

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 257

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

AN ACT

RELATING TO TAXATION; AMENDING THE TAX ADMINISTRATION ACT TO
DEFINE ADDITIONAL TERMS; REORGANIZING THE CONFIDENTIALITY
PROVISIONS AND ADDING EXCEPTIONS; CLARIFYING THE PENALTY FOR
REVEALING INFORMATION CONCERNING TAXPAYERS; AMENDING AND
ENACTING SECTIONS OF THE NMSA 1978.

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

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

"7-1-3. DEFINITIONS.--Unless the context clearly
indicates a different meaning, the definitions of words and
phrases as they are stated in this section are to be used, and
whenever in the Tax Administration Act these words and phrases
appear, the singular includes the plural and the plural
includes the singular:

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underscored material = new
[bracketed material] = delete

1 A. "automated clearinghouse transaction" means an
2 electronic credit or debit transmitted through an automated
3 clearinghouse payable to the state treasurer and deposited with
4 the fiscal agent of New Mexico;

5 B. "department" means the taxation and revenue
6 department, the secretary or any employee of the department
7 exercising authority lawfully delegated to that employee by the
8 secretary;

9 C. "electronic payment" means a payment made by
10 automated clearinghouse deposit, any funds wire transfer system
11 or a credit card, debit card or electronic cash transaction
12 through the internet;

13 D. "employee of the department" means any employee
14 of the department, including the secretary, or any person
15 acting as agent or authorized to represent or perform services
16 for the department in any capacity with respect to any law made
17 subject to administration and enforcement under the provisions
18 of the Tax Administration Act;

19 E. "financial institution" means any state or
20 federally chartered, federally insured depository institution;

21 F. "Internal Revenue Code" means the Internal
22 Revenue Code of 1986, as that code may be amended or its
23 sections renumbered;

24 G. "levy" means the lawful power, hereby invested
25 in the secretary, to take into possession or to require the

1 present or future surrender to the secretary or the secretary's
2 delegate of any property or rights to property belonging to a
3 delinquent taxpayer;

4 H. "local option gross receipts tax" means a tax
5 authorized to be imposed by a county or municipality upon the
6 taxpayer's gross receipts, as that term is defined in the Gross
7 Receipts and Compensating Tax Act, and required to be collected
8 by the department at the same time and in the same manner as
9 the gross receipts tax; "local option gross receipts tax"
10 includes the taxes imposed pursuant to the Municipal Local
11 Option Gross Receipts Taxes Act, Supplemental Municipal Gross
12 Receipts Tax Act, County Local Option Gross Receipts Taxes Act,
13 Local Hospital Gross Receipts Tax Act, County Correctional
14 Facility Gross Receipts Tax Act and such other acts as may be
15 enacted authorizing counties or municipalities to impose taxes
16 on gross receipts, which taxes are to be collected by the
17 department in the same time and in the same manner as it
18 collects the gross receipts tax;

19 I. "managed audit" means a review and analysis
20 conducted by a taxpayer under an agreement with the department
21 to determine the taxpayer's compliance with a tax administered
22 pursuant to the Tax Administration Act and the presentation of
23 the results to the department for assessment of tax found to be
24 due;

25 J. "net receipts" means the total amount of money

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1 paid by taxpayers to the department in a month pursuant to a
2 tax or tax act less any refunds disbursed in that month with
3 respect to that tax or tax act;

4 K. "overpayment" means an amount paid, pursuant to
5 any law subject to administration and enforcement under the
6 provisions of the Tax Administration Act, by a person to the
7 department or withheld from the person in excess of tax due
8 from the person to the state at the time of the payment or at
9 the time the amount withheld is credited against tax due;

10 L. "paid" includes the term "paid over";

11 M. "pay" includes the term "pay over";

12 N. "payment" includes the term "payment over";

13 O. "person" means any individual, estate, trust,
14 receiver, cooperative association, club, corporation, company,
15 firm, partnership, limited liability company, limited liability
16 partnership, joint venture, syndicate, other association or
17 gas, water or electric utility owned or operated by a county or
18 municipality; "person" also means, to the extent permitted by
19 law, a federal, state or other governmental unit or
20 subdivision, or an agency, department or instrumentality
21 thereof; and "person", as used in Sections 7-1-72 through
22 7-1-74 NMSA 1978, also includes an officer or employee of a
23 corporation, a member or employee of a partnership or any
24 individual who, as such, is under a duty to perform any act in
25 respect of which a violation occurs;

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1 P. "property" means property or rights to property;

2 Q. "property or rights to property" means any
3 tangible property, real or personal, or any intangible property
4 of a taxpayer;

5 R. "return" means any tax or information return,
6 declaration of estimated tax or claim for refund, including any
7 amendments or supplements to the return, required or permitted
8 pursuant to a law subject to administration and enforcement
9 pursuant to the Tax Administration Act and filed with the
10 secretary or the secretary's delegate by or on behalf of any
11 person;

12 S. "return information" means a taxpayer's name,
13 address, government-issued identification number and other
14 identifying information; any information contained in or
15 derived from a taxpayer's return; any information with respect
16 to any actual or possible administrative or legal action by an
17 employee of the department concerning a taxpayer's return, such
18 as audits, managed audits, denial of credits or refunds,
19 assessments of tax, penalty or interest, protests of
20 assessments or denial of refunds or credits, levies or liens;
21 or any other information with respect to a taxpayer's return or
22 tax liability that was not obtained from public sources or that
23 was created by an employee of the department; but "return
24 information" does not include statistical data or other
25 information that cannot be associated with or directly or

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1 indirectly identify a particular taxpayer;

2 [R.] T. "secretary" means the secretary of taxation
3 and revenue and, except for purposes of Subsection B of Section
4 7-1-4 NMSA 1978 and Subsection E of Section 7-1-24 NMSA 1978,
5 also includes the deputy secretary or a division director or
6 deputy division director delegated by the secretary;

7 [S.] U. "secretary or the secretary's delegate"
8 means the secretary or any employee of the department
9 exercising authority lawfully delegated to that employee by the
10 secretary;

11 [T.] V. "security" means money, property or rights
12 to property or a surety bond;

13 [U.] W. "state" means any state of the United
14 States, the District of Columbia, the commonwealth of Puerto
15 Rico and any territory or possession of the United States;

16 [V.] X. "tax" means the total amount of each tax
17 imposed and required to be paid, withheld and paid or collected
18 and paid under provision of any law made subject to
19 administration and enforcement according to the provisions of
20 the Tax Administration Act and, unless the context otherwise
21 requires, includes the amount of any interest or civil penalty
22 relating thereto; "tax" also means any amount of any abatement
23 of tax made or any credit, rebate or refund paid or credited by
24 the department under any law subject to administration and
25 enforcement under the provisions of the Tax Administration Act

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1 to any person contrary to law and includes, unless the context
2 requires otherwise, the amount of any interest or civil penalty
3 relating thereto;

4 ~~[W.]~~ Y. "taxpayer" means a person liable for
5 payment of any tax, a person responsible for withholding and
6 payment or for collection and payment of any tax or a person to
7 whom an assessment has been made, if the assessment remains
8 unabated or the amount thereof has not been paid; and

9 ~~[X.]~~ Z. "tax return preparer" means a person who
10 prepares for others for compensation or who employs one or more
11 persons to prepare for others for compensation any return of
12 income tax, a substantial portion of any return of income tax,
13 any claim for refund with respect to income tax or a
14 substantial portion of any claim for refund with respect to
15 income tax; provided that a person shall not be a "tax return
16 preparer" merely because such person:

17 (1) furnishes typing, reproducing or other
18 mechanical assistance;

19 (2) is an employee who prepares an income tax
20 return or claim for refund with respect to an income tax return
21 of the employer, or of an officer or employee of the employer,
22 by whom the person is regularly and continuously employed; or

23 (3) prepares as a trustee or other fiduciary
24 an income tax return or claim for refund with respect to income
25 tax for any person."

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

3 "7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER
4 INFORMATION.--~~[It is unlawful for an employee of the department
5 or a former employee of the department to reveal to an
6 individual other than another employee of the department
7 information contained in the return of a taxpayer made pursuant
8 to a law subject to administration and enforcement under the
9 provisions of the Tax Administration Act or any other
10 information about a taxpayer acquired as a result of the
11 employee's employment by the department and not available from
12 public sources, except:~~

13 A. ~~to an authorized representative of another
14 state; provided that the receiving state has entered into a
15 written agreement with the department to use the information
16 for tax purposes only and that the receiving state has enacted
17 a confidentiality statute similar to this section to which the
18 representative is subject;~~

19 B. ~~to a representative of the secretary of the
20 treasury or the secretary's delegate pursuant to the terms of a
21 reciprocal agreement entered into with the federal government
22 for exchange of the information;~~

23 C. ~~to the multistate tax commission, the federation
24 of tax administrators or their authorized representatives;
25 provided that the information is used for tax purposes only and~~

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1 ~~is disclosed by the multistate tax commission or the federation~~
2 ~~of tax administrators only to states that have met the~~
3 ~~requirements of Subsection A of this section;~~

4 ~~D. to another jurisdiction pursuant to an~~
5 ~~international fuel tax agreement; provided that the information~~
6 ~~is used for tax purposes only;~~

7 ~~E. to a district court, an appellate court or a~~
8 ~~federal court;~~

9 ~~(1) in response to an order thereof in an~~
10 ~~action relating to taxes or an action for tax fraud or any~~
11 ~~other crime that may affect taxes due to the state to which the~~
12 ~~state is a party and in which the information sought is about a~~
13 ~~taxpayer who is party to the action and is material to the~~
14 ~~inquiry, in which case only that information may be required to~~
15 ~~be produced in court and admitted in evidence subject to court~~
16 ~~order protecting the confidentiality of the information and no~~
17 ~~more;~~

18 ~~(2) in an action in which the department is~~
19 ~~attempting to enforce an act with which the department is~~
20 ~~charged or to collect a tax; or~~

21 ~~(3) in any matter in which the department is a~~
22 ~~party and the taxpayer has put the taxpayer's own liability for~~
23 ~~taxes at issue, in which case only that information regarding~~
24 ~~the taxpayer who is party to the action may be produced, but~~
25 ~~this shall not prevent the disclosure of department policy or~~

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1 ~~interpretation of law arising from circumstances of a taxpayer~~
2 ~~who is not a party;~~

3 ~~F. to the taxpayer or to the taxpayer's authorized~~
4 ~~representative; provided, however, that nothing in this~~
5 ~~subsection shall be construed to require any employee to~~
6 ~~testify in a judicial proceeding except as provided in~~
7 ~~Subsection E of this section;~~

8 ~~G. information obtained through the administration~~
9 ~~of a law not subject to administration and enforcement under~~
10 ~~the provisions of the Tax Administration Act to the extent that~~
11 ~~release of that information is not otherwise prohibited by law;~~

12 ~~H. in a manner, for statistical purposes, that the~~
13 ~~information revealed is not identified as applicable to an~~
14 ~~individual taxpayer;~~

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

21 ~~J. to a transferee, assignee, buyer or lessor of a~~
22 ~~liquor license, the amount and basis of an unpaid assessment of~~
23 ~~tax for which the transferor, assignor, seller or lessee is~~
24 ~~liable;~~

25 ~~K. to a purchaser of a business as provided in~~

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1 ~~Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis~~
2 ~~of an unpaid assessment of tax for which the purchaser's seller~~
3 ~~is liable;~~

4 ~~L. to a municipality of this state upon its request~~
5 ~~for a period specified by that municipality within the twelve~~
6 ~~months preceding the request for the information by that~~
7 ~~municipality;~~

8 ~~(1) the names, taxpayer identification numbers~~
9 ~~and addresses of registered gross receipts taxpayers reporting~~
10 ~~gross receipts for that municipality under the Gross Receipts~~
11 ~~and Compensating Tax Act or a local option gross receipts tax~~
12 ~~imposed by that municipality. The department may also release~~
13 ~~the information described in this paragraph quarterly or upon~~
14 ~~such other periodic basis as the secretary and the municipality~~
15 ~~may agree; and~~

16 ~~(2) information indicating whether persons~~
17 ~~shown on a list of businesses located within that municipality~~
18 ~~furnished by the municipality have reported gross receipts to~~
19 ~~the department but have not reported gross receipts for that~~
20 ~~municipality under the Gross Receipts and Compensating Tax Act~~
21 ~~or a local option gross receipts tax imposed by that~~
22 ~~municipality.~~

23 ~~The employees of municipalities receiving information as~~
24 ~~provided in this subsection shall be subject to the penalty~~
25 ~~contained in Section 7-1-76 NMSA 1978 if that information is~~

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1 ~~revealed to individuals other than other employees of the~~
2 ~~municipality in question or the department;~~

3 ~~M. to the commissioner of public lands for use in~~
4 ~~auditing that pertains to rentals, royalties, fees and other~~
5 ~~payments due the state under land sale, land lease or other~~
6 ~~land use contracts; the commissioner of public lands and~~
7 ~~employees of the commissioner are subject to the same~~
8 ~~provisions regarding confidentiality of information as~~
9 ~~employees of the department;~~

10 ~~N. the department shall furnish, upon request by~~
11 ~~the child support enforcement division of the human services~~
12 ~~department, the last known address with date of all names~~
13 ~~certified to the department as being absent parents of children~~
14 ~~receiving public financial assistance. The child support~~
15 ~~enforcement division personnel shall use such information only~~
16 ~~for the purpose of enforcing the support liability of the~~
17 ~~absent parents and shall not use the information or disclose it~~
18 ~~for any other purpose; the child support enforcement division~~
19 ~~and its employees are subject to the provisions of this section~~
20 ~~with respect to any information acquired from the department;~~

21 ~~O. the department shall furnish to the information~~
22 ~~systems division of the general services department, by~~
23 ~~electronic media, a database containing New Mexico personal~~
24 ~~income tax filers by county, which shall be updated quarterly.~~
25 ~~The database information shall be used only for the purpose of~~

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1 ~~producing the random jury list for the selection of petit or~~
2 ~~grand jurors for the state courts pursuant to Section 38-5-3~~
3 ~~NMSA 1978. The database shall not contain any financial~~
4 ~~information. If any information in the database is revealed by~~
5 ~~an employee of the administrative office of the courts or the~~
6 ~~information systems division to individuals other than~~
7 ~~employees of the administrative office of the courts, the state~~
8 ~~courts, the information systems division or the department, the~~
9 ~~employee shall be subject to the penalty provisions of Section~~
10 ~~7-1-76 NMSA 1978;~~

11 ~~P. with respect to the tax on gasoline imposed by~~
12 ~~the Gasoline Tax Act, the department shall make available for~~
13 ~~public inspection at monthly intervals a report covering the~~
14 ~~number of gallons of gasoline and ethanol blended fuels~~
15 ~~received and deducted and the amount of tax paid by each person~~
16 ~~required to file a gasoline tax return or pay gasoline tax in~~
17 ~~the state of New Mexico;~~

18 ~~Q. the identity of a rack operator, importer,~~
19 ~~blender, supplier or distributor and the number of gallons~~
20 ~~reported on returns required under the Gasoline Tax Act,~~
21 ~~Special Fuels Supplier Tax Act or Alternative Fuel Tax Act to a~~
22 ~~rack operator, importer, blender, distributor or supplier, but~~
23 ~~only when it is necessary to enable the department to carry out~~
24 ~~its duties under the Gasoline Tax Act, the Special Fuels~~
25 ~~Supplier Tax Act or the Alternative Fuel Tax Act;~~

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1 ~~R. the department shall release upon request only~~
2 ~~the names and addresses of all gasoline or special fuel~~
3 ~~distributors, wholesalers and retailers to the New Mexico~~
4 ~~department of agriculture, the employees of which are thereby~~
5 ~~subject to the penalty contained in Section 7-1-76 NMSA 1978 if~~
6 ~~that information is revealed to individuals other than~~
7 ~~employees of either the New Mexico department of agriculture or~~
8 ~~the department;~~

9 ~~S. the department shall answer all inquiries~~
10 ~~concerning whether a person is or is not a registered taxpayer~~
11 ~~for tax programs that require registration, but nothing in this~~
12 ~~subsection shall be construed to allow the department to answer~~
13 ~~inquiries concerning whether a person has filed a tax return;~~

14 ~~T. upon request of a municipality or county of this~~
15 ~~state, the department shall permit officials or employees of~~
16 ~~the municipality or county to inspect the records of the~~
17 ~~department pertaining to an increase or decrease to a~~
18 ~~distribution or transfer made pursuant to Section 7-1-6.15 NMSA~~
19 ~~1978 for the purpose of reviewing the basis for the increase or~~
20 ~~decrease. The municipal or county officials or employees~~
21 ~~receiving information provided in this subsection shall not~~
22 ~~reveal that information to any person other than another~~
23 ~~employee of the municipality or the county, the department or a~~
24 ~~district court, an appellate court or a federal court in a~~
25 ~~proceeding relating to a disputed distribution and in which~~

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1 ~~both the state and the municipality or county are parties.~~
2 ~~Information provided pursuant to provisions of this subsection~~
3 ~~that is revealed other than as provided in this subsection~~
4 ~~shall subject the person revealing the information to the~~
5 ~~penalty contained in Section 7-1-76 NMSA 1978;~~

6 ~~U. to a county of this state that has in effect a~~
7 ~~local option gross receipts tax imposed by the county upon its~~
8 ~~request for a period specified by that county within the twelve~~
9 ~~months preceding the request for the information by that~~
10 ~~county;~~

11 ~~(1) the names, taxpayer identification numbers~~
12 ~~and addresses of registered gross receipts taxpayers reporting~~
13 ~~gross receipts either for that county in the case of a local~~
14 ~~option gross receipts tax imposed on a countywide basis or only~~
15 ~~for the areas of that county outside of any incorporated~~
16 ~~municipalities within that county in the case of a county local~~
17 ~~option gross receipts tax imposed only in areas of the county~~
18 ~~outside of any incorporated municipalities. The department may~~
19 ~~also release the information described in this paragraph~~
20 ~~quarterly or upon such other periodic basis as the secretary~~
21 ~~and the county may agree;~~

22 ~~(2) in the case of a local option gross~~
23 ~~receipts tax imposed by a county on a countywide basis,~~
24 ~~information indicating whether persons shown on a list of~~
25 ~~businesses located within the county furnished by the county~~

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1 ~~have reported gross receipts to the department but have not~~
2 ~~reported gross receipts for that county under the Gross~~
3 ~~Receipts and Compensating Tax Act or a local option gross~~
4 ~~receipts tax imposed by that county on a countywide basis; and~~

5 ~~(3) in the case of a local option gross~~
6 ~~receipts tax imposed by a county only on persons engaging in~~
7 ~~business in that area of the county outside of incorporated~~
8 ~~municipalities, information indicating whether persons on a~~
9 ~~list of businesses located in that county outside of the~~
10 ~~incorporated municipalities but within that county furnished by~~
11 ~~the county have reported gross receipts to the department but~~
12 ~~have not reported gross receipts for that county outside of the~~
13 ~~incorporated municipalities within that county under the Gross~~
14 ~~Receipts and Compensating Tax Act or a local option gross~~
15 ~~receipts tax imposed by the county only on persons engaging in~~
16 ~~business in that county outside of the incorporated~~
17 ~~municipalities.~~

18 ~~The officers and employees of counties receiving~~
19 ~~information as provided in this subsection shall be subject to~~
20 ~~the penalty contained in Section 7-1-76 NMSA 1978 if the~~
21 ~~information is revealed to individuals other than other~~
22 ~~officers or employees of the county in question or the~~
23 ~~department;~~

24 ~~V. to authorized representatives of an Indian~~
25 ~~nation, tribe or pueblo, the territory of which is located~~

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1 wholly or partially within New Mexico, pursuant to the terms of
 2 a reciprocal agreement entered into with the Indian nation,
 3 tribe or pueblo for the exchange of that information for tax
 4 purposes only; provided that the Indian nation, tribe or pueblo
 5 has enacted a confidentiality statute similar to this section;

6 W. information with respect to the taxes or tax
 7 acts administered pursuant to Subsection B of Section 7-1-2
 8 NMSA 1978, except that:

9 (1) information for or relating to a period
 10 prior to July 1, 1985 with respect to Sections 7-25-1 through
 11 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978 may be released only
 12 to a committee of the legislature for a valid legislative
 13 purpose;

14 (2) except as provided in Paragraph (3) of
 15 this subsection, contracts and other agreements between the
 16 taxpayer and other parties and the proprietary information
 17 contained in those contracts and agreements shall not be
 18 released without the consent of all parties to the contract or
 19 agreement; and

20 (3) audit workpapers and the proprietary
 21 information contained in the workpapers shall not be released
 22 except to:

23 (a) the minerals management service of
 24 the United States department of the interior, if production
 25 occurred on federal land;

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1 ~~(b) a person having a legal interest in~~
2 ~~the property that is subject to the audit;~~

3 ~~(c) a purchaser of products severed from~~
4 ~~a property subject to the audit; or~~

5 ~~(d) the authorized representative of any~~
6 ~~of the persons in Subparagraphs (a) through (c) of this~~
7 ~~paragraph. This paragraph does not prohibit the release of~~
8 ~~proprietary information contained in the workpapers that is~~
9 ~~also available from returns or from other sources not subject~~
10 ~~to the provisions of this section;~~

11 ~~X. information with respect to the taxes, surtaxes,~~
12 ~~advance payments or tax acts administered pursuant to~~
13 ~~Subsection C of Section 7-1-2 NMSA 1978;~~

14 ~~Y. to the public regulation commission, information~~
15 ~~with respect to the Corporate Income and Franchise Tax Act~~
16 ~~required to enable the commission to carry out its duties;~~

17 ~~Z. to the state racing commission, information with~~
18 ~~respect to the state, municipal and county gross receipts taxes~~
19 ~~paid by racetracks;~~

20 ~~AA. upon request of a corporation authorized to be~~
21 ~~formed under the Educational Assistance Act, the department~~
22 ~~shall furnish the last known address and the date of that~~
23 ~~address of every person certified to the department as an~~
24 ~~absent obligor of an educational debt due and owed to the~~
25 ~~corporation or that the corporation has lawfully contracted to~~

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1 ~~collect. The corporation and its officers and employees shall~~
2 ~~use that information only to enforce the educational debt~~
3 ~~obligation of the absent obligors and shall not disclose that~~
4 ~~information or use it for any other purpose;~~

5 ~~BB. a decision and order made by a hearing officer~~
6 ~~pursuant to Section 7-1-24 NMSA 1978 with respect to a protest~~
7 ~~filed with the secretary on or after July 1, 1993;~~

8 ~~CC. information required by a provision of the Tax~~
9 ~~Administration Act to be made available to the public by the~~
10 ~~department;~~

11 ~~DD. upon request by the Bernalillo county~~
12 ~~metropolitan court, the department shall furnish the last known~~
13 ~~address and the date of that address for every person the court~~
14 ~~certifies to the department as a person who owes fines, fees or~~
15 ~~costs to the court or who has failed to appear pursuant to a~~
16 ~~court order or a promise to appear;~~

17 ~~EE. upon request by a magistrate court, the~~
18 ~~department shall furnish the last known address and the date of~~
19 ~~that address for every person the court certifies to the~~
20 ~~department as a person who owes fines, fees or costs to the~~
21 ~~court or who has failed to appear pursuant to a court order or~~
22 ~~a promise to appear;~~

23 ~~FF. to the national tax administration agencies of~~
24 ~~Mexico and Canada; provided the agency receiving the~~
25 ~~information has entered into a written agreement with the~~

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1 ~~department to use the information for tax purposes only and is~~
2 ~~subject to a confidentiality statute similar to this section;~~

3 ~~GG. to a district attorney, a state district court~~
4 ~~grand jury or federal grand jury for an investigation of or~~
5 ~~proceeding related to an alleged criminal violation of the tax~~
6 ~~laws;~~

7 ~~HH. to a third party subject to a subpoena or levy~~
8 ~~issued pursuant to the provisions of the Tax Administration~~
9 ~~Act, the identity of the taxpayer involved, the taxes or tax~~
10 ~~acts involved and the nature of the proceeding;~~

11 ~~II. to the gaming control board, tax returns of~~
12 ~~license applicants and their affiliates as provided in~~
13 ~~Subsection E of Section 60-2E-14 NMSA 1978;~~

14 ~~JJ. any written ruling on questions of evidence or~~
15 ~~procedure made by a hearing officer pursuant to Section 7-1-24~~
16 ~~NMSA 1978; provided that the name and identification number of~~
17 ~~the taxpayer requesting the ruling shall not be disclosed;~~

18 ~~KK. to representatives of the workers' compensation~~
19 ~~administration, authorized by the director of the workers'~~
20 ~~compensation administration for this purpose, to facilitate the~~
21 ~~identification of taxpayers that are delinquent or noncompliant~~
22 ~~in payment of fees required by Section 52-1-9.1 or 52-5-19 NMSA~~
23 ~~1978;~~

24 ~~LL. to the secretary of labor or the secretary's~~
25 ~~delegate for use in enforcement of unemployment insurance~~

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

7 ~~MM. information that the department is authorized~~
 8 ~~by the Tax Administration Act to release to a local body that~~
 9 ~~licenses professions or occupations pursuant to Chapter 36,~~
 10 ~~Article 2 NMSA 1978 or Chapter 61 NMSA 1978; and~~

11 ~~NN. upon request for inspection by the public~~
 12 ~~pursuant to Section 7-1-29 NMSA 1978, the department shall~~
 13 ~~furnish the taxpayer name, refund or credit amount, tax program~~
 14 ~~or business tax credit and the date the refund or credit was~~
 15 ~~issued; nothing in this subsection shall be construed to~~
 16 ~~require the release of information that would violate an~~
 17 ~~agreement between the state and the federal internal revenue~~
 18 ~~service for sharing of information or any provision or rule of~~
 19 ~~the federal Internal Revenue Code to which a state is subject.]~~

20 A. It is unlawful for any person other than the
 21 taxpayer to reveal to any other person the taxpayer's return or
 22 return information, except as provided in Sections 7-1-8.1
 23 through 7-1-8.10 NMSA 1978.

24 B. A return or return information revealed under
 25 Sections 7-1-8.1 through 7-1-8.10 NMSA 1978:

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1 (1) may only be revealed to a person
2 specifically authorized to receive the return or return
3 information and the employees, directors, officers and agents
4 of such person whose official duties or duties in the course of
5 their employment require the return or return information and
6 to an employee of the department;

7 (2) may only be revealed for the authorized
8 purpose and only to the extent necessary to perform that
9 authorized purpose;

10 (3) shall at all times be protected from being
11 revealed to an unauthorized person by physical, electronic or
12 any other safeguards specified by directive by the secretary;
13 and

14 (4) shall be returned to the secretary or the
15 secretary's delegate or destroyed as soon as it is no longer
16 required for the authorized purpose.

17 C. If any provision of Sections 7-1-8.1 through
18 7-1-8.10 NMSA 1978 requires that a return or return information
19 will only be revealed pursuant to a written agreement between a
20 person and the department, the written agreement shall:

21 (1) list the name and position of any official
22 or employee of the person to whom a return or return
23 information is authorized to be revealed under the provision;

24 (2) describe the specific purpose for which
25 the return or return information is to be used;

1 (3) describe the procedures and safeguards the
2 person has in place to ensure that the requirements of
3 Subsection B of this section are met; and

4 (4) provide for reimbursement to the
5 department for all costs incurred by the department in
6 supplying the returns or return information to, and
7 administering the agreement with, the person.

8 D. A return or return information that is lawfully
9 made public by an employee of the department or any other
10 person, or that is made public by the taxpayer, is not subject
11 to the provisions of this section once it is made public."

12 Section 3. A new section of the Tax Administration Act,
13 Section 7-1-8.1 NMSA 1978, is enacted to read:

14 "7-1-8.1. [NEW MATERIAL] INFORMATION THAT MAY BE REVEALED
15 TO AN EMPLOYEE OF THE DEPARTMENT, A TAXPAYER OR THE TAXPAYER'S
16 REPRESENTATIVE.--An employee of the department may reveal a
17 return or return information:

18 A. to another employee of the department whose
19 official duties require the return or return information; and

20 B. to the taxpayer or to the taxpayer's authorized
21 representative; provided, however, that nothing in this section
22 shall be construed to require an employee to testify in a
23 judicial proceeding except as provided in Subsection A of
24 Section 7-1-8.4 NMSA 1978."

25 Section 4. A new section of the Tax Administration Act,
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underscored material = new
[bracketed material] = delete

1 Section 7-1-8.2 NMSA 1978, is enacted to read:

2 "7-1-8.2. [NEW MATERIAL] INFORMATION REQUIRED TO BE
3 REVEALED.--

4 A. The department shall:

5 (1) furnish returns and return information
6 required by a provision of the Tax Administration Act to be
7 made available to the public by the department;

8 (2) answer all inquiries concerning whether a
9 person is or is not a registered taxpayer for tax programs that
10 require registration, but nothing in this subsection shall be
11 construed to allow the department to answer inquiries
12 concerning whether a person has filed a tax return;

13 (3) furnish, upon request for inspection by a
14 member of the public pursuant to:

15 (a) Section 7-1-28 or Section 7-1-29
16 NMSA 1978, the taxpayer name, abatement, refund or credit
17 amount, tax program or business tax credit and the date the
18 abatement, refund or credit was issued; and

19 (b) Section 7-1-21 NMSA 1978, the
20 installment agreement; and

21 (4) with respect to the tax on gasoline
22 imposed by the Gasoline Tax Act, make available for public
23 inspection at monthly intervals a report covering the number of
24 gallons of gasoline and ethanol blended fuels received and
25 deducted and the amount of tax paid by each person required to

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1 file a gasoline tax return or pay gasoline tax in the state of
2 New Mexico.

3 B. Nothing in this section shall be construed to
4 require the release of information that would violate an
5 agreement between the state and the federal internal revenue
6 service for sharing of information or any provision or rule of
7 the federal Internal Revenue Code to which a state is subject."

8 Section 5. A new section of the Tax Administration Act,
9 Section 7-1-8.3 NMSA 1978, is enacted to read:

10 "7-1-8.3. [NEW MATERIAL] INFORMATION THAT MAY BE REVEALED
11 TO PUBLIC.--An employee of the department may reveal:

12 A. information obtained through the administration
13 of a law not subject to administration and enforcement under
14 the provisions of the Tax Administration Act to the extent that
15 revealing that information is not otherwise prohibited by law;

16 B. return information with respect to the taxes or
17 tax acts administered pursuant to Subsection B of Section 7-1-2
18 NMSA 1978, except that:

19 (1) return information for or relating to a
20 period prior to July 1, 1985 with respect to Sections 7-25-1
21 through 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978 may be
22 revealed only to a committee of the legislature for a valid
23 legislative purpose;

24 (2) except as provided in Paragraph (3) of
25 this subsection, contracts and other agreements between the

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1 taxpayer and other parties and the proprietary information
2 contained in those contracts and agreements shall not be
3 revealed without the consent of all parties to the contract or
4 agreement; and

5 (3) audit workpapers and the proprietary
6 information contained in the workpapers shall not be revealed
7 except to:

8 (a) the minerals management service of
9 the United States department of the interior, if production
10 occurred on federal land;

11 (b) a person having a legal interest in
12 the property that is subject to the audit;

13 (c) a purchaser of products severed from
14 a property subject to the audit; or

15 (d) the authorized representative of any
16 of the persons in Subparagraphs (a) through (c) of this
17 paragraph. This paragraph does not prohibit the revelation of
18 proprietary information contained in the workpapers that is
19 also available from returns or from other sources not subject
20 to the provisions of Section 7-1-8 NMSA 1978;

21 C. return information with respect to the taxes,
22 surtaxes, advance payments or tax acts administered pursuant to
23 Subsection C of Section 7-1-2 NMSA 1978;

24 D. a decision and order made by a hearing officer
25 pursuant to Section 7-1-24 NMSA 1978 with respect to a protest

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1 filed with the secretary on or after July 1, 1993;

2 E. any written ruling on questions of evidence or
3 procedure made by a hearing officer pursuant to Section 7-1-24
4 NMSA 1978; provided that the name and identification number of
5 the taxpayer requesting the ruling shall not be revealed; and

6 F. return information included in a notice of lien
7 or release or extinguishment of lien."

8 Section 6. A new section of the Tax Administration Act,
9 Section 7-1-8.4 NMSA 1978, is enacted to read:

10 "7-1-8.4. [NEW MATERIAL] INFORMATION THAT MAY BE REVEALED
11 TO JUDICIAL BODIES OR WITH RESPECT TO JUDICIAL PROCEEDINGS OR
12 INVESTIGATIONS.--An employee of the department may reveal to:

13 A. a district court, an appellate court or a
14 federal court, a return or return information:

15 (1) in response to an order thereof in an
16 action relating to taxes or an action for tax fraud or any
17 other crime that may involve taxes due to the state and in
18 which the information sought is about a taxpayer who is party
19 to the action and is material to the inquiry, in which case
20 only that information may be required to be produced in court
21 and admitted in evidence subject to court order protecting the
22 confidentiality of the information and no more;

23 (2) in an action in which the department is
24 attempting to enforce an act with which the department is
25 charged or to collect a tax; or

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1 (3) in any matter in which the department is a
2 party and the taxpayer has put the taxpayer's own liability for
3 taxes at issue, in which case only that information regarding
4 the taxpayer who is party to the action may be produced, but
5 this shall not prevent revelation of department policy or
6 interpretation of law arising from circumstances of a taxpayer
7 who is not a party;

8 B. the Bernalillo county metropolitan court, upon
9 that court's request, the last known address and the date of
10 that address for every person the court certifies to the
11 department as a person who owes fines, fees or costs to the
12 court or who has failed to appear pursuant to a court order or
13 a promise to appear;

14 C. a magistrate court, upon the magistrate court's
15 request, the last known address and the date of that address
16 for every person the court certifies to the department as a
17 person who owes fines, fees or costs to the court or who has
18 failed to appear pursuant to a court order or a promise to
19 appear;

20 D. a district attorney, a state district court
21 grand jury or federal grand jury, information for an
22 investigation of or proceeding related to an alleged criminal
23 violation of the tax laws; and

24 E. a third party subject to a subpoena or levy
25 issued pursuant to the provisions of the Tax Administration

1 Act, the identity of the taxpayer involved, the taxes or tax
2 acts involved and the nature of the proceeding."

3 Section 7. A new section of the Tax Administration Act,
4 Section 7-1-8.5 NMSA 1978, is enacted to read:

5 "7-1-8.5. [NEW MATERIAL] INFORMATION THAT MAY BE REVEALED
6 TO NATIONAL GOVERNMENTS OR THEIR AGENCIES.--An employee of the
7 department may reveal return information to:

8 A. a representative of the secretary of the
9 treasury or the secretary's delegate pursuant to the terms of a
10 reciprocal agreement entered into with the federal government
11 for exchange of the information; and

12 B. the national tax administration agencies of
13 Mexico and Canada; provided the agency receiving the
14 information has entered into a written agreement with the
15 department to use the information for tax purposes only and is
16 subject to a confidentiality statute and penalty similar to
17 Sections 7-1-8 and 7-1-76 NMSA 1978."

18 Section 8. A new section of the Tax Administration Act,
19 Section 7-1-8.6 NMSA 1978, is enacted to read:

20 "7-1-8.6. [NEW MATERIAL] INFORMATION THAT MAY BE REVEALED
21 TO CERTAIN TRIBAL GOVERNMENTS.--An employee of the department
22 may reveal return information to authorized representatives of
23 an Indian nation, tribe or pueblo, the territory of which is
24 located wholly or partially within New Mexico, pursuant to the
25 terms of a written reciprocal agreement entered into by the

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1 department with the Indian nation, tribe or pueblo for the
2 exchange of that information for tax purposes only; provided
3 that the Indian nation, tribe or pueblo has enacted a
4 confidentiality statute and penalty similar to Sections 7-1-8
5 and 7-1-76 NMSA 1978."

6 Section 9. A new section of the Tax Administration Act,
7 Section 7-1-8.7 NMSA 1978, is enacted to read:

8 "7-1-8.7. [NEW MATERIAL] INFORMATION THAT MAY BE REVEALED
9 TO OTHER STATES OR MULTISTATE ADMINISTRATIVE BODIES.--An
10 employee of the department may reveal return information to:

11 A. an authorized representative of another state;
12 provided that the receiving state has entered into a written
13 agreement with the department to use the return information for
14 tax purposes only and that the receiving state has enacted a
15 confidentiality statute and penalty similar to Sections 7-1-8
16 and 7-1-76 NMSA 1978 to which the representative is subject;

17 B. the multistate tax commission, the federation of
18 tax administrators or their authorized representatives;
19 provided that the return information is used for tax purposes
20 only and is revealed by the multistate tax commission or the
21 federation of tax administrators only to states that have met
22 the requirements of Subsection A of this section; and

23 C. another jurisdiction pursuant to an
24 international fuel tax agreement; provided that the return
25 information is used for tax purposes only."

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1 Section 10. A new section of the Tax Administration Act,
2 Section 7-1-8.8 NMSA 1978, is enacted to read:

3 "7-1-8.8. [NEW MATERIAL] INFORMATION THAT MAY BE REVEALED
4 TO OTHER STATE AGENCIES.--An employee of the department may
5 reveal to:

6 A. a committee of the legislature for a valid
7 legislative purpose, return information concerning any tax or
8 fee imposed pursuant to the Cigarette Tax Act;

9 B. the attorney general, return information
10 acquired pursuant to the Cigarette Tax Act for purposes of
11 Section 6-4-13 NMSA 1978 and the master settlement agreement
12 defined in Section 6-4-12 NMSA 1978;

13 C. the commissioner of public lands, return
14 information for use in auditing that pertains to rentals,
15 royalties, fees and other payments due the state under land
16 sale, land lease or other land use contracts;

17 D. the secretary of human services or the
18 secretary's delegate, under a written agreement with the
19 department, the last known address with date of all names
20 certified to the department as being absent parents of children
21 receiving public financial assistance, but only for the purpose
22 of enforcing the support liability of the absent parents by the
23 child support enforcement division or any successor
24 organizational unit;

25 E. the department of information technology, by

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1 electronic media, a database updated quarterly that contains
2 the names, addresses, county of address and taxpayer
3 identification numbers of New Mexico personal income tax
4 filers, but only for the purpose of producing the random jury
5 list for the selection of petit or grand jurors for the state
6 courts pursuant to Section 38-5-3 NMSA 1978;

7 F. the state courts, the random jury lists produced
8 by the department of information technology under Subsection E
9 of this section;

10 G. the director of the New Mexico department of
11 agriculture or the director's authorized representative, upon
12 request of the director or representative, the names and
13 addresses of all gasoline or special fuel distributors,
14 wholesalers and retailers;

15 H. the public regulation commission, return
16 information with respect to the Corporate Income and Franchise
17 Tax Act required to enable the commission to carry out its
18 duties;

19 I. the state racing commission, return information
20 with respect to the state, municipal and county gross receipts
21 taxes paid by racetracks;

22 J. the gaming control board, tax returns of license
23 applicants and their affiliates as provided in Subsection E of
24 Section 60-2E-14 NMSA 1978;

25 K. the director of the workers' compensation

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1 administration or to the director's representatives authorized
 2 for this purpose, return information to facilitate the
 3 identification of taxpayers that are delinquent or noncompliant
 4 in payment of fees required by Section 52-1-9.1 or 52-5-19 NMSA
 5 1978; and

6 L. the secretary of workforce solutions or the
 7 secretary's delegate, return information for use in enforcement
 8 of unemployment insurance collections pursuant to the terms of
 9 a written reciprocal agreement entered into by the department
 10 with the secretary of workforce solutions for exchange of
 11 information."

12 Section 11. A new section of the Tax Administration Act,
 13 Section 7-1-8.9 NMSA 1978, is enacted to read:

14 "7-1-8.9. [NEW MATERIAL] INFORMATION THAT MAY BE REVEALED
 15 TO LOCAL GOVERNMENTS AND THEIR AGENCIES.--An employee of the
 16 department may reveal to:

17 A. the officials or employees of a municipality of
 18 this state authorized in a written request by the municipality
 19 for a period specified in the request within the twelve months
 20 preceding the request:

21 (1) the names, taxpayer identification numbers
 22 and addresses of registered gross receipts taxpayers reporting
 23 gross receipts for that municipality under the Gross Receipts
 24 and Compensating Tax Act or a local option gross receipts tax
 25 imposed by that municipality. The department may also reveal

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1 the information described in this paragraph quarterly or upon
2 such other periodic basis as the secretary and the municipality
3 may agree; and

4 (2) information indicating whether persons
5 shown on a list of businesses located within that municipality
6 furnished by the municipality have reported gross receipts to
7 the department but have not reported gross receipts for that
8 municipality under the Gross Receipts and Compensating Tax Act
9 or a local option gross receipts tax imposed by that
10 municipality;

11 B. the officials or employees of a county of this
12 state authorized in a written request by the county for a
13 period specified in the request within the twelve months
14 preceding the request:

15 (1) the names, taxpayer identification numbers
16 and addresses of registered gross receipts taxpayers reporting
17 gross receipts either for that county in the case of a local
18 option gross receipts tax imposed on a countywide basis or only
19 for the areas of that county outside of any incorporated
20 municipalities within that county in the case of a county local
21 option gross receipts tax imposed only in areas of the county
22 outside of any incorporated municipalities. The department may
23 also reveal the information described in this paragraph
24 quarterly or upon such other periodic basis as the secretary
25 and the county may agree;

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1 (2) in the case of a local option gross
2 receipts tax imposed by a county on a countywide basis,
3 information indicating whether persons shown on a list of
4 businesses located within the county furnished by the county
5 have reported gross receipts to the department but have not
6 reported gross receipts for that county under the Gross
7 Receipts and Compensating Tax Act or a local option gross
8 receipts tax imposed by that county on a countywide basis; and

9 (3) in the case of a local option gross
10 receipts tax imposed by a county only on persons engaging in
11 business in that area of the county outside of incorporated
12 municipalities, information indicating whether persons on a
13 list of businesses located in that county outside of the
14 incorporated municipalities but within that county furnished by
15 the county have reported gross receipts to the department but
16 have not reported gross receipts for that county outside of the
17 incorporated municipalities within that county under the Gross
18 Receipts and Compensating Tax Act or a local option gross
19 receipts tax imposed by the county only on persons engaging in
20 business in that county outside of the incorporated
21 municipalities; and

22 C. officials or employees of a municipality or
23 county of this state, authorized in a written request of the
24 municipality or county, for purposes of inspection, the records
25 of the department pertaining to an increase or decrease to a

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1 distribution or transfer made pursuant to Section 7-1-6.15 NMSA
2 1978 for the purpose of reviewing the basis for the increase or
3 decrease; the authorized officials or employees may only reveal
4 the information provided in this subsection to another
5 authorized official or employee, to an employee of the
6 department, or a district court, an appellate court or a
7 federal court in a proceeding relating to a disputed
8 distribution and in which both the state and the municipality
9 or county are parties."

10 Section 12. A new section of the Tax Administration Act,
11 Section 7-1-8.10 NMSA 1978, is enacted to read:

12 "7-1-8.10. [NEW MATERIAL] INFORMATION THAT MAY BE
13 REVEALED TO PRIVATE PERSONS OTHER THAN THE TAXPAYER.--An
14 employee of the department may reveal to:

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

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

23 C. a rack operator, importer, blender, distributor
24 or supplier, the identity of a rack operator, importer,
25 blender, supplier or distributor and the number of gallons

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1 reported on returns required under the Gasoline Tax Act,
 2 Special Fuels Supplier Tax Act or Alternative Fuel Tax Act, but
 3 only when it is necessary to enable the department to carry out
 4 its duties under the Gasoline Tax Act, the Special Fuels
 5 Supplier Tax Act or the Alternative Fuel Tax Act; and

6 D. a corporation authorized to be formed under the
 7 Educational Assistance Act, upon its written request, the last
 8 known address and the date of that address of every person
 9 certified to the department as an absent obligor of an
 10 educational debt due and owed to the corporation or that the
 11 corporation has lawfully contracted to collect; this
 12 information may only be used by the corporation and its
 13 officers and employees to enforce the educational debt
 14 obligation of the absent obligors."

15 Section 13. Section 7-1-76 NMSA 1978 (being Laws 1965,
 16 Chapter 248, Section 76, as amended) is amended to read:

17 "7-1-76. REVEALING INFORMATION CONCERNING TAXPAYERS.--
 18 ~~[Any employee of the department, any former employee of the~~
 19 ~~department or any other]~~ A person who reveals to another
 20 [individual] person any return or return information [which he
 21 is prohibited from lawfully revealing by provision of] that is
 22 prohibited from being revealed pursuant to Section 7-1-8 NMSA
 23 1978 or who uses a return or return information for any purpose
 24 that is not authorized by Sections 7-1-8 through 7-1-8.10 NMSA
 25 1978 is guilty of a misdemeanor and shall, upon conviction

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1 thereof, be fined not more than one thousand dollars (\$1,000)
2 or imprisoned [~~not more than~~] up to one year, or both, together
3 with costs of prosecution, and shall not be employed by the
4 state for a period of five years after the date of the
5 conviction."

6 Section 14. EFFECTIVE DATE.--The effective date of the
7 provisions of this act is July 1, 2009.

underscoring = new
~~bracketed~~ = delete