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HOUSE BILL 697

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

INTRODUCED BY

Brian K. Moore

FOR THE LEGISLATIVE FINANCE COMMITTEE

AN ACT

RELATING TO TAX INCENTIVES; AUTHORIZING THE TAXATION AND REVENUE DEPARTMENT TO PROVIDE CERTAIN INFORMATION TO THE LABOR DEPARTMENT; REQUIRING A REPORT ON JOBS CREATION RESULTING FROM TAX INCENTIVES; REQUIRING A RECIPROCAL AGREEMENT; 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

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

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

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

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

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

25 E. to a district court, an appellate court or a

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1 federal court:

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

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

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

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

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

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

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

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

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

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

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1                   (1) the names, taxpayer identification numbers  
2 and 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.~~] O. 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 person  
9 required to file a gasoline tax return or pay gasoline tax in  
10 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]~~ subsection shall be construed to allow the department  
6 to answer inquiries concerning whether a person has filed a tax  
7 return;

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

25           ~~[T.]~~ U. to a county of this state that has in

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1 effect a local option gross receipts tax imposed by the county  
2 upon its request for a period specified by that county within  
3 the twelve months preceding the request for the information by  
4 that county:

5 (1) the names, taxpayer identification numbers  
6 and 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 provided in  
8 Subsection E of Section 60-2E-14 NMSA 1978; [~~and~~

9 ~~HH-]~~ 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 [~~HH-]~~ 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 [~~JJ-]~~ LL. to the secretary of labor or the  
21 secretary's delegate, provided that the secretary of labor or  
22 the secretary's delegate comply with the provisions regarding  
23 confidentiality of information contained in the Tax  
24 Administration Act:

25 (1) for use in enforcement of unemployment

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1 insurance collections pursuant to the terms of a reciprocal  
2 agreement entered into with the secretary of labor for exchange  
3 of information [~~the secretary of labor and employees of the~~  
4 ~~labor department are subject to the provisions regarding~~  
5 ~~confidentiality of information contained in the Tax~~  
6 ~~Administration Act~~]; and

7 (2) for use to develop data on the  
8 effectiveness of tax incentives, pursuant to a reciprocal  
9 agreement entered into with the secretary of labor, including  
10 employer identification information to enable the labor  
11 department to correlate the employers receiving tax incentives  
12 with the labor department's employment databases; and

13 [KK.] MM. information that the department is  
14 authorized by the Tax Administration Act to release to a local  
15 body that licenses professions or occupations pursuant to  
16 Chapter 36, Article 2 NMSA 1978 or Chapter 61 NMSA 1978."

17 Section 2. A new section of the Tax Administration Act is  
18 enacted to read:

19 "[NEW MATERIAL] REPORT--NEW EMPLOYEES--BUSINESSES  
20 RECEIVING TAX INCENTIVES--RECIPROCAL AGREEMENT.--

21 A. The secretary shall report quarterly to the  
22 legislative finance committee on tax incentives identified by  
23 the department by tax incentive. The report shall include the  
24 following information for each tax incentive:

25 (1) the name of the tax incentive;

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1 (2) the aggregate amount of the tax incentive  
2 issued in the quarter;

3 (3) the number of employers receiving the tax  
4 incentive;

5 (4) the aggregate number of persons employed  
6 by employers receiving the tax incentive; and

7 (5) the aggregate amount of wages paid in the  
8 quarter by employers receiving the tax incentive.

9 B. The secretary shall enter into a reciprocal  
10 agreement with the secretary of labor to provide from the  
11 taxation and revenue department employer identification  
12 information as needed by the labor department to develop data  
13 on employers receiving tax incentives and to receive from the  
14 labor department information necessary to evaluate the  
15 effectiveness of tax incentives.

16 C. As used in this section, "tax incentive" means  
17 those tax credits designed to promote job creation, including  
18 the film production tax credit, high-wage jobs tax credit,  
19 investment tax credit, technology jobs tax credit, rural job  
20 tax credit and other credits of a similar nature that may be  
21 created from time to time."

22 Section 3. A new section of the Labor Department Act is  
23 enacted to read:

24 "[NEW MATERIAL] RECIPROCAL AGREEMENT--LABOR DEPARTMENT AND  
25 TAXATION AND REVENUE DEPARTMENT--EXCHANGE OF EMPLOYER

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INFORMATION.--

A. The secretary shall enter into a reciprocal agreement with the secretary of taxation and revenue to receive from the taxation and revenue department employer identification information as needed to develop data on employers receiving tax incentives and to provide to the taxation and revenue department information necessary to evaluate the effectiveness of tax incentives.

B. As used in this section, "tax incentive" means those tax credits designed to promote job creation, including the film production tax credit, high-wage jobs tax credit, investment tax credit, technology jobs tax credit, rural job tax credit and other credits of a similar nature that may be created from time to time."