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Governor

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Cabinet Secretary

April 23, 2024

DIVISIONS

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Enclosed is the following proposal:

The New Mexico Taxation and Revenue Department hereby gives notice as required under Section 14-4-5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to amend/repeal/replace and enact certain rules and regulations pertaining to the property tax veteran exemption under Section 7-37-5 NMSA 1978 under the Imposition of Property Tax Act. The State Records Center and Archives Administrative Law Division is requiring a repeal and replace of the entire regulation part Title 3 – Taxation, Chapter 6 – Property Taxes, Part 6 – Provisions for Imposition of Tax – Applicability in order to make this amendment, citing Regulation 1.24.11.9(C) NMAC:

Summary of Proposed Changes:

The New Mexico Taxation and Revenue Department proposes to amend and enact the following rule(s):

Imposition of Property Tax Act

Repeal and replace 3.6.6 NMAC. The only changes in language are to the following language, so for ease of reference these changes are shown in the following pages as amendments:

Section 7-37-5 NMSA 1978
3.6.6.12 – Veteran Exemption

Section 7-37-5.1 NMSA 1978
3.6.6.13 – Disabled Veteran Exemption

Technical Information: No technical information was consulted in drafting these proposed rule changes.

Purpose of Proposed Rule: The proposed repeal and replace is in accordance with the SRCA requirements. The only amendments being made are to Regulations 3.6.6.12 and 3.6.6.13 NMAC in order to align the language to the last statutory changes that took place. Section 7-37-5 NMSA 1978 (2005) and Section 7-37.5.1 NMSA 1978 (2015), regarding the property tax exemption for veterans and disabled veterans.

Notice of Public Rule Hearing: A public hearing will be held on the proposed rule changes on Thursday, May 23, 2024, from 10 AM to 11 AM at the 3rd floor in the Montoya Building, 1100 South St. Francis Drive, Santa Fe, New Mexico 87504. The hearing will be recorded, and oral comments can be made during the public hearing. Written comments can be submitted as outlined at the end of this notice.

Virtual meeting access also available using Join Zoom Meeting:

<https://us02web.zoom.us/j/6586491797?pwd=QldaSFM5ZXZlaUNXU3dKNWxuZlg3dz09&omn=89327804091>

Meeting ID: 658 649 1797 Passcode: 87504

The rule proposals were placed on file in the Office of the Secretary on April 8, 2024. Pursuant to Regulation 3.1.2.9 NMAC under Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about June 25, 2024.

Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Bobbie Marquez at BobbieJ.Marquez@tax.nm.gov. The Taxation and Revenue Department will make every effort to accommodate all reasonable requests but cannot guarantee accommodation of a request that is not received at least ten calendar days prior to the scheduled hearing.

Copies of the proposed rules may be found at <https://www.tax.newmexico.gov/all-nm-taxes/proposed-regulations-hearing-notices/> or are available upon request by contacting the Tax Policy Office at policy.office@tax.nm.gov.

Notice of Acceptance of Written Public Comment: Written comments on the proposals can be submitted by email to policy.office@tax.nm.gov or by mail to the Taxation and Revenue Department, Tax Information and Policy Office, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or by 5PM on Thursday, May 23, 2024. All written comments received by the agency will be posted on <https://www.tax.newmexico.gov/all-nm-taxes/proposed-regulations-hearing-notices/> no more than 3 business days following receipt to allow for public review.

Stephanie Schardin Clarke
Cabinet Secretary

Reviewed for legal sufficiency:

Donnita “Dee” Wald
Chief Legal Counsel
New Mexico Taxation and Revenue Department

TITLE 3: TAXATION
CHAPTER 6: PROPERTY TAXES
PART 6: PROVISIONS FOR IMPOSITION OF TAX - APPLICABILITY

3.6.6.1 ISSUING AGENCY: Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630
[8/31/96; 3.6.6.1 NMAC - Rn, 3 NMAC 6.6.1, 4/30/01; Rp xx/xx/xxxx]

3.6.6.2 SCOPE: The sections under this part apply to all property subject to property taxation under the Property Tax Code, owners and agents of owners of such property and all county officials and personnel of the taxation and revenue department charged with administration of the Property Tax Code.
[8/31/96; 3.6.6.2 NMAC - Rn, 3 NMAC 6.6.2, 4/30/01; Rp xx/xx/xxxx]

3.6.6.3 STATUTORY AUTHORITY: Section 9-11-6.2 NMSA 1978.
[8/31/96; 3.6.6.3 NMAC - Rn, 3 NMAC 6.6.3, 4/30/01; Rp xx/xx/xxxx]

3.6.6.4 DURATION: Permanent.
[8/31/96; 3.6.6.4 NMAC - Rn, 3 NMAC 6.6.4, 4/30/01; Rp xx/xx/xxxx]

3.6.6.5 EFFECTIVE DATE: 8/31/96, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[8/31/96; 3.6.6.5 NMAC - Rn & A, 3 NMAC 6.6.5, 4/30/01; Rp xx/xx/xxxx]

3.6.6.6 OBJECTIVE: The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Property Tax Code.
[8/31/96; 3.6.6.6 NMAC - Rn, 3 NMAC 6.6.6, 4/30/01; Rp xx/xx/xxxx]

3.6.6.7 DEFINITIONS: [Reserved.]
[8/31/96; 3.6.6.7 NMAC - Rn, 3 NMAC 6.6.7, 4/30/01; Rp xx/xx/xxxx]

3.6.6.8 [RESERVED.]
[3.6.6.8 NMAC - Rn, 3 NMAC 6.6.8, 4/30/01; Rp xx/xx/xxxx]

3.6.6.9 [RESERVED.]
[3.6.6.9 NMAC - Rn, 3 NMAC 6.6.9, 4/30/01; Rp xx/xx/xxxx]

3.6.6.10 APPLICATION OF TAX RATIO: The tax ratio is applied to the value of property determined for property taxation purposes by dividing that value by three [~~3~~]. The quotient resulting from this division is the "taxable value" of the property.
[3/23/83, 12/29/94, 8/31/96; 3.6.6.10 NMAC - Rn, 3 NMAC 6.6.10, 4/30/01; Rp xx/xx/xxxx]

3.6.6.11 HEAD OF FAMILY EXEMPTION
A. **CLAIMING THE EXEMPTION:** Exemptions are claimed by filing proof of eligibility for the head of family exemption with the county assessor.

B. **SPECIAL BENEFIT ASSESSMENTS AND CERTAIN TAXES - EXEMPTION**
INAPPLICABLE: The head of family exemption is not effective against impositions or levies of taxes on specific classes of property outside the Property Tax Code and special benefit assessments authorized by laws outside the Property Tax Code, such as conservancy district assessments.

C. **DEPENDENTS NOT REQUIRED:** A claimant is not required to have dependent children or other dependents to be entitled to the benefits of the head-of-family exemption.

D. **ABSENCE FROM THE STATE:** Mere absence from the state does not deprive a taxpayer who is head of a family of the exemption. The qualifying taxpayer may claim the head of family exemption as long as the taxpayer does not establish residence elsewhere and intends to return to New Mexico.

E. **NONRESIDENT PROPERTY OWNER:** A property owner who is not a resident of New Mexico is not entitled to claim head of family exemption on property subject to property tax within New Mexico. A New Mexico resident is a person who is domiciled in New Mexico with a bona fide intention of continuing to reside in New Mexico even though the person may be temporarily absent from New Mexico.

F. **MILITARY PERSON CLAIMING LEGAL RESIDENCE IN ANOTHER STATE:**

If a military person claims legal residence in another state for voting and other purposes although he or she physically resides in this state, the person may not claim the head of family exemption because the claim of residence in another state indicates an intent to depart New Mexico.

[3/23/83, 10/24/89, 12/29/94, 8/31/96; 3.6.6.11 NMAC - Rn, 3 NMAC 6.6.11, 4/30/01; Rp xx/xx/xxxx]

3.6.6.12 VETERAN EXEMPTION

A. **PROPERTY TAXES AUTHORIZED BY LAWS OUTSIDE THE PROPERTY TAX CODE**

AND SPECIAL BENEFIT ASSESSMENTS: The veteran exemption applies to property taxes imposed by laws other than the Property Tax Code, such as the ad valorem tax on taxable property within a hospital district Section 4-48A-16 NMSA 1978 [(1987)]; the property tax on taxable property within a college district Section 21-2A-5 NMSA 1978 [(1995)]; the property tax on all property subject to taxation within a flood control district Section 72-18-20 NMSA 1978 [(1986)]; and, the general ad valorem tax on all property subject to taxation within a solid waste authority Section 74-10-27 NMSA 1978 [(1993)]. The veteran exemption is not effective against impositions or levies of taxes on specific classes of property authorized by laws outside the property tax code or impositions of special benefit assessments authorized by laws outside the Property Tax Code, ~~such as conservancy district assessments.~~

B. **APPLICATION OF VETERAN EXEMPTION - GENERAL:**

(1) ~~[Husband and wife] Married persons.~~ Where both married persons are veterans within the meaning of Subsection C of Section 7-37-5 NMSA 1978, ~~[they may between them hold exempt property to the extent of \$4,000] they may each claim the exemption allowed in Subsection A of Section 7-37-5 NMSA 1978.~~

(2) Military relationship.

(a) The veteran's exemption contained in Section 7-37-5 NMSA 1978 requires that claimant has been honorably discharged from membership in the armed forces of the United States. A person has been "honorably discharged" if he or she has been discharged and has not received either a dishonorable discharge or a discharge for misconduct.

(b) Any veteran who did not serve at least ~~[ninety (90) days at any time during any period in which the military forces were engaged in armed conflict is not entitled to the exemption; except that a person who would otherwise be entitled to the status as a veteran]~~ 90 continuous days on active duty is not entitled to the exemption; except for failure to have served in the armed forces continuously for ~~[ninety] 90 days~~ is considered to have met that qualification if ~~[the person served for less than ninety days and]~~ the reason for not having served for that period was a discharge brought about by service-connected disablement.

(c) A veteran does not lose his or her right to a veteran's exemption by re-enlisting immediately after receiving his or her honorable discharge.

(d) A person whose civilian service has been recognized as service in the armed forces of the United States under federal law, ~~[such as the United States Public Health Service Commissioned Corps or the National Oceanic and Atmospheric Administration Commissioned Officer Corps, and who has been issued a discharge certificate by a branch of the armed forces of the United States]~~ as determined under Title 32, Part 47 of the Code of Federal Regulations, as amended, shall be considered to have served in the armed forces of the United States.

(3) Residency. Pursuant to Section 7-37-5 NMSA 1978, it is required that a person be a current New Mexico resident to qualify for the veteran's exemption.

(4) Veteran's interest in property.

(a) A veteran who qualifies under Section 7-37-5 NMSA 1978, who is a life tenant of real estate, is entitled to exemption on taxation on the property in which the veteran is a life tenant.

(b) A veteran cannot claim exemption from taxation on land where the veteran holds no title to the land, either legal or equitable.

(c) If a veteran entitled to claim the exemption owns property on January 1, it remains exempt even though the veteran sells it during the year.

(d) ~~[In a joint tenancy in which one of the tenants is a veteran, if the share of a veteran's property is of the value of \$2,000 or more, the veteran's share is entitled to the full \$2,000 exemption.]~~

~~[(e)]~~ (d) A veteran who has purchased property on an executory contract with legal title remaining in escrow pending the final payment under the purchase contract is the beneficial owner of the property and is the owner for purposes of taxation and may apply the exemption to the property.

~~[(f)]~~ (e) A veteran cannot claim exemption from taxation for his or her spouse's separate property or his or her spouse's portion of community property.

~~[(g)]~~ (f) A veteran cannot claim exemption from taxation when the veteran is one of the partners in a partnership, and the partnership owns the property on which the exemption is claimed.

(5) Surviving spouse.

(a) A resident unmarried surviving spouse of a veteran who died in service is entitled to the veteran's exemption.

(b) If a veteran's surviving spouse remarries and thereafter obtains a divorce from the subsequent spouse, he or she does not revert to the status of an unmarried surviving spouse entitled to claim the exemption.

(c) A surviving spouse of an eligible veteran is not, if a subsequent marriage is annulled, entitled to the exemption.

(d) An unmarried surviving spouse of a deceased veteran who is also a veteran may receive a tax exemption as veteran and also as a surviving spouse of a veteran.

(e) An unmarried surviving spouse of a veteran who at the time of the veteran's death was legally separated from the veteran is entitled to the exemption.

C. **APPLICATION OF VETERAN EXEMPTION - CERTAIN TAXES AND FEES
OUTSIDE PROPERTY TAX CODE:**

(1) Aircraft registration fees. The veteran's exemption may not be applied to aircraft registration fees.

~~(2) [Cattle Industry Indemnity Act. The veterans exemption may not be applied to the levy authorized by the Cattle Industry Indemnity Act or to similar taxes or assessments against only livestock or the value of livestock.]~~

~~[(3)]~~ 2 _____ Motor vehicle registration fees. Under Section 66-6-7 NMSA 1978, a veteran who has claimed any portion of the veteran's exemption on real or personal property for the year in which the veteran may be liable for the payment of a registration fee for a motor vehicle is not entitled to the reduction in rate for the motor vehicle registration fee. However, if the exemption for motor vehicle registration fees is taken prior to the claiming of the exemption on real and personal property, both exemptions may be claimed to the extent permitted by Section 7-37-5 NMSA 1978.

~~D. [ARMED CONFLICTS PRIOR TO WORLD WAR I: The following are recognized as armed conflicts prior to World War I:~~

~~(1) Spanish American War. A Spanish American War veteran, or his or her unmarried surviving spouse is entitled to the exemption provided by Section 7-37-5 NMSA 1978.~~

~~(2) Punitive expedition into Mexico in 1916.~~

~~(a) Members of the first New Mexico infantry of the New Mexico national guard who served for ninety days or more in the punitive expedition into Mexico in 1916 are entitled to exemption under this statute.~~

~~(b) Members of national guards from other states whose outfits were simply engaged in border patrol service and were not officially assigned to the punitive expedition into Mexico in 1916 are not entitled to exemption under this statute.~~

~~(c) A veteran of the New Mexico national guard who served in the punitive expedition into Mexico in 1916, or his unmarried surviving spouse, is entitled to the veteran's exemption.~~

~~[(E)]~~ **D. _____ ACTIVITIES WHICH ARE NOT SERVICE IN THE ARMED FORCES:**

~~(1) Medical laboratory technician. A medical laboratory technician, subject to orders of the war department, but not in uniform and not given a formal discharge when terminated from hospital service, is a civilian employee and not entitled to the veteran's exemption.~~

~~(2) Students army training corps. A claimant is not entitled to the veteran's exemption by reason of his participation in the students army training corps during World War I.~~

~~(3) Texas rangers. A Texas ranger who fought in the Indian wars or his or her unmarried surviving spouse is not entitled to veteran tax exemption.~~

[3/23/83, 12/29/94, 8/31/96; 3.6.6.12 NMAC - Rn & A, 3 NMAC 6.6.12, 4/30/01; A, 9/15/09; Rp xx/xx/xxxx]

3.6.6.13 DISABLED VETERAN EXEMPTION

A. PROPERTY TAXES AUTHORIZED BY LAWS OUTSIDE THE PROPERTY TAX CODE AND SPECIAL BENEFIT ASSESSMENTS.

(1) The disabled veteran exemption applies to property taxes imposed by laws other than the Property Tax Code, such as the ad valorem tax on taxable property within a hospital district Section 4-48A-16 NMSA 1978 [(1987)]; the property tax on taxable property within a college district Section 21-2A-5 NMSA 1978 [(1995)]; the property tax on all property subject to taxation within a flood control district Section 72-18- 20 NMSA 1978 [(1986)]; and, the general ad valorem tax on all property subject to taxation within a solid waste authority Section 74-10-27 NMSA 1978 [(1993)]. ~~[The disabled veteran exemption is not effective against impositions of special benefit assessments authorized by laws outside the Property Tax Code, such as conservancy district assessments.]~~

(2) The disabled veteran exemption applies to special benefit assessments. Special benefit assessments are assessments or levies on specific classes of property that are specially benefited by the assessment or levy, rather than general property taxes on all property benefiting all property owners and residents of the taxing district. Special benefit assessments include assessments and levies outside the Property Tax Code, which consists of Articles 35 through 38 of Chapter 7 NMSA 1978.

B. RESIDENCY. Section 7-37-5.1 NMSA 1978 requires that the property for which the exemption is claimed must be occupied by the disabled veteran (or the disabled veteran’s surviving spouse) as his or her principal place of residence. Therefore, a person claiming the disabled veteran exemption must be a current New Mexico resident to qualify for the exemption.

C. SURVIVING SPOUSE.

(1) A surviving spouse of a disabled veteran may apply for the exemption even if the disabled veteran did not apply for the exemption during his or her lifetime if the surviving spouse meets the requirements of Subsection C of Section 7-37-5.1 NMSA 1978.

(2) After the disabled veteran’s death, his or her resident unmarried surviving spouse is entitled to the disabled veteran exemption if he or she continuously occupies the property, on which the disabled veteran exemption was claimed, as the surviving spouse’s principal place of residence.

(3) If a disabled veteran’s surviving spouse remarries and thereafter obtains an annulment of the marriage or a divorce from the subsequent spouse, he or she does not revert to the status of an unmarried surviving spouse entitled to claim the disabled veteran exemption.

(4) An unmarried surviving spouse of a disabled veteran who at the time of the disabled veteran’s death was legally separated from the veteran is entitled to the disabled veteran exemption.

D. CONTINUOUSLY OCCUPIES PRINCIPAL PLACE OF RESIDENCE. Subsection B of Section 7-37-5.1 NMSA 1978 provides for an exemption from property tax of a disabled veteran’s principal place of residence when it is occupied by the disabled veteran. Subsection C of Section 7-37-5.1 NMSA 1978 allows the surviving spouse of a disabled veteran to claim the exemption if the surviving spouse continues to occupy the property continuously as the surviving spouse’s principal place of residence. “Principal place of residence” means the dwelling owned and occupied by the disabled veteran and so much of the land surrounding it, not to exceed five acres, as is reasonably necessary for use of the dwelling as a home and may consist of a part of a multidwelling or a multipurpose building and a part of the land upon which it is built. “Occupy the property continuously” means that the individual is physically present in the residence for a total of 185 days or more in aggregate during the prior year and is domiciled in New Mexico as of January 1 of the property tax year for which the exemption is claimed. The definition of “domicile” in Subsections C and D of 3.3.1.9 NMAC is incorporated herein by reference.

[3.6.6.13 NMAC - N, 9/15/09; Rp xx/xx/xxxx]

3.6.6.14 TAX RATES AUTHORIZED - LIMITATIONS

A. CEDING PROHIBITED: Ceding of authorized rates by one governmental unit to another is prohibited.

B. RATES SUBJECT TO YIELD CONTROL:

(1) Every rate or imposition authorized under Paragraph (2) or (3) of Subsection C of Section 7-37-7 NMSA 1978 and every benefit assessment authorized by law is subject to the provisions of Section 7-37-7.1

NMSA 1978 except for:

- (a) any rate, imposition or benefit assessment specifically exempted by law from the provisions of Section 7-37-7.1 NMSA 1978;
- (b) any rate or imposition of an assessment for the payment of a definite amount for a specific benefit;
- (c) any rate not imposed against the value of the property.

(2) Example 1: The following rates, impositions and benefit assessments are some of the rates subject to the provisions of Section 7-37-7.1 NMSA 1978:

- (a) the rates for general operating purposes authorized under Subsection B of Section 7-37-7 NMSA 1978; and
- (b) the municipal flood control rate authorized by Section 3-41-2 NMSA 1978;
- (c) the special hospital district rate authorized by Section 4-48A-16 NMSA 1978;
- (d) the rates for branch community colleges authorized by Sections 21-14-6 and 21-14-6.1 NMSA 1978;
- (e) the rate for technical and vocational institutes authorized by Section 21-16-12 NMSA 1978;
- (f) the portion of an assessment for general operations of a conservancy district authorized by Items 3 and 4 of Subsection A of Section 73-18-8 NMSA 1978 to be imposed against Class B property.

(3) Example 2: The following rates, impositions and benefit assessments are not subject to the provisions of Section 7-37-7.1 NMSA 1978 because they are specifically exempted:

(a) rates used to pay principal and interest on public general obligation debt, which includes rates authorized to guarantee payment of indebtedness such as the rate authorized by Section 73-16-42 NMSA 1978 for a "guarantee fund"; and

(b) the portion of the rate authorized for Class A counties in Paragraph (1) of Subsection A of Section 4-48B-12 NMSA 1978 to meet the requirements of the Statewide Health Care Act but the rest of the rate is subject to Section 7-37-7.1 NMSA 1978.

(4) Example 3: Some rates are imposed to pay, or to reimburse a public entity the amount of, a specific sum for a benefit to the persons upon whom the rate is levied. Such impositions are not subject to the provisions of Section 7-37-7.1 NMSA 1978 because the rate necessary is calculated by dividing the fixed amount to be raised by the net taxable value or taxable value of the property against which the rate is imposed. The necessary rate varies inversely with changes in net taxable value or taxable value. Thus the result achieved by yield control is achieved without its application. Further, application of the provisions of Section 7-37-7.1 NMSA 1978 in such cases would produce a revenue insufficient to meet the purposes of the imposition, possibly impairing contracts. Examples of such rates are:

- (a) the assessment for county improvement districts authorized by Section 4-55A-17 NMSA 1978;
- (b) the assessment for drainage districts authorized by Section 73-7-14 NMSA 1978; and
- (c) the assessment for conservancy districts authorized by Item 2 of Subsection A of Section 73-18-8 NMSA 1978 for amounts due under contract with the United States.

(5) Example 4: Rates not subject to the provisions of Section 7-37-7.1 NMSA 1978 because they are imposed on a basis other than the value of the property include:

(a) an assessment for business improvement districts authorized by Section 3-63-13 NMSA 1978 when imposed on a square footage, street frontage or similar basis; and

(b) the portion of an assessment for general operations of a conservancy district authorized by Items 3 and 4 of Subsection A of Section 73-18-8 NMSA 1978 to be imposed against Class A property when assessed on a per acre basis.

[3/23/83, 10/2/92, 12/29/94, 8/31/96; 3.6.6.14 NMAC - Rn & A, 3 NMAC 6.6.14, 4/30/01; Rp xx/xx/xxxx]