

SENATE INDIAN AND CULTURAL AFFAIRS COMMITTEE SUBSTITUTE FOR
SENATE BILL 1230

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

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
REQUIRING THE TAXATION AND REVENUE DEPARTMENT TO IDENTIFY AND
NOTIFY CERTAIN TAXPAYERS OF POSSIBLE OVERPAYMENT OF TAXES;
EXTENDING THE TIME FOR REFUND CLAIMS WITH RESPECT TO CERTAIN
MILITARY INCOME OF NATIVE AMERICANS.

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] REVIEW OF RECORDS--NOTICE OF POTENTIAL
ELIGIBILITY FOR REFUND.--

A. The department shall review income tax records
to identify possible overpayments that have been made with
respect to income earned from service in the armed forces of
the United States by a taxpayer who is:

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1 (1) a resident of New Mexico;

2 (2) an enrolled member of a federally
3 recognized Indian nation, tribe or pueblo; and

4 (3) whose domicile during that service was on
5 the member's or the member's spouse's reservation, pueblo grant
6 or within the boundaries of lands held in trust by the United
7 States for the benefit of the member, the member's spouse or
8 the member's or the spouse's Indian nation, tribe or pueblo,
9 subject to restrictions against alienation imposed by the
10 United States.

11 B. The department shall send a notice detailing the
12 possible overpayments to the identified taxpayers, pursuant to
13 the provisions of Section 7-1-9 NMSA 1978."

14 Section 2. Section 7-1-26 NMSA 1978 (being Laws 1965,
15 Chapter 248, Section 28, as amended) is amended to read:

16 "7-1-26. CLAIM FOR REFUND.--

17 A. ~~[Any]~~ A person who believes that an amount of
18 tax has been paid by or withheld from that person in excess of
19 that for which the person was liable, who has been denied ~~[any]~~
20 a credit or rebate claimed or who claims a prior right to
21 property in the possession of the department pursuant to a levy
22 made under authority of Sections 7-1-31 through 7-1-34 NMSA
23 1978 may claim a refund by directing to the secretary, within
24 the time limited by the provisions of Subsections D, E ~~[and]~~,
25 F and K of this section, a written claim for refund. Except as

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1 provided in Subsection J of this section, a refund claim shall
2 include the taxpayer's name, address and identification number,
3 the type of tax for which a refund is being claimed, the sum of
4 money being claimed, the period for which overpayment was made
5 and the basis for the refund. As used in this subsection,
6 "basis for the refund" means a brief statement of the facts and
7 the law on which the claim is based.

8 B. The secretary or the secretary's delegate may
9 allow the claim in whole or in part or may deny the claim.

10 (1) If the claim is denied in whole or in part
11 in writing, no claim may be refiled with respect to that which
12 was denied but the person, within ninety days after either the
13 mailing or delivery of the denial of all or any part of the
14 claim, may elect to pursue one, but not more than one, of the
15 remedies in Subsection C of this section.

16 (2) If the department has neither granted nor
17 denied ~~[any]~~ a portion of a claim for refund within one hundred
18 twenty days of the date the claim was mailed or delivered to
19 the department, the person may refile it within the time limits
20 set forth in Subsection ~~[G]~~ D of this section or may within
21 ninety days elect to pursue one, but only one, of the remedies
22 in Subsection C of this section. After the expiration of the
23 two hundred ten days from the date the claim was mailed or
24 delivered to the department, the department may not approve or
25 disapprove the claim unless the person has pursued one of the

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1 remedies under Subsection C of this section.

2 C. A person may elect to pursue one, but only one,
3 of the remedies in Paragraphs (1) and (2) of this subsection.
4 In any case, if a person does timely pursue more than one
5 remedy, the person shall be deemed to have elected the first
6 remedy invoked. The remedies are as follows:

7 (1) the person may direct to the secretary a
8 written protest against the denial of, or failure to either
9 allow or deny the claim or portion thereof, which shall be set
10 for hearing by a hearing officer designated by the secretary
11 promptly after the receipt of the protest in accordance with
12 the provisions of Section 7-1-24 NMSA 1978, and pursue the
13 remedies of appeal from decisions adverse to the protestant as
14 provided in Section 7-1-25 NMSA 1978; or

15 (2) the person may commence a civil action in
16 the district court for Santa Fe county by filing a complaint
17 setting forth the circumstance of the claimed overpayment,
18 alleging that on account thereof the state is indebted to the
19 plaintiff in the amount stated, together with any interest
20 allowable, demanding the refund to the plaintiff of that amount
21 and reciting the facts of the claim for refund. The plaintiff
22 or the secretary may appeal from any final decision or order of
23 the district court to the court of appeals.

24 D. Except as otherwise provided in Subsections E
25 [~~and~~], F and K of this section, no credit or refund of any

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1 amount may be allowed or made to ~~any~~ a person unless as the
2 result of a claim made by that person as provided in this
3 section:

4 (1) within three years of the end of the
5 calendar year in which:

6 (a) the payment was originally due or
7 the overpayment resulted from an assessment by the department
8 pursuant to Section 7-1-17 NMSA 1978, whichever is later;

9 (b) the final determination of value
10 occurs with respect to any overpayment that resulted from a
11 disapproval by any agency of the United States or the state of
12 New Mexico or any court of increase in value of a product
13 subject to taxation under the Oil and Gas Severance Tax Act,
14 the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency
15 School Tax Act, the Oil and Gas Ad Valorem Production Tax Act
16 or the Natural Gas Processors Tax Act; or

17 (c) property was levied upon pursuant to
18 the provisions of the Tax Administration Act;

19 (2) when an amount of a claim for credit under
20 the provisions of the Investment Credit Act, Laboratory
21 Partnership with Small Business Tax Credit Act, Technology Jobs
22 Tax Credit Act [~~Capital Equipment Tax Credit Act~~] or similar
23 act or for the rural job tax credit pursuant to Sections 7-2E-1
24 and 7-2E-2 NMSA 1978 or similar credit has been denied, the
25 taxpayer may claim a refund of the credit no later than one

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1 year after the date of the denial;

2 (3) when a taxpayer under audit by the
3 department has signed a waiver of the limitation on assessments
4 on or after July 1, 1993 pursuant to Subsection F of Section
5 7-1-18 NMSA 1978, the taxpayer may file a claim for refund of
6 the same tax paid for the same period for which the waiver was
7 given, until a date one year after the later of the date of the
8 mailing of an assessment issued pursuant to the audit, the date
9 of the mailing of final audit findings to the taxpayer or the
10 date a proceeding is begun in court by the department with
11 respect to the same tax and the same period;

12 (4) if the payment of an amount of tax was not
13 made within three years of the end of the calendar year in
14 which the original due date of the tax or date of the
15 assessment of the department occurred, a claim for refund of
16 that amount of tax can be made within one year of the date on
17 which the tax was paid; or

18 (5) when a taxpayer has been assessed a tax on
19 or after July 1, 1993 under Subsection B, C or D of Section
20 7-1-18 NMSA 1978 and when the assessment applies to a period
21 ending at least three years prior to the beginning of the year
22 in which the assessment was made, the taxpayer may claim a
23 refund for the same tax for the period of the assessment or for
24 any period following that period within one year of the date of
25 the assessment unless a longer period for claiming a refund is

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1 provided in this section.

2 E. No credit or refund shall be allowed or made to
3 [~~any~~] a person claiming a refund of gasoline tax under Section
4 7-13-11 NMSA 1978 unless notice of the destruction of the
5 gasoline was given the department within thirty days of the
6 actual destruction and the claim for refund is made within six
7 months of the date of destruction. No credit or refund shall
8 be allowed or made to [~~any~~] a person claiming a refund of
9 gasoline tax under Section 7-13-17 NMSA 1978 unless the refund
10 is claimed within six months of the date of purchase of the
11 gasoline and the gasoline has been used at the time the claim
12 for refund is made.

13 F. If, as a result of an audit by the internal
14 revenue service or the filing of an amended federal return
15 changing a prior election or making any other change for which
16 federal approval is required by the Internal Revenue Code, any
17 adjustment of federal tax is made with the result that there
18 would have been an overpayment of tax if the adjustment to
19 federal tax had been applied to the taxable period to which it
20 relates, claim for credit or refund of only that amount based
21 on the adjustment may be made as provided in this section
22 within one year of the date of the internal revenue service
23 audit adjustment or payment of the federal refund or within the
24 period limited by Subsection D of this section, whichever
25 expires later. Interest computed at the rate specified in
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underscoring material = new
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1 Subsection B of Section 7-1-68 NMSA 1978 shall be allowed on
2 any such claim for refund from the date one hundred twenty days
3 after the claim is made until the date the final decision to
4 grant the credit or refund is made.

5 G. If as a result of an audit by the department or
6 a managed audit covering multiple periods an overpayment of tax
7 is found in any period under the audit, that overpayment may be
8 credited against an underpayment of the same tax found in
9 another period under audit pursuant to Section 7-1-29 NMSA
10 1978, provided that the taxpayer files a claim for refund for
11 the overpayments identified in the audit.

12 H. Any refund of tax paid under any tax or tax act
13 administered under Subsection B of Section 7-1-2 NMSA 1978 may
14 be made, at the discretion of the department, in the form of
15 credit against future tax payments if future tax liabilities in
16 an amount at least equal to the credit amount reasonably may be
17 expected to become due.

18 I. For the purposes of this section, the term "oil
19 and gas tax return" means a return reporting tax due with
20 respect to oil, natural gas, liquid hydrocarbons or carbon
21 dioxide pursuant to the Oil and Gas Severance Tax Act, the Oil
22 and Gas Conservation Tax Act, the Oil and Gas Emergency School
23 Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the
24 Natural Gas Processors Tax Act or the Oil and Gas Production
25 Equipment Ad Valorem Tax Act.

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1 J. The filing of a fully completed original income
2 tax return, corporate income tax return, corporate income and
3 franchise tax return, estate tax return or special fuel excise
4 tax return that shows a balance due the taxpayer or a fully
5 completed amended income tax return, an amended corporate
6 income tax return, an amended corporate income and franchise
7 tax return, an amended estate tax return, an amended special
8 fuel excise tax return or an amended oil and gas tax return
9 that shows a lesser tax liability than the original return
10 constitutes the filing of a claim for refund for the difference
11 in tax due shown on the original and amended returns.

12 K. A claim for a refund may be made until December
13 31, 2017, if the claim for a refund is for an amount paid by
14 the taxpayer or withheld from the taxpayer's earnings with
15 respect to income earned from service in the armed forces of
16 the United States, and the basis of the refund claim is that
17 the income was not subject to taxation by New Mexico because
18 the taxpayer was an enrolled member of a federally recognized
19 Indian nation, tribe or pueblo and the taxpayer's domicile in
20 New Mexico during that service was on the member's or the
21 member's spouse's reservation or pueblo grant or within the
22 boundaries of lands held in trust for the benefit of the
23 member, the member's spouse or the member's or the spouse's
24 Indian nation, tribe or pueblo subject to restrictions against
25 alienation imposed by the United States."

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