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_____ BILL

57TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2025

INTRODUCED BY

DISCUSSION DRAFT

AN ACT

RELATING TO TAXATION; INCREASING THE AMOUNT OF INSTALLMENT AGREEMENTS THAT SHALL BE AVAILABLE FOR PUBLIC INSPECTION; INCREASING THE MINIMUM AMOUNT OF INTEREST THE TAXATION AND REVENUE DEPARTMENT SHALL PAY FOR OVERPAYMENT OF TAX; INCREASING CERTAIN PENALTIES FOR FAILURE TO PAY A TAX OR FILE A RETURN, INTERFERING WITH ADMINISTRATION OF THE TAX ADMINISTRATION ACT, ASSAULTING TAXATION AND REVENUE DEPARTMENT EMPLOYEES AND REVEALING TAXPAYER RETURN INFORMATION.

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

SECTION 1. Section 7-1-21 NMSA 1978 (being Laws 1965, Chapter 248, Section 23, as amended) is amended to read:

"7-1-21. INSTALLMENT PAYMENTS OF TAXES--INSTALLMENT AGREEMENTS.--

A. Whenever justified by the circumstances, the

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1 secretary or the secretary's delegate may enter into a written
2 agreement with a taxpayer in which the taxpayer admits
3 conclusive liability for the entire amount of taxes due and
4 agrees to make monthly installment payments according to the
5 terms of the agreement, but not for a period longer than
6 seventy-two months. No installment agreement shall prevent the
7 accrual of interest otherwise provided by law.

8 B. The agreement provided for in this section is to
9 be known as an "installment agreement". If entered into after
10 a court acquires jurisdiction over the matter, the agreement
11 shall be part of a stipulated order or judgment disposing of
12 the case.

13 C. At the time of entering into an installment
14 agreement, the secretary shall require the affected taxpayer or
15 person to furnish security for payment of the taxes admitted to
16 be due according to the terms of the agreement, but if the
17 taxpayer does not provide security, the secretary shall cause a
18 notice of lien to be filed in accordance with the provisions of
19 Section 7-1-38 NMSA 1978, and when so filed it shall constitute
20 a lien upon all the property or rights to property of the
21 taxpayer in that county in the same manner as in the case of
22 the lien provided for in Section 7-1-37 NMSA 1978.

23 D. An installment agreement is conclusive as to
24 liability for payment of the amount of taxes specified therein
25 but does not preclude the assessment of any additional tax.

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1 E. After entering into the agreement, except in
2 unusual circumstances as require the secretary in the
3 secretary's discretion to take further action to protect the
4 interests of the state, no further attempts to enforce payment
5 of the tax by levy or injunction shall be made; however, if
6 installment payments are not made on or before the times
7 specified in the agreement, if any other condition contained in
8 the agreement is not met or if the taxpayer does not make
9 payment of all other taxes for which the taxpayer becomes
10 liable as they are due, the secretary may proceed to enforce
11 collection of the tax as if the agreement had not been made or
12 may proceed, as provided in Section 7-1-54 NMSA 1978, against
13 the security furnished.

14 F. [~~Records of~~] Installment agreements in excess of
15 [~~one thousand dollars (\$1,000)~~] ten thousand dollars (\$10,000)
16 shall be available for inspection by the public. The
17 department shall [~~keep the records~~] retain installment
18 agreements for a minimum of three years from the date of the
19 effective date of the installment agreement."

20 SECTION 2. Section 7-1-68 NMSA 1978 (being Laws 1965,
21 Chapter 248, Section 69, as amended) is amended to read:

22 "7-1-68. INTEREST ON OVERPAYMENTS.--

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

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1 B. Interest on overpayments of tax shall accrue and
2 be paid at the underpayment rate established pursuant to
3 Section 6621 of the Internal Revenue Code, computed on a daily
4 basis; provided that if a different rate is specified by a
5 compact or other interstate agreement to which New Mexico is a
6 party, that rate shall apply to amounts due under the compact
7 or other agreement.

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

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

19 (1) the amount of interest due is less than
20 [~~one dollar (\$1.00)~~] ten dollars (\$10.00);

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

22 (a) fifty-five days of the date of the
23 complete claim for refund of income tax, pursuant to either the
24 Income Tax Act or the Corporate Income and Franchise Tax Act
25 for the tax year immediately preceding the tax year in which

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1 the claim is made;

2 (b) sixty days of the date of the
3 complete claim for refund of any tax not provided for in this
4 paragraph;

5 (c) seventy-five days of the date of the
6 complete claim for refund of gasoline tax to users of gasoline
7 off the highways;

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

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

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

24 (4) the credit results from overpayments found
25 in an audit of multiple reporting periods and applied to

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1 underpayments found in that audit or refunded as a net
2 overpayment to the taxpayer pursuant to Section 7-1-29 NMSA
3 1978;

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

9 (6) the credit or refund results from
10 overpayments the department finds pursuant to Subsection F of
11 Section 7-1-29 NMSA 1978 that exceed the refund claimed by the
12 taxpayer on the return; or

13 (7) the refund results from a tax credit
14 pursuant to the Investment Credit Act, Laboratory Partnership
15 with Small Business Tax Credit Act, Technology Jobs and
16 Research and Development Tax Credit Act, Film Production Tax
17 Credit Act, Affordable Housing Tax Credit Act or a rural job
18 tax credit or high-wage jobs tax credit.

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

21 SECTION 3. Section 7-1-69 NMSA 1978 (being Laws 1965,
22 Chapter 248, Section 70, as amended) is amended to read:

23 "7-1-69. CIVIL PENALTY FOR FAILURE TO PAY TAX OR FILE A
24 RETURN.--

25 A. Except as provided in Subsection C of this

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1 section, in the case of failure due to negligence or disregard
2 of department rules and regulations, but without intent to
3 evade or defeat a tax, to pay when due the amount of tax
4 required to be paid, to pay in accordance with the provisions
5 of Section 7-1-13.1 NMSA 1978 when required to do so or to file
6 by the date required a return regardless of whether a tax is
7 due, there shall be added to the amount assessed a penalty in
8 an amount equal to the greater of:

9 (1) two percent per month or any fraction of a
10 month from the date the tax was due multiplied by the amount of
11 tax due but not paid, not to exceed twenty percent of the tax
12 due but not paid;

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

18 (3) a minimum of [~~five dollars (\$5.00)~~]
19 fifteen dollars (\$15.00), but the [~~five dollar (\$5.00)~~] minimum
20 penalty shall not apply to taxes levied under the Income Tax
21 Act, Corporate Income and Franchise Tax Act or taxes
22 administered by the department pursuant to Subsection B of
23 Section 7-1-2 NMSA 1978.

24 B. No penalty shall be assessed against a taxpayer
25 if the failure to pay an amount of tax when due results from a

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1 mistake of law made in good faith and on reasonable grounds.

2 C. If a different penalty is specified in a compact
3 or other interstate agreement to which New Mexico is a party,
4 the penalty provided in the compact or other interstate
5 agreement shall be applied to amounts due under the compact or
6 other interstate agreement at the rate and in the manner
7 prescribed by the compact or other interstate agreement.

8 D. In the case of failure, with willful intent to
9 evade or defeat a tax, to pay when due the amount of tax
10 required to be paid, there shall be added to the amount fifty
11 percent of the tax or a minimum of [~~twenty-five dollars~~
12 ~~(\$25.00), whichever is greater~~] seventy-five dollars (\$75.00)
13 as penalty.

14 E. If demand is made for payment of a tax,
15 including penalty imposed pursuant to this section, and if the
16 tax is paid within ten days after the date of such demand, no
17 penalty shall be imposed for the period after the date of the
18 demand with respect to the amount paid.

19 F. If a taxpayer makes electronic payment of a tax
20 but the payment does not include all of the information
21 required by the department pursuant to the provisions of
22 Section 7-1-13.1 NMSA 1978 and if the department does not
23 receive the required information within five business days from
24 the later of the date a request by the department for that
25 information is received by the taxpayer or the due date, the

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1 taxpayer shall be subject to a penalty of two percent per month
2 or any fraction of a month from the fifth day following the
3 date the request is received. If a penalty is imposed under
4 Subsection A of this section with respect to the same
5 transaction for the same period, no penalty shall be imposed
6 under this subsection.

7 G. No penalty shall be imposed on:

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

11 (2) tax due as the result of a managed audit;
12 or

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

16 SECTION 4. Section 7-1-71.3 NMSA 1978 (being Laws 2005,
17 Chapter 108, Section 4) is amended to read:

18 "7-1-71.3. WILLFUL FAILURE TO COLLECT AND PAY OVER
19 TAXES.--

20 A. A person who is required to collect, account for
21 and pay over a tax imposed by the state and who willfully, with
22 the intent to defraud, fails to collect or truthfully account
23 for and pay over the tax due to the state is guilty of a
24 felony, and upon conviction thereof, shall be fined not more
25 than [~~five thousand dollars (\$5,000)~~] ten thousand dollars

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1 (\$10,000) or imprisoned for a period of not less than six
2 months and not more than three years, or both, together with
3 the costs of prosecution.

4 B. As used in this section:

5 (1) "tax" does not include civil penalties or
6 interest; and

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

9 SECTION 5. Section 7-1-71.4 NMSA 1978 (being Laws 2007,
10 Chapter 127, Section 2) is amended to read:

11 "7-1-71.4. TAX RETURN PREPARER--ELECTRONIC FILING
12 REQUIREMENT--PENALTY.--

13 A. [~~In taxable years beginning on or after January~~
14 ~~1, 2008~~] A tax return preparer who prepares over twenty-five
15 personal income tax returns for a taxable year shall ensure
16 that each return is submitted to the department by a
17 department-approved electronic media, unless a person for whom
18 the preparer files a return requests, in a form prescribed by
19 the department, that the return be filed by other means in
20 accordance with department rule.

21 B. A tax return preparer shall pay to the
22 department a penalty not to exceed [~~five dollars (\$5.00)~~] ten
23 dollars (\$10.00) for each tax return filed in violation of this
24 section."

25 SECTION 6. Section 7-1-72 NMSA 1978 (being Laws 1965,

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1 Chapter 248, Section 73) is amended to read:

2 "7-1-72. ATTEMPTS TO EVADE OR DEFEAT TAX.--Any person who
3 willfully attempts to evade or defeat any tax or the payment
4 thereof is, in addition to other penalties provided by law,
5 guilty of a felony and, upon conviction thereof, shall be fined
6 not less than [~~one thousand dollars (\$1,000)~~] ten thousand
7 dollars (\$10,000) nor more than [~~ten thousand dollars~~
8 ~~(\$10,000)~~] fifty thousand dollars (\$50,000), or imprisoned not
9 less than one year nor more than five years, or both such fine
10 and imprisonment, together with the costs of prosecution."

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

13 "7-1-73. TAX FRAUD.--

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

15 (1) willfully makes and subscribes any return,
16 statement or other document that contains or is verified by a
17 written declaration that it is true and correct as to every
18 material matter and that the person does not believe it to be
19 true and correct as to every material matter;

20 (2) willfully assists in, willfully procures,
21 willfully advises or willfully provides counsel regarding the
22 preparation or presentation of a return, affidavit, claim or
23 other document pursuant to or in connection with any matter
24 arising under the Tax Administration Act or a tax administered
25 by the department, knowing that it is fraudulent or knowing

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1 that it is false as to a material matter, whether or not that
2 fraud or falsity is with knowledge or consent of:

3 (a) the taxpayer or other person liable
4 for taxes owed on the return; or

5 (b) a person who signs a document
6 stating that the return, affidavit, claim or other document is
7 true, correct and complete to the best of that person's
8 knowledge;

9 (3) files any return electronically, knowing
10 the information in the return is not true and correct as to
11 every material matter;

12 (4) with intent to evade or defeat the payment
13 or collection of any tax, or, knowing that the probable
14 consequences of the person's act will be to evade or defeat the
15 payment or collection of any tax, removes, conceals or releases
16 any property on which levy is authorized or that is liable for
17 payment of tax under the provisions of Section 7-1-61 NMSA
18 1978, or aids in accomplishing or causes the accomplishment of
19 any of the foregoing;

20 (5) with intent to evade or defeat the payment
21 or collection of any tax, or, knowing that the probable
22 consequences of the person's act will be to evade or defeat the
23 payment or collection of any tax, purchases, installs or uses
24 any sales suppression software; or

25 (6) with the intent to evade or defeat the

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1 payment 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, sells, licenses, purchases,
4 installs, transfers, sells as a service, manufactures, develops
5 or possesses any sales suppression software with the purpose to
6 defeat or evade the payment or collection of any tax.

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

12 C. Whoever commits tax fraud when the amount of the
13 tax owed is over [~~two hundred fifty dollars (\$250)~~] five
14 hundred dollars (\$500) but not more than [~~five hundred dollars~~
15 ~~(\$500)~~] one thousand dollars (\$1,000) is guilty of a
16 misdemeanor and shall be sentenced pursuant to the provisions
17 of Section 31-19-1 NMSA 1978.

18 D. Whoever commits tax fraud when the amount of the
19 tax owed is over [~~five hundred dollars (\$500)~~] one thousand
20 dollars (\$1,000) but not more than [~~two thousand five hundred~~
21 ~~dollars (\$2,500)~~] five thousand dollars (\$5,000) is guilty of a
22 fourth degree felony and shall be sentenced pursuant to the
23 provisions of Section 31-18-15 NMSA 1978.

24 E. Whoever commits tax fraud when the amount of the
25 tax owed is over [~~two thousand five hundred dollars (\$2,500)~~]

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1 five thousand dollars (\$5,000) but not more than [~~twenty~~
2 ~~thousand dollars (\$20,000)~~] fifty thousand dollars (\$50,000) is
3 guilty of a third degree felony and shall be sentenced pursuant
4 to the provisions of Section 31-18-15 NMSA 1978.

5 F. Whoever commits tax fraud when the amount of the
6 tax owed is over [~~twenty thousand dollars (\$20,000)~~] fifty
7 thousand dollars (\$50,000) is guilty of a second degree felony
8 and shall be sentenced pursuant to the provisions of Section
9 31-18-15 NMSA 1978.

10 G. In addition to the fines imposed pursuant to
11 this section, a person who commits tax fraud shall pay the
12 costs of the prosecution of the person's case.

13 H. As used in this section:

14 (1) "sales suppression software" means hidden
15 or concealed computer software, also known as phantomware, for
16 a point-of-sale system that can create a second set of records
17 or eliminate or manipulate transaction records that may or may
18 not be preserved in digital formats in order to misrepresent
19 the existence or the true record of a transaction in the point-
20 of-sale system. "Sales suppression software" includes an
21 electronic device that carries or contains sales suppression
22 software;

23 (2) "tax" does not include civil penalties or
24 interest; and

25 (3) "willfully" means intentionally,

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1 deliberately or purposely, but not necessarily maliciously."

2 SECTION 8. Section 7-1-74 NMSA 1978 (being Laws 1965,
3 Chapter 248, Section 75) is amended to read:

4 "7-1-74. INTERFERENCE OR ATTEMPTS CORRUPTLY, FORCIBLY OR
5 BY THREAT TO INTERFERE WITH ADMINISTRATION OF REVENUE LAWS.--
6 Whoever forcibly, or by bribe, threat or other corrupt practice
7 obstructs or impedes or attempts to obstruct or impede the due
8 administration of the provisions of the Tax Administration Act
9 shall, upon conviction thereof, be fined not less than [~~two~~
10 ~~hundred fifty dollars (\$250)~~] one thousand dollars (\$1,000) nor
11 more than [~~ten thousand dollars (\$10,000)~~] twenty-five thousand
12 dollars (\$25,000) or imprisoned for not less than three months
13 nor more than one year, or both, together with costs of
14 prosecution."

15 SECTION 9. Section 7-1-75 NMSA 1978 (being Laws 1971,
16 Chapter 276, Section 12, as amended) is amended to read:

17 "7-1-75. ASSAULT AND BATTERY OF A DEPARTMENT EMPLOYEE.--
18 Whoever assaults and batters or attempts to assault and batter
19 an employee of the department acting within the scope of [~~his~~]
20 the employee's employment shall, upon conviction thereof, be
21 fined not less than [~~one hundred dollars (\$100)~~] one thousand
22 dollars (\$1,000) nor more than [~~five hundred dollars (\$500)~~]
23 five thousand dollars (\$5,000) or be imprisoned for not less
24 than three days nor more than six months, or both, together
25 with costs of prosecution. Jurisdiction over actions brought

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1 under this section is hereby granted to magistrate courts."

2 SECTION 10. Section 7-1-76 NMSA 1978 (being Laws 1965,
3 Chapter 248, Section 76, as amended) is amended to read:

4 "7-1-76. REVEALING INFORMATION CONCERNING TAXPAYERS.--A
5 person who reveals to another person any return or return
6 information that is prohibited from being revealed pursuant to
7 Section 7-1-8 NMSA 1978 or who uses a return or return
8 information for any purpose that is not authorized by Sections
9 7-1-8 through 7-1-8.11 NMSA 1978 is guilty of a misdemeanor and
10 shall, upon conviction thereof, be fined not more than [~~one~~
11 ~~thousand dollars (\$1,000)~~] five thousand dollars (\$5,000) or
12 imprisoned up to one year, or both, together with costs of
13 prosecution, and shall not be employed by the state for a
14 period of five years after the date of the conviction."

15 SECTION 11. EFFECTIVE DATE.--

16 A. The effective date of the provisions of Section
17 1 of this act is July 1, 2025.

18 B. The effective date of the provisions of Sections
19 2 through 10 of this act is January 1, 2026.