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AN ACT
RELATING TO TAXATION; AMENDING SECTIONS OF THE NMSA 1978
CONCERNING THE NATIVE AMERICAN VETERANS' INCOME TAX
SETTLEMENT FUND; MAKING APPROPRIATIONS.

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

Section 1. Section 7-2H-1 NMSA 1978 (being Laws 2008,
Chapter 89, Section 1) is amended to read:

"7-2H-1. LEGISLATIVE FINDINGS.--

A. Native Americans have had a long history of
serving their country through active duty in the armed forces
of the United States during periods of both war and peace and
have made great sacrifices in serving their country through
active duty in the military during periods of war and peace.

B. Native American veterans domiciled within the
boundaries of their tribal lands or their spouse's tribal
lands during their periods of active military service may
have been exempt from paying state personal income taxes on
their military income, but may have had state personal income
taxes withheld from their military income.

C. Native American veterans now are barred by the
state statute of limitations from claiming refunds of state
personal income taxes that may have been withheld from their
military income when they were domiciled within the
boundaries of their tribal lands or their spouse's tribal

1 lands during the period of their active military duty, and
2 even if not barred by the statute of limitations, the passage
3 of time extending to decades will make it difficult for many
4 Native American veterans to meet strict standards of proof
5 that they are entitled to a refund of withheld state personal
6 income taxes.

7 D. It is incumbent upon the state to ensure that
8 it was not unjustly enriched by the withholding of state
9 personal income taxes from Native American veterans who were
10 domiciled within the boundaries of their tribal lands or
11 their spouse's tribal lands during the period of their active
12 military duty, and the state should implement a feasible
13 means of refunding to Native American veterans any state
14 personal income taxes that were withheld from military income
15 while they were domiciled within the boundaries of their
16 tribal lands or their spouse's tribal lands during the period
17 of their active military duty."

18 Section 2. Section 7-2H-2 NMSA 1978 (being Laws 2008,
19 Chapter 89, Section 2) is amended to read:

20 "7-2H-2. DEFINITION.--As used in Chapter 7, Article 2H
21 NMSA 1978, "fund" means the Native American veterans' income
22 tax settlement fund."

23 Section 3. Section 7-2H-3 NMSA 1978 (being Laws 2008,
24 Chapter 89, Section 3) is amended to read:

25 "7-2H-3. NATIVE AMERICAN VETERANS' INCOME TAX

1 SETTLEMENT FUND--CREATED--PURPOSE--APPROPRIATIONS.--

2 A. The "Native American veterans' income tax
3 settlement fund" is created as a nonreverting fund in the
4 state treasury and shall be administered by the taxation and
5 revenue department. The fund shall consist of money that is
6 appropriated or donated or that otherwise accrues to the
7 fund.

8 B. The taxation and revenue department shall
9 establish procedures and adopt rules as required to
10 administer the fund and to make settlement payments from the
11 fund as approved by the secretary of taxation and revenue.

12 C. Money in the fund is appropriated to the
13 taxation and revenue department to make settlement payments
14 to Native American veterans who were domiciled within the
15 boundaries of their tribal lands or their spouse's tribal
16 lands during the period of their active military duty and had
17 state personal income taxes withheld from their military
18 income, or to their heirs pursuant to applicable law.

19 Settlement payments shall include the amount of state
20 personal income taxes withheld from eligible Native American
21 veterans that have not been previously refunded to the
22 veterans and interest on the amount withheld from the date of
23 withholding computed on a daily basis at the rate specified
24 for individuals pursuant to Section 6621 of the Internal
25 Revenue Code of 1986. No settlement payments shall be made

1 for any taxable year for which a refund claim may be timely
2 filed with the taxation and revenue department, or for which
3 an application for settlement is received after December 31,
4 2012. Money shall be disbursed from the fund only on warrant
5 of the secretary of finance and administration upon vouchers
6 signed by the secretary of taxation and revenue or the
7 secretary's authorized representative. Any unexpended or
8 unencumbered balance remaining in the fund at the end of a
9 fiscal year shall not revert to the general fund.

10 D. Beginning in fiscal year 2010 and in subsequent
11 fiscal years, not more than five percent of the fund is
12 appropriated from the fund to the taxation and revenue
13 department for expenditure in the fiscal year in which it is
14 appropriated to administer the fund. Any unexpended or
15 unencumbered balance remaining at the end of any fiscal year
16 shall revert to the fund.

17 E. Beginning in fiscal year 2010 and in subsequent
18 fiscal years, not more than five percent of the fund is
19 appropriated from the fund to the veterans' services
20 department for expenditure in the fiscal year in which it is
21 appropriated to assist in outreach and public relations and
22 in determining eligibility for settlement payments. Any
23 unexpended or unencumbered balance remaining at the end of
24 any fiscal year shall revert to the fund."

25 Section 4. Section 7-2H-4 NMSA 1978 (being Laws 2008,

1 Chapter 89, Section 4) is amended to read:

2 "7-2H-4. DUTIES OF THE SECRETARY.--

3 A. The secretary of veterans' services shall
4 conduct a study in cooperation with the taxation and revenue
5 department to determine whether Native American veterans who
6 were domiciled within the boundaries of their tribal lands or
7 their spouse's tribal lands during the period of their active
8 military duty had state personal income taxes withheld from
9 their military income and if so, to determine the amount of
10 such state personal income taxes withheld and the number and
11 identity of Native American veterans or their survivors
12 affected by the withholding of such state personal income
13 taxes.

14 B. The secretary of taxation and revenue and the
15 secretary of veterans' services shall promulgate rules for a
16 state program to compensate Native American veterans or their
17 survivors for state personal income taxes withheld from
18 military income while on active military duty and domiciled
19 within the boundaries of the veteran's or the veteran's
20 spouse's tribal lands.

21 C. The secretary of taxation and revenue shall
22 report to the appropriate interim legislative committee no
23 later than October 1 of each year regarding estimates of the
24 amount of state personal income taxes withheld from the
25 military income of Native American veterans domiciled on their

