

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 319

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

INTRODUCED BY

John Arthur Smith

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; EXTENDING THE TIME PERIOD DURING WHICH
MANAGED AUDIT PARTICIPANTS MAY MAKE INTEREST-FREE PAYMENTS ON
DELINQUENT TAXES; ELIMINATING FOR MANAGED AUDIT PARTICIPANTS
THE PENALTY FOR INCORRECT REPORTING OF GROSS RECEIPTS TAX
DEDUCTIONS FOR SALES OF FOOD OR HEALTH CARE PRACTITIONER
SERVICES; PROVIDING FOR INCREASED TAX PAYMENT AND FILING
EXTENSION PERIODS.

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

Section 1. Section 7-1-13 NMSA 1978 (being Laws 1965,
Chapter 248, Section 18, as amended) is amended to read:

"7-1-13. TAXPAYER RETURNS--PAYMENT OF TAXES--EXTENSION OF
TIME.--

A. Taxpayers are liable for tax at the time of and
after the transaction or incident giving rise to tax until

.160257.1

underscoring material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 payment is made. Taxes are due on and after the date on which
2 their payment is required until payment is made.

3 B. Every taxpayer shall, on or before the date on
4 which payment of any tax is due, complete and file a tax return
5 in a form prescribed and according to the regulations issued by
6 the secretary. Except as provided in Section 7-1-13.1 NMSA
7 1978 or by regulation, ruling, order or instruction of the
8 secretary, the payment of any tax or the filing of any return
9 may be accomplished by mail.

10 C. If any adjustment is made in the basis for
11 computation of any federal tax as a result of an audit by the
12 internal revenue service or the filing of an amended federal
13 return changing a prior election or making any other change for
14 which federal approval is required by the Internal Revenue
15 Code, the taxpayer affected shall, within ninety days of the
16 internal revenue service audit adjustment or payment of the
17 federal refund, file an amended return with the department.
18 Payment of any additional tax due shall accompany the return.

19 D. Payment of the total amount of all taxes that
20 are due from the taxpayer shall precede or accompany the
21 return. Delivery to the department of a check that is not paid
22 upon presentment does not constitute payment.

23 E. The secretary or the secretary's delegate may,
24 for good cause, extend in favor of a taxpayer or a class of
25 taxpayers, for no more than a total of twelve months, the date

.160257.1

underscored material = new
[bracketed material] = delete

1 on which payment of any tax is required or on which any return
2 required by provision of the Tax Administration Act shall be
3 filed, but no extension shall prevent the accrual of interest
4 as otherwise provided by law. When an extension of time for
5 income tax has been granted a taxpayer under the Internal
6 Revenue Code, such extension shall serve to extend the time for
7 filing New Mexico income tax provided that a copy of the
8 approved federal extension of time is attached to the
9 taxpayer's New Mexico income tax return, except that the
10 secretary by regulation may also provide for the automatic
11 extension for no more than [~~four~~] six months of the date upon
12 which payment of any New Mexico income tax or the filing of any
13 New Mexico income tax return is required. If the secretary or
14 the secretary's delegate believes it necessary to assure the
15 collection of the tax, the secretary or the secretary's
16 delegate may require, as a condition of granting any extension,
17 that the taxpayer furnish security in accordance with the
18 provisions of Section 7-1-54 NMSA 1978."

19 Section 2. Section 7-1-67 NMSA 1978 (being Laws 1965,
20 Chapter 248, Section 68, as amended) is amended to read:

21 "7-1-67. INTEREST ON DEFICIENCIES.--

22 A. If a tax imposed is not paid on or before the
23 day on which it becomes due, interest shall be paid to the
24 state on that amount from the first day following the day on
25 which the tax becomes due, without regard to any extension of

.160257.1

underscored material = new
[bracketed material] = delete

1 time or installment agreement, until it is paid, except that:

2 (1) for income tax imposed on a member of the
3 armed services of the United States serving in a combat zone
4 under orders of the president of the United States, interest
5 shall accrue only for the period beginning the day after any
6 applicable extended due date if the tax is not paid;

7 (2) if the amount of interest due at the time
8 payment is made is less than one dollar (\$1.00), then no
9 interest shall be due;

10 (3) if demand is made for payment of a tax,
11 including accrued interest, and if the tax is paid within ten
12 days after the date of the demand, no interest on the amount
13 paid shall be imposed for the period after the date of the
14 demand;

15 (4) if a managed audit is completed by the
16 taxpayer on or before the date required, as provided in the
17 agreement for the managed audit, and payment of any tax found
18 to be due is made in full within [~~thirty~~] one hundred eighty
19 days of the date the secretary has mailed or delivered an
20 assessment for the tax to the taxpayer, no interest shall be
21 due on the assessed tax;

22 (5) when, as the result of an audit or a
23 managed audit, an overpayment of a tax is credited against an
24 underpayment of tax pursuant to Section 7-1-29 NMSA 1978,
25 interest shall accrue from the date the tax was due until the

.160257.1

underscored material = new
[bracketed material] = delete

1 tax is deemed paid;

2 (6) if the department does not issue an
3 assessment for the tax program and period within the time
4 provided in Subsection D of Section 7-1-11.2 NMSA 1978,
5 interest shall be paid from the first day following the day on
6 which the tax becomes due until the tax is paid, excluding the
7 period between either:

8 (a) the one hundred eightieth day after
9 giving a notice of outstanding records or books of account and
10 the date of the assessment of the tax; or

11 (b) the ninetieth day after the
12 expiration of the additional time requested by the taxpayer to
13 comply, if such request was granted, and the date of the
14 assessment of the tax; and

15 (7) if the taxpayer was not provided with
16 proper notices as required in Section 7-1-11.2 NMSA 1978,
17 interest shall be paid from the first day following the day on
18 which the tax becomes due until the tax is paid, excluding the
19 period between one hundred eighty days prior to the date of
20 assessment and the date of assessment.

21 B. Interest due to the state under Subsection A or
22 D of this section shall be at the rate of fifteen percent a
23 year, computed on a daily basis; provided that if a different
24 rate is specified by a compact or other interstate agreement to
25 which New Mexico is a party, that rate shall be applied to

.160257.1

underscored material = new
[bracketed material] = delete

1 amounts due under the compact or other agreement.

2 C. Nothing in this section shall be construed to
3 impose interest on interest or interest on the amount of any
4 penalty.

5 D. If any tax required to be paid in accordance
6 with Section 7-1-13.1 NMSA 1978 is not paid in the manner
7 required by that section, interest shall be paid to the state
8 on the amount required to be paid in accordance with Section
9 7-1-13.1 NMSA 1978. If interest is due under this subsection
10 and is also due under Subsection A of this section, interest
11 shall be due and collected only pursuant to Subsection A of
12 this section."

13 Section 3. Section 7-1-71.2 NMSA 1978 (being Laws 2004,
14 Chapter 116, Section 3) is amended to read:

15 "7-1-71.2. PENALTY FOR INCORRECT REPORTING OF FOOD
16 DEDUCTION OR HEALTH CARE PRACTITIONER SERVICES DEDUCTION.--A
17 taxpayer who claims a deduction pursuant to Section 7-9-92 or
18 7-9-93 NMSA 1978 and fails to correctly report the amount of
19 the deduction to which the taxpayer is entitled shall pay a
20 penalty in the amount of the difference between the incorrect
21 deduction amount and the correct deduction amount multiplied by
22 twice the total local option tax rates in effect at the
23 taxpayer's business location for which the deduction was
24 claimed. [~~This~~] The penalty shall be in addition to other
25 applicable penalties, and shall not apply to a taxpayer

.160257.1

underscored material = new
[bracketed material] = delete

1 conducting a managed audit pursuant to an agreement with the
2 department."

3 Section 4. EFFECTIVE DATE.--The effective date of the
4 provisions of this act is July 1, 2006.

5 - 7 -

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25