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HOUSE BILL 177

**44TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION,
2000**

INTRODUCED BY
Jerry Sandel

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; CHANGING CERTAIN PROVISIONS OF THE TAX
ADMINISTRATION ACT; AMENDING AND ENACTING CERTAIN SECTIONS OF
THE NMSA 1978.

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

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

"7-1-2. APPLICABILITY.--The Tax Administration Act
applies to and governs:

A. the administration and enforcement of the
following taxes or tax acts as they now exist or may
hereafter be amended:

- (1) Income Tax Act;
- (2) Withholding Tax Act;
- (3) Venture Capital Investment Act;
- [+3] (4) Gross Receipts and Compensating

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1 Tax Act and any state gross receipts tax;
2 ~~[+4]~~ (5) Liquor Excise Tax Act;
3 ~~[+5]~~ (6) Local Liquor Excise Tax Act;
4 ~~[+6]~~ (7) any municipal local option gross
5 receipts tax;
6 ~~[+7]~~ (8) any county local option gross
7 receipts tax;
8 ~~[+8]~~ (9) Special Fuels Supplier Tax Act;
9 ~~[+9]~~ (10) Gasoline Tax Act;
10 ~~[+10]~~ (11) petroleum products loading fee,
11 which fee shall be considered a tax for the purpose of the
12 Tax Administration Act;
13 ~~[+11]~~ (12) Alternative Fuel Tax Act;
14 ~~[+12]~~ (13) Cigarette Tax Act;
15 ~~[+13]~~ (14) Estate Tax Act;
16 ~~[+14]~~ (15) Railroad Car Company Tax Act;
17 ~~[+15]~~ (16) Investment Credit Act;
18 (17) Capital Equipment Tax Credit Act;
19 (18) rural job tax credit;
20 ~~[+16]~~ (19) Corporate Income and Franchise
21 Tax Act;
22 ~~[+17]~~ (20) Uniform Division of Income for
23 Tax Purposes Act;
24 ~~[+18]~~ (21) Multistate Tax Compact;
25 ~~[+19]~~ (22) Tobacco Products Tax Act; and
 ~~[+20]~~ ~~Filmmaker's Credit Act; and~~
 ~~+21]~~ (23) the telecommunications relay

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1 service surcharge imposed by Section 63-9F-11 NMSA 1978,
2 which surcharge shall be considered a tax for the purposes of
3 the Tax Administration Act;

4 B. the administration and enforcement of the
5 following taxes, surtaxes, advanced payments or tax acts as
6 they now exist or may hereafter be amended:

- 7 (1) Resources Excise Tax Act;
- 8 (2) Severance Tax Act;
- 9 (3) any severance surtax;
- 10 (4) Oil and Gas Severance Tax Act;
- 11 (5) Oil and Gas Conservation Tax Act;
- 12 (6) Oil and Gas Emergency School Tax Act;
- 13 (7) Oil and Gas Ad Valorem Production Tax
14 Act;
- 15 (8) Natural Gas Processors Tax Act;
- 16 (9) Oil and Gas Production Equipment Ad
17 Valorem Tax Act;
- 18 (10) Copper Production Ad Valorem Tax Act;
- 19 [~~and~~]
- 20 (11) any advance payment required to be made
21 by any act specified in this subsection, which advance
22 payment shall be considered a tax for the purposes of the Tax
23 Administration Act;
- 24 (12) Enhanced Oil Recovery Act;
- 25 (13) Natural Gas and Crude Oil Production
Incentive Act; and
(14) intergovernmental production tax credit

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1 and intergovernmental production equipment tax credit;

2 C. the administration and enforcement of the
3 following taxes, surcharges, fees or acts as they now exist
4 or may hereafter be amended:

5 (1) Weight Distance Tax Act;

6 [~~+2~~] ~~Special Fuels Tax Act;~~

7 [~~+3~~] (2) the workers' compensation fee
8 authorized by Section 52-5-19 NMSA 1978, which fee shall be
9 considered a tax for purposes of the Tax Administration Act;

10 [~~+4~~] (3) Uniform Unclaimed Property Act;

11 [~~+5~~] (4) 911 emergency surcharge and the
12 network and database surcharge, which surcharges shall be
13 considered taxes for purposes of the Tax Administration Act;

14 [~~+6~~] (5) the solid waste assessment fee
15 authorized by the Solid Waste Act, which fee shall be
16 considered a tax for purposes of the Tax Administration Act;

17 [~~+7~~] (6) the water conservation fee imposed
18 by Section 74-1-13 NMSA 1978, which fee shall be considered a
19 tax for the purposes of the Tax Administration Act; and

20 [~~+8~~] (7) the gaming tax imposed pursuant to
21 the Gaming Control Act; and

22 D. the administration and enforcement of all other
23 laws, with respect to which the department is charged with
24 responsibilities pursuant to the Tax Administration Act, but
25 only to the extent that the other laws do not conflict with
the Tax Administration Act."

Section 2. Section 7-1-3 NMSA 1978 (being Laws 1965,

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1 Chapter 248, Section 3, as amended) is amended to read:

2 "7-1-3. DEFINITIONS.--Unless the context clearly
3 indicates a different meaning, the definitions of words and
4 phrases as they are stated in this section are to be used,
5 and whenever in the Tax Administration Act these words and
6 phrases appear, the singular includes the plural and the
7 plural includes the singular:

8 A. "automated clearinghouse transaction" means an
9 electronic credit or debit transmitted through an automated
10 clearinghouse payable to the state treasurer and deposited
11 with the fiscal agent of New Mexico;

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

16 ~~[B.]~~ C. "division" or "oil and gas accounting
17 division" means the department;

18 ~~[C.]~~ D. "director" means the secretary;

19 ~~[D.]~~ E. "director or his delegate" means the
20 secretary or the secretary's delegate;

21 F. "electronic payment" means a payment made by
22 automated clearinghouse deposit, any funds wire transfer
23 system or a credit card debit card or electronic cash
24 transaction through the internet;

25 ~~[E.]~~ G. "employee of the department" means any
employee of the department, including the secretary, or any
person acting as agent or authorized to represent or perform

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1 services for the department in any capacity with respect to
2 any law made subject to administration and enforcement under
3 the provisions of the Tax Administration Act;

4 H. "financial institution" means any state or
5 federally chartered, federally insured depository
6 institution;

7 ~~[F.]~~ I. "Internal Revenue Code" means the Internal
8 Revenue Code of 1986, as amended;

9 ~~[G.]~~ J. "levy" means the lawful power, hereby
10 invested in the secretary, to take into possession or to
11 require the present or future surrender to the secretary or
12 the secretary's delegate of any property or rights to
13 property belonging to a delinquent taxpayer;

14 ~~[H.]~~ K. "local option gross receipts tax" means a
15 tax authorized to be imposed by a county or municipality upon
16 the taxpayer's gross receipts, as that term is defined in the
17 Gross Receipts and Compensating Tax Act, and required to be
18 collected by the department at the same time and in the same
19 manner as the gross receipts tax; "local option gross
20 receipts tax" includes the taxes imposed pursuant to the
21 Municipal Local Option Gross Receipts Taxes Act, Supplemental
22 Municipal Gross Receipts Tax Act, ~~[Special Municipal Gross~~
23 ~~Receipts Tax Act]~~ County Local Option Gross Receipts Taxes
24 Act, Local Hospital Gross Receipts Tax Act, County
25 Correctional Facility Gross Receipts Tax Act and such other
acts as may be enacted authorizing counties or municipalities
to impose taxes on gross receipts, which taxes are to be

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1 collected by the department in the same time and in the same
2 manner as it collects the gross receipts tax;

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

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

14 ~~[K.]~~ N. "paid" includes the term "paid over";

15 ~~[H.]~~ O. "pay" includes the term "pay over";

16 ~~[M.]~~ P. "payment" includes the term "payment
17 over";

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

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

4 [Ø.] R. "property" means property or rights to
5 property;

6 [P.] S. "property or rights to property" means any
7 tangible property, real or personal, or any intangible
8 property of a taxpayer;

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

15 [R.] U. "secretary or the secretary's delegate"
16 means the secretary or any employee of the department
17 exercising authority lawfully delegated to that employee by
18 the secretary;

19 [S.] V. "security" means money, property or rights
20 to property or a surety bond;

21 [T.] W. "state" means any state of the United
22 States, the District of Columbia, the commonwealth of Puerto
23 Rico and any territory or possession of the United States;

24 [U.] X. "tax" means the total amount of each tax
25 imposed and required to be paid, withheld and paid or
collected and paid under provision of any law made subject to
administration and enforcement according to the provisions of

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

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

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

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

25 (2) is an employee who prepares an income
tax return or claim for refund with respect to an income tax
return of the employer, or of an officer or employee of the

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1 employer, by whom the person is regularly and continuously
2 employed; or

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

6 Section 3. 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
10 department or any former employee of the department to reveal
11 to any individual other than another employee of the
12 department any information contained in the return of any
13 taxpayer made pursuant to any law subject to administration
14 and enforcement under the provisions of the Tax
15 Administration Act or any other information about any
16 taxpayer acquired as a result of his employment by the
17 department, 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
22 enacted a confidentiality statute similar to this section to
23 which the 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 reciprocal agreement entered into with the federal
government for exchange of the information;

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

6 D. to a district court or an appellate court or a
7 federal court:

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

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

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

25 E. to the taxpayer or to the taxpayer's authorized
representative; provided, however, that nothing in this
subsection shall be construed to require any employee to

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1 testify in a judicial proceeding except as provided in
2 Subsection D of this section;

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

8 G. in such manner, for statistical purposes, that
9 the information revealed is not identified as applicable to
10 any individual taxpayer;

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

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

22 J. to a purchaser of a business as provided in
23 Sections 7-1-61 through [~~7-1-64~~] 7-1-63 NMSA 1978, the amount
24 and basis of any unpaid assessment of tax for which the
25 purchaser's seller is liable;

K. to a municipality of this state upon its
request for any period specified by that municipality within

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1 the twelve months preceding the request for the information
2 by that municipality:

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

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

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

23 L. to the commissioner of public lands for use in
24 auditing that pertains to rentals, royalties, fees and other
25 payments due the state under land sale, land lease or other
land use contracts; the commissioner of public lands and
employees of the commissioner are subject to the same

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1 provisions regarding confidentiality of information as
2 employees of the department;

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

15 N. with respect to the tax on gasoline imposed by
16 the Gasoline Tax Act, the department shall make available for
17 public inspection at monthly intervals a report covering the
18 amount and gallonage of gasoline and ethanol blended fuels
19 imported, exported, sold and used, including tax-exempt sales
20 to the federal government reported or upon which the gasoline
21 tax was paid and covering taxes received from each
22 distributor in the state of New Mexico;

23 O. the identity of distributors and gallonage
24 reported on returns required under the Gasoline Tax Act,
25 Special Fuels Supplier Tax Act or Alternative Fuel Tax Act to
any distributor or supplier, but only when it is necessary to
enable the department to carry out its duties under the

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1 Gasoline Tax Act, the Special Fuels Supplier Tax Act or the
2 Alternative Fuel Tax Act;

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

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

14 R. upon request of a municipality or county of
15 this state, the department shall permit officials or
16 employees of the municipality or county to inspect the
17 records of the department pertaining to an increase or
18 decrease to a distribution or transfer made pursuant to
19 Section 7-1-6.15 NMSA 1978 for the purpose of reviewing the
20 basis for the increase or decrease. The municipal or county
21 officials or employees receiving information provided in this
22 subsection shall not reveal that information to any person
23 other than another employee of the municipality or the
24 county, the department or a district court, an appellate
25 court or a federal court in a proceeding relating to a
disputed distribution and in which both the state and the
municipality or county are parties. Any information provided

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1 ~~[in]~~ pursuant to provisions of this subsection that is
2 revealed other than as provided in this subsection shall
3 subject the person revealing the information to the penalties
4 contained in Section 7-1-76 NMSA 1978;

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

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

22 (2) in the case of a local option gross
23 receipts tax imposed by a county on a countywide basis,
24 information indicating whether persons shown on any list of
25 businesses located within the county furnished by the county
 have reported gross receipts to the department but have not
 reported gross receipts for that county under the Gross

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1 Receipts and Compensating Tax Act or a local option gross
2 receipts tax imposed by that county on a countywide basis;
3 and

4 (3) in the case of a local option gross
5 receipts tax imposed by a county only on persons engaging in
6 business in that area of the county outside of any
7 incorporated municipalities, information indicating whether
8 persons shown on any list of businesses located in the area
9 of that county outside of any incorporated municipalities
10 within that county furnished by the county have reported
11 gross receipts to the department but have not reported gross
12 receipts for the area of that county outside of any
13 incorporated municipalities within that county under the
14 Gross Receipts and Compensating Tax Act or any local option
15 gross receipts tax imposed by the county only on persons
16 engaging in business in that area of the county outside of
17 any incorporated municipalities.

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

24 T. to authorized representatives of an Indian
25 nation, tribe or pueblo, the territory of which is located
wholly or partially within New Mexico, pursuant to the terms
of a reciprocal agreement entered into with the Indian

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1 nation, tribe or pueblo for the exchange of that information
2 for tax purposes only; provided that the Indian nation, tribe
3 or pueblo has enacted a confidentiality statute similar to
4 this section;

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

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

13 (2) except as provided in Paragraph (3) of
14 this subsection, contracts and other agreements between the
15 taxpayer and other parties and the proprietary information
16 contained in such contracts and agreements shall not be
17 released without the consent of all parties to the contract
18 or agreement; and

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

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

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

(c) a purchaser of products severed

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1 from a property subject to the audit; or

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

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

11 W. to the ~~[state corporation]~~ public regulation
12 commission, information with respect to the Corporate Income
13 and Franchise Tax Act required to enable the commission to
14 carry out its duties;

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

18 Y. upon request of a corporation authorized to be
19 formed under the Educational Assistance Act, the department
20 shall furnish the last known address and the date of that
21 address of every person certified to the department as being
22 an absent obligor of an educational debt that is due and owed
23 to the corporation or that the corporation has lawfully
24 contracted to collect. The corporation and its officers and
25 employees shall use that information only for the purpose of
enforcing the educational debt obligation of such absent
obligors and shall not disclose that information or use it

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1 for any other purpose;

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

5 AA. information required by any provision of the
6 Tax Administration Act to be made available to the public by
7 the department;

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

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

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

Section 4. Section 7-1-12 NMSA 1978 (being Laws 1965,
Chapter 248, Section 17, as amended) is amended to read:

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1 "7-1-12. IDENTIFICATION OF TAXPAYERS.--

2 A. The [~~director~~] secretary by regulation shall
3 establish a system for the registration and identification of
4 taxpayers and shall require taxpayers to comply therewith.

5 B. The registration system shall be devised so as
6 to facilitate the exchange of information with other states
7 and the United States and to aid in statistical computations.

8 C. The [~~director~~] secretary by regulation also
9 shall provide for a system for the registration and
10 identification of purchasers or lessees who, by reason of
11 their status or the nature of their use of property or
12 service purchased or leased, are ordinarily entitled to make
13 nontaxable purchases or leases of some kinds of property or
14 service and may require such purchasers or lessees to comply
15 therewith.

16 D. Any document, issued by the [~~director~~]
17 department under authority of this section, which is required
18 to be posted on the business premises of the taxpayer shall
19 contain a brief reference to the requirements of Section
20 7-1-61 NMSA 1978."

21 Section 5. Section 7-1-13.1 NMSA 1978 (being Laws 1988,
22 Chapter 99, Section 3, as amended) is amended to read:

23 "7-1-13.1. METHOD OF PAYMENT OF CERTAIN TAXES DUE.--

24 A. Payment of the taxes, including any applicable
25 penalties and interest, described in Paragraph (1), (2) or
(3) of this subsection shall be made on or before the date
due in accordance with Subsection B of this section if the

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1 taxpayer's average tax payment for the group of taxes during
2 the preceding calendar year equaled or exceeded twenty-five
3 thousand dollars (\$25,000):

4 (1) Group 1: all taxes due under the
5 Withholding Tax Act, the Gross Receipts and Compensating Tax
6 Act, local option gross receipts tax acts, the Interstate
7 Telecommunications Gross Receipts Tax Act and the Leased
8 ~~[Vehicles]~~ Vehicle Gross Receipts Tax Act;

9 (2) Group 2: all taxes due under the Oil and
10 Gas Severance Tax Act, the Oil and Gas Conservation Tax Act,
11 the Oil and Gas Emergency School Tax Act and the Oil and Gas
12 Ad Valorem Production Tax Act; or

13 (3) Group 3: the tax due under the Natural
14 Gas Processors Tax Act.

15 For taxpayers who have more than one identification
16 number issued by the department, the average tax payment
17 shall be computed by combining the amounts paid under the
18 several identification numbers.

19 B. Taxpayers who are required to make payment in
20 accordance with the provisions of this section shall make
21 payment by one or more of the following means on or before
22 the due date so that funds are immediately available to the
23 state on or before the due date:

24 ~~[(1) automated clearinghouse transactions to~~
25 ~~allow deposit and fund availability to the state on or before~~
~~the due date and containing the information required by the~~
~~department;~~

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~~(2) a transfer of funds through the wire transfer system operated by the federal reserve system, which provides immediate availability of funds to the state on or before the due date and containing the information required by the department]~~

(1) electronic payment; provided that a result of the payment is that funds are immediately available to the state of New Mexico on or before the due date;

~~[+3)] (2) currency of the United States;~~
~~[+4)] (3) check drawn on and payable at any New Mexico financial institution provided that the check is received by the department at the place and time required by the department at least one banking day prior to the due date; or~~

~~[+5)] (4) check drawn on and payable at any domestic non-New Mexico financial institution provided that the check is received by the department at the time and place required by the department at least two banking days prior to the due date.~~

C. If the taxes required to be paid under this section are not paid in accordance with Subsection B of this section, the payment is not timely and is subject to the provisions of Sections 7-1-67 and 7-1-69 NMSA 1978. ~~[When an automated clearinghouse transaction is reversed or a check is dishonored by the taxpayer's financial institution, neither the department nor the fiscal agent is obligated to resubmit the automated clearinghouse transaction or check for payment.~~

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1 ~~If the reversal or dishonoring causes the final payment of~~
2 ~~taxes to be not timely under the provisions of this section,~~
3 ~~then the provisions of Sections 7-1-67 and 7-1-69 NMSA 1978~~
4 ~~apply.]~~

5 D. For the purposes of this section,

6 [~~(1) "automated clearinghouse transaction"~~
7 ~~means an electronic credit or debit transmitted through an~~
8 ~~automated clearinghouse payable to the state treasurer and~~
9 ~~deposited with the fiscal agent of the state;~~

10 ~~(2)] "average tax payment" means the total~~
11 ~~amount of taxes paid with respect to a group of taxes listed~~
12 ~~under Subsection A of this section during a calendar year~~
13 ~~divided by the number of months in that calendar year~~
14 ~~containing a due date on which the taxpayer was required to~~
15 ~~pay one or more taxes in the group [and~~

16 ~~(3) "financial institution" means any state~~
17 ~~or nationally chartered federally insured depository~~
18 ~~institution]."~~

19 Section 6. A new section of the Tax Administration Act,
20 Section 7-1-13.4 NMSA 1978, is enacted read:

21 "7-1-13.4. [NEW MATERIAL] ELECTRONIC PAYMENTS--
22 REVERSALS.--

23 A. The department is authorized to accept payment
24 by automated clearinghouse transaction, federal reserve
25 system wire transfer and such other means of electronic
payment as the department, with the concurrence of the state
board of finance, may choose.

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B. With respect to automated clearinghouse transactions, federal reserve system wire transfers and electronic payments by means the department has chosen, neither the department nor the fiscal agent of New Mexico shall refuse to accept the funds or to reverse the transaction when funds have been received by the fiscal agent designating the department as the payee together with sufficient information to identify the name of the taxpayer. The department or the fiscal agent of New Mexico may refuse to accept such a payment or to cause the reversal of the transaction only when the transaction is not successful in making the funds to be transferred available or in identifying the taxpayer. The department and the fiscal agent of New Mexico may refuse to accept electronic payments tendered by means other than automated clearinghouse deposit, federal reserve system wire transfer or those other means the department has chosen.

C. When an electronic payment transaction is reversed through the taxpayer's action or a check is dishonored by the taxpayer's financial institution, neither the department nor the fiscal agent of New Mexico is obligated to resubmit the transaction or check for payment. If the reversal or dishonoring causes the final payment of taxes to be not timely, then the provisions of Sections 7-1-67 and 7-1-69 NMSA 1978 apply."

Section 7. Section 7-1-19 NMSA 1978 (being Laws 1971, Chapter 21, Section 1, as amended) is amended to read:

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1 "7-1-19. LIMITATION OF ACTIONS.--No action or
2 proceeding shall be brought to collect taxes administered
3 under the provisions of the Tax Administration Act and due
4 under an assessment or notice of the assessment of taxes
5 after the later of either ten years from the date of such
6 assessment or notice or, with respect to undischarged amounts
7 in a bankruptcy proceeding, one year after the later of the
8 issuance of the final order or the date of the last scheduled
9 payment."

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

12 "7-1-24. ADMINISTRATIVE HEARING--PROCEDURE.--

13 A. Any taxpayer may dispute the assessment to the
14 taxpayer of any amount of tax, the application to the
15 taxpayer of any provision of the Tax Administration Act or
16 the denial of or failure to either allow or deny a claim for
17 refund made in accordance with Section 7-1-26 NMSA 1978 by
18 filing with the secretary a written protest against the
19 assessment or against the application to the taxpayer of the
20 provision or against the denial of or the failure to allow or
21 deny the amount claimed to have been erroneously paid as tax.
22 Every protest shall identify the taxpayer and the tax [~~or~~
23 ~~taxes~~] involved and state the grounds for the taxpayer's
24 protest and the affirmative relief requested. The statement
25 of grounds for protest shall specify individual grounds upon
which the protest is based and a summary statement of the
evidence expected to be produced supporting each ground

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1 asserted, if any; provided that the taxpayer may supplement
2 the statement at any time prior to ten days before any
3 hearing conducted on the protest [~~under~~] pursuant to
4 Subsection E of this section or, if a scheduling order has
5 been issued, in accordance with the scheduling order. The
6 secretary may, in appropriate cases, provide for an informal
7 conference before setting a hearing of the protest or acting
8 on any claim for refund.

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

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

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

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

24 E. A hearing officer shall be designated by the
25 secretary to conduct the hearing. Taxpayers may appear at a
hearing for themselves or be represented by a bona fide
employee, an attorney, a certified public accountant or a

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1 registered public accountant. Hearings shall not be open to
2 the public except upon request of the taxpayer and may be
3 postponed or continued at the discretion of the hearing
4 officer.

5 F. In hearings before the hearing officer, the
6 technical rules of evidence shall not apply, but in ruling on
7 the admissibility of evidence, the hearing officer may
8 require reasonable substantiation of statements or records
9 tendered, the accuracy or truth of which is in reasonable
10 doubt.

11 G. 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
18 render a decision in accordance with the law and the evidence
19 presented and admitted.

20 H. In the case of the hearing of any protest, the
21 hearing officer shall make and preserve a complete record of
22 the proceedings. At the beginning of the hearing, the
23 hearing officer shall inform the taxpayer of the taxpayer's
24 right to representation. The hearing officer, within thirty
25 days of the hearing, shall inform the protestant in writing
of the decision, informing the protestant at the same time of
the right to, and the requirements for perfection of, an

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1 appeal from the decision to the court of appeals and of the
2 consequences of a failure to appeal. The written decision
3 shall embody an order granting or denying the relief
4 requested or granting such part thereof as seems appropriate.
5

6 I. Nothing in this section shall be construed to
7 authorize any criminal proceedings hereunder or to authorize
8 an administrative protest of the issuance of a subpoena or
9 summons."

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

12 "7-1-26. CLAIM FOR REFUND.--

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

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

3 (1) If the claim is denied in whole or in
4 part in writing, [the claim may not be refiled. If the claim
5 is not granted in full] no claim may be refiled with respect
6 to that which was denied but the person, within ninety days
7 after either the mailing or delivery of the denial of all or
8 any part of the claim, may elect to pursue one, but not more
9 than one, of the remedies in ~~[Paragraphs (1) and (2) of this~~
10 ~~subsection]~~ Subsection C of this section.

11 (2) If the department has neither granted
12 nor denied any portion of a claim for refund within one
13 hundred twenty days of the date the claim was mailed or
14 delivered to the department, [the department may not approve
15 or deny the claim but] the person may refile it within the
16 time limits set forth in Subsection C of this section or may
17 within ninety days elect to pursue one, but only one, of the
18 remedies in [Paragraphs (1) and (2) of this subsection]
19 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
22 or disapprove the claim unless the person has pursued one of
23 the 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.
In any case, if a person does timely pursue more than one
remedy, the person shall be deemed to have elected the first

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1 remedy invoked. The remedies are as follows:

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

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

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

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

(a) the payment was originally due [~~the~~

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1 ~~payment was made~~] or the overpayment resulted from an
2 assessment by the department pursuant to Section 7-1-17 NMSA
3 1978, whichever is later;

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

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

14 (2) within one year of the date:

15 (a) of the denial of the claim for
16 credit under the provisions of the Investment Credit Act [~~or~~
17 ~~Filmmaker's Credit Act~~] or Capital Equipment Tax Credit Act
18 or for the rural job tax credit pursuant to Sections 7-2E-1
19 and 7-2E-2 NMSA 1978;

20 (b) an assessment of tax is made; [~~or~~]

21 (c) a proceeding begun in court by the
22 department with respect to any period that is covered by a
23 waiver signed on or after July 1, 1993 by the taxpayer
24 pursuant to Subsection F of Section 7-1-18 NMSA 1978; or

25 (d) payment of tax was made if the
payment was not made within three years of the end of the
calendar year in which the original due date of the tax or

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1 date of the assessment of the department occurred; or

2 (3) for assessments made on or after July 1,
3 1993, within one year of the date of an assessment of tax
4 made under Subsection B, C or D of Section 7-1-18 NMSA 1978
5 when the assessment applies to a period ending at least three
6 years prior to the beginning of the year in which the
7 assessment was made, but the claim for refund shall not be
8 made with respect to any period not covered by the
9 assessment.

10 ~~[D-]~~ E. No credit or refund shall be allowed or
11 made to any person claiming a refund of gasoline tax under
12 Section 7-13-11 NMSA 1978 unless notice of the destruction of
13 the gasoline was given the department within thirty days of
14 the actual destruction and the claim for refund is made
15 within six months of the date of destruction. No credit or
16 refund shall be allowed or made to any person claiming a
17 refund of gasoline tax under Section ~~[7-13-14]~~ 7-13-17 NMSA
18 1978 unless the refund is claimed within six months of the
19 date of purchase of the gasoline and the gasoline has been
20 used at the time the claim for refund is made.

21 ~~[E-]~~ F. If, as a result of an audit by the
22 internal revenue service or the filing of an amended federal
23 return changing a prior election or making any other change
24 for which federal approval is required by the Internal
25 Revenue Code, any adjustment of federal tax is made with the
result that there would have been an overpayment of tax if
the adjustment to federal tax had been applied to the taxable

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

12 [F.] G. Any refund of tax paid under any tax or
13 tax act administered under Subsection B of Section 7-1-2 NMSA
14 1978 may be made, at the discretion of the department, in the
15 form of credit against future tax payments if future tax
16 liabilities in an amount at least equal to the credit amount
17 reasonably may be expected to become due.

18 [G.] H. For the purposes of this section, the term
19 "oil and gas tax return" means a return reporting tax due
20 with respect to oil, natural gas, liquid hydrocarbons or
21 carbon dioxide pursuant to the Oil and Gas Severance Tax Act,
22 the Oil and Gas Conservation Tax Act, the Oil and Gas
23 Emergency School Tax Act, the Oil and Gas Ad Valorem
24 Production Tax Act, the Natural Gas Processors Tax Act or the
25 Oil and Gas Production Equipment Ad Valorem Tax Act.

[H.] I. The filing of a fully completed original
income tax return, corporate income tax return, corporate

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

11 Section 10. Section 7-1-28 NMSA 1978 (being Laws 1965,
12 Chapter 248, Section 30, as amended) is amended to read:

13 "7-1-28. AUTHORITY FOR ABATEMENTS OF ASSESSMENTS OF
14 TAX.--

15 A. In response to a written protest against an
16 assessment, submitted in accordance with the provisions of
17 Section 7-1-24 NMSA 1978, but before any court acquires
18 jurisdiction of the matter, or when a "notice of assessment
19 of taxes" is found to be incorrect, the secretary or the
20 secretary's delegate [~~may~~], with the prior written approval
21 of the attorney general, may abate any part of an assessment
22 determined by the secretary or the secretary's delegate to
23 have been incorrectly, erroneously or illegally made,
24 [~~Notwithstanding the above, abatements of assessments~~
25 ~~incorrectly, erroneously or illegally made to one person~~
~~amounting to less than five thousand dollars (\$5,000) in one~~
~~calendar year may be made without the prior written approval~~

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1 ~~of the attorney general]~~ except that:

2 (1) abatements with respect to the Oil and
3 Gas Severance Tax Act, the Oil and Gas Conservation Tax Act,
4 the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad
5 Valorem Production Tax Act, the Natural Gas Processors Tax
6 Act or the Oil and Gas Production Equipment Ad Valorem Tax
7 Act, abatements of gasoline tax made under [~~Sections 7-13-13~~
8 ~~through 7-13-15]~~ Section 7-13-17 NMSA 1978 and abatements of
9 cigarette tax made under the Cigarette Tax Act may be made
10 without the prior approval of the attorney general regardless
11 of the amount; ~~[and]~~

12 (2) abatements with respect to the Corporate
13 Income and Franchise Tax Act amounting to less than twenty
14 thousand dollars (\$20,000) may be made without prior approval
15 of the attorney general; and

16 (3) abatements amounting to less than five
17 thousand dollars (\$5,000) may be made without the prior
18 written approval of the attorney general.

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

C. Pursuant to a compromise of taxes agreed to by

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1 the secretary and according to the terms of the closing
2 agreement formalizing the compromise, the secretary or the
3 secretary's delegate shall cause the abatement of the
4 appropriate amount of any assessment [~~or assessments~~] of tax.

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

11 E. Records of abatements made in excess of five
12 thousand dollars (\$5,000) shall be available for inspection
13 by the public. The department shall keep such records for a
14 minimum of three years from the date of the abatement."

15 Section 11. Section 7-1-67 NMSA 1978 (being Laws 1965,
16 Chapter 248, Section 68, as amended) is amended to read:

17 "7-1-67. INTEREST ON DEFICIENCIES.--

18 A. If any tax imposed is not paid on or before the
19 day on which it becomes due, interest shall be paid to the
20 state on such amount from the first day following the day on
21 which the tax becomes due, without regard to any extension of
22 time or installment agreement, until it is paid, except that:

23 (1) for any income tax imposed on a member
24 of the armed services of the United States serving in a
25 combat zone under orders of the president of the United
States, interest shall accrue only for the period beginning
the day after any applicable extended due date if the tax is

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1 not paid;

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

5 (3) if demand is made for payment of any
6 tax, including accrued interest, and if such tax is paid
7 within ten days after the date of such demand, no interest on
8 the amount so paid shall be imposed for the period after the
9 date of the demand.

10 B. Interest due to the state under Subsection A or
11 D of this section shall be at the rate of fifteen percent a
12 year, computed ~~[at the rate of one and one-fourth percent per~~
13 ~~month or any fraction thereof]~~ on a daily basis; provided
14 that if a different rate is specified by a compact or other
15 interstate agreement to which New Mexico is a party, ~~[then]~~
16 that rate shall be applied to amounts due under the compact
17 or other agreement.

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

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

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1 this section."

2 Section 12. Section 7-1-68 NMSA 1978 (being Laws 1965,
3 Chapter 248, Section 69, as amended) is amended to read:

4 "7-1-68. INTEREST ON OVERPAYMENTS.--

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

8 B. Interest payable on overpayments of tax shall
9 be paid at the rate of fifteen percent a year, computed [~~at~~
10 ~~the rate of one and one fourth percent per month or fraction~~
11 ~~thereof]~~ on a daily basis; provided that if a different rate
12 is specified by a compact or other interstate agreement to
13 which New Mexico is a party, [~~then~~] that rate shall be
14 applied to amounts due under the compact or other agreement.

15 C. Unless otherwise provided by this section,
16 interest on an overpayment not arising from an assessment by
17 the department shall be paid from the date the claim for
18 refund was made until a date preceding by not more than
19 thirty days the date on which the amount thereof is credited
20 or refunded to any person; interest on an overpayment arising
21 from an assessment by the department shall be paid from the
22 date overpayment was made until a date preceding by not more
23 than thirty days the date on which the amount thereof is
24 credited or refunded to any person.

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

- (1) the amount of interest due is less than

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1 one dollar (\$1.00);

2 (2) the credit or refund is made within
3 seventy-five days of the date of the claim for refund of
4 income tax, pursuant to either the Income Tax Act or the
5 Corporate Income and Franchise Tax Act, for the tax year
6 immediately preceding the tax year in which the claim is
7 made;

8 (3) the credit or refund is made within one
9 hundred twenty days of the date of the claim for refund of
10 income tax, pursuant to the Income Tax Act or the Corporate
11 Income and Franchise Tax Act [~~or the Banking and Financial~~
12 ~~Corporations Tax Act~~], for any tax year more than one year
13 prior to the year in which the claim is made;

14 (4) Sections 6611(f) and 6611(g) of the
15 [~~United States~~] Internal Revenue Code [~~of 1986~~], as those
16 sections may be amended or renumbered, prohibit payment of
17 interest for federal income tax purposes;

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

21 (6) gasoline tax is refunded or credited
22 under the Gasoline Tax Act to users of gasoline off the
23 highways.

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

Section 13. Section 7-1-69 NMSA 1978 (being Laws 1965,
Chapter 248, Section 70, as amended) is amended to read:

.130540.2

underscored material = new
~~[bracketed material] = delete~~

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

3 A. Except as provided in Subsection B of this
4 section, in the case of failure due to negligence or
5 disregard of rules and regulations, but without intent to
6 evade or defeat any tax, to pay when due any 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
9 file by the date required a return regardless of whether any
10 tax is due, there shall be added to the amount as penalty the
11 greater of:

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

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

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

B. If a different penalty is specified in a
compact or other interstate agreement to which New Mexico is

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underscoring material = new
~~[bracketed material] = delete~~

1 a party, the penalty provided in the compact or other
2 interstate agreement shall be applied to amounts due under
3 the compact or other interstate agreement at the rate and in
4 the manner prescribed by the compact or other interstate
5 agreement.

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

11 D. If demand is made for payment of any tax,
12 including penalty imposed pursuant to this section, and if
13 such tax is paid within ten days after the date of such
14 demand, no penalty shall be imposed for the period after the
15 date of the demand with respect to the amount paid.

16 E. If a taxpayer makes electronic payment of any
17 tax but the payment does not include all of the information
18 required by the department pursuant to the provisions of
19 Section 7-1-13.1 NMSA 1978 and if the department does not
20 receive the required information within five business days
21 from the later of the date a request by the department for
22 that information is received by the taxpayer or the due date,
23 the taxpayer shall be subject to a penalty of two percent per
24 month or any fraction of a month from the fifth day following
25 the date the request is received. If a penalty is imposed
under Subsection A of this section with respect to the same
transaction for the same period, no penalty shall be imposed

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underscored material = new
~~[bracketed material] = delete~~

1 under this subsection."

2 Section 14. TEMPORARY PROVISION--PAYMENT OF CLAIMS FOR
3 REFUND.--Any claim for refund paid in the period July 1, 1997
4 through June 30, 2000 by the department pursuant to the
5 provisions of Section 7-1-26 NMSA 1978 that complied with all
6 provisions of the Tax Administration Act except for the one-
7 hundred-twenty-day restriction in Subsection B of that
8 section is hereby approved.

9 Section 15. APPLICABILITY.--

10 A. The rate of interest applicable under Sections
11 7-1-67 and 7-1-68 NMSA 1978 for periods ending on or prior to
12 January 1, 2001 shall be the rate in effect under the
13 provisions of those sections immediately prior to January 1,
14 2001. For periods beginning on or after January 1, 2001 or
15 beginning prior to that date but ending after January 1,
16 2001, the applicable rate shall be the rate provided in
17 Sections 11 and 12 of this act.

18 B. The provisions of Section 8 of this act apply
19 to protests filed on or after July 1, 2000.

20 Section 16. EFFECTIVE DATES.--

21 A. The effective date of the provisions of
22 Sections 1 through 10 and 13 of this act is July 1, 2000.

23 B. The effective date of the provisions of
24 Sections 11 and 12 of this act is January 1, 2001.

25