

Strengthening Taxpayer Rights

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For the New Mexico Chamber of Commerce

Revenue Stabilization and Tax Policy Committee
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Commentary on "TP Bill of Rights items". First seven are TAA amendments; last two are TRD Act amendments.

Items 1 and 2 go together.

7-1-4.2 (part of New Mexico's taxpayer bill of rights): Expands existing right to an explanation to cover denials of credits, include the specific statutory, regulatory, administrative or judicial bases for TRD's determination & to require that it be in writing.

7-1-17 enforces the right by shifting burden of proof to TRD for failure to provide explanation. (No consequences currently for failure to explain.)

Taxpayer needs this information to:

- Understand the law and how it applies to taxpayer's business activity for future compliance. This is consistent with one of TRD's stated audit functions--taxpayer education;
- Determine what to protest and how to calculate any undisputed amounts. While NM generally does not have "pay-to-play" rules for assessments, a taxpayer is required under Section 7-1-24 to pay any undisputed portions of an assessment at the time it files its protest. Absent clear explanations, especially in multiple-issue assessments, figuring out what the TP does not to protest can be onerous;
- Isolate the legal and, if applicable, factual issues that need to be resolved. A clear, written explanation serves to streamline the protest process.
- Be notified of TRD's legal theory, which may also implicate presumption of correctness issues.

- New requirement dovetails into the policy reasons behind the statutory presumption of correctness. The presumption was enacted when assessments, by necessity, were the product of an examination (field or desk audit) in which facts and law were examined.

Item 3

7-1-18 establishes a single audit rule for NM. (Several other states already have such a rule.) Audits are expensive from a taxpayer's point of view so they should be completed properly the first time.

Item 4

7-1-31 requires that TRD make no levy if the expenses of doing so would exceed the return and, if TRD issues a levy in error or erroneously cause one or more of the TP's checks to bounce, TP can claim a reimbursement of reasonable bank charges.

Item 5

7-1-60 Extends estoppel against the state to documents signed by the secretary other than regulations and rulings. "Secretary" is defined here to include the deputy secretary and division directors and deputy directors delegated by the secretary. Taxpayers should be able to rely on documents issued by senior TRD officials.

Item 6

7-1-67 governs interest due the state. There are 2 issues here.

For decades, tax hearing officers have been required to issue their decisions within 30 days of the close of the hearing. There have never been negative consequences to the state when hearing officers, either at TRD or now at AHO, fail to render timely decisions. At the very least, no interest should run against the taxpayer when decisions run overtime.

Unreasonable delays by TRD also should not result in running up interest against the taxpayer. "Unreasonable delay" is defined.

Item 7

7-1-76 provides penalties for revealing unlawfully confidential taxpayer information. It does nothing, however, to remedy the damage that the taxpayer may incur as a result of the leak. Proposal sets out damages of the greater of \$1,000 or the actual damages and, in the case of willful disclosure resulting from gross negligence, punitive damages

Note: Since 2009, penalty for unlawfully disclosing confidential taxpayer information has applied to everyone, not just current and former TRD employees.

Item 8

9-11-6.2 (TRD Act) declares that, if TRD adopts a new interpretation of any law or a new application of a law, that the new interpretation or application be prospective only unless it is favorable to the taxpayers.

Item 9

9-11-16 (TRD Act) bars TRD from using records of tax enforcement results (e.g., audit assessment amounts) from evaluating tax enforcement and collection employees and their direct supervisors. (TRD doesn't do this now but it would be good to set the rule out clearly in law.) Enforcement results may be used for planning, management and control purposes.