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SENATE BILL 347

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

James G. Taylor

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; EXPANDING THE KINDS OF TAXES THAT MAY BE REPORTED ON AN ESTIMATED BASIS; INCLUDING REPORTING OF HELIUM AND NONHYDROCARBON GAS ON OIL AND GAS TAX RETURNS FOR REFUND PURPOSES; EXCLUDING HELIUM AND NONHYDROCARBON GAS AS NATURAL RESOURCES IN THE RESOURCES EXCISE TAX ACT.

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

Section 1. Section 7-1-10 NMSA 1978 (being Laws 1965, Chapter 248, Section 15, as amended) is amended to read:

"7-1-10. RECORDS REQUIRED BY STATUTE--TAXPAYER RECORDS--ACCOUNTING METHODS--REPORTING METHODS--INFORMATION RETURNS.--

A. Every person required by the provisions of any statute administered by the department to keep records and documents and every taxpayer shall maintain books of account or

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1 other records in a manner that will permit the accurate  
2 computation of state taxes or provide information required by  
3 the statute under which [~~he~~] the person is required to keep  
4 records.

5 B. Methods of accounting shall be consistent for  
6 the same business. A taxpayer engaged in more than one  
7 business may use a different method of accounting for each  
8 business.

9 C. Prior to changing [~~his~~] the method of accounting  
10 in keeping [~~his~~] books and records for tax purposes, a taxpayer  
11 shall first secure the consent of the secretary or the  
12 secretary's delegate. If consent is not secured, the  
13 department upon audit may require the taxpayer to compute the  
14 amount of tax due on the basis of the accounting method earlier  
15 used.

16 D. Prior to changing [~~his~~] the method of reporting  
17 taxes, other than for changes required by law, a taxpayer shall  
18 first secure the consent of the secretary or the secretary's  
19 delegate. Consent shall be granted or withheld pursuant to the  
20 provisions of Section 7-4-19 NMSA 1978. If consent is not  
21 secured, the secretary or the secretary's delegate upon audit  
22 may require the taxpayer to compute the amount of tax due on  
23 the basis of the reporting method earlier used.

24 E. Upon the written application of a taxpayer and  
25 at the sole discretion of the secretary or the secretary's

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1 delegate, the secretary or the secretary's delegate may enter  
2 into an agreement with a taxpayer allowing the taxpayer to  
3 report values, gross receipts, deductions or the value of  
4 property on an estimated basis for gross receipts and  
5 compensating tax, oil and gas severance tax, oil and gas  
6 conservation tax, oil and gas emergency school tax and oil and  
7 gas ad valorem production tax purposes for a limited period of  
8 time not to exceed four years. As used in this section,  
9 "estimated basis" means a methodology that is reasonably  
10 expected to approximate the tax that will be due over the  
11 period of the agreement using summary rather than detail data  
12 or alternate valuation applications or methods, provided that:

13 (1) nothing in this section shall be construed  
14 to require the secretary or the secretary's delegate to enter  
15 into such an agreement; and

16 (2) the agreement must:

17 (a) specify the receipts, deductions or  
18 values to be reported on an estimated basis and the methodology  
19 to be followed by the taxpayer in making the estimates;

20 (b) state the term of the agreement and  
21 the procedures for terminating the agreement prior to its  
22 expiration;

23 (c) be signed by the taxpayer or the  
24 taxpayer's representative and the secretary or the secretary's  
25 delegate; and

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1 (d) contain a declaration by the  
2 taxpayer or the taxpayer's representative that all statements  
3 of fact made by the taxpayer or the taxpayer's representative  
4 in the taxpayer's application and the agreement are true and  
5 correct as to every material matter.

6 F. The secretary may, by regulation, require any  
7 person doing business in the state to submit to the department  
8 information reports that are considered reasonable and  
9 necessary for the administration of any provision of law to  
10 which the Tax Administration Act applies."

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

13 "7-1-26. CLAIM FOR REFUND.--

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

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1 claimed, the period for which overpayment was made and the  
2 basis for the refund. As used in this subsection, "basis for  
3 the refund" means a brief statement of the facts and the law on  
4 which the claim is based.

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

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

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

24 C. A person may elect to pursue one, but only one,  
25 of the remedies in Paragraphs (1) and (2) of this subsection.

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1 In any case, if a person does timely pursue more than one  
2 remedy, the person shall be deemed to have elected the first  
3 remedy invoked. The remedies are as follows:

4 (1) the person may direct to the secretary a  
5 written protest against the denial of, or failure to either  
6 allow or deny the claim or portion thereof, which shall be set  
7 for hearing by a hearing officer designated by the secretary  
8 promptly after the receipt of the protest in accordance with  
9 the provisions of Section 7-1-24 NMSA 1978, and pursue the  
10 remedies of appeal from decisions adverse to the protestant as  
11 provided in Section 7-1-25 NMSA 1978; or

12 (2) the person may commence a civil action in  
13 the district court for Santa Fe county by filing a complaint  
14 setting forth the circumstance of the claimed overpayment,  
15 alleging that on account thereof the state is indebted to the  
16 plaintiff in the amount stated, together with any interest  
17 allowable, demanding the refund to the plaintiff of that amount  
18 and reciting the facts of the claim for refund. The plaintiff  
19 or the secretary may appeal from any final decision or order of  
20 the district court to the court of appeals.

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

25 (1) within three years of the end of the

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1 calendar year in which:

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

5 (b) the final determination of value  
6 occurs with respect to any overpayment that resulted from a  
7 disapproval by any agency of the United States or the state of  
8 New Mexico or any court of increase in value of a product  
9 subject to taxation under the Oil and Gas Severance Tax Act,  
10 the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency  
11 School Tax Act, the Oil and Gas Ad Valorem Production Tax Act  
12 or the Natural Gas Processors Tax Act; or

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

15 (2) when an amount of a claim for credit under  
16 the provisions of the Investment Credit Act, Laboratory  
17 Partnership with Small Business Tax Credit Act or Technology  
18 Jobs Tax Credit Act [~~Capital Equipment Tax Credit Act or~~  
19 ~~similar act~~] or for the rural job tax credit pursuant to  
20 Sections 7-2E-1 and 7-2E-2 NMSA 1978 or similar credit has been  
21 denied, the taxpayer may claim a refund of the credit no later  
22 than one year after the date of the denial;

23 (3) when a taxpayer under audit by the  
24 department has signed a waiver of the limitation on assessments  
25 on or after July 1, 1993 pursuant to Subsection F of Section

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1 7-1-18 NMSA 1978, the taxpayer may file a claim for refund of  
2 the same tax paid for the same period for which the waiver was  
3 given, until a date one year after the later of the date of the  
4 mailing of an assessment issued pursuant to the audit, the date  
5 of the mailing of final audit findings to the taxpayer or the  
6 date a proceeding is begun in court by the department with  
7 respect to the same tax and the same period;

8 (4) if the payment of an amount of tax was not  
9 made within three years of the end of the calendar year in  
10 which the original due date of the tax or date of the  
11 assessment of the department occurred, a claim for refund of  
12 that amount of tax can be made within one year of the date on  
13 which the tax was paid; or

14 (5) when a taxpayer has been assessed a tax on  
15 or after July 1, 1993 under Subsection B, C or D of Section  
16 7-1-18 NMSA 1978 and when the assessment applies to a period  
17 ending at least three years prior to the beginning of the year  
18 in which the assessment was made, the taxpayer may claim a  
19 refund for the same tax for the period of the assessment or for  
20 any period following that period within one year of the date of  
21 the assessment unless a longer period for claiming a refund is  
22 provided in this section.

23 E. No credit or refund shall be allowed or made to  
24 any person claiming a refund of gasoline tax under Section  
25 7-13-11 NMSA 1978 unless notice of the destruction of the

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1 gasoline was given the department within thirty days of the  
2 actual destruction and the claim for refund is made within six  
3 months of the date of destruction. No credit or refund shall  
4 be allowed or made to any person claiming a refund of gasoline  
5 tax under Section 7-13-17 NMSA 1978 unless the refund is  
6 claimed within six months of the date of purchase of the  
7 gasoline and the gasoline has been used at the time the claim  
8 for refund is made.

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

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1           G. If as a result of an audit by the department or  
2 a managed audit covering multiple periods an overpayment of tax  
3 is found in any period under the audit, that overpayment may be  
4 credited against an underpayment of the same tax found in  
5 another period under audit pursuant to Section 7-1-29 NMSA  
6 1978, provided that the taxpayer files a claim for refund for  
7 the overpayments identified in the audit.

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

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

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

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1 completed amended income tax return, an amended corporate  
2 income tax return, an amended corporate income and franchise  
3 tax return, an amended estate tax return, an amended special  
4 fuel excise tax return or an amended oil and gas tax return  
5 that shows a lesser tax liability than the original return  
6 constitutes the filing of a claim for refund for the difference  
7 in tax due shown on the original and amended returns."

8 Section 3. Section 7-25-3 NMSA 1978 (being Laws 1966,  
9 Chapter 48, Section 3, as amended) is amended to read:

10 "7-25-3. DEFINITIONS.--As used in the Resources Excise  
11 Tax Act:

12 A. "department" means the taxation and revenue  
13 department, the secretary of taxation and revenue or any  
14 employee of the department exercising authority lawfully  
15 delegated to that employee by the secretary;

16 B. "natural resource" means timber and any product  
17 thereof and any metalliferous or nonmetalliferous mineral  
18 product, combination or compound thereof, severed in New Mexico  
19 but does not include oil, natural gas, liquid hydrocarbon  
20 individually or any combination thereof [øæ], carbon dioxide,  
21 helium or nonhydrocarbon gas;

22 C. "person" means any individual, estate, trust,  
23 receiver, cooperative association, club, corporation, company,  
24 firm, partnership, joint venture, syndicate or other entity;

25 D. "processing" means smelting, leaching, refining,

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1 reducing, compounding or otherwise preparing for sale or  
2 commercial use any natural resource so that its character or  
3 condition is materially changed in mills or plants located in  
4 New Mexico;

5 E. "processor" means any person engaging in the  
6 business of processing natural resources that the person owns,  
7 or any person who is the owner of natural resources and who has  
8 another person perform the processing of such natural  
9 resources;

10 F. "service charge" means the total amount of money  
11 or the reasonable value of other consideration received for  
12 severing or processing any natural resource by any person who  
13 is not the owner of the natural resource. However, if the  
14 money received does not represent the value of the severing or  
15 processing performed, "service charge" means the reasonable  
16 value of the severing or processing performed;

17 G. "severer" means any person engaging in the  
18 business of severing natural resources that the person owns, or  
19 any person who is the owner of natural resources and who has  
20 another person perform the severing of such natural resources;

21 H. "severing" means mining, quarrying, extracting,  
22 felling or producing any natural resource in New Mexico for  
23 sale, profit or commercial use; and

24 I. "taxable value" means the value after severing  
25 or processing, without deduction of any kind other than

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1 specified in this subsection, of any natural resource severed  
2 or processed in New Mexico. It is presumed, in the absence of  
3 preponderant evidence of another value, that the taxable value  
4 means the total amount of money or the reasonable value of  
5 other consideration received for the severed or processed  
6 natural resource. However, if the amount of money received  
7 does not represent the value of the severed or processed  
8 natural resource or if the severed or processed natural  
9 resource is not sold, the taxable value shall be the reasonable  
10 value of the severed or processed natural resource. All  
11 natural resources severed or processed in New Mexico shall be  
12 included in determining taxable value, regardless of the place  
13 of sale or the fact that delivery may be made to points outside  
14 of New Mexico. If any person shall ship, transmit or transport  
15 natural resources out of New Mexico without making sale of them  
16 or shall ship, transmit or transport natural resources out of  
17 New Mexico in an unfinished condition, the value of the natural  
18 resources in the condition in which they existed when shipped,  
19 transmitted or transported out of New Mexico and before they  
20 enter interstate commerce, without deduction of any kind other  
21 than specified in this subsection, shall be the basis for  
22 determining the taxable value. Amounts received from selling  
23 natural resources, other than metalliferous mineral ores,  
24 whether processed or unprocessed, to the United States or any  
25 agency or instrumentality thereof, the state of New Mexico or

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1 any political subdivision thereof, or to organizations that  
2 have demonstrated to the department that they have been granted  
3 exemption from the federal income tax by the United States  
4 commissioner of internal revenue as organizations described in  
5 Section 501 (c) (3) of the United States Internal Revenue Code  
6 of 1954, as amended or renumbered, which employ the natural  
7 resource in the conduct of functions described in Section 501  
8 (c) (3) and not in the conduct of an unrelated trade or  
9 business as defined in Section 513 of the United States  
10 Internal Revenue Code of 1954, as amended or renumbered, may be  
11 deducted from taxable value. Any royalty or other similar  
12 interest, whether payable in cash or in kind, paid to the  
13 United States or any agency or instrumentality thereof, or the  
14 state of New Mexico or any political subdivision thereof, or  
15 any Indian tribe, Indian pueblo or Indian that is a ward of the  
16 United States may be deducted from taxable value. In computing  
17 taxable value, any owner of natural resources may deduct any  
18 service charge on which the service tax imposed by Section  
19 7-25-6 NMSA 1978 is payable."

20 Section 4. EFFECTIVE DATE.--The effective date of the  
21 provisions of this act is July 1, 2007.

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