

HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 64

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

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 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 MATERIAL 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. ensure that the rights of New Mexico taxpayers are adequately safeguarded and protected during the assessment,

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1 collection and enforcement of any tax administered by the  
2 department pursuant to the Tax Administration Act;

3 B. ensure that the taxpayer is treated with dignity  
4 and respect; and

5 C. provide brief but comprehensive statements that  
6 explain in simple, nontechnical terms the rights of taxpayers  
7 as set forth in Section 2 of this 2003 act. "

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

10 "[NEW MATERIAL] NEW MEXICO TAXPAYER BILL OF RIGHTS. -- The  
11 rights afforded New Mexico taxpayers during the assessment,  
12 collection and enforcement of any tax administered by the  
13 department as set forth in the Tax Administration Act include:

14 A. the right to available public information and  
15 prompt and courteous tax assistance;

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

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

23 D. the right to have the department conduct its  
24 audits in a timely and expeditious manner and be entitled to  
25 the tolling of interest as provided in the Tax Administration

1 Act;

2 E. the right to obtain nontechnical information  
3 that explains the procedures, remedies and rights available  
4 during audit, protest, appeals and collection proceedings  
5 pursuant to the Tax Administration Act;

6 F. the right to be provided with an explanation of  
7 the results of and the basis for audits, assessments or denials  
8 of refunds that identify any amount of tax, interest or penalty  
9 due;

10 G. the right to seek review, through formal or  
11 informal proceedings, of any findings or adverse decisions  
12 relating to determinations during audit or protest procedures  
13 in accordance with Section 7-1-24 NMSA 1978;

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

17 I. the right to abatement of an assessment of taxes  
18 determined to have been incorrectly, erroneously or illegally  
19 made, as provided in Section 7-1-28 NMSA 1978 and the right to  
20 seek a compromise of an asserted tax liability by obtaining a  
21 written determination of liability or nonliability when the  
22 secretary in good faith is in doubt of the liability as  
23 provided in Section 7-1-20 NMSA 1978;

24 J. upon receipt of a tax assessment, the right to  
25 be informed clearly that if the assessment is not paid,

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1 secured, protested or otherwise provided for in accordance with  
2 the provisions of Section 7-1-16 NMSA 1978, the taxpayer will  
3 be a delinquent taxpayer and, upon notice of delinquency, the  
4 right to timely notice of any collection actions that will  
5 require sale or seizure of the taxpayer's property in  
6 accordance with the provisions of the Tax Administration Act;  
7 and

8 K. the right to procedures for payment of tax  
9 obligations by installment payment agreements, in accordance  
10 with Section 7-1-21 NMSA 1978. "

11 Section 3. A new section of the Tax Administration Act is  
12 enacted to read:

13 "[NEW MATERIAL] NEW MEXICO TAXPAYER BILL OF RIGHTS--NOTICE  
14 TO THE PUBLIC.--The department shall develop a publication that  
15 states the rights of taxpayers in simple, nontechnical terms  
16 and shall disseminate the publication to taxpayers, at a  
17 minimum, with the annual income and semiannual combined  
18 reporting system tax forms. "

19 Section 4. Section 7-1-3 NMSA 1978 (being Laws 1965,  
20 Chapter 248, Section 3, as amended by Laws 2001, Chapter 16,  
21 Section 2 and also by Laws 2001, Chapter 56, Section 2) is  
22 amended to read:

23 "7-1-3. DEFINITIONS.--Unless the context clearly  
24 indicates a different meaning, the definitions of words and  
25 phrases as they are stated in this section are to be used, and

1 whenever in the Tax Administration Act these words and phrases  
2 appear, the singular includes the plural and the plural  
3 includes the singular;

4 A. "automated clearinghouse transaction" means an  
5 electronic credit or debit transmitted through an automated  
6 clearinghouse payable to the state treasurer and deposited with  
7 the fiscal agent of New Mexico;

8 B. "department" means the taxation and revenue  
9 department, the secretary or any employee of the department  
10 exercising authority lawfully delegated to that employee by the  
11 secretary;

12 C. "electronic payment" means a payment made by  
13 automated clearinghouse deposit, any funds wire transfer system  
14 or a credit card, debit card or electronic cash transaction  
15 through the internet;

16 D. "employee of the department" means any employee  
17 of the department, including the secretary, or any person  
18 acting as agent or authorized to represent or perform services  
19 for the department in any capacity with respect to any law made  
20 subject to administration and enforcement under the provisions  
21 of the Tax Administration Act;

22 E. "financial institution" means any state or  
23 federally chartered, federally insured depository institution;

24 F. "Internal Revenue Code" means the Internal  
25 Revenue Code of 1986, as amended;

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1           G. "levy" means the lawful power, hereby invested  
2 in the secretary, to take into possession or to require the  
3 present or future surrender to the secretary or the secretary's  
4 delegate of any property or rights to property belonging to a  
5 delinquent taxpayer;

6           H. "local option gross receipts tax" means a tax  
7 authorized to be imposed by a county or municipality upon the  
8 taxpayer's gross receipts, as that term is defined in the Gross  
9 Receipts and Compensating Tax Act, and required to be collected  
10 by the department at the same time and in the same manner as  
11 the gross receipts tax; "local option gross receipts tax"  
12 includes the taxes imposed pursuant to the Municipal Local  
13 Option Gross Receipts Taxes Act, Supplemental Municipal Gross  
14 Receipts Tax Act, County Local Option Gross Receipts Taxes Act,  
15 Local Hospital Gross Receipts Tax Act, County Correctional  
16 Facility Gross Receipts Tax Act and such other acts as may be  
17 enacted authorizing counties or municipalities to impose taxes  
18 on gross receipts, which taxes are to be collected by the  
19 department in the same time and in the same manner as it  
20 collects the gross receipts tax;

21           I. "managed audit" means a review and analysis  
22 conducted by a taxpayer under an agreement with the department  
23 to determine the taxpayer's compliance with [~~the Gross Receipts  
24 and Compensating Tax Act and local option gross receipts taxes~~]  
25 a tax administered pursuant to the Tax Administration Act and

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1 the presentation of the results to the department for  
 2 assessment of tax found to be due;

3 J. "net receipts" means the total amount of money  
 4 paid by taxpayers to the department in a month pursuant to a  
 5 tax or tax act less any refunds disbursed in that month with  
 6 respect to that tax or tax act;

7 K. "overpayment" means an amount paid, pursuant to  
 8 any law subject to administration and enforcement under the  
 9 provisions of the Tax Administration Act, by a person to the  
 10 department or withheld from the person in excess of tax due  
 11 from the person to the state at the time of the payment or at  
 12 the time the amount withheld is credited against tax due;

13 L. "paid" includes the term "paid over";

14 M. "pay" includes the term "pay over";

15 N. "payment" includes the term "payment over";

16 O. "person" means any individual, estate, trust,  
 17 receiver, cooperative association, club, corporation, company,  
 18 firm, partnership, limited liability company, limited liability  
 19 partnership, joint venture, syndicate, other association or  
 20 gas, water or electric utility owned or operated by a county or  
 21 municipality; "person" also means, to the extent permitted by  
 22 law, a federal, state or other governmental unit or  
 23 subdivision, or an agency, department or instrumentality  
 24 thereof; and "person", as used in Sections 7-1-72 through  
 25 7-1-74 NMSA 1978, also includes an officer or employee of a

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1 corporation, a member or employee of a partnership or any  
2 individual who, as such, is under a duty to perform any act in  
3 respect of which a violation occurs;

4 P. "property" means property or rights to property;

5 Q. "property or rights to property" means any  
6 tangible property, real or personal, or any intangible property  
7 of a taxpayer;

8 R. "secretary" means the secretary of taxation and  
9 revenue and, except for purposes of Subsection B of Section  
10 7-1-4 NMSA 1978 and Subsection E of Section 7-1-24 NMSA 1978,  
11 also includes the deputy secretary or a division director or  
12 deputy division director delegated by the secretary;

13 S. "secretary or the secretary's delegate" means  
14 the secretary or any employee of the department exercising  
15 authority lawfully delegated to that employee by the secretary;

16 T. "security" means money, property or rights to  
17 property or a surety bond;

18 U. "state" means any state of the United States,  
19 the District of Columbia, the commonwealth of Puerto Rico and  
20 any territory or possession of the United States;

21 V. "tax" means the total amount of each tax imposed  
22 and required to be paid, withheld and paid or collected and  
23 paid under provision of any law made subject to administration  
24 and enforcement according to the provisions of the Tax  
25 Administration Act and, unless the context otherwise requires,

1 includes the amount of any interest or civil penalty relating  
 2 thereto; "tax" also means any amount of any abatement of tax  
 3 made or any credit, rebate or refund paid or credited by the  
 4 department under any law subject to administration and  
 5 enforcement under the provisions of the Tax Administration Act  
 6 to any person contrary to law and includes, unless the context  
 7 requires otherwise, the amount of any interest or civil penalty  
 8 relating thereto;

9 W. "taxpayer" means a person liable for payment of  
 10 any tax, a person responsible for withholding and payment or  
 11 for collection and payment of any tax or a person to whom an  
 12 assessment has been made, if the assessment remains unabated or  
 13 the amount thereof has not been paid; and

14 X. "tax return preparer" means a person who  
 15 prepares for others for compensation or who employs one or more  
 16 persons to prepare for others for compensation any return of  
 17 income tax, a substantial portion of any return of income tax,  
 18 any claim for refund with respect to income tax or a  
 19 substantial portion of any claim for refund with respect to  
 20 income tax; provided that a person shall not be a "tax return  
 21 preparer" merely because such person:

22 (1) furnishes typing, reproducing or other  
 23 mechanical assistance;

24 (2) is an employee who prepares an income tax  
 25 return or claim for refund with respect to an income tax return

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1 of the employer, or of an officer or employee of the employer,  
2 by whom the person is regularly and continuously employed; or

3 (3) prepares as a trustee or other fiduciary  
4 an income tax return or claim for refund with respect to income  
5 tax for any person. "

6 Section 5. Section 7-1-8 NMSA 1978 (being Laws 1965,  
7 Chapter 248, Section 13, as amended) is amended to read:

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

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

24 B. to a representative of the secretary of the  
25 treasury or the secretary's delegate pursuant to the terms of a

1 reciprocal agreement entered into with the federal government  
2 for exchange of the information;

3 C. to the multistate tax commission or its  
4 authorized representative; provided that the information is  
5 used for tax purposes only and is disclosed by the multistate  
6 tax commission only to states that have met the requirements of  
7 Subsection A of this section;

8 D. to a district court or an appellate court or a  
9 federal court:

10 (1) in response to an order thereof in an  
11 action relating to taxes to which the state is a party and in  
12 which the information sought is about a taxpayer who is party  
13 to the action and is material to the inquiry, in which case  
14 only that information may be required to be produced in court  
15 and admitted in evidence subject to court order protecting the  
16 confidentiality of the information and no more;

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

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

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1 who is not a party;

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

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

11 G. in such manner, for statistical purposes, that  
12 the information revealed is not identified as applicable to any  
13 individual taxpayer;

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

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

24 J. to a purchaser of a business as provided in  
25 Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis

1 of any unpaid assessment of tax for which the purchaser's  
2 seller is liable;

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

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

15 (2) information indicating whether persons  
16 shown on any list of businesses located within that  
17 municipality furnished by the municipality have reported gross  
18 receipts to the department but have not reported gross receipts  
19 for that municipality under the Gross Receipts and Compensating  
20 Tax Act or a local option gross receipts tax imposed by that  
21 municipality.

22 The employees of municipalities receiving information as  
23 provided in this subsection shall be subject to the penalty  
24 contained in Section 7-1-76 NMSA 1978 if that information is  
25 revealed to individuals other than other employees of the

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1 municipality in question or the department;

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

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

20 N. with respect to the tax on gasoline imposed by  
21 the Gasoline Tax Act, the department shall make available for  
22 public inspection at monthly intervals a report covering the  
23 amount and gallonage of gasoline and ethanol blended fuels  
24 imported, exported, sold and used, including tax-exempt sales  
25 to the federal government reported or upon which the gasoline

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1 tax was paid and covering taxes received from each distributor  
 2 in the state of New Mexico;

3 0. the identity of distributors and gallonage  
 4 reported on returns required under the Gasoline Tax Act,  
 5 Special Fuels Supplier Tax Act or Alternative Fuel Tax Act to  
 6 any distributor or supplier, but only when it is necessary to  
 7 enable the department to carry out its duties under the  
 8 Gasoline Tax Act, the Special Fuels Supplier Tax Act or the  
 9 Alternative Fuel Tax Act;

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

18 Q. the department shall answer all inquiries  
 19 concerning whether a person is or is not a registered taxpayer  
 20 for tax programs that require registration, but nothing in this  
 21 subsection shall be construed to allow the department to answer  
 22 inquiries concerning whether a person has filed a tax return;

23 R. upon request of a municipality or county of this  
 24 state, the department shall permit officials or employees of  
 25 the municipality or county to inspect the records of the

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1 department pertaining to an increase or decrease to a  
2 distribution or transfer made pursuant to Section 7-1-6.15 NMSA  
3 1978 for the purpose of reviewing the basis for the increase or  
4 decrease. The municipal or county officials or employees  
5 receiving information provided in this subsection shall not  
6 reveal that information to any person other than another  
7 employee of the municipality or the county, the department or a  
8 district court, an appellate court or a federal court in a  
9 proceeding relating to a disputed distribution and in which  
10 both the state and the municipality or county are parties. Any  
11 information provided pursuant to provisions of this subsection  
12 that is revealed other than as provided in this subsection  
13 shall subject the person revealing the information to the  
14 [~~penalties~~] penalty contained in Section 7-1-76 NMSA 1978;

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

20 (1) the names, taxpayer identification numbers  
21 and addresses of registered gross receipts taxpayers reporting  
22 gross receipts either for that county in the case of a local  
23 option gross receipts tax imposed on a countywide basis or only  
24 for the areas of that county outside of any incorporated  
25 municipalities within that county in the case of a county local

1 option gross receipts tax imposed only in areas of the county  
2 outside of any incorporated municipalities. The department may  
3 also release the information described in this paragraph  
4 quarterly or upon such other periodic basis as the secretary  
5 and the county may agree;

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

14 (3) in the case of a local option gross  
15 receipts tax imposed by a county only on persons engaging in  
16 business in that area of the county outside of any incorporated  
17 municipalities, information indicating whether persons shown on  
18 any list of businesses located in the area of that county  
19 outside of any incorporated municipalities within that county  
20 furnished by the county have reported gross receipts to the  
21 department but have not reported gross receipts for the area of  
22 that county outside of any incorporated municipalities within  
23 that county under the Gross Receipts and Compensating Tax Act  
24 or any local option gross receipts tax imposed by the county  
25 only on persons engaging in business in that area of the county

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1 outside of any incorporated municipalities.

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

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

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

18 (1) information for or relating to any period  
19 prior to July 1, 1985 with respect to Sections 7-25-1 through  
20 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978 may be released only  
21 to a committee of the legislature for a valid legislative  
22 purpose;

23 (2) except as provided in Paragraph (3) of  
24 this subsection, contracts and other agreements between the  
25 taxpayer and other parties and the proprietary information

1 contained in such contracts and agreements shall not be  
2 released without the consent of all parties to the contract or  
3 agreement; and

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

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

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

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

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

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

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

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

4 Y. upon request of a corporation authorized to be  
5 formed under the Educational Assistance Act, the department  
6 shall furnish the last known address and the date of that  
7 address of every person certified to the department as being an  
8 absent obligor of an educational debt that is due and owed to  
9 the corporation or that the corporation has lawfully contracted  
10 to collect. The corporation and its officers and employees  
11 shall use that information only for the purpose of enforcing  
12 the educational debt obligation of such absent obligors and  
13 shall not disclose that information or use it for any other  
14 purpose;

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

18 AA. information required by any provision of the  
19 Tax Administration Act to be made available to the public by  
20 the department;

21 BB. upon request by the Bernalillo county  
22 metropolitan court, the department shall furnish the last known  
23 address and the date of that address for every person certified  
24 to the department by the court as being a person who owes  
25 fines, fees or costs to the court or who has failed to appear

1 pursuant to a court order or a promise to appear;

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

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

13 EE. to a district attorney, a state district court  
 14 grand jury or federal grand jury with respect to any  
 15 investigation of or proceeding related to an alleged criminal  
 16 violation of the tax laws; ~~and~~

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

21 GG. any written ruling on questions of evidence or  
 22 procedure made by a hearing officer pursuant to Section 7-1-24  
 23 NMSA 1978, provided that the name and identification number of  
 24 the taxpayer requesting the ruling shall not be provided."

25 Section 6. Section 7-1-11.1 NMSA 1978 (being Laws 2001,  
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underscoring material = new  
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1 Chapter 16, Section 1) is amended to read:

2 "7-1-11. 1. MANAGED AUDITS. --

3 A. A managed audit may be limited in scope to  
4 [~~gross receipts tax, local option gross receipts taxes or~~  
5 ~~compensating tax due from~~] certain periods, activities, lines  
6 of business, geographic areas or transactions, including tax  
7 on:

- 8 (1) the receipts from certain sales;  
9 (2) the value of certain assets;  
10 (3) the value of certain expense items or  
11 services used; and  
12 (4) any other category specified in an  
13 agreement authorized by this section.

14 B. Upon the application of the taxpayer, the  
15 secretary or the secretary's delegate may enter into a written  
16 agreement with a taxpayer for a managed audit. To be effective  
17 the written agreement must:

- 18 (1) be signed by the taxpayer or the  
19 taxpayer's authorized representative and by the secretary or  
20 the secretary's delegate;  
21 (2) contain a declaration by the taxpayer or  
22 the taxpayer's authorized representative that all statements of  
23 fact made by the taxpayer or the taxpayer's representative in  
24 the taxpayer's application and the agreement are true and  
25 correct as to every material matter;

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1 (3) specify the reporting period or periods,  
2 the type of receipts or transactions and tax to be audited, the  
3 procedures to be followed in performing the managed audit, the  
4 records to be used, the date of commencement of the audit for  
5 purposes of Section 7-9-43 NMSA 1978 and the date for the  
6 taxpayer's presentation of the results of the managed audit to  
7 the department; and

8 (4) include a waiver by the taxpayer of the  
9 limitations on assessments for the reporting period or periods  
10 to be audited.

11 C. The agreement for a managed audit may be  
12 modified in writing, provided that the modification meets the  
13 requirements of Subsection B of this section.

14 D. In determining whether to enter into an  
15 agreement for a managed audit the secretary or the secretary's  
16 delegate may consider, in addition to other relevant factors:

- 17 (1) the taxpayer's history of tax compliance;  
18 (2) the amount of time and resources the  
19 taxpayer has available to dedicate to the audit;  
20 (3) the extent and availability of the  
21 taxpayer's records; and  
22 (4) the taxpayer's ability to pay any expected  
23 liability.

24 E. The decision whether to enter into an agreement  
25 for a managed audit rests solely with the secretary or the

1 secretary' s delegate.

2 F. The results of the managed audit shall be  
3 presented to the department by the taxpayer on or before any  
4 date set for presentation of the results in the managed audit  
5 agreement. The department shall assess the tax liability found  
6 to be due as the result of a managed audit performed in  
7 accordance with a managed audit agreement. The department may  
8 review records, documents, schedules or other information to  
9 determine if the managed audit substantially conforms to the  
10 managed audit agreement. "

11 Section 7. A new section of the Tax Administration Act,  
12 Section 7-1-11.2 NMSA 1978, is enacted to read:

13 "7-1-11.2. [NEW MATERIAL] REQUIRED AUDIT NOTICES. --

14 A. Except as provided in Subsection G of this  
15 section, prior to or coincident with requesting records and  
16 books of account from a taxpayer pursuant to Section 7-1-11  
17 NMSA 1978, as part of an office or field audit, the department  
18 shall provide the taxpayer with written dated notice of the  
19 commencement of an audit. The notice shall, at a minimum,  
20 state the tax programs and reporting periods to be covered and  
21 the date on which the audit is commenced.

22 B. To any taxpayer to whom the department is  
23 required to provide a written notice of the commencement of an  
24 audit, the department shall also provide a written notice of  
25 the outstanding records or books of account that have been

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1 requested but not received. If the taxpayer has provided all  
2 records and books of account requested, the notice shall so  
3 state. The notice of outstanding records or books of account  
4 shall be given no sooner than sixty days and no later than one  
5 hundred eighty days after the date of the commencement of the  
6 audit. The notice of outstanding records or books of account  
7 shall be dated and shall provide reasonable descriptions of any  
8 records or books of account needed or the information expected  
9 to be contained in them and shall give the taxpayer ninety days  
10 to comply with Section 7-1-11 NMSA 1978. The notice shall  
11 state that if the taxpayer does not properly comply within  
12 ninety days of the date of the notice, the department will  
13 proceed to issue any assessment of tax due on the basis of  
14 information available.

15 C. A taxpayer may request additional time to comply  
16 with the notice of outstanding records and books of account.  
17 Such request shall be in writing and shall state the amount of  
18 time needed.

19 D. If the department does not issue an assessment  
20 within one hundred eighty days after giving a notice of  
21 outstanding records or books of account or within ninety days  
22 after the expiration of the additional time requested by the  
23 taxpayer to comply, if such request was granted, interest shall  
24 be computed in accordance with Paragraph (6) of Subsection A of  
25 Section 7-1-67 NMSA 1978.

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1           E. Any taxpayer who was not provided a proper  
2 notice of outstanding records or books of account is entitled  
3 to computation of interest in accordance with Paragraph (7) of  
4 Subsection A of Section 7-1-67 NMSA 1978.

5           F. Nothing in this section shall prevent the  
6 department from requesting from the taxpayer a waiver of the  
7 statute of limitations for assessment of tax owed. Nothing in  
8 this section shall prevent the department from issuing an  
9 assessment of tax owed on the basis of the information  
10 available.

11           G. This section does not apply to investigations of  
12 fraud. "

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

15           "7-1-24. ADMINISTRATIVE HEARING--PROCEDURE. --

16           A. Any taxpayer may dispute the assessment to the  
17 taxpayer of any amount of tax, the application to the taxpayer  
18 of any provision of the Tax Administration Act or the denial of  
19 or failure to either allow or deny a claim for refund made in  
20 accordance with Section 7-1-26 NMSA 1978 by filing with the  
21 secretary a written protest against the assessment or against  
22 the application to the taxpayer of the provision or against the  
23 denial of or the failure to allow or deny the amount claimed to  
24 have been erroneously paid as tax. Every protest shall  
25 identify the taxpayer and the tax involved and state the

1 grounds for the taxpayer's protest and the affirmative relief  
2 requested. The statement of grounds for protest shall specify  
3 individual grounds upon which the protest is based and a  
4 summary statement of the evidence expected to be produced  
5 supporting each ground asserted, if any; provided that the  
6 taxpayer may supplement the statement at any time prior to ten  
7 days before any hearing conducted on the protest pursuant to  
8 Subsection [E] D of this section or, if a scheduling order has  
9 been issued, in accordance with the scheduling order. The  
10 secretary may, in appropriate cases, provide for an informal  
11 conference before setting a hearing of the protest or acting on  
12 any claim for refund.

13 B. Any protest by a taxpayer shall be filed within  
14 thirty days of the date of the mailing to the taxpayer by the  
15 department of the notice of assessment or mailing to, or  
16 service upon, the taxpayer of other peremptory notice or  
17 demand, or the date of mailing or filing a return. Upon  
18 written request of the taxpayer made within the time permitted  
19 for filing a protest, the secretary may grant an extension of  
20 time, not to exceed sixty days, within which to file the  
21 protest. If a protest is not filed within the time required  
22 for filing a protest or, if an extension has been granted,  
23 within the extended time, the secretary may proceed to enforce  
24 collection of any tax if the taxpayer is delinquent within the  
25 meaning of Section 7-1-16 NMSA 1978. Upon written request of

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1 the taxpayer made after the time for filing a protest but not  
2 more than sixty days after the expiration of the time for  
3 filing a protest, the secretary may grant a retroactive  
4 extension of time, not to exceed sixty days, within which to  
5 file the protest; provided that the taxpayer demonstrates to  
6 the secretary's satisfaction that the taxpayer was not able to  
7 file a protest or to request an extension within the time to  
8 file the protest and that the grounds for the protest have  
9 substantial merit. The fact that the department did not mail  
10 the assessment or other peremptory notice or demand by  
11 certified or registered mail or otherwise demand and receive  
12 acknowledgment of receipt by the taxpayer shall not be deemed  
13 to demonstrate the taxpayer's inability to protest or request  
14 an extension within the time for filing a protest within the  
15 required time. The secretary shall not grant a retroactive  
16 extension if a levy has already been served under Section  
17 7-1-31 or 7-1-33 NMSA 1978 or a jeopardy assessment has been  
18 made under Section 7-1-59 NMSA 1978. No proceedings other than  
19 those to enforce collection of any amount assessed as tax and  
20 to protect the interest of the state by injunction, as provided  
21 in Sections 7-1-31, 7-1-33, 7-1-34, 7-1-40, 7-1-53, 7-1-56 and  
22 7-1-58 NMSA 1978, are stayed by timely filing of a protest  
23 under this section.

24 C. Claims for refund shall be filed as provided for  
25 in Section 7-1-26 NMSA 1978.

1           D. Upon timely receipt of a protest, the department  
2 or hearing officer shall promptly set a date for hearing and on  
3 that date hear the protest or claim.

4           E. A hearing officer shall be designated by the  
5 secretary to conduct the hearing. Taxpayers may appear at a  
6 hearing for themselves or be represented by a bona fide  
7 employee, an attorney, a certified public accountant or a  
8 registered public accountant. Hearings shall not be open to  
9 the public except upon request of the taxpayer and may be  
10 postponed or continued at the discretion of the hearing  
11 officer.

12           F. A hearing officer shall not engage or  
13 participate in any way as an employee of the department in the  
14 areas of enforcement or formulating general tax policy other  
15 than to conduct hearings. A taxpayer may request that the  
16 secretary determine whether a hearing officer has engaged or  
17 participated in tax policy or enforcement in a way that might  
18 reasonably be expected to affect the hearing officer's  
19 impartiality in a particular matter. The secretary may  
20 designate another hearing officer for the matter to avoid  
21 actual or apparent prejudice.

22           G. A hearing officer shall not engage in ex-parte  
23 communications concerning the substantive issues of any matter  
24 that has been protested while that matter is still pending. If  
25 the secretary finds that a hearing officer has engaged in

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1 prohibited ex-parte communications, the secretary shall  
2 designate another hearing officer for that matter.

3 [F-] H. In hearings before the hearing officer, the  
4 technical rules of evidence shall not apply, but in ruling on  
5 the admissibility of evidence, the hearing officer may require  
6 reasonable substantiation of statements or records tendered,  
7 the accuracy or truth of which is in reasonable doubt. A  
8 taxpayer may request a written ruling on any contested question  
9 of evidence in a matter in which the taxpayer has filed a  
10 written protest and that protest is pending.

11 [G-] I. In hearings before the hearing officer, the  
12 Rules of Civil Procedure for the District Courts shall not  
13 apply, but the hearing shall be conducted so that both  
14 complaints and defenses are amply and fairly presented. To  
15 this end, the hearing officer shall hear arguments, permit  
16 discovery, entertain and dispose of motions, require written  
17 expositions of the case as the circumstances justify and render  
18 a decision in accordance with the law and the evidence  
19 presented and admitted. A taxpayer may request a written  
20 ruling on any contested question of procedure in a matter in  
21 which the taxpayer has filed a written protest and that protest  
22 is pending.

23 [H-] J. In the case of the hearing of any protest,  
24 the hearing officer shall make and preserve a complete record  
25 of the proceedings. At the beginning of the hearing, the

1 hearing officer shall inform the taxpayer of the taxpayer's  
 2 right to representation. The hearing officer, within thirty  
 3 days of the hearing, shall inform the protestant in writing of  
 4 the decision, informing the protestant at the same time of the  
 5 right to, and the requirements for perfection of, an appeal  
 6 from the decision to the court of appeals and of the  
 7 consequences of a failure to appeal. The written decision  
 8 shall embody an order granting or denying the relief requested  
 9 or granting such part thereof as seems appropriate.

10 K. A taxpayer with two or more protests containing  
 11 related issues may request that such protests be combined and  
 12 heard jointly. The designated hearing officer shall grant the  
 13 request to combine protests unless it would create an  
 14 unreasonable burden on the department.

15 [~~F.~~] L. Nothing in this section shall be construed  
 16 to authorize any criminal proceedings hereunder or to authorize  
 17 an administrative protest of the issuance of a subpoena or  
 18 summons. "

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

21 "7-1-26. CLAIM FOR REFUND. - -

22 A. Any person who believes that an amount of tax  
 23 has been paid by or withheld from that person in excess of that  
 24 for which the person was liable, who has been denied any credit  
 25 or rebate claimed or who claims a prior right to property in

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underscored material = new  
 [bracketed material] = delete

1 the possession of the department pursuant to a levy made under  
2 authority of Sections 7-1-31 through 7-1-34 NMSA 1978 may claim  
3 a refund by directing to the secretary, within the time limited  
4 by the provisions of Subsections D, E and F of this section, a  
5 written claim for refund. Except as provided in Subsection J  
6 of this section, a refund claim shall include the taxpayer's  
7 name, address and identification number, the type of tax for  
8 which a refund is being claimed, the sum of money being  
9 claimed, the period for which overpayment was made and the  
10 basis for the refund. As used in this subsection, "basis for  
11 the refund" means a brief statement of the facts and the law on  
12 which the claim is based.

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

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

21 (2) If the department has neither granted nor  
22 denied any portion of a claim for refund within one hundred  
23 twenty days of the date the claim was mailed or delivered to  
24 the department, the person may refile it within the time limits  
25 set forth in Subsection C of this section or may within ninety

1 days elect to pursue one, but only one, of the remedies in  
 2 Subsection C of this section. After the expiration of the two  
 3 hundred ten days from the date the claim was mailed or  
 4 delivered to the department, the department may not approve or  
 5 disapprove the claim unless the person has pursued one of the  
 6 remedies under Subsection C of this section.

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

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

20 (2) the person may commence a civil action in  
 21 the district court for Santa Fe county by filing a complaint  
 22 setting forth the circumstance of the claimed overpayment,  
 23 alleging that on account thereof the state is indebted to the  
 24 plaintiff in the amount stated, together with any interest  
 25 allowable, demanding the refund to the plaintiff of that amount

1 and reciting the facts of the claim for refund. The plaintiff  
2 or the secretary may appeal from any final decision or order of  
3 the district court to the court of appeals.

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

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

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

13 (b) the final determination of value  
14 occurs with respect to any overpayment that resulted from a  
15 disapproval by any agency of the United States or the state of  
16 New Mexico or any court of increase in value of a product  
17 subject to taxation under the Oil and Gas Severance Tax Act,  
18 the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency  
19 School Tax Act, the Oil and Gas Ad Valorem Production Tax Act  
20 or the Natural Gas Processors Tax Act; or

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

23 (2) when an amount of a claim for credit under  
24 the provisions of the Investment Credit Act, Laboratory  
25 Partnership with Small Business Tax Credit Act, Technology Jobs

1 Tax Credit Act, Capital Equipment Tax Credit Act or similar act  
 2 or for the rural job tax credit pursuant to Sections 7-2E-1 and  
 3 7-2E-2 NMSA 1978 or similar credit has been denied, the  
 4 taxpayer may claim a refund of the credit no later than one  
 5 year after the date of the denial;

6 (3) when a taxpayer under audit by the  
 7 department has signed a waiver of the limitation on assessments  
 8 on or after July 1, 1993 pursuant to Subsection F of Section  
 9 7-1-18 NMSA 1978, the taxpayer may file a claim for refund of  
 10 the same tax paid for the same period for which the waiver was  
 11 given, until a date one year after the later of the date of the  
 12 mailing of an assessment issued pursuant to the audit, the date  
 13 of the mailing of final audit findings to the taxpayer or the  
 14 date a proceeding is begun in court by the department with  
 15 respect to the same tax and the same period;

16 (4) if the payment of an amount of tax was not  
 17 made within three years of the end of the calendar year in  
 18 which the original due date of the tax or date of the  
 19 assessment of the department occurred, a claim for refund of  
 20 that amount of tax can be made within one year of the date on  
 21 which the tax was paid; or

22 (5) when a taxpayer has been assessed a tax on  
 23 or after July 1, 1993 under Subsection B, C or D of Section  
 24 7-1-18 NMSA 1978 and when the assessment applies to a period  
 25 ending at least three years prior to the beginning of the year

1 in which the assessment was made, the taxpayer may claim a  
2 refund for the same tax for the period of the assessment or for  
3 any period following that period within one year of the date of  
4 the assessment unless a longer period for claiming a refund is  
5 provided in this section.

6 E. No credit or refund shall be allowed or made to  
7 any person claiming a refund of gasoline tax under Section  
8 7-13-11 NMSA 1978 unless notice of the destruction of the  
9 gasoline was given the department within thirty days of the  
10 actual destruction and the claim for refund is made within six  
11 months of the date of destruction. No credit or refund shall  
12 be allowed or made to any person claiming a refund of gasoline  
13 tax under Section 7-13-17 NMSA 1978 unless the refund is  
14 claimed within six months of the date of purchase of the  
15 gasoline and the gasoline has been used at the time the claim  
16 for refund is made.

17 F. If, as a result of an audit by the internal  
18 revenue service or the filing of an amended federal return  
19 changing a prior election or making any other change for which  
20 federal approval is required by the Internal Revenue Code, any  
21 adjustment of federal tax is made with the result that there  
22 would have been an overpayment of tax if the adjustment to  
23 federal tax had been applied to the taxable period to which it  
24 relates, claim for credit or refund of only that amount based  
25 on the adjustment may be made as provided in this section

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1 within one year of the date of the internal revenue service  
 2 audit adjustment or payment of the federal refund or within the  
 3 period limited by Subsection D of this section, whichever  
 4 expires later. Interest computed at the rate specified in  
 5 Subsection B of Section 7-1-68 NMSA 1978 shall be allowed on  
 6 any such claim for refund from the date one hundred twenty days  
 7 after the claim is made until the date the final decision to  
 8 grant the credit or refund is made.

9 G. If as a result of an audit by the department or  
 10 a managed audit covering multiple periods an overpayment of tax  
 11 is found in any period under the audit, that overpayment may be  
 12 credited against an underpayment of the same tax found in  
 13 another period under audit pursuant to Section 7-1-29 NMSA  
 14 1978, provided that the taxpayer files a claim for refund for  
 15 the overpayments identified in the audit.

16 H. Any refund of tax paid under any tax or tax act  
 17 administered under Subsection B of Section 7-1-2 NMSA 1978 may  
 18 be made, at the discretion of the department, in the form of  
 19 credit against future tax payments if future tax liabilities in  
 20 an amount at least equal to the credit amount reasonably may be  
 21 expected to become due.

22 I. For the purposes of this section, the term "oil  
 23 and gas tax return" means a return reporting tax due with  
 24 respect to oil, natural gas, liquid hydrocarbons or carbon  
 25 dioxide pursuant to the Oil and Gas Severance Tax Act, the Oil

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

5 J. The filing of a fully completed original income  
6 tax return, corporate income tax return, corporate income and  
7 franchise tax return, estate tax return or special fuel excise  
8 tax return that shows a balance due the taxpayer or a fully  
9 completed amended income tax return, an amended corporate  
10 income tax return, an amended corporate income and franchise  
11 tax return, an amended estate tax return, an amended special  
12 fuel excise tax return or an amended oil and gas tax return  
13 that shows a lesser tax liability than the original return  
14 constitutes the filing of a claim for refund for the difference  
15 in tax due shown on the original and amended returns. "

16 Section 10. A new section of the Tax Administration Act  
17 is enacted to read:

18 "[NEW MATERIAL] CREDIT CLAIMS. --Any taxpayer who requests  
19 approval of a statutory tax credit is deemed to have received  
20 such approval if the request has not been granted or denied  
21 within one hundred eighty days of the date it was filed.  
22 Nothing in this section shall be construed to prevent the  
23 department from auditing taxes paid or from assessing taxes  
24 owed, including any tax resulting from tax credits found not to  
25 be valid. "

1 Section 11. Section 7-1-29 NMSA 1978 (being Laws 1965,  
2 Chapter 248, Section 31, as amended) is amended to read:

3 "7-1-29. AUTHORITY TO MAKE REFUNDS OR CREDITS. --

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

15 (1) refunds with respect to the Oil and Gas  
16 Severance Tax Act, the Oil and Gas Conservation Tax Act, the  
17 Oil and Gas Emergency School Tax Act, the Oil and Gas Ad  
18 Valorem Production Tax Act, the Natural Gas Processors Tax Act  
19 or the Oil and Gas Production Equipment Ad Valorem Tax Act,  
20 refunds of gasoline tax made under Section 7-13-17 NMSA 1978  
21 and refunds of cigarette tax made under the Cigarette Tax Act  
22 may be made without the prior approval of the attorney general  
23 regardless of the amount; and

24 (2) refunds with respect to the Corporate  
25 Income and Franchise Tax Act amounting to less than twenty

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1 thousand dollars (\$20,000) may be made without the prior  
2 approval of the attorney general.

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

9 C. In the discretion of the secretary, any amount  
10 of tax due to be refunded may be offset against any amount of  
11 tax for the payment of which the person due to receive the  
12 refund is liable. The secretary or the secretary's delegate  
13 shall give notice to the taxpayer that the refund will be made  
14 in this manner, and the taxpayer shall be entitled to interest  
15 under Section 7-1-68 NMSA 1978 until the tax liability is  
16 credited with the refund amount.

17 D. In an audit by the department or a managed audit  
18 covering multiple reporting periods where both underpayments  
19 and overpayments of a tax are found to have been made in  
20 different reporting periods, the department shall credit the  
21 tax overpayments found against the underpayments, provided that  
22 the taxpayer files a claim for refund of the overpayments. An  
23 overpayment shall be applied as a credit first to the earliest  
24 underpayment found and then to succeeding underpayments. An  
25 underpayment of tax to which an overpayment is credited

1 pursuant to this section shall be deemed paid in the period in  
 2 which the overpayment was made or the period in which the  
 3 overpayment was credited against an underpayment, whichever is  
 4 later. If the overpayments credited pursuant to this section  
 5 exceed the underpayments found for a tax, the amount of the net  
 6 overpayment for the periods covered in the audit shall be  
 7 refunded to the taxpayer.

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

12 Section 12. A new section of the Tax Administration Act,  
 13 Section 7-1-29.1 NMSA 1978, is enacted to read:

14 "7-1-29.1. [NEW MATERIAL] AWARDING OF COSTS AND FEES. --

15 A. In any administrative or court proceeding that  
 16 is brought by or against the taxpayer on or after July 1, 2003  
 17 in connection with the determination, collection or refund of  
 18 any tax, interest or penalty for a tax governed by the  
 19 provisions of the Tax Administration Act, the taxpayer shall be  
 20 awarded a judgment or a settlement for reasonable  
 21 administrative costs incurred in connection with an  
 22 administrative proceeding with the department or reasonable  
 23 litigation costs incurred in connection with a court  
 24 proceeding, if the taxpayer is the prevailing party.

25 B. As used in this section:

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underscored material = new  
 [bracketed material] = delete

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

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

5 (3) "reasonable administrative costs" means:

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

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

16 (4) "reasonable litigation costs" means:

17 (a) reasonable court costs; and

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

25 C. For purposes of this section:

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

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

5 (b) substantially prevailed with respect  
6 to most of the issues involved in the case or the most  
7 significant issue or set of issues involved in the case;

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

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

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

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

22 (a) department regulations, information  
23 releases, instructions, notices, technical advice memoranda and  
24 announcements; and

25 (b) private letter rulings and letters

1 issued by the department to the taxpayer; and

2 (4) the determination of whether the taxpayer  
3 is the prevailing party and the amount of reasonable litigation  
4 costs or reasonable administrative costs shall be made by  
5 agreement of the parties or:

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

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

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

22 E. No agreement for or award of reasonable  
23 administrative costs or reasonable litigation costs in any  
24 administrative or court proceeding pursuant to Subsection A of  
25 this section shall exceed the lesser of twenty percent of the

1 amount of the settlement or judgment or fifty thousand dollars  
 2 (\$50,000). A taxpayer awarded administrative litigation costs  
 3 pursuant to this section may not receive an award of attorney  
 4 fees pursuant to Subsection D of Section 7-1-25 NMSA 1978. "

5 Section 13. Section 7-1-67 NMSA 1978 (being Laws 1965,  
 6 Chapter 248, Section 68, as amended) is amended to read:

7 "7-1-67. INTEREST ON DEFICIENCIES. --

8 A. If a tax imposed is not paid on or before the  
 9 day on which it becomes due, interest shall be paid to the  
 10 state on that amount from the first day following the day on  
 11 which the tax becomes due, without regard to any extension of  
 12 time or installment agreement, until it is paid, except that:

13 (1) for income tax imposed on a member of the  
 14 armed services of the United States serving in a combat zone  
 15 under orders of the president of the United States, interest  
 16 shall accrue only for the period beginning the day after any  
 17 applicable extended due date if the tax is not paid;

18 (2) if the amount of interest due at the time  
 19 payment is made is less than one dollar (\$1.00), then no  
 20 interest shall be due;

21 (3) if demand is made for payment of a tax,  
 22 including accrued interest, and if the tax is paid within ten  
 23 days after the date of the demand, no interest on the amount  
 24 paid shall be imposed for the period after the date of the  
 25 demand;

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underscored material = new  
 [bracketed material] = delete

1 (4) if a managed audit is completed by the  
2 taxpayer on or before the date required, as provided in the  
3 agreement for the managed audit, and payment of any tax found  
4 to be due is made in full within thirty days of the date the  
5 secretary has mailed or delivered an assessment for the tax to  
6 the taxpayer, no interest shall be due on the assessed tax;  
7 [~~and~~]

8 (5) when, as the result of an audit or a  
9 managed audit, an overpayment of a tax is credited against an  
10 underpayment of tax pursuant to Section 7-1-29 NMSA 1978,  
11 interest shall accrue from the date the tax was due until the  
12 tax is deemed paid;

13 (6) if the department does not issue an  
14 assessment for the tax program and period within the time  
15 provided in Subsection D of Section 7-1-11.2 NMSA 1978,  
16 interest shall be paid from the first day following the day on  
17 which the tax becomes due until the tax is paid, excluding the  
18 period between either:

19 (a) the one hundred eightieth day after  
20 giving a notice of outstanding records or books of account and  
21 the date of the assessment of the tax; or

22 (b) the ninetieth day after the  
23 expiration of the additional time requested by the taxpayer to  
24 comply, if such request was granted, and the date of the  
25 assessment of the tax; and

1                   (7) if the taxpayer was not provided with  
 2 proper notices as required in Section 7-1-11.2 NMSA 1978,  
 3 interest shall be paid from the first day following the day on  
 4 which the tax becomes due until the tax is paid, excluding the  
 5 period between one hundred eighty days prior to the date of  
 6 assessment and the date of assessment.

7                   B. Interest due to the state under Subsection A or  
 8 D of this section shall be at the rate of fifteen percent a  
 9 year, computed on a daily basis; provided that if a different  
 10 rate is specified by a compact or other interstate agreement to  
 11 which New Mexico is a party, that rate shall be applied to  
 12 amounts due under the compact or other agreement.

13                  C. Nothing in this section shall be construed to  
 14 impose interest on interest or interest on the amount of any  
 15 penalty.

16                  D. If any tax required to be paid in accordance  
 17 with Section 7-1-13.1 NMSA 1978 is not paid in the manner  
 18 required by that section, interest shall be paid to the state  
 19 on the amount required to be paid in accordance with Section  
 20 7-1-13.1 NMSA 1978. If interest is due under this subsection  
 21 and is also due under Subsection A of this section, interest  
 22 shall be due and collected only pursuant to Subsection A of  
 23 this section. "

24                  Section 14. Section 7-1-69 NMSA 1978 (being Laws 1965,  
 25 Chapter 248, Section 70, as amended) is amended to read:

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

3 A. Except as provided in Subsection [B] C of this  
4 section, in the case of failure due to negligence or disregard  
5 of department rules and regulations, but without intent to  
6 evade or defeat a tax, to pay when due the amount of tax  
7 required to be paid, to pay in accordance with the provisions  
8 of Section 7-1-13.1 NMSA 1978 when required to do so or to file  
9 by the date required a return regardless of whether a tax is  
10 due, there shall be added to the amount [~~as~~] assessed a penalty  
11 in an amount equal to the greater of:

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

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

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

25 B. No penalty shall be assessed against a taxpayer

1 if the failure to pay an amount of tax when due results from a  
 2 mistake of law made in good faith and on reasonable grounds.

3 ~~[B.]~~ C. If a different penalty is specified in a  
 4 compact or other interstate agreement to which New Mexico is a  
 5 party, the penalty provided in the compact or other interstate  
 6 agreement shall be applied to amounts due under the compact or  
 7 other interstate agreement at the rate and in the manner  
 8 prescribed by the compact or other interstate agreement.

9 ~~[C.]~~ D. In the case of failure, with willful intent  
 10 to evade or defeat a tax, to pay when due the amount of tax  
 11 required to be paid, there shall be added to the amount fifty  
 12 percent of the tax or a minimum of twenty-five dollars  
 13 (\$25.00), whichever is greater, as penalty.

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

19 ~~[E.]~~ F. If a taxpayer makes electronic payment of a  
 20 tax but the payment does not include all of the information  
 21 required by the department pursuant to the provisions of  
 22 Section 7-1-13.1 NMSA 1978 and if the department does not  
 23 receive the required information within five business days from  
 24 the later of the date a request by the department for that  
 25 information is received by the taxpayer or the due date, the

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1 taxpayer shall be subject to a penalty of two percent per month  
2 or any fraction of a month from the fifth day following the  
3 date the request is received. If a penalty is imposed under  
4 Subsection A of this section with respect to the same  
5 transaction for the same period, no penalty shall be imposed  
6 under this subsection.

7 ~~[F-]~~ G. No penalty shall be imposed on:

8 (1) tax due in excess of tax paid in  
9 accordance with an approved estimated basis pursuant to Section  
10 7-1-10 NMSA 1978;

11 (2) tax due as the result of a managed audit;  
12 or

13 (3) tax that is deemed paid by crediting  
14 overpayments found in an audit or managed audit of multiple  
15 periods pursuant to Section 7-1-29 NMSA 1978. "

16 Section 15. A new section of the Tax Administration Act  
17 is enacted to read:

18 "[NEW MATERIAL] TAX LIABILITY--SPOUSE OR FORMER SPOUSE. --

19 A. If the secretary determines that, taking into  
20 account all the facts and circumstances, it is inequitable to  
21 hold the spouse or former spouse of a taxpayer liable for  
22 payment of all or part of any unpaid tax, assessment or other  
23 deficiency for a tax administered under the Tax Administration  
24 Act, the secretary may decline to bring an action or proceeding  
25 to collect such taxes against the spouse or former spouse of

1 the taxpayer.

2 B. Nothing in Subsection A of this section shall be  
3 construed to authorize the abatement of taxes or enforcement of  
4 any provisions of the Tax Administration Act against the  
5 taxpayer.

6 C. The secretary shall adopt and promulgate  
7 regulations as necessary for making the determinations pursuant  
8 to this section."

9 Section 16. EFFECTIVE DATE. --The effective date of the  
10 provisions of this act is July 1, 2003.