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SENATE BILL 537

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 THE TAXATION AND REVENUE DEPARTMENT; PERMITTING THE DEPARTMENT TO DISCLOSE PERSONAL INCOME TAX INFORMATION TO THE BUREAU OF BUSINESS AND ECONOMIC RESEARCH AND TO THE EARTH DATA ANALYSIS CENTER OF THE UNIVERSITY OF NEW MEXICO FOR POPULATION AND DEMOGRAPHIC RESEARCH PURPOSES AND TAXPAYER INFORMATION TO LAW ENFORCEMENT AGENCIES OF THE STATE FOR JOINT INVESTIGATION PURPOSES; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2005.

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 2005, Chapter 107, Section 1 and by Laws 2005, Chapter 108, Section 2 and by Laws 2005, Chapter 109, Section 2) is amended to read:

"7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER

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1 INFORMATION.--It is unlawful for an employee of the department
2 or a former employee of the department to reveal to an
3 individual other than another employee of the department
4 information contained in the return of a taxpayer made pursuant
5 to a law subject to administration and enforcement under the
6 provisions of the Tax Administration Act or any other
7 information about a taxpayer acquired as a result of the
8 employee's employment by the department and not available from
9 public sources, except:

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

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

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

25 D. to another jurisdiction pursuant to an

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1 international fuel tax agreement, provided that the information
2 is used for tax purposes only;

3 E. to a district court, an appellate court or a
4 federal court:

5 (1) in response to an order thereof in an
6 action relating to taxes or an action for tax fraud or any
7 other crime that may affect taxes due to the state to which the
8 state is a party and in which the information sought is about a
9 taxpayer who is party to the action and is material to the
10 inquiry, in which case only that information may be required to
11 be produced in court and admitted in evidence subject to court
12 order protecting the confidentiality of the information and no
13 more;

14 (2) in an action in which the department is
15 attempting to enforce an act with which the department is
16 charged or to collect a tax; or

17 (3) in any matter in which the department is a
18 party and the taxpayer has put the taxpayer's own liability for
19 taxes at issue, in which case only that information regarding
20 the taxpayer who is party to the action may be produced, but
21 this shall not prevent the disclosure of department policy or
22 interpretation of law arising from circumstances of a taxpayer
23 who is not a party;

24 F. to the taxpayer or to the taxpayer's authorized
25 representative; provided, however, that nothing in this

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1 subsection shall be construed to require any employee to
2 testify in a judicial proceeding except as provided in
3 Subsection E of this section;

4 G. information obtained through the administration
5 of a law not subject to administration and enforcement under
6 the provisions of the Tax Administration Act to the extent that
7 release of that information is not otherwise prohibited by law;

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

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

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

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

25 L. to a municipality of this state upon its request

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1 for a period specified by that municipality within the twelve
2 months preceding the request for the information by that
3 municipality:

4 (1) the names, taxpayer identification numbers
5 and addresses of registered gross receipts taxpayers reporting
6 gross receipts for that municipality under the Gross Receipts
7 and Compensating Tax Act or a local option gross receipts tax
8 imposed by that municipality. The department may also release
9 the information described in this paragraph quarterly or upon
10 such other periodic basis as the secretary and the municipality
11 may agree; and

12 (2) information indicating whether persons
13 shown on a list of businesses located within that municipality
14 furnished by the municipality have reported gross receipts to
15 the department but have not reported gross receipts for that
16 municipality under the Gross Receipts and Compensating Tax Act
17 or a local option gross receipts tax imposed by that
18 municipality.

19 The employees of municipalities receiving information as
20 provided in this subsection shall be subject to the penalty
21 contained in Section 7-1-76 NMSA 1978 if that information is
22 revealed to individuals other than other employees of the
23 municipality in question or the department;

24 M. to the commissioner of public lands for use in
25 auditing that pertains to rentals, royalties, fees and other

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1 payments due the state under land sale, land lease or other
2 land use contracts; the commissioner of public lands and
3 employees of the commissioner are subject to the same
4 provisions regarding confidentiality of information as
5 employees of the department;

6 N. the department shall furnish, upon request by
7 the child support enforcement division of the human services
8 department, the last known address with date of all names
9 certified to the department as being absent parents of children
10 receiving public financial assistance. The child support
11 enforcement division personnel shall use such information only
12 for the purpose of enforcing the support liability of the
13 absent parents and shall not use the information or disclose it
14 for any other purpose; the child support enforcement division
15 and its employees are subject to the provisions of this section
16 with respect to any information acquired from the department;

17 ~~[N.]~~ O. the department shall furnish to the
18 information systems division of the general services
19 department, by electronic media, a database containing New
20 Mexico personal income tax filers by county, which shall be
21 updated quarterly. The database information shall be used only
22 for the purpose of producing the random jury list for the
23 selection of petit or grand jurors for the state courts
24 pursuant to Section 38-5-3 NMSA 1978. The database shall not
25 contain any financial information. If any information in the

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1 database is revealed by an employee of the administrative
2 office of the courts or the information systems division to
3 individuals other than employees of the administrative office
4 of the courts, the state courts, the information systems
5 division or the department, the employee shall be subject to
6 the penalty provisions of Section 7-1-76 NMSA 1978;

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

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

22 ~~[Q.]~~ R. the department shall release upon request
23 only the names and addresses of all gasoline or special fuel
24 distributors, wholesalers and retailers to the New Mexico
25 department of agriculture, the employees of which are thereby

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1 subject to the penalty contained in Section 7-1-76 NMSA 1978 if
2 that information is revealed to individuals other than
3 employees of either the New Mexico department of agriculture or
4 the department;

5 ~~[R-]~~ S. the department shall answer all inquiries
6 concerning whether a person is or is not a registered taxpayer
7 for tax programs that require registration, but nothing in this
8 ~~[section]~~ subsection shall be construed to allow the department
9 to answer inquiries concerning whether a person has filed a tax
10 return;

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

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1 shall subject the person revealing the information to the
2 penalty contained in Section 7-1-76 NMSA 1978;

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

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

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

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

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

21 [~~U.~~] V. to authorized representatives of an Indian
22 nation, tribe or pueblo, the territory of which is located
23 wholly or partially within New Mexico, pursuant to the terms of
24 a reciprocal agreement entered into with the Indian nation,
25 tribe or pueblo for the exchange of that information for tax

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1 purposes only; provided that the Indian nation, tribe or pueblo
2 has enacted a confidentiality statute similar to this section;

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

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

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

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

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

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

25 (c) a purchaser of products severed from

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1 a property subject to the audit; or

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

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

11 [~~X-~~] Y. to the public regulation commission,
12 information with respect to the Corporate Income and Franchise
13 Tax Act required to enable the commission to carry out its
14 duties;

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

18 [~~Z-~~] AA. upon request of a corporation authorized
19 to be formed under the Educational Assistance Act, the
20 department shall furnish the last known address and the date of
21 that 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 ~~[AA-]~~ BB. a decision and order made by a hearing
4 officer pursuant to Section 7-1-24 NMSA 1978 with respect to a
5 protest filed with the secretary on or after July 1, 1993;

6 ~~[BB-]~~ CC. information required by a provision of
7 the Tax Administration Act to be made available to the public
8 by the department;

9 ~~[CC-]~~ DD. 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 ~~[DD-]~~ EE. 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 ~~[EE-]~~ FF. to the national tax administration
22 agencies of Mexico and Canada, provided the agency receiving
23 the 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 ~~[FF.]~~ GG. to a district attorney, a state district
2 court grand jury or federal grand jury for an investigation of
3 or proceeding related to an alleged criminal violation of the
4 tax laws;

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

9 ~~[HH.]~~ II. to the gaming control board, tax returns
10 of license applicants and their affiliates as provided in
11 Subsection E of Section 60-2E-14 NMSA 1978; ~~[and]~~

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

17 ~~[II.]~~ KK. to representatives of the workers'
18 compensation administration, authorized by the director of the
19 workers' compensation administration for this purpose, to
20 facilitate the identification of taxpayers that are delinquent
21 or noncompliant in payment of fees required by Section 52-1-9.1
22 or 52-5-19 NMSA 1978;

23 ~~[JJ.]~~ LL. to the secretary of labor or the
24 secretary's delegate for use in enforcement of unemployment
25 insurance collections pursuant to the terms of a reciprocal

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1 agreement entered into with the secretary of labor for exchange
2 of information; the secretary of labor and employees of the
3 labor department are subject to the provisions regarding
4 confidentiality of information contained in the Tax
5 Administration Act; [~~and~~]

6 ~~KK.~~ MM. information that the department is
7 authorized by the Tax Administration Act to release to a local
8 body that licenses professions or occupations pursuant to
9 Chapter 36, Article 2 NMSA 1978 or Chapter 61 NMSA 1978;

10 NN. personal income tax information to the bureau
11 of business and economic research and to the earth data
12 analysis center of the university of New Mexico for the
13 purposes of population and demographic research; provided that
14 the bureau or center shall not release the data in any form
15 other than as statistics that protect taxpayer identity; and

16 OO. to a law enforcement agency of the state or of
17 a political subdivision of the state with which the department
18 is conducting a joint investigation; provided that the
19 information released is for purposes of that investigation."