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SENATE BILL 321

**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 MAIL ASSESSMENTS OF TAXES, INTEREST, PENALTIES AND OTHER PAYMENTS TO THE LAST KNOWN MAILING ADDRESSES OF PERSONS OWING THOSE PAYMENTS; REQUIRING THE DEPARTMENT TO ISSUE NOTICES UPON RECEIPT OF CLAIMS FOR REFUND; PROVIDING FOR ESTABLISHMENT OF CERTAIN CLAIMS FOR REFUND AS PROTECTIVE CLAIMS.

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:

"[NEW MATERIAL] MAILING OF ASSESSMENTS.--The department shall mail assessments of taxes, interest, penalties and other payments due to the department to the last known mailing address shown in department records of the person who owes

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1 those payments to the department."

2 Section 2. 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]~~ A person who believes that an amount of  
6 tax has been paid by or withheld from that person in excess of  
7 that for which the person was liable, who has been denied ~~[any]~~  
8 a credit or rebate claimed or who claims a prior right to  
9 property in the possession of the department pursuant to a levy  
10 made under authority of Sections 7-1-31 through 7-1-34 NMSA  
11 1978 may claim a refund by directing to the secretary, within  
12 the time limited by the provisions of Subsections D, E and F of  
13 this section, a written claim for refund. Except as provided  
14 in Subsection J of this section, a refund claim shall include  
15 the taxpayer's name, address and identification number, the  
16 type of tax for which a refund is being claimed, the sum of  
17 money being claimed, the period for which overpayment was made  
18 and ~~[the basis for the refund. As used in this subsection,~~  
19 ~~"basis for the refund" means]~~ a brief statement of the facts  
20 and the law on which the claim is based. Upon receipt of a  
21 claim for a refund of gross receipts tax, compensating tax,  
22 personal income tax or corporate income tax, other than a claim  
23 described in Subsection J of this section, the department shall  
24 promptly send a notice to the person filing the claim stating  
25 that it has received the claim and indicating whether it

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1 considers the claim to be complete. The department and the  
2 person filing the claim may agree to designate the claim as a  
3 protective claim.

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

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

12 (2) For a claim other than a protective  
13 claim, if the department has neither granted nor denied any  
14 portion of a claim for refund within one hundred twenty days of  
15 the date the claim was mailed or delivered to the department,  
16 the person may refile it within the time limits set forth in  
17 Subsection ~~[E]~~ D of this section or may within ninety days  
18 elect to pursue one, but only one, of the remedies in  
19 Subsection C of this section.

20 (3) After the expiration of the two hundred  
21 ten days from the date the claim was mailed or delivered to the  
22 department, ~~[the department may not approve or disapprove the~~  
23 ~~claim unless the person has pursued one of the remedies under~~  
24 ~~Subsection C of this section]~~ if the person has failed to  
25 pursue one of the remedies pursuant to Subsection C of this

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1 section, the department may act on the claim; provided that the  
2 taxpayer establishes that the claim was filed in a timely  
3 manner and that the claim was complete. In the event that the  
4 department approves such a claim after the expiration of more  
5 than two hundred ten days from the date the claim was filed,  
6 interest shall not be allowed pursuant to Section 7-1-68 NMSA  
7 1978. The department shall not act on that claim more than one  
8 year from the end of the calendar year in which the claim was  
9 filed.

10 (4) For a protective claim, if the department  
11 has not acted within one hundred twenty days from either the  
12 date of a final decision in the lead case from which appeal may  
13 not be taken or the last date on which appeal may be taken when  
14 no appeal is taken, any part of the claim not granted or denied  
15 is denied.

16 C. A person may elect to pursue one ~~[but only one]~~  
17 of the remedies in Paragraphs (1) and (2) of this subsection.  
18 ~~[In any case]~~ If a person does timely pursue more than one  
19 remedy, the person shall be deemed to have elected the first  
20 remedy invoked. The remedies are as follows:

21 (1) the person may direct to the secretary a  
22 written protest against the denial of, or failure to either  
23 allow or deny the claim or portion ~~[thereof]~~ of the claim,  
24 which shall be set for hearing by a hearing officer designated  
25 by the secretary promptly after the receipt of the protest in

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1 accordance with the provisions of Section 7-1-24 NMSA 1978, and  
2 pursue the remedies of appeal from decisions adverse to the  
3 protestant as provided in Section 7-1-25 NMSA 1978; or

4 (2) the person may commence a civil action in  
5 the district court for Santa Fe county by filing a complaint  
6 setting forth the circumstance of the claimed overpayment,  
7 alleging that on account thereof the state is indebted to the  
8 plaintiff in the amount stated, together with any interest  
9 allowable, demanding the refund to the plaintiff of that amount  
10 and reciting the facts of the claim for refund. The plaintiff  
11 or the secretary may appeal from any final decision or order of  
12 the district court to the court of appeals.

13 D. Except as otherwise provided in Subsections E  
14 and F of this section, [~~no~~] a credit or refund of any amount  
15 [~~may~~] shall not be allowed or made to any person unless as the  
16 result of a claim made by that person as provided in this  
17 section:

18 (1) within three years of the end of the  
19 calendar year in which:

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

23 (b) the final determination of value  
24 occurs with respect to [~~any~~] an overpayment that resulted from  
25 a disapproval by [~~any~~] an agency of the United States or the

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1 state of New Mexico or ~~[any]~~ a court of increase in value of a  
2 product subject to taxation under the Oil and Gas Severance Tax  
3 Act, the Oil and Gas Conservation Tax Act, the Oil and Gas  
4 Emergency School Tax Act, the Oil and Gas Ad Valorem Production  
5 Tax Act or the Natural Gas Processors Tax Act; or

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

8 (2) when an amount of a claim for credit under  
9 the provisions of the Investment Credit Act, Laboratory  
10 Partnership with Small Business Tax Credit Act, Technology Jobs  
11 Tax Credit Act, Capital Equipment Tax Credit Act or similar act  
12 or for the rural job tax credit pursuant to ~~[Sections]~~ Section  
13 7-2E-1 ~~[and 7-2E-2]~~ NMSA 1978 or similar credit has been  
14 denied, the taxpayer may claim a refund of the credit no later  
15 than one year after the date of the denial;

16 (3) when a taxpayer under audit by the  
17 department has signed a waiver of the limitation on assessments  
18 ~~[on or after July 1, 1993]~~ pursuant to Subsection F of Section  
19 7-1-18 NMSA 1978, the taxpayer may file a claim for refund of  
20 the same tax paid for the same period for which the waiver was  
21 given, until a date one year after the later of the date of the  
22 mailing of an assessment issued pursuant to the audit, the date  
23 of the mailing of final audit findings to the taxpayer or the  
24 date a proceeding is begun in court by the department with  
25 respect to the same tax and the same period;

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1 (4) if the payment of an amount of tax was not  
2 made within three years of the end of the calendar year in  
3 which the original due date of the tax or date of the  
4 assessment of the department occurred, a claim for refund of  
5 that amount of tax can be made within one year of the date on  
6 which the tax was paid; or

7 (5) when a taxpayer has been assessed a  
8 tax [~~on or after July 1, 1993 under~~] pursuant to Subsection B,  
9 C or D of Section 7-1-18 NMSA 1978 and when the assessment  
10 applies to a period ending at least three years prior to the  
11 beginning of the year in which the assessment was made, the  
12 taxpayer may claim a refund for the same tax for the period of  
13 the assessment or for any period following that period within  
14 one year of the date of the assessment unless a longer period  
15 for claiming a refund is provided in this section.

16 E. [~~No~~] A credit or refund shall not be allowed or  
17 made to [~~any~~] a person claiming a refund of gasoline tax under  
18 Section 7-13-11 NMSA 1978 unless notice of the destruction of  
19 the gasoline was given the department within thirty days of the  
20 actual destruction and the claim for refund is made within six  
21 months of the date of destruction. [~~No~~] A credit or refund  
22 shall not be allowed or made to [~~any~~] a person claiming a  
23 refund of gasoline tax under Section 7-13-17 NMSA 1978 unless  
24 the refund is claimed within six months of the date of purchase  
25 of the gasoline and the gasoline has been used at the time the

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1 claim for refund is made.

2 F. If, as a result of an audit by the internal  
3 revenue service or the filing of an amended federal return  
4 changing a prior election or making any other change for which  
5 federal approval is required by the Internal Revenue Code,  
6 [~~any~~] an adjustment of federal tax is made with the result that  
7 there would have been an overpayment of tax if the adjustment  
8 to federal tax had been applied to the taxable period to which  
9 it relates, claim for credit or refund of only that amount  
10 based on the adjustment may be made as provided in this section  
11 within one year of the date of the internal revenue service  
12 audit adjustment or payment of the federal refund or within the  
13 period limited by Subsection D of this section, whichever  
14 expires later. Interest computed at the rate specified in  
15 Subsection B of Section 7-1-68 NMSA 1978 shall be allowed on  
16 any such claim for refund from the date one hundred twenty days  
17 after the claim is made until the date the final decision to  
18 grant the credit or refund is made.

19 G. If as a result of an audit by the department or  
20 a managed audit covering multiple periods an overpayment of tax  
21 is found in any period under the audit, that overpayment may be  
22 credited against an underpayment of the same tax found in  
23 another period under audit pursuant to Section 7-1-29 NMSA  
24 1978, provided that the taxpayer files a claim for refund for  
25 the overpayments identified in the audit.

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1           H. ~~[Any]~~ A refund of tax paid under ~~[any]~~ a tax or  
2 tax act administered under Subsection B of Section 7-1-2 NMSA  
3 1978 may be made, at the discretion of the department, in the  
4 form of credit against future tax payments if future tax  
5 liabilities in an amount at least equal to the credit amount  
6 reasonably may be expected to become due.

7           I. For the purposes of this section, the term "oil  
8 and gas tax return" means a return reporting tax due with  
9 respect to oil, natural gas, liquid hydrocarbons or carbon  
10 dioxide pursuant to 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.

15           J. The filing of a fully completed original income  
16 tax return, corporate income tax return, corporate income and  
17 franchise tax return, estate tax return or special fuel excise  
18 tax return that shows a balance due the taxpayer or a fully  
19 completed amended income tax return, an amended corporate  
20 income tax return, an amended corporate income and franchise  
21 tax return, an amended estate tax return, an amended special  
22 fuel excise tax return or an amended oil and gas tax return  
23 that shows a lesser tax liability than the original return  
24 constitutes the filing of a claim for refund for the difference  
25 in tax due shown on the original and amended returns.

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1                   K. For the purposes of this section:

2                               (1) "lead case" means the previously filed  
3 claim or protest described in Paragraph (2) of this subsection;  
4 and

5                               (2) "protective claim" means a claim for a  
6 refund filed by a person asserting that the person's  
7 entitlement to a refund will be established by a final decision  
8 of a New Mexico court of competent jurisdiction on a claim for  
9 a refund or protest previously filed by that person or another.

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

12                   Section 3. 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, computed on a  
22 daily basis [~~provided that~~].

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 [~~G.~~] 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 [~~D.~~] E. No interest shall be allowed or paid with  
13 respect to an amount credited or refunded if:

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

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

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

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

25 (3) the credit or refund is made within one

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

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

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

12 (6) the credit results from overpayments found  
13 in an audit of multiple reporting periods and applied to  
14 underpayments found in that audit or refunded as a net  
15 overpayment to the taxpayer pursuant to Section 7-1-29 NMSA  
16 1978;

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

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

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

7                   (10) the department acts to grant the credit  
8 or refund pursuant to Paragraph (3) of Subsection B of Section  
9 7-1-26 NMSA 1978.

10                   ~~[E-]~~ F. Nothing in this section shall be construed  
11 to require the payment of interest upon interest."

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