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HOUSE BILL 55

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Pauline K. Gubbels

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

**RELATING TO TAXATION; RAISING THE REFUND AMOUNT FOR WHICH
ATTORNEY GENERAL APPROVAL IS NECESSARY; RAISING THE REFUND
AMOUNT FOR WHICH RECORDS OF REFUNDS MUST BE MADE AVAILABLE TO
THE PUBLIC; AMENDING A SECTION OF THE NMSA 1978.**

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

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

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

**A. In response to a claim for refund made as
provided in Section 7-1-26 NMSA 1978, but before any court
acquires jurisdiction of the matter, the secretary or the
secretary's delegate may authorize the refund to a person of
the amount of any overpayment of tax determined by the
secretary or the secretary's delegate to have been erroneously**

underscored material = new
[bracketed material] = delete

1 made by the person, together with allowable interest. Any
2 refund of tax and interest erroneously paid and amounting to
3 more than [~~five thousand dollars (\$5,000)~~] ten thousand
4 dollars (\$10,000) may be made to any one person only with the
5 prior approval of the attorney general, except that:

6 (1) refunds with respect to the Oil and Gas
7 Severance Tax Act, the Oil and Gas Conservation Tax Act, the
8 Oil and Gas Emergency School Tax Act, the Oil and Gas Ad
9 Valorem Production Tax Act, the Natural Gas Processors Tax Act
10 or the Oil and Gas Production Equipment Ad Valorem Tax Act,
11 refunds of gasoline tax made under Section 7-13-17 NMSA 1978
12 and refunds of cigarette tax made under the Cigarette Tax Act
13 may be made without the prior approval of the attorney general
14 regardless of the amount; and

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

19 B. Pursuant to the final order of the district
20 court, the court of appeals, the supreme court of New Mexico
21 or any federal court, from which order, appeal or review is
22 not successfully taken, adjudging that any person has made an
23 overpayment of tax, the secretary shall authorize the refund
24 to the person of the amount thereof.

25 C. In the discretion of the secretary, any amount

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[bracketed material] = delete

1 of tax due to be refunded may be offset against any amount of
2 tax for the payment of which the person due to receive the
3 refund is liable.

4 D. In an audit by the department or a managed
5 audit covering multiple reporting periods where both
6 underpayments and overpayments of a tax are found to have been
7 made in different reporting periods, the department shall
8 credit the tax overpayments found against the underpayments,
9 provided that the taxpayer files a claim for refund of the
10 overpayments. An overpayment shall be applied as a credit
11 first to the earliest underpayment found and then to
12 succeeding underpayments. An underpayment of tax to which an
13 overpayment is credited pursuant to this section shall be
14 deemed paid in the period in which the overpayment was made or
15 the period in which the overpayment was credited against an
16 underpayment, whichever is later. If the overpayments
17 credited pursuant to this section exceed the underpayments
18 found for a tax, the amount of the net overpayment for the
19 periods covered in the audit shall be refunded to the
20 taxpayer.

21 E. Records of refunds made in excess of [~~five~~
22 ~~thousand dollars (\$5,000)~~] ten thousand dollars (\$10,000)
23 shall be available for inspection by the public. The
24 department shall keep such records for a minimum of three
25 years from the date of the refund. "

1 Section 2. EFFECTIVE DATE. -- The effective date of the
2 provisions of this act is July 1, 2002.

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