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**REGULATIONS PERTAINING TO THE
OIL AND GAS EMERGENCY SCHOOL TAX ACTS
Sections 7-31-1 to 7-31-27**

(3.18 NMAC)

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Publication 3.18 NMAC
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7-31-1. TITLE.--Chapter 7, Article 31 NMSA 1978 may be cited as the "Oil and Gas Emergency School Tax Act".

7-31-2. DEFINITIONS.--As used in the Oil and Gas Emergency School Tax Act:

A. "commission", "department" or "division" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

B. "production unit" means a unit of property designated by the department from which products of common ownership are severed;

C. "severance" means the taking from the soil of any product in any manner whatsoever;

D. "value" means the actual price received from products at the production unit, except as otherwise provided in the Oil and Gas Emergency School Tax Act;

E. "product" or "products" means oil, natural gas or liquid hydrocarbon, individually or any combination thereof, carbon dioxide, helium or a non-hydrocarbon gas;

F. "operator" means any person:

(1) engaged in the severance of products from a production unit; or

(2) owning an interest in any product at the time of severance who receives a portion or all of such product for his interest;

G. "purchaser" means a person who is the first purchaser of a product after severance from a production unit, except as otherwise provided in the Oil and Gas Emergency School Tax Act;

H. "person" means any individual, estate, trust, receiver, business trust, corporation, firm, copartnership, cooperative, joint venture, association, limited liability company or other group or combination acting as a unit, and the plural as well as the singular number;

I. "interest owner" means a person owning an entire or fractional interest of whatsoever kind or nature in the products at the time of severance from a production unit or who has a right to a monetary payment that is determined by the value of such products;

J. "stripper well property" means a crude oil or natural gas producing property that is assigned a single production unit number by the department and is certified by the oil conservation division of the energy, minerals and natural resources department pursuant to the Natural Gas and Crude Oil Production Incentive Act to have produced in the preceding calendar year:

(1) if a crude oil producing property, an average daily production of less than ten barrels of oil per eligible well per day;

(2) if a natural gas producing property, an average daily production of less than sixty thousand cubic feet of natural gas per eligible well per day; or

(3) if a property with wells that produce both crude oil and natural gas, an average daily production of less than ten barrels of oil per eligible well per day, as determined by converting the volume of natural gas produced by the well to barrels of oil by using a ratio of six thousand cubic feet to one barrel of oil;

K. "average annual taxable value" means as applicable:

(1) the average of the taxable value per one thousand cubic feet, determined pursuant to Section 7-31-5 NMSA 1978, of all natural gas produced in New Mexico for the specified calendar year as determined by the department; or

(2) the average of the taxable value per barrel, determined pursuant to Section 7-31-5 NMSA 1978, of all oil produced in New Mexico for the specified calendar year as determined by the department; and

L. "tax" means the oil and gas emergency school tax.

(Laws 2005, Chapter 130, Section 7)

3.18.1.7 - DEFINITIONS:

A. **ACTUAL PRICE:** "Actual price" means the money or other consideration received or accrued for the product undiminished by adjustments except as provided in Sections 3.18.6.8 through 3.18.6.10 NMAC. Actual price includes all receipts, whether the receipt is characterized as a payment for the product, a reimbursement for tax or other expense, a price adjustment pursuant to Sections 7-29-4.2, 7-30-6, 7-31-6, and 7-32-6 NMSA 1978, or a payment or reimbursement for services such as sweetening, dehydration, measurement, compression or gathering. Receipts from take-or-pay contracts or negotiated contract settlements become part of the actual price to the extent that such receipts are consideration received for product severed and sold. "Actual price" also includes insurance proceeds received for stolen product.

B. **"ARM'S-LENGTH" - AFFILIATED PERSONS:**

(1) "Arm's-length" means a transaction, contract or agreement that has been arrived at in the marketplace between independent, nonaffiliated persons with opposing economic interests regarding that transaction, contract or agreement.

(2) Two persons are affiliated if one of the persons either directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the other person. Based on the ownership of the voting securities of a person or based on other forms of ownership:

(a) ownership in excess of fifty percent constitutes control;

(b) ownership of 10 through 50 percent creates a presumption of control;

and

(c) ownership of less than ten percent creates a presumption of noncontrol which the department may rebut if it demonstrates actual or legal control, including the existence of interlocking directorates.

(3) Two natural persons are affiliated if related by blood to the third degree or by marriage. Transactions between relatives are not transactions under arm's-length contracts.

(4) To be considered arm's-length for any production month, a contract must meet the requirements of Subsection 3.18.1.7B NMAC for that production month as well as when the contract was executed. Two persons are affiliated for any production month if they are affiliated for any part of that month.

C. [Reserved.]

D. **GATHERING:** "Gathering" is the movement of product from the production unit, as that term is defined in Paragraph 3.18.1.7E(1) NMAC, to a central accumulation point or processing or treatment point. This version of Subsection 3.18.1.7D NMAC is applicable to gathering occurring on or after July 15, 1998.

E. **PRODUCTION UNIT:**

(1) For purposes of determining value with respect to production on or after July 15, 1998, a production unit is the wellhead and the equipment associated with the wellhead. Equipment associated with the wellhead consists of all pipe and equipment supporting separation, dehydration, compression, sweetening, product storage, metering and other activities prior to and including the first place of physical measurement.

(a) For oil and condensate, the first place of physical measurement is either the outlet of the initial storage facility or the outlet of the lease automatic custody transfer unit.

(b) For natural gas and carbon dioxide, the first place of physical measurement is the outlet of the custody transfer meter, the allocation meter or the sales meter, whichever occurs first.

(2) For reporting purposes, the department may designate any of the following as a production unit:

(a) property subject to an oil and gas lease on which one or more wells are located;

(b) an area subject to an order for unitization or communitization;

(c) an area subject to a producer's division order;

(d) any producing well;

(e) any other place from which products are severed; or

(f) a proration unit approved by the oil conservation division of the energy, minerals and natural resources department.

F. **REASONABLE RATE OF RETURN:** A "reasonable rate of return" is a rate of return which does not exceed the industrial rate associated with Standard and Poor's BBB monthly average rate, as published in the *Standard and Poor's Bond Guide*, for January of the preceding calendar year.

G. **TRUCKING:** "trucking" means the transportation by truck of product; transportation by any other means, such as pipeline or railroad, is not trucking.

[5/24/91, 11/15/96, 10/31/98, 5/31/99; 3.18.1.7 NMAC - Rn & A, 3 NMAC 18.1.7, 12/29/00]

7-31-3. Repealed.
(Laws 1985, Ch. 65, Section 46)

**7-31-4. PRIVILEGE TAX LEVIED--COLLECTED BY DEPARTMENT--
RATE--INTEREST OWNER'S LIABILITY TO STATE--INDIAN
LIABILITY.--**

A. There is levied and shall be collected by the department a privilege tax on the business of every person severing products in this state. The measure of the tax shall be:

(1) on oil and on oil and other liquid hydrocarbons removed from natural gas at or near the wellhead, except as provided in Paragraphs (4) and (5) of this subsection, three and fifteen hundredths percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978;

(2) on carbon dioxide, helium and nonhydrocarbon gases, three and fifteen hundredths percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978;

(3) on natural gas, except as provided in Paragraphs (6) and (7) of this subsection, four percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978;

(4) on the oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead from a stripper well property, one and fifty-eight hundredths percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978, provided that the average annual taxable value of oil was equal to or less than fifteen dollars (\$15.00) per barrel in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed;

(5) on the oil and on other liquid hydrocarbons removed from natural gas at or near the wellhead from a stripper well property, two and thirty-six hundredths percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978, provided that the average annual taxable value of oil was greater than fifteen dollars (\$15.00) per barrel but not more than eighteen dollars (\$18.00) per barrel in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed;

(6) on the natural gas removed from a stripper well property, two percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978, provided that the average annual taxable value of natural gas was equal to or less than one dollar fifteen cents (\$1.15) per thousand cubic feet in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed; and

(7) on the natural gas removed from a stripper well property, three percent of the taxable value determined pursuant to Section 7-31-5 NMSA 1978, provided that the average annual taxable value of natural gas was greater than one dollar fifteen cents (\$1.15) per thousand cubic feet but not more than one dollar thirty-five cents (\$1.35) per thousand cubic feet in the calendar year preceding July 1 of the fiscal year in which the tax rate is to be imposed.

B. Every interest owner, for the purpose of levying this tax, is deemed to be in the business of severing products and is liable for this tax to the extent of his interest in the value of the products or to the extent of his interest as may be measured by the value of the products.

**C. Any Indian tribe, Indian pueblo or Indian is liable for this tax to the extent authorized or permitted by law.
(Laws 2005, Chapter 130, Section 8)**

3.18.4.7 – DEFINITIONS

Definition of “sold”: A product is sold when it is delivered, for a consideration, to another party.

[5/24/91, 11/15/96; 3.18.4.7 NMAC - Rn & A, 3 NMAC 18.4.7, 12/29/00]

3.18.5.9 - DEDUCTIONS AND ADJUSTMENTS WHEN ACTUAL PRICE DETERMINED AT THE PRODUCTION UNIT

When actual price is established in an arm’s-length transaction among non-affiliated persons at the production unit, the only deductions allowed are those recognized by Sections 7-29-4.1, 7-30-5, 7-31-5 and 7-32-5 NMSA 1978. The transportation adjustment provided in Section 3.18.6.9 NMAC and the processing adjustment provided in Section 3.18.6.10 NMAC do not apply. Section 3.18.5.9 NMAC applies to transactions occurring on or after July 15, 1998.

[5/31/99; 3.18.5.9 NMAC - Rn & A, 3 NMAC 18.5.9, 12/29/00]

7-31-5. TAXABLE VALUE--METHOD OF DETERMINING.--To determine the taxable value there shall be deducted from the value of products:

A. royalties paid or due the United States or the state of New Mexico;

B. royalties paid or due any Indian tribe, Indian pueblo or Indian that is a ward of the United States of America; and

C. the reasonable expense of trucking any product from the production unit to the first place of market.

(Laws 1963, Chapter 179, Section 25)

3.18.4.8 - TAX DUE FROM REDUCTION OF ROYALTIES

A. When an agency of the United States of America, the state or New Mexico or any Indian nation, tribe or pueblo, a member of an Indian nation, tribe or pueblo who is a ward of the United States or any court approves a royalty reduction on products previously reported, the reduction in royalty shall be reported no later than the twenty-fifth day of the second month following the month in which approval was granted. The tax due New Mexico as a result of the reduction in royalty shall be computed by applying to the reduction the appropriate rates of the oil and gas severance, the oil and gas emergency school, the oil and gas conservation and the oil and gas ad valorem production taxes in effect for the month in which the product was severed. The tax due shall accompany or precede the return.

B. Section 3.18.4.9 NMAC is retroactively applicable to orders issued on or after July 1, 1997.

[6/15/98; 3.18.4.8 NMAC - Rn & A, 3 NMAC 18.4.8, 12/29/00]

3.18.5.8 - REASONABLE EXPENSE OF TRUCKING

A. When the person trucking product is not affiliated with the interest owner or operator, the reasonable expense of trucking means the cost paid in an arm's-length transaction by the interest owner or operator for trucking services performed from a point within the production unit, as that term is defined in Paragraph 3.18.1.7E(1) NMAC, to the first point of market. This version of Subsection 3.18.5.8A NMAC is applicable to trucking performed on or after July 15, 1998.

B. When trucking is performed by the interest owner or operator or by a person affiliated with the interest owner or operator or when trucking is performed by a non-affiliated person in a non-arm's-length transaction, the reasonable expense of trucking from a point within the production unit, as that term is defined in Paragraph 3.18.1.7E(1) NMAC, to the first place of market shall be determined in accordance with the first applicable benchmark. This version of Subsection 3.18.5.8B NMAC is applicable to trucking performed on or after July 15, 1998.

C. Benchmark 1: If trucking charges are subject to regulatory approval, the reasonable expense of trucking shall not exceed any applicable tariff set or approved by the Federal Energy Regulatory Commission or any other federal or state agency having jurisdiction.

D. Benchmark 2: If the amount of product trucked under arm's-length contracts during the reporting period is at least fifty percent of the total amount trucked during that reporting period by the person performing the trucking, the reasonable expense of trucking shall

be not more than the highest charge nor less than the lowest charge made to non-affiliated persons by the person performing the trucking.

E. Benchmark 3: If the reasonable expense of trucking is not determined under the preceding benchmarks, then it shall not exceed the sum of actual allowable trucking costs. Allowable trucking costs are:

(1) operating expenses, which include operations supervision, operations labor, fuel, utilities, materials and supplies, property taxes, rent and any other directly attributable operating expense of the trucking operation;

(2) maintenance expenses, which include maintenance of the truck fleet and associated equipment, maintenance labor and any other directly attributable maintenance expense;

(3) overhead expenses, which include administrative and other overhead expenses directly attributable to the operation or maintenance of the trucking operation but excluding federal and state taxes (other than property taxes), payments for product, royalties and any expense which may be included in a processing or transportation adjustment; and

(4) either depreciation expense, which includes depreciation on the truck fleet and associated equipment determined on the straight-line method based on the class life of the truck fleet and equipment and appropriate salvage values. A successor in business or purchaser of assets shall base depreciation expense for the purposes of Section 3.18.5.8 NMAC upon the depreciation schedules of the previous owner; or

(5) in lieu of item 4), a reasonable rate of return on depreciable capital assets used in the trucking operation.

F. The reasonable expense of trucking is a deduction either from actual price received when actual price is established at the production unit under an arm's-length contract among non-affiliated persons or from the reasonable value established by the department in all other situations, but not both.

G. This version of Section 3.18.5.8 NMAC is retroactively applicable to production on or after September 1, 1991.

[5/24/91, 11/15/96, 10/31/98; 3.18.5.8 NMAC - Rn & A, 3 NMAC 18.5.8, 12/29/00]

7-31-6. VALUE MAY BE DETERMINED BY [DEPARTMENT]--STANDARD.--The [department] may determine the value of products severed from a production unit when:

- A. the operator and purchaser are affiliated persons; or when
- B. the sale and purchase of products is not an arm's length transaction; or when
- C. products are severed and removed from a production unit and a value as defined in this Act is not established for such products.

The value determined by the [department] shall be commensurate with the actual price received for products of like quality, character and use which are severed in the same field or area.

[Laws 1959, Chapter 54, Section 6]

3.18.6.7 – DEFINITIONS

“Reasonable value” means the value established by the department under Sections 7-29-4.2, 7-30-6, 7-31-6 or 7-32-6 NMSA 1978.

[5/24/91, 11/15/96; 3.18.6.7 NMAC - Rn & A, 3 NMAC 18.6.7, 12/29/00]

3.18.6.8 - REASONABLE VALUE WHEN ACTUAL PRICE NOT DETERMINED AT THE PRODUCTION UNIT

A. Reasonable value shall be determined in accordance with Section 3.18.6.8 NMAC when actual price is established in a transaction among affiliated persons or established at a point other than at the production unit.

(1) Example 1: P sells natural gas to a California utility. Under the contract, P is paid for natural gas delivered to the California border; P is responsible for arranging and paying for the necessary transportation to California. In this situation, value is not established for the product at the production unit.

(2) Example 2: X, the owner of a refinery, posts a price at which X will purchase oil delivered to the refinery. P, a producer, sells X oil from wells located ten miles from the refinery. P pays for transporting the oil to the refinery. In this situation, value is not established for the product at the production unit.

B. Non-affiliated persons. When actual price is established in an arm's-length transaction among non-affiliated persons, reasonable value shall be determined by subtracting, in accordance with Sections 3.18.6.9 and 3.18.6.10 NMAC, from actual price received the value added by transportation from the production unit, processing in a natural gas processing plant or both.

(1) Example: P enters into an arm's-length contract with U, an out-of-state utility, for sale of natural gas at \$2.00 per mcf delivered to U. P then enters arm's-length contracts with X (a gathering system operator), Y (a natural gas processing plant operator) and Z (a mainline pipeline) to transport and process P's gas. X charges 5 cents per mcf to transport P's gas from P's production unit to Y's processing plant. Y charges 20 cents per mcf to process the gas. Z charges 25 cents per mcf to transport P's gas from Y's plant to U. P is not affiliated with U, X, Y or Z. “Actual price” at the production unit, as that term is defined in Paragraph 3.18.1.7E(1) NMAC,

then, is \$1.50 per mcf; this is the base upon which tax is to be paid. It shall be reported as \$2 gross, with 30 cents in transportation deductions and 20 cents in processing deductions.

(2) This version of Subsection 3.18.6.8B NMAC is applicable to production occurring on or after July 15, 1998.

C. Affiliated persons. When actual price is established in a transaction among affiliated persons or among non-affiliated persons in a non-arm's-length transaction, reasonable value shall be determined in accordance with the first applicable benchmark.

D. Benchmark 1: Reasonable value shall be the average actual price received, less applicable processing and transportation adjustments, provided that:

(1) at least fifty percent of sales or purchases from the same field are arm's-length transactions; and

(2) the price received or paid falls within the range of the prices received or paid for comparable products under arm's-length transactions of comparable terms.

E. Benchmark 2: Reasonable value shall be the actual price received, less applicable processing and transportation adjustments, from the first sale occurring between non-affiliated persons in an arm's-length transaction. However, this reasonable value can never be less than the price actually received, less applicable processing and transportation adjustments, in the first transaction with an affiliate.

F. Benchmark 3: If the reasonable value cannot be determined under preceding benchmarks, then the department may permit or require the taxpayer to use any other method which reasonably measures the value of product. This may include values determined under arm's-length contracts between non-affiliates for comparable product in nearby field, prices received in spot sales or other reliable sources of price or market information.

G. In determining comparability of product under Section 3.18.6.8 NMAC, the department will consider the following factors: time of execution, duration, market or markets served, terms, quality, volume and such other factors as may be appropriate.

[5/24/91, 11/15/96; 3.18.6.8 NMAC - Rn & A, 3 NMAC 18.6.8, 12/29/00]

3.18.6.9 - TRANSPORTATION ADJUSTMENTS

A. The adjustments to actual price provided by Section 3.18.6.9 NMAC apply only in cases where actual price is determined at a point other than at the production unit. The adjustment provided by Section 3.18.6.9 NMAC may be referred to as the "transportation adjustment". The transportation adjustment covers costs of transportation from a production unit to the point at which the product is sold. The transportation adjustment includes charges for gathering, mainline transportation and fuel gas and also includes charges or costs associated with compression incurred downstream of the production unit, as that term is defined in Paragraph 3.18.1.7E(1) NMAC. No transportation adjustment may be claimed or allowed unless the transportation with respect to which the adjustment is claimed actually occurs. This version of Subsection 3.18.6A NMAC is applicable to transportation occurring on or after July 15, 1998.

B. For the purposes of Section 3.18.6.9 NMAC:

(1) "producer" means the person or persons owning the product or the operator of the well; and

(2) "transportation company" means the pipeline, gathering company or other entity transporting product.

C. Nonmonetary payments. To secure uniform reporting, when payment of transportation charges is made with product rather than money, the value of the product shall be added to the amount reported as proceeds from the sale as well as reported as a transportation deduction. For purposes of determining the transportation deduction, the value of the product paid shall be the contract price without deduction. In all 3 following cases the volume of production to be reported is 12,500 mcf.

(1) Example: Producer A moves natural gas directly into P's pipeline from A's production unit. A contracts to deliver natural gas to an out-of-state utility for \$2.50 per delivered mcf. A inputs 12,500 mcf to the pipeline.

(a) Case 1: P charges A \$.50 per mcf to transport the gas from A's production unit to the utility; P uses P's own gas for fuel. A's transportation adjustment is \$6,250. A's taxable value is \$2.00 per mcf on 12,500 mcf severed and sold. (\$31,250 received from the utility less \$6,250 paid to the pipeline, divided by 12,500 mcf).

(b) Case 2: P charges A 10% of the gas put into the pipeline plus 27.774 per mcf of the remaining gas. A's transportation adjustment is \$6,250 (\$3,125 cash plus \$3,125 in value of product). A's taxable value is \$2.00 per mcf on 12,500 mcf severed and sold (although only 11,250 mcf delivered to the utility). (\$28,125 received from the utility plus \$3,125 for value of product transferred to the pipeline less a transportation deduction of \$6,250, divided by 12,500 mcf).

(c) Case 3: P charges A 20% of the input gas as a delivery charge. A's transportation adjustment is \$6,250 (value of product). A's taxable value is \$2.00 per mcf on 12,500 mcf severed and sold (though only 10,000 delivered to the utility). (\$25,000 from the utility plus \$6,250 for value of product transferred to pipeline minus \$6,250 transportation deduction, divided by 12,500 mcf.)

D. Non-affiliated persons. When the producer and the transportation company are not affiliated persons, actual price may be reduced by the actual monetary charges paid in an arm's-length transaction between the transportation company and the producer for transporting product, provided that the charges do not exceed any applicable tariff set or approved by any federal or state agency having jurisdiction.

E. Affiliated persons. When the producer and the transportation company are affiliated persons or when the transporting of product is not an arm's-length transaction, the transportation deduction shall be determined in accordance with the first applicable benchmark.

F. Benchmark 1: If the transportation charge is subject to regulatory approval, it may not exceed the tariff set or approved by any federal or state agency having jurisdiction.

G. Benchmark 2: If at least fifty percent of the product transported by the transportation company during the reporting period is transported for non-affiliated persons in arm's-length transactions, the transportation deduction for transporting products of an affiliate may be determined as a charge not more than the highest charge nor less than the lowest charge made in an arm's-length transaction by that transportation company to non-affiliated persons for transporting similar product.

H. Benchmark 3: If the transportation deduction is not determined under the preceding benchmarks, then it shall not exceed the sum of actual allowable transportation costs during the previous year on a per barrel or mcf basis, as appropriate. Allowable transportation costs are:

(1) operating expenses, which include operations supervision and engineering, operations labor, fuel, utilities, materials and supplies, property taxes, rent and any other directly attributable operating expense of the pipeline or gathering system;

(2) maintenance expenses, which include maintenance of the pipeline or gathering system and associated equipment, maintenance labor and any other directly attributable maintenance expense;

(3) overhead expenses, which include administrative and other overhead expenses directly attributable to the operation or maintenance of the pipeline or gathering system but excluding federal and state taxes (other than property taxes), payments for product, royalties, trucking expenses and any expense which may be included in a processing adjustment;

(4) depreciation expense, which includes depreciation on the pipeline or gathering system and associated equipment determined on the straight-line method based on the class life of the pipeline or gathering system and equipment and an appropriate salvage value for equipment. A successor in business or purchaser of assets shall base depreciation expense for the purposes of Section 3.18.6.9 NMAC upon the depreciation schedules of the previous owner; and

(5) a reasonable rate of return on depreciable capital assets used in the transportation operation.

I. Trucking expenses. An expense of transporting product by truck may not be deducted from actual price both as a “trucking expense” and a “transportation adjustment”.

J. This version of Section 3.18.6.9 NMAC is retroactively applicable to products severed on or after July 1, 1995.

[5/24/91, 7/31/95, 11/15/96, 10/31/98; 3.18.6.9 NMAC - Rn & A, 3 NMAC 18.6.9, 12/29/00]

3.18.6.10 - PROCESSING ADJUSTMENTS - NATURAL GAS

A. The adjustments to actual price provided by Section 3.18.6.10 NMAC apply only in cases where actual price is determined at a point other than at the production unit. The adjustment provided by Section 3.18.6.10 NMAC may be referred to as the “processing adjustment”.

B. For the purposes of Section 3.18.6.10 NMAC, “producer” means the person or persons owning the natural gas or the operator of the well.

C. Processing costs are only those costs of removing dissolved liquid hydrocarbons and impurities from natural gas in a natural gas processing plant. Charges or costs associated with dehydration, purification, sweetening and the like are “processing costs” for the purpose of Sections 3.18.6.8 through 3.18.6.10 NMAC.

D. Nonmonetary payments. To the extent that payment of the processing charge is made with product (other than liquids separated from natural gas) rather than money, reported proceeds shall include the value of the product transferred. The value shall also be reported as a processing deduction. The value of liquids shall not be reported as either part of proceeds or as a transportation deduction when the entire value of the liquids is transferred to the natural gas plant operator as part of the plant operator's processing fee.

(1) Example 1: The operator of a natural gas processing plant charges \$.05 per mcf of natural gas processed (as measured at the plant inlet) plus two-thirds of the receipts from sale of the separated liquids. G moves 10,000 mcf to the plant for processing; liquids worth \$150 are separated by the processing. G reports the \$150 from sale of the liquids to the proceeds from

sale of the residual gas; G's processing adjustment is \$600.

(2) Example 2: The operator of a natural gas processing plant charges 5% of the residual gas from processing plus two-thirds of the receipts from sale of the separated liquids. For this example, liquids worth \$150 are separated from G's gas by the processing; the operator also takes 1,000 mcf of the residual gas as part of the fee. G sells the remaining gas at \$1.50 per mcf. G adds \$1,650 to proceeds from sale of the gas (\$150 from liquids and \$1,500 from residual gas) and deducts \$1,600 (\$100 in liquids and \$1,500 residual gas).

E. Non-affiliated persons. When the producer and the operator or owner of the natural gas plant are not affiliated persons, the producer may reduce actual price by the actual monetary charges paid in an arm's-length transaction between the owner or operator of the natural gas processing plant and the producer for processing natural gas.

F. Affiliated persons. When the producer and the operator or owner of the natural gas processing plant are affiliated persons or when the product is processed in a non-arm's-length transaction among non-affiliated persons, calculation of the processing adjustment shall be in accordance with the first applicable benchmark.

G. Benchmark 1: If at least fifty percent of the natural gas processed is processed for non-affiliated persons in arm's-length transactions, the producer may reduce actual price by the actual monetary charges paid for the processing of the natural gas provided that the charges paid are not more than the highest charge nor less than the lowest charge made in an arm's-length transaction to non-affiliated persons for processing of similar natural gas.

H. Benchmark 2: If less than fifty percent of the natural gas processed during the reporting period is processed for non-affiliated persons in arm's-length transactions, the processing adjustment for processing products of an affiliate shall not exceed allowable processing costs of the natural gas processing plant during the previous calendar year on an mcf basis. Allowable processing costs are:

(1) operating expenses, which include operations supervision and engineering, operations labor, fuel, utilities, materials and supplies, property taxes, rent and any other directly attributable operating expense of the natural gas plant;

(2) maintenance expenses, which include maintenance of the processing plant and its equipment, maintenance labor and any other directly attributable maintenance expense;

(3) overhead expenses, which include administrative and other overhead expenses directly attributable to the operation or maintenance of the processing plant but excluding federal and state taxes (other than property taxes), payments for product, royalties, trucking expenses and any expense which may be included in a transportation adjustment;

(4) depreciation expense, which includes depreciation on the processing plant and its equipment determined on the straight-line method based on the class life of the processing plant and equipment and an appropriate salvage value for equipment. A successor in business or purchaser of assets shall base depreciation expense for the purposes of Section 3.18.6.10 NMAC upon the depreciation schedules of the previous owner; and

(5) a reasonable rate of return on depreciable capital assets used in the processing operation.

I. This version of Section 3.18.6.10 NMAC is retroactively applicable to products severed on or after July 1, 1995.

[5/24/91, 7/31/95, 11/15/96; 3.18.6.10 NMAC - Rn & A, 3 NMAC 18.6.10, 12/29/00]

7-31-7. PRICE INCREASE SUBJECT TO APPROVAL OF AGENCY OF UNITED STATES OF AMERICA, STATE OF NEW MEXICO OR COURT--REFUND.--When an increase in the value of any product is subject to the approval of any agency of the United States of America or the state of New Mexico or any court, the increased value shall be subject to this tax. In the event the increase in value is disapproved, either in whole or in part, then the amount of tax which has been paid on the disapproved part of the value shall be considered excess tax. Any person who has paid any such excess tax may apply for a refund of that excess tax in accordance with the provisions of Section 7-1-26 NMSA 1978.
[Laws 1985, Chapter 65, Section 35]

3.18.7.8 - SETTLEMENTS - WHEN TAX ON ADDITIONAL VALUE IS DUE

A. When any agency of the United States of America or the state of New Mexico or any court issues an order and the effect of the order is to increase the taxable value of products previously reported, the increase in taxable value shall be reported no later than the twenty-fifth day of the second month following the month in which payment or credit for the increase is received by the taxpayer. The tax due on the increase in taxable value shall be computed by applying to the increase the appropriate rates of the oil and gas severance, the oil and gas emergency school, the oil and gas conservation and the oil and gas ad valorem production taxes in effect for the month in which the product was severed. The tax due shall accompany or precede the return.

B. In the event the increase in taxable value is not readily attributable to the months in which the products were severed, tax due may be determined based on an allocation of the increase if the method of allocation is approved by the department.

C. Section 3.18.7.8 NMAC is retroactively applicable to orders issued on or after September 1, 1991.

[3/31/94, 11/15/96; 3.18.7.8 NMAC - Rn & A, 3 NMAC 18.7.8, 12/29/00]

7-31-8. PRODUCTS ON WHICH TAX HAS BEEN LEVIED; REGULATION BY COMMISSION.--This tax shall not be levied more than once on the same product. Reporting of products on which this tax has been paid shall be subject to the regulation of the commission.

7-31-9. OPERATOR OR PURCHASER TO WITHHOLD INTEREST OWNER'S TAX; COMMISSION MAY REQUIRE WITHHOLDING OF TAX; TAX WITHHELD TO BE REMITTED TO THE STATE; OPERATOR OR PURCHASER TO BE REIMBURSED.-- Any operator making a monetary payment to an interest owner for his portion of the value of products from a production unit shall withhold from such payment the amount of tax due from any interest owner.

Any purchaser, who, by express or implied agreement with the operator, makes a monetary payment to an interest owner for his portion of the value of products from a production unit, shall withhold from such payment the amount of tax due from the interest owner.

The commission may require any purchaser making a monetary payment to an interest owner for his portion of the value of products from a production unit to withhold from such payment the amount of tax due from the interest owner.

Any operator or purchaser who pays any tax due from an interest owner shall be entitled to reimbursement from the interest owner for the tax so paid, and may take credit for such amount from any monetary payment to the interest owner for the value of products.

7-31-10. OPERATOR'S REPORT; TAX REMITTANCE; ADDITIONAL INFORMATION.--Each operator shall in the form and manner required by the division make a return to the division showing the total value, volume and kind of products sold from each production unit for each calendar month. All taxes due or to be remitted by the operator shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. Any additional report or information the division may deem necessary for the proper administration of the Oil and Gas Emergency School Tax Act may be required.

7-31-10.1. REPEALED.
(Laws 1999, Ch. 218, Section 3)

7-31-11. PURCHASER'S REPORT; TAX REMITTANCE; ADDITIONAL INFORMATION.--Each purchaser shall in the form and manner required by the division make a return to the division showing the total value, volume and kind of products purchased by him from each production unit for each calendar month. All taxes due or to be remitted by the purchaser shall accompany this return. The return shall be filed on or before the twenty-fifth day of the second month after the calendar month for which the return is required. Any additional reports or information the division may deem necessary for the proper administration of the Oil and Gas Emergency School Tax Act may be required.

7-31-12 to 7-31-25. REPEALED.
(Laws 1985, Ch. 65, Section 46)

7-31-26. ADVANCE PAYMENT REQUIRED.--

A. Any person required to make payment of tax pursuant to Section 7-31-10 or 7-31-11 NMSA 1978 shall make the advance payment required by this section.

B. For the purposes of this section:

(1) "advance payment" means the payment required to be made by this section in addition to any oil and gas emergency school tax, penalty or interest due; and

(2) "average tax" means the aggregate amount of tax, net of any refunds or credits, paid by a person during the twelve-month period ending March 31, pursuant to the Oil and Gas Emergency School Tax Act divided by the number of months during that period for which the person made payment.

C. Each year, prior to July 1, each person required to pay tax pursuant to the Oil and Gas Emergency School Tax Act shall compute the average tax for the period ending March 31 of that year. The average tax calculated for a year shall be used during the twelve-month period beginning with July of that year and ending with June of the following year as the basis for making the advance payments required by Subsection D of this section.

D. Every month, beginning with July 1991, every person required to pay tax in a month pursuant to the Oil and Gas Emergency School Tax Act shall pay, in addition to any amount of tax, interest or penalty due, an advance payment in an amount equal to the applicable average tax, except:

(1) if the person is making a final return under the Oil and Gas Emergency School Tax Act, no advance payment pursuant to this subsection is due for that return; and

(2) as provided in Subsection F of this section.

E. Every month, beginning with tax payments in August 1991, every person required to pay tax pursuant to the Oil and Gas Emergency School Tax Act may claim a credit equal to the amount of advance payment made in the previous month, except as provided in Subsection F of this section.

F. If, in any month, a person is not required to pay tax pursuant to the Oil and Gas Emergency School Tax Act, that person is not required to pay the advance payment and may not claim a credit pursuant to Subsection E of this section provided that, in any succeeding month when the person has liability under the Oil and Gas Emergency School Tax Act, the person may claim a credit for any advance payment made and not credited.

G. In the event that the date by which a person is required to pay the tax pursuant to the Oil and Gas Emergency School Tax Act is accelerated to a date earlier than the twenty-fifth day of the second month following the month of production, the advance payment provision contained in this section is null and void and any money held as advance payments shall be credited to the taxpayers' accounts.

7-31-27. JICARILLA APACHE TRIBAL CAPITAL IMPROVEMENTS TAX CREDIT.--

A. A person who is liable for the payment of the oil and gas emergency school tax imposed on products severed from Jicarilla Apache tribal land or imposed on the privilege of severing products from Jicarilla Apache tribal land shall be entitled to a credit to be computed pursuant to this section and to be deducted from the payment of those taxes with respect to products from qualifying wells. The credit provided by this section may be referred to as the "Jicarilla Apache tribal capital improvements tax credit".

B. As used in this section:

(1) "Jicarilla Apache tribal land" means land within the state of New Mexico that on March 1, 2002 was within the exterior boundaries of a Jicarilla Apache reservation or was held in trust by the United States for the Jicarilla Apache Nation;

(2) "product" means oil, natural gas or liquid hydrocarbon, individually or in combination, or carbon dioxide;

(3) "qualifying well" means a well on Jicarilla Apache tribal land; and

(4) "Jicarilla Apache tribal capital improvements tax" means a tax imposed after the effective date of this section by the Jicarilla Apache Nation that is exclusively dedicated to fund capital improvement projects on Jicarilla Apache tribal land and that is not available to finance the construction of buildings used for commercial activity.

C. The Jicarilla Apache tribal capital improvements tax credit shall be determined separately for each calendar month and shall be equal to the lesser of:

(1) the amount of the Jicarilla Apache tribal capital improvements tax imposed by the Jicarilla Apache Nation upon the products severed from qualifying wells or upon the privilege of severing products from qualifying wells; or

(2) seven-tenths of one percent of the taxable value of the products severed from qualifying wells as determined by applicable state law.

D. A credit pursuant to this section shall be allowed by the taxation and revenue department only if the Jicarilla Apache Nation has entered into a cooperative agreement with the secretary of taxation and revenue for the exchange of information necessary for the administration of the Jicarilla Apache tribal capital improvements tax credit.

E. Notwithstanding any other provision of law to the contrary, the amount of credit taken and allowed shall be applied against the amount of the oil and gas emergency school tax due with respect to the products or severance of products taxed.

F. The credit provided by this section shall be in addition to any credit

claimed by the taxpayer or allowed by the taxation and revenue department pursuant to Section 7-29C-1 NMSA 1978 with respect to the same products or the severance of the same products. A Jicarilla Apache tribal capital improvements tax that qualifies for the credit provided by this section shall constitute an increase in tribal taxes for purposes of Subsection F of Section 7-29C-1 NMSA 1978 only to the extent that it exceeds the amount identified in Paragraph (2) of Subsection C of this section.

G. The taxation and revenue department shall administer and interpret the provisions of this section in accordance with the provisions of the Tax Administration Act.

H. The burden of showing entitlement to a credit authorized by this section is on the taxpayer claiming it, and the taxpayer shall furnish to the appropriate tax collecting agency, in a manner determined by the taxation and revenue department, proof of payment of the Jicarilla Apache tribal capital improvements tax on which the credit is based.

(Laws 2002, Chapter 15, Section 1)
