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HOUSE BILL 284

53RD LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2018

INTRODUCED BY
Larry R. Scott

AN ACT

RELATING TO TAXATION; PROVIDING THAT A PERSON WHO WILLFULLY ATTEMPTS TO EVADE OR DEFEAT A TAX IS GUILTY OF A SECOND TO FOURTH DEGREE FELONY DEPENDING ON THE AMOUNT AT ISSUE; INCLUDING THE VALUE OF A FRAUDULENT REFUND CLAIM WHEN DETERMINING THE PENALTY FOR COMMITTING TAX FRAUD; PROVIDING WHAT CONSISTS OF THE OBSTRUCTION OR IMPEDIMENT OF THE DUE ADMINISTRATION OF THE PROVISIONS OF THE TAX ADMINISTRATION ACT; EXPANDING THE INVESTIGATIONAL DUTIES OF THE TAX FRAUD INVESTIGATIONS DIVISION OF THE TAXATION AND REVENUE DEPARTMENT; PERMITTING COMMISSIONED TAX FRAUD ENFORCEMENT OFFICERS THE AUTHORITY TO MAKE ARRESTS IN CERTAIN CIRCUMSTANCES; PROVIDING PENALTIES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

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1 SECTION 1. Section 7-1-72 NMSA 1978 (being Laws 1965,
2 Chapter 248, Section 73) is repealed and new Section 7-1-72
3 NMSA 1978 is enacted to read:

4 "7-1-72. [NEW MATERIAL] ATTEMPTS TO EVADE OR DEFEAT TAX--
5 PENALTIES.--

6 A. In addition to any other penalties provided by
7 law, a person who willfully attempts to evade or defeat any tax
8 or the payment thereof is guilty of the following felonies and
9 shall be sentenced pursuant to the provisions of Section
10 31-18-15 NMSA 1978:

11 (1) a fourth degree felony if the amount of
12 tax owed or at issue is over five hundred dollars (\$500) but
13 not more than two thousand five hundred dollars (\$2,500);

14 (2) a third degree felony if the amount of tax
15 owed or at issue is over two thousand five hundred dollars
16 (\$2,500) but not more than twenty thousand dollars (\$20,000);

17 or

18 (3) a second degree felony if the amount of
19 tax owed or at issue is over twenty thousand dollars (\$20,000).

20 B. In addition to the penalties provided by this
21 section, a person who commits tax fraud shall pay the costs of
22 the prosecution of the person's case."

23 SECTION 2. Section 7-1-73 NMSA 1978 (being Laws 1965,
24 Chapter 248, Section 74, as amended) is amended to read:

25 "7-1-73. TAX FRAUD--PENALTIES.--

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- 1 A. A person is guilty of tax fraud if the person:
- 2 (1) willfully makes and subscribes any return,
- 3 statement or other document that contains or is verified by a
- 4 written declaration that it is true and correct as to every
- 5 material matter and that the person does not believe it to be
- 6 true and correct as to every material matter;
- 7 (2) willfully assists in, willfully procures,
- 8 willfully advises or willfully provides counsel regarding the
- 9 preparation or presentation of a return, affidavit, claim or
- 10 other document pursuant to or in connection with any matter
- 11 arising under the Tax Administration Act or a tax administered
- 12 by the department, knowing that it is fraudulent or knowing
- 13 that it is false as to a material matter, whether or not that
- 14 fraud or falsity is with knowledge or consent of:
- 15 (a) the taxpayer or other person liable
- 16 for taxes owed on the return; or
- 17 (b) a person who signs a document
- 18 stating that the return, affidavit, claim or other document is
- 19 true, correct and complete to the best of that person's
- 20 knowledge;
- 21 (3) files any return electronically, knowing
- 22 the information in the return is not true and correct as to
- 23 every material matter; or
- 24 (4) with intent to evade or defeat the payment
- 25 or collection of any tax, or, knowing that the probable

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1 consequences of the person's act will be to evade or defeat the
2 payment or collection of any tax, removes, conceals or releases
3 any property on which levy is authorized or that is liable for
4 payment of tax under the provisions of Section 7-1-61 NMSA
5 1978, or aids in accomplishing or causes the accomplishment of
6 any of the foregoing.

7 B. Whoever commits tax fraud when the amount of the
8 tax owed or the value of a fraudulent refund claim filed is
9 ~~[two hundred fifty dollars (\$250)]~~ five hundred dollars (\$500)
10 or less, in the aggregate, is guilty of a petty misdemeanor and
11 shall be sentenced pursuant to the provisions of Section
12 31-19-1 NMSA 1978.

13 ~~[G. Whoever commits tax fraud when the amount of~~
14 ~~the tax owed is over two hundred fifty dollars (\$250) but not~~
15 ~~more than five hundred dollars (\$500) is guilty of a~~
16 ~~misdemeanor and shall be sentenced pursuant to the provisions~~
17 ~~of Section 31-19-1 NMSA 1978.~~

18 ~~D.]~~ C. Whoever commits tax fraud when the amount of
19 the tax owed or the value of a fraudulent refund claim filed is
20 over five hundred dollars (\$500) but not more than two thousand
21 five hundred dollars (\$2,500), in the aggregate, is guilty of a
22 fourth degree felony and shall be sentenced pursuant to the
23 provisions of Section 31-18-15 NMSA 1978.

24 ~~[E.]~~ D. Whoever commits tax fraud when the amount
25 of the tax owed or the value of a fraudulent refund claim filed

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1 is over two thousand five hundred dollars (\$2,500) but not more
2 than twenty thousand dollars (\$20,000), in the aggregate, is
3 guilty of a third degree felony and shall be sentenced pursuant
4 to the provisions of Section 31-18-15 NMSA 1978.

5 ~~[F.]~~ E. Whoever commits tax fraud when the amount
6 of the tax owed or the value of a fraudulent refund claim filed
7 is over twenty thousand dollars (\$20,000), in the aggregate, is
8 guilty of a second degree felony and shall be sentenced
9 pursuant to the provisions of Section 31-18-15 NMSA 1978.

10 ~~[G.]~~ F. In addition to the ~~[fines imposed pursuant~~
11 ~~to]~~ penalties provided by this section, a person who commits
12 tax fraud shall pay the costs of the prosecution of the
13 person's case.

14 ~~[H.]~~ G. As used in this section:

15 (1) "tax" does not include civil penalties or
16 interest; and

17 (2) "willfully" means intentionally,
18 deliberately or purposely, but not necessarily maliciously."

19 **SECTION 3.** Section 7-1-74 NMSA 1978 (being Laws 1965,
20 Chapter 248, Section 75) is amended to read:

21 "7-1-74. INTERFERENCE OR ATTEMPTS CORRUPTLY, FORCIBLY OR
22 BY THREAT TO INTERFERE WITH ADMINISTRATION OF REVENUE LAWS.--

23 A. Whoever forcibly, or by bribe, threat or other
24 corrupt practice, obstructs or impedes or attempts to obstruct
25 or impede the due administration of the provisions of the Tax

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1 Administration Act shall, upon conviction thereof, be fined not
2 less than two hundred fifty dollars (\$250) nor more than ten
3 thousand dollars (\$10,000) or imprisoned for not less than
4 three months nor more than one year, or both, together with
5 costs of prosecution.

6 B. Obstructing or impeding the due administration
7 of the provisions of the Tax Administration Act consists of:

8 (1) knowingly providing false information to
9 or knowingly withholding information from a person authorized
10 to investigate violations of the Tax Administration Act or to
11 enforce the remedies of that act, where that information is
12 material to the investigation or enforcement;

13 (2) knowingly altering, destroying, mutilating
14 or concealing a document or record required to be retained
15 pursuant to the Tax Administration Act or a regulation issued
16 by the department, when the alteration, destruction, mutilation
17 or concealment is intended to mislead an investigation by a tax
18 fraud investigations division investigator or employee of the
19 department and concerns information material to that
20 investigation; or

21 (3) knowingly preventing, obstructing,
22 delaying or attempting to prevent, obstruct or delay the
23 communication of information or records relating to a state
24 tax-related investigation or providing or attempting to provide
25 misleading information or records to a tax fraud investigations

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1 division investigator or employee of the department authorized
2 to investigate or enforce the remedies of the Tax
3 Administration Act.

4 C. Whoever commits obstructing or impeding the due
5 administration of the provisions of the Tax Administration Act
6 is guilty of a fourth degree felony and upon conviction shall
7 be sentenced pursuant to the provisions of Section 31-18-15
8 NMSA 1978."

9 SECTION 4. Section 9-11-14 NMSA 1978 (being Laws 2005,
10 Chapter 108, Section 6) is amended to read:

11 "9-11-14. POWER TO EMPLOY LAW ENFORCEMENT OFFICERS FOR
12 TAX FRAUD INVESTIGATIONS DIVISION.--

13 A. The secretary shall employ police officers as
14 commissioned tax fraud enforcement officers as needed in the
15 tax fraud investigations division of the department to:

16 (1) enforce the tax laws [~~or to~~] administered
17 by the department;

18 (2) investigate fraud and other crimes that
19 may affect the collection of taxes due to the state or that may
20 lead to tax fraud;

21 (3) investigate any crimes that could occur
22 within the department; and

23 (4) investigate any crimes under the laws
24 administered by the department, including the Motor Vehicle
25 Code.

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1 B. Except as provided in Subsection C of this
2 section, commissioned tax fraud enforcement officers shall be
3 certified as having completed basic law enforcement training at
4 the New Mexico law enforcement academy or at another recognized
5 certified regional or federal law enforcement training program
6 equivalent to or more stringent than the basic law enforcement
7 training at the New Mexico law enforcement academy.

8 C. The secretary may employ a peace officer that is
9 not certified; provided that the peace officer will become
10 certified pursuant to Subsection B of this section or by waiver
11 pursuant to Section 29-7-10 NMSA 1978 within one year of being
12 hired.

13 D. Commissioned tax fraud enforcement officers
14 shall have the authority to make arrests with a court-approved
15 warrant or if a crime within their scope of authority is
16 committed in their presence.

17 [~~G.~~] E. The secretary may require specialized
18 training in addition to the requirements of [~~Subsection B of~~]
19 this section.

20 [~~D.~~] F. The secretary shall require continuing in-
21 service law enforcement training for tax fraud enforcement
22 officers as required by the New Mexico law enforcement academy
23 for all police officers."