

## CHAPTER 11

### CHAPTER 11, LAWS 2002

#### AN ACT

RELATING TO TAXATION; RAISING THE REFUND AMOUNT FOR WHICH ATTORNEY GENERAL APPROVAL IS NECESSARY; RAISING THE REFUND AMOUNT FOR WHICH RECORDS OF REFUNDS MUST BE MADE AVAILABLE TO THE PUBLIC; AMENDING A SECTION OF THE NMSA 1978.

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

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

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

A. In response to a claim for refund made as provided in Section 7-1-26 NMSA 1978, but before any court acquires jurisdiction of the matter, the secretary or the secretary's delegate may authorize the refund to a person of the amount of any overpayment of tax determined by the secretary or the secretary's delegate to have been erroneously made by the person, together with allowable interest. Any refund of tax and interest erroneously paid and amounting to more than ten thousand dollars (\$10,000) may be made to any one person only with the prior approval of the attorney general, except that:

(1) refunds with respect to the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas Production Equipment Ad Valorem Tax Act, refunds of gasoline tax made under Section 7-13-17 NMSA 1978 and refunds of cigarette tax made under the Cigarette Tax Act may be made without the prior approval of the attorney general regardless of the amount; and

(2) refunds with respect to the Corporate Income and Franchise Tax Act amounting to less than twenty thousand dollars (\$20,000) may be made without the prior approval of the attorney general.

B. Pursuant to the final order of the district court, the court of appeals, the supreme court of New Mexico or any federal court, from which order, appeal or review is not successfully taken, adjudging that any person has made an overpayment of tax, the secretary shall authorize the refund to the person of the amount thereof.

C. In the discretion of the secretary, any amount of tax due to be refunded may be offset against any amount of tax for the payment of which the person due to receive

the refund is liable.

D. In an audit by the department or a managed audit covering multiple reporting periods where both underpayments and overpayments of a tax are found to have been made in different reporting periods, the department shall credit the tax overpayments found against the underpayments, provided that the taxpayer files a claim for refund of the overpayments. An overpayment shall be applied as a credit first to the earliest underpayment found and then to succeeding underpayments. An underpayment of tax to which an overpayment is credited pursuant to this section shall be deemed paid in the period in which the overpayment was made or the period in which the overpayment was credited against an underpayment, whichever is later. If the overpayments credited pursuant to this section exceed the underpayments found for a tax, the amount of the net overpayment for the periods covered in the audit shall be refunded to the taxpayer.

E. Records of refunds made in excess of ten thousand dollars (\$10,000) shall be available for inspection by the public. The department shall keep such records for a minimum of three years from the date of the refund."

Section 2. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2002.