

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

AN ACT

RELATING TO TAXATION; EXPANDING THE KINDS OF TAXES THAT MAY
BE REPORTED ON AN ESTIMATED BASIS; INCLUDING REPORTING OF
HELIUM AND NONHYDROCARBON GAS ON OIL AND GAS TAX RETURNS FOR
REFUND PURPOSES; EXCLUDING HELIUM AND NONHYDROCARBON GAS AS
NATURAL RESOURCES IN THE RESOURCES EXCISE TAX ACT.

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

Section 1. Section 7-1-10 NMSA 1978 (being Laws 1965,
Chapter 248, Section 15, as amended) is amended to read:

"7-1-10. RECORDS REQUIRED BY STATUTE--TAXPAYER
RECORDS--ACCOUNTING METHODS--REPORTING METHODS--INFORMATION
RETURNS.--

A. Every person required by the provisions of any
statute administered by the department to keep records and
documents and every taxpayer shall maintain books of account
or other records in a manner that will permit the accurate
computation of state taxes or provide information required by
the statute under which the person is required to keep
records.

B. Methods of accounting shall be consistent for
the same business. A taxpayer engaged in more than one
business may use a different method of accounting for each
business.

C. Prior to changing the method of accounting in

1 keeping books and records for tax purposes, a taxpayer shall
2 first secure the consent of the secretary or the secretary's
3 delegate. If consent is not secured, the department upon
4 audit may require the taxpayer to compute the amount of tax
5 due on the basis of the accounting method earlier used.

6 D. Prior to changing the method of reporting
7 taxes, other than for changes required by law, a taxpayer
8 shall first secure the consent of the secretary or the
9 secretary's delegate. Consent shall be granted or withheld
10 pursuant to the provisions of Section 7-4-19 NMSA 1978. If
11 consent is not secured, the secretary or the secretary's
12 delegate upon audit may require the taxpayer to compute the
13 amount of tax due on the basis of the reporting method
14 earlier used.

15 E. Upon the written application of a taxpayer and
16 at the sole discretion of the secretary or the secretary's
17 delegate, the secretary or the secretary's delegate may enter
18 into an agreement with a taxpayer allowing the taxpayer to
19 report values, gross receipts, deductions or the value of
20 property on an estimated basis for gross receipts and
21 compensating tax, oil and gas severance tax, oil and gas
22 conservation tax, oil and gas emergency school tax and oil
23 and gas ad valorem production tax purposes for a limited
24 period of time not to exceed four years. As used in this
25 section, "estimated basis" means a methodology that is

1 reasonably expected to approximate the tax that will be due
2 over the period of the agreement using summary rather than
3 detail data or alternate valuation applications or methods,
4 provided that:

5 (1) nothing in this section shall be
6 construed to require the secretary or the secretary's
7 delegate to enter into such an agreement; and

8 (2) the agreement must:

9 (a) specify the receipts, deductions or
10 values to be reported on an estimated basis and the
11 methodology to be followed by the taxpayer in making the
12 estimates;

13 (b) state the term of the agreement and
14 the procedures for terminating the agreement prior to its
15 expiration;

16 (c) be signed by the taxpayer or the
17 taxpayer's representative and the secretary or the
18 secretary's delegate; and

19 (d) contain a declaration by the
20 taxpayer or the taxpayer's representative that all statements
21 of fact made by the taxpayer or the taxpayer's representative
22 in the taxpayer's application and the agreement are true and
23 correct as to every material matter.

24 F. The secretary may, by regulation, require any
25 person doing business in the state to submit to the

1 department information reports that are considered reasonable
2 and necessary for the administration of any provision of law
3 to which the Tax Administration Act applies."

4 Section 2. Section 7-1-26 NMSA 1978 (being Laws 1965,
5 Chapter 248, Section 28, as amended) is amended to read:

6 "7-1-26. CLAIM FOR REFUND.--

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

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

1 (1) If the claim is denied in whole or in
2 part in writing, no claim may be refiled with respect to that
3 which was denied but the person, within ninety days after
4 either the mailing or delivery of the denial of all or any
5 part of the claim, may elect to pursue one, but not more than
6 one, of the remedies in Subsection C of this section.

7 (2) If the department has neither granted
8 nor denied any portion of a claim for refund within one
9 hundred twenty days of the date the claim was mailed or
10 delivered to the department, the person may refile it within
11 the time limits set forth in Subsection D of this section or
12 may within ninety days elect to pursue one, but only one, of
13 the remedies in Subsection C of this section. After the
14 expiration of the two hundred ten days from the date the
15 claim was mailed or delivered to the department, the
16 department may not approve or disapprove the claim unless the
17 person has pursued one of the remedies under Subsection C of
18 this section.

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

24 (1) the person may direct to the secretary a
25 written protest against the denial of, or failure to either

1 allow or deny the claim or portion thereof, which shall be
2 set for hearing by a hearing officer designated by the
3 secretary promptly after the receipt of the protest in
4 accordance with the provisions of Section 7-1-24 NMSA 1978,
5 and pursue the remedies of appeal from decisions adverse to
6 the protestant as provided in Section 7-1-25 NMSA 1978; or

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

17 D. Except as otherwise provided in Subsections E
18 and F of this section, no credit or refund of any amount may
19 be allowed or made to any person unless as the result of a
20 claim made by that person as provided in this section:

21 (1) within three years of the end of the
22 calendar year in which:

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

1 (b) the final determination of value
2 occurs with respect to any overpayment that resulted from a
3 disapproval by any agency of the United States or the state
4 of New Mexico or any court of increase in value of a product
5 subject to taxation under the Oil and Gas Severance Tax Act,
6 the Oil and Gas Conservation Tax Act, the Oil and Gas
7 Emergency School Tax Act, the Oil and Gas Ad Valorem
8 Production Tax Act or the Natural Gas Processors Tax Act; or

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

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

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

1 to the taxpayer or the date a proceeding is begun in court by
2 the department with respect to the same tax and the same
3 period;

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

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

19 E. No credit or refund shall be allowed or made to
20 any person claiming a refund of gasoline tax under Section
21 7-13-11 NMSA 1978 unless notice of the destruction of the
22 gasoline was given the department within thirty days of the
23 actual destruction and the claim for refund is made within
24 six months of the date of destruction. No credit or refund
25 shall be allowed or made to any person claiming a refund of

1 gasoline tax under Section 7-13-17 NMSA 1978 unless the
2 refund is claimed within six months of the date of purchase
3 of the gasoline and the gasoline has been used at the time
4 the claim for refund is made.

5 F. If, as a result of an audit by the internal
6 revenue service or the filing of an amended federal return
7 changing a prior election or making any other change for
8 which federal approval is required by the Internal Revenue
9 Code, any adjustment of federal tax is made with the result
10 that there would have been an overpayment of tax if the
11 adjustment to federal tax had been applied to the taxable
12 period to which it relates, claim for credit or refund of
13 only that amount based on the adjustment may be made as
14 provided in this section within one year of the date of the
15 internal revenue service audit adjustment or payment of the
16 federal refund or within the period limited by Subsection D
17 of this section, whichever expires later. Interest computed
18 at the rate specified in Subsection B of Section 7-1-68 NMSA
19 1978 shall be allowed on any such claim for refund from the
20 date one hundred twenty days after the claim is made until
21 the date the final decision to grant the credit or refund is
22 made.

23 G. If as a result of an audit by the department or
24 a managed audit covering multiple periods an overpayment of
25 tax is found in any period under the audit, that overpayment

1 may be credited against an underpayment of the same tax found
2 in another period under audit pursuant to Section 7-1-29 NMSA
3 1978, provided that the taxpayer files a claim for refund for
4 the overpayments identified in the audit.

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

11 I. For the purposes of this section, the term "oil
12 and gas tax return" means a return reporting tax due with
13 respect to oil, natural gas, liquid hydrocarbons, carbon
14 dioxide, helium or nonhydrocarbon gas pursuant to the Oil and
15 Gas Severance Tax Act, the Oil and Gas Conservation Tax Act,
16 the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad
17 Valorem Production Tax Act, the Natural Gas Processors Tax
18 Act or the Oil and Gas Production Equipment Ad Valorem Tax
19 Act.

20 J. The filing of a fully completed original income
21 tax return, corporate income tax return, corporate income and
22 franchise tax return, estate tax return or special fuel
23 excise tax return that shows a balance due the taxpayer or a
24 fully completed amended income tax return, an amended
25 corporate income tax return, an amended corporate income and

1 franchise tax return, an amended estate tax return, an
2 amended special fuel excise tax return or an amended oil and
3 gas tax return that shows a lesser tax liability than the
4 original return constitutes the filing of a claim for refund
5 for the difference in tax due shown on the original and
6 amended returns."

7 Section 3. Section 7-25-3 NMSA 1978 (being Laws 1966,
8 Chapter 48, Section 3, as amended) is amended to read:

9 "7-25-3. DEFINITIONS.--As used in the Resources Excise
10 Tax Act:

11 A. "department" means the taxation and revenue
12 department, the secretary of taxation and revenue or any
13 employee of the department exercising authority lawfully
14 delegated to that employee by the secretary;

15 B. "natural resource" means timber and any product
16 thereof and any metalliferous or nonmetalliferous mineral
17 product, combination or compound thereof, severed in New
18 Mexico but does not include oil, natural gas, liquid
19 hydrocarbon individually or any combination thereof, carbon
20 dioxide, helium or nonhydrocarbon gas;

21 C. "person" means any individual, estate, trust,
22 receiver, cooperative association, club, corporation,
23 company, firm, partnership, joint venture, syndicate or other
24 entity;

25 D. "processing" means smelting, leaching,

1 refining, reducing, compounding or otherwise preparing for
2 sale or commercial use any natural resource so that its
3 character or condition is materially changed in mills or
4 plants located in New Mexico;

5 E. "processor" means any person engaging in the
6 business of processing natural resources that the person
7 owns, or any person who is the owner of natural resources and
8 who has another person perform the processing of such natural
9 resources;

10 F. "service charge" means the total amount of
11 money or the reasonable value of other consideration received
12 for severing or processing any natural resource by any person
13 who is not the owner of the natural resource. However, if
14 the money received does not represent the value of the
15 severing or processing performed, "service charge" means the
16 reasonable value of the severing or processing performed;

17 G. "severer" means any person engaging in the
18 business of severing natural resources that the person owns,
19 or any person who is the owner of natural resources and who
20 has another person perform the severing of such natural
21 resources;

22 H. "severing" means mining, quarrying, extracting,
23 felling or producing any natural resource in New Mexico for
24 sale, profit or commercial use; and

25 I. "taxable value" means the value after severing

1 or processing, without deduction of any kind other than
2 specified in this subsection, of any natural resource severed
3 or processed in New Mexico. It is presumed, in the absence
4 of preponderant evidence of another value, that the taxable
5 value means the total amount of money or the reasonable value
6 of other consideration received for the severed or processed
7 natural resource. However, if the amount of money received
8 does not represent the value of the severed or processed
9 natural resource or if the severed or processed natural
10 resource is not sold, the taxable value shall be the
11 reasonable value of the severed or processed natural
12 resource. All natural resources severed or processed in New
13 Mexico shall be included in determining taxable value,
14 regardless of the place of sale or the fact that delivery may
15 be made to points outside of New Mexico. If any person shall
16 ship, transmit or transport natural resources out of New
17 Mexico without making sale of them or shall ship, transmit or
18 transport natural resources out of New Mexico in an
19 unfinished condition, the value of the natural resources in
20 the condition in which they existed when shipped, transmitted
21 or transported out of New Mexico and before they enter
22 interstate commerce, without deduction of any kind other than
23 specified in this subsection, shall be the basis for
24 determining the taxable value. Amounts received from selling
25 natural resources, other than metalliferous mineral ores,

1 whether processed or unprocessed, to the United States or any
2 agency or instrumentality thereof, the state of New Mexico or
3 any political subdivision thereof, or to organizations that
4 have demonstrated to the department that they have been
5 granted exemption from the federal income tax by the United
6 States commissioner of internal revenue as organizations
7 described in Section 501 (c) (3) of the United States
8 Internal Revenue Code of 1954, as amended or renumbered,
9 which employ the natural resource in the conduct of functions
10 described in Section 501 (c) (3) and not in the conduct of an
11 unrelated trade or business as defined in Section 513 of the
12 United States Internal Revenue Code of 1954, as amended or
13 renumbered, may be deducted from taxable value. Any royalty
14 or other similar interest, whether payable in cash or in
15 kind, paid to the United States or any agency or
16 instrumentality thereof, or the state of New Mexico or any
17 political subdivision thereof, or any Indian tribe, Indian
18 pueblo or Indian that is a ward of the United States may be
19 deducted from taxable value. In computing taxable value, any
20 owner of natural resources may deduct any service charge on
21 which the service tax imposed by Section 7-25-6 NMSA 1978 is
22 payable."

23 Section 4. EFFECTIVE DATE.--The effective date of the
24 provisions of this act is July 1, 2007. _____