

7-36-20

Special Method of Valuation

Land Used Primarily for Agricultural Purposes

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, "agricultural use" means the use of land for the production of plants, crops, trees, forest products, orchard crops, livestock, poultry, captive deer or elk, or fish. The term also includes the 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. 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 must 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 must be made no later than the last day of February of the tax year. 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.

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

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.

ANNOTATIONS

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, reversing 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. *Prop. Appraisal Dep't v. Ransom*, 84 N.M. 637, 506 P.2d 794 (Ct. App. 1973)(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*, 94 N.M. 395, 611 P.2d 218 (1980).

Agricultural land is to be valued based on its capacity to produce, not on its actual production. *Jicarilla Apache Nation v. Rio Arriba County Assessor*, 2004-NMCA-055, 135 N.M. 630, 92 P.3d 642, reversed 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*, 94 N.M. 395, 611 P.2d 218 (1980).

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) ion." *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*, 89 N.M. 131, 548 P.2d 93 (Ct. App. 1976).

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*, 94 N.M. 395, 611 P.2d 218 (1980).

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*, 71 N.M. 385, 378 P.2d 619 (1963).

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*, 71 N.M. 385, 378 P.2d 619 (1963).

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.

REGULATIONS

3.6.5.27. Special method of valuation - land used primarily for agricultural purposes:

A. APPLICATION FORM FOR VALUATION AS AGRICULTURAL LAND:

(1) Applications by owners of land for valuation pursuant to Section 7-36-20 NMSA 1978 must be on a form which has been approved by the director of the division. The form shall contain the following requirements for information to be provided:

- (a) description of the land;
- (b) the use of the land during the year preceding the year for which the application is made;
- (c) whether the land was held for speculative land subdivision and sale or has been subdivided;
- (d) whether the land was used for commercial purposes of a nonagricultural character;
- (e) whether the land was used for recreational purposes and if so, how; and
- (f) whether the land was leased and if so, who was the lessee, did he report livestock for valuation and what was the lessee's use of the property.

(2) The form, or a separate document, may also contain requirements for providing information as to the owner's farm income and farm expenses reported to the United States internal revenue service for federal income tax purposes.

B. AGRICULTURAL PROPERTY - BURDEN OF DEMONSTRATING USE ON OWNER:

(1) To be eligible for the special method of valuation for land used primarily for agricultural purposes, the owner of the land bears the burden of demonstrating that the use of the land is primarily agricultural. This burden cannot be met without submitting objective evidence that:

(a) the plants, crops, trees, forest products, orchard crops, livestock, captive deer or elk, poultry or fish which were produced or which were attempted to be produced through use of the land were:

- (i) produced for sale or subsistence in whole or in part; or
- (ii) used by others for sale or resale; or
- (iii) used, as feed, seed or breeding stock, to produce other such products which other products were to be held for sale or subsistence; or

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

(c) the owner of the land was resting the land to maintain its capacity to produce such products in subsequent years.

(2) The use of land for the lawful taking of game shall not disqualify land from a determination that it is used primarily for agricultural purposes. Any income to the landowner from the use of the landowner's land for the lawful taking of game will not be considered for purposes of determining whether land is used primarily for agricultural purposes.

(a) The taking of game is lawful for purposes of this subsection if it complies with the requirements of NMSA 1978, Chapter 17.

(b) The land is used for the lawful taking of game if the landowner actively participates in the lawful taking of game on the landowner's land or authorizes others to use the landowner's land for the lawful taking of game.

(3) A presumption exists that land is not used primarily for agricultural purposes if income from nonagricultural use of the land exceeds the income from agricultural use of the land.

(4) A homesite is not land used for agricultural purposes and is not to be valued as agricultural land pursuant to Section 7-36-20 NMSA 1978. A "homesite" as that term is used in this section is the site used primarily as a residence, together with any appurtenant lands used for purposes related to residing on the site. It is more than the boundary of the foundation of an improvement used as a residence and includes land on which yards, swimming pools, tennis courts and similar nonagricultural facilities are located but does not include land on which agricultural facilities such as barns, pig pens, corrals, bunk houses, farm equipment sheds and outbuildings are located. A homesite shall be presumed to be a minimum of one acre, unless the property owner establishes that a portion of the acre allocated to classification as homesite is actually used for agricultural purposes under the conditions of this section. A homesite can exceed one acre if nonagricultural facilities extend beyond one acre.

(5) Once land has been classified as land used primarily for agricultural purposes, no application for that classification is required for any succeeding year so long as the primary use of the land remains agricultural. The land will retain its status for property taxation purposes in every succeeding year as land used primarily for agricultural purposes.

(6) When use of the land changes such that it is no longer used primarily for agricultural purposes, the owner of the land must report the change in use to the county assessor in which the land is located. A report by the owner that land classified as land used primarily for agricultural purposes in the preceding property tax year is not used primarily for agricultural purposes in the current property tax year rebuts the presumptions in Subsection A of Section 7-36-20 NMSA 1978. If subsequently use of the land again becomes primarily agricultural, the owner must apply for classification of the land as land used primarily for agricultural purposes.

(7) When the owner of the land has not reported that the use of the land is no longer primarily for agricultural purposes but the county assessor has evidence sufficient to rebut the presumptions in Subsection A of Section 7-36-20 NMSA 1978, the county assessor must change the classification of the land. In such a case the county assessor must also consider whether the penalty provided by Subsection H of Section 7-36-20 NMSA 1978 should be applied. The owner may protest the change in classification.

C. AGRICULTURAL LAND - MINIMUM SIZE: Tracts or parcels of land of less than one (1) acre, other than tracts or parcels used for the production of orchard crops, poultry or fish, are not used primarily for agricultural purposes. Property used for grazing is only eligible for special valuation as land used primarily for agricultural purposes if the property meets the requirements of Paragraph (1) of Subsection B of this section, is stocked with livestock that are reported to the county assessor for valuation by either the property owner or the owner of the livestock, and contains the minimum number of acres capable of sustaining one animal unit as established in the order issued pursuant to Paragraph (5) of Subsection F of this section. Tracts or parcels of property smaller than the minimum number of acres capable of sustaining one animal unit may qualify as land used primarily for agricultural purposes as grazing land upon application to the county assessor. The county assessor shall consider the following in determining whether the property is eligible for special valuation as land used primarily for agricultural purposes as grazing land:

(1) whether the property owned or leased is of sufficient size and capacity to produce more than one-half of the feed required during the year for the livestock stocked on the property;

(2) the predominant use of the land has been continuous;

(3) the purchase price paid;

(4) whether an effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices;

(5) whether the property has been divided, without regard to whether such division was made pursuant to county or municipality subdivision regulations;

(6) whether the property is eligible for landowner hunting permits issued by the department of game and fish;

(7) whether the property is contiguous to land used primarily for agricultural purposes owned by a member or members of the immediate family of the owner; "immediate

family" means a spouse, children, parents, brothers and sisters, and

(8) such other factors as may from time to time become applicable.

D. AGRICULTURAL PRODUCTS DEFINED: The phrase "agricultural products" as it is used in Section 7-36-20 NMSA 1978 and regulations under the Property Tax Code means plants, crops, trees, forest products, orchard crops, livestock, captive deer or elk, wool, mohair, hides, pelts, poultry, fish, dairy products and honey.

E. PRODUCTION CAPACITY OF AGRICULTURAL LAND - IMPLEMENTATION OF VALUATION METHOD:

(1) The production capacity of agricultural land shall be determined by the income method of valuation based on the income derived or capable of being derived from the use of the land for agricultural purposes. If information about income amounts from the use of land for agricultural purposes is unavailable, then income shall be imputed to the land being valued on the basis of income amounts from the use of comparable agricultural lands for agricultural purposes. The comparability of the land used for purposes of imputing income shall be determined on the basis of class. A determination of income from agricultural land is not required to be restricted to income from actual production of agricultural products on the agricultural land, since the basis for determination of value is on the land's capacity to produce agricultural products.

(2) "Income" as that term is used in this section is generally the average for the preceding five tax years of:

(a) the amount reported for federal income tax purposes on Schedule F of the individual federal income tax return as net farm profit, excluding income and expenses not attributable to the agricultural land being valued; plus

(b) fees for rental of land or machinery less expenses relating thereto; plus

(c) the reasonable value of unpaid labor of the operator or the farm family; less

(d) the expense of depreciation on farm buildings and machinery.

(3) In lieu of calculating income in the manner set forth in Paragraph (2) of Subsection B of this section, income may be determined by either of the following methods.

(a) Income may be determined from reference services such as the New Mexico crop and livestock reporting service, the cooperative extension service, and the agriculture departments of state universities. If a source other than the reported federal farm income, referred to in Paragraph (2) of Subsection E of this section, is used, adjustments should be made to allow for costs allowable on the federal farm income tax return if such costs are not allowed in the income figure provided. Also, income from sources other than the federal farm income return are to be closely matched to the class of agricultural land being valued so that the income properly reflects income from the class of agricultural land being valued.

(b) The division by order may determine annual income from various classes of agricultural land based on the land's capacity to produce agricultural products, as provided in Subsection E of this section. This order or orders, if issued, would be issued before the last day of

the tax year preceding the year in which the annual income amounts are to be used.

(4) The capitalization rate to be used in valuing land used primarily for agricultural purposes pursuant to this section may be set by the division by order. This order, if made, will be issued before the last day of the tax year preceding the year in which the capitalization rate is to be used. The division shall review the capitalization rate used at least once every five tax years. In setting the capitalization rate, consideration is given to the current interest rates for government loans, federal land bank loans and production credit association loans.

(5) The capitalization rate is divided into the annual "income" per acre, except for grazing land, to arrive at the value per acre for property taxation purposes of the agricultural land being valued.

F. CLASSES OF AGRICULTURAL LAND:

(1) Pursuant to Section 7-36-20 NMSA 1978, the division shall annually issue an order establishing the carrying capacity of grazing land in accordance with the methods of classification contained in this subsection.

(2) Agricultural land is classified as either:

(a) "irrigated agricultural land", which is all agricultural land receiving supplemental water to that provided by natural rainfall; or

(b) "dryland agricultural land", which is all agricultural land without a supplemental water supply; or

(c) "grazing land" which is all agricultural land which is used solely for the grazing of livestock as established in Subsections B and C above; land the bona fide and primary use of which is the production of captive deer or elk shall be valued as grazing.

(3) All lands that were previously irrigated or dryland meeting the preceding classifications but which are now participating in any of the various crop retirement programs such as the soil bank or acreage set-aside program sponsored by the United States department of agriculture are still to be classified as irrigated or dryland until the program expires from the subject land and clear evidence is shown that a change in land use is occurring, unless there has been a sale of the water rights, the use of which permitted irrigation.

(4) Irrigated and dryland agricultural land is classified using the following sources:

(a) The land capability classification of the natural resources conservation service which is a rating of land according to its ability to produce permanently and the requirements of management to sustain production. It consists of eight (8) different land capability classes. Classes I through IV are considered suitable for cultivation; Classes V through VIII are considered to be not suitable for cultivation. Classes II through VIII are further modified by four (4) subclasses that are used to signify the particular kind of limitation affecting the soil. In addition, there are nine (9) land capability units which are used to indicate a special kind of condition. This system is an interpretative rating that includes not only the physical factors of soil, but the availability of water and the effects of climate. It is designed primarily for soil management and conservation

practices. Each land capability description carries with it specific recommendations for farming practices that were developed by actual farming experience to offset or allow for the existing production-limiting factors of the soil.

(b) Natural land classification of soil by physiographic groups based on their general topographic, or slope, position.

(c) Classification by series and type which is the classification used in the cooperative survey of New Mexico state university and the United States department of agriculture and by the natural resources conservation service and which classify in a series-type grouping.

(d) Soil characteristics shown by the current New Mexico county assessor's agricultural manual.

(e) Weather data. The general weather pattern of an area is usually well known and presents no special problems. However, the possible presence of microclimatic zones should be considered. Weather data can be obtained from the national weather service, agriculture experiments stations, extension service and others connected with growing conditions.

(f) Cost and availability of water. Irrigation districts and other water suppliers boundaries can be obtained from the local conservancy district office or the New Mexico state engineer's office. The supply of water and its cost is to be considered. Electric utility companies often have information on pumping costs and related charges. District taxes, where they are charged, are to be ascertained as well as other water costs. Many areas are subject to charges related to reclamation and drainage; information on such charges must be obtained.

(g) Cropping information. Knowledge of crop production, yields, prices received, costs and cultural practices is essential to many appraisal situations.

(5) The minimum carrying capacity of grazing land will be established in an order of the division by the number of animal units per section (conventionally 640 acres) that the grazing land will support under accepted management practices. The assessor can allocate acreage per animal unit for land parcels that are less than 640 acres as long as the allocation is proportionate and meets the criteria of Subsection C "agricultural land-minimum size" herein. In establishing carrying capacity, the division shall adhere to the definition of livestock in Subsection C of Section 7-35-2 NMSA 1978, as well as utilize the animal unit equivalencies recognized by and information obtained from livestock industry representatives, the bureau of land management, the natural resources conservation service, the forest service, agricultural departments of state universities and the state and federal departments of agriculture shall be used. The division will consider drought and natural conditions which would tend to reduce the carrying capacity of grazing land. The division may establish in each county one or more carrying capacities based on different natural conditions within the county. Economic conditions, such as the market price of livestock, are not taken into consideration in determining carrying capacity of grazing land. The order is issued before the last day of the year preceding the tax year in which it is to be used.

(6) The division, by order, shall determine the values per animal, which values reflect the net income derived or capable of being derived from the use of the land (or fractional interests

in real property) used for grazing being valued for the tax year for grazing purposes. These animal values are applied uniformly throughout the state and are calculated in a manner so that the tax ratio is applied. This amount or these amounts shall be reviewed by the division prior to the issuance of the annual order. The annual order is to be issued before the last day of the tax year preceding the tax year in which it is to be used; however, this deadline may be extended by order of the director.

G. IMPROVEMENTS ON AGRICULTURAL LAND - VALUATION: All improvements, other than those specified in Subsection C of Section 7-36-15 NMSA 1978, on land used primarily for agricultural purposes shall be valued separately, using the methods described in Section 7-36-15 NMSA 1978 and regulations thereunder, and the value of these improvements shall be added to the value of the land.

H. VALUATION OF CAPTIVE DEER AND ELK: The department shall establish the value of captive elk and deer under Section 7-36-21 NMSA 1978 and 3.6.5.28 NMAC. For purposes of the department's determination:

- (1) captive deer shall be valued and taxed as sheep; and
- (2) captive elk shall be valued and taxed as cattle.

[3/23/83, 12/29/94, 8/31/96, 12/31/97; 3.6.5.27NMAC - Rn & A, 3 NMAC 6.5.27, 4/30/01; A, 8/15/06; A, 9/15/09]

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 Subsection 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.

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

ANNOTATIONS

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*, 114 N.M. 263, 837 P.2d 457 (Ct. App. 1992).

REGULATIONS

3.6.5.28. Special method of valuation - livestock:

A. LIVESTOCK OWNERS REPORT: The livestock owners report shall be on a form approved by the director of the division. The report requires the following information:

(1) the number of each class of livestock, by head, owned by the owner and located in New Mexico on January 1 of the tax year, the classes being consistent with those established in the division order referred to in Subsection D of Section 7-36-21 NMSA 1978;

(2) the numbers of each class of livestock, by head, owned by the owner and not located in New Mexico on January 1 but brought into New Mexico and located here for more than twenty days subsequent to January 1, the classes being consistent with those established in the division order referred to in Subsection D of Section 7-36-21 NMSA 1978; and

(3) a statement as to the length of time during the tax year that the livestock are expected to be in New Mexico and their location, such as a feedlot or grazing on pasture, with reference to school district in the county.

B. ISSUING OF ORDER DELEGATED: Authority to issue and sign the order establishing the classes of livestock and the value of each class is delegated to the director.

C. ALLOCATION OF VALUE OF LIVESTOCK:

(1) Livestock that are in New Mexico for a portion of a tax year exceeding twenty days will be valued at a prorated value determined by multiplying by a fraction, the numerator of which is the number of months or portions of a month the livestock are located in New Mexico and the denominator of which is twelve, the value of the livestock determined by the order referred to in Subsection D of Section 7-36-21 NMSA 1978. Therefore, if a head of livestock was in New Mexico for one month and five days during a tax year, the value of the head of livestock would be determined as follows: $2/12 \times \$100$ (value per order) = \$16.67 (value for property tax purposes).

(2) If livestock are imported for an indeterminate time or are exported for an indeterminate time but returned to New Mexico during the tax year and during this time of importation or exportation the cattle are:

(a) located in a feedlot, it shall be presumed that the livestock were in the feedlot for five months;

(b) used for racing, it shall be presumed that the livestock were used for racing for three months; and

(c) used for rodeos, it shall be presumed that the livestock were used for rodeos for one month; these presumptions may be overcome by a showing by the owner of the livestock of the actual time the livestock were or will be in New Mexico.

(3) Livestock, both resident and transient, which range on land in more than one governmental unit shall be allocated among the governmental units on the basis of the proportion of range land in each governmental unit. Therefore, if livestock valued at \$1,000 range on ten acres of land located one-half in X county and one-half in Y county, the value allocated to X county would be \$500 and the value allocated to Y county would be \$500. This allocation may be adjusted to account for a difference in carrying capacity of the grazing land in different governmental units. Values of livestock may also be allocated on the basis of the time they range on land in a governmental unit during the tax year, as that time relates to the total time the livestock are ranged on land in all governmental units in New Mexico.

[3/23/83, 12/29/94, 8/31/96; 3.6.5.28 NMAC - Rn & A, 3 NMAC 6.5.28, 4/30/01]

7-38-21

Property Tax Protests

Election of Remedies

(c) used for rodeos, it shall be presumed that the livestock were used for rodeos for one month; these presumptions may be overcome by a showing by the owner of the livestock of the actual time the livestock were or will be in New Mexico.

(3) Livestock, both resident and transient, which range on land in more than one governmental unit shall be allocated among the governmental units on the basis of the proportion of range land in each governmental unit. Therefore, if livestock valued at \$1,000 range on ten acres of land located one-half in X county and one-half in Y county, the value allocated to X county would be \$500 and the value allocated to Y county would be \$500. This allocation may be adjusted to account for a difference in carrying capacity of the grazing land in different governmental units. Values of livestock may also be allocated on the basis of the time they range on land in a governmental unit during the tax year, as that time relates to the total time the livestock are ranged on land in all governmental units in New Mexico.

[3/23/83, 12/29/94, 8/31/96; 3.6.5.28 NMAC - Rn & A, 3 NMAC 6.5.28, 4/30/01]

7-38-21. Protests; election of remedies.

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

(1) filing a petition of protest with the director or the county assessor as provided in the Property Tax Code [Articles 35 to 38 of Chapter 7 NMSA 1978]; or

(2) filing a claim for refund after paying his taxes as provided in the Property Tax Code.

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

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

History: 1953 Comp., § 72-31-21, enacted by Laws 1973, ch. 258, § 61; 1981, ch. 37, § 71; 1983, ch. 215, § 1; 2001, ch. 24, § 1.

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

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

ANNOTATIONS

Protest or refund. — The alternate methods of protesting the rejection of a tax exemption set out in

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

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation §§ 795 to 816.

84 C.J.S. Taxation §§ 512 to 559.

REGULATIONS

3.6.7.30. Time of election of remedies:

The election provided for in Section 7-38-21 NMSA 1978 is made when the taxpayer files a petition of protest or claim for refund. The taxpayer may not withdraw the protest, then pay the assessment and claim a refund.

[3/23/83, 12/29/94, 8/31/96; 3.6.7.30 NMAC - Rn,3 NMAC 6.7.30, 4/30/01]

7-38-67

Real Property Sale Requirements

7-38-67. Real property sale requirements.

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

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

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

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

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

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

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

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

- (1) the property is situated within the boundaries of that land grant-merced as shown in the United States patent to the grant;
- (2) the bid covers all past taxes, penalties, interest and costs due on the property; and
- (3) the land becomes part of the common lands of the land grant-merced.

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

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

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

The 2001 amendment, effective June 15, 2001, in Subsection B, substituted "local newspaper" for "newspaper of general circulation", added "or, if there is no local county or municipal newspaper, then a newspaper published in a county contiguous to or near the county in which the real property is located", and added the second sentence. Laws 2001, ch. 253, § 3 enacted identical amendments to this section. The section was set out as amended by Laws 2001, ch. 254, § 3. See 12-1-8 NMSA 1978.

The 1995 amendment, effective June 16, 1995, substituted "department" for "division" throughout the section and substituted "costs" for "expenses of the sale" in Subsection D and in two places in Subsection E.

ANNOTATIONS

Notice by publication inadequate for mortgagee. — Notice by publication, in compliance with this section, does not provide a mortgagee of real property with constitutionally adequate notice of a proceeding to sell the mortgaged property for nonpayment of taxes. *Macaron v. Assocs. Capital Servs. Corp.*, 105 N.M. 380, 733 P.2d 11 (Ct. App. 1987).

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

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

85 C.J.S. Taxation §§ 798 to 808.