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SENATE BILL 312

**47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006**

INTRODUCED BY

John Arthur Smith

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; REQUIRING THE TAXATION AND REVENUE DEPARTMENT TO KEEP AND TO MAKE AVAILABLE FOR PUBLIC INSPECTION RECORDS OF CREDITS MADE IN EXCESS OF TEN THOUSAND DOLLARS (\$10,000); RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2003.

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

Section 1. Section 7-1-29 NMSA 1978 (being Laws 1965, Chapter 248, Section 31, as amended by Laws 2003, Chapter 398, Section 11 and by Laws 2003, Chapter 439, Section 4) is amended to read:

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

A. In response to a claim for refund made as provided in Section 7-1-26 NMSA 1978, but before a court acquires jurisdiction of the matter, the secretary or the

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1 secretary's delegate may authorize the refund to a person of  
2 the amount of [~~any~~] an overpayment of tax determined by the  
3 secretary or the secretary's delegate to have been erroneously  
4 made by the person, together with allowable interest. A refund  
5 of tax and interest erroneously paid and amounting to more than  
6 ten thousand dollars (\$10,000) may be made to a person only  
7 with the prior approval of the attorney general, except that  
8 the secretary or the secretary's delegate may make refunds with  
9 respect to:

10 (1) the Oil and Gas Severance Tax Act, the Oil  
11 and Gas Conservation Tax Act, the Oil and Gas Emergency School  
12 Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the  
13 Natural Gas Processors Tax Act or the Oil and Gas Production  
14 Equipment Ad Valorem Tax Act, Section 7-13-17 NMSA 1978 and the  
15 Cigarette Tax Act without the prior approval of the attorney  
16 general regardless of the amount; and

17 (2) the Corporate Income and Franchise Tax Act  
18 amounting to less than twenty thousand dollars (\$20,000)  
19 without the prior approval of the attorney general.

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

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

9           D. In an audit by the department or a managed audit  
10 covering multiple reporting periods ~~[where]~~ in which both  
11 underpayments and overpayments of a tax have been made in  
12 different reporting periods, the department shall credit the  
13 tax overpayments against the underpayments, provided that the  
14 taxpayer files a claim for refund of the overpayments. An  
15 overpayment shall be applied as a credit first to the earliest  
16 underpayment and then to succeeding underpayments. An  
17 underpayment of tax to which an overpayment is credited  
18 pursuant to this section shall be deemed paid in the period in  
19 which the overpayment was made or the period to which the  
20 overpayment was credited against an underpayment, whichever is  
21 later. If the overpayments credited pursuant to this section  
22 exceed the underpayments of a tax, the amount of the net  
23 overpayment for the periods covered in the audit shall be  
24 refunded to the taxpayer.

25           E. When a taxpayer makes a payment identified to a  
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1 particular return or assessment, and the department determines  
2 that the payment exceeds the amount due pursuant to that return  
3 or assessment, the secretary may apply the excess to the  
4 taxpayer's other liabilities [~~under~~] pursuant to the tax acts  
5 to which the return or assessment applies, without requiring  
6 the taxpayer to file a claim for a refund. The liability to  
7 which an overpayment is applied pursuant to this section shall  
8 be deemed paid in the period in which the overpayment was made  
9 or the period to which the overpayment was applied, whichever  
10 is later.

11 F. If the department determines, upon review of an  
12 original or amended income tax return, corporate income and  
13 franchise tax return, estate tax return, special fuels excise  
14 tax return or oil and gas tax return, that there has been an  
15 overpayment of tax for the taxable period to which the return  
16 or amended return relates in excess of the amount due to be  
17 refunded to the taxpayer [~~under~~] pursuant to the provisions of  
18 Subsection J of Section 7-1-26 NMSA 1978, the department may  
19 refund that excess amount to the taxpayer without requiring the  
20 taxpayer to file a refund claim.

21 G. Records of refunds and credits made in excess of  
22 ten thousand dollars (\$10,000) shall be available for  
23 inspection by the public. The department shall keep such  
24 records for a minimum of three years from the date of the  
25 refund or credit."

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1           Section 2.   EFFECTIVE DATE.--The effective date of the  
2 provisions of this act is July 1, 2006.

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