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SENATE BILL 203

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

INTRODUCED BY

Sue Wilson Beffort

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; ALLOWING TAXPAYERS TO REQUEST EARLY
COMPLETION OF AUDITS; EXTENDING THE TIME PERIOD DURING WHICH
MANAGED AUDIT PARTICIPANTS MAY MAKE INTEREST-FREE PAYMENTS ON
DELINQUENT TAXES; STATING EXCEPTIONS TO DELINQUENT TAXPAYER
STATUS; AMENDING SECTIONS OF THE NMSA 1978; RECONCILING
MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2001.

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

Section 1. Section 7-1-11 NMSA 1978 (being Laws 1965,
Chapter 248, Section 16, as amended by Laws 2001, Chapter 16,
Section 4 and also by Laws 2001, Chapter 56, Section 4) is
amended to read:

"7-1-11. INSPECTION OF BOOKS OF TAXPAYERS--CREDENTIALS.--

A. The department shall cause the records and books
of account of taxpayers to be inspected or audited at such

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1 times as the department deems necessary for the effective
2 execution of the department's responsibilities.

3 B. Auditors and other officials of the department
4 designated by the secretary are authorized to request and
5 require the production for examination of the records and books
6 of account of a taxpayer. [~~Those~~] Auditors and officials of
7 the department [~~so~~] designated by the secretary shall be
8 furnished with credentials identifying them as such, which they
9 shall display to any taxpayer whose books are sought to be
10 examined.

11 C. Taxpayers shall upon request make their records
12 and books of account available for inspection at reasonable
13 hours to the secretary or the secretary's delegate who
14 [~~properly identifies himself~~] presents proper identification to
15 the taxpayer.

16 D. If the taxpayer's records and books of account
17 do not exist or are insufficient to determine the taxpayer's
18 tax liability, if any, the department may use any reasonable
19 method of estimating the tax liability, including but not
20 limited to using information about similar persons, businesses
21 or industries to estimate the taxpayer's liability.

22 E. The secretary or the secretary's delegate shall
23 develop and maintain written audit policies and procedures for
24 all audit programs in which the department routinely conducts
25 field audits of taxpayers, including policies and procedures

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1 concerning audit notification, scheduling, records that may be
2 examined, analysis that may be done, sampling procedures,
3 gathering information or evidence from third parties, policies
4 concerning the rights of taxpayers under audit and related
5 matters. Department audit policies and procedures shall be
6 made available to a person who requests them, at a reasonable
7 charge to defray the cost of preparing and distributing those
8 policies and procedures. Nothing in this section shall be
9 construed to require the department to provide information that
10 is confidential pursuant to Section 7-1-8 NMSA 1978, nor shall
11 the department be required to provide information concerning
12 how taxpayers are selected for audit."

13 Section 2. Section 7-1-11.2 NMSA 1978 (being Laws 2003,
14 Chapter 398, Section 7) is amended to read:

15 "7-1-11.2. REQUIRED AUDIT NOTICES.--

16 A. Except as provided in Subsection G of this
17 section, prior to or coincident with requesting records and
18 books of account from a taxpayer pursuant to Section 7-1-11
19 NMSA 1978, as part of an office or field audit, the department
20 shall provide the taxpayer with written dated notice of the
21 commencement of an audit. The notice shall, at a minimum,
22 state the tax programs and reporting periods to be covered and
23 the date on which the audit is commenced.

24 B. To any taxpayer to whom the department is
25 required to provide a written notice of the commencement of an

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1 audit, the department shall also provide a written notice of
2 the outstanding records or books of account that have been
3 requested but not received. If the taxpayer has provided all
4 records and books of account requested, the notice shall so
5 state. The notice of outstanding records or books of account
6 shall be given no sooner than sixty days, unless the taxpayer
7 provides a written request for early completion of the audit,
8 and no later than one hundred eighty days after the date of the
9 commencement of the audit. The notice of outstanding records
10 or books of account shall be dated and shall provide reasonable
11 descriptions of any records or books of account needed or the
12 information expected to be contained in them and shall give the
13 taxpayer ninety days to comply with Section 7-1-11 NMSA 1978.
14 The notice shall state that if the taxpayer does not properly
15 comply within ninety days of the date of the notice, the
16 department will proceed to issue any assessment of tax due on
17 the basis of information available.

18 C. A taxpayer may request additional time to comply
19 with the notice of outstanding records and books of account.
20 Such request shall be in writing and shall state the amount of
21 time needed.

22 D. If the department does not issue an assessment
23 within one hundred eighty days after giving a notice of
24 outstanding records or books of account or within ninety days
25 after the expiration of the additional time requested by the

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1 taxpayer to comply, if such request was granted, interest shall
2 be computed in accordance with Paragraph (6) of Subsection A of
3 Section 7-1-67 NMSA 1978.

4 E. Any taxpayer who was not provided a proper
5 notice of outstanding records or books of account is entitled
6 to computation of interest in accordance with Paragraph (7) of
7 Subsection A of Section 7-1-67 NMSA 1978.

8 F. Nothing in this section shall prevent the
9 department from requesting from the taxpayer a waiver of the
10 statute of limitations for assessment of tax owed. Nothing in
11 this section shall prevent the department from issuing an
12 assessment of tax owed on the basis of the information
13 available.

14 G. This section does not apply to investigations of
15 fraud."

16 Section 3. Section 7-1-16 NMSA 1978 (being Laws 1965,
17 Chapter 248, Section 19, as amended) is amended to read:

18 "7-1-16. DELINQUENT TAXPAYER.--

19 A. Except as provided in Subsection D of this
20 section, any taxpayer to whom taxes have been assessed as
21 provided in Section 7-1-17 NMSA 1978 or upon whom demand for
22 payment has been made as provided in Section 7-1-63 NMSA 1978
23 who does not within thirty days after the date of assessment or
24 demand for payment make payment, protest the assessment or
25 demand for payment as provided by Section 7-1-24 NMSA 1978 or

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1 furnish security for payment as provided by Section 7-1-54 NMSA
2 1978 becomes a delinquent taxpayer and remains such until:

3 (1) payment of the total amount of all such
4 taxes is made;

5 (2) a retroactive extension of time to file a
6 protest is granted pursuant to Section 7-1-24 NMSA 1978;
7 provided, however, that the taxpayer again becomes a delinquent
8 taxpayer if the assessment is not abated and the taxpayer does
9 not pay, protest or furnish security within the time allowed by
10 the retroactive extension of time;

11 (3) security is furnished for payment; or

12 (4) no part of the assessment remains
13 unabated.

14 B. Any taxpayer who fails to provide security as
15 required by Subsection D of Section 7-1-54 NMSA 1978 shall be
16 deemed to be a delinquent taxpayer.

17 C. If a taxpayer files a protest as provided in
18 Section 7-1-24 NMSA 1978, the taxpayer nevertheless becomes a
19 delinquent taxpayer upon failure of the taxpayer to appear, in
20 person or by authorized representative, at the hearing set or
21 upon failure to perfect an appeal from any decision or part
22 thereof adverse to the taxpayer to the next higher appellate
23 level, as provided in that section, unless the taxpayer makes
24 payment of the total amount of all taxes assessed and remaining
25 unabated or furnishes security for payment.

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1 ~~[D. If a taxpayer files for an extension of time to~~
2 ~~file a protest as provided in Section 7-1-24 NMSA 1978 within~~
3 ~~thirty days after the date of the assessment or demand for~~
4 ~~payment, the taxpayer does not become a delinquent taxpayer~~
5 ~~unless the assessment is not abated and the taxpayer does not~~
6 ~~pay, protest or furnish security within the time allowed by the~~
7 ~~extension of time.]~~

8 D. A taxpayer does not become a delinquent taxpayer
9 if the taxpayer:

10 (1) files for an extension of time to file a
11 protest as provided in Section 7-1-24 NMSA 1978 within thirty
12 days after the date of the assessment or demand for payment,
13 unless the assessment is not abated and the taxpayer does not
14 pay, protest or furnish security within the time allowed by the
15 extension of time; or

16 (2) has been issued an assessment as a result
17 of a managed audit but is still within the allowed time period
18 to pay the tax due as specified in Paragraph (4) of Subsection
19 A of Section 7-1-67 NMSA 1978."

20 Section 4. Section 7-1-67 NMSA 1978 (being Laws 1965,
21 Chapter 248, Section 68, as amended) is amended to read:

22 "7-1-67. INTEREST ON DEFICIENCIES.--

23 A. If a tax imposed is not paid on or before the
24 day on which it becomes due, interest shall be paid to the
25 state on that amount from the first day following the day on

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1 which the tax becomes due, without regard to any extension of
2 time or installment agreement, until it is paid, except that:

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

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

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

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

23 (5) when, as the result of an audit or a
24 managed audit, an overpayment of a tax is credited against an
25 underpayment of tax pursuant to Section 7-1-29 NMSA 1978,

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1 interest shall accrue from the date the tax was due until the
2 tax is deemed paid;

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

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

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

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

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

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1 which New Mexico is a party, that rate shall be applied to
2 amounts due under the compact or other agreement.

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

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

14 Section 5. REPEAL.--Laws 2001, Chapter 16, Section 4 is
15 repealed.

16 Section 6. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is July 1, 2007.