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Bill

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

AN ACT

RELATING TO TAXATION: AMENDING THE TAX ADMINISTRATION ACT TO
REVISE THE PROCEDURE FOR ADJUSTING DISTRIBUTIONS AND TRANSFERS TO
LOCAL GOVERNMENTS, INCLUDING REQUIRING NOTIFICATIONS, SETTING TIME
LIMITS FOR ACTIONS AND PROVIDING FOR PROTESTS OF DEPARTMENT
ACTIONS; DECLARING AN EMERGENCY.

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

SECTION 1. Section 7-1-6.15 NMSA 1978 (being Laws 1983,
Chapter 211, Section 20, as amended) is amended to read:

"7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO
MUNICIPALITIES OR COUNTIES.--

A. The provisions of this section apply to:

(1) any distribution to a municipality [~~of~~
~~gross receipts taxes~~] pursuant to Section 7-1-6.4 [~~NMSA 1978 or of~~
~~interstate telecommunications gross receipts tax pursuant to~~

1 ~~Section~~], 7-1-6.36 or 7-1-6.46 NMSA 1978;

2 (2) any transfer to a municipality with
3 respect to any local option gross receipts tax imposed by that
4 municipality;

5 (3) any transfer to a county with respect to
6 any local option gross receipts tax imposed by that county;

7 (4) any distribution to a county pursuant to
8 Section 7-1-6.16 or 7-1-6.47 NMSA 1978;

9 (5) any distribution to a municipality or a
10 county of gasoline taxes pursuant to Section 7-1-6.9 NMSA 1978;

11 (6) any transfer to a county with respect to
12 any tax imposed in accordance with the Local Liquor Excise Tax
13 Act;

14 (7) any distribution to a municipality or a
15 county of cigarette taxes pursuant to Sections 7-1-6.11, 7-12-15
16 and 7-12-16 NMSA 1978;

17 (8) any distribution to a county from the
18 county government road fund pursuant to Section 7-1-6.26 NMSA
19 1978;

20 (9) any distribution to a municipality of
21 gasoline taxes pursuant to Section 7-1-6.27 NMSA 1978; and

22 (10) any distribution to a municipality of
23 compensating taxes pursuant to Section 7-1-6.55 NMSA 1978.

24 ~~[B. If the secretary determines that any prior~~
25 ~~distribution or transfer to a political subdivision was erroneous,~~

1 ~~the secretary shall increase or decrease the next distribution or~~
2 ~~transfer amount for that political subdivision after the~~
3 ~~determination, except as provided in Subsection C, D or E of this~~
4 ~~section, by the amount necessary to correct the error. Subject to~~
5 ~~the provisions of Subsection E of this section, the secretary~~
6 ~~shall notify the political subdivision of the amount of each~~
7 ~~increase or decrease.~~

8 C. ~~No decrease shall be made to current or future~~
9 ~~distributions or transfers to a political subdivision for any~~
10 ~~excess distribution or transfer made to that political subdivision~~
11 ~~more than one year prior to the calendar year in which the~~
12 ~~determination of the secretary was made.~~

13 D. ~~The secretary, in lieu of recovery from the next~~
14 ~~distribution or transfer amount, may recover an excess~~
15 ~~distribution or transfer of one hundred dollars (\$100) or more to~~
16 ~~the political subdivision in installments from current and future~~
17 ~~distributions or transfers to that political subdivision pursuant~~
18 ~~to an agreement with the officials of the political subdivision~~
19 ~~whenever the amount of the distribution or transfer decrease for~~
20 ~~the political subdivision exceeds ten percent of the average~~
21 ~~distribution or transfer amount for that political subdivision for~~
22 ~~the twelve months preceding the month in which the secretary's~~
23 ~~determination is made; provided that for the purposes of this~~
24 ~~subsection, the "average distribution or transfer amount" shall be~~
25 ~~the arithmetic mean of the distribution or transfer amounts within~~

1 ~~the twelve months immediately preceding the month in which the~~
2 ~~determination is made.~~

3 ~~E. Except for the provisions of this section, if the~~
4 ~~amount by which a distribution or transfer would be adjusted~~
5 ~~pursuant to Subsection B of this section is one hundred dollars~~
6 ~~(\$100) or less, no adjustment or notice need be made.]~~

7 B. As used in this section:

8 (1) "average distribution or transfer amount"
9 means the arithmetic mean of the amounts of a distribution or
10 transfer for the twelve consecutive months immediately preceding
11 the current month; provided, that if the tax rate for a local
12 option tax changes during the twelve-month period, actual revenues
13 for a month with a tax rate differing from the month immediately
14 preceding the current month will be standardized by multiplying it
15 by the ratio of the tax rate for the month preceding the current
16 month to the subject month's tax rate;

17 (2) "current month" means the month in which the
18 secretary determines that a decrease to a distribution or transfer
19 is a qualifying amount; and

20 (2) "qualifying amount" means a negative amount
21 that, absent the provisions of this section, would be included in
22 the computation of the aggregate distribution or transfer amount
23 for a particular political subdivision for the current month if
24 the negative amount exceeds both one hundred dollars (\$100) and
25 twenty-five percent of the average distribution or transfer amount

1 for that political subdivision.

2 C. Except as provided otherwise in this section, the
3 secretary has the authority and duty to increase or decrease a
4 current month distribution or transfer to a political subdivision
5 when information received, whether the information derives from
6 amended returns, approved claims for refund, payments of
7 department-issued assessments, processing of audit adjustments,
8 detection of department error or other source, clearly indicates
9 that such an increase or decrease is appropriate. No increase or
10 decrease to a distribution or transfer amount shall be made with
11 respect to an overpayment or underpayment of local option gross
12 receipts tax prior to the beginning of the calendar year
13 immediately prior to the year of the current month. The secretary
14 also has the authority and duty to determine whether a decrease is
15 a qualifying amount.

16 D. The amount of a distribution or transfer for a
17 current month shall not include a decrease determined that month
18 to be a qualifying amount. Prior to taking action to collect that
19 qualifying amount in subsequent months, the department shall:

20 (1) reduce the qualifying amount by the sum of
21 any component negative amounts related to periods more than one
22 year prior to the calendar year in which the determination of the
23 secretary was made, net of any positive component amounts related
24 to those same periods; and

25 (2) notify the affected political subdivision of

1 the reduced qualifying amount and that the department intends to
2 collect the reduced qualifying amount, beginning with the
3 distributions or transfers to that political subdivision for
4 months beginning with the second month following the month in
5 which notice is given. If practicable, the notice shall be made
6 concurrently with the current month's distribution or transfer to
7 that political subdivision.

8 E. Within sixty days from the date notice is given,
9 the political subdivision must either agree to collection of the
10 reduced qualifying amount by entering into a repayment agreement
11 or to protest pursuant to Section 7-1-24 NMSA 1978 a proposed
12 application, or its application without proper notice or prior to
13 the expiration of the sixty-day time limit, of the reduced
14 qualifying amount to a distribution or transfer for the political
15 subdivision, calculation of its amount or both. If a protest is
16 entered, collection of the reduced qualifying amount shall be
17 deferred until the protest is resolved but if any portion of the
18 reduced qualifying amount is admitted to be due, that portion may
19 be collected beginning with the next distribution or transfer. If
20 within the sixty days the political subdivision agrees to allow
21 the entire amount to be collected from a distribution or transfer,
22 it will be deemed to have entered into a repayment agreement of
23 one period. If the political subdivision fails to enter into a
24 repayment agreement or to protest within the sixty days, the
25 secretary shall decrease the next distribution or transfer, and if

1 necessary succeeding distributions or transfers, to the political
2 subdivision until the reduced qualifying amount is collected.

3 (1) A repayment agreement pursuant to this
4 subsection may not exceed a period of sixty months.

5 (2) If a repayment agreement at the maximum
6 permissible term pursuant to Paragraph (1) of this subsection
7 would result in amounts that jeopardize repayment of bonded
8 indebtedness or the public peace, safety, health or welfare of the
9 citizens of the political subdivision, the secretary, with the
10 concurrence of the state board of finance, may collect that
11 portion of the reduced qualifying amount that would not jeopardize
12 repayment of bonded indebtedness or the public peace, safety,
13 health or welfare through a repayment agreement pursuant to this
14 subsection and record that the remaining portion has been presumed
15 paid by act of the legislature.

16 F. The secretary is authorized to decrease a
17 distribution to a municipality or county upon being directed to do
18 so by the secretary of finance and administration pursuant to the
19 State Aid Intercept Act or to redirect a distribution to the New
20 Mexico finance authority pursuant to an ordinance or a resolution
21 passed by the county or municipality and a written agreement of
22 the municipality or county and the New Mexico finance authority.
23 Upon direction to decrease a distribution or notice to redirect a
24 distribution to a municipality or county, the secretary shall
25 decrease or redirect the next designated distribution, and

1 succeeding distributions as necessary, by the amount of the state
2 distributions intercept authorized by the secretary of finance and
3 administration pursuant to the State Aid Intercept Act or by the
4 amount of the state distribution intercept authorized pursuant to
5 an ordinance or a resolution passed by the county or municipality
6 and a written agreement with the New Mexico finance authority.

7 The secretary shall transfer the state distributions intercept
8 amount to the municipal or county treasurer or other person
9 designated by the secretary of finance and administration or to
10 the New Mexico finance authority pursuant to written agreement to
11 pay the debt service to avoid default on qualified local revenue
12 bonds or meet other local revenue bond, loan or other debt
13 obligations of the municipality or county to the New Mexico
14 finance authority. A decrease to or redirection of a distribution
15 pursuant to this subsection takes precedence over any collection
16 of a decrease pursuant to Subsections C through E of this section.
17 Any collection of such a decrease may only be from the net amount
18 of a distribution remaining after application of the decrease or
19 redirection pursuant to this subsection.

20 G. Upon the direction of the secretary of finance
21 and administration pursuant to Section 9-6-5.2 NMSA 1978, the
22 secretary shall temporarily withhold a distribution to a
23 municipality or county, net of any repayment amount due pursuant
24 to Subsection F of this section, that has failed to submit an
25 audit report required by the Audit Act or a financial report

1 required by Subsection F of Section 6-6-2 NMSA 1978. The amount
2 to be withheld, the source of the withheld distribution and the
3 number of months that the distribution is to be withheld shall be
4 as directed by the secretary of finance and administration. A
5 distribution withheld pursuant to this subsection shall remain in
6 the tax administration suspense fund until distributed to the
7 municipality or county and shall not be distributed to the general
8 fund."

9 **SECTION 2.** Section 7-1-8.9 NMSA 1978 (being Laws 2009,
10 Chapter 243, Section 11) is amended to read:

11 "7-1-8.9. INFORMATION THAT MAY BE REVEALED TO LOCAL
12 GOVERNMENTS AND THEIR AGENCIES.--

13 A. An employee of the department may reveal to:

14 [~~A.~~] (1) the officials or employees of a municipality
15 of this state authorized in a written request by the municipality
16 for a period specified in the request within the twelve months
17 preceding the request:

18 [~~(1)~~] (a) the names, taxpayer identification
19 numbers, [~~and~~] addresses and taxable gross receipts of registered
20 gross receipts taxpayers reporting gross receipts for that
21 municipality under the Gross Receipts and Compensating Tax Act or
22 a local option gross receipts tax imposed by that municipality.
23 The department may also reveal the information described in this
24 paragraph quarterly or upon such other periodic basis as the
25 secretary and the municipality may agree in writing; and

1 [~~+2~~] (b) information indicating whether persons
2 shown on a list of businesses located within that municipality
3 furnished by the municipality have reported gross receipts to the
4 department but have not reported gross receipts for that
5 municipality under the Gross Receipts and Compensating Tax Act or
6 a local option gross receipts tax imposed by that municipality;

7 [~~B-~~] (2) the officials or employees of a county of
8 this state authorized in a written request by the county for a
9 period specified in the request within the twelve months preceding
10 the request:

11 [~~+1~~] (a) the names, taxpayer identification
12 numbers, [~~and~~] addresses and taxable gross receipts of registered
13 gross receipts taxpayers reporting gross receipts either for that
14 county in the case of a local option gross receipts tax imposed on
15 a countywide basis or only for the areas of that county outside of
16 any incorporated municipalities within that county in the case of
17 a county local option gross receipts tax imposed only in areas of
18 the county outside of any incorporated municipalities. The
19 department may also reveal the information described in this
20 paragraph quarterly or upon such other periodic basis as the
21 secretary and the county may agree in writing;

22 [~~+2~~] (b) in the case of a local option gross
23 receipts tax imposed by a county on a countywide basis,
24 information indicating whether persons shown on a list of
25 businesses located within the county furnished by the county have

1 reported gross receipts to the department but have not reported
2 gross receipts for that county under the Gross Receipts and
3 Compensating Tax Act or a local option gross receipts tax imposed
4 by that county on a countywide basis; and

5 [~~3~~] (c) in the case of a local option gross
6 receipts tax imposed by a county only on persons engaging in
7 business in that area of the county outside of incorporated
8 municipalities, information indicating whether persons on a list
9 of businesses located in that county outside of the incorporated
10 municipalities but within that county furnished by the county have
11 reported gross receipts to the department but have not reported
12 gross receipts for that county outside of the incorporated
13 municipalities within that county under the Gross Receipts and
14 Compensating Tax Act or a local option gross receipts tax imposed
15 by the county only on persons engaging in business in that county
16 outside of the incorporated municipalities; and

17 [~~C~~] (3) officials or employees of a municipality or
18 county of this state, authorized in a written request of the
19 municipality or county, for purposes of inspection, the records of
20 the department pertaining to an increase or decrease to a
21 distribution or transfer made pursuant to Section 7-1-6.15 NMSA
22 1978 or any other authority for the purpose of reviewing the basis
23 for the increase or decrease.

24 B. Information received by a county or municipal
25 official or employee pursuant to Subsection A of this section is

1 return or return information revealed pursuant to a written
2 agreement between the department and the county or municipality
3 and is subject to the provisions of Section 7-1-8 NMSA 1978. Any
4 written agreement pursuant to this section may restrict receipt of
5 the information to one or more officials or employees of the
6 municipality or county. The authorized officials or employees may
7 only reveal the information provided in this subsection to another
8 authorized official or employee, to an employee of the department,
9 or a district court, an appellate court or a federal court in a
10 proceeding relating to a disputed distribution and in which both
11 the state and the municipality or county are parties."

12 **SECTION 3.** Section 7-1-18 NMSA 1978 (being Laws 1965,
13 Chapter 248, Section 21, as amended) is amended to read:

14 "7-1-18. LIMITATION ON ASSESSMENT BY DEPARTMENT.--

15 A. Except as otherwise provided in this section, no
16 assessment of tax may be made by the department after three years
17 from the end of the calendar year in which payment of the tax was
18 due, and no proceeding in court for the collection of such tax
19 without the prior assessment thereof shall be begun after the
20 expiration of such period.

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

1 be begun after the expiration of such period.

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

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

14 E. If any adjustment in the basis for computation of
15 any federal tax is made as a result of an audit by the internal
16 revenue service or the filing of an amended federal return
17 changing a prior election or making any other change for which
18 federal approval is required by the Internal Revenue Code that
19 results in liability for any tax, the amount thereof may be
20 assessed at any time, but not after three years from the end of
21 the calendar year in which filing of an amended return is required
22 by Subsection C of Section 7-1-13 NMSA 1978.

23 F. If the taxpayer has signed a waiver of the
24 limitations on assessment imposed by this section, an assessment
25 of tax may be made or a proceeding in court begun without regard

1 to the time at which payment of the tax was due.

2 G. In the case of a local option gross receipts tax,
3 no assessment made be made for any amount due more than one year
4 after the end of the calendar year in which the tax was originally
5 due and no proceeding in court for the collection of such tax
6 without the prior assessment thereof shall be begun after the
7 expiration of such period."

8 **SECTION 4.** Section 7-1-24 NMSA 1978 (being Laws 1965, Chapter
9 248, Section 26, as amended) is amended to read:

10 "7-1-24. DISPUTING LIABILITIES--ADMINISTRATIVE PROTEST.--

11 A. Any taxpayer may dispute:

12 (1) the assessment to the taxpayer of any amount
13 of tax;

14 (2) the application to the taxpayer of any
15 provision of the Tax Administration Act except the issuance of a
16 subpoena or summons; [~~or~~]

17 (3) the denial of or failure either to allow or to
18 deny a:

19 (a) credit or rebate; or

20 (b) claim for refund made in accordance with
21 Section 7-1-26 NMSA 1978; or

22 (4) if the taxpayer is a municipality or county
23 receiving a distribution or transfer pursuant to Section 7-1-6.1
24 NMSA 1978, the proposed application, or its application without
25 proper notice or prior to the expiration of the time period

1 provided in Section 7-1-6.15 NMSA 1978, of a reduced qualifying
2 amount to a distribution or transfer for the municipality or
3 county, the calculation of its amount or both.

4 B. The taxpayer may dispute a matter described in
5 Subsection A of this section by filing with the secretary a
6 written protest. Every protest shall identify the taxpayer and the
7 tax, credit, rebate, property or provision of the Tax
8 Administration Act involved and state the grounds for the
9 taxpayer's protest and the affirmative relief requested. The
10 statement of grounds for protest shall specify individual grounds
11 upon which the protest is based and a summary statement of the
12 evidence, if any, expected to be produced supporting each ground
13 asserted; provided that the taxpayer may supplement the statement
14 at any time prior to ten days before any hearing conducted on the
15 protest pursuant to Section 7-1-24.1 NMSA 1978 or, if a scheduling
16 order has been issued, in accordance with the scheduling order.
17 The secretary may, in appropriate cases, provide for an informal
18 conference before setting a hearing of the protest or acting on
19 any claim for refund. In the case of an assessment of tax by the
20 department, a protest may be filed without making payment of the
21 amount assessed.

22 C. Except for protests described in Paragraph (4) of
23 Subsection A of this section, any protest by a taxpayer shall be
24 filed within ninety days of the date of the mailing to or service
25 upon the taxpayer by the department of the notice of assessment or

1 other peremptory notice or demand, the date of mailing or filing a
2 return, the date of the application to the taxpayer of the
3 applicable provision of the Tax Administration Act, the date of
4 denial of a claim pursuant to Section [~~7-1-24.1~~] 7-1-26 NMSA 1978
5 or the last date upon which the department was required to take
6 action on the claim but failed to take action. If a protest is not
7 filed within the time required, the secretary may proceed to
8 enforce collection of any tax if the taxpayer is delinquent within
9 the meaning of Section 7-1-16 NMSA 1978. The fact that the
10 department did not mail the assessment or other peremptory notice
11 or demand by certified or registered mail or otherwise demand and
12 receive acknowledgment of receipt by the taxpayer shall not be
13 deemed to demonstrate the taxpayer's inability to protest within
14 the required time.

15 D. No proceedings other than those to enforce
16 collection of any amount assessed as tax and to protect the
17 interest of the state by injunction, as provided in Sections 7-1-
18 31, 7-1-33, 7-1-34, 7-1-40, 7-1-53, 7-1-56 and 7-1-58 NMSA 1978,
19 are stayed by timely filing of a protest under this section.

20 E. Nothing in this section shall be construed to
21 authorize any criminal proceedings hereunder or to authorize an
22 administrative protest of the issuance of a subpoena or summons.

23 F. For the purposes of Sections 7-1-24, 7-1-24.1 and 7-
24 1-25 NMSA 1978, the term "taxpayer" includes a municipality or
25 county receiving a distribution or transfer pursuant to Section 7-

1 1-6.1 NMSA 1978."

2 **SECTION 5.** Section 7-1-26 NMSA 1978 (being Laws 1965,
3 Chapter 248, Section 28, as amended) is amended to read:

4 "7-1-26. DISPUTING LIABILITIES--CLAIM FOR CREDIT, REBATE OR
5 REFUND.--

6 A. Any person who believes that an amount of tax has
7 been paid by or withheld from that person in excess of that for
8 which the person was liable, who has been denied any credit or
9 rebate claimed or who claims a prior right to property in the
10 possession of the department pursuant to a levy made under
11 authority of Sections 7-1-31 through 7-1-34 NMSA 1978 may claim a
12 refund by directing to the secretary, within the time limited by
13 the provisions of Subsections D and E of this section, a written
14 claim for refund. Except as provided in Subsection I of this
15 section, a refund claim shall include:

16 (1) the taxpayer's name, address and
17 identification number;

18 (2) the type of tax for which a refund is being
19 claimed, the credit or rebate denied or the property levied upon;

20 (3) the sum of money or other property being
21 claimed;

22 (4) with respect to refund, the period for which
23 overpayment was made; and

24 (5) a brief statement of the facts and the law on
25 which the claim is based, which may be referred to as the "basis

1 for the refund".

2 B. The secretary or the secretary's delegate may allow
3 the claim in whole or in part or may deny the claim.

4 (1) If the claim is denied in whole or in part in
5 writing, no claim may be refiled with respect to that which was
6 denied, but the person, within ninety days after either the
7 mailing or delivery of the denial of all or any part of the claim,
8 may elect to pursue one, but not more than one, of the remedies in
9 Subsection C of this section.

10 (2) If the department has neither granted nor
11 denied any portion of a claim for refund within one hundred twenty
12 days of the date the claim was mailed or delivered to the
13 department, the person may refile it within the time limits set
14 forth in Subsection D of this section or may within ninety days
15 elect to pursue one, but only one, of the remedies in Subsection C
16 of this section. After the expiration of the two hundred ten days
17 from the date the claim was mailed or delivered to the department,
18 the department may not approve or disapprove the claim unless the
19 person has pursued one of the remedies under Subsection C of this
20 section.

21 C. A person may elect to pursue one, but only one, of
22 the remedies in Paragraphs (1) and (2) of this subsection. In any
23 case, if a person does timely pursue more than one remedy, the
24 person shall be deemed to have elected the first remedy invoked.
25 The remedies are as follows:

1 (1) the person may direct to the secretary,
2 pursuant to the provisions of Section 7-1-24 NMSA 1978, a written
3 protest against the denial of, or failure to either allow or deny
4 the claim or portion of the claim; or

5 (2) the person may commence a civil action in the
6 district court for Santa Fe county by filing a complaint setting
7 forth the circumstance of the claimed overpayment, denied credit
8 or rebate or denial of a prior right to property levied upon by
9 the department alleging that on account thereof the state is
10 indebted to the plaintiff in the amount or property stated,
11 together with any interest allowable, demanding the refund to the
12 plaintiff of that amount or property and reciting the facts of the
13 claim for refund. The plaintiff or the secretary may appeal from
14 any final decision or order of the district court to the court of
15 appeals.

16 D. Except as otherwise provided in Subsection E of this
17 section, no credit or refund of any amount may be allowed or made
18 to any person unless as the result of a claim made by that person
19 as provided in this section:

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

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

25 (b) the final determination of value occurs

1 with respect to any overpayment that resulted from a disapproval
2 by any agency of the United States or the state of New Mexico or
3 any court of increase in value of a product subject to taxation
4 under the Oil and Gas Severance Tax Act, the Oil and Gas
5 Conservation Tax Act, the Oil and Gas Emergency School Tax Act,
6 the Oil and Gas Ad Valorem Production Tax Act or the Natural Gas
7 Processors Tax Act;

8 (c) property was levied upon pursuant to the
9 provisions of the Tax Administration Act; or

10 (d) an overpayment of New Mexico tax
11 resulted from: 1) an internal revenue service audit adjustment or
12 a federal refund paid due to an adjustment of an audit by the
13 internal revenue service or an amended federal return; or 2)
14 making a change to a federal return for which federal approval is
15 required by the Internal Revenue Code; or

16 (2) ~~{when an amount}~~ within one year:

17 (a) of the denial of a claim for credit
18 under the provisions of the Investment Credit Act, Laboratory
19 Partnership with Small Business Tax Credit Act, ~~[or]~~ Technology
20 Jobs Tax Credit Act, ~~[or for]~~ the rural job tax credit pursuant to
21 Section 7-2E-1.1 NMSA 1978, Film Production Tax Credit Act, high-
22 wage jobs tax credit pursuant to Section 7-9G-1 NMSA 1978 or
23 similar credit ~~[has been denied, the taxpayer may claim a refund~~
24 ~~of the credit no later than one year after the date of the~~
25 ~~denial]~~;

1 Subsection B, C or D of Section 7-1-18 NMSA 1978 and when the
2 assessment applies to a period ending at least three years prior
3 to the beginning of the year in which the assessment was made, the
4 taxpayer may claim a refund for the same tax for the period of the
5 assessment or for any period following that period [~~within one~~
6 ~~year of the date of the assessment~~], unless a longer period for
7 claiming a refund is provided in this section; or

8 (e) after the end of the calendar year in
9 which the local option gross receipts tax was paid with respect to
10 a business location in a municipality or county, if the claim is
11 for refund of local option gross receipts tax imposed by the
12 municipality or county.

13 E. No credit or refund shall be allowed or made to any
14 person claiming a refund of gasoline tax under Section 7-13-11
15 NMSA 1978 unless notice of the destruction of the gasoline was
16 given the department within thirty days of the actual destruction
17 and the claim for refund is made within six months of the date of
18 destruction. No credit or refund shall be allowed or made to any
19 person claiming a refund of gasoline tax under Section 7-13-17
20 NMSA 1978 unless the refund is claimed within six months of the
21 date of purchase of the gasoline and the gasoline has been used at
22 the time the claim for refund is made.

23 F. If as a result of an audit by the department or a
24 managed audit covering multiple periods an overpayment of tax is
25 found in any period under the audit, that overpayment may be

1 credited against an underpayment of the same tax found in another
2 period under audit pursuant to Section 7-1-29 NMSA 1978, provided
3 that the taxpayer files a claim for refund for the overpayments
4 identified in the audit.

5 G. Any refund of tax paid under any tax or tax act
6 administered under Subsection B of Section 7-1-2 NMSA 1978 may be
7 made, at the discretion of the department, in the form of credit
8 against future tax payments if future tax liabilities in an amount
9 at least equal to the credit amount reasonably may be expected to
10 become due.

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

19 I. The filing of a fully completed original income tax
20 return, corporate income tax return, corporate income and
21 franchise tax return, estate tax return or special fuel excise tax
22 return that shows a balance due the taxpayer or a fully completed
23 amended income tax return, an amended corporate income tax return,
24 an amended corporate income and franchise tax return, an amended
25 estate tax return, an amended special fuel excise tax return or an

1 amended oil and gas tax return that shows a lesser tax liability
2 than the original return constitutes the filing of a claim for
3 refund for the difference in tax due shown on the original and
4 amended returns."

5 **SECTION 6. APPLICABILITY.**--The provisions of this act apply
6 to determinations of the secretary pursuant to Section 7-1-6.15
7 NMSA 1978 and to assessments or claims for refund made on or after
8 April 1, 2014.

9 **SECTION 7. EMERGENCY.**--It is necessary for the public peace,
10 health and safety that this act take effect immediately.

11