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AN ACT  
RELATING TO TAXATION; AMENDING SECTIONS OF THE TAX  
ADMINISTRATION ACT AND AMENDING AND ENACTING SECTIONS OF THE  
WITHHOLDING TAX ACT TO ADDRESS FEDERAL PARTNERSHIP AUDIT OR  
ADJUSTMENT REQUESTS RESULTING IN UNDER- OR OVER-PAYMENT OF  
CERTAIN STATE TAXES.

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

1 of submission of the return or payment.

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

6 D. The secretary or the secretary's delegate may,  
7 for good cause, extend in favor of a taxpayer or a class of  
8 taxpayers, for no more than a total of twelve months, the  
9 date on which payment of any tax is required or on which any  
10 return required by provision of the Tax Administration Act  
11 shall be filed, but no extension shall prevent the accrual of  
12 interest as otherwise provided by law. When an extension of  
13 time for income tax has been granted a taxpayer pursuant to  
14 the Internal Revenue Code, the extension shall serve to  
15 extend the time for filing New Mexico income tax; provided  
16 that a copy of the approved federal extension of time is  
17 attached to the taxpayer's New Mexico income tax return. The  
18 secretary by regulation may also provide for the automatic  
19 extension for no more than six months of the date upon which  
20 payment of any New Mexico income tax or the filing of any  
21 New Mexico income tax return is required. If the secretary  
22 or the secretary's delegate believes it necessary to ensure  
23 the collection of the tax, the secretary or the secretary's  
24 delegate may require, as a condition of granting any  
25 extension, that the taxpayer furnish security in accordance

1 with the provisions of Section 7-1-54 NMSA 1978.

2 E. Except as provided in Subsection F of this  
3 section, no later than one hundred eighty days after the  
4 final determination date, a taxpayer shall file a federal  
5 adjustments report with the department and pay any state tax  
6 due with respect to final net-positive federal adjustments  
7 arising from:

8 (1) an audit or other action by the internal  
9 revenue service; or

10 (2) a timely filed amended federal income  
11 tax return, including a return or other similar information  
12 filed pursuant to Section 6225(c)(2) of the Internal Revenue  
13 Code.

14 F. Except for federal adjustments that are  
15 required to be reported pursuant to Subsection E of this  
16 section, partnerships and partners shall report final  
17 net-positive federal adjustments arising from a partnership  
18 level audit or an administrative adjustment request and make  
19 payments as follows:

20 (1) except for where the partnership or  
21 tiered partner makes an election pursuant to Subsection G of  
22 this section, the partnership or tiered partner shall:

23 (a) file: 1) a completed federal  
24 adjustments report and notify each of its direct partners of  
25 their distributive share of the final federal adjustments,

1 including information necessary for reporting state tax due  
2 as required by the department; and 2) an amended withholding  
3 return for the reviewed year if such return was filed, or  
4 would have been required pursuant to the Withholding Tax Act;

5 (b) in the case of an audited  
6 partnership, file the returns required by this paragraph no  
7 later than ninety days after the final determination date;  
8 and

9 (c) in the case of a tiered partner of  
10 an audited partnership, file the returns required by this  
11 paragraph no later than ninety days after the time for the  
12 audited partnership's filing and furnishing statements to  
13 tiered partnerships and their partners as established  
14 pursuant to Section 6226 of the Internal Revenue Code and the  
15 regulations thereunder; and

16 (2) a partner of a partnership or a tiered  
17 partner subject to tax pursuant to Section 7-2-3 or 7-2A-3  
18 NMSA 1978 on adjustments to which Paragraph (1) of this  
19 subsection applies shall file a federal adjustments report  
20 reporting the partner's distributive share of the adjustments  
21 and shall pay the additional amount of state tax due, plus  
22 any penalty and interest due and less any credit for related  
23 amounts paid or withheld and remitted on behalf of the  
24 partner pursuant to Paragraph (1) of this subsection as  
25 follows:

1 (a) for taxable direct partners of the  
2 audited partnership, no later than one hundred eighty days  
3 after the final determination date; or

4 (b) for taxable indirect partners of  
5 the audited partnership, no later than one hundred eighty  
6 days after the time for the audited partnership's filing and  
7 furnishing statements to tiered partnerships and their  
8 partners as established pursuant to Section 6226 of the  
9 Internal Revenue Code and the regulations thereunder.

10 G. The election provided by this subsection  
11 applies only to federal adjustments other than the  
12 distributive share of federal adjustments that must be  
13 included in the unitary business income of any direct or  
14 indirect corporate partner; provided that this can be  
15 reasonably determined, or federal adjustments resulting from  
16 an administrative adjustment request. A partnership making  
17 an election pursuant to this subsection shall:

18 (1) file a completed federal adjustments  
19 report and notify the department that it is making the  
20 election pursuant to this subsection; and

21 (2) pay an amount, determined as follows, in  
22 lieu of taxes owed by its direct and indirect taxable  
23 partners:

24 (a) exclude from the total final  
25 federal adjustments the distributive share reported to a

1 direct partner that is an exempt partner unless the  
2 adjustment represents unrelated business taxable income;

3 (b) include only the portion of the  
4 total federal adjustment to distributive shares of partners  
5 taken into account pursuant to Section 6225(b)(2) of the  
6 Internal Revenue Code;

7 (c) apportion and allocate the  
8 adjustments as provided by the Uniform Division of Income for  
9 Tax Purposes Act as applied at the partnership level  
10 following any department regulations adopted for this  
11 purpose;

12 (d) multiply the resulting amount by  
13 the highest tax rate provided by Section 7-2A-5 NMSA 1978;  
14 and

15 (e) add to the amount calculated  
16 pursuant to Subparagraph (d) of this paragraph an amount of  
17 penalty and interest computed pursuant to the Tax  
18 Administration Act.

19 H. In any action required or allowed to be taken  
20 pursuant to the Tax Administration Act with respect to the  
21 reporting of federal adjustments by a partnership, the state  
22 partnership representative for the reviewed year shall have  
23 the sole authority to act on behalf of the partnership, and  
24 the partnership's direct partners and indirect partners shall  
25 be bound by those actions. The state partnership

1 representative is the partnership's federal partnership  
2 representative for the reviewed year, unless the partnership  
3 designates in writing another person as its state partnership  
4 representative; provided that the person meets any  
5 qualifications established by the department.

6 I. Pursuant to procedures that may be adopted by  
7 the department, an audited partnership or tiered partner of  
8 that partnership may enter into an agreement with the  
9 department to utilize an alternative reporting and payment  
10 method, including applicable time requirements or any other  
11 provision pursuant to Subsections E through H of this  
12 section, if the audited partnership or tiered partner  
13 demonstrates that the requested method will reasonably  
14 provide for the reporting and payment of taxes, penalties and  
15 interest due pursuant to Subsections E through H of this  
16 section. Application for approval of an alternative  
17 reporting and payment method must be made by the audited  
18 partnership or tiered partner within the time for election as  
19 provided in Subsection G of this section, as appropriate.

20 J. An election made pursuant to Subsection G or I  
21 of this section is irrevocable, unless the department, in its  
22 discretion, determines otherwise. If properly reported and  
23 paid by the audited partnership or tiered partner, the amount  
24 determined in Paragraph (2) of Subsection G of this section,  
25 or similarly under an optional election pursuant to

1 Subsection I of this section, will be treated as paid in lieu  
2 of taxes owed by its direct and indirect partners on the same  
3 final federal adjustments. The direct or indirect partners  
4 of the partnership that pays this in lieu of amount may not  
5 claim any deduction, credit or refund with respect to that  
6 amount.

7 K. A taxpayer may make estimated payments of state  
8 tax expected to result from a pending audit by the internal  
9 revenue service prior to the final determination date,  
10 following the process prescribed by the department, and such  
11 payments will limit the accrual of further statutory interest  
12 on that amount.

13 L. A taxpayer may claim an amount of state tax  
14 resulting from final net-negative federal adjustments as  
15 provided in Section 7-1-26 NMSA 1978.

16 M. Nothing in Subsections E through L of this  
17 section shall prevent the department from assessing direct  
18 partners or indirect partners for taxes they owe, using the  
19 best information available, in the event that a partnership  
20 or tiered partner fails to timely make any report or payment  
21 required for any reason.

22 N. As used in this section:

23 (1) "administrative adjustment request"  
24 means an administrative adjustment request filed by a  
25 partnership pursuant to Section 6227 of the Internal Revenue



1 Code;

2 (2) "audited partnership" means a  
3 partnership subject to a partnership level audit resulting in  
4 a federal adjustment;

5 (3) "corporate partner" means a partner,  
6 direct or indirect, that is subject to tax pursuant to the  
7 Corporate Income and Franchise Tax Act;

8 (4) "direct partner" means any partner that  
9 holds an interest directly in a partnership or pass-through  
10 entity;

11 (5) "exempt partner" means a partner, direct  
12 or indirect, that is exempt from New Mexico income tax except  
13 on unrelated business taxable income;

14 (6) "federal adjustment" means a change to  
15 an item or amount determined pursuant to the Internal Revenue  
16 Code that is used by a taxpayer to compute an amount of state  
17 tax owed, whether that change results from action by the  
18 internal revenue service, including a partnership level  
19 audit, or the filing of an amended federal return, federal  
20 refund claim or an administrative adjustment request by a  
21 partnership;

22 (7) "federal adjustments report" includes  
23 the methods or forms required by the department for use by a  
24 taxpayer to report final federal adjustments, including an  
25 amended tax return, information return or a uniform

1 multistate report;

2 (8) "final determination date" means:

3 (a) except as provided in Subparagraphs  
4 (b), (c) and (d) of this paragraph, if a federal adjustment  
5 arises from an audit or other action by the internal revenue  
6 service, the final determination date is the first day on  
7 which no federal adjustments arising from that audit or other  
8 action remain to be finally determined, whether by a decision  
9 of the internal revenue service with respect to which all  
10 rights of appeal have been waived or exhausted, by agreement,  
11 or, if appealed or contested, by a final decision with  
12 respect to which all rights of appeal have been waived or  
13 exhausted. For agreements required to be signed by the  
14 internal revenue service and the taxpayer, the final  
15 determination date is the date on which the last party signed  
16 the agreement;

17 (b) for federal adjustments arising  
18 from an internal revenue service audit or other action by the  
19 internal revenue service, if the taxpayer filed as a member  
20 of a filing group pursuant to the Corporate Income and  
21 Franchise Tax Act, the final determination date means the  
22 first day on which no related federal adjustments arising  
23 from that audit remain to be finally determined, as described  
24 in Subparagraph (a) of this paragraph, for the entire group;

25 (c) except as provided in

1 Subparagraph (d) of this paragraph, if the federal adjustment  
2 results from filing an amended federal return, a federal  
3 refund claim or an administrative adjustment request, or if  
4 it is a federal adjustment reported on an amended federal  
5 return or other similar report filed pursuant to  
6 Section 6225(c) of the Internal Revenue Code, the final  
7 determination date means the day on which the amended return,  
8 refund claim, administrative adjustment request or other  
9 similar report was filed; and

10 (d) for adjustments resulting from a  
11 partnership level audit or an administrative adjustment  
12 request for which the final determination date pursuant to  
13 Subparagraph (a) or (c) of this paragraph is determined to be  
14 a date occurring prior to the effective date of this  
15 2021 act, the final determination date shall be July 1, 2021;

16 (9) "final federal adjustments" means  
17 adjustments for which the final determination date has  
18 passed, including final net-positive federal adjustments and  
19 final net-negative federal adjustments;

20 (10) "indirect partner" means a partner in a  
21 partnership or pass-through entity in which the partner holds  
22 an interest directly, or through another indirect partner, in  
23 a partnership or pass-through entity;

24 (11) "net-negative federal adjustments"  
25 means federal adjustments relating to the same tax period,

1 whether made by the taxpayer or the internal revenue service,  
2 the net effect of which is to decrease state tax due as  
3 compared to tax originally reported for that period;

4 (12) "net-positive federal adjustments"  
5 means federal adjustments relating to the same tax period,  
6 whether made by the taxpayer or the internal revenue service,  
7 the net effect of which is to increase state tax due as  
8 compared to tax originally reported for that period;

9 (13) "partner" means a person that holds an  
10 interest directly or indirectly in a partnership or other  
11 pass-through entity;

12 (14) "partnership" means an entity subject  
13 to taxation pursuant to Subchapter K of the Internal Revenue  
14 Code;

15 (15) "partnership level audit" means an  
16 examination by the internal revenue service at the  
17 partnership level pursuant to Subchapter C or Subtitle F,  
18 Chapter 63 of the Internal Revenue Code which results in  
19 federal adjustments;

20 (16) "pass-through entity" means an entity,  
21 other than a partnership, that is not subject to tax pursuant  
22 to the Corporate Income and Franchise Tax Act;

23 (17) "reviewed year" means the taxable year  
24 of a partnership that is subject to a partnership level audit  
25 from which federal adjustments arise;

1 (18) "taxpayer" means a taxpayer, including  
2 a partnership subject to a partnership level audit or a  
3 partnership that has made an administrative adjustment  
4 request, as well as a tiered partner of that partnership,  
5 unless the context indicates otherwise;

6 (19) "tiered partner" means any partner that  
7 is a partnership or pass-through entity; and

8 (20) "unrelated business taxable income"  
9 means "unrelated business taxable income" as used in  
10 Section 512 of the Internal Revenue Code."

11 SECTION 2. Section 7-1-18 NMSA 1978 (being Laws 1965,  
12 Chapter 248, Section 21, as amended) is amended to read:

13 "7-1-18. LIMITATION ON ASSESSMENT BY DEPARTMENT.--

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

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

1 such period.

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

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

15 E. If any adjustment in the basis for computation  
16 of any federal tax is made as a result of an audit by the  
17 internal revenue service or the filing of an amended federal  
18 return or administrative adjustment request changing a prior  
19 election or making any other change for which federal  
20 approval is required by the Internal Revenue Code that  
21 results in liability for any tax, the amount thereof may be  
22 assessed at any time, but not after three years from the end  
23 of the calendar year in which filing of a federal adjustments  
24 report is required by Subsections E through J of  
25 Section 7-1-13 NMSA 1978.

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

6 G. As used in this section:

7 (1) "administrative adjustment request"  
8 means "administrative adjustment request" as used in  
9 Section 7-1-13 NMSA 1978; and

10 (2) "federal adjustments report" means  
11 "federal adjustments report" as used in Section 7-1-13  
12 NMSA 1978."

13 SECTION 3. Section 7-1-26 NMSA 1978 (being Laws 1965,  
14 Chapter 248, Section 28, as amended) is amended to read:

15 "7-1-26. DISPUTING LIABILITIES--CLAIM FOR CREDIT,  
16 REBATE OR REFUND.--

17 A. A person who believes that an amount of tax has  
18 been paid by or withheld from that person in excess of that  
19 for which the person was liable, who has been denied a credit  
20 or rebate claimed or who claims a prior right to property in  
21 the possession of the department pursuant to a levy made  
22 pursuant to the authority of Sections 7-1-31 through 7-1-34  
23 NMSA 1978 may claim a refund by directing to the secretary,  
24 within the time limitations provided by Subsections F and G  
25 of this section, a written claim for refund that, except as

1 provided in Subsection K of this section, includes:

2 (1) the taxpayer's name, address and  
3 identification number;

4 (2) the type of tax for which a refund is  
5 being claimed, the credit or rebate denied or the property  
6 levied upon;

7 (3) the sum of money or other property being  
8 claimed;

9 (4) with respect to a refund, the period for  
10 which overpayment was made;

11 (5) a brief statement of the facts and the  
12 law on which the claim is based, which may be referred to as  
13 the "basis for the refund", which may include documentation  
14 that substantiates the written claim and supports the  
15 taxpayer's basis for the refund; and

16 (6) if applicable, a copy of an amended  
17 return for each tax period for which the refund is claimed.

18 B. A claim for refund that meets the requirements  
19 of Subsection A of this section and that is filed within the  
20 time limitations provided by Subsections F and G of this  
21 section is deemed to be properly before the department for  
22 consideration, regardless of whether the department requests  
23 additional documentation after receipt of the claim for  
24 refund.

25 C. If the department requests additional relevant



1 documentation from a taxpayer who has submitted a claim for  
2 refund, the claim for refund shall not be considered  
3 incomplete provided the taxpayer submits sufficient  
4 information for the department to make a determination.

5 D. The secretary or the secretary's delegate may  
6 allow the claim in whole or in part or may deny the claim.

7 If the:

8 (1) claim is denied in whole or in part in  
9 writing, the person shall not refile the denied claim, but  
10 the person, within ninety days after either the mailing or  
11 delivery of the denial of all or any part of the claim, may  
12 elect to pursue only one of the remedies provided in  
13 Subsection E of this section; and

14 (2) department has neither granted nor  
15 denied any portion of a complete claim for refund within one  
16 hundred eighty days after the claim was mailed or otherwise  
17 delivered to the department, the person may elect to treat  
18 the claim as denied and elect to pursue only one of the  
19 remedies provided in Subsection E of this section.

20 E. A person may elect to pursue only one of the  
21 remedies provided in this subsection. A person who timely  
22 pursues more than one remedy is deemed to have elected the  
23 first. The person may:

24 (1) direct to the secretary, pursuant to the  
25 provisions of Section 7-1-24 NMSA 1978, a written protest

1 that sets forth:

2 (a) the circumstances of: 1) an  
3 alleged overpayment; 2) a denied credit; 3) a denied rebate;  
4 or 4) a denial of a prior right to property levied upon by  
5 the department;

6 (b) an allegation that, because of that  
7 overpayment or denial, the state is indebted to the taxpayer  
8 for a specified amount, including any allowed interest, or  
9 for the property;

10 (c) a demand for the refund to the  
11 taxpayer of that amount or that property; and

12 (d) a recitation of the facts of the  
13 claim for refund; or

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

25 F. Except as otherwise provided in Subsection G of SB 410  
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1 this section, a credit or refund of any amount of overpaid  
2 tax, penalty or interest may be allowed or made to a person  
3 if a claim is properly filed:

4 (1) only within three years after the end of  
5 the calendar year in which the applicable event occurs:

6 (a) in the case of tax paid with an  
7 original or amended state return, the date the related tax  
8 was originally due;

9 (b) in the case of tax paid in response  
10 to an assessment by the department pursuant to Section 7-1-17  
11 NMSA 1978, the date the tax was paid;

12 (c) in the case of tax with respect to  
13 which a net-negative federal adjustment, as that term is used  
14 in Section 7-1-13 NMSA 1978, relates, the final determination  
15 date of that federal adjustment, as provided in  
16 Section 7-1-13 NMSA 1978;

17 (d) the final determination of value  
18 occurs with respect to any overpayment that resulted from a  
19 disapproval by any agency of the United States or the state  
20 of New Mexico or any court of increase in value of a product  
21 subject to taxation pursuant to the Oil and Gas Severance Tax  
22 Act, the Oil and Gas Conservation Tax Act, the Oil and Gas  
23 Emergency School Tax Act, the Oil and Gas Ad Valorem  
24 Production Tax Act or the Natural Gas Processors Tax Act; or

25 (e) in the case of a claim related to

1 property taken by levy, the date the property was levied upon  
2 as provided in the Tax Administration Act;

3 (2) in the case of a denial of a claim for  
4 credit pursuant to the Investment Credit Act, Laboratory  
5 Partnership with Small Business Tax Credit Act or Technology  
6 Jobs and Research and Development Tax Credit Act or for the  
7 rural job tax credit provided by Section 7-2E-1.1 NMSA 1978  
8 or similar credit, only within one year after the date of the  
9 denial;

10 (3) in the case of a taxpayer under audit by  
11 the department who has signed a waiver of the limitation on  
12 assessments on or after July 1, 1993 pursuant to Subsection F  
13 of Section 7-1-18 NMSA 1978, only for a refund of the same  
14 tax paid for the same period for which the waiver was given,  
15 and only until a date one year after the later of the date of  
16 the mailing of an assessment issued pursuant to the audit,  
17 the date of the mailing of final audit findings to the  
18 taxpayer or the date a proceeding is begun in court by the  
19 department with respect to the same tax and the same period;

20 (4) in the case of a payment of an amount of  
21 tax not made within three years of the end of the calendar  
22 year in which the original due date of the tax or date of the  
23 assessment of the department occurred, only for a claim for  
24 refund of that amount of tax and only within one year of the  
25 date on which the tax was paid; or

1                   (5) in the case of a taxpayer who has been  
2 assessed a tax on or after July 1, 1993 pursuant to  
3 Subsection B, C or D of Section 7-1-18 NMSA 1978 and an  
4 assessment that applies to a period ending at least three  
5 years prior to the beginning of the year in which the  
6 assessment was made, only for a refund for the same tax for  
7 the period of the assessment or for any period following that  
8 period within one year of the date of the assessment unless a  
9 longer period for claiming a refund is provided in this  
10 section.

11                   G. No credit or refund shall be allowed or made to  
12 a person claiming a refund of gasoline tax pursuant to  
13 Section 7-13-11 NMSA 1978 unless notice of the destruction of  
14 the gasoline was given to the department within thirty days  
15 of the actual destruction and the claim for refund is made  
16 within six months of the date of destruction. No credit or  
17 refund shall be allowed or made to a person claiming a refund  
18 of gasoline tax pursuant to Section 7-13-17 NMSA 1978 unless  
19 the refund is claimed within six months of the date of  
20 purchase of the gasoline and the gasoline has been used at  
21 the time the claim for refund is made.

22                   H. If, as a result of an audit by the department  
23 or a managed audit covering multiple periods, an overpayment  
24 of tax is found in any period under the audit and if the  
25 taxpayer files a claim for refund for the overpayments

1 identified in the audit, that overpayment may be credited  
2 against an underpayment of the same tax found in another  
3 period under audit pursuant to Section 7-1-29 NMSA 1978.

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

10 J. For the purposes of this section, "oil and gas  
11 tax return" means a return reporting tax due with respect to  
12 oil, natural gas, liquid hydrocarbons, carbon dioxide, helium  
13 or nonhydrocarbon gas pursuant to the Oil and Gas Severance  
14 Tax Act, the Oil and Gas Conservation Tax Act, the Oil and  
15 Gas Emergency School Tax Act, the Oil and Gas Ad Valorem  
16 Production Tax Act, the Natural Gas Processors Tax Act or the  
17 Oil and Gas Production Equipment Ad Valorem Tax Act.

18 K. The filing of a fully completed original income  
19 tax return, corporate income tax return, corporate income and  
20 franchise tax return, estate tax return or special fuel  
21 excise tax return that shows a balance due the taxpayer or a  
22 fully completed amended income tax return, an amended  
23 corporate income tax return, an amended corporate income and  
24 franchise tax return, an amended estate tax return, an  
25 amended special fuel excise tax return or an amended oil and

1 gas tax return that shows a lesser tax liability than the  
2 original return constitutes the filing of a claim for refund  
3 for the difference in tax due shown on the original and  
4 amended returns.

5 L. In no case may a credit or refund be claimed if  
6 the related federal adjustment is taken into account by a  
7 partnership in the partnership's tax return for the  
8 adjustment year and allocated to the partners in a manner  
9 similar to other partnership tax items."

10 SECTION 4. Section 7-1-29 NMSA 1978 (being Laws 1965,  
11 Chapter 248, Section 31, as amended) is amended to read:

12 "7-1-29. AUTHORITY TO MAKE REFUNDS OR CREDITS.--

13 A. In response to a claim for refund, credit or  
14 rebate made as provided in Section 7-1-26 NMSA 1978, but  
15 before a court acquires jurisdiction of the matter, the  
16 secretary or the secretary's delegate may authorize payment  
17 to a person in the amount of the credit or rebate claimed or  
18 refund an overpayment of tax determined by the secretary or  
19 the secretary's delegate to have been erroneously made by the  
20 person, together with allowable interest. A payment of a  
21 credit rebate claimed or a refund of tax and interest  
22 erroneously paid amounting to twenty thousand dollars  
23 (\$20,000) or more shall be made with the prior approval of  
24 the attorney general, except that the secretary or the  
25 secretary's delegate may make refunds with respect to the

1 Oil and Gas Severance Tax Act, the Oil and Gas Conservation  
2 Tax Act, the Oil and Gas Emergency School Tax Act, the  
3 Oil and Gas Ad Valorem Production Tax Act, the Natural Gas  
4 Processors Tax Act or the Oil and Gas Production Equipment Ad  
5 Valorem Tax Act, Section 7-13-17 NMSA 1978 and the Cigarette  
6 Tax Act without the prior approval of the attorney general  
7 regardless of the amount.

8 B. Pursuant to the final order of the district  
9 court, the court of appeals, the supreme court of New Mexico  
10 or a federal court, from which order, appeal or review is not  
11 successfully taken, adjudging that a person has properly  
12 claimed a credit, rebate or a refund of overpaid tax, the  
13 secretary shall authorize the payment to the person of the  
14 amount thereof. After a court acquires jurisdiction but  
15 before it issues a final order, the secretary may authorize  
16 payment of a credit, rebate or refund pursuant to a closing  
17 agreement pursuant to Section 7-1-20 NMSA 1978.

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



1 liability is credited with the credit, rebate or refund  
2 amount.

3           D. In an audit by the department or a managed  
4 audit covering multiple reporting periods in which both  
5 underpayments and overpayments of a tax have been made in  
6 different reporting periods, the department shall credit the  
7 tax overpayments against the underpayments; provided that the  
8 taxpayer files a claim for refund of the overpayments. An  
9 overpayment shall be applied as a credit first to the  
10 earliest underpayment and then to succeeding underpayments.  
11 An underpayment of tax to which an overpayment is credited  
12 pursuant to this section shall be deemed paid in the period  
13 in which the overpayment was made or the period to which the  
14 overpayment was credited against an underpayment, whichever  
15 is later. If the overpayments credited pursuant to this  
16 section exceed the underpayments of a tax, the amount of the  
17 net overpayment for the periods covered in the audit shall be  
18 refunded to the taxpayer.

19           E. When a taxpayer makes a payment identified to a  
20 particular return or assessment, and the department  
21 determines that the payment exceeds the amount due pursuant  
22 to that return or assessment, the secretary may apply the  
23 excess to the taxpayer's other liabilities pursuant to the  
24 tax acts to which the return or assessment applies, without  
25 requiring the taxpayer to file a claim for a refund. The

1 liability to which an overpayment is applied pursuant to this  
2 section shall be deemed paid in the period in which the  
3 overpayment was made or the period to which the overpayment  
4 was applied, whichever is later.

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

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

20 H. In response to a timely refund claim pursuant  
21 to Section 7-1-26 NMSA 1978 and notwithstanding any other  
22 provision of the Tax Administration Act, the secretary or the  
23 secretary's delegate may refund or credit a portion of an  
24 assessment of tax paid, including applicable penalties and  
25 interest representing the amount of tax previously paid by

1 another person on behalf of the taxpayer on the same  
2 transaction; provided that the requirements of equitable  
3 recoupment are met. For purposes of this subsection, the  
4 refund claim may be filed by the taxpayer to whom the  
5 assessment was issued or by another person who claims to have  
6 previously paid the tax on behalf of the taxpayer. Prior to  
7 granting the refund or credit, the secretary may require a  
8 waiver of all rights to claim a refund or credit of the tax  
9 previously paid by another person paying a tax on behalf of  
10 the taxpayer.

11 I. If, as a result of an audit by the department  
12 or a managed audit, a person is determined to owe gross  
13 receipts tax on receipts from the sale of property or  
14 services, the department may credit against the amount owed  
15 an amount of compensating tax paid by the purchaser if the  
16 person can demonstrate that the purchaser timely paid the  
17 compensating tax on the same property or services. The  
18 credit provided by this subsection shall not be denied solely  
19 because the purchaser cannot timely file for a refund of the  
20 compensating tax paid and, if the credit is to be granted,  
21 the department shall require, for the purpose of granting the  
22 credit, that the purchaser give up any right to claim a  
23 refund of that tax."

24 SECTION 5. A new section of the Withholding Tax Act is  
25 enacted to read:

1 "COMPOSITE RETURNS.--

2 A. A pass-through entity may file a composite  
3 income tax return on behalf of electing nonresident members  
4 reporting and paying income tax at the highest marginal rate  
5 provided in Section 7-2A-5 NMSA 1978 on the members' pro rata  
6 or distributive shares of income of the pass-through entity  
7 from doing business in, or deriving income from sources  
8 within, this state.

9 B. A nonresident member whose only source of  
10 income within a state is from one or more pass-through  
11 entities may elect to be included in a composite income tax  
12 return filed pursuant to this section.

13 C. A nonresident member that has been included in  
14 a composite income tax return may file an individual income  
15 tax return and shall receive credit for tax paid on the  
16 member's behalf by the pass-through entity.

17 D. As used in this section:

18 (1) "pass-through entity" means a  
19 corporation that for the applicable tax year is treated as an  
20 S corporation pursuant to Section 1362(a) of the Internal  
21 Revenue Code and any entity with one or more members that is  
22 not taxed as a corporation pursuant to Subchapter C of the  
23 Internal Revenue Code;

24 (2) "member" means a shareholder of an  
25 S corporation; a partner in a general partnership, a limited

1 partnership or a limited liability partnership; a member of a  
2 limited liability company; or a beneficiary of a trust; and

3 (3) "nonresident" means an individual who is  
4 not a resident of or domiciled in the state, a business  
5 entity that does not have its commercial domicile in the  
6 state or a trust not organized in the state."

7 SECTION 6. APPLICABILITY.--The provisions of  
8 Sections 1 and 4 of this act apply to federal adjustments  
9 with a final determination date occurring on and after  
10 January 1, 2021.

11 SECTION 7. EFFECTIVE DATE.--The effective date of the  
12 provisions of Section 5 of this act is January 1, 2022. \_\_\_\_\_

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