

Section 7-1-5" preceding "and Subsection E" in Subsection Q, and inserted "abatement of tax made or any" preceding "credit, rebate or refund" in Subsection U.

The 1994 amendment, effective July 1, 1994, inserted Subsection F, redesignated former Subsections F to V as Subsections G to W and substituted the present list of tax acts in Subsection H for the former list.

The 1993 amendment, effective July 1, 1993, inserted "limited liability partnership" and "limited liability company" near the beginning of Subsection M.

The 1992 amendment, effective July 1, 1992, added Subsection G and redesignated former Subsections G through U as Subsections H through V.

United States as "taxpayer". — Since the contracts require the United States to pay all costs under the contracts including taxes, this is sufficient to recognize the United States as a "taxpayer" under this section and allow it to be a party in tax disputes with the department. *United States v. New Mexico*, 455 F. Supp. 993 (D.N.M. 1978), *rev'd in part on other grounds*, 624 F.2d 111 (10th Cir. 1980), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

Right of United States to participate as party in certain cases. — In cases involving a challenge to state taxes as violating the federal government's sovereign and constitutional rights, the United States must be permitted to participate as a party. *United States v. New Mexico*, 455 F. Supp. 993 (D.N.M. 1978), *rev'd in part on other grounds*, 624 F.2d 111 (10th Cir. 1980), *aff'd*, 455 U.S. 720, 102 S. Ct. 1373, 71 L. Ed. 2d 580 (1982).

7-1-4. Investigative authority and powers.

A. For the purpose of establishing or determining the extent of the liability of any person for any tax, for the purpose of collecting any tax, for the purpose of enforcing any statute administered under the provisions of the Tax Administration Act or for the purpose of investigating possible criminal violations of the revenue laws of this state, including fraud or other crimes that may affect the taxes due to the state, the secretary or the secretary's delegate is authorized to examine equipment and to examine and require the production of any pertinent records, books, information or evidence, to require the presence of any person and to require that person to testify under oath concerning the subject matter of the inquiry and to make a permanent record of the proceedings.

B. As a means for accomplishing the matters referred to in Subsection A of this section, the secretary is hereby invested with the power to issue subpoenas and summonses. In no case shall a subpoena or summons be made returnable less than ten days from the date of service.

C. Any subpoena or summons issued by the secretary shall state with reasonable certainty the nature of the evidence required to be produced, the time and place of the hearing, the nature of the inquiry or investigation and the consequences of failure to obey the subpoena or summons; shall bear the seal of the department; and shall be attested by the secretary.

D. After service of a subpoena or summons upon the person, if any person neglects or refuses to appear in response to the summons or neglects or refuses to produce records or other evidence or to allow the inspection of equipment in response to the subpoena or neglects or refuses to give testimony as required, the department may invoke the aid of the court in the enforcement of the subpoena or summons. In appropriate cases, the court shall issue its order requiring the person to appear and testify or produce books or records and may, upon failure of the person to comply with the order, punish the person for contempt.

E. If a person, the extent of whose tax liability is being established, or that person's agent, nominee or other person acting under the direction or control of that person, files an action with the court to quash a subpoena or summons issued by that court pursuant to this section, the running of the period of limitations pursuant to Sections 7-1-18 and 7-1-19 NMSA 1978 or Section 30-1-8 NMSA 1978 with respect to the tax liability under investigation shall be suspended for the period during which a proceeding and related appeals regarding the enforcement of the subpoena or summons is pending.

History: 1953 Comp., § 72-13-22, enacted by Laws 1965, ch. 248, § 10; 1971, ch. 276, § 4; 1979, ch. 144, § 4; 1986, ch. 20, § 4. 2005, ch. 108, § 1.

ANNOTATIONS

The 2005 amendment, effective June 17, 2005, in Subsection A, added the authority to investigate possible criminal violation of state revenue laws, including fraud and other crimes that may affect the taxes due the state; and added Subsection E to provide that if a person, whose tax liability has been determined, files an action to quash a subpoena or summons, the statute of limitations is tolled during the time the action or any appeal is pending.

Secretary's authority to examine and reconstruct records. — This section not only gives the commissioner (now secretary) authority to examine pertinent books and records for the purpose of verification but also authority to reconstruct records when they are destroyed. *Torridge Corp. v. Comm'r of Revenue*, 1972-NMCA-171, 84 N.M. 610, 506 P.2d 354, cert. denied, 84 N.M. 592, 506 P.2d 336 (1973).

Scope of examination. — The New Mexico taxation and revenue department has the authority to examine records, including looking beyond what was simply reported on the taxpayers federal tax forms, in order to determine the extent of taxpayer's liability to pay state income tax. *Holt v. N.M. Dep't of Taxation & Revenue*, 2002-NMSC-034, 133 N.M. 11, 59 P.3d 491.