

1 HOUSE BILL 1251

2 **48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

3 INTRODUCED BY

4 Roberto "Bobby" J. Gonzales

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10 AN ACT

11 RELATING TO TAXATION; INCREASING THE MINIMUM ASSESSMENT AMOUNT;
12 INCREASING THE CAP ON A PENALTY IMPOSED FOR FAILURE TO PAY A
13 TAX OR TO FILE A RETURN; CHANGING THE RATE OF INTEREST PAID ON
14 AN UNDERPAYMENT OR OVERPAYMENT OF A TAX; LIMITING THE RIGHT TO
15 INTEREST ON REFUNDS OF CERTAIN TAXES TO REFUNDS THAT ARE MADE
16 MORE THAN ONE HUNDRED TWENTY DAYS AFTER THE CLAIM FOR REFUND IS
17 MADE; MODIFYING THE PENALTY FOR INCORRECT REPORTING OF THE FOOD
18 OR HEALTH CARE PRACTITIONER SERVICES DEDUCTION; IMPOSING A
19 PENALTY FOR FAILURE TO FILE INFORMATION RETURNS PURSUANT TO THE
20 GASOLINE TAX ACT OR SPECIAL FUELS SUPPLIER TAX ACT; RECONCILING
21 MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2003.

22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

24 Section 1. Section 7-1-17 NMSA 1978 (being Laws 1965,
25 Chapter 248, Section 20, as amended) is amended to read:

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1 "7-1-17. ASSESSMENT OF TAX--PRESUMPTION OF CORRECTNESS.--

2 A. If the secretary or the secretary's delegate
3 determines that a taxpayer is liable for taxes in excess of
4 [~~ten dollars (\$10.00)~~] twenty-five dollars (\$25.00) that are
5 due and that have not been previously assessed to the taxpayer,
6 the secretary or the secretary's delegate shall promptly assess
7 the amount thereof to the taxpayer.

8 B. Assessments of tax are effective:

9 (1) when a return of a taxpayer is received by
10 the department showing a liability for taxes;

11 (2) when a document denominated "notice of
12 assessment of taxes", issued in the name of the secretary, is
13 mailed or delivered in person to the taxpayer against whom the
14 liability for tax is asserted, stating the nature and amount of
15 the taxes assertedly owed by the taxpayer to the state,
16 demanding of the taxpayer the immediate payment of the taxes
17 and briefly informing the taxpayer of the remedies available to
18 the taxpayer; or

19 (3) when an effective jeopardy assessment is
20 made as provided in the Tax Administration Act.

21 C. Any assessment of taxes or demand for payment
22 made by the department is presumed to be correct.

23 D. When taxes have been assessed to any taxpayer
24 and remain unpaid, the secretary or the secretary's delegate
25 may demand payment at any time except as provided otherwise by

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1 Section 7-1-19 NMSA 1978."

2 Section 2. Section 7-1-67 NMSA 1978 (being Laws 1965,
3 Chapter 248, Section 68, as amended) is amended to read:

4 "7-1-67. INTEREST ON DEFICIENCIES.--

5 A. If a tax imposed is not paid on or before the
6 day on which it becomes due, interest shall be paid to the
7 state on that amount from the first day following the day on
8 which the tax becomes due, without regard to any extension of
9 time or installment agreement, until it is paid, except that:

10 (1) for income tax imposed on a member of the
11 armed services of the United States serving in a combat zone
12 under orders of the president of the United States, interest
13 shall accrue only for the period beginning the day after any
14 applicable extended due date if the tax is not paid;

15 (2) if the amount of interest due at the time
16 payment is made is less than one dollar (\$1.00), then no
17 interest shall be due;

18 (3) if demand is made for payment of a tax,
19 including accrued interest, and if the tax is paid within ten
20 days after the date of the demand, no interest on the amount
21 paid shall be imposed for the period after the date of the
22 demand;

23 (4) if a managed audit is completed by the
24 taxpayer on or before the date required, as provided in the
25 agreement for the managed audit, and payment of any tax found

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1 to be due is made in full within thirty days of the date the
2 secretary has mailed or delivered an assessment for the tax to
3 the taxpayer, no interest shall be due on the assessed tax;

4 (5) when, as the result of an audit or a
5 managed audit, an overpayment of a tax is credited against an
6 underpayment of tax pursuant to Section 7-1-29 NMSA 1978,
7 interest shall accrue from the date the tax was due until the
8 tax is deemed paid;

9 (6) if the department does not issue an
10 assessment for the tax program and period within the time
11 provided in Subsection D of Section 7-1-11.2 NMSA 1978,
12 interest shall be paid from the first day following the day on
13 which the tax becomes due until the tax is paid, excluding the
14 period between either:

15 (a) the one hundred eightieth day after
16 giving a notice of outstanding records or books of account and
17 the date of the assessment of the tax; or

18 (b) the ninetieth day after the
19 expiration of the additional time requested by the taxpayer to
20 comply, if such request was granted, and the date of the
21 assessment of the tax; and

22 (7) if the taxpayer was not provided with
23 proper notices as required in Section 7-1-11.2 NMSA 1978,
24 interest shall be paid from the first day following the day on
25 which the tax becomes due until the tax is paid, excluding the

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1 period between one hundred eighty days prior to the date of
2 assessment and the date of assessment.

3 B. Interest due to the state under Subsection A or
4 D of this section shall be at the rate [~~of fifteen percent a~~
5 ~~year~~] established for individuals pursuant to Section 6621 of
6 the Internal Revenue Code, computed on a daily basis; provided
7 that if a different rate is specified by a compact or other
8 interstate agreement to which New Mexico is a party, that rate
9 shall be applied to amounts due under the compact or other
10 agreement.

11 C. Nothing in this section shall be construed to
12 impose interest on interest or interest on the amount of any
13 penalty.

14 D. If any tax required to be paid in accordance
15 with Section 7-1-13.1 NMSA 1978 is not paid in the manner
16 required by that section, interest shall be paid to the state
17 on the amount required to be paid in accordance with Section 7-
18 1-13.1 NMSA 1978. If interest is due under this subsection and
19 is also due under Subsection A of this section, interest shall
20 be due and collected only pursuant to Subsection A of this
21 section."

22 Section 3. Section 7-1-68 NMSA 1978 (being Laws 1965,
23 Chapter 248, Section 69, as amended by Laws 2003, Chapter 2,
24 Section 1 and by Laws 2003, Chapter 439, Section 6) is amended
25 to read:

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

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

5 B. Interest on overpayments of tax shall accrue and
6 be paid at the rate [~~of fifteen percent a year~~] established for
7 individuals pursuant to Section 6621 of the Internal Revenue
8 Code, computed on a daily basis; provided that if a different
9 rate is specified by a compact or other interstate agreement to
10 which New Mexico is a party, that rate shall apply to amounts
11 due under the compact or other agreement.

12 C. Unless otherwise provided by this section,
13 interest on an overpayment not arising from an assessment by
14 the department shall be paid from the date of the claim for
15 refund until a date preceding by not more than thirty days the
16 date of the credit or refund to any person; interest on an
17 overpayment arising from an assessment by the department shall
18 be paid from the date of overpayment until a date preceding by
19 not more than thirty days the date of the credit or refund to
20 any person.

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

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

25 (2) the credit or refund is made within:

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1 (a) fifty-five days of the date of the
2 claim for refund of income tax, pursuant to either the Income
3 Tax Act or the Corporate Income and Franchise Tax Act for the
4 tax year immediately preceding the tax year in which the claim
5 is made; [~~or~~]

6 (b) seventy-five days of the date of the
7 claim for refund of gasoline tax to users of gasoline off the
8 highways; or

9 (c) one hundred twenty days of the date
10 of the claim for refund of tax imposed pursuant to the
11 Resources Excise Tax Act, the Severance Tax Act, the Oil and
12 Gas Severance Tax Act, the Oil and Gas Conservation Tax Act,
13 the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad
14 Valorem Production Tax Act, the Natural Gas Processors Tax Act
15 or the Oil and Gas Production Equipment Ad Valorem Tax Act;

16 (3) the credit or refund is made within one
17 hundred twenty days of the date of the claim for refund of
18 income tax, pursuant to the Income Tax Act or the Corporate
19 Income and Franchise Tax Act, for any tax year more than one
20 year prior to the year in which the claim is made;

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

25 (5) the credit or refund is made within sixty

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1 days of the date of the claim for refund of any tax other than
2 income tax; [~~or~~]

3 (6) the credit results from overpayments found
4 in an audit of multiple reporting periods and applied to
5 underpayments found in that audit or refunded as a net
6 overpayment to the taxpayer pursuant to Section 7-1-29 NMSA
7 1978;

8 (7) the department applies the credit or
9 refund to an intercept program, to the taxpayer's estimated
10 payment prior to the due date for the estimated payment or to
11 offset prior liabilities of the taxpayer pursuant to Subsection
12 E of Section 7-1-29 NMSA 1978; or

13 (8) the credit or refund results from
14 overpayments the department finds pursuant to Subsection F of
15 Section 7-1-29 NMSA 1978 that exceed the refund claimed by the
16 taxpayer on the return.

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

19 Section 4. Section 7-1-69 NMSA 1978 (being Laws 1965,
20 Chapter 248, Section 70, as amended) is amended to read:

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

23 A. Except as provided in Subsection C of this
24 section, in the case of failure due to negligence or disregard
25 of department rules and regulations, but without intent to

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

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

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

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

20 B. No penalty shall be assessed against a taxpayer
21 if the failure to pay an amount of tax when due results from a
22 mistake of law made in good faith and on reasonable grounds.

23 C. If a different penalty is specified in a compact
24 or other interstate agreement to which New Mexico is a party,
25 the penalty provided in the compact or other interstate

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1 agreement shall be applied to amounts due under the compact or
2 other interstate agreement at the rate and in the manner
3 prescribed by the compact or other interstate agreement.

4 D. In the case of failure, with willful intent to
5 evade or defeat a tax, to pay when due the amount of tax
6 required to be paid, there shall be added to the amount fifty
7 percent of the tax or a minimum of twenty-five dollars
8 (\$25.00), whichever is greater, as penalty.

9 E. If demand is made for payment of a tax,
10 including penalty imposed pursuant to this section, and if the
11 tax is paid within ten days after the date of such demand, no
12 penalty shall be imposed for the period after the date of the
13 demand with respect to the amount paid.

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

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1 under this subsection.

2 G. No penalty shall be imposed on:

3 (1) tax due in excess of tax paid in
4 accordance with an approved estimated basis pursuant to Section
5 7-1-10 NMSA 1978;

6 (2) tax due as the result of a managed audit;
7 or

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

11 Section 5. Section 7-1-69.1 NMSA 1978 (being Laws 2005,
12 Chapter 109, Section 1) is amended to read:

13 "7-1-69.1. CIVIL PENALTY FOR FAILURE TO FILE AN
14 INFORMATION RETURN.--A taxpayer, wholesaler, retailer or rack
15 operator who fails to file an information return on time
16 pursuant to the Gasoline Tax Act or the Special Fuels Supplier
17 Tax Act shall pay a penalty of fifty dollars (\$50.00) for each
18 late report. This penalty shall be in addition to other
19 applicable penalties."

20 Section 6. Section 7-1-71.2 NMSA 1978 (being Laws 2004,
21 Chapter 116, Section 3) is amended to read:

22 "7-1-71.2. PENALTY FOR INCORRECT REPORTING OF FOOD
23 DEDUCTION OR HEALTH CARE PRACTITIONER SERVICES DEDUCTION.--A
24 taxpayer who claims a deduction pursuant to Section 7-9-92 or
25 7-9-93 NMSA 1978 and fails to correctly report the amount of

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1 the deduction to which the taxpayer is entitled shall pay a
2 penalty in the amount of two percent per month or any fraction
3 of a month from the date the return was required to be filed,
4 up to a maximum of twenty percent, of the difference between
5 the incorrect deduction amount and the correct deduction amount
6 multiplied by [~~twice~~] the total local option tax rates in
7 effect at the taxpayer's business location for which the
8 deduction was claimed. This penalty shall be in addition to
9 other applicable penalties, and shall not apply to a taxpayer
10 conducting a managed audit pursuant to an agreement with the
11 department."

12 Section 7. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2007.

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