

**7-36-33. Special method of valuation; certain industrial and commercial personal property.**

A. The following kinds of property shall be valued for property taxation purposes in accordance with the provisions of this section;

(1) all property used in connection with mineral property and defined in Paragraph (1) of Subsection B of Section 7-36-23 NMSA 1978 and Paragraph (1) of Subsection B of Section 7-36-25 NMSA 1978;

(2) all industrial, manufacturing, construction and commercial machinery, equipment, furniture, materials and supplies subject to valuation for property taxation purposes and not subject to valuation under the provisions of Sections 7-36-22 through 7-36-32 NMSA 1978;

(3) all other business personal property subject to valuation for property taxation purposes and not subject to valuation under the provisions of Sections 7-36-22 through 7-36-32 NMSA 1978; and

(4) construction work in progress that includes any of the items of property specified in Paragraphs (1), (2) or (3) of this subsection.

B. As used in this section:

(1) "depreciation" means the straight line method of computing the depreciation allowance over the useful life of the item of property;

(2) "useful life of the item of property" means the "class life" for same or similar kinds of property as defined and used in Section 167 of the United States Internal Revenue Code of 1954, as amended or renumbered;

(3) "other justifiable factors" includes, but is not limited to, functional and economic obsolescence;

(4) "schedule value" means a fixed value of an individual property unit within a mass of similar or like units established by determining the average unit tangible property cost of a substantial sample of such property and deducting therefrom an average related accumulated provision for depreciation per unit and an average of other justifiable factors per unit;

(5) "tangible property cost" means the actual cost of acquisition or construction of property including additions, retirements, adjustments and transfers, but without deduction of related accumulated provision for depreciation, amortization or other purposes; and

(6) "construction work in progress" means the total of the balance of work orders for property in process of construction on the last day of the preceding calendar year but does not include the equipment, machinery or devices used or available to construct such property but not incorporated therein.

C. The value of individual items of property subject to valuation under this section, except construction work in progress, shall be determined as follows:

(1) the valuation authority shall first establish the tangible property cost of each item

of property;

(2) from the tangible property cost shall be deducted the related accumulated provision for depreciation and any other justifiable factors; and

(3) notwithstanding the foregoing determination of value for property taxation purposes, the value for property taxation purposes of each item of property valued under this subsection shall never be less than twelve and one-half percent of the tangible property cost of such item of property so long as the property is used and useful in a business activity.

D. Construction work in progress shall be valued at fifty percent of the actual amounts expended and entered upon the accounting records of the taxpayer as of December 31 of the preceding calendar year as construction work in progress.

E. The division may establish a schedule value for the same or similar kinds of property to be valued under Subsection C of this section for property taxation purposes. In arriving at a schedule value, the division shall:

(1) determine the average unit tangible property cost of a substantial sample of the same or similar kinds of property;

(2) such unit average tangible property cost shall then be reduced by the average related accumulated provision for depreciation per unit applicable to the sample of the same or similar kinds of property and shall then be further reduced by an average of other justifiable factors per unit applicable to the same or similar kinds of property; and

(3) from the foregoing determination a schedule value for the same or similar kinds of property shall be determined and set forth in a regulation adopted pursuant to Section 7-38-88 NMSA 1978 [repealed].

F. The division shall adopt a schedule value for the following kinds of property:

(1) drilling rigs; and

(2) large off-the-road highway construction equipment.

G. Each item of property having a taxable situs in the state and valued under this section shall have its net taxable value allocated to the governmental unit in which the property is located.

H. The division shall adopt regulations under Section 7-38-88 NMSA 1978 [repealed] to implement the provisions of this section.

**History:** 1953 Comp., § 72-29-22, enacted by Laws 1975, ch. 165, § 14; 1982, ch. 28, § 5.

**Bracketed material.** — The bracketed material was inserted by the compiler and is not part of the law. Laws 1991, ch. 166, § 14 repealed 7-38-88 NMSA 1978, referred to in Subsections E and H. For present comparable provisions, see 9-11-6.2 NMSA 1978.

**Cross references.** — For Section 167 of the Internal Revenue Code, see 26 U.S.C. § 167.

## ANNOTATIONS

**Uranium mine development costs** are tangible property costs subject to taxation. *Kerr-McGee Nuclear Corp. v. Property Tax Div.*, 1980-NMCA-063, 95 N.M. 685, 625 P.2d 1202.

Such things as labor, engineer and geological analysis, utility bills and equipment rental fees relating to the development and operation of a uranium mine are tangible property costs under this section. *Kerr-McGee Nuclear Corp. v. Property Tax Div.*, 1980-NMCA-063, 95 N.M. 685, 625 P.2d 1202.

**Negative mineral property production figure disallowed.** — The statutory requirement of allocating the net taxable value of each item of property used in connection with mineral property prevents the use of the negative value for mineral property production to reduce the valuation of property valued under this section; therefore, the taxpayer cannot use a negative figure for mineral property production to reduce the positive value of property used in connection with mineral property. *U.V. Indus., Inc. v. Property Tax Div. of Taxation & Revenue Dep't*, 1979-NMCA-147, 93 N.M. 651, 603 P.2d 1108.

**Showing required for claim of obsolescence.** — Not every decision to abandon property gives rise to a claim for obsolescence: a taxpayer must show that ordinary depreciation will not sufficiently restore the cost of the property before its usefulness is over. *Anaconda Co. v. Property Tax Dep't*, 1979-NMCA-158, 94 N.M. 202, 608 P.2d 514, cert. denied, 94 N.M. 628, 614 P.2d 545 (1980).

**Burden is on taxpayer to prove amount of deduction for obsolescence** to which it is entitled; such a deduction will not be granted when the taxpayer fails to prove the connection between the degree of obsolescence and the amount of the deduction claimed. *Anaconda Co. v. Property Tax Dep't*, 1979-NMCA-158, 94 N.M. 202, 608 P.2d 514, cert. denied, 94 N.M. 628, 614 P.2d 545 (1980).

## REGULATIONS

### 3.6.5.40. SPECIAL METHOD OF VALUATION - CERTAIN INDUSTRIAL AND COMMERCIAL PERSONAL PROPERTY:

**A. GENERAL - CONSTRUCTION WORK IN PROGRESS:** The phrase "construction work in progress" as defined in Paragraph (6) of Subsection B of Section 7-36-33 NMSA 1978 and as valued pursuant to Subsection D of Section 7-36-33 NMSA 1978 does not include the value of the land upon which the construction work is in progress. The land is valued pursuant to Section 7-36-15, 7-36-20, 7-36-23 or 7-36-25 NMSA 1978 and regulations thereunder, depending upon the nature and use of land.

### **B. GENERAL - LARGE OFF-THE-ROAD HIGHWAY CONSTRUCTION EQUIPMENT - CONTRACTORS' MACHINERY AND EQUIPMENT:**

(1) The machinery and equipment, except "manufactured homes" and "well drilling rigs" as defined in Parts 1 through 7 of Chapter 3.6 NMAC, of all resident and nonresident persons engaged in "construction" as that term is defined in Paragraph (3) of Subsection C of Section 7-36-2 NMSA 1978, including such property of such persons whose property is subject to valuation by the county assessor and the division, is reported and valued in accordance with this subsection.

(2) Information required to be reported.

(a) The person reports each item of machinery and equipment owned or leased by that person by county in which the items were used during the preceding tax year and provide the following information with respect to each item:

- (i) make, model and year of manufacture, if available;
- (ii) capacity, if available;
- (iii) serial number, if available;
- (iv) where located by school district and county on January 1 of the tax year;
- (v) date purchased;
- (vi) "tangible property cost" of the item as that term is defined in Subsection B of Section 7-36-33 NMSA 1978.

(b) This reporting requirement may be modified by division instruction to permit use of information found in the uniform system of accounts used for reporting by certain persons reporting to state or federal regulatory agencies.

(3) The tangible property cost reported above is multiplied by a percentage, shown in the following schedule, that reflects an "average related accumulated provision for depreciation per unit...and an average of other justifiable factors per unit". The product of the multiplication is the value of the machinery and equipment for property taxation purposes. The value determined using this procedure may be adjusted upon a sufficient showing to the division of a lesser value. In the case of persons required to report to it, the division may permit valuation on the basis of "book value" upon a showing that "book value" will result in substantially the same value arrived at by application of this procedure. The division may also permit or require valuation on the basis of values found in the uniform system of accounts used by certain persons to report to certain state or federal regulatory agencies.

First calendar year immediately preceding current tax year of use

after acquisition or purchase	1.25
Second year of use after acquisition or purchase	3.75
Third year of use after acquisition or purchase	6.25
Fourth year of use after acquisition or purchase	38.75
Fifth year of use after acquisition or purchase	1.25
Sixth year and following years after acquisition or purchase	2.50

(4) Manufactured homes of all resident and nonresident persons engaged in construction is valued and reported pursuant to Section 7-36-26 NMSA 1978 and regulations thereunder.

(5) Well drilling rigs of all resident and nonresident persons engaged in construction

are valued pursuant to Section 3.6.5.40 NMAC.

**C. GENERAL - CERTAIN PROPERTY OF REGULATED BUSINESSES:** Industrial, manufacturing and commercial machinery, equipment and furniture is valued by the division, as a schedule value pursuant to Subsection E of Section 7-36-33 NMSA 1978, at the value shown on the person's reported uniform system of accounts if the property is required to be valued by the division pursuant to Section 7-36-2 NMSA 1978 and it is:

(1) not subject to valuation under the provisions of Sections 7-36-22 through 7-36-32 NMSA 1978;

(2) not valued pursuant to the methods implemented in Subsection B of Section 3.6.5.40 NMAC; and

(3) reported to a state or federal regulatory agency by a person regulated by such agency using a uniform system of accounts.

**D. GENERAL - WELL DRILLING RIG UNITS:**

(1) A "well drilling rig unit" means all of the component parts of a unit that normally are transported to a site and set up to make a complete rig that is to be used for drilling a well for oil, gas, carbon dioxide, water, geothermal or other minerals. A well drilling rig unit includes, but is not limited to derrick and substructure; crown blocks; traveling block; drilling line; sand line; rotary hose and standpipe; hook; tongs and swivel; elevators; kelly; rotary table; draw works; engine; instrument; slush and mudpumps; generators; electric lines and accessories; mud tanks; fuel tanks; boilers; feed pump; blowout preventer; tools and supplies; water pumps and lines; drill bits; stairs; railings; dog house; tool joints; and miscellaneous equipment.

(2) "Depth capacity" as that phrase is used in Section 3.6.5.40 NMAC means the maximum depth of a well that the well drilling rig unit is capable of drilling without exceeding its safe operating design limits.

(3) Well drilling rig units are valued using a "schedule value" "as that phrase is defined in Subsection B(4) of Section 7-36-33 NMSA 1978 based on drilling capacity. The schedule applicable to well drilling rig units is as follows:

**WELL-DRILLING RIG UNIT VALUATION SCHEDULE**

Depth Capacity in Feet		Value for Property Taxation Purposes
2,000	- 4,999	\$ 55,840
5,000	- 7,499	111,607
7,500	- 9,999	167,412
10,000	- 12,499	223,215
12,500	- 14,999	279,019
15,000	- 17,999	334,824
18,000	- 19,999	379,466
20,000	- 24,999	491,071
25,000	- 29,999	580,355.

**E. GENERAL - MINE DEVELOPMENT COSTS:** Except for property used in connection with mineral property when the primary production from the mineral property is potash, mine development costs are tangible property costs subject to valuation and taxation under the Property Tax Code. Such include labor, engineering, geological analysis, utility costs and equipment rental fees relating to the development and opening of the mine.

**F. GENERAL - CLAIM OF OBSOLESCENCE - BURDEN OF PROOF - THRESHOLD AMOUNT:**

(1) A deduction for obsolescence will not be allowed unless the taxpayer proves that functional or economic obsolescence has reduced the value of the property and the connection between the degree of obsolescence and the amount of deduction claimed.

(2) Because the process of determining obsolescence generally is imprecise, no claim for obsolescence will be allowed unless the functional or economic obsolescence exceeds ten percent of the value of the property prior to application of the amount of obsolescence.

**G. GENERAL - METHODS OF CALCULATING DEPRECIATION:** For purposes of Subsection G of Section 3.6.5.40 NMAC, "salvage value" means the minimum twelve and one-half percent value established by Paragraph (3) of Subsection C of Section 7-36-33 NMSA 1978. To calculate allowable depreciation for any year, first salvage value shall be deducted from the tangible property cost for each item of property. Then the remainder shall be divided by the useful life in order to obtain the allowable depreciation per year for each item. In the alternative, a "percent good" table can be used in lieu of determining the depreciation for each individual asset. If used, a percent good table shall be calculated using straight line depreciation and a half-year convention as defined by the internal revenue service in publication 946.  
[3/23/83, 12/29/94, 8/31/96, 3/31/00; 3.6.5.40 NMAC - Rn & A, 3 NMAC 6.5.40, 4/30/01]