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HOUSE BILL 154
45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001
INTRODUCED BY
Luciano "Lucky" Varela

AN ACT
RELATING TO TAXATION; PROVIDING FOR MANAGED AUDITS; GRANTING
RELIEF FROM PENALTY AND INTEREST IN CERTAIN CIRCUMSTANCES;
AMENDING AND ENACTING SECTIONS OF THE TAX ADMINISTRATION ACT.

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

Section 1. A new section of the Tax Administration Act
is enacted to read:

"[NEW MATERIAL] MANAGED AUDITS. --

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

- (1) the receipts from certain sales;**
- (2) the value of certain assets;**

1 (3) the value of certain expense items or
2 services used; and

3 (4) any other category specified in an
4 agreement authorized by this section.

5 B. Upon the application of the taxpayer, the
6 secretary or the secretary's delegate may enter into a written
7 agreement with a taxpayer for a managed audit. To be
8 effective the written agreement must:

9 (1) be signed by the taxpayer or the
10 taxpayer's authorized representative and by the secretary or
11 the secretary's delegate;

12 (2) contain a declaration by the taxpayer or
13 the taxpayer's authorized representative that all statements
14 of fact made by the taxpayer or the taxpayer's representative
15 in the taxpayer's application and the agreement are true and
16 correct as to every material matter;

17 (3) specify the reporting period or periods,
18 the type of receipts or transactions and tax to be audited,
19 the procedures to be followed in performing the managed audit,
20 the records to be used, the date of commencement of the audit
21 for purposes of Section 7-9-43 NMSA 1978 and the date for the
22 taxpayer's presentation of the results of the managed audit to
23 the department; and

24 (4) include a waiver by the taxpayer of the
25 limitations on assessments for the reporting period or periods

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1 to be audited.

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

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

8 (1) the taxpayer's history of tax compliance;

9 (2) the amount of time and resources the
10 taxpayer has available to dedicate to the audit;

11 (3) the extent and availability of the
12 taxpayer's records; and

13 (4) the taxpayer's ability to pay any
14 expected liability.

15 E. The decision whether to enter into an agreement
16 for a managed audit rests solely with the secretary or the
17 secretary's delegate.

18 F. The results of the managed audit shall be
19 presented to the department by the taxpayer on or before any
20 date set for presentation of the results in the managed audit
21 agreement. The department shall assess the tax liability
22 found to be due as the result of a managed audit performed in
23 accordance with a managed audit agreement. The department may
24 review records, documents, schedules or other information to
25 determine if the managed audit substantially conforms to the

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1 managed audit agreement. "

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

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

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

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

18 C. "division" or "oil and gas accounting division"
19 means the department;

20 D. "director" means the secretary;

21 E. "director or his delegate" means the secretary
22 or the secretary's delegate;

23 F. "electronic payment" means a payment made by
24 automated clearinghouse deposit, any funds wire transfer
25 system or a credit card, debit card or electronic cash

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1 transaction through the internet;

2 G. "employee of the department" means any employee
3 of the department, including the secretary, or any person
4 acting as agent or authorized to represent or perform services
5 for the department in any capacity with respect to any law
6 made subject to administration and enforcement under the
7 provisions of the Tax Administration Act;

8 H. "financial institution" means any state or
9 federally chartered, federally insured depository institution;

10 I. "Internal Revenue Code" means the Internal
11 Revenue Code of 1986, as amended;

12 J. "levy" means the lawful power, hereby invested
13 in the secretary, to take into possession or to require the
14 present or future surrender to the secretary or the
15 secretary's delegate of any property or rights to property
16 belonging to a delinquent taxpayer;

17 K. "local option gross receipts tax" means a tax
18 authorized to be imposed by a county or municipality upon the
19 taxpayer's gross receipts, as that term is defined in the
20 Gross Receipts and Compensating Tax Act, and required to be
21 collected by the department at the same time and in the same
22 manner as the gross receipts tax; "local option gross receipts
23 tax" includes the taxes imposed pursuant to the Municipal
24 Local Option Gross Receipts Taxes Act, Supplemental Municipal
25 Gross Receipts Tax Act, County Local Option Gross Receipts

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1 Taxes Act, Local Hospital Gross Receipts Tax Act, County
2 Correctional Facility Gross Receipts Tax Act and such other
3 acts as may be enacted authorizing counties or municipalities
4 to impose taxes on gross receipts, which taxes are to be
5 collected by the department in the same time and in the same
6 manner as it collects the gross receipts tax;

7 L. "managed audit" means a review and analysis
8 conducted by a taxpayer under an agreement with the department
9 to determine the taxpayer's compliance with the Gross Receipts
10 and Compensating Tax Act and local option gross receipts taxes
11 and the presentation of the results to the department for
12 assessment of tax found to be due;

13 [~~L.~~] M "net receipts" means the total amount of
14 money paid by taxpayers to the department in a month pursuant
15 to a tax or tax act less any refunds disbursed in that month
16 with respect to that tax or tax act;

17 [~~M.~~] N. "overpayment" means an amount paid,
18 pursuant to any law subject to administration and enforcement
19 under the provisions of the Tax Administration Act, by a
20 person to the department or withheld from the person in excess
21 of tax due from the person to the state at the time of the
22 payment or at the time the amount withheld is credited against
23 tax due;

24 [~~N.~~] O. "paid" includes the term "paid over";

25 [~~O.~~] P. "pay" includes the term "pay over";

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1 ~~[P.]~~ Q. "payment" includes the term "payment
2 over";

3 ~~[Q.]~~ R. "person" means any individual, estate,
4 trust, receiver, cooperative association, club, corporation,
5 company, firm, partnership, limited liability company, limited
6 liability partnership, joint venture, syndicate, other
7 association or gas, water or electric utility owned or
8 operated by a county or municipality; "person" also means, to
9 the extent permitted by law, a federal, state or other
10 governmental unit or subdivision, or an agency, department or
11 instrumentality thereof; and "person", as used in Sections
12 7-1-72 through 7-1-74 NMSA 1978, also includes an officer or
13 employee of a corporation, a member or employee of a
14 partnership or any individual who, as such, is under a duty to
15 perform any act in respect of which a violation occurs;

16 ~~[R.]~~ S. "property" means property or rights to
17 property;

18 ~~[S.]~~ T. "property or rights to property" means any
19 tangible property, real or personal, or any intangible
20 property of a taxpayer;

21 ~~[T.]~~ U. "secretary" means the secretary of
22 taxation and revenue and, except for purposes of Subsection B
23 of Section 7-1-4 NMSA 1978 and Subsection E of Section 7-1-24
24 NMSA 1978, also includes the deputy secretary or a division
25 director or deputy division director delegated by the

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1 secretary;

2 [U-] V. "secretary or the secretary's delegate"
3 means the secretary or any employee of the department
4 exercising authority lawfully delegated to that employee by
5 the secretary;

6 [V-] W. "security" means money, property or rights
7 to property or a surety bond;

8 [W-] X. "state" means any state of the United
9 States, the District of Columbia, the commonwealth of Puerto
10 Rico and any territory or possession of the United States;

11 [X-] Y. "tax" means the total amount of each tax
12 imposed and required to be paid, withheld and paid or
13 collected and paid under provision of any law made subject to
14 administration and enforcement according to the provisions of
15 the Tax Administration Act and, unless the context otherwise
16 requires, includes the amount of any interest or civil penalty
17 relating thereto; "tax" also means any amount of any abatement
18 of tax made or any credit, rebate or refund paid or credited
19 by the department under any law subject to administration and
20 enforcement under the provisions of the Tax Administration Act
21 to any person contrary to law and includes, unless the context
22 requires otherwise, the amount of any interest or civil
23 penalty relating thereto;

24 [Y-] Z. "taxpayer" means a person liable for
25 payment of any tax, a person responsible for withholding and

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1 payment or for collection and payment of any tax or a person
2 to whom an assessment has been made, if the assessment remains
3 unabated or the amount thereof has not been paid; and

4 [Z.] AA. "tax return preparer" means a person who
5 prepares for others for compensation or who employs one or
6 more persons to prepare for others for compensation any return
7 of income tax, a substantial portion of any return of income
8 tax, any claim for refund with respect to income tax or a
9 substantial portion of any claim for refund with respect to
10 income tax; provided that a person shall not be a "tax return
11 preparer" merely because such person:

12 (1) furnishes typing, reproducing or other
13 mechanical assistance;

14 (2) is an employee who prepares an income tax
15 return or claim for refund with respect to an income tax
16 return of the employer, or of an officer or employee of the
17 employer, by whom the person is regularly and continuously
18 employed; or

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

22 Section 3. Section 7-1-10 NMSA 1978 (being Laws 1965,
23 Chapter 248, Section 15, as amended) is amended to read:

24 "7-1-10. RECORDS REQUIRED BY STATUTE--TAXPAYER RECORDS--
25 ACCOUNTING METHODS--REPORTING METHODS--INFORMATION RETURNS.--

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1 A. Every person required by the provisions of any
2 statute administered by the department to keep records and
3 documents and every taxpayer shall maintain books of account
4 or other records in a manner that will permit the accurate
5 computation of state taxes or provide information required by
6 the statute under which he is required to keep records.

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

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

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

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1 used.

2 E. Upon the written application of a taxpayer and
3 at the sole discretion of the secretary or the secretary's
4 delegate, the secretary or the secretary's delegate may enter
5 into an agreement with a taxpayer allowing the taxpayer to
6 report gross receipts, deductions or the value of property on
7 an estimated basis for gross receipts and compensating tax
8 purposes for a limited period of time not to exceed four
9 years. As used in this section, "estimated basis" means a
10 methodology that is reasonably expected to approximate the tax
11 that will be due over the period of the agreement using
12 summary rather than detail data, provided that:

13 (1) nothing in this section shall be
14 construed to require the secretary or the secretary's delegate
15 to enter 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
19 methodology to be followed by the taxpayer in making the
20 estimates;

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

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

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1 delegate; and

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

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

12 Section 4. Section 7-1-11 NMSA 1978 (being Laws 1965,
13 Chapter 248, Section 16, as amended) is amended to read:

14 "7-1-11. INSPECTION OF BOOKS OF TAXPAYERS--
15 CREDENTIALS. --

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

20 B. Auditors and other officials of the department
21 designated by the secretary are authorized to request and
22 require the production for examination of the records and
23 books of account of a taxpayer. Those auditors and officials
24 of the department so designated by the secretary shall be
25 furnished with credentials identifying them as such, which

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1 they shall display to any taxpayer whose books are sought to
2 be 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 properly identifies himself to the taxpayer.

7 D. The secretary or the secretary's delegate shall
8 develop and maintain written audit policies and procedures for
9 all tax programs in which the department routinely conducts
10 field audits of taxpayers, including policies and procedures
11 concerning audit notification, scheduling, records that may be
12 examined, analysis that may be done, sampling procedures,
13 gathering information or evidence from third parties, policies
14 concerning the rights of taxpayers under audit and other
15 related matters. Department audit policies and procedures
16 shall be made available to a person who requests them, at a
17 reasonable charge to defray the cost of preparing and
18 distributing those policies and procedures. Nothing in this
19 section shall be construed to require the department to
20 provide information that is confidential pursuant to Section
21 7-1-8 NMSA 1978, nor shall the department be required to
22 provide information concerning how taxpayers are selected for
23 audit. "

24 Section 5. Section 7-1-26 NMSA 1978 (being Laws 1965,
25 Chapter 248, Section 28, as amended) is amended to read:

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

2 A. Any person who believes that an amount of tax
3 has been paid by or withheld from that person in excess of
4 that for which the person was liable, who has been denied any
5 credit or rebate claimed or who claims a prior right to
6 property in the possession of the department pursuant to a
7 levy made under authority of Sections 7-1-31 through 7-1-34
8 NMSA 1978 may claim a refund by directing to the secretary,
9 within the time limited by the provisions of Subsections D, E
10 and F of this section, a written claim for refund. Except as
11 provided in Subsection [F] J of this section, a refund claim
12 shall include the taxpayer's name, address and identification
13 number, the type of tax for which a refund is being claimed,
14 the sum of money being claimed, the period for which
15 overpayment was made and the basis for the refund.

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

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

24 (2) If the department has neither granted nor
25 denied any portion of a claim for refund within one hundred

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1 twenty days of the date the claim was mailed or delivered to
2 the department, the person may refile it within the time
3 limits set forth in Subsection C of this section or may within
4 ninety days elect to pursue one, but only one, of the remedies
5 in Subsection C of this section. After the expiration of the
6 two hundred ten days from the date the claim was mailed or
7 delivered to the department, the department may not approve or
8 disapprove the claim unless the person has pursued one of the
9 remedies under Subsection C of this section.

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

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

23 (2) the person may commence a civil action in
24 the district court for Santa Fe county by filing a complaint
25 setting forth the circumstance of the claimed overpayment,

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1 alleging that on account thereof the state is indebted to the
2 plaintiff in the amount stated, together with any interest
3 allowable, demanding the refund to the plaintiff of that
4 amount and reciting the facts of the claim for refund. The
5 plaintiff or the secretary may appeal from any final decision
6 or order of the district court to the court of appeals.

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

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

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

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

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

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1 ~~[(2) within one year of the date:~~

2 ~~(a) of the denial of the]~~

3 (2) when an amount of a claim for credit

4 under the provisions of the Investment Credit Act or Capital
5 Equipment Tax Credit Act or for the rural job tax credit
6 pursuant to Sections 7-2E-1 and 7-2E-2 NMSA 1978

7 ~~[(b) an assessment of tax is made;~~

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

12 ~~(d) payment of tax was made]~~ has been

13 denied, the taxpayer may claim a refund of the credit no later
14 than one year after the date of the denial;

15 (3) when a taxpayer under audit by the

16 department has signed a waiver of the limitation on
17 assessments on or after July 1, 1993 pursuant to Subsection F
18 of Section 7-1-18 NMSA 1978, the taxpayer may file a claim for
19 refund of the same tax paid for the same period for which the
20 waiver was given, until a date one year after the later of the
21 date of the mailing of an assessment issued pursuant to the
22 audit, the date of the mailing of final audit findings to the
23 taxpayer or the date a proceeding is begun in court by the
24 department with respect to the same tax and the same period;

25 (4) if the payment of an amount of tax was

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1 not made within three years of the end of the calendar year in
2 which the original due date of the tax or date of the
3 assessment of the department occurred, a claim for refund of
4 that amount of tax can be made within one year of the date on
5 which the tax was paid; or

6 [~~(3) for assessments made~~] (5) when a
7 taxpayer has been assessed a tax on or after July 1, 1993
8 [within one year of the date of an assessment of tax made]
9 under Subsection B, C or D of Section 7-1-18 NMSA 1978
10 and when the assessment applies to a period ending at least
11 three years prior to the beginning of the year in which the
12 assessment was made [but the claim for refund shall not be
13 made with respect to any period not covered by the
14 assessment], the taxpayer may claim a refund for the same tax
15 for the period of the assessment or for any period following
16 that period within one year of the date of the assessment
17 unless a longer period for claiming a refund is provided in
18 this section.

19 E. No credit or refund shall be allowed or made to
20 any person claiming a refund of gasoline tax under Section
21 7-13-11 NMSA 1978 unless notice of the destruction of the
22 gasoline was given the department within thirty days of the
23 actual destruction and the claim for refund is made within six
24 months of the date of destruction. No credit or refund shall
25 be allowed or made to any person claiming a refund of gasoline

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1 tax under Section 7-13-17 NMSA 1978 unless the refund is
2 claimed within six months of the date of purchase of the
3 gasoline and the gasoline has been used at the time the claim
4 for refund is made.

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

22 G. If as a result of an audit by the department or
23 a managed audit covering multiple periods an overpayment of
24 tax is found in any period under the audit, that overpayment
25 may be credited against an underpayment of the same tax found

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1 in another period under audit pursuant to Section 7-1-29 NMSA
2 1978, provided that the taxpayer files a claim for refund for
3 the overpayments identified in the audit.

4 ~~[G.]~~ H. Any refund of tax paid under any tax or
5 tax act administered under Subsection B of Section 7-1-2 NMSA
6 1978 may be made, at the discretion of the department, in the
7 form of credit against future tax payments if future tax
8 liabilities in an amount at least equal to the credit amount
9 reasonably may be expected to become due.

10 ~~[H.]~~ I. For the purposes of this section, the term
11 "oil and gas tax return" means a return reporting tax due with
12 respect to oil, natural gas, liquid hydrocarbons or carbon
13 dioxide pursuant to the Oil and Gas Severance Tax Act, the Oil
14 and Gas Conservation Tax Act, the Oil and Gas Emergency School
15 Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the
16 Natural Gas Processors Tax Act or the Oil and Gas Production
17 Equipment Ad Valorem Tax Act.

18 ~~[I.]~~ J. The filing of a fully completed original
19 income tax return, corporate income tax return, corporate
20 income and franchise tax return, estate tax return or special
21 fuel excise tax return that shows a balance due the taxpayer
22 or a fully completed amended income tax return, an amended
23 corporate income tax return, an amended corporate income and
24 franchise tax return, an amended estate tax return, an amended
25 special fuel excise tax return or an amended oil and gas tax

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1 return that shows a lesser tax liability than the original
2 return constitutes the filing of a claim for refund for the
3 difference in tax due shown on the original and amended
4 returns. "

5 Section 6. Section 7-1-29 NMSA 1978 (being Laws 1965,
6 Chapter 248, Section 31, as amended) is amended to read:

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

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

19 (1) refunds with respect to the Oil and Gas
20 Severance Tax Act, the Oil and Gas Conservation Tax Act, the
21 Oil and Gas Emergency School Tax Act, the Oil and Gas Ad
22 Valorem Production Tax Act, the Natural Gas Processors Tax Act
23 or the Oil and Gas Production Equipment Ad Valorem Tax Act,
24 refunds of gasoline tax made under [~~Sections 7-13-13 through~~
25 ~~7-13-15~~] Section 7-13-17 NMSA 1978 and refunds of cigarette

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1 tax made under the Cigarette Tax Act may be made without the
2 prior approval of the attorney general regardless of the
3 amount; and

4 (2) refunds with respect to the Corporate
5 Income and Franchise Tax Act amounting to less than twenty
6 thousand dollars (\$20,000) may be made without the prior
7 approval of the attorney general.

8 B. Pursuant to the final order of the district
9 court, the court of appeals, the supreme court of New Mexico
10 or any federal court, from which order, appeal or review is
11 not successfully taken, adjudging that any person has made an
12 overpayment of tax, the secretary shall authorize the refund
13 to the person of the amount thereof.

14 C. In the discretion of the secretary, any amount
15 of tax due to be refunded may be offset against any amount of
16 tax for the payment of which the person due to receive the
17 refund is liable.

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

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

10 ~~[D-]~~ E. Records of refunds made in excess of five
11 thousand dollars (\$5,000) shall be available for inspection by
12 the public. The department shall keep such records for a
13 minimum of three years from the date of the refund. "

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

16 "7-1-67. INTEREST ON DEFICIENCIES. --

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

23 (1) for ~~[any]~~ income tax imposed on a member
24 of the armed services of the United States serving in a combat
25 zone under orders of the president of the United States,

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1 interest shall accrue only for the period beginning the day
2 after any applicable extended due date if the tax is not paid;

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

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

11 (4) if a managed audit is completed by the
12 taxpayer on or before the date required, as provided in the
13 agreement for the managed audit, and payment of any tax found
14 to be due is made in full within thirty days of the date the
15 secretary has mailed or delivered an assessment for the tax to
16 the taxpayer, no interest shall be due on the assessed tax;
17 and

18 (5) when, as the result of an audit or a
19 managed audit, an overpayment of a tax is credited against an
20 underpayment of tax pursuant to Section 7-1-29 NMSA 1978,
21 interest shall accrue from the date the tax was due until the
22 tax is deemed paid.

23 B. Interest due to the state under Subsection A or
24 D of this section shall be at the rate of fifteen percent a
25 year, computed on a daily basis; provided that if a different

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1 rate is specified by a compact or other interstate agreement
2 to which New Mexico is a party, that rate shall be applied to
3 amounts due under the compact or other agreement.

4 C. Nothing in this section shall be construed to
5 impose interest on interest or interest on the amount of any
6 penalty.

7 D. If any tax required to be paid in accordance
8 with Section 7-1-13.1 NMSA 1978 is not paid in the manner
9 required by that section, interest shall be paid to the state
10 on the amount required to be paid in accordance with Section
11 7-1-13.1 NMSA 1978. If interest is due under this subsection
12 and is also due under Subsection A of this section, interest
13 shall be due and collected only pursuant to Subsection A of
14 this section. "

15 Section 8. Section 7-1-68 NMSA 1978 (being Laws 1965,
16 Chapter 248, Section 69, as amended) is amended to read:

17 "7-1-68. INTEREST ON OVERPAYMENTS. --

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

21 B. Interest payable on overpayments of tax shall
22 be paid at the rate of fifteen percent a year, computed on a
23 daily basis; provided that if a different rate is specified by
24 a compact or other interstate agreement to which New Mexico is
25 a party, that rate shall be applied to amounts due under the

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1 compact or other agreement.

2 C. Unless otherwise provided by this section,
3 interest on an overpayment not arising from an assessment by
4 the department shall be paid from the date the claim for
5 refund was made until a date preceding by not more than thirty
6 days the date on which the amount thereof is credited or
7 refunded to any person; interest on an overpayment arising
8 from an assessment by the department shall be paid from the
9 date overpayment was made until a date preceding by not more
10 than thirty days the date on which the amount thereof is
11 credited or refunded to any person.

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

14 (1) the amount of interest due is less than
15 one dollar (\$1.00);

16 (2) the credit or refund is made within
17 seventy-five days of the date of the claim for refund of
18 income tax, pursuant to either the Income Tax Act or the
19 Corporate Income and Franchise Tax Act, for the tax year
20 immediately preceding the tax year in which the claim is made;

21 (3) the credit or refund is made within one
22 hundred twenty days of the date of the claim for refund of
23 income tax, pursuant to the Income Tax Act or the Corporate
24 Income and Franchise Tax Act, for any tax year more than one
25 year prior to the year in which the claim is made;

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1 (4) Sections 6611(f) and 6611(g) of the
2 Internal Revenue Code, as those sections may be amended or
3 renumbered, prohibit payment of interest for federal income
4 tax purposes;

5 (5) the credit or refund is made within sixty
6 days of the date of the claim for refund of any tax other than
7 income tax; [~~or~~]

8 (6) gasoline tax is refunded or credited
9 under the Gasoline Tax Act to users of gasoline off the
10 highways; or

11 (7) the credit results from overpayments
12 found in an audit of multiple reporting periods and applied to
13 underpayments found in that audit or refunded as a net
14 overpayment to the taxpayer pursuant to Section 7-1-29 NMSA
15 1978.

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

18 Section 9. Section 7-1-69 NMSA 1978 (being Laws 1965,
19 Chapter 248, Section 70, as amended) is amended to read:

20 "7-1-69. CIVIL PENALTY FOR FAILURE TO PAY TAX OR FILE A
21 RETURN. --

22 A. Except as provided in Subsection B of this
23 section, in the case of failure due to negligence or disregard
24 of rules and regulations, but without intent to evade or
25 defeat [~~any~~] a tax, to pay when due [~~any~~] the amount of tax

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1 required to be paid, to pay in accordance with the provisions
2 of Section 7-1-13.1 NMSA 1978 when required to do so or to
3 file by the date required a return regardless of whether [~~any~~]
4 a tax is due, there shall be added to the amount as penalty
5 the greater of:

6 (1) two percent per month or any fraction of
7 a month from the date the tax was due multiplied by the amount
8 of tax due but not paid, not to exceed ten percent of the tax
9 due but not paid;

10 (2) two percent per month or any fraction of
11 a month from the date the return was required to be filed
12 multiplied by the tax liability established in the late
13 return, not to exceed ten percent of the tax liability
14 established in the late return; or

15 (3) a minimum of five dollars (\$5.00), but
16 the five-dollar (\$5.00) minimum penalty shall not apply to
17 taxes levied under the Income Tax Act or taxes administered by
18 the department pursuant to Subsection B of Section 7-1-2 NMSA
19 1978.

20 B. If a different penalty is specified in a
21 compact or other interstate agreement to which New Mexico is a
22 party, the penalty provided in the compact or other interstate
23 agreement shall be applied to amounts due under the compact or
24 other interstate agreement at the rate and in the manner
25 prescribed by the compact or other interstate agreement.

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1 C. In the case of failure, with willful intent to
2 evade or defeat [~~any~~] a tax, to pay when due [~~any~~] the amount
3 of tax required to be paid, there shall be added to the amount
4 fifty percent of the tax or a minimum of twenty-five dollars
5 (\$25.00), whichever is greater, as penalty.

6 D. If demand is made for payment of [~~any~~] a tax,
7 including penalty imposed pursuant to this section, and if
8 [~~such~~] the tax is paid within ten days after the date of such
9 demand, no penalty shall be imposed for the period after the
10 date of the demand with respect to the amount paid.

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

24 F. No penalty shall be imposed on:

25 (1) tax due in excess of tax paid in

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1 accordance with an approved estimated basis pursuant to
2 Section 7-1-10 NMSA 1978;

3 (2) tax due as the result of a managed audit;
4 or

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

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