

TP Bill of rights items

1) Strengthen requirement that department adequately inform taxpayers of the basis for assessments, denials of refunds, etc. See also proposed amendment to 7-1-17 (Subsection E).

“7-1-4.2. NEW MEXICO TAXPAYER BILL OF RIGHTS.--The rights afforded New Mexico taxpayers during the assessment, collection and enforcement of any tax administered by the department as set forth in the Tax Administration Act include:

A. the right to available public information and prompt and courteous tax assistance;

B. the right to be represented or advised by counsel or other qualified representatives at any time in administrative interactions with the department in accordance with the provisions of Section 7-1-24 NMSA 1978 or the administrative hearings office in accordance with the provisions of the Administrative Hearings Office Act;

C. the right to have audits, inspections of records and meetings conducted at a reasonable time and place in accordance with the provisions of Section 7-1-11 NMSA 1978;

D. the right to have the department conduct its audits in a timely and expeditious manner and be entitled to the tolling of interest as provided in the Tax Administration Act;

E. the right to obtain nontechnical information that explains the procedures, remedies and rights available during audit, protest, appeals and collection proceedings pursuant to the Tax Administration Act;

F. the right to be provided with ~~[an]~~ a written explanation of the results of ~~[and the basis for]~~ audits, assessments or denials of refunds or credits that both include the specific statutory, regulatory, administrative or judicial bases for the department's determination and identify any amount and type of tax, interest or penalty [due] that results from the department's determination;

G. the right to seek review, through formal or informal proceedings, of any findings or adverse decisions relating to determinations during audit or protest procedures in accordance with the provisions of Section 7-1-24 NMSA 1978 and the Administrative Hearings Office Act;

H. the right to have the taxpayer's tax information kept confidential unless otherwise specified by law, in accordance with Sections 7-1-8 through 7-1-8.11 NMSA 1978;

I. the right to abatement of an assessment of taxes determined to have been incorrectly, erroneously or illegally made, as provided in Section 7-1-28 NMSA 1978 and the right to seek a compromise of an asserted tax liability by obtaining a written determination of liability or nonliability when the secretary in good faith is in doubt of the liability as provided in Section 7-1-20 NMSA 1978;

J. upon receipt of a tax assessment, the right to be informed clearly that if the assessment is not paid, secured, protested or otherwise provided for in accordance with the provisions of Section 7-1-16 NMSA 1978, the taxpayer will be a delinquent taxpayer and, upon notice of delinquency, the right to timely notice of any collection actions that will require sale or seizure of the taxpayer's property in accordance with the provisions of the Tax Administration Act; and

K. the right to procedures for payment of tax obligations by installment payment agreements, in accordance with Section 7-1-21 NMSA 1978.”

2) Assessments: Loss of presumption of correctness for failure to provide explanation.

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

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

B. Assessments of tax are effective:

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

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

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

C. Except as provided in Subsection E of this section, any assessment of taxes or demand for payment made by the department is presumed to be correct.

D. When taxes have been assessed to any taxpayer and remain unpaid, the secretary or the secretary's delegate may demand payment at any time except as provided otherwise by Section 7-1-19 NMSA 1978.

E. For assessments issued on or after July 1, 2022, failure of the department to provide the specific statutory, regulatory, administrative or judicial basis for amounts assessed shifts the burden of proof to the department.”

[Arizona]

3) Assessments. TRD assessments are presumed correct. Therefore they may not be increased once issued, except in extraordinary circumstances.

“7-1-18.1. [NEW MATERIAL] ASSESSMENTS--ADDITIONAL LIMITATION.--With respect to assessments issued by the department on or after July 1, 2022, the department may not increase the amount of an assessment for the tax period or periods covered by the assessment, whether by amendment of the original assessment or by issuance of a replacement or supplemental assessment, unless:

- A. to correct an obvious clerical error; or
- B. the department demonstrates that the taxpayer:
 - (1) made a material misrepresentation of fact;
 - (2) failed to disclose any material fact; or
 - (3) failed to provide relevant and material information in response to a written request from the department.”

4) No uneconomical levies; reimbursement for certain bank charges

“7-1-31. SEIZURE OF PROPERTY BY LEVY FOR COLLECTION OF TAXES.

A. The secretary or secretary's delegate may proceed to collect tax from a delinquent taxpayer by levy upon all property or rights to property of the delinquent taxpayer and convert the property or rights to property to money by appropriate means.

B. A levy is made by taking possession of property pursuant to authority contained in a warrant of levy or by the service, by the secretary or secretary's delegate or any sheriff or certified law enforcement employee of the department of public safety, of the warrant upon the taxpayer or other person in possession of property or rights to property of the taxpayer, upon the taxpayer's employer or upon any person or depositary owing or who will owe money to or holding funds of the taxpayer, ordering the taxpayer or other person to reveal the extent thereof and surrender it to the secretary or secretary's delegate forthwith or agree to surrender it or the proceeds therefrom in the future, but in any case on the terms and conditions stated in the warrant.

C. Upon agreement between the department and a financial institution, the department may serve a warrant of levy on the financial institution in electronic format pursuant to the Electronic Authentication of Documents Act and the Uniform Electronic Transactions Act.

D. No levy may be made on any property if, at the time of levy, the secretary or the secretary's delegate estimates the amount of the expenses that would be incurred by the department with respect to the levy and sale of such property exceeds the market value of the property at the time of the levy.

E. If the department issues a levy in error, or erroneously causes one or more checks or other negotiable instruments to be returned to the

issuer by the issuer's bank or financial institution, the taxpayer is entitled to a reimbursement for reasonable bank charges to the taxpayer, not to exceed five hundred dollars (\$500) per incident.

[New York & Arizona]

5) Waive P&I when TRD misleads t/p.

“7-1-60. ESTOPPEL AGAINST STATE.--In any proceeding pursuant to the provisions of the Tax Administration Act, the department shall be estopped from obtaining or withholding the relief requested if it is shown by the party adverse to the department that the party's action or inaction complained of was in accordance with:

A. any regulation effective during the time the asserted liability for tax arose ~~[or in accordance with]~~

B. any ruling addressed to the party personally and in writing by the secretary, unless the ruling had been rendered invalid or had been superseded by regulation or by another ruling similarly addressed at the time the asserted liability for tax arose; or

C. any other document addressed to the party personally by the secretary concerning the tax and period complained of.”

6) Suspend interest when AHO decisions against taxpayer are issued more than 30 days after conclusion of hearing.

“7-1-67. INTEREST ON DEFICIENCIES.--

A. Except as provided in Subsections C and D of this section, if a tax imposed is not paid on or before the day on which it becomes due, interest shall be paid to the state on that amount from the first day following the day on which the tax becomes due, without regard to any extension of time or installment agreement, until it is paid, except that:

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

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

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

(4) if a managed audit is completed by the taxpayer on or before the date required, as provided in the agreement for the managed audit, and payment of any tax found to be due is made in full within one hundred eighty days of the date the secretary has mailed or delivered an

assessment for the tax to the taxpayer, no interest shall be due on the assessed tax;

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

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

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

(b) the ninetieth day after the expiration of the additional time requested by the taxpayer to comply pursuant to Section 7-1-11.2 NMSA 1978, if such request was granted, and the date of the assessment of the tax; and

(7) if the taxpayer was not provided with proper notices as required in Section 7-1-11.2 NMSA 1978, interest shall be paid from the first day following the day on which the tax becomes due until the tax is paid, excluding the period between one hundred eighty days prior to the date of assessment and the date of assessment.

B. If any tax required to be paid in accordance with Section 7-1-13.1 NMSA 1978 is not paid in the manner required by that section, interest shall be paid to the state on the amount required to be paid in accordance with Section 7-1-13.1 NMSA 1978. If interest is due under this subsection and is also due under Subsection A of this section, interest shall be due and collected only pursuant to Subsection A of this section.

C. If the hearing officer does not inform the department and the taxpayer of the officer's decision in a tax protest hearing within thirty days after the close of the hearing, no interest shall accrue on assessments issued by the department for the period beginning with the thirty-first day after the hearing and ending with the day the department and taxpayer are informed of the decision.

D. No interest shall accrue on assessments issued by the department to the extent that interest results from unreasonable department delay.

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

~~[G.]~~ F. Nothing in this section shall be construed to impose interest on interest or interest on the amount of any penalty.

~~[D. If any tax required to be paid in accordance with Section 7-1-13.1 NMSA 1978 is not paid in the manner required by that section, interest shall be paid to the state on the amount required to be paid in accordance with Section 7-1-13.1 NMSA 1978. If interest is due under this subsection and is also due under Subsection A of this section, interest shall be due and collected only pursuant to Subsection A of this section.]~~

G. As used in this section, "unreasonable department delay" means:

(1) any delay caused by the department's failure to meet a deadline prescribed by statute or regulation or prescribed by order of the hearing officer with respect to the protest of an assessment or hearing on a protest of an assessment; or

(2) any delay of sixty days or more not expressly authorized by law in processing, prosecuting or concluding a protest proceeding cause by the inaction of the department or its employees if no significant aspect of the delay can be attributed to the taxpayer."

[Arizona]

7) Allow taxpayer to sue for civil damages for unauthorized release of confidential data, whether released by TRD or someone else

"7-1-76. REVEALING INFORMATION CONCERNING TAXPAYERS.--

A. A person who reveals to another person any return or return information that is prohibited from being revealed pursuant to Section 7-1-8 NMSA 1978 or who uses a return or return information for any purpose that is not authorized by Sections 7-1-8 through 7-1-8.11 NMSA 1978 is guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than one thousand dollars (\$1,000) or imprisoned up to one year, or both, together with costs of prosecution, and shall not be employed by the state for a period of five years after the date of the conviction.

B. The taxpayer whose return or return information was unlawfully revealed or used for an unauthorized purpose may bring a civil action in district court for damages against the state if the person who revealed the information or used it for an unauthorized purpose at the time was a state employee acting in an official capacity or against the person if not. Upon a finding of liability on the part of the defendant, the defendant shall be liable to the plaintiff in an amount equal to the sum of the costs of the action plus the greater of:

(1) one thousand dollars for each act of unauthorized disclosure with respect to which the defendant is found liable; or

(2) the sum of the actual damages sustained by the plaintiff as a result of the unauthorized disclosure plus, in the case of willful disclosure or disclosure that is the result of gross negligence, punitive damages."

[New York]

8) Application of change of interpretation

"9-11-6.2. ADMINISTRATIVE REGULATIONS, RULINGS, INSTRUCTIONS AND ORDERS--PRESUMPTION OF CORRECTNESS.-

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A. The secretary is empowered and directed to issue and file as required by law all regulations, rulings, instructions or orders necessary to implement and enforce any provision of any law the administration and enforcement of which the department, the secretary, any division of the department or any director of any division of the department is charged, including all rules and regulations necessary by reason of any alteration of any such law. In order to accomplish its purpose, this provision is to be liberally construed.

B. Directives issued by the secretary shall be in form substantially as follows:

(1) regulations shall be written statements of the secretary of general application, interpreting and exemplifying the statutes to which they relate;

(2) rulings shall be written statements of the secretary, of limited application to one or a small number of persons, interpreting the statutes to which they relate, ordinarily issued in response to a request for clarification of the consequences of a specified set of circumstances;

(3) orders shall be written statements of the secretary or delegate of the secretary to implement a decision after a hearing; and

(4) instructions shall be other written statements or directives of the secretary or secretary's delegate not dealing with the merits of any law but otherwise in aid of the accomplishment of the duties of the secretary.

C. To be effective, any ruling or regulation issued by the secretary shall be reviewed by the attorney general or other legal counsel of the department prior to being filed as required by law, and the fact of the review shall be indicated on the ruling or regulation.

D. To be effective, a regulation shall first be issued as a proposed regulation and filed for public inspection in the office of the secretary. Unless otherwise provided by statute, no regulation affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested parties may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published at least thirty days prior to the hearing date in the New Mexico register and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance

notice of hearing. After the proposed regulation has been on file for not less than sixty days and a public hearing on the proposed action has been held by the secretary or a hearing officer designated by the secretary, the secretary may issue it as a final regulation by signing the regulation and filing the regulation in the manner required by law. The secretary shall not delegate the authority to sign regulations.

E. In addition to filing copies of regulations with the state records administrator as required by law, the secretary shall maintain in the office of the secretary a duplicate official set of current and superseded regulations, a set of current and superseded rulings and such additional sets of those regulations and rulings as appear necessary, which duplicate or additional sets shall be available for inspection by the public, but superseded regulations need be maintained for no longer than ten years from the date of supersession.

F. The secretary shall develop and maintain a file of names and addresses of individuals and professional and industry groups having an interest in the promulgation of new, revised or proposed regulations. At convenient times, the secretary shall distribute to these persons all such regulations and all pertinent rulings, making such charges as will defray the expense incurred in their physical preparation and mailing. Such charges are appropriated to the department to defray the costs of preparing and distributing regulations and rulings.

G. Any regulation, ruling, instruction or order issued by the secretary or delegate of the secretary is presumed to be a proper implementation of the provisions of the laws that are charged to the department, the secretary, any division of the department or any director of any division of the department provided that if the department adopts a new interpretation or application of any provision of any law charged to the department in Chapter 7 NMSA 1978 or determines that the provision applies to a new or additional category or type of taxpayer:

(1) The change in interpretation or application shall apply prospectively only unless it is favorable to taxpayers.

(2) The department shall not assess any tax, penalty or interest retroactively based on the change in interpretation or application.

(3) The change may be raised as an affirmative defense in any administrative or judicial action for retroactive assessment of tax, interest and penalties to taxable periods before the new interpretation or application was adopted.

(4) Tax liabilities, penalties and interest paid before the new interpretation or application of the department shall not be refunded solely because of the new interpretation or application, unless it is applied retroactively.

H. The extent to which regulations, rulings and orders will have retroactive effect shall be stated, and if no such statement is made, they will be applied prospectively only.

I. For the purposes of this section, "new interpretation or application" means any revision of policies and procedures adopted by directive of the secretary or the failure to issue a ruling requested by a taxpayer that substantially change the position of the department with respect to tax liabilities in the circumstances described by the directive, a change which is not due to a change in law."

10) Bar collection results from basis for employee evaluations; use no individual collection goals.

"9-11-16 [NEW MATERIAL] BASIS OF EVALUATION OF EMPLOYEES.--

A. The department shall not use records of tax enforcement results to evaluate employees directly involved in assessment or collection activities and their immediate supervisors or to impose or suggest production quotas or goals with respect to those employees.

B. Forecasts of enforcement results may be made and communicated for planning purposes. Tax enforcement results may be accumulated, tabulated, published and used for management and control of tax administration resources so long as tax enforcement results tabulations are not used to evaluate the employees described in Subsection A of this section."

[Arizona & New York]