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HOUSE BILL 374

45TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2002

INTRODUCED BY

Luciano "Lucky" Varela

AN ACT

RELATING TO TAXATION; AMENDING THE TAX ADMINISTRATION ACT TO  
DEFINE "BASIS FOR THE REFUND".

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

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

"7-1-26. CLAIM FOR REFUND. --

A. Any person who believes that an amount of tax  
has been paid by or withheld from that person in excess of  
that for which the person was liable, who has been denied any  
credit or rebate claimed or who claims a prior right to  
property in the possession of the department pursuant to a  
levy made under authority of Sections 7-1-31 through 7-1-34  
NMSA 1978 may claim a refund by directing to the secretary,  
within the time limited by the provisions of Subsections D, E

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1 and F of this section, a written claim for refund. Except as  
2 provided in Subsection J of this section, a refund claim shall  
3 include the taxpayer's name, address and identification  
4 number, the type of tax for which a refund is being claimed,  
5 the sum of money being claimed, the period for which  
6 overpayment was made and the basis for the refund. For the  
7 purposes of this section, "basis for the refund" means a brief  
8 written explanation sufficient to identify the issue or issues  
9 that the taxpayer asserts as the grounds upon which the refund  
10 is being claimed. A claim for refund shall not be rejected by  
11 the secretary as incomplete or invalid solely because the  
12 department requests additional documentation or information  
13 for the department's evaluation or processing of the claim.  
14 Amendments to the basis for the refund made in response to  
15 such requests by the department and made within one hundred  
16 twenty days of the date the claim for refund was originally  
17 filed shall not constitute a new claim for refund and shall  
18 not affect the timeliness of the original filing or the  
19 accrual of interest on the refund pursuant to Section 7-1-68  
20 NMSA 1978.

21 B. The secretary or the secretary's delegate may  
22 allow the claim in whole or in part or may deny the claim

23 (1) If the claim is denied in whole or in  
24 part in writing, no claim may be refiled with respect to that  
25 which was denied but the person, within ninety days after

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1 either the mailing or delivery of the denial of all or any  
2 part of the claim, may elect to pursue one, but not more than  
3 one, of the remedies in Subsection C of this section.

4 (2) If the department has neither granted nor  
5 denied any portion of a claim for refund within one hundred  
6 twenty days of the date the claim was mailed or delivered to  
7 the department, the person may refile it within the time  
8 limits set forth in Subsection C of this section or may within  
9 ninety days elect to pursue one, but only one, of the remedies  
10 in Subsection C of this section. After the expiration of the  
11 two hundred ten days from the date the claim was mailed or  
12 delivered to the department, the department may not approve or  
13 disapprove the claim unless the person has pursued one of the  
14 remedies under Subsection C of this section.

15 C. A person may elect to pursue one, but only one,  
16 of the remedies in Paragraphs (1) and (2) of this subsection.  
17 In any case, if a person does timely pursue more than one  
18 remedy, the person shall be deemed to have elected the first  
19 remedy invoked. The remedies are as follows:

20 (1) the person may direct to the secretary a  
21 written protest against the denial of, or failure to either  
22 allow or deny the claim or portion thereof, which shall be set  
23 for hearing by a hearing officer designated by the secretary  
24 promptly after the receipt of the protest in accordance with  
25 the provisions of Section 7-1-24 NMSA 1978, and pursue the

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1 remedies of appeal from decisions adverse to the protestant as  
2 provided in Section 7-1-25 NMSA 1978; or

3 (2) the person may commence a civil action in  
4 the district court for Santa Fe county by filing a complaint  
5 setting forth the circumstance of the claimed overpayment,  
6 alleging that on account thereof the state is indebted to the  
7 plaintiff in the amount stated, together with any interest  
8 allowable, demanding the refund to the plaintiff of that  
9 amount and reciting the facts of the claim for refund. The  
10 plaintiff or the secretary may appeal from any final decision  
11 or order of the district court to the court of appeals.

12 D. Except as otherwise provided in Subsections E  
13 and F of this section, no credit or refund of any amount may  
14 be allowed or made to any person unless as the result of a  
15 claim made by that person as provided in this section:

16 (1) within three years of the end of the  
17 calendar year in which:

18 (a) the payment was originally due or  
19 the overpayment resulted from an assessment by the department  
20 pursuant to Section 7-1-17 NMSA 1978, whichever is later;

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

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

4 (c) property was levied upon pursuant  
5 to the provisions of the Tax Administration Act;

6 (2) when an amount of a claim for credit  
7 under the provisions of the Investment Credit Act, Laboratory  
8 Partnership with Small Business Tax Credit Act, Technology  
9 Jobs Tax Credit Act, Capital Equipment Tax Credit Act or  
10 similar act or for the rural job tax credit pursuant to  
11 Sections 7-2E-1 and 7-2E-2 NMSA 1978 or similar credit has  
12 been denied, the taxpayer may claim a refund of the credit no  
13 later than one year after the date of the denial;

14 (3) when a taxpayer under audit by the  
15 department has signed a waiver of the limitation on  
16 assessments on or after July 1, 1993 pursuant to Subsection F  
17 of Section 7-1-18 NMSA 1978, the taxpayer may file a claim for  
18 refund of the same tax paid for the same period for which the  
19 waiver was given, until a date one year after the later of the  
20 date of the mailing of an assessment issued pursuant to the  
21 audit, the date of the mailing of final audit findings to the  
22 taxpayer or the date a proceeding is begun in court by the  
23 department with respect to the same tax and the same period;

24 (4) if the payment of an amount of tax was  
25 not made within three years of the end of the calendar year in

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1 which the original due date of the tax or date of the  
2 assessment of the department occurred, a claim for refund of  
3 that amount of tax can be made within one year of the date on  
4 which the tax was paid; or

5 (5) when a taxpayer has been assessed a  
6 tax on or after July 1, 1993 under Subsection B, C or D of  
7 Section 7-1-18 NMSA 1978 and when the assessment applies to a  
8 period ending at least three years prior to the beginning of  
9 the year in which the assessment was made, the taxpayer may  
10 claim a refund for the same tax for the period of the  
11 assessment or for any period following that period within one  
12 year of the date of the assessment unless a longer period for  
13 claiming a refund is provided in this section.

14 E. No credit or refund shall be allowed or made to  
15 any person claiming a refund of gasoline tax under Section  
16 7-13-11 NMSA 1978 unless notice of the destruction of the  
17 gasoline was given the department within thirty days of the  
18 actual destruction and the claim for refund is made within six  
19 months of the date of destruction. No credit or refund shall  
20 be allowed or made to any person claiming a refund of gasoline  
21 tax under Section 7-13-17 NMSA 1978 unless the refund is  
22 claimed within six months of the date of purchase of the  
23 gasoline and the gasoline has been used at the time the claim  
24 for refund is made.

25 F. If, as a result of an audit by the internal

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1 revenue service or the filing of an amended federal return  
2 changing a prior election or making any other change for which  
3 federal approval is required by the Internal Revenue Code, any  
4 adjustment of federal tax is made with the result that there  
5 would have been an overpayment of tax if the adjustment to  
6 federal tax had been applied to the taxable period to which it  
7 relates, claim for credit or refund of only that amount based  
8 on the adjustment may be made as provided in this section  
9 within one year of the date of the internal revenue service  
10 audit adjustment or payment of the federal refund or within  
11 the period limited by Subsection D of this section, whichever  
12 expires later. Interest computed at the rate specified in  
13 Subsection B of Section 7-1-68 NMSA 1978 shall be allowed on  
14 any such claim for refund from the date one hundred twenty  
15 days after the claim is made until the date the final decision  
16 to grant the credit or refund is made.

17 G. If as a result of an audit by the department or  
18 a managed audit covering multiple periods an overpayment of  
19 tax is found in any period under the audit, that overpayment  
20 may be credited against an underpayment of the same tax found  
21 in another period under audit pursuant to Section 7-1-29 NMSA  
22 1978, provided that the taxpayer files a claim for refund for  
23 the overpayments identified in the audit.

24 H. Any refund of tax paid under any tax or tax act  
25 administered under Subsection B of Section 7-1-2 NMSA 1978 may

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1 be made, at the discretion of the department, in the form of  
2 credit against future tax payments if future tax liabilities  
3 in an amount at least equal to the credit amount reasonably  
4 may be expected to become due.

5 I. For the purposes of this section, the term "oil  
6 and gas tax return" means a return reporting tax due with  
7 respect to oil, natural gas, liquid hydrocarbons or carbon  
8 dioxide pursuant to the Oil and Gas Severance Tax Act, the Oil  
9 and Gas Conservation Tax Act, the Oil and Gas Emergency School  
10 Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the  
11 Natural Gas Processors Tax Act or the Oil and Gas Production  
12 Equipment Ad Valorem Tax Act.

13 J. The filing of a fully completed original income  
14 tax return, corporate income tax return, corporate income and  
15 franchise tax return, estate tax return or special fuel excise  
16 tax return that shows a balance due the taxpayer or a fully  
17 completed amended income tax return, an amended corporate  
18 income tax return, an amended corporate income and franchise  
19 tax return, an amended estate tax return, an amended special  
20 fuel excise tax return or an amended oil and gas tax return  
21 that shows a lesser tax liability than the original return  
22 constitutes the filing of a claim for refund for the  
23 difference in tax due shown on the original and amended  
24 returns. "