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**HOUSE BILL 930**

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

**INTRODUCED BY**

**Luciano "Lucky" Varela**

**FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE**

**AN ACT**

**RELATING TO TAXATION; ENACTING THE NEW MEXICO TAXPAYER BILL OF RIGHTS; PROVIDING THAT TAXPAYERS MAY BE AWARDED COSTS AND FEES IN CERTAIN INSTANCES; PROHIBITING PENALTY ASSESSMENTS IN CERTAIN CASES; AMENDING AND ENACTING CERTAIN 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 NEW MEXICO TAXPAYER BILL OF RIGHTS CREATED- -PURPOSE. - -The "New Mexico Taxpayer Bill of Rights" is created. It is the purpose of the New Mexico Taxpayer Bill of Rights to:**

**A. guarantee that the rights, privacy and property of New Mexico taxpayers are adequately safeguarded and**

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1 protected during the tax assessment, collection and  
2 enforcement procedures for the tax acts administered by the  
3 department pursuant to the Tax Administration Act;

4 B. assure that the taxpayer is treated with  
5 dignity and respect; and

6 C. compile in one act, brief but comprehensive  
7 statements that explain in simple, nontechnical terms, the  
8 rights of taxpayers. "

9 Section 2. A new section of the Tax Administration Act  
10 is enacted to read:

11 "[NEW MATERIAL] NEW MEXICO TAXPAYER BILL OF RIGHTS. --The  
12 rights afforded New Mexico taxpayers to assure that their  
13 privacy and property are safeguarded and protected during tax  
14 assessment, collection and enforcement are available insofar  
15 as they are implemented in the Tax Administration Act and the  
16 tax acts administered by the department pursuant to the  
17 provisions of that act and the rules adopted and promulgated  
18 pursuant to those acts by the secretary. The rights  
19 guaranteed New Mexico taxpayers pursuant to those laws and  
20 rules are as follows:

21 A. the right to available information and prompt,  
22 courteous and accurate response to questions and requests for  
23 tax assistance;

24 B. the right to be represented or advised by  
25 counsel or other qualified representatives at any time in

1 administrative interactions with the department in accordance  
2 with the provisions of Section 7-1-24 NMSA 1978;

3 C. the right to have audits, inspections of  
4 records and meetings conducted at a reasonable time and place  
5 in accordance with the provisions of Section 7-1-11 NMSA 1978;

6 D. the right to have the department begin and  
7 complete its audits in a timely and expeditious manner after  
8 notification of intent to audit;

9 E. the right to obtain simple, nontechnical  
10 information that explains the procedures, remedies and rights  
11 available during audit, protest, appeals and collection  
12 proceedings pursuant to the Tax Administration Act, including  
13 the rights pursuant to the New Mexico Taxpayer Bill of Rights;

14 F. the right to be provided with an explanation  
15 for denials of refunds as well as the basis of audits,  
16 assessments or denials of refunds that identify any amount of  
17 tax, interest or penalty due;

18 G. the right to seek review, through formal or  
19 informal proceedings, of any findings or adverse decisions  
20 relating to determinations during audit or protest procedures;

21 H. the right to have the taxpayer's tax  
22 information kept confidential unless otherwise specified by  
23 law, in accordance with Section 7-1-8 NMSA 1978;

24 I. the right to abatement of an assessment of  
25 taxes determined to have been incorrectly, erroneously or

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1 illegally made, as provided in Section 7-1-28 NMSA 1978 and  
2 the right to seek a compromise of an asserted tax liability by  
3 obtaining a written determination of liability or nonliability  
4 when the secretary in good faith is in doubt of the liability  
5 as provided in Section 7-1-20 NMSA 1978;

6 J. upon receipt of a tax assessment, the right to  
7 be informed clearly that if the assessment is not paid,  
8 secured, protested or otherwise provided for within thirty  
9 days pursuant to the provisions of Section 7-1-16 NMSA 1978,  
10 the taxpayer will be a delinquent taxpayer and, upon notice of  
11 delinquency, the right to timely notice of any collection  
12 actions that will require sale or seizure of the taxpayer's  
13 property;

14 K. after a jeopardy assessment, the right to at  
15 least five days to review the jeopardy assessment before  
16 paying the tax or furnishing satisfactory security for the tax  
17 in accordance with Section 7-1-59 NMSA 1978;

18 L. the right to procedures for retirement of tax  
19 obligations by installment payment agreements, in accordance  
20 with Section 7-1-21 NMSA 1978, which recognize both the  
21 taxpayer's financial condition and the best interests of the  
22 state; provided that the taxpayer gives accurate, current  
23 information and meets all other tax obligations on schedule;  
24 and

25 M the right to procedures that assure that the

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1 individual employees of the department are not paid, evaluated  
2 or promoted on the basis of the amount of assessments or  
3 collections from taxpayers. "

4 Section 3. A new section of the Tax Administration Act  
5 is enacted to read:

6 "[NEW MATERIAL] NEW MEXICO TAXPAYER BILL OF RIGHTS--  
7 NOTICE TO THE PUBLIC. --The department shall develop a brochure  
8 that states the New Mexico Taxpayer Bill of Rights in simple,  
9 nontechnical terms and shall disseminate the brochure to  
10 taxpayers, at a minimum, with the annual income and semiannual  
11 Combined Reporting System tax forms. "

12 Section 4. A new section of the Tax Administration Act,  
13 Section 7-1-29.1 NMSA 1978, is enacted to read:

14 "7-1-29.1. [NEW MATERIAL] AWARDING OF COSTS AND FEES. --

15 A. In any administrative or court proceeding that  
16 is brought by or against the taxpayer on or after July 1, 2001  
17 in connection with the determination, collection or refund of  
18 any tax, interest or penalty for a tax governed by the  
19 provisions of the Tax Administration Act, the taxpayer shall  
20 be awarded a judgment or a settlement for reasonable  
21 administrative costs incurred in connection with an  
22 administrative proceeding with the department or reasonable  
23 litigation costs incurred in connection with a court  
24 proceeding, if the taxpayer is the prevailing party.

25 B. As used in this section:

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1 (1) "administrative proceeding" means any  
2 procedure or other action before the department;

3 (2) "court proceeding" means any civil action  
4 brought in state district court;

5 (3) "reasonable administrative costs" means:

6 (a) any administrative fees or similar  
7 charges imposed by the department; and

8 (b) actual charges for: 1) filing  
9 fees, court reporter fees, service of process fees and similar  
10 expenses; 2) the services of expert witnesses; 3) any study,  
11 analysis, report, test or project reasonably necessary for the  
12 preparation of the party's case; and 4) fees and costs paid or  
13 incurred for the services in connection with the proceeding of  
14 attorneys or of certified public accountants who are  
15 authorized to practice before the department; and

16 (4) "reasonable litigation costs" means:

17 (a) reasonable court costs; and

18 (b) actual charges for: 1) filing  
19 fees, court reporter fees, service of process fees and similar  
20 expenses; 2) the services of expert witnesses; 3) any study,  
21 analysis, report, test or project reasonably necessary for the  
22 preparation of the party's case; and 4) fees and costs paid or  
23 incurred for the services of attorneys in connection with the  
24 proceeding.

25 C. For purposes of this section:

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1 (1) the taxpayer is the prevailing party if  
2 the taxpayer has:

3 (a) substantially prevailed with  
4 respect to the amount controversy; or

5 (b) substantially prevailed with  
6 respect to most of the issues involved in the case or the most  
7 significant issue or set of issues involved in the case;

8 (2) the taxpayer shall not be treated as the  
9 prevailing party if the department establishes that the  
10 position of the department in the proceeding was based upon a  
11 reasonable application of the law to the facts of the case.  
12 For purposes of this paragraph, the position of the department  
13 shall be presumed not to be based upon a reasonable  
14 application of the law to the facts of the case if:

15 (a) the department did not follow its  
16 applicable published guidance in the proceeding; or

17 (b) the assessment giving rise to the  
18 proceeding is not supported by substantial evidence determined  
19 at the time of the issuance of the assessment;

20 (3) as used in Subparagraph (a) of Paragraph  
21 (2) of this subsection, "applicable published guidance" means:

22 (a) department regulations, revenue  
23 rulings, revenue procedures, information releases,  
24 instructions, notices, technical advice memoranda and  
25 announcements; and

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1 (b) private letter rulings and letters  
2 issued by the department to the taxpayer; and

3 (4) the determination of whether the taxpayer  
4 is the prevailing party and the amount of reasonable  
5 litigation costs or reasonable administrative costs shall be  
6 made by agreement of the parties or:

7 (a) in the case where the final  
8 determination with respect to the tax, interest or penalty is  
9 made in an administrative proceeding, by the department  
10 hearing officer; or

11 (b) in the case where the final  
12 determination is made by the court, the court.

13 D. An order granting or denying in whole or in  
14 part an award for reasonable litigation costs pursuant to  
15 Subsection A of this section in a court proceeding may be  
16 incorporated as a part of the decision or judgment in the  
17 court proceeding and shall be subject to appeal in the same  
18 manner as the decision or judgment. A decision or order  
19 granting or denying in whole or in part an award for  
20 reasonable administrative costs pursuant to Subsection A of  
21 this section by the department hearing officer shall be  
22 reviewable in the same manner as a decision of the department  
23 hearing officer. "

24 Section 5. Section 7-1-69 NMSA 1978 (being Laws 1965,  
25 Chapter 248, Section 70, as amended) is amended to read:

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

3 A. Except as provided in Subsection [B] C of this  
4 section, in the case of failure due to negligence or willful  
5 disregard of department rules and regulations, but without  
6 intent to evade or defeat [~~any~~] a tax, to pay when due [~~any~~]  
7 the amount of tax required to be paid, to pay in accordance  
8 with the provisions of Section 7-1-13.1 NMSA 1978 when  
9 required to do so or to file by the date required a return  
10 regardless of whether [~~any~~] a tax is due, there shall be added  
11 to the amount [~~as~~] assessed a penalty in an amount equal to  
12 the greater of:

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

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

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

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2 B. No penalty shall be assessed against a taxpayer  
3 if the failure to pay an amount of tax when due results from a  
4 mistake of law or fact made in good faith and on reasonable  
5 grounds.

6 [~~B.-~~] C. If a different penalty is specified in a  
7 compact or other interstate agreement to which New Mexico is a  
8 party, the penalty provided in the compact or other interstate  
9 agreement shall be applied to amounts due under the compact or  
10 other interstate agreement at the rate and in the manner  
11 prescribed by the compact or other interstate agreement.

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

17 [~~D.-~~] E. If demand is made for payment of [~~any~~] a  
18 tax, including penalty imposed pursuant to this section, and  
19 if [~~such~~] the tax is paid within ten days after the date of  
20 such demand, no penalty shall be imposed for the period after  
21 the date of the demand with respect to the amount paid.

22 [~~E.-~~] F. If a taxpayer makes electronic payment of  
23 [~~any~~] a tax but the payment does not include all of the  
24 information required by the department pursuant to the  
25 provisions of Section 7-1-13.1 NMSA 1978 and if the department

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1 does not receive the required information within five business  
2 days from the later of the date a request by the department  
3 for that information is received by the taxpayer or the due  
4 date, the taxpayer shall be subject to a penalty of two  
5 percent per month or any fraction of a month from the fifth  
6 day following the date the request is received. If a penalty  
7 is imposed under Subsection A of this section with respect to  
8 the same transaction for the same period, no penalty shall be  
9 imposed under this subsection. "

10 Section 6. EFFECTIVE DATE. -- The effective date of the  
11 provisions of this act is July 1, 2001.

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