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HOUSE BILL 86

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Jerry Sandel

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):

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1 (1) Group 1: all taxes due under the
2 Withholding Tax Act, the Gross Receipts and Compensating Tax
3 Act, local option gross receipts tax acts, the Interstate
4 Telecommunications Gross Receipts Tax Act and the Leased
5 [~~Vehicles~~] Vehicle Gross Receipts Tax Act;

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

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

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

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

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

25 (2) [a] transfer of funds through the wire

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

5 (3) currency of the United States;

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

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

16 C. If the taxes required to be paid under this
17 section are not paid in accordance with Subsection B of this
18 section, the payment is not timely and is subject to the
19 provisions of Sections 7-1-67 and 7-1-69 NMSA 1978. When an
20 automated clearinghouse transaction is reversed or a check is
21 dishonored by the taxpayer's financial institution, neither
22 the department nor the fiscal agent is obligated to resubmit
23 the automated clearinghouse transaction or check for payment.
24 If the reversal or dishonoring is the fault of the taxpayer
25 and causes the final payment of taxes to be not timely under

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1 the provisions of this section, then the provisions of
2 Sections 7-1-67 and 7-1-69 NMSA 1978 apply. If the department
3 can identify the taxpayer from the information submitted and
4 the funds are available to the state, even though they are in
5 a suspense account, neither the department nor the fiscal
6 agent shall return the funds or reverse the automated
7 clearinghouse transaction. Any funds paid to the state that
8 are identified to a taxpayer shall not be refunded without a
9 valid request for refund from the taxpayer. An automated
10 clearinghouse transaction or any other electronic transfer of
11 funds may be reversed only when the funds transmitted are not
12 actually available to the financial institution.

13 D. For the purposes of this section:

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

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

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

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1 institution. "

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

4 "7-1-67. INTEREST ON DEFICIENCIES. --

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

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

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

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

23 B. Interest due to the state under Subsection A or
24 D of this section shall be at the rate of fifteen percent a
25 year, which shall be computed [~~at the rate of one and one-~~

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1 ~~fourth percent per month or any fraction thereof~~ on a daily
2 basis; provided that if a different rate is specified by a
3 compact or other interstate agreement to which New Mexico is a
4 party, ~~then~~ that rate shall be applied to amounts due under
5 the compact or other agreement.

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

9 D. If any tax required to be paid in accordance
10 with Section 7-1-13.1 NMSA 1978 is not paid in the manner
11 required by that section, interest shall be paid to the state
12 on the amount required to be paid in accordance with Section
13 7-1-13.1 NMSA 1978. If interest is due under this subsection
14 and is also due under Subsection A of this section, interest
15 shall be due and collected only pursuant to Subsection A of
16 this section. "

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

19 "7-1-69. CIVIL PENALTY FOR FAILURE TO PAY TAX OR FILE A
20 RETURN. --

21 A. Except as provided in [~~Subsection~~] Subsections
22 B and E of this section, in the case of failure due to
23 negligence or disregard of rules and regulations, but without
24 intent to evade or defeat any tax, to pay when due any amount
25 of tax required to be paid, to pay in accordance with the

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1 provisions of Section 7-1-13.1 NMSA 1978 when required to do
2 so or to file by the date required a return regardless of
3 whether any tax is due, there shall be added to the amount as
4 penalty the greater of:

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

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

14 (3) a minimum of five dollars (\$5.00), but
15 the five-dollar (\$5.00) minimum penalty shall not apply to
16 taxes levied under the Income Tax Act or taxes administered by
17 the department pursuant to Subsection B of Section 7-1-2 NMSA
18 1978.

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

25 C. In the case of failure, with willful intent to

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1 evade or defeat any tax, to pay when due any amount of tax
2 required to be paid, there shall be added to the amount fifty
3 percent of the tax or a minimum of twenty-five dollars
4 (\$25.00), whichever is greater, as penalty.

5 D. If demand is made for payment of any tax,
6 including penalty imposed pursuant to this section, and if
7 such tax is paid within ten days after the date of such
8 demand, no penalty shall be imposed for the period after the
9 date of the demand with respect to the amount paid.

10 E. If a taxpayer has made a reasonable effort to
11 cause a tax to be paid in a timely manner, but through the
12 fault of a financial institution the tax is not paid on the
13 date it is due, the taxpayer is not negligent or acting in
14 disregard of rules or instructions of the secretary or the
15 department. "

16 Section 4. EFFECTIVE DATE. --The effective date of the
17 provisions of this act is July 1, 1999.

1 FORTY-FOURTH LEGISLATURE
2 FIRST SESSION, 1999
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6 March 3, 1999
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8 Mr. Speaker:
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10 Your TAXATION AND REVENUE COMMITTEE, to whom has
11 been referred
12

13 HOUSE BILL 86
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15 has had it under consideration and reports same with
16 recommendation that it DO PASS, amended as follows:

17 1. On page 8, line 12, after "institution" insert "or a
18 third party".
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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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Respectfully submitted,

Jerry W. Sandel, Chairman

Adopted _____

Not Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 11 For 0 Against

Yes: 11

Excused: Lujan, Russell, Silva, Stell

Absent: None

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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March 12, 1999

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Mr. President:

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Your WAYS & MEANS COMMITTEE, to whom has been referred

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HOUSE BILL 86, as amended

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has had it under consideration and reports same with
recommendation that it DO PASS.

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Respectfully submitted,

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Carlos R. Cisneros, Chairman

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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Adopted _____ Not

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Adopted _____

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(Chief Clerk)

(Chief Clerk)

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Date _____

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The roll call vote was 6 For 0 Against

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Yes: 6

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No: 0

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Excused: Carraro, Duran, Kidd

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Absent: None

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