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SENATE BILL 64

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

INTRODUCED BY

Timothy M. Keller

AN ACT

RELATING TO TAXATION; PROVIDING FOR DIRECT DEPOSIT OF PERSONAL INCOME TAX REFUNDS INTO UP TO THREE OF THE TAXPAYER'S CHECKING OR SAVINGS BANK ACCOUNTS.

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

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

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

A. Any person who believes that an amount of tax has been paid by or withheld from that person in excess of that for which the person was liable, who has been denied any credit or rebate claimed or who claims a prior right to property in the possession of the department pursuant to a levy made under authority of Sections 7-1-31 through 7-1-34 NMSA 1978 may claim a refund by directing to the secretary, within the time limited

1 by the provisions of Subsections D, E and F of this section, a
2 written claim for refund. Except as provided in Subsection J
3 of this section, a refund claim shall include the taxpayer's
4 name, address and identification number, the type of tax for
5 which a refund is being claimed, the sum of money being
6 claimed, the period for which overpayment was made and the
7 basis for the refund. As used in this subsection, "basis for
8 the refund" means a brief statement of the facts and the law on
9 which the claim is based.

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

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

18 (2) If the department has neither granted nor
19 denied any portion of a claim for refund within one hundred
20 twenty days of the date the claim was mailed or delivered to
21 the department, the person may refile it within the time limits
22 set forth in Subsection D of this section or may within ninety
23 days elect to pursue one, but only one, of the remedies in
24 Subsection C of this section. After the expiration of the two
25 hundred ten days from the date the claim was mailed or

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1 delivered to the department, the department may not approve or
2 disapprove the claim unless the person has pursued one of the
3 remedies under Subsection C of this section.

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

9 (1) the person may direct to the secretary a
10 written protest against the denial of, or failure to either
11 allow or deny the claim or portion thereof, which shall be set
12 for hearing by a hearing officer designated by the secretary
13 promptly after the receipt of the protest in accordance with
14 the provisions of Section 7-1-24 NMSA 1978, and pursue the
15 remedies of appeal from decisions adverse to the protestant as
16 provided in Section 7-1-25 NMSA 1978; or

17 (2) the person may commence a civil action in
18 the district court for Santa Fe county by filing a complaint
19 setting forth the circumstance of the claimed overpayment,
20 alleging that on account thereof the state is indebted to the
21 plaintiff in the amount stated, together with any interest
22 allowable, demanding the refund to the plaintiff of that amount
23 and reciting the facts of the claim for refund. The plaintiff
24 or the secretary may appeal from any final decision or order of
25 the district court to the court of appeals.

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

5 (1) within three years of the end of the
6 calendar year in which:

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

10 (b) the final determination of value
11 occurs with respect to any overpayment that resulted from a
12 disapproval by any agency of the United States or the state of
13 New Mexico or any court of increase in value of a product
14 subject to taxation under the Oil and Gas Severance Tax Act,
15 the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency
16 School Tax Act, the Oil and Gas Ad Valorem Production Tax Act
17 or the Natural Gas Processors Tax Act; or

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

20 (2) when an amount of a claim for credit under
21 the provisions of the Investment Credit Act, Laboratory
22 Partnership with Small Business Tax Credit Act or Technology
23 Jobs Tax Credit Act or for the rural job tax credit [pursuant
24 to Sections 7-2E-1 and 7-2E-2 NMSA 1978] or similar credit has
25 been denied, the taxpayer may claim a refund of the credit no

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1 later than one year after the date of the denial;

2 (3) when a taxpayer under audit by the
3 department has signed a waiver of the limitation on assessments
4 on or after July 1, 1993 pursuant to Subsection F of Section
5 7-1-18 NMSA 1978, the taxpayer may file a claim for refund of
6 the same tax paid for the same period for which the waiver was
7 given, until a date one year after the later of the date of the
8 mailing of an assessment issued pursuant to the audit, the date
9 of the mailing of final audit findings to the taxpayer or the
10 date a proceeding is begun in court by the department with
11 respect to the same tax and the same period;

12 (4) if the payment of an amount of tax was not
13 made within three years of the end of the calendar year in
14 which the original due date of the tax or date of the
15 assessment of the department occurred, a claim for refund of
16 that amount of tax can be made within one year of the date on
17 which the tax was paid; or

18 (5) when a taxpayer has been assessed a tax on
19 or after July 1, 1993 under Subsection B, C or D of Section
20 7-1-18 NMSA 1978 and when the assessment applies to a period
21 ending at least three years prior to the beginning of the year
22 in which the assessment was made, the taxpayer may claim a
23 refund for the same tax for the period of the assessment or for
24 any period following that period within one year of the date of
25 the assessment unless a longer period for claiming a refund is

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1 provided in this section.

2 E. No credit or refund shall be allowed or made to
3 any person claiming a refund of gasoline tax under Section
4 7-13-11 NMSA 1978 unless notice of the destruction of the
5 gasoline was given the department within thirty days of the
6 actual destruction and the claim for refund is made within six
7 months of the date of destruction. No credit or refund shall
8 be allowed or made to any person claiming a refund of gasoline
9 tax under Section 7-13-17 NMSA 1978 unless the refund is
10 claimed within six months of the date of purchase of the
11 gasoline and the gasoline has been used at the time the claim
12 for refund is made.

13 F. If, as a result of an audit by the internal
14 revenue service or the filing of an amended federal return
15 changing a prior election or making any other change for which
16 federal approval is required by the Internal Revenue Code, any
17 adjustment of federal tax is made with the result that there
18 would have been an overpayment of tax if the adjustment to
19 federal tax had been applied to the taxable period to which it
20 relates, claim for credit or refund of only that amount based
21 on the adjustment may be made as provided in this section
22 within one year of the date of the internal revenue service
23 audit adjustment or payment of the federal refund or within the
24 period limited by Subsection D of this section, whichever
25 expires later. Interest computed at the rate specified in

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1 Subsection B of Section 7-1-68 NMSA 1978 shall be allowed on
2 any such claim for refund from the date one hundred twenty days
3 after the claim is made until the date the final decision to
4 grant the credit or refund is made.

5 G. If as a result of an audit by the department or
6 a managed audit covering multiple periods an overpayment of tax
7 is found in any period under the audit, that overpayment may be
8 credited against an underpayment of the same tax found in
9 another period under audit pursuant to Section 7-1-29 NMSA
10 1978, provided that the taxpayer files a claim for refund for
11 the overpayments identified in the audit.

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

18 I. For the purposes of this section, the term "oil
19 and gas tax return" means a return reporting tax due with
20 respect to oil, natural gas, liquid hydrocarbons, carbon
21 dioxide, helium or nonhydrocarbon gas pursuant to the Oil and
22 Gas Severance Tax Act, the Oil and Gas Conservation Tax Act,
23 the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad
24 Valorem Production Tax Act, the Natural Gas Processors Tax Act
25 or the Oil and Gas Production Equipment Ad Valorem Tax Act.

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1 J. The filing of a fully completed original income
2 tax return, corporate income tax return, corporate income and
3 franchise tax return, estate tax return or special fuel excise
4 tax return that shows a balance due the taxpayer or a fully
5 completed amended income tax return, an amended corporate
6 income tax return, an amended corporate income and franchise
7 tax return, an amended estate tax return, an amended special
8 fuel excise tax return or an amended oil and gas tax return
9 that shows a lesser tax liability than the original return
10 constitutes the filing of a claim for refund for the difference
11 in tax due shown on the original and amended returns.

12 K. A taxpayer may elect in the taxpayer's income
13 tax return to split a refund of personal income tax overpayment
14 and to have the department automatically deposit the refund
15 amount into up to three of the taxpayer's checking or savings
16 bank accounts. The department shall provide by rule for the
17 forms and required information to implement automatic deposit
18 of personal income tax refund amounts."

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