

**7-36-2. Allocation of responsibility for valuation and determining classification of property for property taxation purposes; county assessor and department.**

A. The county assessor is responsible and has the authority for the valuation of all property subject to valuation for property taxation purposes in the county except the property specified by Subsections B and C of this section.

B. The department is responsible and has the authority for the valuation of all property subject to valuation for property taxation purposes and used in the conduct of the following businesses:

- (1) railroad;
- (2) communications system as that term is defined in Section 7-36-30 NMSA 1978;
- (3) pipeline;
- (4) public utility; and
- (5) airline.

C. The department is responsible and has the authority for the valuation of property subject to valuation for property taxation purposes when that property is:

- (1) an electricity generating plant, whether or not owned by a public utility, if all or part of the electricity is generated for ultimate sale to the consuming public;
- (2) mineral property and property held or used in connection with mineral property as defined in Sections 7-36-22 through 7-36-25 NMSA 1978; or
- (3) machinery, equipment and other personal property of all resident and nonresident persons customarily engaged in construction that involves the use during a tax year of the machinery, equipment and other personal property in more than one county. For the purposes of this paragraph, "construction" means leveling or clearing land, excavating earth, drilling wells of any type, including seismograph shot holes or core drilling, or similar work, or building, altering, repairing or demolishing any:
  - (a) road, highway, bridge, parking area or related project;
  - (b) building, fence, stadium or other structure;
  - (c) airport, subway or similar facility;
  - (d) park, trail, athletic field, golf course or similar facility;
  - (e) dam, reservoir, canal, ditch or similar facility;
  - (f) sewerage or water treatment facility, power generating plant, pump station, natural gas compressing station, gas processing plant, coal gasification plant, refinery, distillery or similar facility;
  - (g) sewerage, water, gas or other pipeline;
  - (h) transmission line;

- (i) radio, television or other tower;
- (j) water, oil or other storage tank;
- (k) shaft, tunnel or other mining appurtenance; or
- (l) similar work.

D. The entity having responsibility and authority for valuing the property described in Subsections A through C of this section shall also have responsibility and authority for classifying that property as either residential or nonresidential under the provisions of Section 7-36-2.1 NMSA 1978.

E. The secretary by regulation may delegate authority to the county assessor for the valuation and classification of property subject to valuation for property taxation purposes for which the department is responsible pursuant to Subsections B through D of this section only if:

(1) the property is held or used in connection with the transmission, storage, measurement or distribution of water and the transmission, storage, measurement and distribution is conducted by a single person entirely within a single county; or

(2) the property is held or used in connection with a communications system as defined in Section 7-36-30 NMSA 1978 and the system operates entirely within a single county.

F. The department is authorized to enter into one or more agreements with each county assessor, subject to approval of each agreement by the appropriate board of county commissioners, under which the county assessor agrees to perform the valuation of property for which the department is responsible under Subsection B of this section but which property is not subject to the special methods of valuation set forth in Sections 7-36-27, 7-36-28 and 7-36-30 through 7-36-32 NMSA 1978.

**History:** 1953 Comp., § 72-29-2, enacted by Laws 1973, ch. 258, § 14; 1974, ch. 92, § 5; 1975, ch. 156, § 1; 1975, ch. 165, § 1; 1981, ch. 37, § 62; 1985, ch. 109, § 2; 1995, ch. 12, § 6.

**Cross references.** — For county assessors, see Chapter 4, Article 39 NMSA 1978.

**The 1995 amendment,** effective June 16, 1995, substituted "department" for "division" in the section heading and in Subsections B, C, and E; inserted "gas processing plant, coal gasification plant, refinery, distillery" in Subparagraph C(3)(f); substituted "secretary" for "director" near the beginning of Subsection E; and added Subsection F.

## ANNOTATIONS

**Different tax treatment based on use of contractor's equipment unconstitutional.** — Since the effect of former 7-36-9 NMSA 1978 and 72-6-4A(1)(c), 1953 Comp. (predecessor of this section), was that contractors whose machinery and equipment was used in more than one county were subject to property tax on sales inventories, and contractors whose machinery and equipment was not used in more than one county were not subject to property tax on sales inventories, this difference in tax treatment based solely on whether a contractor uses his equipment in more than one county was arbitrary and resulted in a denial of equal protection of the law; therefore, to the extent that valuation by the property

appraisal department deprives the taxpayer of the exemption in former 7-36-9 NMSA 1978, that section is unconstitutional. *Halliburton Co. v. Property Appraisal Dep't*, 1975-NMCA-123, 88 N.M. 476, 542 P.2d 56.

**Use of equipment in multiple counties cannot be defended on basis of administrative convenience.** — A classification based solely on the use of machinery and equipment in more than one county is patently unreasonable, and cannot be defended on the basis of assessment procedures. Administrative convenience in arriving at a valuation of the property involved does not show a rational basis for taxing inventories of contractors who report value to the property appraisal department rather than to the county assessor. The fact that taxpayers may reasonably be required to report their property values to different government offices because of differences in geographic operations does not provide a reasonable basis for a difference in tax treatment on the values reported. *Halliburton Co. v. Property Appraisal Dep't*, 1975-NMCA-123, 88 N.M. 476, 542 P.2d 56.

**Mineral value taxed centrally.** — In New Mexico, any mineral value, whether held in fee or as severed minerals, may only be classified and valued by the state tax commission (now taxation and revenue department). *Gerner v. State Tax Comm'n*, 1963-NMSC-022, 71 N.M. 385, 378 P.2d 619.

**Director, not court, to choose between conflicting inferences.** — Decision of the director supported by substantial evidence that taxpayer contractor's activities, which were performed prior to production from a well, in the usual course of business, involving the use of machinery and equipment commonly used in the course of drilling an oil and gas well came within 72-6-4A(1)(c), 1953 Comp. (now Section 7-36-2C(3) NMSA 1978), was affirmed since although there was conflicting evidence and it was for the director to choose between conflicting inferences. *Halliburton Co. v. Prop. Appraisal Dep't*, 1975-NMCA-123, 88 N.M. 476, 542 P.2d 56.

**Use of machinery and equipment sufficient.** — Section 72-6-4A(1)(c), 1953 Comp. (now Section 7-36-2C(3) NMSA 1978), by its terms, did not require a company to be the drilling contractor; the contractor's work must involve the use of, but not be limited to, machinery and equipment commonly used in oil and gas well drilling. *Halliburton Co. v. Prop. Appraisal Dep't*, 1975-NMCA-123, 88 N.M. 476, 542 P.2d 56.

**Assessed value is not competent direct evidence** of value for purposes other than taxation. *Gomez v. Board of Educ.*, 1966-NMSC-095, 76 N.M. 305, 414 P.2d 522.

**Valuation of livestock.** — Subsection D of Section 7-36-21 NMSA 1978 does not allocate valuation of livestock responsibility to the division (department); instead, that section simply requires the division (department) to supervise the assessor by establishing classes of livestock and values for those classes of livestock. While the division (department) must establish general criteria for valuing livestock, the county assessor does the actual valuation. *Zwaagstra v. DelCurto*, 1992-NMCA-087, 114 N.M. 263, 837 P.2d 457.

**Am. Jur. 2d, A.L.R. and C.J.S. references.** — Method of rule for valuation of leasehold interest for purpose of property taxation, 84 A.L.R. 1310.

Price paid or received by taxpayer for property as evidence of its value for tax purposes, 160 A.L.R. 684.

Method of calculating value of stock of goods or the like for purposes of tangible personal property tax, 66 A.L.R.2d 833.

Separate assessment and taxation of air rights, 56 A.L.R.3d 1300.

## REGULATIONS

**3.6.4.8. ALLOCATION OF RESPONSIBILITY FOR VALUATION AND DETERMINING CLASSIFICATION OF PROPERTY FOR PROPERTY TAXATION PURPOSES - COUNTY ASSESSOR AND DEPARTMENT:**

**A. PIPELINES FOR IRRIGATION PURPOSES NOT EXEMPT:** Although community ditches and their laterals are exempted by Article VIII, Section 3 of the New Mexico Constitution, other irrigation works, water pipeline businesses or public utilities which use pipelines as a means of delivering water are not exempt.

**B. MINERAL RIGHTS AND INTERESTS NOT INCLUDED IN THE DEFINITIONS OF MINERAL PROPERTY:** Mineral rights or interests in minerals, including fractional mineral rights or interests in minerals in lands, which are not "... known to contain minerals in commercially workable quantities of such a character as add present value to the land in addition to its values for other purposes, ..." are not within the definition of "mineral property" found in the Property Tax Code and are not subject to assessment or taxation by the department under Section 7-36-22 NMSA 1978. These rights or interests are not to be placed on the tax schedules of any county as property separate from the surface rights.

**C. CERTAIN SUBSTANCES ARE MINERALS:** Sand, gravel and guano are each defined to be a "mineral" as that term is used in Subsection C of Section 7-36-2 NMSA 1978 and Sections 7-36-22 and 7-36-23 NMSA 1978.

**D. SEVERED MINERAL INTERESTS:**

(1) The owner, lessee or holder of the mineral estate or mineral interest is required to report to the division the mineral property and property held or used in connection with the mineral property when:

(a) the mineral estate or mineral interest in real property has been severed from the surface interest in the real property by sale, lease or other arrangement; and

(b) the mineral estate or mineral interest is "mineral property" as defined in Sections 7-36-22 through 7-36-25 NMSA 1978.

(2) The owner of the surface interest in the real property which is not used in connection with the mineral property is not required to report to the division unless the surface interest is held in the same ownership as the mineral interests. The surface interest, however, is required to be valued by the county assessor of the county in which the real property is located.

**E. USE OF CONSTRUCTION EQUIPMENT IN MORE THAN ONE COUNTY:** The phrase "that involves the use during a tax year of the machinery, equipment and other personal property in more than one county" does not limit the department's authority to value machinery, equipment and other personal property which is either moved or not moved between counties. The department's authority to value certain property of certain persons engaged in construction attaches if machinery, equipment and other personal property located in more than one county is used by the contractor in a tax year.

**F. "CONSTRUCTION" AS DISTINGUISHED FROM OTHER SERVICES:** The term

"construction" is limited to the activities which are listed in Paragraph (3) of Subsection C of Section 7-36-2 NMSA 1978. "Construction" does not include services that are only incidentally related to a construction project such as renting or leasing construction equipment either with or without the operator, hauling to the construction site, maintenance work, landscape upkeep, or the repair of equipment or appliances.

**G. SPECULATIVE BUILDERS:** A person is "engaged in construction" if the person constructs improvements on real property which the person owns and which improved property is held for sale by the person in the ordinary course of the person's business.

**H. CONSTRUCTION INCLUDES:** The term "construction," as used in Paragraph (3) of Subsection C of Section 7-36-2 NMSA 1978, includes:

- (1) building prefabricated houses, including modular homes, whether on or off site;
- (2) the painting of structures;
- (3) the installation of sprinkler systems;
- (4) the building of irrigation pipelines; and
- (5) seeding and laying sod in conjunction with a construction project.

**I. CONSTRUCTION DOES NOT INCLUDE:** The term "construction," as used in Paragraph (3) of Subsection C of Section 7-36-2 NMSA 1978, does not include:

- (1) the installation of carpets;
- (2) the installation of draperies; or
- (3) the seeding of lawns or laying sod not in conjunction with a construction project.

**J. DELEGATION OF AUTHORITY TO THE COUNTY ASSESSOR:**

- (1) The director may delegate authority to the county assessor for the valuation of:
  - (a) single county water utilities, and
  - (b) single county communications systems.
- (2) Delegation is accomplished by issuing an order in the name of the secretary to the county assessor. The order shall contain the following:
  - (a) name of company,
  - (b) general location of company,
  - (c) general description of property to be valued,
  - (d) statutes applicable for valuation, and
  - (e) the first tax year for which the order is effective.

(3) Upon receipt of the order, the county assessor is responsible for entering the property on the tax schedule, maintaining valuation records regarding the property and valuing the property. Once issued, the order remains in effect as long as the company is located and operates solely in the county. A copy of the order shall be mailed to the taxpayer and instructions on reporting to

the county assessor shall be attached.

**[3/23/83, 12/13/85, 12/29/94, 8/31/96; 3.6.4.8 NMAC - Rn & A, 3 NMAC 6.4.8, 4/30/01, A, 6/29/01]**