

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 119

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

J. "Andy" Kissner

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; AMENDING CERTAIN PROVISIONS OF THE TAX ADMINISTRATION ACT REGARDING DELINQUENT TAXPAYERS, CLAIMS FOR REFUND AND INTEREST ON OVERPAYMENTS.

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

Section 1. Section 7-1-16 NMSA 1978 (being Laws 1965, Chapter 248, Section 19, as amended) is amended to read:

"7-1-16. DELINQUENT TAXPAYER. --

A. Except as provided in Subsection D of this section, any taxpayer to whom taxes have been assessed as provided in Section 7-1-17 NMSA 1978 or upon whom demand for payment has been made as provided in Section 7-1-63 NMSA 1978 who does not within thirty days after the date of assessment or demand for payment make payment, protest the assessment or demand for payment as provided by Section 7-1-24 NMSA 1978 or

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = del ete

1 furnish security for payment as provided by Section 7-1-54
2 NMSA 1978 becomes a delinquent taxpayer and remains such
3 until:

4 (1) payment of the total amount of all such
5 taxes is made;

6 (2) a retroactive extension of time to file a
7 protest is granted pursuant to Section 7-1-24 NMSA 1978;
8 provided, however, that the taxpayer again becomes a
9 delinquent taxpayer if the assessment is not abated and the
10 taxpayer does not pay, protest or furnish security within the
11 time allowed by the retroactive extension of time;

12 (3) security is furnished for payment; or

13 (4) no part of the assessment remains
14 unabated.

15 B. Any taxpayer who fails to provide security as
16 required by Subsection D of Section 7-1-54 NMSA 1978 shall be
17 deemed to be a delinquent taxpayer.

18 C. If a taxpayer files a protest as provided in
19 Section 7-1-24 NMSA 1978, the taxpayer nevertheless becomes a
20 delinquent taxpayer upon failure of the taxpayer to appear, in
21 person or by authorized representative, at the hearing set or
22 upon failure to perfect an appeal from any decision or part
23 thereof adverse to the taxpayer to the next higher appellate
24 level, as provided in that section, unless the taxpayer makes
25 payment of the total amount of all taxes assessed and

underscored material = new
[bracketed material] = delete

1 remaining unabated or furnishes security for payment.

2 D. If a taxpayer files for an extension of time to
3 file a protest as provided in Section 7-1-24 NMSA 1978 within
4 thirty days after the date of the assessment or demand for
5 payment, the taxpayer does not become a delinquent taxpayer
6 unless the assessment is not abated and the taxpayer does not
7 pay, protest or furnish security within the time allowed by
8 the extension of time. "

9 Section 2. Section 7-1-26 NMSA 1978 (being Laws 1965,
10 Chapter 248, Section 28, as amended) is amended to read:

11 "7-1-26. CLAIM FOR REFUND. --

12 A. Any person who believes that an amount of tax
13 has been paid by or withheld from that person in excess of
14 that for which the person was liable, who has been denied any
15 credit or rebate claimed or who claims a prior right to
16 property in the possession of the department pursuant to a
17 levy made under authority of Sections 7-1-31 through 7-1-34
18 NMSA 1978 may claim a refund by directing to the secretary,
19 within the time limited by the provisions of Subsections C, D
20 and E of this section, a written claim for refund. Except as
21 provided in Subsection H of this section, a refund claim shall
22 include the taxpayer's name, address and identification
23 number, the type of tax for which a refund is being claimed,
24 the sum of money being claimed, the period for which
25 overpayment was made and the basis for the refund.

underscored material = new
[bracketed material] = delete

1 B. The secretary or the secretary's delegate may
2 allow the claim in whole or in part or may deny the claim. If
3 the claim is denied in whole or in part in writing, the claim
4 may not be refiled. If the claim is not granted in full, the
5 person, within ninety days after either the mailing or
6 delivery of the denial of all or any part of the claim, may
7 elect to pursue one, but not more than one, of the remedies in
8 Paragraphs (1) and (2) of this subsection. If the department
9 has neither granted nor denied any portion of a claim for
10 refund within one hundred twenty days of the date the claim
11 was mailed or delivered to the department, the department may
12 not approve or deny the claim but the person may refile it
13 within the time limits set forth in Subsection C of this
14 section or may within ninety days elect to pursue one, but
15 only one, of the remedies in Paragraphs (1) and (2) of this
16 subsection. In any case, if a person does timely pursue more
17 than one remedy, the person shall be deemed to have elected
18 the first remedy invoked. The remedies are as follows:

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

. 125012. 2

underscored material = new
[bracketed material] = delete

1 Section 7-1-25 NMSA 1978; or

2 (2) the person may commence a civil action in
3 the district court for Santa Fe county by filing a complaint
4 setting forth the circumstance of the claimed overpayment,
5 alleging that on account thereof the state is indebted to the
6 plaintiff in the amount stated, together with any interest
7 allowable, demanding the refund to the plaintiff of that
8 amount and reciting the facts of the claim for refund. The
9 plaintiff or the secretary may appeal from any final decision
10 or order of the district court to the court of appeals.

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

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

17 (a) the payment was originally due, the
18 payment was made or the overpayment resulted from an
19 assessment by the department pursuant to Section 7-1-17 NMSA
20 1978, whichever is later;

21 (b) the final determination of value
22 occurs with respect to any overpayment that resulted from a
23 disapproval by any agency of the United States or the state of
24 New Mexico or any court of increase in value of a product
25 subject to taxation under the Oil and Gas Severance Tax Act,

underscored material = new
[bracketed material] = delete

1 the Oil and Gas Conservation Tax Act, the Oil and Gas
2 Emergency School Tax Act, the Oil and Gas Ad Valorem
3 Production Tax Act or the Natural Gas Processors Tax Act; or

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

6 (2) within one year of the date:

7 (a) of the denial of the claim for
8 credit under the provisions of the Investment Credit Act or
9 Filmmaker's Credit Act;

10 (b) an assessment of tax is made; or

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

15 (3) for assessments made on or after July 1,
16 1993, within one year of the date of an assessment of tax made
17 under Subsection B, C or D of Section 7-1-18 NMSA 1978 when
18 the assessment applies to a period ending at least three years
19 prior to the beginning of the year in which the assessment was
20 made, but the claim for refund shall not be made with respect
21 to any period not covered by the assessment.

22 D. No credit or refund shall be allowed or made to
23 any person claiming a refund of gasoline tax under Section
24 7-13-11 NMSA 1978 unless notice of the destruction of the
25 gasoline was given the department within thirty days of the

. 125012. 2

underscored material = new
[bracketed material] = delete

1 actual destruction and the claim for refund is made within six
2 months of the date of destruction. No credit or refund shall
3 be allowed or made to any person claiming a refund of gasoline
4 tax under Section 7-13-14 NMSA 1978 unless the refund is
5 claimed within six months of the date of purchase of the
6 gasoline and the gasoline has been used at the time the claim
7 for refund is made.

8 E. If, as a result of an audit by the internal
9 revenue service or the filing of an amended federal return
10 changing a prior election or making any other change for which
11 federal approval is required by the Internal Revenue Code, any
12 adjustment of federal tax is made with the result that there
13 would have been an overpayment of tax if the adjustment to
14 federal tax had been applied to the taxable period to which it
15 relates, claim for credit or refund of only that amount based
16 on the adjustment may be made as provided in this section
17 within one year of the date of the internal revenue service
18 audit adjustment or payment of the federal refund or within
19 the period limited by Subsection C of this section, whichever
20 expires later. Interest computed at the rate specified in
21 Subsection B of Section 7-1-68 NMSA 1978 shall be allowed on
22 any such claim for refund from the date one hundred twenty
23 days after the claim is made until the date the final decision
24 to grant the credit or refund is made.

25 F. Any refund of tax paid under any tax or tax act

underscored material = new
[bracketed material] = del ete

1 administered under Subsection B of Section 7-1-2 NMSA 1978 may
2 be made, at the discretion of the department, in the form of
3 credit against future tax payments if future tax liabilities
4 in an amount at least equal to the credit amount reasonably
5 may be expected to become due.

6 G. For the purposes of this section, the term "oil
7 and gas tax return" means a return reporting tax due with
8 respect to oil, natural gas, liquid hydrocarbons or carbon
9 dioxide pursuant to the Oil and Gas Severance Tax Act, the Oil
10 and Gas Conservation Tax Act, the Oil and Gas Emergency School
11 Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the
12 Natural Gas Processors Tax Act or the Oil and Gas Production
13 Equipment Ad Valorem Tax Act.

14 H. The filing of a fully completed original income
15 tax return, corporate income tax return, corporate income and
16 franchise tax return, estate tax return or special fuel excise
17 tax return that shows a balance due the taxpayer or a fully
18 completed amended income tax return, an amended corporate
19 income tax return, an amended corporate income and franchise
20 tax return, an amended estate tax return, an amended special
21 fuel excise tax return or an amended oil and gas tax return
22 that shows a lesser tax liability than the original return
23 constitutes the filing of a claim for refund for the
24 difference in tax due shown on the original and amended
25 returns. "

underscored material = new
[bracketed material] = del ete

1 Section 3. Section 7-1-27 NMSA 1978 (being Laws 1965,
2 Chapter 248, Section 29, as amended) is amended to read:

3 "7-1-27. CONCLUSIVENESS OF COURT ORDER ON LIABILITY FOR
4 PAYMENT OF TAX. --Whenever the jurisdiction of the district
5 court of Santa Fe county or the court of appeals is invoked
6 according to the provisions of [~~Sections 72-13-39, 72-13-40 or~~
7 ~~72-13-72 New Mexico Statutes Annotated, 1953 Compilation~~]
8 Section 7-1-25, 7-1-26 or 7-1-59 NMSA 1978, or whenever the
9 jurisdiction of any federal court is invoked or whenever the
10 jurisdiction of any district court of this state is invoked
11 according to the provisions of Section [~~72-13-71 New Mexico~~
12 ~~Statutes Annotated, 1953 Compilation~~] 7-1-58 NMSA 1978, a
13 final decision of that court or of any higher court which
14 reviews the matter and from which decision no appeal or review
15 is successfully taken is conclusive as regards the liability
16 or nonliability of any person for payment of any tax. "

17 Section 4. EFFECTIVE DATE. --The effective date of the
18 provisions of this act is July 1, 1999.

19 - 9 -
20
21
22
23
24
25

1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
3
4
5

6 February 3, 1999
7

8 Mr. Speaker:
9

10 Your TAXATION AND REVENUE COMMITTEE, to whom has
11 been referred
12

13 HOUSE BILL 119
14

15 has had it under consideration and reports same with
16 recommendation that it DO PASS.

17 Respectfully submitted,
18

19
20
21 _____
22 Jerry W. Sandel, Chairman
23
24
25

underscored material = new
[bracketed material] = delete

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

3 HB 119

Page 11

4 Adopted _____ Not Adopted _____

6 (Chief Clerk)

(Chief Clerk)

8 Date _____

10 The roll call vote was 14 For 0 Against

11 Yes: 14

12 Excused: Stell

13 Absent: None

14 C:\Reports\H0119TR1.wpd

underscored material = new
[bracketed material] = delete

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

1 HB 119

Page 12

2

3

4

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

5

6

7

8

March 12, 1999

9

Mr. President:

10

11

Your WAYS & MEANS COMMITTEE, to whom has been referred

12

13

HOUSE BILL 119

14

has had it under consideration and reports same with
recommendation that it DO PASS.

16

17

Respectfully submitted,

18

19

20

21

22

Carlos R. Cisneros, Chairman

23

24

25

. 125012. 2

underscored material = new
[bracketed material] = delete

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

1 HB 119

2

Adopted _____ Not

3

Adopted _____

4

(Chief Clerk)

(Chief Clerk)

5

6

7

8

Date _____

9

10

The roll call vote was 6 For 0 Against

11

Yes: 6

12

No: 0

13

Excused: Carraro, Duran, Kidd

14

Absent: None

15

16

H0119WM1

17

18

19

20

21

22

23

24

25

underscored material = new
[bracketed material] = delete