

AN ACT

RELATING TO TAXATION; PROVIDING FOR EQUAL TREATMENT AND ADMINISTRATION UNDER THE TAX ADMINISTRATION ACT; EXTENDING DEADLINES; ALLOWING INTEREST TO APPLY TO LONGER PERIODS; ALLOWING THE SECRETARY OF TAXATION AND REVENUE TO ABATE CERTAIN ASSESSMENTS OF TAXES PROTESTED; PROVIDING FOR EQUITABLE RECOUPMENT; MAKING TECHNICAL CORRECTIONS; RECONCILING MULTIPLE AMENDMENTS TO THE SAME SECTION OF LAW IN LAWS 2007.

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

**SECTION 1.** Section 7-1-13 NMSA 1978 (being Laws 1965, Chapter 248, Section 18, as amended) is amended to read:

"7-1-13. TAXPAYER RETURNS--PAYMENT OF TAXES--EXTENSION OF TIME.--

A. Taxpayers are liable for tax at the time of and after the transaction or incident giving rise to tax until payment is made. Taxes are due on and after the date on which their payment is required until payment is made.

B. Every taxpayer shall, on or before the date on which payment of any tax is due, complete and file a tax return in a form prescribed and according to the regulations issued by the secretary. Except as provided in Section 7-1-13.1 NMSA 1978 or by regulation, ruling, order or instruction of the secretary, the payment of any tax or the

filing of any return may be accomplished by mail. When the filing of a tax return or payment of a tax is accomplished by mail, the date of the postmark shall be considered the date of submission of the return or payment.

C. If any adjustment is made in the basis for computation of any federal tax as a result of an audit by the internal revenue service or the filing of an amended federal return changing a prior election or making any other change for which federal approval is required by the Internal Revenue Code, the taxpayer affected shall, within one hundred eighty days of final determination of the adjustment, file an amended return with the department. Payment of any additional tax due shall accompany the return.

D. Payment of the total amount of all taxes that are due from the taxpayer shall precede or accompany the return. Delivery to the department of a check that is not paid upon presentment does not constitute payment.

E. The secretary or the secretary's delegate may, for good cause, extend in favor of a taxpayer or a class of taxpayers, for no more than a total of twelve months, the date on which payment of any tax is required or on which any return required by provision of the Tax Administration Act shall be filed, but no extension shall prevent the accrual of interest as otherwise provided by law. When an extension of time for income tax has been granted a taxpayer under the Internal

Revenue Code, the extension shall serve to extend the time for filing New Mexico income tax provided that a copy of the approved federal extension of time is attached to the taxpayer's New Mexico income tax return. The secretary by regulation may also provide for the automatic extension for no more than six months of the date upon which payment of any New Mexico income tax or the filing of any New Mexico income tax return is required. If the secretary or the secretary's delegate believes it necessary to ensure the collection of the tax, the secretary or the secretary's delegate may require, as a condition of granting any extension, that the taxpayer furnish security in accordance with the provisions of Section 7-1-54 NMSA 1978.

F. As used in this section, "final determination" means:

- (1) the taxpayer has:
  - (a) made payment on any additional income tax liability resulting from the federal audit; and
  - (b) not filed a petition for redetermination or claim for refund for the portions of the audit on which payment was made;
- (2) the taxpayer has received a refund from the United States department of the treasury resulting from the federal audit;
- (3) the taxpayer has signed federal form 870

or other internal revenue service form consenting to the deficiency or accepting any overassessment;

(4) the taxpayer's time period for filing a federal petition for redetermination to the United States tax court has expired;

(5) the taxpayer enters into a closing agreement with the internal revenue service as provided in Section 7121 of the Internal Revenue Code; or

(6) a decision from the United States tax court, United States district court, United States court of appeals, United States court of claims or United States supreme court becomes final."

**SECTION 2.** Section 7-1-16 NMSA 1978 (being Laws 1965, Chapter 248, Section 19, as amended) is amended to read:

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

A. Except as provided in Subsection D of this section, any taxpayer to whom taxes have been assessed as provided in Section 7-1-17 NMSA 1978 or upon whom demand for payment has been made as provided in Section 7-1-63 NMSA 1978 who does not within ninety days after the date of assessment or demand for payment make payment, protest the assessment or demand for payment as provided by Section 7-1-24 NMSA 1978 or furnish security for payment as provided by Section 7-1-54 NMSA 1978 becomes a delinquent taxpayer and remains such until:

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

(2) security is furnished for payment; or

(3) no part of the assessment remains unabated.

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

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

D. A taxpayer does not become a delinquent taxpayer if the taxpayer has been issued an assessment as a result of a managed audit but is still within the allowed time period to pay the tax due as specified in Paragraph (4) of Subsection A of Section 7-1-67 NMSA 1978."

**SECTION 3.** Section 7-1-18 NMSA 1978 (being Laws 1965, Chapter 248, Section 21, as amended) is amended to read:

"7-1-18. LIMITATION ON ASSESSMENT BY DEPARTMENT.--

A. Except as otherwise provided in this section, no assessment of tax may be made by the department after three years from the end of the calendar year in which payment of the tax was due, and no proceeding in court for the collection of such tax without the prior assessment thereof shall be begun after the expiration of such period.

B. In case of a false or fraudulent return made by a taxpayer with intent to evade tax, the amount thereof may be assessed at any time within ten years from the end of the calendar year in which the tax was due, and no proceeding in court for the collection of such tax without the prior assessment thereof shall be begun after the expiration of such period.

C. In case of the failure by a taxpayer to complete and file any required return, the tax relating to the period for which the return was required may be assessed at any time within seven years from the end of the calendar year in which the tax was due, and no proceeding in court for the collection of such tax without the prior assessment thereof shall be begun after the expiration of such period.

D. If a taxpayer in a return understates by more than twenty-five percent the amount of liability for any tax for the period to which the return relates, appropriate assessments may be made by the department at any time within six years from the end of the calendar year in which payment

of the tax was due.

E. If any adjustment in the basis for computation of any federal tax is made as a result of an audit by the internal revenue service or the filing of an amended federal return changing a prior election or making any other change for which federal approval is required by the Internal Revenue Code that results in liability for any tax, the amount thereof may be assessed at any time, but not after three years from the end of the calendar year in which filing of an amended return is required by Subsection C of Section 7-1-13 NMSA 1978.

F. If the taxpayer has signed a waiver of the limitations on assessment imposed by this section, an assessment of tax may be made or a proceeding in court begun without regard to the time at which payment of the tax was due."

**SECTION 4.** Section 7-1-19 NMSA 1978 (being Laws 1971, Chapter 21, Section 1, as amended) is amended to read:

"7-1-19. LIMITATION OF ACTIONS.--No action or proceeding shall be brought to collect taxes administered under the provisions of the Tax Administration Act and due under an assessment or notice of the assessment of taxes after the later of either ten years from the date of such assessment or notice or, with respect to undischarged amounts in a bankruptcy proceeding, one year after the later of the

issuance of the final order or the date of the last scheduled payment."

**SECTION 5.** Section 7-1-23 NMSA 1978 (being Laws 1965, Chapter 248, Section 25, as amended) is amended to read:

"7-1-23. DISPUTING LIABILITIES--ELECTION OF REMEDIES.-- Any taxpayer must elect to dispute the taxpayer's liability for the payment of taxes either by protesting the assessment thereof as provided in Section 7-1-24 NMSA 1978 without making payment or by claiming a refund thereof as provided in Section 7-1-26 NMSA 1978 after making payment. The pursuit of one of the two remedies described herein constitutes an unconditional waiver of the right to pursue the other."

**SECTION 6.** Section 7-1-24 NMSA 1978 (being Laws 1965, Chapter 248, Section 26, as amended) is amended to read:

"7-1-24. DISPUTING LIABILITIES--ADMINISTRATIVE PROTEST.--

A. Any taxpayer may dispute:

- (1) the assessment to the taxpayer of any amount of tax;
- (2) the application to the taxpayer of any provision of the Tax Administration Act except the issuance of a subpoena or summons; or
- (3) the denial of or failure either to allow or to deny a:

(a) credit or rebate; or



(b) claim for refund made in accordance with Section 7-1-26 NMSA 1978.

B. The taxpayer may dispute a matter described in Subsection A of this section by filing with the secretary a written protest. Every protest shall identify the taxpayer and the tax credit, rebate, property or provision of the Tax Administration Act involved and state the grounds for the taxpayer's protest and the affirmative relief requested. The statement of grounds for protest shall specify individual grounds upon which the protest is based and a summary statement of the evidence, if any, expected to be produced supporting each ground asserted; provided that the taxpayer may supplement the statement at any time prior to ten days before any hearing conducted on the protest pursuant to Section 7-1-24.1 NMSA 1978 or, if a scheduling order has been issued, in accordance with the scheduling order. The secretary may, in appropriate cases, provide for an informal conference before setting a hearing of the protest or acting on any claim for refund. In the case of an assessment of tax by the department, a protest may be filed without making payment of the amount assessed.

C. Any protest by a taxpayer shall be filed within ninety days of the date of the mailing to or service upon the taxpayer by the department of the notice of assessment or other peremptory notice or demand, the date of mailing or

filing a return, the date of the application to the taxpayer of the applicable provision of the Tax Administration Act, the date of denial of a claim pursuant to Section 7-1-24.1 NMSA 1978 or the last date upon which the department was required to take action on the claim but failed to take action. If a protest is not filed within the time required, the secretary may proceed to enforce collection of any tax if the taxpayer is delinquent within the meaning of Section 7-1-16 NMSA 1978. The fact that the department did not mail the assessment or other peremptory notice or demand by certified or registered mail or otherwise demand and receive acknowledgment of receipt by the taxpayer shall not be deemed to demonstrate the taxpayer's inability to protest within the required time.

D. No proceedings other than those to enforce collection of any amount assessed as tax and to protect the interest of the state by injunction, as provided in Sections 7-1-31, 7-1-33, 7-1-34, 7-1-40, 7-1-53, 7-1-56 and 7-1-58 NMSA 1978, are stayed by timely filing of a protest under this section.

E. Nothing in this section shall be construed to authorize any criminal proceedings hereunder or to authorize an administrative protest of the issuance of a subpoena or summons."

**SECTION 7.** A new section of the Tax Administration Act, Section 7-1-24.1 NMSA 1978, is enacted to read:

"7-1-24.1. DISPUTING LIABILITIES--CONDUCT OF HEARINGS--  
HEARING OFFICER.--

A. Upon timely receipt of a protest filed pursuant to Section 7-1-24 NMSA 1978, the department or a hearing officer shall set a date for a hearing within ninety days.

B. A hearing officer shall be designated by the secretary to conduct the hearing. A taxpayer may appear at a hearing on the taxpayer's own behalf or may be represented by a bona fide employee, an attorney, a certified public accountant, a registered public accountant or, with respect only to tax imposed pursuant to the Income Tax Act, a person who is an enrolled agent for federal income tax purposes. If the department and the taxpayer agree, the hearing may be conducted via videoconference. A hearing shall not be open to the public except upon request of the taxpayer. A hearing officer may postpone or continue a hearing at the hearing officer's discretion.

C. A hearing officer shall not engage or participate as an employee of the department in the enforcement or formulation of general tax policy, other than to conduct hearings. A taxpayer may request that the secretary determine whether a hearing officer engaged or participated in the enforcement or formulation of general tax policy and whether that engagement or participation affects the hearing officer's impartiality in a particular matter.

The secretary may designate another hearing officer for the matter to avoid actual or apparent prejudice.

D. A hearing officer shall not engage in ex-parte communications concerning the substantive issues of any matter that has been protested while that matter is still pending. If the secretary determines that a hearing officer has engaged in prohibited ex-parte communications, the secretary shall designate another hearing officer for that matter.

E. The rules of evidence shall not apply in a hearing. The hearing officer may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt, to rule on the admissibility of evidence. A taxpayer may request a written ruling on a contested question of evidence in a matter in which the taxpayer has filed a written protest and for which that protest is pending.

F. In hearings before a hearing officer, the Rules of Civil Procedure for the District Courts shall not apply. The hearing officer shall conduct a hearing to allow the ample and fair presentation of both complaints and defenses. The hearing officer shall hear arguments, permit discovery, entertain and dispose of motions, require written expositions of the case as the circumstances justify and render a decision in accordance with the law and the evidence presented and admitted. A taxpayer may request a written ruling on any

contested question of procedure in a matter in which the taxpayer has filed a written protest and for which that protest is pending.

G. In the case of a hearing of any protest, the hearing officer shall make and preserve a complete record of the proceedings. At the beginning of the hearing, the hearing officer shall inform the taxpayer of the taxpayer's right to representation. The hearing officer, within thirty days of the conclusion of the hearing, shall inform the protestant in writing of the decision and of the protestant's right to, and the requirements for perfection of, an appeal from the decision to the court of appeals and of the consequences of a failure to appeal. The written decision shall embody an order granting or denying the relief requested or granting or denying a part of the relief requested as appropriate.

H. A taxpayer with two or more protests containing related issues may request that the protests be combined and heard jointly. The hearing officer shall grant the request to combine protests unless it would create an unreasonable burden on the department."

**SECTION 8.** Section 7-1-26 NMSA 1978 (being Laws 1965, Chapter 248, Section 28, as amended) is amended to read:

"7-1-26. DISPUTING LIABILITIES--CLAIM FOR CREDIT, REBATE OR REFUND.--

A. Any person who believes that an amount of tax

has been paid by or withheld from that person in excess of that for which the person was liable, who has been denied any credit or rebate claimed or who claims a prior right to property in the possession of the department pursuant to a levy made under authority of Sections 7-1-31 through 7-1-34 NMSA 1978 may claim a refund by directing to the secretary, within the time limited by the provisions of Subsections D and E of this section, a written claim for refund. Except as provided in Subsection I of this section, a refund claim shall include:

- (1) the taxpayer's name, address and identification number;
- (2) the type of tax for which a refund is being claimed, the credit or rebate denied or the property levied upon;
- (3) the sum of money or other property being claimed;
- (4) with respect to refund, the period for which overpayment was made; and
- (5) a brief statement of the facts and the law on which the claim is based, which may be referred to as the "basis for the refund".

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

- (1) If the claim is denied in whole or in

part in writing, no claim may be refiled with respect to that which was denied, but the person, within ninety days after either the mailing or delivery of the denial of all or any part of the claim, may elect to pursue one, but not more than one, of the remedies in Subsection C of this section.

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

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

(1) the person may direct to the secretary, pursuant to the provisions of Section 7-1-24 NMSA 1978, a written protest against the denial of, or failure to either

allow or deny the claim or portion of the claim; or

(2) the person may commence a civil action in the district court for Santa Fe county by filing a complaint setting forth the circumstance of the claimed overpayment, denied credit or rebate or denial of a prior right to property levied upon by the department alleging that on account thereof the state is indebted to the plaintiff in the amount or property stated, together with any interest allowable, demanding the refund to the plaintiff of that amount or property and reciting the facts of the claim for refund. The plaintiff or the secretary may appeal from any final decision or order of the district court to the court of appeals.

D. Except as otherwise provided in Subsection E of this section, no credit or refund of any amount may be allowed or made to any person unless as the result of a claim made by that person as provided in this section:

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

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

(b) the final determination of value occurs with respect to any overpayment that resulted from a disapproval by any agency of the United States or the state of



New Mexico or any court of increase in value of a product subject to taxation under the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act or the Natural Gas Processors Tax Act;

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

(d) an overpayment of New Mexico tax resulted from: 1) an internal revenue service audit adjustment or a federal refund paid due to an adjustment of an audit by the internal revenue service or an amended federal return; or 2) making a change to a federal return for which federal approval is required by the Internal Revenue Code;

(2) when an amount of a claim for credit under the provisions of the Investment Credit Act, Laboratory Partnership with Small Business Tax Credit Act or Technology Jobs Tax Credit Act or for the rural job tax credit pursuant to Section 7-2E-1.1 NMSA 1978 or similar credit has been denied, the taxpayer may claim a refund of the credit no later than one year after the date of the denial;

(3) when a taxpayer under audit by the department has signed a waiver of the limitation on assessments on or after July 1, 1993 pursuant to Subsection F of Section 7-1-18 NMSA 1978, the taxpayer may file a claim for refund of the same tax paid for the same period for which the

waiver was given, until a date one year after the later of the date of the mailing of an assessment issued pursuant to the audit, the date of the mailing of final audit findings to the taxpayer or the date a proceeding is begun in court by the department with respect to the same tax and the same period;

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

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

E. No credit or refund shall be allowed or made to any person claiming a refund of gasoline tax under Section 7-13-11 NMSA 1978 unless notice of the destruction of the gasoline was given the department within thirty days of the actual destruction and the claim for refund is made within six

months of the date of destruction. No credit or refund shall be allowed or made to any person claiming a refund of gasoline tax under Section 7-13-17 NMSA 1978 unless the refund is claimed within six months of the date of purchase of the gasoline and the gasoline has been used at the time the claim for refund is made.

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

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

H. For the purposes of this section, the term "oil and gas tax return" means a return reporting tax due with respect to oil, natural gas, liquid hydrocarbons, carbon dioxide, helium or nonhydrocarbon gas pursuant to the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad

Valorem Production Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas Production Equipment Ad Valorem Tax Act.

I. The filing of a fully completed original income tax return, corporate income tax return, corporate income and franchise tax return, estate tax return or special fuel excise tax return that shows a balance due the taxpayer or a fully completed amended income tax return, an amended corporate income tax return, an amended corporate income and franchise tax return, an amended estate tax return, an amended special fuel excise tax return or an amended oil and gas tax return that shows a lesser tax liability than the original return constitutes the filing of a claim for refund for the difference in tax due shown on the original and amended returns."

**SECTION 9.** Section 7-1-28 NMSA 1978 (being Laws 1965, Chapter 248, Section 30, as amended) is amended to read:

"7-1-28. AUTHORITY FOR ABATEMENTS OF ASSESSMENTS OF TAX.--

A. In response to a written protest against an assessment, submitted in accordance with the provisions of Section 7-1-24 NMSA 1978, but before any court acquires jurisdiction of the matter, or when a "notice of assessment of taxes" is incorrect, the secretary or the secretary's delegate may abate any part of an assessment determined by the secretary or the secretary's delegate to have been

incorrectly, erroneously or illegally made. An abatement in the amount of twenty thousand dollars (\$20,000) or more shall be made with the prior approval of the attorney general; except that the secretary or the secretary's delegate may make abatements with respect to the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas Production Equipment Ad Valorem Tax Act, abatements of gasoline tax made under Section 7-13-17 NMSA 1978 and abatements of cigarette tax made under the Cigarette Tax Act without the prior approval of the attorney general regardless of the amount.

B. Pursuant to the final order of the district court, the court of appeals, the supreme court of New Mexico or any federal court, from which order, appeal or review is not successfully taken by the department, adjudging that any person is not required to pay any portion of tax assessed to that person, the secretary or the secretary's delegate shall cause that amount of the assessment to be abated.

C. Pursuant to a compromise of taxes agreed to by the secretary and according to the terms of the closing agreement formalizing the compromise, the secretary or the secretary's delegate shall cause the abatement of the appropriate amount of any assessment of tax.

D. The secretary or the secretary's delegate shall cause the abatement of the amount of an assessment of tax that is equal to the amount of fee paid to or retained by an out-of-state attorney or collection agency from a judgment or the amount collected by the attorney or collection agency pursuant to Section 7-1-58 NMSA 1978.

E. Records of abatements made in excess of ten thousand dollars (\$10,000) shall be available for inspection by the public. The department shall keep such records for a minimum of three years from the date of the abatement.

F. In response to a timely protest pursuant to Section 7-1-24 NMSA 1978 of an assessment by the department and notwithstanding any other provision of the Tax Administration Act, the secretary or the secretary's delegate may abate that portion of an assessment of tax, including applicable penalties and interest, representing the amount of tax previously paid by another person on behalf of the taxpayer on the same transaction; provided that the requirements of equitable recoupment are met. For purposes of this subsection, the protest pursuant to Section 7-1-24 NMSA 1978 of the department's assessment may be made by the taxpayer to whom the assessment was issued or by the other person who claims to have previously paid the tax on behalf of the taxpayer."

Chapter 248, Section 31, as amended) is amended to read:

"7-1-29. AUTHORITY TO MAKE REFUNDS OR CREDITS.--

A. In response to a claim for refund, credit or rebate made as provided in Section 7-1-26 NMSA 1978, but before a court acquires jurisdiction of the matter, the secretary or the secretary's delegate may authorize payment to a person in the amount of the creditor or rebate claimed or refund an overpayment of tax determined by the secretary or the secretary's delegate to have been erroneously made by the person, together with allowable interest. A payment of a credit rebate claimed or a refund of tax and interest erroneously paid amounting to twenty thousand dollars (\$20,000) or more shall be made with the prior approval of the attorney general, except that the secretary or the secretary's delegate may make refunds with respect to the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas Production Equipment Ad Valorem Tax Act, Section 7-13-17 NMSA 1978 and the Cigarette Tax Act without the prior approval of the attorney general regardless of the amount.

B. Pursuant to the final order of the district court, the court of appeals, the supreme court of New Mexico or a federal court, from which order, appeal or review is not

successfully taken, adjudging that a person has properly claimed a credit or rebate or made an overpayment of tax, the secretary shall authorize the payment to the person of the amount thereof.

C. In the discretion of the secretary, any amount of credit or rebate to be paid or tax to be refunded may be offset against any amount of tax for which the person due to receive the credit, rebate payment or refund is liable. The secretary or the secretary's delegate shall give notice to the taxpayer that the credit, rebate payment or refund will be made in this manner, and the taxpayer shall be entitled to interest pursuant to Section 7-1-68 NMSA 1978 until the tax liability is credited with the credit, rebate or refund amount.

D. In an audit by the department or a managed audit covering multiple reporting periods in which both underpayments and overpayments of a tax have been made in different reporting periods, the department shall credit the tax overpayments against the underpayments, provided that the taxpayer files a claim for refund of the overpayments. An overpayment shall be applied as a credit first to the earliest underpayment and then to succeeding underpayments. An underpayment of tax to which an overpayment is credited pursuant to this section shall be deemed paid in the period in which the overpayment was made or the period to which the



overpayment was credited against an underpayment, whichever is later. If the overpayments credited pursuant to this section exceed the underpayments of a tax, the amount of the net overpayment for the periods covered in the audit shall be refunded to the taxpayer.

E. When a taxpayer makes a payment identified to a particular return or assessment, and the department determines that the payment exceeds the amount due pursuant to that return or assessment, the secretary may apply the excess to the taxpayer's other liabilities pursuant to the tax acts to which the return or assessment applies, without requiring the taxpayer to file a claim for a refund. The liability to which an overpayment is applied pursuant to this section shall be deemed paid in the period in which the overpayment was made or the period to which the overpayment was applied, whichever is later.

F. If the department determines, upon review of an original or amended income tax return, corporate income and franchise tax return, estate tax return, special fuels excise tax return or oil and gas tax return, that there has been an overpayment of tax for the taxable period to which the return or amended return relates in excess of the amount due to be refunded to the taxpayer pursuant to the provisions of Subsection I of Section 7-1-26 NMSA 1978, the department may refund that excess amount to the taxpayer without requiring

the taxpayer to file a refund claim.

G. Records of refunds and credits made in excess of ten thousand dollars (\$10,000) shall be available for inspection by the public. The department shall keep such records for a minimum of three years from the date of the refund or credit.

H. In response to a timely refund claim pursuant to Section 7-1-26 NMSA 1978 and notwithstanding any other provision of the Tax Administration Act, the secretary or the secretary's delegate may refund or credit a portion of an assessment of tax paid, including applicable penalties and interest representing the amount of tax previously paid by another person on behalf of the taxpayer on the same transaction, provided that the requirements of equitable recoupment are met. For purposes of this subsection, the refund claim may be filed by the taxpayer to whom the assessment was issued or by another person who claims to have previously paid the tax on behalf of the taxpayer. Prior to granting the refund or credit, the secretary may require a waiver of all rights to claim a refund or credit of the tax previously paid by another person paying a tax on behalf of the taxpayer."

**SECTION 11.** Section 7-1-67 NMSA 1978 (being Laws 1965, Chapter 248, Section 68, as amended by Laws 2007, Chapter 45, Section 2 and by Laws 2007, Chapter 262, Section 4) is amended

to read:

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

A. If a tax imposed is not paid on or before the day on which it becomes due, interest shall be paid to the state on that amount from the first day following the day on which the tax becomes due, without regard to any extension of time or installment agreement, until it is paid, except that:

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

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

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

(4) if a managed audit is completed by the taxpayer on or before the date required, as provided in the agreement for the managed audit, and payment of any tax found to be due is made in full within one hundred eighty days of the date the secretary has mailed or delivered an assessment

for the tax to the taxpayer, no interest shall be due on the assessed tax;

(5) when, as the result of an audit or a managed audit, an overpayment of a tax is credited against an underpayment of tax pursuant to Section 7-1-29 NMSA 1978, interest shall accrue from the date the tax was due until the tax is deemed paid;

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

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

(b) the ninetieth day after the expiration of the additional time requested by the taxpayer to comply pursuant to Section 7-1-11.2 NMSA 1978, if such request was granted, and the date of the assessment of the tax; and

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

assessment and the date of assessment.

B. Interest due to the state under Subsection A or D of this section shall be at the underpayment rate established for individuals pursuant to Section 6621 of the Internal Revenue Code computed on a daily basis; provided that if a different rate is specified by a compact or other interstate agreement to which New Mexico is a party, that rate shall be applied to amounts due under the compact or other agreement.

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

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

**SECTION 12.** Section 7-1-68 NMSA 1978 (being Laws 1965, Chapter 248, Section 69, as amended) is amended to read:

"7-1-68. INTEREST ON OVERPAYMENTS.--

A. As provided in this section, interest shall be allowed and paid on the amount of tax overpaid by a person

that is subsequently refunded or credited to that person.

B. Interest on overpayments of tax shall accrue and be paid at the underpayment rate established pursuant to Section 6621 of the Internal Revenue Code, computed on a daily basis; provided that if a different rate is specified by a compact or other interstate agreement to which New Mexico is a party, that rate shall apply to amounts due under the compact or other agreement.

C. Unless otherwise provided by this section, interest on an overpayment not arising from an assessment by the department shall be paid from the date of the claim for refund until a date preceding by not more than thirty days the date of the credit or refund to any person; interest on an overpayment arising from an assessment by the department shall be paid from the date of overpayment until a date preceding by not more than thirty days the date of the credit or refund to any person.

D. No interest shall be allowed or paid with respect to an amount credited or refunded if:

(1) the amount of interest due is less than one dollar (\$1.00);

(2) the credit or refund is made within:

(a) fifty-five days of the date of the claim for refund of income tax, pursuant to either the Income Tax Act or the Corporate Income and Franchise Tax Act for the

tax year immediately preceding the tax year in which the claim is made;

(b) sixty days of the date of the claim for refund of any tax not provided for in this paragraph;

(c) seventy-five days of the date of the claim for refund of gasoline tax to users of gasoline off the highways;

(d) one hundred twenty days of the date of the claim for refund of tax imposed pursuant to the Resources Excise Tax Act, the Severance Tax Act, the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas Production Equipment Ad Valorem Tax Act; or

(e) one hundred twenty days of the date of the claim for refund of income tax, pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act, for any tax year more than one year prior to the year in which the claim is made;

(3) Sections 6611(f) and 6611(g) of the Internal Revenue Code, as those sections may be amended or renumbered, prohibit payment of interest for federal income tax purposes;

(4) the credit results from overpayments found in an audit of multiple reporting periods and applied to

underpayments found in that audit or refunded as a net overpayment to the taxpayer pursuant to Section 7-1-29 NMSA 1978;

(5) the department applies the credit or refund to an intercept program, to the taxpayer's estimated payment prior to the due date for the estimated payment or to offset prior liabilities of the taxpayer pursuant to Subsection E of Section 7-1-29 NMSA 1978;

(6) the credit or refund results from overpayments the department finds pursuant to Subsection F of Section 7-1-29 NMSA 1978 that exceed the refund claimed by the taxpayer on the return; or

(7) the refund results from a film production tax credit pursuant to Section 7-2F-1 NMSA 1978.

E. Nothing in this section shall be construed to require the payment of interest upon interest."

**SECTION 13. APPLICABILITY--WRITTEN PROTESTS--TIME LIMITS.--**The following time limits for filing a written protest shall apply pursuant to that version of Section 7-1-24 NMSA 1978 in effect:

A. immediately prior to July 1, 2013, if the date of mailing or service of process, application of the applicable provision of the Tax Administration Act, denial of failure to deny or allow with the time prescribed occurred on or before June 1, 2013; or



B. on or after July 1, 2013, if the date of mailing or service of process, application of the applicable provision of the Tax Administration Act, denial or failure to deny or allow with the time prescribed occurred on or after June 2, 2013.

**SECTION 14. EFFECTIVE DATE.**--The effective date of the provisions of this act is July 1, 2013.\_\_\_\_\_