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HOUSE BILL 667

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Roberto "Bobby" J. Gonzales

AN ACT

RELATING TO TAX ADMINISTRATION; IDENTIFYING TAX PROVISIONS
SUBJECT TO THE TAX ADMINISTRATION ACT; PERMITTING DISCLOSURE OF
CERTAIN RECORDS OR CREDITS THAT THE DEPARTMENT IS REQUIRED TO
MAKE AVAILABLE FOR PUBLIC INSPECTION; RECONCILING MULTIPLE
AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2005.

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;

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- 1 (2) Withholding Tax Act;
- 2 (3) Venture Capital Investment Act;
- 3 (4) Gross Receipts and Compensating Tax Act
- 4 and any state gross receipts tax;
- 5 (5) Liquor Excise Tax Act;
- 6 (6) Local Liquor Excise Tax Act;
- 7 (7) any municipal local option gross receipts
- 8 tax;
- 9 (8) any county local option gross receipts
- 10 tax;
- 11 (9) Special Fuels Supplier Tax Act;
- 12 (10) Gasoline Tax Act;
- 13 (11) petroleum products loading fee, which fee
- 14 shall be considered a tax for the purpose of the Tax
- 15 Administration Act;
- 16 (12) Alternative Fuel Tax Act;
- 17 (13) Cigarette Tax Act;
- 18 (14) Estate Tax Act;
- 19 (15) Railroad Car Company Tax Act;
- 20 (16) Investment Credit Act, [~~Capital Equipment~~
- 21 ~~Tax Credit Act~~] rural job tax credit, Laboratory Partnership
- 22 with Small Business Tax Credit Act, [~~and~~] Technology Jobs Tax
- 23 Credit Act, film production tax credit, New Mexico filmmaker
- 24 tax credit, Affordable Housing Tax Credit Act, high-wage jobs
- 25 tax credit and Research and Development Small Business Tax

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- 1 Credit Act;
- 2 (17) Corporate Income and Franchise Tax Act;
- 3 (18) Uniform Division of Income for Tax
- 4 Purposes Act;
- 5 (19) Multistate Tax Compact;
- 6 (20) Tobacco Products Tax Act; and
- 7 (21) the telecommunications relay service
- 8 surcharge imposed by Section 63-9F-11 NMSA 1978, which
- 9 surcharge shall be considered a tax for the purposes of the Tax
- 10 Administration Act;
- 11 B. the administration and enforcement of the
- 12 following taxes, surtaxes, advanced payments or tax acts as
- 13 they now exist or may hereafter be amended:
- 14 (1) Resources Excise Tax Act;
- 15 (2) Severance Tax Act;
- 16 (3) any severance surtax;
- 17 (4) Oil and Gas Severance Tax Act;
- 18 (5) Oil and Gas Conservation Tax Act;
- 19 (6) Oil and Gas Emergency School Tax Act;
- 20 (7) Oil and Gas Ad Valorem Production Tax Act;
- 21 (8) Natural Gas Processors Tax Act;
- 22 (9) Oil and Gas Production Equipment Ad
- 23 Valorem Tax Act;
- 24 (10) Copper Production Ad Valorem Tax Act;
- 25 (11) any advance payment required to be made

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1 by any act specified in this subsection, which advance payment
2 shall be considered a tax for the purposes of the Tax
3 Administration Act;

4 (12) Enhanced Oil Recovery Act;

5 (13) Natural Gas and Crude Oil Production
6 Incentive Act; and

7 (14) intergovernmental production tax credit
8 and intergovernmental production equipment tax credit;

9 C. the administration and enforcement of the
10 following taxes, surcharges, fees or acts as they now exist or
11 may hereafter be amended:

12 (1) Weight Distance Tax Act;

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

16 (3) Uniform Unclaimed Property Act (1995);

17 (4) 911 emergency surcharge and the network
18 and database surcharge, which surcharges shall be considered
19 taxes for purposes of the Tax Administration Act;

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

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

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1 (7) the gaming tax imposed pursuant to the
2 Gaming Control Act; and

3 D. the administration and enforcement of all other
4 laws, with respect to which the department is charged with
5 responsibilities pursuant to the Tax Administration Act, but
6 only to the extent that the other laws do not conflict with the
7 Tax Administration Act."

8 Section 2. Section 7-1-8 NMSA 1978 (being Laws 1965,
9 Chapter 248, Section 13, as amended by Laws 2005, Chapter 107,
10 Section 1 and by Laws 2005, Chapter 108, Section 2 and also by
11 Laws 2005, Chapter 109, Section 2) is amended to read:

12 "7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER
13 INFORMATION.--It is unlawful for an employee of the department
14 or a former employee of the department to reveal to an
15 individual other than another employee of the department
16 information contained in the return of a taxpayer made pursuant
17 to a law subject to administration and enforcement under the
18 provisions of the Tax Administration Act or any other
19 information about a taxpayer acquired as a result of the
20 employee's employment by the department and not available from
21 public sources, except:

22 A. to an authorized representative of another
23 state; provided that the receiving state has entered into a
24 written agreement with the department to use the information
25 for tax purposes only and that the receiving state has enacted

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1 a confidentiality statute similar to this section to which the
2 representative is subject;

3 B. to a representative of the secretary of the
4 treasury or the secretary's delegate pursuant to the terms of a
5 reciprocal agreement entered into with the federal government
6 for exchange of the information;

7 C. to the multistate tax commission or its
8 authorized representative; provided that the information is
9 used for tax purposes only and is disclosed by the multistate
10 tax commission only to states that have met the requirements of
11 Subsection A of this section;

12 D. to another jurisdiction pursuant to an
13 international fuel tax agreement; provided that the information
14 is used for tax purposes only;

15 E. to a district court, an appellate court or a
16 federal court:

17 (1) in response to an order thereof in an
18 action relating to taxes or an action for tax fraud or any
19 other crime that may affect taxes due to the state to which the
20 state is a party and in which the information sought is about a
21 taxpayer who is party to the action and is material to the
22 inquiry, in which case only that information may be required to
23 be produced in court and admitted in evidence subject to court
24 order protecting the confidentiality of the information and no
25 more;

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1 (2) in an action in which the department is
2 attempting to enforce an act with which the department is
3 charged or to collect a tax; or

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

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

16 G. information obtained through the administration
17 of a law not subject to administration and enforcement under
18 the provisions of the Tax Administration Act to the extent that
19 release of that information is not otherwise prohibited by law;

20 H. in a manner, for statistical purposes, that the
21 information revealed is not identified as applicable to an
22 individual taxpayer;

23 I. with reference to information concerning the tax
24 on tobacco imposed by Sections 7-12-1 through 7-12-13, 7-12-15
25 and 7-12-17 NMSA 1978 to a committee of the legislature for a

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1 valid legislative purpose or to the attorney general for purposes
2 of Section 6-4-13 NMSA 1978 and the master settlement agreement
3 defined in Section 6-4-12 NMSA 1978;

4 J. to a transferee, assignee, buyer or lessor of a
5 liquor license, the amount and basis of an unpaid assessment of
6 tax for which the transferor, assignor, seller or lessee is
7 liable;

8 K. to a purchaser of a business as provided in
9 Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis
10 of an unpaid assessment of tax for which the purchaser's seller
11 is liable;

12 L. to a municipality of this state upon its request
13 for a period specified by that municipality within the twelve
14 months preceding the request for the information by that
15 municipality:

16 (1) the names, taxpayer identification numbers
17 and addresses of registered gross receipts taxpayers reporting
18 gross receipts for that municipality under the Gross Receipts
19 and Compensating Tax Act or a local option gross receipts tax
20 imposed by that municipality. The department may also release
21 the information described in this paragraph quarterly or upon
22 such other periodic basis as the secretary and the municipality
23 may agree; and

24 (2) information indicating whether persons
25 shown on a list of businesses located within that municipality

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1 furnished by the municipality have reported gross receipts to
2 the department but have not reported gross receipts for that
3 municipality under the Gross Receipts and Compensating Tax Act
4 or a local option gross receipts tax imposed by that
5 municipality.

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

11 M. to the commissioner of public lands for use in
12 auditing that pertains to rentals, royalties, fees and other
13 payments due the state under land sale, land lease or other
14 land use contracts; the commissioner of public lands and
15 employees of the commissioner are subject to the same
16 provisions regarding confidentiality of information as
17 employees of the department;

18 N. the department shall furnish, upon request by
19 the child support enforcement division of the human services
20 department, the last known address with date of all names
21 certified to the department as being absent parents of children
22 receiving public financial assistance. The child support
23 enforcement division personnel shall use such information only
24 for the purpose of enforcing the support liability of the
25 absent parents and shall not use the information or disclose it

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1 for any other purpose; the child support enforcement division
2 and its employees are subject to the provisions of this section
3 with respect to any information acquired from the department;

4 ~~[N.]~~ O. the department shall furnish to the
5 information systems division of the general services
6 department, by electronic media, a database containing New
7 Mexico personal income tax filers by county, which shall be
8 updated quarterly. The database information shall be used only
9 for the purpose of producing the random jury list for the
10 selection of petit or grand jurors for the state courts
11 pursuant to Section 38-5-3 NMSA 1978. The database shall not
12 contain any financial information. If any information in the
13 database is revealed by an employee of the administrative
14 office of the courts or the information systems division to
15 individuals other than employees of the administrative office
16 of the courts, the state courts, the information systems
17 division or the department, the employee shall be subject to
18 the penalty provisions of Section 7-1-76 NMSA 1978;

19 ~~[O.]~~ P. with respect to the tax on gasoline imposed
20 by the Gasoline Tax Act, the department shall make available
21 for public inspection at monthly intervals a report covering
22 the number of gallons of gasoline and ethanol blended fuels
23 received and deducted and the amount of tax paid by each person
24 required to file a gasoline tax return or pay gasoline tax in
25 the state of New Mexico;

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1 [~~P.~~] Q. the identity of a rack operator, importer,
2 blender, supplier or distributor and the number of gallons
3 reported on returns required under the Gasoline Tax Act,
4 Special Fuels Supplier Tax Act or Alternative Fuel Tax Act to a
5 rack operator, importer, blender, distributor or supplier, but
6 only when it is necessary to enable the department to carry out
7 its duties under the Gasoline Tax Act, the Special Fuels
8 Supplier Tax Act or the Alternative Fuel Tax Act;

9 [~~Q.~~] R. the department shall release upon request
10 only the names and addresses of all gasoline or special fuel
11 distributors, wholesalers and retailers to the New Mexico
12 department of agriculture, the employees of which are thereby
13 subject to the penalty contained in Section 7-1-76 NMSA 1978 if
14 that information is revealed to individuals other than
15 employees of either the New Mexico department of agriculture or
16 the department;

17 [~~R.~~] S. the department shall answer all inquiries
18 concerning whether a person is or is not a registered taxpayer
19 for tax programs that require registration, but nothing in this
20 [~~section~~] subsection shall be construed to allow the department
21 to answer inquiries concerning whether a person has filed a tax
22 return;

23 [~~S.~~] T. upon request of a municipality or county of
24 this state, the department shall permit officials or employees
25 of the municipality or county to inspect the records of the

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1 department pertaining to an increase or decrease to a
2 distribution or transfer made pursuant to Section 7-1-6.15 NMSA
3 1978 for the purpose of reviewing the basis for the increase or
4 decrease. The municipal or county officials or employees
5 receiving information provided in this subsection shall not
6 reveal that information to any person other than another
7 employee of the municipality or the county, the department or a
8 district court, an appellate court or a federal court in a
9 proceeding relating to a disputed distribution and in which
10 both the state and the municipality or county are parties.
11 Information provided pursuant to provisions of this subsection
12 that is revealed other than as provided in this subsection
13 shall subject the person revealing the information to the
14 penalty contained in Section 7-1-76 NMSA 1978;

15 ~~[F.]~~ U. to a county of this state that has in
16 effect a local option gross receipts tax imposed by the county
17 upon its request for a period specified by that county within
18 the twelve months preceding the request for the information by
19 that county:

20 (1) the names, taxpayer identification numbers
21 and addresses of registered gross receipts taxpayers reporting
22 gross receipts either for that county in the case of a local
23 option gross receipts tax imposed on a countywide basis or only
24 for the areas of that county outside of any incorporated
25 municipalities within that county in the case of a county local

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1 option gross receipts tax imposed only in areas of the county
2 outside of any incorporated municipalities. The department may
3 also release the information described in this paragraph
4 quarterly or upon such other periodic basis as the secretary
5 and the county may agree;

6 (2) in the case of a local option gross
7 receipts tax imposed by a county on a countywide basis,
8 information indicating whether persons shown on a list of
9 businesses located within the county furnished by the county
10 have reported gross receipts to the department but have not
11 reported gross receipts for that county under the Gross
12 Receipts and Compensating Tax Act or a local option gross
13 receipts tax imposed by that county on a countywide basis; and

14 (3) in the case of a local option gross
15 receipts tax imposed by a county only on persons engaging in
16 business in that area of the county outside of incorporated
17 municipalities, information indicating whether persons on a
18 list of businesses located in that county outside of the
19 incorporated municipalities but within that county furnished by
20 the county have reported gross receipts to the department but
21 have not reported gross receipts for that county outside of the
22 incorporated municipalities within that county under the Gross
23 Receipts and Compensating Tax Act or a local option gross
24 receipts tax imposed by the county only on persons engaging in
25 business in that county outside of the incorporated

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1 municipalities.

2 The officers and employees of counties receiving
3 information as provided in this subsection shall be subject to
4 the penalty contained in Section 7-1-76 NMSA 1978 if the
5 information is revealed to individuals other than other
6 officers or employees of the county in question or the
7 department;

8 ~~[U.]~~ V. to authorized representatives of an Indian
9 nation, tribe or pueblo, the territory of which is located
10 wholly or partially within New Mexico, pursuant to the terms of
11 a reciprocal agreement entered into with the Indian nation,
12 tribe or pueblo for the exchange of that information for tax
13 purposes only; provided that the Indian nation, tribe or pueblo
14 has enacted a confidentiality statute similar to this section;

15 ~~[V.]~~ W. information with respect to the taxes or
16 tax acts administered pursuant to Subsection B of Section 7-1-2
17 NMSA 1978, except that:

18 (1) information for or relating to a period
19 prior to July 1, 1985 with respect to Sections 7-25-1 through
20 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978 may be released only
21 to a committee of the legislature for a valid legislative
22 purpose;

23 (2) except as provided in Paragraph (3) of
24 this subsection, contracts and other agreements between the
25 taxpayer and other parties and the proprietary information

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1 contained in those contracts and agreements shall not be
2 released without the consent of all parties to the contract or
3 agreement; and

4 (3) audit workpapers and the proprietary
5 information contained in the workpapers shall not be released
6 except to:

7 (a) the minerals management service of
8 the United States department of the interior, if production
9 occurred on federal land;

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

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

14 (d) the authorized representative of any
15 of the persons in Subparagraphs (a) through (c) of this
16 paragraph. This paragraph does not prohibit the release of
17 proprietary information contained in the workpapers that is
18 also available from returns or from other sources not subject
19 to the provisions of this section;

20 [~~W.~~] X. information with respect to the taxes,
21 surtaxes, advance payments or tax acts administered pursuant to
22 Subsection C of Section 7-1-2 NMSA 1978;

23 [~~X.~~] Y. to the public regulation commission,
24 information with respect to the Corporate Income and Franchise
25 Tax Act required to enable the commission to carry out its

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1 duties;

2 [~~Y.~~] Z. to the state racing commission, information
3 with respect to the state, municipal and county gross receipts
4 taxes paid by racetracks;

5 [~~Z.~~] AA. upon request of a corporation authorized
6 to be formed under the Educational Assistance Act, the
7 department shall furnish the last known address and the date of
8 that address of every person certified to the department as an
9 absent obligor of an educational debt due and owed to the
10 corporation or that the corporation has lawfully contracted to
11 collect. The corporation and its officers and employees shall
12 use that information only to enforce the educational debt
13 obligation of the absent obligors and shall not disclose that
14 information or use it for any other purpose;

15 [~~AA.~~] BB. a decision and order made by a hearing
16 officer pursuant to Section 7-1-24 NMSA 1978 with respect to a
17 protest filed with the secretary on or after July 1, 1993;

18 [~~BB.~~] CC. information required by a provision of
19 the Tax Administration Act to be made available to the public
20 by the department;

21 [~~CC.~~] DD. upon request by the Bernalillo county
22 metropolitan court, the department shall furnish the last known
23 address and the date of that address for every person the court
24 certifies to the department as a person who owes fines, fees or
25 costs to the court or who has failed to appear pursuant to a

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1 court order or a promise to appear;

2 [DD.] EE. upon request by a magistrate court, the
3 department shall furnish the last known address and the date of
4 that address for every person the court certifies to the
5 department as a person who owes fines, fees or costs to the
6 court or who has failed to appear pursuant to a court order or
7 a promise to appear;

8 [EE.] FF. to the national tax administration
9 agencies of Mexico and Canada; provided the agency receiving
10 the information has entered into a written agreement with the
11 department to use the information for tax purposes only and is
12 subject to a confidentiality statute similar to this section;

13 [FF.] GG. to a district attorney, a state district
14 court grand jury or federal grand jury for an investigation of
15 or proceeding related to an alleged criminal violation of the
16 tax laws;

17 [GG.] HH. to a third party subject to a subpoena or
18 levy issued pursuant to the provisions of the Tax
19 Administration Act, the identity of the taxpayer involved, the
20 taxes or tax acts involved and the nature of the proceeding;

21 [HH.] II. to the gaming control board, tax returns
22 of license applicants and their affiliates as provided in
23 Subsection E of Section 60-2E-14 NMSA 1978; [~~and~~

24 [~~II.~~] JJ. any written ruling on questions of
25 evidence or procedure made by a hearing officer pursuant to

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1 Section 7-1-24 NMSA 1978; provided that the name and
2 identification number of the taxpayer requesting the ruling
3 shall not be [~~provided~~] disclosed;

4 [~~II.~~] KK. to representatives of the workers'
5 compensation administration, authorized by the director of the
6 workers' compensation administration for this purpose, to
7 facilitate the identification of taxpayers that are delinquent
8 or noncompliant in payment of fees required by Section 52-1-9.1
9 or 52-5-19 NMSA 1978;

10 [~~JJ.~~] LL. to the secretary of labor or the
11 secretary's delegate for use in enforcement of unemployment
12 insurance collections pursuant to the terms of a reciprocal
13 agreement entered into with the secretary of labor for exchange
14 of information; the secretary of labor and employees of the
15 labor department are subject to the provisions regarding
16 confidentiality of information contained in the Tax
17 Administration Act; [~~and~~

18 ~~KK.~~] MM. information that the department is
19 authorized by the Tax Administration Act to release to a local
20 body that licenses professions or occupations pursuant to
21 Chapter 36, Article 2 NMSA 1978 or Chapter 61 NMSA 1978;

22 NN. to the federation of tax administrators and
23 similar organizations for use in collecting information related
24 to tax scams; and

25 OO. upon request for inspection by the public

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1 pursuant to Section 7-1-29 NMSA 1978, the department shall
2 furnish the taxpayer name, refund or credit amount, tax program
3 or business tax credit and the date the refund or credit was
4 issued; nothing in this subsection shall be construed to
5 require the release of information that would violate an
6 agreement between the state and the federal internal revenue
7 service for sharing of information or any provision or rule of
8 the federal Internal Revenue Code to which a state is subject."

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