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SENATE BILL 332

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

INTRODUCED BY

John Arthur Smith

AN ACT

RELATING TO TAXATION; PROVIDING FOR ALTERNATIVE UNIT VALUATION OF PROPERTY USED IN THE PROCESSING, GATHERING, TRANSMISSION OR DISTRIBUTION OF OIL, GAS, CARBON DIOXIDE OR LIQUID HYDROCARBONS; PROVIDING METHODS FOR ESTABLISHING DEPRECIATION AND OBSOLESCENCE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-36-27 NMSA 1978 (being Laws 1975, Chapter 165, Section 8, as amended) is amended to read:

"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,

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1 measurement or distribution of oil, natural gas, carbon dioxide
2 or liquid hydrocarbons subject to valuation for property
3 taxation purposes shall be valued in accordance with the
4 provisions of this section.

5 B. As used in this section:

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

14 [~~(1)~~] (2) "depreciation" means straight-line
15 depreciation over the useful life of the item of property;

16 [~~(2)~~] (3) "direct customer distribution
17 pipeline" means low or intermediate pressure distribution
18 system pipeline of four inches or smaller diameter situated in
19 urban areas;

20 (4) "economic obsolescence" means the loss in
21 value caused by unfavorable economic influences or factors
22 outside the property, and the loss is in addition to the loss
23 in value attributable to physical depreciation;

24 (5) "functional obsolescence" means the loss
25 of value due to functional inadequacies or deficiencies caused

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1 by factors within the property, and the loss in value is in
2 addition to the value loss attributable to physical
3 depreciation;

4 [~~(3)~~] (6) "large industrial sales meter" means
5 a sales meter having an installed tangible property cost in
6 excess of two thousand five hundred dollars (\$2,500);

7 [~~(4)~~] (7) "other justifiable factors"
8 includes, but is not limited to, functional and economic
9 obsolescence;

10 [~~(5)~~] (8) "pipeline" means all pipe,
11 appurtenances and devices used in systems for gathering,
12 transmission or distribution, but excludes sales meters,
13 pipeline operated exclusively for and constituting a part of a
14 plant and direct customer distribution pipeline;

15 [~~(6)~~] (9) "plant" means any refinery, gasoline
16 plant, extraction plant, purification plant, compressor or
17 pumping station or similar plant including all structures,
18 equipment, pipes and other related facilities, excluding
19 residential housing, office buildings and warehouses;

20 [~~(7)~~] (10) "sales meter" means the meter,
21 regulator and all appurtenances and devices used for measuring
22 sales to customers and includes the service pipe to the
23 customer's property line from the point of connection with the
24 pipeline;

25 [~~(8)~~] (11) "schedule value" means a fixed

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1 value of an individual property unit within a mass of similar
2 or like units established by determining the total tangible
3 property cost of a substantial sample of such property and
4 deducting therefrom an average related accumulated provision
5 for depreciation and allocating a proportionate part of the
6 remainder to individual taxable property units;

7 [~~(9)~~] (12) "tangible property cost" means the
8 actual cost of acquisition or construction of property,
9 excluding construction work in progress, including additions,
10 retirements, adjustments and transfers, but without deduction
11 of related accumulated provision for depreciation, amortization
12 or other purposes and excluding any amount attributable to oil
13 or gas reserves dedicated to such item of property; and

14 [~~(10)~~] (13) "tank" means any storage tank or
15 container, other than a natural reservoir, for storage that is
16 not a component part of any plant [~~and~~

17 ~~(11) "construction work in progress" means the~~
18 ~~total of the balances of work orders for pipelines, plants,~~
19 ~~large industrial sales meters and tanks in the process of~~
20 ~~construction on the last day of the preceding calendar year,~~
21 ~~exclusive of land and land rights and equipment, machinery or~~
22 ~~devices used or available to construct pipelines, plants, large~~
23 ~~industrial sales meters and tanks but which are not~~
24 ~~incorporated therein].~~

25 C. Sales meters, other than large industrial sales

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1 meters, shall be valued as follows:

2 (1) the ~~[division]~~ department may periodically
3 determine the average tangible property cost of a substantial
4 sample of sales meters in general use in the state;

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

8 (3) from the foregoing determinations a
9 schedule of value for sales meters for property taxation
10 purposes shall be determined and set forth in a regulation
11 ~~[adopted pursuant to Section 7-38-88 NMSA 1978]~~.

12 D. A taxpayer having property subject to valuation
13 pursuant to this section shall have the property valued by the
14 department in accordance with either Subsection E or H of this
15 section. The valuation shall be effective for subsequent
16 property tax years unless prior permission of the secretary is
17 obtained to change the valuation for good cause shown. A
18 taxpayer shall not seek permission to change a valuation unless
19 the prior valuation has been effective for at least three
20 consecutive property tax years. The secretary shall find that
21 good cause exists to change the valuation upon a showing
22 satisfactory to the secretary by the taxpayer that:

23 (1) the net result of all amendments to the
24 property tax statutes and rules with effective dates commencing
25 within the property tax year has a substantial adverse effect

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1 on the valuation for property tax purposes under the
2 alternative valuation of the property for that year relative to
3 what the valuation for property tax purposes would have been
4 under the alternative in the absence of the amendments;

5 (2) the net result of all changes in law or
6 circumstance but excluding acquisition or sale of property
7 subject to valuation under this section, including changes that
8 do not affect property tax liability, occurring within the
9 property tax year has a substantial adverse effect on the
10 valuation for property tax purposes under the alternative
11 valuation of the property for that year relative to what the
12 valuation for property tax purposes for the property would have
13 been under the alternative in the absence of the changes; or

14 (3) changes in property tax statutes or rules
15 that are effective prior to the property tax year have a
16 substantial adverse effect on the valuation for property tax
17 purposes under the alternative valuation of the property
18 relative to what the valuation for property tax purposes would
19 have been under the alternative.

20 ~~[D.]~~ E. Pipelines, direct customer distribution
21 pipelines, large industrial sales meters, tanks and plants
22 valued under this subsection shall be valued as follows:

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

25 (2) from such tangible property cost shall be

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1 deducted the related accumulated provision for depreciation and
2 any other justifiable factors that further affect the tangible
3 property value of each item of property; and

4 (3) notwithstanding the foregoing
5 determination of value for property taxation purposes, the
6 value for property taxation purposes of each item of property
7 valued under this subsection shall not be less than twenty
8 percent of the tangible property cost of such item of property.

9 [E-] F. Construction work in progress shall be
10 valued at fifty percent of the amount expended and entered upon
11 the accounting records of the taxpayer as of December 31 of the
12 preceding year as construction work in progress.

13 [F-] G. Each item of property having a taxable
14 situs in the state and valued under this section shall have its
15 net taxable value allocated to the governmental units in which
16 the property is located.

17 [~~G. The division shall adopt regulations under~~
18 ~~Section 7-38-88 NMSA 1978 to implement the provisions of this~~
19 ~~section.~~]

20 H. All pipelines, tanks, sales meters and plants
21 used in the processing, gathering, transmission, storage,
22 measurement or distribution of oil, natural gas, carbon dioxide
23 or liquid hydrocarbons subject to valuation under this
24 subsection shall be valued using one or more or a combination
25 of the following methods of valuation and applying the unit

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1 rule of appraisal to the property's:

2 (1) capitalization of earnings;

3 (2) market value of stock and debt; or

4 (3) cost less depreciation and obsolescence.

5 I. Claims for the deduction of economic or
6 functional obsolescence shall contain a requested obsolescence
7 factor along with a brief statement of the facts upon which the
8 claim is made, together with the necessary documentation to
9 support the claim. The documentation may include items such as
10 monthly throughput volumes from the prior year; comparisons to
11 a documented industry standard; comparisons to a close
12 competitor; an engineer's or appraiser's valuation; a
13 comparison of actual versus allowed rate of return; or other
14 objective evidence of functional or economic obsolescence.

15 J. If the department believes that a taxpayer has
16 not established a claim for functional or economic
17 obsolescence, it shall advise the taxpayer in writing of the
18 reasons for its determination and what additional information
19 is required to establish obsolescence. The department shall
20 make the response in sufficient time to allow the taxpayer to
21 address the deficiencies so that a notice of value or amended
22 notice of value may be issued if the taxpayer provides the
23 information."

24 Section 2. Section 7-38-8 NMSA 1978 (being Laws 1973,
25 Chapter 258, Section 48, as amended) is amended to read:

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1 "7-38-8. REPORTING OF PROPERTY FOR VALUATION--PENALTIES
2 FOR FAILURE TO REPORT.--

3 A. All property subject to valuation for property
4 taxation purposes by the department shall be reported annually
5 to the department. The report required by this subsection
6 shall be made by the owner of the property or such other person
7 as may be authorized by regulations of the department. The
8 report shall be in a form and contain the information required
9 by regulations of the department. It shall be made not later
10 than the last day of February in the tax year in which the
11 property is subject to valuation. Claims of economic or
12 functional obsolescence on nonfederally regulated properties
13 must be made at the time the annual report is filed; however,
14 the department shall accept supplements to the annual report
15 containing claims of economic or functional obsolescence on
16 properties regulated by the federal energy regulatory
17 commission or its successor at the time the annual commission
18 report becomes available, but no later than April 15 of the tax
19 year, or at a later time allowed by an extension granted by the
20 department. Requests must be based on information known about
21 the property prior to January 1 of the tax year. In the case
22 of the failure or refusal to file the report required under
23 this subsection, the department shall determine the value of
24 the property subject to valuation from the best information
25 available.

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1 B. Except as provided in Subsection D of this
2 section, all property subject to valuation for property
3 taxation purposes by the county assessor shall be reported as
4 follows:

5 (1) property valued in the 1974 tax year by
6 the county assessor need not be reported for any subsequent tax
7 year unless required to be reported under Paragraph (3) of this
8 subsection;

9 (2) property not valued in the 1974 tax year
10 by the county assessor but that becomes subject to valuation by
11 the county assessor in any subsequent tax year shall be
12 reported to the county assessor not later than the last day of
13 February of the tax year in which it becomes subject to
14 valuation, but such property need not be reported for any year
15 subsequent to the year in which initially reported unless
16 required to be reported under Paragraph (3) of this subsection;

17 (3) property once valued by a county assessor
18 in a tax year, but which is not valued for a year subsequent to
19 the year of initial valuation because it is not subject to
20 valuation for that subsequent year by the county assessor,
21 shall be reported to the county assessor not later than the
22 last day of February in a tax year in which it again becomes
23 subject to valuation by the county assessor; and

24 (4) reports required under Paragraphs (2) and
25 (3) of this subsection shall be in a form and contain the

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1 information required by regulations of the department.

2 C. Not later than the last day of February of each
3 tax year, every owner of real property who made, or caused to
4 be made, in the preceding calendar year improvements costing
5 more than ten thousand dollars (\$10,000) to that real property
6 shall report to the county assessor the property improved, the
7 improvements made, the cost of the improvements and such other
8 information as the department may require.

9 D. Manufactured homes, livestock and land used for
10 agricultural purposes shall be reported for valuation for
11 property taxation purposes to the county assessor at the times
12 and in the manner prescribed under Sections 7-36-26, 7-36-21
13 and 7-36-20 NMSA 1978 and regulations promulgated by the
14 department.

15 E. Property subject to valuation by the county
16 assessor for property taxation purposes and improvements to
17 such property that are required to be reported under Subsection
18 C of this section shall be reported to the county assessor of
19 the county in which the property is required to be valued under
20 Section 7-36-14 NMSA 1978. Reports shall be made either by the
21 owner of the property, the owner's authorized agent or any
22 person having control or management of the property and shall
23 be in a form and contain the information required by
24 regulations of the department.

25 F. Reports required by this section shall be made

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1 by the declarant under oath, and the director, employees of the
2 department, the assessor and [~~his~~] the assessor's employees are
3 empowered to administer oaths for this purpose.

4 G. [~~Any~~] A person who intentionally refuses to make
5 a report required [~~of him~~] under the provisions of Subsection
6 A, B or C of this section or who knowingly makes a false
7 statement in a report required under the provisions of
8 Subsection A, B or C of this section is guilty of a misdemeanor
9 and upon conviction shall be punished by the imposition of a
10 fine of not more than one thousand dollars (\$1,000).

11 H. [~~Any~~] A person who fails to make a report
12 required [~~of him~~] under the provisions of Subsection A or B of
13 this section is liable for a civil penalty in an amount equal
14 to five percent of the property taxes ultimately determined to
15 be due on the property for the tax year or years for which [~~he~~]
16 the person failed to make the required report.

17 I. [~~Any~~] A person who intentionally refuses to make
18 a report required [~~of him~~] under the provisions of Subsection A
19 or B of this section with the intent to evade any tax or who
20 fails to make a report required [~~of him~~] under the provisions
21 of Subsection A or B of this section with the intent to evade
22 any tax is liable for a civil penalty in an amount equal to
23 twenty-five percent of the property taxes ultimately determined
24 to be due on the property for the tax year or years for which
25 [~~he~~] the person refused or failed to make the required report.

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1 J. ~~Any~~ A person who is required to make a report
2 under the provisions of Subsection C of this section and who
3 fails to do so is personally liable for a civil penalty in an
4 amount equal to the greater of twenty-five dollars (\$25.00) or
5 twenty-five percent of the difference between the property
6 taxes ultimately determined to be due and the property taxes
7 originally paid for the tax year or years for which the person
8 failed to make the required report. This penalty shall not be
9 considered a delinquent property tax, and the provisions of the
10 Property Tax Code for the enforcement and collection of
11 delinquent property taxes through the sale of the property do
12 not apply. However, the county treasurer may use all other
13 methods provided by law to collect the property tax or penalty
14 due. Notwithstanding any other provision of the Property Tax
15 Code, amounts collected pursuant to the penalty provided by
16 this subsection shall be distributed among jurisdictions
17 imposing tax on the property in the same proportion as the
18 amount of tax ultimately determined to be due for the
19 jurisdiction bears to the total due for all such jurisdictions.

20 K. The civil penalties authorized under Subsections
21 H and I of this section shall be imposed and collected at the
22 time and in the manner that the tax is imposed and collected.
23 In order to assist in the imposition and collection of the
24 penalties, the persons having responsibility for determining
25 the value of the property shall make an entry in the valuation

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1 records indicating the liability for any penalties due under
2 this section.

3 L. For the purposes of this section:

4 (1) "improvements" means the construction of
5 any new structure permanently affixed to the land or the
6 repair, rehabilitation or alteration of an existing structure
7 permanently affixed to the land that, for property used for any
8 commercial purpose, is required or allowed to be capitalized
9 under the Internal Revenue Code and, for other properties, any
10 similar construction, repair, rehabilitation or alteration; and

11 (2) "owner of real property" includes every
12 owner of improvements who does not own the land upon which the
13 improvements are made."

14 Section 3. APPLICABILITY.--The provisions of this act
15 apply to the 2006 and subsequent property tax years.

16 Section 4. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is July 1, 2006.