

SENATE BILL 410

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

INTRODUCED BY

William F. Burt

This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO TAXATION; AMENDING SECTIONS OF THE TAX ADMINISTRATION ACT AND AMENDING AND ENACTING SECTIONS OF THE WITHHOLDING TAX ACT TO ADDRESS FEDERAL PARTNERSHIP AUDIT OR ADJUSTMENT REQUESTS RESULTING IN UNDER- OR OVER-PAYMENT OF CERTAIN STATE TAXES.

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

**SECTION 1.** Section 7-1-13 NMSA 1978 (being Laws 1965,

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Chapter 248, Section 18, as amended) is amended to read:

"7-1-13. TAXPAYER RETURNS--PAYMENT OF TAXES--EXTENSION OF TIME.--

A. Taxpayers are liable for tax at the time of and after the transaction or incident giving rise to tax until payment is made. Taxes are due on and after the date on which their payment is required until payment is made.

B. Every taxpayer shall, on or before the date on which payment of any tax is due, complete and file a tax return in a form prescribed and according to the regulations issued by the secretary. Except as provided in Section 7-1-13.1 NMSA 1978 or by regulation, ruling, order or instruction of the secretary, the payment of any tax or the filing of any return may be accomplished by mail. When the filing of a tax return or payment of a tax is accomplished by mail, the date of the postmark shall be considered the date of submission of the return or payment.

~~[C. If any adjustment is made in the basis for computation of any federal tax as a result of an audit by the internal revenue service or the filing of an amended federal return changing a prior election or making any other change for which federal approval is required by the Internal Revenue Code, the taxpayer affected shall, within one hundred eighty days of final determination of the adjustment, file an amended return with the department. Payment of any additional tax due~~

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~~shall accompany the return.~~

~~D.]~~ C. Payment of the total amount of all taxes that are due from the taxpayer shall precede or accompany the return. Delivery to the department of a check that is not paid upon presentment does not constitute payment.

~~[E.]~~ D. The secretary or the secretary's delegate may, for good cause, extend in favor of a taxpayer or a class of taxpayers, for no more than a total of twelve months, the date on which payment of any tax is required or on which any return required by provision of the Tax Administration Act shall be filed, but no extension shall prevent the accrual of interest as otherwise provided by law. When an extension of time for income tax has been granted a taxpayer ~~[under]~~ pursuant to the Internal Revenue Code, the extension shall serve to extend the time for filing New Mexico income tax; provided that a copy of the approved federal extension of time is attached to the taxpayer's New Mexico income tax return. The secretary by regulation may also provide for the automatic extension for no more than six months of the date upon which payment of any New Mexico income tax or the filing of any New Mexico income tax return is required. If the secretary or the secretary's delegate believes it necessary to ensure the collection of the tax, the secretary or the secretary's delegate may require, as a condition of granting any extension, that the taxpayer furnish security in accordance with the

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provisions of Section 7-1-54 NMSA 1978.

~~[F. As used in this section, "final determination" means:~~

~~(1) the taxpayer has:~~

~~(a) made payment on any additional income tax liability resulting from the federal audit; and~~

~~(b) not filed a petition for redetermination or claim for refund for the portions of the audit on which payment was made;~~

~~(2) the taxpayer has received a refund from the United States department of the treasury resulting from the federal audit;~~

~~(3) the taxpayer has signed federal form 870 or other internal revenue service form consenting to the deficiency or accepting any overassessment;~~

~~(4) the taxpayer's time period for filing a federal petition for redetermination to the United States tax court has expired;~~

~~(5) the taxpayer enters into a closing agreement with the internal revenue service as provided in Section 7121 of the Internal Revenue Code; or~~

~~(6) a decision from the United States tax court, United States district court, United States court of appeals, United States court of claims or United States supreme court becomes final.]~~

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E. Except as provided in Subsection F of this section, no later than one hundred eighty days after the final determination date, a taxpayer shall file a federal adjustments report with the department and pay any state tax due with respect to final net-positive federal adjustments arising from:

(1) an audit or other action by the internal revenue service; or

(2) a timely filed amended federal income tax return, including a return or other similar information filed pursuant to Section 6225(c)(2) of the Internal Revenue Code.

F. Except for federal adjustments that are required to be reported pursuant to Subsection E of this section, partnerships and partners shall report final net-positive federal adjustments arising from a partnership level audit or an administrative adjustment request and make payments as follows:

(1) except for where the partnership or tiered partner makes an election pursuant to Subsection G of this section, the partnership or tiered partner shall:

(a) file: 1) a completed federal adjustments report and notify each of its direct partners of their distributive share of the final federal adjustments, including information necessary for reporting state tax due as required by the department; and 2) an amended withholding return for the reviewed year if such return was filed, or would

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have been required pursuant to the Withholding Tax Act;

(b) in the case of an audited partnership, file the returns required by this paragraph no later than ninety days after the final determination date; and

(c) in the case of a tiered partner of an audited partnership, file the returns required by this paragraph no later than ninety days after the time for the audited partnership's filing and furnishing statements to tiered partnerships and their partners as established pursuant to Section 6226 of the Internal Revenue Code and the regulations thereunder; and

(2) a partner of a partnership or a tiered partner subject to tax pursuant to Section 7-2-3 or 7-2A-3 NMSA 1978 on adjustments to which Paragraph (1) of this subsection applies shall file a federal adjustments report reporting the partner's distributive share of the adjustments and shall pay the additional amount of state tax due, plus any penalty and interest due and less any credit for related amounts paid or withheld and remitted on behalf of the partner pursuant to Paragraph (1) of this subsection as follows:

(a) for taxable direct partners of the audited partnership, no later than one hundred eighty days after the final determination date; or

(b) for taxable indirect partners of the audited partnership, no later than one hundred eighty days

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after the time for the audited partnership's filing and furnishing statements to tiered partnerships and their partners as established pursuant to Section 6226 of the Internal Revenue Code and the regulations thereunder.

G. The election provided by this subsection applies only to federal adjustments other than the distributive share of federal adjustments that must be included in the unitary business income of any direct or indirect corporate partner; provided that this can be reasonably determined, or federal adjustments resulting from an administrative adjustment request. A partnership making an election pursuant to this subsection shall:

(1) file a completed federal adjustments report and notify the department that it is making the election pursuant to this subsection; and

(2) pay an amount, determined as follows, in lieu of taxes owed by its direct and indirect taxable partners:

(a) exclude from the total final federal adjustments the distributive share reported to a direct partner that is an exempt partner unless the adjustment represents unrelated business taxable income;

(b) include only the portion of the total federal adjustment to distributive shares of partners taken into account pursuant to Section 6225(b)(2) of the Internal Revenue Code;

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(c) apportion and allocate the adjustments as provided by the Uniform Division of Income for Tax Purposes Act as applied at the partnership level following any department regulations adopted for this purpose;

(d) multiply the resulting amount by the highest tax rate provided by Section 7-2A-5 NMSA 1978; and

(e) add to the amount calculated pursuant to Subparagraph (d) of this paragraph an amount of penalty and interest computed pursuant to the Tax Administration Act.

H. In any action required or allowed to be taken pursuant to the Tax Administration Act with respect to the reporting of federal adjustments by a partnership, the state partnership representative for the reviewed year shall have the sole authority to act on behalf of the partnership, and the partnership's direct partners and indirect partners shall be bound by those actions. The state partnership representative is the partnership's federal partnership representative for the reviewed year, unless the partnership designates in writing another person as its state partnership representative; provided that the person meets any qualifications established by the department.

I. Pursuant to procedures that may be adopted by the department, an audited partnership or tiered partner of that partnership may enter into an agreement with the



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department to utilize an alternative reporting and payment method, including applicable time requirements or any other provision pursuant to Subsections E through H of this section, if the audited partnership or tiered partner demonstrates that the requested method will reasonably provide for the reporting and payment of taxes, penalties and interest due pursuant to Subsections E through H of this section. Application for approval of an alternative reporting and payment method must be made by the audited partnership or tiered partner within the time for election as provided in Subsection G of this section, as appropriate.

J. An election made pursuant to Subsection G or I of this section is irrevocable, unless the department, in its discretion, determines otherwise. If properly reported and paid by the audited partnership or tiered partner, the amount determined in Paragraph (2) of Subsection G of this section, or similarly under an optional election pursuant to Subsection I of this section, will be treated as paid in lieu of taxes owed by its direct and indirect partners on the same final federal adjustments. The direct or indirect partners of the partnership that pays this in lieu of amount may not claim any deduction, credit or refund with respect to that amount.

K. A taxpayer may make estimated payments of state tax expected to result from a pending audit by the internal revenue service prior to the final determination date,

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following the process prescribed by the department, and such payments will limit the accrual of further statutory interest on that amount.

L. A taxpayer may claim an amount of state tax resulting from final net-negative federal adjustments as provided in Section 7-1-26 NMSA 1978.

M. Nothing in Subsections E through L of this section shall prevent the department from assessing direct partners or indirect partners for taxes they owe, using the best information available, in the event that a partnership or tiered partner fails to timely make any report or payment required for any reason.

N. As used in this section:

(1) "administrative adjustment request" means an administrative adjustment request filed by a partnership pursuant to Section 6227 of the Internal Revenue Code;

(2) "audited partnership" means a partnership subject to a partnership level audit resulting in a federal adjustment;

(3) "corporate partner" means a partner, direct or indirect, that is subject to tax pursuant to the Corporate Income and Franchise Tax Act;

(4) "direct partner" means any partner that holds an interest directly in a partnership or pass-through entity;

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(5) "exempt partner" means a partner, direct or indirect, that is exempt from New Mexico income tax except on unrelated business taxable income;

(6) "federal adjustment" means a change to an item or amount determined pursuant to the Internal Revenue Code that is used by a taxpayer to compute an amount of state tax owed, whether that change results from action by the internal revenue service, including a partnership level audit, or the filing of an amended federal return, federal refund claim or an administrative adjustment request by a partnership;

(7) "federal adjustments report" includes the methods or forms required by the department for use by a taxpayer to report final federal adjustments, including an amended tax return, information return or a uniform multistate report;

(8) "final determination date" means:

(a) except as provided in Subparagraphs (b), (c) and (d) of this paragraph, if a federal adjustment arises from an audit or other action by the internal revenue service, the final determination date is the first day on which no federal adjustments arising from that audit or other action remain to be finally determined, whether by a decision of the internal revenue service with respect to which all rights of appeal have been waived or exhausted, by agreement, or, if appealed or contested, by a final decision with respect to

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which all rights of appeal have been waived or exhausted. For agreements required to be signed by the internal revenue service and the taxpayer, the final determination date is the date on which the last party signed the agreement;

(b) for federal adjustments arising from an internal revenue service audit or other action by the internal revenue service, if the taxpayer filed as a member of a filing group pursuant to the Corporate Income and Franchise Tax Act, the final determination date means the first day on which no related federal adjustments arising from that audit remain to be finally determined, as described in Subparagraph (a) of this paragraph, for the entire group;

(c) except as provided in Subparagraph (d) of this paragraph, if the federal adjustment results from filing an amended federal return, a federal refund claim or an administrative adjustment request, or if it is a federal adjustment reported on an amended federal return or other similar report filed pursuant to Section 6225(c) of the Internal Revenue Code, the final determination date means the day on which the amended return, refund claim, administrative adjustment request or other similar report was filed; and

(d) for adjustments resulting from a partnership level audit or an administrative adjustment request for which the final determination date pursuant to Subparagraph (a) or (c) of this paragraph is determined to be a date

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occurring prior to the effective date of this 2021 act, the final determination date shall be July 1, 2021;

(9) "final federal adjustments" means adjustments for which the final determination date has passed, including final net-positive federal adjustments and final net-negative federal adjustments;

(10) "indirect partner" means a partner in a partnership or pass-through entity in which the partner holds an interest directly, or through another indirect partner, in a partnership or pass-through entity;

(11) "net-negative federal adjustments" means federal adjustments relating to the same tax period, whether made by the taxpayer or the internal revenue service, the net effect of which is to decrease state tax due as compared to tax originally reported for that period;

(12) "net-positive federal adjustments" means federal adjustments relating to the same tax period, whether made by the taxpayer or the internal revenue service, the net effect of which is to increase state tax due as compared to tax originally reported for that period;

(13) "partner" means a person that holds an interest directly or indirectly in a partnership or other pass-through entity;

(14) "partnership" means an entity subject to taxation pursuant to Subchapter K of the Internal Revenue Code;

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(15) "partnership level audit" means an examination by the internal revenue service at the partnership level pursuant to Subchapter C or Subtitle F, Chapter 63 of the Internal Revenue Code which results in federal adjustments;

(16) "pass-through entity" means an entity, other than a partnership, that is not subject to tax pursuant to the Corporate Income and Franchise Tax Act;

(17) "reviewed year" means the taxable year of a partnership that is subject to a partnership level audit from which federal adjustments arise;

(18) "taxpayer" means a taxpayer, including a partnership subject to a partnership level audit or a partnership that has made an administrative adjustment request, as well as a tiered partner of that partnership, unless the context indicates otherwise;

(19) "tiered partner" means any partner that is a partnership or pass-through entity; and

(20) "unrelated business taxable income" means "unrelated business taxable income" as used in Section 512 of the Internal Revenue Code."

SECTION 2. Section 7-1-18 NMSA 1978 (being Laws 1965, Chapter 248, Section 21, as amended) is amended to read:

"7-1-18. LIMITATION ON ASSESSMENT BY DEPARTMENT.--

A. Except as otherwise provided in this section, no assessment of tax may be made by the department after three

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years from the end of the calendar year in which payment of the tax was due, and no proceeding in court for the collection of such tax without the prior assessment thereof shall be begun after the expiration of such period.

B. In case of a false or fraudulent return made by a taxpayer with intent to evade tax, the amount thereof may be assessed at any time within ten years from the end of the calendar year in which the tax was due, and no proceeding in court for the collection of such tax without the prior assessment thereof shall be begun after the expiration of such period.

C. In case of the failure by a taxpayer to complete and file any required return, the tax relating to the period for which the return was required may be assessed at any time within seven years from the end of the calendar year in which the tax was due, and no proceeding in court for the collection of such tax without the prior assessment thereof shall be begun after the expiration of such period.

D. If a taxpayer in a return understates by more than twenty-five percent the amount of liability for any tax for the period to which the return relates, appropriate assessments may be made by the department at any time within six years from the end of the calendar year in which payment of the tax was due.

E. If any adjustment in the basis for computation

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of any federal tax is made as a result of an audit by the internal revenue service or the filing of an amended federal return or administrative adjustment request changing a prior election or making any other change for which federal approval is required by the Internal Revenue Code that results in liability for any tax, the amount thereof may be assessed at any time, but not after three years from the end of the calendar year in which filing of ~~[an amended return]~~ a federal adjustments report is required by ~~[Subsection G]~~ Subsections E through J of Section 7-1-13 NMSA 1978.

F. If the taxpayer has signed a waiver of the limitations on assessment imposed by this section, an assessment of tax may be made or a proceeding in court begun without regard to the time at which payment of the tax was due.

G. As used in this section:

(1) "administrative adjustment request" means "administrative adjustment request" as used in Section 7-1-13 NMSA 1978; and

(2) "federal adjustments report" means "federal adjustments report" as used in Section 7-1-13 NMSA 1978."

SECTION 3. Section 7-1-26 NMSA 1978 (being Laws 1965, Chapter 248, Section 28, as amended) is amended to read:

"7-1-26. DISPUTING LIABILITIES--CLAIM FOR CREDIT, REBATE OR REFUND.--

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A. A 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 a credit or rebate claimed or who claims a prior right to property in the possession of the department pursuant to a levy made ~~under~~ pursuant to the authority of Sections 7-1-31 through 7-1-34 NMSA 1978 may claim a refund by directing to the secretary, within the time limitations provided by Subsections F and G of this section, a written claim for refund that, except as provided in Subsection K of this section, includes:

- (1) the taxpayer's name, address and identification number;
- (2) the type of tax for which a refund is being claimed, the credit or rebate denied or the property levied upon;
- (3) the sum of money or other property being claimed;
- (4) with respect to a refund, the period for which overpayment was made;
- (5) a brief statement of the facts and the law on which the claim is based, which may be referred to as the "basis for the refund", which may include documentation that substantiates the written claim and supports the taxpayer's basis for the refund; and
- (6) if applicable, a copy of an amended return

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for each tax period for which the refund is claimed.

B. A claim for refund that meets the requirements of Subsection A of this section and that is filed within the time limitations provided by Subsections F and G of this section is deemed to be properly before the department for consideration, regardless of whether the department requests additional documentation after receipt of the claim for refund.

C. If the department requests additional relevant documentation from a taxpayer who has submitted a claim for refund, the claim for refund shall not be considered incomplete provided the taxpayer submits sufficient information for the department to make a determination.

D. The secretary or the secretary's delegate may allow the claim in whole or in part or may deny the claim. If the:

(1) claim is denied in whole or in part in writing, the person shall not refile the denied claim, but the person, within ninety days after either the mailing or delivery of the denial of all or any part of the claim, may elect to pursue only one of the remedies provided in Subsection E of this section; and

(2) department has neither granted nor denied any portion of a complete claim for refund within one hundred eighty days after the claim was mailed or otherwise delivered to the department, the person may elect to treat the claim as

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denied and elect to pursue only one of the remedies provided in Subsection E of this section.

E. A person may elect to pursue only one of the remedies provided in this subsection. A person who timely pursues more than one remedy is deemed to have elected the first. The person may:

(1) direct to the secretary, pursuant to the provisions of Section 7-1-24 NMSA 1978, a written protest that sets forth:

(a) the circumstances of: 1) an alleged overpayment; 2) a denied credit; 3) a denied rebate; or 4) a denial of a prior right to property levied upon by the department;

(b) an allegation that, because of that overpayment or denial, the state is indebted to the taxpayer for a specified amount, including any allowed interest, or for the property;

(c) a demand for the refund to the taxpayer of that amount or that property; and

(d) a recitation of the facts of the claim for refund; or

(2) commence a civil action in the district court for Santa Fe county by filing a complaint setting forth the circumstance of the claimed overpayment, denied credit or rebate or denial of a prior right to property levied upon by

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the department alleging that on account thereof the state is indebted to the plaintiff in the amount or property stated, together with any interest allowable, demanding the refund to the plaintiff of that amount or property and reciting the facts of the claim for refund. The plaintiff or the secretary may appeal from any final decision or order of the district court to the court of appeals.

F. Except as otherwise provided in Subsection G of this section, a credit or refund of any amount of overpaid tax, penalty or interest may be allowed or made to a person if a claim is properly filed:

(1) only within three years after the end of the calendar year in which the applicable event occurs:

(a) [~~the payment was originally due or the overpayment resulted from an assessment by the department as provided in Section 7-1-17 NMSA 1978, whichever is later~~] in the case of tax paid with an original or amended state return, the date the related tax was originally due;

(b) in the case of tax paid in response to an assessment by the department pursuant to Section 7-1-17 NMSA 1978, the date the STBTC→assessment was made←STBTC STBTC→tax was paid←STBTC ;

(c) in the case of tax with respect to which a net-negative federal adjustment, as that term is used in Section 7-1-13 NMSA 1978, relates, the final determination

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date of that federal adjustment, as provided in Section 7-1-13 NMSA 1978;

~~[(b)]~~ (d) the final determination of value occurs with respect to any overpayment that resulted from a disapproval by any agency of the United States or the state of New Mexico or any court of increase in value of a product subject to taxation ~~[under]~~ pursuant to the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act or the Natural Gas Processors Tax Act; or

~~[(c)]~~ (e) in the case of a claim related to property taken by levy, the date the property was levied upon as provided in the Tax Administration Act; [or

~~(d) an overpayment of New Mexico tax resulted from: 1) an internal revenue service audit adjustment or a federal refund paid due to an adjustment of an audit by the internal revenue service or an amended federal return; or 2) the amendment to a federal return for which federal approval is required by the Internal Revenue Code;]~~

(2) in the case of a denial of a claim for credit ~~[under]~~ pursuant to the Investment Credit Act, Laboratory Partnership with Small Business Tax Credit Act or Technology Jobs and Research and Development Tax Credit Act or for the rural job tax credit provided by Section 7-2E-1.1 NMSA

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1978 or similar credit, only within one year after the date of the denial;

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

(4) in the case of a payment of an amount of tax not made within three years of the end of the calendar year in which the original due date of the tax or date of the assessment of the department occurred, only for a claim for refund of that amount of tax and only within one year of the date on which the tax was paid; or

(5) in the case of a taxpayer who has been assessed a tax on or after July 1, 1993 ~~[under]~~ pursuant to Subsection B, C or D of Section 7-1-18 NMSA 1978 and an assessment that applies to a period ending at least three years prior to the beginning of the year in which the assessment was made, only for a refund for the same tax for the period of the assessment or for any period following that period within one

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year of the date of the assessment unless a longer period for claiming a refund is provided in this section.

G. No credit or refund shall be allowed or made to a person claiming a refund of gasoline tax [~~under~~] pursuant to Section 7-13-11 NMSA 1978 unless notice of the destruction of the gasoline was given to the department within thirty days of the actual destruction and the claim for refund is made within six months of the date of destruction. No credit or refund shall be allowed or made to a person claiming a refund of gasoline tax [~~under~~] pursuant to Section 7-13-17 NMSA 1978 unless the refund is claimed within six months of the date of purchase of the gasoline and the gasoline has been used at the time the claim for refund is made.

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

I. A refund of tax paid under any tax or tax act administered [~~under~~] pursuant to Subsection B of Section 7-1-2 NMSA 1978 may be made, at the discretion of the department, in the form of credit against future tax payments if future tax liabilities in an amount at least equal to the credit amount

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reasonably may be expected to become due.

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

K. The filing of a fully completed original income tax return, corporate income tax return, corporate income and franchise tax return, estate tax return or special fuel excise tax return that shows a balance due the taxpayer or a fully completed amended income tax return, an amended corporate income tax return, an amended corporate income and franchise tax return, an amended estate tax return, an amended special fuel excise tax return or an amended oil and gas tax return that shows a lesser tax liability than the original return constitutes the filing of a claim for refund for the difference in tax due shown on the original and amended returns.

L. In no case may a credit or refund be claimed if the related federal adjustment is taken into account by a partnership in the partnership's tax return for the adjustment year and allocated to the partners in a manner similar to other partnership tax items."

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SECTION 4. Section 7-1-29 NMSA 1978 (being Laws 1965, Chapter 248, Section 31, as amended) is amended to read:

"7-1-29. AUTHORITY TO MAKE REFUNDS OR CREDITS.--

A. In response to a claim for refund, credit or rebate made as provided in Section 7-1-26 NMSA 1978, but before a court acquires jurisdiction of the matter, the secretary or the secretary's delegate may authorize payment to a person in the amount of the credit or rebate claimed or refund an overpayment of tax determined by the secretary or the secretary's delegate to have been erroneously made by the person, together with allowable interest. A payment of a credit rebate claimed or a refund of tax and interest erroneously paid amounting to twenty thousand dollars (\$20,000) or more shall be made with the prior approval of the attorney general, except that the secretary or the secretary's delegate may make refunds with respect to the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas Production Equipment Ad Valorem Tax Act, Section 7-13-17 NMSA 1978 and the Cigarette Tax Act without the prior approval of the attorney general regardless of the amount.

B. Pursuant to the final order of the district court, the court of appeals, the supreme court of New Mexico or a federal court, from which order, appeal or review is not

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successfully taken, adjudging that a person has properly claimed a credit, ~~[or]~~ rebate or ~~[made an overpayment of]~~ a refund of overpaid tax, the secretary shall authorize the payment to the person of the amount thereof. After a court acquires jurisdiction but before it issues a final order, the secretary may authorize payment of a credit, rebate or refund pursuant to a closing agreement pursuant to Section 7-1-20 NMSA 1978.

C. In the discretion of the secretary, any amount of credit or rebate to be paid or tax to be refunded may be offset against any amount of tax for which the person due to receive the credit, rebate payment or refund is liable. The secretary or the secretary's delegate shall give notice to the taxpayer that the credit, rebate payment or refund will be made in this manner, and the taxpayer shall be entitled to interest pursuant to Section 7-1-68 NMSA 1978 until the tax liability is credited with the credit, rebate or refund amount.

D. In an audit by the department or a managed audit covering multiple reporting periods in which both underpayments and overpayments of a tax have been made in different reporting periods, the department shall credit the tax overpayments against the underpayments; provided that the taxpayer files a claim for refund of the overpayments. An overpayment shall be applied as a credit first to the earliest underpayment and then to succeeding underpayments. An underpayment of tax to which

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an overpayment is credited pursuant to this section shall be deemed paid in the period in which the overpayment was made or the period to which the overpayment was credited against an underpayment, whichever is later. If the overpayments credited pursuant to this section exceed the underpayments of a tax, the amount of the net overpayment for the periods covered in the audit shall be refunded to the taxpayer.

E. When a taxpayer makes a payment identified to a particular return or assessment, and the department determines that the payment exceeds the amount due pursuant to that return or assessment, the secretary may apply the excess to the taxpayer's other liabilities pursuant to the tax acts to which the return or assessment applies, without requiring the taxpayer to file a claim for a refund. The liability to which an overpayment is applied pursuant to this section shall be deemed paid in the period in which the overpayment was made or the period to which the overpayment was applied, whichever is later.

F. If the department determines, upon review of an original or amended income tax return, corporate income and franchise tax return, estate tax return, special fuels excise tax return or oil and gas tax return, that there has been an overpayment of tax for the taxable period to which the return or amended return relates in excess of the amount due to be refunded to the taxpayer pursuant to the provisions of

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Subsection K of Section 7-1-26 NMSA 1978, the department may refund that excess amount to the taxpayer without requiring the taxpayer to file a refund claim.

G. Records of refunds and credits made in excess of ten thousand dollars (\$10,000) shall be available for inspection by the public. The department shall keep such records for a minimum of three years from the date of the refund or credit.

H. In response to a timely refund claim pursuant to Section 7-1-26 NMSA 1978 and notwithstanding any other provision of the Tax Administration Act, the secretary or the secretary's delegate may refund or credit a portion of an assessment of tax paid, including applicable penalties and interest representing the amount of tax previously paid by another person on behalf of the taxpayer on the same transaction; provided that the requirements of equitable recoupment are met. For purposes of this subsection, the refund claim may be filed by the taxpayer to whom the assessment was issued or by another person who claims to have previously paid the tax on behalf of the taxpayer. Prior to granting the refund or credit, the secretary may require a waiver of all rights to claim a refund or credit of the tax previously paid by another person paying a tax on behalf of the taxpayer.

I. If, as a result of an audit by the department or

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a managed audit, a person is determined to owe gross receipts tax on receipts from the sale of property or services, the department may credit against the amount owed an amount of compensating tax paid by the purchaser if the person can demonstrate that the purchaser timely paid the compensating tax on the same property or services. The credit provided by this subsection shall not be denied solely because the purchaser cannot timely file for a refund of the compensating tax paid and, if the credit is to be granted, the department shall require, for the purpose of granting the credit, that the purchaser give up any right to claim a refund of that tax."

SECTION 5. A new section of the Withholding Tax Act is enacted to read:

"[NEW MATERIAL] COMPOSITE RETURNS.--

A. A pass-through entity may file a composite income tax return on behalf of electing nonresident members reporting and paying income tax at the highest marginal rate provided in Section 7-2A-5 NMSA 1978 on the members' pro rata or distributive shares of income of the pass-through entity from doing business in, or deriving income from sources within, this state.

B. A nonresident member whose only source of income within a state is from one or more pass-through entities may elect to be included in a composite income tax return filed pursuant to this section.

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C. A nonresident member that has been included in a composite income tax return may file an individual income tax return and shall receive credit for tax paid on the member's behalf by the pass-through entity.

D. As used in this section:

(1) "pass-through entity" means a corporation that for the applicable tax year is treated as an S corporation pursuant to Section 1362(a) of the Internal Revenue Code and any entity with one or more members that is not taxed as a corporation pursuant to Subchapter C of the Internal Revenue Code;

(2) "member" means a shareholder of an S corporation; a partner in a general partnership, a limited partnership or a limited liability partnership; a member of a limited liability company; or a beneficiary of a trust; and

(3) "nonresident" means an individual who is not a resident of or domiciled in the state, a business entity that does not have its commercial domicile in the state or a trust not organized in the state."

SECTION 6. APPLICABILITY.--The provisions of Sections 1 and STBTC→5←STBTC STBTC→4←STBTC of this act apply to federal adjustments with a final determination date occurring on and after January 1, 2021.

SECTION 7. EFFECTIVE DATE.--The effective date of the provisions STBTC→of Section 5←STBTC of this act is STBTC→July

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