

AN ACT

RELATING TO TAXATION; ENACTING THE NEW MEXICO TAXPAYER BILL OF RIGHTS; PROVIDING THAT TAXPAYERS MAY BE AWARDED COSTS AND FEES IN CERTAIN INSTANCES; PROHIBITING PENALTY ASSESSMENTS IN CERTAIN CASES; AMENDING AND ENACTING SECTIONS OF THE TAX ADMINISTRATION ACT.

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Tax Administration Act is enacted to read:

"NEW MEXICO TAXPAYER BILL OF RIGHTS CREATED--PURPOSE.--The "New Mexico Taxpayer Bill of Rights" is created. It is the purpose of the New Mexico Taxpayer Bill of Rights to:

A. ensure that the rights of New Mexico taxpayers are adequately safeguarded and protected during the assessment, collection and enforcement of any tax administered by the department pursuant to the Tax Administration Act;

B. ensure that the taxpayer is treated with dignity and respect; and

C. provide brief but comprehensive statements that explain in simple, nontechnical terms the rights of taxpayers as set forth in Section 2 of this 2003 act."

Section 2. A new section of the Tax Administration Act is enacted to read:

"NEW MEXICO TAXPAYER BILL OF RIGHTS.--The rights afforded New Mexico taxpayers during the assessment, collection and enforcement of any tax administered by the department as set forth in the Tax Administration Act include:

A. the right to available public information and prompt and courteous tax assistance;

B. the right to be represented or advised by counsel or other qualified

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representatives at any time in administrative interactions with the department in accordance with the provisions of Section 7-1-24 NMSA 1978;

C. the right to have audits, inspections of records and meetings conducted at a reasonable time and place in accordance with the provisions of Section 7-1-11 NMSA 1978;

D. the right to have the department conduct its audits in a timely and expeditious manner and be entitled to the tolling of interest as provided in the Tax Administration Act;

E. the right to obtain nontechnical information that explains the procedures, remedies and rights available during audit, protest, appeals and collection proceedings pursuant to the Tax Administration Act;

F. the right to be provided with an explanation of the results of and the basis for audits, assessments or denials of refunds that identify any amount of tax, interest or penalty due;

G. the right to seek review, through formal or informal proceedings, of any findings or adverse decisions relating to determinations during audit or protest procedures in accordance with Section 7-1-24 NMSA 1978;

H. the right to have the taxpayer's tax information kept confidential unless otherwise specified by law, in accordance with Section 7-1-8 NMSA 1978;

I. the right to abatement of an assessment of taxes determined to have been incorrectly, erroneously or illegally made, as provided in Section 7-1-28 NMSA 1978 and the right to seek a compromise of an asserted tax liability by obtaining a written determination of liability or nonliability when the secretary in good faith is in doubt of the liability as provided in Section 7-1-20 NMSA 1978;

J. upon receipt of a tax assessment, the right to be informed clearly that if the assessment is not paid, secured, protested or otherwise provided for in accordance with the provisions of Section 7-1-16 NMSA 1978, the taxpayer will be a delinquent taxpayer and, upon notice of delinquency, the right to timely notice of any collection actions that will require sale or seizure of the taxpayer's property in accordance with the provisions of the Tax Administration Act; and

K. the right to procedures for payment of tax obligations by installment payment agreements, in accordance with Section 7-1-21 NMSA 1978."

Section 3. A new section of the Tax Administration Act is enacted to read:

"NEW MEXICO TAXPAYER BILL OF RIGHTS--NOTICE TO THE PUBLIC.--The department shall develop a publication that states the rights of taxpayers in simple, nontechnical terms and shall disseminate the publication to taxpayers, at a minimum, with the annual income and semiannual combined reporting system tax forms."

Section 4. Section 7-1-3 NMSA 1978 (being Laws 1965, Chapter 248, Section 3, as amended by Laws 2001, Chapter 16, Section 2 and also by Laws 2001, Chapter 56, Section 2) is amended to read:

"7-1-3. DEFINITIONS.--Unless the context clearly indicates a different meaning, the definitions of words and phrases as they are stated in this section are to be used, and whenever in the Tax Administration Act these words and phrases appear, the singular includes the plural and the plural includes the singular:

A. "automated clearinghouse transaction" means an electronic credit or debit transmitted through an automated clearinghouse payable to the state treasurer and deposited with the fiscal agent of New Mexico;

B. "department" means the taxation and revenue department, the

secretary or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

C. "electronic payment" means a payment made by automated clearinghouse deposit, any funds wire transfer system or a credit card, debit card or electronic cash transaction through the internet;

D. "employee of the department" means any employee of the department, including the secretary, or any person acting as agent or authorized to represent or perform services for the department in any capacity with respect to any law made subject to administration and enforcement under the provisions of the Tax Administration Act;

E. "financial institution" means any state or federally chartered, federally insured depository institution;

F. "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended;

G. "levy" means the lawful power, hereby invested in the secretary, to take into possession or to require the present or future surrender to the secretary or the secretary's delegate of any property or rights to property belonging to a delinquent taxpayer;

H. "local option gross receipts tax" means a tax authorized to be imposed by a county or municipality upon the taxpayer's gross receipts, as that term is defined in the Gross Receipts and Compensating Tax Act, and required to be collected by the department at the same time and in the same manner as the gross receipts tax; "local option gross receipts tax" includes the taxes imposed pursuant to the Municipal Local Option Gross Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax

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Act, County Local Option Gross Receipts Taxes Act, Local Hospital Gross Receipts Tax Act, County Correctional Facility Gross Receipts Tax Act and such other acts as may be enacted authorizing counties or municipalities to impose taxes on gross receipts, which taxes are to be collected by the department in the same time and in the same manner as it collects the gross receipts tax;

I. "managed audit" means a review and analysis conducted by a taxpayer under an agreement with the department to determine the taxpayer's compliance with a tax administered pursuant to the Tax Administration Act and the presentation of the results to the department for assessment of tax found to be due;

J. "net receipts" means the total amount of money paid by taxpayers to the department in a month pursuant to a tax or tax act less any refunds disbursed in that month with respect to that tax or tax act;

K. "overpayment" means an amount paid, pursuant to any law subject to administration and enforcement under the provisions of the Tax Administration Act, by a person to the department or withheld from the person in excess of tax due from the person to the state at the time of the payment or at the time the amount withheld is credited against tax due;

L. "paid" includes the term "paid over";

M. "pay" includes the term "pay over";

N. "payment" includes the term "payment over";

O. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate, other association or gas, water or electric utility owned or operated by a county or municipality; "person" also means, to

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the extent permitted by law, a federal, state or other governmental unit or subdivision, or an agency, department or instrumentality thereof; and "person", as used in Sections 7-1-72 through 7-1-74 NMSA 1978, also includes an officer or employee of a corporation, a member or employee of a partnership or any individual who, as such, is under a duty to perform any act in respect of which a violation occurs;

P. "property" means property or rights to property;

Q. "property or rights to property" means any tangible property, real or personal, or any intangible property of a taxpayer;

R. "secretary" means the secretary of taxation and revenue and, except for purposes of Subsection B of Section 7-1-4 NMSA 1978 and Subsection E of Section 7-1-24 NMSA 1978, also includes the deputy secretary or a division director or deputy division director delegated by the secretary;

S. "secretary or the secretary's delegate" means the secretary or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

T. "security" means money, property or rights to property or a surety bond;

U. "state" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico and any territory or possession of the United States;

V. "tax" means the total amount of each tax imposed and required to be paid, withheld and paid or collected and paid under provision of any law made subject to administration and enforcement according to the provisions of the Tax

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Administration Act and, unless the context otherwise requires, includes the amount of any interest or civil penalty relating thereto; "tax" also means any amount of any abatement of tax made or any credit, rebate or refund paid or credited by the department under any law subject to administration and enforcement under the provisions of the Tax Administration Act to any person contrary to law and includes, unless the context requires otherwise, the amount of any interest or civil penalty relating thereto;

W. "taxpayer" means a person liable for payment of any tax, a person responsible for withholding and payment or for collection and payment of any tax or a person to whom an assessment has been made, if the assessment remains unabated or the amount thereof has not been paid; and

X. "tax return preparer" means a person who prepares for others for compensation or who employs one or more persons to prepare for others for compensation any return of income tax, a substantial portion of any return of income tax, any claim for refund with respect to income tax or a substantial portion of any claim for refund with respect to income tax; provided that a person shall not be a "tax return preparer" merely because such person:

(1) furnishes typing, reproducing or other mechanical assistance;

(2) is an employee who prepares an income tax return or claim for refund with respect to an income tax return of the employer, or of an officer or employee of the employer, by whom the person is regularly and continuously employed; or

(3) prepares as a trustee or other fiduciary an income tax

return or claim for refund with respect to income tax for any person."

Section 5. Section 7-1-8 NMSA 1978 (being Laws 1965, Chapter 248, Section 13, as amended) is amended to read:

"7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER INFORMATION.--It is unlawful for any employee of the department or any former employee of the department to reveal to any individual other than another employee of the department any information contained in the return of any taxpayer made pursuant to any law subject to administration and enforcement under the provisions of the Tax Administration Act or any other information about any taxpayer acquired as a result of his employment by the department and not available from public sources, except:

A. to an authorized representative of another state; provided that the receiving state has entered into a written agreement with the department to use the information for tax purposes only and that the receiving state has enacted a confidentiality statute similar to this section to which the representative is subject;

B. to a representative of the secretary of the treasury or the secretary's delegate pursuant to the terms of a reciprocal agreement entered into with the federal government for exchange of the information;

C. to the multistate tax commission or its authorized representative; provided that the information is used for tax purposes only and is disclosed by the multistate tax commission only to states that have met the requirements of Subsection A of this section;

D. to a district court or an appellate court or a federal court:

(1) in response to an order thereof in an action relating to taxes to which the state is a party and in which the information sought is about a

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taxpayer who is party to the action and is material to the inquiry, in which case only that information may be required to be produced in court and admitted in evidence subject to court order protecting the confidentiality of the information and no more;

(2) in any action in which the department is attempting to enforce an act with which the department is charged or to collect a tax; or

(3) in any matter in which the department is a party and the taxpayer has put his own liability for taxes at issue, in which case only that information regarding the taxpayer who is party to the action may be produced, but this shall not prevent the disclosure of department policy or interpretation of law arising from circumstances of a taxpayer who is not a party;

E. to the taxpayer or to the taxpayer's authorized representative; provided, however, that nothing in this subsection shall be construed to require any employee to testify in a judicial proceeding except as provided in Subsection D of this section;

F. information obtained through the administration of any law not subject to administration and enforcement under the provisions of the Tax Administration Act to the extent that release of that information is not otherwise prohibited by law;

G. in such manner, for statistical purposes, that the information revealed is not identified as applicable to any individual taxpayer;

H. with reference to any information concerning the tax on tobacco imposed by Sections 7-12-1 through 7-12-13 and Sections 7-12-15 and 7-12-17 NMSA 1978 to a committee of the legislature for a valid legislative purpose or to the attorney general for purposes of Section 6-4-13 NMSA 1978 and the master settlement

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agreement defined in Section 6-4-12 NMSA 1978;

I. to a transferee, assignee, buyer or lessor of a liquor license, the amount and basis of any unpaid assessment of tax for which his transferor, assignor, seller or lessee is liable;

J. to a purchaser of a business as provided in Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis of any unpaid assessment of tax for which the purchaser's seller is liable;

K. to a municipality of this state upon its request for any period specified by that municipality within the twelve months preceding the request for the information by that municipality:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts for that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality. The department may also release the information described in this paragraph quarterly or upon such other periodic basis as the secretary and the municipality may agree; and

(2) information indicating whether persons shown on any list of businesses located within that municipality furnished by the municipality have reported gross receipts to the department but have not reported gross receipts for that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality.

The employees of municipalities receiving information as provided in this subsection shall be subject to the penalty contained in Section 7-1-76 NMSA 1978 if that information is revealed to individuals other than other employees of the

municipality in question or the department;

L. to the commissioner of public lands for use in auditing that pertains to rentals, royalties, fees and other payments due the state under land sale, land lease or other land use contracts; the commissioner of public lands and employees of the commissioner are subject to the same provisions regarding confidentiality of information as employees of the department;

M. the department shall furnish, upon request by the child support enforcement division of the human services department, the last known address with date of all names certified to the department as being absent parents of children receiving public financial assistance. The child support enforcement division personnel shall use such information only for the purpose of enforcing the support liability of the absent parents and shall not use the information or disclose it for any other purpose; the child support enforcement division and its employees are subject to the provisions of this section with respect to any information acquired from the department;

N. with respect to the tax on gasoline imposed by the Gasoline Tax Act, the department shall make available for public inspection at monthly intervals a report covering the amount and gallonage of gasoline and ethanol blended fuels imported, exported, sold and used, including tax-exempt sales to the federal government reported or upon which the gasoline tax was paid and covering taxes received from each distributor in the state of New Mexico;

O. the identity of distributors and gallonage reported on returns required under the Gasoline Tax Act, Special Fuels Supplier Tax Act or Alternative Fuel Tax Act to any distributor or supplier, but only when it is necessary to enable the

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department to carry out its duties under the Gasoline Tax Act, the Special Fuels Supplier Tax Act or the Alternative Fuel Tax Act;

P. the department shall release upon request only the names and addresses of all gasoline or special fuel distributors, wholesalers and retailers to the New Mexico department of agriculture, the employees of which are thereby subject to the penalty contained in Section 7-1-76 NMSA 1978 if that information is revealed to individuals other than employees of either the New Mexico department of agriculture or the department;

Q. the department shall answer all inquiries concerning whether a person is or is not a registered taxpayer for tax programs that require registration, but nothing in this subsection shall be construed to allow the department to answer inquiries concerning whether a person has filed a tax return;

R. upon request of a municipality or county of this state, the department shall permit officials or employees of the municipality or county to inspect the records of the department pertaining to an increase or decrease to a distribution or transfer made pursuant to Section 7-1-6.15 NMSA 1978 for the purpose of reviewing the basis for the increase or decrease. The municipal or county officials or employees receiving information provided in this subsection shall not reveal that information to any person other than another employee of the municipality or the county, the department or a district court, an appellate court or a federal court in a proceeding relating to a disputed distribution and in which both the state and the municipality or county are parties. Any information provided pursuant to provisions of this subsection that is revealed other than as provided in this subsection shall subject the person revealing the information to the penalty contained in Section 7-1-76 NMSA 1978;

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S. to a county of this state that has in effect any local option gross receipts tax imposed by the county upon its request for any period specified by that county within the twelve months preceding the request for the information by that county:

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(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts either for that county in the case of a local option gross receipts tax imposed on a countywide basis or only for the areas of that county outside of any incorporated municipalities within that county in the case of a county local option gross receipts tax imposed only in areas of the county outside of any incorporated municipalities. The department may also release the information described in this paragraph quarterly or upon such other periodic basis as the secretary and the county may agree;

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(2) in the case of a local option gross receipts tax imposed by a county on a countywide basis, information indicating whether persons shown on any list of businesses located within the county furnished by the county have reported gross receipts to the department but have not reported gross receipts for that county under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that county on a countywide basis; and

(3) in the case of a local option gross receipts tax imposed by a county only on persons engaging in business in that area of the county outside of any incorporated municipalities, information indicating whether persons shown on any list of businesses located in the area of that county outside of any incorporated municipalities within that county furnished by the county have reported gross receipts to the department but have not reported gross receipts for the area of that county

outside of any incorporated municipalities within that county under the Gross Receipts and Compensating Tax Act or any local option gross receipts tax imposed by the county only on persons engaging in business in that area of the county outside of any incorporated municipalities.

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The officers and employees of counties receiving information as provided in this subsection shall be subject to the penalty contained in Section 7-1-76 NMSA 1978 if such information is revealed to individuals other than other officers or employees of the county in question or the department;

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T. to authorized representatives of an Indian nation, tribe or pueblo, the territory of which is located wholly or partially within New Mexico, pursuant to the terms of a reciprocal agreement entered into with the Indian nation, tribe or pueblo for the exchange of that information for tax purposes only; provided that the Indian nation, tribe or pueblo has enacted a confidentiality statute similar to this section;

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U. information with respect to the taxes or tax acts administered pursuant to Subsection B of Section 7-1-2 NMSA 1978, except that:

(1) information for or relating to any period prior to July 1, 1985 with respect to Sections 7-25-1 through 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978 may be released only to a committee of the legislature for a valid legislative purpose;

(2) except as provided in Paragraph (3) of this subsection, contracts and other agreements between the taxpayer and other parties and the proprietary information contained in such contracts and agreements shall not be released without the consent of all parties to the contract or agreement; and

(3) audit workpapers and the proprietary information contained in such workpapers shall not be released except to:

(a) the minerals management service of the United States department of the interior, if production occurred on federal land;

(b) a person having a legal interest in the property that is subject to the audit;

(c) a purchaser of products severed from a property subject to the audit; or

(d) the authorized representative of any of the persons in Subparagraphs (a) through (c) of this paragraph. This paragraph does not prohibit the release of any proprietary information contained in the workpapers that is also available from returns or from other sources not subject to the provisions of this section;

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V. information with respect to the taxes, surtaxes, advance payments or tax acts administered pursuant to Subsection C of Section 7-1-2 NMSA 1978;

W. to the public regulation commission, information with respect to the Corporate Income and Franchise Tax Act required to enable the commission to carry out its duties;

X. to the state racing commission, information with respect to the state, municipal and county gross receipts taxes paid by race tracks;

Y. upon request of a corporation authorized to be formed under the Educational Assistance Act, the department shall furnish the last known address and the date of that address of every person certified to the department as being an absent obligor of an educational debt that is due and owed to the corporation or that the corporation has lawfully contracted to collect. The corporation and its officers and employees shall use that information only for the purpose of enforcing the educational

debt obligation of such absent obligors and shall not disclose that information or use it for any other purpose;

Z. any decision and order made by a hearing officer pursuant to Section 7-1-24 NMSA 1978 with respect to a protest filed with the secretary on or after July 1, 1993;

AA. information required by any provision of the Tax Administration Act to be made available to the public by the department;

BB. upon request by the Bernalillo county metropolitan court, the department shall furnish the last known address and the date of that address for every person certified to the department by the court as being a person who owes fines, fees or costs to the court or who has failed to appear pursuant to a court order or a promise to appear;

CC. upon request by a magistrate court, the department shall furnish the last known address and the date of that address for every person certified to the department by the court as being a person who owes fines, fees or costs to the court or who has failed to appear pursuant to a court order or a promise to appear;

DD. to the national tax administration agencies of Mexico and Canada, provided the agency receiving the information has entered into a written agreement with the department to use the information for tax purposes only and is subject to a confidentiality statute similar to this section;

EE. to a district attorney, a state district court grand jury or federal grand jury with respect to any investigation of or proceeding related to an alleged criminal violation of the tax laws;

FF. to a third party subject to a subpoena or levy issued pursuant to

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the provisions of the Tax Administration Act, the identity of the taxpayer involved, the taxes or tax acts involved and the nature of the proceeding; and

GG. any written ruling on questions of evidence or procedure made by a hearing officer pursuant to Section 7-1-24 NMSA 1978, provided that the name and identification number of the taxpayer requesting the ruling shall not be provided."

Section 6. Section 7-1-11.1 NMSA 1978 (being Laws 2001, Chapter 16, Section 1) is amended to read:

"7-1-11.1. MANAGED AUDITS.--

A. A managed audit may be limited in scope to certain periods, activities, lines of business, geographic areas or transactions, including tax on:

- (1) the receipts from certain sales;
- (2) the value of certain assets;
- (3) the value of certain expense items or services used; and
- (4) any other category specified in an agreement authorized by

this section.

B. Upon the application of the taxpayer, the secretary or the secretary's delegate may enter into a written agreement with a taxpayer for a managed audit. To be effective the written agreement must:

- (1) be signed by the taxpayer or the taxpayer's authorized representative and by the secretary or the secretary's delegate;
- (2) contain a declaration by the taxpayer or the taxpayer's authorized representative that all statements of fact made by the taxpayer or the taxpayer's representative in the taxpayer's application and the agreement are true and correct as to every material matter;

(3) specify the reporting period or periods, the type of receipts or transactions and tax to be audited, the procedures to be followed in performing the managed audit, the records to be used, the date of commencement of the audit for purposes of Section 7-9-43 NMSA 1978 and the date for the taxpayer's presentation of the results of the managed audit to the department; and

(4) include a waiver by the taxpayer of the limitations on assessments for the reporting period or periods to be audited.

C. The agreement for a managed audit may be modified in writing, provided that the modification meets the requirements of Subsection B of this section.

D. In determining whether to enter into an agreement for a managed audit the secretary or the secretary's delegate may consider, in addition to other relevant factors:

(1) the taxpayer's history of tax compliance;

(2) the amount of time and resources the taxpayer has available to dedicate to the audit;

(3) the extent and availability of the taxpayer's records; and

(4) the taxpayer's ability to pay any expected liability.

E. The decision whether to enter into an agreement for a managed audit rests solely with the secretary or the secretary's delegate.

F. The results of the managed audit shall be presented to the department by the taxpayer on or before any date set for presentation of the results in the managed audit agreement. The department shall assess the tax liability found to be due as the result of a managed audit performed in accordance with a managed audit agreement. The department may review records, documents, schedules or other

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information to determine if the managed audit substantially conforms to the managed audit agreement."

Section 7. A new section of the Tax Administration Act, Section 7-1-11.2 NMSA 1978, is enacted to read:

"7-1-11.2. REQUIRED AUDIT NOTICES.--

A. Except as provided in Subsection G of this section, prior to or coincident with requesting records and books of account from a taxpayer pursuant to Section 7-1-11 NMSA 1978, as part of an office or field audit, the department shall provide the taxpayer with written dated notice of the commencement of an audit. The notice shall, at a minimum, state the tax programs and reporting periods to be covered and the date on which the audit is commenced.

B. To any taxpayer to whom the department is required to provide a written notice of the commencement of an audit, the department shall also provide a written notice of the outstanding records or books of account that have been requested but not received. If the taxpayer has provided all records and books of account requested, the notice shall so state. The notice of outstanding records or books of account shall be given no sooner than sixty days and no later than one hundred eighty days after the date of the commencement of the audit. The notice of outstanding records or books of account shall be dated and shall provide reasonable descriptions of any records or books of account needed or the information expected to be contained in them and shall give the taxpayer ninety days to comply with Section 7-1-11 NMSA 1978. The notice shall state that if the taxpayer does not properly comply within ninety days of the date of the notice, the department will proceed to issue any assessment of tax due on the basis of information available.

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C. A taxpayer may request additional time to comply with the notice of outstanding records and books of account. Such request shall be in writing and shall state the amount of time needed.

D. If the department does not issue an assessment within one hundred eighty days after giving a notice of outstanding records or books of account or within ninety days after the expiration of the additional time requested by the taxpayer to comply, if such request was granted, interest shall be computed in accordance with Paragraph (6) of Subsection A of Section 7-1-67 NMSA 1978.

E. Any taxpayer who was not provided a proper notice of outstanding records or books of account is entitled to computation of interest in accordance with Paragraph (7) of Subsection A of Section 7-1-67 NMSA 1978.

F. Nothing in this section shall prevent the department from requesting from the taxpayer a waiver of the statute of limitations for assessment of tax owed. Nothing in this section shall prevent the department from issuing an assessment of tax owed on the basis of the information available.

G. This section does not apply to investigations of fraud."

Section 8. Section 7-1-24 NMSA 1978 (being Laws 1965, Chapter 248, Section 26, as amended) is amended to read:

"7-1-24. ADMINISTRATIVE HEARING--PROCEDURE.--

A. Any taxpayer may dispute the assessment to the taxpayer of any amount of tax, the application to the taxpayer of any provision of the Tax Administration Act or the denial of or failure to either allow or deny a claim for refund made in accordance with Section 7-1-26 NMSA 1978 by filing with the secretary a written protest against the assessment or against the application to the taxpayer of the

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provision or against the denial of or the failure to allow or deny the amount claimed to have been erroneously paid as tax. Every protest shall identify the taxpayer and the tax involved and state the grounds for the taxpayer's protest and the affirmative relief requested. The statement of grounds for protest shall specify individual grounds upon which the protest is based and a summary statement of the evidence expected to be produced supporting each ground asserted, if any; provided that the taxpayer may supplement the statement at any time prior to ten days before any hearing conducted on the protest pursuant to Subsection D of this section or, if a scheduling order has been issued, in accordance with the scheduling order. The secretary may, in appropriate cases, provide for an informal conference before setting a hearing of the protest or acting on any claim for refund.

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B. Any protest by a taxpayer shall be filed within thirty days of the date of the mailing to the taxpayer by the department of the notice of assessment or mailing to, or service upon, the taxpayer of other peremptory notice or demand, or the date of mailing or filing a return. Upon written request of the taxpayer made within the time permitted for filing a protest, the secretary may grant an extension of time, not to exceed sixty days, within which to file the protest. If a protest is not filed within the time required for filing a protest or, if an extension has been granted, within the extended time, the secretary may proceed to enforce collection of any tax if the taxpayer is delinquent within the meaning of Section 7-1-16 NMSA 1978. Upon written request of the taxpayer made after the time for filing a protest but not more than sixty days after the expiration of the time for filing a protest, the secretary may grant a retroactive extension of time, not to exceed sixty days, within which to file the protest; provided that the taxpayer demonstrates to the secretary's satisfaction that the taxpayer was not

able to file a protest or to request an extension within the time to file the protest and that the grounds for the protest have substantial merit. The fact that the department did not mail the assessment or other peremptory notice or demand by certified or registered mail or otherwise demand and receive acknowledgment of receipt by the taxpayer shall not be deemed to demonstrate the taxpayer's inability to protest or request an extension within the time for filing a protest within the required time. The secretary shall not grant a retroactive extension if a levy has already been served under Section 7-1-31 or 7-1-33 NMSA 1978 or a jeopardy assessment has been made under Section 7-1-59 NMSA 1978. No proceedings other than those to enforce collection of any amount assessed as tax and to protect the interest of the state by injunction, as provided in Sections 7-1-31, 7-1-33, 7-1-34, 7-1-40, 7-1-53, 7-1-56 and 7-1-58 NMSA 1978, are stayed by timely filing of a protest under this section.

C. Claims for refund shall be filed as provided for in Section 7-1-26 NMSA 1978.

D. Upon timely receipt of a protest, the department or hearing officer shall promptly set a date for hearing and on that date hear the protest or claim.

E. A hearing officer shall be designated by the secretary to conduct the hearing. Taxpayers may appear at a hearing for themselves or be represented by a bona fide employee, an attorney, a certified public accountant or a registered public accountant. Hearings shall not be open to the public except upon request of the taxpayer and may be postponed or continued at the discretion of the hearing officer.

F. A hearing officer shall not engage or participate in any way as an employee of the department in the areas of enforcement or formulating general tax

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policy other than to conduct hearings. A taxpayer may request that the secretary determine whether a hearing officer has engaged or participated in tax policy or enforcement in a way that might reasonably be expected to affect the hearing officer's impartiality in a particular matter. The secretary may designate another hearing officer for the matter to avoid actual or apparent prejudice.

G. A hearing officer shall not engage in ex-parte communications concerning the substantive issues of any matter that has been protested while that matter is still pending. If the secretary finds that a hearing officer has engaged in prohibited ex-parte communications, the secretary shall designate another hearing officer for that matter.

H. In hearings before the hearing officer, the technical rules of evidence shall not apply, but in ruling on the admissibility of evidence, the hearing officer may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt. A taxpayer may request a written ruling on any contested question of evidence in a matter in which the taxpayer has filed a written protest and that protest is pending.

I. In hearings before the hearing officer, the Rules of Civil Procedure for the District Courts shall not apply, but the hearing shall be conducted so that both complaints and defenses are amply and fairly presented. To this end, the hearing officer shall hear arguments, permit discovery, entertain and dispose of motions, require written expositions of the case as the circumstances justify and render a decision in accordance with the law and the evidence presented and admitted. A taxpayer may request a written ruling on any contested question of procedure in a matter in which the taxpayer has filed a written protest and that protest is pending.

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J. In the case of the hearing of any protest, the hearing officer shall make and preserve a complete record of the proceedings. At the beginning of the hearing, the hearing officer shall inform the taxpayer of the taxpayer's right to representation. The hearing officer, within thirty days of the hearing, shall inform the protestant in writing of the decision, informing the protestant at the same time of the right to, and the requirements for perfection of, an appeal from the decision to the court of appeals and of the consequences of a failure to appeal. The written decision shall embody an order granting or denying the relief requested or granting such part thereof as seems appropriate.

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K. A taxpayer with two or more protests containing related issues may request that such protests be combined and heard jointly. The designated hearing officer shall grant the request to combine protests unless it would create an unreasonable burden on the department.

L. Nothing in this section shall be construed to authorize any criminal proceedings hereunder or to authorize an administrative protest of the issuance of a subpoena or summons."

Section 9. Section 7-1-26 NMSA 1978 (being Laws 1965, Chapter 248, Section 28, as amended) is amended to read:

"7-1-26. CLAIM FOR REFUND.--

A. Any person who believes that an amount of tax has been paid by or withheld from that person in excess of that for which the person was liable, who has been denied any credit or rebate claimed or who claims a prior right to property in the possession of the department pursuant to a levy made under authority of Sections 7-1-31 through 7-1-34 NMSA 1978 may claim a refund by directing to the secretary, within

the time limited by the provisions of Subsections D, E and F of this section, a written claim for refund. Except as provided in Subsection J of this section, a refund claim shall include the taxpayer's name, address and identification number, the type of tax for which a refund is being claimed, the sum of money being claimed, the period for which overpayment was made and the basis for the refund. As used in this subsection, "basis for the refund" means a brief statement of the facts and the law on which the claim is based.

B. The secretary or the secretary's delegate may allow the claim in whole or in part or may deny the claim.

(1) If the claim is denied in whole or in part in writing, no claim may be refiled with respect to that which was denied but the person, within ninety days after either the mailing or delivery of the denial of all or any part of the claim, may elect to pursue one, but not more than one, of the remedies in Subsection C of this section.

(2) If the department has neither granted nor denied any portion of a claim for refund within one hundred twenty days of the date the claim was mailed or delivered to the department, the person may refile it within the time limits set forth in Subsection C of this section or may within ninety days elect to pursue one, but only one, of the remedies in Subsection C of this section. After the expiration of the two hundred ten days from the date the claim was mailed or delivered to the department, the department may not approve or disapprove the claim unless the person has pursued one of the remedies under Subsection C of this section.

C. A person may elect to pursue one, but only one, of the remedies in Paragraphs (1) and (2) of this subsection. In any case, if a person does timely pursue more than one remedy, the person shall be deemed to have elected the first remedy

invoked. The remedies are as follows:

(1) the person may direct to the secretary a written protest against the denial of, or failure to either allow or deny the claim or portion thereof, which shall be set for hearing by a hearing officer designated by the secretary promptly after the receipt of the protest in accordance with the provisions of Section 7-1-24 NMSA 1978, and pursue the remedies of appeal from decisions adverse to the protestant as provided in Section 7-1-25 NMSA 1978; or

(2) the person may commence a civil action in the district court for Santa Fe county by filing a complaint setting forth the circumstance of the claimed overpayment, alleging that on account thereof the state is indebted to the plaintiff in the amount stated, together with any interest allowable, demanding the refund to the plaintiff of that amount and reciting the facts of the claim for refund. The plaintiff or the secretary may appeal from any final decision or order of the district court to the court of appeals.

D. Except as otherwise provided in Subsections E and F of this section, no credit or refund of any amount may be allowed or made to any person unless as the result of a claim made by that person as provided in this section:

(1) within three years of the end of the calendar year in which:

(a) the payment was originally due or the overpayment resulted from an assessment by the department pursuant to Section 7-1-17 NMSA 1978, whichever is later;

(b) the final determination of value occurs with respect to any overpayment that resulted from a disapproval by any agency of the United States or the state of New Mexico or any court of increase in value of a product subject

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to taxation under the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act or the Natural Gas Processors Tax Act; or

(c) property was levied upon pursuant to the provisions of the Tax Administration Act;

(2) when an amount of a claim for credit under the provisions of the Investment Credit Act, Laboratory Partnership with Small Business Tax Credit Act, Technology Jobs Tax Credit Act, Capital Equipment Tax Credit Act or similar act or for the rural job tax credit pursuant to Sections 7-2E-1 and 7-2E-2 NMSA 1978 or similar credit has been denied, the taxpayer may claim a refund of the credit no later than one year after the date of the denial;

(3) when a taxpayer under audit by the department has signed a waiver of the limitation on assessments on or after July 1, 1993 pursuant to Subsection F of Section 7-1-18 NMSA 1978, the taxpayer may file a claim for refund of the same tax paid for the same period for which the waiver was given, until a date one year after the later of the date of the mailing of an assessment issued pursuant to the audit, the date of the mailing of final audit findings to the taxpayer or the date a proceeding is begun in court by the department with respect to the same tax and the same period;

(4) if the payment of an amount of tax was not made within three years of the end of the calendar year in which the original due date of the tax or date of the assessment of the department occurred, a claim for refund of that amount of tax can be made within one year of the date on which the tax was paid; or

(5) when a taxpayer has been assessed a tax on or after July

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1, 1993 under Subsection B, C or D of Section 7-1-18 NMSA 1978 and when the assessment applies to a period ending at least three years prior to the beginning of the year in which the assessment was made, the taxpayer may claim a refund for the same tax for the period of the assessment or for any period following that period within one year of the date of the assessment unless a longer period for claiming a refund is provided in this section.

E. No credit or refund shall be allowed or made to any person claiming a refund of gasoline tax under Section 7-13-11 NMSA 1978 unless notice of the destruction of the gasoline was given the department within thirty days of the actual destruction and the claim for refund is made within six months of the date of destruction. No credit or refund shall be allowed or made to any person claiming a refund of gasoline tax under Section 7-13-17 NMSA 1978 unless the refund is claimed within six months of the date of purchase of the gasoline and the gasoline has been used at the time the claim for refund is made.

F. If, as a result of an audit by the internal revenue service or the filing of an amended federal return changing a prior election or making any other change for which federal approval is required by the Internal Revenue Code, any adjustment of federal tax is made with the result that there would have been an overpayment of tax if the adjustment to federal tax had been applied to the taxable period to which it relates, claim for credit or refund of only that amount based on the adjustment may be made as provided in this section within one year of the date of the internal revenue service audit adjustment or payment of the federal refund or within the period limited by Subsection D of this section, whichever expires later. Interest computed at the rate specified in Subsection B of Section 7-1-68 NMSA 1978 shall be allowed on any such claim for

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refund from the date one hundred twenty days after the claim is made until the date the final decision to grant the credit or refund is made.

G. If as a result of an audit by the department or a managed audit covering multiple periods an overpayment of tax is found in any period under the audit, that overpayment may be credited against an underpayment of the same tax found in another period under audit pursuant to Section 7-1-29 NMSA 1978, provided that the taxpayer files a claim for refund for the overpayments identified in the audit. H.

Any refund of tax paid under any tax or tax act administered under Subsection B of Section 7-1-2 NMSA 1978 may be made, at the discretion of the department, in the form of credit against future tax payments if future tax liabilities in an amount at least equal to the credit amount reasonably may be expected to become due.

I. For the purposes of this section, the term "oil and gas tax return" means a return reporting tax due with respect to oil, natural gas, liquid hydrocarbons or carbon dioxide pursuant to the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas Production Equipment Ad Valorem Tax Act.

J. The filing of a fully completed original income tax return, corporate income tax return, corporate income and franchise tax return, estate tax return or special fuel excise tax return that shows a balance due the taxpayer or a fully completed amended income tax return, an amended corporate income tax return, an amended corporate income and franchise tax return, an amended estate tax return, an amended special fuel excise tax return or an amended oil and gas tax return that shows a lesser tax liability than the original return constitutes the filing of a claim for

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refund for the difference in tax due shown on the original and amended returns."

Section 10. A new section of the Tax Administration Act is enacted to read:

"CREDIT CLAIMS.--Any taxpayer who requests approval of a statutory tax credit is deemed to have received such approval if the request has not been granted or denied within one hundred eighty days of the date it was filed. Nothing in this section shall be construed to prevent the department from auditing taxes paid or from assessing taxes owed, including any tax resulting from tax credits found not to be valid."

Section 11. Section 7-1-29 NMSA 1978 (being Laws 1965, Chapter 248, Section 31, as amended) is amended to read:

"7-1-29. AUTHORITY TO MAKE REFUNDS OR CREDITS.--

A. In response to a claim for refund made as provided in Section 7-1-26 NMSA 1978, but before a court acquires jurisdiction of the matter, the secretary or the secretary's delegate may authorize the refund to a person of the amount of any overpayment of tax determined by the secretary or the secretary's delegate to have been erroneously made by the person, together with allowable interest. A refund of tax and interest erroneously paid and amounting to more than ten thousand dollars (\$10,000) may be made to a person only with the prior approval of the attorney general, except that:

(1) refunds with respect to the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas Production Equipment Ad Valorem Tax Act, refunds of gasoline tax made under Section 7-13-17 NMSA 1978 and refunds of cigarette tax made under the

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Cigarette Tax Act may be made without the prior approval of the attorney general regardless of the amount; and

(2) refunds with respect to the Corporate Income and Franchise Tax Act amounting to less than twenty thousand dollars (\$20,000) may be made without the prior approval of the attorney general.

B. Pursuant to the final order of the district court, the court of appeals, the supreme court of New Mexico or any federal court, from which order, appeal or review is not successfully taken, adjudging that a person has made an overpayment of tax, the secretary shall authorize the refund to the person of the amount thereof.

C. In the discretion of the secretary, any amount of tax due to be refunded may be offset against any amount of tax for the payment of which the person due to receive the refund is liable. The secretary or the secretary's delegate shall give notice to the taxpayer that the refund will be made in this manner, and the taxpayer shall be entitled to interest under Section 7-1-68 NMSA 1978 until the tax liability is credited with the refund amount.

D. In an audit by the department or a managed audit covering multiple reporting periods where both underpayments and overpayments of a tax are found to have been made in different reporting periods, the department shall credit the tax overpayments found against the underpayments, provided that the taxpayer files a claim for refund of the overpayments. An overpayment shall be applied as a credit first to the earliest underpayment found and then to succeeding underpayments. An underpayment of tax to which an overpayment is credited pursuant to this section shall be deemed paid in the period in which the overpayment was made or the period in which the overpayment was credited against an underpayment, whichever is later. If

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the overpayments credited pursuant to this section exceed the underpayments found for a tax, the amount of the net overpayment for the periods covered in the audit shall be refunded to the taxpayer.

E. Records of refunds made in excess of ten thousand dollars (\$10,000) shall be available for inspection by the public. The department shall keep such records for a minimum of three years from the date of the refund."

Section 12. A new section of the Tax Administration Act, Section 7-1-29.1 NMSA 1978, is enacted to read:

"7-1-29.1. AWARDING OF COSTS AND FEES.--

A. In any administrative or court proceeding that is brought by or against the taxpayer on or after July 1, 2003 in connection with the determination, collection or refund of any tax, interest or penalty for a tax governed by the provisions of the Tax Administration Act, the taxpayer shall be awarded a judgment or a settlement for reasonable administrative costs incurred in connection with an administrative proceeding with the department or reasonable litigation costs incurred in connection with a court proceeding, if the taxpayer is the prevailing party.

B. As used in this section:

(1) "administrative proceeding" means any procedure or other action before the department;

(2) "court proceeding" means any civil action brought in state district court;

(3) "reasonable administrative costs" means:

(a) any administrative fees or similar charges imposed by the department; and

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(b) actual charges for: 1) filing fees, court reporter fees, service of process fees and similar expenses; 2) the services of expert witnesses; 3) any study, analysis, report, test or project reasonably necessary for the preparation of the party's case; and 4) fees and costs paid or incurred for the services in connection with the proceeding of attorneys or of certified public accountants who are authorized to practice before the department; and

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(4) "reasonable litigation costs" means:

(a) reasonable court costs; and

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(b) actual charges for: 1) filing fees, court reporter fees, service of process fees and similar expenses; 2) the services of expert witnesses; 3) any study, analysis, report, test or project reasonably necessary for the preparation of the party's case; and 4) fees and costs paid or incurred for the services of attorneys in connection with the proceeding.

C. For purposes of this section:

(1) the taxpayer is the prevailing party if the taxpayer has:

(a) substantially prevailed with respect to the amount controversy; or

(b) substantially prevailed with respect to most of the issues involved in the case or the most significant issue or set of issues involved in the case;

(2) the taxpayer shall not be treated as the prevailing party if the department establishes that the position of the department in the proceeding was based upon a reasonable application of the law to the facts of the case. For purposes of this paragraph, the position of the department shall be presumed not to be based

upon a reasonable application of the law to the facts of the case if:

(a) the department did not follow its applicable published guidance in the proceeding; or

(b) the assessment giving rise to the proceeding is not supported by substantial evidence determined at the time of the issuance of the assessment;

(3) as used in Subparagraph (a) of Paragraph (2) of this subsection, "applicable published guidance" means:

(a) department regulations, information releases, instructions, notices, technical advice memoranda and announcements; and

(b) private letter rulings and letters issued by the department to the taxpayer; and

(4) the determination of whether the taxpayer is the prevailing party and the amount of reasonable litigation costs or reasonable administrative costs shall be made by agreement of the parties or:

(a) in the case where the final determination with respect to the tax, interest or penalty is made in an administrative proceeding, by the department hearing officer; or

(b) in the case where the final determination is made by the court, the court.

D. An order granting or denying in whole or in part an award for reasonable litigation costs pursuant to Subsection A of this section in a court proceeding may be incorporated as a part of the decision or judgment in the court proceeding and shall be subject to appeal in the same manner as the decision or

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judgment. A decision or order granting or denying in whole or in part an award for reasonable administrative costs pursuant to Subsection A of this section by the department hearing officer shall be reviewable in the same manner as a decision of the department hearing officer.

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E. No agreement for or award of reasonable administrative costs or reasonable litigation costs in any administrative or court proceeding pursuant to Subsection A of this section shall exceed the lesser of twenty percent of the amount of the settlement or judgment or fifty thousand dollars (\$50,000). A taxpayer awarded administrative litigation costs pursuant to this section may not receive an award of attorney fees pursuant to Subsection D of Section 7-1-25 NMSA 1978."

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Section 13. Section 7-1-67 NMSA 1978 (being Laws 1965, Chapter 248, Section 68, as amended) is amended to read:

"7-1-67. INTEREST ON DEFICIENCIES.--

A. If a tax imposed is not paid on or before the day on which it becomes due, interest shall be paid to the state on that amount from the first day following the day on which the tax becomes due, without regard to any extension of time or installment agreement, until it is paid, except that:

(1) for income tax imposed on a member of the armed services of the United States serving in a combat zone under orders of the president of the United States, interest shall accrue only for the period beginning the day after any applicable extended due date if the tax is not paid;

(2) if the amount of interest due at the time payment is made is less than one dollar (\$1.00), then no interest shall be due;

(3) if demand is made for payment of a tax, including accrued

interest, and if the tax is paid within ten days after the date of the demand, no interest on the amount paid shall be imposed for the period after the date of the demand;

(4) if a managed audit is completed by the taxpayer on or before the date required, as provided in the agreement for the managed audit, and payment of any tax found to be due is made in full within thirty days of the date the secretary has mailed or delivered an assessment for the tax to the taxpayer, no interest shall be due on the assessed tax;

(5) when, as the result of an audit or a managed audit, an overpayment of a tax is credited against an underpayment of tax pursuant to Section 7-1-29 NMSA 1978, interest shall accrue from the date the tax was due until the tax is deemed paid;

(6) if the department does not issue an assessment for the tax program and period within the time provided in Subsection D of Section 7-1-11.2 NMSA 1978, interest shall be paid from the first day following the day on which the tax becomes due until the tax is paid, excluding the period between either:

(a) the one hundred eightieth day after giving a notice of outstanding records or books of account and the date of the assessment of the tax; or

(b) the ninetieth day after the expiration of the additional time requested by the taxpayer to comply, if such request was granted, and the date of the assessment of the tax; and

(7) if the taxpayer was not provided with proper notices as required in Section 7-1-11.2 NMSA 1978, interest shall be paid from the first day following the day on which the tax becomes due until the tax is paid, excluding the

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period between one hundred eighty days prior to the date of assessment and the date of assessment.

B. Interest due to the state under Subsection A or D of this section shall be at the rate of fifteen percent a year, computed on a daily basis; provided that if a different rate is specified by a compact or other interstate agreement to which New Mexico is a party, that rate shall be applied to amounts due under the compact or other agreement.

C. Nothing in this section shall be construed to impose interest on interest or interest on the amount of any penalty.

D. If any tax required to be paid in accordance with Section 7-1-13.1 NMSA 1978 is not paid in the manner required by that section, interest shall be paid to the state on the amount required to be paid in accordance with Section 7-1-13.1 NMSA 1978. If interest is due under this subsection and is also due under Subsection A of this section, interest shall be due and collected only pursuant to Subsection A of this section."

Section 14. Section 7-1-69 NMSA 1978 (being Laws 1965, Chapter 248, Section 70, as amended) is amended to read:

"7-1-69. CIVIL PENALTY FOR FAILURE TO PAY TAX OR FILE A RETURN.--

A. Except as provided in Subsection C of this section, in the case of failure due to negligence or disregard of department rules and regulations, but without intent to evade or defeat a tax, to pay when due the amount of tax required to be paid, to pay in accordance with the provisions of Section 7-1-13.1 NMSA 1978 when required to do so or to file by the date required a return regardless of whether a tax is due, there shall be added to the amount assessed a penalty in an amount equal to the

greater of:

(1) two percent per month or any fraction of a month from the date the tax was due multiplied by the amount of tax due but not paid, not to exceed ten percent of the tax due but not paid;

(2) two percent per month or any fraction of a month from the date the return was required to be filed multiplied by the tax liability established in the late return, not to exceed ten percent of the tax liability established in the late return; or

(3) a minimum of five dollars (\$5.00), but the five-dollar (\$5.00) minimum penalty shall not apply to taxes levied under the Income Tax Act or taxes administered by the department pursuant to Subsection B of Section 7-1-2 NMSA 1978.

B. No penalty shall be assessed against a taxpayer if the failure to pay an amount of tax when due results from a mistake of law made in good faith and on reasonable grounds.

C. If a different penalty is specified in a compact or other interstate agreement to which New Mexico is a party, the penalty provided in the compact or other interstate agreement shall be applied to amounts due under the compact or other interstate agreement at the rate and in the manner prescribed by the compact or other interstate agreement.

D. In the case of failure, with willful intent to evade or defeat a tax, to pay when due the amount of tax required to be paid, there shall be added to the amount fifty percent of the tax or a minimum of twenty-five dollars (\$25.00), whichever is greater, as penalty.

E. If demand is made for payment of a tax, including penalty imposed

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pursuant to this section, and if the tax is paid within ten days after the date of such demand, no penalty shall be imposed for the period after the date of the demand with respect to the amount paid.

F. If a taxpayer makes electronic payment of a tax but the payment does not include all of the information required by the department pursuant to the provisions of Section 7-1-13.1 NMSA 1978 and if the department does not receive the required information within five business days from the later of the date a request by the department for that information is received by the taxpayer or the due date, the taxpayer shall be subject to a penalty of two percent per month or any fraction of a month from the fifth day following the date the request is received. If a penalty is imposed under Subsection A of this section with respect to the same transaction for the same period, no penalty shall be imposed under this subsection.

G. No penalty shall be imposed on:

- (1) tax due in excess of tax paid in accordance with an approved estimated basis pursuant to Section 7-1-10 NMSA 1978;
- (2) tax due as the result of a managed audit; or
- (3) tax that is deemed paid by crediting overpayments found in an audit or managed audit of multiple periods pursuant to Section 7-1-29 NMSA 1978."

Section 15. A new section of the Tax Administration Act is enacted to read:

"TAX LIABILITY--SPOUSE OR FORMER SPOUSE.--

A. If the secretary determines that, taking into account all the facts and circumstances, it is inequitable to hold the spouse or former spouse of a taxpayer liable for payment of all or part of any unpaid tax, assessment or other deficiency for a tax administered under the Tax Administration Act, the secretary may decline to bring

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an action or proceeding to collect such taxes against the spouse or former spouse of the taxpayer.

B. Nothing in Subsection A of this section shall be construed to authorize the abatement of taxes or enforcement of any provisions of the Tax Administration Act against the taxpayer.

C. The secretary shall adopt and promulgate regulations as necessary for making the determinations pursuant to this section."

Section 16. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.