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SENATE BILL

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

INTRODUCED BY

Cliff R. Pirtle

AN ACT

RELATING TO SMALL BUSINESSES; ENACTING THE SMALL BUSINESS
PANDEMIC TAKINGS REPARATIONS ACT; CREATING THE PANDEMIC
REPARATIONS DIVISION IN THE TAXATION AND REVENUE DEPARTMENT;
PROVIDING POWERS AND DUTIES; CREATING THE SMALL BUSINESS
PANDEMIC REPARATIONS TAX CREDIT AND PROVIDING FOR CERTIFICATES
OF ELIGIBILITY; PROVIDING A PROCESS FOR PROTESTS; CREATING A
FUND; MAKING AN APPROPRIATION.

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

SECTION 1. 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. A taxpayer may dispute:

(1) the assessment to the taxpayer of any
amount of tax;

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1 (2) the application to the taxpayer of any
2 provision of the Tax Administration Act except the issuance of
3 a subpoena or summons; or

4 (3) the denial of or failure either to allow
5 or to deny [a]:

6 (a) a credit or rebate; [~~or~~]

7 (b) a claim for refund made in
8 accordance with Section 7-1-26 NMSA 1978; or

9 (c) an application for a certificate of
10 eligibility for a small business pandemic reparations tax
11 credit.

12 B. The taxpayer may dispute a matter described in
13 Subsection A of this section by filing with the secretary a
14 written protest that:

15 (1) identifies the taxpayer and the tax
16 credit, rebate, property or provision of the Tax Administration
17 Act involved;

18 (2) states the grounds on which the protest is
19 based and summarizes evidence supporting each ground asserted;
20 and

21 (3) states the affirmative relief requested.

22 C. A taxpayer may amend a statement made by the
23 taxpayer in accordance with Paragraphs (2) and (3) of
24 Subsection B of this section at any time prior to ten days
25 before the hearing conducted on the protest in accordance with

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1 the Administrative Hearings Office Act or, if a scheduling
2 order has been issued, in accordance with the scheduling order.
3 The secretary may, in appropriate cases, provide for an
4 informal conference before a hearing of the protest is set by
5 the administrative hearings office or before acting on a claim
6 for refund.

7 D. A taxpayer may file a protest, in the case of an
8 assessment of tax by the department, without making payment of
9 the amount assessed; provided that, if only a portion of the
10 assessment is in dispute, any unprotested amounts of tax,
11 interest or penalty shall be paid, or, if applicable, an
12 installment agreement pursuant to Section 7-1-21 NMSA 1978
13 shall be entered into for the unprotested amounts, on or before
14 the due date for the protest.

15 E. A protest by a taxpayer shall be filed within
16 ninety days after:

17 (1) the date of the mailing to the taxpayer by
18 the department of the notice of assessment and demand for
19 payment as provided in Subsection A or D of Section 7-1-17 NMSA
20 1978;

21 (2) the mailing of the other peremptory notice
22 or demand;

23 (3) the date of the application to the
24 taxpayer of the applicable provision of the Tax Administration
25 Act; or

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1 (4) the date of denial of a claim pursuant to
2 Section 7-1-26 NMSA 1978 or pursuant to the Small Business
3 Pandemic Takings Reparations Act or the last date upon which
4 the department was required to take action on the claim but
5 failed to take action.

6 F. If a taxpayer fails to timely protest an
7 assessment of tax, penalty or interest:

8 (1) the undisputed amount of tax assessed and
9 not protested becomes final;

10 (2) the taxpayer is deemed to have waived the
11 right to protest the assessment, unless the taxpayer pays the
12 tax and claims a refund of the tax pursuant to Section 7-1-26
13 NMSA 1978; and

14 (3) the secretary may proceed to enforce
15 collection of the tax if the taxpayer is delinquent as defined
16 by Section 7-1-16 NMSA 1978.

17 G. The fact that the department did not mail the
18 assessment or other peremptory notice or demand by certified or
19 registered mail or otherwise demand and receive acknowledgment
20 of receipt by the taxpayer shall not be deemed to demonstrate
21 the taxpayer's inability to protest within the required time.

22 H. A proceeding other than one to enforce
23 collection of an amount assessed as tax and to protect the
24 interest of the state by injunction, as provided by Sections
25 7-1-31, 7-1-33, 7-1-34, 7-1-40, 7-1-53, 7-1-56 and 7-1-58 NMSA

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1 1978, is not stayed by timely filing of a protest in accordance
2 with this section.

3 I. Nothing in this section shall be construed to
4 authorize a criminal proceeding or to authorize an
5 administrative protest of the issuance of a subpoena or
6 summons."

7 SECTION 2. [NEW MATERIAL] SHORT TITLE.--Sections 2
8 through 7 of this act may be cited as the "Small Business
9 Pandemic Takings Reparations Act".

10 SECTION 3. [NEW MATERIAL] PURPOSE.--The purpose of the
11 Small Business Pandemic Takings Reparations Act is to implement
12 the provisions of Article 2, Section 20 of the constitution of
13 New Mexico providing just compensation from the state for
14 private property taken or damaged for public use.

15 SECTION 4. [NEW MATERIAL] DEFINITIONS.--As used in the
16 Small Business Pandemic Takings Reparations Act:

17 A. "department" means the taxation and revenue
18 department;

19 B. "division" means the pandemic reparations
20 division of the department;

21 C. "small business" means a business that carries
22 on a trade or business in New Mexico and that employs in New
23 Mexico fewer than one hundred fifty full- and part-time
24 employees in total; and

25 D. "taking" means the substantial deprivation of

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1 the right to the free use or enjoyment of private property.

2 SECTION 5. [NEW MATERIAL] SMALL BUSINESS PANDEMIC
3 REPARATIONS TAX CREDIT--APPLICATION AGAINST PERSONAL INCOME TAX
4 OR CORPORATE INCOME TAX LIABILITY--APPLICATION FOR CERTIFICATE
5 OF ELIGIBILITY.--

6 A. The tax credit created by this section may be
7 referred to as the "small business pandemic reparations tax
8 credit". A taxpayer that is issued a certificate of
9 eligibility pursuant to the Small Business Pandemic Takings
10 Reparations Act may claim, and the department shall allow, a
11 tax credit in the amount of the compensation determined to be
12 owed to the small business pursuant to the Small Business
13 Pandemic Takings Reparations Act. The taxpayer may claim the
14 credit for the taxable year for which the division grants the
15 taxpayer's claim pursuant to the Small Business Pandemic
16 Takings Reparations Act.

17 B. The taxpayer may apply the small business
18 pandemic reparations tax credit against personal income tax
19 liability or corporate income tax liability. If the amount of
20 the small business pandemic reparations tax credit exceeds the
21 taxpayer's tax liability for the taxable year for which the
22 credit is claimed, the excess shall be refunded; provided that
23 there is a sufficient amount of money in the pandemic
24 reparations fund to pay the claim for the taxable year for
25 which the claim is owed. If the amount of money in the

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1 pandemic reparations fund is not sufficient to pay a claim for
2 the taxable year for which the claim is owed, the amount of the
3 small business pandemic reparations tax credit for which a
4 refund is not issued may be carried forward for a period of
5 twenty consecutive taxable years.

6 C. A taxpayer that is a small business that has
7 closed and that alleges that the closure of the small business
8 or taking of the small business's property occurred as the
9 result of a public health order issued pursuant to the Public
10 Health Act may apply for a certificate of eligibility for a
11 small business pandemic reparations tax credit. The taxpayer
12 shall file an application with the division no later than the
13 end of the taxable year in which the closure or alleged taking
14 occurred. Each application shall provide information
15 evidencing:

16 (1) the number of full- and part-time
17 employees that were employed by the small business in the third
18 month immediately preceding the closure of the small business
19 or the alleged taking as a result of a public health order
20 issued pursuant to the Public Health Act; provided that a small
21 business that was not in existence in the third month
22 immediately preceding the closure or taking of the small
23 business shall provide information on the number of full- and
24 part-time employees employed by the small business during each
25 month of the small business's operation, but not exceeding

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1 three months;

2 (2) that the small business was closed or that
3 a taking of the small business's property occurred as a result
4 of a public health order issued pursuant to the Public Health
5 Act;

6 (3) the amount of revenue the small business
7 earned for the three consecutive months immediately preceding
8 the closure of the small business as a result of a public
9 health order issued pursuant to the Public Health Act; provided
10 that a small business that was not in existence for three
11 consecutive months immediately preceding the closure of the
12 small business as a result of a public health order shall
13 provide information on the revenue earned for each month during
14 the small business's operation, but not exceeding three months;

15 (4) the value of the damages caused by the
16 closure or alleged taking;

17 (5) expenses incurred directly as a result of
18 complying with a public health order issued pursuant to the
19 Public Health Act, including an itemized description of each
20 expense; and

21 (6) assistance received from the state or
22 federal government as a result of complying with the public
23 health order issued pursuant to the Public Health Act.

24 SECTION 6. [NEW MATERIAL] PANDEMIC REPARATIONS DIVISION
25 DUTIES--TAXATION AND REVENUE DEPARTMENT RULEMAKING AND REPORT

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1 TO THE LEGISLATURE.--

2 A. The division shall:

3 (1) employ personnel and consultants as
4 necessary to carry out the provisions of the Small Business
5 Pandemic Takings Reparations Act;

6 (2) review applications for certificates of
7 eligibility in the order received;

8 (3) within one hundred eighty days of receipt
9 of an application for a certificate of eligibility, issue a
10 written determination:

11 (a) of whether the small business of the
12 applicant was closed as a result of a public health order
13 issued pursuant to the Public Health Act;

14 (b) of whether the applicant meets
15 requirements for eligibility pursuant to the Small Business
16 Pandemic Takings Reparations Act;

17 (c) granting or denying the application
18 for the certificate of eligibility; and

19 (d) of the amount of the small business
20 pandemic reparations tax credit for which the applicant is
21 eligible; provided that the amount of the small business
22 pandemic reparations tax credit for which the applicant is
23 eligible shall, at a minimum, include the amount of damages
24 owed to the applicant, as determined by the division pursuant
25 to rules promulgated by the department, including expenses

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1 incurred directly as a result of complying with the public
2 health order issued pursuant to the Public Health Act and minus
3 any state and federal government assistance received by the
4 small business accrued as a result of complying with the public
5 health order issued pursuant to the Public Health Act at the
6 time the small business filed the claim with the division; and

7 (4) issue a certificate of eligibility to each
8 taxpayer deemed eligible for the small business pandemic
9 reparations tax credit, including the amount of the small
10 business pandemic reparations tax credit for which the
11 applicant is deemed eligible.

12 B. The department shall:

13 (1) adopt rules that govern the:

14 (a) evaluation of and acceptance or
15 denial of applications made pursuant to the Small Business
16 Pandemic Takings Reparations Act; and

17 (b) determination of the amount of the
18 small business pandemic reparations tax credit to which a
19 taxpayer is eligible pursuant to the Small Business Pandemic
20 Takings Reparations Act; and

21 (2) beginning in 2021, by September 1 of each
22 year, provide to the appropriate interim legislative committee
23 a report that provides an update on the aggregate amount of
24 credits issued to taxpayers pursuant to the Small Business
25 Pandemic Takings Reparations Act.

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1 SECTION 7. [NEW MATERIAL] PANDEMIC REPARATIONS FUND

2 CREATED--ADMINISTRATION.--The "pandemic reparations fund" is
3 created as a nonreverting fund in the state treasury. The fund
4 consists of appropriations, gifts, grants and donations to the
5 fund and income from investment in the fund. The legislature
6 may appropriate money in the fund to the department for the
7 administration of and payment of claims for a small business
8 pandemic reparations tax credit in accordance with the Small
9 Business Pandemic Takings Reparations Act and any limitations
10 on the appropriation. Expenditures from the fund shall be made
11 on warrant of the secretary of finance and administration
12 pursuant to vouchers signed by the secretary of taxation and
13 revenue or the secretary's authorized representative.

14 SECTION 8. Section 9-11-4 NMSA 1978 (being Laws 1977,
15 Chapter 249, Section 4, as amended) is amended to read:

16 "9-11-4. DEPARTMENT ESTABLISHED.--There is created in the
17 executive branch the "taxation and revenue department". The
18 department shall be a cabinet department and shall consist of,
19 but not be limited to, [~~seven~~] eight divisions as follows:

- 20 A. the audit and compliance division;
- 21 B. the property tax division;
- 22 C. the revenue processing division;
- 23 D. the tax fraud investigations division;
- 24 E. the motor vehicle division;
- 25 F. the administrative services division; [~~and~~]

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G. the information technology division; and
H. the pandemic reparations division."

SECTION 9. APPROPRIATION.--Fifty-five million dollars (\$55,000,000) is appropriated from the general fund to the pandemic reparations fund for expenditure in fiscal year 2022 and subsequent fiscal years for the purposes of the fund. Any unexpended or unencumbered balance remaining at the end of a fiscal year shall not revert to the general fund.