

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
RELATING TO TAXATION; ENACTING THE NEW MEXICO TAXPAYER BILL
OF RIGHTS; PROVIDING OPTIONS FOR CERTAIN TAXPAYERS SEEKING
REFUNDS; PROVIDING THAT TAXPAYERS MAY BE AWARDED COSTS AND
FEES IN CERTAIN INSTANCES; PROHIBITING PENALTY ASSESSMENTS IN
CERTAIN CASES; AMENDING AND ENACTING CERTAIN SECTIONS OF THE
TAX ADMINISTRATION ACT.

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

Section 1. A new section of the Tax Administration Act
is enacted to read:

"NEW MEXICO TAXPAYER BILL OF RIGHTS CREATED--PURPOSE.--
The "New Mexico Taxpayer Bill of Rights" is created. It is
the purpose of the New Mexico Taxpayer Bill of Rights to:

A. guarantee that the rights, privacy and
property of New Mexico taxpayers are adequately safeguarded
and protected during the tax assessment, collection and
enforcement procedures for the tax acts administered by the
department pursuant to the Tax Administration Act;

B. assure that the taxpayer is treated with
dignity and respect; and

C. compile in one act, brief but comprehensive
statements that explain in simple, nontechnical terms, the
rights of taxpayers."

Section 2. A new section of the Tax Administration Act is enacted to read:

"NEW MEXICO TAXPAYER BILL OF RIGHTS.--The rights afforded New Mexico taxpayers to assure that their privacy and property are safeguarded and protected during tax assessment, collection and enforcement are available insofar as they are implemented in the Tax Administration Act and the tax acts administered by the department pursuant to the provisions of that act and the rules adopted and promulgated pursuant to those acts by the secretary. The rights guaranteed New Mexico taxpayers pursuant to those laws and rules are as follows:

A. the right to available information and prompt, courteous and accurate response to questions and requests for tax assistance;

B. the right to be represented or advised by counsel or other qualified representatives at any time in administrative interactions with the department in accordance with the provisions of Section 7-1-24 NMSA 1978;

C. the right to have audits, inspections of records and meetings conducted at a reasonable time and place in accordance with the provisions of Section 7-1-11 NMSA 1978;

D. the right to have the department begin and complete its audits in a timely and expeditious manner after

notification of intent to audit;

E. the right to obtain simple, nontechnical information that explains the procedures, remedies and rights available during audit, protest, appeals and collection proceedings pursuant to the Tax Administration Act, including the rights pursuant to the New Mexico Taxpayer Bill of Rights;

F. the right to be provided with an explanation for denials of refunds as well as the basis of the audit, assessments or denials of refunds that identify any amount of tax, interest or penalty due;

G. the right to seek review, through formal or informal proceedings, of any findings or adverse decisions relating to determinations during audit or protest procedures;

H. the right to have the taxpayer's tax information kept confidential unless otherwise specified by law, in accordance with Section 7-1-8 NMSA 1978;

I. the right to abatement of an assessment of taxes determined to have been incorrectly, erroneously or illegally made, as provided in Section 7-1-28 NMSA 1978 and the right to seek a compromise of an asserted tax liability by obtaining a written determination of liability or nonliability when the secretary of taxation and revenue in good faith is in doubt of the liability as provided in

Section 7-1-20 NMSA 1978;

J. upon receipt of a tax assessment, the right to be informed clearly that if the assessment is not paid, secured, protested or otherwise provided for within thirty days pursuant to the provisions of Section 7-1-16 NMSA 1978, the taxpayer will be a delinquent taxpayer and, upon notice of delinquency, the right to timely notice of any collection actions that will require sale or seizure of the taxpayer's property;

K. after a jeopardy assessment, the right to at least five days to review the jeopardy assessment before paying the tax or furnishing satisfactory security for the tax in accordance with Section 7-1-59 NMSA 1978;

L. the right to procedures for retirement of tax obligations by installment payment agreements, in accordance with Section 7-1-21 NMSA 1978, which recognize both the taxpayer's financial condition and the best interests of the state, provided that the taxpayer gives accurate, current information and meets all other tax obligations on schedule; and

M. the right to procedures that assure that the individual employees of the department are not paid, evaluated or promoted on the basis of the amount of assessments or collections from taxpayers."

Section 3. A new section of the Tax Administration Act

is enacted to read:

"NEW MEXICO TAXPAYER BILL OF RIGHTS--NOTICE TO THE PUBLIC.--The department shall develop a brochure that states the New Mexico Taxpayer Bill of Rights in simple, nontechnical terms and disseminate the brochure to taxpayers, at a minimum with the annual income and semiannual CRS tax forms."

Section 4. 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 by the provisions of Subsections E, F and G of this section, a written claim for refund. Except as provided in Subsection J of this section, a refund claim shall include the taxpayer's name, address and identification number, the type of tax for which a refund is being claimed, the sum of money being claimed, the period for which overpayment was made and the basis for the refund.

B. The secretary or the secretary's delegate may

allow the claim in whole or in part or may deny the claim. If the claim is denied in whole or in part in writing, the claim may not be refiled. If the claim is not granted in full, 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 one, but not more than one, of the remedies in Paragraphs (1) and (2) of Subsection C of this section.

C. If the department has neither granted nor denied any portion of a claim for refund within one hundred twenty days of the date the claim was mailed or delivered to the department, the person may elect to pursue one, but only one, of the remedies in Paragraphs (1) and (2) of this subsection. In any case, if a person does timely pursue more than one remedy, the person shall be deemed to have elected the first remedy invoked. The remedies are as follows:

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

(2) the person may commence a civil action

in state district court by filing a complaint setting forth the circumstance of the claimed overpayment, alleging that on account thereof the state is indebted to the plaintiff in the amount stated, together with any interest allowable, demanding the refund to the plaintiff of that amount 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.

D. With respect to refunds first claimed on or after July 1, 1999, no protest or civil action for refund under Subsection B of this section may be filed after the expiration of two years from the date of mailing by certified mail by the secretary to the person of the denial of the claim to which the protest or civil action relates.

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

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

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

(b) 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 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) property was levied upon pursuant to the provisions of the Tax Administration Act;

(2) within one year of the date:

(a) of the denial of the claim for credit under the provisions of the Investment Credit Act;

(b) an assessment of tax is made; or

(c) a proceeding begun in court by the department with respect to any period that is covered by a waiver signed on or after July 1, 1993 by the taxpayer pursuant to Subsection F of Section 7-1-18 NMSA 1978; or

(3) for assessments made on or after July 1, 1993, within one year of the date of an assessment of tax made under Subsection B, C or D of Section 7-1-18 NMSA 1978 when the assessment applies to a period ending at least three years prior to the beginning of the year in which the assessment was made, but the claim for refund shall not be made with respect to any period not covered by the assessment.

F. No credit or refund shall be allowed or made

to any person claiming a refund of gasoline tax under Section 7-13-11 NMSA 1978 unless notice of the destruction of the gasoline was given 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 any person claiming a refund of gasoline tax under 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.

G. If, 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, any adjustment of federal tax is made with the result that there would have been an overpayment of tax if the adjustment to federal tax had been applied to the taxable period to which it relates, claim for credit or refund of only that amount based on the adjustment may be made as provided in this section within one year of the date of the internal revenue service audit adjustment or payment of the federal refund or within the period limited by Subsection E of this section, whichever expires later. Interest, computed at the rate specified in Subsection B of Section 7-1-68 NMSA 1978, shall be allowed on any such claim for refund from the

date one hundred twenty days after the claim is made until the date the final decision to grant the credit or refund is made.

H. Any refund of tax paid under any tax or tax act administered under 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 reasonably may be expected to become due.

I. For the purposes of this section, the term "oil and gas tax return" means a return reporting tax due with respect to oil, natural gas, liquid hydrocarbons or carbon dioxide 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.

J. 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."

Section 5. A new section of the Tax Administration Act, Section 7-1-29.1 NMSA 1978, is enacted to read:

"7-1-29.1. AWARDING OF COSTS AND FEES.--

A. In any administrative or court proceeding that is brought by or against the taxpayer on or after July 1, 1999 in connection with the determination, collection or refund of any tax, interest or penalty for a tax governed by the provisions of the Tax Administration Act, the taxpayer shall be awarded a judgment or a settlement for reasonable administrative costs incurred in connection with an administrative proceeding with the department or reasonable litigation costs incurred in connection with a court proceeding, if the taxpayer is the prevailing party.

B. As used in this section:

(1) "administrative proceeding" means any procedure or other action before the department;

(2) "court proceeding" means any civil action brought in state district court;

(3) "reasonable administrative costs" means:

(a) any administrative fees or similar charges imposed by the department; and

(b) actual charges for: 1) filing fees, court reporter fees, service of process fees and similar expenses; 2) the services of expert witnesses; 3) any study, analysis, report, test or project reasonably necessary for the preparation of the party's case; and 4) fees and costs paid or incurred for the services in connection with the proceeding of attorneys or of certified public accountants who are authorized to practice before the department; and

(4) "reasonable litigation costs" means:

(a) reasonable court costs; and

(b) actual charges for: 1) filing fees, court reporter fees, service of process fees and similar expenses; 2) the services of expert witnesses; 3) any study, analysis, report, test or project reasonably necessary for the preparation of the party's case; and 4) fees and costs paid or incurred for the services of attorneys in connection with the proceeding.

C. For purposes of this section:

(1) the taxpayer is the prevailing party if the taxpayer has:

(a) substantially prevailed with respect to the amount controversy; or

(b) substantially prevailed with respect to most of the issues involved in the case or the

most significant issue or set of issues involved in the case;

(2) the taxpayer shall not be treated as the prevailing party if the department establishes that the position of the department in the proceeding was based upon a reasonable application of the law to the facts of the case. For purposes of this paragraph, the position of the department shall be presumed not to be based upon a reasonable application of the law to the facts of the case if:

(a) the department did not follow its applicable published guidance in the proceeding; or

(b) the assessment giving rise to the proceeding is not supported by substantial evidence determined at the time of the issuance of the assessment;

(3) as used in Subparagraph (a) of Paragraph (2) of this subsection, "applicable published guidance" means:

(a) department regulations, revenue rulings, revenue procedures, information releases, instructions, notices, technical advice memoranda and announcements; and

(b) private letter rulings and letters issued by the department to the taxpayer; and

(4) the determination of whether the taxpayer is the prevailing party and the amount of reasonable

litigation costs or reasonable administrative costs shall be made by agreement of the parties or:

(a) in the case where the final determination with respect to the tax, interest or penalty is made in an administrative proceeding, by the department hearing officer; or

(b) in the case where the final determination is made by the court, the court.

D. An order granting or denying in whole or in part an award for reasonable litigation costs pursuant to Subsection A of this section in a court proceeding may be incorporated as a part of the decision or judgment in the court proceeding and shall be subject to appeal in the same manner as the decision or judgment. A decision or order granting or denying in whole or in part an award for reasonable administrative costs pursuant to Subsection A of this section by the department hearing officer shall be reviewable in the same manner as a decision of the department hearing officer."

Section 6. Section 7-1-69 NMSA 1978 (being Laws 1965, Chapter 248, Section 70, as amended) is amended to read:

"7-1-69. CIVIL PENALTY FOR FAILURE TO PAY TAX OR FILE A RETURN.--

A. Except as provided in Subsection C of this section, in the case of failure due to negligence or willful

disregard of department rules and regulations, but without intent to evade or defeat any tax, to pay when due any amount of tax required to be paid, to pay in accordance with the provisions of Section 7-1-13.1 NMSA 1978 when required to do so or to file by the date required a return regardless of whether any tax is due, there shall be added to the amount assessed a penalty in an amount equal to the greater of:

(1) two percent per month or any fraction of a month from the date the tax was due multiplied by the amount of tax due but not paid, not to exceed ten percent of the tax due but not paid;

(2) two percent per month or any fraction of a month from the date the return was required to be filed multiplied by the tax liability established in the late return, not to exceed ten percent of the tax liability established in the late return; or

(3) a minimum of five dollars (\$5.00), but the five-dollar (\$5.00) minimum penalty shall not apply to taxes levied under the Income Tax Act or taxes administered by the department pursuant to Subsection B of Section 7-1-2 NMSA 1978.

B. If a different penalty is specified in a compact or other interstate agreement to which New Mexico is a party, the penalty provided in the compact or other interstate agreement shall be applied to amounts due under

