

Taxation and Revenue Department
Joseph M. Montoya Building
Post Office Box 630
Santa Fe, New Mexico 87504-0630

**REGULATIONS PERTAINING TO THE
SEVERANCE TAX ACT
SECTION 7-26-1 NMSA 1978**

[3.19.4 NMAC]

Revised July 2009

This page intentionally blank

TABLE OF CONTENTS

7-26-1. SHORT TITLE

7-26-2. DEFINITIONS

3.19.4.10 Which substances are “natural resources”

7-26-3. IMPOSITION OF TAX—DENOMINATION AS “SEVERANCE TAX”

7-26-4. DETERMINATION OF TAXABLE VALUE OF NATURAL RESOURCES

3.19.4.8 Gross value of sand and gravel

3.19.4.9 Value of copper, lead, zinc, gold and silver

3.19.4.12 U_3O_8 shipped for conversion to UF_6

7-26-5. TAX RATES ON SEVERED NATURAL RESOURCES EXCEPT COAL AND URANIUM

7-26-6. SEVERANCE TAX ON COAL—SURTAX

7-26-6.2. COAL SURTAX EXEMPTION—QUALIFICATION REQUIREMENTS

7-26-7. SEVERANCE TAX ON URANIUM

7-26-8. DATE PAYMENT OF TAX DUE

7-26-1. SHORT TITLE. --

Sections 7-26-1 through 7-26-8 NMSA 1978 may be cited as the
“Severance Tax Act”.

7-26-2. DEFINITIONS. -- As used in the Severance 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 metalliferous or nonmetalliferous mineral product, combination or compound thereof but does not include oil, natural gas, liquid hydrocarbon, individually or any combination thereof, or carbon dioxide;

C. “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 has another person perform the severing of such natural resources;

D. “severing” means mining, quarrying, extracting, felling or producing any natural resources in New Mexico;

E. “owner”, when used in connection with the severing of any of the natural resources covered by the Severance Tax Act under any lease or contract with the state or United States, includes any person having the right to sever those resources; and

F. “director” or “secretary” means the secretary of taxation and revenue.

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]

7-26-3. IMPOSITION OF TAX; DENOMINATION AS “SEVERANCE TAX”. -- For the privilege of severing natural resources, there is imposed on any severer of natural resources in New Mexico an excise tax on the taxable value or the quantity of natural resources severed and saved by or for him as determined under, and at the rates provided in the Severance Tax Act. The tax imposed by this section shall be known as the “severance tax”.

7-26-4. DETERMINATION OF TAXABLE VALUE OF NATURAL RESOURCES.--

A. Except as otherwise provided in Subsections C, E, F and G of this section, the "taxable event" is the severance of a natural resource whose taxable value is determined under the provisions of this section.

B. For all natural resources except potash or potash products described under Subsection C of this section, molybdenum or molybdenum products described under Subsection D of this section, copper, lead or zinc described in Subsection E of this section, gold described in Subsection F of this section, silver described in Subsection G of this section, coal and uranium, the gross value of the natural resource is the sales value of the severed and saved product at the first marketable point without any deductions, except that:

(1) for those products having a posted field or market price at the point of production, the gross value is its posted field or market price, except that the gross value of potash is forty percent of the posted field or market price, less those expenses of hoisting, crushing and loading necessary to place the severed product in marketable form and at a marketable place, but the allowable deductions for hoisting, loading and crushing shall not exceed fifty percent of the posted field or market price; and

(2) for those products that must be processed or beneficiated before sale, the gross value is the sales value after deducting freight charges from the point of severance to the point of first sale and the cost of processing or beneficiation.

C. The gross value for each type of potash and potash product requiring processing or beneficiation (other than sizing), regardless of the form in which the product is actually sold, shall be thirty-three and one-third percent of the proceeds realized from the sale of muriate of potash and sulphate of potash magnesia, as standard grades, and thirty-three and one-third percent of the value of such products consumed in the production of other potash products, less fifty percent of such reported value as a deduction for expenses of hoisting, loading, crushing, processing and beneficiation. For purposes of this subsection, the taxable event occurs when products are sold or consumed. Any potash or potash products, the value of which is computed under this subsection, shall not also have their value computed by the use of any of the provisions of Subsection B of this section.

D. The gross value for each type of molybdenum and molybdenum product requiring processing or beneficiation, regardless of the form in which the product is actually sold, shall be the value of molybdenum contained in concentrates shipped or sold from a mine site, but in no event a value less than the value that bona fide sales which reflect current market conditions would yield for the same quantity of molybdenum products contained in concentrates at the mine site, less fifty percent of that value as a deduction for the expenses of hoisting, loading, crushing, processing and beneficiation.

E. The gross value for copper, lead and zinc shall be sixty- six and

two-thirds percent of the sales value established from published price data, as further described in this subsection, of the quantity of copper, lead or zinc recoverable from the concentrate or other product which is sold or is shipped, transmitted or transported out of New Mexico without sale, less fifty percent of the sales value as a deduction for the expenses of hoisting, loading, crushing, processing and beneficiation. For purposes of this subsection, the taxable event occurs when the severer sells copper, lead or zinc in New Mexico or when the severer ships, transmits or transports copper, lead or zinc out of New Mexico without first making sale of it. The secretary shall designate by regulation which published price index shall be used to establish the sales value for each resource. The sales value for each resource shall be the monthly average price published for each resource for the month in which the taxable event occurs. When the taxable event is sale, the recoverable quantity of copper, lead or zinc shall be reported as the provisional quantity determined by presale assay, and the reported quantity may be adjusted in a report filed after final assay, if necessary. When the taxable event is shipment, transmission or transportation out of New Mexico without sale, the recoverable quantity of copper, lead or zinc shall be reported as the provisional quantity determined after preshipment assay. Copper, lead or zinc shall not be considered saved for the purposes of the Severance Tax Act unless the copper, lead or zinc can economically be separated and saved from the dominant resource, which is the resource subject to sale by the severer. Any copper, lead or zinc the value of which is computed under this subsection shall not also have its value computed by the use of any of the provisions of Subsection B of this section.

F. The gross value for gold shall be the sales value established from published price data, as further described in this subsection, of the quantity of gold recoverable from the concentrate or other product which is sold or is shipped, transmitted or transported out of New Mexico without sale, less fifty percent of the sales value as a deduction for the expenses of hoisting, loading, crushing, processing and beneficiation. For purposes of this subsection, the taxable event occurs when the severer sells gold in New Mexico or when the severer ships, transmits or transports gold out of New Mexico without first making sale of it. The secretary shall designate by regulation which published price index shall be used to establish the sales value for gold. The sales value for gold shall be the monthly average price published for gold for the month in which the taxable event occurs. When the taxable event is sale, the recoverable quantity of gold shall be reported as the provisional quantity determined by presale assay, and the reported quantity may be adjusted in a report filed after final assay, if necessary. When the taxable event is shipment, transmission or transportation out of New Mexico without sale, the recoverable quantity of gold shall be reported as the provisional quantity determined after preshipment assay. For purposes of the Severance Tax Act, gold shall not be considered saved unless the gold can economically be separated and saved

from the dominant resource, which is the resource subject to sale by the severer. Any gold the value of which is computed under this subsection shall not also have its value computed by the use of any of the provisions of Subsection B of this section.

G. The gross value for silver shall be eighty percent of the sales value established from published price data, as further described in this subsection, of the quantity of silver recoverable from the concentrate or other product which is sold or is shipped, transmitted or transported out of New Mexico without sale, less fifty percent of the sales value as a deduction for the expenses of hoisting, loading, crushing, processing and beneficiation. For purposes of this subsection, the taxable event occurs when the severer sells silver in New Mexico or when the severer ships, transmits or transports silver out of New Mexico without first making sale of it. The secretary shall designate by regulation which published price index shall be used to establish the sales value for silver. The sales value for silver shall be the monthly average price published for silver for the month in which the taxable event occurs. When the taxable event is sale, the recoverable quantity of silver shall be reported as the provisional quantity determined by presale assay, and the reported quantity may be adjusted in a report filed after final assay, if necessary. When the taxable event is shipment, transmission or transportation out of New Mexico without sale, the recoverable quantity of silver shall be reported as the provisional quantity determined after preshipment assay. For purposes of the Severance Tax Act, silver shall not be considered saved unless the silver can economically be separated and saved from the dominant resource, which is the resource subject to sale by the severer. Any silver the value of which is computed under this subsection shall not also have its value computed by the use of any of the provisions of Subsection B of this section.

H. The taxable value of all severed natural resources except coal and uranium is the gross value of the severed resource determined under this section less rental or royalty payments belonging to the United States or the state.

I. The taxable value to be reported for severed and saved uranium-bearing material is the sales price per pound of the content of U308 contained in the severed and saved or processed uranium, regardless of the form in which the product is actually disposed of, reduced by fifty percent for the purposes of Section 7-26-7 NMSA 1978. It is presumed, in the absence of preponderant evidence of another value, that the sales price means the total amount of money and the reasonable value of other consideration received, or either of them, for the severed and saved uranium ore or processed uranium “yellowcake” concentrate without deduction of any kind. However, if the severed and saved uranium ore or “yellowcake” concentrate is not sold as ore or concentrate, the sales price shall be the value of U308 in ore or “yellowcake” concentrate represented in the final product.

(Laws 1986, Chapter 20, Section 91)

3.19.4.8 - GROSS VALUE OF SAND AND GRAVEL

A. In the absence of substantial evidence of a different posted field or market price for sand and gravel, it is presumed that the gross value of sand and gravel for purposes of the Severance Tax Act is \$1.75 per ton.

B. In the absence of evidence of lower deductible expenses the maximum 50% deduction will be allowed.

[7-7-78, 7/31/96; 3.19.4.8 NMAC - Rn, 3 NMAC 19.4.8, 1/15/01]

3.19.4.9 - VALUE OF COPPER, LEAD, ZINC, GOLD AND SILVER

The sales values for resources for which the gross value is determined by the provisions of Subsections E, F and G of Section 7-26-4 NMSA 1978 will be the following monthly average index prices as published in Metals Week:

A. Copper will be the Comex HG first position price.

B. Lead and zinc will be the London Metal Exchange cash price.

C. Gold will be London Metal Exchange Final.

D. Silver will be the London spot, U.S. equivalent.

[8-14-84, 7/31/96; 3.19.4.9 NMAC - Rn, 3 NMAC 19.4.9, 1/15/01]

3.19.4.12 - U₃O₈ SHIPPED FOR CONVERSION TO UF₆

When U₃O₈ is shipped from New Mexico to another state for conversion into UF₆ for delivery to the New Mexico taxpayer's customers, the New Mexico taxpayer may use for severance tax purposes the value of the U₃O₈ as determined at the time of the delivery of UF₆ 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]

7-26-5. TAX RATES ON SEVERED NATURAL RESOURCES EXCEPT COAL AND URANIUM. -- The severance tax is imposed at the following rates on the taxable value determined under Section 7-26-4 NMSA 1978 of the following natural resources:

A. potash $2\frac{1}{2}\%$

B. copper $1\frac{1}{2}\%$

C. timber $1\frac{1}{8}\%$

D. pumice, gypsum, sand, gravel, clay, fluorspar and other nonmetallic minerals $1\frac{1}{8}\%$

E. lead, zinc, thorium, molybdenum, manganese, rare earth and other metals $1\frac{1}{8}\%$

F. gold and silver $1\frac{1}{5}\%$

(Laws 1984, Chapter 84, Section 2)

7-26-6. SEVERANCE TAX ON COAL; SURTAX.

A. The severance tax on coal is measured by the quantity of coal severed and saved. The taxable event is sale, transportation out of New Mexico or consumption of the coal, whichever first occurs. Upon each short ton (two thousand pounds) of coal severed and saved, there shall be imposed on the severer a severance tax. For the period commencing on July 1, 1982, the severance tax rate shall be:

- (1) surface coal, fifty-seven cents (\$.57); and
- (2) underground coal, fifty-five cents (\$.55).

B. The severance tax on coal shall be increased by a surtax, hereby imposed. The surtax shall be imposed on the unit of quantity of such product or natural resource at the following rates:

- (1) surface coal, sixty cents (\$.60); and
- (2) underground coal, fifty-eight cents (\$.58).

C. The surtax rate on coal shall be increased on July 1, 1994, and on July 1 of each succeeding year by an amount equal to the product of the dollar amount of the severance tax imposed on each ton of coal by a percentage equal to the percentage rise in the producer price index for coal from the calendar year 1992 to the calendar year just prior to the year in which the surtax rates are computed, but in no case shall the surtax rate be decreased. The rates so computed shall be computed by the department in April of 1994 and in April of each year thereafter and published on or before May 1, 1994 and on or before May 1 of each year thereafter. If the producer price index for coal is substantially revised or if the base year used as an index of one hundred is changed, the department shall make an adjustment in the percentage used to compute the surtax rates that would produce results equivalent, as nearly as possible, to those that would have been obtained if the producer price index for coal had not been so revised or if the base year had not been changed. If this index ceases to become available, then a comparable index based upon changes in the price of coal shall be adopted by the department by regulation.

D. As used in this section:

(1) "producer price index for coal" means the commodity code 05-1 as reported annually by the bureau of labor statistics at the United States department of labor in their annual producer price indexes data;

(2) "surface coal" means coal that is severed using surface mining methods;

(3) "surface mining" means the extraction of coal from the earth by removing the material overlying a coal seam and then removing the coal by common methods, including, but not limited to, contour mining, strip mining, mountain top removal mining, box cut mining, open pit mining and area mining; and

(4) "underground coal" means all coal that is not surface coal.
(Laws 1993, Chapter 89, Section 1)

7-26-6.2. COAL SURTAX EXEMPTION; QUALIFICATION REQUIREMENTS.--

A. The following coal is exempt from the surtax imposed on coal under the provisions of Section 7-26-6 NMSA 1978:

(1) coal sold and delivered pursuant to coal sales contracts that are entered into on or after July 1, 1990, under which deliveries start after July 1, 1990, if the sales contracts are not the result of:

(a) a producer and purchaser mutually rescinding an existing contract and negotiating a revised contract under substantially similar terms and conditions;

(b) a purchaser establishing an affiliated company to purchase coal on behalf of the purchaser; or

(c) a purchaser independently abrogating a contract that was in effect on July 1, 1990 with a producer for the purpose of securing the benefits of the exemption granted by this section; and

(2) coal sold and delivered pursuant to a contract in effect on July 1, 1990 that exceeds the average calendar year deliveries under the contract during production years 1987, 1988 and 1989 or the highest contract minimum during 1987, 1988 and 1989, whichever is greater.

B. If a contract existing on July 1, 1990 is renegotiated between a producer and a purchaser after May 20, 1992 and if that renegotiated contract requires the purchaser to take annual coal deliveries in excess of the greater of the average calendar year deliveries under the contract during production years 1987, 1988 and 1989 or the highest contract minimum during 1987, 1988 and 1989, the surtax imposed by Subsection B of Section 7-26-6 NMSA 1978 shall not apply to such excess deliveries for the remaining term of the renegotiated contract.

C. For coal exempt under the provisions of Paragraph (2) of Subsection A of this section, if the contract involved was for a lesser term during the production years specified, then actual deliveries shall be annualized to establish average calendar year deliveries, and in the event that coal sold and delivered in a calendar year after June 30, 2009 falls below the average calendar year deliveries during 1987, 1988 and 1989, the exemption shall no longer apply unless the deliveries are reduced due to causes beyond the reasonable control of either party to the contract.

D. The taxpayer, prior to taking the exemption provided by this section, shall register any contract for the sale of coal that qualifies for the exemption from the surtax under the provisions of this section with the department on forms provided by the secretary. If upon examination of the contract or upon audit or inspection of transactions occurring under the contract the secretary or the secretary's delegate determines that a person who is a party to the contract has taken an action to circumvent the intent and purpose of this

**section, the exemption shall be disallowed.
(Laws 1999, Chapter 86, Section 1)**

7-26-7. SEVERANCE TAX ON URANIUM.--The severance tax on uranium is measured by the quantity of U3O8 contained in and recoverable from severed and saved uranium-bearing material whether that material is ore or solution, measured in a standard manner established by regulation of the director. The taxable event is the sale, transportation out of New Mexico or consumption of the uranium-bearing material, whichever first occurs. Upon each pound of severed and saved U3O8 contained in severed uranium-bearing material, there shall be collected from the severer a severance tax equal to three and one-half percent of taxable value.

(Laws 1985, Chapter 65, Section 25)

7-26-8. DATE PAYMENT OF TAX DUE. -- The severance tax is to be paid on or before the twenty-fifth day of the month following the month in which the taxable event occurs.

(Laws 1977, Chapter 102, Section 10)
