

**Repeals.** — Laws 2019, ch. 274, § 16 repealed 7-24B-9 NMSA 1978, as enacted by Laws 1987, ch. 45, § 18, relating to interpretation of Special County Hospital Gasoline Tax Act, effective July 1, 2019. For provisions of former section, see the 2018 NMSA 1978 on *NMOneSource.com*.

## **7-24B-10. Repealed.**

### **ANNOTATIONS**

**Repeals.** — Laws 1990, ch. 88, § 21 repealed 7-24B-10 NMSA 1978, as enacted by Laws 1987, ch. 45, § 19, relating to imposition of federal regulations, effective May 16, 1990. For provisions of former section, see the 1989 NMSA 1978 on *NMOneSource.com*.

## **ARTICLE 25**

### **Resources Excise Tax**

#### **7-25-1. Short title.**

Chapter 7, Article 25 NMSA 1978 may be cited as the "Resources Excise Tax Act".

**History:** 1953 Comp., § 72-16A-20, enacted by Laws 1966, ch. 48, § 1; 1985, ch. 65, § 21.

### **ANNOTATIONS**

**Cross references.** — For provisions governing administration and enforcement, see 7-1-2 NMSA 1978.

For duty of successor in business with respect to this act, see 7-1-61 NMSA 1978 et seq.

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

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

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 28 to 30, 614.

84 C.J.S. Taxation § 95 et seq.

## **7-25-2. Purpose.**

The purpose of the Resources Excise Tax Act is to provide revenue for public purposes by levying a tax on the privilege of severing and processing natural resources within New Mexico.

**History:** 1953 Comp., § 72-16A-21, enacted by Laws 1966, ch. 48, § 2.

### **ANNOTATIONS**

**Effective dates.** — Laws 1966, ch. 48, § 14 made Laws 1966, ch. 48, § 2 effective July 1, 1967.

**Primary purpose of Resources Excise Tax Act** is to encourage the development of the extractive industries of this state through the imposition of rates that are a fraction of the gross receipts tax (see Sections 7-9-1 to 7-9-81 NMSA 1978). *Carter & Sons, Inc. v. N.M. Bureau of Revenue*, 1979-NMCA-025, 92 N.M. 591, 592 P.2d 191.

**Taxation of lumber business activities.** — "Road maintenance" and "hauling" are an integral and indispensable part of a taxpayer's activity of severing timber and delivering it to a lumber mill and as such are exempt from the gross receipts tax (see Sections 7-9-1 to 7-9-81 NMSA 1978) by the provisions of Section 7-9-35 NMSA 1978, while being taxable under the Resources Excise Tax Act. *Carter & Sons, Inc. v. N.M. Bureau of Revenue*, 1979-NMCA-025, 92 N.M. 591, 592 P.2d 191.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 84 C.J.S. Taxation § 95 et seq.

## **7-25-3. Definitions.**

As used in the Resources Excise Tax Act:

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

B. "natural resource" means timber and any product thereof and any metalliferous or nonmetalliferous mineral product, combination or compound thereof, severed in New Mexico but does not include oil, natural gas, liquid hydrocarbon individually or any combination thereof, carbon dioxide, helium or nonhydrocarbon gas;

C. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity;

D. "processing" means smelting, leaching, refining, reducing, compounding or otherwise preparing for sale or commercial use any natural resource so that its character or condition is materially changed in mills or plants located in New Mexico;

E. "processor" means any person engaging in the business of processing natural resources that the person owns, or any person who is the owner of natural resources and who has another person perform the processing of such natural resources;

F. "service charge" means the total amount of money or the reasonable value of other consideration received for severing or processing any natural resource by any person who is not the owner of the natural resource. However, if the money received does not represent the value of the severing or processing performed, "service charge" means the reasonable value of the severing or processing performed;

G. "severer" means any person engaging in the business of severing natural resources that the person owns, or any person who is the owner of natural resources and who has another person perform the severing of such natural resources;

H. "severing" means mining, quarrying, extracting, felling or producing any natural resource in New Mexico for sale, profit or commercial use; and

I. "taxable value" means the value after severing or processing, without deduction of any kind other than specified in this subsection, of any natural resource severed or processed in New Mexico. It is presumed, in the absence of preponderant evidence of another value, that the taxable value means the total amount of money or the reasonable value of other consideration received for the severed or processed natural resource. However, if the amount of money received does not represent the value of the severed or processed natural resource or if the severed or processed natural resource is not sold, the taxable value shall be the reasonable value of the severed or processed natural resource. All natural resources severed or processed in New Mexico shall be included in determining taxable value, regardless of the place of sale or the fact that delivery may be made to points outside of New Mexico. If any person shall ship, transmit or transport natural resources out of New Mexico without making sale of them or shall ship, transmit or transport natural resources out of New Mexico in an unfinished condition, the value of the natural resources in the condition in which they existed when shipped, transmitted or transported out of New Mexico and before they enter interstate commerce, without deduction of any kind other than specified in this subsection, shall be the basis for determining the taxable value. Amounts received from selling natural resources, other than metalliferous mineral ores, whether processed or unprocessed, to the United States or any agency or instrumentality thereof, the state of New Mexico or any political subdivision thereof, or to organizations that have demonstrated to the department that they have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section

501 (c) (3) of the United States Internal Revenue Code of 1954, as amended or renumbered, which employ the natural resource in the conduct of functions described in Section 501 (c) (3) and not in the conduct of an unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code of 1954, as amended or renumbered, may be deducted from taxable value. Any royalty or other similar interest, whether payable in cash or in kind, paid to the United States or any agency or instrumentality thereof, or the state of New Mexico or any political subdivision thereof, or any Indian tribe, Indian pueblo or Indian that is a ward of the United States may be deducted from taxable value. In computing taxable value, any owner of natural resources may deduct any service charge on which the service tax imposed by Section 7-25-6 NMSA 1978 is payable.

**History:** 1953, Comp., § 72-16A-22, enacted by Laws 1966, ch. 48, § 3; 1968, ch. 58, § 1; 1969, ch. 267, § 1; 1970, ch. 14, § 1; 1971, ch. 23, § 1; 1972, ch. 37, § 1; 1977, ch. 249, § 50; 1979, ch. 255, § 1; 1985, ch. 65, § 22; 1986, ch. 20, § 91; 2007, ch. 275, § 3.

## ANNOTATIONS

**Cross references.** — For Sections 501(c)(3) and 513 of the Internal Revenue Code of 1954, see 26 U.S.C. §§ 501(c)(3) and 513, respectively.

**The 2007 amendment,** effective July 1, 2007, excluded helium and nonhydrocarbon gas in the definition of "natural resource".

**"Severing" includes incidental development work.** — The exemption from the gross receipts tax provided by Section 7-9-35 NMSA 1978 applies when severing was taking place as the development work was performed and none of taxpayer's work was preliminary to or preparatory for severing; receipts from development work, which includes construction, are exempted from the gross receipts tax and taxable under the service tax provided by Section 7-25-6 NMSA 1978 when such construction work is incidental to the severing. *Patten v. Bureau of Revenue*, 1974-NMCA-051, 86 N.M. 355, 524 P.2d 527.

**Highway department owns sand and gravel severed from leased pits.** — Highway department is owner of sand and gravel processed or severed from pits it leases from others. *J.W. Jones Constr. Co. v. Revenue Div.*, 1979-NMCA-144, 94 N.M. 39, 607 P.2d 126.

**"Taxable value" includes reimbursements for tax increases.** — When a severer is reimbursed for the amount of a severance tax increase, it must include the reimbursed amount in "taxable value" in figuring the resources tax. *In re Ranchers-Tufco Limestone Project Joint Venture*, 1983-NMCA-126, 100 N.M. 632, 674 P.2d 522, cert. denied, 100 N.M. 505, 672 P.2d 1136.

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

## **7-25-4. Rate and measure of tax; denomination as "resources tax".**

A. For the privilege of severing natural resources, there is imposed on any severer of natural resources in New Mexico an excise tax at the following rates on the taxable value of the natural resources:

- (1) all natural resources except potash and molybdenum, three-fourths of one percent;
- (2) potash, one-half of one percent; and
- (3) molybdenum, one-eighth of one percent.

B. The tax imposed by this section shall be referred to as the "resources tax".

**History:** 1953 Comp., § 72-16A-23, enacted by Laws 1966, ch. 48, § 4; 1970, ch. 8, § 3; 1973, ch. 144, § 1; 1999, ch. 177, § 1; repealed and reenacted by 1999, ch. 177, § 2.

### **ANNOTATIONS**

**Cross references.** — For exemption of natural resource on which processors tax is paid, see 7-25-7 NMSA 1978.

**1999 amendments.** — Laws 1999, ch. 177, § 1, for tax years beginning July 1, 1999 and ending July 1, 2002, reduced the three-quarters of one percent tax on copper in Subsection A and provided for a resources tax on copper of one-fourth of one percent until July 1, 2002. See Laws 1999, ch. 177, § 5 for the applicability of Laws 1999, ch. 177, §§ 1 and 3.

Laws 1999, ch. 177, § 2, applicable for the tax year beginning July 1, 2002, repealed and reenacted 7-25-4 NMSA 1978 to increase the resources tax on copper from one-fourth of one percent to three-quarters of one percent. See Laws 1999, ch. 177, § 6 for the applicability of Laws 1999, ch. 177, §§ 2 and 4.

**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).

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 22 Nat. Resources J. 673 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 218, 614.

## **7-25-5. Rate and measure of tax; denomination as "processors tax".**

A. For the privilege of processing natural resources, there is imposed on any processor of natural resources in New Mexico an excise tax at the following rates on the taxable value of the natural resources:

- (1) all natural resources except timber, potash and molybdenum, three-fourths of one percent;
- (2) timber, three-eighths of one percent;
- (3) potash, one-eighth of one percent; and
- (4) molybdenum, one-eighth of one percent.

B. The tax imposed by this section shall be referred to as the "processors tax".

**History:** 1978 Comp., § 7-25-5, enacted by Laws 1985, (1st S.S.), ch. 3, §§ 1, 2; 1999, ch. 177, § 3; repealed and reenacted by Laws 1999, ch. 177, § 4.

### **ANNOTATIONS**

**1999 amendments.** — Laws 1999, ch. 177, § 3, for tax years beginning July 1, 1999 and ending July 1, 2002, reduced the three-quarters of one percent processors tax on copper to one-fourth of one percent. See Laws 1999, ch. 177, § 5 for the applicability of Laws 1999, ch. 177, §§ 1 and 3.

Laws 1999, ch. 177, § 4, applicable for the tax year beginning July 1, 2002, repealed and reenacted 7-25-5 NMSA 1978 to increase the processors tax on copper in Subsection A(1) from one-fourth of one percent to three-fourths of one percent. See Laws 1999, ch. 177, § 6 for the applicability of Laws 1999, ch. 177, §§ 2 and 4.

**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).

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 22 Nat. Resources J. 673 (1982).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 218, 614.

84 C.J.S. Taxation § 95 et seq.

## **7-25-6. Rate and measure of tax; denomination as "service tax".**

A. For the privilege of severing or processing in New Mexico natural resources that are owned by another person and are not otherwise taxed by Sections 7-25-4 and 7-25-5 NMSA 1978, there is imposed on the service charge of any person severing or processing natural resources that are owned by another person an excise tax at the same rate that would be imposed on an owner of natural resources for performing the same function.

B. The tax imposed by this section shall be referred to as the "service tax".

**History:** 1953 Comp., § 72-16A-25, enacted by Laws 1966, ch. 48, § 6; 1993, ch. 30, § 25.

### **ANNOTATIONS**

**The 1993 amendment**, effective June 18, 1993, substituted "Sections 7-25-4 and 7-25-5 NMSA 1978" for "Sections 4 and 5 of the Resources Excise Tax Act" in Subsection A.

**Severance alone does not give rise to taxable event.** *Yankee Atomic Elec. Co. v. N.M. & Ariz. Land Co.*, 632 F.2d 855 (10th Cir. 1980).

**Severance and sale, transportation or consumption triggers tax.** — Severance, coupled with the sale, transportation out of New Mexico, or consumption thereof triggers the imposition of the tax. *Yankee Atomic Elec. Co. v. N.M. & Ariz. Land Co.*, 632 F.2d 855 (10th Cir. 1980).

**Receipts from development work incidental to severing taxable under this section.** — The exemption from the gross receipts tax provided by Section 7-9-35 NMSA 1978 applies when severing was taking place as the development work was performed and none of taxpayer's work was preliminary to or preparatory for severing; receipts from development work, which includes construction, are exempted from the gross receipts tax and taxable under the service tax provided by this section when such construction work is incidental to the severing. *Patten v. Bureau of Revenue*, 86 N.M. 355, 524 P.2d 527 (Ct. App. 1974).

**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).

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — 71 Am. Jur. 2d State and Local Taxation §§ 218, 614.

## **7-25-7. Exemption; resources tax.**

Exempted from the resources tax is the taxable value of any natural resource that is processed in New Mexico and on whose taxable value the processors tax is paid.

**History:** 1953 Comp., § 72-16A-26, enacted by Laws 1966, ch. 48, § 7.

### **ANNOTATIONS**

**Effective dates.** — Laws 1966, ch. 48, § 14 made Laws 1966, ch. 48, § 7 effective July 1, 1967.

**Cross references.** — For resources tax, see 7-25-4 NMSA 1978.

For processors tax, see 7-25-5 NMSA 1978.

## **7-25-8. Sales of natural resources subject to Gross Receipts and Compensating Tax Act.**

In addition to being subject to the Resources Excise Tax Act, any person who sells nonfissionable natural resources other than for subsequent sale in the ordinary course of business or for use as an ingredient or component part of a manufactured product is also subject to the provisions of the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] on such sales.

**History:** 1953 Comp., § 72-16A-27, enacted by Laws 1966, ch. 48, § 8; 1984, ch. 2, § 8.

### **ANNOTATIONS**

**Cross references.** — For exception to exemption from gross receipts tax of persons liable for resources excise tax, see 7-9-35 NMSA 1978.