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HOUSE BILL 20

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION, 2003

INTRODUCED BY

Joseph Cervantes

AN ACT

RELATING TO TAXATION; AMENDING THE TAX ADMINISTRATION ACT.

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

Section 1. Section 7-1-17 NMSA 1978 (being Laws 1965, Chapter 248, Section 20, as amended) is amended to read:

"7-1-17. ASSESSMENT OF TAX--PRESUMPTION OF CORRECTNESS. --

A. If the secretary or the secretary's delegate determines that a taxpayer is liable for taxes in excess of ~~[ten dollars (\$10.00)]~~ twenty-five dollars (\$25.00) that are due and that have not been previously assessed to the taxpayer, the secretary or the secretary's delegate shall promptly assess the amount thereof to the taxpayer.

B. Assessments of tax are effective:

(1) when a return of a taxpayer is received by the department showing a liability for taxes;

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1 (2) when a document denominated "notice of
2 assessment of taxes", issued in the name of the secretary, is
3 mailed or delivered in person to the taxpayer against whom the
4 liability for tax is asserted, stating the nature and amount of
5 the taxes assertedly owed by the taxpayer to the state,
6 demanding of the taxpayer the immediate payment of the taxes
7 and briefly informing the taxpayer of the remedies available to
8 the taxpayer; or

9 (3) when an effective jeopardy assessment is
10 made as provided in the Tax Administration Act.

11 C. Any assessment of taxes or demand for payment
12 made by the department is presumed to be correct.

13 D. When taxes have been assessed to any taxpayer
14 and remain unpaid, the secretary or the secretary's delegate
15 may demand payment at any time except as provided otherwise by
16 Section 7-1-19 NMSA 1978. "

17 Section 2. Section 7-1-24 NMSA 1978 (being Laws 1965,
18 Chapter 248, Section 26, as amended) is amended to read:

19 "7-1-24. ADMINISTRATIVE HEARING--PROCEDURE. --

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

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

17 B. Any protest by a taxpayer shall be filed within
18 thirty days of the date of the mailing to the taxpayer by the
19 department of the notice of assessment or mailing to, or
20 service upon, the taxpayer of other peremptory notice or
21 demand, or the date of mailing or filing a return. Upon
22 written request of the taxpayer made within the time permitted
23 for filing a protest, the secretary may grant an extension of
24 time, not to exceed sixty days, within which to file the
25 protest. If a protest is not filed within the time required

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1 for filing a protest or, if an extension has been granted,
2 within the extended time, the secretary may proceed to enforce
3 collection of any tax if the taxpayer is delinquent within the
4 meaning of Section 7-1-16 NMSA 1978. Upon written request of
5 the taxpayer made after the time for filing a protest but not
6 more than sixty days after the expiration of the time for
7 filing a protest, the secretary may grant a retroactive
8 extension of time, not to exceed sixty days, within which to
9 file the protest; provided that the taxpayer demonstrates to
10 the secretary's satisfaction that the taxpayer was not able to
11 file a protest or to request an extension within the time to
12 file the protest and that the grounds for the protest have
13 substantial merit. The fact that the department did not mail
14 the assessment or other peremptory notice or demand by
15 certified or registered mail or otherwise demand and receive
16 acknowledgment of receipt by the taxpayer shall not be deemed
17 to demonstrate the taxpayer's inability to protest or request
18 an extension within the time for filing a protest within the
19 required time. The secretary shall not grant a retroactive
20 extension if a levy has already been served under Section
21 7-1-31 or 7-1-33 NMSA 1978 or a jeopardy assessment has been
22 made under Section 7-1-59 NMSA 1978. No proceedings other than
23 those to enforce collection of any amount assessed as tax and
24 to protect the interest of the state by injunction, as provided
25 in Sections 7-1-31, 7-1-33, 7-1-34, 7-1-40, 7-1-53, 7-1-56 and

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1 7-1-58 NMSA 1978, are stayed by timely filing of a protest
2 under this section.

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

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

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

16 F. A hearing officer shall not engage or
17 participate in any way as an employee of the department in the
18 areas of enforcement or formulating general tax policy other
19 than to conduct hearings. A taxpayer may request that the
20 secretary determine whether a hearing officer has engaged or
21 participated in tax policy or enforcement in a way that might
22 reasonably be expected to affect the hearing officer's
23 impartiality in a particular matter. The secretary may
24 designate another hearing officer for the matter to avoid
25 actual or apparent prejudice.

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

7 H. In hearings before the hearing officer, the
8 taxpayer may elect that the Rules of Civil Procedure for the
9 District Courts apply to the proceedings. The secretary shall
10 prescribe by regulation the manner in which an election shall
11 be made. In the absence of such an election, the technical
12 rules of evidence shall not apply, but in ruling on the
13 admissibility of evidence, the hearing officer may require
14 reasonable substantiation of statements or records tendered,
15 the accuracy or truth of which is in reasonable doubt. A
16 taxpayer may request a written ruling on any contested question
17 of evidence in a matter in which the taxpayer has filed a
18 written protest and that protest is pending.

19 I. In hearings before the hearing officer when the
20 Rules of Civil Procedure for the District Courts [~~shall~~] do not
21 apply, [~~but~~] the hearing shall be conducted so that both
22 complaints and defenses are amply and fairly presented. To
23 this end, the hearing officer shall hear arguments, permit
24 discovery, entertain and dispose of motions, require written
25 expositions of the case as the circumstances justify and render

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1 a decision in accordance with the law and the evidence
2 presented and admitted. A taxpayer may request a written
3 ruling on any contested question of procedure in a matter in
4 which the taxpayer has filed a written protest and that protest
5 is pending.

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

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

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

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1 summons. "

2 Section 3. Section 7-1-26 NMSA 1978 (being Laws 1965,
3 Chapter 248, Section 28, as amended) is amended to read:

4 "7-1-26. CLAIM FOR REFUND. --

5 A. Any person who believes that an amount of tax
6 has been paid by or withheld from that person in excess of that
7 for which the person was liable, who has been denied any credit
8 or rebate claimed or who claims a prior right to property in
9 the possession of the department pursuant to a levy made under
10 authority of Sections 7-1-31 through 7-1-34 NMSA 1978 may claim
11 a refund by directing to the secretary, within the time limited
12 by the provisions of Subsections D, E and F of this section, a
13 written claim for refund. Except as provided in Subsection J
14 of this section, a refund claim shall include the taxpayer's
15 name, address and identification number, the type of tax for
16 which a refund is being claimed, the sum of money being
17 claimed, the period for which overpayment was made and the
18 basis for the refund. As used in this subsection, "basis for
19 the refund" means a brief statement of the facts and the law on
20 which the claim is based. Upon receipt of a claim for a refund
21 of gross receipts tax, compensating tax, personal income tax
22 for years other than the current tax year or corporate income
23 tax for years other than the current tax year, other than a
24 claim described in Subsection J of this section, the department
25 shall promptly send a notice to the person filing the claim

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1 stating that it has received the claim and indicating whether
2 it considers the claim to be complete. The department and the
3 person filing the claim may agree to designate the claim as a
4 protective claim.

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

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

13 (2) For a claim other than a protective claim,
14 if the department has neither granted nor denied any portion of
15 a claim for refund within one hundred twenty days of the date
16 the claim was mailed or delivered to the department, the person
17 may refile it within the time limits set forth in Subsection C
18 of this section or may within ninety days elect to pursue one,
19 but only one, of the remedies in Subsection C of this section.
20 After the expiration of the two hundred ten days from the date
21 the claim was mailed or delivered to the department, the
22 department may not approve or disapprove the claim unless the
23 person has pursued one of the remedies under Subsection C of
24 this section.

25 (3) For a protective claim, if the department

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1 has not acted within one hundred twenty days from either the
2 date of a final decision in the lead case from which appeal may
3 not be taken or the last date on which appeal may be taken when
4 no appeal is taken, any part of the claim not granted or denied
5 is denied.

6 C. A person may elect to pursue one, but only one,
7 of the remedies in Paragraphs (1) and (2) of this subsection.
8 In any case, if a person does timely pursue more than one
9 remedy, the person shall be deemed to have elected the first
10 remedy invoked. The remedies are as follows:

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

19 (2) the person may commence a civil action in
20 the district court for Santa Fe county by filing a complaint
21 setting forth the circumstance of the claimed overpayment,
22 alleging that on account thereof the state is indebted to the
23 plaintiff in the amount stated, together with any interest
24 allowable, demanding the refund to the plaintiff of that amount
25 and reciting the facts of the claim for refund. The plaintiff

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1 or the secretary may appeal from any final decision or order of
2 the district court to the court of appeals.

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

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

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

12 (b) the final determination of value
13 occurs with respect to any overpayment that resulted from a
14 disapproval by any agency of the United States or the state of
15 New Mexico or any court of increase in value of a product
16 subject to taxation under the Oil and Gas Severance Tax Act,
17 the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency
18 School Tax Act, the Oil and Gas Ad Valorem Production Tax Act
19 or the Natural Gas Processors Tax Act; or

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

22 (2) when an amount of a claim for credit under
23 the provisions of the Investment Credit Act, Laboratory
24 Partnership with Small Business Tax Credit Act, Technology Jobs
25 Tax Credit Act, Capital Equipment Tax Credit Act or similar act

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1 or for the rural job tax credit pursuant to Sections 7-2E-1 and
2 7-2E-2 NMSA 1978 or similar credit has been denied, the
3 taxpayer may claim a refund of the credit no later than one
4 year after the date of the denial;

5 (3) when a taxpayer under audit by the
6 department has signed a waiver of the limitation on assessments
7 on or after July 1, 1993 pursuant to Subsection F of Section
8 7-1-18 NMSA 1978, the taxpayer may file a claim for refund of
9 the same tax paid for the same period for which the waiver was
10 given, until a date one year after the later of the date of the
11 mailing of an assessment issued pursuant to the audit, the date
12 of the mailing of final audit findings to the taxpayer or the
13 date a proceeding is begun in court by the department with
14 respect to the same tax and the same period;

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

21 (5) when a taxpayer has been assessed a tax on
22 or after July 1, 1993 under Subsection B, C or D of Section
23 7-1-18 NMSA 1978 and when the assessment applies to a period
24 ending at least three years prior to the beginning of the year
25 in which the assessment was made, the taxpayer may claim a

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1 refund for the same tax for the period of the assessment or for
2 any period following that period within one year of the date of
3 the assessment unless a longer period for claiming a refund is
4 provided in this section.

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

16 F. If, as a result of an audit by the internal
17 revenue service or the filing of an amended federal return
18 changing a prior election or making any other change for which
19 federal approval is required by the Internal Revenue Code, any
20 adjustment of federal tax is made with the result that there
21 would have been an overpayment of tax if the adjustment to
22 federal tax had been applied to the taxable period to which it
23 relates, claim for credit or refund of only that amount based
24 on the adjustment may be made as provided in this section
25 within one year of the date of the internal revenue service

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1 audit adjustment or payment of the federal refund or within the
2 period limited by Subsection D of this section, whichever
3 expires later. Interest computed at the rate specified in
4 Subsection B of Section 7-1-68 NMSA 1978 shall be allowed on
5 any such claim for refund from the date one hundred twenty days
6 after the claim is made until the date the final decision to
7 grant the credit or refund is made.

8 G. If as a result of an audit by the department or
9 a managed audit covering multiple periods an overpayment of tax
10 is found in any period under the audit, that overpayment may be
11 credited against an underpayment of the same tax found in
12 another period under audit pursuant to Section 7-1-29 NMSA
13 1978, provided that the taxpayer files a claim for refund for
14 the overpayments identified in the audit.

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

21 I. For the purposes of this section, the term "oil
22 and gas tax return" means a return reporting tax due with
23 respect to oil, natural gas, liquid hydrocarbons or carbon
24 dioxide pursuant to the Oil and Gas Severance Tax Act, the Oil
25 and Gas Conservation Tax Act, the Oil and Gas Emergency School

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1 Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the
2 Natural Gas Processors Tax Act or the Oil and Gas Production
3 Equipment Ad Valorem Tax Act.

4 J. The filing of a fully completed original income
5 tax return, corporate income tax return, corporate income and
6 franchise tax return, estate tax return or special fuel excise
7 tax return that shows a balance due the taxpayer or a fully
8 completed amended income tax return, an amended corporate
9 income tax return, an amended corporate income and franchise
10 tax return, an amended estate tax return, an amended special
11 fuel excise tax return or an amended oil and gas tax return
12 that shows a lesser tax liability than the original return
13 constitutes the filing of a claim for refund for the difference
14 in tax due shown on the original and amended returns.

15 K. For the purposes of this section:

16 (1) "protective claim" means a claim for a
17 refund filed by a person asserting that the person's
18 entitlement to a refund will be established by a final decision
19 of a New Mexico court of competent jurisdiction on a claim for
20 a refund or protest previously filed by that person or another;
21 and

22 (2) "lead case" means the previously filed
23 claim or protest described in Paragraph (1) of this subsection.

24 L. Disposition of a protective claim shall be
25 postponed until a final decision is reached in the lead case."

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1 Section 4. Section 7-1-67 NMSA 1978 (being Laws 1965,
2 Chapter 248, Section 68, as amended) is amended to read:

3 "7-1-67. INTEREST ON DEFICIENCIES. --

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

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

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

17 (3) if demand is made for payment of a tax,
18 including accrued interest, and if the tax is paid within ten
19 days after the date of the demand, no interest on the amount
20 paid shall be imposed for the period after the date of the
21 demand;

22 (4) if a managed audit is completed by the
23 taxpayer on or before the date required, as provided in the
24 agreement for the managed audit, and payment of any tax found
25 to be due is made in full within thirty days of the date the

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1 secretary has mailed or delivered an assessment for the tax to
2 the taxpayer, no interest shall be due on the assessed tax;

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

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

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

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

21 (7) if the taxpayer was not provided with
22 proper notices as required in Section 7-1-11.2 NMSA 1978,
23 interest shall be paid from the first day following the day on
24 which the tax becomes due until the tax is paid, excluding the
25 period between one hundred eighty days prior to the date of

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1 assessment and the date of assessment.

2 B. Interest due to the state under Subsection A or
3 ~~[D]~~ E of this section shall be:

4 (1) through June 30, 2004, at the rate of
5 fifteen percent a year, computed on a daily basis [~~provided~~
6 ~~that~~];

7 (2) from July 1, 2004 through December 31,
8 2005, at the rate of ten percent a year computed on a daily
9 basis; and

10 (3) on and after January 1, 2006, at the
11 underpayment rate for the period determined in accordance with
12 Section 6621 of the Internal Revenue Code.

13 C. If a different rate than the rate established by
14 Subsection B of this section is specified by a compact or other
15 interstate agreement to which New Mexico is a party, [~~that~~] the
16 rate specified by the compact or other agreement shall be
17 applied to amounts due under the compact or other agreement.

18 ~~[C-]~~ D. Nothing in this section shall be construed
19 to impose interest on interest or interest on the amount of any
20 penalty.

21 ~~[D-]~~ E. If any tax required to be paid in
22 accordance with Section 7-1-13.1 NMSA 1978 is not paid in the
23 manner required by that section, interest shall be paid to the
24 state on the amount required to be paid in accordance with
25 Section 7-1-13.1 NMSA 1978. If interest is due under this

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1 subsection and is also due under Subsection A of this section,
2 interest shall be due and collected only pursuant to Subsection
3 A of this section. "

4 Section 5. Section 7-1-68 NMSA 1978 (being Laws 1965,
5 Chapter 248, Section 69, as amended by Laws 2003, Chapter 2,
6 Section 1 and by Laws 2003, Chapter 439, Section 6) is amended
7 to read:

8 "7-1-68. INTEREST ON OVERPAYMENTS. --

9 A. As provided in this section, interest shall be
10 allowed and paid on the amount of tax overpaid by a person that
11 is subsequently refunded or credited to that person.

12 B. Interest on overpayments of tax shall accrue and
13 be paid:

14 (1) through June 30, 2004, at the rate of
15 fifteen percent a year, computed on a daily basis [~~provided~~
16 ~~that~~];

17 (2) from July 1, 2004 through December 31,
18 2005, at the rate of ten percent a year computed on a daily
19 basis; and

20 (3) on and after January 1, 2006, at the
21 underpayment rate for the period determined in accordance with
22 Section 6621 of the Internal Revenue Code.

23 C. If a different rate than the rate established by
24 Subsection B of this section is specified by a compact or other
25 interstate agreement to which New Mexico is a party, [~~that~~] the

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1 rate specified by the compact or other agreement shall apply to
2 amounts due under the compact or other agreement.

3 ~~[C.]~~ D. Unless otherwise provided by this section,
4 interest on an overpayment not arising from an assessment by
5 the department shall be paid from the date of the claim for
6 refund until a date preceding by not more than thirty days the
7 date of the credit or refund to any person; interest on an
8 overpayment arising from an assessment by the department shall
9 be paid from the date of overpayment until a date preceding by
10 not more than thirty days the date of the credit or refund to
11 any person.

12 E. Interest on a refund or credit of tax paid on a
13 deduction initially disallowed by the department for failure to
14 produce a proper nontaxable transaction certificate or not
15 claimed by the taxpayer on a timely filed original return shall
16 be paid from the date on which the taxpayer produces to the
17 department proof that the nontaxable transaction certificate
18 has been obtained.

19 ~~[D.]~~ F. No interest shall be allowed or paid with
20 respect to an amount credited or refunded if:

21 (1) the amount of interest due is less than
22 one dollar (\$1.00);

23 (2) the credit or refund is made within:

24 (a) fifty-five days of the date of the
25 claim for refund of income tax, pursuant to either the Income

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1 Tax Act or the Corporate Income and Franchise Tax Act for the
2 tax year immediately preceding the tax year in which the claim
3 is made; or

4 (b) seventy-five days of the date of the
5 claim for refund of gasoline tax to users of gasoline off the
6 highways;

7 (3) the credit or refund is made within one
8 hundred twenty days of the date of the claim for refund of
9 income tax, pursuant to the Income Tax Act or the Corporate
10 Income and Franchise Tax Act, for any tax year more than one
11 year prior to the year in which the claim is made;

12 (4) Sections 6611(f) and 6611(g) of the
13 Internal Revenue Code, as those sections may be amended or
14 renumbered, prohibit payment of interest for federal income tax
15 purposes;

16 (5) the credit or refund is made within sixty
17 days of the date of the claim for refund of any tax other than
18 income tax;

19 (6) the credit results from overpayments found
20 in an audit of multiple reporting periods and applied to
21 underpayments found in that audit or refunded as a net
22 overpayment to the taxpayer pursuant to Section 7-1-29 NMSA
23 1978;

24 (7) the department applies the credit or
25 refund to an intercept program, to the taxpayer's estimated

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1 payment prior to the due date for the estimated payment, or to
2 offset prior liabilities of the taxpayer pursuant to Subsection
3 E of Section 7-1-29 NMSA 1978; ~~[or]~~

4 (8) the credit or refund results from
5 overpayments the department finds pursuant to Subsection F of
6 Section 7-1-29 NMSA 1978 that exceed the refund claimed by the
7 taxpayer on the return; or

8 (9) the credit or refund is in settlement of a
9 protective claim, as defined in Section 7-1-26 NMSA 1978;
10 provided that interest shall be paid with respect to the period
11 from the date of the final unappealable decision in the lead
12 case until a date preceding by not more than thirty days the
13 date the credit or refund is paid on the protective claim.

14 ~~[E-]~~ G. Nothing in this section shall be construed
15 to require the payment of interest upon interest. "

16 Section 6. Section 7-1-69 NMSA 1978 (being Laws 1965,
17 Chapter 248, Section 70, as amended) is amended to read:

18 "7-1-69. CIVIL PENALTY FOR FAILURE TO PAY TAX OR FILE A
19 RETURN. --

20 A. Except as provided in Subsection C of this
21 section, in the case of failure due to negligence or disregard
22 of department rules and regulations, but without intent to
23 evade or defeat a tax, to pay when due the amount of tax
24 required to be paid, to pay in accordance with the provisions
25 of Section 7-1-13.1 NMSA 1978 when required to do so or to file

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1 by the date required a return regardless of whether a tax is
2 due, there shall be added to the amount assessed a penalty in
3 an amount equal to the greater of:

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

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

13 (3) a minimum of [~~five dollars (\$5.00)~~] one
14 hundred fifty dollars (\$150), but the [~~five dollar (\$5.00)~~]
15 minimum penalty shall not apply to taxes levied under the
16 Income Tax Act or taxes administered by the department pursuant
17 to Subsection B of Section 7-1-2 NMSA 1978.

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

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

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1 prescribed by the compact or other interstate agreement.

2 D. In the case of failure, with willful intent to
3 evade or defeat a tax, to pay when due the amount of tax
4 required to be paid, there shall be added to the amount fifty
5 percent of the tax or a minimum of [~~twenty-five dollars~~
6 ~~(\$25.00)~~] one hundred fifty dollars (\$150), whichever is
7 greater, as penalty.

8 E. If demand is made for payment of a tax,
9 including penalty imposed pursuant to this section, and if the
10 tax is paid within ten days after the date of such demand, no
11 penalty shall be imposed for the period after the date of the
12 demand with respect to the amount paid.

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

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1 G. No penalty shall be imposed on:

2 (1) tax due in excess of tax paid in
3 accordance with an approved estimated basis pursuant to Section
4 7-1-10 NMSA 1978;

5 (2) tax due as the result of a managed audit;
6 or

7 (3) tax that is deemed paid by crediting
8 overpayments found in an audit or managed audit of multiple
9 periods pursuant to Section 7-1-29 NMSA 1978. "

10 Section 7. Section 7-9-43 NMSA 1978 (being Laws 1966,
11 Chapter 47, Section 13, as amended) is amended to read:

12 "7-9-43. NONTAXABLE TRANSACTION CERTIFICATES AND OTHER
13 EVIDENCE REQUIRED TO ENTITLE PERSONS TO DEDUCTIONS [~~RENEWAL~~]. --

14 A. [~~All nontaxable transaction certificates of the~~
15 ~~appropriate series executed by buyers or lessees should be in~~
16 ~~the possession of the seller or lessor for nontaxable~~
17 ~~transactions at the time the return is due for receipts from~~
18 ~~the transactions. If the seller or lessor is not in possession~~
19 ~~of the required nontaxable transaction certificates within~~
20 ~~sixty days from the date that the notice requiring possession~~
21 ~~of these nontaxable transaction certificates is given the~~
22 ~~seller or lessor by the department, deductions claimed by the~~
23 ~~seller or lessor that require delivery of these nontaxable~~
24 ~~transaction certificates shall be disallowed. The] Nontaxable~~
25 transaction certificates shall contain the information and be

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1 in a form prescribed by the department. The department by
2 regulation may deem to be nontaxable transaction certificates
3 documents issued by other states or the multistate tax
4 commission to taxpayers not required to be registered in New
5 Mexico. Only buyers or lessees who have a registration number
6 or have applied for a registration number and have not been
7 refused one under Subsection C of Section 7-1-12 NMSA 1978
8 shall execute nontaxable transaction certificates issued by the
9 department. If the seller or lessor has been given an
10 identification number for tax purposes by the department, the
11 seller or lessor shall disclose that identification number to
12 the buyer or lessee prior to or upon acceptance of a nontaxable
13 transaction certificate. When the seller or lessor accepts a
14 nontaxable transaction certificate [~~within the required time~~
15 ~~and~~] in good faith that the buyer or lessee will employ the
16 property or service transferred in a nontaxable manner, the
17 properly executed nontaxable transaction certificate shall be
18 conclusive evidence, and the only material evidence, that the
19 proceeds from the transaction are deductible from the seller's
20 or lessor's gross receipts.

21 B. Notwithstanding any other provision of the Gross
22 Receipts and Compensating Tax Act, when a seller or lessor
23 required by provisions of this act to have a nontaxable
24 transaction certificate to claim a deduction is unable to
25 obtain the required nontaxable transaction certificate because

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1 the buyer or lessee has initiated bankruptcy proceedings under
2 federal bankruptcy laws, is dead or no longer exists as a
3 business entity, the department shall allow the deduction upon
4 presentation of other evidence acceptable to the secretary that
5 the taxpayer is entitled to claim the deduction.

6 [B-] C. Properly executed documents required to
7 support the deductions provided in Sections 7-9-57, 7-9-58 and
8 7-9-74 NMSA 1978 should be in the possession of the seller at
9 the time the return is due for receipts from the transactions.
10 If the seller is not in possession of these documents [~~within~~
11 ~~sixty days from the date that the notice requiring possession~~
12 ~~of these documents is given to the seller by the department~~] on
13 a date not later than thirty days prior to the date of a formal
14 hearing on a protest that requires the documents to establish
15 the taxpayer's entitlement to any deduction under protest, the
16 deductions claimed by the seller or lessor that require
17 delivery of these documents shall be disallowed. These
18 documents shall contain the information and be in a form
19 prescribed by the department. When the seller accepts these
20 documents within the required time and in good faith that the
21 buyer will employ the property or service transferred in a
22 nontaxable manner, the properly executed documents shall be
23 conclusive evidence, and the only material evidence, that the
24 proceeds from the transaction are deductible from the seller's
25 gross receipts.

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1 ~~[C. Notice, as used in this section, is sufficient~~
2 ~~if the notice is mailed or served as provided in Subsection A~~
3 ~~of Section 7-1-9 NMSA 1978. Notice by the department under~~
4 ~~this section shall not be given prior to the commencement of an~~
5 ~~audit of the seller required to be in possession of the~~
6 ~~documents.~~

7 ~~D. On January 1, 2005, every nontaxable transaction~~
8 ~~certificate, except for nontaxable transaction certificates of~~
9 ~~the series applicable to the twelve-year period beginning~~
10 ~~January 1, 2005 and issued by the department prior to that~~
11 ~~date, is void with respect to transactions after December 31,~~
12 ~~2004. The department shall issue separate series of nontaxable~~
13 ~~transaction certificates for the twelve-year period beginning~~
14 ~~January 1, 2005 and for each twelve-year period beginning on~~
15 ~~January 1 of every twelfth year succeeding calendar year 2005.~~
16 ~~A series of nontaxable transaction certificates issued by the~~
17 ~~department for any twelve-year period may be executed by buyers~~
18 ~~or lessees for transactions occurring within or prior to that~~
19 ~~twelve-year period but is not valid for transactions occurring~~
20 ~~after that twelve-year period, except the nontaxable~~
21 ~~transaction certificates issued by the department for the~~
22 ~~period January 1, 1992 to December 31, 2001 may be executed by~~
23 ~~buyers or lessees for transactions occurring prior to December~~
24 ~~31, 2004. For administrative convenience, the department may~~
25 ~~accept and approve qualifying applications for the privilege of~~

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1 ~~executing nontaxable transaction certificates and pre-issue~~
2 ~~certificates of any series within the six-month period~~
3 ~~immediately preceding the beginning of the twelve-year period~~
4 ~~to which the series of nontaxable transaction certificates~~
5 ~~applies.~~

6 E.] D. To exercise the privilege of executing
7 appropriate nontaxable transaction certificates, a buyer or
8 lessee shall apply to the department for permission to execute
9 nontaxable transaction certificates, except with respect to
10 documents issued by other states or the multistate tax
11 commission that the department has deemed to be nontaxable
12 transaction certificates. If a person is shown on the
13 department's records to be a delinquent taxpayer or to have a
14 non-filed period, the department may refuse to approve the
15 application of the person until the person has filed returns
16 for all non-filed periods and is no longer shown to be a
17 delinquent taxpayer, and the taxpayer may protest that refusal
18 pursuant to Section 7-1-24 NMSA 1978. Upon the department's
19 approval of the application, the buyer or lessee may request
20 appropriate nontaxable transaction certificates for execution
21 by the buyer or lessee; provided that if a person is shown on
22 the department's records to be a delinquent taxpayer or to have
23 a non-filed period, the department may refuse to issue
24 nontaxable transaction certificates to the person until the
25 person has filed returns for all non-filed periods and is no

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1 longer shown to be a delinquent taxpayer. The taxpayer may
2 protest that refusal pursuant to Section 7-1-24 NMSA 1978. The
3 department may require a buyer or lessee requesting and
4 receiving nontaxable transaction certificates for execution by
5 that buyer or lessee to report to the department the names,
6 addresses and identification numbers assigned by the department
7 of the sellers and lessors to whom they have delivered
8 nontaxable transaction certificates. The department may
9 require a seller or lessor engaged in business in New Mexico to
10 report to the department the names, addresses and federal
11 employer identification numbers or state identification numbers
12 for tax purposes issued by the department of the buyers or
13 lessees from whom the seller or lessor has accepted nontaxable
14 transaction certificates. "

15 Section 8. Section 9-11-6.2 NMSA 1978 (being Laws 1995,
16 Chapter 31, Section 3) is amended to read:

17 "9-11-6.2. ADMINISTRATIVE REGULATIONS, RULINGS,
18 INSTRUCTIONS AND ORDERS--PRESUMPTION OF CORRECTNESS.--

19 A. The secretary is empowered and directed to issue
20 and file as required by law all regulations, rulings,
21 instructions or orders necessary to implement and enforce any
22 provision of any law the administration and enforcement of
23 which the department, the secretary, any division of the
24 department or any director of any division of the department is
25 charged, including all rules and regulations necessary by

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1 reason of any alteration of any such law. In order to
2 accomplish its purpose, this provision is to be liberally
3 construed.

4 B. Directives issued by the secretary shall be in
5 form substantially as follows:

6 (1) regulations shall be written statements of
7 the secretary of general application, interpreting and
8 exemplifying or implementing the ~~[statues]~~ statutes to which
9 they relate and may be issued in response to a request from a
10 taxpayer or other interested party;

11 (2) rulings shall be written statements of the
12 secretary, of limited application to one or a small number of
13 persons, interpreting the statutes to which they relate,
14 ordinarily issued in response to a request for clarification of
15 the consequences of a specified set of circumstances;

16 (3) orders shall be written statements of the
17 secretary or a hearing officer or other delegate of the
18 secretary to implement a decision after a hearing; and

19 (4) instructions shall be other written
20 statements or directives of the secretary or secretary's
21 delegate not dealing with the merits of any law but otherwise
22 in aid of the accomplishment of the duties of the secretary.

23 C. To be effective, any ruling or regulation issued
24 by the secretary shall be reviewed by the attorney general or
25 other legal counsel of the department prior to being filed as

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1 required by law, and the fact of the review shall be indicated
2 on the ruling or regulation.

3 D. To be effective, a regulation shall first be
4 issued as a proposed regulation and filed for public inspection
5 in the office of the secretary. Unless otherwise provided by
6 statute, no regulation affecting any person or agency outside
7 the department shall be adopted, amended or repealed without a
8 public hearing on the proposed action before the secretary or a
9 hearing officer designated by the secretary. The public
10 hearing shall be held in Santa Fe unless otherwise permitted by
11 statute. Notice of the subject matter of the regulation, the
12 action proposed to be taken, the time and place of the hearing,
13 the manner in which interested parties may present their views
14 and the method by which copies of the proposed regulation,
15 proposed amendment or repeal of an existing regulation may be
16 obtained shall be published at least thirty days prior to the
17 hearing date in [a] the New Mexico register and mailed at least
18 thirty days prior to the hearing date to all persons who have
19 made a written request for advance notice of hearing. After
20 the proposed regulation has been on file for not less than
21 sixty days and a public hearing on the proposed action has been
22 held by the secretary or a hearing officer designated by the
23 secretary, the secretary may issue it as a final regulation by
24 signing the regulation and filing the regulation in the manner
25 required by law. The secretary shall not delegate the

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1 authority to sign regulations.

2 E. In addition to filing copies of regulations with
3 the state records center as required by law, the secretary
4 shall maintain in the office of the secretary a duplicate
5 official set of current and superseded regulations, a set of
6 current and superseded rulings and such additional sets of
7 those regulations and rulings as appear necessary, which
8 duplicate or additional sets shall be available for inspection
9 by the public, but superseded regulations need be maintained
10 for no longer than ten years from the date of supersession.

11 F. The secretary shall develop and maintain a file
12 of names and addresses of individuals and professional and
13 industry groups having an interest in the promulgation of new,
14 revised or proposed regulations. At convenient times, the
15 secretary shall distribute to these persons all such
16 regulations and all pertinent rulings, making such charges as
17 will defray the expense incurred in their physical preparation
18 and mailing. Such charges are appropriated to the department
19 to defray the costs of preparing and distributing regulations
20 and rulings.

21 G. Any regulation, ruling, instruction or order
22 issued by the secretary or order or instruction issued by a
23 hearing officer or other delegate of the secretary is presumed
24 to be a proper implementation of the provisions of the laws
25 that are charged to the department, the secretary, any division

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1 of the department or any director of any division of the
2 department.

3 H. The extent to which regulations, rulings and
4 orders will have retroactive effect shall be stated and, if no
5 such statement is made, they will be applied prospectively
6 only. "

7 Section 9. EFFECTIVE DATE. --The effective date of the
8 provisions of this act is July 1, 2004.

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