

1 HOUSE BILL 90

2 **55TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2021**

3 INTRODUCED BY

4 Christine Chandler and Jason C. Harper

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7  
8 ENDORSED BY THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

9  
10 AN ACT

11 RELATING TO TAXATION; AMENDING PROVISIONS FOR SUBMITTING AN  
12 APPLICATION FOR A TAX CREDIT; PROVIDING THAT EVADING OR  
13 DEFEATING A TAX WITH SALES SUPPRESSION SOFTWARE CONSTITUTES TAX  
14 FRAUD; CLARIFYING PROCESSES FOR PROTESTING THE VALUE OR  
15 CLASSIFICATION OF PROPERTY BY A COUNTY ASSESSOR AND THE STATE  
16 AND APPEALS OF ORDERS BY A COUNTY VALUATION PROTESTS BOARD.

17  
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

19 SECTION 1. Section 7-1-29.2 NMSA 1978 (being Laws 2003,  
20 Chapter 398, Section 10) is amended to read:

21 "7-1-29.2. CREDIT CLAIMS.--~~[Any]~~

22 A. A taxpayer who ~~[requests approval of]~~ submits a  
23 complete application for a ~~[statutory]~~ tax credit is deemed to  
24 have received ~~[such]~~ approval of the application if the  
25 ~~[request]~~ application has not been granted or denied within one

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1 hundred ~~[eighty]~~ twenty days of the date it was filed. Nothing  
2 in this section shall be construed to prevent the department  
3 from auditing taxes paid or from assessing taxes owed,  
4 including any tax resulting from tax credits found not to be  
5 valid.

6 B. A taxpayer who believes that the taxpayer is  
7 eligible to receive a tax credit may apply for approval of the  
8 credit by directing to the secretary a complete application on  
9 the form and in the manner prescribed by the department.

10 C. An application for a tax credit that has all  
11 fields completed, includes all attachments required by the  
12 application instructions and is submitted in accordance with  
13 the application instructions is deemed to be properly before  
14 the department for consideration, regardless of whether the  
15 department requests additional documentation after receipt of  
16 the application for credit.

17 D. If the department requests additional relevant  
18 documentation from a taxpayer who has submitted an incomplete  
19 application for a tax credit, the application shall be  
20 considered complete on the date that the taxpayer mails or  
21 delivers sufficient information for the department to consider  
22 the application.

23 E. The secretary or the secretary's delegate may  
24 approve or deny an application for a tax credit in whole or in  
25 part. An approval or denial by the secretary or the

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1 secretary's delegate shall be in writing. If the application  
2 is denied in whole or in part, the taxpayer shall not refile  
3 the denied application, but the taxpayer, within one hundred  
4 twenty days after the mailing or delivery of the denial of all  
5 or any part of the application, may elect to pursue only one of  
6 the remedies provided in this subsection. A taxpayer who  
7 timely pursues more than one remedy is deemed to have elected  
8 the first remedy requested. The taxpayer may:

9 (1) direct to the secretary, pursuant to the  
10 provisions of Section 7-1-24 NMSA 1978, a written protest that  
11 sets forth:

12 (a) the circumstances of the denied  
13 application for a tax credit;

14 (b) an allegation that, because of the  
15 denial, the state is indebted to the taxpayer for a specified  
16 amount, including any allowed interest;

17 (c) a demand for the approval of the  
18 application for the tax credit of the specified amount; and

19 (d) a recitation of the facts supporting  
20 the application for the tax credit; or

21 (2) commence a civil action in the district  
22 court for Santa Fe county by filing a complaint setting forth  
23 the circumstance of the denied application for the tax credit;  
24 alleging that on account of the denial, the state is indebted  
25 to the taxpayer for a specified amount, together with any

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1 interest allowable; demanding approval of the application for  
2 the tax credit of that amount; and reciting the facts of the  
3 application for the tax credit. The taxpayer or the secretary  
4 may appeal from any final decision or order of the district  
5 court to the court of appeals."

6 SECTION 2. Section 7-1-73 NMSA 1978 (being Laws 1965,  
7 Chapter 248, Section 74, as amended) is amended to read:

8 "7-1-73. TAX FRAUD.--

9 A. A person is guilty of tax fraud if the person:

10 (1) willfully makes and subscribes any return,  
11 statement or other document that contains or is verified by a  
12 written declaration that it is true and correct as to every  
13 material matter and that the person does not believe it to be  
14 true and correct as to every material matter;

15 (2) willfully assists in, willfully procures,  
16 willfully advises or willfully provides counsel regarding the  
17 preparation or presentation of a return, affidavit, claim or  
18 other document pursuant to or in connection with any matter  
19 arising under the Tax Administration Act or a tax administered  
20 by the department, knowing that it is fraudulent or knowing  
21 that it is false as to a material matter, whether or not that  
22 fraud or falsity is with knowledge or consent of:

23 (a) the taxpayer or other person liable  
24 for taxes owed on the return; or

25 (b) a person who signs a document

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1 stating that the return, affidavit, claim or other document is  
2 true, correct and complete to the best of that person's  
3 knowledge;

4 (3) files any return electronically, knowing  
5 the information in the return is not true and correct as to  
6 every material matter; [~~or~~]

7 (4) with intent to evade or defeat the payment  
8 or collection of any tax, or, knowing that the probable  
9 consequences of the person's act will be to evade or defeat the  
10 payment or collection of any tax, removes, conceals or releases  
11 any property on which levy is authorized or that is liable for  
12 payment of tax under the provisions of Section 7-1-61 NMSA  
13 1978, or aids in accomplishing or causes the accomplishment of  
14 any of the foregoing;

15 (5) with intent to evade or defeat the payment  
16 or collection of any tax, or, knowing that the probable  
17 consequences of the person's act will be to evade or defeat the  
18 payment or collection of any tax, purchases, installs or uses  
19 any sales suppression software; or

20 (6) knowingly sells, licenses, purchases,  
21 installs, transfers, sells as a service, manufactures, develops  
22 or possesses any sales suppression software with the purpose to  
23 defeat or evade the payment or collection of any tax.

24 B. Whoever commits tax fraud when the amount of the  
25 tax owed is two hundred fifty dollars (\$250) or less is guilty

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1 of a petty misdemeanor and shall be sentenced pursuant to the  
2 provisions of Section 31-19-1 NMSA 1978.

3 C. Whoever commits tax fraud when the amount of the  
4 tax owed is over two hundred fifty dollars (\$250) but not more  
5 than five hundred dollars (\$500) is guilty of a misdemeanor and  
6 shall be sentenced pursuant to the provisions of Section  
7 31-19-1 NMSA 1978.

8 D. Whoever commits tax fraud when the amount of the  
9 tax owed is over five hundred dollars (\$500) but not more than  
10 two thousand five hundred dollars (\$2,500) is guilty of a  
11 fourth degree felony and shall be sentenced pursuant to the  
12 provisions of Section 31-18-15 NMSA 1978.

13 E. Whoever commits tax fraud when the amount of the  
14 tax owed is over two thousand five hundred dollars (\$2,500) but  
15 not more than twenty thousand dollars (\$20,000) is guilty of a  
16 third degree felony and shall be sentenced pursuant to the  
17 provisions of Section 31-18-15 NMSA 1978.

18 F. Whoever commits tax fraud when the amount of the  
19 tax owed is over twenty thousand dollars (\$20,000) is guilty of  
20 a second degree felony and shall be sentenced pursuant to the  
21 provisions of Section 31-18-15 NMSA 1978.

22 G. In addition to the fines imposed pursuant to  
23 this section, a person who commits tax fraud shall pay the  
24 costs of the prosecution of the person's case.

25 H. As used in this section:

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1                   (1) "sales suppression software" means hidden  
2 or concealed computer software, also known as phantomware, for  
3 a point-of-sale system that can create a second set of records  
4 or eliminate or manipulate transaction records that may or may  
5 not be preserved in digital formats in order to misrepresent  
6 the existence or the true record of a transaction in the point-  
7 of-sale system. "Sales suppression software" includes an  
8 electronic device that carries or contains sales suppression  
9 software;

10                   [~~(1)~~] (2) "tax" does not include civil  
11 penalties or interest; and

12                   [~~(2)~~] (3) "willfully" means intentionally,  
13 deliberately or purposely, but not necessarily maliciously."

14                   SECTION 3. Section 7-38-21 NMSA 1978 (being Laws 1973,  
15 Chapter 258, Section 61, as amended) is amended to read:

16                   "7-38-21. PROTESTS--COUNTY-ASSESSED PROPERTY--ELECTION OF  
17 REMEDIES.--

18                   A. A property owner may protest the value or  
19 classification determined by the county assessor for the  
20 property owner's property for property taxation purposes, the  
21 allocation of value of the property to a particular  
22 governmental unit or a denial of a claim for an exemption or  
23 for a limitation on increase in value either by:

24                   (1) filing a petition with the county assessor  
25 as provided in the Property Tax Code [~~a petition of protest~~

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1 with:

2 ~~(a) the administrative hearings office;~~

3 or

4 ~~(b) the county assessor];~~ or

5 (2) filing a claim for refund after paying the  
6 property owner's taxes as provided in the Property Tax Code.

7 B. The initiation of a protest under Paragraph (1)  
8 of Subsection A of this section is an election to pursue that  
9 remedy and is an unconditional and irrevocable waiver of the  
10 right to pursue the remedy provided in Paragraph (2) of  
11 Subsection A of this section.

12 C. A property owner may also protest the  
13 application to the property owner's property of any  
14 administrative fee adopted pursuant to Section 7-38-36.1 NMSA  
15 1978 by filing a claim for refund after paying the property  
16 owner's taxes as provided in the Property Tax Code."

17 SECTION 4. A new Section 7-38-21.1 NMSA 1978 is enacted  
18 to read:

19 "7-38-21.1. [NEW MATERIAL] PROTESTS--STATE-ASSESSED  
20 PROPERTY--ELECTION OF REMEDIES.--

21 A. A property owner may protest the value or  
22 classification determined by the department for the property  
23 owner's property for property taxation purposes, the allocation  
24 of value of the property to a particular governmental unit or a  
25 denial of a claim for an exemption by:

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1 (1) filing a petition of protest with the  
2 administrative hearings office, as provided in the Property Tax  
3 Code; or

4 (2) filing a claim for refund with a district  
5 court after paying the property owner's taxes as provided in  
6 the Property Tax Code.

7 B. The initiation of a protest under Paragraph (1)  
8 of Subsection A of this section is an election to pursue that  
9 remedy and is an unconditional and irrevocable waiver of the  
10 right to pursue the alternative remedy provided in Paragraph  
11 (2) of Subsection A of this section."

12 SECTION 5. Section 7-38-22 NMSA 1978 (being Laws 1973,  
13 Chapter 258, Section 62, as amended) is amended to read:

14 "7-38-22. PROTESTING VALUES, CLASSIFICATION, ALLOCATION  
15 OF VALUES AND DENIAL OF EXEMPTION DETERMINED BY THE [DIVISION]  
16 DEPARTMENT.--

17 A. A property owner may protest the value or  
18 classification determined by the [~~division~~] department for the  
19 property owner's property for property taxation purposes or the  
20 [~~division's~~] department's allocation of value of the property  
21 owner's property to a particular governmental unit or the  
22 denial of a claim for an exemption by filing a petition with  
23 the administrative hearings office. Filing a petition in  
24 accordance with this section entitles a property owner to a  
25 hearing on the property owner's protest.

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B. Petitions shall:

(1) be filed no later than thirty days after:

- (a) the mailing by the ~~[division]~~ department of the notice of valuation; or
- (b) the mailing of a property tax bill on omitted property pursuant to Section 7-38-76 NMSA 1978;

(2) state the property owner's name and address and the description of the property;

(3) state why the property owner believes the value, classification, allocation of value or denial of an exemption is incorrect and what the property owner believes the correct value, classification, allocation of value or exemption to be;

(4) state the value, classification, allocation of value or exemption that is not in controversy; and

(5) contain such other information as the administrative hearings office may by rule require.

C. The administrative hearings office shall notify the ~~[director]~~ secretary and the property owner by certified mail of the date, time and place that the parties may appear before the administrative hearings office to present evidence related to the petition. The notice shall be mailed at least fifteen days prior to the hearing date.

D. The ~~[director]~~ secretary may provide for an

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1 informal conference on the protest before the hearing."

2 SECTION 6. Section 7-38-28 NMSA 1978 (being Laws 1973,  
3 Chapter 258, Section 68, as amended) is amended to read:

4 "7-38-28. APPEALS FROM ORDERS OF THE [~~HEARING OFFICER OR~~]  
5 COUNTY VALUATION PROTESTS BOARDS.--[A.] A property owner may  
6 appeal an order made by [~~a hearing officer or~~] a county  
7 valuation protests board by filing an appeal pursuant to the  
8 provisions of Section 39-3-1.1 NMSA 1978.

9 [~~B. The director shall notify the appropriate  
10 county assessor of the decision and order of the district court  
11 and shall direct the assessor to take appropriate action to  
12 comply with the decision and order.~~]"

13 SECTION 7. A new section of Chapter 7, Article 38 NMSA  
14 1978 is enacted to read:

15 "[NEW MATERIAL] APPEALS FROM DECISIONS AND ORDERS OF THE  
16 HEARING OFFICER.--

17 A. A property owner or the secretary may appeal a  
18 decision and order of a hearing officer to the court of appeals  
19 for further relief, but only to the same extent and on the same  
20 theory as was asserted in the hearing before the hearing  
21 officer. All such appeals shall be on the record made at the  
22 hearing and shall not be de novo. All such appeals shall be  
23 taken within thirty days of the date of mailing or delivery of  
24 the written decision and order of the hearing officer to the  
25 property owner, and, if not so taken, the decision and order

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1 are conclusive.

2 B. The procedure for perfecting an appeal pursuant  
3 to this section shall be as provided by the Rules of Appellate  
4 Procedure.

5 C. On appeal, the court shall set aside a decision  
6 and order of the hearing officer only if the decision and order  
7 is found to be:

8 (1) arbitrary, capricious or an abuse of  
9 discretion;

10 (2) not supported by substantial evidence in  
11 the record; or

12 (3) otherwise not in accordance with the law.

13 D. If the secretary appeals a decision and order of  
14 the hearing officer and the court's decision, from which either  
15 no appeal is taken or no appeal may be taken, upholds the  
16 decision of the hearing officer, the court shall award  
17 reasonable attorney fees to the property owner. If the court's  
18 decision upholds the hearing officer's decision only in part,  
19 the award shall be limited to reasonable attorney fees  
20 associated with the portion upheld.

21 E. The secretary shall notify the appropriate  
22 county assessor of any decision and order or appellate court  
23 opinion and shall direct the assessor to take appropriate  
24 action to comply with the decision and order."

25 SECTION 8. EFFECTIVE DATE.--The effective date of the  
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1 provisions of this act is July 1, 2021.

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