

AN ACT

RELATING TO TAXATION; CREATING FILING AND PAYMENT REQUIREMENTS FOR GASOLINE AND SPECIAL FUEL RETAILERS, WHOLESALERS, RACK OPERATORS AND DISTRIBUTORS; MODIFYING CONFIDENTIALITY REQUIREMENTS; CLARIFYING LIABILITY PROVISIONS FOR THE SPECIAL FUEL INVENTORY TAX; AUTHORIZING THE SECRETARY OF TAXATION AND REVENUE TO TERMINATE INTERSTATE AGREEMENTS FOR SPECIAL FUEL TAX COLLECTIONS; PROVIDING A PENALTY.

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:

"CIVIL PENALTY FOR FAILURE TO FILE AN INFORMATION RETURN.--A taxpayer who fails to file an information return on time pursuant to the Gasoline Tax Act or the Special Fuels Supplier Tax Act shall pay a penalty of fifty dollars (\$50.00) for each late report. This penalty shall be in addition to other applicable penalties."

Section 2. 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 information contained in the return of a taxpayer made pursuant to a law subject to administration and enforcement under the provisions of the Tax Administration Act or any other information about a taxpayer acquired as a result of the employee's 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 another jurisdiction pursuant to an international fuel tax agreement, provided that the information is used for tax purposes only;

E. to a district court, 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 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 an 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 the taxpayer's 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;

F. 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 E of this section;

G. information obtained through the administration

of a 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;

H. in a manner, for statistical purposes, that the information revealed is not identified as applicable to an individual taxpayer;

I. with reference to 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 agreement defined in Section 6-4-12 NMSA 1978;

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

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

L. to a municipality of this state upon its request for a 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 a 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;

M. 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;

N. 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;

O. 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 number of gallons of gasoline and ethanol blended fuels received and deducted, and the amount of tax paid by each person required to file a gasoline tax return or pay gasoline tax in the state of New Mexico;

P. the identity of a rack operator, importer, blender, supplier or distributor and the number of gallons reported on returns required under the Gasoline Tax Act,

Special Fuels Supplier Tax Act or Alternative Fuel Tax Act to a rack operator, importer, blender, distributor or supplier, but only when it is necessary to enable the department to carry out its duties under the Gasoline Tax Act, the Special Fuels Supplier Tax Act or the Alternative Fuel Tax Act;

Q. 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;

R. 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 section shall be construed to allow the department to answer inquiries concerning whether a person has filed a tax return;

S. 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. 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 penalties contained in Section 7-1-76 NMSA 1978;

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

(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;

(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 a 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 incorporated municipalities, information indicating whether persons on a list of businesses located in that county outside of the incorporated municipalities but within that county furnished by the county have reported gross receipts to the department but have not reported gross receipts for that county outside of the incorporated municipalities within that county under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by the county only on persons engaging in business in that county outside of the incorporated municipalities.

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 the information is revealed to individuals other than other officers or employees of the county in question or the department;

U. 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;

V. 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 a 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 those 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 the 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 proprietary information contained in the workpapers that is also available from returns or from other sources not subject to the provisions of this section;

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

X. 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;

Y. to the state racing commission, information with respect to the state, municipal and county gross receipts taxes paid by racetracks;

Z. 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 an absent obligor of an educational debt 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 to enforce the educational debt obligation of the absent obligors and shall not disclose that information or use it for any other purpose;

AA. a 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;

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

CC. 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 the court certifies to the department as 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. upon request by a magistrate court, the department shall furnish the last known address and the date of that address for every person the court certifies to the department as 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;

EE. 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;

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

GG. to a third party subject to a subpoena or levy issued pursuant to 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;

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

II. 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 3. Section 7-1-13.1 NMSA 1978 (being Laws 1988, Chapter 99, Section 3, as amended) is amended to read:

"7-1-13.1. METHOD OF PAYMENT OF CERTAIN TAXES DUE.--

A. Payment of the taxes, including any applicable penalties and interest, described in Paragraph (1), (2), (3) or (4) of this subsection shall be made on or before the date due in accordance with Subsection B of this section if the taxpayer's average tax payment for the group of taxes during the preceding calendar year equaled or exceeded twenty-five thousand dollars (\$25,000):

(1) Group 1: all taxes due under the Withholding Tax Act, the Gross Receipts and Compensating Tax Act, local option gross receipts tax acts, the Interstate Telecommunications Gross Receipts Tax Act and the Leased Vehicle Gross Receipts Tax Act;

(2) Group 2: all taxes due under the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act and the Oil and Gas Ad Valorem Production Tax Act;

(3) Group 3: the tax due under the Natural Gas Processors Tax Act; or

(4) Group 4: all taxes and fees due under the Gasoline Tax Act, the Special Fuels Supplier Tax Act and the Petroleum Products Loading Fee Act.

For taxpayers who have more than one identification number issued by the department, the average tax payment shall be computed by combining the amounts paid under the several identification numbers.

B. Taxpayers who are required to make payment in accordance with the provisions of this section shall make payment by one or more of the following means on or before the due date so that funds are immediately available to the state on or before the due date:

(1) electronic payment; provided that a result of the payment is that funds are immediately available to the state of New Mexico on or before the due date;

(2) currency of the United States;

(3) check drawn on and payable at any New Mexico financial institution provided that the check is received by the department at the place and time required by the department at least one banking day prior to the due date;
or

(4) check drawn on and payable at any domestic non-New Mexico financial institution provided that the check is received by the department at the time and place required by the department at least two banking days prior to the due date.

C. If the taxes required to be paid under this section are not paid in accordance with Subsection B of this

section, the payment is not timely and is subject to the provisions of Sections 7-1-67 and 7-1-69 NMSA 1978.

D. For the purposes of this section, "average tax payment" means the total amount of taxes paid with respect to a group of taxes listed under Subsection A of this section during a calendar year divided by the number of months in that calendar year containing a due date on which the taxpayer was required to pay one or more taxes in the group."

Section 4. A new section of the Gasoline Tax Act is enacted to read:

"RETURNS BY RETAILERS--REQUIREMENTS--EXCEPTION.--
Retailers shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which gasoline is sold in New Mexico. The department may require that the information returns be provided through electronic means if the department provides an exception from that requirement for retailers that purchase limited amounts of fuel."

Section 5. A new section of the Gasoline Tax Act is enacted to read:

"RETURNS BY RACK OPERATORS--REQUIREMENTS.--Rack
operators shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which gasoline is sold in New Mexico. The department may require that an information

return be provided through electronic means if the department provides an exception from that requirement for rack operators that distribute limited amounts of fuel."

Section 6. Section 7-13-5 NMSA 1978 (being Laws 1971, Chapter 207, Section 5, as amended) is amended to read:

"7-13-5. TAX RETURNS--PAYMENT OF TAX.--Distributors shall file gasoline tax returns in form and content as prescribed by the secretary on or before the twenty-fifth day of the month following the month in which gasoline is received in New Mexico. Such returns shall be accompanied by payment of the amount of gasoline tax due. The department may require that the tax returns be provided through electronic means as long as an exception is provided for distributors with limited amounts of fuel distributed."

Section 7. Section 7-13-6 NMSA 1978 (being Laws 1971, Chapter 207, Section 6, as amended) is amended to read:

"7-13-6. RETURNS BY WHOLESALERS--EXCEPTION.--Wholesalers shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which gasoline is sold in New Mexico. The department may require that the information returns be provided through electronic means as long as an exception is provided for wholesalers with limited amounts of fuel sold. Sales of gasoline in quantities of thirty-five gallons or more delivered into the fuel tanks of

aircraft are not wholesale sales for the purposes of this section, and information returns on such sales need not be filed with the department."

Section 8. Section 7-16A-2 NMSA 1978 (being Laws 1992, Chapter 51, Section 2, as amended) is amended to read:

"7-16A-2. DEFINITIONS.--As used in the Special Fuels Supplier Tax Act:

A. "bulk storage" means the storage of special fuels in any tank or receptacle, other than a supply tank, for the purpose of sale by a dealer or for use by a user or for any other purpose;

B. "bulk storage user" means a user who operates, owns or maintains bulk storage in this state from which the user places special fuel into the supply tanks of motor vehicles owned or operated by that user;

C. "dealer" means any person who sells and delivers special fuel to a user;

D. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

E. "government-licensed vehicle" means a motor vehicle lawfully displaying a registration plate, as defined in the Motor Vehicle Code issued by:

(1) the United States or any state,

identifying the motor vehicle as belonging to the United States or any of its agencies or instrumentalities;

(2) the state of New Mexico, identifying the vehicle as belonging to the state of New Mexico or any of its political subdivisions, agencies or instrumentalities; or

(3) any state, identifying the motor vehicle as belonging to an Indian nation, tribe or pueblo or an agency or instrumentality thereof;

F. "gross vehicle weight" means the weight of a motor vehicle or combination motor vehicle without load, plus the weight of any load on the vehicle;

G. "highway" means every road, highway, thoroughfare, street or way, including toll roads, generally open to the use of the public as a matter of right for the purpose of motor vehicle travel and notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair;

H. "motor vehicle" means any self-propelled vehicle or device that is either subject to registration pursuant to Section 66-3-1 NMSA 1978 or is used or may be used on the public highways in whole or in part for the purpose of transporting persons or property and includes any connected trailer or semitrailer;

I. "person" means an individual or any other entity, including, to the extent permitted by law, any

federal, state or other government or any department, agency, instrumentality or political subdivision of any federal, state or other government;

J. "rack operator" means the operator of a refinery in this state, any person who blends special fuel in this state or the owner of special fuel stored at a pipeline terminal in this state;

K. "registrant" means any person who has registered a motor vehicle pursuant to the laws of this state or of another state;

L. "retailer" means a person who sells special fuel generally in quantities of less than two hundred fifty gallons and delivers the special fuel into the supply tanks of motor vehicles;

M. "sale" means any delivery, exchange, gift or other disposition;

N. "secretary" means the secretary of taxation and revenue or the secretary's delegate;

O. "special fuel" means any diesel-engine fuel or kerosene used for the generation of power to propel a motor vehicle, except for gasoline, liquefied petroleum gas, compressed or liquefied natural gas and products specially prepared and sold for use in aircraft propelled by turbo-prop or jet engines;

P. "special fuel user" means any user who is a

registrant, owner or operator of a motor vehicle using special fuel and having a gross vehicle weight in excess of twenty-six thousand pounds;

Q. "state" or "jurisdiction" means a state, territory or possession of the United States, the District of Columbia, the commonwealth of Puerto Rico, a foreign country or a state or province of a foreign country;

R. "supplier" means any person, but not including a rack operator or the United States or any of its agencies except to the extent now or hereafter permitted by the constitution of the United States and laws thereof, who receives special fuel;

S. "supply tank" means any tank or other receptacle in which or by which fuel may be carried and supplied to the fuel-furnishing device or apparatus of the propulsion mechanism of a motor vehicle when the tank or receptacle either contains special fuel or special fuel is delivered into it;

T. "tax" means the special fuel excise tax imposed pursuant to the Special Fuels Supplier Tax Act and, with respect to a special fuel user, "tax" includes any special fuel tax paid to another jurisdiction pursuant to a cooperative agreement to which the state is a party pursuant to Section 9-11-12 NMSA 1978;

U. "user" means any person other than the United

States government or any of its agencies or instrumentalities; the state of New Mexico or any of its political subdivisions, agencies or instrumentalities; or an Indian nation, tribe or pueblo or any agency or instrumentality of an Indian nation, tribe or pueblo, who uses special fuel to propel a motor vehicle on the highways; and

V. "wholesaler" means a person who is not a supplier and who sells special fuel in quantities of two hundred fifty gallons or more and does not deliver special fuel into the supply tanks of motor vehicles."

Section 9. Section 7-16A-5 NMSA 1978 (being Laws 1992, Chapter 51, Section 5) is amended to read:

"7-16A-5. SPECIAL FUEL INVENTORIES.--

A. On the day prior to the day in which the special fuel excise tax rate is increased or decreased, each supplier, dealer and bulk storage user shall take inventory of the gallons of special fuel on hand.

B. Suppliers and bulk storage users shall report total gallons of special fuel in inventory on the day prior to the day in which an increase in the special fuel excise tax rate is effective and pay any special fuel inventory tax due."

Section 10. Section 7-16A-9 NMSA 1978 (being Laws 1992, Chapter 51, Section 9, as amended) is amended to read:

"7-16A-9. TAX RETURNS--PAYMENT OF TAX.--Rack operators

and special fuel suppliers shall file tax returns in form and content as prescribed by the secretary on or before the twenty-fifth day of the month following the month in which special fuel is received in New Mexico. Payment of the tax shall be made with or prior to filing of the return. The department may require that the tax returns be provided through electronic means as long as an exception is provided for rack operators with limited amounts of fuel sold and for suppliers with limited amounts of fuel received."

Section 11. Section 7-16A-11 NMSA 1978 (being Laws 1992, Chapter 51, Section 11) is amended to read:

"7-16A-11. TAX RETURNS--PAYMENT OF TAX--SPECIAL FUEL USERS.--

A. Except as otherwise provided in this section, a special fuel user shall file a special fuel excise tax return in form and content as prescribed by the secretary to conform to the due date for the special fuel excise tax return required by an interstate agreement to which the state is a party.

B. A special fuel user may elect to file and pay the special fuel excise tax annually by conforming to the annual filing requirements of an international fuel tax agreement to which the state is a party.

C. A special fuel user shall file a return in accordance with the conditions and terms of the international

fuel tax agreement to which the state is a party."

Section 12. A new section of the Special Fuels Supplier Tax Act is enacted to read:

"RETURNS BY RETAILERS--REQUIREMENTS.--Retailers shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which special fuel is purchased in New Mexico. The department may require that the information returns be provided through electronic means if the department provides an exception from that requirement for retailers that purchase limited amounts of fuel."

Section 13. A new section of the Special Fuels Supplier Tax Act is enacted to read:

"RETURNS BY WHOLESALERS.--Wholesalers shall file information returns in form and content as prescribed by the department on or before the twenty-fifth day of the month following the month in which special fuel is sold in New Mexico. The department may require that the information returns be provided through electronic means as long as an exception is provided for wholesalers with limited amounts of fuel sold."

Section 14. A new section of the Special Fuels Supplier Tax Act is enacted to read:

"RETURNS BY RACK OPERATORS--REQUIREMENTS.--Rack operators shall file information returns in form and content

