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**REGULATIONS PERTAINING TO THE  
RESOURCES EXCISE TAX ACT  
SECTION 7-25-1 through 7-25-9 NMSA 1978**

[3.19.4 NMAC]

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**7-25-1. SHORT TITLE. --**

Chapter 7, Article 25 NMSA 1978 may be cited as the “Resources Excise Tax Act”.

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**7-25-2. PURPOSE. –**

The purpose of the Resources Excise Tax Act [this article] is to provide revenue for public purposes by levying a tax on the privilege of severing and processing natural resources within New Mexico.

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**7-25-3. Definitions. -- As used in the Resources Excise Tax Act:**

A. "department" 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. "natural resource" means timber and any product thereof and any metalliferous or nonmetalliferous mineral product, combination or compound thereof, severed in New Mexico but does not include oil, natural gas, liquid hydrocarbon individually or any combination thereof, carbon dioxide, helium or nonhydrocarbon gas;

C. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate or other entity;

D. "processing" means smelting, leaching, refining, reducing, compounding or otherwise preparing for sale or commercial use any natural resource so that its character or condition is materially changed in mills or plants located in New Mexico;

E. "processor" means any person engaging in the business of processing natural resources that the person owns, or any person who is the owner of natural resources and who has another person perform the processing of such natural resources;

F. "service charge" means the total amount of money or the reasonable value of other consideration received for severing or processing any natural resource by any person who is not the owner of the natural resource. However, if the money received does not represent the value of the severing or processing performed, "service charge" means the reasonable value of the severing or processing performed;

G. "severer" means any person engaging in the business of severing natural resources that the person owns, or any person who is the owner of natural resources and who has another person perform the severing of such natural resources;

H. "severing" means mining, quarrying, extracting, felling or producing any natural resource in New Mexico for sale, profit or commercial use; and

I. "taxable value" means the value after severing or processing, without deduction of any kind other than specified in this subsection, of any natural resource severed or processed in New Mexico. It is presumed, in the absence of preponderant evidence of another value, that the taxable value means the total amount of money or the reasonable value of other consideration received for the severed or processed natural resource. However, if the amount of money received does not represent the value of the severed or processed natural resource or if the severed or processed natural resource is not sold, the taxable value shall be the reasonable value of the severed or processed natural resource. All natural resources severed or

processed in New Mexico shall be included in determining taxable value, regardless of the place of sale or the fact that delivery may be made to points outside of New Mexico. If any person shall ship, transmit or transport natural resources out of New Mexico without making sale of them or shall ship, transmit or transport natural resources out of New Mexico in an unfinished condition, the value of the natural resources in the condition in which they existed when shipped, transmitted or transported out of New Mexico and before they enter interstate commerce, without deduction of any kind other than specified in this subsection, shall be the basis for determining the taxable value. Amounts received from selling natural resources, other than metalliferous mineral ores, whether processed or unprocessed, to the United States or any agency or instrumentality thereof, the state of New Mexico or any political subdivision thereof, or to organizations that have demonstrated to the department that they have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501 (c) (3) of the United States Internal Revenue Code of 1954, as amended or renumbered, which employ the natural resource in the conduct of functions described in Section 501 (c) (3) and not in the conduct of an unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code of 1954, as amended or renumbered, may be deducted from taxable value. Any royalty or other similar interest, whether payable in cash or in kind, paid to the United States or any agency or instrumentality thereof, or the state of New Mexico or any political subdivision thereof, or any Indian tribe, Indian pueblo or Indian that is a ward of the United States may be deducted from taxable value. In computing taxable value, any owner of natural resources may deduct any service charge on which the service tax imposed by Section 7-25-6 NMSA 1978 is payable.

(Laws 2007, Ch. 275, Sec. 3)

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#### **3.19.4.10 - WHICH SUBSTANCES ARE “NATURAL RESOURCES”**

A. **GUANO IS NOT A NATURAL RESOURCE:** Guano is a substance composed chiefly of the dung of sea birds or bats, accumulated along certain costal areas or in caves, and used as a fertilizer. The definitions of “natural resource” in Sections 7-25-3 and 7-26-2 NMSA 1978 do not include guano and therefore guano is not a natural resource from the purposes of the Resources Excise Tax Act and the Severance Tax Act.

B. **CALICHE IS A NATURAL RESOURCE:** Caliche is a natural resource for purposes of the Resources Excise Tax Act and the Severance Tax Act.

C. **TREES:**

(1) Trees felled for timber are a natural resource. The word “timber” connotes trees that are cut down for use as poles, masts, lumber or wood products or derivatives. Trees gathered, transplanted or felled for other purposes are not a natural resource for purposes of the Resources Excise Tax Act and the Severance Tax Act.

(2) Examples: Trees cut for use as Christmas trees or firewood and trees transplanted for use as landscaping are not timber. The taxes imposed by the Resources Excise Tax Act and the Severance Tax Act do not apply to these uses of trees.

D. **BORROW MATERIALS ARE NOT NATURAL RESOURCES:** Borrow materials, such as soil type materials, used for fill or embankment in a construction operation are not a “natural resource” as that term is used in the Resources Excise Tax Act or the Severance Tax Act.

[10/31/97; 3.19.4.10 NMAC - Rn & A, 3 NMAC 19.4.10, 1/15/01]

#### **3.19.4.11 - ORE SEVERED BY PERSON NOT THE OWNER**

The owner of metal ores which are severed by another person, and not processed in the state, is liable for the resources tax at the appropriate rate specified in Section 7-25-4 NMSA 1978 times the taxable value of the severed ores, less the amount of the service charge paid to the person severing the ores. The person severing the metal ores is subject to the service tax on the amount of the service charge.

[10/31/97; 3.19.4.11 NMAC - Rn & A, 3 NMAC 19.4.11, 1/15/01]

#### **3.19.4.12 - U<sub>3</sub>O<sub>8</sub> SHIPPED FOR CONVERSION TO UF<sub>6</sub>**

When U<sub>3</sub>O<sub>8</sub> is shipped from New Mexico to another state for conversion into UF<sub>6</sub> for delivery to the New Mexico taxpayer's customers, the New Mexico taxpayer may use for severance tax purposes the value of the U<sub>3</sub>O<sub>8</sub> as determined at the time of the delivery of UF<sub>6</sub> to the customer as the value to be reported for the taxable event.

[10/31/97; 3.19.4.12 NMAC - Rn, 3 NMAC 19.4.12, 1/15/01]

#### **3.19.4.13 - PROCESSING OF TIMBER**

A. For purposes of the Resources Excise Tax Act, processing of timber ends when the timber has been sawn into rough green lumber. The processing tax due is measured by the value of the rough green lumber.

B. If rough green lumber is brought into this state, the processing tax is not due with respect to such lumber. If logs are sawed in New Mexico, the processing tax is due regardless of whether the logs were severed in New Mexico or elsewhere.

[10/31/97; 3.19.4.13 NMAC - Rn, 3 NMAC 19.4.13, 1/15/01]

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**7-25-4. RATE AND MEASURE OF TAX; DENOMINATION AS “RESOURCES TAX”. (EFFECTIVE UNTIL JULY 1, 2005.) --**

**A. For the privilege of severing natural resources, there is imposed on any severer of natural resources in New Mexico an excise tax as the following rates on the taxable value of the natural resources:**

- (1) all natural resources except potash, molybdenum and copper, three-fourths of one percent;**
- (2) potash, one-half of one percent;**
- (3) molybdenum, one-eighth of one percent; and**
- (4) copper, one-fourth of one percent.**

**B. The tax imposed by this section shall be referred to as the “resources tax”.**

**(Laws 1999, Chapter 177, Section 5.)**

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**7-25-5. RATE AND MEASURE OF TAX; DENOMINATION AS “PROCESSORS TAX”. (EFFECTIVE UNTIL JULY 1, 2005.) --**

**A. For the privilege of processing natural resources, there is imposed on any processor of natural resources in New Mexico an excise tax at the following rates on the taxable value of the natural resource.**

- (1) all natural resources except timber, potash, molybdenum and copper, three-fourths of one percent;**
- (2) timber, three-eighths of one percent;**
- (3) potash, one-eighth of one percent;**
- (4) molybdenum, one-eighth of one percent; and**
- (5) copper, one-fourth of one percent.**

**B. The tax imposed by this section shall be referred to as the “processors tax”.**

**(Laws 1999, Chapter 177, Section 3.)**

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**7-25-6. RATE AND MEASURE OF TAX; DENOMINATION AS “SERVICE TAX”. --**

**A. For the privilege of severing or processing in New Mexico natural resources that are owned by another person and are not otherwise taxed by Sections 7-25-4 and 7-25-5 NMSA 1978, there is imposed on the service charge of any person severing or processing natural resources that are owned by another person an excise tax at the same rate that would be imposed on an owner of natural resources for performing the same function.**

**B. The tax imposed by this section shall be referred to as the “service tax”.**

**(Laws 1993, Chapter 30, Section 25.)**

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**7-25-7. EXEMPTION; RESOURCES TAX.--**

Exempted from the resources tax is the taxable value of any natural resource that is processed in New Mexico and on whose taxable value the processors tax is paid.

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**7-25-8. SALES OF NATURAL RESOURCES SUBJECT TO GROSS RECEIPTS AND COMPENSATING TAX ACT.—**

In addition to being subject to the Resources Excise Tax Act [this article], any person who sells nonfissionable natural resources other than for subsequent sale in the ordinary course of business or for use as an ingredient or component part of a manufactured product is also subject to the provisions of the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] on such sales.

(Laws 1984, Chapter 2, Section 8.)

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**7-25-9. DATE PAYMENT DUE. –**

The taxes imposed by the Resources Excise Tax Act [this article] are to be paid on or before the twenty-fifth day of the month following the month in which the first of the following occurs: sale, transportation out of New Mexico or consumption.

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