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SENATE BILL 8

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY

VIRGIL O. RHODES

FOR THE REVENUE STABILIZATION AND TAX POLICY COMMITTEE

AN ACT

RELATING TO TAXATION; AMENDING SECTIONS OF THE TAX
ADMINISTRATION ACT.

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

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

"7-1-2. APPLICABILITY. -- The Tax Administration Act applies
to and governs:

A. the administration and enforcement of the
following taxes or tax acts as they now exist or may hereafter
be amended:

- (1) Income Tax Act;
- (2) Withholding Tax Act;
- (3) Gross Receipts and Compensating Tax Act and

any state gross receipts tax;

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- 1 (4) Liquor Excise Tax Act;
2 (5) Local Liquor Excise Tax Act;
3 (6) Banking and Financial Corporations Tax Act;
4 (7) any municipal local option gross receipts
5 tax;
6 (8) any county local option gross receipts tax;
7 (9) Special Fuels Supplier Tax Act;
8 (10) Gasoline Tax Act;
9 (11) petroleum products loading fee, which fee
10 shall be considered a tax for the purpose of the Tax
11 Administration Act;
12 (12) Alternative Fuel Tax Act;
13 [~~(12)~~] (13) Cigarette Tax Act;
14 [~~(13)~~] (14) Estate Tax Act;
15 [~~(14)~~] (15) Railroad Car Company Tax Act;
16 [~~(15)~~] (16) Investment Credit Act;
17 [~~(16) — Corporate Income Tax Act;~~]
18 (17) Corporate Income and Franchise Tax Act;
19 (18) Uniform Division of Income for Tax
20 Purposes Act;
21 (19) Multistate Tax Compact;
22 (20) Tobacco Products Tax Act;
23 (21) Filmmaker's Credit Act; and
24 (22) the telecommunications relay service
25 surcharge imposed by Section 63-9F-11 NMSA 1978, which surcharge

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1 shall be considered a tax for the purposes of the Tax
2 Administration Act;

3 B. the administration and enforcement of the
4 following taxes, surtaxes, advanced payments or tax acts as they
5 now exist or may hereafter be amended:

- 6 (1) Resources Excise Tax Act;
- 7 (2) Severance Tax Act;
- 8 (3) any severance surtax;
- 9 (4) Oil and Gas Severance Tax Act;
- 10 (5) Oil and Gas Conservation Tax Act;
- 11 (6) Oil and Gas Emergency School Tax Act;
- 12 (7) Oil and Gas Ad Valorem Production Tax Act;
- 13 (8) Natural Gas Processors Tax Act;
- 14 (9) Oil and Gas Production Equipment Ad Valorem
15 Tax Act;
- 16 (10) Copper Production Ad Valorem Tax Act; and
- 17 (11) any advance payment required to be made by

18 any act specified in this subsection, which advance payment
19 shall be considered a tax for the purposes of the Tax
20 Administration Act;

21 C. the administration and enforcement of the
22 following taxes, surcharges, fees or acts as they now exist or
23 may hereafter be amended:

- 24 (1) Weight Distance Tax Act;
- 25 (2) Special Fuels Tax Act;

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1 (3) the workers' compensation fee authorized by
2 Section 52-5-19 NMSA 1978, which fee shall be considered a tax
3 for purposes of the Tax Administration Act;

4 [~~(4)~~—Controlled Substance Tax Act;

5 ~~(5)~~] (4) Uniform Unclaimed Property Act;

6 [~~(6)~~] (5) 911 emergency surcharge and the
7 network and database surcharge, which surcharges shall be
8 considered taxes for purposes of the Tax Administration Act;

9 [~~(7)~~] (6) the solid waste assessment fee
10 authorized by the Solid Waste Act, which fee shall be considered
11 a tax for purposes of the Tax Administration Act; and

12 [~~(8)~~] (7) the water conservation fee imposed by
13 Section 74-1-13 NMSA 1978, which fee shall be considered a tax
14 for the purposes of the Tax Administration Act; and

15 D. the administration and enforcement of all other
16 laws, with respect to which the department is charged with
17 responsibilities pursuant to the Tax Administration Act, but
18 only to the extent that [~~such~~] the other laws do not conflict
19 with the Tax Administration Act."

20 Section 2. Section 7-1-8 NMSA 1978 (being Laws 1965,
21 Chapter 248, Section 13, as amended by Laws 1993, Chapter 5,
22 Section 3 and also by Laws 1993, Chapter 261, Section 1) is
23 amended to read:

24 "7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER
25 INFORMATION.--It is unlawful for any employee of the department

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1 or any former employee of the department to reveal to any
2 individual other than another employee of the department any
3 information contained in the return of any taxpayer made
4 pursuant to any law subject to administration and enforcement
5 under the provisions of the Tax Administration Act or any other
6 information about any taxpayer acquired as a result of his
7 employment by the department, except:

8 A. to an authorized representative of another state;
9 provided that the receiving state has entered into a written
10 agreement with the department to use the information for tax
11 purposes only and that the receiving state has enacted a
12 confidentiality statute similar to this section to which the
13 representative is subject;

14 B. to a representative of the secretary of the
15 treasury or the secretary's delegate pursuant to the terms of a
16 reciprocal agreement entered into with the federal government
17 for exchange of [~~such~~] the information;

18 C. to the multistate tax commission or its
19 authorized representative; provided that the information is used
20 for tax purposes only and is disclosed by the multistate tax
21 commission only to states [~~which~~] that have met the requirements
22 of Subsection A of this section;

23 D. to a district court or an appellate court or a
24 federal court:

25 (1) in response to an order thereof in an

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1 action relating to taxes to which the state is a party and in
2 which the information sought is about a taxpayer who is party to
3 the action and is material to the inquiry, in which case only
4 that information may be required to be produced in court and
5 admitted in evidence subject to court order protecting the
6 confidentiality of the information and no more;

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

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

17 E. to the taxpayer or to the taxpayer's authorized
18 representative; provided, however, that nothing in this
19 subsection shall be construed to require any employee to testify
20 in a judicial proceeding except as provided in Subsection D of
21 this section;

22 F. information obtained through the administration
23 of any law not subject to administration and enforcement under
24 the provisions of the Tax Administration Act to the extent that
25 release of [such] that information is not otherwise prohibited

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1 by law;

2 G. in such manner, for statistical purposes, that
3 the information revealed is not identified as applicable to any
4 individual taxpayer;

5 H. with reference to any information concerning the
6 tax on tobacco imposed by Sections 7-12-1 through 7-12-17 NMSA
7 1978 to a committee of the legislature for a valid legislative
8 purpose;

9 I. to a transferee, assignee, buyer or lessor of a
10 liquor license, the amount and basis of any unpaid assessment of
11 tax for which his transferor, assignor, seller or lessee is
12 liable;

13 J. to a purchaser of a business as provided in
14 Sections 7-1-61 through 7-1-64 NMSA 1978, the amount and basis
15 of any unpaid assessment of tax for which the purchaser's seller
16 is liable;

17 K. to a municipality of this state upon its request
18 for any period specified by that municipality within the twelve
19 months preceding the request for ~~[such]~~ the information by that
20 municipality:

21 (1) the names, taxpayer identification numbers
22 and addresses of registered gross receipts taxpayers reporting
23 gross receipts for that municipality under the Gross Receipts
24 and Compensating Tax Act or a local option gross receipts tax
25 imposed by that municipality. The department may also release

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1 ~~[within the twelve months following the request for such~~
2 ~~information by the municipality]~~ the information described in
3 this paragraph quarterly or upon such other periodic basis as
4 the secretary and the municipality may agree; and

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

12 The employees of municipalities receiving information as
13 provided in this subsection shall be subject to the penalty
14 contained in Section 7-1-76 NMSA 1978 if ~~[such]~~ that information
15 is revealed to individuals other than other employees of the
16 municipality in question or the department;

17 L. to the commissioner of public lands for use in
18 auditing that pertains to rentals, royalties, fees and other
19 payments due the state under land sale, land lease or other land
20 use contracts; the commissioner of public lands and employees of
21 the commissioner are subject to the same provisions regarding
22 confidentiality of information as employees of the department;

23 M the department shall furnish, upon request by the
24 child support enforcement division of the human services
25 department, the last known address with date of all names

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1 certified to the department as being absent parents of children
2 receiving public financial assistance. The child support
3 enforcement division personnel shall use such information only
4 for the purpose of enforcing the support liability of ~~[such]~~ the
5 absent parents and shall not use the information or disclose it
6 for any other purpose; the child support enforcement division
7 and its employees are subject to the provisions of this section
8 with respect to any information acquired from the department;

9 N. with respect to the tax on gasoline imposed by
10 the Gasoline Tax Act, the department shall make available for
11 public inspection at monthly intervals a report covering the
12 amount and gallonage of gasoline and ethanol blended fuels
13 imported, exported, sold and used, including tax-exempt sales to
14 the federal government reported or upon which the gasoline tax
15 was paid ~~[together with a tabulation of]~~ and covering taxes
16 received from each distributor in the state of New Mexico;

17 O. the identity of distributors and gallonage
18 reported on returns required under the Gasoline Tax Act, ~~[or]~~
19 Special Fuels Supplier Tax Act or Alternative Fuel Tax Act to
20 any distributor or supplier, but only when it is necessary to
21 enable the department to carry out its duties under the Gasoline
22 Tax Act, ~~[or]~~ the Special Fuels Supplier Tax Act or the
23 Alternative Fuel Tax Act;

24 P. the department shall release upon request only
25 the names and addresses of all gasoline or special fuel

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1 distributors, wholesalers and retailers to the New Mexico
2 department of agriculture, the employees of which are thereby
3 subject to the penalty contained in Section 7-1-76 NMSA 1978 if
4 [~~such~~] that information is revealed to individuals other than
5 employees of either the New Mexico department of agriculture or
6 the department;

7 Q. the department shall answer all inquiries
8 concerning whether a person is or is not a registered taxpayer;

9 R. upon request of [~~the~~] a municipality or [~~the~~]
10 county of this state, the department shall permit officials or
11 employees of the municipality or county to inspect the records
12 of the department pertaining to an increase or decrease to a
13 distribution or transfer made pursuant to Section 7-1-6.15 NMSA
14 1978 for the purpose of reviewing the basis for the increase or
15 decrease. The municipal or county officials or employees
16 receiving information provided in this subsection shall not
17 reveal that information to any person other than another
18 employee of the municipality or the county, the department or a
19 district court, an appellate court or a federal court in a
20 proceeding relating to a disputed distribution and in which both
21 the state and the municipality or county are parties. Any
22 information provided in this subsection that is revealed other
23 than as provided in this subsection shall subject the person
24 revealing the information to the penalties contained in Section
25 7-1-76 NMSA 1978;

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1 S. to a county of this state that has in effect any
2 local option gross receipts tax imposed by the county upon its
3 request for any period specified by that county within the
4 twelve months preceding the request for ~~[such]~~ the information
5 by that county:

6 (1) the names, taxpayer identification numbers
7 and addresses of registered gross receipts taxpayers reporting
8 gross receipts either for that county in the case of a local
9 option gross receipts tax imposed on a county-wide basis or only
10 for the areas of that county outside of any incorporated
11 municipalities within that county in the case of a county local
12 option gross receipts tax imposed only in areas of the county
13 outside of any incorporated municipalities. The department may
14 also release ~~[within the twelve months following the request for~~
15 ~~such information by the county]~~ the information described in
16 this paragraph quarterly or upon such other periodic basis as
17 the secretary and the county may agree;

18 (2) in the case of a local option gross
19 receipts tax imposed by a county on a county-wide basis,
20 information indicating whether persons shown on any list of
21 businesses located within the county furnished by the county
22 have reported gross receipts to the department but have not
23 reported gross receipts for that county under the Gross Receipts
24 and Compensating Tax Act or a local option gross receipts tax
25 imposed by that county on a county-wide basis; and

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1 (3) in the case of a local option gross
2 receipts tax imposed by a county only on persons engaging in
3 business in that area of the county outside of any incorporated
4 municipalities, information indicating whether persons shown on
5 any list of businesses located in the area of that county
6 outside of any incorporated municipalities within that county
7 furnished by the county have reported gross receipts to the
8 department but have not reported gross receipts for the area of
9 that county outside of any incorporated municipalities within
10 that county under the Gross Receipts and Compensating Tax Act or
11 any local option gross receipts tax imposed by the county only
12 on persons engaging in business in that area of the county
13 outside of any incorporated municipalities.

14 The officers and employees of counties receiving
15 information as provided in this subsection shall be subject to
16 the penalty contained in Section 7-1-76 NMSA 1978 if such
17 information is revealed to individuals other than other officers
18 or employees of the county in question or the department;

19 T. to authorized representatives of an Indian
20 nation, tribe or pueblo, the territory of which is located
21 wholly or partially within New Mexico, pursuant to the terms of
22 a reciprocal agreement entered into with the Indian nation,
23 tribe or pueblo for the exchange of [such] that information for
24 tax purposes only; provided that the Indian nation, tribe or
25 pueblo has enacted a confidentiality statute similar to this

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1 section;

2 U. information with respect to the taxes or tax acts
3 administered pursuant to Subsection B of Section 7-1-2 NMSA
4 1978, except that:

5 (1) information for or relating to any period
6 prior to July 1, 1985 with respect to Sections 7-25-1 through
7 7-25-9 and 7-26-1 through [~~7-26-9~~] 7-26-8 NMSA 1978 may be
8 released only to a committee of the legislature for a valid
9 legislative purpose;

10 (2) except as provided in Paragraph (3) of this
11 subsection, contracts and other agreements between the taxpayer
12 and other parties and the proprietary information contained in
13 such contracts and agreements shall not be released without the
14 consent of all parties to the contract or agreement; and

15 (3) audit workpapers and the proprietary
16 information contained in such workpapers shall not be released
17 except to:

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

21 (b) a person having a legal interest in
22 the property that is subject to the audit [~~to~~] and whose oil and
23 gas tax liability with respect to the interest was paid, or
24 should have been paid, by the audited taxpayer for any part of
25 the period audited, but only information with respect to that

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1 liability:

2 (c) a purchaser of products severed from
3 a property subject to the audit; who is liable for payment of
4 taxes on behalf of the audited taxpayer, but only information
5 with respect to that liability; or [to]

6 (d) the authorized representative of
7 [either] any of the persons in Subparagraphs (a) through (c) of
8 this paragraph,

9 but this paragraph does not prohibit the release of any
10 proprietary information contained in the workpapers that is also
11 available from returns or from other sources not subject to the
12 provisions of this section;

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

16 W. to the state corporation commission, information
17 with respect to the Corporate Income and Franchise Tax Act
18 required to enable the commission to carry out its duties;

19 X. to the state racing commission, information with
20 respect to the state, municipal and county gross receipts taxes
21 paid by race tracks;

22 Y. upon request of a corporation authorized to be
23 formed under the Educational Assistance Act, the department
24 shall furnish the last known address and the date of that
25 address of every person certified to the department as being an

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1 absent obligor of an educational debt that is due and owed to
2 the corporation or that the corporation has lawfully contracted
3 to collect. The corporation and its officers and employees
4 shall use [such] that information only for the purpose of
5 enforcing the educational debt obligation of such absent
6 obligors and shall not disclose that information or use it for
7 any other purpose;

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

11 AA. information required by any provision of the Tax
12 Administration Act to be made available to the public by the
13 department;

14 BB. upon request by the Bernalillo county
15 metropolitan court, the department shall furnish the last known
16 address and the date of that address for every person certified
17 to the department by the court as being a person who owes fines,
18 fees or costs to the court or who has failed to appear pursuant
19 to a court order or a promise to appear; [~~and~~]

20 CC. upon request by a magistrate court, the
21 department shall furnish the last known address and the date of
22 that address for every person certified to the department by the
23 court as being a person who owes fines, fees or costs to the
24 court or who has failed to appear pursuant to a court order or a
25 promise to appear; and

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1 DD. to the national tax administration agencies of
2 Mexico and Canada, provided the agency receiving the information
3 has entered into a written agreement with the department to use
4 the information for tax purposes only and is subject to a
5 confidentiality statute similar to this section. "

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

8 "7-1-26. CLAIM FOR REFUND. --

9 A. Any person who believes that an amount of tax has
10 been paid by or withheld from that person in excess of that for
11 which the person was liable, who has been denied any credit or
12 rebate claimed or who claims a prior right to property in the
13 possession of the department pursuant to a levy made under
14 authority of Sections 7-1-31 through 7-1-34 NMSA 1978 may claim
15 a refund by directing to the secretary, within the time limited
16 by the provisions of Subsections B, C and D of this section, a
17 written claim for refund. ~~[Every claim for refund shall state~~
18 ~~the nature of the person's complaint and contain information~~
19 ~~sufficient to allow processing of the claim]~~ Except as provided
20 in Subsection G of this section, a refund claim must include the
21 taxpayer's name, address and identification number, the type of
22 tax for which a refund is being claimed, the sum of money being
23 claimed, the period for which overpayment was made and the basis
24 for the refund. The secretary or the secretary's delegate may
25 allow the claim in whole or in part or may deny the claim. If

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1 the claim is denied in whole or in part in writing, the claim
2 may not be refiled. If the claim is not granted in full, the
3 person, within ninety days after either the mailing of the
4 denial of all or any part of the claim, may elect to pursue one,
5 but not more than one, of the remedies in Paragraphs (1) and (2)
6 of this subsection. If the department has neither granted nor
7 denied any portion of a claim for refund within one hundred
8 twenty days of the date the claim was mailed or delivered to the
9 department, the person may refile it within the time limits set
10 forth in Subsection B of this section or may within ninety days
11 elect to pursue one, but only one, of the remedies in Paragraphs
12 (1) and (2) of this subsection. In any case, if a person does
13 timely pursue more than one remedy, the person shall be deemed
14 to have elected the first remedy invoked. The remedies are as
15 follows:

16 (1) the person may direct to the secretary a
17 written protest against the denial of, or failure to either
18 allow or deny, the claim, which shall be set for hearing by a
19 hearing officer designated by the secretary promptly after the
20 receipt of the protest in accordance with the provisions of
21 Section 7-1-24 NMSA 1978, and pursue the remedies of appeal from
22 decisions adverse to the protestant as provided in Section
23 7-1-25 NMSA 1978; or

24 (2) the person may commence a civil action in
25 the district court for Santa Fe county by filing a complaint

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1 setting forth the circumstance of the claimed overpayment,
2 alleging that on account thereof the state is indebted to the
3 plaintiff in the amount stated, together with any interest
4 allowable, demanding the refund to the plaintiff of that amount
5 and reciting the facts of the claim for refund. The plaintiff
6 or the secretary may appeal from any final decision or order of
7 the district court to the court of appeals.

8 B. Except as otherwise provided in Subsections C and
9 D of this section, no credit or refund of any amount may be
10 allowed or made to any person unless as the result of a claim
11 made by that person as provided in this section:

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

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

17 (b) 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 of
20 New Mexico or any court of increase in value of a product
21 subject to taxation under the Oil and Gas Severance Tax Act, the
22 Oil and Gas Conservation Tax Act, the Oil and Gas Emergency
23 School Tax Act, the Oil and Gas Ad Valorem Production Tax Act or
24 the Natural Gas Processors Tax Act; or

25 (c) property was levied upon pursuant to

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1 the provisions of the Tax Administration Act;

2 (2) within one year of the date:

3 (a) of the denial of the claim for credit
4 under the provisions of the Investment Credit Act or Filmmaker's
5 Credit Act;

6 (b) an assessment of tax is made; or

7 (c) a proceeding begun in court by the
8 department with respect to any period that is covered by a
9 waiver signed on or after July 1, 1993 by the taxpayer pursuant
10 to Subsection F of Section 7-1-18 NMSA 1978; or

11 (3) for assessments made on or after July 1,
12 1993, within one year of the date of an assessment of tax made
13 under Subsection B, C or D of Section 7-1-18 NMSA 1978 when the
14 assessment applies to a period ending at least three years prior
15 to the beginning of the year in which the assessment was made,
16 but the claim for refund shall not be made with respect to any
17 period not covered by the assessment.

18 C. No credit or refund shall be allowed or made to
19 any person claiming a refund of gasoline tax under Section
20 7-13-11 NMSA 1978 unless notice of the destruction of the
21 gasoline was given the department within thirty days of the
22 actual destruction and the claim for refund is made within six
23 months of the date of destruction. No credit or refund shall be
24 allowed or made to any person claiming a refund of gasoline tax
25 under Section 7-13-14 NMSA 1978 unless the refund is claimed

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1 within six months of the date of purchase of the gasoline and
2 the gasoline has been used at the time the claim for refund is
3 made.

4 D. If, as a result of an audit by the internal
5 revenue service or the filing of an amended federal return
6 changing a prior election or making any other change for which
7 federal approval is required by the Internal Revenue Code, any
8 adjustment of federal tax is made with the result that there
9 would have been an overpayment of tax if the adjustment to
10 federal tax had been applied to the taxable period to which it
11 relates, claim for credit or refund of only that amount based on
12 the adjustment may be made as provided in this section within
13 one year of the date of the internal revenue service audit
14 adjustment or payment of the federal refund or within the period
15 limited by Subsection B of this section, whichever expires
16 later. Interest, computed at the rate specified in Subsection B
17 of Section 7-1-68 NMSA 1978, shall be allowed on any such claim
18 for refund from the date one hundred twenty days after the claim
19 is made until the date the final decision to grant the credit or
20 refund is made.

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

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1 expected to become due.

2 F. For the purposes of this section, the term "oil
3 and gas tax return" means a return reporting tax due with
4 respect to oil, natural gas, liquid hydrocarbons or carbon
5 dioxide pursuant to the Oil and Gas Severance Tax Act, the Oil
6 and Gas Conservation Tax Act, the Oil and Gas Emergency School
7 Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the
8 Natural Gas Processors Tax Act or the Oil and Gas Production
9 Equipment Ad Valorem Tax Act.

10 G. The filing of a fully completed original income
11 tax return, corporate income tax return, corporate income and
12 franchise tax return, estate tax return or special fuel excise
13 tax return that shows a balance due the taxpayer or a fully
14 completed amended income tax return, an amended corporate income
15 tax return, an amended corporate income and franchise tax
16 return, an amended estate tax return, an amended special fuel
17 excise tax return or an amended oil and gas tax return that
18 shows a lesser tax liability than the original return
19 constitutes the filing of a claim for refund for the difference
20 in tax due shown on the original and amended returns. "

21 Section 4. Section 7-1-28 NMSA 1978 (being Laws 1965,
22 Chapter 248, Section 30, as amended) is amended to read:

23 "7-1-28. AUTHORITY FOR ABATEMENTS OF ASSESSMENTS OF TAX. --

24 A. In response to a written protest against an
25 assessment, submitted in accordance with the provisions of

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1 Section 7-1-24 NMSA 1978, but before any court acquires
2 jurisdiction of the matter, or when a "notice of assessment of
3 taxes" is found to be incorrect, the secretary or the
4 secretary's delegate may, with the written approval of the
5 attorney general, abate any part of an assessment determined by
6 the secretary or the secretary's delegate to have been
7 incorrectly, erroneously or illegally made. Notwithstanding the
8 above, abatements of assessments incorrectly, erroneously or
9 illegally made to one person amounting to less than five
10 thousand dollars (\$5,000) in one calendar year may be made
11 without the prior written approval of the attorney general,
12 except that:

13 (1) abatements with respect to the Oil and Gas
14 Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil
15 and 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, abatements
18 of gasoline tax made under Sections 7-13-13 through 7-13-15 NMSA
19 1978 and abatements of cigarette tax made under the Cigarette
20 Tax Act may be made without the prior approval of the attorney
21 general regardless of the amount; and

22 (2) abatements with respect to the Corporate
23 Income and Franchise Tax Act amounting to less than twenty
24 thousand dollars (\$20,000) may be made without prior approval of
25 the attorney general.

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[bracketed material] = delete

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

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

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

19 E. Records of abatements made in excess of [~~one~~
20 ~~thousand dollars (\$1,000)~~] five thousand dollars (\$5,000) shall
21 be available for inspection by the public. The department shall
22 keep such records for a minimum of three years from the date of
23 the abatement. "

24 Section 5. Section 7-1-38 NMSA 1978 (being Laws 1965,
25 Chapter 248, Section 40, as amended) is amended to read:

Underscored material = new
[bracketed material] = delete

1 "7-1-38. NOTICE OF LIEN. -- A notice of the lien provided
2 for in Section 7-1-37 NMSA 1978 may be recorded in any county in
3 the state in the tax lien index established by Sections 48-1-1
4 through 48-1-7 NMSA 1978 and a copy thereof shall be sent to the
5 taxpayer affected. Any county clerk to whom ~~[such]~~ the notices
6 are presented shall record them as requested without charge.
7 The notice of lien ~~[(a)]~~ shall identify the taxpayer whose
8 liability for taxes is sought to be enforced and the date or
9 approximate date on which the tax became due and ~~[(b)]~~ shall
10 state that ~~[the state of]~~ New Mexico claims a lien for the
11 entire amount of tax asserted to be due, including applicable
12 interest and penalties. Recording of the notice of lien shall
13 be effective as to ~~[both real and tangible personal]~~ all
14 property and rights to property of the taxpayer. "

15 Section 6. Section 7-1-67 NMSA 1978 (being Laws 1965,
16 Chapter 248, Section 68, as amended) is amended to read:

17 "7-1-67. INTEREST ON DEFICIENCIES. --

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

23 (1) for any income tax imposed on a member of
24 the armed services of the United States serving in a combat zone
25 under orders of the president of the United States, interest

1 shall accrue only for the period beginning the day after any
2 applicable extended due date if the tax is not paid;

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

6 (3) if demand is made for payment of any tax
7 including accrued interest, and if such tax is paid within ten
8 days after the date of such demand, no interest on the amount so
9 paid shall be imposed for the period after the date of the
10 demand.

11 B. Interest due to the state under Subsection A or D
12 of this section shall be at the rate of fifteen percent a year,
13 computed at the rate of one and one-fourth percent per month or
14 any fraction thereof; provided that, if a different rate is
15 specified by a compact or other interstate agreement to which
16 New Mexico is a party, then that rate shall be applied to
17 amounts due under the compact or other agreement.

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

21 D. If any tax required to be paid in accordance with
22 Section 7-1-13.1 NMSA 1978 is not paid in the manner required by
23 that section, interest shall be paid to the state on the amount
24 required to be paid in accordance with Section 7-1-13.1 NMSA
25 1978. If interest is due under this subsection and is also due

Underscored material = new
[bracketed material] = delete

1 under Subsection A of this section, interest shall be due and
2 collected only pursuant to Subsection A of this section."

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

5 "7-1-68. INTEREST ON OVERPAYMENTS. --

6 A. As provided in this section, interest shall be
7 allowed and paid on the amount of tax overpaid by a person
8 ~~[which]~~ that is subsequently refunded or credited to that
9 person.

10 B. Interest payable on overpayments of tax shall be
11 paid at the rate of fifteen percent a year, computed at the rate
12 of one and one-fourth percent per month or fraction thereof;
13 provided that, if a different rate is specified by a compact or
14 other interstate agreement to which New Mexico is a party, then
15 that rate shall be applied to amounts due under the compact or
16 other agreement.

17 C. Unless otherwise provided by this section,
18 interest on an overpayment not arising from an assessment by the
19 department shall be paid from the date the claim for refund was
20 made until a date preceding by not more than thirty days the
21 date on which the amount thereof is credited or refunded to any
22 person; interest on an overpayment arising from an assessment by
23 the department shall be paid from the date overpayment was made
24 until a date preceding by not more than thirty days the date on
25 which the amount thereof is credited or refunded to any person.

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Underscored material = new
[bracketed material] = delete

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

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

5 (2) the credit or refund is made within
6 seventy-five days of the date of the claim for refund of income
7 tax, pursuant to either the Income Tax Act or the Corporate
8 Income and Franchise Tax Act, for the tax year immediately
9 preceding the tax year in which the claim is made;

10 (3) the credit or refund is made within one
11 hundred twenty days of the date of the claim for refund of
12 income tax, pursuant to the Income Tax Act, [~~the Corporate~~
13 ~~Income Tax Act~~] the Corporate Income and Franchise Tax Act or
14 the Banking and Financial Corporations Tax Act, for any tax year
15 more than one year prior to the year in which the claim is made;

16 (4) Sections 6611(f) and 6611(g) of the United
17 States Internal Revenue Code of 1986, as those sections may be
18 amended or renumbered, prohibit payment of interest for federal
19 income tax purposes;

20 (5) the credit or refund is made within sixty
21 days of the date of the claim for refund of any tax other than
22 income tax; or

23 (6) gasoline tax is refunded or credited under
24 the Gasoline Tax Act to users of gasoline off the highways. "

25 Section 8. Section 7-1-69 NMSA 1978 (being Laws 1965,

Underscored material = new
[bracketed material] = delete

1 Chapter 248, Section 70, as amended) is amended to read:

2 "7-1-69. CIVIL PENALTY FOR FAILURE TO PAY TAX OR FILE A
3 RETURN. --

4 A. Except as provided in Subsection B of this
5 section, in the case of failure due to negligence or disregard
6 of rules and regulations, but without intent to defraud, to pay
7 when due any amount of tax required to be paid or to file by the
8 date required a return regardless of whether any tax is due,
9 there shall be added to the amount as penalty the greater of:

10 (1) two percent per month or any fraction of a
11 month from the date the tax was due multiplied by the amount of
12 tax due but not paid, not to exceed ten percent of the tax due
13 but not paid;

14 (2) two percent per month or any fraction of a
15 month from the date the return was required to be filed
16 multiplied by the tax liability established in the late return,
17 not to exceed ten percent of the tax liability established in
18 the late return; or

19 (3) a minimum of five dollars (\$5.00), but the
20 five-dollar (\$5.00) minimum penalty shall not apply to taxes
21 levied under the Income Tax Act or taxes administered by the
22 department pursuant to Subsection B of Section 7-1-2 NMSA 1978.

23 B. If a different penalty is specified in a compact
24 or other interstate agreement to which New Mexico is a party,
25 then the penalty provided in the compact or other interstate

. 109055. 1

Underscored material = new
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1 agreement shall be applied to amounts due under the compact or
2 other interstate agreement at the rate and in the manner
3 prescribed by the compact or other interstate agreement.

4 [B-] C. In the case of failure, with intent to
5 defraud the state, to pay when due any amount of tax required to
6 be paid there shall be added to the amount fifty percent of the
7 tax or a minimum of twenty-five dollars (\$25.00), whichever is
8 greater, as penalty.

9 [C-] D. In the case of failure to pay the amount of
10 tax required to be paid in accordance with Section 7-1-13.1 NMSA
11 1978 in the manner required by that section there shall be added
12 to the amount due a penalty of two percent of the amount due,
13 except that if a penalty is required to be imposed by this
14 subsection and a penalty is also required to be imposed under
15 Subsection A of this section, the penalty shall be imposed and
16 collected pursuant to Subsection A of this section only."

17 Section 9. Section 7-1-70 NMSA 1978 (being Laws 1965,
18 Chapter 248, Section 71) is amended to read:

19 "7-1-70. CIVIL PENALTY FOR BAD CHECKS. -- If any payment
20 required to be made by provision of the Tax Administration Act
21 is attempted to be made by check [~~which~~] that is not paid upon
22 presentment, such dishonor is presumptive of negligence. The
23 penalty shall never be less than ten dollars (\$10.00). This
24 penalty is in addition to any other penalty imposed by law."

25 Section 10. EFFECTIVE DATE. -- The effective date of the

Underscored material = new
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1 provisions of this act is July 1, 1996.

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1 FORTY- SECOND LEGI SLATURE
2 SECOND SESSI ON, 1996
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5 JANUARY 18, 1996
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7 Mr. Presi dent:
8

9 Your COMMI TTEES' COMMI TTEE, to whom has been referred
10

11 SENATE BILL 8
12

13 has had it under consideration and finds same to be GERMANE, PURSUANT
14 TO CONSTITUTIONAL PROVISIONS, and thence referred to the SENATE WAYS
15 AND MEANS COMMI TTEE.
16

17 Respectfully submi tted,
18
19

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22 _____
23 SENATOR MANNY M. ARAGON, Chai rman
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~~[bracketed material] = delete~~

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

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Date _____

The roll call vote was __ For __ Against

Yes:

No:

Excused:

Absent:

S0008CC1

1 FORTY-SECOND LEGISLATURE
2 SECOND SESSION, 1996

SB 8/a

3
4
5 January 29, 1996

6
7 Mr. President:

8
9 Your WAYS AND MEANS COMMITTEE, to whom has been referred

10
11 SENATE BILL 8

12
13 has had it under consideration and reports same with recommendation that
14 it DO PASS, amended as follows:

15
16 1. On page 13, strike all of lines 15 through 25 and on page 14,
17 strike all of line 1 and insert in lieu thereof the following:

18
19 "(3) information and documents obtained in connection
20 with the department's audit of a taxpayer or a taxpayer's protest of an
21 audit, including correspondence, audit workpapers and confidential
22 documents produced by the taxpayer in the course of the audit or protest
23 but excluding the final determination of taxable volumes and values that
24 should have been reported, shall not be released except to:

25
(a) the minerals management service of the United

**FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996**

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SWMC/SB8

Page 34

States department of the interior with respect to production on federal land unless the taxpayer designates data as proprietary during the course of an audit, in which case such data shall not be released to the minerals management service without the prior approval of the taxpayer;

(b) a person against whom an assessment, demand or notice of potential liability has been made by the department and whose oil and gas liability with respect to that assessment, demand or notice was paid, or should have been paid, by the audited taxpayer for any part of the period audited, but only information with respect to that liability; ".

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~~[bracketed material] = delete~~

**FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996**

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SWMC/SB8

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2. On page 14, line 10, strike "proprietary information contained in the workpapers" and insert in lieu thereof "information".

3. On page 23 and page 24, strike Section 5 in its entirety and renumber succeeding sections accordingly. ,

and thence referred to the FINANCE COMMITTEE.

Respectfully submitted,

TITO D. CHAVEZ, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

Underscored material = new
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**FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996**

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SWMC/SB8

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The roll call vote was 4 For 1 Against

Yes: 4

No: Rawson

Excused: Romero, Campos, Weiner. Absent: 0

S008WM1

Underscored material = new
~~[bracketed material] = delete~~

1 FORTY- SECOND LEGI SLATURE
2 SECOND SESSI ON, 1996
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5 February 1, 1996
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7 Mr. President:
8

9 Your FINANCE COMMI TTEE, to whom has been referred
10

11 SENATE BILL 8, as amended
12

13 has had it under consideration and reports same with recommendation that
14 it DO PASS, amended as follows:
15

- 16 1. Strike Senate Ways & Means Committee Amendment 3
17

18 Respectfully submit ted,
19

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22 _____
23 Ben D. Altami rano, Chairman
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**FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996**

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Adopted _____ Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 10 For 0 Against

Yes: 10

No: 0

Excused: Donisthorpe, Kidd, Kysar

Absent: None

S0008SF1

Underscored material = new
[bracketed material] = delete

State of New Mexico House of Representatives

1 FORTY-SECOND LEGISLATURE
2 SECOND SESSION, 1996
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5 February 9, 1996
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7
8 Mr. Speaker:

9 Your TAXATION AND REVENUE COMMITTEE, to whom has been
10 referred

11
12 SENATE BILL 8, as amended
13

14 has had it under consideration and reports same with
15 recommendation that it DO PASS, amended as follows:

16 1. On page 4, between lines 19 and 20, insert the following
17 section:

18
19 "Section 2. Section 7-1-6.10 NMSA 1978 (being Laws 1983, Chapter
20 211, Section 15, as amended by Laws 1995, Chapter 6, Section 4 and also
21 by Laws 1995, Chapter 16, Section 11) is amended to read:

22
23 "7-1-6.10. DISTRIBUTIONS--STATE ROAD FUND.--

24 A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall
25 be made to the state road fund in an amount equal to the net receipts

. 109055. 1

FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

HTRC/SB 8, aa

Page 40

1
2 attributable to the taxes, surcharges, penalties and interest imposed
3 pursuant to the Gasoline Tax Act and to the taxes, surtaxes, fees,
4 penalties and interest imposed pursuant to the Special Fuels Tax Act,
5 the Special Fuels Supplier Tax Act and the Alternative Fuel Tax Act
6 less:

7 (1) the amount distributed to the state aviation fund
8 pursuant to Subsection [C] B of Section 7-1-6.7 NMSA 1978;

9
10 (2) the amount distributed to the motorboat fuel tax fund
11 pursuant to Section 7-1-6.8 NMSA 1978;

12 (3) the amount distributed to municipalities and counties
13 pursuant to Subsection A of Section 7-1-6.9 NMSA 1978;

14
15 (4) the amount distributed to the county government road
16 fund pursuant to Section 7-1-6.19 NMSA 1978;

17
18 (5) the amount distributed to the [~~corrective action~~]
19 local governments road fund pursuant to Section [~~7-1-6.25~~] 7-1-6.39 NMSA
20 1978;

21 (6) the amount distributed to the municipalities pursuant
22 to Section 7-1-6.27 NMSA 1978; and

23
24 (7) the amount distributed to the municipal arterial
25 program [~~and~~] of the local governments road fund pursuant to Section
7-1-6.28 NMSA 1978 [~~and~~

. 109055. 1

Underscored material = new
[bracketed material] = delete

FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

HTRC/SB 8, aa

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~~(8) the amount distributed to the general fund pursuant to Section 7-1-6.37 NMSA 1978].~~

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state road fund in an amount equal to the net receipts attributable to the taxes, fees, interest and penalties from the Weight Distance Tax Act. "".

2. Renumber succeeding sections accordingly.,

and thence referred to the APPROPRIATIONS AND FINANCE COMMITTEE.

Respectfully submitted,

Jerry W. Sandel, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

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FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

HTRC/SB 8, aa

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The roll call vote was 11 For 0 Against
 Yes: 11
 Excused: Crook, Hawkins
 Absent: None

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Underscored material = new
[bracketed material] = delete

**State of New Mexico
House of Representatives**

FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

February 15, 1996

Mr. Speaker:

Your APPROPRIATIONS AND FINANCE COMMITTEE, to whom has
been referred

SENATE BILL 8, as amended

has had it under consideration and reports same with
recommendation that it DO PASS, amended as follows:

1. Strike Senate Ways and Means Committee Amendments 1 and 2.

2. On page 13, strike lines 21 through 25, and on page 14, strike
lines 1 through 5 and insert in lieu thereof:

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

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

FORTY-SECOND LEGISLATURE
SECOND SESSION, 1996

HB30

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Respectfully submitted,

Max Coll, Chairman

Adopted _____ Not Adopted _____
(Chief Clerk) (Chief Clerk)

Date _____

The roll call vote was 15 For 0 Against
Yes: 15
Excused: Coll, Gentry, Townsend
Absent: None

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Underscored material = new
[bracketed material] = delete