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SENATE BILL 318

**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; INCREASING THE CAP ON A PENALTY IMPOSED FOR FAILURE TO PAY A TAX OR TO FILE A RETURN; CHANGING THE RATE OF INTEREST PAID ON AN UNDERPAYMENT OR OVERPAYMENT OF A TAX.

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

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

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

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

(1) for income tax imposed on a member of the armed services of the United States serving in a combat zone

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1 under orders of the president of the United States, interest  
2 shall accrue only for the period beginning the day after any  
3 applicable extended due date if the tax is not paid;

4 (2) if the amount of interest due at the time  
5 payment is made is less than one dollar (\$1.00), [~~then no~~]  
6 interest shall not be due;

7 (3) if demand is made for payment of a tax,  
8 including accrued interest, and if the tax is paid within ten  
9 days after the date of the demand, [~~no~~] interest on the amount  
10 paid shall not be imposed for the period after the date of the  
11 demand;

12 (4) if a managed audit is completed by the  
13 taxpayer on or before the date required, as provided in the  
14 agreement for the managed audit, and payment of any tax found  
15 to be due is made in full within thirty days of the date the  
16 secretary has mailed or delivered an assessment for the tax to  
17 the taxpayer, [~~no~~] interest shall not be due on the assessed  
18 tax;

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

24 (6) if the department does not issue an  
25 assessment for the tax program and period within the time

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1 provided in Subsection D of Section 7-1-11.2 NMSA 1978,  
2 interest shall be paid from the first day following the day on  
3 which the tax becomes due until the tax is paid, excluding the  
4 period between either:

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

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

12 (7) if the taxpayer was not provided with  
13 proper notices as required in Section 7-1-11.2 NMSA 1978,  
14 interest shall be paid from the first day following the day on  
15 which the tax becomes due until the tax is paid, excluding the  
16 period between one hundred eighty days prior to the date of  
17 assessment and the date of assessment.

18 B. Interest due to the state under Subsection A or  
19 D of this section shall be at the rate [~~of fifteen percent a~~  
20 ~~year~~] established for individuals pursuant to Section 6621 of  
21 the Internal Revenue Code, computed on a daily basis; provided  
22 that if a different rate is specified by a compact or other  
23 interstate agreement to which New Mexico is a party, that rate  
24 shall be applied to amounts due under the compact or other  
25 agreement.

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1 C. Nothing in this section shall be construed to  
2 impose interest on interest or interest on the amount of ~~any~~  
3 a penalty.

4 D. If ~~any~~ a tax required to be paid in accordance  
5 with Section 7-1-13.1 NMSA 1978 is not paid in the manner  
6 required by that section, interest shall be paid to the state  
7 on the amount required to be paid in accordance with Section  
8 7-1-13.1 NMSA 1978. If interest is due under this subsection  
9 and is also due under Subsection A of this section, interest  
10 shall be due and collected only pursuant to Subsection A of  
11 this section."

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

16 "7-1-68. INTEREST ON OVERPAYMENTS.--

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

20 B. Interest on overpayments of tax shall accrue and  
21 be paid at the rate ~~[of fifteen percent a year]~~ established for  
22 individuals pursuant to Section 6621 of the Internal Revenue  
23 Code, computed on a daily basis; provided that if a different  
24 rate is specified by a compact or other interstate agreement to  
25 which New Mexico is a party, that rate shall apply to amounts

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1 due under the compact or other agreement.

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

11 D. [~~No~~] Interest shall not be allowed or paid with  
12 respect to an amount credited or refunded if:

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

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

16 (a) fifty-five days of the date of the  
17 claim for refund of income tax, pursuant to either the Income  
18 Tax Act or the Corporate Income and Franchise Tax Act for the  
19 tax year immediately preceding the tax year in which the claim  
20 is made; or

21 (b) seventy-five days of the date of the  
22 claim for refund of gasoline tax to users of gasoline off the  
23 highways;

24 (3) the credit or refund is made within one  
25 hundred twenty days of the date of the claim for refund of

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1 income tax, pursuant to the Income Tax Act or the Corporate  
2 Income and Franchise Tax Act, for any tax year more than one  
3 year prior to the year in which the claim is made;

4 (4) Sections 6611(f) and 6611(g) of the  
5 Internal Revenue Code [~~as those sections may be amended or~~  
6 ~~renumbered~~] prohibit payment of interest for federal income tax  
7 purposes;

8 (5) the credit or refund is made within sixty  
9 days of the date of the claim for refund of any tax other than  
10 income tax;

11 (6) the credit results from overpayments found  
12 in an audit of multiple reporting periods and applied to  
13 underpayments found in that audit or refunded as a net  
14 overpayment to the taxpayer pursuant to Section 7-1-29 NMSA  
15 1978;

16 (7) the department applies the credit or  
17 refund to an intercept program, to the taxpayer's estimated  
18 payment prior to the due date for the estimated payment or to  
19 offset prior liabilities of the taxpayer pursuant to Subsection  
20 E of Section 7-1-29 NMSA 1978; or

21 (8) the credit or refund results from  
22 overpayments the department finds pursuant to Subsection F of  
23 Section 7-1-29 NMSA 1978 that exceed the refund claimed by the  
24 taxpayer on the return.

25 E. Nothing in this section shall be construed to

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1 require the payment of interest upon interest."

2 Section 3. Section 7-1-69 NMSA 1978 (being Laws 1965,  
3 Chapter 248, Section 70, as amended) is amended to read:

4 "7-1-69. CIVIL PENALTY FOR FAILURE TO PAY TAX OR FILE A  
5 RETURN.--

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

15 (1) two percent per month or any fraction of a  
16 month from the date the tax was due multiplied by the amount of  
17 tax due but not paid, not to exceed [~~ten~~] sixteen percent of  
18 the tax due but not paid;

19 (2) two percent per month or any fraction of a  
20 month from the date the return was required to be filed  
21 multiplied by the tax liability established in the late return,  
22 not to exceed [~~ten~~] sixteen percent of the tax liability  
23 established in the late return; or

24 (3) a minimum of five dollars (\$5.00), but the  
25 five-dollar (\$5.00) minimum penalty shall not apply to taxes

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1 levied under the Income Tax Act or taxes administered by the  
2 department pursuant to Subsection B of Section 7-1-2 NMSA 1978.

3 B. ~~[No]~~ A penalty shall not be assessed against a  
4 taxpayer if the failure to pay an amount of tax when due  
5 results from a mistake of law made in good faith and on  
6 reasonable grounds.

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

13 D. In the case of failure, with willful intent to  
14 evade or defeat a tax, to pay when due the amount of tax  
15 required to be paid, there shall be added to the amount fifty  
16 percent of the tax or a minimum of twenty-five dollars  
17 (\$25.00), whichever is greater, as penalty.

18 E. If demand is made for payment of a tax,  
19 including penalty imposed pursuant to this section, and if the  
20 tax is paid within ten days after the date of such demand, ~~[no]~~  
21 a penalty shall not be imposed for the period after the date of  
22 the demand with respect to the amount paid.

23 F. If a taxpayer makes electronic payment of a tax  
24 but the payment does not include all of the information  
25 required by the department pursuant to the provisions of

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1 Section 7-1-13.1 NMSA 1978 and if the department does not  
2 receive the required information within five business days from  
3 the later of the date a request by the department for that  
4 information is received by the taxpayer or the due date, the  
5 taxpayer shall be subject to a penalty of two percent per month  
6 or any fraction of a month from the fifth day following the  
7 date the request is received. If a penalty is imposed under  
8 Subsection A of this section with respect to the same  
9 transaction for the same period, ~~[no]~~ a penalty shall not be  
10 imposed under this subsection.

11 G. ~~[No]~~ A penalty shall not be imposed on:

12 (1) tax due in excess of tax paid in  
13 accordance with an approved estimated basis pursuant to Section  
14 7-1-10 NMSA 1978;

15 (2) tax due as the result of a managed audit;  
16 or

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

20 Section 4. EFFECTIVE DATE.--The effective date of the  
21 provisions of this act is July 1, 2006.

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