

1 SENATE BILL 496

2 **46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004**

3 INTRODUCED BY

4 Michael S. Sanchez

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9  
10 AN ACT

11 RELATING TO TAXATION; CREATING THE TAX FRAUD INVESTIGATIONS  
12 DIVISION OF THE TAXATION AND REVENUE DEPARTMENT; EXPANDING THE  
13 DUTIES AND POWERS OF THE TAXATION AND REVENUE DEPARTMENT;  
14 CREATING AND AMENDING TAX OFFENSES AND PENALTIES; RECONCILING  
15 MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2003;  
16 AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

17  
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 Section 1. Section 7-1-4 NMSA 1978 (being Laws 1965,  
20 Chapter 248, Section 10, as amended) is amended to read:

21 "7-1-4. INVESTIGATIVE AUTHORITY AND POWERS.--

22 A. For the purpose of establishing or determining  
23 the extent of the liability of any person for any tax, for the  
24 purpose of collecting any tax, [or] for the purpose of  
25 enforcing any statute administered under the provisions of the

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1 Tax Administration Act or for the purpose of investigating  
2 possible criminal violations of the revenue laws of this state,  
3 including fraud or other crimes that may affect the taxes due  
4 to the state, the secretary or the secretary's delegate is  
5 authorized to examine equipment and to examine and require the  
6 production of any pertinent records, books, information or  
7 evidence, to require the presence of any person and to require  
8 that person to testify under oath concerning the subject matter  
9 of the inquiry and to make a permanent record of the  
10 proceedings.

11 B. As a means for accomplishing the matters  
12 referred to in Subsection A of this section, the secretary is  
13 hereby invested with the power to issue subpoenas and  
14 summonses. In no case shall a subpoena or summons be made  
15 returnable less than ten days from the date of service.

16 C. Any subpoena or summons issued by the secretary  
17 shall state with reasonable certainty the nature of the  
18 evidence required to be produced, the time and place of the  
19 hearing, the nature of the inquiry or investigation and the  
20 consequences of failure to obey the subpoena or summons; shall  
21 bear the seal of the department; and shall be attested by the  
22 secretary.

23 D. After service of a subpoena or summons upon the  
24 person, if any person neglects or refuses to appear in response  
25 to the summons or neglects or refuses to produce records or

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1 other evidence or to allow the inspection of equipment in  
2 response to the subpoena or neglects or refuses to give  
3 testimony as required, the department may invoke the aid of the  
4 court in the enforcement of the subpoena or summons. In  
5 appropriate cases, the court shall issue its order requiring  
6 the person to appear and testify or produce books or records  
7 and may, upon failure of the person to comply with the order,  
8 punish the person for contempt.

9 E. If a person, the extent of whose tax liability  
10 is being established, or that person's agent, nominee or other  
11 person acting under the direction or control of that person,  
12 files an action with the court to quash a subpoena or summons  
13 issued by that court pursuant to this section, the running of  
14 the period of limitations pursuant to Sections 7-1-18 and  
15 7-1-19 NMSA 1978 or Section 30-1-8 NMSA 1978 with respect to  
16 the tax liability under investigation shall be suspended for  
17 the period during which a proceeding and related appeals  
18 regarding the enforcement of the subpoena or summons is  
19 pending."

20 Section 2. Section 7-1-8 NMSA 1978 (being Laws 1965,  
21 Chapter 248, Section 13, as amended by Laws 2003, Chapter 398,  
22 Section 5 and by Laws 2003, Chapter 439, Section 1) is amended  
23 to read:

24 "7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER  
25 INFORMATION.--It is unlawful for an employee of the department

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1 or a former employee of the department to reveal to an  
2 individual other than another employee of the department,  
3 information contained in the return of a taxpayer made pursuant  
4 to a law subject to administration and enforcement under the  
5 provisions of the Tax Administration Act or any other  
6 information about a taxpayer acquired as a result of his  
7 employment by the department and not available from public  
8 sources, except:

9 A. to an authorized representative of another  
10 state; provided that the receiving state has entered into a  
11 written agreement with the department to use the information  
12 for tax purposes only and that the receiving state has enacted  
13 a confidentiality statute similar to this section to which the  
14 representative is subject;

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

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

24 D. to a district court, an appellate court or a  
25 federal court:

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1 (1) in response to an order thereof in an  
2 action relating to taxes or an action in fraud or other crime  
3 that may affect taxes due to the state to which the state is a  
4 party and in which the information sought is about a taxpayer  
5 who is party to the action and is material to the inquiry, in  
6 which case only that information may be required to be produced  
7 in court and admitted in evidence subject to court order  
8 protecting the confidentiality of the information and no more;

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

12 (3) in any matter in which the department is a  
13 party and the taxpayer has put his own liability for taxes at  
14 issue, in which case only that information regarding the  
15 taxpayer who is party to the action may be produced, but this  
16 shall not prevent the disclosure of department policy or  
17 interpretation of law arising from circumstances of a taxpayer  
18 who is not a party;

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

24 F. information obtained through the administration  
25 of a law not subject to administration and enforcement under

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1 the provisions of the Tax Administration Act to the extent that  
2 release of that information is not otherwise prohibited by law;

3 G. in a manner, for statistical purposes, that the  
4 information revealed is not identified as applicable to an  
5 individual taxpayer;

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

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

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

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

24 (1) the names, taxpayer identification numbers  
25 and addresses of registered gross receipts taxpayers reporting

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1 gross receipts for that municipality under the Gross Receipts  
2 and Compensating Tax Act or a local option gross receipts tax  
3 imposed by that municipality. The department may also release  
4 the information described in this paragraph quarterly or upon  
5 such other periodic basis as the secretary and the municipality  
6 may agree; and

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

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

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

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

12 N. with respect to the tax on gasoline imposed by  
13 the Gasoline Tax Act, the department shall make available for  
14 public inspection at monthly intervals a report covering the  
15 number of gallons of gasoline and ethanol-blended fuels  
16 received and deducted, and the amount of tax paid by each  
17 person required to file a gasoline tax return or pay gasoline  
18 tax in the state of New Mexico;

19 O. the identity of a rack operator, importer,  
20 blender, supplier or distributor and the number of gallons  
21 reported on returns required under the Gasoline Tax Act,  
22 Special Fuels Supplier Tax Act or Alternative Fuel Tax Act to a  
23 rack operator, importer, blender, distributor or supplier, but  
24 only when it is necessary to enable the department to carry out  
25 its duties under the Gasoline Tax Act, the Special Fuels

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1 Supplier Tax Act or the Alternative Fuel Tax Act;

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

10 Q. the department shall answer all inquiries  
11 concerning whether a person is or is not a registered taxpayer  
12 for tax programs that require registration, but nothing in this  
13 subsection shall be construed to allow the department to answer  
14 inquiries concerning whether a person has filed a tax return;

15 R. upon request of a municipality or county of this  
16 state, the department shall permit officials or employees of  
17 the municipality or county to inspect the records of the  
18 department pertaining to an increase or decrease to a  
19 distribution or transfer made pursuant to Section 7-1-6.15 NMSA  
20 1978 for the purpose of reviewing the basis for the increase or  
21 decrease. The municipal or county officials or employees  
22 receiving information provided in this subsection shall not  
23 reveal that information to any person other than another  
24 employee of the municipality or the county, the department or a  
25 district court, an appellate court or a federal court in a

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1 proceeding relating to a disputed distribution and in which  
2 both the state and the municipality or county are parties.  
3 Information provided pursuant to provisions of this subsection  
4 that is revealed other than as provided in this subsection  
5 shall subject the person revealing the information to the  
6 [~~penalties~~] penalty contained in Section 7-1-76 NMSA 1978;

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

12 (1) the names, taxpayer identification numbers  
13 and addresses of registered gross receipts taxpayers reporting  
14 gross receipts either for that county in the case of a local  
15 option gross receipts tax imposed on a countywide basis or only  
16 for the areas of that county outside of any incorporated  
17 municipalities within that county in the case of a county local  
18 option gross receipts tax imposed only in areas of the county  
19 outside of any incorporated municipalities. The department may  
20 also release the information described in this paragraph  
21 quarterly or upon such other periodic basis as the secretary  
22 and the county may agree;

23 (2) in the case of a local option gross  
24 receipts tax imposed by a county on a countywide basis,  
25 information indicating whether persons shown on a list of

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1 businesses located within the county furnished by the county  
2 have reported gross receipts to the department but have not  
3 reported gross receipts for that county under the Gross  
4 Receipts and Compensating Tax Act or a local option gross  
5 receipts tax imposed by that county on a countywide basis; and

6 (3) in the case of a local option gross  
7 receipts tax imposed by a county only on persons engaging in  
8 business in that area of the county outside of incorporated  
9 municipalities, information indicating whether persons on a  
10 list of businesses located in that county outside of the  
11 incorporated municipalities but within that county furnished by  
12 the county have reported gross receipts to the department but  
13 have not reported gross receipts for that county outside of the  
14 incorporated municipalities within that county under the Gross  
15 Receipts and Compensating Tax Act or a local option gross  
16 receipts tax imposed by the county only on persons engaging in  
17 business in that county outside of the incorporated  
18 municipalities.

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

25 T. to authorized representatives of an Indian

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1 nation, tribe or pueblo, the territory of which is located  
2 wholly or partially within New Mexico, pursuant to the terms of  
3 a reciprocal agreement entered into with the Indian nation,  
4 tribe or pueblo for the exchange of that information for tax  
5 purposes only; provided that the Indian nation, tribe or pueblo  
6 has enacted a confidentiality statute similar to this section;

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

10 (1) information for or relating to a period  
11 prior to July 1, 1985 with respect to Sections 7-25-1 through  
12 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978 may be released only  
13 to a committee of the legislature for a valid legislative  
14 purpose;

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

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

24 (a) the minerals management service of  
25 the United States department of the interior, if production

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1 occurred on federal land;

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

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

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

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

15 W. to the public regulation commission, information  
16 with respect to the Corporate Income and Franchise Tax Act  
17 required to enable the commission to carry out its duties;

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

21 Y. upon request of a corporation authorized to be  
22 formed under the Educational Assistance Act, the department  
23 shall furnish the last known address and the date of that  
24 address of every person certified to the department as an  
25 absent obligor of an educational debt due and owed to the

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1 corporation or that the corporation has lawfully contracted to  
2 collect. The corporation and its officers and employees shall  
3 use that information only to enforce the educational debt  
4 obligation of the absent obligors and shall not disclose that  
5 information or use it for any other purpose;

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

9 AA. information required by a provision of the Tax  
10 Administration Act to be made available to the public by the  
11 department;

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

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

24 DD. to the national tax administration agencies of  
25 Mexico and Canada, provided the agency receiving the

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1 information has entered into a written agreement with the  
2 department to use the information for tax purposes only and is  
3 subject to a confidentiality statute similar to this section;

4 EE. to a district attorney, a state district court  
5 grand jury or federal grand jury for an investigation of or  
6 proceeding related to an alleged criminal violation of the tax  
7 laws;

8 FF. to a third party subject to a subpoena or levy  
9 issued pursuant to the provisions of the Tax Administration  
10 Act, the identity of the taxpayer involved, the taxes or tax  
11 acts involved and the nature of the proceeding; ~~and~~

12 GG. to the gaming control board, tax returns of  
13 license applicants and their affiliates as defined in  
14 Subsection E of Section 60-2E-14 NMSA 1978; and

15 HH. any written ruling on questions of evidence or  
16 procedure made by a hearing officer pursuant to Section 7-1-24  
17 NMSA 1978, provided that the name and identification number of  
18 the taxpayer requesting the ruling shall not be provided."

19 Section 3. Section 7-1-73 NMSA 1978 (being Laws 1965,  
20 Chapter 248, Section 74, as amended) is amended to read:

21 "7-1-73. FALSE STATEMENT AND FRAUD.--

22 A. Any individual or person ~~who~~ is guilty of a  
23 felony if the person:

24 ~~[A.]~~ (1) willfully makes and subscribes any  
25 return, statement or other document that contains or is

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1 verified by a written declaration that it is true and correct  
2 as to every material matter and that the individual or person  
3 does not believe to be true and correct as to every material  
4 matter;

5 (2) willfully assists in, willfully procures,  
6 willfully advises or willfully provides counsel regarding the  
7 preparation or presentation of a return, affidavit, claim or  
8 other document pursuant to or in connection with any matter  
9 arising under the Tax Administration Act, or any other tax  
10 administered by the department, that is fraudulent or is false  
11 as to any material matter, whether or not such falsity or fraud  
12 is with knowledge or consent of the individual or person  
13 authorized or required to present the return, affidavit, claim  
14 or document;

15 [~~B-~~] (3) files any return electronically,  
16 knowing the information in the return is not true and correct  
17 as to every material matter; or

18 [~~G-~~] (4) with intent to evade or defeat the  
19 payment or collection of any tax, or, knowing that the probable  
20 consequences of the person's act will be to evade or defeat the  
21 payment or collection of any tax, removes, conceals or releases  
22 any property on which levy is authorized or that is liable for  
23 payment of tax under the provisions of Section 7-1-61 NMSA  
24 1978, or aids in accomplishing or causes the accomplishment of  
25 any of the foregoing [~~is guilty of a felony and~~]. As used in

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1 Paragraph (2) of this subsection, "individual or person" means  
2 a taxpayer or other person liable for taxes owed on the return  
3 or an affiant, claimant or person signing a document stating  
4 that the filing is true, correct and complete to the best of  
5 the taxpayer's knowledge or other person's attestation.

6 B. Upon conviction [thereof] under Subsection A of  
7 this section, a person shall be fined not more than five  
8 thousand dollars (\$5,000) or imprisoned not less than six  
9 months or more than three years, or both, together with costs  
10 of prosecution.

11 C. As used in this section, "willfully" means  
12 intentionally, deliberately or purposely, but not necessarily  
13 maliciously."

14 Section 4. A new section of the Tax Administration Act is  
15 enacted to read:

16 "[NEW MATERIAL] WILLFUL FAILURE TO COLLECT AND PAY OVER  
17 TAXES.--Any person required by the revenue laws of the state to  
18 collect, account for and pay over a tax imposed by those laws  
19 who willfully fails to collect or truthfully account for and  
20 pay over the tax due to the state, is guilty of a felony and  
21 upon conviction pursuant to this section, in addition to other  
22 penalties provided by law, shall be fined not more than ten  
23 thousand dollars (\$10,000) or imprisoned not more than five  
24 years, or both."

25 Section 5. Section 9-11-4 NMSA 1978 (being Laws 1977,

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1 Chapter 249, Section 4, as amended) is amended to read:

2 "9-11-4. DEPARTMENT ESTABLISHED.--There is created in the  
3 executive branch the "taxation and revenue department". The  
4 department shall be a cabinet department and shall consist of,  
5 but not be limited to, an administrative services division and  
6 [~~four~~] five program divisions as follows:

- 7 A. the audit and compliance division;
- 8 B. the property tax division;
- 9 C. the revenue processing division; [~~and~~]
- 10 D. the tax fraud investigations division; and
- 11 [~~D-~~] E. the motor vehicle division."

12 Section 6. A new section of the Taxation and Revenue  
13 Department Act is enacted to read:

14 "[NEW MATERIAL] POWER TO EMPLOY LAW ENFORCEMENT OFFICERS  
15 FOR TAX FRAUD INVESTIGATIONS DIVISION.--

16 A. The secretary shall employ police officers as  
17 commissioned tax fraud enforcement officers as needed in the  
18 tax fraud investigations division of the department to enforce  
19 the tax laws or to investigate fraud and other crimes that may  
20 affect the collection of taxes due to the state.

21 B. Tax fraud enforcement officers shall be  
22 certified as having completed basic law enforcement training at  
23 the New Mexico law enforcement academy or at another recognized  
24 certified regional or federal law enforcement training program  
25 equivalent to or more stringent than the basic law enforcement

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1 training at the New Mexico law enforcement academy.

2 C. The secretary may require specialized training  
3 in addition to the requirements of Subsection B of this  
4 section.

5 D. The secretary shall require continuing in-  
6 service law enforcement training for tax fraud enforcement  
7 officers as required by the New Mexico law enforcement academy  
8 for all police officers."

9 Section 7. Section 30-1-8 NMSA 1978 (being Laws 1963,  
10 Chapter 303, Section 1-8, as amended) is amended to read:

11 "30-1-8. TIME LIMITATIONS FOR COMMENCING PROSECUTION.--No  
12 person shall be prosecuted, tried or punished in any court of  
13 this state unless the indictment is found or information or  
14 complaint is filed therefor within the time as provided:

15 A. for a second degree felony, within six years  
16 from the time the crime was committed;

17 B. for a third or fourth degree felony, within five  
18 years from the time the crime was committed;

19 C. for a misdemeanor, within two years from the  
20 time the crime was committed;

21 D. for a petty misdemeanor, within one year from  
22 the time the crime was committed;

23 E. for any crime against or violation of [~~the~~  
24 ~~revenue laws of this state of~~] Section 51-1-38 NMSA 1978,  
25 within three years from the time the crime was committed;

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1                    F. for a crime against or violation of the revenue  
2 laws of this state, within six years from the time the crime  
3 was committed;

4                    [~~F.~~] G. for any crime not contained in the Criminal  
5 Code, other than a crime against or violation of the revenue  
6 laws of this state, or where a limitation is not otherwise  
7 provided for, within three years from the time the crime was  
8 committed; and

9                    [~~G.~~] H. for a capital felony or a first degree  
10 violent felony, no limitation period shall exist and  
11 prosecution for these crimes may commence at any time after the  
12 occurrence of the crime."