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AN ACT

RELATING TO TAXATION; ALLOWING TAXPAYERS TO REQUEST EARLY
COMPLETION OF AUDITS; EXTENDING THE TIME PERIOD DURING WHICH
MANAGED AUDIT PARTICIPANTS MAY MAKE INTEREST-FREE PAYMENTS ON
DELINQUENT TAXES; STATING EXCEPTIONS TO DELINQUENT TAXPAYER
STATUS; AMENDING SECTIONS OF THE NMSA 1978; RECONCILING
MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2001.

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

Section 1. Section 7-1-11 NMSA 1978 (being Laws 1965,
Chapter 248, Section 16, as amended by Laws 2001, Chapter 16,
Section 4 and also by Laws 2001, Chapter 56, Section 4) is
amended to read:

"7-1-11. INSPECTION OF BOOKS OF TAXPAYERS--
CREDENTIALS.--

A. The department shall cause the records and
books of account of taxpayers to be inspected or audited at
such times as the department deems necessary for the
effective execution of the department's responsibilities.

B. Auditors and other officials of the department
designated by the secretary are authorized to request and
require the production for examination of the records and
books of account of a taxpayer. Auditors and officials of
the department designated by the secretary shall be furnished
with credentials identifying them as such, which they shall

1 display to any taxpayer whose books are sought to be
2 examined.

3 C. Taxpayers shall upon request make their records
4 and books of account available for inspection at reasonable
5 hours to the secretary or the secretary's delegate who
6 presents proper identification to the taxpayer.

7 D. If the taxpayer's records and books of account
8 do not exist or are insufficient to determine the taxpayer's
9 tax liability, if any, the department may use any reasonable
10 method of estimating the tax liability, including but not
11 limited to using information about similar persons,
12 businesses or industries to estimate the taxpayer's
13 liability.

14 E. The secretary or the secretary's delegate shall
15 develop and maintain written audit policies and procedures
16 for all audit programs in which the department routinely
17 conducts field audits of taxpayers, including policies and
18 procedures concerning audit notification, scheduling, records
19 that may be examined, analysis that may be done, sampling
20 procedures, gathering information or evidence from third
21 parties, policies concerning the rights of taxpayers under
22 audit and related matters. Department audit policies and
23 procedures shall be made available to a person who requests
24 them, at a reasonable charge to defray the cost of preparing
25 and distributing those policies and procedures. Nothing in

1 this section shall be construed to require the department to
2 provide information that is confidential pursuant to Section
3 7-1-8 NMSA 1978, nor shall the department be required to
4 provide information concerning how taxpayers are selected for
5 audit."

6 Section 2. Section 7-1-11.2 NMSA 1978 (being Laws 2003,
7 Chapter 398, Section 7) is amended to read:

8 "7-1-11.2. REQUIRED AUDIT NOTICES.--

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

17 B. To any taxpayer to whom the department is
18 required to provide a written notice of the commencement of
19 an audit, the department shall also provide a written notice
20 of the outstanding records or books of account that have been
21 requested but not received. If the taxpayer has provided all
22 records and books of account requested, the notice shall so
23 state. The notice of outstanding records or books of account
24 shall be given no sooner than sixty days, unless the taxpayer
25 provides a written request for early completion of the audit,

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

11 C. A taxpayer may request additional time to
12 comply with the notice of outstanding records and books of
13 account. Such request shall be in writing and shall state
14 the amount of time needed.

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

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

1 F. Nothing in this section shall prevent the
2 department from requesting from the taxpayer a waiver of the
3 statute of limitations for assessment of tax owed. Nothing
4 in this section shall prevent the department from issuing an
5 assessment of tax owed on the basis of the information
6 available.

7 G. This section does not apply to investigations
8 of fraud."

9 Section 3. Section 7-1-16 NMSA 1978 (being Laws 1965,
10 Chapter 248, Section 19, as amended) is amended to read:

11 "7-1-16. DELINQUENT TAXPAYER.--

12 A. Except as provided in Subsection D of this
13 section, any taxpayer to whom taxes have been assessed as
14 provided in Section 7-1-17 NMSA 1978 or upon whom demand for
15 payment has been made as provided in Section 7-1-63 NMSA 1978
16 who does not within thirty days after the date of assessment
17 or demand for payment make payment, protest the assessment or
18 demand for payment as provided by Section 7-1-24 NMSA 1978 or
19 furnish security for payment as provided by Section 7-1-54
20 NMSA 1978 becomes a delinquent taxpayer and remains such
21 until:

22 (1) payment of the total amount of all such
23 taxes is made;

24 (2) a retroactive extension of time to file
25 a protest is granted pursuant to Section 7-1-24 NMSA 1978;

1 provided, however, that the taxpayer again becomes a
2 delinquent taxpayer if the assessment is not abated and the
3 taxpayer does not pay, protest or furnish security within the
4 time allowed by the retroactive extension of time;

5 (3) security is furnished for payment; or

6 (4) no part of the assessment remains
7 unabated.

8 B. Any taxpayer who fails to provide security as
9 required by Subsection D of Section 7-1-54 NMSA 1978 shall be
10 deemed to be a delinquent taxpayer.

11 C. If a taxpayer files a protest as provided in
12 Section 7-1-24 NMSA 1978, the taxpayer nevertheless becomes a
13 delinquent taxpayer upon failure of the taxpayer to appear,
14 in person or by authorized representative, at the hearing set
15 or upon failure to perfect an appeal from any decision or
16 part thereof adverse to the taxpayer to the next higher
17 appellate level, as provided in that section, unless the
18 taxpayer makes payment of the total amount of all taxes
19 assessed and remaining unabated or furnishes security for
20 payment.

21 D. A taxpayer does not become a delinquent
22 taxpayer if the taxpayer:

23 (1) files for an extension of time to file a
24 protest as provided in Section 7-1-24 NMSA 1978 within thirty
25 days after the date of the assessment or demand for payment,

1 unless the assessment is not abated and the taxpayer does not
2 pay, protest or furnish security within the time allowed by
3 the extension of time; or

4 (2) has been issued an assessment as a
5 result of a managed audit but is still within the allowed
6 time period to pay the tax due as specified in Paragraph (4)
7 of Subsection A of Section 7-1-67 NMSA 1978."

8 Section 4. Section 7-1-67 NMSA 1978 (being Laws 1965,
9 Chapter 248, Section 68, as amended) is amended to read:

10 "7-1-67. INTEREST ON DEFICIENCIES.--

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

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

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

25 (3) if demand is made for payment of a tax,

1 including accrued interest, and if the tax is paid within ten
2 days after the date of the demand, no interest on the amount
3 paid shall be imposed for the period after the date of the
4 demand;

5 (4) if a managed audit is completed by the
6 taxpayer on or before the date required, as provided in the
7 agreement for the managed audit, and payment of any tax found
8 to be due is made in full within one hundred eighty days of
9 the date the secretary has mailed or delivered an assessment
10 for the tax to the taxpayer, no interest shall be due on the
11 assessed tax;

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

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

23 (a) the one hundred eightieth day after
24 giving a notice of outstanding records or books of account
25 and the date of the assessment of the tax; or

1 (b) the ninetieth day after the
2 expiration of the additional time requested by the taxpayer
3 to comply, if such request was granted, and the date of the
4 assessment of the tax; and

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

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

17 C. Nothing in this section shall be construed to
18 impose interest on interest or interest on the amount of any
19 penalty.

20 D. If any tax required to be paid in accordance
21 with Section 7-1-13.1 NMSA 1978 is not paid in the manner
22 required by that section, interest shall be paid to the state
23 on the amount required to be paid in accordance with Section
24 7-1-13.1 NMSA 1978. If interest is due under this subsection
25 and is also due under Subsection A of this section, interest

1 shall be due and collected only pursuant to Subsection A of
2 this section."

3 Section 5. REPEAL.--Laws 2001, Chapter 16, Section 4 is
4 repealed.

5 Section 6. EFFECTIVE DATE.--The effective date of the
6 provisions of this act is July 1, 2007. _____

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