

1 SENATE BILL 146

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

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10 AN ACT

11 RELATING TO TAXATION; AMENDING THE AMOUNT OF TAX LIABILITY
12 REQUIRING ASSESSMENT BY THE SECRETARY OF TAXATION AND REVENUE
13 OR ALLOWED TO BE DISPUTED BY A TAXPAYER; AMENDING PROVISIONS
14 FOR SUBMITTING AN APPLICATION FOR A TAX CREDIT; PROVIDING THAT
15 EVADING OR DEFEATING A TAX WITH SALES SUPPRESSION SOFTWARE
16 CONSTITUTES TAX FRAUD; CLARIFYING PROCESSES FOR PROTESTING THE
17 VALUE OR CLASSIFICATION OF PROPERTY BY A COUNTY ASSESSOR AND
18 THE STATE AND APPEALS OF ORDERS BY A COUNTY VALUATION PROTESTS
19 BOARD.

20
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

22 SECTION 1. Section 7-1-17 NMSA 1978 (being Laws 1965,
23 Chapter 248, Section 20, as amended) is amended to read:

24 "7-1-17. ASSESSMENT OF TAX--PRESUMPTION OF CORRECTNESS.--

25 A. If the secretary or the secretary's delegate

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1 determines that a taxpayer is liable for taxes in excess of
2 [~~twenty five dollars (\$25.00)~~] fifty dollars (\$50.00) that are
3 due and that have not been previously assessed to the taxpayer,
4 the secretary or the secretary's delegate shall promptly assess
5 the amount thereof to the taxpayer.

6 B. Assessments of tax are effective:

7 (1) when a return of a taxpayer is received by
8 the department showing a liability for taxes;

9 (2) when a document denominated "notice of
10 assessment of taxes", issued in the name of the secretary, is
11 mailed or delivered in person to the taxpayer against whom the
12 liability for tax is asserted, stating the nature and amount of
13 the taxes assertedly owed by the taxpayer to the state,
14 demanding of the taxpayer the immediate payment of the taxes
15 and briefly informing the taxpayer of the remedies available to
16 the taxpayer; or

17 (3) when an effective jeopardy assessment is
18 made as provided in the Tax Administration Act.

19 C. Any assessment of taxes or demand for payment
20 made by the department is presumed to be correct.

21 D. When taxes have been assessed to any taxpayer
22 and remain unpaid, the secretary or the secretary's delegate
23 may demand payment at any time except as provided otherwise by
24 Section 7-1-19 NMSA 1978."

25 SECTION 2. Section 7-1-24 NMSA 1978 (being Laws 1965,
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1 Chapter 248, Section 26, as amended) is amended to read:

2 "7-1-24. DISPUTING LIABILITIES--ADMINISTRATIVE PROTEST.--

3 A. A taxpayer may dispute:

4 (1) the assessment to the taxpayer of any
5 amount of tax over fifty dollars (\$50.00);

6 (2) the application to the taxpayer of any
7 provision of the Tax Administration Act except the issuance of
8 a subpoena or summons; or

9 (3) the denial of or failure either to allow
10 or to deny a:

11 (a) credit or rebate; or

12 (b) claim for refund made in accordance
13 with Section 7-1-26 NMSA 1978.

14 B. The taxpayer may dispute a matter described in
15 Subsection A of this section by filing with the secretary a
16 written protest that:

17 (1) identifies the taxpayer and the tax
18 credit, rebate, property or provision of the Tax Administration
19 Act involved;

20 (2) states the grounds on which the protest is
21 based and summarizes evidence supporting each ground asserted;
22 and

23 (3) states the affirmative relief requested.

24 C. A taxpayer may amend a statement made by the
25 taxpayer in accordance with Paragraphs (2) and (3) of

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1 Subsection B of this section at any time prior to ten days
2 before the hearing conducted on the protest in accordance with
3 the Administrative Hearings Office Act or, if a scheduling
4 order has been issued, in accordance with the scheduling order.
5 The secretary may, in appropriate cases, provide for an
6 informal conference before a hearing of the protest is set by
7 the administrative hearings office or before acting on a claim
8 for refund.

9 D. A taxpayer may file a protest, in the case of an
10 assessment of tax by the department, without making payment of
11 the amount assessed; provided that, if only a portion of the
12 assessment is in dispute, any unprotested amounts of tax,
13 interest or penalty shall be paid, or, if applicable, an
14 installment agreement pursuant to Section 7-1-21 NMSA 1978
15 shall be entered into for the unprotested amounts, on or before
16 the due date for the protest.

17 E. A protest by a taxpayer shall be filed within
18 ninety days after:

19 (1) the date of the mailing to the taxpayer by
20 the department of the notice of assessment and demand for
21 payment as provided in Subsection A or D of Section 7-1-17 NMSA
22 1978;

23 (2) the mailing of the other peremptory notice
24 or demand;

25 (3) the date of the application to the

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1 taxpayer of the applicable provision of the Tax Administration
2 Act; or

3 (4) the date of denial of a claim pursuant to
4 Section 7-1-26 NMSA 1978 or the last date upon which the
5 department was required to take action on the claim but failed
6 to take action.

7 F. If a taxpayer fails to timely protest an
8 assessment of tax, penalty or interest:

9 (1) the undisputed amount of tax assessed and
10 not protested becomes final;

11 (2) the taxpayer is deemed to have waived the
12 right to protest the assessment, unless the taxpayer pays the
13 tax and claims a refund of the tax pursuant to Section 7-1-26
14 NMSA 1978; and

15 (3) the secretary may proceed to enforce
16 collection of the tax if the taxpayer is delinquent as defined
17 by Section 7-1-16 NMSA 1978.

18 G. The fact that the department did not mail the
19 assessment or other peremptory notice or demand by certified or
20 registered mail or otherwise demand and receive acknowledgment
21 of receipt by the taxpayer shall not be deemed to demonstrate
22 the taxpayer's inability to protest within the required time.

23 H. A proceeding other than one to enforce
24 collection of an amount assessed as tax and to protect the
25 interest of the state by injunction, as provided by Sections
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1 7-1-31, 7-1-33, 7-1-34, 7-1-40, 7-1-53, 7-1-56 and 7-1-58 NMSA
2 1978, is not stayed by timely filing of a protest in accordance
3 with this section.

4 I. Nothing in this section shall be construed to
5 authorize a criminal proceeding or to authorize an
6 administrative protest of the issuance of a subpoena or
7 summons."

8 SECTION 3. Section 7-1-29.2 NMSA 1978 (being Laws 2003,
9 Chapter 398, Section 10) is amended to read:

10 "7-1-29.2. CREDIT CLAIMS.--~~[Any]~~

11 A. A taxpayer who ~~[requests approval of]~~ submits a
12 complete application for a ~~[statutory]~~ tax credit is deemed to
13 have received ~~[such]~~ approval of the application if the
14 ~~[request]~~ application has not been granted or denied within one
15 hundred ~~[eighty]~~ twenty days of the date it was filed. Nothing
16 in this section shall be construed to prevent the department
17 from auditing taxes paid or from assessing taxes owed,
18 including any tax resulting from tax credits found not to be
19 valid.

20 B. A taxpayer who believes that the taxpayer is
21 eligible to receive a tax credit may apply for approval of the
22 credit by directing to the secretary a complete application on
23 the form and in the manner prescribed by the department.

24 C. An application for a tax credit that has all
25 fields completed, includes all attachments required by the

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1 application instructions and is submitted in accordance with
2 the application instructions is deemed to be properly before
3 the department for consideration, regardless of whether the
4 department requests additional documentation after receipt of
5 the application for credit.

6 D. If the department requests additional relevant
7 documentation from a taxpayer who has submitted an incomplete
8 application for a tax credit, the application shall be
9 considered complete on the date that the taxpayer mails or
10 delivers sufficient information for the department to consider
11 the application.

12 E. The secretary or the secretary's delegate may
13 approve or deny an application for a tax credit in whole or in
14 part. An approval or denial by the secretary or the
15 secretary's delegate shall be in writing. If the application
16 is denied in whole or in part, the taxpayer shall not refile
17 the denied application, but the taxpayer, within one hundred
18 twenty days after the mailing or delivery of the denial of all
19 or any part of the application, may elect to pursue only one of
20 the remedies provided in this subsection. A taxpayer who
21 timely pursues more than one remedy is deemed to have elected
22 the first remedy requested. The taxpayer may:

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

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1 (a) the circumstances of the denied
2 application for a tax credit;
3 (b) an allegation that, because of the
4 denial, the state is indebted to the taxpayer for a specified
5 amount, including any allowed interest;
6 (c) a demand for the approval of the
7 application for the tax credit of the specified amount; and
8 (d) a recitation of the facts supporting
9 the application for the tax credit; or
10 (2) commence a civil action in the district
11 court for Santa Fe county by filing a complaint setting forth
12 the circumstance of the denied application for the tax credit;
13 alleging that on account of the denial, the state is indebted
14 to the taxpayer for a specified amount, together with any
15 interest allowable; demanding approval of the application for
16 the tax credit of that amount; and reciting the facts of the
17 application for the tax credit. The taxpayer or the secretary
18 may appeal from any final decision or order of the district
19 court to the court of appeals."

20 SECTION 4. Section 7-1-73 NMSA 1978 (being Laws 1965,
21 Chapter 248, Section 74, as amended) is amended to read:

22 "7-1-73. TAX FRAUD.--

23 A. A person is guilty of tax fraud if the person:

24 (1) willfully makes and subscribes any return,
25 statement or other document that contains or is verified by a

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1 written declaration that it is true and correct as to every
2 material matter and that the person does not believe it to be
3 true and correct as to every material matter;

4 (2) willfully assists in, willfully procures,
5 willfully advises or willfully provides counsel regarding the
6 preparation or presentation of a return, affidavit, claim or
7 other document pursuant to or in connection with any matter
8 arising under the Tax Administration Act or a tax administered
9 by the department, knowing that it is fraudulent or knowing
10 that it is false as to a material matter, whether or not that
11 fraud or falsity is with knowledge or consent of:

12 (a) the taxpayer or other person liable
13 for taxes owed on the return; or

14 (b) a person who signs a document
15 stating that the return, affidavit, claim or other document is
16 true, correct and complete to the best of that person's
17 knowledge;

18 (3) files any return electronically, knowing
19 the information in the return is not true and correct as to
20 every material matter; ~~[or]~~

21 (4) with intent to evade or defeat the payment
22 or collection of any tax, or, knowing that the probable
23 consequences of the person's act will be to evade or defeat the
24 payment or collection of any tax, removes, conceals or releases
25 any property on which levy is authorized or that is liable for

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1 payment of tax under the provisions of Section 7-1-61 NMSA
2 1978, or aids in accomplishing or causes the accomplishment of
3 any of the foregoing;

4 (5) with intent to evade or defeat the payment
5 or collection of any tax, or, knowing that the probable
6 consequences of the person's act will be to evade or defeat the
7 payment or collection of any tax, purchases, installs or uses
8 any sales suppression software; or

9 (6) with the intent to evade or defeat the
10 payment or collection of any tax, or, knowing that the probable
11 consequences of the person's act will be to evade or defeat the
12 payment or collection of any tax, sells, licenses, purchases,
13 installs, transfers, sells as a service, manufactures, develops
14 or possesses any sales suppression software with the purpose to
15 defeat or evade the payment or collection of any tax.

16 B. Whoever commits tax fraud when the amount of the
17 tax owed is two hundred fifty dollars (\$250) or less is guilty
18 of a petty misdemeanor and shall be sentenced pursuant to the
19 provisions of Section 31-19-1 NMSA 1978.

20 C. Whoever commits tax fraud when the amount of the
21 tax owed is over two hundred fifty dollars (\$250) but not more
22 than five hundred dollars (\$500) is guilty of a misdemeanor and
23 shall be sentenced pursuant to the provisions of Section
24 31-19-1 NMSA 1978.

25 D. Whoever commits tax fraud when the amount of the
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1 tax owed is over five hundred dollars (\$500) but not more than
2 two thousand five hundred dollars (\$2,500) is guilty of a
3 fourth degree felony and shall be sentenced pursuant to the
4 provisions of Section 31-18-15 NMSA 1978.

5 E. Whoever commits tax fraud when the amount of the
6 tax owed is over two thousand five hundred dollars (\$2,500) but
7 not more than twenty thousand dollars (\$20,000) is guilty of a
8 third degree felony and shall be sentenced pursuant to the
9 provisions of Section 31-18-15 NMSA 1978.

10 F. Whoever commits tax fraud when the amount of the
11 tax owed is over twenty thousand dollars (\$20,000) is guilty of
12 a second degree felony and shall be sentenced pursuant to the
13 provisions of Section 31-18-15 NMSA 1978.

14 G. In addition to the fines imposed pursuant to
15 this section, a person who commits tax fraud shall pay the
16 costs of the prosecution of the person's case.

17 H. As used in this section:

18 (1) "sales suppression software" means hidden
19 or concealed computer software, also known as phantomware, for
20 a point-of-sale system that can create a second set of records
21 or eliminate or manipulate transaction records that may or may
22 not be preserved in digital formats in order to misrepresent
23 the existence or the true record of a transaction in the point-
24 of-sale system. "Sales suppression software" includes an
25 electronic device that carries or contains sales suppression

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1 software;

2 [~~(1)~~] (2) "tax" does not include civil
3 penalties or interest; and

4 [~~(2)~~] (3) "willfully" means intentionally,
5 deliberately or purposely, but not necessarily maliciously."

6 SECTION 5. Section 7-38-21 NMSA 1978 (being Laws 1973,
7 Chapter 258, Section 61, as amended) is amended to read:

8 "7-38-21. PROTESTS--COUNTY-ASSESSED PROPERTY--ELECTION OF
9 REMEDIES.--

10 A. A property owner may protest the value or
11 classification determined by the county assessor for the
12 property owner's property for property taxation purposes, the
13 allocation of value of the property to a particular
14 governmental unit or a denial of a claim for an exemption or
15 for a limitation on increase in value either by:

16 (1) filing a petition with the county assessor
17 as provided in the Property Tax Code [~~a petition of protest~~
18 ~~with:~~

19 ~~(a) the administrative hearings office;~~

20 ~~or~~

21 ~~(b) the county assessor]; or~~

22 (2) filing a claim for refund after paying the
23 property owner's taxes as provided in the Property Tax Code.

24 B. The initiation of a protest under Paragraph (1)
25 of Subsection A of this section is an election to pursue that

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1 remedy and is an unconditional and irrevocable waiver of the
2 right to pursue the remedy provided in Paragraph (2) of
3 Subsection A of this section.

4 C. A property owner may also protest the
5 application to the property owner's property of any
6 administrative fee adopted pursuant to Section 7-38-36.1 NMSA
7 1978 by filing a claim for refund after paying the property
8 owner's taxes as provided in the Property Tax Code."

9 SECTION 6. A new Section 7-38-21.1 NMSA 1978 is enacted
10 to read:

11 "7-38-21.1. [NEW MATERIAL] PROTESTS--STATE-ASSESSED
12 PROPERTY--ELECTION OF REMEDIES.--

13 A. A property owner may protest the value or
14 classification determined by the department for the property
15 owner's property for property taxation purposes, the allocation
16 of value of the property to a particular governmental unit or a
17 denial of a claim for an exemption by:

18 (1) filing a petition of protest with the
19 administrative hearings office, as provided in the Property Tax
20 Code; or

21 (2) filing a claim for refund with a district
22 court after paying the property owner's taxes as provided in
23 the Property Tax Code.

24 B. The initiation of a protest under Paragraph (1)
25 of Subsection A of this section is an election to pursue that
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1 remedy and is an unconditional and irrevocable waiver of the
2 right to pursue the alternative remedy provided in Paragraph
3 (2) of Subsection A of this section."

4 SECTION 7. Section 7-38-22 NMSA 1978 (being Laws 1973,
5 Chapter 258, Section 62, as amended) is amended to read:

6 "7-38-22. PROTESTING VALUES, CLASSIFICATION, ALLOCATION
7 OF VALUES AND DENIAL OF EXEMPTION DETERMINED BY THE [~~DIVISION~~]
8 DEPARTMENT.--

9 A. A property owner may protest the value or
10 classification determined by the [~~division~~] department for the
11 property owner's property for property taxation purposes or the
12 [~~division's~~] department's allocation of value of the property
13 owner's property to a particular governmental unit or the
14 denial of a claim for an exemption by filing a petition with
15 the administrative hearings office. Filing a petition in
16 accordance with this section entitles a property owner to a
17 hearing on the property owner's protest.

18 B. Petitions shall:

19 (1) be filed no later than thirty days after:

20 (a) the mailing by the [~~division~~]
21 department of the notice of valuation; or

22 (b) the mailing of a property tax bill
23 on omitted property pursuant to Section 7-38-76 NMSA 1978;

24 (2) state the property owner's name and
25 address and the description of the property;

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1 (3) state why the property owner believes the
2 value, classification, allocation of value or denial of an
3 exemption is incorrect and what the property owner believes the
4 correct value, classification, allocation of value or exemption
5 to be;

6 (4) state the value, classification,
7 allocation of value or exemption that is not in controversy;
8 and

9 (5) contain such other information as the
10 administrative hearings office may by rule require.

11 C. The administrative hearings office shall notify
12 the ~~[director]~~ secretary and the property owner by certified
13 mail of the date, time and place that the parties may appear
14 before the administrative hearings office to present evidence
15 related to the petition. The notice shall be mailed at least
16 fifteen days prior to the hearing date.

17 D. The ~~[director]~~ secretary may provide for an
18 informal conference on the protest before the hearing."

19 SECTION 8. Section 7-38-28 NMSA 1978 (being Laws 1973,
20 Chapter 258, Section 68, as amended) is amended to read:

21 "7-38-28. APPEALS FROM ORDERS OF THE ~~[HEARING OFFICER OR]~~
22 COUNTY VALUATION PROTESTS BOARDS.--~~[A.]~~ A property owner may
23 appeal an order made by ~~[a hearing officer or]~~ a county
24 valuation protests board by filing an appeal pursuant to the
25 provisions of Section 39-3-1.1 NMSA 1978.

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1 ~~[B. The director shall notify the appropriate~~
2 ~~county assessor of the decision and order of the district court~~
3 ~~and shall direct the assessor to take appropriate action to~~
4 ~~comply with the decision and order.]"~~

5 SECTION 9. A new section of Chapter 7, Article 38 NMSA
6 1978 is enacted to read:

7 "[NEW MATERIAL] APPEALS FROM DECISIONS AND ORDERS OF THE
8 HEARING OFFICER.--

9 A. A property owner or the secretary may appeal a
10 decision and order of a hearing officer to the court of appeals
11 for further relief, but only to the same extent and on the same
12 theory as was asserted in the hearing before the hearing
13 officer. All such appeals shall be on the record made at the
14 hearing and shall not be de novo. All such appeals shall be
15 taken within thirty days of the date of mailing or delivery of
16 the written decision and order of the hearing officer to the
17 property owner, and, if not so taken, the decision and order
18 are conclusive.

19 B. The procedure for perfecting an appeal pursuant
20 to this section shall be as provided by the Rules of Appellate
21 Procedure.

22 C. On appeal, the court shall set aside a decision
23 and order of the hearing officer only if the decision and order
24 is found to be:

- 25 (1) arbitrary, capricious or an abuse of

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1 discretion;

2 (2) not supported by substantial evidence in
3 the record; or

4 (3) otherwise not in accordance with the law.

5 D. If the secretary appeals a decision and order of
6 the hearing officer and the court's decision, from which either
7 no appeal is taken or no appeal may be taken, upholds the
8 decision of the hearing officer, the court shall award
9 reasonable attorney fees to the property owner. If the court's
10 decision upholds the hearing officer's decision only in part,
11 the award shall be limited to reasonable attorney fees
12 associated with the portion upheld.

13 E. The secretary shall notify the appropriate
14 county assessor of any decision and order or appellate court
15 opinion and shall direct the assessor to take appropriate
16 action to comply with the decision and order."

17 SECTION 10. EFFECTIVE DATE.--The effective date of the
18 provisions of this act is July 1, 2023.

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