

HOUSE BILL 436

53RD LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2017

INTRODUCED BY

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AN ACT

RELATING TO TAXATION; PROVIDING THAT A PERSON WHO WILLFULLY ATTEMPTS TO EVADE OR DEFEAT A TAX IS GUILTY OF A SECOND TO FOURTH DEGREE FELONY DEPENDING ON THE AMOUNT AT ISSUE; INCLUDING THE VALUE OF A FRAUDULENT REFUND CLAIM WHEN DETERMINING THE PENALTY FOR COMMITTING TAX FRAUD; INCLUDING THE VALUE OF A FRAUDULENT REFUND CLAIM FILED AS AN AMOUNT USED TO DETERMINE THE PENALTY FOR TAX FRAUD; PROVIDING WHAT CONSISTS OF THE OBSTRUCTION OR IMPEDIMENT OF THE DUE ADMINISTRATION OF THE PROVISIONS OF THE TAX ADMINISTRATION ACT; EXPANDING THE INVESTIGATIONAL DUTIES OF THE TAX FRAUD INVESTIGATIONS DIVISION OF THE TAXATION AND REVENUE DEPARTMENT; PERMITTING COMMISSIONED TAX FRAUD ENFORCEMENT OFFICERS THE AUTHORITY TO MAKE ARRESTS IN CERTAIN CIRCUMSTANCES; PROVIDING PENALTIES; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

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

2 SECTION 1. Section 7-1-72 NMSA 1978 (being Laws 1965,
3 Chapter 248, Section 73) is repealed and new Section 7-1-72
4 NMSA 1978 is enacted to read:

5 "7-1-72. [NEW MATERIAL] ATTEMPTS TO EVADE OR DEFEAT TAX--
6 PENALTIES.--

7 A. In addition to any other penalties provided by
8 law, a person who willfully attempts to evade or defeat any tax
9 or the payment thereof is guilty of the following felonies and
10 shall be sentenced pursuant to the provisions of Section
11 31-18-15 NMSA 1978:

12 (1) a fourth degree felony if the amount of
13 tax owed or at issue is over five hundred dollars (\$500) but
14 not more than two thousand five hundred dollars (\$2,500);

15 (2) a third degree felony if the amount of tax
16 owed or at issue is over two thousand five hundred dollars
17 (\$2,500) but not more than twenty thousand dollars (\$20,000);
18 or

19 (3) a second degree felony if the amount of
20 tax owed or at issue is over twenty thousand dollars (\$20,000).

21 B. In addition to the penalties provided by this
22 section, a person who commits tax fraud shall pay the costs of
23 the prosecution of the person's case."

24 SECTION 2. Section 7-1-73 NMSA 1978 (being Laws 1965,
25 Chapter 248, Section 74, as amended) is amended to read:

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1 "7-1-73. TAX FRAUD--PENALTIES.--

2 A. A person is guilty of tax fraud if the person:

3 (1) willfully makes and subscribes any return,
4 statement or other document that contains or is verified by a
5 written declaration that it is true and correct as to every
6 material matter and that the person does not believe it to be
7 true and correct as to every material matter;

8 (2) willfully assists in, willfully procures,
9 willfully advises or willfully provides counsel regarding the
10 preparation or presentation of a return, affidavit, claim or
11 other document pursuant to or in connection with any matter
12 arising under the Tax Administration Act or a tax administered
13 by the department, knowing that it is fraudulent or knowing
14 that it is false as to a material matter, whether or not that
15 fraud or falsity is with knowledge or consent of:

16 (a) the taxpayer or other person liable
17 for taxes owed on the return; or

18 (b) a person who signs a document
19 stating that the return, affidavit, claim or other document is
20 true, correct and complete to the best of that person's
21 knowledge;

22 (3) files any return electronically, knowing
23 the information in the return is not true and correct as to
24 every material matter; or

25 (4) with intent to evade or defeat the payment

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1 or collection of any tax, or, knowing that the probable
2 consequences of the person's act will be to evade or defeat the
3 payment or collection of any tax, removes, conceals or releases
4 any property on which levy is authorized or that is liable for
5 payment of tax under the provisions of Section 7-1-61 NMSA
6 1978, or aids in accomplishing or causes the accomplishment of
7 any of the foregoing.

8 B. Whoever commits tax fraud when the amount of the
9 tax owed or the value of a fraudulent refund claim filed is
10 [~~two hundred fifty dollars (\$250)~~] five hundred dollars (\$500)
11 or less, in the aggregate, is guilty of a petty misdemeanor and
12 shall be sentenced pursuant to the provisions of Section
13 31-19-1 NMSA 1978.

14 [~~G. Whoever commits tax fraud when the amount of~~
15 ~~the tax owed is over two hundred fifty dollars (\$250) but not~~
16 ~~more than five hundred dollars (\$500) is guilty of a~~
17 ~~misdemeanor and shall be sentenced pursuant to the provisions~~
18 ~~of Section 31-19-1 NMSA 1978.~~

19 ~~D.]~~ C. Whoever commits tax fraud when the amount of
20 the tax owed or the value of a fraudulent refund claim filed is
21 over five hundred dollars (\$500) but not more than two thousand
22 five hundred dollars (\$2,500), in the aggregate, is guilty of a
23 fourth degree felony and shall be sentenced pursuant to the
24 provisions of Section 31-18-15 NMSA 1978.

25 [~~E.]~~ D. Whoever commits tax fraud when the amount

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1 of the tax owed or the value of a fraudulent refund claim filed
2 is over two thousand five hundred dollars (\$2,500) but not more
3 than twenty thousand dollars (\$20,000), in the aggregate, is
4 guilty of a third degree felony and shall be sentenced pursuant
5 to the provisions of Section 31-18-15 NMSA 1978.

6 ~~[F.]~~ E. Whoever commits tax fraud when the amount
7 of the tax owed or the value of a fraudulent refund claim filed
8 is over twenty thousand dollars (\$20,000), in the aggregate, is
9 guilty of a second degree felony and shall be sentenced
10 pursuant to the provisions of Section 31-18-15 NMSA 1978.

11 ~~[G.]~~ F. In addition to the ~~[fines imposed pursuant~~
12 ~~to]~~ penalties provided by this section, a person who commits
13 tax fraud shall pay the costs of the prosecution of the
14 person's case.

15 ~~[H.]~~ G. As used in this section:

16 (1) "tax" does not include civil penalties or
17 interest; and

18 (2) "willfully" means intentionally,
19 deliberately or purposely, but not necessarily maliciously."

20 **SECTION 3.** Section 7-1-74 NMSA 1978 (being Laws 1965,
21 Chapter 248, Section 75) is amended to read:

22 "7-1-74. INTERFERENCE OR ATTEMPTS CORRUPTLY, FORCIBLY OR
23 BY THREAT TO INTERFERE WITH ADMINISTRATION OF REVENUE LAWS.--

24 A. Whoever forcibly, or by bribe, threat or other
25 corrupt practice, obstructs or impedes or attempts to obstruct

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1 or impede the due administration of the provisions of the Tax
2 Administration Act shall, upon conviction thereof, be fined not
3 less than two hundred fifty dollars (\$250) nor more than ten
4 thousand dollars (\$10,000) or imprisoned for not less than
5 three months nor more than one year, or both, together with
6 costs of prosecution.

7 B. Obstructing or impeding the due administration
8 of the provisions of the Tax Administration Act consists of:

9 (1) knowingly providing false information to
10 or knowingly withholding information from a person authorized
11 to investigate violations of the Tax Administration Act or to
12 enforce the remedies of that act, where that information is
13 material to the investigation or enforcement;

14 (2) knowingly altering, destroying, mutilating
15 or concealing a document or record required to be retained
16 pursuant to the Tax Administration Act or a regulation issued
17 by the department, when the alteration, destruction, mutilation
18 or concealment is intended to mislead an investigation by a tax
19 fraud investigations division investigator or employee and
20 concerns information material to that investigation; or

21 (3) knowingly preventing, obstructing,
22 delaying or attempting to prevent, obstruct or delay the
23 communication of information or records relating to a state
24 tax-related investigation or providing or attempting to provide
25 misleading information or records to a tax fraud investigations

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1 division investigator or employee authorized to investigate or
2 enforce the remedies of the Tax Administration Act.

3 C. Whoever commits obstructing or impeding the due
4 administration of the provisions of the Tax Administration Act
5 is guilty of a fourth degree felony and upon conviction shall
6 be sentenced pursuant to the provisions of Section 31-18-15
7 NMSA 1978."

8 SECTION 4. Section 9-11-14 NMSA 1978 (being Laws 2005,
9 Chapter 108, Section 6) is amended to read:

10 "9-11-14. POWER TO EMPLOY LAW ENFORCEMENT OFFICERS FOR
11 TAX FRAUD INVESTIGATIONS DIVISION.--

12 A. The secretary shall employ police officers as
13 commissioned tax fraud enforcement officers as needed in the
14 tax fraud investigations division of the department to:

15 (1) enforce the tax laws [~~or to~~] administered
16 by the department;

17 (2) investigate fraud and other crimes that
18 may affect the collection of taxes due to the state or that may
19 lead to tax fraud;

20 (3) investigate any crimes that could occur
21 within the department; and

22 (4) investigate any crimes under the laws
23 administered by the department, including the Motor Vehicle
24 Code.

25 B. Except as provided in Subsection C of this

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1 section, commissioned tax fraud enforcement officers shall be
2 certified as having completed basic law enforcement training at
3 the New Mexico law enforcement academy or at another recognized
4 certified regional or federal law enforcement training program
5 equivalent to or more stringent than the basic law enforcement
6 training at the New Mexico law enforcement academy.

7 C. The secretary may employ a peace officer that is
8 not certified; provided that the peace officer will become
9 certified pursuant to Subsection B of this section or by waiver
10 pursuant to Section 29-7-10 NMSA 1978 within one year of being
11 hired.

12 D. Commissioned tax fraud enforcement officers
13 shall have the authority to make arrests with a court-approved
14 warrant or if a crime within their scope of authority is
15 committed in their presence.

16 [~~G.~~] E. The secretary may require specialized
17 training in addition to the requirements of [~~Subsection B of~~]
18 this section.

19 [~~D.~~] F. The secretary shall require continuing in-
20 service law enforcement training for tax fraud enforcement
21 officers as required by the New Mexico law enforcement academy
22 for all police officers."