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HOUSE BILL 572

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Jeannette O. Wallace

FOR THE LEGISLATIVE FINANCE COMMITTEE

AN ACT

RELATING TO THE TAXATION AND REVENUE DEPARTMENT; PERMITTING THE TAXATION AND REVENUE DEPARTMENT TO RELEASE TAXPAYER INFORMATION TO THE LEGISLATIVE FINANCE COMMITTEE FOR AUDIT PURPOSES; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTIONS OF LAW IN LAWS 2003.

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

Section 1. Section 7-1-8 NMSA 1978 (being Laws 1965, Chapter 248, Section 13, as amended by Laws 2003, Chapter 398, Section 5 and by Laws 2003, Chapter 439, Section 1) is amended to read:

"7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER INFORMATION.--It is unlawful for an employee of the department or a former employee of the department to reveal to an individual other than another employee of the department

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1 information contained in the return of a taxpayer made pursuant
2 to a law subject to administration and enforcement under the
3 provisions of the Tax Administration Act or any other
4 information about a taxpayer acquired as a result of [~~his~~] the
5 employee's employment by the department and not available from
6 public sources, except:

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

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

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

22 D. to a district court, an appellate court or a
23 federal court:

24 (1) in response to an order thereof in an
25 action relating to taxes to which the state is a party and in

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

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

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

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

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

25 G. in a manner, for statistical purposes, that the

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1 information revealed is not identified as applicable to an
2 individual taxpayer;

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

9 I. to a transferee, assignee, buyer or lessor of a
10 liquor license, the amount and basis of an unpaid assessment of
11 tax for which [~~his~~] the transferor, assignor, seller or lessee
12 is liable;

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

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

21 (1) the names, taxpayer identification numbers
22 and addresses of registered gross receipts taxpayers reporting
23 gross receipts for that municipality under the Gross Receipts
24 and Compensating Tax Act or a local option gross receipts tax
25 imposed by that municipality. The department may also release

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1 the information described in this paragraph quarterly or upon
2 such other periodic basis as the secretary and the municipality
3 may agree; and

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

11 The employees of municipalities receiving information as
12 provided in this subsection shall be subject to the penalty
13 contained in Section 7-1-76 NMSA 1978 if that information is
14 revealed to individuals other than other employees of the
15 municipality in question or the department;

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

23 M. the department shall furnish, upon request by
24 the child support enforcement division of the human services
25 department, the last known address with date of all names

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1 certified to the department as being absent parents of children
2 receiving public financial assistance. The child support
3 enforcement division personnel shall use such information only
4 for the purpose of enforcing the support liability of the
5 absent parents and shall not use the information or disclose it
6 for any other purpose; the child support enforcement division
7 and its employees are subject to the provisions of this section
8 with respect to any information acquired from the department;

9 N. with respect to the tax on gasoline imposed by
10 the Gasoline Tax Act, the department shall make available for
11 public inspection at monthly intervals a report covering the
12 number of gallons of gasoline and ethanol blended fuels
13 received and deducted, and the amount of tax paid by each
14 person required to file a gasoline tax return or pay gasoline
15 tax in the state of New Mexico;

16 O. the identity of a rack operator, importer,
17 blender, supplier or distributor and the number of gallons
18 reported on returns required under the Gasoline Tax Act,
19 Special Fuels Supplier Tax Act or Alternative Fuel Tax Act to a
20 rack operator, importer, blender, distributor or supplier, but
21 only when it is necessary to enable the department to carry out
22 its duties under the Gasoline Tax Act, the Special Fuels
23 Supplier Tax Act or the Alternative Fuel Tax Act;

24 P. the department shall release upon request only
25 the names and addresses of all gasoline or special fuel

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1 distributors, wholesalers and retailers to the New Mexico
2 department of agriculture, the employees of which are thereby
3 subject to the penalty contained in Section 7-1-76 NMSA 1978 if
4 that information is revealed to individuals other than
5 employees of either the New Mexico department of agriculture or
6 the department;

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

12 R. upon request of a municipality or county of this
13 state, the department shall permit officials or employees of
14 the municipality or county to inspect the records of the
15 department pertaining to an increase or decrease to a
16 distribution or transfer made pursuant to Section 7-1-6.15 NMSA
17 1978 for the purpose of reviewing the basis for the increase or
18 decrease. The municipal or county officials or employees
19 receiving information provided in this subsection shall not
20 reveal that information to any person other than another
21 employee of the municipality or the county, the department or a
22 district court, an appellate court or a federal court in a
23 proceeding relating to a disputed distribution and in which
24 both the state and the municipality or county are parties.
25 Information provided pursuant to provisions of this subsection

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1 that is revealed other than as provided in this subsection
2 shall subject the person revealing the information to the
3 penalties contained in Section 7-1-76 NMSA 1978;

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

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

20 (2) in the case of a local option gross
21 receipts tax imposed by a county on a countywide basis,
22 information indicating whether persons shown on a list of
23 businesses located within the county furnished by the county
24 have reported gross receipts to the department but have not
25 reported gross receipts for that county under the Gross

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1 Receipts and Compensating Tax Act or a local option gross
2 receipts tax imposed by that county on a countywide basis; and

3 (3) in the case of a local option gross
4 receipts tax imposed by a county only on persons engaging in
5 business in that area of the county outside of incorporated
6 municipalities, information indicating whether persons on a
7 list of businesses located in that county outside of the
8 incorporated municipalities but within that county furnished by
9 the county have reported gross receipts to the department but
10 have not reported gross receipts for that county outside of the
11 incorporated municipalities within that county under the Gross
12 Receipts and Compensating Tax Act or a local option gross
13 receipts tax imposed by the county only on persons engaging in
14 business in that county outside of the incorporated
15 municipalities.

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

22 T. to authorized representatives of an Indian
23 nation, tribe or pueblo, the territory of which is located
24 wholly or partially within New Mexico, pursuant to the terms of
25 a reciprocal agreement entered into with the Indian nation,

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1 tribe or pueblo for the exchange of that information for tax
2 purposes only; provided that the Indian nation, tribe or pueblo
3 has enacted a confidentiality statute similar to this section;

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

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

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

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

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

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

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

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

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

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

15 X. to the state racing commission, information with
16 respect to the state, municipal and county gross receipts taxes
17 paid by [~~race tracks~~] racetracks;

18 Y. upon request of a corporation authorized to be
19 formed under the Educational Assistance Act, the department
20 shall furnish the last known address and the date of that
21 address of every person certified to the department as an
22 absent obligor of an educational debt due and owed to the
23 corporation or that the corporation has lawfully contracted to
24 collect. The corporation and its officers and employees shall
25 use that information only to enforce the educational debt

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1 obligation of the absent obligors and shall not disclose that
2 information or use it for any other purpose;

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

6 AA. information required by a provision of the Tax
7 Administration Act to be made available to the public by the
8 department;

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

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

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

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1 EE. to a district attorney, a state district court
2 grand jury or federal grand jury for an investigation of or
3 proceeding related to an alleged criminal violation of the tax
4 laws;

5 FF. to a third party subject to a subpoena or levy
6 issued pursuant to the provisions of the Tax Administration
7 Act, the identity of the taxpayer involved, the taxes or tax
8 acts involved and the nature of the proceeding; ~~and~~

9 GG. to the gaming control board, tax returns of
10 license applicants and their affiliates as defined in
11 Subsection E of Section 60-2E-14 NMSA 1978;

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

16 II. upon request of the legislative finance
17 committee, the department shall release information to the
18 legislative finance committee for the purpose of conducting an
19 audit of the department; provided that, with respect to that
20 information, the legislative finance committee and its
21 employees are subject to the same provisions regarding
22 confidentiality of information as employees of the department."