The Honorable Stephanie Schardin Clarke  
Secretary of Taxation and Revenue  
P.O. Box 630  
Santa Fe NM 87504-0630

Dear Secretary Schardin Clarke:

These comments are submitted for the record at the hearing to be held September 9, 2022 regarding various property tax rules.

**A comment on style.** Amending an existing rule by deleting it entirely and then restating all of it with the addition of some actually new material (e.g., 3.6.5.34 NMAC) is undoubtedly easy on the agency. It reduces the work needed to prepare the final rule for submission to the Records Center. It requires more than counterbalancing additional effort on the part of the public, however, because the "new" material must be compared with the deleted "old" material to determine if there are any changes. This is especially onerous with the lengthy rules so common under the Property Tax Code. Since the point of the rule publication process is to make rule changes as transparent as possible—even if it does create more work for the agencies, this style undermines the intent of the State Rules Act. Imagine the reaction of our legislators if LCS tried to adopt this style for legislation.

**3.6.1.7 Definitions**

- **D:** Intangible property. Two sentences are inserted.
  
  "'Intangible property' is contingent and dependent on other property and cannot be owned, used, transferred, or held separately from other property." This is errant nonsense. Do you actually believe no one can own a share of stock or a certificate of deposit by itself? How did this get past your internal review process? Strike this sentence.

  "To the extent that intangible property contributes to, or effects, the value of property, its value must be appropriately considered when determining taxable value." This proposed rule is out of place. It is not definitional. It belongs with the rules discussing valuation. Since intangible property is not "property" as defined in Article VIII of the state Constitution or in the Property Tax Code, no matter how ardently the Department wishes it were, intangible property is not subject to valuation. Strike this sentence as well, which means dropping the entire proposed change to 3.6.1.7.
Perhaps you can achieve your goal by adding as a Subsection H to 3.6.5.22 the following:

"H. To the extent that intangible property contributes to, or influences, the value of property, its contribution or influence must be appropriately considered when determining taxable value of the subject property."

3.6.5.21 Taxable situs

Drops Subsection G, which states that intangible property is not subject to valuation. Yet that statement remains true whether or not it is included in 3.6.5.21. You may be misleading yourselves and others if you delete this statement. Better to drop this proposal altogether and try an indirect approach as suggested in my comments to 3.6.1.7.

3.6.5.24 Valuation of residential property

This rule has been due for a re-write for years. In general, a good effort.

A(1)(b) & D: As written, I don’t think these cover all the possibilities. The owner (whether 65/older or disabled), having become qualified, thereafter must remain qualified continuously in two dimensions—ownership and income—to keep the valuation of the year in which the owner became qualified. If the owner loses qualification under either dimension for a property tax year, the 7-36-21.3 valuation resets to the valuation for the next property tax year in which the owner qualifies in both dimensions.

Issue not covered: Suppose a person who is single qualifies under 7-36-21.3, then marries after qualification and adds the spouse to the deed. Is that a disqualifying change in ownership? Does the 7-36-21.2E NMSA 1978 definition of “change of ownership” apply to 7-36-21.3 NMSA 1978?

3.6.5.34 Valuation of oil and gas pipelines

Does two things. (1) Assigns responsibility for valuing saltwater disposal pipeline property to the Property Tax Division (per 7-36-2B NMSA 1978). OK (2) Requires valuation pursuant to the special method of valuation in 7-36-27 NMSA 1978. I see the logic of valuing these saltwater pipelines as part of the overall oil and gas operation. Some might be so unkind as to point out that this stretches the definition of “processing” (oil or natural gas) and that 7-36-27 NMSA 1978, which deals with valuing water and wastewater systems, seems a more natural fit.

3.6.6.13 Disabled veteran exemption

Recognizes that 7-37-5.4 NMSA 1978, enacted in 2015, applies the disabled veteran exemption to all special benefit assessments. OK

A: As long as you are in the neighborhood, eliminate the parenthetical dates following statute citations. These refer to particular versions of the statute cited and, while perhaps useful in rulings, are inappropriate in these regulations.
I hope you find these comments of use.

Sincerely,

James P. O'Neill