

HOUSE BUSINESS AND INDUSTRY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 387

47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006

AN ACT

RELATING TO THE TAXATION AND REVENUE DEPARTMENT; PERMITTING THE  
DEPARTMENT TO DISCLOSE TAXPAYER INFORMATION TO LAW ENFORCEMENT  
AGENCIES OF THE STATE FOR JOINT INVESTIGATION PURPOSES;  
PERMITTING THAT DEPARTMENT TO DISCLOSE CERTAIN RECORDS OR  
CREDITS THAT THE DEPARTMENT IS REQUIRED TO MAKE AVAILABLE FOR  
PUBLIC INSPECTION; RECONCILING MULTIPLE AMENDMENTS TO THE SAME  
SECTION OF LAW IN LAWS 2005.

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

Section 1. Section 7-1-8 NMSA 1978 (being Laws 1965,  
Chapter 248, Section 13, as amended by Laws 2005, Chapter 107,  
Section 1 and by Laws 2005, Chapter 108, Section 2 and by Laws  
2005, Chapter 109, Section 2) is amended to read:

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

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underscoring material = new  
[bracketed material] = delete

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 the  
7 employee's employment by the department and not available from  
8 public 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 another jurisdiction pursuant to an  
25 international fuel tax agreement, provided that the information

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1 is used for tax purposes only;

2 E. to a district court, an appellate court or a  
3 federal court:

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

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

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

23 F. to the taxpayer or to the taxpayer's authorized  
24 representative; provided, however, that nothing in this  
25 subsection shall be construed to require any employee to

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1 testify in a judicial proceeding except as provided in  
2 Subsection E of this section;

3 G. information obtained through the administration  
4 of a law not subject to administration and enforcement under  
5 the provisions of the Tax Administration Act to the extent that  
6 release of that information is not otherwise prohibited by law;

7 H. in a manner, for statistical purposes, that the  
8 information revealed is not identified as applicable to an  
9 individual taxpayer;

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

16 J. to a transferee, assignee, buyer or lessor of a  
17 liquor license, the amount and basis of an unpaid assessment of  
18 tax for which the transferor, assignor, seller or lessee is  
19 liable;

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

24 L. to a municipality of this state upon its request  
25 for a period specified by that municipality within the twelve

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1 months preceding the request for the information by that  
2 municipality:

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

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

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

23 M. to the commissioner of public lands for use in  
24 auditing that pertains to rentals, royalties, fees and other  
25 payments due the state under land sale, land lease or other

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1 land use contracts; the commissioner of public lands and  
2 employees of the commissioner are subject to the same  
3 provisions regarding confidentiality of information as  
4 employees of the department;

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

16 ~~[N.]~~ O. the department shall furnish to the  
17 information systems division of the general services  
18 department, by electronic media, a database containing New  
19 Mexico personal income tax filers by county, which shall be  
20 updated quarterly. The database information shall be used only  
21 for the purpose of producing the random jury list for the  
22 selection of petit or grand jurors for the state courts  
23 pursuant to Section 38-5-3 NMSA 1978. The database shall not  
24 contain any financial information. If any information in the  
25 database is revealed by an employee of the administrative

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1 office of the courts or the information systems division to  
2 individuals other than employees of the administrative office  
3 of the courts, the state courts, the information systems  
4 division or the department, the employee shall be subject to  
5 the penalty provisions of Section 7-1-76 NMSA 1978;

6 ~~[O.]~~ P. with respect to the tax on gasoline imposed  
7 by the Gasoline Tax Act, the department shall make available  
8 for public inspection at monthly intervals a report covering  
9 the number of gallons of gasoline and ethanol blended fuels  
10 received and deducted, and the amount of tax paid by each  
11 person required to file a gasoline tax return or pay gasoline  
12 tax in the state of New Mexico;

13 ~~[P.]~~ Q. the identity of a rack operator, importer,  
14 blender, supplier or distributor and the number of gallons  
15 reported on returns required under the Gasoline Tax Act,  
16 Special Fuels Supplier Tax Act or Alternative Fuel Tax Act to a  
17 rack operator, importer, blender, distributor or supplier, but  
18 only when it is necessary to enable the department to carry out  
19 its duties under the Gasoline Tax Act, the Special Fuels  
20 Supplier Tax Act or the Alternative Fuel Tax Act;

21 ~~[Q.]~~ R. the department shall release upon request  
22 only the names and addresses of all gasoline or special fuel  
23 distributors, wholesalers and retailers to the New Mexico  
24 department of agriculture, the employees of which are thereby  
25 subject to the penalty contained in Section 7-1-76 NMSA 1978 if

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1 that information is revealed to individuals other than  
2 employees of either the New Mexico department of agriculture or  
3 the department;

4 [R.] S. the department shall answer all inquiries  
5 concerning whether a person is or is not a registered taxpayer  
6 for tax programs that require registration, but nothing in this  
7 [section] subsection shall be construed to allow the department  
8 to answer inquiries concerning whether a person has filed a tax  
9 return;

10 [S.] T. upon request of a municipality or county of  
11 this state, the department shall permit officials or employees  
12 of the municipality or county to inspect the records of the  
13 department pertaining to an increase or decrease to a  
14 distribution or transfer made pursuant to Section 7-1-6.15 NMSA  
15 1978 for the purpose of reviewing the basis for the increase or  
16 decrease. The municipal or county officials or employees  
17 receiving information provided in this subsection shall not  
18 reveal that information to any person other than another  
19 employee of the municipality or the county, the department or a  
20 district court, an appellate court or a federal court in a  
21 proceeding relating to a disputed distribution and in which  
22 both the state and the municipality or county are parties.  
23 Information provided pursuant to provisions of this subsection  
24 that is revealed other than as provided in this subsection  
25 shall subject the person revealing the information to the

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1 penalty contained in Section 7-1-76 NMSA 1978;

2 ~~[F-]~~ U. to a county of this state that has in  
3 effect a local option gross receipts tax imposed by the county  
4 upon its request for a period specified by that county within  
5 the twelve months preceding the request for the information by  
6 that county:

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

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

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

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

20                   [~~U.~~] V. to authorized representatives of an Indian  
21 nation, tribe or pueblo, the territory of which is located  
22 wholly or partially within New Mexico, pursuant to the terms of  
23 a reciprocal agreement entered into with the Indian nation,  
24 tribe or pueblo for the exchange of that information for tax  
25 purposes only; provided that the Indian nation, tribe or pueblo

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1 has enacted a confidentiality statute similar to this section;

2 [V-] W. information with respect to the taxes or  
3 tax acts administered pursuant to Subsection B of Section 7-1-2  
4 NMSA 1978, except that:

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

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

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

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

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

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

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

7 [~~W.~~] X. information with respect to the taxes,  
8 surtaxes, advance payments or tax acts administered pursuant to  
9 Subsection C of Section 7-1-2 NMSA 1978;

10 [~~X.~~] Y. to the public regulation commission,  
11 information with respect to the Corporate Income and Franchise  
12 Tax Act required to enable the commission to carry out its  
13 duties;

14 [~~Y.~~] Z. to the state racing commission, information  
15 with respect to the state, municipal and county gross receipts  
16 taxes paid by racetracks;

17 [~~Z.~~] AA. upon request of a corporation authorized  
18 to be formed under the Educational Assistance Act, the  
19 department shall furnish the last known address and the date of  
20 that address of every person certified to the department as an  
21 absent obligor of an educational debt due and owed to the  
22 corporation or that the corporation has lawfully contracted to  
23 collect. The corporation and its officers and employees shall  
24 use that information only to enforce the educational debt  
25 obligation of the absent obligors and shall not disclose that

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1 information or use it for any other purpose;

2 ~~[AA.]~~ BB. a decision and order made by a hearing  
3 officer pursuant to Section 7-1-24 NMSA 1978 with respect to a  
4 protest filed with the secretary on or after July 1, 1993;

5 ~~[BB.]~~ CC. information required by a provision of  
6 the Tax Administration Act to be made available to the public  
7 by the department;

8 ~~[GG.]~~ DD. upon request by the Bernalillo county  
9 metropolitan court, the department shall furnish the last known  
10 address and the date of that address for every person the court  
11 certifies to the department as a person who owes fines, fees or  
12 costs to the court or who has failed to appear pursuant to a  
13 court order or a promise to appear;

14 ~~[DD.]~~ EE. upon request by a magistrate court, the  
15 department shall furnish the last known address and the date of  
16 that address for every person the court certifies to the  
17 department as a person who owes fines, fees or costs to the  
18 court or who has failed to appear pursuant to a court order or  
19 a promise to appear;

20 ~~[EE.]~~ FF. to the national tax administration  
21 agencies of Mexico and Canada, provided the agency receiving  
22 the information has entered into a written agreement with the  
23 department to use the information for tax purposes only and is  
24 subject to a confidentiality statute similar to this section;

25 ~~[FF.]~~ GG. to a district attorney, a state district

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1 court grand jury or federal grand jury for an investigation of  
2 or proceeding related to an alleged criminal violation of the  
3 tax laws;

4 ~~[GG.]~~ HH. to a third party subject to a subpoena or  
5 levy issued pursuant to the provisions of the Tax  
6 Administration Act, the identity of the taxpayer involved, the  
7 taxes or tax acts involved and the nature of the proceeding;

8 ~~[HH.]~~ II. to the gaming control board, tax returns  
9 of license applicants and their affiliates as provided in  
10 Subsection E of Section 60-2E-14 NMSA 1978; ~~[and]~~

11 ~~[II.]~~ JJ. any written ruling on questions of  
12 evidence or procedure made by a hearing officer pursuant to  
13 Section 7-1-24 NMSA 1978; provided that the name and  
14 identification number of the taxpayer requesting the ruling  
15 shall not be ~~[provided]~~ disclosed;

16 ~~[II.]~~ KK. to representatives of the workers'  
17 compensation administration, authorized by the director of the  
18 workers' compensation administration for this purpose, to  
19 facilitate the identification of taxpayers that are delinquent  
20 or noncompliant in payment of fees required by Section 52-1-9.1  
21 or 52-5-19 NMSA 1978;

22 ~~[JJ.]~~ LL. to the secretary of labor or the  
23 secretary's delegate for use in enforcement of unemployment  
24 insurance collections pursuant to the terms of a reciprocal  
25 agreement entered into with the secretary of labor for exchange

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1 of information; the secretary of labor and employees of the  
2 labor department are subject to the provisions regarding  
3 confidentiality of information contained in the Tax  
4 Administration Act; [~~and~~]

5 ~~[KK.]~~ MM. information that the department is  
6 authorized by the Tax Administration Act to release to a local  
7 body that licenses professions or occupations pursuant to  
8 Chapter 36, Article 2 NMSA 1978 or Chapter 61 NMSA 1978;

9 NN. to a law enforcement agency or any other agency  
10 that investigates criminal violations, with which the  
11 department is conducting a joint investigation pursuant to a  
12 memorandum of understanding with that agency; provided that the  
13 information released is for purposes of that investigation; and

14 OO. records of refunds or credits that the  
15 department is required to make available for public inspection  
16 pursuant to Section 7-1-29 NMSA 1978."

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