

Taxation & Revenue Dep't, 2006-NMSC-017, 139 N.M. 589, 136 P.3d 999, *rev'g* 2005-NMCA-091, 138 N.M. 55, 116 P.3d 846..

Refund procedures of 7-1-26 NMSA 1978 are not applicable to real property taxes. *Lovelace Ctr. for Health Sciences v. Beach*, 1980-NMCA-004, 93 N.M. 793, 606 P.2d 203.

This article governs priorities between assignee for creditors and state. — In disposing of priorities between the assignee for the benefit of creditors and the State of New Mexico, a court is governed by the Tax Administration Act. *Regents of N.M. College of Agric. & Mechanic Arts v. Academy of Aviation, Inc.*, 1971-NMSC-087, 83 N.M. 86, 488 P.2d 343.

Law reviews. — For comment, "Ad Valorem Taxes - Omitted Property and Improvements - Assessments," see 6 Nat. Resources J. 105 (1966).

7-1-2.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1986, ch. 20, § 136A repealed 7-1-2.1 NMSA 1978, as enacted by Laws 1985, ch. 65, § 2, relating to applicability of the Tax Administration Act and legislative intent, effective July 1, 1986. For present comparable provisions relating to applicability, see 7-1-2 NMSA 1978.

7-1-2.2. Repealed.

ANNOTATIONS

Repeals. — Laws 1987, ch. 169, § 7 repealed 7-1-2.2 NMSA 1978, as enacted by Laws 1985, ch. 65, § 53, relating to applicability of the Tax Administration Act and legislative intent, effective July 1, 1987. For present comparable provisions relating to applicability, see 7-1-2 NMSA 1978.

7-1-3. Definitions.

Unless the context clearly indicates a different meaning, the definitions of words and phrases as they are stated in this section are to be used, and whenever in the Tax Administration Act these words and phrases appear, the singular includes the plural and the plural includes the singular:

A. "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 New Mexico;

B. "business location" means the location where a taxpayer's gross receipts and deductions are required to be reported pursuant to Section 7-1-14 NMSA 1978;

C. "department" means the taxation and revenue department, the secretary or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

D. "electronic payment" means a payment made by automated clearinghouse deposit, any funds wire transfer system or a credit card, debit card or electronic cash transaction through the internet;

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

F. "financial institution" means any state or federally chartered, federally insured depository institution;

G. "hearing officer" means a person who has been designated by the chief hearing officer to serve as a hearing officer and who is:

- (1) the chief hearing officer;
- (2) an employee of the administrative hearings office; or
- (3) a contractor of the administrative hearings office;

H. "Internal Revenue Code" means the Internal Revenue Code of 1986, as that code may be amended or its sections renumbered;

I. "levy" means the lawful power, hereby invested in the secretary, to take into possession or to require the present or future surrender to the secretary or the secretary's delegate of any property or rights to property belonging to a delinquent taxpayer;

J. "local option gross receipts tax" means a tax authorized to be imposed by a county or municipality upon a taxpayer's gross receipts, as that term is defined in the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978], and required to be collected by the department at the same time and in the same manner as the gross receipts tax;

K. "managed audit" means a review and analysis conducted by a taxpayer under an agreement with the department to determine the taxpayer's compliance with a tax administered pursuant to the Tax Administration Act and the presentation of the results to the department for assessment of tax found to be due;

L. "net receipts" means the total amount of money paid by taxpayers to the department in a month pursuant to a tax or tax act less any refunds disbursed in that month with respect to that tax or tax act;

M. "overpayment" means an amount paid, pursuant to any law subject to administration and enforcement under the provisions of the Tax Administration Act, by a person to the department or withheld from the person in excess of tax due from the person to the state at the time of the payment or at the time the amount withheld is credited against tax due;

N. "paid" includes the term "paid over";

O. "pay" includes the term "pay over";

P. "payment" includes the term "payment over";

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

R. "property" means property or rights to property;

S. "property or rights to property" means any tangible property, real or personal, or any intangible property of a taxpayer;

T. "return" means any tax or information return, application or form, declaration of estimated tax or claim for refund, including any amendments or supplements to the return, required or permitted pursuant to a law subject to administration and enforcement pursuant to the Tax Administration Act and filed with the secretary or the secretary's delegate by or on behalf of any person;

U. "return information" means a taxpayer's name, address, government-issued identification number and other identifying information; any information contained in or derived from a taxpayer's return; any information with respect to any actual or possible administrative or legal action by an employee of the department concerning a taxpayer's return, such as audits, managed audits, denial of credits or refunds, assessments of tax, penalty or interest, protests of assessments or denial of refunds or credits, levies or liens; or any other information with respect to a taxpayer's return or tax liability that was not obtained from public sources or that was created by an employee of the department;

but "return information" does not include statistical data or other information that cannot be associated with or directly or indirectly identify a particular taxpayer;

V. "secretary" means the secretary of taxation and revenue and, except for purposes of Subsection B of Section 7-1-4 NMSA 1978, also includes the deputy secretary or a division director or deputy division director delegated by the secretary;

W. "secretary or the secretary's delegate" means the secretary or any employee of the department exercising authority lawfully delegated to that employee by the secretary;

X. "security" means money, property or rights to property or a surety bond;

Y. "state" means any state of the United States, the District of Columbia, the commonwealth of Puerto Rico and any territory or possession of the United States;

Z. "tax" means the total amount of each tax imposed and required to be paid, withheld and paid or collected and paid under provision of any law made subject to administration and enforcement according to the provisions of the Tax Administration Act, including the amount of any interest or civil penalty relating thereto; "tax" also means any amount of any abatement of tax made or any credit, rebate or refund paid or credited by the department under any law subject to administration and enforcement under the provisions of the Tax Administration Act to any person contrary to law, including the amount of any interest or civil penalty relating thereto;

AA. "tax return preparer" means a person who prepares for others for compensation or who employs one or more persons to prepare for others for compensation any return of income tax, a substantial portion of any return of income tax, any claim for refund with respect to income tax or a substantial portion of any claim for refund with respect to income tax; provided that a person shall not be a "tax return preparer" merely because such person:

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

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

(3) prepares as a trustee or other fiduciary an income tax return or claim for refund with respect to income tax for any person; and

BB. "taxpayer" means a person liable for payment of any tax; a person responsible for withholding and payment or for collection and payment of any tax; a person to whom an assessment has been made, if the assessment remains unabated or the amount thereof has not been paid; or a person who entered into a special agreement pursuant to Section 7-1-21.1 NMSA 1978 to assume the liability of gross

receipts tax or governmental gross receipts tax of another person and the special agreement was approved by the secretary pursuant to the Tax Administration Act.

History: 1953 Comp., § 72-13-15, enacted by Laws 1965, ch. 248, § 3; 1977, ch. 249, § 41; 1979, ch. 144, § 3; 1982, ch. 18, § 2; 1985, ch. 65, § 3; 1986, ch. 20, § 3; 1987, ch. 169, § 1; 1992, ch. 55, § 2; 1993, ch. 5, § 2; 1994, ch. 51, § 2; 1997, ch. 67, § 1; 2000, ch. 28, § 2; 2001, ch. 16, § 2; 2001, ch. 56, § 2; 2003, ch. 398, § 4; 2009, ch. 243, § 1; 2013, ch. 87, § 2; 2015, ch. 73, § 10; 2017, ch. 63, § 4; 2019, ch. 270, § 2; 2019, ch. 274, § 10.

ANNOTATIONS

Cross references. — For the federal Internal Revenue Code, see 26 U.S.C. § 1 et seq.

2019 Multiple Amendments. — Laws 2019, ch. 270, § 2 and Laws 2019, ch. 274, § 10, both effective July 1, 2019, enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2019, ch. 274, § 10, as the last act signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2019, ch. 270, § 2 and Laws 2019, ch. 274, § 10 are described below. To view the session laws in their entirety, see the 2019 session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Laws 2019, ch. 270, § 2, defined "business location", and revised the definition of "local option gross receipts tax", as used in the Tax Administration Act, and Laws 2019, ch. 274, § 10, revised the definition of "local option gross receipts tax" as used in the Tax Administration Act.

Laws 2019, ch. 270, § 2, effective July 1, 2019, defined "business location", and revised the definition of "local option gross receipts tax", as used in the Tax Administration Act; added a new Subsection B and redesignated former Subsections B through AA as Subsections C through BB, respectively; and in Subsection J, deleted "'local option gross receipts tax' includes the taxes imposed pursuant to the Municipal Local Option Gross Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax Act, County Local Option Gross Receipts Taxes Act, Local Hospital Gross Receipts Tax Act and County Correctional Facility Gross Receipts Tax Act and such other acts as may be enacted authorizing counties or municipalities to impose taxes on gross receipts, which taxes are to be collected by the department in the same time and in the same manner as it collects the gross receipts tax".

Laws 2019, ch. 274, § 10, effective July 1, 2019, revised the definition of "local option gross receipts tax" as used in the Tax Administration Act; and deleted "'local option gross receipts tax' includes the taxes imposed pursuant to the Municipal Local Option Gross Receipts Taxes Act, Supplemental Municipal Gross Receipts Tax Act, County Local Option Gross Receipts Taxes Act, Local Hospital Gross Receipts Tax Act and County Correctional Facility Gross Receipts Tax Act and such other acts as may be enacted authorizing counties or municipalities to impose taxes on gross receipts, which