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SENATE BILL 410

**55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

INTRODUCED BY

William F. Burt

AN ACT

RELATING TO TAXATION; AMENDING SECTIONS OF THE TAX  
ADMINISTRATION ACT AND AMENDING AND ENACTING SECTIONS OF THE  
WITHHOLDING TAX ACT TO ADDRESS FEDERAL PARTNERSHIP AUDIT OR  
ADJUSTMENT REQUESTS RESULTING IN UNDER- OR OVER-PAYMENT OF  
CERTAIN STATE TAXES.

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

SECTION 1. Section 7-1-13 NMSA 1978 (being Laws 1965,  
Chapter 248, Section 18, as amended) is amended to read:

"7-1-13. TAXPAYER RETURNS--PAYMENT OF TAXES--EXTENSION OF  
TIME.--

A. Taxpayers are liable for tax at the time of and  
after the transaction or incident giving rise to tax until  
payment is made. Taxes are due on and after the date on which  
their payment is required until payment is made.

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1           B. Every taxpayer shall, on or before the date on  
2 which payment of any tax is due, complete and file a tax return  
3 in a form prescribed and according to the regulations issued by  
4 the secretary. Except as provided in Section 7-1-13.1 NMSA  
5 1978 or by regulation, ruling, order or instruction of the  
6 secretary, the payment of any tax or the filing of any return  
7 may be accomplished by mail. When the filing of a tax return  
8 or payment of a tax is accomplished by mail, the date of the  
9 postmark shall be considered the date of submission of the  
10 return or payment.

11           ~~[C. If any adjustment is made in the basis for~~  
12 ~~computation of any federal tax as a result of an audit by the~~  
13 ~~internal revenue service or the filing of an amended federal~~  
14 ~~return changing a prior election or making any other change for~~  
15 ~~which federal approval is required by the Internal Revenue~~  
16 ~~Code, the taxpayer affected shall, within one hundred eighty~~  
17 ~~days of final determination of the adjustment, file an amended~~  
18 ~~return with the department. Payment of any additional tax due~~  
19 ~~shall accompany the return.~~

20           D.] C. Payment of the total amount of all taxes  
21 that are due from the taxpayer shall precede or accompany the  
22 return. Delivery to the department of a check that is not paid  
23 upon presentment does not constitute payment.

24           ~~[E.]~~ D. The secretary or the secretary's delegate  
25 may, for good cause, extend in favor of a taxpayer or a class

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1 of taxpayers, for no more than a total of twelve months, the  
2 date on which payment of any tax is required or on which any  
3 return required by provision of the Tax Administration Act  
4 shall be filed, but no extension shall prevent the accrual of  
5 interest as otherwise provided by law. When an extension of  
6 time for income tax has been granted a taxpayer ~~[under]~~  
7 pursuant to the Internal Revenue Code, the extension shall  
8 serve to extend the time for filing New Mexico income tax;  
9 provided that a copy of the approved federal extension of time  
10 is attached to the taxpayer's New Mexico income tax return.  
11 The secretary by regulation may also provide for the automatic  
12 extension for no more than six months of the date upon which  
13 payment of any New Mexico income tax or the filing of any New  
14 Mexico income tax return is required. If the secretary or the  
15 secretary's delegate believes it necessary to ensure the  
16 collection of the tax, the secretary or the secretary's  
17 delegate may require, as a condition of granting any extension,  
18 that the taxpayer furnish security in accordance with the  
19 provisions of Section 7-1-54 NMSA 1978.

20 ~~[F. As used in this section, "final determination"~~  
21 ~~means:~~

22 ~~(1) the taxpayer has:~~

23 ~~(a) made payment on any additional~~  
24 ~~income tax liability resulting from the federal audit; and~~

25 ~~(b) not filed a petition for~~

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1 ~~redetermination or claim for refund for the portions of the~~  
2 ~~audit on which payment was made;~~

3 ~~(2) the taxpayer has received a refund from~~  
4 ~~the United States department of the treasury resulting from the~~  
5 ~~federal audit;~~

6 ~~(3) the taxpayer has signed federal form 870~~  
7 ~~or other internal revenue service form consenting to the~~  
8 ~~deficiency or accepting any overassessment;~~

9 ~~(4) the taxpayer's time period for filing a~~  
10 ~~federal petition for redetermination to the United States tax~~  
11 ~~court has expired;~~

12 ~~(5) the taxpayer enters into a closing~~  
13 ~~agreement with the internal revenue service as provided in~~  
14 ~~Section 7121 of the Internal Revenue Code; or~~

15 ~~(6) a decision from the United States tax~~  
16 ~~court, United States district court, United States court of~~  
17 ~~appeals, United States court of claims or United States supreme~~  
18 ~~court becomes final.]~~

19 E. Except as provided in Subsection F of this  
20 section, no later than one hundred eighty days after the final  
21 determination date, a taxpayer shall file a federal adjustments  
22 report with the department and pay any state tax due with  
23 respect to final net-positive federal adjustments arising from:

24 (1) an audit or other action by the internal  
25 revenue service; or

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1                   (2) a timely filed amended federal income tax  
2 return, including a return or other similar information filed  
3 pursuant to Section 6225(c)(2) of the Internal Revenue Code.

4                   F. Except for federal adjustments that are required  
5 to be reported pursuant to Subsection E of this section,  
6 partnerships and partners shall report final net-positive  
7 federal adjustments arising from a partnership level audit or  
8 an administrative adjustment request and make payments as  
9 follows:

10                   (1) except for where the partnership or tiered  
11 partner makes an election pursuant to Subsection G of this  
12 section, the partnership or tiered partner shall:

13                   (a) file: 1) a completed federal  
14 adjustments report and notify each of its direct partners of  
15 their distributive share of the final federal adjustments,  
16 including information necessary for reporting state tax due as  
17 required by the department; and 2) an amended withholding  
18 return for the reviewed year if such return was filed, or would  
19 have been required pursuant to the Withholding Tax Act;

20                   (b) in the case of an audited  
21 partnership, file the returns required by this paragraph no  
22 later than ninety days after the final determination date; and

23                   (c) in the case of a tiered partner of  
24 an audited partnership, file the returns required by this  
25 paragraph no later than ninety days after the time for the

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1 audited partnership's filing and furnishing statements to  
2 tiered partnerships and their partners as established pursuant  
3 to Section 6226 of the Internal Revenue Code and the  
4 regulations thereunder; and

5 (2) a partner of a partnership or a tiered  
6 partner subject to tax pursuant to Section 7-2-3 or 7-2A-3 NMSA  
7 1978 on adjustments to which Paragraph (1) of this subsection  
8 applies shall file a federal adjustments report reporting the  
9 partner's distributive share of the adjustments and shall pay  
10 the additional amount of state tax due, plus any penalty and  
11 interest due and less any credit for related amounts paid or  
12 withheld and remitted on behalf of the partner pursuant to  
13 Paragraph (1) of this subsection as follows:

14 (a) for taxable direct partners of the  
15 audited partnership, no later than one hundred eighty days  
16 after the final determination date; or

17 (b) for taxable indirect partners of the  
18 audited partnership, no later than one hundred eighty days  
19 after the time for the audited partnership's filing and  
20 furnishing statements to tiered partnerships and their partners  
21 as established pursuant to Section 6226 of the Internal Revenue  
22 Code and the regulations thereunder.

23 G. The election provided by this subsection applies  
24 only to federal adjustments other than the distributive share  
25 of federal adjustments that must be included in the unitary

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1 business income of any direct or indirect corporate partner;  
2 provided that this can be reasonably determined, or federal  
3 adjustments resulting from an administrative adjustment  
4 request. A partnership making an election pursuant to this  
5 subsection shall:

6 (1) file a completed federal adjustments  
7 report and notify the department that it is making the election  
8 pursuant to this subsection; and

9 (2) pay an amount, determined as follows, in  
10 lieu of taxes owed by its direct and indirect taxable partners:

11 (a) exclude from the total final federal  
12 adjustments the distributive share reported to a direct partner  
13 that is an exempt partner unless the adjustment represents  
14 unrelated business taxable income;

15 (b) include only the portion of the  
16 total federal adjustment to distributive shares of partners  
17 taken into account pursuant to Section 6225(b)(2) of the  
18 Internal Revenue Code;

19 (c) apportion and allocate the  
20 adjustments as provided by the Uniform Division of Income for  
21 Tax Purposes Act as applied at the partnership level following  
22 any department regulations adopted for this purpose;

23 (d) multiply the resulting amount by the  
24 highest tax rate provided by Section 7-2A-5 NMSA 1978; and

25 (e) add to the amount calculated

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1 pursuant to Subparagraph (d) of this paragraph an amount of  
2 penalty and interest computed pursuant to the Tax  
3 Administration Act.

4 H. In any action required or allowed to be taken  
5 pursuant to the Tax Administration Act with respect to the  
6 reporting of federal adjustments by a partnership, the state  
7 partnership representative for the reviewed year shall have the  
8 sole authority to act on behalf of the partnership, and the  
9 partnership's direct partners and indirect partners shall be  
10 bound by those actions. The state partnership representative  
11 is the partnership's federal partnership representative for the  
12 reviewed year, unless the partnership designates in writing  
13 another person as its state partnership representative;  
14 provided that the person meets any qualifications established  
15 by the department.

16 I. Pursuant to procedures that may be adopted by  
17 the department, an audited partnership or tiered partner of  
18 that partnership may enter into an agreement with the  
19 department to utilize an alternative reporting and payment  
20 method, including applicable time requirements or any other  
21 provision pursuant to Subsections E through H of this section,  
22 if the audited partnership or tiered partner demonstrates that  
23 the requested method will reasonably provide for the reporting  
24 and payment of taxes, penalties and interest due pursuant to  
25 Subsections E through H of this section. Application for

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1 approval of an alternative reporting and payment method must be  
2 made by the audited partnership or tiered partner within the  
3 time for election as provided in Subsection G of this section,  
4 as appropriate.

5 J. An election made pursuant to Subsection G or I  
6 of this section is irrevocable, unless the department, in its  
7 discretion, determines otherwise. If properly reported and  
8 paid by the audited partnership or tiered partner, the amount  
9 determined in Paragraph (2) of Subsection G of this section, or  
10 similarly under an optional election pursuant to Subsection I  
11 of this section, will be treated as paid in lieu of taxes owed  
12 by its direct and indirect partners on the same final federal  
13 adjustments. The direct or indirect partners of the  
14 partnership that pays this in lieu of amount may not claim any  
15 deduction, credit or refund with respect to that amount.

16 K. A taxpayer may make estimated payments of state  
17 tax expected to result from a pending audit by the internal  
18 revenue service prior to the final determination date,  
19 following the process prescribed by the department, and such  
20 payments will limit the accrual of further statutory interest  
21 on that amount.

22 L. A taxpayer may claim an amount of state tax  
23 resulting from final net-negative federal adjustments as  
24 provided in Section 7-1-26 NMSA 1978.

25 M. Nothing in Subsections E through L of this

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1 section shall prevent the department from assessing direct  
2 partners or indirect partners for taxes they owe, using the  
3 best information available, in the event that a partnership or  
4 tiered partner fails to timely make any report or payment  
5 required for any reason.

6 N. As used in this section:

7 (1) "administrative adjustment request" means  
8 an administrative adjustment request filed by a partnership  
9 pursuant to Section 6227 of the Internal Revenue Code;

10 (2) "audited partnership" means a partnership  
11 subject to a partnership level audit resulting in a federal  
12 adjustment;

13 (3) "corporate partner" means a partner,  
14 direct or indirect, that is subject to tax pursuant to the  
15 Corporate Income and Franchise Tax Act;

16 (4) "direct partner" means any partner that  
17 holds an interest directly in a partnership or pass-through  
18 entity;

19 (5) "exempt partner" means a partner, direct  
20 or indirect, that is exempt from New Mexico income tax except  
21 on unrelated business taxable income;

22 (6) "federal adjustment" means a change to an  
23 item or amount determined pursuant to the Internal Revenue Code  
24 that is used by a taxpayer to compute an amount of state tax  
25 owed, whether that change results from action by the internal

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1 revenue service, including a partnership level audit, or the  
2 filing of an amended federal return, federal refund claim or an  
3 administrative adjustment request by a partnership;

4 (7) "federal adjustments report" includes the  
5 methods or forms required by the department for use by a  
6 taxpayer to report final federal adjustments, including an  
7 amended tax return, information return or a uniform multistate  
8 report;

9 (8) "final determination date" means:

10 (a) except as provided in Subparagraphs  
11 (b), (c) and (d) of this paragraph, if a federal adjustment  
12 arises from an audit or other action by the internal revenue  
13 service, the final determination date is the first day on which  
14 no federal adjustments arising from that audit or other action  
15 remain to be finally determined, whether by a decision of the  
16 internal revenue service with respect to which all rights of  
17 appeal have been waived or exhausted, by agreement, or, if  
18 appealed or contested, by a final decision with respect to  
19 which all rights of appeal have been waived or exhausted. For  
20 agreements required to be signed by the internal revenue  
21 service and the taxpayer, the final determination date is the  
22 date on which the last party signed the agreement;

23 (b) for federal adjustments arising from  
24 an internal revenue service audit or other action by the  
25 internal revenue service, if the taxpayer filed as a member of

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1 a filing group pursuant to the Corporate Income and Franchise  
2 Tax Act, the final determination date means the first day on  
3 which no related federal adjustments arising from that audit  
4 remain to be finally determined, as described in Subparagraph  
5 (a) of this paragraph, for the entire group;

6 (c) except as provided in Subparagraph  
7 (d) of this paragraph, if the federal adjustment results from  
8 filing an amended federal return, a federal refund claim or an  
9 administrative adjustment request, or if it is a federal  
10 adjustment reported on an amended federal return or other  
11 similar report filed pursuant to Section 6225(c) of the  
12 Internal Revenue Code, the final determination date means the  
13 day on which the amended return, refund claim, administrative  
14 adjustment request or other similar report was filed; and

15 (d) for adjustments resulting from a  
16 partnership level audit or an administrative adjustment request  
17 for which the final determination date pursuant to Subparagraph  
18 (a) or (c) of this paragraph is determined to be a date  
19 occurring prior to the effective date of this 2021 act, the  
20 final determination date shall be July 1, 2021;

21 (9) "final federal adjustments" means  
22 adjustments for which the final determination date has passed,  
23 including final net-positive federal adjustments and final  
24 net-negative federal adjustments;

25 (10) "indirect partner" means a partner in a

1 partnership or pass-through entity in which the partner holds  
2 an interest directly, or through another indirect partner, in a  
3 partnership or pass-through entity;

4 (11) "net-negative federal adjustments" means  
5 federal adjustments relating to the same tax period, whether  
6 made by the taxpayer or the internal revenue service, the net  
7 effect of which is to decrease state tax due as compared to tax  
8 originally reported for that period;

9 (12) "net-positive federal adjustments" means  
10 federal adjustments relating to the same tax period, whether  
11 made by the taxpayer or the internal revenue service, the net  
12 effect of which is to increase state tax due as compared to tax  
13 originally reported for that period;

14 (13) "partner" means a person that holds an  
15 interest directly or indirectly in a partnership or other  
16 pass-through entity;

17 (14) "partnership" means an entity subject to  
18 taxation pursuant to Subchapter K of the Internal Revenue Code;

19 (15) "partnership level audit" means an  
20 examination by the internal revenue service at the partnership  
21 level pursuant to Subchapter C or Subtitle F, Chapter 63 of the  
22 Internal Revenue Code which results in federal adjustments;

23 (16) "pass-through entity" means an entity,  
24 other than a partnership, that is not subject to tax pursuant  
25 to the Corporate Income and Franchise Tax Act;

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1                   (17) "reviewed year" means the taxable year of  
2 a partnership that is subject to a partnership level audit from  
3 which federal adjustments arise;

4                   (18) "taxpayer" means a taxpayer, including a  
5 partnership subject to a partnership level audit or a  
6 partnership that has made an administrative adjustment request,  
7 as well as a tiered partner of that partnership, unless the  
8 context indicates otherwise;

9                   (19) "tiered partner" means any partner that  
10 is a partnership or pass-through entity; and

11                   (20) "unrelated business taxable income" means  
12 "unrelated business taxable income" as used in Section 512 of  
13 the Internal Revenue Code."

14                   SECTION 2. Section 7-1-18 NMSA 1978 (being Laws 1965,  
15 Chapter 248, Section 21, as amended) is amended to read:

16                   "7-1-18. LIMITATION ON ASSESSMENT BY DEPARTMENT.--

17                   A. Except as otherwise provided in this section, no  
18 assessment of tax may be made by the department after three  
19 years from the end of the calendar year in which payment of the  
20 tax was due, and no proceeding in court for the collection of  
21 such tax without the prior assessment thereof shall be begun  
22 after the expiration of such period.

23                   B. In case of a false or fraudulent return made by  
24 a taxpayer with intent to evade tax, the amount thereof may be  
25 assessed at any time within ten years from the end of the

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1 calendar year in which the tax was due, and no proceeding in  
2 court for the collection of such tax without the prior  
3 assessment thereof shall be begun after the expiration of such  
4 period.

5 C. In case of the failure by a taxpayer to complete  
6 and file any required return, the tax relating to the period  
7 for which the return was required may be assessed at any time  
8 within seven years from the end of the calendar year in which  
9 the tax was due, and no proceeding in court for the collection  
10 of such tax without the prior assessment thereof shall be begun  
11 after the expiration of such period.

12 D. If a taxpayer in a return understates by more  
13 than twenty-five percent the amount of liability for any tax  
14 for the period to which the return relates, appropriate  
15 assessments may be made by the department at any time within  
16 six years from the end of the calendar year in which payment of  
17 the tax was due.

18 E. If any adjustment in the basis for computation  
19 of any federal tax is made as a result of an audit by the  
20 internal revenue service or the filing of an amended federal  
21 return or administrative adjustment request changing a prior  
22 election or making any other change for which federal approval  
23 is required by the Internal Revenue Code that results in  
24 liability for any tax, the amount thereof may be assessed at  
25 any time, but not after three years from the end of the

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1 calendar year in which filing of ~~[an amended return]~~ a federal  
2 adjustments report is required by ~~[Subsection G]~~ Subsections E  
3 through J of Section 7-1-13 NMSA 1978.

4 F. If the taxpayer has signed a waiver of the  
5 limitations on assessment imposed by this section, an  
6 assessment of tax may be made or a proceeding in court begun  
7 without regard to the time at which payment of the tax was due.

8 G. As used in this section:

9 (1) "administrative adjustment request" means  
10 "administrative adjustment request" as used in Section 7-1-13  
11 NMSA 1978; and

12 (2) "federal adjustments report" means  
13 "federal adjustments report" as used in Section 7-1-13 NMSA  
14 1978."

15 SECTION 3. Section 7-1-26 NMSA 1978 (being Laws 1965,  
16 Chapter 248, Section 28, as amended) is amended to read:

17 "7-1-26. DISPUTING LIABILITIES--CLAIM FOR CREDIT, REBATE  
18 OR REFUND.--

19 A. A person who believes that an amount of tax has  
20 been paid by or withheld from that person in excess of that for  
21 which the person was liable, who has been denied a credit or  
22 rebate claimed or who claims a prior right to property in the  
23 possession of the department pursuant to a levy made ~~[under]~~  
24 pursuant to the authority of Sections 7-1-31 through 7-1-34  
25 NMSA 1978 may claim a refund by directing to the secretary,

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1 within the time limitations provided by Subsections F and G of  
2 this section, a written claim for refund that, except as  
3 provided in Subsection K of this section, includes:

4 (1) the taxpayer's name, address and  
5 identification number;

6 (2) the type of tax for which a refund is  
7 being claimed, the credit or rebate denied or the property  
8 levied upon;

9 (3) the sum of money or other property being  
10 claimed;

11 (4) with respect to a refund, the period for  
12 which overpayment was made;

13 (5) a brief statement of the facts and the law  
14 on which the claim is based, which may be referred to as the  
15 "basis for the refund", which may include documentation that  
16 substantiates the written claim and supports the taxpayer's  
17 basis for the refund; and

18 (6) if applicable, a copy of an amended return  
19 for each tax period for which the refund is claimed.

20 B. A claim for refund that meets the requirements  
21 of Subsection A of this section and that is filed within the  
22 time limitations provided by Subsections F and G of this  
23 section is deemed to be properly before the department for  
24 consideration, regardless of whether the department requests  
25 additional documentation after receipt of the claim for refund.

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1           C. If the department requests additional relevant  
2 documentation from a taxpayer who has submitted a claim for  
3 refund, the claim for refund shall not be considered incomplete  
4 provided the taxpayer submits sufficient information for the  
5 department to make a determination.

6           D. The secretary or the secretary's delegate may  
7 allow the claim in whole or in part or may deny the claim. If  
8 the:

9                   (1) claim is denied in whole or in part in  
10 writing, the person shall not refile the denied claim, but the  
11 person, within ninety days after either the mailing or delivery  
12 of the denial of all or any part of the claim, may elect to  
13 pursue only one of the remedies provided in Subsection E of  
14 this section; and

15                   (2) department has neither granted nor denied  
16 any portion of a complete claim for refund within one hundred  
17 eighty days after the claim was mailed or otherwise delivered  
18 to the department, the person may elect to treat the claim as  
19 denied and elect to pursue only one of the remedies provided in  
20 Subsection E of this section.

21           E. A person may elect to pursue only one of the  
22 remedies provided in this subsection. A person who timely  
23 pursues more than one remedy is deemed to have elected the  
24 first. The person may:

25                   (1) direct to the secretary, pursuant to the

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1 provisions of Section 7-1-24 NMSA 1978, a written protest that  
2 sets forth:

3 (a) the circumstances of: 1) an alleged  
4 overpayment; 2) a denied credit; 3) a denied rebate; or 4) a  
5 denial of a prior right to property levied upon by the  
6 department;

7 (b) an allegation that, because of that  
8 overpayment or denial, the state is indebted to the taxpayer  
9 for a specified amount, including any allowed interest, or for  
10 the property;

11 (c) a demand for the refund to the  
12 taxpayer of that amount or that property; and

13 (d) a recitation of the facts of the  
14 claim for refund; or

15 (2) commence a civil action in the district  
16 court for Santa Fe county by filing a complaint setting forth  
17 the circumstance of the claimed overpayment, denied credit or  
18 rebate or denial of a prior right to property levied upon by  
19 the department alleging that on account thereof the state is  
20 indebted to the plaintiff in the amount or property stated,  
21 together with any interest allowable, demanding the refund to  
22 the plaintiff of that amount or property and reciting the facts  
23 of the claim for refund. The plaintiff or the secretary may  
24 appeal from any final decision or order of the district court  
25 to the court of appeals.

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1 F. Except as otherwise provided in Subsection G of  
2 this section, a credit or refund of any amount of overpaid tax,  
3 penalty or interest may be allowed or made to a person if a  
4 claim is properly filed:

5 (1) only within three years after the end of  
6 the calendar year in which the applicable event occurs:

7 (a) [~~the payment was originally due or~~  
8 ~~the overpayment resulted from an assessment by the department~~  
9 ~~as provided in Section 7-1-17 NMSA 1978, whichever is later] in  
10 the case of tax paid with an original or amended state return,  
11 the date the related tax was originally due;~~

12 (b) in the case of tax paid in response  
13 to an assessment by the department pursuant to Section 7-1-17  
14 NMSA 1978, the date the assessment was made;

15 (c) in the case of tax with respect to  
16 which a net-negative federal adjustment, as that term is used  
17 in Section 7-1-13 NMSA 1978, relates, the final determination  
18 date of that federal adjustment, as provided in Section 7-1-13  
19 NMSA 1978;

20 [~~(b)~~] (d) the final determination of  
21 value occurs with respect to any overpayment that resulted from  
22 a disapproval by any agency of the United States or the state  
23 of New Mexico or any court of increase in value of a product  
24 subject to taxation [~~under~~] pursuant to the Oil and Gas  
25 Severance Tax Act, the Oil and Gas Conservation Tax Act, the

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1 Oil and Gas Emergency School Tax Act, the Oil and Gas Ad  
2 Valorem Production Tax Act or the Natural Gas Processors Tax  
3 Act; or

4 ~~[(e)]~~ (e) in the case of a claim related  
5 to property taken by levy, the date the property was levied  
6 upon as provided in the Tax Administration Act; ~~[or~~

7 ~~(d) an overpayment of New Mexico tax~~  
8 ~~resulted from: 1) an internal revenue service audit adjustment~~  
9 ~~or a federal refund paid due to an adjustment of an audit by~~  
10 ~~the internal revenue service or an amended federal return; or~~  
11 ~~2) the amendment to a federal return for which federal approval~~  
12 ~~is required by the Internal Revenue Code;]~~

13 (2) in the case of a denial of a claim for  
14 credit ~~[under]~~ pursuant to the Investment Credit Act,  
15 Laboratory Partnership with Small Business Tax Credit Act or  
16 Technology Jobs and Research and Development Tax Credit Act or  
17 for the rural job tax credit provided by Section 7-2E-1.1 NMSA  
18 1978 or similar credit, only within one year after the date of  
19 the denial;

20 (3) in the case of a taxpayer under audit by  
21 the department who has signed a waiver of the limitation on  
22 assessments on or after July 1, 1993 pursuant to Subsection F  
23 of Section 7-1-18 NMSA 1978, only for a refund of the same tax  
24 paid for the same period for which the waiver was given, and  
25 only until a date one year after the later of the date of the

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1 mailing of an assessment issued pursuant to the audit, the date  
2 of the mailing of final audit findings to the taxpayer or the  
3 date a proceeding is begun in court by the department with  
4 respect to the same tax and the same period;

5 (4) in the case of a payment of an amount of  
6 tax not made within three years of the end of the calendar year  
7 in which the original due date of the tax or date of the  
8 assessment of the department occurred, only for a claim for  
9 refund of that amount of tax and only within one year of the  
10 date on which the tax was paid; or

11 (5) in the case of a taxpayer who has been  
12 assessed a tax on or after July 1, 1993 ~~[under]~~ pursuant to  
13 Subsection B, C or D of Section 7-1-18 NMSA 1978 and an  
14 assessment that applies to a period ending at least three years  
15 prior to the beginning of the year in which the assessment was  
16 made, only for a refund for the same tax for the period of the  
17 assessment or for any period following that period within one  
18 year of the date of the assessment unless a longer period for  
19 claiming a refund is provided in this section.

20 G. No credit or refund shall be allowed or made to  
21 a person claiming a refund of gasoline tax ~~[under]~~ pursuant to  
22 Section 7-13-11 NMSA 1978 unless notice of the destruction of  
23 the gasoline was given to the department within thirty days of  
24 the actual destruction and the claim for refund is made within  
25 six months of the date of destruction. No credit or refund

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1 shall be allowed or made to a person claiming a refund of  
2 gasoline tax ~~[under]~~ pursuant to Section 7-13-17 NMSA 1978  
3 unless the refund is claimed within six months of the date of  
4 purchase of the gasoline and the gasoline has been used at the  
5 time the claim for refund is made.

6 H. If, as a result of an audit by the department or  
7 a managed audit covering multiple periods, an overpayment of  
8 tax is found in any period under the audit and if the taxpayer  
9 files a claim for refund for the overpayments identified in the  
10 audit, that overpayment may be credited against an underpayment  
11 of the same tax found in another period under audit pursuant to  
12 Section 7-1-29 NMSA 1978.

13 I. A refund of tax paid under any tax or tax act  
14 administered ~~[under]~~ pursuant to Subsection B of Section 7-1-2  
15 NMSA 1978 may be made, at the discretion of the department, in  
16 the form of credit against future tax payments if future tax  
17 liabilities in an amount at least equal to the credit amount  
18 reasonably may be expected to become due.

19 J. For the purposes of this section, "oil and gas  
20 tax return" means a return reporting tax due with respect to  
21 oil, natural gas, liquid hydrocarbons, carbon dioxide, helium  
22 or nonhydrocarbon gas pursuant to the Oil and Gas Severance Tax  
23 Act, the Oil and Gas Conservation Tax Act, the Oil and Gas  
24 Emergency School Tax Act, the Oil and Gas Ad Valorem Production  
25 Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas

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1 Production Equipment Ad Valorem Tax Act.

2 K. The filing of a fully completed original income  
3 tax return, corporate income tax return, corporate income and  
4 franchise tax return, estate tax return or special fuel excise  
5 tax return that shows a balance due the taxpayer or a fully  
6 completed amended income tax return, an amended corporate  
7 income tax return, an amended corporate income and franchise  
8 tax return, an amended estate tax return, an amended special  
9 fuel excise tax return or an amended oil and gas tax return  
10 that shows a lesser tax liability than the original return  
11 constitutes the filing of a claim for refund for the difference  
12 in tax due shown on the original and amended returns.

13 L. In no case may a credit or refund be claimed if  
14 the related federal adjustment is taken into account by a  
15 partnership in the partnership's tax return for the adjustment  
16 year and allocated to the partners in a manner similar to other  
17 partnership tax items."

18 SECTION 4. Section 7-1-29 NMSA 1978 (being Laws 1965,  
19 Chapter 248, Section 31, as amended) is amended to read:

20 "7-1-29. AUTHORITY TO MAKE REFUNDS OR CREDITS.--

21 A. In response to a claim for refund, credit or  
22 rebate made as provided in Section 7-1-26 NMSA 1978, but before  
23 a court acquires jurisdiction of the matter, the secretary or  
24 the secretary's delegate may authorize payment to a person in  
25 the amount of the credit or rebate claimed or refund an

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1 overpayment of tax determined by the secretary or the  
2 secretary's delegate to have been erroneously made by the  
3 person, together with allowable interest. A payment of a  
4 credit rebate claimed or a refund of tax and interest  
5 erroneously paid amounting to twenty thousand dollars (\$20,000)  
6 or more shall be made with the prior approval of the attorney  
7 general, except that the secretary or the secretary's delegate  
8 may make refunds with respect to the Oil and Gas Severance Tax  
9 Act, the Oil and Gas Conservation Tax Act, the Oil and Gas  
10 Emergency School Tax Act, the Oil and Gas Ad Valorem Production  
11 Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas  
12 Production Equipment Ad Valorem Tax Act, Section 7-13-17 NMSA  
13 1978 and the Cigarette Tax Act without the prior approval of  
14 the attorney general regardless of the amount.

15 B. Pursuant to the final order of the district  
16 court, the court of appeals, the supreme court of New Mexico or  
17 a federal court, from which order, appeal or review is not  
18 successfully taken, adjudging that a person has properly  
19 claimed a credit, ~~[or]~~ rebate or ~~[made an overpayment of]~~ a  
20 refund of overpaid tax, the secretary shall authorize the  
21 payment to the person of the amount thereof. After a court  
22 acquires jurisdiction but before it issues a final order, the  
23 secretary may authorize payment of a credit, rebate or refund  
24 pursuant to a closing agreement pursuant to Section 7-1-20 NMSA  
25 1978.

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1           C. In the discretion of the secretary, any amount  
2 of credit or rebate to be paid or tax to be refunded may be  
3 offset against any amount of tax for which the person due to  
4 receive the credit, rebate payment or refund is liable. The  
5 secretary or the secretary's delegate shall give notice to the  
6 taxpayer that the credit, rebate payment or refund will be made  
7 in this manner, and the taxpayer shall be entitled to interest  
8 pursuant to Section 7-1-68 NMSA 1978 until the tax liability is  
9 credited with the credit, rebate or refund amount.

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

25           E. When a taxpayer makes a payment identified to a

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1 particular return or assessment, and the department determines  
2 that the payment exceeds the amount due pursuant to that return  
3 or assessment, the secretary may apply the excess to the  
4 taxpayer's other liabilities pursuant to the tax acts to which  
5 the return or assessment applies, without requiring the  
6 taxpayer to file a claim for a refund. The liability to which  
7 an overpayment is applied pursuant to this section shall be  
8 deemed paid in the period in which the overpayment was made or  
9 the period to which the overpayment was applied, whichever is  
10 later.

11 F. If the department determines, upon review of an  
12 original or amended income tax return, corporate income and  
13 franchise tax return, estate tax return, special fuels excise  
14 tax return or oil and gas tax return, that there has been an  
15 overpayment of tax for the taxable period to which the return  
16 or amended return relates in excess of the amount due to be  
17 refunded to the taxpayer pursuant to the provisions of  
18 Subsection K of Section 7-1-26 NMSA 1978, the department may  
19 refund that excess amount to the taxpayer without requiring the  
20 taxpayer to file a refund claim.

21 G. Records of refunds and credits made in excess of  
22 ten thousand dollars (\$10,000) shall be available for  
23 inspection by the public. The department shall keep such  
24 records for a minimum of three years from the date of the  
25 refund or credit.

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1           H. In response to a timely refund claim pursuant to  
2 Section 7-1-26 NMSA 1978 and notwithstanding any other  
3 provision of the Tax Administration Act, the secretary or the  
4 secretary's delegate may refund or credit a portion of an  
5 assessment of tax paid, including applicable penalties and  
6 interest representing the amount of tax previously paid by  
7 another person on behalf of the taxpayer on the same  
8 transaction; provided that the requirements of equitable  
9 recoupment are met. For purposes of this subsection, the  
10 refund claim may be filed by the taxpayer to whom the  
11 assessment was issued or by another person who claims to have  
12 previously paid the tax on behalf of the taxpayer. Prior to  
13 granting the refund or credit, the secretary may require a  
14 waiver of all rights to claim a refund or credit of the tax  
15 previously paid by another person paying a tax on behalf of the  
16 taxpayer.

17           I. If, as a result of an audit by the department or  
18 a managed audit, a person is determined to owe gross receipts  
19 tax on receipts from the sale of property or services, the  
20 department may credit against the amount owed an amount of  
21 compensating tax paid by the purchaser if the person can  
22 demonstrate that the purchaser timely paid the compensating tax  
23 on the same property or services. The credit provided by this  
24 subsection shall not be denied solely because the purchaser  
25 cannot timely file for a refund of the compensating tax paid

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1 and, if the credit is to be granted, the department shall  
2 require, for the purpose of granting the credit, that the  
3 purchaser give up any right to claim a refund of that tax."

4 SECTION 5. A new section of the Withholding Tax Act is  
5 enacted to read:

6 "[NEW MATERIAL] COMPOSITE RETURNS.--

7 A. A pass-through entity may file a composite  
8 income tax return on behalf of electing nonresident members  
9 reporting and paying income tax at the highest marginal rate  
10 provided in Section 7-2A-5 NMSA 1978 on the members' pro rata  
11 or distributive shares of income of the pass-through entity  
12 from doing business in, or deriving income from sources within,  
13 this state.

14 B. A nonresident member whose only source of income  
15 within a state is from one or more pass-through entities may  
16 elect to be included in a composite income tax return filed  
17 pursuant to this section.

18 C. A nonresident member that has been included in a  
19 composite income tax return may file an individual income tax  
20 return and shall receive credit for tax paid on the member's  
21 behalf by the pass-through entity.

22 D. As used in this section:

23 (1) "pass-through entity" means a corporation  
24 that for the applicable tax year is treated as an S corporation  
25 pursuant to Section 1362(a) of the Internal Revenue Code and

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1 any entity with one or more members that is not taxed as a  
2 corporation pursuant to Subchapter C of the Internal Revenue  
3 Code;

4 (2) "member" means a shareholder of an S  
5 corporation; a partner in a general partnership, a limited  
6 partnership or a limited liability partnership; a member of a  
7 limited liability company; or a beneficiary of a trust; and

8 (3) "nonresident" means an individual who is  
9 not a resident of or domiciled in the state, a business entity  
10 that does not have its commercial domicile in the state or a  
11 trust not organized in the state."

12 SECTION 6. APPLICABILITY.--The provisions of Sections 1  
13 and 5 of this act apply to federal adjustments with a final  
14 determination date occurring on and after January 1, 2021.

15 SECTION 7. EFFECTIVE DATE.--The effective date of the  
16 provisions of this act is July 1, 2021.