

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:

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

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

C. "electronic payment" means a payment made by

automated clearinghouse deposit, any funds wire transfer system or a credit card, debit card or electronic cash transaction through the internet;

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

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

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

G. "levy" means the lawful power, hereby invested in the secretary, to take into possession or to require the present or future surrender to the secretary or the secretary's delegate of any property or rights to property belonging to a delinquent taxpayer;

H. "local option gross receipts tax" means a tax authorized to be imposed by a county or municipality upon the taxpayer's gross receipts, as that term is defined in the Gross Receipts and Compensating Tax Act, and required to be collected by the department at the same time and in the same manner as the gross receipts tax; "local option gross receipts

tax" includes the taxes imposed pursuant to the Municipal Local Option Gross Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax Act, County Local Option Gross Receipts Taxes Act, Local Hospital Gross Receipts Tax Act, County Correctional Facility Gross Receipts Tax Act and such other acts as may be enacted authorizing counties or municipalities to impose taxes on gross receipts, which taxes are to be collected by the department in the same time and in the same manner as it collects the gross receipts tax;

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

J. "net receipts" means the total amount of money paid by taxpayers to the department in a month pursuant to a tax or tax act less any refunds disbursed in that month with respect to that tax or tax act;

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

- L. "paid" includes the term "paid over";
- M. "pay" includes the term "pay over";
- N. "payment" includes the term "payment over";
- O. "person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, limited liability company, limited liability partnership, joint venture, syndicate, other association or gas, water or electric utility owned or operated by a county or municipality; "person" also means, to the extent permitted by law, a federal, state or other governmental unit or subdivision, or an agency, department or instrumentality thereof; and "person", as used in Sections 7-1-72 through 7-1-74 NMSA 1978, also includes an officer or employee of a corporation, a member or employee of a partnership or any individual who, as such, is under a duty to perform any act in respect of which a violation occurs;
- P. "property" means property or rights to property;
- Q. "property or rights to property" means any tangible property, real or personal, or any intangible property of a taxpayer;
- R. "return" means any tax or information return, declaration of estimated tax or claim for refund, including any amendments or supplements to the return, required or permitted pursuant to a law subject to administration and

enforcement pursuant to the Tax Administration Act and filed with the secretary or the secretary's delegate by or on behalf of any person;

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

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

U. "secretary or the secretary's delegate" means the secretary or any employee of the department exercising

authority lawfully delegated to that employee by the secretary;

V. "security" means money, property or rights to property or a surety bond;

W. "state" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico and any territory or possession of the United States;

X. "tax" means the total amount of each tax imposed and required to be paid, withheld and paid or collected and paid under provision of any law made subject to administration and enforcement according to the provisions of the Tax Administration Act and, unless the context otherwise requires, includes the amount of any interest or civil penalty relating thereto; "tax" also means any amount of any abatement of tax made or any credit, rebate or refund paid or credited by the department under any law subject to administration and enforcement under the provisions of the Tax Administration Act to any person contrary to law and includes, unless the context requires otherwise, the amount of any interest or civil penalty relating thereto;

Y. "taxpayer" means a person liable for payment of any tax, a person responsible for withholding and payment or for collection and payment of any tax or a person to whom an assessment has been made, if the assessment remains unabated or the amount thereof has not been paid; and

Z. "tax return preparer" means a person who prepares for others for compensation or who employs one or more persons to prepare for others for compensation any return of income tax, a substantial portion of any return of income tax, any claim for refund with respect to income tax or a substantial portion of any claim for refund with respect to income tax; provided that a person shall not be a "tax return preparer" merely because such person:

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

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

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

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

"7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER INFORMATION.--

A. It is unlawful for any person other than the taxpayer to reveal to any other person the taxpayer's return or return information, except as provided in Sections 7-1-8.1

through 7-1-8.10 NMSA 1978.

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

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

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

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

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

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

(1) list the name and position of any



official or employee of the person to whom a return or return information is authorized to be revealed under the provision;

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

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

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

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

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

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

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

B. to the taxpayer or to the taxpayer's authorized representative; provided, however, that nothing in this

section shall be construed to require an employee to testify in a judicial proceeding except as provided in Subsection A of Section 7-1-8.4 NMSA 1978."

Section 4. A new section of the Tax Administration Act, Section 7-1-8.2 NMSA 1978, is enacted to read:

"7-1-8.2. INFORMATION REQUIRED TO BE REVEALED.--

A. The department shall:

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

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

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

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

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

(4) with respect to the tax on gasoline imposed by the Gasoline Tax Act, make available for public

inspection at monthly intervals a report covering the number of gallons of gasoline and ethanol blended fuels received and deducted and the amount of tax paid by each person required to file a gasoline tax return or pay gasoline tax in the state of New Mexico.

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

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

"7-1-8.3. INFORMATION THAT MAY BE REVEALED TO PUBLIC.--  
An employee of the department may reveal:

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

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

(1) return information for or relating to a period prior to July 1, 1985 with respect to Sections 7-25-1

through 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978 may be revealed only to a committee of the legislature for a valid legislative purpose;

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) in response to an order thereof in an action relating to taxes or an action for tax fraud or any other crime that may involve taxes due to the state and in which the information sought is about a taxpayer who is party to the action and is material to the inquiry, in which case only that information may be required to be produced in court

and admitted in evidence subject to court order protecting the confidentiality of the information and no more;

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

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

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

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

D. a district attorney, a state district court

grand jury or federal grand jury, information for an investigation of or proceeding related to an alleged criminal violation of the tax laws; and

E. a third party subject to a subpoena or levy issued pursuant to the provisions of the Tax Administration Act, the identity of the taxpayer involved, the taxes or tax acts involved and the nature of the proceeding."

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

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

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

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

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

"7-1-8.6. INFORMATION THAT MAY BE REVEALED TO CERTAIN

TRIBAL GOVERNMENTS.--An employee of the department may reveal return information to authorized representatives of an Indian nation, tribe or pueblo, the territory of which is located wholly or partially within New Mexico, pursuant to the terms of a written reciprocal agreement entered into by the department with the Indian nation, tribe or pueblo for the exchange of that information for tax purposes only; provided that the Indian nation, tribe or pueblo has enacted a confidentiality statute and penalty similar to Sections 7-1-8 and 7-1-76 NMSA 1978."

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

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

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

B. the multistate tax commission, the federation of tax administrators or their authorized representatives; provided that the return information is used for tax purposes



only and is revealed by the multistate tax commission or the federation of tax administrators only to states that have met the requirements of Subsection A of this section; and

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

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

"7-1-8.8. INFORMATION THAT MAY BE REVEALED TO OTHER STATE AGENCIES.--An employee of the department may reveal to:

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

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

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

D. the secretary of human services or the secretary's delegate, under a written agreement with the department, the last known address with date of all names certified to the department as being absent parents of

children receiving public financial assistance, but only for the purpose of enforcing the support liability of the absent parents by the child support enforcement division or any successor organizational unit;

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

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

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

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

I. the state racing commission, return information with respect to the state, municipal and county gross receipts

taxes paid by racetracks;

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

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

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

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

"7-1-8.9. INFORMATION THAT MAY BE REVEALED TO LOCAL GOVERNMENTS AND THEIR AGENCIES.--An employee of the department may reveal to:

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

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

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

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

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts either for that county in the case of a local option gross receipts tax imposed on a countywide basis or only for the areas of that county outside of any incorporated municipalities within that county in the case of

a county local option gross receipts tax imposed only in areas of the county outside of any incorporated municipalities. The department may also reveal the information described in this paragraph quarterly or upon such other periodic basis as the secretary and the county may agree;

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

(3) in the case of a local option gross receipts tax imposed by a county only on persons engaging in business in that area of the county outside of incorporated municipalities, information indicating whether persons on a list of businesses located in that county outside of the incorporated municipalities but within that county furnished by the county have reported gross receipts to the department but have not reported gross receipts for that county outside of the incorporated municipalities within that county under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by the county only on persons engaging in business in that county outside of the

incorporated municipalities; and

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

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

"7-1-8.10. INFORMATION THAT MAY BE REVEALED TO PRIVATE PERSONS OTHER THAN THE TAXPAYER.--An employee of the department may reveal to:

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

B. a purchaser of a business as provided in Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis

of an unpaid assessment of tax for which the purchaser's seller is liable;

C. a rack operator, importer, blender, distributor or supplier, the identity of a rack operator, importer, blender, supplier or distributor and the number of gallons reported on returns required under the Gasoline Tax Act, Special Fuels Supplier Tax Act or Alternative Fuel Tax Act, but only when it is necessary to enable the department to carry out its duties under the Gasoline Tax Act, the Special Fuels Supplier Tax Act or the Alternative Fuel Tax Act; and

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

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

"7-1-76. REVEALING INFORMATION CONCERNING TAXPAYERS.--  
A person who reveals to another person any return or return information that is prohibited from being revealed pursuant to Section 7-1-8 NMSA 1978 or who uses a return or return

information for any purpose that is not authorized by Sections 7-1-8 through 7-1-8.10 NMSA 1978 is guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than one thousand dollars (\$1,000) or imprisoned up to one year, or both, together with costs of prosecution, and shall not be employed by the state for a period of five years after the date of the conviction."

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

HJC/HB 257  
Page 24