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SENATE BILL 320

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; REQUIRING TAX RETURN PREPARERS WHO FILE OVER TWENTY-FIVE PERSONAL INCOME TAX RETURNS TO FILE THOSE RETURNS ELECTRONICALLY UNDER CERTAIN CONDITIONS; PERMITTING THE SECRETARY OF TAXATION AND REVENUE TO REQUIRE ELECTRONIC DELIVERY OF RETURNS OR PAYMENTS; CHANGING REQUIREMENTS FOR PAYMENT OF CERTAIN TAXES; CHANGING THE DUE DATE FOR WITHHOLDING TAX PAYMENTS; PROVIDING A PENALTY.

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

Section 1. A new section of the Tax Administration Act is enacted to read:

"[NEW MATERIAL] TAX RETURN PREPARER ELECTRONIC FILING REQUIREMENT--PENALTY.--

A. A tax return preparer that files over twenty-five personal income tax returns for a taxable year shall file

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1 each of those returns by electronic means with the department
2 unless a person for whom the preparer files a return requests,
3 in a form prescribed by the department, that the return be
4 filed by other means in accordance with department regulation.

5 B. A tax return preparer shall pay to the
6 department a penalty not to exceed five dollars (\$5.00) for
7 each tax return filed in violation of this section."

8 Section 2. Section 7-1-13 NMSA 1978 (being Laws 1965,
9 Chapter 248, Section 18, as amended) is amended to read:

10 "7-1-13. TAXPAYER RETURNS--PAYMENT OF TAXES--EXTENSION OF
11 TIME.--

12 A. Taxpayers are liable for tax at the time of and
13 after the transaction or incident giving rise to tax until
14 payment is made. Taxes are due on and after the date on which
15 their payment is required until payment is made.

16 B. Every taxpayer shall, on or before the date on
17 which payment of any tax is due, complete and file a tax return
18 in a form prescribed and according to the regulations issued by
19 the secretary. Except as provided in Section 7-1-13.1 NMSA
20 1978 or by regulation, ruling, order or instruction of the
21 secretary, the payment of any tax or the filing of any return
22 may be accomplished by mail. The secretary may require the
23 electronic delivery of any return or payment by regulation,
24 ruling, order or instruction.

25 C. If any adjustment is made in the basis for

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1 computation of any federal tax as a result of an audit by the
2 internal revenue service or the filing of an amended federal
3 return changing a prior election or making any other change for
4 which federal approval is required by the Internal Revenue
5 Code, the taxpayer affected shall, within ninety days of the
6 internal revenue service audit adjustment or payment of the
7 federal refund, file an amended return with the department.
8 Payment of any additional tax due shall accompany the return.

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

13 E. The secretary or the secretary's delegate may,
14 for good cause, extend in favor of a taxpayer or a class of
15 taxpayers, for no more than a total of twelve months, the date
16 on which payment of any tax is required or on which any return
17 required by provision of the Tax Administration Act shall be
18 filed, but no extension shall prevent the accrual of interest
19 as otherwise provided by law. When an extension of time for
20 income tax has been granted a taxpayer under the Internal
21 Revenue Code, such extension shall serve to extend the time for
22 filing New Mexico income tax provided that a copy of the
23 approved federal extension of time is attached to the
24 taxpayer's New Mexico income tax return, except that the
25 secretary by regulation may also provide for the automatic

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1 extension for no more than four months of the date upon which
2 payment of any New Mexico income tax or the filing of any New
3 Mexico income tax return is required. If the secretary or the
4 secretary's delegate believes it necessary to assure the
5 collection of the tax, the secretary or the secretary's
6 delegate may require, as a condition of granting any extension,
7 that the taxpayer furnish security in accordance with the
8 provisions of Section 7-1-54 NMSA 1978."

9 Section 3. Section 7-1-13.1 NMSA 1978 (being Laws 1988,
10 Chapter 99, Section 3, as amended) is amended to read:

11 "7-1-13.1. METHOD OF PAYMENT OF CERTAIN TAXES DUE.--

12 A. Payment of the taxes, including any applicable
13 penalties and interest, described in Paragraph (1), (2), (3) or
14 (4) of this subsection shall be made on or before the date due
15 in accordance with Subsection B of this section if the
16 taxpayer's average tax payment for the group of taxes during
17 the preceding calendar year equaled or exceeded [~~twenty-five~~
18 ~~thousand dollars (\$25,000)] ten thousand dollars (\$10,000):~~

19 (1) Group 1: all taxes due under the
20 Withholding Tax Act, the Gross Receipts and Compensating Tax
21 Act, local option gross receipts tax acts, the Interstate
22 Telecommunications Gross Receipts Tax Act and the Leased
23 Vehicle Gross Receipts Tax Act;

24 (2) Group 2: all taxes due under the Oil and
25 Gas Severance Tax Act, the Oil and Gas Conservation Tax Act,

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1 the Oil and Gas Emergency School Tax Act and the Oil and Gas Ad
2 Valorem Production Tax Act;

3 (3) Group 3: the tax due under the Natural
4 Gas Processors Tax Act; or

5 (4) Group 4: all taxes and fees due under the
6 Gasoline Tax Act, the Special Fuels Supplier Tax Act and the
7 Petroleum Products Loading Fee Act.

8 For taxpayers who have more than one identification number
9 issued by the department, the average tax payment shall be
10 computed by combining the amounts paid under the several
11 identification numbers.

12 B. Taxpayers who are required to make payment in
13 accordance with the provisions of this section shall make
14 payment by one or more of the following means on or before the
15 due date so that funds are immediately available to the state
16 on or before the due date:

17 (1) electronic payment; provided that a result
18 of the payment is that funds are immediately available to the
19 state of New Mexico on or before the due date;

20 (2) currency of the United States;

21 (3) check drawn on and payable at any New
22 Mexico financial institution provided that the check is
23 received by the department at the place and time required by
24 the department at least one banking day prior to the due date;
25 or

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1 (4) check drawn on and payable at any domestic
2 non-New Mexico financial institution provided that the check is
3 received by the department at the time and place required by
4 the department at least two banking days prior to the due date.

5 C. If the taxes required to be paid under this
6 section are not paid in accordance with Subsection B of this
7 section, the payment is not timely and is subject to the
8 provisions of Sections 7-1-67 and 7-1-69 NMSA 1978.

9 D. For the purposes of this section, "average tax
10 payment" means the total amount of taxes paid with respect to a
11 group of taxes listed under Subsection A of this section during
12 a calendar year divided by the number of months in that
13 calendar year containing a due date on which the taxpayer was
14 required to pay one or more taxes in the group."

15 Section 4. Section 7-3-6 NMSA 1978 (being Laws 1969,
16 Chapter 25, Section 1, as amended) is amended to read:

17 "7-3-6. DATE PAYMENT DUE.--Except for amounts withheld
18 pursuant to the provisions of Section 7-3-12 NMSA 1978, taxes
19 withheld under the provisions of the Withholding Tax Act must
20 be paid on or before the [~~twenty-fifth day of the month~~
21 ~~following the month when the taxes were required to be~~
22 ~~withheld]~~ date established by department regulation. Amounts
23 withheld pursuant to Section 7-3-12 NMSA 1978 must be paid on
24 or before the due date of the return for the pass-through
25 entity."

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1 Section 5. APPLICABILITY.--

2 A. The provisions of Sections 1 through 3 of this
3 act apply to taxable years beginning on or after January 1,
4 2006.

5 B. The provisions of Section 4 of this act apply to
6 taxable years beginning on or after January 1, 2007.

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