

AN ACT

RELATING TO TAXATION; AMENDING CERTAIN PROVISIONS OF THE TAX ADMINISTRATION ACT REGARDING METHOD OF PAYMENT FOR CERTAIN TAXES AND APPLICATION OF PENALTIES.

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

Section 1. Section 7-1-13.1 NMSA 1978 (being Laws 1988, Chapter 99, Section 3, as amended) is amended to read:

"7-1-13.1. METHOD OF PAYMENT OF CERTAIN TAXES DUE.--

A. Payment of the taxes, including any applicable penalties and interest, described in Paragraph (1), (2) or (3) of this subsection shall be made on or before the date due in accordance with Subsection B of this section if the taxpayer's average tax payment for the group of taxes during the preceding calendar year equaled or exceeded twenty-five thousand dollars (\$25,000):

(1) Group 1: all taxes due under the Withholding Tax Act, the Gross Receipts and Compensating Tax Act, local option gross receipts tax acts, the Interstate Telecommunications Gross Receipts Tax Act and the Leased Vehicle Gross Receipts Tax Act;

(2) Group 2: all taxes due under the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act and the Oil and Gas Ad Valorem Production Tax Act; or

(3) Group 3: the tax due under the Natural Gas Processors Tax Act.

For taxpayers who have more than one identification number issued by the department, the average tax payment shall be computed by combining the amounts paid under the several identification numbers.

B. Taxpayers who are required to make payment in accordance with the provisions of this section shall make payment by one or more of the following means on or before the due date so that funds are immediately available to the state on or before the due date:

(1) automated clearinghouse transactions to allow deposit and fund availability to the state on or before the due date and containing substantially all of the information required by the department;

(2) transfer of funds through the wire transfer system operated by the federal reserve system, which provides immediate availability of funds to the state on or before the due date and containing substantially all of the information required by the department;

(3) currency of the United States;

(4) check drawn on and payable at any New Mexico financial institution, provided that the check is received by the department at the place and time required by the department at least one banking day prior to the due

date; or

(5) check drawn on and payable at any domestic non-New Mexico financial institution, provided that the check is received by the department at the time and place required by the department at least two banking days prior to the due date.

C. If the taxes required to be paid under this section are not paid in accordance with Subsection B of this section, the payment is not timely and is subject to the provisions of Sections 7-1-67 and 7-1-69 NMSA 1978. When an automated clearinghouse transaction is reversed or a check is dishonored by the taxpayer's financial institution, neither the department nor the fiscal agent is obligated to resubmit the automated clearinghouse transaction or check for payment. If the reversal or dishonoring is the fault of the taxpayer and causes the final payment of taxes to be not timely under the provisions of this section, then the provisions of Sections 7-1-67 and 7-1-69 NMSA 1978 apply. If the department can identify the taxpayer from the information submitted and the funds are available to the state, even though they are in a suspense account, neither the department nor the fiscal agent shall return the funds or reverse the automated clearinghouse transaction. Any funds paid to the state that are identified to a taxpayer shall not be refunded without a valid request for refund from the taxpayer. An

automated clearinghouse transaction or any other electronic transfer of funds may be reversed only when the funds transmitted are not actually available to the financial institution.

D. For the purposes of this section:

(1) "automated clearinghouse transaction" means an electronic credit or debit transmitted through an automated clearinghouse payable to the state treasurer and deposited with the fiscal agent of the state;

(2) "average tax payment" means the total amount of taxes paid with respect to a group of taxes listed under Subsection A of this section during a calendar year divided by the number of months in that calendar year containing a due date on which the taxpayer was required to pay one or more taxes in the group; and

(3) "financial institution" means any state or nationally chartered federally insured depository institution."

Section 2. Section 7-1-67 NMSA 1978 (being Laws 1965, Chapter 248, Section 68, as amended) is amended to read:

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

A. If any tax imposed is not paid on or before the day on which it becomes due, interest shall be paid to the state on such amount from the first day following the day on which the tax becomes due, without regard to any extension

of time or installment agreement, until it is paid, except that:

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

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

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

B. Interest due to the state under Subsection A or D of this section shall be at the rate of fifteen percent a year, which shall be computed on a daily basis; provided that if a different rate is specified by a compact or other interstate agreement to which New Mexico is a party, that rate shall be applied to amounts due under the compact or other agreement.

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

penalty.

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

Section 3. Section 7-1-69 NMSA 1978 (being Laws 1965, Chapter 248, Section 70, as amended) is amended to read:

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

A. Except as provided in Subsections B and E of this section, in the case of failure due to negligence or disregard of rules and regulations, but without intent to evade or defeat any tax, to pay when due any amount of tax required to be paid, to pay in accordance with the provisions of Section 7-1-13.1 NMSA 1978 when required to do so or to file by the date required a return regardless of whether any tax is due, there shall be added to the amount as penalty the greater of:

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

the tax due but not paid;

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

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

B. If a different penalty is specified in a compact or other interstate agreement to which New Mexico is a party, the penalty provided in the compact or other interstate agreement shall be applied to amounts due under the compact or other interstate agreement at the rate and in the manner prescribed by the compact or other interstate agreement.

C. In the case of failure, with willful intent to evade or defeat any tax, to pay when due any amount of tax required to be paid, there shall be added to the amount fifty percent of the tax or a minimum of twenty-five dollars (\$25.00), whichever is greater, as penalty.

D. If demand is made for payment of any tax, including penalty imposed pursuant to this section, and if

