

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

HOUSE BILL 441

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Jose A. Campos

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 also 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

.164093.1

underscoring material = new
[bracketed material] = delete

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:

.164093.1

underscoring material = new
[bracketed material] = delete

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

.164093.1

underscored material = new
[bracketed material] = delete

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~~] 7-12-12,
9 7-12-15 and 7-12-17 NMSA 1978 to a committee of the legislature
10 for a valid legislative purpose or to the attorney general for
11 purposes of Section 6-4-13 NMSA 1978 and the master settlement
12 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

.164093.1

underscored material = new
[bracketed material] = delete

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 penalties contained in Section 7-1-76 NMSA 1978 if that
19 information is revealed to individuals other than other
20 employees of the 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

.164093.1

underscored material = new
[bracketed material] = delete

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

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

.164093.1

underscoring material = new
[bracketed material] = delete

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

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

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

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

.164093.1

underscoring material = new
[bracketed material] = delete

1 than employees of either the New Mexico department of
2 agriculture or the department;

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

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

.164093.1

underscored material = new
[bracketed material] = delete

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

6 (1) the names, taxpayer identification
7 numbers, gross receipts and gross receipts taxes paid and
8 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

.164093.1

underscoring material = new
[bracketed material] = delete

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~~] penalties contained in Section 7-1-76 NMSA 1978
17 if the 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

.164093.1

underscored material = new
[bracketed material] = delete

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~~] however:

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

.164093.1

underscoring material = new
[bracketed material] = delete

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

.164093.1

underscored material = new
[bracketed material] = delete

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 ~~[CC-]~~ 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

.164093.1

underscored material = new
[bracketed material] = delete

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 ~~HH.]~~ 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 ~~[HH.]~~ 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

.164093.1

underscored material = new
~~[bracketed material]~~ = delete

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 - 15 -