6), in Paragraph (6), after "amortization or other purposes", added "'tangible property cost' excludes the cost of property contributed to, or acquired with funds contributed to, a utility by or on behalf of a ratepayer or potential ratepayer for the expansion, improvement or replacement of property used for the transmission or distribution of electric power of the utility"; and in Subsection C, Paragraph (1), after "cost of", added "the", and in Paragraph (2), after "justifiable factors", added "including functional and economic obsolescence, such as the limitation on the use of the property based on the available reserves committed to the property".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 439 to 442.

84 C.J.S. Taxation § 207.

7-36-30. Special methods of valuation; property that is part of a communications system.

A. All property that is part of a communications system and is subject to valuation for property taxation purposes shall be valued in accordance with the provisions of this section.

B. As used in this section:

(1) "communications system" means a system for the transmission and reception of information by the use of electronic, magnetic or optical means or any combination thereof and which system or any portion thereof is available for use by another person for consideration;

(2) "depreciation" means straight line depreciation over the useful life of the item of property;

(3) "other justifiable factors" includes but is not limited to wear and tear of the property not covered by depreciation, inadequacy, changes in demand and requirements of public authorities attributable to the applicable decrease in value and functional or economic obsolescence;

(4) "plant" means all tangible property located in this state and used or useful for the provision of communication service as reflected by the uniform system of accounting in use by the taxpayer, but does not include construction work in progress or materials and supplies;

(5) "construction work in progress" means the total of the balance of work orders for plant in process of construction on the last day of the preceding calendar year, exclusive of land and land rights;

(6) "tangible property cost" means the actual cost of acquisition or construction of property, including additions, retirements, adjustments and transfers, but without deduction of related accumulated provision for depreciation, amortization or other purposes; and

(7) "materials and supplies" means the cost, including sales, use and excise taxes, and transportation costs to point of delivery in this state, less purchases and trade discounts, of all unapplied materials and supplies on hand in this state as of December 31 of the preceding calendar year.

C. Each taxpayer having property subject to valuation under this section shall elect to have that property valued by the department in accordance with either Subsection D or Subsection F of this section. The election shall be effective for subsequent property tax years unless prior permission of the secretary is obtained to change the election for good cause shown. A taxpayer may not seek permission to change an election unless the prior election has been effective for at least three consecutive property tax years. The secretary shall find that good cause exists to change the election upon a showing satisfactory to the secretary by the taxpayer that:

(1) the net result of all amendments to the property tax statutes and regulations with effective dates commencing within the property tax year has a substantial adverse effect on the valuation for property tax purposes under the alternative elected for the property for that year relative to what the valuation for property tax purposes would have been under the other alternative in the absence of the amendments;

(2) the net result of all changes in law or circumstances but excluding acquisition or sale of property subject to valuation under this section, including changes which do not affect property tax liability, occurring within the property tax year has a substantial adverse effect on the valuation for property tax purposes under the alternative elected for the property for that year relative to what the valuation for property tax purposes for the property would have been under the other alternative in the absence of the changes; or

(3) changes in property tax statutes or regulations which are effective prior to the property tax year have a substantial adverse effect on the valuation for property tax purposes under the alternative elected for the property relative to what the valuation for property tax purposes would have been under the other alternative.

D. Communications system property valued under this subsection shall be valued in accordance with Paragraphs (1), (2) and (3) of this subsection:

(1) plant shall be valued in the following manner:

(a) the department shall first establish the tangible property cost of the plant;

(b) from such tangible property cost shall be deducted the related accumulated provision for depreciation and other justifiable factors; and

(c) notwithstanding the foregoing determination of value for property taxation purposes, the value for property taxation purposes of the plant shall not be less than twenty percent of the tangible property cost of the plant;

(2) construction work in progress shall have a value for property taxation purposes equal to fifty percent of the actual amounts expended and entered upon the accounting records of the taxpayer as of December 31 of the preceding calendar year for construction work in progress; and

(3) the value of materials and supplies shall be the tangible property cost for such property as of December 31 of the preceding calendar year.

E. Each item of property having a taxable situs in the state and valued under this section shall have its net taxable value allocated to the governmental units in which the property is located.

F. Communications system property valued under this subsection shall be valued using one or more or a combination of the following methods of valuation and applying the unit rule of appraisal to the property:

(1) capitalization of earnings;

(2) market value of stock and debt; or

(3) cost less depreciation and obsolescence.

G. The department shall adopt regulations under Section 7-38-88 NMSA 1978 [repealed] to implement the provisions of this section.

History: 1978 Comp., § 7-36-30, enacted by Laws 1975, ch. 165, § 11; 1985, ch. 109, § 6; 1987, ch. 206, § 1; 1989, ch. 112, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 1991, ch. 166, § 14 repealed 7-38-88 NMSA 1978, referred to in Subsection G. For present comparable provisions, *see* 9-11-6.2 NMSA 1978.

The 1989 amendment, effective January 1, 1990, added Subsection C; added the introductory paragraph of Subsection D; designated the introductory paragraph of former Subsection C as Subsection D(1); redesignated former Subsections C(1) through C(3) as Subparagraphs (a) through (c) of Subsection D(1); redesignated former Subsections D through F as Subsections D(2), D(3) and E; deleted former Subsection

G, relating to election of alternate valuation; redesignated former Subsection H as Subsection F, while substituting all of the language of the introductory paragraph preceding "using" for "The department shall, at the election of a taxpayer value communications system property"; deleted former Subsection I, relating to adoption of regulations providing for allocation of net taxable values of communications system property to the state and governmental units; and redesignated former Subsection J as Subsection G.

Interpretation of "communications system". — Where plaintiff cable company repurposed parts of its cable television system and expanded its services to include broadband internet and interconnected voice over internet protocol (VoIP) services, which both transmit and receive information, and where the New Mexico taxation and revenue department began assessing taxes on all cable companies operating in the state which provided two-way communications services, reclassified plaintiff's property as a "communications system", and assessed taxes on plaintiff's property accordingly, the district court erred in granting plaintiff's motion for summary judgment and in concluding that plaintiff's property is not a "communications system" under the Tax Code, because in light of the clear, unambiguous definition of "communications system" in 7-36-30(B)(1) NMSA 1978, the legislature intended to grant the department the authority to classify plaintiff's property as a "communications system" and assess it under this section when plaintiff elected to repurpose portions of its system in order to provide two-way communications services to its customers. *Cable One, Inc. v. N.M. Taxation & Revenue Dep't*, 2018-NMCA-017, cert. granted.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 416 to 420.

84 C.J.S. Taxation § 183.

7-36-31. Special method of valuation; operating railroad property.

A. All property owned or leased and used by an operating railroad in its operation if the operating railroad has operations in New Mexico is subject to valuation for property taxation purposes and shall be valued in accordance with the provisions of this section, except for land and land rights other than operating railroad rights-of-way, sidings and marshalling yards and general buildings and improvements determined not to be an active part of an operating railroad.

B. The division shall value operating railroad property using the following methods of valuation and applying the unit rule of appraisal to the property:

(1) capitalization of earnings;

(2) market value of stock and debt; or

(3) original cost less depreciation and obsolescence.

C. The division may use one or more, or a combination of, the methods of valuation specified in Paragraphs (1), (2) and (3) of Subsection B of this section in valuing operating railroad property.

D. Land, land rights other than operating railroad rights-of-way, sidings and marshalling yards, general buildings and improvements determined not to be an active part of an operating railroad shall be valued under the provisions of this article of the Property Tax Code applicable to the property.

E. The division shall adopt regulations providing for the allocation of net taxable values of operating railroad property to New Mexico and to the governmental units within the state.

F. The division shall adopt regulations pursuant to Section 7-38-88 NMSA 1978 [repealed] to implement the methods of valuation for operating railroad property specified in this section.

History: Laws 1973, ch. 258, § 32; 1953 Comp., § 72-29-20; Laws 1985, ch. 109, § 7.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 1991, ch. 166, § 14 repealed 7-38-88 NMSA 1978, referred to in Subsection F. For present comparable provisions, *see* 9-11-6.2 NMSA 1978.

Cross references. — For tax levied in lieu of property taxes on railroad car companies, *see* 7-11-3 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 402 to 405.

84 C.J.S. Taxation § 221 et seq.

7-36-32. Special method of valuation; commercial aircraft.

A. All commercial aircraft used by commercial airline companies in the operation of their businesses and subject to valuation for property taxation purposes shall be valued in accordance with the provisions of this section.

B. The department shall value commercial aircraft as follows:

(1) all gasoline engine propeller driven aircraft shall be valued at ten percent of original cost regardless of age; and

(2) all jet propelled aircraft shall have an assumed life of twelve years and shall be valued by deducting from eighty percent of the original cost of the aircraft

depreciation computed on a monthly basis, but no aircraft valued under this paragraph shall have computed a value of less than twenty percent of its original cost.

C. The department shall adopt regulations providing for the allocation of net taxable values of commercial aircraft to New Mexico and to the governmental units in the state, which regulations shall include allocation factors related to ground time in New Mexico compared to total ground time within the airline system and flight time over New Mexico compared to total flight time within the airline system, exclusive of flight time outside the continental limits of the United States.

D. The department shall adopt regulations pursuant to Section 7-38-88 NMSA 1978 [repealed] to implement the method of valuation of commercial aircraft specified in this section.

History: Laws 1973, ch. 258, § 33; 1953 Comp., § 72-29-21; Laws 1975, ch. 165, § 13.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 1991, ch. 166, § 14 repealed 7-38-88 NMSA 1978, referred to in Subsection D. For present comparable provisions, *see* 9-11-6.2 NMSA 1978.

Department determines property tax valuation of commercial aircraft by allocating a portion of the net book value of the aircraft to New Mexico based on the flight time over, and ground time in, New Mexico as a percentage of total flight and ground time of the aircraft for the preceding year. *Fed. Express Corp. v. Abeyta*, 2004-NMCA-011, 135 N.M. 37, 84 P.3d 85, cert. granted, 2004-NMCERT-001, 135 N.M. 160, 85 P.3d 802.

7-36-33. Special method of valuation; certain industrial and commercial personal property.

A. The following kinds of property shall be valued for property taxation purposes in accordance with the provisions of this section;

(1) all property used in connection with mineral property and defined in Paragraph (1) of Subsection B of Section 7-36-23 NMSA 1978 and Paragraph (1) of Subsection B of Section 7-36-25 NMSA 1978;

(2) all industrial, manufacturing, construction and commercial machinery, equipment, furniture, materials and supplies subject to valuation for property taxation purposes and not subject to valuation under the provisions of Sections 7-36-22 through 7-36-32 NMSA 1978;

(3) all other business personal property subject to valuation for property taxation purposes and not subject to valuation under the provisions of Sections 7-36-22 through 7-36-32 NMSA 1978; and

(4) construction work in progress that includes any of the items of property specified in Paragraphs (1), (2) or (3) of this subsection.

B. As used in this section:

(1) "depreciation" means the straight line method of computing the depreciation allowance over the useful life of the item of property;

(2) "useful life of the item of property" means the "class life" for same or similar kinds of property as defined and used in Section 167 of the United States Internal Revenue Code of 1954, as amended or renumbered;

(3) "other justifiable factors" includes, but is not limited to, functional and economic obsolescence;

(4) "schedule value" means a fixed value of an individual property unit within a mass of similar or like units established by determining the average unit tangible property cost of a substantial sample of such property and deducting therefrom an average related accumulated provision for depreciation per unit and an average of other justifiable factors per unit;

(5) "tangible property cost" means the actual cost of acquisition or construction of property including additions, retirements, adjustments and transfers, but without deduction of related accumulated provision for depreciation, amortization or other purposes; and

(6) "construction work in progress" means the total of the balance of work orders for property in process of construction on the last day of the preceding calendar year but does not include the equipment, machinery or devices used or available to construct such property but not incorporated therein.

C. The value of individual items of property subject to valuation under this section, except construction work in progress, shall be determined as follows:

(1) the valuation authority shall first establish the tangible property cost of each item of property;

(2) from the tangible property cost shall be deducted the related accumulated provision for depreciation and any other justifiable factors; and

(3) notwithstanding the foregoing determination of value for property taxation purposes, the value for property taxation purposes of each item of property valued under this subsection shall never be less than twelve and one-half percent of the tangible property cost of such item of property so long as the property is used and useful in a business activity.

D. Construction work in progress shall be valued at fifty percent of the actual amounts expended and entered upon the accounting records of the taxpayer as of December 31 of the preceding calendar year as construction work in progress.

E. The division may establish a schedule value for the same or similar kinds of property to be valued under Subsection C of this section for property taxation purposes. In arriving at a schedule value, the division shall:

(1) determine the average unit tangible property cost of a substantial sample of the same or similar kinds of property;

(2) such unit average tangible property cost shall then be reduced by the average related accumulated provision for depreciation per unit applicable to the sample of the same or similar kinds of property and shall then be further reduced by an average of other justifiable factors per unit applicable to the same or similar kinds of property; and

(3) from the foregoing determination a schedule value for the same or similar kinds of property shall be determined and set forth in a regulation adopted pursuant to Section 7-38-88 NMSA 1978 [repealed].

F. The division shall adopt a schedule value for the following kinds of property:

(1) drilling rigs; and

(2) large off-the-road highway construction equipment.

G. Each item of property having a taxable situs in the state and valued under this section shall have its net taxable value allocated to the governmental unit in which the property is located.

H. The division shall adopt regulations under Section 7-38-88 NMSA 1978 [repealed] to implement the provisions of this section.

History: 1953 Comp., § 72-29-22, enacted by Laws 1975, ch. 165, § 14; 1982, ch. 28, § 5.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 1991, ch. 166, § 14 repealed 7-38-88 NMSA 1978, referred to in Subsections E and H. For present comparable provisions, *see* 9-11-6.2 NMSA 1978.

Cross references. — For Section 167 of the Internal Revenue Code, *see* 26 U.S.C. § 167.