

1 HOUSE BILL 222

2 **50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011**

3 INTRODUCED BY

4 Brian F. Egolf

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10 AN ACT

11 RELATING TO TAXATION; ADJUSTING CERTAIN TAXES AND TAX CREDITS  
12 TO REDUCE UNEQUAL TREATMENT OF SIMILAR TRANSACTIONS; CONVERTING  
13 CERTAIN EXEMPTIONS TO DEDUCTIONS.

14  
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

16 SECTION 1. Section 7-9-4 NMSA 1978 (being Laws 1966,  
17 Chapter 47, Section 4, as amended) is amended to read:

18 "7-9-4. IMPOSITION AND RATE OF TAX--DENOMINATION AS  
19 "GROSS RECEIPTS TAX".--

20 A. For the privilege of engaging in business, an  
21 excise tax equal to [~~five and one-eighth~~] four and seven-  
22 eighths percent of gross receipts is imposed on any person  
23 engaging in business in New Mexico.

24 B. The tax imposed by this section shall be  
25 referred to as the "gross receipts tax".

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1           SECTION 2. Section 7-9-7 NMSA 1978 (being Laws 1966,  
2 Chapter 47, Section 7, as amended) is amended to read:

3           "7-9-7. IMPOSITION AND RATE OF TAX--DENOMINATION AS  
4 "COMPENSATING TAX".--

5           A. For the privilege of using tangible property in  
6 New Mexico, there is imposed on the person using the property  
7 an excise tax equal to [~~five and one eighth~~] four and seven-  
8 eighths percent of the value of tangible property that was:

9                           (1) manufactured by the person using the  
10 property in the state;

11                           (2) acquired as the result of a transaction  
12 with a person located outside this state that would have been  
13 subject to the gross receipts tax had the tangible personal  
14 property been acquired from a person with nexus with New  
15 Mexico; or

16                           (3) acquired as the result of a transaction  
17 that was not initially subject to the compensating tax imposed  
18 by Paragraph (2) of this subsection or the gross receipts tax  
19 but which transaction, because of the buyer's subsequent use of  
20 the property, should have been subject to the compensating tax  
21 imposed by Paragraph (2) of this subsection or the gross  
22 receipts tax.

23           B. For the purpose of Subsection A of this section,  
24 value of tangible property shall be the adjusted basis of the  
25 property for federal income tax purposes determined as of the

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1 time of acquisition or introduction into this state or of  
2 conversion to use, whichever is later. If no adjusted basis  
3 for federal income tax purposes is established for the  
4 property, a reasonable value of the property shall be used.

5 C. For the privilege of using services rendered in  
6 New Mexico, there is imposed on the person using such services  
7 an excise tax equal to [~~five~~] four and seven-eighths percent of  
8 the value of the services at the time they were rendered. The  
9 services, to be taxable under this subsection, must have been  
10 rendered as the result of a transaction that was not initially  
11 subject to the gross receipts tax but which transaction,  
12 because of the buyer's subsequent use of the services, should  
13 have been subject to the gross receipts tax.

14 D. The tax imposed by this section shall be  
15 referred to as the "compensating tax".

16 SECTION 3. Section 7-14-4 NMSA 1978 (being Laws 1988,  
17 Chapter 73, Section 14) is amended to read:

18 "7-14-4. DETERMINATION OF AMOUNT OF MOTOR VEHICLE EXCISE  
19 TAX.--The rate of the motor vehicle excise tax is [~~three~~] four  
20 and seven-eighths percent and is applied to the price paid for  
21 the vehicle. If the price paid does not represent the value of  
22 the vehicle in the condition that existed at the time it was  
23 acquired, the tax rate shall be applied to the reasonable value  
24 of the vehicle in such condition at such time. However,  
25 allowances granted for vehicle trade-ins may be deducted from

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1 the price paid or the reasonable value of the vehicle  
2 purchased."

3 SECTION 4. Section 7-25-4 NMSA 1978 (being Laws 1999,  
4 Chapter 177, Section 2) is amended to read:

5 "7-25-4. RATE AND MEASURE OF TAX--DENOMINATION AS  
6 "RESOURCES TAX".--

7 A. For the privilege of severing natural resources,  
8 there is imposed on ~~[any]~~ a severer of natural resources in New  
9 Mexico an excise tax ~~[at the following rates]~~ on the taxable  
10 value of the natural resources

- 11 ~~[(1) all natural resources except potash and~~
- 12 ~~molybdenum, three fourths of one percent;~~
- 13 ~~(2) potash, one half of one percent; and~~
- 14 ~~(3) molybdenum, one eighth of one percent] of~~  
15 three-fourths percent.

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

18 SECTION 5. Section 7-25-5 NMSA 1978 (being Laws 1999,  
19 Chapter 177, Section 4) is amended to read:

20 "7-25-5. RATE AND MEASURE OF TAX--DENOMINATION AS  
21 "PROCESSORS TAX".--

22 A. For the privilege of processing natural  
23 resources, there is imposed on ~~[any]~~ a processor of natural  
24 resources in New Mexico an excise tax at the following rates on  
25 the taxable value of the natural resources:

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

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

8 SECTION 6. Section 7-29-4.2 NMSA 1978 (being Laws 1980,  
9 Chapter 62, Section 7, as amended) is amended to read:

10 "7-29-4.2. VALUE MAY BE DETERMINED BY DEPARTMENT--  
11 STANDARD.--

12 A. The department may determine the value of  
13 products severed from a production unit when the:

14 [~~A. the~~] (1) operator and purchaser are  
15 affiliated persons;

16 [~~B. the~~] (2) sale and purchase of products is  
17 not an arm's length transaction; or [~~when~~

18 ~~6.~~] (3) products are severed and removed from  
19 a production unit and a value as defined in the Oil and Gas  
20 Severance Tax Act is not established for such products.

21 B. The value determined by the department shall be  
22 commensurate with the actual price received for products of  
23 like quality, character and use [~~which~~] that are severed in the  
24 same field or area. If there are no sales of products of like  
25 quality, character and use severed in the same field or area,

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1 then the department shall establish a reasonable value.

2 C. In determining the value of products pursuant to  
3 this section, the department may deduct an amount equal to no  
4 more than twenty-five percent of the value of transportation or  
5 processing of products severed from the production unit."

6 SECTION 7. Section 7-31-4 NMSA 1978 (being Laws 1959,  
7 Chapter 54, Section 4, as amended) is amended to read:

8 "7-31-4. PRIVILEGE TAX LEVIED--COLLECTED BY  
9 DEPARTMENT--RATE--INTEREST OWNER'S LIABILITY TO STATE--INDIAN  
10 LIABILITY.--

11 A. There is levied and shall be collected by the  
12 department a privilege tax on the business of every person  
13 severing products in this state. The measure of the tax shall  
14 be:

15 (1) on oil and on oil and other liquid  
16 hydrocarbons removed from natural gas at or near the wellhead,  
17 [~~except as provided in Paragraphs (4) and (5) of this~~  
18 ~~subsection, three and fifteen hundredths]~~ four percent of the  
19 taxable value determined pursuant to Section 7-31-5 NMSA 1978;

20 (2) on carbon dioxide, helium and non-  
21 hydrocarbon gases, [~~three and fifteen hundredths]~~ four percent  
22 of the taxable value determined pursuant to Section 7-31-5 NMSA  
23 1978; and

24 (3) on natural gas, [~~except as provided in~~  
25 ~~Paragraphs (6) and (7) of this subsection]~~ four percent of the

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1 taxable value determined pursuant to Section 7-31-5 NMSA 1978.

2 ~~[(4) on the oil and on other liquid~~  
3 ~~hydrocarbons removed from natural gas at or near the wellhead~~  
4 ~~from a stripper well property, one and fifty-eight hundredths~~  
5 ~~percent of the taxable value determined pursuant to Section~~  
6 ~~7-31-5 NMSA 1978, provided that the average annual taxable~~  
7 ~~value of oil was equal to or less than fifteen dollars (\$15.00)~~  
8 ~~per barrel in the calendar year preceding July 1 of the fiscal~~  
9 ~~year in which the tax rate is to be imposed;~~

10 ~~(5) on the oil and on other liquid~~  
11 ~~hydrocarbons removed from natural gas at or near the wellhead~~  
12 ~~from a stripper well property, two and thirty-six hundredths~~  
13 ~~percent of the taxable value determined pursuant to Section~~  
14 ~~7-31-5 NMSA 1978, provided that the average annual taxable~~  
15 ~~value of oil was greater than fifteen dollars (\$15.00) per~~  
16 ~~barrel but not more than eighteen dollars (\$18.00) per barrel~~  
17 ~~in the calendar year preceding July 1 of the fiscal year in~~  
18 ~~which the tax rate is to be imposed;~~

19 ~~(6) on the natural gas removed from a stripper~~  
20 ~~well property, two percent of the taxable value determined~~  
21 ~~pursuant to Section 7-31-5 NMSA 1978, provided that the average~~  
22 ~~annual taxable value of natural gas was equal to or less than~~  
23 ~~one dollar fifteen cents (\$1.15) per thousand cubic feet in the~~  
24 ~~calendar year preceding July 1 of the fiscal year in which the~~  
25 ~~tax rate is to be imposed; and~~

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1                   ~~(7) on the natural gas removed from a stripper~~  
2 ~~well property, three percent of the taxable value determined~~  
3 ~~pursuant to Section 7-31-5 NMSA 1978, provided that the average~~  
4 ~~annual taxable value of natural gas was greater than one dollar~~  
5 ~~fifteen cents (\$1.15) per thousand cubic feet but not more than~~  
6 ~~one dollar thirty-five cents (\$1.35) per thousand cubic feet in~~  
7 ~~the calendar year preceding July 1 of the fiscal year in which~~  
8 ~~the tax rate is to be imposed.]~~

9                   B. Every interest owner, for the purpose of levying  
10 this tax, is deemed to be in the business of severing products  
11 and is liable for this tax to the extent of ~~[his]~~ the owner's  
12 interest in the value of the products or to the extent of ~~[his]~~  
13 the owner's interest as may be measured by the value of the  
14 products.

15                   C. Any Indian tribe, Indian pueblo or Indian is  
16 liable for this tax to the extent authorized or permitted by  
17 law."

18                   SECTION 8. Section 7-31-6 NMSA 1978 (being Laws 1959,  
19 Chapter 54, Section 6) is amended to read:

20                   "7-31-6. VALUE MAY BE DETERMINED BY ~~[COMMISSION]~~  
21 DEPARTMENT--STANDARD.--

22                   A. The ~~[commission]~~ department may determine the  
23 value of products severed from a production unit when the:

24                   ~~[A. the]~~ (1) operator and purchaser are  
25 affiliated persons; ~~[or when~~

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1                    ~~B. the~~] (2) sale and purchase of products is  
2 not an arm's length transaction; or [~~when~~

3                    ~~G.~~] (3) products are severed and removed from  
4 a production unit and a value as defined in [~~this~~] the Oil and  
5 Gas Emergency School Tax Act is not established for such  
6 products.

7                    B. The value determined by the [~~commission~~]  
8 department shall be commensurate with the actual price received  
9 for products of like quality, character and use [~~which~~] that  
10 are severed in the same field or area.

11                    C. In determining the value of products pursuant to  
12 this section, the department may deduct an amount equal to no  
13 more than twenty-five percent of the value of transportation or  
14 processing of products severed from the production unit."

15                    SECTION 9. Section 7-32-5 NMSA 1978 (being Laws 1959,  
16 Chapter 55, Section 5, as amended) is amended to read:

17                    "7-32-5. ASSESSED VALUE--METHOD OF DETERMINING.--

18                    A. The taxable value of products is an amount equal  
19 to one hundred fifty percent of the value of products after  
20 deducting:

21                    (1) royalties paid or due the United States or  
22 the state of New Mexico;

23                    (2) royalties paid or due any [~~Indian tribe,~~  
24 ~~Indian pueblo or Indian that is a ward of the United States]~~

25 federally recognized Indian nation, tribe or pueblo; and

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1 (3) the reasonable expense of trucking any  
2 product from the production unit to the first place of market.

3 B. The assessed value of products shall be  
4 determined by applying the uniform assessment ratio to the  
5 taxable value of products. The method prescribed by this  
6 section shall be the exclusive method for determining the  
7 assessed value of products. The tax imposed by Section  
8 [~~72-22-4 NMSA 1953~~] 7-32-4 NMSA 1978 of the Oil and Gas Ad  
9 Valorem Production Tax Act, together with the tax imposed by  
10 Section [~~72-24-4 NMSA 1953~~] 7-34-4 NMSA 1978 of the Oil and Gas  
11 Production Equipment Ad Valorem Tax Act, shall be the full and  
12 exclusive measure of ad valorem tax liability on the interests  
13 of all persons, including the operator and interest owners, in  
14 the production unit. Any other ad valorem tax on the  
15 production unit or on products severed therefrom is void.

16 C. In determining the taxable value of products  
17 pursuant to this section, the department may deduct an amount  
18 equal to no more than twenty-five percent of the value of  
19 transportation or processing of the products."

20 SECTION 10. REPEAL.--Section 7-26-6.2 NMSA 1978 (being  
21 Laws 1990, Chapter 83, Section 1 and Laws 1990, Chapter 84,  
22 Section 1, as amended) is repealed.

23 SECTION 11. EFFECTIVE DATE.--The effective date of the  
24 provisions of this act is July 1, 2011.