

AN ACT

RELATING TO TAXATION; ENACTING THE NEW MEXICO TAXPAYER BILL OF RIGHTS; 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 audits, 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 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 shall disseminate the brochure to taxpayers, at a minimum, with the annual income and semiannual Combined Reporting System tax forms. "

Section 4. 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, 2001 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 5. 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 a tax, to pay when due the 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 a 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. No penalty shall be assessed against a taxpayer if the failure to pay an amount of tax when due results from a mistake of law or fact made in good faith and on reasonable grounds.

C. 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 the compact or other interstate agreement at the rate and in the manner prescribed by the compact or other interstate agreement.

D. In the case of failure, with willful intent to evade or defeat a tax, to pay when due the amount of tax required to be paid, there shall be added to the amount fifty percent of the tax or a minimum of twenty-five dollars (\$25.00), whichever is greater, as penalty.

E. If demand is made for payment of a tax, including penalty imposed pursuant to this section, and if the tax is paid within ten days after the date of such demand, no penalty shall be imposed for the period after the date of the demand with respect to the amount paid.

F. If a taxpayer makes electronic payment of a tax but the payment does not include all of the information required by the department pursuant to the provisions of Section 7-1-13.1 NMSA 1978 and if the department does not receive the required information within five business days from the later of the date a request by the department for that information is received by the taxpayer or the due date, the taxpayer shall be subject to a penalty of two percent per

month or any fraction of a month from the fifth day following the date the request is received. If a penalty is imposed under Subsection A of this section with respect to the same transaction for the same period, no penalty shall be imposed under this subsection. "

Section 6. EFFECTIVE DATE. --The effective date of the provisions of this act is July 1, 2001. \_\_\_\_\_