

AN ACT

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RELATING TO TAXATION; AMENDING THE TAX ADMINISTRATION ACT; AMENDING PROVISIONS REGARDING CONFIDENTIALITY OF TAX RETURNS AND OTHER INFORMATION; INCREASING THE SECRETARY OF TAXATION AND REVENUE'S ABATEMENT AUTHORITY; AMENDING PROVISIONS REGARDING INSTALLMENT PAYMENTS, REFUNDS, HEARINGS AND INTEREST.

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

Section 1. Section 7-1-8 NMSA 1978 (being Laws 1965, Chapter 248, Section 13, as amended) is amended to read:

"7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER INFORMATION.--It is unlawful for an employee of the department or a former employee of the department to reveal to an individual other than another employee of the department, information contained in the return of a taxpayer made pursuant to a law subject to administration and enforcement under the provisions of the Tax Administration Act or any other information about a taxpayer acquired as a result of his employment by the department and not available from public sources, except:

A. to an authorized representative of another state; provided that the receiving state has entered into a written agreement with the department to use the information for tax purposes only and that the receiving state has enacted a confidentiality statute similar to this section to which the representative is subject;

B. to a representative of the secretary of the treasury or the secretary's delegate pursuant to the terms of a reciprocal agreement entered into with the federal government for exchange of the information;

C. to the multistate tax commission or its authorized representative;  
provided that the information is used for tax purposes only and is disclosed by the  
multistate tax commission only to states that have met the requirements of Subsection  
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D. to a district court, an appellate court or a federal court:  
(1) in response to an order thereof in an action relating to  
taxes to which the state is a party and in which the information sought is about a  
taxpayer who is party to the action and is material to the inquiry, in which case only that  
information may be required to be produced in court and admitted in evidence subject  
to court order protecting the confidentiality of the information and no more;

(2) in an action in which the department is attempting to  
enforce an act with which the department is charged or to collect a tax; or

(3) in any matter in which the department is a party and the  
taxpayer has put his own liability for taxes at issue, in which case only that information  
regarding the taxpayer who is party to the action may be produced, but this shall not  
prevent the disclosure of department policy or interpretation of law arising from  
circumstances of a taxpayer who is not a party;

E. to the taxpayer or to the taxpayer's authorized representative;  
provided, however, that nothing in this subsection shall be construed to require any  
employee to testify in a judicial proceeding except as provided in Subsection D of this  
section;

F. information obtained through the administration of a law not subject  
to administration and enforcement under the provisions of the Tax Administration Act  
to the extent that release of that information is not otherwise prohibited by law;

G. in a manner, for statistical purposes, that the information revealed is not identified as applicable to an individual taxpayer;

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H. with reference to information concerning the tax on tobacco imposed by Sections 7-12-1 through 7-12-13 and Sections 7-12-15 and 7-12-17 NMSA 1978 to a committee of the legislature for a valid legislative purpose or to the attorney general for purposes of Section 6-4-13 NMSA 1978 and the master settlement agreement defined in Section 6-4-12 NMSA 1978;

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I. to a transferee, assignee, buyer or lessor of a liquor license, the amount and basis of an unpaid assessment of tax for which his transferor, assignor, seller or lessee is liable;

J. to a purchaser of a business as provided in Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis of an unpaid assessment of tax for which the purchaser's seller is liable;

K. to a municipality of this state upon its request for a period specified by that municipality within the twelve months preceding the request for the information by that municipality:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts for that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality. The department may also release the information described in this paragraph quarterly or upon such other periodic basis as the secretary and the municipality may agree; and

(2) information indicating whether persons shown on a list of businesses located within that municipality furnished by the municipality have reported

gross receipts to the department but have not reported gross receipts for that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality.

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The employees of municipalities receiving information as provided in this subsection shall be subject to the penalty contained in Section 7-1-76 NMSA 1978 if that information is revealed to individuals other than other employees of the municipality in question or the department;

L. to the commissioner of public lands for use in auditing that pertains to rentals, royalties, fees and other payments due the state under land sale, land lease or other land use contracts; the commissioner of public lands and employees of the commissioner are subject to the same provisions regarding confidentiality of information as employees of the department;

M. the department shall furnish, upon request by the child support enforcement division of the human services department, the last known address with date of all names certified to the department as being absent parents of children receiving public financial assistance. The child support enforcement division personnel shall use such information only for the purpose of enforcing the support liability of the absent parents and shall not use the information or disclose it for any other purpose; the child support enforcement division and its employees are subject to the provisions of this section with respect to any information acquired from the department;

N. with respect to the tax on gasoline imposed by the Gasoline Tax Act, the department shall make available for public inspection at monthly intervals a report covering the number of gallons of gasoline and ethanol blended fuels received and

deducted, and the amount of tax paid by each person required to file a gasoline tax return or pay gasoline tax in the state of New Mexico;

O. the identity of a rack operator, importer, blender, supplier or distributor and the number of gallons reported on returns required under the Gasoline Tax Act, Special Fuels Supplier Tax Act or Alternative Fuel Tax Act to a rack operator, importer, blender, distributor or supplier, but only when it is necessary to enable the department to carry out its duties under the Gasoline Tax Act, the Special Fuels Supplier Tax Act or the Alternative Fuel Tax Act;

P. the department shall release upon request only the names and addresses of all gasoline or special fuel distributors, wholesalers and retailers to the New Mexico department of agriculture, the employees of which are thereby subject to the penalty contained in Section 7-1-76 NMSA 1978 if that information is revealed to individuals other than employees of either the New Mexico department of agriculture or the department;

Q. the department shall answer all inquiries concerning whether a person is or is not a registered taxpayer;

R. upon request of a municipality or county of this state, the department shall permit officials or employees of the municipality or county to inspect the records of the department pertaining to an increase or decrease to a distribution or transfer made pursuant to Section 7-1-6.15 NMSA 1978 for the purpose of reviewing the basis for the increase or decrease. The municipal or county officials or employees receiving information provided in this subsection shall not reveal that information to any person other than another employee of the municipality or the county, the department or a district court, an appellate court or a federal court in a proceeding

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relating to a disputed distribution and in which both the state and the municipality or county are parties. Information provided pursuant to provisions of this subsection that is revealed other than as provided in this subsection shall subject the person revealing the information to the penalties contained in Section 7-1-76 NMSA 1978;

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S. to a county of this state that has in effect a local option gross receipts tax imposed by the county upon its request for a period specified by that county within the twelve months preceding the request for the information by that county:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts either for that county in the case of a local option gross receipts tax imposed on a countywide basis or only for the areas of that county outside of any incorporated municipalities within that county in the case of a county local option gross receipts tax imposed only in areas of the county outside of any incorporated municipalities. The department may also release the information described in this paragraph quarterly or upon such other periodic basis as the secretary and the county may agree;

(2) in the case of a local option gross receipts tax imposed by a county on a countywide basis, information indicating whether persons shown on a list of businesses located within the county furnished by the county have reported gross receipts to the department but have not reported gross receipts for that county under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that county on a countywide basis; and

(3) in the case of a local option gross receipts tax imposed by a county only on persons engaging in business in that area of the county outside of

incorporated municipalities, information indicating whether persons on a list of  
businesses located in that county outside of the incorporated municipalities but within  
that county furnished by the county have reported gross receipts to the department  
but have not reported gross receipts for that county outside of the incorporated  
municipalities within that county under the Gross Receipts and Compensating Tax Act  
or a local option gross receipts tax imposed by the county only on persons engaging  
in business in that county outside of the incorporated municipalities.

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The officers and employees of counties receiving information as provided in  
this subsection shall be subject to the penalty contained in Section 7-1-76 NMSA 1978  
if the information is revealed to individuals other than other officers or employees of  
the county in question or the department;

T. to authorized representatives of an Indian nation, tribe or pueblo,  
the territory of which is located wholly or partially within New Mexico, pursuant to the  
terms of a reciprocal agreement entered into with the Indian nation, tribe or pueblo for  
the exchange of that information for tax purposes only; provided that the Indian nation,  
tribe or pueblo has enacted a confidentiality statute similar to this section;

U. information with respect to the taxes or tax acts administered  
pursuant to Subsection B of Section 7-1-2 NMSA 1978, except that:

(1) information for or relating to a period prior to July 1, 1985  
with respect to Sections 7-25-1 through 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978  
may be released only to a committee of the legislature for a valid legislative purpose;

(2) except as provided in Paragraph (3) of this subsection,  
contracts and other agreements between the taxpayer and other parties and the  
proprietary information contained in those contracts and agreements shall not be

released without the consent of all parties to the contract or agreement; and

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(3) audit workpapers and the proprietary information contained  
in the workpapers shall not be released except to:

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(a) the minerals management service of the United  
States department of the interior, if production occurred on federal land;

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(b) a person having a legal interest in the property that  
is subject to the audit;

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(c) a purchaser of products severed from a property  
subject to the audit; or

(d) the authorized representative of any of the persons  
in Subparagraphs (a) through (c) of this paragraph. This paragraph does not prohibit  
the release of proprietary information contained in the workpapers that is also  
available from returns or from other sources not subject to the provisions of this  
section;

V. information with respect to the taxes, surtaxes, advance payments  
or tax acts administered pursuant to Subsection C of Section 7-1-2 NMSA 1978;

W. to the public regulation commission, information with respect to the  
Corporate Income and Franchise Tax Act required to enable the commission to carry  
out its duties;

X. to the state racing commission, information with respect to the state,  
municipal and county gross receipts taxes paid by race tracks;

Y. upon request of a corporation authorized to be formed under the  
Educational Assistance Act, the department shall furnish the last known address and  
the date of that address of every person certified to the department as an absent



obligor of an educational debt due and owed to the corporation or that the corporation has lawfully contracted to collect. The corporation and its officers and employees shall use that information only to enforce the educational debt obligation of the absent obligors and shall not disclose that information or use it for any other purpose;

Z. a decision and order made by a hearing officer pursuant to Section 7-1-24 NMSA 1978 with respect to a protest filed with the secretary on or after July 1, 1993;

AA. information required by a provision of the Tax Administration Act to be made available to the public by the department;

BB. upon request by the Bernalillo county metropolitan court, the department shall furnish the last known address and the date of that address for every person the court certifies to the department as a person who owes fines, fees or costs to the court or who has failed to appear pursuant to a court order or a promise to appear;

CC. upon request by a magistrate court, the department shall furnish the last known address and the date of that address for every person the court certifies to the department as a person who owes fines, fees or costs to the court or who has failed to appear pursuant to a court order or a promise to appear;

DD. to the national tax administration agencies of Mexico and Canada, provided the agency receiving the information has entered into a written agreement with the department to use the information for tax purposes only and is subject to a confidentiality statute similar to this section;

EE. to a district attorney, a state district court grand jury or federal grand jury for an investigation of or proceeding related to an alleged criminal violation

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of the tax laws;

FF. to a third party subject to a subpoena or levy issued pursuant to the provisions of the Tax Administration Act, the identity of the taxpayer involved, the taxes or tax acts involved and the nature of the proceeding; and

GG. to the gaming control board, tax returns of license applicants and their affiliates as defined in Subsection E of Section 60-2E-14 NMSA 1978."

Section 2. Section 7-1-21 NMSA 1978 (being Laws 1965, Chapter 248, Section 23, as amended) is amended to read:

"7-1-21. INSTALLMENT PAYMENTS OF TAXES--INSTALLMENT AGREEMENTS.--

A. Whenever justified by the circumstances, the secretary or the secretary's delegate may enter into a written agreement with a taxpayer in which the taxpayer admits conclusive liability for the entire amount of taxes due and agrees to make monthly installment payments according to the terms of the agreement, but not for a period longer than sixty months. No installment agreement shall prevent the accrual of interest otherwise provided by law.

B. The agreement provided for in this section is to be known as an "installment agreement". If entered into after a court acquires jurisdiction over the matter, the agreement shall be part of a stipulated order or judgment disposing of the case.

C. At the time of entering into an installment agreement, the secretary shall require the affected taxpayer or person to furnish security for payment of the taxes admitted to be due according to the terms of the agreement, but if the taxpayer does not provide security, the secretary shall cause a notice of lien to be filed in

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accordance with the provisions of Section 7-1-38 NMSA 1978, and when so filed it shall constitute a lien upon all the property or rights to property of the taxpayer in that county in the same manner as in the case of the lien provided for in Section 7-1-37 NMSA 1978.

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D. An installment agreement is conclusive as to liability for payment of the amount of taxes specified therein but does not preclude the assessment of any additional tax.

E. After entering into the agreement, except in unusual circumstances as require the secretary in his discretion to take further action to protect the interests of the state, no further attempts to enforce payment of the tax by levy or injunction shall be made; however, if installment payments are not made on or before the times specified in the agreement, if any other condition contained in the agreement is not met or if the taxpayer does not make payment of all other taxes for which he becomes liable as they are due, the secretary may proceed to enforce collection of the tax as if the agreement had not been made or may proceed, as provided in Section 7-1-54 NMSA 1978, against the security furnished.

F. Records of installment agreements in excess of one thousand dollars (\$1,000) shall be available for inspection by the public. The department shall keep the records for a minimum of three years from the date of the installment agreement."

Section 3. Section 7-1-28 NMSA 1978 (being Laws 1965, Chapter 248, Section 30, as amended) is amended to read:

"7-1-28. AUTHORITY FOR ABATEMENTS OF ASSESSMENTS OF TAX.--

A. In response to a written protest against an assessment, submitted in

accordance with the provisions of Section 7-1-24 NMSA 1978, but before any court  
acquires jurisdiction of the matter, or when a "notice of assessment of taxes" is  
incorrect, the secretary or the secretary's delegate, with prior written approval of the  
attorney general, may abate any part of an assessment determined by the secretary or  
the secretary's delegate to have been incorrectly, erroneously or illegally made, except  
that the secretary or the secretary's delegate may make abatements:

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(1) with respect 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, abatements of gasoline tax  
made under Section 7-13-17 NMSA 1978 and abatements of cigarette tax made under  
the Cigarette Tax Act without the prior approval of the attorney general regardless of  
the amount;

(2) with respect to the Corporate Income and Franchise Tax  
Act amounting to less than twenty thousand dollars (\$20,000) without prior approval of  
the attorney general; and

(3) amounting to less than ten thousand dollars (\$10,000)  
without the prior written approval of the attorney general.

B. Pursuant to the final order of the district court for Santa Fe county,  
the court of appeals, the supreme court of New Mexico or any federal court, from which  
order, appeal or review is not successfully taken by the department, adjudging that any  
person is not required to pay any portion of tax assessed to that person, the secretary  
or the secretary's delegate shall cause that amount of the assessment to be abated.

C. Pursuant to a compromise of taxes agreed to by the secretary and

according to the terms of the closing agreement formalizing the compromise, the secretary or the secretary's delegate shall cause the abatement of the appropriate amount of any assessment of tax.

D. The secretary or the secretary's delegate shall cause the abatement of the amount of an assessment of tax that is equal to the amount of fee paid to or retained by an out-of-state attorney or collection agency from a judgment or the amount collected by the attorney or collection agency pursuant to Section 7-1-58 NMSA 1978.

E. Records of abatements made in excess of ten thousand dollars (\$10,000) shall be available for inspection by the public. The department shall keep such records for a minimum of three years from the date of the abatement."

Section 4. Section 7-1-29 NMSA 1978 (being Laws 1965, Chapter 248, Section 31, as amended) is amended to read:

"7-1-29. AUTHORITY TO MAKE REFUNDS OR CREDITS.--

A. In response to a claim for refund made as provided in Section 7-1-26 NMSA 1978, but before a court acquires jurisdiction of the matter, the secretary or the secretary's delegate may authorize the refund to a person of the amount of any overpayment of tax determined by the secretary or the secretary's delegate to have been erroneously made by the person, together with allowable interest. A refund of tax and interest erroneously paid and amounting to more than ten thousand dollars (\$10,000) may be made to a person only with the prior approval of the attorney general, except that the secretary or the secretary's delegate may make refunds with respect to:

(1) the Oil and Gas Severance Tax Act, the Oil and Gas

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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, Section 7-13-17 NMSA 1978 and the Cigarette Tax Act without the prior approval of the attorney general regardless of the amount; and

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(2) the Corporate Income and Franchise Tax Act amounting to less than twenty thousand dollars (\$20,000) without the prior approval of the attorney general.

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B. Pursuant to the final order of the district court, the court of appeals, the supreme court of New Mexico or a federal court, from which order, appeal or review is not successfully taken, adjudging that a person has made an overpayment of tax, the secretary shall authorize the refund to the person of the amount thereof.

C. In the discretion of the secretary, any amount of tax to be refunded may be offset against any amount of tax for which the person due to receive the refund is liable.

D. In an audit by the department or a managed audit covering multiple reporting periods where both underpayments and overpayments of a tax have been made in different reporting periods, the department shall credit the tax overpayments against the underpayments, provided that the taxpayer files a claim for refund of the overpayments. An overpayment shall be applied as a credit first to the earliest underpayment and then to succeeding underpayments. An underpayment of tax to which an overpayment is credited pursuant to this section shall be deemed paid in the period in which the overpayment was made or the period to which the overpayment was credited against an underpayment, whichever is later. If the overpayments

credited pursuant to this section exceed the underpayments of a tax, the amount of the net overpayment for the periods covered in the audit shall be refunded to the taxpayer.

E. When a taxpayer makes a payment identified to a particular return or assessment, and the department determines that the payment exceeds the amount due pursuant to that return or assessment, the secretary may apply the excess to the taxpayer's other liabilities under the tax acts to which the return or assessment applies, without requiring the taxpayer to file a claim for a refund. The liability to which an overpayment is applied pursuant to this section shall be deemed paid in the period in which the overpayment was made or the period to which the overpayment was applied, whichever is later.

F. If the department determines, upon review of an original or amended income tax return, corporate income and franchise tax return, estate tax return, special fuels excise tax return or oil and gas tax return, that there has been an overpayment of tax for the taxable period to which the return or amended return relates in excess of the amount due to be refunded to the taxpayer under the provisions of Subsection J of Section 7-1-26 NMSA 1978, the department may refund that excess amount to the taxpayer without requiring the taxpayer to file a refund claim.

G. Records of refunds made in excess of ten thousand dollars (\$10,000) shall be available for inspection by the public. The department shall keep such records for a minimum of three years from the date of the refund."

Section 5. Section 7-1-53 NMSA 1978 (being Laws 1965, Chapter 248, Section 55, as amended) is amended to read:

"7-1-53. ENJOINING DELINQUENT TAXPAYER FROM CONTINUING IN BUSINESS.--

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A. To ensure or to compel payment of taxes and to aid in the enforcement of the provisions of the Tax Administration Act, the secretary may apply to a district court of this state to have any delinquent taxpayer or person who may be or may become liable for payment of any tax enjoined from engaging in business until the delinquent taxpayer ceases to be a delinquent taxpayer or until the delinquent taxpayer or person complies with other requirements, reasonably necessary to protect the revenues of the state, placed on the delinquent taxpayer or person by the secretary.

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B. Upon application to a court for an injunction against a delinquent taxpayer, the court may forthwith issue an order temporarily restraining the delinquent taxpayer from doing business. The court shall hear the matter within fifteen days. Upon written request of the taxpayer, the hearing may be held earlier. Upon a showing by a preponderance of the evidence that the taxpayer is delinquent and has been given notice of the hearing as required by law, the court may enjoin the taxpayer from engaging in business in New Mexico until the taxpayer ceases to be a delinquent taxpayer. Upon issuing an injunction, the court may also order the business premises of the taxpayer sealed by the sheriff and may allow the taxpayer access thereto only upon approval of the court.

C. Upon application to a court for an injunction against a person other than a delinquent taxpayer, the court:

(1) may issue an order temporarily restraining the person other than the delinquent taxpayer from engaging in business;

(2) shall hear the matter within fifteen days, except that the hearing may be held earlier if requested in writing by the person who is the subject of



the temporary restraining order; and

(3) may without delay issue an injunction to the taxpayer in terms commanding the person who is the subject of the temporary restraining order to refrain from engaging in business until that person complies in full with the demand of the department to furnish security, if there is a showing that:

(a) the person who is the subject of the temporary restraining order has been given notice of the hearing for the injunction as required by law;

(b) a demand by the department has been made upon the taxpayer to furnish security;

(c) the taxpayer has not furnished security; and

(d) the secretary considers the collection from the person primarily responsible for the total amount of tax due or reasonably expected to become due to be in jeopardy.

D. A temporary restraining order or injunction shall not issue by provision of this section against any person who has furnished security in accordance with the provisions of Section 7-1-54 NMSA 1978. Upon a showing to the court by any person against whom a temporary restraining order or writ of injunction has issued by provision of this section that that person has furnished security in accordance with the provisions of Section 7-1-54 NMSA 1978, the court shall dissolve or set aside the temporary restraining order or injunction."

Section 6. Section 7-1-68 NMSA 1978 (being Laws 1965, Chapter 248, Section 69, as amended) is amended to read:

"7-1-68. INTEREST ON OVERPAYMENTS.--

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A. As provided in this section, interest shall be allowed and paid on the amount of tax overpaid by a person that is subsequently refunded or credited to that person.

B. Interest on overpayments of tax shall accrue and be paid at the rate of fifteen percent a year, computed on a daily basis; provided that if a different rate is specified by a compact or other interstate agreement to which New Mexico is a party, that rate shall apply to amounts due under the compact or other agreement.

C. Unless otherwise provided by this section, interest on an overpayment not arising from an assessment by the department shall be paid from the date of the claim for refund until a date preceding by not more than thirty days the date of the credit or refund to any person; interest on an overpayment arising from an assessment by the department shall be paid from the date of overpayment until a date preceding by not more than thirty days the date of the credit or refund to any person.

D. No interest shall be allowed or paid with respect to an amount credited or refunded if:

(1) the amount of interest due is less than one dollar (\$1.00);

(2) the credit or refund is made within:

(a) fifty-five days of the date of the claim for refund of income tax, pursuant to either the Income Tax Act or the Corporate Income and Franchise Tax Act for the tax year immediately preceding the tax year in which the claim is made; or

(b) seventy-five days of the date of the claim for refund of gasoline tax to users of gasoline off the highways;

(3) the credit or refund is made within one hundred twenty days

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of the date of the claim for refund of income tax, pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act, for any tax year more than one year prior to the year in which the claim is made;

(4) Sections 6611(f) and 6611(g) of the Internal Revenue Code, as those sections may be amended or renumbered, prohibit payment of interest for federal income tax purposes;

(5) the credit or refund is made within sixty days of the date of the claim for refund of any tax other than income tax;

(6) the credit results from overpayments found in an audit of multiple reporting periods and applied to underpayments found in that audit or refunded as a net overpayment to the taxpayer pursuant to Section 7-1-29 NMSA 1978;

(7) the department applies the credit or refund to an intercept program, to the taxpayer's estimated payment prior to the due date for the estimated payment, or to offset prior liabilities of the taxpayer pursuant to Subsection E of Section 7-1-29 NMSA 1978; or

(8) the credit or refund results from overpayments the department finds pursuant to Subsection F of Section 7-1-29 NMSA 1978 that exceed the refund claimed by the taxpayer on the return.

E. Nothing in this section shall be construed to require the payment of interest upon interest."

Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2003.

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