September 8, 2022

Sent only via email to policy.office@state.nm.us

New Mexico Taxation and Revenue Department
Tax Information and Policy Office
P.O. Box 630
Santa Fe, New Mexico 87504-0630

Comments for Proposed Changes to
Regulations NMAC 3.6.1.7(D) and
NMAC 3.6.5.21(G)

Dear Sir or Madam,

On August 9, 2022, the New Mexico Taxation and Revenue Department (the “Department”) issued proposed changes to regulations under the Property Tax Code (the “Code”). NMSA 1978 § 7-35-1 et seq. Our comments address the proposed changes to NMAC 3.6.1.7(D) and NMAC 3.6.5.21(G).

The Code defines “property” as “tangible property, real or personal.” NMSA 1978 § 7-35-2(J). The legislature included only these categories of property within the definition of “property”. The legislature did not define “tangible property,” “real or personal,” so our understanding is that their ordinary and normal meaning applies. The present regulation does not define these categories, excludes intangible property, and provides a non-exhaustive list of intangible property. NMAC 3.6.1.7(D).

Although the Code does not provide a definition of “intangible property” pursuant to NMSA 1978 § 7-35-2, the proposed regulation appears to include certain types of intangible property within the definition of “property” even though the definition of “property” only includes tangible property. We think if the legislature intended to include certain types of intangible property within the definition of “property,” the legislature would have included “intangible property” as part of the definition of “property” in NMSA 1978 § 7-35-2. Therefore, we think the inclusion of certain types of “intangible property” within the definition of “property” should be left to the legislature.
The proposed regulation may cause confusion about what constitutes non-property intangible and what constitutes property intangible. On the one hand, the proposed regulation broadly defines "intangible property" as property that is "contingent and dependent upon other property and cannot be owned, used, transferred, or held separately from other property." We are unclear as to how this would work. The proposed regulation apparently requires certain types of "intangible property" to be valued as part of "property". On the other hand, the proposed regulation includes an exhaustive list of "non-property intangibles" that are excluded from the new requirements of the proposed regulation. There is uncertainty about what types of "intangible property" is intended to be governed by the proposed regulation because it is now arguable that any "intangible property" may contribute to or affect the "property." Instead of merely interpreting or exemplifying the statute pursuant to NMSA 1978 § 8-11-6.2(B), the broad definition of "intangible property" may frustrate taxpayers because of its inclusivity. We think this may cause confusion about what types of "intangible property" will be included within the definition of "property." We think there is no end to the types of property that include a component of intangible property. For example, does it extend to trademarks and patents included in an iPhone?

The proposed regulation does not provide guidance about the valuation procedure for "intangible property." The proposed change requires the value of "intangible property" to be considered when evaluating taxable value if it "contributes to, or affects, the value of property." NMSA 1978 § 7-36-1 et seq. governs the determination of value of all property subject to the Code. The Department values centrally assessed property subject to special valuation methods; the county assessor values other property subject to methods of appraisal. NMSA 1978 § 7-36-2. If the "intangible property" contributes to or affects property, it is unclear how the "intangible property" is captured under the evaluation methods under the Code and how the valuation of "intangible property" complies with the comprehensive valuation statues. NMSA 1978 § 7-26-22 et seq. Therefore, we think the proposed regulation should explain the appropriate valuation procedure for "intangible property."

In conclusion, we think the proposed regulation may cause confusion and frustration – without further guidance – about (1) what constitutes property "intangible property" or "non-property intangibles"; and (2) the valuation procedure of property "intangible property" if it contributes or affects the value of property.
Thank you for considering our comments to the proposed changes of NMAC 3.6.1.7(D) and NMAC 3.6.5.21(G).

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