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HOUSE BILL 252

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Pauline K. Gubbels

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

**RELATING TO TAXATION; CHANGING CERTAIN PROVISIONS OF THE TAX
ADMINISTRATION ACT.**

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;**
- (4) Gross Receipts and Compensating Tax Act**

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1 and any state gross receipts tax;

2 (5) Liquor Excise Tax Act;

3 (6) Local Liquor Excise Tax Act;

4 (7) any municipal local option gross receipts
5 tax;

6 (8) any county local option gross receipts
7 tax;

8 (9) Special Fuels Supplier Tax Act;

9 (10) Gasoline Tax Act;

10 (11) petroleum products loading fee, which
11 fee shall be considered a tax for the purpose of the Tax
12 Administration Act;

13 (12) Alternative Fuel Tax Act;

14 (13) Cigarette Tax Act;

15 (14) Estate Tax Act;

16 (15) Railroad Car Company Tax Act;

17 (16) Investment Credit Act, Capital Equipment
18 Tax Credit Act, rural job tax credit, Laboratory Partnership
19 with Small Business Tax Credit Act and Technology Jobs Tax
20 Credit Act;

21 [~~Capital Equipment Tax Credit Act;~~

22 ~~(18) rural job tax credit;~~

23 ~~(19)] Corporate Income and Franchise Tax Act;~~

24 [~~(20)] (18) Uniform Division of Income for
25 Tax Purposes Act;~~

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1 [~~(21)~~] (19) Multistate Tax Compact;
2 [~~(22)~~] (20) Tobacco Products Tax Act; and
3 [~~(23)~~] (21) the telecommunications relay
4 service surcharge imposed by Section 63-9F-11 NMSA 1978, which
5 surcharge shall be considered a tax for the purposes of the
6 Tax Administration Act;

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

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

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1 (12) Enhanced Oil Recovery Act;

2 (13) Natural Gas and Crude Oil Production
3 Incentive Act; and

4 (14) intergovernmental production tax credit
5 and intergovernmental production equipment tax credit;

6 C. the administration and enforcement of the
7 following taxes, surcharges, fees or acts as they now exist or
8 may hereafter be amended:

9 (1) Weight Distance Tax Act;

10 (2) the workers' compensation fee authorized
11 by Section 52-5-19 NMSA 1978, which fee shall be considered a
12 tax for purposes of the Tax Administration Act;

13 (3) Uniform Unclaimed Property Act;

14 (4) 911 emergency surcharge and the network
15 and database surcharge, which surcharges shall be considered
16 taxes for purposes of the Tax Administration Act;

17 (5) the solid waste assessment fee authorized
18 by the Solid Waste Act, which fee shall be considered a tax
19 for purposes of the Tax Administration Act;

20 (6) the water conservation fee imposed by
21 Section 74-1-13 NMSA 1978, which fee shall be considered a tax
22 for the purposes of the Tax Administration Act; and

23 (7) the gaming tax imposed pursuant to the
24 Gaming Control Act; and

25 D. the administration and enforcement of all other

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1 laws, with respect to which the department is charged with
2 responsibilities pursuant to the Tax Administration Act, but
3 only to the extent that the other laws do not conflict with
4 the Tax Administration Act. "

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

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

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

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

21 C. [~~"division" or "oil and gas accounting~~
22 ~~division"~~ means the department;

23 D. ~~"director" means the secretary;~~

24 E. ~~"director or his delegate" means the secretary~~
25 ~~or the secretary's delegate;~~

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1 ~~F.~~ "electronic payment" means a payment made by
2 automated clearinghouse deposit, any funds wire transfer
3 system or a credit card, debit card or electronic cash
4 transaction through the internet;

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

11 ~~H.~~ E. "financial institution" means any state or
12 federally chartered, federally insured depository institution;

13 ~~I.~~ F. "Internal Revenue Code" means the Internal
14 Revenue Code of 1986, as amended;

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

20 ~~K.~~ H. "local option gross receipts tax" means a
21 tax authorized to be imposed by a county or municipality upon
22 the taxpayer's gross receipts, as that term is defined in the
23 Gross Receipts and Compensating Tax Act, and required to be
24 collected by the department at the same time and in the same
25 manner as the gross receipts tax; "local option gross receipts

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

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

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

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

22 [~~Ø.~~] L. "pay" includes the term "pay over";

23 [~~P.~~] M. "payment" includes the term "payment
24 over";

25 [~~Q.~~] N. "person" means any individual, estate,

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

13 [R-] O. "property" means property or rights to
14 property;

15 [S-] P. "property or rights to property" means any
16 tangible property, real or personal, or any intangible
17 property of a taxpayer;

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

23 [U-] R. "secretary or the secretary's delegate"
24 means the secretary or any employee of the department
25 exercising authority lawfully delegated to that employee by

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1 the secretary;

2 [V-] S. "security" means money, property or rights
3 to property or a surety bond;

4 [W-] T. "state" means any state of the United
5 States, the District of Columbia, the commonwealth of Puerto
6 Rico and any territory or possession of the United States;

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

20 [Y-] V. "taxpayer" means a person liable for
21 payment of any tax, a person responsible for withholding and
22 payment or for collection and payment of any tax or a person
23 to whom an assessment has been made, if the assessment remains
24 unabated or the amount thereof has not been paid; and

25 [Z-] W. "tax return preparer" means a person who

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1 prepares for others for compensation or who employs one or
2 more persons to prepare for others for compensation any return
3 of income tax, a substantial portion of any return of income
4 tax, any claim for refund with respect to income tax or a
5 substantial portion of any claim for refund with respect to
6 income tax; provided that a person shall not be a "tax return
7 preparer" merely because such person:

8 (1) furnishes typing, reproducing or other
9 mechanical assistance;

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

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

18 Section 3. Section 7-1-8 NMSA 1978 (being Laws 1965,
19 Chapter 248, Section 13, as amended) is amended to read:

20 "7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER
21 INFORMATION.--It is unlawful for any employee of the
22 department or any former employee of the department to reveal
23 to any individual other than another employee of the
24 department any information contained in the return of any
25 taxpayer made pursuant to any law subject to administration

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1 and enforcement under the provisions of the Tax Administration
2 Act or any other information about any taxpayer acquired as a
3 result of his employment by the department and not available
4 from public sources, except:

5 A. to an authorized representative of another
6 state; provided that the receiving state has entered into a
7 written agreement with the department to use the information
8 for tax purposes only and that the receiving state has enacted
9 a confidentiality statute similar to this section to which the
10 representative is subject;

11 B. to a representative of the secretary of the
12 treasury or the secretary's delegate pursuant to the terms of
13 a reciprocal agreement entered into with the federal
14 government for exchange of the information;

15 C. to the multistate tax commission or its
16 authorized representative; provided that the information is
17 used for tax purposes only and is disclosed by the multistate
18 tax commission only to states that have met the requirements
19 of Subsection A of this section;

20 D. to a district court or an appellate court or a
21 federal court:

22 (1) in response to an order thereof in an
23 action relating to taxes to which the state is a party and in
24 which the information sought is about a taxpayer who is party
25 to the action and is material to the inquiry, in which case

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1 only that information may be required to be produced in court
2 and admitted in evidence subject to court order protecting the
3 confidentiality of the information and no more;

4 (2) in any action in which the department is
5 attempting to enforce an act with which the department is
6 charged or to collect a tax; or

7 (3) in any matter in which the department is
8 a party and the taxpayer has put his own liability for taxes
9 at issue, in which case only that information regarding the
10 taxpayer who is party to the action may be produced, but this
11 shall not prevent the disclosure of department policy or
12 interpretation of law arising from circumstances of a taxpayer
13 who is not a party;

14 E. to the taxpayer or to the taxpayer's authorized
15 representative; provided, however, that nothing in this
16 subsection shall be construed to require any employee to
17 testify in a judicial proceeding except as provided in
18 Subsection D of this section;

19 F. information obtained through the administration
20 of any law not subject to administration and enforcement under
21 the provisions of the Tax Administration Act to the extent
22 that release of that information is not otherwise prohibited
23 by law;

24 G. in such manner, for statistical purposes, that
25 the information revealed is not identified as applicable to

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1 any individual taxpayer;

2 H. with reference to any information concerning
3 the tax on tobacco imposed by Sections 7-12-1 through 7-12-13
4 and Sections 7-12-15 and 7-12-17 NMSA 1978 to a committee of
5 the legislature for a valid legislative purpose or to the
6 attorney general for purposes of Section 6-4-13 NMSA 1978 and
7 the master settlement agreement defined in Section 6-4-12 NMSA
8 1978;

9 I. to a transferee, assignee, buyer or lessor of a
10 liquor license, the amount and basis of any unpaid assessment
11 of tax for which his transferor, assignor, seller or lessee is
12 liable;

13 J. to a purchaser of a business as provided in
14 Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis
15 of any unpaid assessment of tax for which the purchaser's
16 seller is liable;

17 K. to a municipality of this state upon its
18 request for any period specified by that municipality within
19 the twelve months preceding the request for the information by
20 that municipality:

21 (1) the names, taxpayer identification
22 numbers and addresses of registered gross receipts taxpayers
23 reporting gross receipts for that municipality under the Gross
24 Receipts and Compensating Tax Act or a local option gross
25 receipts tax imposed by that municipality. The department may

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1 also release the information described in this paragraph
2 quarterly or upon such other periodic basis as the secretary
3 and the municipality may agree; and

4 (2) information indicating whether persons
5 shown on any list of businesses located within that
6 municipality furnished by the municipality have reported gross
7 receipts to the department but have not reported gross
8 receipts for that municipality under the Gross Receipts and
9 Compensating Tax Act or a local option gross receipts tax
10 imposed by that municipality.

11 The employees of municipalities receiving information as
12 provided in this subsection shall be subject to the penalty
13 contained in Section 7-1-76 NMSA 1978 if that information is
14 revealed to individuals other than other employees of the
15 municipality in question or the department;

16 L. to the commissioner of public lands for use in
17 auditing that pertains to rentals, royalties, fees and other
18 payments due the state under land sale, land lease or other
19 land use contracts; the commissioner of public lands and
20 employees of the commissioner are subject to the same
21 provisions regarding confidentiality of information as
22 employees of the department;

23 M the department shall furnish, upon request by
24 the child support enforcement division of the human services
25 department, the last known address with date of all names

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1 certified to the department as being absent parents of
2 children receiving public financial assistance. The child
3 support enforcement division personnel shall use such
4 information only for the purpose of enforcing the support
5 liability of the absent parents and shall not use the
6 information or disclose it for any other purpose; the child
7 support enforcement division and its employees are subject to
8 the provisions of this section with respect to any information
9 acquired from the department;

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

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

25 P. the department shall release upon request only

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

8 Q. the department shall answer all inquiries
9 concerning whether a person is or is not a registered
10 taxpayer;

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

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1 provided in this subsection shall subject the person revealing
2 the information to the penalties contained in Section 7-1-76
3 NMSA 1978;

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

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

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

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

23 T. to authorized representatives of an Indian
24 nation, tribe or pueblo, the territory of which is located
25 wholly or partially within New Mexico, pursuant to the terms

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

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

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

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

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

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

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

3 (c) a purchaser of products severed
4 from a property subject to the audit; or

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

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

14 W. to the public regulation commission,
15 information with respect to the Corporate Income and Franchise
16 Tax Act required to enable the commission to carry out its
17 duties;

18 X. to the state racing commission, information
19 with respect to the state, municipal and county gross receipts
20 taxes paid by race tracks;

21 Y. upon request of a corporation authorized to be
22 formed under the Educational Assistance Act, the department
23 shall furnish the last known address and the date of that
24 address of every person certified to the department as being
25 an absent obligor of an educational debt that is due and owed

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1 to the corporation or that the corporation has lawfully
2 contracted to collect. The corporation and its officers and
3 employees shall use that information only for the purpose of
4 enforcing the educational debt obligation of such absent
5 obligors and shall not disclose that information or use it for
6 any other purpose;

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

10 AA. information required by any provision of the
11 Tax Administration Act to be made available to the public by
12 the department;

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

19 CC. upon request by a magistrate court, the
20 department shall furnish the last known address and the date
21 of that address for every person certified to the department
22 by the court as being a person who owes fines, fees or costs
23 to the court or who has failed to appear pursuant to a court
24 order or a promise to appear; [and]

25 DD. to the national tax administration agencies of

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1 Mexico and Canada, provided the agency receiving the
2 information has entered into a written agreement with the
3 department to use the information for tax purposes only and is
4 subject to a confidentiality statute similar to this section;

5 EE. to a district attorney, a state district court
6 grand jury or federal grand jury with respect to any
7 investigation of or proceeding related to an alleged criminal
8 violation of the tax laws; and

9 FF. to a third party subject to a subpoena or levy
10 issued pursuant to the provisions of the Tax Administration
11 Act, the identity of the taxpayer involved, the taxes or tax
12 acts involved and the nature of the proceeding. "

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

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

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

21 B. Auditors and other officials of the department
22 designated by the secretary are authorized to request and
23 require the production for examination of the records and
24 books of account of a taxpayer. Those auditors and officials
25 of the department so designated by the secretary shall be

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1 furnished with credentials identifying them as such, which
2 they shall display to any taxpayer whose books are sought to
3 be examined.

4 C. Taxpayers shall upon request make their records
5 and books of account available for inspection at reasonable
6 hours to the secretary or the secretary's delegate who
7 properly identifies himself to the taxpayer.

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

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

16 "7-1-26. CLAIM FOR REFUND. --

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

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1 provided in Subsection I of this section, a refund claim shall
2 include the taxpayer's name, address and identification
3 number, the type of tax for which a refund is being claimed,
4 the sum of money being claimed, the period for which
5 overpayment was made and the basis for the refund.

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

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

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

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

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

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

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

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1 claim made by that person as provided in this section:

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

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

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

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

17 (2) within one year of the date:

18 (a) of the denial of the claim for
19 credit under the provisions of the Investment Credit Act, [or]
20 Laboratory Partnership with Small Business Tax Credit Act,
21 Technology Jobs Tax Credit Act, Capital Equipment Tax Credit
22 Act or similar act or for the rural job tax credit pursuant to
23 Sections 7-2E-1 and 7-2E-2 NMSA 1978 or similar credit;

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

25 ~~(c) a proceeding begun in court by the~~

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1 ~~department]~~ with respect to any period that is covered by a
2 waiver signed on or after July 1, 1993 by the taxpayer
3 pursuant to Subsection F of Section 7-1-18 NMSA 1978, either
4 an assessment of tax is made by the department or a proceeding
5 is begun in court by the department; or

6 [~~d~~] (c) payment of tax was made if
7 the payment was not made within three years of the end of the
8 calendar year in which the original due date of the tax or
9 date of the assessment of the department occurred; or

10 (3) for assessments made on or after July 1,
11 1993, within one year of the date of an assessment of tax made
12 under Subsection B, C or D of Section 7-1-18 NMSA 1978 when
13 the assessment applies to a period ending at least three years
14 prior to the beginning of the year in which the assessment was
15 made, but the claim for refund shall not be made or allowed
16 with respect to any period [~~not~~] preceding the earliest period
17 covered by the assessment or any tax not reported on the same
18 return required for the tax covered by the assessment.

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. Any refund of tax paid under any tax or tax act
23 administered under Subsection B of Section 7-1-2 NMSA 1978 may
24 be made, at the discretion of the department, in the form of
25 credit against future tax payments if future tax liabilities

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1 in an amount at least equal to the credit amount reasonably
2 may be expected to become due.

3 H. For the purposes of this section, the term "oil
4 and gas tax return" means a return reporting tax due with
5 respect to oil, natural gas, liquid hydrocarbons or carbon
6 dioxide pursuant to the Oil and Gas Severance Tax Act, the Oil
7 and Gas Conservation Tax Act, the Oil and Gas Emergency School
8 Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the
9 Natural Gas Processors Tax Act or the Oil and Gas Production
10 Equipment Ad Valorem Tax Act.

11 I. The filing of a fully completed original income
12 tax return, corporate income tax return, corporate income and
13 franchise tax return, estate tax return or special fuel excise
14 tax return that shows a balance due the taxpayer or a fully
15 completed amended income tax return, an amended corporate
16 income tax return, an amended corporate income and franchise
17 tax return, an amended estate tax return, an amended special
18 fuel excise tax return or an amended oil and gas tax return
19 that shows a lesser tax liability than the original return
20 constitutes the filing of a claim for refund for the
21 difference in tax due shown on the original and amended
22 returns. "

23 Section 6. Section 7-1-41 NMSA 1978 (being Laws 1965,
24 Chapter 248, Section 43, as amended) is amended to read:

25 "7-1-41. NOTICE OF SEIZURE.--As soon as practicable

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1 after the levy, the [~~director or his delegate~~] secretary or
2 the secretary's delegate shall notify the owner thereof of the
3 amount and kind of property seized and of the total amount
4 demanded in payment of tax. "

5 Section 7. Section 7-1-42 NMSA 1978 (being Laws 1965,
6 Chapter 248, Section 44, as amended) is amended to read:

7 "7-1-42. NOTICE OF SALE. --As soon as practicable after
8 the levy, the [~~director or his delegate~~] secretary or the
9 secretary's delegate shall decide on a time and place for the
10 sale of the property, shall make a diligent inquiry as to the
11 identity and whereabouts of the owner of the property and
12 persons having an interest therein and shall notify the owner
13 and persons having an interest therein of the time and place
14 for the sale. The fact that any person entitled thereto does
15 not receive the notice provided for in this section does not
16 affect the validity of the sale. "

17 Section 8. Section 7-1-43 NMSA 1978 (being Laws 1965,
18 Chapter 248, Section 45, as amended) is amended to read:

19 "7-1-43. SALE OF INDIVISIBLE PROPERTY. --If any property
20 of the taxpayer subject to levy is not divisible so as to
21 enable the [~~director or his delegate~~] secretary or the
22 secretary's delegate by sale of a part thereof to raise the
23 whole amount of the tax and expenses, the whole of the
24 taxpayer's interest in the property shall be sold but is
25 always subject to redemption before sale according to the

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1 provisions of Section 7-1-47 NMSA 1978. "

2 Section 9. Section 7-1-45 NMSA 1978 (being Laws 1965,
3 Chapter 248, Section 47, as amended) is amended to read:

4 "7-1-45. MANNER OF SALE OR CONVERSION TO MONEY. -- All
5 property levied upon, not consisting of money, shall be sold
6 at public auction at one o'clock in the afternoon on the steps
7 or in front of the courthouse of the county in which the
8 property was located when levied upon or may be consigned to
9 an auctioneer for sale. Payment may be accepted only in full
10 and immediately after the acceptance of a bid for the
11 property. Stocks, bonds, securities and similar property may
12 be negotiated or surrendered for money in accordance with
13 uniform regulations issued by the [~~director~~] secretary,
14 notwithstanding the above. "

15 Section 10. Section 7-1-46 NMSA 1978 (being Laws 1965,
16 Chapter 248, Section 48, as amended) is amended to read:

17 "7-1-46. MINIMUM PRICES. -- Before the sale, the [~~director~~
18 ~~or his delegate~~] secretary or the secretary's delegate shall
19 determine a minimum price for which the property shall be
20 sold, and if no person offers for the property at the sale the
21 amount of the minimum price, the property shall not be sold
22 but the sale shall be readvertised and held at a later time.
23 In determining the minimum price, the [~~director or his~~
24 ~~delegate~~] secretary or the secretary's delegate shall take
25 into account and determine the expense of making the levy and

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1 sale. "

2 Section 11. Section 7-1-47 NMSA 1978 (being Laws 1965,
3 Chapter 248, Section 49, as amended) is amended to read:

4 "7-1-47. REDEMPTION BEFORE SALE. --Any person whose
5 property has been levied upon shall have the right to pay the
6 amount due, together with the expenses of the proceeding, or
7 furnish acceptable security for the payment thereof according
8 to the provisions of Section 7-1-54 NMSA 1978 to the [~~director~~
9 ~~or his delegate~~] department at any time prior to the sale
10 thereof, and upon payment or furnishing of security, the
11 [~~director or his delegate~~] secretary or the secretary's
12 delegate shall restore the property to [~~him~~] that person, and
13 all further proceedings in connection with the levy on the
14 property shall cease from the time of the payment. Any person
15 who has a sufficient interest in property or rights to
16 property levied upon to entitle [~~him~~] the person to redeem it
17 from sale, according to the provisions of this section, who
18 does pay the amount due and accomplishes the redemption shall
19 have a lien against the property in the amount paid and may
20 file a notice thereof in the records of any county in the
21 state in which the property is located and may foreclose the
22 lien as provided by law. "

23 Section 12. Section 7-1-48 NMSA 1978 (being Laws 1965,
24 Chapter 248, Section 50, as amended) is amended to read:

25 "7-1-48. DOCUMENTS OF TITLE. --In case property is sold

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1 as above provided, the [~~director or his delegate~~] department,
2 after payment for the property is received, shall prepare and
3 deliver to the purchaser thereof a certificate of sale, in the
4 case of personalty, or, in the case of realty, a deed, in a
5 form as the [~~director~~] secretary shall by regulation
6 prescribe. Such documents of title shall recite the authority
7 for the transaction, the date of the sale, the interest in the
8 property that is conveyed and the price paid therefor."

9 Section 13. Section 7-1-49 NMSA 1978 (being Laws 1965,
10 Chapter 248, Section 51, as amended) is amended to read:

11 "7-1-49. LEGAL EFFECT OF CERTIFICATE OF SALE. -- In all
12 cases of sale of property other than real property, the
13 certificate of sale provided for in Section 7-1-48 NMSA 1978
14 shall:

15 A. be prima facie evidence of the right of the
16 [~~director or his delegate~~] department to make the sale and
17 conclusive evidence of the regularity of [~~his~~] the proceedings
18 in making the sale;

19 B. transfer to the purchaser all right, title and
20 interest of the delinquent taxpayer in and to the property
21 sold, subject to all outstanding prior interests and
22 encumbrances of record and free of any subsequent encumbrance;

23 C. if such property consists of stock
24 certificates, be notice, when received, to any corporation,
25 company or association of such transfer and be authority to

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1 such corporation, company or association to record the
2 transfer on its books and records in the same manner as if the
3 stock certificates were transferred or assigned by the record
4 owner;

5 D. if the subject of sale is securities or other
6 evidences of debt, be a good and valid receipt to the person
7 holding the same, as against any person holding or claiming to
8 hold possession of the securities or other evidences of debt;
9 and

10 E. if such property consists of a motor vehicle as
11 represented by its title, be notice, when received, to any
12 public official charged with the registration of title to
13 motor vehicles of the transfer and be authority to that
14 official to record the transfer on ~~[his]~~ the official's books
15 and records in the same manner as if the certificate of title
16 to the motor vehicle were transferred or assigned by the
17 record owner. "

18 Section 14. Section 7-1-52 NMSA 1978 (being Laws 1965,
19 Chapter 248, Section 54, as amended) is amended to read:

20 "7-1-52. RELEASE OF LEVY.--It shall be lawful for the
21 ~~[director or his delegate]~~ secretary or the secretary's
22 delegate, under regulations prescribed by the ~~[director]~~
23 secretary, to release the levy upon all or part of the
24 property or rights to property levied upon if the ~~[director or~~
25 ~~his delegate]~~ secretary or the secretary's delegate determines

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1 that such action will facilitate the collection of the
2 liability, but the release shall not operate to prevent any
3 subsequent levy. "

4 Section 15. Section 7-1-53 NMSA 1978 (being Laws 1965,
5 Chapter 248, Section 55, as amended) is amended to read:

6 "7-1-53. ENJOINING DELINQUENT TAXPAYER FROM CONTINUING
7 IN BUSINESS. --

8 A. In order to ensure or to compel payment of
9 taxes and to aid in the enforcement of the provisions of the
10 Tax Administration Act, the [~~director~~] secretary may apply to
11 a district court of this state to have any delinquent taxpayer
12 or person who may be or may become liable for payment of any
13 tax enjoined from engaging in business until [~~he~~] the
14 delinquent taxpayer ceases to be a delinquent taxpayer or
15 until [~~he~~] the delinquent taxpayer or person complies with
16 other requirements, reasonably necessary to protect the
17 revenues of the state, placed on [~~him~~] the delinquent taxpayer
18 or person by the [~~director~~] secretary.

19 B. Upon application to a court for the issuance of
20 an injunction against a delinquent taxpayer, the court may
21 forthwith issue an order temporarily restraining [~~him~~] the
22 delinquent taxpayer from doing business. The court shall hear
23 the matter within three days, and, upon a showing by the
24 preponderance of the evidence that the taxpayer is delinquent
25 and that [~~he~~] the taxpayer has been given notice of the

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1 hearing as required by law, the court may enjoin [~~him~~] the
2 taxpayer from engaging in business in New Mexico until [~~he~~]
3 the taxpayer ceases to be a delinquent taxpayer. Upon issuing
4 an injunction, the court may also order the business premises
5 of the taxpayer to be sealed by the sheriff and may allow the
6 taxpayer access thereto only upon approval of the court.

7 C. Upon application to a court for the issuance of
8 an injunction against a person other than a delinquent
9 taxpayer, the court may issue an order temporarily restraining
10 the person from engaging in business. The court shall hear
11 the matter within three days and upon a showing that:

12 (1) the person has been given notice of the
13 hearing as required by law;

14 (2) [~~that~~] demand has been made upon the
15 taxpayer for the furnishing of security;

16 (3) [~~that~~] the taxpayer has not furnished
17 security; and

18 (4) [~~that~~] the [~~director~~] secretary considers
19 the collection from the person primarily responsible therefor
20 of the total amount of tax due or reasonably expected to
21 become due to be in jeopardy;

22 the court may forthwith issue an injunction to such taxpayer
23 in terms commanding [~~him~~] the person to refrain from engaging
24 in business until [~~he~~] the person complies in full with the
25 demand of the [~~director~~] department for the furnishing of

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1 security.

2 D. No temporary restraining order or injunction
3 shall issue by provision of this section against any person
4 who has furnished security in accordance with the provisions
5 of Section 7-1-54 NMSA 1978. Upon a showing to the court by
6 any person against whom a temporary restraining order or writ
7 of injunction has issued by provision of this section that
8 [he] the person has furnished security in accordance with the
9 provisions of Section 7-1-54 NMSA 1978, the court shall
10 dissolve or set aside the temporary restraining order or
11 injunction. "

12 Section 16. Section 7-1-56 NMSA 1978 (being Laws 1965,
13 Chapter 248, Section 57, as amended) is amended to read:

14 "7-1-56. SALE OF OR PROCEEDINGS AGAINST SECURITY. -- If
15 liability for any tax for the payment of which security has
16 been furnished becomes conclusive, the [~~director or his~~
17 ~~delegate~~] department may:

18 A. redeem for cash or, as specified in the Tax
19 Administration Act for sale of property levied upon, sell such
20 security; or

21 B. compel the surety directly to discharge the
22 liability for payment of the principal debtor by serving
23 demand upon him therefor. "

24 Section 17. Section 7-1-57 NMSA 1978 (being Laws 1965,
25 Chapter 248, Section 58, as amended) is amended to read:

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1 "7-1-57. SURETY BONDS. -- Surety bonds accepted by the
2 [~~director~~] secretary as security in compliance with the
3 provisions of Sections 7-1-54 and 7-1-55 NMSA 1978 shall be
4 payable to the state of New Mexico upon demand by the
5 [~~director or his delegate~~] secretary or the secretary's
6 delegate and a showing [~~by him~~] to the surety that the
7 principal debtor is a delinquent taxpayer. "

8 Section 18. Section 7-1-71.1 NMSA 1978 (being Laws 1985,
9 Chapter 65, Section 19) is amended to read:

10 "7-1-71.1. TAX RETURN PREPARERS-- REQUIREMENTS--
11 PENALTIES. --

12 A. The [~~director~~] secretary may require by
13 regulation any tax return preparer with respect to any return
14 of income tax or claim for refund with respect to income tax
15 to sign such return or claim for refund.

16 B. The [~~director~~] secretary may require by
17 regulation any tax return preparer with respect to any return
18 of income tax or claim for refund with respect to income tax
19 to furnish the tax return preparer's identification number on
20 such return or claim for refund.

21 C. Any tax return preparer with respect to any
22 return of income tax or claim for refund with respect to
23 income tax who is required by regulations promulgated by the
24 [~~director~~] secretary to sign a return or claim for refund or
25 to furnish an identification number on such return or claim

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1 for refund and who fails to sign such return or claim for
2 refund or to furnish an identification number on such return
3 or claim for refund shall pay a penalty of twenty-five dollars
4 (\$25.00) for such failure unless it is shown that such failure
5 is due to reasonable cause and not due to willful neglect.

6 D. Any tax return preparer who endorses or
7 otherwise negotiates, either directly or through an agent, any
8 warrant in respect of the Income Tax Act issued to a taxpayer,
9 other than the tax return preparer, shall pay a penalty of
10 five hundred dollars (\$500) with respect to each such warrant;
11 provided that the provisions of this subsection shall not
12 apply with respect to the deposit by a bank, savings and loan
13 association, credit union or other financial corporation of
14 the full amount of the warrant in the taxpayer's account for
15 the benefit of the taxpayer.

16 E. For the purposes of this section, any penalty
17 determined to be due shall be considered to be tax due."

18 Section 19. Section 7-1-78 NMSA 1978 (being Laws 1965,
19 Chapter 248, Section 81, as amended) is amended to read:

20 "7-1-78. BURDEN OF PROOF IN FRAUD CASES.--In any
21 proceeding involving the issue of whether any person has been
22 guilty of fraud or corruption, the burden of proof in respect
23 of such issue shall be upon the [~~director~~] secretary or the
24 state."

25 Section 20. EFFECTIVE DATE.--The effective date of the

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provisions of this act is July 1, 2001.

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