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HOUSE BILL 658

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

INTRODUCED BY

Donald L. Whitaker

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; PERMITTING MUNICIPALITIES AND COUNTIES TO
ACCESS INFORMATION ON GROSS RECEIPTS AND GROSS RECEIPTS TAXES
PAID; 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
or a former employee of the department to reveal to an
individual other than another employee of the department
information contained in the return of a taxpayer made pursuant

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1 to a law subject to administration and enforcement under the
2 provisions of the Tax Administration Act or any other
3 information about a taxpayer acquired as a result of the
4 employee's employment by the department and not available from
5 public sources, except:

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

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

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

21 D. to another jurisdiction pursuant to an
22 international fuel tax agreement, provided that the information
23 is used for tax purposes only;

24 E. 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 for tax fraud or any
3 other crime that may affect taxes due to the state to which the
4 state is a party and in which the information sought is about a
5 taxpayer who is party to the action and is material to the
6 inquiry, in which case only that information may be required to
7 be produced in court and admitted in evidence subject to court
8 order protecting the confidentiality of the information and no
9 more;

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

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

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

25 G. information obtained through the administration

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1 of a law not subject to administration and enforcement under
2 the provisions of the Tax Administration Act to the extent that
3 release of that information is not otherwise prohibited by law;

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

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

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

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

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

25 (1) the names, taxpayer identification

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

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

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

21 M. to the commissioner of public lands for use in
22 auditing that pertains to rentals, royalties, fees and other
23 payments due the state under land sale, land lease or other
24 land use contracts; the commissioner of public lands and
25 employees of the commissioner are subject to the same

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1 provisions regarding confidentiality of information as
2 employees of the department;

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

14 [~~N.~~] 0. the department shall furnish to the
15 information systems division of the general services
16 department, by electronic media, a database containing New
17 Mexico personal income tax filers by county, which shall be
18 updated quarterly. The database information shall be used only
19 for the purpose of producing the random jury list for the
20 selection of petit or grand jurors for the state courts
21 pursuant to Section 38-5-3 NMSA 1978. The database shall not
22 contain any financial information. If any information in the
23 database is revealed by an employee of the administrative
24 office of the courts or the information systems division to
25 individuals other than employees of the administrative office

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1 of the courts, the state courts, the information systems
2 division or the department, the employee shall be subject to
3 the penalty provisions of Section 7-1-76 NMSA 1978;

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

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

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

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1 the department;

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

7 ~~[S.]~~ T. upon request of a municipality or county of
8 this state, the department shall permit officials or employees
9 of the municipality or county to inspect the records of the
10 department pertaining to an increase or decrease to a
11 distribution or transfer made pursuant to Section 7-1-6.15 NMSA
12 1978 for the purpose of reviewing the basis for the increase or
13 decrease. The municipal or county officials or employees
14 receiving information provided in this subsection shall not
15 reveal that information to any person other than another
16 employee of the municipality or the county, the department or a
17 district court, an appellate court or a federal court in a
18 proceeding relating to a disputed distribution and in which
19 both the state and the municipality or county are parties.
20 Information provided pursuant to provisions of this subsection
21 that is revealed other than as provided in this subsection
22 shall subject the person revealing the information to the
23 penalties contained in Section 7-1-76 NMSA 1978;

24 ~~[T.]~~ U. to a county of this state that has in
25 effect a local option gross receipts tax imposed by the county

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1 upon its request for a period specified by that county within
2 the twelve months preceding the request for the information by
3 that county:

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

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

24 (3) in the case of a local option gross
25 receipts tax imposed by a county only on persons engaging in

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

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

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

25 [~~V.~~] W. information with respect to the taxes or

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1 tax acts administered pursuant to Subsection B of Section 7-1-2
2 NMSA 1978, except that:

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

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

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

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

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

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

24 (d) the authorized representative of any
25 of the persons in Subparagraphs (a) through (c) of this

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1 paragraph. This paragraph does not prohibit the release of
2 proprietary information contained in the workpapers that is
3 also available from returns or from other sources not subject
4 to the provisions of this section;

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

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

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

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

25 ~~[AA.]~~ BB. a decision and order made by a hearing

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1 officer pursuant to Section 7-1-24 NMSA 1978 with respect to a
2 protest filed with the secretary on or after July 1, 1993;

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

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

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

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

23 ~~[FF-]~~ GG. to a district attorney, a state district
24 court grand jury or federal grand jury for an investigation of
25 or proceeding related to an alleged criminal violation of the

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1 tax laws;

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

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

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

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

20 [KK-] LL. to the secretary of labor or the
21 secretary's delegate for use in enforcement of unemployment
22 insurance collections pursuant to the terms of a reciprocal
23 agreement entered into with the secretary of labor for exchange
24 of information; the secretary of labor and employees of the
25 labor department are subject to the provisions regarding

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1 confidentiality of information contained in the Tax
2 Administration Act; and

3 ~~LL~~ MM. information that the department is
4 authorized by the Tax Administration Act to release to a local
5 body that licenses professions or occupations pursuant to
6 Chapter 36, Article 2 NMSA 1978 or Chapter 61 NMSA 1978."

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