

AN ACT

RELATING TO TAXATION; ENACTING THE ELECTRICITY SALES TAX ACT; CREATING AN EXEMPTION IN THE GROSS RECEIPTS AND COMPENSATING TAX ACT FOR CERTAIN SALES OF ELECTRICITY; MAKING CONFORMING AMENDMENTS IN THE TAX ADMINISTRATION ACT AND THE ELECTRIC UTILITY INDUSTRY RESTRUCTURING ACT OF 1999; AMENDING AND ENACTING CERTAIN SECTIONS OF THE NMSA 1978; MAKING AN APPROPRIATION.

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

Section 1. SHORT TITLE.--Sections 1 through 10 of this act may be cited to as the "Electricity Sales Tax Act".

Section 2. DEFINITIONS.--As used in the Electricity Sales Tax Act:

A. "business location" means a municipality or a place outside a municipality designated as a business location by the department pursuant to Section 7-1-14 NMSA 1978;

B. "consume" or "consumption" means any use of electricity other than selling or exporting electricity or using electricity to generate or transmit electricity;

C. "department" means the taxation and revenue department, the secretary of taxation and revenue or any employee of the department exercising authority lawfully delegated to that employee by the secretary; and

D. "price paid" means that total amount of money or the value of other consideration given for purchasing electricity and includes amounts or value given for the performance of any related but separately charged services or the receiving of any related but separately charged licenses but excludes the electricity sales tax. Whenever the amount charged does not represent the value of the electricity, "price paid" means the reasonable value of the electricity.

Section 3. IMPOSITION OF ELECTRICITY SALES TAX. --

A. There is imposed on every person who consumes electricity in this state an excise tax to be known as the "electricity sales tax". The measure of the tax is the price paid for the electricity consumed.

B. The rate of tax is equal to the combined rate of state and local option gross receipts tax in effect for the business location in which the electricity is delivered to the purchaser at the time of delivery less any credit pursuant to Section 7-9-82 NMSA 1978.

C. For ease of administering and collecting the electricity sales tax, electricity is presumed to be purchased for consumption except for purchases of electricity by competitive power suppliers, generation and transmission cooperatives, distribution cooperative utilities or municipal utilities, as those terms are defined in Section 62-3A-3 NMSA 1978.

Section 4. LIABILITY OF CONSUMER. -- Each consumer of electricity remains liable for payment of the electricity sales tax due with respect to the electricity consumed until the amount due is remitted to the department or to a seller who is collecting the electricity sales tax for remittance to the department.

Section 5. DUTY OF SELLER TO COLLECT AND REMIT-- REPORTING-- PAYMENT. -- Except as otherwise provided in the Electricity Sales Tax Act, each seller of electricity for consumption in this state is required to collect from the purchaser the electricity sales tax due with respect to the sale and to remit the amount collected to the department. By the twenty-fifth of each month, the seller shall report to the department by business location the amount of electricity sales tax collected during the preceding month. The report shall be in the form and contain the information prescribed by the department. The department may require reporting and payment by electronic means. Remittance of the amount collected shall precede or accompany the return. Sellers remain liable for remittance of electricity sales tax amounts collected until the amounts collected are remitted to the department.

Section 6. EXEMPTIONS. --

A. Electricity sold to and used exclusively by the following is exempt from the electricity sales tax:

- (1) the United States or an agency,

department or instrumentality thereof;

(2) the state of New Mexico or a political subdivision thereof;

(3) an Indian nation, tribe or pueblo for activities or transactions occurring on its sovereign territory;

(4) a foreign nation or agency, instrumentality or political subdivision thereof, but only when required by a treaty in force to which the United States is a party; or

(5) an organization that has been granted an exemption from the federal income tax by the United States commissioner of internal revenue under Section 501(c)(3) of the Internal Revenue Code of 1986.

B. The department may require reporting of electricity sold but exempt from electricity sales tax.

Section 7. SALE FOR RESALE OR EXPORT--SELLER SHALL NOT COLLECT TAX.--

A. The seller shall not collect or remit electricity sales tax for purchases of electricity for resale or export when the purchaser provides to the seller documentation acceptable to the department that the purchaser is buying the electricity for resale or export.

B. Purchases of electricity by competitive power suppliers, generation and transmission cooperatives, distribution cooperative utilities or municipal utilities,

as those terms are defined in Section 62-3A-3 NMSA 1978, are presumed to be purchases for resale.

C. If the purchaser claims to purchase electricity for resale but consumes and does not resell the electricity, the electricity sales tax is due for that consumption, and the purchaser shall report and pay electricity sales tax in the manner prescribed by the department by the twenty-fifth of the month following the month in which the electricity was consumed.

Section 8. DIRECT PAYMENT PERMITS--APPLICATION-- DENIAL, CANCELLATION--PROTEST--SELLER SHALL NOT COLLECT TAX PENALTY.--

A. The department may permit large, nonresidential consumers to pay the electricity sales tax directly to the department instead of to the seller of the electricity for remittance to the department. The department shall determine the criteria and conditions for granting of a permit to remit electricity sales tax directly. The permit may be granted for specific periods of time and, if so, the time shall be specified on the permit document. The purchaser shall inform the seller of its possession of a valid direct payment permit in the manner required by the department. The seller shall not collect electricity sales tax from any purchaser who holds a valid direct payment permit for purchases in any period in which the permit is valid. The department shall maintain a public

listing identifying persons holding valid direct payment permits and, if applicable, the period of time for which the permit is valid.

B. The department may deny an application for a direct payment permit if the applicant or circumstances do not meet the criteria established by the department. The department may cancel a direct payment permit if the holder becomes a delinquent taxpayer or violates conditions of the permit. The department shall give at least sixty days' notice of a proposed cancellation.

C. The applicant for a direct payment permit may protest pursuant to the provisions of Section 7-1-24 NMSA 1978 the denial of a direct payment permit within thirty days of the denial. Within thirty days of the date of notice by the department, the holder of a direct payment permit may protest a proposed cancellation or revocation of the permit pursuant to the provisions of Section 7-1-24 NMSA 1978.

D. Upon cancellation or revocation of a permit, the permit holder shall notify the department of all persons selling electricity to the permit holder, and the department shall notify persons selling electricity to the permit holder at the time of cancellation or revocation of the fact and effective date of the cancellation or revocation.

Sellers are not required to collect and remit electricity sales tax from a person whose direct payment permit has been

canceled or revoked until the effective date of the cancellation or revocation, or, for sellers whom the department is required to notify, the date of notification, if later.

E. If a permit holder whose permit has been canceled fails to notify the department of the names of persons selling electricity to the permit holder, the permit holder shall pay a penalty of one hundred fifty dollars (\$150) for each day after cancellation of the permit that the permit holder fails to notify the department.

Section 9. FAILURE OF SELLER TO COLLECT TAX. --Whenever a seller receives all or a portion of the amount charged for electricity subject to tax but less than the full amount of electricity sales tax due on the amount received for the electricity, the amount received for the electricity shall be multiplied by a fraction, the numerator of which is the applicable rate of tax and the denominator of which is the sum of one plus the applicable rate of tax. If the result exceeds by at least one dollar (\$1.00) the amount of electricity sales tax received from the purchaser, the result is the amount that the seller must remit as collected electricity sales tax and the difference is a debt of the purchaser to the seller for purchase of electricity. Otherwise, the amount collected by the seller as electricity sales tax is the amount to be remitted to the department as electricity sales tax with respect to that purchaser.

Section 10. INTERPRETATION OF ACT-- ADMINISTRATION AND ENFORCEMENT OF TAX. --

A. The department shall interpret the provisions of the Electricity Sales Tax Act.

B. The department shall administer and enforce the collection of the electricity sales tax, and the Tax Administration Act applies to the administration and enforcement of the tax.

Section 11. Section 7-1-6.15 NMSA 1978 (being Laws 1983, Chapter 211, Section 20, as amended) is amended to read:

"7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO MUNICIPALITIES OR COUNTIES. --

A. The provisions of this section apply to:

(1) any distribution to a municipality of gross receipts taxes pursuant to Section 7-1-6.4 NMSA 1978 or of interstate telecommunications gross receipts tax pursuant to Section 7-1-6.36 NMSA 1978;

(2) any transfer to a municipality with respect to any local option gross receipts tax imposed by that municipality;

(3) any transfer to a county with respect to any local option gross receipts tax imposed by that county;

(4) any distribution to a county pursuant to Section 7-1-6.16 NMSA 1978;



(5) any distribution to a municipality or a county of gasoline taxes pursuant to Section 7-1-6.9 NMSA 1978;

(6) any transfer to a county with respect to any tax imposed in accordance with the Local Liquor Excise Tax Act;

(7) any distribution to a municipality or a county of cigarette taxes pursuant to Sections 7-1-6.11, 7-12-15 and 7-12-16 NMSA 1978;

(8) any distribution to a county from the county government road fund pursuant to Section 7-1-6.26 NMSA 1978;

(9) any distribution to a municipality of gasoline taxes pursuant to Section 7-1-6.27 NMSA 1978;

(10) any distribution to a municipality, county, school district or special district of oil and gas ad valorem production tax reduced as a result of a refund requested in December 1998 with respect to production of carbon dioxide; and

(11) any distribution to a municipality or county of electricity sales taxes pursuant to Section 7-1-6.42 NMSA 1978.

B. If the secretary determines that any prior distribution or transfer to a political subdivision was erroneous, the secretary shall increase or decrease the next distribution or transfer amount for that political

subdivision after the determination, except as provided in Subsection C, D or E of this section, by the amount necessary to correct the error. Subject to the provisions of Subsection E of this section, the secretary shall notify the political subdivision of the amount of each increase or decrease.

C. No decrease shall be made to current or future distributions or transfers to a political subdivision for any excess distribution or transfer made to that political subdivision more than one year prior to the calendar year in which the determination of the secretary was made.

D. The secretary, in lieu of recovery from the next distribution or transfer amount, may recover an excess distribution or transfer of one hundred dollars (\$100) or more to the political subdivision in installments from current and future distributions or transfers to that political subdivision pursuant to an agreement with the officials of the political subdivision whenever the amount of the distribution or transfer decrease for the political subdivision exceeds ten percent of the average distribution or transfer amount for that political subdivision for the twelve months preceding the month in which the secretary's determination is made; provided that for the purposes of this subsection, the "average distribution or transfer amount" shall be the arithmetic mean of the distribution or transfer amounts within the twelve months immediately

preceding the month in which the determination is made.

E. Except for the provisions of this section, if the amount by which a distribution or transfer would be adjusted pursuant to Subsection B of this section is one hundred dollars (\$100) or less, no adjustment or notice need be made.

F. The secretary is authorized to decrease a distribution to a municipality or county upon being directed to do so by the secretary of finance and administration pursuant to the State Aid Intercept Act or to redirect a distribution to the New Mexico finance authority pursuant to an ordinance or a resolution passed by the county or municipality and a written agreement of the municipality or county and the New Mexico finance authority. Upon direction to decrease a distribution or notice to redirect a distribution to a municipality or county, the secretary shall decrease or redirect the next designated distribution, and succeeding distributions as necessary, by the amount of the state distributions intercept authorized by the secretary of finance and administration pursuant to the State Aid Intercept Act or by the amount of the state distribution intercept authorized pursuant to an ordinance or a resolution passed by the county or municipality and a written agreement with the New Mexico finance authority. The secretary shall transfer the state distributions intercept amount to the municipal or county treasurer or

other person designated by the secretary of finance and administration or to the New Mexico finance authority pursuant to written agreement to pay the debt service to avoid default on qualified local revenue bonds or meet other local revenue bond, loan or other debt obligations of the municipality or county to the New Mexico finance authority."

Section 12. A new section of the Tax Administration Act, Section 7-1-6.42 NMSA 1978, is enacted to read:

"7-1-6.42. DISTRIBUTION--ELECTRICITY SALES TAX. --

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each municipality in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the sum of:

(1) the net receipts attributable to the electricity sales tax reported for business locations in that municipality times a fraction, the numerator of which is the sum of the local option gross receipts tax rates imposed by that municipality expressed as a percentage and the denominator of which is the total gross receipts tax rate expressed as a percentage effective for business locations in that municipality; plus

(2) the product of a fraction, the numerator of which is one and two hundred twenty-five thousandths percent and the denominator of which is the total gross receipts tax rate expressed as a percentage effective for business locations in that municipality, times

the net receipts attributable to the electricity sales tax reported for business locations:

- (a) within that municipality;
- (b) on land owned by the state, commonly known as the "state fair grounds", within the exterior boundaries of that municipality; and
- (c) outside the boundaries of any municipality on land owned by that municipality.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each county in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the sum of:

(1) the net receipts attributable to the electricity sales tax reported for business locations in that county times a fraction, the numerator of which is the sum of the local option gross receipts tax rates imposed by that county on a county-wide basis expressed as a percentage and the denominator of which is the total gross receipts tax rate expressed as a percentage effective for business locations in that county; plus

(2) the net receipts attributable to the electricity sales tax reported for business locations in the rest of the county area of that county times a fraction, the numerator of which is the sum of the local option gross receipts tax rates expressed as a percentage imposed by that county only in the rest of county area and the denominator

of which is the total gross receipts tax rate expressed as a percentage effective for business locations in the rest of the county area of that county.

C. Any municipality or county that prior to the effective date of this act has pledged to the payment of bonds all or a portion of its distribution pursuant to Section

7-1-6.4 NMSA 1978 or its revenues pursuant to any local option gross receipts tax shall receive its portion of electricity sales tax revenue impressed with and subject to those bonds."

Section 13. Section 7-1-8 NMSA 1978 (being Laws 1965, Chapter 248, Section 13, as amended) is amended to read:

"7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER INFORMATION. --It is unlawful for any employee of the department or any former employee of the department to reveal to any individual other than another employee of the department any information contained in the return of any taxpayer made pursuant to any law subject to administration and enforcement under the provisions of the Tax Administration Act or any other information about any taxpayer acquired as a result of his employment by the department, except:

A. to an authorized representative of another state; provided that the receiving state has entered into a written agreement with the department to use the information

for tax purposes only and that the receiving state has enacted a confidentiality statute similar to this section to which the representative is subject;

B. to a representative of the secretary of the treasury or the secretary's delegate pursuant to the terms of a reciprocal agreement entered into with the federal government for exchange of the information;

C. to the multistate tax commission or its authorized representative; provided that the information is used for tax purposes only and is disclosed by the multistate tax commission only to states that have met the requirements of Subsection A of this section;

D. to a district court or an appellate court or a federal court:

(1) in response to an order thereof in an action relating to taxes to which the state is a party and in which the information sought is about a taxpayer who is party to the action and is material to the inquiry, in which case only that information may be required to be produced in court and admitted in evidence subject to court order protecting the confidentiality of the information and no more;

(2) in any action in which the department is attempting to enforce an act with which the department is charged or to collect a tax; or

(3) in any matter in which the department

is a party and the taxpayer has put his own liability for taxes at issue, in which case only that information regarding the taxpayer who is party to the action may be produced, but this shall not prevent the disclosure of department policy or interpretation of law arising from circumstances of a taxpayer who is not a party;

E. to the taxpayer or to the taxpayer's authorized representative; provided, however, that nothing in this subsection shall be construed to require any employee to testify in a judicial proceeding except as provided in Subsection D of this section;

F. information obtained through the administration of any law not subject to administration and enforcement under the provisions of the Tax Administration Act to the extent that release of that information is not otherwise prohibited by law;

G. in such manner, for statistical purposes, that the information revealed is not identified as applicable to any individual taxpayer;

H. with reference to any information concerning the tax on tobacco imposed by Sections 7-12-1 through 7-12-13 and Sections 7-12-15 and 7-12-17 NMSA 1978 to a committee of the legislature for a valid legislative purpose or to the attorney general for purposes of Section 6-4-13 NMSA 1978 and the master settlement agreement defined in Section 6-4-12 NMSA 1978;



I. to a transferee, assignee, buyer or lessor of a liquor license, the amount and basis of any unpaid assessment of tax for which his transferor, assignor, seller or lessee is liable;

J. to a purchaser of a business as provided in Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis of any unpaid assessment of tax for which the purchaser's seller is liable;

K. to a municipality of this state upon its request for any period specified by that municipality within the twelve months preceding the request for the information by that municipality:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts for that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality. The department may also release the information described in this paragraph quarterly or upon such other periodic basis as the secretary and the municipality may agree; and

(2) information indicating whether persons shown on any list of businesses located within that municipality furnished by the municipality have reported gross receipts to the department but have not reported gross receipts for that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax

imposed by that municipality.

The employees of municipalities receiving information as provided in this subsection shall be subject to the penalty contained in Section 7-1-76 NMSA 1978 if that information is revealed to individuals other than other employees of the municipality in question or the department;

L. to the commissioner of public lands for use in auditing that pertains to rentals, royalties, fees and other payments due the state under land sale, land lease or other land use contracts; the commissioner of public lands and employees of the commissioner are subject to the same provisions regarding confidentiality of information as employees of the department;

M. the department shall furnish, upon request by the child support enforcement division of the human services department, the last known address with date of all names certified to the department as being absent parents of children receiving public financial assistance. The child support enforcement division personnel shall use such information only for the purpose of enforcing the support liability of the absent parents and shall not use the information or disclose it for any other purpose; the child support enforcement division and its employees are subject to the provisions of this section with respect to any information acquired from the department;

N. with respect to the tax on gasoline imposed by

the Gasoline Tax Act, the department shall make available for public inspection at monthly intervals a report covering the amount and gallonage of gasoline and ethanol blended fuels imported, exported, sold and used, including tax-exempt sales to the federal government reported or upon which the gasoline tax was paid and covering taxes received from each distributor in the state of New Mexico;

O. the identity of distributors and gallonage reported on returns required under the Gasoline Tax Act, Special Fuels Supplier Tax Act or Alternative Fuel Tax Act to any distributor or supplier, but only when it is necessary to enable the department to carry out its duties under the Gasoline Tax Act, the Special Fuels Supplier Tax Act or the Alternative Fuel Tax Act;

P. the department shall release upon request only the names and addresses of all gasoline or special fuel distributors, wholesalers and retailers to the New Mexico department of agriculture, the employees of which are thereby subject to the penalty contained in Section 7-1-76 NMSA 1978 if that information is revealed to individuals other than employees of either the New Mexico department of agriculture or the department;

Q. the department shall answer all inquiries concerning whether a person is or is not a registered taxpayer;

R. upon request of a municipality or county of

this state, the department shall permit officials or employees of the municipality or county to inspect the records of the department pertaining to an increase or decrease to a distribution or transfer made pursuant to Section 7-1-6.15 NMSA 1978 for the purpose of reviewing the basis for the increase or decrease. The municipal or county officials or employees receiving information provided in this subsection shall not reveal that information to any person other than another employee of the municipality or the county, the department or a district court, an appellate court or a federal court in a proceeding relating to a disputed distribution and in which both the state and the municipality or county are parties. Any information provided pursuant to provisions of this subsection that is revealed other than as provided in this subsection shall subject the person revealing the information to the penalties contained in Section 7-1-76 NMSA 1978;

S. to a county of this state that has in effect any local option gross receipts tax imposed by the county upon its request for any period specified by that county within the twelve months preceding the request for the information by that county:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts either for that county in the case of a local option gross receipts tax imposed on a countywide

basis or only for the areas of that county outside of any incorporated municipalities within that county in the case of a county local option gross receipts tax imposed only in areas of the county outside of any incorporated municipalities. The department may also release the information described in this paragraph quarterly or upon such other periodic basis as the secretary and the county may agree;

(2) in the case of a local option gross receipts tax imposed by a county on a countywide basis, information indicating whether persons shown on any list of businesses located within the county furnished by the county have reported gross receipts to the department but have not reported gross receipts for that county under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that county on a countywide basis; and

(3) in the case of a local option gross receipts tax imposed by a county only on persons engaging in business in that area of the county outside of any incorporated municipalities, information indicating whether persons shown on any list of businesses located in the area of that county outside of any incorporated municipalities within that county furnished by the county have reported gross receipts to the department but have not reported gross receipts for the area of that county outside of any

incorporated municipalities within that county under the Gross Receipts and Compensating Tax Act or any local option gross receipts tax imposed by the county only on persons engaging in business in that area of the county outside of any incorporated municipalities.

The officers and employees of counties receiving information as provided in this subsection shall be subject to the penalty contained in Section 7-1-76 NMSA 1978 if such information is revealed to individuals other than other officers or employees of the county in question or the department;

T. to authorized representatives of an Indian nation, tribe or pueblo, the territory of which is located wholly or partially within New Mexico, pursuant to the terms of a reciprocal agreement entered into with the Indian nation, tribe or pueblo for the exchange of that information for tax purposes only; provided that the Indian nation, tribe or pueblo has enacted a confidentiality statute similar to this section;

U. information with respect to the taxes or tax acts administered pursuant to Subsection B of Section 7-1-2 NMSA 1978, except that:

(1) information for or relating to any period prior to July 1, 1985 with respect to Sections 7-25-1 through 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978 may be released only to a committee of the legislature for a valid

legislative purpose;

(2) except as provided in Paragraph (3) of this subsection, contracts and other agreements between the taxpayer and other parties and the proprietary information contained in such contracts and agreements shall not be released without the consent of all parties to the contract or agreement; and

(3) audit workpapers and the proprietary information contained in such workpapers shall not be released except to:

(a) the minerals management service of the United States department of the interior, if production occurred on federal land;

(b) a person having a legal interest in the property that is subject to the audit;

(c) a purchaser of products severed from a property subject to the audit; or

(d) the authorized representative of any of the persons in Subparagraphs (a) through (c) of this paragraph. This paragraph does not prohibit the release of any proprietary information contained in the workpapers that is also available from returns or from other sources not subject to the provisions of this section;

V. information with respect to the taxes, surtaxes, advance payments or tax acts administered pursuant to Subsection C of Section 7-1-2 NMSA 1978;

W. to the public regulation commission, information with respect to the Corporate Income and Franchise Tax Act required to enable the commission to carry out its duties and with respect to persons upon whom the Electricity Sales Tax Act imposes an obligation to collect and pay over a tax whether or not such a person is a delinquent taxpayer;

X. to the state racing commission, information with respect to the state, municipal and county gross receipts taxes paid by race tracks;

Y. upon request of a corporation authorized to be formed under the Educational Assistance Act, the department shall furnish the last known address and the date of that address of every person certified to the department as being an absent obligor of an educational debt that is due and owed to the corporation or that the corporation has lawfully contracted to collect. The corporation and its officers and employees shall use that information only for the purpose of enforcing the educational debt obligation of such absent obligors and shall not disclose that information or use it for any other purpose;

Z. any decision and order made by a hearing officer pursuant to Section 7-1-24 NMSA 1978 with respect to a protest filed with the secretary on or after July 1, 1993;

AA. information required by any provision of the Tax Administration Act or tax or tax act administered and



enforced pursuant to the Tax Administration Act to be made available to the public by the department;

BB. upon request by the Bernalillo county metropolitan court, the department shall furnish the last known address and the date of that address for every person certified to the department by the court as being a person who owes fines, fees or costs to the court or who has failed to appear pursuant to a court order or a promise to appear;

CC. upon request by a magistrate court, the department shall furnish the last known address and the date of that address for every person certified to the department by the court as being a person who owes fines, fees or costs to the court or who has failed to appear pursuant to a court order or a promise to appear;

DD. to the national tax administration agencies of Mexico and Canada, provided the agency receiving the information has entered into a written agreement with the department to use the information for tax purposes only and is subject to a confidentiality statute similar to this section;

EE. to a district attorney, a state district court grand jury or federal grand jury with respect to any investigation of or proceeding related to an alleged criminal violation of the tax laws; and

FF. to a third party subject to a subpoena of levy issued pursuant to the provisions of the Tax

Administration Act, the identity of the taxpayer involved, the taxes or tax acts involved and the nature of the proceeding. "

Section 14. Section 7-1-24 NMSA 1978 (being Laws 1965, Chapter 248, Section 26, as amended) is amended to read:

"7-1-24. ADMINISTRATIVE HEARING--PROCEDURE. --

A. Any taxpayer may dispute the assessment to the taxpayer of any amount of tax, the application to the taxpayer of any provision of the Tax Administration Act, the denial or cancellation or revocation of a direct payment permit pursuant to the Electricity Sales Tax Act or the denial of or failure to either allow or deny a claim for refund made in accordance with Section 7-1-26 NMSA 1978 by filing with the secretary a written protest against the assessment or against the application to the taxpayer of the provision or against the denial of or the failure to allow or deny the amount claimed to have been erroneously paid as tax. Every protest shall identify the taxpayer and the tax involved and state the grounds for the taxpayer's protest and the affirmative relief requested. The statement of grounds for protest shall specify individual grounds upon which the protest is based and a summary statement of the evidence expected to be produced supporting each ground asserted, if any; provided that the taxpayer may supplement the statement at any time prior to ten days before any hearing conducted on the protest pursuant to Subsection D of

this section or, if a scheduling order has been issued, in accordance with the scheduling order. The secretary may, in appropriate cases, provide for an informal conference before setting a hearing of the protest or acting on any claim for refund.

B. Any protest by a taxpayer shall be filed within thirty days of the date of the mailing to the taxpayer by the department of the notice of assessment or mailing to, or service upon, the taxpayer of other peremptory notice or demand, or the date of mailing or filing a return. Upon written request of the taxpayer made within the time permitted for filing a protest, the secretary may grant an extension of time, not to exceed sixty days, within which to file the protest. If a protest is not filed within the time required for filing a protest or, if an extension has been granted, within the extended time, the secretary may proceed to enforce collection of any tax if the taxpayer is delinquent within the meaning of Section 7-1-16 NMSA 1978. Upon written request of the taxpayer made after the time for filing a protest but not more than sixty days after the expiration of the time for filing a protest, the secretary may grant a retroactive extension of time, not to exceed sixty days, within which to file the protest; provided that the taxpayer demonstrates to the secretary's satisfaction that the taxpayer was not able to file a protest or to request an extension within the time

to file the protest and that the grounds for the protest have substantial merit. The fact that the department did not mail the assessment or other peremptory notice or demand by certified or registered mail or otherwise demand and receive acknowledgment of receipt by the taxpayer shall not be deemed to demonstrate the taxpayer's inability to protest or request an extension within the time for filing a protest within the required time. The secretary shall not grant a retroactive extension if a levy has already been served under Section

7-1-31 or 7-1-33 NMSA 1978 or a jeopardy assessment has been made under Section 7-1-59 NMSA 1978. No proceedings other than those to enforce collection of any amount assessed as tax and to protect the interest of the state by injunction, as provided in Sections 7-1-31, 7-1-33, 7-1-34, 7-1-40, 7-1-53, 7-1-56 and 7-1-58 NMSA 1978, are stayed by timely filing of a protest under this section.

C. Claims for refund shall be filed as provided for in Section 7-1-26 NMSA 1978.

D. Upon timely receipt of a protest, the department or hearing officer shall promptly set a date for hearing and on that date hear the protest or claim.

E. A hearing officer shall be designated by the secretary to conduct the hearing. Taxpayers may appear at a hearing for themselves or be represented by a bona fide employee, an attorney, a certified public accountant or a

registered public accountant. Hearings shall not be open to the public except upon request of the taxpayer and may be postponed or continued at the discretion of the hearing officer.

F. In hearings before the hearing officer, the technical rules of evidence shall not apply, but in ruling on the admissibility of evidence, the hearing officer may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt.

G. In hearings before the hearing officer, the Rules of Civil Procedure for the District Courts shall not apply, but the hearing shall be conducted so that both complaints and defenses are amply and fairly presented. To this end, the hearing officer shall hear arguments, permit discovery, entertain and dispose of motions, require written expositions of the case as the circumstances justify and render a decision in accordance with the law and the evidence presented and admitted.

H. In the case of the hearing of any protest, the hearing officer shall make and preserve a complete record of the proceedings. At the beginning of the hearing, the hearing officer shall inform the taxpayer of the taxpayer's right to representation. The hearing officer, within thirty days of the hearing, shall inform the protestant in writing of the decision, informing the protestant at the same time

of the right to, and the requirements for perfection of, an appeal from the decision to the court of appeals and of the consequences of a failure to appeal. The written decision shall embody an order granting or denying the relief requested or granting such part thereof as seems appropriate.

I. Nothing in this section shall be construed to authorize any criminal proceedings hereunder or to authorize an administrative protest of the issuance of a subpoena or summons. "

Section 15. A new section of the Gross Receipts and Compensating Tax Act, Section 7-9-38.2 NMSA 1978, is enacted to read:

"7-9-38.2. EXEMPTION--GROSS RECEIPTS TAX--SALES OF ELECTRICITY.--Exempted from the gross receipts tax are receipts from sales of electricity that are subject to the provisions of the Electricity Sales Tax Act. "

Section 16. Section 62-3A-9 NMSA 1978 (being Laws 1999, Chapter 294, Section 9) is amended to read:

"62-3A-9. COMPETITIVE POWER SUPPLIERS--LICENSE APPLICATION AND REVOCATION.--

A. A competitive power supplier shall file an application with, and obtain a license from, the commission before offering competitive services for sale to customers in the state.

B. Prior to receiving a license in the state, a

competitive power supplier shall file a report with the commission, with information and in a form prescribed by the commission, disclosing activities and operations and those of any affiliate related to its supply service in this state.

C. Any person applying for a competitive power supplier license shall:

(1) disclose its name, owners, business addresses and telephone numbers in the state, and if a corporation, its directors and officers;

(2) execute, by a person authorized to do so, an affidavit authorizing or reflecting the authorization of the competitive power supplier to a statutory agent of the competitive power supplier to accept service of process in the state, accompanied by an acceptance of such designation by the statutory agent;

(3) execute, by a person authorized to do so, an agreement to compensate the state for any applicable taxes for sales to customers in the state;

(4) execute, by a person authorized to do so, an agreement that all electricity sold to a customer in the state shall be delivered to that customer;

(5) provide proof of financial integrity and a demonstration of adequate supply with reserve margins or the ability to obtain adequate reserve margins;

(6) post a bond, the financial security

equivalent of a bond or other adequate financial assurances acceptable to the commission to cover system costs in the event the licensee fails to provide supply service in accordance with its obligations;

(7) execute, by a person authorized to do so, an agreement to comply with and be bound by the rules promulgated by the commission applicable to competitive power suppliers and supply service in the state;

(8) demonstrate capability to meet all obligations undertaken or assumed, for and on behalf of its customers, so that supply service is available, reliable and deliverable on a real-time basis;

(9) execute, by a person authorized to do so, an agreement to produce documents or other records to support any filings, reports or agreements required by the commission and to support any representations made to the commission or customers if required to do so by the commission;

(10) execute, by a person authorized to do so, an agreement to compensate a distribution or transmission company that provides open access for delivery of supply service to a customer of the competitive power supplier for shortfalls in supply service pursuant to rules promulgated by the commission; and

(11) submit a proposal for renewable energy supply service options to customers.



D. An application for a license is deemed approved within forty-five days of its filing with the commission, unless the commission, in its discretion, extends the approval period for thirty days or rejects the application before it is deemed approved. If rejected, the commission shall state its reasons for the rejection and may identify corrective measures to overcome the deficiencies causing the rejection.

E. Thirty days before offering any sales of competitive services in the state, a competitive power supplier shall:

(1) provide all public utilities with copies of its application and license; and

(2) publish a copy of its license in a newspaper of general circulation in each county of the state in which it intends to offer competitive service.

F. The commission shall promulgate rules governing competitive electric suppliers for the protection of customers, including:

(1) required disclosures to a potential customer of unbundled prices, generation sources and fuel mix, associated emissions, gross receipts taxes, electricity sales tax, franchise fees and any other charges;

(2) fair and reasonable marketing and sales practices, including truthful advertising and disclosure practices; and

(3) an expeditious procedure before the commission to resolve a dispute between a customer and a competitive power supplier regarding compliance with commission rules applicable to competitive power suppliers.

G. After a hearing initiated on the commission's own investigation or upon the complaint of an affected party, the commission may revoke or suspend the license of or impose a penalty on a competitive power supplier, or both, if it is established that just cause for the revocation, suspension or penalty imposition exists because the competitive power supplier:

(1) knowingly provided false information to the commission;

(2) switched or caused to be switched the supply service of a customer without first obtaining the customer's informed written permission;

(3) failed to provide reasonably adequate supply service for its customers in the state;

(4) committed fraud or knowingly engaged in an unfair or deceptive trade practice;

(5) is a delinquent taxpayer as to any New Mexico tax;

(6) engaged in anti-competitive conduct; or

(7) violated any other law or commission rule or order.

H. Any person selling or offering to sell

competitive services in this state in violation of any provision of the Electric Utility Industry Restructuring Act of 1999 is subject to license revocation or suspension in addition to any administrative, civil or criminal fines or penalties imposed pursuant to that act or pursuant to other law. Nothing in that act shall be construed to limit a person's rights pursuant to the Unfair Practices Act or to require exhaustion of remedies before bringing an action pursuant to that act."

Section 17. Section 62-3A-18 NMSA 1978 (being Laws 1999, Chapter 294, Section 18) is amended to read:

"62-3A-18. FRANCHISE FEES--GROSS RECEIPTS TAX--TAX REVENUES ANALYSIS.--

A. A franchise fee charge shall be stated as a separate line entry on a public utility's or distribution cooperative utility's bills and shall only be recovered from customers located within the jurisdiction of the government authority imposing the franchise fee.

B. Any gross receipts or electricity sales taxes due for electricity and ancillary services sold to retail customers in the state shall be stated as a separate line entry on a bill for electricity or electric service sent to the customer by a public utility or distribution cooperative utility.

C. The New Mexico legislative council shall annually through January 1, 2002, refer to the revenue

stabilization and tax policy committee questions and issues related to the amount of state and local tax revenues derived from previously regulated electric utility service and property and report to the legislature annually on the changed impact to state and local government tax revenues resulting from restructuring and competition in the electric industry.

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D. On or before January 1, 2003, the revenue stabilization and tax policy committee shall recommend legislative changes, if any, to establish comparable state and local taxation burdens on all market participants in the supply of electricity considering the impacts and changes that have resulted from the restructure and competition in the electric industry in the state."

Section 18. EFFECTIVE DATE. --The provisions of this act

are effective upon the date that the customer choice provisions of Paragraph (1) of Subsection A of Section 62-3A-4

NMSA 1978 become available. \_\_\_\_\_