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HOUSE BILL 879

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

INTRODUCED BY

Raymond G. Sanchez

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE.

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

1 FORTY-FOURTH LEGISLATURE

2 FIRST SESSION, 1999

3
4
5
6 March 3, 1999

7
8 Mr. Speaker:

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

12
13 HOUSE BILL 879

14
15 has had it under consideration and reports same with
16 recommendation that it DO NOT PASS, but that

17 HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
18 HOUSE BILL 879

19
20 DO PASS, amended as follows:

21
22 1. On page 5, line 12, strike "taxpayers" and insert in
23 lieu thereof "taxpayers,".

24
25 2. On page 5, line 13, strike "with tax forms" and insert
in lieu thereof "at a minimum with the annual income and

. 127637. 1

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

HTRC/HB 879

Page 3

semi annual CRS tax forms.”

3. On page 21, line 10, after “B.”, strike the remainder of the line and insert in lieu thereof “a penalty assessed against a taxpayer shall be abated”.

Respectfully submitted,

Jerry W. Sandel, Chairman

Adopted _____
(Chief Clerk)

Not Adopted _____
(Chief Clerk)

Date _____

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

3 HTRC/HB 879

Page 4

4 The roll call vote was 11 For 0 Against

5 Yes: 11

6 Excused: Lujan, Russell, Stell

7 Absent: Hawkins

11 J:\99BillSWP\H0879]

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1 HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE FOR
2 HOUSE BILL 879
3 **44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999**
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8

9 AN ACT

10 RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
11 RELATING TO TAXATION; ENACTING THE NEW MEXICO TAXPAYER BILL OF
12 RIGHTS; PROVIDING OPTIONS FOR CERTAIN TAXPAYERS SEEKING
13 REFUNDS; PROVIDING THAT TAXPAYERS MAY BE AWARDED COSTS AND
14 FEES IN CERTAIN INSTANCES; PROHIBITING PENALTY ASSESSMENTS IN
15 CERTAIN CASES; AMENDING AND ENACTING CERTAIN SECTIONS OF THE
16 TAX ADMINISTRATION ACT.

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

18 Section 1. A new section of the Tax Administration Act
19 is enacted to read:

20 "[NEW MATERIAL] NEW MEXICO TAXPAYER BILL OF RIGHTS
21 CREATED- -PURPOSE. --The "New Mexico Taxpayer Bill of Rights" is
22 created. It is the purpose of the New Mexico Taxpayer Bill of
23 Rights to:

24 A. guarantee that the rights, privacy and property
25 of New Mexico taxpayers are adequately safeguarded and
protected during the tax assessment, collection and

1 enforcement procedures for the tax acts administered by the
2 department pursuant to the Tax Administration Act;

3 B. assure that the taxpayer is treated with
4 dignity and respect; and

5 C. compile in one act, brief but comprehensive
6 statements that explain in simple, nontechnical terms, the
7 rights of taxpayers. "

8 Section 2. A new section of the Tax Administration Act
9 is enacted to read:

10 " [NEW MATERIAL] NEW MEXICO TAXPAYER BILL OF RIGHTS. -- The
11 rights afforded New Mexico taxpayers to assure that their
12 privacy and property are safeguarded and protected during tax
13 assessment, collection and enforcement are available insofar
14 as they are implemented in the Tax Administration Act and the
15 tax acts administered by the department pursuant to the
16 provisions of that act and the rules adopted and promulgated
17 pursuant to those acts by the secretary. The rights
18 guaranteed New Mexico taxpayers pursuant to those laws and
19 rules are as follows:

20 A. the right to available information and prompt,
21 courteous and accurate response to questions and requests for
22 tax assistance;

23 B. the right to be represented or advised by
24 counsel or other qualified representatives at any time in
25 administrative interactions with the department in accordance
with the provisions of Section 7-1-24 NMSA 1978;

C. the right to have audits, inspections of
records and meetings conducted at a reasonable time and place

1 in accordance with the provisions of Section 7-1-11 NMSA 1978;

2 D. the right to have the department begin and
3 complete its audits in a timely and expeditious manner after
4 notification of intent to audit;

5 E. the right to obtain simple, nontechnical
6 information that explains the procedures, remedies and rights
7 available during audit, protest, appeals and collection
8 proceedings pursuant to the Tax Administration Act, including
9 the rights pursuant to the New Mexico Taxpayer Bill of Rights;

10 F. the right to be provided with an explanation
11 for denials of refunds as well as the basis of the audit,
12 assessments or denials of refunds that identify any amount of
13 tax, interest or penalty due;

14 G. the right to seek review, through formal or
15 informal proceedings, of any findings or adverse decisions
16 relating to determinations during audit or protest procedures;

17 H. the right to have the taxpayer's tax
18 information kept confidential unless otherwise specified by
19 law, in accordance with Section 7-1-8 NMSA 1978;

20 I. the right to abatement of an assessment of
21 taxes determined to have been incorrectly, erroneously or
22 illegally made, as provided in Section 7-1-28 NMSA 1978 and
23 the right to seek a compromise of an asserted tax liability by
24 obtaining a written determination of liability or nonliability
25 when the secretary of taxation and revenue in good faith is in
doubt of the liability as provided in Section 7-1-20 NMSA
1978;

J. upon receipt of a tax assessment, the right to

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1 be informed clearly that if the assessment is not paid,
2 secured, protested or otherwise provided for within thirty
3 days pursuant to the provisions of Section 7-1-16 NMSA 1978,
4 the taxpayer will be a delinquent taxpayer and, upon notice of
5 delinquency, the right to timely notice of any collection
6 actions that will require sale or seizure of the taxpayer's
7 property;

8 K. after a jeopardy assessment, the right to at
9 least five days to review the jeopardy assessment before
10 paying the tax or furnishing satisfactory security for the tax
11 in accordance with Section 7-1-59 NMSA 1978;

12 L. the right to procedures for retirement of tax
13 obligations by installment payment agreements, in accordance
14 with Section 7-1-21 NMSA 1978, which recognize both the
15 taxpayer's financial condition and the best interests of the
16 state, provided that the taxpayer gives accurate, current
17 information and meets all other tax obligations on schedule;
18 and

19 M the right to procedures that assure that the
20 individual employees of the department are not paid, evaluated
21 or promoted on the basis of the amount of assessments or
22 collections from taxpayers. "

23 Section 3. A new section of the Tax Administration Act
24 is enacted to read:

25 "[NEW MATERIAL] NEW MEXICO TAXPAYER BILL OF RIGHTS--
NOTICE TO THE PUBLIC. --The department shall develop a brochure
that states the New Mexico Taxpayer Bill of Rights in simple,
nontechnical terms and disseminate the brochure to taxpayers

1 with tax forms. "

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

4 "7-1-3. DEFINITIONS. -- Unless the context clearly
5 indicates a different meaning, the definitions of words and
6 phrases as they are stated in this section are to be used, and
7 whenever in the Tax Administration Act these words and phrases
8 appear, the singular includes the plural and the plural
9 includes the singular:

10 A. "department" means the taxation and revenue
11 department, the secretary or any employee of the department
12 exercising authority lawfully delegated to that employee by
13 the secretary;

14 B. "division" or "oil and gas accounting division"
15 means the department;

16 C. "director" means the secretary;

17 D. "director or his delegate" means the secretary
18 or the secretary's delegate;

19 E. "employee of the department" means any employee
20 of the department, including the secretary, or any person
21 acting as agent or authorized to represent or perform services
22 for the department in any capacity with respect to any law
23 made subject to administration and enforcement under the
24 provisions of the Tax Administration Act;

25 F. "Internal Revenue Code" means the Internal
Revenue Code of 1986, as amended;

G. "levy" means the lawful power, hereby invested
in the secretary, to take into possession or to require the

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1 present or future surrender to the secretary or the
2 secretary's delegate of any property or rights to property
3 belonging to a delinquent taxpayer;

4 H. "local option gross receipts tax" means a tax
5 authorized to be imposed by a county or municipality upon the
6 taxpayer's gross receipts, as that term is defined in the
7 Gross Receipts and Compensating Tax Act, and required to be
8 collected by the department at the same time and in the same
9 manner as the gross receipts tax; "local option gross receipts
10 tax" includes the taxes imposed pursuant to the Municipal
11 Local Option Gross Receipts Taxes Act, Supplemental Municipal
12 Gross Receipts Tax Act, Special Municipal Gross Receipts Tax
13 Act, County Local Option Gross Receipts Taxes Act, Local
14 Hospital Gross Receipts Tax Act, County Correctional Facility
15 Gross Receipts Tax Act and such other acts as may be enacted
16 authorizing counties or municipalities to impose taxes on
17 gross receipts, which taxes are to be collected by the
18 department in the same time and in the same manner as it
19 collects the gross receipts tax;

20 I. "negligence" means the failure to do what a
21 reasonable and ordinarily prudent person would do under
22 similar circumstances;

23 [~~F.~~] J. "net receipts" means the total amount of
24 money paid by taxpayers to the department in a month pursuant
25 to a tax or tax act less any refunds disbursed in that month
with respect to that tax or tax act;

[~~J.~~] K. "overpayment" means [~~any~~] an amount paid,
pursuant to any law subject to administration and enforcement

1 under the provisions of the Tax Administration Act, by [~~any~~] a
 2 person to the department or withheld from the person in excess
 3 of tax due from the person to the state at the time of the
 4 payment or at the time the amount withheld is credited against
 tax due;

5 [~~K.~~] L. "paid" includes the term "paid over";

6 [~~L.~~] M. "pay" includes the term "pay over";

7 [~~M.~~] N. "payment" includes the term "payment
 8 over";

9 [~~N.~~] O. "person" means any individual, estate,
 10 trust, receiver, cooperative association, club, corporation,
 11 company, firm, partnership, limited liability company, limited
 12 liability partnership, joint venture, syndicate, other
 13 association or gas, water or electric utility owned or
 14 operated by a county or municipality; "person" also means, to
 15 the extent permitted by law, [~~any~~] a federal, state or other
 16 governmental unit or subdivision, or an agency, department or
 instrumentality thereof; "person", as used in Sections 7-1-72
 17 through 7-1-74 NMSA 1978, also includes an officer or employee
 18 of a corporation, a member or employee of a partnership or any
 19 individual who, as such, is under a duty to perform any act in
 respect of which a violation occurs;

20 [~~O.~~] P. "property" means property or rights to
 21 property;

22 [~~P.~~] Q. "property or rights to property" means any
 23 tangible property, real or personal, or any intangible
 24 property of a taxpayer;

25 [~~Q.~~] R. "secretary" means the secretary of

1 taxation and revenue and, except for purposes of Subsection B
2 of Section 7-1-4 and Subsection E of Section 7-1-24 NMSA 1978,
3 also includes the deputy secretary or a division director or
4 deputy division director delegated by the secretary;

5 ~~[R.]~~ S. "secretary or the secretary's delegate"
6 means the secretary or any employee of the department
7 exercising authority lawfully delegated to that employee by
8 the secretary;

9 ~~[S.]~~ T. "security" means money, property or rights
10 to property or a surety bond;

11 ~~[T.]~~ U. "state" means any state of the United
12 States, the District of Columbia, the commonwealth of Puerto
13 Rico and any territory or possession of the United States;

14 ~~[U.]~~ V. "tax" means the total amount of each tax
15 imposed and required to be paid, withheld and paid or
16 collected and paid under provision of any law made subject to
17 administration and enforcement according to the provisions of
18 the Tax Administration Act and, unless the context otherwise
19 requires, includes the amount of any interest or civil penalty
20 relating thereto; "tax" also means any amount of any abatement
21 of tax made or any credit, rebate or refund paid or credited
22 by the department under any law subject to administration and
23 enforcement under the provisions of the Tax Administration Act
24 to any person contrary to law and includes, unless the context
25 requires otherwise, the amount of any interest or civil
penalty relating thereto;

~~[V.]~~ W. "taxpayer" means a person liable for
payment of any tax, a person responsible for withholding and

1 payment or for collection and payment of any tax or a person
2 to whom an assessment has been made, if the assessment remains
3 unabated or the amount thereof has not been paid; and

4 [W-] X. "tax return preparer" means a person who
5 prepares for others for compensation or who employs one or
6 more persons ~~[to]~~ who prepare for others for compensation any
7 return of income tax, a substantial portion of any return of
8 income tax, any claim for refund with respect to income tax or
9 a substantial portion of any claim for refund with respect to
10 income tax; provided that a person shall not be a "tax return
preparer" merely because such person:

11 (1) furnishes typing, reproducing or other
12 mechanical assistance;

13 (2) is an employee who prepares an income tax
14 return or claim for refund with respect to an income tax
15 return of the employer, or of an officer or employee of the
16 employer, by whom the person is regularly and continuously
employed; or

17 (3) prepares as a trustee or other fiduciary
18 an income tax return or claim for refund with respect to
19 income tax for any person. "

20 Section 5. Section 7-1-26 NMSA 1978 (being Laws 1965,
Chapter 248, Section 28, as amended) is amended to read:

21 "7-1-26. CLAIM FOR REFUND. --

22 A. Any person who believes that an amount of tax
23 has been paid by or withheld from that person in excess of
24 that for which the person was liable, who has been denied any
25 credit or rebate claimed or who claims a prior right to

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1 property in the possession of the department pursuant to a
2 levy made under authority of Sections 7-1-31 through 7-1-34
3 NMSA 1978 may claim a refund by directing to the secretary,
4 within the time limited by the provisions of Subsections [~~C, D~~
5 ~~and E~~] E, F and G of this section, a written claim for refund.
6 Except as provided in Subsection [~~H~~] J of this section, a
7 refund claim shall include the taxpayer's name, address and
8 identification number, the type of tax for which a refund is
9 being claimed, the sum of money being claimed, the period for
which overpayment was made and the basis for the refund.

10 B. The secretary or the secretary's delegate may
11 allow the claim in whole or in part or may deny the claim. If
12 the claim is denied in whole or in part in writing, the claim
13 may not be refiled. If the claim is not granted in full, the
14 person, within ninety days after either the mailing or
15 delivery of the denial of all or any part of the claim, may
16 elect to pursue one, but not more than one, of the remedies in
17 Paragraphs (1) and (2) of [~~this subsection~~] Subsection C of
this section.

18 C. If the department has neither granted nor
19 denied any portion of a claim for refund within one hundred
20 twenty days of the date the claim was mailed or delivered to
21 the department, the [~~department may not approve or deny the~~
22 ~~claim but the person may refile it within the time limits set~~
23 ~~forth in Subsection C of this section or may within ninety~~
24 ~~days] person may elect to pursue one, but only one, of the
25 remedies in Paragraphs (1) and (2) of this subsection. In any
case, if a person does timely pursue more than one remedy, the~~

1 person shall be deemed to have elected the first remedy
 2 invoked. The remedies are as follows:

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

10 (2) the person may commence a civil action in
 11 [~~the~~] state district court [~~for Santa Fe county~~] by filing a
 12 complaint setting forth the circumstance of the claimed
 13 overpayment, alleging that on account thereof the state is
 14 indebted to the plaintiff in the amount stated, together with
 15 any interest allowable, demanding the refund to the plaintiff
 16 of that amount and reciting the facts of the claim for refund.
 17 The plaintiff or the secretary may appeal from any final
 18 decision or order of the district court to the court of
 appeals.

19 D. No protest or civil action for refund under
 20 Subsection B of this section may be filed after the expiration
 21 of two years from the date of mailing by certified mail by the
 22 secretary to the person of the denial of the claim to which
the protest or civil action relates.

23 [~~C-~~] E. Except as otherwise provided in
 24 Subsections [~~D~~] F and [~~E~~] G of this section, no credit or
 25 refund of any amount may be allowed or made to any person

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1 unless as the result of a claim made by that person as
2 provided in this section:

3 (1) within three years of the end of the
4 calendar year in which:

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

8 (b) the final determination of value
9 occurs with respect to any overpayment that resulted from a
10 disapproval by any agency of the United States or the state of
11 New Mexico or any court of increase in value of a product
12 subject to taxation under the Oil and Gas Severance Tax Act,
13 the Oil and Gas Conservation Tax Act, the Oil and Gas
14 Emergency School Tax Act, the Oil and Gas Ad Valorem
15 Production Tax Act or the Natural Gas Processors Tax Act; or

16 (c) property was levied upon pursuant
17 to the provisions of the Tax Administration Act;

18 (2) within one year of the date:

19 (a) of the denial of the claim for
20 credit under the provisions of the Investment Credit Act [~~or~~
21 ~~Filmmaker's Credit Act~~];

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

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

(3) for assessments made on or after July 1,
1993, within one year of the date of an assessment of tax made

1 under Subsection B, C or D of Section 7-1-18 NMSA 1978 when
 2 the assessment applies to a period ending at least three years
 3 prior to the beginning of the year in which the assessment was
 4 made, but the claim for refund shall not be made with respect
 5 to any period not covered by the assessment.

6 ~~[D.]~~ E. No credit or refund shall be allowed or
 7 made to any person claiming a refund of gasoline tax under
 8 Section 7-13-11 NMSA 1978 unless notice of the destruction of
 9 the gasoline was given the department within thirty days of
 10 the actual destruction and the claim for refund is made within
 11 six months of the date of destruction. No credit or refund
 12 shall be allowed or made to any person claiming a refund of
 13 gasoline tax under Section ~~[7-13-14]~~ 7-13-17 NMSA 1978 unless
 14 the refund is claimed within six months of the date of
 15 purchase of the gasoline and the gasoline has been used at the
 16 time the claim for refund is made.

17 ~~[E.]~~ G. If, as a result of an audit by the
 18 internal revenue service or the filing of an amended federal
 19 return changing a prior election or making any other change
 20 for which federal approval is required by the Internal Revenue
 21 Code, any adjustment of federal tax is made with the result
 22 that there would have been an overpayment of tax if the
 23 adjustment to federal tax had been applied to the taxable
 24 period to which it relates, claim for credit or refund of only
 25 that amount based on the adjustment may be made as provided in
 this section within one year of the date of the internal
 revenue service audit adjustment or payment of the federal
 refund or within the period limited by Subsection ~~[E]~~ E of

1 this section, whichever expires later. Interest, computed at
2 the rate specified in Subsection B of Section 7-1-68 NMSA
3 1978, shall be allowed on any such claim for refund from the
4 date one hundred twenty days after the claim is made until the
5 date the final decision to grant the credit or refund is made.

6 ~~[F.]~~ H. Any refund of tax paid under any tax or
7 tax act administered under Subsection B of Section 7-1-2 NMSA
8 1978 may be made, at the discretion of the department, in the
9 form of credit against future tax payments if future tax
10 liabilities in an amount at least equal to the credit amount
11 reasonably may be expected to become due.

12 ~~[G.]~~ I. For the purposes of this section, the term
13 "oil and gas tax return" means a return reporting tax due with
14 respect to oil, natural gas, liquid hydrocarbons or carbon
15 dioxide pursuant to the Oil and Gas Severance Tax Act, the Oil
16 and Gas Conservation Tax Act, the Oil and Gas Emergency School
17 Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the
18 Natural Gas Processors Tax Act or the Oil and Gas Production
19 Equipment Ad Valorem Tax Act.

20 ~~[H.]~~ J. The filing of a fully completed original
21 income tax return, corporate income tax return, corporate
22 income and franchise tax return, estate tax return or special
23 fuel excise tax return that shows a balance due the taxpayer
24 or a fully completed amended income tax return, an amended
25 corporate income tax return, an amended corporate income and
franchise tax return, an amended estate tax return, an amended
special fuel excise tax return or an amended oil and gas tax
return that shows a lesser tax liability than the original

1 return constitutes the filing of a claim for refund for the
2 difference in tax due shown on the original and amended
3 returns. "

4 Section 6. A new section of the Tax Administration Act,
5 Section 7-1-29.1 NMSA 1978, is enacted to read:

6 "7-1-29.1. [NEW MATERIAL] AWARDING OF COSTS AND FEES. --

7 A. In any administrative or court proceeding that
8 is brought by or against the taxpayer in connection with the
9 determination, collection or refund of any tax, interest or
10 penalty for a tax governed by the provisions of the Tax
11 Administration Act, the taxpayer shall be awarded a judgment
12 or a settlement for reasonable administrative costs incurred
13 in connection with an administrative proceeding with the
14 department or reasonable litigation costs incurred in
15 connection with a court proceeding, if the taxpayer is the
16 prevailing party.

17 B. As used in this section:

18 (1) "administrative proceeding" means any
19 procedure or other action before the department;

20 (2) "court proceeding" means any civil action
21 brought in state district court;

22 (3) "reasonable administrative costs" means:

23 (a) any administrative fees or similar
24 charges imposed by the department; and

25 (b) actual charges for: 1) filing
fees, court reporter fees, service of process fees and similar
expenses; 2) the services of expert witnesses; 3) any study,
analysis, report, test or project reasonably necessary for the

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1 preparation of the party's case; and 4) fees and costs paid or
2 incurred for the services in connection with the proceeding of
3 attorneys or of certified public accountants who are
4 authorized to practice before the department; and

(4) "reasonable litigation costs" means:

(a) reasonable court costs; and

6 (b) actual charges for: 1) filing
7 fees, court reporter fees, service of process fees and similar
8 expenses; 2) the services of expert witnesses; 3) any study,
9 analysis, report, test or project reasonably necessary for the
10 preparation of the party's case; and 4) fees and costs paid or
11 incurred for the services of attorneys in connection with the
12 proceeding.

C. For purposes of this section:

13 (1) the taxpayer is the prevailing party if
14 the taxpayer has:

15 (a) substantially prevailed with
16 respect to the amount controversy; or

17 (b) substantially prevailed with
18 respect to most of the issues involved in the case or the most
19 significant issue or set of issues involved in the case;

20 (2) the taxpayer shall not be treated as the
21 prevailing party if the department establishes that the
22 position of the department in the proceeding was based upon a
23 reasonable application of the law to the facts of the case.
24 For purposes of this paragraph, the position of the department
25 shall be presumed not to be based upon a reasonable
application of the law to the facts of the case if:

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1 (a) the department did not follow its
2 applicable published guidance in the proceeding; or

3 (b) the assessment giving rise to the
4 proceeding is not supported by substantial evidence determined
5 at the time of the issuance of the assessment;

6 (3) as used in Subparagraph (a) of Paragraph
7 (2) of this subsection, "applicable published guidance" means:

8 (a) department regulations, revenue
9 rulings, revenue procedures, information releases,
10 instructions, notices, technical advice memoranda and
11 announcements; and

12 (b) private letter rulings and letters
13 issued by the department to the taxpayer; and

14 (4) the determination of whether the taxpayer
15 is the prevailing party and the amount of reasonable
16 litigation costs or reasonable administrative costs shall be
17 made by agreement of the parties or:

18 (a) in the case where the final
19 determination with respect to the tax, interest or penalty is
20 made in an administrative proceeding, by the department
21 hearing officer; or

22 (b) in the case where the final
23 determination is made by the court, the court.

24 D. An order granting or denying in whole or in
25 part an award for reasonable litigation costs pursuant to
Subsection A of this section in a court proceeding may be
incorporated as a part of the decision or judgment in the
court proceeding and shall be subject to appeal in the same

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1 manner as the decision or judgment. A decision or order
2 granting or denying in whole or in part an award for
3 reasonable administrative costs pursuant to Subsection A of
4 this section by the department hearing officer shall be
5 reviewable in the same manner as a decision of the department
6 hearing officer."

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

9 "7-1-69. CIVIL PENALTY FOR FAILURE TO PAY TAX OR FILE A
10 RETURN. --

11 A. Except as provided in Subsection [B] C of this
12 section, in the case of failure due to negligence or willful
13 disregard of department rules and regulations, but without
14 intent to evade or defeat any tax, to pay when due any amount
15 of tax required to be paid, to pay in accordance with the
16 provisions of Section 7-1-13.1 NMSA 1978 when required to do
17 so or to file by the date required a return regardless of
18 whether any tax is due, there shall be added to the amount
19 [as] assessed a penalty in an amount equal to the greater of:

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

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

1 (3) a minimum of five dollars (\$5.00), but
2 the five-dollar (\$5.00) minimum penalty shall not apply to
3 taxes levied under the Income Tax Act or taxes administered by
4 the department pursuant to Subsection B of Section 7-1-2 NMSA
5 1978.

6 B. No penalty shall be assessed against a taxpayer
7 if the failure to pay any amount of tax when due results from
8 a mistake of law or fact made in good faith and on reasonable
9 grounds.

10 [~~B.~~] C. If a different penalty is specified in a
11 compact or other interstate agreement to which New Mexico is a
12 party, the penalty provided in the compact or other interstate
13 agreement shall be applied to amounts due under the compact or
14 other interstate agreement at the rate and in the manner
15 prescribed by the compact or other interstate agreement.

16 [~~C.~~] D. In the case of failure, with willful
17 intent to evade or defeat any tax, to pay when due any amount
18 of tax required to be paid, there shall be added to the amount
19 fifty percent of the tax or a minimum of twenty-five dollars
20 (\$25.00), whichever is greater, as penalty.

21 [~~D.~~] E. If demand is made for payment of any tax,
22 including penalty imposed pursuant to this section, and if
23 such tax is paid within ten days after the date of such
24 demand, no penalty shall be imposed for the period after the
25 date of the demand with respect to the amount paid. "

Section 8. EFFECTIVE DATE. --The effective date of the
provisions of this act is July 1, 1999.

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FORTY- FOURTH LEGISLATURE HB 879/a
FIRST SESSION, 1999

March 12, 1999

Mr. President:

Your WAYS & MEANS COMMITTEE, to whom has been referred
HOUSE TAXATION AND REVENUE COMMITTEE SUBSTITUTE
FOR HOUSE BILL 879, as amended

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

- 1. Strike House Taxation and Revenue Committee Amendment
- 3.
- 2. On pages 5 through 10, strike Section 4 in its entirety.
- 3. Renumber the succeeding sections accordingly.
- 4. On page 13, line 1, strike "No" and insert in lieu

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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SWMC/SB 879

Page 25

thereof "With respect to refunds first claimed on or after July 1, 1999, no".

5. On page 16, line 25, after "taxpayer" insert "on or after July 1, 1999".

6. On page 21, strike lines 10 through 13.

7. Reletter the succeeding subsections accordingly.

Respectfully submitted,

Carlos R. Cisneros, Chairman

HTRC/HB 879

FORTY- FOURTH LEGISLATURE
FIRST SESSION, 1999

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Page 26

SWMC/SB 879

Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 6 For 0 Against

Yes: 6

No: 0

Excused: Carraro, Duran, Kidd

Absent: None

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