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HOUSE BILL 257

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Luciano "Lucky" Varela

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; AMENDING THE TAX ADMINISTRATION ACT TO
DEFINE ADDITIONAL TERMS; REORGANIZING THE CONFIDENTIALITY
PROVISIONS AND ADDING EXCEPTIONS; CLARIFYING THE PENALTY FOR
REVEALING INFORMATION CONCERNING TAXPAYERS; AMENDING, REPEALING
AND ENACTING SECTIONS OF THE NMSA 1978.

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

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

"7-1-3. DEFINITIONS.--Unless the context clearly
indicates a different meaning, the definitions of words and
phrases as they are stated in this section are to be used, and
whenever in the Tax Administration Act these words and phrases
appear, the singular includes the plural and the plural
includes the singular:

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1 A. "automated clearinghouse transaction" means an
2 electronic credit or debit transmitted through an automated
3 clearinghouse payable to the state treasurer and deposited with
4 the fiscal agent of New Mexico;

5 B. "department" means the taxation and revenue
6 department, the secretary or any employee of the department
7 exercising authority lawfully delegated to that employee by the
8 secretary;

9 C. "electronic payment" means a payment made by
10 automated clearinghouse deposit, any funds wire transfer system
11 or a credit card, debit card or electronic cash transaction
12 through the internet;

13 D. "employee of the department" means any employee
14 of the department, including the secretary, or any person
15 acting as agent or authorized to represent or perform services
16 for the department in any capacity with respect to any law made
17 subject to administration and enforcement under the provisions
18 of the Tax Administration Act;

19 E. "financial institution" means any state or
20 federally chartered, federally insured depository institution;

21 F. "Internal Revenue Code" means the Internal
22 Revenue Code of 1986, as that code may be amended or its
23 sections renumbered;

24 G. "levy" means the lawful power, hereby invested
25 in the secretary, to take into possession or to require the

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1 present or future surrender to the secretary or the secretary's
2 delegate of any property or rights to property belonging to a
3 delinquent taxpayer;

4 H. "local option gross receipts tax" means a tax
5 authorized to be imposed by a county or municipality upon the
6 taxpayer's gross receipts, as that term is defined in the Gross
7 Receipts and Compensating Tax Act, and required to be collected
8 by the department at the same time and in the same manner as
9 the gross receipts tax; "local option gross receipts tax"
10 includes the taxes imposed pursuant to the Municipal Local
11 Option Gross Receipts Taxes Act, Supplemental Municipal Gross
12 Receipts Tax Act, County Local Option Gross Receipts Taxes Act,
13 Local Hospital Gross Receipts Tax Act, County Correctional
14 Facility Gross Receipts Tax Act and such other acts as may be
15 enacted authorizing counties or municipalities to impose taxes
16 on gross receipts, which taxes are to be collected by the
17 department in the same time and in the same manner as it
18 collects the gross receipts tax;

19 I. "managed audit" means a review and analysis
20 conducted by a taxpayer under an agreement with the department
21 to determine the taxpayer's compliance with a tax administered
22 pursuant to the Tax Administration Act and the presentation of
23 the results to the department for assessment of tax found to be
24 due;

25 J. "net receipts" means the total amount of money

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1 paid by taxpayers to the department in a month pursuant to a
2 tax or tax act less any refunds disbursed in that month with
3 respect to that tax or tax act;

4 K. "overpayment" means an amount paid, pursuant to
5 any law subject to administration and enforcement under the
6 provisions of the Tax Administration Act, by a person to the
7 department or withheld from the person in excess of tax due
8 from the person to the state at the time of the payment or at
9 the time the amount withheld is credited against tax due;

10 L. "paid" includes the term "paid over";

11 M. "pay" includes the term "pay over";

12 N. "payment" includes the term "payment over";

13 O. "person" means any individual, estate, trust,
14 receiver, cooperative association, club, corporation, company,
15 firm, partnership, limited liability company, limited liability
16 partnership, joint venture, syndicate, other association or
17 gas, water or electric utility owned or operated by a county or
18 municipality; "person" also means, to the extent permitted by
19 law, a federal, state or other governmental unit or
20 subdivision, or an agency, department or instrumentality
21 thereof; and "person", as used in Sections 7-1-72 through
22 7-1-74 NMSA 1978, also includes an officer or employee of a
23 corporation, a member or employee of a partnership or any
24 individual who, as such, is under a duty to perform any act in
25 respect of which a violation occurs;

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1 P. "property" means property or rights to property;

2 Q. "property or rights to property" means any
3 tangible property, real or personal, or any intangible property
4 of a taxpayer;

5 R. "return" means any tax or information return,
6 declaration of estimated tax or claim for refund, including any
7 amendments or supplements to the return, required or permitted
8 pursuant to a law subject to administration and enforcement
9 pursuant to the Tax Administration Act and filed with the
10 secretary or the secretary's delegate by or on behalf of any
11 person;

12 S. "return information" means a taxpayer's name,
13 address, government-issued identification number and other
14 identifying information; any information contained in or
15 derived from a taxpayer's return; any information with respect
16 to any actual or possible administrative or legal action by an
17 employee of the department concerning a taxpayer's return, such
18 as audits, managed audits, denial of credits or refunds,
19 assessments of tax, penalty or interest, protests of
20 assessments or denial of refunds or credits, levies or liens;
21 or any other information with respect to a taxpayer's return or
22 tax liability that was not obtained from public sources or that
23 was created by an employee of the department; but "return
24 information" does not include statistical data or other
25 information that cannot be associated with or directly or

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1 indirectly identify a particular taxpayer;

2 [R-] T. "secretary" means the secretary of taxation
3 and revenue and, except for purposes of Subsection B of Section
4 7-1-4 NMSA 1978 and Subsection E of Section 7-1-24 NMSA 1978,
5 also includes the deputy secretary or a division director or
6 deputy division director delegated by the secretary;

7 [S-] U. "secretary or the secretary's delegate"
8 means the secretary or any employee of the department
9 exercising authority lawfully delegated to that employee by the
10 secretary;

11 [F-] V. "security" means money, property or rights
12 to property or a surety bond;

13 [U-] W. "state" means any state of the United
14 States, the District of Columbia, the commonwealth of Puerto
15 Rico and any territory or possession of the United States;

16 [V-] X. "tax" means the total amount of each tax
17 imposed and required to be paid, withheld and paid or collected
18 and paid under provision of any law made subject to
19 administration and enforcement according to the provisions of
20 the Tax Administration Act and, unless the context otherwise
21 requires, includes the amount of any interest or civil penalty
22 relating thereto; "tax" also means any amount of any abatement
23 of tax made or any credit, rebate or refund paid or credited by
24 the department under any law subject to administration and
25 enforcement under the provisions of the Tax Administration Act

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1 to any person contrary to law and includes, unless the context
2 requires otherwise, the amount of any interest or civil penalty
3 relating thereto;

4 [W-] Y. "taxpayer" means a person liable for
5 payment of any tax, a person responsible for withholding and
6 payment or for collection and payment of any tax or a person to
7 whom an assessment has been made, if the assessment remains
8 unabated or the amount thereof has not been paid; and

9 [X-] Z. "tax return preparer" means a person who
10 prepares for others for compensation or who employs one or more
11 persons to prepare for others for compensation any return of
12 income tax, a substantial portion of any return of income tax,
13 any claim for refund with respect to income tax or a
14 substantial portion of any claim for refund with respect to
15 income tax; provided that a person shall not be a "tax return
16 preparer" merely because such person:

17 (1) furnishes typing, reproducing or other
18 mechanical assistance;

19 (2) is an employee who prepares an income tax
20 return or claim for refund with respect to an income tax return
21 of the employer, or of an officer or employee of the employer,
22 by whom the person is regularly and continuously employed; or

23 (3) prepares as a trustee or other fiduciary
24 an income tax return or claim for refund with respect to income
25 tax for any person."

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1 Section 2. Section 7-1-8 NMSA 1978 (being Laws 1965,
2 Chapter 248, Section 13, as amended) is amended to read:

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

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

19 B. ~~to a representative of the secretary of the~~
20 ~~treasury or the secretary's delegate pursuant to the terms of a~~
21 ~~reciprocal agreement entered into with the federal government~~
22 ~~for exchange of the information;~~

23 C. ~~to the multistate tax commission, the federation~~
24 ~~of tax administrators or their authorized representatives;~~
25 ~~provided that the information is used for tax purposes only and~~

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1 ~~is disclosed by the multistate tax commission or the federation~~
2 ~~of tax administrators only to states that have met the~~
3 ~~requirements of Subsection A of this section;~~

4 ~~D. to another jurisdiction pursuant to an~~
5 ~~international fuel tax agreement; provided that the information~~
6 ~~is used for tax purposes only;~~

7 ~~E. to a district court, an appellate court or a~~
8 ~~federal court:~~

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

18 ~~(2) in an action in which the department is~~
19 ~~attempting to enforce an act with which the department is~~
20 ~~charged or to collect a tax; or~~

21 ~~(3) in any matter in which the department is a~~
22 ~~party and the taxpayer has put the taxpayer's own liability for~~
23 ~~taxes at issue, in which case only that information regarding~~
24 ~~the taxpayer who is party to the action may be produced, but~~
25 ~~this shall not prevent the disclosure of department policy or~~

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1 ~~interpretation of law arising from circumstances of a taxpayer~~
2 ~~who is not a party;~~

3 ~~F. to the taxpayer or to the taxpayer's authorized~~
4 ~~representative; provided, however, that nothing in this~~
5 ~~subsection shall be construed to require any employee to~~
6 ~~testify in a judicial proceeding except as provided in~~
7 ~~Subsection E of this section;~~

8 ~~G. information obtained through the administration~~
9 ~~of a law not subject to administration and enforcement under~~
10 ~~the provisions of the Tax Administration Act to the extent that~~
11 ~~release of that information is not otherwise prohibited by law;~~

12 ~~H. in a manner, for statistical purposes, that the~~
13 ~~information revealed is not identified as applicable to an~~
14 ~~individual taxpayer;~~

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

21 ~~J. to a transferee, assignee, buyer or lessor of a~~
22 ~~liquor license, the amount and basis of an unpaid assessment of~~
23 ~~tax for which the transferor, assignor, seller or lessee is~~
24 ~~liable;~~

25 ~~K. to a purchaser of a business as provided in~~

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1 ~~Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis~~
2 ~~of an unpaid assessment of tax for which the purchaser's seller~~
3 ~~is liable;~~

4 ~~L. to a municipality of this state upon its request~~
5 ~~for a period specified by that municipality within the twelve~~
6 ~~months preceding the request for the information by that~~
7 ~~municipality:~~

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

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

23 ~~The employees of municipalities receiving information as~~
24 ~~provided in this subsection shall be subject to the penalty~~
25 ~~contained in Section 7-1-76 NMSA 1978 if that information is~~

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1 ~~revealed to individuals other than other employees of the~~
2 ~~municipality in question or the department;~~

3 ~~M. to the commissioner of public lands for use in~~
4 ~~auditing that pertains to rentals, royalties, fees and other~~
5 ~~payments due the state under land sale, land lease or other~~
6 ~~land use contracts; the commissioner of public lands and~~
7 ~~employees of the commissioner are subject to the same~~
8 ~~provisions regarding confidentiality of information as~~
9 ~~employees of the department;~~

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

21 ~~O. the department shall furnish to the information~~
22 ~~systems division of the general services department, by~~
23 ~~electronic media, a database containing New Mexico personal~~
24 ~~income tax filers by county, which shall be updated quarterly.~~
25 ~~The database information shall be used only for the purpose of~~

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1 ~~producing the random jury list for the selection of petit or~~
2 ~~grand jurors for the state courts pursuant to Section 38-5-3~~
3 ~~NMSA 1978. The database shall not contain any financial~~
4 ~~information. If any information in the database is revealed by~~
5 ~~an employee of the administrative office of the courts or the~~
6 ~~information systems division to individuals other than~~
7 ~~employees of the administrative office of the courts, the state~~
8 ~~courts, the information systems division or the department, the~~
9 ~~employee shall be subject to the penalty provisions of Section~~
10 ~~7-1-76 NMSA 1978;~~

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

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

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1 ~~R. the department shall release upon request only~~
2 ~~the names and addresses of all gasoline or special fuel~~
3 ~~distributors, wholesalers and retailers to the New Mexico~~
4 ~~department of agriculture, the employees of which are thereby~~
5 ~~subject to the penalty contained in Section 7-1-76 NMSA 1978 if~~
6 ~~that information is revealed to individuals other than~~
7 ~~employees of either the New Mexico department of agriculture or~~
8 ~~the department;~~

9 ~~S. the department shall answer all inquiries~~
10 ~~concerning whether a person is or is not a registered taxpayer~~
11 ~~for tax programs that require registration, but nothing in this~~
12 ~~subsection shall be construed to allow the department to answer~~
13 ~~inquiries concerning whether a person has filed a tax return;~~

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

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1 ~~both the state and the municipality or county are parties.~~
2 ~~Information provided pursuant to provisions of this subsection~~
3 ~~that is revealed other than as provided in this subsection~~
4 ~~shall subject the person revealing the information to the~~
5 ~~penalty contained in Section 7-1-76 NMSA 1978;~~

6 U. ~~to a county of this state that has in effect a~~
7 ~~local option gross receipts tax imposed by the county upon its~~
8 ~~request for a period specified by that county within the twelve~~
9 ~~months preceding the request for the information by that~~
10 ~~county:~~

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

22 (2) ~~in the case of a local option gross~~
23 ~~receipts tax imposed by a county on a countywide basis,~~
24 ~~information indicating whether persons shown on a list of~~
25 ~~businesses located within the county furnished by the county~~

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1 ~~have reported gross receipts to the department but have not~~
2 ~~reported gross receipts for that county under the Gross~~
3 ~~Receipts and Compensating Tax Act or a local option gross~~
4 ~~receipts tax imposed by that county on a countywide basis; and~~

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

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

24 ~~V. to authorized representatives of an Indian~~
25 ~~nation, tribe or pueblo, the territory of which is located~~

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1 wholly or partially within New Mexico, pursuant to the terms of
2 a reciprocal agreement entered into with the Indian nation,
3 tribe or pueblo for the exchange of that information for tax
4 purposes only; provided that the Indian nation, tribe or pueblo
5 has enacted a confidentiality statute similar to this section;

6 W. information with respect to the taxes or tax
7 acts administered pursuant to Subsection B of Section 7-1-2
8 NMSA 1978, except that:

9 (1) information for or relating to a period
10 prior to July 1, 1985 with respect to Sections 7-25-1 through
11 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978 may be released only
12 to a committee of the legislature for a valid legislative
13 purpose;

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

20 (3) audit workpapers and the proprietary
21 information contained in the workpapers shall not be released
22 except to:

23 (a) the minerals management service of
24 the United States department of the interior, if production
25 occurred on federal land;

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1 ~~collect. The corporation and its officers and employees shall~~
2 ~~use that information only to enforce the educational debt~~
3 ~~obligation of the absent obligors and shall not disclose that~~
4 ~~information or use it for any other purpose;~~

5 ~~BB. a decision and order made by a hearing officer~~
6 ~~pursuant to Section 7-1-24 NMSA 1978 with respect to a protest~~
7 ~~filed with the secretary on or after July 1, 1993;~~

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

11 ~~DD. upon request by the Bernalillo county~~
12 ~~metropolitan court, the department shall furnish the last known~~
13 ~~address and the date of that address for every person the court~~
14 ~~certifies to the department as a person who owes fines, fees or~~
15 ~~costs to the court or who has failed to appear pursuant to a~~
16 ~~court order or a promise to appear;~~

17 ~~EE. upon request by a magistrate court, the~~
18 ~~department shall furnish the last known address and the date of~~
19 ~~that address for every person the court certifies to the~~
20 ~~department as a person who owes fines, fees or costs to the~~
21 ~~court or who has failed to appear pursuant to a court order or~~
22 ~~a promise to appear;~~

23 ~~FF. to the national tax administration agencies of~~
24 ~~Mexico and Canada; provided the agency receiving the~~
25 ~~information has entered into a written agreement with the~~

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1 ~~department to use the information for tax purposes only and is~~
2 ~~subject to a confidentiality statute similar to this section;~~

3 ~~GG. to a district attorney, a state district court~~
4 ~~grand jury or federal grand jury for an investigation of or~~
5 ~~proceeding related to an alleged criminal violation of the tax~~
6 ~~laws;~~

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

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

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

18 ~~KK. to representatives of the workers' compensation~~
19 ~~administration, authorized by the director of the workers'~~
20 ~~compensation administration for this purpose, to facilitate the~~
21 ~~identification of taxpayers that are delinquent or noncompliant~~
22 ~~in payment of fees required by Section 52-1-9.1 or 52-5-19 NMSA~~
23 ~~1978;~~

24 ~~LL. to the secretary of labor or the secretary's~~
25 ~~delegate for use in enforcement of unemployment insurance~~

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

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

11 ~~NN. upon request for inspection by the public~~
12 ~~pursuant to Section 7-1-29 NMSA 1978, the department shall~~
13 ~~furnish the taxpayer name, refund or credit amount, tax program~~
14 ~~or business tax credit and the date the refund or credit was~~
15 ~~issued; nothing in this subsection shall be construed to~~
16 ~~require the release of information that would violate an~~
17 ~~agreement between the state and the federal internal revenue~~
18 ~~service for sharing of information or any provision or rule of~~
19 ~~the federal Internal Revenue Code to which a state is subject.]~~

20 A. It is unlawful for any person other than the
21 taxpayer to reveal to any other person the taxpayer's return or
22 return information, except as provided in Sections 7-1-8.1
23 through 7-1-8.10 NMSA 1978.

24 B. A return or return information revealed under
25 Sections 7-1-8.1 through 7-1-8.10 NMSA 1978:

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1 (1) may only be revealed to a person
2 specifically authorized to receive the return or return
3 information and the employees, directors, officers and agents
4 of such person whose official duties or duties in the course of
5 their employment require the return or return information and
6 to an employee of the department;

7 (2) may only be revealed for the authorized
8 purpose and only to the extent necessary to perform that
9 authorized purpose;

10 (3) shall at all times be protected from being
11 revealed to an unauthorized person by physical, electronic or
12 any other safeguards specified by directive by the secretary;
13 and

14 (4) shall be returned to the secretary or the
15 secretary's delegate or destroyed as soon as it is no longer
16 required for the authorized purpose.

17 C. If any provision of Sections 7-1-8.1 through
18 7-1-8.10 NMSA 1978 requires that a return or return information
19 will only be revealed pursuant to a written agreement between a
20 person and the department, the written agreement shall:

21 (1) list the name and position of any official
22 or employee of the person to whom a return or return
23 information is authorized to be revealed under the provision;

24 (2) describe the specific purpose for which
25 the return or return information is to be used;

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1 (3) describe the procedures and safeguards the
2 person has in place to ensure that the requirements of
3 Subsection B of this section are met; and

4 (4) provide for reimbursement to the
5 department for all costs incurred by the department in
6 supplying the returns or return information to, and
7 administering the agreement with, the person.

8 D. A return or return information that is lawfully
9 made public by an employee of the department or any other
10 person, or that is made public by the taxpayer, is not subject
11 to the provisions of this section once it is made public."

12 Section 3. A new section of the Tax Administration Act,
13 Section 7-1-8.1 NMSA 1978, is enacted to read:

14 "7-1-8.1. [NEW MATERIAL] INFORMATION THAT MAY BE REVEALED
15 TO AN EMPLOYEE OF THE DEPARTMENT, A TAXPAYER OR THE TAXPAYER'S
16 REPRESENTATIVE.--An employee of the department may reveal a
17 return or return information:

18 A. to another employee of the department whose
19 official duties require the return or return information; and

20 B. to the taxpayer or to the taxpayer's authorized
21 representative; provided, however, that nothing in this section
22 shall be construed to require an employee to testify in a
23 judicial proceeding except as provided in Subsection A of
24 Section 7-1-8.4 NMSA 1978."

25 Section 4. A new section of the Tax Administration Act,
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1 Section 7-1-8.2 NMSA 1978, is enacted to read:

2 "7-1-8.2. [NEW MATERIAL] INFORMATION REQUIRED TO BE
3 REVEALED.--

4 A. The department shall:

5 (1) furnish returns and return information
6 required by a provision of the Tax Administration Act to be
7 made available to the public by the department;

8 (2) answer all inquiries concerning whether a
9 person is or is not a registered taxpayer for tax programs that
10 require registration, but nothing in this subsection shall be
11 construed to allow the department to answer inquiries
12 concerning whether a person has filed a tax return;

13 (3) furnish, upon request for inspection by a
14 member of the public pursuant to:

15 (a) Section 7-1-28 or Section 7-1-29
16 NMSA 1978, the taxpayer name, abatement, refund or credit
17 amount, tax program or business tax credit and the date the
18 abatement, refund or credit was issued; and

19 (b) Section 7-1-21 NMSA 1978, the
20 installment agreement; and

21 (4) with respect to the taxes on gasoline
22 imposed by the Gasoline Tax Act and taxes on special fuels
23 imposed by the Special Fuels Supplier Tax Act, make available
24 for public inspection at monthly intervals a report covering
25 the number of gallons of gasoline, ethanol blended fuels and

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1 special fuels received and deducted and the amount of tax paid
2 by each person required to file a tax return or pay tax with
3 respect to gasoline or special fuels in the state of New
4 Mexico.

5 B. Nothing in this section shall be construed to
6 require the release of information that would violate an
7 agreement between the state and the federal internal revenue
8 service for sharing of information or any provision or rule of
9 the federal Internal Revenue Code to which a state is subject."

10 Section 5. A new section of the Tax Administration Act,
11 Section 7-1-8.3 NMSA 1978, is enacted to read:

12 "7-1-8.3. [NEW MATERIAL] INFORMATION THAT MAY BE REVEALED
13 TO PUBLIC.--An employee of the department may reveal:

14 A. information obtained through the administration
15 of a law not subject to administration and enforcement under
16 the provisions of the Tax Administration Act to the extent that
17 revealing that information is not otherwise prohibited by law;

18 B. return information with respect to the taxes or
19 tax acts administered pursuant to Subsection B of Section 7-1-2
20 NMSA 1978, except that:

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

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1 (2) except as provided in Paragraph (3) of
2 this subsection, contracts and other agreements between the
3 taxpayer and other parties and the proprietary information
4 contained in those contracts and agreements shall not be
5 revealed without the consent of all parties to the contract or
6 agreement;

7 (3) audit workpapers and the proprietary
8 information contained in the workpapers shall not be revealed
9 except to:

10 (a) the minerals management service of
11 the United States department of the interior, if production
12 occurred on federal land;

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

15 (c) a purchaser of products severed from
16 a property subject to the audit; or

17 (d) the authorized representative of any
18 of the persons in Subparagraphs (a) through (c) of this
19 paragraph. This paragraph does not prohibit the revelation of
20 proprietary information contained in the workpapers that is
21 also available from returns or from other sources not subject
22 to the provisions of Section 7-1-8 NMSA 1978;

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

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1 E. a decision and order made by a hearing officer
2 pursuant to Section 7-1-24 NMSA 1978 with respect to a protest
3 filed with the secretary on or after July 1, 1993;

4 F. any written ruling on questions of evidence or
5 procedure made by a hearing officer pursuant to Section 7-1-24
6 NMSA 1978; provided that the name and identification number of
7 the taxpayer requesting the ruling shall not be revealed; and

8 G. return information included in a notice of lien
9 or release or extinguishment of lien."

10 Section 6. A new section of the Tax Administration Act,
11 Section 7-1-8.4 NMSA 1978, is enacted to read:

12 "7-1-8.4. [NEW MATERIAL] INFORMATION THAT MAY BE REVEALED
13 TO JUDICIAL BODIES OR WITH RESPECT TO JUDICIAL PROCEEDINGS OR
14 INVESTIGATIONS.--An employee of the department may reveal to:

15 A. a district court, an appellate court or a
16 federal court, a return or return information:

17 (1) in response to an order thereof in an
18 action relating to taxes or an action for tax fraud or any
19 other crime that may involve taxes due to the state and in
20 which the information sought is about a taxpayer who is party
21 to the action and is material to the inquiry, in which case
22 only that information may be required to be produced in court
23 and admitted in evidence subject to court order protecting the
24 confidentiality of the information and no more;

25 (2) in an action in which the department is

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1 attempting to enforce an act with which the department is
2 charged or to collect a tax; or

3 (3) in any matter in which the department is a
4 party and the taxpayer has put the taxpayer's own liability for
5 taxes at issue, in which case only that information regarding
6 the taxpayer who is party to the action may be produced, but
7 this shall not prevent revelation of department policy or
8 interpretation of law arising from circumstances of a taxpayer
9 who is not a party;

10 B. the Bernalillo county metropolitan court, upon
11 that court's request, the last known address and the date of
12 that address for every person the court certifies to the
13 department as a person who owes fines, fees or costs to the
14 court or who has failed to appear pursuant to a court order or
15 a promise to appear;

16 C. a magistrate court, upon the magistrate court's
17 request, the last known address and the date of that address
18 for every person the court certifies to the department as a
19 person who owes fines, fees or costs to the court or who has
20 failed to appear pursuant to a court order or a promise to
21 appear;

22 D. a district, magistrate or municipal court or the
23 Bernalillo county metropolitan court, such tax return
24 information deemed necessary by the department to accomplish
25 the purposes of the Tax Refund Intercept Program Act;

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1 E. a district attorney, a United States attorney, a
2 state district court grand jury or federal grand jury,
3 information for an investigation of or proceeding related to an
4 alleged criminal violation of the tax laws;

5 F. a law enforcement agency with which the
6 department is conducting, pursuant to a written agreement, a
7 joint investigation of a violation of any law subject to
8 administration under the provisions of the Tax Administration
9 Act, information relevant to the investigation; and

10 G. a third party subject to a subpoena or levy
11 issued pursuant to the provisions of the Tax Administration
12 Act, the identity of the taxpayer involved, the taxes or tax
13 acts involved and the nature of the proceeding."

14 Section 7. A new section of the Tax Administration Act,
15 Section 7-1-8.5 NMSA 1978, is enacted to read:

16 "7-1-8.5. [NEW MATERIAL] INFORMATION THAT MAY BE REVEALED
17 TO NATIONAL GOVERNMENTS OR THEIR AGENCIES.--An employee of the
18 department may reveal return information to:

19 A. a representative of the secretary of the
20 treasury or the secretary's delegate pursuant to the terms of a
21 reciprocal agreement entered into with the federal government
22 for exchange of the information;

23 B. the bureau of alcohol, tobacco, firearms and
24 explosives of the department of justice pursuant to the terms
25 of a reciprocal agreement entered into with the federal

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underscoring material = new
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1 government for exchange of the information; and

2 C. the national tax administration agencies of
3 Mexico and Canada; provided the agency receiving the
4 information has entered into a written agreement with the
5 department to use the information for tax purposes only and is
6 subject to a confidentiality statute and penalty similar to
7 Sections 7-1-8 and 7-1-76 NMSA 1978."

8 Section 8. A new section of the Tax Administration Act,
9 Section 7-1-8.6 NMSA 1978, is enacted to read:

10 "7-1-8.6. [NEW MATERIAL] INFORMATION THAT MAY BE REVEALED
11 TO CERTAIN TRIBAL GOVERNMENTS.--An employee of the department
12 may reveal return information to authorized representatives of
13 an Indian nation, tribe or pueblo, the territory of which is
14 located wholly or partially within New Mexico, pursuant to the
15 terms of a written reciprocal agreement entered into by the
16 department with the Indian nation, tribe or pueblo for the
17 exchange of that information for tax purposes only; provided
18 that the Indian nation, tribe or pueblo has enacted a
19 confidentiality statute and penalty similar to Sections 7-1-8
20 and 7-1-76 NMSA 1978."

21 Section 9. A new section of the Tax Administration Act,
22 Section 7-1-8.7 NMSA 1978, is enacted to read:

23 "7-1-8.7. [NEW MATERIAL] INFORMATION THAT MAY BE REVEALED
24 TO OTHER STATES OR MULTISTATE ADMINISTRATIVE BODIES.--An
25 employee of the department may reveal return information to:

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1 A. an authorized representative of another state;
2 provided that the receiving state has entered into a written
3 agreement with the department to use the return information for
4 tax purposes only and that the receiving state has enacted a
5 confidentiality statute and penalty similar to Sections 7-1-8
6 and 7-1-76 NMSA 1978 to which the representative is subject;

7 B. the multistate tax commission, the federation of
8 tax administrators or their authorized representatives;
9 provided that the return information is used for tax purposes
10 only and is revealed by the multistate tax commission or the
11 federation of tax administrators only to states or local
12 governments that have met the requirements of Subsection A of
13 this section; and

14 C. another jurisdiction pursuant to an
15 international fuel tax agreement; provided that the return
16 information is used for tax purposes only."

17 Section 10. A new section of the Tax Administration Act,
18 Section 7-1-8.8 NMSA 1978, is enacted to read:

19 "7-1-8.8. [NEW MATERIAL] INFORMATION THAT MAY BE REVEALED
20 TO OTHER STATE AGENCIES.--An employee of the department may
21 reveal to:

22 A. a committee of the legislature for a valid
23 legislative purpose, return information concerning any tax or
24 fee imposed pursuant to the Cigarette Tax Act;

25 B. the attorney general, return information

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1 acquired pursuant to the Cigarette Tax Act or the Tobacco
2 Products Tax Act for purposes of Section 6-4-13 NMSA 1978 and
3 the master settlement agreement defined in Section 6-4-12 NMSA
4 1978;

5 C. the commissioner of public lands, return
6 information for use in auditing that pertains to rentals,
7 royalties, fees and other payments due the state under land
8 sale, land lease or other land use contracts;

9 D. the secretary of human services or the
10 secretary's delegate, under a written agreement with the
11 department:

12 (1) the last known address with date of all
13 names certified to the department as being absent parents of
14 children receiving public financial assistance, but only for
15 the purpose of enforcing the support liability of the absent
16 parents by the child support enforcement division or any
17 successor organizational unit;

18 (2) such return information needed for reports
19 required to be made to the federal government concerning use of
20 federal funds for state credits paid to low-income working
21 families;

22 (3) the names and addresses of low-income
23 taxpayers for the sole purpose of outreach to taxpayers with
24 dependent children; and

25 (4) such tax return information deemed

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1 necessary by the department to accomplish the purposes of the
2 Tax Refund Intercept Program Act;

3 E. the department of information technology, by
4 electronic media, a database updated quarterly that contains
5 the names, addresses, county of address and taxpayer
6 identification numbers of New Mexico personal income tax
7 filers, but only for the purpose of producing the random jury
8 list for the selection of petit or grand jurors for the state
9 courts pursuant to Section 38-5-3 NMSA 1978;

10 F. the state courts, the random jury lists produced
11 by the department of information technology under Subsection E
12 of this section;

13 G. the director of the New Mexico department of
14 agriculture or the director's authorized representative, upon
15 request of the director or representative, the names and
16 addresses of all gasoline rack operators, distributors,
17 wholesalers and retailers and all special fuel rack operators,
18 suppliers and retailers;

19 H. the public regulation commission, return
20 information with respect to the Corporate Income and Franchise
21 Tax Act required to enable the commission to carry out its
22 duties;

23 I. the state racing commission, return information
24 with respect to the state, municipal and county gross receipts
25 taxes paid by racetracks;

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underscoring material = new
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1 J. the gaming control board, tax returns of license
2 applicants and their affiliates as provided in Subsection E of
3 Section 60-2E-14 NMSA 1978;

4 K. the director of the workers' compensation
5 administration or to the director's representatives authorized
6 for this purpose:

7 (1) return information to facilitate the
8 identification of taxpayers that are delinquent or noncompliant
9 in payment of fees required by Section 52-1-9.1 or 52-5-19 NMSA
10 1978; and

11 (2) such tax return information deemed
12 necessary by the department to accomplish the purposes of the
13 Tax Refund Intercept Program Act;

14 L. the secretary of workforce solutions or the
15 secretary's delegate:

16 (1) return information for use in enforcement
17 of unemployment insurance collections pursuant to the terms of
18 a written reciprocal agreement entered into by the department
19 with the secretary of workforce solutions for exchange of
20 information; and

21 (2) such tax return information deemed
22 necessary by the department to accomplish the purposes of the
23 Tax Refund Intercept Program Act;

24 M. the superintendent of regulation and licensing
25 or the superintendent's authorized representative,

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1 notification, together with return information deemed relevant
2 by the department, that a person licensed by the regulation and
3 licensing department or applying for a license from the
4 regulation and licensing department is a delinquent taxpayer or
5 has failed to file required tax returns; and

6 N. the clerk of the New Mexico supreme court or the
7 clerk's authorized representative, notification, together with
8 return information deemed relevant by the department, that a
9 person licensed by the New Mexico supreme court or applying for
10 a license from the New Mexico supreme court is a delinquent
11 taxpayer or has failed to file required tax returns."

12 Section 11. A new section of the Tax Administration Act,
13 Section 7-1-8.9 NMSA 1978, is enacted to read:

14 "7-1-8.9. [NEW MATERIAL] INFORMATION THAT MAY BE REVEALED
15 TO LOCAL GOVERNMENTS AND THEIR AGENCIES.--An employee of the
16 department may reveal to:

17 A. the officials or employees of a municipality of
18 this state authorized in a written request by the municipality
19 for a period specified in the request within the twelve months
20 preceding the request:

21 (1) the names, taxpayer identification
22 numbers, addresses and North American industry classification
23 system codes of registered gross receipts taxpayers reporting
24 gross receipts for that municipality under the Gross Receipts
25 and Compensating Tax Act or a local option gross receipts tax

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1 imposed by that municipality. The department may also reveal
2 the information described in this paragraph quarterly or upon
3 such other periodic basis as the secretary and the municipality
4 may agree; and

5 (2) information indicating whether persons
6 shown on a list of businesses located within that municipality
7 furnished by the municipality have reported gross receipts to
8 the department but have not reported gross receipts for that
9 municipality under the Gross Receipts and Compensating Tax Act
10 or a local option gross receipts tax imposed by that
11 municipality;

12 B. the officials or employees of a county of this
13 state authorized in a written request by the county for a
14 period specified in the request within the twelve months
15 preceding the request:

16 (1) the names, taxpayer identification
17 numbers, addresses and North American industry classification
18 system codes of registered gross receipts taxpayers reporting
19 gross receipts either for that county in the case of a local
20 option gross receipts tax imposed on a countywide basis or only
21 for the areas of that county outside of any incorporated
22 municipalities within that county in the case of a county local
23 option gross receipts tax imposed only in areas of the county
24 outside of any incorporated municipalities. The department may
25 also reveal the information described in this paragraph

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1 quarterly or upon such other periodic basis as the secretary
2 and the county may agree;

3 (2) in the case of a local option gross
4 receipts tax imposed by a county on a countywide basis,
5 information indicating whether persons shown on a list of
6 businesses located within the county furnished by the county
7 have reported gross receipts to the department but have not
8 reported gross receipts for that county under the Gross
9 Receipts and Compensating Tax Act or a local option gross
10 receipts tax imposed by that county on a countywide basis; and

11 (3) in the case of a local option gross
12 receipts tax imposed by a county only on persons engaging in
13 business in that area of the county outside of incorporated
14 municipalities, information indicating whether persons on a
15 list of businesses located in that county outside of the
16 incorporated municipalities but within that county furnished by
17 the county have reported gross receipts to the department but
18 have not reported gross receipts for that county outside of the
19 incorporated municipalities within that county under the Gross
20 Receipts and Compensating Tax Act or a local option gross
21 receipts tax imposed by the county only on persons engaging in
22 business in that county outside of the incorporated
23 municipalities;

24 C. officials and employees of a tax increment
25 development district of this state authorized in a written

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1 request of the tax increment development district for a period
2 specified in the request within the twelve months preceding the
3 request:

4 (1) the names, taxpayer identification
5 numbers, addresses and North American industry classification
6 system codes of registered gross receipts taxpayers reporting
7 gross receipts for that tax increment development district
8 under the Gross Receipts and Compensating Tax Act or a local
9 option gross receipts tax imposed by a municipality or county
10 having jurisdiction. The department may also reveal the
11 information described in this paragraph quarterly or upon such
12 other periodic basis as the secretary and the tax increment
13 development district may agree; and

14 (2) information indicating whether persons
15 shown on a list of businesses located within that tax increment
16 development district furnished by the tax increment development
17 district have reported gross receipts to the department but
18 have not reported gross receipts for that tax increment
19 development district under the Gross Receipts and Compensating
20 Tax Act or a local option gross receipts tax imposed by a
21 municipality or county having jurisdiction; and

22 D. officials or employees of a municipality, county
23 or tax increment development district of this state, authorized
24 in a written request of the municipality, county or tax
25 increment development district, for purposes of inspection, the

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underscored material = new
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1 records of the department pertaining to an increase or decrease
2 to a distribution or transfer made pursuant to Section 7-1-6.15
3 NMSA 1978 for the purpose of reviewing the basis for the
4 increase or decrease; the authorized officials or employees may
5 only reveal the information provided in this subsection to
6 another authorized official or employee, to an employee of the
7 department, or a district court, an appellate court or a
8 federal court in a proceeding relating to a disputed
9 distribution and in which both the state and the municipality
10 or county are parties."

11 Section 12. A new section of the Tax Administration Act,
12 Section 7-1-8.10 NMSA 1978, is enacted to read:

13 "7-1-8.10. [NEW MATERIAL] INFORMATION THAT MAY BE
14 REVEALED TO PRIVATE PERSONS OTHER THAN THE TAXPAYER.--An
15 employee of the department may reveal to:

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

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

24 C. a rack operator, importer, blender, distributor
25 or supplier, the identity of a rack operator, importer,

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underscored material = new
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1 blender, supplier or distributor and the number of gallons
2 reported on returns required under the Gasoline Tax Act,
3 Special Fuels Supplier Tax Act or Alternative Fuel Tax Act, but
4 only when it is necessary to enable the department to carry out
5 its duties under the Gasoline Tax Act, the Special Fuels
6 Supplier Tax Act or the Alternative Fuel Tax Act; and

7 D. a corporation authorized to be formed under the
8 Educational Assistance Act, upon its written request, the last
9 known address and the date of that address of every person
10 certified to the department as an absent obligor of an
11 educational debt due and owed to the corporation or that the
12 corporation has lawfully contracted to collect; this
13 information may only be used by the corporation and its
14 officers and employees to enforce the educational debt
15 obligation of the absent obligors."

16 Section 13. Section 7-1-76 NMSA 1978 (being Laws 1965,
17 Chapter 248, Section 76, as amended) is amended to read:

18 "7-1-76. REVEALING INFORMATION CONCERNING TAXPAYERS.--
19 ~~[Any employee of the department, any former employee of the~~
20 ~~department or any other]~~ A person who reveals to another
21 [individual] person any return or return information [which he
22 is prohibited from lawfully revealing by provision of] that is
23 prohibited from being revealed pursuant to Section 7-1-8 NMSA
24 1978 or who uses a return or return information for any purpose
25 that is not authorized by Sections 7-1-8 through 7-1-8.10 NMSA

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1 1978 is guilty of a misdemeanor and shall, upon conviction
2 thereof, be fined not more than one thousand dollars (\$1,000)
3 or imprisoned [~~not more than~~] up to one year, or both, together
4 with costs of prosecution, and shall not be employed by the
5 state for a period of five years after the date of the
6 conviction."

7 Section 14. REPEAL.--Section 7-2C-13 NMSA 1978 (being
8 Laws 1985, Chapter 106, Section 13, as amended) is repealed.

9 Section 15. EFFECTIVE DATE.--The effective date of the
10 provisions of this act is July 1, 2009.