

AN ACT

RELATING TO TAX ADMINISTRATION; IDENTIFYING TAX PROVISIONS
SUBJECT TO THE TAX ADMINISTRATION ACT; PERMITTING DISCLOSURE
OF CERTAIN RECORDS OR CREDITS THAT THE DEPARTMENT IS REQUIRED
TO MAKE AVAILABLE FOR PUBLIC INSPECTION; 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 7-1-2 NMSA 1978 (being Laws 1965,
Chapter 248, Section 2, as amended) is amended to read:

"7-1-2. APPLICABILITY.--The Tax Administration Act
applies to and governs:

A. the administration and enforcement of the
following taxes or tax acts as they now exist or may hereafter
be amended:

- (1) Income Tax Act;
- (2) Withholding Tax Act;
- (3) Venture Capital Investment Act;
- (4) Gross Receipts and Compensating Tax Act
and any state gross receipts tax;
- (5) Liquor Excise Tax Act;
- (6) Local Liquor Excise Tax Act;
- (7) any municipal local option gross
receipts tax;
- (8) any county local option gross receipts

tax;

(9) Special Fuels Supplier Tax Act;

(10) Gasoline Tax Act;

(11) petroleum products loading fee, which fee shall be considered a tax for the purpose of the Tax Administration Act;

(12) Alternative Fuel Tax Act;

(13) Cigarette Tax Act;

(14) Estate Tax Act;

(15) Railroad Car Company Tax Act;

(16) Investment Credit Act, rural job tax credit, Laboratory Partnership with Small Business Tax Credit Act, Technology Jobs Tax Credit Act, film production tax credit, New Mexico filmmaker tax credit, Affordable Housing Tax Credit Act, high-wage jobs tax credit and Research and Development Small Business Tax Credit Act;

(17) Corporate Income and Franchise Tax Act;

(18) Uniform Division of Income for Tax Purposes Act;

(19) Multistate Tax Compact;

(20) Tobacco Products Tax Act; and

(21) the telecommunications relay service surcharge imposed by Section 63-9F-11 NMSA 1978, which surcharge shall be considered a tax for the purposes of the Tax Administration Act;

B. the administration and enforcement of the following taxes, surtaxes, advanced payments or tax acts as they now exist or may hereafter be amended:

- (1) Resources Excise Tax Act;
- (2) Severance Tax Act;
- (3) any severance surtax;
- (4) Oil and Gas Severance Tax Act;
- (5) Oil and Gas Conservation Tax Act;
- (6) Oil and Gas Emergency School Tax Act;
- (7) Oil and Gas Ad Valorem Production Tax Act;
- (8) Natural Gas Processors Tax Act;
- (9) Oil and Gas Production Equipment Ad Valorem Tax Act;
- (10) Copper Production Ad Valorem Tax Act;
- (11) any advance payment required to be made by any act specified in this subsection, which advance payment shall be considered a tax for the purposes of the Tax Administration Act;
- (12) Enhanced Oil Recovery Act;
- (13) Natural Gas and Crude Oil Production Incentive Act; and
- (14) intergovernmental production tax credit and intergovernmental production equipment tax credit;

C. the administration and enforcement of the

following taxes, surcharges, fees or acts as they now exist or may hereafter be amended:

- (1) Weight Distance Tax Act;
- (2) the workers' compensation fee authorized by Section 52-5-19 NMSA 1978, which fee shall be considered a tax for purposes of the Tax Administration Act;
- (3) Uniform Unclaimed Property Act (1995);
- (4) 911 emergency surcharge and the network and database surcharge, which surcharges shall be considered taxes for purposes of the Tax Administration Act;
- (5) the solid waste assessment fee authorized by the Solid Waste Act, which fee shall be considered a tax for purposes of the Tax Administration Act;
- (6) the water conservation fee imposed by Section 74-1-13 NMSA 1978, which fee shall be considered a tax for the purposes of the Tax Administration Act; and
- (7) the gaming tax imposed pursuant to the Gaming Control Act; and

D. the administration and enforcement of all other laws, with respect to which the department is charged with responsibilities pursuant to the Tax Administration Act, but only to the extent that the other laws do not conflict with the Tax Administration Act."

Section 2. Section 7-1-8 NMSA 1978 (being Laws 1965, Chapter 248, Section 13, as amended by Laws 2005, Chapter 107, HB 667
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Section 1 and by Laws 2005, Chapter 108, Section 2 and also by Laws 2005, Chapter 109, Section 2) 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, the federation of tax administrators or their authorized representatives; provided that the information is used for tax

purposes only and is disclosed by the multistate tax commission or the federation of tax administrators 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 or an action for tax fraud or any other crime that may affect taxes due to the state 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, 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. the department shall furnish to the information

systems division of the general services department, by electronic media, a database containing New Mexico personal income tax filers by county, which shall be updated quarterly. The database information shall be used only for the purpose of producing the random jury list for the selection of petit or grand jurors for the state courts pursuant to Section 38-5-3 NMSA 1978. The database shall not contain any financial information. If any information in the database is revealed by an employee of the administrative office of the courts or the information systems division to individuals other than employees of the administrative office of the courts, the state courts, the information systems division or the department, the employee shall be subject to the penalty provisions of Section 7-1-76 NMSA 1978;

P. 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;

Q. 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;

R. 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;

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

T. 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 penalty contained in Section 7-1-76 NMSA 1978;

U. 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;

V. 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;

W. 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;

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

Y. 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;

Z. to the state racing commission, information

with respect to the state, municipal and county gross receipts taxes paid by racetracks;

AA. 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;

BB. 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;

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

DD. 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;

EE. 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;

FF. 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;

GG. 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;

HH. 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;

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

JJ. 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 disclosed;

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

LL. to the secretary of labor or the secretary's delegate for use in enforcement of unemployment insurance collections pursuant to the terms of a reciprocal agreement entered into with the secretary of labor for exchange of information; the secretary of labor and employees of the labor department are subject to the provisions regarding confidentiality of information contained in the Tax Administration Act;

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

NN. upon request for inspection by the public pursuant to Section 7-1-29 NMSA 1978, the department shall furnish the taxpayer name, refund or credit amount, tax program or business tax credit and the date the refund or credit was issued; nothing in this subsection shall be construed to require the release of information that would violate an agreement between the state and the federal

internal revenue service for sharing of information or any
provision or rule of the federal Internal Revenue Code to
which a state is subject."
