CHAPTER 7
Taxation

ARTICLE 1
Administration

7-1-1. Short title.

Chapter 7, Article 1 NMSA 1978 may be cited as the "Tax Administration Act".

History: 1953 Comp., § 72-13-13, enacted by Laws 1965, ch. 248, § 1; 1979, ch. 144, § 1.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity of statutory classifications based on population - tax statutes, 98 A.L.R.3d 1083.

7-1-2. Applicability.

The Tax Administration Act applies to and governs:

A. the administration and enforcement of the following taxes or tax acts as they now exist or may hereafter be amended:

(1) Income Tax Act [Chapter 7, Article 2 NMSA 1978];

(2) Withholding Tax Act [Chapter 7, Article 3 NMSA 1978];

(3) Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act [Chapter 7, Article 3A NMSA 1978];

(4) Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978], Interstate Telecommunications Gross Receipts Tax Act [Chapter 7, Article 9C NMSA 1978] and Leased Vehicle Gross Receipts Tax Act [Chapter 7, Article 14A NMSA 1978];

(5) Liquor Excise Tax Act [Chapter 7, Article 17 NMSA 1978];

(6) Local Liquor Excise Tax Act [7-24-8 to 7-24-16 NMSA 1978];

(7) any municipal local option gross receipts tax or municipal compensating tax;

(8) any county local option gross receipts tax or county compensating tax;

(9) Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978];

(10) Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978];

(11) petroleum products loading fee, which fee shall be considered a tax for the purpose of the Tax Administration Act [Chapter 7, Article 1 NMSA 1978];

(12) Alternative Fuel Tax Act [Chapter 7, Article 16B NMSA 1978];

(13) Cigarette Tax Act [Chapter 7, Article 12 NMSA 1978;

(14) Estate Tax Act [7-7-1 to 7-7-12 NMSA 1978];

(15) Railroad Car Company Tax Act [Chapter 7, Article 11 NMSA 1978];

(16) Investment Credit Act [Chapter 7, Article 9A NMSA 1978], rural job tax credit, Laboratory Partnership with Small Business Tax Credit Act [Chapter 7, Article 9E NMSA 1978], Technology Jobs and Research and Development Tax Credit Act [Chapter 7, Article 9F NMSA 1978], Film Production Tax Credit Act [Chapter 7, Article 2F NMSA 1978], Affordable Housing Tax Credit Act [Chapter 7, Article 9I NMSA 1978] and high-wage jobs tax credit;

(17) Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978];

(18) Uniform Division of Income for Tax Purposes Act [Chapter 7, Article 4 NMSA 1978];

(19) Multistate Tax Compact [7-5-1 NMSA 1978;

(20) Tobacco Products Tax Act [Chapter 7, Article 12A NMSA 1978];

(21) the telecommunications relay service surcharge imposed by Section 63-9F-11 NMSA 1978, which surcharge shall be considered a tax for the purposes of the Tax Administration Act;

(22) the Insurance Premium Tax Act [7-40-1 to 7-40-10 NMSA 1978];

(23) the Health Care Quality Surcharge Act [7-41-1 to 7-41-8 NMSA 1978]; and

(24) the Cannabis Tax Act [7-42-1 to 7-42-5 NMSA 1978];

B. the administration and enforcement of the following taxes, surtaxes, advanced payments or tax acts as they now exist or may hereafter be amended:

(1) Resources Excise Tax Act [Chapter 7, Article 25 NMSA 1978];

(2) Severance Tax Act [7-26-1 to 7-26-8 NMSA 1978];

(3) any severance surtax;

(4) Oil and Gas Severance Tax Act [Chapter 7, Article 29 NMSA 1978];

(5) Oil and Gas Conservation Tax Act [Chapter 7, Article 30 NMSA 1978];

(6) Oil and Gas Emergency School Tax Act [Chapter 7, Article 31 NMSA 1978;

(7) Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978];

(8) Natural Gas Processors Tax Act [Chapter 7, Article 33 NMSA 1978];

(9) Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978];

(10) Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978];

(11) any advance payment required to be made by any act specified in this subsection, which advance payment shall be considered a tax for the purposes of the Tax Administration Act;

(12) Enhanced Oil Recovery Act [Chapter 7, Article 29A NMSA 1978];

(13) Natural Gas and Crude Oil Production Incentive Act [7-29B-1 to 7-29B-6 NMSA 1978]; and

(14) intergovernmental production tax credit and intergovernmental production equipment tax credit;

C. the administration and enforcement of the following taxes, surcharges, fees or acts as they now exist or may hereafter be amended:

(1) Weight Distance Tax Act [Chapter 7, Article 15A NMSA 1978];

(2) the workers' compensation fee authorized by Section 52-5-19 NMSA 1978, which fee shall be considered a tax for purposes of the Tax Administration Act;

(3) Uniform Unclaimed Property Act (1995) [Chapter 7, Article 8A NMSA 1978];

(4) 911 emergency surcharge and the network and database surcharge, which surcharges shall be considered taxes for purposes of the Tax Administration Act;

(5) the solid waste assessment fee authorized by the Solid Waste Act, which fee shall be considered a tax for purposes of the Tax Administration Act;

(6) the water conservation fee imposed by Section 74-1-13 NMSA 1978, which fee shall be considered a tax for the purposes of the Tax Administration Act; and

(7) the gaming tax imposed pursuant to the Gaming Control Act [Chapter 60, Article 2E NMSA 1978]; and

D. the administration and enforcement of all other laws, with respect to which the department is charged with responsibilities pursuant to the Tax Administration Act, but only to the extent that the other laws do not conflict with the Tax Administration Act.

History: 1953 Comp., § 72-13-14, enacted by Laws 1965, ch. 248, § 2; 1966, ch. 54, § 1; 1969, ch. 156, § 1; 1971, ch. 276, § 3; 1973, ch. 346, § 1; 1974, ch. 13, § 1; 1975, ch. 301, § 1; 1978, ch. 182, § 22; 1979, ch. 144, § 2; 1982, ch. 18, § 1; 1983, ch. 211, § 3; 1985, ch. 65, § 1; 1986, ch. 20, § 2; 1987, ch. 45, § 20; 1987, ch. 268, § 1; 1988, ch. 71, § 1; 1988, ch. 73, § 1; 1989, ch. 263, § 1; 1989, ch. 325, § 1; 1989, ch. 326, § 10; 1989, ch. 327, § 1; 1990, ch. 86, § 1; 1990, ch. 88, § 1; 1990, ch. 99, § 45; 1990, ch. 124, § 12; 1990, ch. 125, § 1; 1992, ch. 55, § 1; 1993, ch. 5, § 1; 1994, ch. 51, § 1; 1996, ch. 15, § 1; 1997, ch. 190, § 64; 2000, ch. 28, § 1; 2001, ch. 56, § 1; 2004, ch. 4, § 3; 2006, ch. 25, § 1; 2007, ch. 164, § 1; 2016, ch. 77, § 1; 2019, ch. 47, § 1; 2019, ch. 53, § 10; 2019, ch. 270, § 1; 2021 (1st S.S.), ch. 4, § 48.

ANNOTATIONS

Cross references. — For administration of Income Tax Act, *see* 7-2-22 NMSA 1978.

For rural job tax credit, *see* 7-2E-1.1 NMSA 1978.

For administration and enforcement of Estate Tax Act, *see* 7-7-10 NMSA 1978.

The 2021 (1st S.S.) amendment, effective June 29, 2021, added the Cannabis Tax Act to the list of taxes or tax acts to which the Tax Administration Act applies and governs; and in Subsection A, added Paragraph A(24).

2019 Amendments. — Laws 2019, ch. 47, § 1, effective January 1, 2020, added the Insurance Premium Tax Act to the list of tax acts to which the Tax Administration Act applies and governs; and in Subsection A, added Paragraph A(22).

Laws 2019, ch. 53, § 10, effective July 1, 2019, added the Health Care Quality Surcharge Act to the list of tax acts to which the Tax Administration Act applies and governs; and in Subsection A, added Paragraph A(22) [now A(23)].

Laws 2019, ch. 270, § 1, effective July 1, 2019, added the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act, the Interstate Telecommunications Gross Receipts Tax Act and the Leased Vehicle Gross Receipts Tax Act, and any municipal compensating tax or county compensating tax, to the list of tax acts to which the Tax Administration Act applies and governs; in Subsection A, Paragraph A(3), deleted "Venture Capital Investment" and added "Oil and Gas Proceeds and Pass-Through Entity Withholding Tax", in Paragraph A(4), after "Compensating Tax Act", added "Interstate Telecommunications Gross Receipts Tax Act", and after "and", deleted "any state gross receipts tax" and added "Leased Vehicle Gross Receipts Tax Act", in Paragraph A(7), after "gross receipts tax", added "or municipal compensating tax", and in Paragraph A(8), after "gross receipts tax", added "or county compensating tax".

The 2016 amendment, effective May 18, 2016, made non-substantive amendments to conform references in the law; in Subsection A, in Paragraph (16), after "Technology Jobs", added "and Research and Development", after "Tax Credit Act,", deleted "film production tax credit, New Mexico filmmaker tax credit" and added "Film Production Tax Credit Act", after "Affordable Housing Tax Credit Act", added "and", and after "high-wage jobs tax credit", deleted "and Research and Development Small Business Tax Credit Act".

The 2007 amendment, effective June 15, 2007, applied the Tax Administration Act to the film tax credit, New Mexico filmmaker tax credit, Affordable Housing Tax Credit Act, high-wage jobs tax credit and Research and Development Small Business Tax Credit Act.

The 2006 amendment, effective March 2, 2006, deleted Paragraph (22) of Subsection A, which provided for a daily bed charge.

The 2004 amendment, effective May 19, 2004, added a new Paragraph (22) to Subsection A of this section.

The 2001 amendment, effective July 1, 2001, in Subsection A, inserted the provisions contained in former Paragraphs (16) and (17) as well as "Laboratory Partnership with Small Business Tax Credit Act and Technology Jobs Tax Credit Act" in present Paragraph (16), and renumbered the remaining paragraphs accordingly.

The 2000 amendment, effective July 1, 2000, in Subsection A, inserted Paragraphs (3), (17), and (18), deleted Paragraph (20), which read "Filmmaker's Credit Act," and redesignated the remaining paragraphs accordingly; added Subsections B(12) through (14); in Subsection C, deleted Paragraph (2) concerning the Special Fuels Tax Act, and redesignated the remaining paragraphs accordingly.

The 1997 amendment, effective June 20, 1997, in Subsection A, deleted Paragraph (6) referring to the Banking and Financial Corporations Tax Act, and redesignated former Paragraphs (7) to (22) as Paragraphs (6) to (21); in Subsection C, deleted "and" at the end of Paragraph (6) and added Paragraph (8).

The 1996 amendment, effective July 1, 1996, added Paragraph A(12), redesignated former Paragraphs A(12) to A(15) as Paragraphs A(13) to A(16), deleted former Paragraph A(16) which read "Corporate Income Tax Act;", deleted former Paragraph C(4) which read "Controlled Substance Tax Act;", redesignated Paragraphs C(5) to C(8) as Paragraphs C(4) to C(7), and made a stylistic change in Subsection D.

The 1994 amendment, effective July 1, 1994, in Subsection A, deleted "and" at the end of Paragraph (20), added "and" at the end of Paragraph (21) and added Paragraph (22); and, in Subsection C, rewrote Paragraph (6), which read: "911 emergency surcharge, which surcharge shall be considered a tax for purposes of the Tax Administration Act; and", and added Paragraph (8).

The 1993 amendment, effective July 1, 1993, in Subsection A, substituted "local option" for "sales or" in Paragraph (7), rewrote Paragraph (8) which read "County Fire Protection Excise Tax Act", rewrote Paragraph (9) which read "any county local option gross receipts", and added paragraph (21); in Subsection B, inserted "surtaxes, advanced payments" in the introductory paragraph and added Paragraph (11); in Subsection C, substituted "surcharges, fees or acts" for "or tax acts" in the introductory paragraph, substituted "fee" for "assessment" in two places in Paragraph (3), and added the language beginning "which surcharge shall" at the end of Paragraph (6); and made minor stylistic changes.

The 1992 amendment, effective July 1, 1992, added "and any state gross receipts tax" at the end of Subsection A(3); added present Subsection A(11); redesignated former Subsections A(11) to A(13) as present Subsections A(12) to A(14); deleted former Subsection A(14), which read: "County and Municipal Gasoline Tax Act"; added "Uniform" at the beginning of Subsection C(5); and added Subsection C(7).

The 1990 amendment, effective March 7, 1990, in Subsection A, added Paragraph (5), redesignated former Paragraphs (5) to (8) as present Paragraphs (6) to (9), and deleted former Paragraph (9) which read "Uniform Disposition of Unclaimed Property Act"; in Subsection D, added Paragraph (10) and made related stylistic changes; and, in Subsection C, added Paragraphs (5) and (6) and made related stylistic changes.

The 1989 amendment, effective July 1, 1989, added Subsections C(3) and C(4).

Doctrine of vicarious or virtual exhaustion of remedies does not apply. — The Tax Administration Act provides the exclusive remedies for tax refunds and requires taxpayers to individually seek a refund. Each member of the class of taxpayers challenging the constitutionality of a tax must individually exhaust their administrative remedies and only after individual exhaustion by each class member can the district court have jurisdiction over the class. The doctrine of vicarious or virtual exhaustion of remedies that allows a class action for tax refunds to proceed when only a few members of the proposed class have exhausted their administrative remedies does not apply to proceedings under the Tax Administration Act. *U.S. Xpress. Inc. v. N.M.*

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

taxes are to be collected by the department in the same time and in the same manner as it collects the gross receipts tax".

The 2017 amendment, effective June 16, 2017, clarified certain definitions of terms used in the Tax Administration Act; in Subsection I, after "Local Hospital Gross Receipts Tax Act", added "and"; in Subsection S, after "information return", added "application or form"; in Subsection Y, after the first occurrence of "Tax Administration Act", deleted "and, unless the context otherwise requires, includes" and added "including", and after "any person contrary to law", deleted "and includes, unless the context requires otherwise" and added "including"; and in Subsection AA, after "special agreement", added "pursuant to Section 7-1-21.1 NMSA 1978".

The 2015 amendment, effective July 1, 2015, amended the definitions of the Tax Administration Act to include "hearing officer"; added Subsection F and redesignated the succeeding subsections, through Subsection X, accordingly; in Subsection U, after "NMSA 1978", deleted "and Subsection E of Section 7-1-24 NMSA 1978"; deleted former Subsection Y; and added Subsection AA.

The 2013 amendment, effective April 1, 2013, broadened the definition of "taxpayer" to include persons who assume the gross receipts tax liability of another person; and in Subsection Y, after "the amount thereof has not been paid", added the remainder of the sentence.

Applicability. — Laws 2013, ch. 87, § 3 provided that the provisions of Laws 2013, ch. 87, §§ 1 and 2 apply to gross receipts or governmental gross receipts received in tax periods beginning on or after May 1, 2013.

The 2009 amendment, effective July 1, 2009, added Subsections R and S.

The 2003 amendment, effective July 1, 2003, substituted "a tax administered pursuant to the Tax Administration Act" for "the Gross Receipts and Compensating Tax Act and local option gross receipts taxes" near the middle of Subsection I.

The 2001 amendment, effective July 1, 2001, deleted former Subsections C, D and E, which contained the definitions of "division", "director" and "director or his delegate" respectively; added Subsection I, and renumbered the remaining subsections accordingly.

The 2000 amendment, effective July 1, 2000, added Subsections A, F, and H and redesignated the remaining subsections accordingly and deleted "Special Municipal Gross Receipts Tax Act" following "Supplemental Municipal Gross Receipts Tax Act" in present Subsection K.

The 1997 amendment, effective July 1, 1997, made minor stylistic changes to Subsection A and Subsection R, deleted "Paragraphs (1) and (2) of Subsection B of

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.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 109, 110, 601.

Constitutionality of statutory provisions for examination of records, books or documents for taxation purposes, 103 A.L.R. 522.

7-1-4.1. New Mexico taxpayer bill of rights created; purpose.

The "New Mexico Taxpayer Bill of Rights" is created. It is the purpose of the New Mexico Taxpayer Bill of Rights to:

A. ensure that the rights of New Mexico taxpayers are adequately safeguarded and protected during the assessment, collection and enforcement of any tax administered by the department pursuant to the Tax Administration Act;

B. ensure that the taxpayer is treated with dignity and respect; and

C. provide brief but comprehensive statements that explain in simple, nontechnical terms the rights of taxpayers as set forth in Section 7-1-4.2 NMSA 1978.

History: Laws 2003, ch. 398, § 1; 2017, ch. 63, § 5.

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, in Subsection C, after "Section", deleted "2 of this 2003 act", added "7-1-4.2 NMSA 1978".

7-1-4.2. New Mexico taxpayer bill of rights.

The rights afforded New Mexico taxpayers during the assessment, collection and enforcement of any tax administered by the department as set forth in the Tax Administration Act include:

A. the right to available public information and prompt and courteous tax assistance;

B. the right to be represented or advised by counsel or other qualified representatives at any time in administrative interactions with the department in accordance with the provisions of Section 7-1-24 NMSA 1978 or the administrative hearings office in accordance with the provisions of the Administrative Hearings Office Act [7-1B-1 to 7-1B-9 NMSA 1978];

C. the right to have audits, inspections of records and meetings conducted at a reasonable time and place in accordance with the provisions of Section 7-1-11 NMSA 1978;

D. the right to have the department conduct its audits in a timely and expeditious manner and be entitled to the tolling of interest as provided in the Tax Administration Act;

E. the right to obtain nontechnical information that explains the procedures, remedies and rights available during audit, protest, appeals and collection proceedings pursuant to the Tax Administration Act;

F. the right to be provided with an explanation of the results of and the basis for audits, assessments or denials of refunds that identify any amount of tax, interest or penalty due;

G. the right to seek review, through formal or informal proceedings, of any findings or adverse decisions relating to determinations during audit or protest procedures in accordance with the provisions of Section 7-1-24 NMSA 1978 and the Administrative Hearings Office Act;

H. the right to have the taxpayer's tax information kept confidential unless otherwise specified by law, in accordance with Sections 7-1-8 through 7-1-8.11 NMSA 1978;

I. the right to abatement of an assessment of taxes determined to have been incorrectly, erroneously or illegally made, as provided in Section 7-1-28 NMSA 1978 and the right to seek a compromise of an asserted tax liability by obtaining a written determination of liability or nonliability when the secretary 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 be informed clearly that if the assessment is not paid, secured, protested or otherwise provided for in accordance with the provisions of Section 7-1-16 NMSA 1978, the taxpayer will be a delinquent taxpayer and, upon notice of delinquency, the right to timely notice of any collection actions that will require sale or seizure of the taxpayer's property in accordance with the provisions of the Tax Administration Act; and

K. the right to procedures for payment of tax obligations by installment payment agreements, in accordance with Section 7-1-21 NMSA 1978.

History: Laws 2003, ch. 398, § 2; 2015, ch. 73, § 11; 2017, ch. 63, § 6.

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, in Subsection H, after "in accordance with", changed "Section" to "Sections", and after "7-1-8", added "through 7-1-8.11".

The 2015 amendment, effective July 1, 2015, amended the Tax Administration Act to provide for hearings pursuant to the Administrative Hearings Office Act; in Subsection B, after "NMSA 1978", added "or the administrative hearings office in accordance with

the provisions of the Administrative Hearings Office Act"; and in Subsection G, after "in accordance with", added "the provisions of", and after "NMSA 1978", added "and the Administrative Hearings Office Act".

Temporary provisions. — Laws 2015, ch. 73, § 36 provided:

A. On July 1, 2015, all personnel, functions, appropriations, money, records, furniture, equipment and other property of, or attributable to, the hearings bureau of the office of the secretary of taxation and revenue shall be transferred to the administrative hearings office.

B. On July 1, 2015, all contractual obligations of the hearings bureau of the office of the secretary of taxation and revenue shall be binding on the administrative hearings office.

C. On July 1, 2015, all references in statute to the hearings bureau of the office of the secretary of taxation and revenue or hearing officers of the taxation and revenue department in Chapters 7 and 66 NMSA 1978 shall be deemed to be references to the administrative hearings office or a hearing officer of the office.

D. Rules of the taxation and revenue department pertaining to hearing officers and the conduct of hearings pursuant to actions related to Chapter 7 or 66 NMSA 1978 shall be deemed to be the rules of the administrative hearings office until amended or repealed by the office.

Gross receipts tax returns are privileged. — Where plaintiff sued defendants for employment discrimination; plaintiff's spouse, who was not a party to the action, maintained a private law practice; plaintiff alleged that upon filing the complaint, defendants retaliated against plaintiff by asserting irregularities with regard to the gross receipts tax records and returns of the spouse's private law practice; defendants asked the district court to issue subpoenas duces tecum to the spouse and to defendant taxation and revenue department for the spouse's gross receipts tax records and returns; and plaintiff's marital relationship to the spouse did not make plaintiff liable for payment of the gross receipts tax of the spouse's private law practice; the gross receipts tax records and returns sought by the subpoenas issued to the spouse and to defendant taxation and revenue department were confidential under Sections 7-1-4.2 and 7-1-8 NMSA 1978 and privileged under Rule 11-502 NMRA. *Breen v. N.M. Taxation & Revenue Dep't*, 2012-NMCA-101, 287 P.3d 379.

7-1-4.3. New Mexico taxpayer bill of rights; notice to the public.

The department shall develop a publication that states the rights of taxpayers in simple, nontechnical terms and shall disseminate the publication to taxpayers, at a minimum, with tax forms periodically issued by the department.

History: Laws 2003, ch. 398, § 3; 2021, ch. 65, § 1.

ANNOTATIONS

The 2021 amendment, effective July 1, 2021, removed a reference to the combined reporting system, and required the taxation and revenue department to disseminate its publication of the taxpayer bill of rights along with tax forms periodically issued by the department; and after "at a minimum, with", deleted "the annual income and semiannual combined reporting system", and after "tax forms", added "periodically issued by the department".

7-1-4.4. Notice of potential eligibility required.

The department shall include a notice with an income tax refund or other notice sent to a taxpayer whose income is within one hundred thirty percent of federal poverty guidelines as defined by the United States census bureau that the taxpayer may be eligible for food stamps. Included in the notice shall be general information about food stamps, such as where to apply for food stamps, based on information received by the department from the human services department [health care authority department] by January 30 of each calendar year.

History: Laws 2005, ch. 138, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 2023, ch. 205, § 16 provided that references to the human services department shall be deemed to be references to the health care authority department.

Cross references. — For notice by mail pursuant to taxpayers, *see* 7-1-9 NMSA 1978.

Effective dates. — Laws 2005, ch. 138 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

7-1-5. Repealed.

ANNOTATIONS

Repeals. — Laws 1995, ch. 31, § 7 repealed 7-1-5 NMSA 1978, as enacted by Laws 1965, ch. 248, § 11, relating to administrative regulations, rulings, instructions and orders issued by the secretary, effective July 1, 1995. For provisions of the former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 9-11-6.2 NMSA 1978.

7-1-6. Receipts; disbursements; funds created.

A. All money received by the department with respect to laws administered pursuant to the provisions of the Tax Administration Act shall be deposited with the state treasurer before the close of the next succeeding business day after receipt of the money, except that money received with respect to the Income Tax Act [Chapter 7, Article 2 NMSA 1978] and the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] during the period starting with the fifth day prior to the due date for payment of the taxes for the year and ending on the tenth day following that due date shall be deposited before the close of the tenth business day after receipt of the money.

B. Money received or disbursed by the department shall be accounted for by the department as required by law or rule of the secretary of finance and administration.

C. Disbursements for tax credits, tax rebates, refunds, the payment of interest, the payment of fees charged by attorneys or collection agencies for collection of accounts as agent for the department, attorney fees and costs awarded by a court or hearing officer, as the result of oil and gas litigation, the payment of credit card service charges on payments of taxes by use of credit cards, distributions and transfers shall be made by the department of finance and administration upon request and certification of their appropriateness by the secretary or the secretary's delegate.

D. There are hereby created in the state treasury the "tax administration suspense fund", the "extraction taxes suspense fund" and the "workers' compensation collections suspense fund" for the purpose of making the disbursements authorized by the Tax Administration Act.

E. All revenues collected or received by the department pursuant to the provisions of the taxes and tax acts set forth in Subsection A of Section 7-1-2 NMSA 1978 shall be credited to the tax administration suspense fund and are appropriated for the purpose of making the disbursements authorized in this section or otherwise authorized or required by law to be made from the tax administration suspense fund.

F. All revenues collected or received by the department pursuant to the taxes or tax acts set forth in Subsection B of Section 7-1-2 NMSA 1978 shall be credited to the extraction taxes suspense fund and are appropriated for the purpose of making the disbursements authorized in this section or otherwise authorized or required by law to be made from the extraction taxes suspense fund.

G. All revenues collected or received by the department pursuant to the taxes or tax acts set forth in Subsection C of Section 7-1-2 NMSA 1978 may be credited to the tax administration suspense fund, unless otherwise directed by law to be credited to another fund or agency, and are appropriated for the purpose of making disbursements authorized in this section or otherwise authorized or required by law.

H. All revenues collected or received by the department pursuant to the provisions of Section 52-5-19 NMSA 1978 shall be credited to the workers' compensation

collections suspense fund and are appropriated for the purpose of making the disbursements authorized in this section or otherwise authorized or required by law to be made from the workers' compensation collections suspense fund.

I. Disbursements to cover expenditures of the department shall be made only upon approval of the secretary or the secretary's delegate.

J. Miscellaneous receipts from charges made by the department to defray expenses pursuant to the provisions of Section 9-11-6.1 NMSA 1978 and similar charges are appropriated to the department for its use.

K. From the tax administration suspense fund, there may be disbursed each month amounts approved by the secretary or the secretary's delegate necessary to maintain a fund hereby created and to be known as the "income tax suspense fund". The income tax suspense fund shall be used for the payment of income tax refunds.

History: Laws 1965, ch. 248, § 12; 1953 Comp., § 72-13-24; Laws 1966, ch. 53, § 1; 1969, ch. 147, § 1; 1970, ch. 57, § 1; 1975, ch. 263, § 8; 1977, ch. 247, § 182; 1977, ch. 315, § 2; reenacted by Laws 1978, ch. 55, § 1; 1979, ch. 144, § 6; 1979, ch. 284, § 4; 1981, ch. 37, § 7; 1981, ch. 215, § 3; 1982, ch. 18, § 4; 1983, ch. 211, § 5; 1985, ch. 65, § 5; 1986, ch. 20, § 6; 1988, ch. 72, § 1; 1989, ch. 325, § 2; 1990, ch. 86, § 2; 1992, ch. 55, § 3; 2001, ch. 230, § 1; 2009, ch. 242, § 1; 2017, ch. 63, § 7; 2021, ch. 65, § 2.

ANNOTATIONS

The 2021 amendment, effective July 1, 2021, provided the taxation and revenue department the same grace period for timely deposit of corporate income tax revenue during peak filing season that the department currently has for personal income tax, and removed an outdated provision related to federal funds from the temporary assistance to needy families program; in Subsection A, after "except that", deleted "for 1989 and every subsequent year", after "Income Tax Act", added "and the Corporate Income and Franchise Tax Act", and after "payment of", deleted "income tax" and added "the taxes"; and in Subsection E, deleted "and, through June 30, 2009, federal funds from the temporary assistance for needy families program pursuant to an agreement that the department and the human services department may enter into for the payment of tax refunds, tax rebates and tax credits to low-income families with dependent children otherwise authorized by state and federal law".

The 2017 amendment, effective June 16, 2017, in Subsection J, after "Section", changed "9-11-6.2" to "9-11-6.1".

The 2009 amendment, effective April 7, 2009, in Subsection A, after "laws administered", deleted "under" and added "pursuant to"; in Subsection E, after "tax acts", deleted "administered under" and added "set forth in", after "NMSA 1978", added "and, through June 30, 2009, federal funds from the temporary assistance for needy families program pursuant to an agreement that the department and the human services

department may enter into for the payment of tax refunds, tax rebates and tax credits to low-income families with dependent children otherwise authorized by state and federal law", and after "disbursements authorized", deleted "under" and added "in"; in Subsections F and G, after "tax acts", deleted "administered under" and added "set forth in", and after "disbursements authorized", deleted "under" and added "in"; and in Subsection H, after "disbursements authorized", deleted "under" and added "in".

The 2001 amendment, effective June 15, 2001, inserted "attorney fees and costs awarded by a court or hearing officer, as the result of oil and gas litigation" in Subsection C; deleted "other than amounts required to be credited to the oil and gas protested payments suspense fund" following "NMSA 1978" in Subsection E; and updated the internal reference in Subsection I.

The 1992 amendment, effective July 1, 1992, inserted "the payment of fees charged by attorneys or collection agencies for collection of accounts as agent for the department, the payment of credit card service charges on payments of taxes by use of credit cards" in the first sentence of Subsection C.

The 1990 amendment, effective July 1, 1990, deleted "other than the Uniform Disposition of Unclaimed Property Act" following "Section 7-1-2 NMSA 1978", added Subsection F, redesignated former Subsections F to I as Subsections G to J and, in Subsection I, substituted "Section 7-1-5 NMSA 1978" for "Sections 7-1-5 and 7-1-25 NMSA 1978".

The 1989 amendment, effective June 16, 1989, in Subsection A, added all of the language beginning "except that,"; in Subsection C, inserted "and the 'workers' compensation collections suspense fund'"; in Subsections D and E, deleted "of the Tax Administration Act" following "Section 7-1-2 NMSA 1978"; added Subsection F; and redesignated former Subsections F through H as Subsections G through I.

Law reviews. — For article, "Taxation of Electricity Generation: The Economic Efficiency and Equity Bases for Regionalism Within the Federal System," see 20 Nat. Resources J. 877 (1980).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 85 C.J.S. Taxation §§ 1654 to 1664.

7-1-6.1. Identification of money in tax administration suspense fund; distribution.

After the necessary disbursements have been made from the tax administration suspense fund, the money remaining, except for remittances received within the previous sixty days that are unidentified as to source or disposition, in the suspense fund as of the last day of the month shall be identified by tax source and distributed or transferred in accordance with the applicable provisions of the Tax Administration Act. After the necessary distributions and transfers, any balance shall be distributed to the general fund.

History: 1978 Comp., § 7-1-6.1, enacted by Laws 1983, ch. 211, § 6; 1985, ch. 154, § 1; 1986, ch. 20, § 7; 1990, ch. 6, § 19; 1990, ch. 86, § 3; 2007 (1st S.S.), ch. 2, § 9.

ANNOTATIONS

Repeals. — Laws 2007 (1st S.S.), ch. 2, § 11 repealed Laws 1990, ch. 6, § 19, effective June 28, 2007.

Cross references. — For the tax administration suspense fund, *see* 7-1-6 NMSA 1978.

For the general fund, *see* 6-4-2 NMSA 1978.

The 2007 amendment, effective June 28, 2007, eliminated the list of sections of the Tax Administration Act that govern distributions.

The 1990 amendment, effective July 1, 1990, substituted "Sections 7-1-6.2 through 7-1-6.19, 7-1-6.24 through 7-1-6.26 and 7-1-6.28 through 7-1-6.40 NMSA 1978" for "Sections 7-1-6.2 through 7-1-6.18 NMSA 1978" at the end of the first sentence.

7-1-6.2. Distribution; small cities assistance fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the small cities assistance fund in an amount equal to fifteen percent of the net receipts attributable to the compensating tax.

History: 1978 Comp., § 7-1-6.2, enacted by Laws 1983, ch. 211, § 7; 1984, ch. 25, § 2; 1988, ch. 129, § 2; 2012, ch. 5, § 3.

ANNOTATIONS

Cross references. — For distributions from small cities assistance fund, *see* 3-37A-3 NMSA 1978.

The 2012 amendment, effective January 1, 2013, increased the percentage of net receipts attributable to the compensating tax and after "in an amount equal to", deleted "ten" and added "fifteen".

Applicability. — Laws 2012, ch. 5, § 7 provided that the distribution pursuant to Laws 2012, ch. 5, § 3 applies to receipts from compensating taxes that are attributable to sales on or after January 1, 2013.

7-1-6.3. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 65, § 23, repealed 7-1-6.3 NMSA 1978, as enacted by Laws 1983, ch. 214, § 5, relating to distributions to the community alcoholism treatment and detoxification fund, effective July 1, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

7-1-6.4. Distribution; municipality from gross receipts tax.

A. Except as provided in Subsection B of this section, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each municipality in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the product of the quotient of one and two hundred twenty-five thousandths percent divided by the tax rate imposed by Section 7-9-4 NMSA 1978 multiplied by the net receipts, except net receipts attributable to a nonprofit hospital licensed by the department of health, for the month attributable to the gross receipts tax from business locations:

(1) within that municipality;

(2) on land owned by the state, commonly known as the "state fairgrounds", within the exterior boundaries of that municipality;

(3) outside the boundaries of any municipality on land owned by that municipality; and

(4) on an Indian reservation or pueblo grant in an area that is contiguous to that municipality and in which the municipality performs services pursuant to a contract between the municipality and the Indian tribe or Indian pueblo if:

(a) the contract describes an area in which the municipality is required to perform services and requires the municipality to perform services that are substantially the same as the services the municipality performs for itself; and

(b) the governing body of the municipality has submitted a copy of the contract to the secretary.

B. If the reduction made by Laws 1991, Chapter 9, Section 9 to the distribution under this section impairs the ability of a municipality to meet its principal or interest payment obligations for revenue bonds outstanding prior to July 1, 1991 that are secured by the pledge of all or part of the municipality's revenue from the distribution made under this section, then the amount distributed pursuant to this section to that municipality shall be increased by an amount sufficient to meet any required payment, provided that the distribution amount does not exceed the amount that would have been due that municipality under this section as it was in effect on June 30, 1992.

C. A distribution pursuant to this section may be adjusted for a distribution made to a tax increment development district with respect to a portion of a gross receipts tax

increment dedicated by a municipality pursuant to the Tax Increment for Development Act [Chapter 5, Article 15 NMSA 1978].

D. As used in this section, "nonprofit hospital" means a hospital that has been granted exemption from federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c)(3) of the Internal Revenue Code.

History: 1978 Comp., § 7-1-6.4, enacted by Laws 1983, ch. 211, § 9; 1991, ch. 9, § 9; 1992, ch. 42, § 1; 2006, ch. 75, § 30; 2019, ch. 270, § 3.

ANNOTATIONS

Compiler's note. — Laws 1991, ch. 9, § 9 referred to in Subsection B is compiled as 7-1-6.4 NMSA 1978.

The 2019 amendment, effective July 1, 2019, excluded net receipts attributable to a nonprofit hospital licensed by the department of health from the calculation of distributions from gross receipts tax to municipalities, and defined "nonprofit hospital" as used in this section; in Subsection A, after "net receipts", added "except net receipts attributable to a nonprofit hospital licensed by the department of health"; and added Subsection D.

The 2006 amendment, effective March 6, 2006, added Subsection C to provide an adjustment for a distribution to a tax increment development district.

The 1992 amendment, effective August 1, 1992, added the Subsection A designation at the beginning of the formerly undesignated introductory paragraph and added "Except as provided in Subsection B of this section" at the beginning of the paragraph, redesignated former Subsections A to D as Paragraphs (1) to (4) of Subsection A, revised the subparagraph designations in Subsection A(4), and added Subsection B.

The 1991 amendment, effective August 1, 1992, substituted "one and two-hundred-twenty-five-thousandths" for "one and thirty-five hundredths" in the first paragraph; substituted "secretary" for "director" at the end of Paragraph (2) of Subsection D; and made a minor stylistic change in Subsection D.

7-1-6.5. Distribution; small counties assistance fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the small counties assistance fund in an amount equal to ten percent of the net receipts attributable to the compensating tax.

History: 1978 Comp., § 7-1-6.5, enacted by Laws 1983, ch. 211, § 10; 1983, ch. 214, § 6; 1984, ch. 24, § 2.

ANNOTATIONS

Cross references. — For distributions from small counties assistance fund, *see* 4-61-3 NMSA 1978.

Compiler's notes. — Laws 1983, ch. 211, § 10, and Laws 1983, ch. 214, § 6, both enacted the above section. However, Laws 1983, ch. 211, § 10, provided for a distribution in an amount equal to two percent of the net receipts. Both acts were approved on April 6, 1983. The section was set out as enacted by Laws 1983, ch. 214, § 6. *See* 12-1-8 NMSA 1978.

7-1-6.6. Distribution; game protection fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the game protection fund of all amounts designated as contributions to that fund under the provisions of Section 7-2-24 NMSA 1978.

History: 1978 Comp., § 7-1-6.6, enacted by Laws 1983, ch. 211, § 11.

ANNOTATIONS

Effective dates. — Laws 1983, ch. 211, § 43 made Laws 1983, ch. 211, § 11 effective July 1, 1983.

7-1-6.7. Distributions; state aviation fund.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state aviation fund in an amount equal to four and seventy-nine hundredths percent of the taxable gross receipts attributable to the sale of fuel specially prepared and sold for use in turboprop or jet-type engines as determined by the department.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state aviation fund in an amount equal to twenty-six hundredths percent of gasoline taxes, exclusive of penalties and interest, collected pursuant to the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978].

C. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state aviation fund in an amount equal to forty-six thousandths percent of the net receipts attributable to the gross receipts tax distributable to the general fund.

D. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state aviation fund from the net receipts attributable to the gross receipts tax distributable to the general fund in an amount equal to five hundred thousand dollars ($500,000) monthly.

History: 1978 Comp., § 7-1-6.7, enacted by Laws 1994, ch. 5, § 2; 1995, ch. 6, § 1; 1995, ch. 36, § 1; 2001, ch. 198, § 1; 2003, ch. 214, § 1; 2004, ch. 58, § 1; 2007, ch. 297, § 1; 2007, ch. 298, § 1; 2013, ch. 19, § 1; 2016, ch. 87, § 1; 2020, ch. 30, § 1; 2023, ch. 52, § 1.

ANNOTATIONS

Cross references. — For the general fund, *see* 6-4-2 NMSA 1978.

For state aviation fund, *see* 64-1-15 NMSA 1978.

Repeals and reenactments. — Laws 1994, ch. 5, § 2 repealed former 7-1-6.7 NMSA 1978, and enacted a new section, effective August 1, 1995.

Compiler's notes. — Laws 1995, ch. 36, § 2, effective June 16, 1995, repealed Laws 1993, ch. 364, § 4, which had repealed former 7-1-6.7 NMSA 1978, as amended by Laws 1993, ch. 364, § 3, effective July 1, 1995.

Subsection A of Laws 1995, ch. 6, § 20 repealed 7-1-6.7 NMSA 1978, as enacted by Laws 1994, ch. 5, § 3, which was to become effective August 1, 1997, effective June 16, 1995.

The 2023 amendment, effective July 1, 2023, removed a sunset date of a distribution of the gross receipts tax to the state aviation fund; increased the monthly distribution from the gross receipts tax to the state aviation fund; in Subsection C, deleted "From July 1, 2013 through June 30, 2031"; and in Subsection D, deleted former Paragraphs D(1) through D(3) and added "five hundred thousand dollars ($500,000) monthly".

The 2020 amendment, effective July 1, 2020, in Subsection C, after "June 30", deleted "2021" and added "2031".

The 2016 amendment, effective July 1, 2016, extended to the year 2021 the distribution of the general fund gross receipts tax to the state aviation fund; and in Subsection C, changed "June 30, 2018" to "June 30, 2021".

The 2013 amendment, effective July 1, 2013, continued the distribution of forty-six thousandths percent of the gross receipts tax distributable to the general fund during the period from July 1, 2013 through June 30, 2018; and in Subsection C, at the beginning of the sentence, deleted "From July 1, 2002 through June 30, 2012" and added "From July 1, 2013 through June 30, 2018, a".

The 2007 amendment, effective July 1, 2007, in Subsection C, changed the ending date of the period in which distributions are made to the state aviation fund to June 30, 2012 and added Subsection D.

The 2004 amendments, effective March 4, 2004, amended Subsection A to change "four and thirty-one hundredths" to "four and seventy-nine hundredths" percent.

The 2003 amendment, effective August 1, 2003 substituted "four and thirty-one hundredths percent of the taxable" for "three and fifty-nine hundredths percent of the" near the middle of Subsection A.

The 2001 amendment, effective April 3, 2001, added Subsection C.

The 1995 amendment, effective August 1, 1995, substituted "three and fifty nine hundredths percent" for "two and fifteen hundredths percent" in Subsection A.

7-1-6.8. Distribution; motorboat fuel tax fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the motorboat fuel tax fund in an amount equal to thirteen hundredths of one percent of the net receipts attributable to the gasoline tax.

History: 1978 Comp., § 7-1-6.8, enacted by Laws 1983, ch. 211, § 13; 1987, ch. 347, § 7; 1988, ch. 72, § 3; 1988, ch. 73, § 3; 1989, ch. 356, § 3; 1993, ch. 357, § 2; 1994, ch. 5, § 4; 1995, ch. 6, § 2.

ANNOTATIONS

Cross references. — For Gasoline Tax Act, *see* 7-13-1 NMSA 1978 et seq.

For motor boat fuel fund, *see* 16-2-19.1 NMSA 1978.

Compiler's notes. — Subsection A of Laws 1995, ch. 6, § 20 repealed 7-1-6.8 NMSA 1978 as enacted by Laws 1994, ch. 5, § 5, relating to distributions to the motorboat fuel tax fund and which was to become effective August 1, 1997, effective June 16, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

The 1995 amendment, effective August 1, 1995, substituted "thirteen hundredth" for "eleven hundredths".

The 1994 amendment, effective August 1, 1994, substituted "eleven hundredths" for "one tenth".

The 1993 amendment, effective August 1, 1993, substituted "one-tenth of one percent" for "fourteen one-hundredths of one percent".

The 1989 amendment, effective August 1, 1989, substituted "equal to fourteen one hundredths" for "equal to sixteen one hundredths".

7-1-6.9. Distribution of gasoline taxes to municipalities and counties.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made in an amount equal to ten and thirty-eight hundredths percent of the net receipts attributable to the taxes, exclusive of penalties and interest, imposed by the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978].

B. The amount determined in Subsection A of this section shall be distributed as follows:

(1) ninety percent of the amount shall be paid to the treasurers of municipalities and H class counties in the proportion that the taxable motor fuel sales in each of the municipalities and H class counties bears to the aggregate taxable motor fuel sales in all of these municipalities and H class counties; and

(2) ten percent of the amount shall be paid to the treasurers of the counties, including H class counties, in the proportion that the taxable motor fuel sales outside of incorporated municipalities in each of the counties bears to the aggregate taxable motor fuel sales outside of incorporated municipalities in all of the counties.

C. Except as provided in Subsection D of this section, this distribution shall be paid into a separate road fund in the municipal treasury or county road fund for expenditure only for construction, reconstruction, resurfacing or other improvement or maintenance of public roads, streets, alleys or bridges, including right-of-way and materials acquisition. Money distributed pursuant to this section may be used by a municipality or county to provide matching funds for projects subject to cooperative agreements entered into with the department of transportation pursuant to Section 67-3-28 NMSA 1978. Any municipality or H class county that has created or that creates a "street improvement fund" to which gasoline tax revenues or distributions are irrevocably pledged under Sections 3-34-1 through 3-34-4 NMSA 1978 or that has pledged all or a portion of gasoline tax revenues or distributions to the payment of bonds shall receive its proportion of the distribution of revenues under this section impressed with and subject to these pledges.

D. This distribution may be paid into a separate road fund or the general fund of the municipality or county if the municipality has a population less than three thousand or the county has a population less than four thousand.

History: 1978 Comp., § 7-1-6.9, enacted by Laws 1991, ch. 9, § 11; 1993, ch. 357, § 3; 1994, ch. 5, § 6; 1995, ch. 6, § 3; 1999, ch. 212, § 1; 2001, ch. 171, § 1; 2017, ch. 63, § 8.

ANNOTATIONS

Cross references. — For the general fund, *see* 6-4-2 NMSA 1978.

Repeals and reenactments. — Laws 1991, ch. 9, § 11 repealed former 7-1-6.9 NMSA 1978, as amended by Laws 1991, ch. 9, § 10 and enacted a new section, effective July 1, 1992.

Compiler's notes. — Laws 1995, ch. 6, § 20 repealed 7-1-6.9 NMSA 1978, as enacted by Laws 1994, ch. 5, § 7, relating to distribution of gasoline taxes to municipalities and counties and which was to become effective August 1, 1997, effective June 16, 1995.

The 2017 amendment, effective June 16, 2017, made technical changes; in Subsection B, deleted "Except as provided in Subsection D of this section"; and in Subsection C, added "Except as provided in Subsection D of this section", after "agreements entered into with the", deleted "state highway and" and added "department of", and after "transportation", deleted "department".

The 2001 amendment, effective June 15, 2001, inserted "Except as provided in Subsection D of this section" at the beginning of Subsection B; and added Subsection D.

The 1999 amendment, effective August 1, 1999, in Subsection C inserted "a separate road fund in", substituted "road fund" for "general fund", substituted the language beginning "expenditure only" to the end of the first sentence for "general purposes or for any special purposes designated by the governing body of the municipality or county", and added the second sentence.

The 1995 amendment, effective August 1, 1995, substituted "ten and thirty-eight hundredth" for "eight and eighty-two hundredth" in Subsection A.

The 1994 amendment, effective August 1, 1994, substituted "eight and eighty-two hundredths" for "eight and two-hundredths" in Subsection A.

The 1993 amendment, effective August 1, 1993, substituted "eight and two-hundredths percent" for "eleven and three-hundredths percent" in Subsection A.

7-1-6.10. Distributions; state road fund.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state road fund in an amount equal to the net receipts attributable to the taxes, surcharges, penalties and interest imposed pursuant to the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978] and to the taxes, surtaxes, fees, penalties and interest imposed pursuant to the Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978] and the Alternative Fuel Tax Act [7-16B-1 to 7-16B-10 NMSA 1978] less:

(1) the amount distributed to the state aviation fund pursuant to Subsection B of Section 7-1-6.7 NMSA 1978;

(2) the amount distributed to the motorboat fuel tax fund pursuant to Section 7-1-6.8 NMSA 1978;

(3) the amount distributed to municipalities and counties pursuant to Subsection A of Section 7-1-6.9 NMSA 1978;

(4) the amount distributed to the county government road fund pursuant to Section 7-1-6.19 NMSA 1978;

(5) the amount distributed to the local governments road fund pursuant to Section 7-1-6.39 NMSA 1978;

(6) the amount distributed to the municipalities pursuant to Section 7-1-6.27 NMSA 1978;

(7) the amount distributed to the municipal arterial program of the local governments road fund pursuant to Section 7-1-6.28 NMSA 1978;

(8) the amount distributed to a qualified tribe pursuant to a gasoline tax sharing agreement entered into between the secretary of transportation and the qualified tribe pursuant to the provisions of Section 67-3-8.1 NMSA 1978; and

(9) the amount distributed to the general fund pursuant to Section 7-1-6.44 NMSA 1978.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state road fund in an amount equal to the net receipts attributable to the taxes, interest and penalties from the Weight Distance Tax Act [Chapter 7, Article 15A NMSA 1978].

History: 1978 Comp., § 7-1-6.10, enacted by Laws 1983, ch. 211, § 15; 1987, ch. 347, § 9; 1988, ch. 70, § 8; 1988, ch. 73, § 5; 1989, ch. 356, § 5; 1990, ch. 86, § 4; 1992, ch. 55, § 4; 1993, ch. 272, § 1; 1993, ch. 357, § 4; 1994, ch. 5, § 8; 1995, ch. 6, § 4; 1995, ch. 16, § 11; 1996, ch. 15, § 2; 2003, ch. 150, § 1; 2003 (1st S.S.), ch. 3, § 1; 2004, ch. 109, § 1.

ANNOTATIONS

The 2004 amendment, effective July 1, 2004, added Paragraph (9) of Subsection A.

The 2003 (1st S.S.) amendment, effective July 1, 2004, deleted "highway and" following "secretary of" in Paragraph (8) of Subsection A, and "fees," preceding "interest and penalties" in Subsection B.

The 2003 amendment, effective July 1, 2003, deleted "Special Fuels Tax Act" in from the first paragraph in Subsection A, and added Paragraph (A)(8).

7-1-6.11. Distributions of cigarette taxes.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the board of regents of the university of New Mexico for the benefit of the comprehensive cancer center at the university of New Mexico health sciences center in an amount equal to seventy-one hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to seven and fifty-two hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax, shall be made on behalf of and for the benefit of the university of New Mexico health sciences center for its comprehensive cancer center, until payment of all principal, interest and other expenses or obligations related to the bonds authorized pursuant to Section 3 [6-21-6.15 NMSA 1978] of this 2021 act and the New Mexico finance authority certifies to the secretary of taxation and revenue that all obligations for the bonds have been fully discharged, to the credit enhancement account.

C. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to three and seventeen hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax shall be made to the New Mexico finance authority for land acquisition and the planning, designing, construction and equipping of department of health facilities or improvements to such facilities.

D. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to eight and twenty-six hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax shall be made to the New Mexico finance authority for deposit in the credit enhancement account created in the authority.

E. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to fifty-three hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax shall be made, on behalf of and for the benefit of the rural county cancer treatment fund, to the New Mexico finance authority.

History: 1978 Comp., § 7-1-6.11, enacted by Laws 1983, ch. 211, § 16; 1985, ch. 25, § 3; 1986, ch. 13, § 1; 1993, ch. 358, § 1; 2003, ch. 341, § 1; 2005, ch. 320, § 6; 2006, ch. 89, § 2; 2010 (2nd S.S.), ch. 5, § 1; 2017, ch. 34, § 2; 2017, ch. 63, § 9; 2019, ch. 270, § 4; 2021, ch. 72, § 2.

ANNOTATIONS

Cross references. — For the county and municipality recreation fund, *see* 7-12-15 NMSA 1978.

For the county and municipal cigarette tax fund, *see* 7-12-16 NMSA 1978.

For medical trust fund for cancer and other research, *see* 24-20-1 NMSA 1978.

The 2021 amendment, effective June 18, 2021, authorized a distribution from cigarette tax revenue bonds for the purpose of completing the final phase 2 expansion at the comprehensive cancer center at the university of New Mexico health sciences center, and provided that the distribution shall be made until the bonds have been paid off; in Subsection A, after "made to the", added "board of regents of the university of New Mexico for the benefit of the"; and in Subsection B, after "university of New Mexico health sciences center", deleted "to the New Mexico finance authority" and added the remainder of the subsection.

The 2019 amendment, effective July 1, 2019, modified the amount of distributions from the cigarette tax; in Subsection A, after "equal to", deleted "eighty-three" and added "seventy-one"; in Subsection B, after "equal to", deleted "eight and eighty-nine" and added "seven and fifty-two"; in Subsection C, after "equal to three and", deleted "seventy-four" and added "seventeen"; in Subsection D, after "amount equal to", deleted "nine and seventy-seven" and added "eight and twenty-six"; and in Subsection E, after "amount equal to", deleted "sixty-two" and added "fifty-three".

2017 Amendments. — Laws 2017, ch. 63, § 9, effective June 16, 2017, amended a provision that designated funds from the cigarette tax to reflect the comprehensive designation and new name of the cancer center at the university of New Mexico health sciences center, and made technical changes; redesignated former Subsections C through H as Subsections A through F, respectively; and in Subsection A, after "shall be made to the", added "comprehensive", and after "cancer", deleted "research and treatment".

Laws 2017, ch. 34, § 2, effective February 1, 2018, eliminated a distribution of the cigarette tax to the New Mexico finance authority; designated former Subsection C as Subsection A; deleted former Subsection D, which directed that a 1.25 percent distribution from cigarette tax revenues be made to the New Mexico finance authority; and redesignated former Subsections E through H as Subsections B through E, respectively.

Contingent effective date. — Laws 2017, ch. 34, § 3 provided that the provisions of this act is the later of:

A. November 1, 2017; or

B. the first day of the month following the day the chief executive officer of the New Mexico finance authority certifies to the secretary of taxation and revenue, the secretary of finance and administration, the legislative council service and the New Mexico compilation commission that the bonds issued pursuant to Section 6-21-6.10 NMSA 1978 have been discharged in full and the distribution pursuant to Subsection D of Section 7-1-6.11 NMSA 1978 is no longer needed to pay debt service, as that subsection was in effect prior to the effective date of this act.

Pursuant to Laws 2017, ch. 34, § 3, the effective date of Laws 2017, ch. 34, §§ 1 and 2 is February 1, 2018. On January 30, 2018, the New Mexico finance authority certified that the bonds issued pursuant to Section 6-21-6.10 NMSA 1978 have been discharged in full and the distribution pursuant to Subsection D of Section 7-1-6.11 NMSA 1978 is no longer needed to pay debt service.

The 2010 (2nd S. S.) amendment, effective July 1, 2010, in Subsection C, changed the amount of the distribution of net receipts from one and thirty-five hundredths percent to eighty-three hundredths percent; in Subsection D, changed the amount of the distribution of net receipts from two and two hundredths percent to one and twenty-five hundredths percent; in Subsection E, changed the amount of the distribution of net receipts from fourteen and thirty-seven hundredths percent to eight and eighty-nine hundredths percent; in Subsection F, changed the amount of the distribution of net receipts from six and five hundredths percent to three and seventy-four hundredths percent; in Subsection G, changed the amount of the distribution of net receipts from fifteen and seventy-nine hundredths percent to nine and seventy-seven hundredths percent; and in Subsection H, changed the amount of the distribution of net receipts from one percent to sixty-two hundredths percent.

Applicability. — Laws 2010 (2nd S.S.), ch. 5, § 27 provided that the distributions pursuant to the provisions of Laws 2010 (2nd S.S.), ch. 5, § 1 apply to receipts from the cigarette tax that are attributable to sales that occur on or after July 1, 2010.

The 2006 amendment, effective May 17, 2006, reduced the cigarette tax distribution in Subsections A through G; and added Subsection H to provide for a one percent distribution, for the benefit of the rural county cancer treatment fund, to the New Mexico finance authority.

The 2005 amendment, effective June 17, 2005, provided in Subsection F that the distribution shall be made to land acquisition and the planning, designing, construction and equipping and making improvements to department of health facilities.

The 2003 amendment, effective August 1, 2003, in Subsection A and C, substituted "one and thirty-six hundredths" for "four and three-quarters"; in Subsection B, substituted "two and seventy-two hundredths" for "nine and one-half"; in Subsection C, inserted "research and treatment" and substituted "health sciences center" for "school of medicine"; in Subsection D, substituted "two and four-hundredths" for "seven and one-eighth"; and added Subsections E, F, and G.

The 1993 amendment, effective August 1, 1993, deleted "to municipalities, counties and dedicated health research fund" from the end of the catchline; substituted "four and three-quarters percent" for "one-fifteenth" in Subsection A; substituted "nine and one-half percent" for "two-fifteenths" in Subsection B; and substituted "the cancer center at the university of New Mexico school of medicine" for "dedicated health research fund" and "four and three-quarters percent" for "three-fifteenths" in Subsection C.

7-1-6.12. Transfer; revenues from municipal local option gross receipts and compensating taxes.

A. A transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each municipality for which the department is collecting a local option gross receipts tax and municipal compensating tax imposed by that municipality in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the net receipts attributable to the local option gross receipts tax and municipal compensating tax imposed by that municipality, less any deduction for administrative cost determined and made by the department pursuant to the provisions of the act authorizing imposition by that municipality of the local option gross receipts tax and municipal compensating tax and any additional administrative fee withheld pursuant to Section 7-1-6.41 NMSA 1978.

B. A transfer pursuant to this section may be adjusted for a distribution made to a tax increment development district with respect to a portion of a gross receipts tax increment dedicated by a municipality pursuant to the Tax Increment for Development Act [Chapter 5, Article 15 NMSA 1978].

C. A transfer pursuant to this section shall be adjusted for a distribution made to the Local Economic Development Act [Chapter 5, Article 10 NMSA 1978] fund pursuant to Section 5 [7-1-6.67 NMSA 1978] of this 2021 act and with respect to the amount dedicated by a municipality pursuant to Subsection B of Section 2 [5-10-17 NMSA 1978] of this 2021 act.

History: 1978 Comp., § 7-1-6.12, enacted by Laws 1983, ch. 211, § 17; 1986, ch. 20, § 8; 1990, ch. 99, § 46; 1991, ch. 9, § 12; 1993, ch. 30, § 1; 1997, ch. 125, § 2; 2006, ch. 75, § 31; 2019, ch. 270, § 5; 2021 (1st S.S.), ch. 2, § 3.

ANNOTATIONS

Cross references. — For the solid waste facility grant fund, *see* 74-9-41 NMSA 1978.

The 2021 (1st S.S.) amendment, effective April 7, 2021, provided transfers and distributions of a portion of municipal local option gross receipts and compensating tax revenue to the Local Economic Development Act fund; and added Subsection C.

The 2019 amendment, effective July 1, 2019, included municipal compensating tax with the local option gross receipts tax, the revenues of which are used to make transfers to each municipality; in the section heading, added "and compensating"; and in Subsection A, after each occurrence of "local option gross receipts", added "tax and municipal compensating", and after "pursuant to", deleted "Subsection C of".

The 2006 amendment, effective March 6, 2006, added Subsection B to provide an adjustment for a distribution to a tax increment development district.

The 1997 amendment, effective July 1, 1997, added the language beginning "and any additional administrative".

The 1993 amendment, effective June 18, 1993, inserted "local option" in the catchline and rewrote this section to the extent that a detailed comparison is impracticable.

7-1-6.12. Transfer; revenues from municipal local option gross receipts and compensating taxes. (Effective July 1, 2024.)

A. A transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each municipality for which the department is collecting a local option gross receipts tax and municipal compensating tax imposed by that municipality in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the net receipts attributable to the local option gross receipts tax and municipal compensating tax imposed by that municipality, less any deduction for administrative cost determined and made by the department pursuant to the provisions of the act authorizing imposition by that municipality of the local option gross receipts tax and municipal compensating tax and any additional administrative fee withheld pursuant to Section 7-1-6.41 NMSA 1978.

B. A transfer pursuant to this section may be adjusted for a distribution made to a tax increment development district with respect to a portion of a gross receipts tax increment dedicated by a municipality pursuant to the Tax Increment for Development Act [Chapter 5, Article 15 NMSA 1978].

C. A transfer pursuant to this section shall be adjusted for a distribution made to the Local Economic Development Act fund [5-10-14 NMSA 1978] pursuant to Section 7-1-6.67 NMSA 1978 and with respect to the amount dedicated by a municipality pursuant to Subsection B of Section 5-10-17 NMSA 1978.

D. A transfer pursuant to this section shall be adjusted for a distribution made to the metropolitan redevelopment fund pursuant to Section 11 [7-1-6.71 NMSA 1978] of this 2023 act and with respect to the amount dedicated by a municipality pursuant to Section 3-60A-23 NMSA 1978.

History: *1978 Comp., § 7-1-6.12, enacted by Laws 1983, ch. 211, § 17; 1986, ch. 20, § 8; 1990, ch. 99, § 46; 1991, ch. 9, § 12; 1993, ch. 30, § 1; 1997, ch. 125, § 2; 2006, ch. 75, § 31; 2019, ch. 270, § 5; 2021 (1st S.S.), ch. 2, § 3; 2023, ch. 112, § 12.*

ANNOTATIONS

The 2023 amendment, *effective July 1, 2024, provided that a transfer pursuant to this section shall be adjusted for a distribution made to the metropolitan redevelopment fund; in Subsection C, changed "5 of this 2021 act" to "7-1-6.67 NMSA 1978" changed "2 of this 2021 act" to "5-10-17 NMSA 1978"; and added Subsection D.*

7-1-6.13. Transfer; revenues from county local option gross receipts and compensating taxes.

A. A transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each county for which the department is collecting a local option gross receipts tax and county compensating tax imposed by that county in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the net receipts attributable to the local option gross receipts tax and county compensating tax imposed by that county, less any deduction for administrative cost determined and made by the department pursuant to the provisions of the act authorizing imposition by that county of the local option gross receipts tax and county compensating tax and any additional administrative fee withheld pursuant to Section 7-1-6.41 NMSA 1978.

B. A transfer pursuant to this section may be adjusted for a distribution made to a tax increment development district with respect to a portion of a gross receipts tax increment dedicated by a county pursuant to the Tax Increment for Development Act [Chapter 5, Article 15 NMSA 1978].

C. A transfer pursuant to this section shall be adjusted for a distribution made to the Local Economic Development Act [Chapter 5, Article 10 NMSA 1978] fund pursuant to Section 5 [7-1-6.67 NMSA 1978] of this 2021 act and with respect to the amount dedicated by a county pursuant to Subsection B of Section 2 [5-10-17 NMSA 1978] of this 2021 act.

History: 1978 Comp., § 7-1-6.13, enacted by Laws 1983, ch. 211, § 18; 1986, ch. 20, § 9; 1987, ch. 45, § 9; 1989, ch. 326, § 11; 1990, ch. 99, § 47; 1991, ch. 176, § 16; 1993, ch. 30, § 2; 1997, ch. 125, § 3; 2003, ch. 205, § 1; 2005, ch. 338, § 1; 2006, ch. 75, § 32; 2008, ch. 51, § 1; 2014, ch. 79, § 1; 2019, ch. 270, § 6; 2021 (1st S.S.), ch. 2, § 4.

ANNOTATIONS

The 2021 (1st S.S.) amendment , effective April 7, 2021, provided transfers and distributions of a portion of county local option gross receipts and compensating tax revenue to the Local Economic Development Act fund; and added Subsection C.

The 2019 amendment, effective July 1, 2019, included county compensating tax with the local option gross receipts tax, the revenues of which are used to make transfers to each county; in the section heading, added "and compensating"; and in Subsection A, after each occurrence of "local option gross receipts", added "tax and county compensating", and after "pursuant to", deleted "Subsection C of".

The 2014 amendment, effective March 12, 2014, eliminated the distribution to the sole community provider fund; in Subsection A, after "Except as provided in", deleted "Subsections" and added "Subsection", and after "Subsection B", deleted "and C"; and deleted former Subsection C, which provided for a distribution to the sole community provider fund from the county gross receipts tax through June 30, 2009.

The 2008 amendment, effective February 28, 2008, added Subsection C.

The 2006 amendment, effective March 6, 2006, added Subsection B to provide an adjustment for a distribution to a tax increment development district.

The 2005 amendment, effective July 1, 2005, deleted former Subsection B which provided for a distribution of local option gross receipts tax and special county hospital gross receipts tax to the largest municipality in certain class B counties for hospital purposes.

The 2003 amendment, effective July 1, 2003, in Subsection A, inserted "Except as provided in Subsection B of this section" at the beginning, substituted "7-1-6.41 NMSA 1978" for "1 of this 1997 act" at the end; and added Subsection B.

The 1997 amendment, effective July 1, 1997, added the language beginning "and any additional administrative".

The 1993 amendment, effective June 18, 1993, inserted "local option" in the section heading and rewrote this section to the extent that a detailed comparison is impracticable.

7-1-6.13. Transfer; revenues from county local option gross receipts and compensating taxes. (Effective July 1, 2024.)

A. A transfer pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each county for which the department is collecting a local option gross receipts tax and county compensating tax imposed by that county in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the net receipts attributable to the local option gross receipts tax and county compensating tax imposed by that county, less any deduction for administrative cost determined and made by the department pursuant to the provisions of the act authorizing imposition by that county of the local option gross receipts tax and county compensating tax and any additional administrative fee withheld pursuant to Section 7-1-6.41 NMSA 1978.

B. A transfer pursuant to this section may be adjusted for a distribution made to a tax increment development district with respect to a portion of a gross receipts tax increment dedicated by a county pursuant to the Tax Increment for Development Act [Chapter 5, Article 15 NMSA 1978].

C. A transfer pursuant to this section shall be adjusted for a distribution made to the Local Economic Development Act fund [5-10-14 NMSA 1978] pursuant to Section 7-1-6.67 NMSA 1978 and with respect to the amount dedicated by a county pursuant to Subsection B of Section 5-10-17 NMSA 1978.

D. A transfer pursuant to this section shall be adjusted for a distribution made to the metropolitan redevelopment fund pursuant to Section 11 [7-1-6.71 NMSA 1978] of this

2023 act and with respect to the amount dedicated by a county pursuant to Section 3-60A-23 NMSA 1978.

History: *1978 Comp., § 7-1-6.13, enacted by Laws 1983, ch. 211, § 18; 1986, ch. 20, § 9; 1987, ch. 45, § 9; 1989, ch. 326, § 11; 1990, ch. 99, § 47; 1991, ch. 176, § 16; 1993, ch. 30, § 2; 1997, ch. 125, § 3; 2003, ch. 205, § 1; 2005, ch. 338, § 1; 2006, ch. 75, § 32; 2008, ch. 51, § 1; 2014, ch. 79, § 1; 2019, ch. 270, § 6; 2021 (1st S.S.), ch. 2, § 4; 2023, ch. 112, § 13.*

ANNOTATIONS

The 2023 amendment, *effective July 1, 2024, provided that a transfer pursuant to this section shall be adjusted for a distribution made to the metropolitan redevelopment fund; in Subsection C, changed "5 of this 2021 act" to "7-1-6.67 NMSA 1978" and changed "2 of this 2021 act" to "5-10-17 NMSA 1978"; and added Subsection D.*

7-1-6.14. Repealed.

ANNOTATIONS

Repeals. — Laws 1990, ch. 88, § 21 repealed 7-1-6.14 NMSA 1978, as enacted by Laws 1983, ch. 211, § 19, relating to transfers to counties or municipalities of amounts of net receipts attributable to county or municipal gasoline tax, effective May 16, 1990. For provisions of former section, *see* the 1989 NMSA on *NMOneSource.com.*

7-1-6.15. Adjustments of distributions or transfers to municipalities or counties.

A. The provisions of this section apply to:

(1) any distribution to a municipality pursuant to Section 7-1-6.4, 7-1-6.36 or 7-1-6.46 NMSA 1978;

(2) any transfer to a municipality with respect to any local option gross receipts tax imposed by that municipality;

(3) any transfer to a county with respect to any local option gross receipts tax imposed by that county;

(4) any distribution to a county pursuant to Section 7-1-6.16 or 7-1-6.47 NMSA 1978;

(5) any distribution to a municipality or a county of gasoline taxes pursuant to Section 7-1-6.9 NMSA 1978;

(6) any transfer to a county with respect to any tax imposed in accordance with the Local Liquor Excise Tax Act [7-24-8 to 7-24-16 NMSA 1978];

(7) any distribution to a county from the county government road fund pursuant to Section 7-1-6.26 NMSA 1978;

(8) any distribution to a municipality of gasoline taxes pursuant to Section 7-1-6.27 NMSA 1978;

(9) any distribution to a municipality of compensating taxes pursuant to Section 7-1-6.55 NMSA 1978; and

(10) any distribution to a municipality or a county of cannabis excise taxes pursuant to the Cannabis Tax Act.

B. Before making a distribution or transfer specified in Subsection A of this section to a municipality or county for the month, amounts comprising the net receipts shall be segregated into two mutually exclusive categories. One category shall be for amounts relating to the current month, and the other category shall be for amounts relating to prior periods. The total of each category for a municipality or county shall be reported each month to that municipality or county. If the total of the amounts relating to prior periods is less than zero and its absolute value exceeds the greater of one hundred dollars ($100) or an amount equal to twenty percent of the average distribution or transfer amount for that municipality or county, then the following procedures shall be carried out:

(1) all negative amounts relating to any period prior to the three calendar years preceding the year of the current month, net of any positive amounts in that same time period for the same taxpayers to which the negative amounts pertain, shall be excluded from the total relating to prior periods. Except as provided in Paragraph (2) of this subsection, the net receipts to be distributed or transferred to the municipality or county shall be adjusted to equal the amount for the current month plus the revised total for prior periods; and

(2) if the revised total for prior periods determined pursuant to Paragraph (1) of this subsection is negative and its absolute value exceeds the greater of one hundred dollars ($100) or an amount equal to twenty percent of the average distribution or transfer amount for that municipality or county, the revised total for prior periods shall be excluded from the distribution or transfers and the net receipts to be distributed or transferred to the municipality or county shall be equal to the amount for the current month.

C. The department shall recover from a municipality or county the amount excluded by Paragraph (2) of Subsection B of this section. This amount may be referred to as the "recoverable amount".

D. Prior to or concurrently with the distribution or transfer to the municipality or county of the adjusted net receipts, the department shall notify the municipality or county whose distribution or transfer has been adjusted pursuant to Paragraph (2) of Subsection B of this section:

(1) that the department has made such an adjustment, that the department has determined that a specified amount is recoverable from the municipality or county and that the department intends to recover that amount from future distributions or transfers to the municipality or county;

(2) that the municipality or county has ninety days from the date notice is made to enter into a mutually agreeable repayment agreement with the department;

(3) that if the municipality or county takes no action within the ninety-day period, the department will recover the amount from the next six distributions or transfers following the expiration of the ninety days; and

(4) that the municipality or county may inspect, pursuant to Section 7-1-8.9 NMSA 1978, an application for a claim for refund that gave rise to the recoverable amount, exclusive of any amended returns that may be attached to the application.

E. No earlier than ninety days from the date notice pursuant to Subsection D of this section is given, the department shall begin recovering the recoverable amount from a municipality or county as follows:

(1) the department may collect the recoverable amount by:

(a) decreasing distributions or transfers to the municipality or county in accordance with a repayment agreement entered into with the municipality or county; or

(b) except as provided in Paragraphs (2) and (3) of this subsection, if the municipality or county fails to act within the ninety days, decreasing the amount of the next six distributions or transfers to the municipality or county following expiration of the ninety-day period in increments as nearly equal as practicable and sufficient to recover the amount;

(2) if, pursuant to Subsection B of this section, the secretary determines that the recoverable amount is more than fifty percent of the average distribution or transfer of net receipts for that municipality or county, the secretary:

(a) shall recover only up to fifty percent of the average distribution or transfer of net receipts for that municipality or county; and

(b) may, in the secretary's discretion, waive recovery of any portion of the recoverable amount, subject to approval by the state board of finance; and

(3) if, after application of a refund claim, audit adjustment, correction of a mistake by the department or other adjustment of a prior period, but prior to any recovery of the department pursuant to this section, the total net receipts of a municipality or county for the twelve-month period beginning with the current month are reduced or are projected to be reduced to less than fifty percent of the average distribution or transfer of net receipts, the secretary may waive recovery of any portion of the recoverable amount, subject to approval by the state board of finance.

F. No later than ninety days from the date notice pursuant to Subsection D of this section is given, the department shall provide the municipality or county adequate opportunity to review an application for a claim for refund that gave rise to the recoverable amount, exclusive of any amended returns that may be attached to the application, pursuant to Section 7-1-8.9 NMSA 1978.

G. On or before September 1 of each year beginning in 2016, the secretary shall report to the state board of finance and the legislative finance committee the total recoverable amount waived pursuant to Subparagraph (b) of Paragraph (2) and Paragraph (3) of Subsection E of this section for each municipality and county in the prior fiscal year.

H. The secretary is authorized to decrease a distribution or transfer to a municipality or county upon being directed to do so by the secretary of finance and administration pursuant to the State Aid Intercept Act [6-22-1 to 6-22-3 NMSA 1978] or to redirect a distribution or transfer to the New Mexico finance authority pursuant to an ordinance or a resolution passed by the county or municipality and a written agreement of the municipality or county and the New Mexico finance authority. Upon direction to decrease a distribution or transfer or notice to redirect a distribution or transfer to a municipality or county, the secretary shall decrease or redirect the next designated distribution or transfer, and succeeding distributions or transfers as necessary, by the amount of the state distributions intercept authorized by the secretary of finance and administration pursuant to the State Aid Intercept Act or by the amount of the state distribution intercept authorized pursuant to an ordinance or a resolution passed by the county or municipality and a written agreement with the New Mexico finance authority. The secretary shall transfer the state distributions intercept amount to the municipal or county treasurer or other person designated by the secretary of finance and administration or to the New Mexico finance authority pursuant to written agreement to pay the debt service to avoid default on qualified local revenue bonds or meet other local revenue bond, loan or other debt obligations of the municipality or county to the New Mexico finance authority. A decrease to or redirection of a distribution or transfer pursuant to this subsection that arose:

(1) prior to an adjustment of a distribution or transfer of net receipts creating a recoverable amount owed to the department takes precedence over any collection of any recoverable amount pursuant to Paragraph (2) of Subsection B of this section, which may be made only from the net amount of the distribution or transfer remaining after application of the decrease or redirection pursuant to this subsection; and

(2) after an adjustment of a distribution or transfer of net receipts creating a recoverable amount owed to the department shall be subordinate to any collection of any recoverable amount pursuant to Paragraph (2) of Subsection B of this section.

I. Upon the direction of the secretary of finance and administration pursuant to Section 9-6-5.2 NMSA 1978, the secretary shall temporarily withhold the balance of a distribution to a municipality or county, net of any decrease or redirected amount pursuant to Subsection H of this section and any recoverable amount pursuant to Paragraph (2) of Subsection B of this section, that has failed to submit an audit report required by the Audit Act [12-6-1 to 12-6-15 NMSA 1978] or a financial report required by Subsection F of Section 6-6-2 NMSA 1978. The amount to be withheld, the source of the withheld distribution and the number of months that the distribution is to be withheld shall be as directed by the secretary of finance and administration. A distribution withheld pursuant to this subsection shall remain in the tax administration suspense fund until distributed to the municipality or county and shall not be distributed to the general fund. An amount withheld pursuant to this subsection shall be distributed to the municipality or county upon direction of the secretary of finance and administration.

J. As used in this section:

(1) "amounts relating to the current month" means any amounts included in the net receipts of the current month that represent payment of tax due for the current month, correction of amounts processed in the current month that relate to the current month or that otherwise relate to obligations due for the current month;

(2) "amounts relating to prior periods" means any amounts processed during the current month that adjust amounts processed in a period or periods prior to the current month regardless of whether the adjustment is a correction of a department error or due to the filing of amended returns, payment of department-issued assessments, filing or approval of claims for refund, audit adjustments or other cause;

(3) "average distribution or transfer amount" means the following amounts; provided that a distribution or transfer that is negative shall not be used in calculating the amounts:

(a) the annual average of the total amount distributed or transferred to a municipality or county in each of the three twelve-month periods preceding the current month;

(b) if a distribution or transfer to a municipality or county has been made for less than three years, the total amount distributed or transferred in the year preceding the current month; or

(c) if a municipality or county has not received distributions or transfers of net receipts for twelve or more months, the monthly average of net receipts distributed or

transferred to the municipality or county preceding the current month multiplied by twelve;

(4) "current month" means the month for which the distribution or transfer is being prepared; and

(5) "repayment agreement" means an agreement between the department and a municipality or county under which the municipality or county agrees to allow the department to recover an amount determined pursuant to Paragraph (2) of Subsection B of this section by decreasing distributions or transfers to the municipality or county for one or more months beginning with the distribution or transfer to be made with respect to a designated month. No interest shall be charged.

History: 1978 Comp., § 7-1-6.15, enacted by Laws 1983, ch. 211, § 20; 1986, ch. 20, § 10; 1987, ch. 169, § 2; 1988, ch. 72, § 5; 1989, ch. 326, § 12; 1990, ch. 99, § 48; 1991, ch. 9, § 13; 1991, ch. 176, § 17; 1992, ch. 105, § 4; 1993, ch. 30, § 3; 1994, ch. 54, § 1; 1996, ch. 28, § 3; 1999, ch. 189, § 1; 2007, ch. 331, § 1; 2011, ch. 106, § 3; 2015, ch. 89, § 1; 2015, ch. 100, § 1; 2021 (1st S.S.), ch. 4, § 49.

ANNOTATIONS

The 2021 (1st S.S.) amendment, effective June 29, 2021, distributed a portion of the cannabis excise tax revenues to municipalities and counties; and in Subsection A, added Paragraph A(10).

The 2015 amendment, effective July 1, 2015, changed the procedures for adjusting certain distributions and transfers to municipalities and counties; in Paragraph (1) of Subsection A, after "municipality", deleted "of gross receipts taxes", after "7-1-6.4", deleted "NMSA 1978 or of interstate telecommunications gross receipts tax pursuant to Section", and after "7-1-6.36", added "or 7-1-6.46"; in Paragraph (4) of Subsection A, after "7-1-6.16", added "or 7-1-6.47"; deleted Paragraph (7) of Subsection A and redesignated the succeeding paragraphs accordingly; deleted former Subsections B through E; added new Subsections B through G; redesignated former Subsections F and G as Subsections H and I, respectively; in Subsection H, after "decrease a distribution", added "or transfer", after "to redirect a distribution", added "or transfer", after "decrease a distribution", added "or transfer", after "notice to redirect a distribution", added "or transfer", after "designated distribution", added "or transfer", after "succeeding distributions", added "or transfers", and added the last sentence of the introductory paragraph of Subsection H; added Paragraphs (1) and (2) of Subsection H; in Subsection I, after "temporarily withhold", added "the balance of", after "municipality or county,", added "net of any decrease or redirected amount pursuant to Subsection H of this section and any recoverable amount pursuant to Paragraph (2) of Subsection B of this section", and added the last sentence of Subsection I; and added Subsection J.

The 2011 amendment, effective July 1, 2012, authorized the secretary of finance and administration to order the secretary of taxation and revenue to temporarily withhold

distributions to municipalities and counties that have failed to submit audit reports required by the Audit Act or financial reports required by Section 6-6-2 NMSA 1978.

The 2007 amendment, effective July 1, 2007, amended Paragraph 10 of Subsection A to replace distributions to counties, school districts or special districts and distributions of oil and gas ad valorem production taxes with a distribution to municipalities pursuant to 7-1-6.55 NMSA 1978.

The 1999 amendment, effective June 18, 1999, added Subsection A(10) and substituted "political subdivision" for "municipality or county" throughout Subsections B to D.

The 1996 amendment, effective March 4, 1996, inserted "or a resolution" in the first and second sentences of Subsection F.

The 1994 amendment, effective May 18, 1994, in Subsection A, deleted "and" at the end of Paragraph (6), and added Paragraphs (8) and (9); and, in Subsection F, added all of the language at the end of the first sentence beginning with "or to redirect", all of the language at the end of the second sentence beginning with "or by the amount" and all the language at the end of the last sentence beginning with "or meet other", and inserted "or notice to redirect a distribution" and "or redirect" in the second sentence, and "or to the New Mexico finance authority pursuant to written agreement" in the last sentence.

The 1993 amendment, effective June 18, 1993, in Subsection A, added the language beginning "or of interstate" at the end of Paragraph (1), rewrote Paragraphs (2) and (3), deleted former Paragraphs (6) and (7) relating to transfers to municipalities or counties with respect to a tax on gasoline, added Paragraph (6) and redesignated former Paragraph (8) as Paragraph (7).

The 1992 amendment, effective May 20, 1992, inserted "Municipal Infrastructure Gross Receipts Tax Act" in Subsection A(2); substituted "Subject to the provisions of" for "Unless provided by" in the second sentence of Subsection B; inserted "pursuant to Subsection B of this section" in Subsection E; and added Subsection F.

The 1991 amendment, effective April 4, 1991, in Paragraph (3) of Subsection A, added "or Local Hospital Gross Receipts Tax Act" and made a related stylistic change.

The 1990 amendment, effective March 5, 1990, in Subsection A, added "Municipal Environmental Services Gross Receipts Tax Act" at the end of Paragraph (2), deleted "County Sales Tax Act" following "in accordance with the" and added "County Environmental Services Gross Receipts Tax Act" at the end of Paragraph (3), and made minor stylistic changes.

The 1989 amendment, effective June 16, 1989, in Subsection A(3), inserted "Local Liquor Excise Tax Act".

Meaning of the term "erroneous". — The term "erroneous" in 7-1-6.15(B) NMSA 1978 refers to distributions or transfers of gross receipts tax revenue that were in error due to a taxpayer filing or reporting error by a taxpayer as well as an error made by the department. *City of Eunice v. N.M. Taxation & Revenue Dep't*, 2014-NMCA-085, cert. granted, 2014-NMCERT-008.

Time limitation to recover over-payment of gross receipts taxes to a municipality. — Where the taxpayer, who paid gross receipts taxes imposed by the state, county and municipality, determined that it had mistakenly paid taxes to the municipality because its place of business was actually in the unincorporated part of the county and not within the municipal boundaries; the taxpayer filed amended returns changing the reporting location from the municipality to the county; in January 2013, the department granted the taxpayer a refund of taxes going back to January 2009; and the department claimed that the municipality had to refund taxes distributed to the municipality based on the taxpayer's original returns from January 2009 in excess of $2.3 million, 7-1-6.15(C) NMSA 1978 barred the department from recovering any excess state and municipal taxes revenues distributed to the municipality prior to January 1, 2012 and had statutory authority to recover only $120,552 from the municipality for erroneous distributions of taxes made in 2012. *City of Eunice v. N.M. Taxation & Revenue Dep't*, 2014-NMCA-085, cert. granted, 2014-NMCERT-008.

7-1-6.16. County equalization distribution.

A. Beginning on September 15, 1989 and on September 15 of each year thereafter, the department shall distribute to any county that has imposed or continued in effect during the state's preceding fiscal year a county gross receipts tax pursuant to Section 7-20E-9 NMSA 1978 an amount equal to:

(1) the product of a fraction, the numerator of which is the county's population and the denominator of which is the state's population, multiplied by the annual sum for the county; less

(2) the net receipts received by the department during the report year, including any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, attributable to the county gross receipts tax at a rate of one-eighth percent; provided that for any month in the report year, if no county gross receipts tax was in effect in the county in the previous month, the net receipts, for the purposes of this section, for that county for that month shall be zero.

B. If the amount determined by the calculation in Subsection A of this section is zero or a negative number for a county, no distribution shall be made to that county.

C. As used in this section:

(1) "annual sum" means for each county the sum of the monthly amounts for those months in the report year that follow a month in which the county had in effect a county gross receipts tax;

(2) "monthly amount" means an amount equal to the product of:

(a) the net receipts received by the department in the month attributable to the state gross receipts tax plus five percent of the total amount of deductions claimed pursuant to Section 7-9-92 NMSA 1978 for the month plus five percent of the total amount of deductions claimed pursuant to Section 7-9-93 NMSA 1978 for the month; and

(b) a fraction, the numerator of which is one-eighth percent and the denominator of which is the tax rate imposed by Section 7-9-4 NMSA 1978 in effect on the last day of the previous month;

(3) "population" means the most recent official census or estimate determined by the United States census bureau for the unit or, if neither is available, the most current estimated population for the unit provided in writing by the bureau of business and economic research at the university of New Mexico; and

(4) "report year" means the twelve-month period ending on the July 31 immediately preceding the date upon which a distribution pursuant to this section is required to be made.

History: 1978 Comp., § 7-1-6.16, enacted by Laws 1983, ch. 213, § 27; 1986, ch. 20, § 11; 1989, ch. 216, § 1; 2004, ch. 116, § 4.

ANNOTATIONS

The 2004 amendment, effective January 1, 2005, amended Subsection C to divide Paragraph (2) into Subparagraphs (a) and (b), to delete from Subparagraph (a), "multiplied by" and to insert in its place: "plus five percent of the total amount of deductions claimed pursuant to Section 7-9-92 NMSA 1978 for the month plus five percent of the total amount of deductions claimed pursuant to Section 7-9-93 NMSA 1978 for the month; and".

The 1989 amendment, effective June 16, 1989, in the introductory paragraph of Subsection A substituted "1989" for "1986", inserted "during the state's preceding fiscal year", and deleted "for general purposes" following "tax"; rewrote Paragraph A(1); in Paragraph A(2) rewrote the first sentence and added the second sentence; added Paragraphs C(1) and C(2); redesignated former Subsection C as Paragraph C(3) while deleting therein "for the purposes of this section" following "means"; and added Paragraph C(4).

7-1-6.17. Repealed.

ANNOTATIONS

Repeals. — Laws 1987, ch. 264, § 25A repealed 7-1-6.17 NMSA 1978, as enacted by Laws 1986, ch. 112, § 1, relating to distribution of tobacco products tax, effective July 1, 1987.

7-1-6.18. Distribution; veterans' state cemetery fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the veterans' state cemetery fund of the amounts designated pursuant to Section 7-2-28 NMSA 1978 as contributions to that fund after the city of Santa Fe has received the balance of tax refund contributions in the amount of one million seventy thousand dollars ($1,070,000).

History: 1978 Comp., § 7-1-6.18, enacted by Laws 1987, ch. 257, § 1; 2011, ch. 42, § 2; 2016, ch. 7, § 1.

ANNOTATIONS

The 2016 amendment, effective May 18, 2016, changed the name of the veterans' national cemetery fund to the veterans' state cemetery fund, removed a contingency on a distribution to the veterans' state cemetery fund that already occurred, and removed a requirement that certain excess amounts in the veterans' state cemetery fund be distributed to the substance abuse education fund; in the catchline, after "veterans'", deleted "national" and added "state"; deleted "Upon a certification by the state board of finance that the city of Santa Fe grants and conveys additional acreage for the Santa Fe national cemetery", after "veterans'", deleted "national" and added "state", after "contributions to that fund", deleted "provided that when the sum of contributions received on or after January 1, 1988 equals one million seventy thousand dollars ($1,070,000), any contributions received in excess of that amount shall be distributed to the substance abuse education fund" and added "after the city of Santa Fe has received the balance of tax refund contributions in the amount of one million seventy thousand dollars ($1,070,000)".

The 2011 amendment, effective June 17, 2011, eliminated the provision that permitted distributions to the substance abuse education fund if House Bill 103 of the first session of the thirty-eighth legislature became law.

7-1-6.19. Distribution; county government road fund created.

A. There is created in the state treasury the "county government road fund".

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the county government road fund in an amount equal to five and seventy-six hundredths percent of the net receipts attributable to the gasoline tax.

History: 1978 Comp., § 7-1-6.19, enacted by Laws 1991, ch. 9, § 15; 1993, ch. 357, § 5; 1994, ch. 5, § 9; 1995, ch. 6, § 5.

ANNOTATIONS

Repeals and reenactments. — Laws 1991, ch. 9, § 15 repealed former 7-1-6.19 NMSA 1978, as enacted by Laws 1987, ch. 347, § 10, and enacted a new section, effective July 1, 1992.

Compiler's notes. — Subsection A of Laws 1995, ch. 6, § 20 repealed 7-1-6.19 NMSA 1978, as enacted by Laws 1994, ch. 5, § 10, relating to the creation of and distributions to county government road fund and which was to become effective August 1, 1997, effective June 16, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

The 1995 amendment, effective August 1, 1995, substituted "five and seventy-six hundredths percent" for "four and nine tenth percent" in Subsection B.

The 1994 amendment, effective August 1, 1994, substituted "four and nine-tenths" for "four and forty-six hundredths" in Subsection B.

The 1993 amendment, effective August 1, 1993, substituted "four and forty-six hundredths percent" for "six and thirteen-hundredths percent" in Subsection B.

7-1-6.20. Identification of money in extraction taxes suspense fund; distribution.

A. Except as provided in Subsection B of this section, after the necessary disbursements have been made from the extraction taxes suspense fund, the money remaining in the suspense fund as of the last day of the month shall be identified by tax source and distributed or transferred in accordance with the provisions of Sections 7-1-6.21 through 7-1-6.23 and 7-1-6.61 NMSA 1978. After the necessary distributions and transfers, any balance, except for remittances unidentified as to source or disposition, shall be transferred to the general fund.

B. Payments on assessments issued by the department pursuant to the Oil and Gas Conservation Tax Act [Chapter 7, Article 30 NMSA 1978], the Oil and Gas Emergency School Tax Act [Chapter 7, Article 31 NMSA 1978], the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978] and the Oil and Gas Severance Tax Act [Chapter 7, Article 29 NMSA 1978] shall be held in the extraction taxes suspense fund until the secretary determines that there is no substantial risk of protest or other litigation, whereupon after the necessary disbursements have been made from the extraction taxes suspense fund, the money remaining in the suspense fund as of the last day of the month attributed to these payments shall be identified by tax source and distributed or transferred in accordance with the provisions of Sections 7-1-6.21 through 7-1-6.23 and 7-1-6.61 NMSA 1978. After the necessary distributions and transfers, any

balance, except for remittance unidentified as to source or disposition, shall be transferred to the general fund.

History: 1978 Comp., § 7-1-6.20, enacted by Laws 1985, ch. 65, § 6; 2001, ch. 230, § 2; 2017 (1st S.S.), ch. 3, § 2; 2020, ch. 3, § 5.

ANNOTATIONS

Cross references. — For the extraction taxes suspense fund, *see* 7-1-6 NMSA 1978.

For the general fund, *see* 6-4-2 NMSA 1978.

The 2020 amendment, effective July 1, 2020, in Subsections A and B, changed "Section 3 of this 2017 act" to "7-1-6.61".

The 2017 (1st S.S.) amendment, effective July 1, 2018, provided that excess funds in the extraction taxes suspense fund be distributed or transferred in accordance with the provisions of Section 7-1-6.61 NMSA 1978; and in Subsections A and B, after "7-1-6.23 NMSA 1978", added "and Section 3 of this 2017 act".

The 2001 amendment, effective June 15, 2001, inserted "Except as provided in Subsection B of this section" in Subsection A, and added Subsection B.

7-1-6.21. Distribution to oil and gas reclamation fund.

A. With respect to any period for which the rate of the tax imposed by Section 7-30-4 NMSA 1978 is nineteen-hundredths percent, a distribution pursuant to Section 7-1-6.20 NMSA 1978 shall be made to the oil and gas reclamation fund in an amount equal to two-nineteenths of the net receipts attributable to the tax imposed under the Oil and Gas Conservation Tax Act [Chapter 7, Article 30 NMSA 1978].

B. With respect to any period for which the total rate of the tax imposed on oil by Section 7-30-4 NMSA 1978 is twenty-four hundredths percent, a distribution pursuant to Section 7-1-6.20 NMSA 1978 shall be made to the oil and gas reclamation fund in an amount equal to nineteen and seven-tenths percent of the net receipts attributable to the tax imposed under the Oil and Gas Conservation Tax Act.

History: 1978 Comp., § 7-1-6.21, enacted by Laws 1985, ch. 65, § 7; 1989, ch. 130, § 1; 1991, ch. 9, § 16; 2003, ch. 433, § 1; 2010, ch. 98, § 1.

ANNOTATIONS

The 2010 amendment, effective May 19, 2010, in Subsection A, after "reclamation fund in", deleted "the" and added "an"; in Subsection B, after "for which the", added "total"; after "tax imposed", added "on oil"; after "Section 7-30-4 NMSA 1978 is", deleted "eighteen hundredths" and added "twenty-four hundredths"; after "reclamation fund in",

deleted "the" and added "an"; and after "amount equal to", deleted "one-eighteenth" and added "nineteen and seven-tenths percent".

The 2003 amendment, effective July 1, 2003, inserted the Subsection A designation; substituted "two-nineteenths" for "one-nineteenth" in the second percentage of Subsection A; and added Subsection B.

The 1991 amendment, effective July 1, 1991, substituted "and Gas Reclamation" for "Conservation" in the catchline; deleted former Subsection A, relating to a distribution pursuant to 7-1-6.20 NMSA 1978 to the oil conservation fund; and deleted the subsection designation "B".

The 1989 amendment, effective June 16, 1989, designated the formerly undesignated provisions as Subsection A, while inserting therein "the difference between" and adding all of the language following "Act", and added Subsection B.

7-1-6.22. Distributions to oil and gas production tax fund, oil and gas equipment tax fund and copper production tax fund; creation of funds.

A. A distribution pursuant to Section 7-1-6.20 NMSA 1978 shall be made to the "oil and gas production tax fund", hereby created in the state treasury, of the net receipts including advance payments, attributable to the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978].

B. A distribution pursuant to Section 7-1-6.20 NMSA 1978 shall be made to the "oil and gas equipment tax fund", hereby created in the state treasury, of the net receipts attributable to the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978].

C. A distribution pursuant to Section 7-1-6.20 NMSA 1978 shall be made to the "copper production tax fund", hereby created in the state treasury, of the net receipts attributable to the Copper Production Ad Valorem Tax Act [Chapter 7, Article 39 NMSA 1978].

History: 1978 Comp., § 7-1-6.22, enacted by Laws 1985, ch. 65, § 8; 1990, ch. 125, § 2; 1991, ch. 9, § 17.

ANNOTATIONS

The 1991 amendment, effective July 1, 1991, inserted "including advance payments" in Subsection A.

The 1990 amendment, effective March 7, 1990, inserted "and copper production tax fund" in the section heading, made a related stylistic change, and added Subsection C.

7-1-6.23. Distribution to severance tax bonding fund.

A distribution pursuant to Section 7-1-6.20 NMSA 1978 shall be made to the severance tax bonding fund of the net receipts attributable to the taxes and advance payment imposed pursuant to the Severance Tax Act [7-26-1 to 7-26-8 NMSA 1978] and the Oil and Gas Severance Tax Act [Chapter 7, Article 29 NMSA 1978].

History: 1978 Comp., § 7-1-6.23, enacted by Laws 1985, ch. 65, § 9; 1991, ch. 9, § 18.

ANNOTATIONS

Cross references. — For the severance tax bonding fund, *see* 7-27-2 NMSA 1978.

The 1991 amendment, effective July 1, 1991, inserted "and advance payment".

7-1-6.24. Distribution; substance abuse education fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the substance abuse education fund of the amounts designated pursuant to Section 7-2-30 NMSA 1978 as contributions to that fund.

History: 1978 Comp., § 7-1-6.18, enacted by Laws 1987, ch. 265, § 3; 2017, ch. 63, § 10.

ANNOTATIONS

Compiler's notes. — Laws 1987, ch. 257, § 1 and ch. 265, § 3 both enacted 7-1-6.18 NMSA 1978, thereby necessitating the renumbering of this section as 7-1-6.24 NMSA 1978.

Cross references. — For substance abuse education fund, *see* 9-7-17 NMSA 1978.

The 2017 amendment, effective June 16, 2017, after the second occurrence of "Section", changed "7-2-28" to "7-2-30".

7-1-6.25. Distribution of petroleum products loading fee; corrective action fund; local governments road fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 of the net receipts attributable to the petroleum products loading fee shall be made to each of the following funds in the following amounts:

A. to the local governments road fund an amount equal to the net receipts attributable to a fee of forty dollars ($40.00) per load; and

B. to the corrective action fund the balance, if any, of the net receipts.

History: 1978 Comp., § 7-1-6.25, enacted by Laws 1988, ch. 70, § 9; 1990, ch. 124, § 13; 1993, ch. 298, § 1; 1995, ch. 6, § 6; 1996, ch. 82, § 1.

ANNOTATIONS

Cross references. — For imposition of petroleum products loading fee, *see* 7-13A-3 NMSA 1978.

For local governments road fund, *see* 67-3-28.2 NMSA 1978.

For ground water protection corrective action fund, *see* 74-6B-7 NMSA 1978.

The 1996 amendment, effective July 1, 1996, deleted former Subsection B relating to ceasing imposition of the petroleum products loading fee when the corrective action fund is certified to equal or exceed $50,000,000, and rewrote the remaining provisions.

The 1995 amendment, effective August 1, 1995, inserted "of petroleum products loading fee" and "local governments road fund" in the section heading; designated the former first and second sentences as Subsections A and B; deleted "shall be made to the corrective action fund" preceding "of the net receipts" and added the language beginning "shall be made" at the end of the introductory paragraph of Subsection A; and added Paragraphs A(1) and A(2).

The 1993 amendment, effective April 7, 1993, substituted "fifty million dollars ($50,000,000)" for "twenty-five million dollars ($25,000,000)" and "secretary of environment" for "director of the environmental improvement division of the health and environment department" near the middle of the second sentence.

The 1990 amendment, effective July 1, 1990, rewrote the section to the extent that a detailed comparison would be impracticable.

7-1-6.26. County government road fund; distribution.

A. For the purposes of this section, "distributable amount" means the amount in the county government road fund as of the last day of any month for which a distribution is required to be made pursuant to this section in excess of the balance in that fund as of the last day of the preceding month after reduction for any required distributions for the preceding month.

B. The secretary of transportation shall determine and certify on or before July 1 of each year the total miles of public roads maintained by each county pursuant to Section 66-6-23 NMSA 1978. For the purposes of this subsection, if the certified mileage of public roads maintained by a county is less than four hundred miles, the state treasurer shall increase the number of miles of public roads maintained by that county by fifty

percent and revise the total miles of public roads maintained by all counties accordingly. Except as provided otherwise in Subsection D of this section, each county shall receive an amount equal to its proportionate share of miles of public roads maintained, as the number of miles for the county may have been revised pursuant to this subsection, to the total miles of public roads maintained by all counties, as that total may have been revised pursuant to this subsection, times fifty percent of the distributable amount in the county government road fund.

C. Except as provided otherwise in Subsection D of this section, each county shall receive a share of fifty percent of the distributable amount in the county government road fund as determined in this subsection. The amount for each county shall be the greater of:

(1) twenty-one cents ($.21) multiplied by the county's population as shown by the most recent federal decennial census; or

(2) the proportionate share that the taxable gallons of gasoline reported for that county for the preceding fiscal year bear to the total taxable gallons of gasoline for all counties in the preceding fiscal year, as determined by the department, multiplied by fifty percent of the distributable amount in the county government road fund.

If the sum of the amounts to be distributed pursuant to Paragraphs (1) and (2) of this subsection exceeds fifty percent of the distributable amount in the county government road fund, the excess shall be eliminated by multiplying the amount determined in Paragraphs (1) and (2) of this subsection for each county by a fraction, the numerator of which is fifty percent of the distributable amount in the county government road fund, and the denominator of which is the sum of amounts determined for all counties in Paragraphs (1) and (2) of this subsection.

D. If the distribution for a class A county or for an H class county determined pursuant to Subsections B and C of this section exceeds an amount equal to one-twelfth of the product of the total taxable gallons of gasoline reported for the county for the preceding fiscal year times one cent ($.01), the distribution for that county shall be reduced to an amount equal to one-twelfth of the product of the total taxable gallons of gasoline reported for the county for the preceding fiscal year times one cent ($.01). Any amount of the reduction shall be shared among the counties whose distribution has not been reduced pursuant to this subsection in the ratio of the amounts computed in Subsections B and C of this section.

E. If a county has not made the required mileage certification pursuant to Section 67-3-28.3 NMSA 1978 by April 1 of every year of the year for which distribution is being made, the secretary of transportation shall estimate the mileage maintained by those counties for the purpose of making distribution to all counties, and the amount calculated to be distributed each month to those counties not certifying mileage shall be reduced by one-third each month for that fiscal year and that amount not distributed to those counties shall be distributed equally to all counties that have certified mileages.

F. Distributions made to counties pursuant to this section shall be deposited in the county road fund to be used for the construction, reconstruction, resurfacing or other improvement or maintenance of the public roads and bridges in the county, including right-of-way and materials acquisition. Money distributed pursuant to this section may be used by the county to provide matching funds for projects subject to cooperative agreements entered into with the department of transportation pursuant to Section 67-3-28 NMSA 1978.

History: Laws 1987, ch. 347, § 11; 1988, ch. 106, § 1; 1989, ch. 352, § 2; 1990, ch. 85, § 3; 1992, ch. 55, § 5; 1999, ch. 212, § 2; 2017, ch. 63, § 11.

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, made technical corrections; in Subsection B, after "The secretary of", deleted "highway and", after "certify on or before", deleted "July 1, 1987 and on or before", and after "July 1 of each", deleted "subsequent"; in Subsection E, after "NMSA 1978", deleted "by May 1, 1998, and", after "of every year", deleted "thereafter", and after "the secretary of", deleted "highway and"; and in Subsection F, after "entered into with the", deleted "state highway and" and added "department of", and after "transportation", deleted "department".

The 1999 amendment, effective August 1, 1999, added Subsection F.

The 1992 amendment, effective July 1, 1992, substituted "Subsections B and C" for "Subsections A and B" near the beginning of the first sentence of Subsection D and "that" for "which" near the end of Subsection E.

The 1990 amendment, effective July 1, 1990, deleted former Subsection A which read "The state treasurer shall distribute the distributable amount for August, 1987 and each subsequent month to the respective county road funds in accordance with the provisions of this section"; redesignated former Subsections B to F as Subsections A to E; deleted "less the distributable amount to the county government training program, pursuant to Section 7-1-6.19 NMSA 1978, which is equal to five-tenths of one percent of the amount in the county government road fund" at the end of Subsection A; in Subsection C, substituted "Subsection D" for "Subsection E" in the first sentence and rewrote the second paragraph of Paragraph (2); and, in Subsection D, substituted "Subsections A and B" for "Subsections B and C" in the first sentence and added the second sentence.

The 1989 amendment, effective June 16, 1989, in Subsection B, inserted the language at the end beginning "less the distributable amount".

7-1-6.27. Distribution; municipal roads.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to municipalities for the purposes and amounts specified in this section in an aggregate

amount equal to five and seventy-six hundredths percent of the net receipts attributable to the gasoline tax.

B. The distribution authorized in this section shall be used for the following purposes:

(1) reconstructing, resurfacing, maintaining, repairing or otherwise improving existing alleys, streets, roads or bridges, or any combination of the foregoing; or laying off, opening, constructing or otherwise acquiring new alleys, streets, roads or bridges, or any combination of the foregoing; provided that any of the foregoing improvements may include, but are not limited to, the acquisition of rights of way;

(2) to provide matching funds for projects subject to cooperative agreements with the state highway and transportation department pursuant to Section 67-3-28 NMSA 1978; and

(3) for expenses of purchasing, maintaining and operating transit operations and facilities, for the operation of a transit authority established by the municipal transit law and for the operation of a vehicle emission inspection program. A municipality may engage in the business of the transportation of passengers and property within the political subdivision by whatever means the municipality may decide and may acquire cars, trucks, motor buses and other equipment necessary for operating the business. A municipality may acquire land, erect buildings and equip the buildings with all the necessary machinery and facilities for the operation, maintenance, modification, repair and storage of the cars, trucks, motor buses and other equipment needed. A municipality may do all things necessary for the acquisition and the conduct of the business of public transportation.

C. For the purposes of this section:

(1) "computed distribution amount" means the distribution amount calculated for a municipality for a month pursuant to Paragraph (2) of Subsection D of this section prior to any adjustments to the amount due to the provisions of Subsections E and F of this section;

(2) "floor amount" means four hundred seventeen dollars ($417);

(3) "floor municipality" means a municipality whose computed distribution amount is less than the floor amount; and

(4) "full distribution municipality" means a municipality whose population at the last federal decennial census was at least two hundred thousand.

D. Subject to the provisions of Subsections E and F of this section, each municipality shall be distributed a portion of the aggregate amount distributable under this section in an amount equal to the greater of:

(1) the floor amount; or

(2) eighty-five percent of the aggregate amount distributable under this section times a fraction, the numerator of which is the municipality's reported taxable gallons of gasoline for the immediately preceding state fiscal year and the denominator of which is the reported total taxable gallons for all municipalities for the same period.

E. Fifteen percent of the aggregate amount distributable under this section shall be referred to as the "redistribution amount". Beginning in August 1990, and each month thereafter, from the redistribution amount there shall be taken an amount sufficient to increase the computed distribution amount of every floor municipality to the floor amount. In the event that the redistribution amount is insufficient for this purpose, the computed distribution amount for each floor municipality shall be increased by an amount equal to the redistribution amount times a fraction, the numerator of which is the difference between the floor amount and the municipality's computed distribution amount and the denominator of which is the difference between the product of the floor amount multiplied by the number of floor municipalities and the total of the computed distribution amounts for all floor municipalities.

F. If a balance remains after the redistribution amount has been reduced pursuant to Subsection E of this section, there shall be added to the computed distribution amount of each municipality that is neither a full distribution municipality nor a floor municipality an amount that equals the balance of the redistribution amount times a fraction, the numerator of which is the computed distribution amount of the municipality and the denominator of which is the sum of the computed distribution amounts of all municipalities that are neither full distribution municipalities nor floor municipalities.

History: 1978 Comp., § 7-1-6.27, enacted by Laws 1991, ch. 9, § 20; 1992, ch. 55, § 6; 1993, ch. 357, § 6; 1994, ch. 5, § 11; 1995, ch. 6, § 7; 1999, ch. 212, § 3.

ANNOTATIONS

Repeals and reenactments. — Laws 1991, ch. 9, § 20 repealed former 7-1-6.27 NMSA 1978, as amended by Laws 1991, ch. 9, § 19 and enacted a new section, effective July 1, 1992.

Compiler's notes. — Subsection A of Laws 1995, ch. 6, § 20 repealed 7-1-6.27 NMSA 1978, as enacted by Laws 1994, ch. 5, § 12, relating to distributions to municipalities for municipal roads and which was to become effective August 1, 1997, effective June 16, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

The 1999 amendment, effective August 1, 1999, in Subsection B added Paragraph (2), made a related stylistic change, and redesignated former Paragraph (2) as Paragraph (3).

The 1995 amendment, effective August 1, 1995, substituted "five and seventy-six hundredths percent" for "four and nine tenth percents" in Subsection A.

The 1994 amendment, effective August 1, 1994, substituted "four and nine-tenths" for "four and forty-six hundredths" in Subsection A and "amount distributable under this section" for "six and thirteen-hundredths percent of the net receipts attributable to the gasoline tax" in the introductory language of Subsection D, and deleted the former second sentence in Subsection E, relating to the 1989-1990 period.

The 1993 amendment, effective August 1, 1993, substituted "four and forty-six hundredths percent" for "six and thirteen hundredths percent" in Subsection A.

The 1992 amendment, effective July 1, 1992, substituted "thirteen-hundredths percent" for "twenty-five one hundredths percent" in the introductory paragraph of Subsection D and made minor stylistic changes in Subsection F.

7-1-6.28. Distribution; municipal arterial program of local governments road fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the municipal arterial program of the local governments road fund created in Section 67-3-28.2 NMSA 1978 in an amount equal to one and forty-four hundredths percent of the net receipts attributable to the gasoline tax.

History: 1978 Comp., § 7-1-6.28, enacted by Laws 1991, ch. 9, § 22; 1993, ch. 357, § 7; 1994, ch. 5, § 13; 1995, ch. 6, § 8.

ANNOTATIONS

Repeals and reenactments. — Laws 1991, ch. 9, § 22 repealed former 7-1-6.28 NMSA 1978, as enacted by Laws 1989, ch. 356, § 8, and enacted a new section, effective July 1, 1992.

Compiler's notes. — Subsection A of Laws 1995, ch. 6, § 20 repeals 7-1-6.28 NMSA 1978 as enacted by Laws 1994, ch. 5, § 14, relating to distributions to the local governments road fund and which was to become effective August 1, 1997, effective June 16, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

The 1995 amendment, effective August 1, 1995, substituted "Distribution" for "Distributions" and inserted "municipal arterial program of" in the section heading; deleted the Subsection A designation; substituted "one and forty-four hundredths" for "one and twenty-two hundredths"; and deleted former Subsection B relating to distributions pursuant to 7-1-6.1 NMSA 1978 to the local governments road fund.

The 1994 amendment, effective August 1, 1994, rewrote the section heading, which read: "Distribution; municipal arterial program"; designated the previously undesignated language as Subsection A, and substituted "one and twenty-two hundredths" for "one and eleven-hundredths" therein; and added Subsection B.

The 1993 amendment, effective August 1, 1993, substituted "one and eleven hundredths" for "one and fifty-three hundredths".

7-1-6.29. Money in workers' compensation collections suspense fund; distribution.

A. After the necessary disbursements from the workers' compensation collections suspense fund have been made, money remaining in the suspense fund as of the last day of the month, less any deduction for administrative costs determined and made by the department pursuant to Section 52-5-19 NMSA 1978, less any distribution made pursuant to Subsection B of this section and less any amount determined by the department to be retained in the suspense fund for the purpose of making refunds, shall be distributed to the workers' compensation administration fund.

B. Upon certification by the New Mexico finance authority that a project is sufficiently developed to warrant the issuance of bonds by the authority, the department shall distribute the first forty cents ($.40) of each workers' compensation assessment imposed pursuant to Section 52-5-19 NMSA 1978 to the New Mexico finance authority. Upon certification by the authority, the department shall cease distribution to the authority.

History: 1978 Comp., § 7-1-6.27, enacted by Laws 1989, ch. 325, § 3; 1993, ch. 367, § 74.

ANNOTATIONS

Compiler's notes. — As enacted by Laws 1989, ch. 325, § 3, this section was designated 7-1-6.27 NMSA 1978. However, due to the enactment of an identically designated section by Laws 1989, ch. 356, § 7, this section was redesignated.

The 1993 amendment, effective April 8, 1993, redesignated the existing language as Subsection A and inserted "less any distribution made pursuant to Subsection B of this section" in that subsection, and added Subsection B.

7-1-6.30. Distribution; retiree health care fund.

A. Beginning January 1, 2017 and prior to July 1, 2019, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the retiree health care fund in an amount equal to one-twelfth of the total amount distributed to the retiree health care fund beginning July 1, 2015 and prior to July 1, 2016.

B. Beginning July 1, 2019, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the retiree health care fund in an amount equal to one-twelfth of one hundred twelve percent of the total amount distributed to the retiree health care fund in the previous fiscal year.

History: 1978 Comp., § 7-1-6.30, enacted by Laws 1990, ch. 6, § 20; 1992, ch. 55, § 7; 2001, ch. 335, § 1; 2016 (2nd S.S.), ch. 1, § 1.

ANNOTATIONS

Cross references. — For retiree health care fund, *see* 10-7C-8 NMSA 1978.

The 2016 (2nd S.S.) amendment, effective October 7, 2016, temporarily suspended the growth of certain distributions to the retiree health care fund; after the catchline, deleted "For the period ending June 30, 2002, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the retiree health care fund in an amount equal to one-twelfth of one hundred six percent of the total amount distributed to the retiree health care fund in the previous fiscal year. For the fiscal year beginning July 1, 2002 and subsequent fiscal years" and added new Subsection A; added the new subsection designation "B" and in Subsection B, after the subsection designation, added "Beginning July 1, 2019".

The 2001 amendment, effective June 15, 2001, substituted "period ending June 30, 2002" for "eighty-first and subsequent fiscal years"; and added the last sentence.

The 1992 amendment, effective July 1, 1992, rewrote this section to the extent that a detailed comparison would be impracticable.

7-1-6.31. Distributions; enhanced 911 fund; network and database surcharge fund.

A. Pursuant to Section 7-1-6.1 NMSA 1978, a distribution shall be made to the enhanced 911 fund in an amount equal to the net receipts attributable to the 911 emergency surcharge.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the network and database surcharge fund of the net receipts attributable to the network and database surcharge imposed pursuant to the Enhanced 911 Act [63-9D-1 to 63-9D-11.1 NMSA 1978].

History: 1978 Comp., § 7-1-6.30, enacted by Laws 1990, ch. 86, § 5; 1993, ch. 48, § 1.

ANNOTATIONS

Compiler's notes. — Laws 1990, ch 86, § 5 enacted this section as 7-1-6.30 NMSA 1978, but since Laws 1990, ch. 6, § 20 had already enacted a section designated 7-1-6.30 NMSA 1978, this section has been compiled as 7-1-6.31 NMSA 1978.

The 1993 amendment, effective July 1, 1993, rewrote the catchline which read "Distribution - Enhanced 911 Fund"; redesignated the former provision as Subsection A; and added Subsection B.

7-1-6.32. Distribution; solid waste assessment fee.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the solid waste facility grant fund of the net receipts attributable to the solid waste assessment fee authorized under the Solid Waste Act [74-9-1 to 74-9-42 NMSA 1978] less any administrative fee withheld pursuant to Section 7-1-6.41 NMSA 1978.

History: Laws 1990, ch. 99, § 44; 1997, ch. 125, § 4; 2017, ch. 63, § 12.

ANNOTATIONS

Cross references. — For solid waste facility grant fund, *see* 74-9-41 NMSA 1978.

The 2017 amendment, effective June 16, 2017, after the second occurrence of "Section", deleted "1 of this 1997 act" and added "7-1-6.41 NMSA 1978".

The 1997 amendment, effective July 1, 1997, added the language beginning "less any administrative".

7-1-6.33. Distribution to county-supported medicaid fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the county-supported medicaid fund of the net receipts attributable to the taxes imposed pursuant to Section 7-20E-18 NMSA 1978.

History: Laws 1991, ch. 212, § 15; 2017, ch. 63, § 13.

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, after "imposed pursuant to", deleted "the County Health Care Gross Receipts Tax Act" and added "Section 7-20E-18 NMSA 1978".

7-1-6.34. Distribution; conservation planting revolving fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the conservation planting revolving fund of all amounts designated as contributions to that fund under the provisions of Section 7-2-24.1 NMSA 1978.

History: 1978 Comp., § 7-1-6.34, enacted by Laws 1992, ch. 108, § 3.

ANNOTATIONS

Cross references. — For contributions to proper state political party, *see* 7-1-6.35 NMSA 1978.

For optional designation of tax refund, *see* 7-2-31 NMSA 1978.

7-1-6.35. Distribution; contributions to state political party.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state treasurer in an amount equal to the money designated pursuant to Section 7-2-31 NMSA 1978 as contributions to a state political party, as that term is defined in Section 7-2-31 NMSA 1978. The state treasurer within ten days of receipt of the money from the department shall remit the amount designated for each state political party to that party.

History: Laws 1992, ch. 108, § 2; 1993, ch. 30, § 4.

ANNOTATIONS

Cross references. — For contributions to conservation planting revolving fund, *see* 7-1-6.34 NMSA 1978.

For optional designation of tax refund, *see* 7-2-31 NMSA 1978.

The 1993 amendment, effective June 18, 1993, rewrote the catchline which read "Contributions credited to proper state political party" and rewrote this section to the extent that a detailed comparison is impracticable.

7-1-6.36. Distribution; interstate telecommunications gross receipts tax.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each municipality in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the product of the quotient of one and thirty-five hundredths percent divided by the tax rate imposed by the Interstate Telecommunications Gross Receipts Tax Act [Chapter 7, Article 9C NMSA 1978] times the net receipts for the month attributable to the interstate telecommunications gross receipts tax from business locations:

A. within that municipality;

B. on land owned by the state, commonly known as the "state fairgrounds", within the exterior boundaries of that municipality;

C. outside the boundaries of any municipality on land owned by that municipality; and

D. on an Indian reservation or pueblo grant in an area that is contiguous to that municipality and in which the municipality performs services pursuant to a contract between the municipality and the Indian tribe or Indian pueblo if:

(1) the contract describes an area in which the municipality is required to perform services and requires the municipality to perform services that are substantially the same as the services the municipality performs for itself; and

(2) the governing body of the municipality has submitted a copy of the contract to the secretary.

History: Laws 1992, ch. 50, § 13 and Laws 1992, ch. 67, § 13.

ANNOTATIONS

Compiler's notes. — Identical versions of this section were enacted by Laws 1992, ch. 50, § 13 and Laws 1992, ch. 67, § 13, both effective July 1, 1992. The section was set out as enacted by Laws 1992, ch. 67, § 13. *See* 12-1-8 NMSA 1978.

7-1-6.37. Repealed.

ANNOTATIONS

Repeals. — Laws 1995, ch. 6, § 21 repealed 7-1-6.37 NMSA 1978, as enacted by Laws 1993, ch. 357, § 8, relating to distribution of gasoline and special fuel excise taxes to the general fund, effective August 1, 1995. For provisions of former section, *see* the 1994 NMSA 1978 on *NMOneSource.com.*

Subsection A of Laws 1995, ch. 6, § 20 repealed 7-1-6.37 NMSA 1978, as enacted by Laws 1994, ch. 5, § 16, relating to distribution of gasoline and special fuel excise taxes to the general fund and which was to become effective August 1, 1997, effective June 16, 1995.

7-1-6.38. Distribution; governmental gross receipts tax.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made in amounts equal to the following percentages of the net receipts attributable to the governmental gross receipts tax, less the net receipts attributable to a hospital licensed by the department of health:

(1) seventy-five percent to the public project revolving fund administered by the New Mexico finance authority;

(2) twenty-four percent to the energy, minerals and natural resources department; provided that forty-one and two-thirds percent of the distribution is appropriated to the energy, minerals and natural resources department to implement the provisions of the New Mexico Youth Conservation Corps Act [9-5B-1 to 9-5B-11 NMSA 1978] and fifty-eight and one-third percent of the distribution is appropriated to the energy, minerals and natural resources department for state park and recreation area capital improvements, including the costs of planning, engineering, design, construction, renovation, repair, equipment and furnishings; and

(3) one percent to the cultural affairs department for capital improvements at state museums and monuments administered by the cultural affairs department.

B. The state pledges to and agrees with the holders of any bonds or notes issued by the New Mexico finance authority or by the energy, minerals and natural resources department and payable from the net receipts attributable to the governmental gross receipts tax distributed to the New Mexico finance authority or the energy, minerals and natural resources department pursuant to this section that the state will not limit, reduce or alter the distribution of the net receipts attributable to the governmental gross receipts tax to the New Mexico finance authority or the energy, minerals and natural resources department or limit, reduce or alter the rate of imposition of the governmental gross receipts tax until the bonds or notes together with the interest thereon are fully met and discharged. The New Mexico finance authority and the energy, minerals and natural resources department are authorized to include this pledge and agreement of the state in any agreement with the holders of the bonds or notes.

History: Laws 1994, ch. 145, § 1; 1995, ch. 141, § 21; 2003, ch. 430, § 1; 2019, ch. 270, § 8.

ANNOTATIONS

Cross references. — For public project revolving fund, *see* 6-21-6 NMSA 1978.

For appropriations to other funds from the public project revolving fund, *see* 6-21-6.1 NMSA 1978.

For acquisition of lands for park and recreational purposes, *see* 16-2-11 NMSA 1978.

The 2019 amendment, effective July 1, 2019, removed net receipts attributable to a hospital licensed by the department of health from the governmental gross receipts tax, from which distributions are made pursuant to Section 7-1-6.1 NMSA 1978, and clarified certain language; in Subsection A, in the introductory clause, after "shall be made", added "in amounts equal to the following percentages of the net receipts attributable to the governmental gross receipts tax, less the net receipts attributable to a hospital licensed by the department of health", added new paragraph designations "(1)" and redesignated former Subsections B through D as Paragraphs A(2), A(3) and Subsection B, respectively, in Paragraph A(1), added "seventy-five percent", and after "finance

authority", deleted "in an amount equal to seventy-five percent of the net receipts attributable to the governmental gross receipts tax", in Paragraph A(2), deleted "A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made" and added "twenty-four percent", and after "natural resources department", deleted "in an amount equal to twenty-four percent of the net receipts attributable to the governmental gross receipts tax" and added "provided that", in Paragraph A(3), deleted "A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made" and added "one percent", and after "cultural affairs", deleted "in an amount equal to one percent of the net receipts attributable to the government gross receipts tax" and added "department".

The 2003 amendment, effective June 20, 2003, in Subsection B, substituted "twenty-four percent" for "twenty-five percent" in the first percentage, "forty-one and two-thirds" for "forty" in the second, and "fifty-eight and one-third" for "sixty" in the third; inserted present Subsection C and redesignated the remaining subsection accordingly.

The 1995 amendment, effective April 5, 1995, inserted "energy, minerals and natural resources" in two places in the second sentence in Subsection B and added Subsection C.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Constitutionality, construction, and application of state and local public-utility-gross-receipts-tax statutes - modern cases, 58 A.L.R.5th 187.

7-1-6.39. Distribution of special fuel excise tax to local governments road fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the local governments road fund in an amount equal to nine and fifty-two hundredths percent of the net receipts attributable to the taxes, exclusive of penalties and interest, from the special fuel excise tax imposed by the Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978].

History: 1978 Comp., § 7-1-6.39, enacted by Laws 1995, ch. 6, § 9; 2003 (1st S.S.), ch. 3, § 2.

ANNOTATIONS

Cross references. — For the local governments road fund, *see* 67-3-28.2 NMSA 1978.

The 2003 (1st S.S.) amendment, effective July 1, 2004, substituted "nine and fifty-two" for "eleven and eleven" following "amount equal to" near the middle of the section.

7-1-6.40. Distribution of liquor excise tax; local DWI grant fund; certain municipalities; drug court fund.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to forty-five percent of the net receipts attributable to the liquor excise tax shall be made to the local DWI grant fund.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 of twenty thousand seven hundred fifty dollars ($20,750) monthly from the net receipts attributable to the liquor excise tax shall be made to a municipality that is located in a class A county and that has a population according to the most recent federal decennial census of more than thirty thousand but less than sixty thousand and shall be used by the municipality only for the provision of alcohol treatment and rehabilitation services for street inebriates.

C. Beginning July 1, 2019, a distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to five percent of the net receipts attributable to the liquor excise tax shall be made to the drug court fund.

History: Laws 1997, ch. 182, § 1; 2000, ch. 83, § 1; 2001, ch. 112, § 1; 2007, ch. 138, § 1; 2008, ch. 93, § 1; 2014, ch. 54, § 1; 2014, ch. 80, § 7; 2015, ch. 8, § 1; 2018, ch. 48, § 1.

ANNOTATIONS

Repeals. — Laws 2015, ch. 8, § 2 repealed Laws 2014, ch. 54, § 1 effective July 1, 2015.

Cross references. — For local DWI grant fund, *see* 11-6A-3 NMSA 1978.

For imposition and rate of liquor excise tax, *see* 7-17-5 NMSA 1978.

The 2018 amendment, effective July 1, 2018, increased the distribution of the liquor excise tax to the local DWI grant fund, distributed a portion of the liquor excise tax to the drug court fund, and removed outdated language regarding previous appropriations; in the catchline, deleted "lottery tuition" and added "drug court"; in Subsection A, after "7-1-6.1 NMSA 1978", deleted "shall be made to the local DWI grant fund", after "in an amount equal to", deleted "the following percentages" and added "forty-five percent", and after "attributable to the liquor excise tax", deleted former Paragraphs A(1) through A(3) and added "shall be made to the local DWI grant fund"; in Subsection B, after "less than sixty thousand", deleted "The distribution pursuant to this subsection" and added "and"; and in Subsection C, deleted "From July 1, 2015 through June 30, 2017" and added "Beginning July 1, 2019, a", after "7-1-6.1 NMSA 1978", deleted "of thirty-nine" and added "in an amount equal to five", and after "shall be made to", deleted "lottery tuition" and added "drug court".

The 2015 amendment, effective July 1, 2015, increased, for the period July 1, 2015 through June 30, 2018, the percentage of the liquor excise tax distributed to the local DWI grant fund from forty-one and one-half percent to forty-six percent, after which the percentage reverts to its current amount of forty-one and one-half percent and also

changed the ending date of the distribution to the lottery tuition fund from July 1, 2017 to read "through June 30"; in the catchline, added "of liquor excise tax", and after "grant fund", added "certain"; in Subsection A, after "amount equal to", deleted "forty-one and fifty hundredths percent" and added "the following percentages", and added new Paragraphs (1), (2) and (3); in Subsection C, after "From July 1, 2015", deleted "July 1" and added "through June 30".

The 2014 amendment, effective March 12, 2014, distributed money in the liquor excise tax to the lottery tuition fund; in the catchline, after "municipalities", added "lottery tuition fund"; and added Subsection C.

The 2008 amendment, effective July 1, 2009, added Subsection B.

Applicability. — Laws 2008, ch. 93, § 2 provided that the distribution pursuant to Laws 2008, ch. 93, § 1 applies to revenue earned on a modified accrual basis after June 30, 2009.

The 2007 amendment, effective July 1, 2007, increases the percentage from thirty-four and fifty-seven hundredths to forty-one and fifty hundredths.

The 2001 amendment, effective July 1, 2001, changed the percentage of the net receipts attributable to the liquor excise tax to thirty-four and fifty-seven hundredths percent and deleted Subsections A and B, which contained the percentages of the net receipts to be used in certain time periods.

The 2000 amendment, effective July 1, 2001, changed the distribution percentage of the net receipts attributable to the liquor excise tax from twenty-seven and two-tenths to the percentages stipulated in Subsections A and B.

7-1-6.41. Administrative fee imposed; appropriation.

A. The taxation and revenue department is directed to withhold an administrative fee of three percent of the net amount to be distributed under the provisions of:

(1) Section 7-1-6.32 NMSA 1978;

(2) Section 66-12-20 NMSA 1978; and

(3) Section 74-1-13 NMSA 1978.

B. The administrative fee to be withheld pursuant to Subsection A of this section shall be withheld on distributions made on or after July 1, 1997 and shall continue until the earlier of December 31, 2006 or the date on which the New Mexico finance authority certifies to the taxation and revenue department that all obligations for bonds issued pursuant to Section 12 of this 1997 act have been fully discharged and directs the department to cease distributing money to the authority pursuant to this section.

C. The taxation and revenue department is directed to withhold an additional administrative fee at the following percentage of the net amount to be distributed pursuant to the following provisions of law:

(1) two percent of the net amount to be distributed pursuant to Section 7-1-6.12 NMSA 1978; and

(2) six-tenths of one percent of the net amount to be distributed pursuant to Section 7-1-6.13 NMSA 1978.

D. The administrative fee to be withheld under Subsection C of this section shall be withheld on distributions made on or after July 1, 1997 and shall continue until the earlier of July 1, 2000 or the date on which the New Mexico finance authority certifies to the taxation and revenue department that all obligations for bonds issued pursuant to Section 12 of this 1997 act have been fully discharged and directs the department to cease distributing money to the authority pursuant to this section.

E. The administrative fee to be withheld by the taxation and revenue department under Section 7-1-6.12 and 7-1-6.13 NMSA 1978 shall be set at three percent of the net amount to be distributed pursuant to the provisions of those sections.

F. The administrative fee to be withheld under Subsection E of this section shall be withheld on distributions made on or after July 1, 2000 and shall continue until the earlier of December 31, 2006 or the date on which the New Mexico finance authority certifies to the taxation and revenue department that all obligations for bonds issued pursuant to Section 12 of this 1997 act have been fully discharged and directs the department to cease distributing money to the authority pursuant to this section. After the department has been directed by the authority to cease distributing money to the authority pursuant to this section, the administrative fee shall be remitted to the state treasurer for deposit in the state general fund each month.

G. The administrative fee shall be distributed monthly to the New Mexico finance authority to be pledged irrevocably for the payment of principal, interest and any expenses or obligations related to the bonds issued by the authority to finance the taxation and revenue information management systems project.

History: Laws 1997, ch. 125, § 1.

ANNOTATIONS

Effective dates. — Laws 1997, ch. 125, § 13 made Laws 1997, ch. 125, § 1 effective on July 1, 1997.

Compiler's notes. — The phrase "Section 12 of this 1997 act" in Subsection B refers to Section 12 of Laws 1997, ch. 125, which is an uncompiled provision authorizing the issuance of revenue bonds.

7-1-6.42. Distribution; state building bonding fund; gross receipts tax.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state building bonding fund in the amount of five hundred thirty thousand dollars ($530,000) from the net receipts attributable to the gross receipts tax imposed by the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978]. The distribution shall be made:

A. after the required distribution pursuant to Section 7-1-6.4 NMSA 1978;

B. contemporaneously with other distributions of net receipts attributable to the gross receipts tax for payment of debt service on outstanding bonds or to a fund dedicated for that purpose; and

C. prior to any other distribution of net receipts attributable to the gross receipts tax.

History: Laws 2001, ch. 199, § 12; 2003, ch. 371, § 11; 2007, ch. 64, § 2.

ANNOTATIONS

Cross references. — For gross receipts tax, *see* 7-9-4 NMSA 1978.

The 2007 amendment, effective March 29, 2007, increased the distribution from $500,000 to $530,000.

The 2003 amendment, effective June 20, 2003, substituted "state building bonding fund" for "state office building bonding fund" in the section heading and at the beginning of the introductory text of the section.

7-1-6.42. Distribution; state building bonding fund; gross receipts tax. (Contingent effective date. See note below.)

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state building bonding fund in the amount of six hundred eighty thousand dollars ($680,000) from the net receipts attributable to the gross receipts tax imposed by the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978]. The distribution shall be made:

A. after the required distribution pursuant to Section 7-1-6.4 NMSA 1978;

B. contemporaneously with other distributions of net receipts attributable to the gross receipts tax for payment of debt service on outstanding bonds or to a fund dedicated for that purpose; and

C. prior to any other distribution of net receipts attributable to the gross receipts tax.

History: *Laws 2001, ch. 199, § 12; 2003, ch. 371, § 11; 2007, ch. 64, § 2; 2009, ch. 114, § 3.*

ANNOTATIONS

The 2009 amendment *changed the amount from $530,000 to $680,000.*

Contingent effective dates. — *The effective date of the provisions of Laws 2009, ch. 114, § 3 is the later of:*

A. July 1, 2011; or

B. the first day of the month following the day that the chief executive officer of the New Mexico finance authority certifies to the secretary of taxation and revenue, the secretary of finance and administration, the legislative council service and the New Mexico compilation commission that the distribution is needed to make debt service payments on the bonds issued pursuant to Laws 2009, ch. 114, § 5 of this act.

7-1-6.43. Distribution; oil and gas proceeds and pass-through entity withholding tax; magistrate retirement fund; judicial retirement fund; legislative retirement fund.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 from the net receipts attributable to the amount of tax deducted pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act [Chapter 7, Article 3A NMSA 1978] shall be made as follows:

(1) to the magistrate retirement fund in the amount of one hundred thousand dollars ($100,000);

(2) to the judicial retirement fund in the amount of one hundred thousand dollars ($100,000); and

(3) on and after July 1, 2025, to the legislative retirement fund in the amount of seventy-five thousand dollars ($75,000) or, if larger, in an amount equal to one-twelfth of the amount necessary to pay out the retirement benefits due under state legislator member coverage plan 2 and Paragraph (2) of Subsection C of Section 10-11-41 NMSA 1978 for the succeeding calendar year.

B. In regard to the distributions to the magistrate retirement fund and the judicial retirement fund, in December 2024 and in each December thereafter, the public employees retirement association, with the assistance of the administrative office of the courts, shall determine the funded ratio of each fund as of the end of the preceding fiscal year. If the funded ratio of the magistrate retirement fund for the preceding fiscal

year is equal to or greater than one hundred percent, the association shall notify the department, and no further distributions pursuant to Paragraph (1) of Subsection A of this section shall be made. If the funded ratio of the judicial retirement fund for the preceding fiscal year is equal to or greater than one hundred percent, the association shall notify the department, and no further distributions pursuant to Paragraph (2) of Subsection A of this section shall be made.

C. In regard to the distribution to the legislative retirement fund, in December 2024 and in each December thereafter, the public employees retirement association, with the assistance of the legislative council service, shall determine the amount of retirement benefits for the succeeding calendar year. If the monthly average exceeds seventy-five thousand dollars ($75,000), the association shall immediately notify the department of the average amount.

History: Laws 2003, ch. 86, § 1; 2016 (2nd S.S.), ch. 3, § 1; 2017 (1st S.S.), ch. 3, § 6; 2020, ch. 38, § 1.

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, provided for distributions pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act to the judicial retirement fund and the magistrate retirement fund, and delayed further distributions to the legislative retirement fund until fiscal year 2026; in the section heading, added "oil and gas proceeds and pass-through entity withholding tax; magistrate retirement fund; judicial retirement fund"; in Subsection A, in the introductory clause, deleted "Beginning on July 1, 2019", and after "shall be made", added "as follows", and added Paragraphs A(1) through A(3); added a new Subsection B and redesignated former Subsection B as Subsection C; and in Subsection C, after the first occurrence of "December", deleted "2003" and added "2024", and after "thereafter", deleted "except in 2017".

The 2017 (1st S.S.) amendment, effective July 1, 2017, suspended certain distributions to the legislative retirement fund; in the catchline, after "Distribution", deleted "to"; in Subsection A, added "Beginning on July 1, 2019", and added "from the net receipts attributable to the amount of tax deducted pursuant to the Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act", after "legislative retirement fund in", deleted "an" and added "the", after "amount", deleted "equal to" and added "of", after "if larger", added "in an amount equal to", and after "NMSA 1978 for the", added "succeeding"; and in Subsection B, after "In", added "regard to the distribution to the legislative retirement fund, in", after "thereafter", added "except in 2017", after "determine the amount of", deleted "those", after "association shall", deleted "notify", after "immediately", added "notify", and deleted the last sentence, which related to the timing of certain distributions to the legislative retirement fund.

The 2016 (2nd S.S.) amendment, effective October 19, 2016, reduced a distribution to the legislative retirement fund; in Subsection A, after "in an amount equal to", deleted "two hundred thousand dollars ($200,000)" and added "seventy-five thousand dollars

($75,000)", and after "Subsection C of Section", deleted "10-11-42" and added "10-11-41"; in Subsection B, after "the monthly average exceeds", deleted "two hundred thousand dollars ($200,000)" and added "seventy-five thousand dollars ($75,000)".

7-1-6.44. Distribution; gasoline tax sharing agreement.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made by the department to each qualified tribe in an amount equal to forty percent of the net receipts attributable to the gasoline tax paid to the department on two million five hundred thousand gallons of gasoline each month. The distribution to each qualified tribe shall be made pursuant to a gasoline tax sharing agreement entered into by the department of transportation and the qualified tribe according to the provisions of Section 67-3-8.1 NMSA 1978.

B. From the balance remaining each month from the gasoline tax revenue on two million five hundred thousand gallons of gasoline per qualified tribe after distributions made pursuant to Subsection A of this section, a distribution of thirty-three thousand three hundred thirty-three dollars ($33,333) shall be made to the general fund.

C. The balance remaining after the distributions from gasoline tax revenue from two million five hundred thousand gallons of gasoline per qualified tribe pursuant to Subsections A and B of this section shall be distributed pursuant to Section 7-1-6.10 NMSA 1978.

D. As used in this section, "qualified tribe" means the Pueblo of Nambe or the Pueblo of Santo Domingo, as long as it owns one hundred percent of a registered Indian tribal distributor pursuant to the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978], that qualifies for a deduction pursuant to Subsection F of Section 7-13-4 NMSA 1978 and has entered into a gasoline tax sharing agreement pursuant to Section 67-3-8.1 NMSA 1978.

History: Laws 2003, ch. 150, § 2; 2004, ch. 109, § 2.

ANNOTATIONS

The 2004 amendments, effective July 1, 2004, amended Subsection A to change "a qualified tribe" to "each qualified tribe", added after "distribution" "to each qualified tribe", added Subsections B and C, redesignated Subsection B as Subsection D and added at the end of Subsection D "and has entered into a gasoline tax sharing agreement pursuant to Section 67-3-8.1 NMSA 1978".

7-1-6.45. Repealed.

ANNOTATIONS

Repeals. — Laws 2006, ch. 25, § 2 repealed 7-1-6.45 NMSA 1978, as enacted by Laws 2004, ch. 4, § 2, relating to distributions to the medicaid program, effective March 2, 2006. For provisions of former section, *see* the 2005 NMSA 1978 on *NMOneSource.com.*

7-1-6.46. Distribution to municipalities; offset for food deduction and health care practitioner services deduction.

A. For a municipality that did not have in effect on June 30, 2019 a municipal hold harmless gross receipts tax through an ordinance and that has a population of less than ten thousand according to the most recent federal decennial census, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the municipality in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the applicable maximum distribution for the municipality.

B. For a municipality that did not have in effect on June 30, 2019 a municipal hold harmless gross receipts tax through an ordinance and has a population of at least ten thousand according to the most recent federal decennial census, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the municipality in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the following percentages of the applicable maximum distribution for the municipality:

(1) for a municipality that has a municipal poverty level two percentage points or more above the state poverty level, eighty percent;

(2) for a municipality that has a poverty level of less than two percentage points above or below the state poverty level, fifty percent; and

(3) for a municipality that has a poverty level two percentage points or more below the state poverty level:

(a) on or after July 1, 2022 and prior to July 1, 2023, forty-nine percent;

(b) on or after July 1, 2023 and prior to July 1, 2024, forty-two percent;

(c) on or after July 1, 2024 and prior to July 1, 2025, thirty-five percent; and

(d) on or after July 1, 2025, thirty percent.

C. For a municipality not described in Subsection A or B of this section, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the municipality in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the applicable maximum distribution for the municipality multiplied by the following percentages:

(1) on or after July 1, 2022 and prior to July 1, 2023, forty-nine percent;

(2) on or after July 1, 2023 and prior to July 1, 2024, forty-two percent;

(3) on or after July 1, 2024 and prior to July 1, 2025, thirty-five percent;

(4) on or after July 1, 2025 and prior to July 1, 2026, twenty-eight percent;

(5) on or after July 1, 2026 and prior to July 1, 2027, twenty-one percent;

(6) on or after July 1, 2027 and prior to July 1, 2028, fourteen percent;

(7) on or after July 1, 2028 and prior to July 1, 2029, seven percent; and

(8) on and after July 1, 2029, zero percent.

D. A distribution pursuant to this section is in lieu of revenue that would have been received by the municipality but for the deductions provided by Sections 7-9-92 and 7-9-93 NMSA 1978. The distribution shall be considered gross receipts tax revenue and shall be used by the municipality in the same manner as gross receipts tax revenue, including payment of gross receipts tax revenue bonds.

E. If the changes made by this 2022 act to the distributions made pursuant to this section impair the ability of a municipality to meet its principal or interest payment obligations for revenue bonds that are outstanding prior to July 1, 2022 and that are secured by the pledge of all or part of the municipality's revenue from the distribution made pursuant to this section, then the amount distributed pursuant to this section to that municipality shall be increased by an amount sufficient to meet the required payment; provided that the total amount distributed to that municipality pursuant to this section does not exceed the amount that would have been due that municipality pursuant to this section as it was in effect on June 30, 2022.

F. For the purposes of this section:

(1) "business locations attributable to the municipality" means business locations:

(a) within the municipality;

(b) on land owned by the state, commonly known as the "state fairgrounds", within the exterior boundaries of the municipality;

(c) outside the boundaries of the municipality on land owned by the municipality; and

(d) on an Indian reservation or pueblo grant in an area that is contiguous to the municipality and in which the municipality performs services pursuant to a contract between the municipality and the Indian tribe or Indian pueblo if: 1) the contract

describes an area in which the municipality is required to perform services and requires the municipality to perform services that are substantially the same as the services the municipality performs for itself; and 2) the governing body of the municipality has submitted a copy of the contract to the secretary;

(2) "maximum distribution" means:

(a) for a municipality that did not have in effect on June 30, 2019 a municipal hold harmless gross receipts tax, the total deductions claimed pursuant to Sections 7-9-92 and 7-9-93 NMSA 1978 for the month by taxpayers from business locations attributable to the municipality multiplied by the sum of the combined rate of all municipal local option gross receipts taxes in effect in the municipality for the month plus one and two hundred twenty-five thousandths percent; and

(b) for a municipality not described in Subparagraph (a) of this paragraph, the total deductions claimed pursuant to Sections 7-9-92 and 7-9-93 NMSA 1978 for the month by taxpayers from business locations attributable to the municipality multiplied by the sum of the combined rate of all municipal local option gross receipts taxes in effect in the municipality on January 1, 2007 plus one and two hundred twenty-five thousandths percent; and

(3) "poverty level" means the percentage of persons in poverty, according to the most recent five-year American community survey, as published by the United States census bureau. For the purposes of determining the poverty level of a municipality, "poverty level" means the percentage of persons in poverty in a municipality, according to the most recent five-year American community survey, as published by the United States census bureau, that includes adequate data to make a determination as to the poverty level of the municipality.

G. A distribution pursuant to this section may be adjusted for a distribution made to a tax increment development district with respect to a portion of a gross receipts tax increment dedicated by a municipality pursuant to the Tax Increment for Development Act [Chapter 5, Article 15 NMSA 1978].

History: Laws 2004, ch. 116, § 1; 2006, ch. 75, § 33; 2007, ch. 331, § 2; 2013, ch. 160, § 1; 2022, ch. 47, § 1.

ANNOTATIONS

The 2022 amendment, effective July 1, 2022, provided that certain municipalities are exempt from the hold harmless distribution phase-out if they did not have a hold harmless gross receipts tax in effect on June 30, 2019, allowed municipalities with a population of at least ten thousand to retain a percentage of the hold harmless distribution based on the poverty level of the municipality, and defined "maximum distribution"; in Subsection A, after "For a municipality that", deleted "has not elected to impose" and added "did not have in effect on June 30, 2019", after "equal to the",

deleted "sum of" and added "applicable maximum distribution for the municipality", and deleted Paragraphs A(1) and A(2); added a new Subsection B and redesignated former Subsections B through F as Subsections C through G, respectively; in Subsection C, after "described in Subsection A", added "or B", after "equal to the", deleted "sum of" and added "applicable maximum distribution for the municipality multiplied by", deleted former Paragraph (1) and the language "the total deductions claimed pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers from business locations attributable to the municipality multiplied by the sum of the combined rate of all municipal local option gross receipts taxes in effect in the municipality on January 1, 2007 plus one and two hundred twenty-five thousandths percent in", deleted Subparagraphs (2)(a) through 2(h) and redesignated former Subparagraphs (2)(i) through (2)(o) as Paragraphs C(1) through C(7), respectively, and added Paragraph C(8); in Subsection D, deleted "The" and added "A", after "pursuant to", deleted "Subsections A and B of", and deleted "A distribution pursuant to this section to a municipality not described in Subsection A of this section or to a municipality that has imposed a gross receipts tax through an ordinance that does not provide a deduction contained in the Gross Receipts and Compensating Tax Act shall not be made on or after July 1, 2029."; in Subsection E, after "If the", deleted "reductions" and added "changes", after "pursuant to", deleted "Subsections A and B of", and substituted each occurrence of "2013" with "2022" throughout the subsection; and in Subsection F, redesignated former Paragraphs (1) through (4) as Subparagraphs F(1)(a) through F(1)(d), respectively, in Subparagraph F(1)(d), redesignated former Subparagraphs (4)(a) and (4)(b) as Items F(1)(d)1) and F(1)(d)2), respectively, and added Paragraphs F(2) and F(3).

The 2013 amendment, effective July 1, 2013, offset the effects of revenue reductions from decreasing the corporate income tax rate and the use of a single sales factor by phasing out certain local government hold harmless provisions over a fifteen-year period; in Subsection A, at the beginning of the sentence, added the language up to "a distribution pursuant to Section 7-1-6.1 NMSA 1978"; deleted former Paragraph (1) of Subsection A, which provided a distribution for municipalities having a population of less than ten thousand and a per capita taxable gross receipts less than the average for all municipalities; in Subsection B, after "described in", deleted "Paragraph (1) of this" and after "Section", added the remainder of the sentence; in Paragraph (1) of Subsection B, in the introductory sentence, added "in the following percentages" and added Subparagraphs (a) through (o); in Paragraph (2) of Subsection B, after "percent", added "in the following percentages" and added Subparagraphs (a) through (o); in Subsection C, in the first sentence, after "pursuant to", changed "Subsection A" to "Subsections A and B", and added the third sentence; and added Subsection D.

The 2007 amendment, effective July 1, 2007, added Paragraph (1) of Subsection A and Subparagraphs (a) and (b) of Paragraph (2) of Subsection A.

The 2006 amendment, effective March 6, 2006, added Subsection D to provide an adjustment for a distribution to a tax increment development district.

7-1-6.47. Distribution to counties; offset for food deduction and health care practitioner services deduction.

A. For a county that did not have in effect on June 30, 2019 a county hold harmless gross receipts tax through an ordinance and that has a population of less than forty-eight thousand according to the most recent federal decennial census, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the county in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the applicable maximum distribution for the county.

B. For a county not described in Subsection A of this section, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the county in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the applicable maximum distribution multiplied by the following percentages:

(1) on or after July 1, 2021 and prior to July 1, 2022, fifty-six percent;

(2) on or after July 1, 2022 and prior to July 1, 2023, forty-nine percent;

(3) on or after July 1, 2023 and prior to July 1, 2024, forty-two percent;

(4) on or after July 1, 2024 and prior to July 1, 2025, thirty-five percent;

(5) on or after July 1, 2025 and prior to July 1, 2026, twenty-eight percent;

(6) on or after July 1, 2026 and prior to July 1, 2027, twenty-one percent;

(7) on or after July 1, 2027 and prior to July 1, 2028, fourteen percent;

(8) on or after July 1, 2028 and prior to July 1, 2029, seven percent; and

(9) on and after July 1, 2029, zero percent.

C. A distribution pursuant to this section is in lieu of revenue that would have been received by the county but for the deductions provided by Sections 7-9-92 and 7-9-93 NMSA 1978. The distribution shall be considered gross receipts tax revenue and shall be used by the county in the same manner as gross receipts tax revenue, including payment of gross receipts tax revenue bonds.

D. If the changes made by this 2022 act to the distributions made pursuant to this section impair the ability of a county to meet its principal or interest payment obligations for revenue bonds that are outstanding prior to July 1, 2022 and that are secured by the pledge of all or part of the county's revenue from the distribution made pursuant to this section, then the amount distributed pursuant to this section to that county shall be increased by an amount sufficient to meet the required payment; provided that the total amount distributed to that county pursuant to this section does not exceed the amount

that would have been due that county pursuant to this section as it was in effect on June 30, 2022.

E. A distribution pursuant to this section may be adjusted for a distribution made to a tax increment development district with respect to a portion of a gross receipts tax increment dedicated by a county pursuant to the Tax Increment for Development Act [Chapter 5, Article 15 NMSA 1978].

F. For the purposes of this section, "maximum distribution" means:

(1) for a county that did not have in effect on June 30, 2019 a county hold harmless gross receipts tax and that has a population of less than forty-eight thousand according to the most recent federal decennial census, the sum of:

(a) the total deductions claimed pursuant to Sections 7-9-92 and 7-9-93 NMSA 1978 for the month by taxpayers from business locations within a municipality in the county multiplied by the combined rate of all county local option gross receipts taxes in effect for the month that are imposed throughout the county; and

(b) the total deductions claimed pursuant to Sections 7-9-92 and 7-9-93 NMSA 1978 for the month by taxpayers from business locations in the county but not within a municipality multiplied by the combined rate of all county local option gross receipts taxes in effect for the month that are imposed in the county area not within a municipality; and

(2) for a county not described in Paragraph (1) of this subsection, the sum of:

(a) the total deductions claimed pursuant to Sections 7-9-92 and 7-9-93 NMSA 1978 for the month by taxpayers from business locations within a municipality in the county multiplied by the combined rate of all county local option gross receipts taxes in effect on January 1, 2007 that are imposed throughout the county; and

(b) the total deductions claimed pursuant to Sections 7-9-92 and 7-9-93 NMSA 1978 for the month by taxpayers from business locations in the county but not within a municipality multiplied by the combined rate of all county local option gross receipts taxes in effect on January 1, 2007 that are imposed in the county area not within a municipality.

History: Laws 2004, ch. 116, § 2; 2006, ch. 75, § 34; 2007, ch. 331, § 3; 2013, ch. 160, § 2; 2022, ch. 47, § 2.

ANNOTATIONS

The 2022 amendment, effective July 1, 2022, provided that certain counties are exempt from the hold harmless distribution phase-out if they did not have a hold harmless gross receipts tax in effect on June 30, 2019, and defined "maximum

distribution"; in Subsection A, after "For a county that", deleted "has not elected to impose" and added "did not have in effect on June 30, 2019", after "equal to the", deleted "sum of" and added "applicable maximum distribution for the county", and deleted former Paragraphs A(1) through A(4); in Subsection B, deleted Paragraphs B(1) through B(3), and the language "the total deductions claimed pursuant to Section 7-9-93 NMSA 1978 for the month by taxpayers from business locations in the county but not within a municipality multiplied by the combined rate of all county local option gross receipts taxes in effect on January 1, 2007 that are imposed in the county area not within a municipality in", deleted Subparagraphs B(4)(a) through B(4)(g) and redesignated former Subparagraph B(4)(h) through B(4)(o) as Paragraphs B(1) through B(8), respectively, and added Paragraph B(9); in Subsection C, after "pursuant to", deleted "Subsections A and B of", and deleted "A distribution pursuant to this section to a county not described in Subsection A of this section or to a county that has imposed a gross receipts tax through an ordinance that does not provide a deduction contained in the Gross Receipts and Compensating Tax Act shall not be made on or after July 1, 2029"; in Subsection D, after "If the", deleted "reductions" and added "changes", after "made pursuant to", deleted "Subsections A and B of", and substituted each occurrence of "2013" with "2022"; and added Subsection F.

The 2013 amendment, effective July 1, 2013, offset the effects of revenue reductions from decreasing the corporate income tax rate and the use of a single sales factor by phasing out certain local government hold harmless provisions over a fifteen-year period; in Subsection A, at the beginning of the sentence, added the language up to "a distribution pursuant to Section 7-1-6.1 NMSA 1978"; deleted former Paragraph (1) of Subsection A, which provided a distribution for counties having a population of less than forty eight thousand; in Subsection B, after "described in", deleted "Paragraph (1) of this" and after "Section", added the remainder of the sentence; in Paragraph (1) of Subsection B, in the introductory sentence, after "imposed throughout the county", added "in the following percentages" and added Subparagraphs (a) through (o); in Paragraph (2) of Subsection B, in the introductory sentence, after "county area not within a municipality", added "in the following percentages" and added Subparagraphs (a) through (o); in Paragraph (3) of Subsection B, in the introductory sentence, after "imposed throughout the county", added "in the following percentages" and added Subparagraphs (a) through (o); in Paragraph (4) of Subsection B, in the introductory sentence, after "county area not within a municipality", added "in the following percentages" and added Subparagraphs (a) through (o); in Subsection C, in the first sentence, after "pursuant to", changed "Subsection A" to "Subsections A and B", and added the third sentence; and added Subsection D.

The 2007 amendment, effective July 1, 2007, amended Subsection A to provide separate distributions to offset for food deductions and health care practitioner services deductions for counties having a population of less than 48,000 in Paragraph (1) and all other counties as provided in new Paragraph (2).

The 2006 amendment, effective March 6, 2006, added Subsection C to provide an adjustment for a distribution to a tax increment development district.

7-1-6.48. Distribution; contributions to department of health; amyotrophic lateral sclerosis research.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the amyotrophic lateral sclerosis research fund in an amount equal to the money designated pursuant to Section 7-2-30.1 NMSA 1978 as contributions to the amyotrophic lateral sclerosis research fund.

History: Laws 2005, ch. 56, § 1; 2017, ch. 63, § 14.

ANNOTATIONS

Cross reference. — For the amyotrophic lateral sclerosis research fund, *see* 24-20-4 NMSA 1978.

The 2017 amendment, effective June 16, 2017, after "pursuant to", deleted "the Income Tax Act" and added "Section 7-2-30.1 NMSA 1978".

7-1-6.49. Distribution; contributions to the state parks division.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the energy, minerals and natural resources department in an amount equal to the money designated pursuant to Section 7-2-30.2 NMSA 1978 as contributions to the state parks division of the energy, minerals and natural resources department for the kids in parks education program. The energy, minerals and natural resources department shall remit the amount designated for the state parks division to the state parks division for expenditure for the kids in parks education program.

History: Laws 2005, ch. 87, § 1; 2017, ch. 63, § 15.

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, after "pursuant to", deleted "the Income Tax Act" and added "Section 7-2-30.2 NMSA 1978".

7-1-6.50. Distribution; contributions for national guard member and family assistance.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the department of military affairs in an amount equal to the money designated pursuant to Section 7-2-30.3 NMSA 1978 as contributions for assistance to members of the New Mexico national guard and to their families. The department of military affairs shall deposit the money in a temporary suspense account for distribution to members of the New Mexico national guard and to their families.

History: Laws 2005, ch. 220, § 1; 2008, ch. 13, § 1; 2015, ch. 150, § 1; 2017, ch. 63, § 16; 2018, ch. 4, § 1.

ANNOTATIONS

The 2018 amendment, effective July 1, 2018, changed the eligibility requirements for National Guard members to receive assistance from the tax administration suspense fund; and after "New Mexico national guard", deleted "deployed overseas for a period of thirty or more consecutive days".

The 2017 amendment, effective June 16, 2017, after "pursuant to", deleted "the Income Tax Act" and added "Section 7-2-30.3 NMSA 1978".

The 2015 amendment, effective April 10, 2015, authorized a distribution from the tax administration suspense fund to be made to the department of military affairs for assistance to members of the New Mexico national guard who have been deployed overseas for a period of thirty or more consecutive days; after the first occurrence of "New Mexico national guard", deleted "activated for service in the global war on terrorism" and added "deployed overseas for a period of thirty or more consecutive days", and after the second occurrence of "New Mexico national guard", deleted "activated for service in the global war on terrorism".

The 2008 amendment, effective February 22, 2008, changed the distribution from the secretary of veterans' services to the department of military affairs.

7-1-6.51. Distribution; municipal event center surcharge.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the public project revolving fund administered by the New Mexico finance authority in an amount equal to seventy-five percent of the amount of event center surcharge proceeds transferred to the tax administration suspense fund pursuant to the Municipal Event Center Funding Act [3-66-1 to 3-66-11 NMSA 1978].

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the energy, minerals and natural resources department in an amount equal to twenty-four percent of the amount of event center surcharge proceeds transferred to the tax administration suspense fund pursuant to the Municipal Event Center Funding Act.

C. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the cultural affairs department in an amount equal to one percent of the amount of event center surcharge proceeds transferred to the tax administration suspense fund pursuant to the Municipal Event Center Funding Act.

History: Laws 2005, ch. 351, § 1.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 351, § 14 made Laws 2005, ch. 351, § 1 effective April 8, 2005.

Compiler's notes. — Laws 2005, ch. 351 was not enacted as part of the Municipal Code, but is included in that code as a convenience to the user.

7-1-6.52. Distribution adjustment; tax administration suspense fund; credit for certain sales of services for resale.

Distributions from the tax administration suspense fund to the general fund of revenue attributable to the gross receipts tax or to the governmental gross receipts tax shall be adjusted for credits issued pursuant to the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] for receipts from the sale of services for resale.

History: Laws 2005, ch. 104, § 1.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 104, § 29 made Laws 2005, ch. 104, § 1 effective July 1, 2005.

7-1-6.53. Distribution; energy efficiency and renewable energy bonding fund; gross receipts tax.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the energy efficiency and renewable energy bonding fund from the net receipts attributable to the gross receipts tax imposed by the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] in an amount necessary to make the required bond debt service payments pursuant to the Energy Efficiency and Renewable Energy Bonding Act [Chapter 6, Article 21D NMSA 1978] as determined by the New Mexico finance authority. The distribution shall be made:

A. after the required distribution pursuant to Section 7-1-6.4 NMSA 1978;

B. contemporaneously with other distributions of net receipts attributable to the gross receipts tax for payment of debt service on outstanding bonds or to a fund dedicated for that purpose; and

C. prior to any other distribution of net receipts attributable to the gross receipts tax.

History: Laws 2005, ch. 176, § 11.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 176, § 13 made Laws 2005, ch. 176, § 11 effective July 1, 2005.

7-1-6.54. Distributions; tax increment development districts.

A distribution for a tax increment development district shall be made by the department to a special fund of the district, in accordance with a notice that is filed pursuant to Section 5-15-27 NMSA 1978 with respect to a dedication of a gross receipts tax increment, to a special fund of the tax increment development district.

History: Laws 2006, ch. 75, § 29; 2019, ch. 275, § 9.

ANNOTATIONS

The 2019 amendment, effective July 1, 2019, required the taxation and revenue department to make distributions for a tax increment development district into a special fund of the district in accordance with a notice that is filed pursuant to Section 5-15-27 NMSA 1978; and after "distribution", deleted "to" and added "for", after "department", added "to a special fund of the district", after "pursuant to", deleted "the Tax Increment for Development Act" and added "Section 5-15-27 NMSA 1978", and after "tax increment, to", added "a special fund".

Applicability. — Laws 2019, ch. 275, § 10 provided that the provisions of this act shall not apply to dedications of gross receipts tax increments by the state board of finance made prior to July 1, 2019.

7-1-6.55. Repealed.

History: Laws 2007, ch. 331, § 4; repealed by Laws 2019, ch. 270, § 57.

ANNOTATIONS

Repeals. — Laws 2019, ch. 270, § 57 repealed 7-1-6.55 NMSA 1978, as enacted by Laws 2007, ch. 331, § 4, relating to distribution to municipality equivalent to a portion of compensating tax, effective July 1, 2021. For provisions of former section, *see* the 2020 NMSA 1978 on *NMOneSource.com*.

7-1-6.56. Repealed.

History: Laws 2007, ch. 168, § 1; 2009, ch. 287, § 1; 2009, ch. 288, § 1; repealed by Laws 2016 (2nd S.S.), ch. 1, § 3.

ANNOTATIONS

Repeals. — Laws 2016 (2nd S.S.), ch. 1, § 3 repealed 7-1-6.56 NMSA 1978, as enacted by Laws 2007, ch. 168, § 1, relating to retiree health care fund distribution,

effective January 1, 2017. For provisions of former section, *see* the 2016 NMSA 1978 on *NMOneSource.com*.

7-1-6.57. Repealed.

History: Laws 2007, ch. 361, § 1; repealed by Laws 2019, ch. 270, § 56.

ANNOTATIONS

Repeals. — Laws 2019, ch. 270, § 56 repealed 7-1-6.57 NMSA 1978, as enacted by Laws 2007, ch. 361, § 1, relating to distribution adjustment, tax administration suspense fund, credit for receipts of hospitals, effective July 1, 2019. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

7-1-6.58. Distribution; public election fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the public election fund from the amount deposited pursuant to the provisions of Section 7-8A-13 NMSA 1978 in the amount of one hundred thousand dollars ($100,000) per month during fiscal year 2008 and subsequent fiscal years.

History: Laws 2007 (1st S.S.), ch. 2, § 8.

ANNOTATIONS

Effective dates. — Laws 2007 (1st S.S.), ch. 2 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 28, 2007, 90 days after the adjournment of the legislature.

7-1-6.59. Distribution; Vietnam veterans memorial operation, maintenance and improvement.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the veterans' services department in an amount equal to the money designated pursuant to Section 7-2-30.4 NMSA 1978 as contributions to the veterans' services department for the operation, maintenance and improvement of the Vietnam veterans memorial near Angel Fire, New Mexico.

History: Laws 2009, ch. 175, § 1; 2017, ch. 63, § 17; 2017, ch. 115, § 1.

ANNOTATIONS

2017 Multiple Amendments. — Laws 2017, ch. 63, § 17 and Laws 2017, ch. 115, § 1, both effective June 16, 2017, enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2017, ch. 115, § 1, as the last act

signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2017, ch. 63, § 17 and Laws 2017, ch. 115, § 1 are described below. To view the session laws in their entirety, *see* the 2017 session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Laws 2017, ch. 63, § 17, provided the citation to the Vietnam veterans memorial state park tax contribution statute, and Laws 2017, ch. 115, § 1, redesignated tax contributions from the state parks division of the energy, minerals and natural resources department to the veterans' services department for the operation, maintenance and improvement of the Vietnam veterans memorial near Angel Fire, New Mexico.

Laws 2017, ch. 115, § 1, effective June 16, 2017, redesignated tax contributions from the state parks division of the energy, minerals and natural resources department to the veterans' services department for the operation, maintenance and improvement of the Vietnam veterans memorial near Angel Fire, New Mexico; in the catchline added "Vietnam"; after "shall be made to the", deleted "state parks division of the energy, mineral and natural resources" and added "veterans' services", after "contributions to the", deleted "state parks division of the energy, minerals and natural resources" and added "veterans' services", and after "Vietnam veterans memorial", deleted "state park".

Laws 2017, ch. 63, § 17, effective June 16, 2017, provided the citation to the Vietnam veterans memorial state park tax contribution statute; after "pursuant to", deleted "the Income Tax Act" and added "Section 7-2-30.4 NMSA 1978".

Temporary provisions. — Laws 2017, ch. 90, § 1, effective June 16, 2017, provided:

A. Upon ratification of the transfer of the real property of Vietnam Veterans Memorial state park in Colfax county from the energy, minerals and natural resources department to the general services department, all programs, functions, personnel, appropriations, money, records, furniture, equipment, supplies and other property belonging to the energy, minerals and natural resources department pertaining to Vietnam Veterans Memorial state park in Colfax county shall be transferred to the veterans' services department.

B. Upon ratification of the transfer of the real property of Vietnam Veterans Memorial state park in Colfax county from the energy, minerals and natural resources department to the general services department, all contractual obligations of the energy, minerals and natural resources department pertaining to any of the function delineated in Subsection A of this section shall be transferred to the veterans' services department.

C. Upon ratification of the transfer of the real property of Vietnam Veterans Memorial state park in Colfax county from the energy, minerals and natural resources department to the general services department, all references in law to the energy, minerals and natural resources department pertaining to any of the functions delineated in Subsection A of this section shall be transferred to the veterans' services department.

7-1-6.60. Distribution; county business retention gross receipts tax.

Beginning September 1, 2011, an annual distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to a county that has imposed and the electors have approved a county business retention gross receipts tax. The distribution shall be in an amount equal to the balance of the net receipts attributable to that tax collected in the prior fiscal year, exclusive of penalties and interest, after the state has deducted an amount for deposit to the general fund equal to the reduction in gaming tax revenue from the gaming operator licensees that are racetracks located in that county resulting from county gaming tax credits allowed in the immediately prior fiscal year for gaming operator licensees located in that county. The total receipts from any county transferred to the general fund in any fiscal year shall not exceed seven hundred fifty thousand dollars ($750,000) or the total amount of the decrease in gaming tax revenue calculated for the county pursuant to this section, whichever is less.

History: Laws 2010, ch. 31, § 2.

ANNOTATIONS

Emergency clauses. — Laws 2010, ch. 31, § 4 contained an emergency clause and was approved March 3, 2010.

7-1-6.61. Distribution; oil and gas emergency school tax; excess extraction taxes suspense fund.

A. A distribution pursuant to Section 7-1-6.20 NMSA 1978 shall be made to the excess extraction taxes suspense fund in an amount as calculated pursuant to Subsection B of this section.

B. If the year-to-date amount plus the current net receipts exceeds the annual average amount, the excess shall be distributed by the taxation and revenue department to the excess extraction taxes suspense fund. Each month the department of finance and administration shall make the calculation to determine the excess amount to be distributed. If there is not an excess amount, no distribution shall be made.

C. As used in this section:

(1) "annual average amount" means the total net receipts attributable to the tax imposed pursuant to Section 7-31-4 NMSA 1978 and distributed pursuant to Section 7-1-6.20 NMSA 1978 in the immediately preceding five fiscal years, divided by five; and

(2) "year-to-date amount" means the cumulative year-to-date net receipts attributable to the tax imposed pursuant to Section 7-31-4 NMSA 1978 and distributed to the general fund in the prior months of the current fiscal year.

History: Laws 2017 (1st S.S.), ch. 3, § 3; 2020, ch. 3, § 6.

ANNOTATIONS

The 2020 amendment, effective July 1, 2020, distributed excess oil and gas emergency school tax revenue to the excess extraction taxes suspense fund, and removed direct distributions to the tax stabilization reserve; in the section heading, deleted "tax stabilization reserve from the", and added "excess extraction taxes suspense fund"; in Subsection A, after "shall be made to the", deleted "tax stabilization reserve" and added "excess extraction taxes suspense fund"; and in Subsection B, after "distributed", added "by the taxation and revenue department", after "to the", deleted "tax stabilization reserve" and added "excess extraction taxes suspense fund. Each month the department of finance and administration shall make the calculation to determine the excess amount to be distributed.", and after "no distribution shall be made", deleted "to the tax stabilization reserve. Each month the department shall make the calculation to determine if an excess amount should be distributed".

7-1-6.61. Distribution; oil and gas emergency school tax; excess extraction taxes suspense fund. (Effective July 1, 2024.)

A. A distribution pursuant to Section 7-1-6.20 NMSA 1978 shall be made to the excess extraction taxes suspense fund in an amount as calculated pursuant to Subsection B of this section.

B. If the year-to-date amount plus the current net receipts exceeds the threshold amount, the excess shall be distributed by the taxation and revenue department to the excess extraction taxes suspense fund. Each month the department of finance and administration shall make the calculation to determine the excess amount to be distributed. If there is not an excess amount, no distribution shall be made.

C. As used in this section:

(1) "threshold amount" means the total net receipts attributable to the tax imposed pursuant to Section 7-31-4 NMSA 1978 and distributed to the general fund in fiscal year 2024; and

(2) "year-to-date amount" means the cumulative year-to-date net receipts attributable to the tax imposed pursuant to Section 7-31-4 NMSA 1978 and distributed to the general fund in the prior months of the current fiscal year.

History: *Laws 2017 (1st S.S.), ch. 3, § 3; 2020, ch. 3, § 6; 2023, ch. 22, § 2.*

ANNOTATIONS

The 2023 amendment, *effective July 1, 2024, removed the definition of "annual average amount" and defined "threshold amount"; in Subsection B, after "exceeds the",*

deleted "annual average" and added "threshold"; and in Subsection C, Paragraph C(1), deleted "'annual average amount' means the total net receipts attributable to the tax imposed pursuant to Section 7-31-4 NMSA 1978 and distributed pursuant to Section 7-1-6.20 NMSA 1978 in the immediately preceding five fiscal years, divided by five" and added "'threshold amount' means the total net receipts attributable to the tax imposed pursuant to Section 7-31-4 NMSA 1978 and distributed to the general fund in fiscal year 2024".

7-1-6.62. Distribution; premium tax.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the law enforcement protection fund in an amount equal to ten percent of the net receipts attributable to the premium tax from life, health, general casualty and title insurance business.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the fire protection fund of the net receipts attributable to the premium tax derived from property and vehicle insurance business.

History: Laws 2019, ch. 47, § 2; 2023, ch. 182, § 1.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, included receipts attributable to the premium tax on health insurance business in a distribution of that tax to the law enforcement protection fund; and in Subsection A, after "tax from life", added "health".

7-1-6.63. Distribution; health care quality surcharge; health care facility fund; disability health care facility fund.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the health care facility fund in an amount equal to the net receipts attributable to the health care quality surcharge imposed on skilled nursing facilities and intermediate care facilities pursuant to the Health Care Quality Surcharge Act [7-41-1 to 7-41-8 NMSA 1978].

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the disability health care facility fund in an amount equal to the net receipts attributable to the health care quality surcharge imposed on intermediate care facilities for individuals with intellectual disabilities pursuant to the Health Care Quality Surcharge Act.

History: Laws 2019, ch. 53, § 9.

ANNOTATIONS

Repeals. — Laws 2022, ch. 37, § 1, effective May 18, 2022, repealed Laws 2019, ch. 53, § 12 that would have repealed 7-1-6.63 NMSA 1978 effective January 1, 2023.

Effective dates. — Laws 2019, ch. 53, § 13 made Laws 2019, ch. 53, § 9 effective July 1, 2019.

7-1-6.64. Repealed.

History: Laws 2019, ch. 270, § 9; 2020 (1st S.S.), ch. 4, § 1; repealed by Laws 2019, ch. 270, § 57.

ANNOTATIONS

Repeals. — Laws 2019, ch. 270, § 57 repealed 7-1-6.64 NMSA 1978, as enacted by Laws 2019, ch. 270, § 9, relating to distribution; municipalities and counties, effective July 1, 2021. For provisions of former section, *see* the 2020 NMSA 1978 on *NMOneSource.com*.

7-1-6.65. Repealed.

History: Laws 2020, ch. 22, § 2; repealed by Laws 2022, ch. 45, § 3.

ANNOTATIONS

Repeals. — Laws 2022, ch. 45, § 3 repealed 7-1-6.65 NMSA 1978, as enacted by Laws 2020, ch. 22, § 2, relating to distribution, gross receipts tax, technology readiness gross receipts tax credit fund, effective July 1, 2022. For provisions of former section, *see* the 2021 NMSA 1978 on *NMOneSource.com*.

Laws 2022, ch. 45, § 3 repealed Laws 2020, ch. 22, § 3 that would have repealed 7-1-6.65 NMSA 1978 effective July 1, 2024.

7-1-6.66. Distribution; offset for food and beverage establishments deduction.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to a municipality in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the sum of the deductions claimed pursuant to Section 3 [7-9-118 NMSA 1978] of this 2021 act for the month by taxpayers from business locations attributable to the municipality multiplied by the sum of the combined rate of all municipal local option gross receipts taxes in effect in the municipality on January 1, 2021 plus one and two hundred twenty-five thousandths percent.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to a county in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15

NMSA 1978, equal to the sum of the total deductions claimed pursuant to Section 3 of this 2021 act for the month by taxpayers from business locations:

(1) within a municipality in the county multiplied by the combined rate of all county local option gross receipts taxes in effect on January 1, 2021 that are imposed in the county; and

(2) in the county but not within a municipality multiplied by the combined rate of all county local option gross receipts taxes in effect on January 1, 2021 that are imposed in the county area not within a municipality.

C. A distribution pursuant to this section may be adjusted for a distribution made to a tax increment development district with respect to a portion of a gross receipts tax increment dedicated by a municipality pursuant to the Tax Increment for Development Act [Chapter 5, Article 15 NMSA 1978].

D. For the purposes of this section, "business locations attributable to the municipality" means business locations:

(1) within the municipality;

(2) on land owned by the state, commonly known as the "state fairgrounds", within the exterior boundaries of the municipality;

(3) outside the boundaries of the municipality on land owned by the municipality; and

(4) on an Indian reservation or pueblo grant in an area that is contiguous to the municipality and in which the municipality performs services pursuant to a contract between the municipality and the Indian tribe or Indian pueblo if:

(a) the contract describes an area in which the municipality is required to perform services and requires the municipality to perform services that are substantially the same as the services the municipality performs for itself; and

(b) the governing body of the municipality has submitted a copy of the contract to the secretary.

History: Laws 2021, ch. 4, § 1.

ANNOTATIONS

Emergency clauses. — Laws 2021, ch. 4, § 6 contained an emergency clause and was approved March 3, 2021.

7-1-6.67. Distribution; Local Economic Development Act Fund.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the Local Economic Development Act [Chapter 5, Article 10 NMSA 1978] fund equal to the following amounts of the following taxes imposed and paid on the expenses related to the construction of the qualifying entity's economic development project, as determined pursuant to Section 2 [5-10-17 NMSA 1978] of this 2021 act:

(1) fifty percent of the net receipts attributable to state gross receipts tax and the state compensating tax; and

(2) fifty percent of the net receipts attributable to the local option gross receipts tax and county compensating tax imposed by a county and local option gross receipts tax and municipal compensating tax imposed by a municipality.

B. As used in this section:

(1) "economic development project" means "economic development project" as used in the Local Economic Development Act; and

(2) "qualifying entity" means "qualifying entity" as used in the Local Economic Development Act.

History: Laws 2021 (1st S.S.), ch. 2, § 5.

ANNOTATIONS

Emergency clauses. — Laws 2021 (1st S.S.), ch. 2, § 6 contained an emergency clause and was approved April 7, 2021.

7-1-6.68. Distribution; cannabis excise tax; municipalities and counties.

A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each municipality, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, in an amount equal to thirty-three and thirty-three hundredths percent of the net receipts attributable to the cannabis excise tax from business locations within the municipality as reported pursuant to Section 7-42-4 NMSA 1978.

B. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each county in an amount equal to thirty-three and thirty-three hundredths percent of the net receipts attributable to the cannabis excise tax from business locations within the county area of the county as reported pursuant to Section 7-42-4 NMSA 1978.

C. The department may deduct an amount not to exceed three percent of the distributions made pursuant to this section for the reasonable costs for administering the distributions.

D. As used in this section, "county area" means that portion of a county located outside the boundaries of any municipality.

History: Laws 2021 (1st S.S.), ch. 4, § 50; 2023, ch. 85, § 2.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, provided for destination-based sourcing for the cannabis excise tax; after "cannabis excise tax from", deleted "cannabis retailers" and added "business locations" throughout the section; in Subsection A, after "municipality", added "as reported pursuant to Section 7-42-4 NMSA 1978"; and in Subsection B, after "within the county area of the county", added "as reported pursuant to Section 7-42-4 NMSA 1978".

7-1-6.69. Distribution; health insurance premium surtax; health care affordability fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the health care affordability fund in an amount equal to the following amounts of the net receipts attributable to the health insurance premium surtax; provided that if the rate of the health insurance premium surtax is reduced pursuant to Subsection F of Section 7-40-3 NMSA 1978, no distribution pursuant to this section shall be made:

A. beginning January 1, 2022 and prior to July 1, 2022, fifty-two percent;

B. beginning July 1, 2022 and prior to July 1, 2024, fifty-five percent; and

C. beginning July 1, 2024, thirty percent.

History: Laws 2021, ch. 136, § 1.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 136, § 11 made Laws 2021, ch. 136, § 1 effective January 1, 2022.

7-1-6.70. Distribution; land grant-merced assistance fund.

A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the land grant-merced assistance fund in an amount equal to five-hundredths percent of the net receipts attributable to the gross receipts tax after distributions have been made pursuant to Sections 7-1-6.46 and 7-1-6.47 NMSA 1978.

History: Laws 2022, ch. 32, § 1.

ANNOTATIONS

Effective dates. — Laws 2022, ch. 32, § 3 made Laws 2022, ch. 32, § 1 effective July 1, 2022.

7-1-6.71. Distribution; metropolitan redevelopment fund. (Effective July 1, 2024.)

A distribution for a metropolitan redevelopment project pursuant to the Metropolitan Redevelopment Code [Chapter 3, Article 60A NMSA 1978] shall be made to the metropolitan redevelopment fund in accordance with a notice filed by a municipality or county pursuant to Section 3-60A-21 NMSA 1978 with respect to a dedication of a gross receipts tax increment.

History: *Laws 2023, ch. 112, § 11.*

ANNOTATIONS

Effective dates. *— Laws 2023, ch. 112, § 15 made Laws 2023, ch. 112, § 11 effective July 1, 2024.*

7-1-7. Repealed.

ANNOTATIONS

Repeals. — Laws 1992, ch. 55, § 18 repealed 7-1-7 NMSA 1978, as enacted by Laws 1969, ch. 147, § 2, relating to distribution in lieu of municipal sales tax and pledges of municipal sales tax, effective July 1, 1992. For provisions of former section, *see* the 1991 NMSA 1978 on *NMOneSource.com.*

7-1-8. Confidentiality of returns and other information.

A. It is unlawful for any person other than the taxpayer to reveal to any other person the taxpayer's return or return information, except as provided in Sections 7-1-8.1 through 7-1-8.11 NMSA 1978.

B. A return or return information revealed under Sections 7-1-8.1 through 7-1-8.11 NMSA 1978:

(1) may only be revealed to a person specifically authorized to receive the return or return information and the employees, directors, officers and agents of such person whose official duties or duties in the course of their employment require the return or return information and to an employee of the department;

(2) may only be revealed for the authorized purpose and only to the extent necessary to perform that authorized purpose;

(3) shall at all times be protected from being revealed to an unauthorized person by physical, electronic or any other safeguards specified by directive by the secretary; and

(4) shall be returned to the secretary or the secretary's delegate or destroyed as soon as it is no longer required for the authorized purpose.

C. If any provision of Sections 7-1-8.1 through 7-1-8.11 NMSA 1978 requires that a return or return information will only be revealed pursuant to a written agreement between a person and the department, the written agreement shall:

(1) list the name and position of any official or employee of the person to whom a return or return information is authorized to be revealed under the provision;

(2) describe the specific purpose for which the return or return information is to be used;

(3) describe the procedures and safeguards the person has in place to ensure that the requirements of Subsection B of this section are met; and

(4) provide for reimbursement to the department for all costs incurred by the department in supplying the returns or return information to, and administering the agreement with, the person.

D. A return or return information that is lawfully made public by an employee of the department or any other person, or that is made public by the taxpayer, is not subject to the provisions of this section once it is made public.

History: 1953 Comp., § 72-13-25, enacted by Laws 1965, ch. 248, § 13; 1969, ch. 8, § 1; 1970, ch. 16, § 1; 1971, ch. 276, § 5; 1975, ch. 136, § 1; 1977, ch. 249, § 42; 1979, ch. 144, § 7; 1981, ch. 37, § 8; 1982, ch. 18, § 8; 1983, ch. 211, § 21; 1985, ch. 65, § 10; 1986, ch. 20, § 12; 1987, ch. 169, § 3; 1988, ch. 73, § 6; 1991, ch. 19, § 1; 1993, ch. 5, § 3; 1993, ch. 261, § 1; 1996, ch. 15, § 3; 2000, ch. 28, § 3; 2001, ch. 56, § 3; 2003, ch. 398, § 5; 2003, ch. 439, § 1; 2005, ch. 107, § 1; 2005, ch. 108, § 2; 2005, ch. 109, § 2; 2007, ch. 164, § 2; 2009, ch. 241, § 1; 2009, ch. 242, § 2; 2009, ch. 243, § 2; 2017, ch. 63, § 18.

ANNOTATIONS

Repeals. — Laws 2017, ch. 63, § 31 repealed Laws 2009, ch. 241, § 1 and Laws 2009, ch. 242, § 2, effective June 16, 2017.

The 2017 amendment, effective June 16, 2017, included the statutory reference for a new section of the Tax Administration Act, and changed "through 7-1-8.10" to "through 7-1-8.11" throughout the section.

The 2009 amendment, effective July 1, 2009, deleted the former introductory paragraph; deleted former Subsections A through NN; and added new Subsections A through D.

The 2007 amendment, effective June 15, 2007, permits disclosure of information to the federation of tax administrators and adds Subsection NN.

The 2005 amendment, effective January 1, 2006, provided in Subsection D that the taxation and revenue department may disclose information to another jurisdiction pursuant to an international fuel tax agreement for tax purposes only; provided in Subsection R that the department may answer inquires concerning whether a person is a registered taxpayer for tax programs that require registration, but whether a person has filed a tax return; and provided in Subsection II that the department may disclose written rulings on questions of evidence and procedure made by a hearing officer, but not the name and identification of the taxpayer requesting the ruling.

The 2003 amendment, effective July 1, 2003, in Subsection N, substituted "number of gallons" for "amount and gallonage" and "received and deducted, and the amount of tax paid by each person required to file a gasoline tax return or pay gasoline tax" for "imported, exported, sold and used, including tax-exempt sales to the federal government reported or upon which the gasoline tax was paid and covering taxes received from each distributor"; in Subsection O, substituted "a rack operator, importer, blender, supplier or distributor and the number of gallons" for "distributors and gallonage" and inserted "a rack operator, importor, blender" following "Alternative Fuel Tax Act" and added Subsection GG.

The 2001 amendment, effective July 1, 2001, inserted "and not available from public sources" at the end of the preliminary language of the section and added Subsections EE and FF.

The 2000 amendment, effective July 1, 2000, in Subsection H, inserted "7-12-13 and Sections 7-12-15 and" and "or to the attorney general for purposes of Section 6-4-13 NMSA 1978 and the master settlement agreement defined in Section 6-4-12 NMSA 1978"; substituted "7-1-63" for "7-1-64" in Subsection J; and substituted "public regulation" for "state corporation" in Subsection W.

Gross receipts tax returns are privileged. — Where plaintiff sued defendants for employment discrimination; plaintiff's spouse, who was not a party to the action, maintained a private law practice; plaintiff alleged that upon filing the complaint, defendants retaliated against plaintiff by asserting irregularities with regard to the gross receipts tax records and returns of the spouse's private law practice; defendants asked the district court to issue subpoenas duces tecum to the spouse and to defendant taxation and revenue department for the spouse's gross receipts tax records and returns; and plaintiff's marital relationship to the spouse did not make plaintiff liable for payment of the gross receipts tax of the spouse's private law practice; the gross receipts tax records and returns sought by the subpoenas issued to the spouse and to

defendant taxation and revenue department were confidential under Sections 7-1-4.2 and 7-1-8 NMSA 1978 and privileged under Rule 11-502 NMRA. *Breen v. N.M. Taxation & Revenue Dep't*, 2012-NMCA-101, 287 P.3d 379.

Release of audit to non-affiliated property owner not permitted. — Subsection U does not permit the release of an audit report on oil and gas operations by the taxation and revenue department to a non-affiliated owner of working interests in properties operated by the audited company. *Meridian Oil, Inc. v. N.M. Taxation & Revenue*, 1996-NMCA-079, 122 N.M. 131, 921 P.2d 327 (decided under prior law).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 590, 591.

Validity, construction, and effect of state laws requiring public officials to protect confidentiality of income tax returns or information, 1 A.L.R.4th 959.

What constitutes privileged communications with preparer of federal tax returns so as to render communication inadmissible in federal tax prosecution, 36 A.L.R. Fed. 686.

84 C.J.S. Taxation § 481.

7-1-8.1. Information that may be revealed to an employee of the department, a taxpayer or the taxpayer's representative.

An employee of the department may reveal a return or return information:

A. to another employee of the department whose official duties require the return or return information; and

B. to the taxpayer or to the taxpayer's authorized representative; provided, however, that nothing in this section shall be construed to require an employee to testify in a judicial proceeding except as provided in Subsection A of Section 7-1-8.4 NMSA 1978.

History: 1978 Comp., § 7-1-8.1, as enacted by Laws 2009, ch. 243, § 3.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 243, § 14 made Laws 2009, ch. 243, § 3 effective July 1, 2009.

7-1-8.2. Information required to be revealed.

A. The department shall:

(1) furnish returns and return information required by a provision of the Tax Administration Act to be made available to the public by the department;

(2) answer all inquiries concerning whether a person is or is not a registered taxpayer for tax programs that require registration, but nothing in this subsection shall be construed to allow the department to answer inquiries concerning whether a person has filed a tax return;

(3) furnish, upon request for inspection by a member of the public pursuant to:

(a) Section 7-1-28 or Section 7-1-29 NMSA 1978, the taxpayer name, abatement, refund or credit amount, tax program or business tax credit and the date the abatement, refund or credit was issued; and

(b) Section 7-1-21 NMSA 1978, the installment agreement; and

(4) with respect to the taxes on gasoline and special fuel imposed by the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978] and the Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978], make available for public inspection at monthly intervals a report covering the number of gallons of gasoline, ethanol blended fuels and special fuel received and deducted and the amount of tax paid by each person required to file a gasoline tax return or special fuel tax return or pay gasoline tax or special fuel excise tax in the state of New Mexico.

B. Nothing in this section shall be construed to require the release of information that would violate an agreement between the state and the federal internal revenue service for sharing of information or any provision or rule of the federal Internal Revenue Code to which a state is subject.

History: 1978 Comp., § 7-1-8.2, as enacted by Laws 2009, ch. 243, § 4; 2023, ch. 85, § 3.

ANNOTATIONS

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

The 2023 amendment, effective July 1, 2023, required the taxation and revenue department to make publicly available reports on special fuel for which the special fuels excise tax is imposed; in Subsection A, Paragraph A(4), after "on gasoline", added "and special fuel", after "Gasoline Tax Act", added "and the Special Fuels Supplier Tax Act", after "ethanol blended fuels", added "and special fuel", after "file a gasoline tax return", added "or special fuel tax return", and after "or pay gasoline tax", added "or special fuel excise tax".

7-1-8.3. Information that may be revealed to public.

An employee of the department may reveal:

A. information obtained through the administration of a law not subject to administration and enforcement under the provisions of the Tax Administration Act to the extent that revealing that information is not otherwise prohibited by law;

B. return information with respect to the taxes or tax acts administered pursuant to Subsection B of Section 7-1-2 NMSA 1978, except that:

(1) return information for or relating to a period prior to July 1, 1985 with respect to the Resources Excise Tax Act [Chapter 7, Article 25 NMSA 1978] and the Severance Tax Act [7-26-1 to 7-26-8 NMSA 1978] may be revealed only to a committee of the legislature for a valid legislative purpose;

(2) except as provided in Paragraph (3) of this subsection, contracts and other agreements between the taxpayer and other parties and the proprietary information contained in those contracts and agreements shall not be revealed without the consent of all parties to the contract or agreement; and

(3) audit workpapers and the proprietary information contained in the workpapers shall not be revealed except to:

(a) the bureau of safety and environmental enforcement of the United States department of the interior, if production occurred on federal land;

(b) a person having a legal interest in the property that is subject to the audit;

(c) a purchaser of products severed from a property subject to the audit; or

(d) the authorized representative of any of the persons in Subparagraphs (a) through (c) of this paragraph. This paragraph does not prohibit the revelation of proprietary information contained in the workpapers that is also available from returns or from other sources not subject to the provisions of Section 7-1-8 NMSA 1978;

C. return information with respect to the taxes, surtaxes, advance payments or tax acts administered pursuant to Subsection C of Section 7-1-2 NMSA 1978;

D. a decision and order made by a hearing officer pursuant to the provisions of the Administrative Hearings Office Act [7-1B-1 to 7-1B-9 NMSA 1978] with respect to a protest filed with the secretary on or after July 1, 1993;

E. any written ruling on questions of evidence or procedure made by a hearing officer pursuant to the provisions of the Administrative Hearings Office Act; provided that the name and identification number of the taxpayer requesting the ruling shall not be revealed; and

F. return information included in a notice of lien or release or extinguishment of lien.

History: 1978 Comp., § 7-1-8.3, as enacted by Laws 2009, ch. 243, § 5; 2015, ch. 73, § 12.

ANNOTATIONS

The 2015 amendment, effective July 1, 2015, authorized certain tax information resulting from administrative hearings to be revealed to the public; in Subsection B, Paragraph (1), after "respect to", deleted "Sections 7-25-1 through 7-25-9 and 7-26-1 through 7-26-8 NMSA 1978" and added "the Resources Excise Tax Act and the Severance Tax Act"; in Subsection B, Paragraph (3)(a), after "the", deleted "minerals management service" and added "bureau of safety and environment enforcement"; in Subsection D, after "pursuant to", deleted "Section 7-1-24 NMSA 1978" and added "the provisions of the Administrative Hearings Office Act"; and in Subsection E, after "pursuant to", deleted "Section 7-1-24 NMSA 1978" and added "the provisions of the Administrative Hearings Office Act".

Temporary provisions. — Laws 2015, ch. 73, § 36 provided:

A. On July 1, 2015, all personnel, functions, appropriations, money, records, furniture, equipment and other property of, or attributable to, the hearings bureau of the office of the secretary of taxation and revenue shall be transferred to the administrative hearings office.

B. On July 1, 2015, all contractual obligations of the hearings bureau of the office of the secretary of taxation and revenue shall be binding on the administrative hearings office.

C. On July 1, 2015, all references in statute to the hearings bureau of the office of the secretary of taxation and revenue or hearing officers of the taxation and revenue department in Chapters 7 and 66 NMSA 1978 shall be deemed to be references to the administrative hearings office or a hearing officer of the office.

D. Rules of the taxation and revenue department pertaining to hearing officers and the conduct of hearings pursuant to actions related to Chapter 7 or 66 NMSA 1978 shall be deemed to be the rules of the administrative hearings office until amended or repealed by the office.

7-1-8.4. Information that may be revealed to judicial bodies or with respect to judicial proceedings or investigations and to administrative hearings office.

An employee of the department may reveal to:

A. a district court, an appellate court or a federal court, a return or return information:

(1) in response to an order thereof in an action relating to taxes or an action for tax fraud or any other crime that may involve taxes due to the state and in which the information sought is about a taxpayer that is party to the action and is material to the inquiry, in which case only that information may be required to be produced in court and admitted in evidence subject to court order protecting the confidentiality of the information and no more;

(2) in an action in which the department is attempting to enforce an act with which the department is charged or to collect a tax; or

(3) in any matter in which the department is a party and the taxpayer has put the taxpayer's own liability for taxes at issue, in which case only that information regarding the taxpayer that is party to the action may be produced, but this shall not prevent revelation of department policy or interpretation of law arising from circumstances of a taxpayer that is not a party;

B. the Bernalillo county metropolitan court, upon that court's request, the last known address and the date of that address for every person the court certifies to the department as a person who owes fines, fees or costs to the court or who has failed to appear pursuant to a court order or a promise to appear;

C. a magistrate court, upon the magistrate court's request, the last known address and the date of that address for every person the court certifies to the department as a person who owes fines, fees or costs to the court or who has failed to appear pursuant to a court order or a promise to appear;

D. a district attorney, a state district court grand jury or federal grand jury, information for an investigation of or proceeding related to an alleged criminal violation of the tax laws;

E. a third party subject to a subpoena or levy issued pursuant to the provisions of the Tax Administration Act, the identity of the taxpayer involved, the taxes or tax acts involved and the nature of the proceeding; and

F. the administrative hearings office, information in relation to a protest or other hearing, in which case only that information regarding the taxpayer that is a party to the action may be produced, but this shall not prevent revelation of department policy or interpretation of law arising from circumstances of a taxpayer that is not a party. The office shall maintain confidentiality regarding taxpayer information as required by the provisions of Section 7-1-8 NMSA 1978.

History: 1978 Comp., § 7-1-8.4, as enacted by Laws 2009, ch. 243, § 6; 2015, ch. 73, § 13.

ANNOTATIONS

The 2015 amendment, effective July 1, 2015, authorized certain information from administrative hearings to be revealed to judicial bodies or with respect to judicial proceedings or investigations; in the catchline, after "investigations", added "and to administrative hearings office"; in Subsection A, Paragraph (1), after "taxpayer", deleted "who" and added "that"; in Subsection A, Paragraph (3), after the second and third occurrence of "taxpayer", deleted "who" and added "that"; in Subsection D, after "tax laws;", deleted "and"; in Subsection E, after the semicolon, added "and"; and added Subsection F.

7-1-8.5. Information that may be revealed to national governments or their agencies.

An employee of the department may reveal return information to:

A. a representative of the secretary of the treasury or the secretary's delegate pursuant to the terms of a reciprocal agreement entered into with the federal government for exchange of the information; and

B. the national tax administration agencies of Mexico and Canada; provided the agency receiving the information has entered into a written agreement with the department to use the information for tax purposes only and is subject to a confidentiality statute and penalty similar to Sections 7-1-8 and 7-1-76 NMSA 1978.

History: 1978 Comp., § 7-1-8.5, as enacted by Laws 2009, ch. 243, § 7.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 243, § 14 made Laws 2009, ch. 243, § 7 effective July 1, 2009.

7-1-8.6. Information that may be revealed to certain tribal governments.

An employee of the department may reveal return information to authorized representatives of an Indian nation, tribe or pueblo, the territory of which is located wholly or partially within New Mexico, pursuant to the terms of a written reciprocal agreement entered into by the department with the Indian nation, tribe or pueblo for the exchange of that information for tax purposes only; provided that the Indian nation, tribe or pueblo has enacted a confidentiality statute and penalty similar to Sections 7-1-8 and 7-1-76 NMSA 1978.

History: 1978 Comp., § 7-1-8.6, as enacted by Laws 2009, ch. 243, § 8.

ANNOTATIONS

Effective dates. — Laws 2009, ch. 243, § 14 made Laws 2009, ch. 243, § 8 effective July 1, 2009.

7-1-8.7. Information that may be revealed to other states or multistate administrative bodies.

An employee of the department may reveal return information to:

A. an authorized representative of another state or an authorized representative of a local government of another state who is charged under the laws of that state with the responsibility for administration of that state's tax laws; provided that the receiving state or local government has entered into a written agreement with the department to use the return information for tax purposes only and that the receiving state has enacted a confidentiality statute and penalty similar to Sections 7-1-8 and 7-1-76 NMSA 1978 to which the representative is subject;

B. the multistate tax commission, the federation of tax administrators or their authorized representatives; provided that the return information is used for tax purposes only and is revealed by the multistate tax commission or the federation of tax administrators only to states that have met the requirements of Subsection A of this section; and

C. another jurisdiction pursuant to an international fuel tax agreement; provided that the return information is used for tax purposes only.

History: 1978 Comp., § 7-1-8.7, as enacted by Laws 2009, ch. 243, § 9; 2015 (1st S.S.), ch. 2, § 1.

ANNOTATIONS

The 2015 (1st S.S.) amendment, effective September 6, 2015, authorized employees of the New Mexico taxation and revenue department to reveal tax return information to authorized representatives of local governments of another state who are charged with administering that state’s tax laws; and in Subsection A, after "another state", added "or an authorized representative of a local government of another state who is charged under the laws of that state with the responsibility for administration of that state’s tax laws", and after "receiving state", added "or local government".

7-1-8.8. Information that may be revealed to other state and legislative agencies.

An employee of the department may reveal confidential return information to the following agencies; provided that a person who receives the information on behalf of the agency shall be subject to the penalties in Section 7-1-76 NMSA 1978 if the person fails to maintain the confidentiality required:

A. a committee of the legislature for a valid legislative purpose, return information concerning any tax or fee imposed pursuant to the Cigarette Tax Act [Chapter 7, Article 12 NMSA 1978];

B. the attorney general, return information acquired pursuant to the Cigarette Tax Act for purposes of Section 6-4-13 NMSA 1978 and the master settlement agreement defined in Section 6-4-12 NMSA 1978;

C. the commissioner of public lands, return information for use in auditing that pertains to rentals, royalties, fees and other payments due the state under land sale, land lease or other land use contracts;

D. the secretary of human services or the secretary's delegate under a written agreement with the department:

(1) the last known address with date of all names certified to the department as being absent parents of children receiving public financial assistance, but only for the purpose of enforcing the support liability of the absent parents by the child support enforcement division or any successor organizational unit;

(2) return information needed for reports required to be made to the federal government concerning the use of federal funds for low-income working families;

(3) return information of low-income taxpayers for the limited purpose of outreach to those taxpayers; provided that the human services department [health care authority department] shall pay the department for expenses incurred by the department to derive the information requested by the human services department [health care authority department] if the information requested is not readily available in reports for which the department's information systems are programmed;

(4) return information required to administer the Health Care Quality Surcharge Act [7-41-1 to 7-41-8 NMSA 1978]; and

(5) return information in accordance with the provisions of the Easy Enrollment Act [59A-23H-1 to 59A-23H-6 NMSA 1978];

E. the department of information technology, by electronic media, a database updated quarterly that contains the names, addresses, county of address and taxpayer identification numbers of New Mexico personal income tax filers, but only for the purpose of producing the random jury list for the selection of petit or grand jurors for the state courts pursuant to Section 38-5-3 NMSA 1978;

F. the state courts, the random jury lists produced by the department of information technology under Subsection E of this section;

G. the director of the New Mexico department of agriculture or the director's authorized representative, upon request of the director or representative, the names and addresses of all gasoline or special fuel distributors, wholesalers and retailers;

H. the public regulation commission, return information with respect to the Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] required to enable the commission to carry out its duties;

I. the state racing commission, return information with respect to the state, municipal and county gross receipts taxes paid by racetracks;

J. the gaming control board, tax returns of license applicants and their affiliates as provided in Subsection E of Section 60-2E-14 NMSA 1978;

K. the director of the workers' compensation administration or to the director's representatives authorized for this purpose, return information to facilitate the identification of taxpayers that are delinquent or noncompliant in payment of fees required by Section 52-1-9.1 or 52-5-19 NMSA 1978;

L. the secretary of workforce solutions or the secretary's delegate, return information for use in enforcement of unemployment insurance collections pursuant to the terms of a written reciprocal agreement entered into by the department with the secretary of workforce solutions for exchange of information;

M. the New Mexico finance authority, information with respect to the amount of municipal and county gross receipts taxes collected by municipalities and counties pursuant to any local option municipal or county gross receipts taxes imposed, and information with respect to the amount of governmental gross receipts taxes paid by every agency, institution, instrumentality or political subdivision of the state pursuant to Section 7-9-4.3 NMSA 1978;

N. the superintendent of insurance, return information with respect to the premium tax and the health insurance premium surtax;

O. the secretary of finance and administration or the secretary's designee, return information concerning a credit pursuant to the Film Production Tax Credit Act [Chapter 7, Article 2F NMSA 1978];

P. the secretary of economic development or the secretary's designee, return information concerning a credit pursuant to the Film Production Tax Credit Act;

Q. the secretary of public safety or the secretary's designee, return information concerning the Weight Distance Tax Act [Chapter 7, Article 15A NMSA 1978];

R. the secretary of transportation or the secretary's designee, return information concerning the Weight Distance Tax Act;

S. the secretary of energy, minerals and natural resources or the secretary's designee, return information concerning tax credits or deductions for which eligibility is certified or otherwise determined by the secretary or the secretary's designee;

T. the secretary of environment or the secretary's designee, return information concerning tax credits for which eligibility is certified or otherwise determined by the secretary or the secretary's designee; and

U. the secretary of state or the secretary's designee, taxpayer information required to maintain voter registration records and as otherwise provided in the Election Code [Chapter 1 NMSA 1978].

History: 1978 Comp., § 7-1-8.8, as enacted by Laws 2009, ch. 243, § 10; 2015, ch. 30, § 1; 2017, ch. 63, § 19; 2018, ch. 57, § 11; 2019, ch. 87, § 1; repealed and reenacted by Laws 2019, ch. 87, § 2; 2020, ch. 43, § 1; 2022, ch. 33, § 7; 2023, ch. 39, § 90.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 2023, ch. 205, § 16 provided that references to the human services department shall be deemed to be references to the health care authority department.

Repeals and reenactments. — Laws 2019, ch. 87, § 2 repealed and reenacted 7-1-8.8 NMSA 1978, as enacted by Laws 2009, ch. 243, § 10, effective January 1, 2020. For provisions of former section, *see* the 2018 NMSA 1978 on *NMOneSource.com*.

The 2023 amendment, effective June 16, 2023, provided that the taxation and revenue department may reveal confidential return information to the secretary of state to maintain voter registration records; and added Subsection U.

The 2022 amendment, effective May 18, 2022, authorized the taxation and revenue department to reveal certain confidential tax return information to certain agencies, provided that a person who receives the information on behalf of the agency is subject to certain penalties if the person fails to maintain the confidentiality required; in the introductory clause, after "may reveal", deleted "to" and added "confidential return information to the following agencies; provided that a person who receives the information on behalf of the agency shall be subject to the penalties in Section 7-1-76 NMSA 1978 if the person fails to maintain the confidentiality required"; in Subsection D, added Paragraphs D(2) through D(5); and deleted former Subsection N and redesignated former Subsections O through U as Subsections N through T, respectively.

Applicability. — Laws 2022, ch. 33, § 9 provided that the provisions of Laws 2022, ch. 33 apply to taxable years beginning on or after January 1, 2022.

The 2020 amendment, effective March 4, 2020, provided that an employee of the taxation and revenue department may reveal tax return information required to administer the Health Care Quality Surcharge Act to the secretary of human services, tax return information concerning the Weight Distance Tax Act to the secretary of public safety and the secretary of transportation, and tax return information concerning certain tax credits or deductions to the secretary of energy, minerals and natural resources and secretary of environment; in Subsection N, added Paragraph (3); in Subsections P and Q, after "secretary's", deleted "delegate, aggregate" and added "designee"; and added Subsections R through U.

The 2019 amendment, (Laws 2019, ch. 87, § 1) effective July 1, 2019, provided that an employee of the taxation and revenue department may reveal information concerning credits pursuant to the Film Production Tax Credit Act to the secretary of finance and administration and the secretary of economic development; and added Subsections O and P.

The 2018 amendment, effective January 1, 2020, provided that an employee of the taxation and revenue department may reveal return information with respect to the premium tax and the health insurance premium surtax to the superintendent of insurance; and added new Subsection O.

The 2017 amendment, effective June 16, 2017, authorized the taxation and revenue department to reveal certain tax information to the secretary of human services or the secretary's delegate for limited purposes; and added Subsection N.

The 2015 amendment, effective July 1, 2015, authorized employees of the taxation and revenue department to provide certain tax-related information to the New Mexico finance authority; and added Subsection M.

7-1-8.9. Information that may be revealed to local governments and their agencies.

A. An employee of the department may reveal to:

(1) the officials or employees of a municipality of this state authorized in a written request by the municipality for a period specified in the request within the twelve months preceding the request; provided that the municipality receiving the information has entered into a written agreement with the department that the information shall be used for tax purposes only and specifying that the municipality is subject to the confidentiality provisions of Section 7-1-8 NMSA 1978 and the penalty provisions of Section 7-1-76 NMSA 1978:

(a) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts for that municipality under the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] or a local option gross receipts tax imposed by that municipality. The department may also reveal the

information described in this subparagraph quarterly or upon such other periodic basis as the secretary and the municipality may agree in writing;

(b) a range of taxable gross receipts of registered gross receipts paid by taxpayers from business locations attributable to that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality; provided that authorization from the federal internal revenue service to reveal such information has been received. The department may also reveal the information described in this subparagraph quarterly or upon such other periodic basis as the secretary and the municipality may agree in writing; and

(c) information indicating whether persons shown on a list of businesses located within that municipality furnished by the municipality have reported gross receipts to the department but have not reported gross receipts for that municipality under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that municipality;

(2) the officials or employees of a county of this state authorized in a written request by the county for a period specified in the request within the twelve months preceding the request; provided that the county receiving the information has entered into a written agreement with the department that the information shall be used for tax purposes only and specifying that the county is subject to the confidentiality provisions of Section 7-1-8 NMSA 1978 and the penalty provisions of Section 7-1-76 NMSA 1978:

(a) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts either for that county in the case of a local option gross receipts tax imposed on a countywide basis or only for the areas of that county outside of any incorporated municipalities within that county in the case of a county local option gross receipts tax imposed only in areas of the county outside of any incorporated municipalities. The department may also reveal the information described in this subparagraph quarterly or upon such other periodic basis as the secretary and the county may agree in writing;

(b) a range of taxable gross receipts of registered gross receipts paid by taxpayers from business locations attributable either to that county in the case of a local option gross receipts tax imposed on a countywide basis or only to the areas of that county outside of any incorporated municipalities within that county in the case of a county local option gross receipts tax imposed only in areas of the county outside of any incorporated municipalities; provided that authorization from the federal internal revenue service to reveal such information has been received. The department may also reveal the information described in this subparagraph quarterly or upon such other periodic basis as the secretary and the county may agree in writing;

(c) in the case of a local option gross receipts tax imposed by a county on a countywide basis, information indicating whether persons shown on a list of businesses located within the county furnished by the county have reported gross receipts to the

department but have not reported gross receipts for that county under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by that county on a countywide basis; and

(d) in the case of a local option gross receipts tax imposed by a county only on persons engaging in business in that area of the county outside of incorporated municipalities, information indicating whether persons on a list of businesses located in that county outside of the incorporated municipalities but within that county furnished by the county have reported gross receipts to the department but have not reported gross receipts for that county outside of the incorporated municipalities within that county under the Gross Receipts and Compensating Tax Act or a local option gross receipts tax imposed by the county only on persons engaging in business in that county outside of the incorporated municipalities; and

(3) officials or employees of a municipality or county of this state, authorized in a written request of the municipality or county, for purposes of inspection, the records of the department pertaining to an increase or decrease to a distribution or transfer made pursuant to Section 7-1-6.15 NMSA 1978 for the purpose of reviewing the basis for the increase or decrease; provided that the municipality or county receiving the information has entered into a written agreement with the department that the information shall be used for tax purposes only and specifying that the municipality or county is subject to the confidentiality provisions of Section 7-1-8 NMSA 1978 and the penalty provisions of Section 7-1-76 NMSA 1978. The authorized officials or employees may only reveal the information provided in this paragraph to another authorized official or employee, to an employee of the department, or a district court, an appellate court or a federal court in a proceeding relating to a disputed distribution and in which both the state and the municipality or county are parties.

B. The department may require that a municipal or county official or employee satisfactorily complete appropriate training on protecting confidential information prior to receiving the information pursuant to Subsection A of this section.

History: 1978 Comp., § 7-1-8.9, as enacted by Laws 2009, ch. 243, § 11; 2015, ch. 89, § 2; 2015, ch. 100, § 2.

ANNOTATIONS

The 2015 amendment, effective July 1, 2015, allowed the taxation and revenue department to reveal to local governments certain gross receipts tax information attributable to those local governments; designated the previously undesignated introductory sentence as Subsection A; redesignated former Subsection A as Paragraph (1) of Subsection A; in Paragraph (1) of Subsection A, after "preceding the request;", added the remainder of the paragraph; redesignated former Paragraph (1) of Subsection A as Subparagraph A(1)(a); in Subparagraph A(1)(a), after "described in this", deleted "paragraph" and added subparagraph", and after "may agree", added "in writing"; added Subparagraph A(1)(b); redesignated former Paragraph (2) of Subsection

A as Subparagraph A(1)(c); redesignated former Subsection B as Paragraph (2) of Subsection A; in Paragraph (2) of Subsection A, after "preceding the request", added the remainder of the paragraph; redesignated former Paragraph (1) of Subsection B as Subparagraph A(2)(a); in Subparagraph A(2)(a), after "described in this", deleted paragraph and added "subparagraph", and after "may agree", added "in writing"; added Subparagraph A(2)(b); redesignated former Paragraphs (2) and (3) of Subsection B as Subparagraphs A(2)(c) and A(2)(d), respectively; redesignated former Subsection C as Paragraph (3) of Subsection A; in Paragraph (3) of Subsection A, after "increase or decrease", added "provided that the municipality or county receiving the information has entered into a written agreement with the department that the information shall be used for tax purposes only and specifying that the municipality or county is subject to the confidentiality provisions of Section 7-1-8 NMSA 1978 and the penalty provisions of Section 7-1-76 NMSA 1978", and after "provided in this", deleted "subsection" and added "paragraph"; and added Subsection B.

Duplicate laws. — Laws 2015, ch. 89, § 2 and Laws 2015, ch. 100, § 2, both effective July 1, 2015, enacted identical amendments to this section. The section was set out as amended by Laws 2015, ch. 100, § 2. *See* 12-1-8 NMSA 1978.

7-1-8.10. Information that may be revealed to private persons other than the taxpayer.

An employee of the department may reveal to:

A. a transferee, assignee, buyer or lessor of a liquor license, the amount and basis of an unpaid assessment of tax for which the transferor, assignor, seller or lessee is liable;

B. a purchaser of a business as provided in Sections 7-1-61 through 7-1-63 NMSA 1978, the amount and basis of an unpaid assessment of tax for which the purchaser's seller is liable;

C. a rack operator, importer, blender, distributor or supplier, the identity of a rack operator, importer, blender, supplier or distributor and the number of gallons reported on returns required under the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978], Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978] or Alternative Fuel Tax Act [Chapter 7, Article 16B NMSA 1978], but only when it is necessary to enable the department to carry out its duties under the Gasoline Tax Act, the Special Fuels Supplier Tax Act or the Alternative Fuel Tax Act;

D. a corporation authorized to be formed under the Educational Assistance Act [Chapter 21, Article 21A NMSA 1978], upon its written request, the last known address and the date of that address of every person certified to the department as an absent obligor of an educational debt due and owed to the corporation or that the corporation has lawfully contracted to collect; this information may only be used by the corporation

and its officers and employees to enforce the educational debt obligation of the absent obligors; and

E. the executive director of the New Mexico health insurance exchange:

(1) insurance-relevant information for which the taxpayer consents to disclosure in accordance with the provisions of the Easy Enrollment Act [59A-23H-1 to 59A-23H-6 NMSA 1978]; and

(2) information on consent that a taxpayer provides on a state income tax return in accordance with the provisions of the Easy Enrollment Act.

History: 1978 Comp., § 7-1-8.10, as enacted by Laws 2009, ch. 243, § 12; 2022, ch. 33, § 8.

ANNOTATIONS

The 2022 amendment, effective May 18, 2022, authorized the taxation and revenue department to reveal certain information related to the Easy Enrollment Act to the executive director of the New Mexico health insurance exchange; and added Subsection E.

Applicability. — Laws 2022, ch. 33, § 9 provided that the provisions of Laws 2022, ch. 33 apply to taxable years beginning on or after January 1, 2022.

7-1-8.11. Information that may be revealed to a water and sanitation district.

A. An employee of the department may reveal to the officials and employees of a water and sanitation district of this state that has in effect a water and sanitation gross receipts tax imposed by the water and sanitation district upon its request for a period specified by that water and sanitation district within the twelve months preceding the request for the information by those officials and employees:

(1) the names, taxpayer identification numbers and addresses of registered gross receipts taxpayers reporting gross receipts for that water and sanitation district; the department may also release the information described in this paragraph quarterly or upon any other periodic basis to which the secretary and the district agree; and

(2) information indicating whether the persons shown on a list of businesses within the water and sanitation district have reported gross receipts to the department but have not reported gross receipts for that water and sanitation district.

B. The officials and employees of water and sanitation districts receiving information as provided in this section shall be subject to the confidentiality provisions of Section 7-1-8 NMSA 1978 and the penalty provisions of Section 7-1-76 NMSA 1978.

History: 1978 Comp., § 7-1-8.11, enacted by Laws 2017, ch. 63, § 20.

ANNOTATIONS

Effective dates. — Laws 2017, ch. 63 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 16, 2017, 90 days after the adjournment of the legislature.

7-1-9. Address of notices and payments; timely mailing constitutes timely filing or making.

A. Any notice required or authorized by the Tax Administration Act to be given by mail is effective if mailed or served by the secretary or the secretary's delegate to the taxpayer or person at the last address shown on his registration certificate or other record of the department. Any notice, return, application or payment required or authorized to be delivered to the secretary or the department by mail shall be addressed to the secretary of taxation and revenue, taxation and revenue department, Santa Fe, New Mexico or in any other manner which the secretary by regulation or instruction may direct.

B. Except as provided otherwise in Section 7-1-13.1 NMSA 1978, all notices, returns, applications or payments authorized or required to be made or given by mail are timely if mailed on or before the date on which they are required. The secretary by regulation may provide that delivery to a private delivery or courier service on or before the date on which mailing is required constitutes timely mailing and may specify standards under which the service's time stamps or other indication of date of delivery to the service are adequate to determine actual time of delivery to the service.

History: 1953 Comp., § 72-13-26, enacted by Laws 1965, ch. 248, § 14; 1979, ch. 144, § 8; 1985, ch. 65, § 11; 1986, ch. 20, § 13; 1988, ch. 99, § 1; 1997, ch. 67, § 2.

ANNOTATIONS

The 1997 amendment, effective July 1, 1997, added the second sentence to Subsection B.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Penalty for nonpayment of taxes where due as affected by lack of notice to taxpayer, 102 A.L.R. 405.

Sufficiency of compliance with statute providing for service by mail of notice in tax procedure, 155 A.L.R. 1279.

Time of mailing or time of receipt as determinative of liability for penalty or additional amount for failure to pay tax on license fee within prescribed time, 158 A.L.R. 370.

7-1-10. Records required by statute; taxpayer records; accounting methods; reporting methods; information returns.

A. Every person required by the provisions of any statute administered by the department to keep records and documents and every taxpayer shall maintain books of account or other records in a manner that will permit the accurate computation of state taxes or provide information required by the statute under which the person is required to keep records.

B. Methods of accounting shall be consistent for the same business. A taxpayer engaged in more than one business may use a different method of accounting for each business.

C. Prior to changing the method of accounting in keeping books and records for tax purposes, a taxpayer shall first secure the consent of the secretary or the secretary's delegate. If consent is not secured, the department upon audit may require the taxpayer to compute the amount of tax due on the basis of the accounting method earlier used.

D. Prior to changing the method of reporting taxes, other than for changes required by law, a taxpayer shall first secure the consent of the secretary or the secretary's delegate. Consent shall be granted or withheld pursuant to the provisions of Section 7-4-19 NMSA 1978. If consent is not secured, the secretary or the secretary's delegate upon audit may require the taxpayer to compute the amount of tax due on the basis of the reporting method earlier used.

E. Upon the written application of a taxpayer and at the sole discretion of the secretary or the secretary's delegate, the secretary or the secretary's delegate may enter into an agreement with a taxpayer allowing the taxpayer to report values, gross receipts, deductions or the value of property on an estimated basis for gross receipts and compensating tax, oil and gas severance tax, oil and gas conservation tax, oil and gas emergency school tax and oil and gas ad valorem production tax purposes for a limited period of time not to exceed four years. As used in this section, "estimated basis" means a methodology that is reasonably expected to approximate the tax that will be due over the period of the agreement using summary rather than detail data or alternate valuation applications or methods, provided that:

(1) nothing in this section shall be construed to require the secretary or the secretary's delegate to enter into such an agreement; and

(2) the agreement must:

(a) specify the receipts, deductions or values to be reported on an estimated basis and the methodology to be followed by the taxpayer in making the estimates;

(b) state the term of the agreement and the procedures for terminating the agreement prior to its expiration;

(c) be signed by the taxpayer or the taxpayer's representative and the secretary or the secretary's delegate; and

(d) contain a declaration by the taxpayer or the taxpayer's representative that all statements of fact made by the taxpayer or the taxpayer's representative in the taxpayer's application and the agreement are true and correct as to every material matter.

F. The secretary may, by regulation, require any person doing business in the state to submit to the department information reports that are considered reasonable and necessary for the administration of any provision of law to which the Tax Administration Act applies.

History: 1953 Comp., § 72-13-27, enacted by Laws 1965, ch. 248, § 15; 1971, ch. 276, § 6; 1979, ch. 144, § 9; 1982, ch. 18, § 9; 1983, ch. 211, § 22; 1993, ch. 30, § 5; 2001, ch. 16, § 3; 2007, ch. 275, § 1.

ANNOTATIONS

Cross references. — For inspection of books of taxpayers, *see* 7-1-11 NMSA 1978.

The 2007 amendment, effective July 1, 2007, amends Subsection E to permit oil and gas severance tax, oil and gas conservation tax, oil and gas emergency school tax and oil and gas ad valorem production tax to be reported on an estimated basis.

The 2001 amendment, effective July 1, 2001, added present Subsection E and renumbered the remaining subsection accordingly.

The 1993 amendment, effective June 18, 1993, substituted "department" for "division" in Subsections A and E; substituted "secretary or the secretary's delegate" for "director or his delegate" in Subsection C and in two places in Subsection D; substituted "department" for "director or his delegate" in the second sentence of Subsection C; substituted "secretary" for "director" in Subsection E; and made minor stylistic changes.

Adequacy of taxpayer's books and records is question of fact and the fact that taxpayer, in the hearing before the commissioner (now secretary), introduced evidence that his books and records were adequate did not require a ruling, as a matter of law, that they were adequate. *Waldroop v. O'Cheskey*, 1973-NMCA-146, 85 N.M. 736, 516 P.2d 1119.

Director's (now secretary's) decision conclusive if more than one inference possible. — If more than one inference can reasonably be drawn from the evidence, then the determination made by the commissioner (now secretary) that the books and records were inadequate is conclusive. *Waldroop v. O'Cheskey*, 1973-NMCA-146, 85 N.M. 736, 516 P.2d 1119.

Taxpayer has duty to provide director (now secretary) with books and records upon which to establish a standard for taxation as provided by law. If he fails to do so, he cannot complain of the best methods used by the commissioner (now secretary). *Archuleta v. O'Cheskey*, 1972-NMCA-165, 84 N.M. 428, 504 P.2d 638.

7-1-11. Inspection of books of taxpayers; exception for marketplace providers and marketplace sellers; credentials.

A. To determine the correct amount of tax due, the department shall cause the records and books of account of taxpayers to be inspected or audited at such times as the department deems necessary for the effective execution of the department's responsibilities.

B. The department shall audit a marketplace provider, but not a marketplace seller, with respect to gross receipts from transactions facilitated by a marketplace provider and for which the marketplace seller may claim a deduction pursuant to Section 36 of this 2019 act, unless an audit of the marketplace seller is necessary to determine the correct amount of tax due, including examining the marketplace seller:

(1) to determine compliance with Section 36 [7-9-117 NMSA 1978] of this 2019 act;

(2) to determine if the marketplace provider should be relieved of liability pursuant to Subsection C of Section 7-9-5 NMSA 1978; or

(3) to enforce any other provision of the Tax Administration Act.

C. Auditors and other officials of the department designated by the secretary are authorized to request and require the production for examination of the records and books of account of a taxpayer. Auditors and officials of the department designated by the secretary shall be furnished with credentials identifying them as such, which they shall display to any taxpayer whose books are sought to be examined.

D. Taxpayers shall upon request make their records and books of account available for inspection at reasonable hours to the secretary or the secretary's delegate who presents proper identification to the taxpayer.

E. If the taxpayer's records and books of account do not exist or are insufficient to determine the taxpayer's tax liability, if any, the department may use any reasonable method of estimating the tax liability, including using information about similar persons, businesses or industries to estimate the taxpayer's liability.

F. The secretary or the secretary's delegate shall develop and maintain written audit policies and procedures for all audit programs in which the department routinely conducts field audits of taxpayers, including policies and procedures concerning audit notification, scheduling, records that may be examined, analysis that may be done,

sampling procedures, gathering information or evidence from third parties, policies concerning the rights of taxpayers under audit and related matters. Department audit policies and procedures shall be made available to a person who requests them, at a reasonable charge to defray the cost of preparing and distributing those policies and procedures.

G. Nothing in this section shall be construed to require the department to provide the following:

(1) information that is confidential pursuant to Section 7-1-8 NMSA 1978; or

(2) methods, techniques and analysis used to select taxpayers for audit, including the use of:

(a) data analytics;

(b) data mining;

(c) a scoring model;

(d) internal controls; and

(e) metadata used to detect fraud and noncompliance.

H. For purposes of this section:

(1) "data analytics" means the science of examining data with the purpose of drawing conclusions about the information;

(2) "data mining" means the process of analyzing data from different perspectives and summarizing it into useful information by collecting data into data sets for the purpose of discovering patterns;

(3) "scoring model" means a predictive model that can predict the chance of occurring of a fact and its occurrence;

(4) "methods, techniques and analysis" means a systematic way to accomplish a tactic, qualitative or quantitative component of research and the use of a specific method;

(5) "internal controls" means a process of assuring achievement of an organization's objectives in operational effectiveness and efficiency, reliable financial reporting and compliance with laws, regulations and policies;

(6) "marketplace provider" means a "marketplace provider", as that term is used in the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978];

(7) "marketplace seller" means a "marketplace seller", as that term is used in the Gross Receipts and Compensating Tax Act; and

(8) "metadata" means data that provides information about other data.

History: 1953 Comp., § 72-13-28, enacted by Laws 1965, ch. 248, § 16; 1979, ch. 144, § 10; 1993, ch. 30, § 6; 2001, ch. 16, § 4; 2001, ch. 56, § 4; 2007, ch. 262, § 1; 2017, ch. 63, § 21; 2019, ch. 270, § 10.

ANNOTATIONS

Repeals. — Laws 2007, ch. 262, § 5 repealed Laws 2001, ch. 16, § 4, effective July 1, 2007.

Cross references. — For accounting methods and reporting methods of taxpayers, *see* 7-1-10 NMSA 1978.

For managed audits, *see* 7-1-11.1 NMSA 1978.

The 2019 amendment, effective July 1, 2019, provided an exception to the audit provisions of the section; in the heading, added "exception for marketplace providers and marketplace sellers"; added a new Subsection B and redesignated former Subsections B through G as Subsections C through H, respectively; and in Subsection H, Paragraph H(4), after "techniques and", deleted "methodology", and added new Paragraphs H(6) and H(7) and redesignated former Paragraph H(6) as Paragraph H(8).

The 2017 amendment, effective June 16, 2017, set forth additional audit information that is confidential, and provided definitions for terms used in the section; in Subsection A, added "To determine the correct amount of tax due"; designated the last sentence of Subsection E as new Subsection F; in Subsection F, after "require the department to provide", deleted "information that is confidential pursuant to Section 7-1-8 NMSA 1978, nor shall the department be required to provide information concerning how taxpayers are selected for audit" and added "the following:", and added Paragraphs F(1) and F(2); and added Subsection G.

The 2007 amendment, effective July 1, 2007, required auditors to present proper identification to taxpayers.

The 2001 amendment, effective July 1, 2001, added Subsections D and E.

The 1993 amendment, effective June 18, 1993, substituted "department" for "director or his delegate" in Subsection A and for "division" in two places in Subsection B;

substituted "secretary" for "director" in two places in Subsection B and "secretary or the secretary's delegate" for "director or his delegate" in Subsection C; and made related stylistic changes.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 110, 136, 603; 72 Am. Jur. 2d State and Local Taxation § 729.

Constitutionality of statutory provision for examination of records, books or documents for taxation purposes, 103 A.L.R. 522.

7-1-11.1. Managed audits.

A. A managed audit may be limited in scope to certain periods, activities, lines of business, geographic areas or transactions, including tax on:

(1) the receipts from certain sales;

(2) the value of certain assets;

(3) the value of certain expense items or services used; and

(4) any other category specified in an agreement authorized by this section.

B. Upon the application of the taxpayer, the secretary or the secretary's delegate may enter into a written agreement with a taxpayer for a managed audit. To be effective the written agreement must:

(1) be signed by the taxpayer or the taxpayer's authorized representative and by the secretary or the secretary's delegate;

(2) contain a declaration by the taxpayer or the taxpayer's authorized representative that all statements of fact made by the taxpayer or the taxpayer's representative in the taxpayer's application and the agreement are true and correct as to every material matter;

(3) specify the reporting period or periods, the type of receipts or transactions and tax to be audited, the procedures to be followed in performing the managed audit, the records to be used, the date of commencement of the audit for purposes of Section 7-9-43 NMSA 1978 and the date for the taxpayer's presentation of the results of the managed audit to the department; and

(4) include a waiver by the taxpayer of the limitations on assessments for the reporting period or periods to be audited.

C. The agreement for a managed audit may be modified in writing, provided that the modification meets the requirements of Subsection B of this section.

D. In determining whether to enter into an agreement for a managed audit the secretary or the secretary's delegate may consider, in addition to other relevant factors:

(1) the taxpayer's history of tax compliance;

(2) the amount of time and resources the taxpayer has available to dedicate to the audit;

(3) the extent and availability of the taxpayer's records; and

(4) the taxpayer's ability to pay any expected liability.

E. The decision whether to enter into an agreement for a managed audit rests solely with the secretary or the secretary's delegate.

F. The results of the managed audit shall be presented to the department by the taxpayer on or before any date set for presentation of the results in the managed audit agreement. The department shall assess the tax liability found to be due as the result of a managed audit performed in accordance with a managed audit agreement. The department may review records, documents, schedules or other information to determine if the managed audit substantially conforms to the managed audit agreement.

History: Laws 2001, ch. 16, § 1; 2003, ch. 398, § 6.

ANNOTATIONS

Cross references. — For definition of local option gross receipts tax, *see* 7-1-3 NMSA 1978.

For gross receipts tax, *see* 7-9-4 NMSA 1978.

For compensating tax, *see* 7-9-7 NMSA 1978.

Temporary provisions. — Laws 2020 (1st S.S.), ch. 4, § 4, effective June 29, 2020, provided:

A. Notwithstanding Sections 7-1-67 and 7-1-69 NMSA 1978, no interest shall accrue and no penalty shall be assessed to a taxpayer for:

(1) tax liabilities pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act for failure to pay the tax that became due April 15, 2020 through July 15, 2020; provided that the failure to pay the tax was made without intent to evade or defeat the tax; and provided further that payment for the unpaid payments is made in full on or before April 15, 2021;

(2) tax liabilities pursuant to the Withholding Tax Act for failure to pay the tax that became due March 25, 2020 through July 25, 2020; provided that the failure to pay the tax was made without intent to evade or defeat the tax; and provided further that payment for the unpaid taxes is made in full on or before April 25, 2021;

(3) gross receipts tax, local option gross receipts tax or compensating tax liabilities for failure to pay any of those taxes that became due March 25, 2020 through July 25, 2020; provided that the failure to pay the tax was made without intent to evade or defeat the tax; and provided further that payment for the unpaid taxes is made in full on or before April 25, 2021; and

(4) tax liabilities assessed between September 3, 2019 and January 3, 2020 as the result of a managed audit performed in accordance with a managed audit agreement pursuant to Section 7-1-11.1 NMSA 1978; provided that payment for those liabilities is made pursuant to terms of the managed audit agreement on or before December 31, 2020.

B. Notwithstanding Sections 7-38-49 and 7-38-50 NMSA 1978, no interest shall accrue and no penalty shall be assessed to a property owner for unpaid property taxes that became due April 10, 2020 pursuant to Section 7-38-38 NMSA 1978; provided that:

(1) the unpaid property taxes did not become delinquent because of an intent to defraud by the property owner;

(2) payment for the unpaid property taxes is made in full on or before May 10, 2021; and

(3) the subject property does not have property taxes that became delinquent pursuant to Section 7-38-46 NMSA 1978 prior to May 10, 2020.

The 2003 amendment, effective July 1, 2003, deleted "gross receipts tax, local option gross receipts taxes or compensating tax due from" following "limited in scope to" near the beginning of Subsection A.

7-1-11.2. Required audit notices.

A. Except as provided in Subsection G of this section, prior to or coincident with requesting records and books of account from a taxpayer pursuant to Section 7-1-11 NMSA 1978, as part of an office or field audit, the department shall provide the taxpayer with written dated notice of the commencement of an audit. The notice shall, at a minimum, state the tax programs and reporting periods to be covered and the date on which the audit is commenced.

B. To any taxpayer to whom the department is required to provide a written notice of the commencement of an audit, the department shall also provide a written notice of the outstanding records or books of account that have been requested but not received. If

the taxpayer has provided all records and books of account requested, the notice shall so state. The notice of outstanding records or books of account shall be given no sooner than sixty days, unless the taxpayer provides a written request for early completion of the audit, and no later than one hundred eighty days after the date of the commencement of the audit. The notice of outstanding records or books of account shall be dated and shall provide reasonable descriptions of any records or books of account needed or the information expected to be contained in them and shall give the taxpayer ninety days to comply with Section 7-1-11 NMSA 1978. The notice shall state that if the taxpayer does not properly comply within ninety days of the date of the notice, the department will proceed to issue any assessment of tax due on the basis of information available.

C. A taxpayer may request additional time to comply with the notice of outstanding records and books of account. Such request shall be in writing and shall state the amount of time needed.

D. If the department does not issue an assessment within one hundred eighty days after giving a notice of outstanding records or books of account or within ninety days after the expiration of the additional time requested by the taxpayer to comply, if such request was granted, interest shall be computed in accordance with Paragraph (6) of Subsection A of Section 7-1-67 NMSA 1978.

E. Any taxpayer who was not provided a proper notice of outstanding records or books of account is entitled to computation of interest in accordance with Paragraph (7) of Subsection A of Section 7-1-67 NMSA 1978.

F. Nothing in this section shall prevent the department from requesting from the taxpayer a waiver of the statute of limitations for assessment of tax owed. Nothing in this section shall prevent the department from issuing an assessment of tax owed on the basis of the information available.

G. This section does not apply to investigations of fraud.

History: 1978 Comp., § 7-1-11.2, enacted by Laws 2003, ch. 398, § 7; 2007, ch. 262, § 2.

ANNOTATIONS

The 2007 amendment, effective July 1, 2007, provided an exception to the sixty-day notice of outstanding records if the taxpayer has requested early completion of the audit.

7-1-12. Identification of taxpayers.

A. The secretary by regulation shall establish a system for the registration and identification of taxpayers and shall require taxpayers to comply therewith.

B. The registration system shall be devised so as to facilitate the exchange of information with other states and the United States and to aid in statistical computations.

C. The secretary by regulation also shall provide for a system for the registration and identification of purchasers or lessees who, by reason of their status or the nature of their use of property or service purchased or leased, are ordinarily entitled to make nontaxable purchases or leases of some kinds of property or service and may require such purchasers or lessees to comply therewith.

D. Any document, issued by the department under authority of this section, which is required to be posted on the business premises of the taxpayer shall contain a brief reference to the requirements of Section 7-1-61 NMSA 1978.

History: 1953 Comp., § 72-13-29, enacted by Laws 1965, ch. 248, § 17; 1966, ch. 52, § 1; 1979, ch. 144, § 11; 2000, ch. 28, § 4.

ANNOTATIONS

The 2000 amendment, effective July 1, 2000, substituted "secretary" for "director" in Subsections A and C and substituted "department" for "director" in Subsection D.

Possession of taxpayer identification number. — The mere possession of a New Mexico registration number by a foreign taxpayer does not mean that the taxpayer is registered with New Mexico for gross receipts tax purposes; the possession of a New Mexico taxpayer identification number did not mean that the taxpayer acknowledged that a nexus existed with respect to its activities in New Mexico for gross receipts tax purposes. *Siemens Energy & Automation, Inc. v. N.M. Taxation & Revenue Dep't*, 1994-NMCA-173, 119 N.M. 316, 889 P.2d 1238.

Department lacked authority to impose tax liability against taxpayer who was not engaged in business at the time the tax liability was incurred. — Where in 2009, taxpayer established a business that provided court reporting services, registered with the taxation and revenue department (department), was assigned a Combined Reporting System (CRS) number for tax reporting purposes, and operated the business as a sole proprietorship from 2009 to 2012, at which time taxpayer converted the business to a limited liability company (LLC), and where taxpayer failed to update the business's registration with the department and continued to operate under the original CRS number assigned to the sole proprietorship, and where the department's computerized auditing system detected a mismatch between the information taxpayer reported to the IRS and the information taxpayer reported to the department, resulting in the department updating the computerized records to reflect that taxpayer's business was operating as an LLC, but failing to issue taxpayer a new CRS number, and where, in 2017, the department issued a notice of assessment of taxes and demand for payment for gross receipts tax from taxpayer as the sole proprietor of the business for the 2012 tax year, and where the hearing officer denied taxpayer's protest finding that

the sole proprietorship was obligated for the assessment because at the time the tax liability was incurred, the CRS number on file with the department was assigned to taxpayer, as the sole proprietor of the business, rather than as an LLC, the hearing officer erred in denying taxpayer's protest because to the extent the hearing officer's decision imposed liability against taxpayer for failing to register with the department, it is not in accordance with this section, which permits only the person engaging in business to be taxed, and the overwhelming evidence demonstrated that the business was operating as an LLC during the taxable period. Moreover, neither the registration statute, NMSA 1978 § 7-1-12, nor the department's regulations permit the department to impose liability against a taxpayer based solely on its failure to update its registrations. *New Mexico Depo v. N.M. Tax'n & Revenue Dep't,* 2021-NMCA-011.

7-1-12.1. Department to designate production unit; index; identification by number or symbol.

A. The department shall have the power to designate the property that shall constitute a production unit; provided, a production unit shall be a unit of property from which products of common ownership are severed.

B. The department shall compile and keep current an index of all production units by description sufficient to properly identify such production units.

C. The department shall assign to each production unit a number or symbol, and the number or symbol shall serve as a means of identification for the purpose of reporting, tax payment and tax collection of the taxes administered by the department.

History: 1978 Comp., § 7-1-12.1, enacted by Laws 1985, ch. 65, § 12; 1993, ch. 30, § 7.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "Department" for "Oil and gas accounting division" in the section heading and throughout this section; substituted "department" for "division" in Subsection C; and made a minor stylistic change.

7-1-12.2. Notice of identification number assigned; operator may request identification number.

The department shall inform each operator of a production unit as to the identification number or symbol assigned to such production unit. Such number or symbol may be changed or revised and information regarding such change or revision shall likewise be given the operator. In the creation of a new production unit or in the event of a change of ownership or revision in a production unit, the operator may request the department to assign a new identification number or symbol, and the department shall notify the operator of the identification number or symbol to be used.

History: 1978 Comp., § 7-1-12.2, enacted by Laws 1985, ch. 65, § 13; 1993, ch. 30, § 8; 2017, ch. 63, § 22.

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, removed the requirement that notice of identification numbers must be made by mail; after the first occurrence of "production unit", deleted "by mail", and after the second occurrence of "operator", deleted "by mail".

The 1993 amendment, effective June 18, 1993, substituted "department" for "oil and gas accounting division" in the first sentence and for "division" in two places in the final sentence.

7-1-13. Taxpayer returns; payment of taxes; extension of time.

A. Taxpayers are liable for tax at the time of and after the transaction or incident giving rise to tax until payment is made. Taxes are due on and after the date on which their payment is required until payment is made.

B. Every taxpayer shall, on or before the date on which payment of any tax is due, complete and file a tax return in a form prescribed and according to the regulations issued by the secretary. Except as provided in Section 7-1-13.1 NMSA 1978 or by regulation, ruling, order or instruction of the secretary, the payment of any tax or the filing of any return may be accomplished by mail. When the filing of a tax return or payment of a tax is accomplished by mail, the date of the postmark shall be considered the date of submission of the return or payment.

C. Payment of the total amount of all taxes that are due from the taxpayer shall precede or accompany the return. Delivery to the department of a check that is not paid upon presentment does not constitute payment.

D. The secretary or the secretary's delegate may, for good cause, extend in favor of a taxpayer or a class of taxpayers, for no more than a total of twelve months, the date on which payment of any tax is required or on which any return required by provision of the Tax Administration Act shall be filed, but no extension shall prevent the accrual of interest as otherwise provided by law. When an extension of time for income tax has been granted a taxpayer pursuant to the Internal Revenue Code, the extension shall serve to extend the time for filing New Mexico income tax; provided that a copy of the approved federal extension of time is attached to the taxpayer's New Mexico income tax return. The secretary by regulation may also provide for the automatic extension for no more than six months of the date upon which payment of any New Mexico income tax or the filing of any New Mexico income tax return is required. If the secretary or the secretary's delegate believes it necessary to ensure the collection of the tax, the secretary or the secretary's delegate may require, as a condition of granting any extension, that the taxpayer furnish security in accordance with the provisions of Section 7-1-54 NMSA 1978.

E. Except as provided in Subsection F of this section, no later than one hundred eighty days after the final determination date, a taxpayer shall file a federal adjustments report with the department and pay any state tax due with respect to final net-positive federal adjustments arising from:

(1) an audit or other action by the internal revenue service; or

(2) a timely filed amended federal income tax return, including a return or other similar information filed pursuant to Section 6225(c)(2) of the Internal Revenue Code.

F. Except for federal adjustments that are required to be reported pursuant to Subsection E of this section, partnerships and partners shall report final net-positive federal adjustments arising from a partnership level audit or an administrative adjustment request and make payments as follows:

(1) except for where the partnership or tiered partner makes an election pursuant to Subsection G of this section, the partnership or tiered partner shall:

(a) file: 1) a completed federal adjustments report and notify each of its direct partners of their distributive share of the final federal adjustments, including information necessary for reporting state tax due as required by the department; and 2) an amended withholding return for the reviewed year if such return was filed, or would have been required pursuant to the Withholding Tax Act;

(b) in the case of an audited partnership, file the returns required by this paragraph no later than ninety days after the final determination date; and

(c) in the case of a tiered partner of an audited partnership, file the returns required by this paragraph no later than ninety days after the time for the audited partnership's filing and furnishing statements to tiered partnerships and their partners as established pursuant to Section 6226 of the Internal Revenue Code and the regulations thereunder; and

(2) a partner of a partnership or a tiered partner subject to tax pursuant to Section 7-2-3 or 7-2A-3 NMSA 1978 on adjustments to which Paragraph (1) of this subsection applies shall file a federal adjustments report reporting the partner's distributive share of the adjustments and shall pay the additional amount of state tax due, plus any penalty and interest due and less any credit for related amounts paid or withheld and remitted on behalf of the partner pursuant to Paragraph (1) of this subsection as follows:

(a) for taxable direct partners of the audited partnership, no later than one hundred eighty days after the final determination date; or

(b) for taxable indirect partners of the audited partnership, no later than one hundred eighty days after the time for the audited partnership's filing and furnishing statements to tiered partnerships and their partners as established pursuant to Section 6226 of the Internal Revenue Code and the regulations thereunder.

G. The election provided by this subsection applies only to federal adjustments other than the distributive share of federal adjustments that must be included in the unitary business income of any direct or indirect corporate partner; provided that this can be reasonably determined, or federal adjustments resulting from an administrative adjustment request. A partnership making an election pursuant to this subsection shall:

(1) file a completed federal adjustments report and notify the department that it is making the election pursuant to this subsection; and

(2) pay an amount, determined as follows, in lieu of taxes owed by its direct and indirect taxable partners:

(a) exclude from the total final federal adjustments the distributive share reported to a direct partner that is an exempt partner unless the adjustment represents unrelated business taxable income;

(b) include only the portion of the total federal adjustment to distributive shares of partners taken into account pursuant to Section 6225(b)(2) of the Internal Revenue Code;

(c) apportion and allocate the adjustments as provided by the Uniform Division of Income for Tax Purposes Act as applied at the partnership level following any department regulations adopted for this purpose;

(d) multiply the resulting amount by the highest tax rate provided by Section 7-2A-5 NMSA 1978; and

(e) add to the amount calculated pursuant to Subparagraph (d) of this paragraph an amount of penalty and interest computed pursuant to the Tax Administration Act.

H. In any action required or allowed to be taken pursuant to the Tax Administration Act with respect to the reporting of federal adjustments by a partnership, the state partnership representative for the reviewed year shall have the sole authority to act on behalf of the partnership, and the partnership's direct partners and indirect partners shall be bound by those actions. The state partnership representative is the partnership's federal partnership representative for the reviewed year, unless the partnership designates in writing another person as its state partnership representative; provided that the person meets any qualifications established by the department.

I. Pursuant to procedures that may be adopted by the department, an audited partnership or tiered partner of that partnership may enter into an agreement with the department to utilize an alternative reporting and payment method, including applicable time requirements or any other provision pursuant to Subsections E through H of this section, if the audited partnership or tiered partner demonstrates that the requested method will reasonably provide for the reporting and payment of taxes, penalties and interest due pursuant to Subsections E through H of this section. Application for approval of an alternative reporting and payment method must be made by the audited partnership or tiered partner within the time for election as provided in Subsection G of this section, as appropriate.

J. An election made pursuant to Subsection G or I of this section is irrevocable, unless the department, in its discretion, determines otherwise. If properly reported and paid by the audited partnership or tiered partner, the amount determined in Paragraph (2) of Subsection G of this section, or similarly under an optional election pursuant to Subsection I of this section, will be treated as paid in lieu of taxes owed by its direct and indirect partners on the same final federal adjustments. The direct or indirect partners of the partnership that pays this in lieu of amount may not claim any deduction, credit or refund with respect to that amount.

K. A taxpayer may make estimated payments of state tax expected to result from a pending audit by the internal revenue service prior to the final determination date, following the process prescribed by the department, and such payments will limit the accrual of further statutory interest on that amount.

L. A taxpayer may claim an amount of state tax resulting from final net-negative federal adjustments as provided in Section 7-1-26 NMSA 1978.

M. Nothing in Subsections E through L of this section shall prevent the department from assessing direct partners or indirect partners for taxes they owe, using the best information available, in the event that a partnership or tiered partner fails to timely make any report or payment required for any reason.

N. As used in this section:

(1) "administrative adjustment request" means an administrative adjustment request filed by a partnership pursuant to Section 6227 of the Internal Revenue Code;

(2) "audited partnership" means a partnership subject to a partnership level audit resulting in a federal adjustment;

(3) "corporate partner" means a partner, direct or indirect, that is subject to tax pursuant to the Corporate Income and Franchise Tax Act;

(4) "direct partner" means any partner that holds an interest directly in a partnership or pass-through entity;

(5) "exempt partner" means a partner, direct or indirect, that is exempt from New Mexico income tax except on unrelated business taxable income;

(6) "federal adjustment" means a change to an item or amount determined pursuant to the Internal Revenue Code that is used by a taxpayer to compute an amount of state tax owed, whether that change results from action by the internal revenue service, including a partnership level audit, or the filing of an amended federal return, federal refund claim or an administrative adjustment request by a partnership;

(7) "federal adjustments report" includes the methods or forms required by the department for use by a taxpayer to report final federal adjustments, including an amended tax return, information return or a uniform multistate report;

(8) "final determination date" means:

(a) except as provided in Subparagraphs (b), (c) and (d) of this paragraph, if a federal adjustment arises from an audit or other action by the internal revenue service, the final determination date is the first day on which no federal adjustments arising from that audit or other action remain to be finally determined, whether by a decision of the internal revenue service with respect to which all rights of appeal have been waived or exhausted, by agreement, or, if appealed or contested, by a final decision with respect to which all rights of appeal have been waived or exhausted. For agreements required to be signed by the internal revenue service and the taxpayer, the final determination date is the date on which the last party signed the agreement;

(b) for federal adjustments arising from an internal revenue service audit or other action by the internal revenue service, if the taxpayer filed as a member of a filing group pursuant to the Corporate Income and Franchise Tax Act, the final determination date means the first day on which no related federal adjustments arising from that audit remain to be finally determined, as described in Subparagraph (a) of this paragraph, for the entire group;

(c) except as provided in Subparagraph (d) of this paragraph, if the federal adjustment results from filing an amended federal return, a federal refund claim or an administrative adjustment request, or if it is a federal adjustment reported on an amended federal return or other similar report filed pursuant to Section 6225(c) of the Internal Revenue Code, the final determination date means the day on which the amended return, refund claim, administrative adjustment request or other similar report was filed; and

(d) for adjustments resulting from a partnership level audit or an administrative adjustment request for which the final determination date pursuant to Subparagraph (a) or (c) of this paragraph is determined to be a date occurring prior to the effective date of this 2021 act, the final determination date shall be July 1, 2021;

(9) "final federal adjustments" means adjustments for which the final determination date has passed, including final net-positive federal adjustments and final net-negative federal adjustments;

(10) "indirect partner" means a partner in a partnership or pass-through entity in which the partner holds an interest directly, or through another indirect partner, in a partnership or pass-through entity;

(11) "net-negative federal adjustments" means federal adjustments relating to the same tax period, whether made by the taxpayer or the internal revenue service, the net effect of which is to decrease state tax due as compared to tax originally reported for that period;

(12) "net-positive federal adjustments" means federal adjustments relating to the same tax period, whether made by the taxpayer or the internal revenue service, the net effect of which is to increase state tax due as compared to tax originally reported for that period;

(13) "partner" means a person that holds an interest directly or indirectly in a partnership or other pass-through entity;

(14) "partnership" means an entity subject to taxation pursuant to Subchapter K of the Internal Revenue Code;

(15) "partnership level audit" means an examination by the internal revenue service at the partnership level pursuant to Subchapter C or Subtitle F, Chapter 63 of the Internal Revenue Code which results in federal adjustments;

(16) "pass-through entity" means an entity, other than a partnership, that is not subject to tax pursuant to the Corporate Income and Franchise Tax Act;

(17) "reviewed year" means the taxable year of a partnership that is subject to a partnership level audit from which federal adjustments arise;

(18) "taxpayer" means a taxpayer, including a partnership subject to a partnership level audit or a partnership that has made an administrative adjustment request, as well as a tiered partner of that partnership, unless the context indicates otherwise;

(19) "tiered partner" means any partner that is a partnership or pass-through entity; and

(20) "unrelated business taxable income" means "unrelated business taxable income" as used in Section 512 of the Internal Revenue Code.

History: 1953 Comp., § 72-13-30, enacted by Laws 1965, ch. 248, § 18; 1971, ch. 276, § 7; 1978, ch. 90, § 1; 1979, ch. 144, § 12; 1983, ch. 211, § 23; 1988, ch. 99, § 2; 1989, ch. 325, § 4; 1993, ch. 5, § 4; 1994, ch. 51, § 3; 2007, ch. 127, § 1; 2013, ch. 27, § 1; 2021, ch. 83, § 1.

ANNOTATIONS

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

The 2021 amendment, effective June 18, 2021, amended sections of the tax administration act to address federal partnership audit or adjustment requests resulting in underpayment or overpayment of state taxes, and defined terms as used in this section; deleted former Subsection C and redesignated former Subsections D and E as Subsections C and D, respectively; and deleted former Subsection F and added new Subsections E through N.

Applicability. — Laws 2021, ch. 83, § 6 provided that the provisions of Laws 2021, ch. 83, §§ 1 and 4 apply to federal adjustments with a final determination date occurring on and after January 1, 2021.

The 2013 amendment, effective July 1, 2013, extended the deadline for filing an amended return after the final determination of an adjustment in the computation of a federal tax; in Subsection C, after "the taxpayer affected shall, within", deleted "ninety days of the internal revenue service audit adjustment or payment of the federal refund" and added "one hundred eighty days of final determination of the adjustment"; and added Subsection F.

The 2007 amendment, effective July 1, 2007, provided that if a tax return or payment is mailed, the date of the postmark is the date of submission of the return or payment and increases the period of an automatic extension authorized by the secretary to not more than six months.

The 1994 amendment, effective July 1, 1994, substituted "ninety" for "thirty" in the first sentence in Subsection C.

The 1993 amendment, effective July 1, 1993, rewrote the first sentence of Subsection C which read "If any adjustment is made in the basis for computation of any federal tax, the taxpayer affected shall, within thirty days, file an amended return with the department" and made a minor stylistic change in Subsection D.

The 1989 amendment, effective June 16, 1989, made a minor stylistic change in Subsection A and, in Subsection E, substituted "shall be filed" for "must be filed" and, at the end of the second sentence, inserted the language beginning "except that".

State returns used for audit although federal taxes filed on different basis. — Since the taxpayer filed consolidated federal income tax returns for a three-year period,

but, for the same period, elected to file its state income tax returns as a separate corporate entity, excluding its subsidiaries, and since it was not obligated to file its state returns on the same basis as its federal return, the revenue department was not required to audit and assess the taxpayer's income taxes on the basis of consolidated income reported by the taxpayer in its federal returns rather than on the basis of its state returns which it had filed. *Getty Oil Co. v. Taxation & Revenue Dep't*, 1979-NMCA-131, 93 N.M. 589, 603 P.2d 328.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation §§ 834, 835, 842.

What amounts to reasonable cause for failure to file, or delay in filing, tax return, 3 A.L.R.2d 617.

85 C.J.S. Taxation §§ 1579 et seq.

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), (3) or (4) 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 [Chapter 7, Article 3 NMSA 1978], the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978], local option gross receipts tax acts, the Interstate Telecommunications Gross Receipts Tax Act [Chapter 7, Article 9C NMSA 1978] and the Leased Vehicle Gross Receipts Tax Act [Chapter 7, Article 14A NMSA 1978];

(2) Group 2: all taxes due under the Oil and Gas Severance Tax Act [Chapter 7, Article 29 NMSA 1978], the Oil and Gas Conservation Tax Act [Chapter 7, Article 30 NMSA 1978], the Oil and Gas Emergency School Tax Act [Chapter 7, Article 31 NMSA 1978] and the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978];

(3) Group 3: the tax due under the Natural Gas Processors Tax Act [Chapter 7, Article 33 NMSA 1978]; or

(4) Group 4: all taxes and fees due under the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978], the Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978] and the Petroleum Products Loading Fee Act [Chapter 7, Article 13A NMSA 1978].

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) electronic payment; provided that a result of the payment is that funds are immediately available to the state of New Mexico on or before the due date;

(2) currency of the United States;

(3) 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

(4) 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.

D. For the purposes of this section, "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.

History: 1978 Comp., § 7-1-13.1, enacted by Laws 1988, ch. 99, § 3; 1989, ch. 76, § 1; 1990, ch. 86, § 6; 1992, ch. 55, § 8; 1993, ch. 5, § 5; 2000, ch. 28, § 5; 2005, ch. 109, § 3.

ANNOTATIONS

The 2005 amendment, effective January 1, 2006, adds taxes and fees due under the Gasoline Tax Act, the Special Fuels Supplier Tax Act and the Petroleum Products Loading Fee Act as a new group of taxes in Subsection A(4).

The 2000 amendment, effective July 1, 2000, deleted former Subsections B(1) and B(2), concerning automated clearinghouse transactions and transfer of funds through wire transfer systems respectively; added present Subsection B(1) and redesignated the remaining paragraphs in Subsection B accordingly; deleted the last two sentences of Subsection C, concerning automated clearinghouse transactions and the use of

checks for the payment of taxes; and deleted former Subsections D(1) and D(3), which defined "automated clearinghouse transaction" and "financial institution" respectively.

The 1993 amendment, effective July 1, 1993, in Subsection A, substituted "the group of taxes" for "those taxes" in the first paragraph, inserted "Group 1", "Group 2", and "Group 3" at the beginning of Paragraphs (1), (2), and (3), substituted the language beginning "local option" for "and any other act authorizing a municipal or county tax to be collected at the same time or in the same manner as the gross receipts tax" at the end of Paragraph (1); in Subsection C, deleted "an offsetting debit to" following "When", inserted "is reversed" and substituted "automated clearinghouse transaction" for "debit" in the second sentence and inserted "reversal or" in the final sentence; in Subsection D, added current Paragraph (2) and redesignated former Paragraph (2) as (3); and made minor stylistic changes.

The 1992 amendment, effective July 1, 1992, rewrote Subsection B; substituted "transaction" for "deposit" in the second sentence of Subsection C; and, in Subsection D(1), substituted "transaction" for "deposit", inserted "or debit", and deleted "deposit" preceding "payable".

The 1990 amendment, effective July 1, 1990, in Subsection A, rewrote the introductory clause which read "Payment of the following taxes, including any applicable penalties and interests described in this subsection, shall be made on or before the date due in accordance with Subsection B of this section"; deleted "if the sum of these taxes equals or exceeds twenty-five thousand dollars ($25,000)" at the end of Paragraphs (1) and (2); deleted "if the tax equals or exceeds twenty-five thousand dollars ($25,000)" at the end of Paragraph (3); deleted former Paragraph (4) which read "the taxes described in Paragraph (1), (2), or (3) of this subsection if the taxpayer's average tax payment for those taxes during the preceding calendar year equaled or exceeded twenty-five thousand dollars ($25,000)"; added the final paragraph and made a stylistic change; and, in Subsection B, substituted "shall make payment" for "must make payment" in the introductory clause.

The 1989 amendment, effective May 1, 1989, rewrote the introductory paragraph of Subsection A; added present Subsection B; redesignated former Subsection B as present Subsection C, substituting therein all of the language of the first sentence preceding "the payment" for "If the taxes required to be paid by automated clearing-house deposit under this section are not paid by automated clearing-house deposit on or before the date due" and adding the second sentence; deleted former Subsection C, which read: "Any tax, including any applicable penalty and interest, may be paid by check drawn on the main office of the state fiscal agent"; and in Subsection D substituted the colon and Paragraph (1) designation for a comma, inserted "deposit" preceding "payable" in Paragraph (1), deleted "which must be initiated by the taxpayer or the taxpayer's agent one banking day prior to the due date" at the end of Paragraph (1), and added Paragraph (2).

7-1-13.2. Repealed.

ANNOTATIONS

Repeals. — Laws 1989, ch. 319, § 15 repealed 7-1-13.2 NMSA 1978, as enacted by Laws 1988, ch. 73, § 55, relating to bond required of certain persons, effective July 1, 1989.

7-1-13.3. Repealed.

ANNOTATIONS

Repeals. — Laws 1999, ch. 176, § 2 repealed 7-1-13.3 NMSA 1978, as enacted by Laws 1992, ch. 55, § 9, authorizing the department to accept payment of taxes by credit card, effective June 18, 1999. For provisions of former section, *see* the 1998 NMSA 1978 on *NMOneSource.com.* For present comparable provisions, *see* 6-1-14 NMSA 1978.

7-1-13.4. Electronic payments; reversals.

A. The department is authorized to accept payment by automated clearinghouse transaction, federal reserve system wire transfer and such other means of electronic payment as the department, with the concurrence of the state board of finance, may choose.

B. With respect to automated clearinghouse transactions, federal reserve system wire transfers and electronic payments by means the department has chosen, neither the department nor the fiscal agent of New Mexico shall refuse to accept the funds or to reverse the transaction when funds have been received by the fiscal agent designating the department as the payee together with sufficient information to identify the name of the taxpayer. The department or the fiscal agent of New Mexico may refuse to accept such a payment or to cause the reversal of the transaction only when the transaction is not successful in making the funds to be transferred available or in identifying the taxpayer. The department and the fiscal agent of New Mexico may refuse to accept electronic payments tendered by means other than automated clearinghouse deposit, federal reserve system wire transfer or those other means the department has chosen.

C. When an electronic payment transaction is reversed through the taxpayer's action or a check is dishonored by the taxpayer's financial institution, neither the department nor the fiscal agent of New Mexico is obligated to resubmit the transaction or check for payment. If the reversal or dishonoring causes the final payment of taxes to be not timely, then the provisions of Sections 7-1-67 and 7-1-69 NMSA 1978 apply.

History: 1978 Comp., § 7-1-13.4, enacted by Laws 2000, ch. 28, § 6.

ANNOTATIONS

Effective dates. — Laws 2000, ch. 28, § 6 made Laws 2000, ch. 28, § 6 effective July 1, 2000.

7-1-14. Reporting location instructions for purposes of reporting gross receipts and use; location; code database and location-rate database.

A. For purposes of the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978], Interstate Telecommunications Gross Receipts Tax Act [Chapter 7, Article 9C NMSA 1978], Leased Vehicle Gross Receipts Tax Act [Chapter 7, Article 14A NMSA 1978] and any act authorizing the imposition of a local option gross receipts or compensating tax, a taxpayer that has gross receipts and a taxpayer using property or services in New Mexico in a taxable manner shall report the gross receipts and use to the proper reporting location as provided in this section.

B. The reporting location for gross receipts from the sale, lease or granting of a license to use real property located in New Mexico, and any related deductions, shall be the location of the property.

C. The reporting location for gross receipts from the sale or license of property, other than real property, and any related deductions, shall be at the following locations:

(1) if the property is received by the purchaser at the New Mexico location of the seller, the location of the seller;

(2) if the property is not received by the purchaser at the location of the seller, the location indicated by instructions for delivery to the purchaser, or the purchaser's donee, when known to the seller;

(3) if Paragraphs (1) and (2) of this subsection do not apply, the location indicated by an address for the purchaser available from the business records of the seller that are maintained in the ordinary course of business; provided that use of the address does not constitute bad faith;

(4) if Paragraphs (1) through (3) of this subsection do not apply, the location for the purchaser obtained during consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available; provided that use of this address does not constitute bad faith; or

(5) if Paragraphs (1) through (4) of this subsection do not apply, including a circumstance in which the seller is without sufficient information to apply those standards, the location from which the property was shipped or transmitted.

D. The reporting location for gross receipts from the lease of tangible personal property, including vehicles, other transportation equipment and other mobile tangible personal property, and any related deductions, shall be the location of primary use of

the property, as indicated by the address for the property provided by the lessee that is available to the lessor from the lessor's records maintained in the ordinary course of business; provided that use of this address does not constitute bad faith. The location of primary use shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

E. The reporting location for gross receipts from the sale, lease or license of franchises, and any related deductions, shall be where the franchise is used.

F. The reporting location for gross receipts from the performance or sale of the following services, and any related deductions, shall be at the following locations:

(1) for professional services performed in New Mexico, other than construction-related services, or performed outside New Mexico when the product of the service is initially used in New Mexico, the location of the performer of the service or seller of the product of the service, as appropriate;

(2) for construction services and construction-related services performed for a construction project in New Mexico, the location of the construction site;

(3) for services with respect to the selling of real estate located in New Mexico, the location of the real estate;

(4) for transportation of persons or property in, into or from New Mexico, the location where the person or property enters the vehicle; and

(5) for services other than those described in Paragraphs (1) through (4) of this subsection, the location where the product of the service is delivered.

G. Except as provided in Subsection H of this section, the reporting location for uses of property or services subject to the compensating tax shall be the location at which gross receipts would have been required to be reported had the transaction been subject to the gross receipts tax.

H. If a taxpayer subject to the compensating tax can demonstrate that the first use upon which compensating tax is imposed occurred at a time and place different from the time and place of the purchase, then the reporting location for the compensating tax shall be the location of the first use.

I. The secretary shall develop a location-code database that provides the reporting location codes designated by the secretary. The secretary shall also develop and provide to taxpayers a location-rate database that sets out the tax rates applicable to reporting locations within the state, by address, and sellers who properly rely on this database shall not be liable for any additional tax due to the use of an incorrect rate.

J. As used in this section:

(1) "gross receipts" means, as applicable, "gross receipts" as used in the Gross Receipts and Compensating Tax Act and the Leased Vehicle Gross Receipts Tax Act and "interstate telecommunications gross receipts" in the Interstate Telecommunications Gross Receipts Tax Act [Chapter 7, Article 9C NMSA 1978];

(2) "in-person service" means a service physically provided in person by the service provider, where the customer or the customer's real or tangible personal property upon which the service is performed is in the same location as the service provider at the time the service is performed; and

(3) "professional service" means a service, other than an in-person service, that requires either an advanced degree from an accredited post-secondary educational institution or a license from the state to perform.

History: 1953 Comp., § 72-13-30.1, enacted by Laws 1969, ch. 145, § 1; 1970, ch. 57, § 2; 1977, ch. 315, § 3; 1979, ch. 144, § 13; 1983, ch. 211, § 24; 1992, ch. 55, § 10; 1995, ch. 100, § 1; 2019, ch. 270, § 11; repealed and reenacted by Laws 2020, ch. 80, § 1; 2023, ch. 85, § 4.

ANNOTATIONS

Repeals and reenactments. — Laws 2020, ch. 80, § 1 repealed former 7-1-14 NMSA 1978, as enacted by Laws 1969, ch. 145, § 1, and enacted a new section, effective July 1, 2021.

Laws 2020, ch. 80, § 15 repealed Laws 2019, ch. 270, § 11, effective July 1, 2021.

The 2023 amendment, effective July 1, 2023, clarified reporting location instructions for certain property; substituted "reporting location" for "business location" throughout the section; in Subsection A, substituted "taxpayer" for "person" throughout the subsection; in Subsection C, after "sale or license of", deleted "tangible personal", and after "property", added "other than real property"; in Subsection G, after "Subsection H of this section", added "the reporting location for"; in Subsection H, after "If a", deleted "person" and added "taxpayer"; deleted former Subsection I, which required the secretary of the taxation and revenue department to designate codes to identify business locations, and redesignated Subsections J and K as Subsections I and J, respectively; in Subsection I, after "location codes designated", deleted "pursuant to Subsection I of this section" and added "by the secretary"; and in Subsection J, deleted former Paragraph (1), which defined "business location" and redesignated Paragraphs K(2) through K(4) as Paragraphs J(1) through J(3), respectively.

The 1995 amendment, effective July 1, 1995, rewrote the section heading which read "Secretary may require gross receipts to be reported according to municipality, Indian reservation, pueblo grant or if on municipally owned land"; designated the former first, second and third sentences as Subsections A through C; and added Subsection D.

The 1992 amendment, effective July 1, 1992, substituted "Secretary" for "Director" in the section heading and throughout the section, substituted "one or more places" for "more than one place" and deleted "covered by a contract of the type described in Section 7-1-6.4 NMSA 1978" following "pueblo grant" in the first sentence, added "all of the present language of the second sentence" following "place of business", and made minor stylistic changes throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation § 727.

85 C.J.S. Taxation §§ 1701 et seq

7-1-15. Secretary may set tax reporting and payment intervals.

The secretary may, pursuant to regulation, allow taxpayers with an anticipated tax liability of less than two hundred dollars ($200) a month to report and pay taxes at intervals which the secretary may specify. However, unless specifically permitted by law, an interval shall not exceed six months. The secretary may also allow direct marketers who have entered into an agreement with the department to collect and remit compensating tax to report and pay on a quarterly or semi-annual basis.

History: 1953 Comp., § 72-13-30.1, enacted by Laws 1969, ch. 31, § 1; 1979, ch. 144, § 14; 1983, ch. 211, § 25; 1988, ch. 73, § 7; 1991, ch. 138, § 1; 1998, ch. 105, § 2.

ANNOTATIONS

The 1998 amendment, effective May 20, 1998, added the last sentence.

The 1991 amendment, effective July 1, 1991, substituted "two hundred dollars ($200)" for "one hundred dollars ($100)".

7-1-15.1. Secretary may permit or require rounding.

By regulation or instruction, the secretary may permit or require rounding to the nearest whole dollar of tax due provided that, for any tax or tax act the revenues from which are required by the provisions of the Tax Administration Act to be distributed or transferred partly to local governments and partly to state funds, the gain or loss due to rounding shall be attributed to the state funds.

History: 1978 Comp., § 7-1-15.1, enacted by Laws 1987, ch. 169, § 4.

ANNOTATIONS

Effective Dates. — Laws 1987, ch. 169, § 8 made Laws 1987, ch. 169, § 4 effective July 1, 1987.

7-1-15.2. Agreements; collection of compensating tax.

The department may enter into agreements with direct marketers for purposes of enforcing collection of the compensating tax.

History: Laws 1998, ch. 105, § 1.

ANNOTATIONS

Effective dates. — Laws 1998, ch. 105 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 20, 1998, 90 days after the adjournment of the legislature.

Cross references. — For compensating tax, *see* 7-9-1 NMSA 1978 et seq.

7-1-16. Delinquent taxpayer.

A. Except as provided in Subsection D of this section, any taxpayer to whom taxes have been assessed as provided in Section 7-1-17 NMSA 1978 or upon whom demand for payment has been made as provided in Section 7-1-63 NMSA 1978 who does not within ninety days after the date of assessment or demand for payment make payment of the undisputed amount, protest the assessment or demand for payment as provided by Section 7-1-24 NMSA 1978 or furnish security for payment as provided by Section 7-1-54 NMSA 1978 becomes a delinquent taxpayer and remains such until:

(1) payment of the total amount of all such taxes is made;

(2) security is furnished for payment; or

(3) no part of the assessment remains unabated.

B. Any taxpayer who fails to provide security as required by Subsection D of Section 7-1-54 NMSA 1978 shall be deemed to be a delinquent taxpayer.

C. If a taxpayer files a protest as provided in Section 7-1-24 NMSA 1978, the taxpayer nevertheless becomes a delinquent taxpayer upon failure of the taxpayer to appear, in person or by authorized representative, at the hearing set or upon failure to perfect an appeal from any decision or part thereof adverse to the taxpayer to the next higher appellate level, as provided in that section, unless the taxpayer makes payment of the total amount of all taxes assessed and remaining unabated or furnishes security for payment.

D. A taxpayer does not become a delinquent taxpayer if the taxpayer has been issued an assessment as a result of a managed audit but is still within the allowed time period to pay the tax due as specified in Paragraph (4) of Subsection A of Section 7-1-67 NMSA 1978.

History: 1953 Comp., § 72-13-31, enacted by Laws 1965, ch. 248, § 19; 1979, ch. 144, § 15; 1985, ch. 65, § 14; 1989, ch. 325, § 5; 1993, ch. 5, § 6; 1999, ch. 84, § 1; 2007, ch. 262, § 3; 2013, ch. 27, § 2; 2019, ch. 157, § 1.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, modified certain terms related to delinquent taxes; and in Subsection A, after "make payment", added "of the undisputed amount".

The 2013 amendment, effective July 1, 2013, extended the deadline for protesting an assessment or demand for payment; in Subsection A, in the first sentence, after "who does not within", deleted "thirty" and added "ninety"; deleted former Paragraph (2) of Subsection A, which provided for a retroactive extension of time to file a protest; and deleted Paragraph (1) of Subsection D, which provided that a taxpayer did not become delinquent if the taxpayer filed for an extension of time to file a protest.

The 2007 amendment, effective July 1, 2007, rewrote Subsection D.

The 1999 amendment, effective July 1, 1999, in Subsection A, added "Except as provided in Subsection D of this section" at the beginning of the introductory language and inserted "the assessment is not abated and" in Paragraph (2); and added Subsection D.

The 1993 amendment, effective July 1, 1993, in Subsection A, inserted the paragraph designations, added Paragraph (2), and made minor stylistic changes.

The 1989 amendment, effective June 16, 1989, in Subsection C, substituted "taxpayer files a protest" for "taxpayer does make application for hearing" and made minor stylistic changes throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation §§ 782 to 787, 835, 842, 843.

85 C.J.S. Taxation §§ 1096 to 1098, 1108 et seq.

7-1-17. Assessment of tax; presumption of correctness.

A. If the secretary or the secretary's delegate determines that a taxpayer is liable for taxes in excess of fifty dollars ($50.00) that are due and that have not been previously assessed to the taxpayer, the secretary or the secretary's delegate shall promptly assess the amount thereof to the taxpayer.

B. Assessments of tax are effective:

(1) when a return of a taxpayer is received by the department showing a liability for taxes;

(2) when a document denominated "notice of assessment of taxes", issued in the name of the secretary, is mailed or delivered in person to the taxpayer against whom the liability for tax is asserted, stating the nature and amount of the taxes assertedly owed by the taxpayer to the state, demanding of the taxpayer the immediate payment of the taxes and briefly informing the taxpayer of the remedies available to the taxpayer; or

(3) when an effective jeopardy assessment is made as provided in the Tax Administration Act.

C. Any assessment of taxes or demand for payment made by the department is presumed to be correct.

D. When taxes have been assessed to any taxpayer and remain unpaid, the secretary or the secretary's delegate may demand payment at any time except as provided otherwise by Section 7-1-19 NMSA 1978.

History: 1953 Comp., § 72-13-32, enacted by Laws 1965, ch. 248, § 20; 1969, ch. 32, § 1; 1978 Comp., § 7-1-17; 1979, ch. 144, § 16; 1992, ch. 55, § 11; 2007, ch. 45, § 1; 2023, ch. 36, § 1.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, raised the amount of tax liability requiring assessment by the secretary of taxation and revenue; and in Subsection A, after "taxes in excess of", deleted "twenty-five dollars ($25.00)" and added "fifty dollars ($50.00)".

The 2007 amendment, effective January 1, 2008, in Subsection A, changed the minimum amount from $10.00 to $25.00.

The 1992 amendment, effective July 1, 1992, substituted "secretary" for "director" and "department" for "division" several times throughout the section, added "except as provided otherwise by Section 7-1-19 NMSA 1978" at the end of Subsection D, and made minor stylistic changes throughout the section.

Assessment of taxes effective when effective jeopardy assessment is made as provided in the Tax Administration Act. *Regents of N.M. Coll. of Agric. & Mechanic Arts v. Academy of Aviation, Inc*., 1971-NMSC-087, 83 N.M. 86, 488 P.2d 343.

Assessment upheld when statutes followed and no dispute of factual correctness. — Since the record showed the statutory provisions were followed and taxpayer presented no evidence tending to dispute the factual correctness of the

assessments, assessment will be upheld. *McConnell v. State ex rel. Bureau of Revenue*, 1971-NMCA-181, 83 N.M. 386, 492 P.2d 1003.

Presumption of correctness applies when assessment delivered. — Once the notice of assessment of taxes is delivered to the taxpayer, the statutory presumption, of the correctness of the assessment, applies, and absent a showing of incorrectness by taxpayers, the audit and notice of assessment of taxes must stand. *Torridge Corp. v. Commissioner of Revenue*, 1972-NMCA-171, 84 N.M. 610, 506 P.2d 354, cert. denied, 84 N.M. 592, 506 P.2d 336 (1973).

Exemption strictly construed in favor of taxing authority. — There is a presumption that an assessment of gross receipts taxes is correct, and in order for the taxpayer to be successful, he must clearly overcome this presumption. Moreover, where an exemption is claimed, the exemption is strictly construed in favor of the taxing authority. *Stohr v. N.M. Bureau of Revenue*, 1976-NMCA-118, 90 N.M. 43, 559 P.2d 420, cert. denied, 90 N.M. 254, 561 P.2d 1347 (1977).

Presumption applicable to penalty statute. — Presumption of correctness of this section also applies to penalty section (7-1-69 NMSA 1978). *Tiffany Constr. Co. v. Bureau of Revenue*, 1976-NMCA-127, 90 N.M. 16, 558 P.2d 1155, cert. denied, 90 N.M. 255, 561 P.2d 1348 (1977).

Burden on protesting taxpayers to overcome presumption. — The burden is on taxpayers protesting assessment to overcome presumption that the bureau's (now department's) assessment is correct. *Archuleta v. O'Cheskey*, 1972-NMCA-165, 84 N.M. 428, 504 P.2d 638; *Tipperary Corp. v. N.M. Bureau of Revenue*, 1979-NMCA-031, 93 N.M. 22, 595 P.2d 1212, cert. denied, 92 N.M. 675, 593 P.2d 1078; *Anaconda Co. v. Prop. Tax Dep't*, 1979-NMCA-158, 94 N.M. 202, 608 P.2d 514, cert. denied, 94 N.M. 628, 614 P.2d 545 (1980); *Hawthorne v. Director of Revenue Div. Taxation & Revenue Dep't*, 1980-NMCA-071, 94 N.M. 480, 612 P.2d 710, *Carlsberg Mgmt. Co. v. State Taxation & Revenue Dep't*, 1993-NMCA-121, 116 N.M. 247, 861 P.2d 288; *MPC Ltd. v. N.M. Taxation & Revenue Dep't*, 2003-NMCA-021, 133 N.M. 217, 62 P.3d 308.

Presumption overcome when not supported by substantial evidence. — The assessment is presumed to be correct; the taxpayer may overcome the presumption of correctness of the assessment by presenting evidence and showing that the decision of the bureau (now department) is not supported by substantial evidence. *Floyd & Berry Davis Co. v. Bureau of Revenue*, 1975-NMCA-143, 88 N.M. 576, 544 P.2d 291.

Protesting taxpayer must dispute factual correctness to overcome presumption. — Since any assessment of taxes is presumed to be correct, the duty rested on the taxpayer to present evidence tending to dispute the factual correctness of the assessments and to overcome this presumption. *Champion Int'l Corp. v. Bureau of Revenue*, 1975-NMCA-106, 88 N.M. 411, 540 P.2d 1300, cert. denied, 89 N.M. 5, 548 P.2d 70.

Presumption may be overcome by disputing factual correctness. — The presumption of Subsection C need be overcome only by a taxpayer's disputing the factual correctness of an assessment. When the taxpayer challenged the interpretation of a county ordinance in its submitted memorandum of positions, the burden was properly shifted by the memorandum to the bureau (now department) to at least acknowledge the existence of the ordinance. *Co-Con, Inc. v. Bureau of Revenue*, 1974-NMCA-134, 87 N.M. 118, 529 P.2d 1239, cert. denied, 87 N.M. 111, 529 P.2d 1232.

Necessity of presenting evidence to rebut the presumption of correctness. — When the corporation contracted with an out-of-state buyer for the corporation to destroy munitions, it was entitled to the gross receipts deduction, and the hearing officer could not properly determine that use or delivery took place within the state without some affirmative evidence in the record to support that conclusion. *TPL, Inc. v. N.M. Taxation & Revenue Dep't*, 2003-NMSC-007, 133 N.M. 447, 64 P.3d 474.

No basis for overturning decision where taxpayer unprepared. — Since the record showed that hearing officer carefully advised taxpayer as to the statutory procedures and his rights in connection with hearing and it also showed the taxpayer did not come prepared for the hearing, taxpayer's claims that bureau (now department) should have given him opportunity to present his evidence at a later time and, although it was his burden to proceed, that he was denied the right to cross-examine a witness who was never called were based on taxpayer's lack of preparation and do not provide a basis for overturning the commissioner's (now secretary's) decision. *McConnell v. State ex rel. Bureau of Revenue*, 1971-NMCA-181, 83 N.M. 386, 492 P.2d 1003.

Presumption not overcome by contradictory evidence. — Evidence that the construction contract between the taxpayer, a contracting business and a corporation created a ceiling price was not compelling in view of the contradictory evidence as to the actual cost of the construction, and the presumption of correctness of the assessment of gross receipts tax was not overcome. *Floyd & Berry Davis Co. v. Bureau of Revenue*, 1975-NMCA-143, 88 N.M. 576, 544 P.2d 291.

Presumption not overcome since acceptable audit method used. — Since the "test months" method was used for audit of taxpayers whose records were destroyed by fire in order to determine gross receipts subject to tax, and since there was evidence that the "test months" method was acceptable practice, the presumption of correctness of the assessments was not overcome. *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).

Evidence of entitlement to a manufacturing deduction. — A biotechnology company whose expertise was in the diagnosis of genetic disorders that could be detected through the appearance of chromosomes, and who produced tangible objects that were provided to its customers, such as a written report of its experts' diagnosis and a laminated karyotype, which consisted of photographs of chromosomes that were numbered and pasted onto a piece of laminated cardboard, did not establish its

entitlement to a manufacturing deduction, since the company could not identify any out-of-state purchases that would be subject to the compensating tax of products incorporated into its reports or laminated karyotypes. The department, whose assessment is assumed correct, had identified as subject to the compensating tax such items as microscopes, sinks, and furniture, which undoubtedly were not incorporated into the documents or laminated karyotypes. *Vivigen, Inc. v. Minzner*, 1994-NMCA-027, 117 N.M. 224, 870 P.2d 1382.

Presumption overcome when no basis for assessments existed. — Since the undisputed evidence of no audit for a two-year period of no test for gross receipts for those years and of different under-reporting percentages for the audited period established an absence of any basis for the assessments for that period, such showing overcame the presumption that the assessments were correct. *Torridge Corp. v. Commissioner of Revenue*, 1972-NMCA-171, 84 N.M. 610, 506 P.2d 354, cert. denied, 84 N.M. 592, 506 P.2d 336 (1973).

Standard of review on appeal. — Department's gross receipts tax assessment can only be reversed by the court of appeals if arbitrary, capricious, or there is an abuse of discretion, such that the assessment's not supported by substantial evidence or it is otherwise not in accordance with law. *ITT Educ. Serv. v. Taxation & Revenue Dep't*, 1998-NMCA-078, 125 N.M. 244, 959 P.2d 969.

Standard of review on appeal. — Any assessment of taxes by the taxation and revenue department is presumed to be correct and in protesting the assessment of taxes the taxpayer has the burden of proving the deductions were proper. In reviewing, courts will reverse the department's decision only if it is arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, or not supported by substantial evidence. *Arco Materials, Inc. v. State Taxation & Revenue Dep't*, 1994-NMCA-062, 118 N.M. 12, 878 P.2d 330, *rev'd on other grounds sub nom. Blaze Constr. Co. v. Taxation & Revenue Dep't*, 1994-NMSC-110, 118 N.M. 647, 884 P.2d 803, cert. denied, 514 U.S. 1016, 115 S. Ct. 1359, 131 L. Ed. 2d 216 (1995).

Presumption overcome by showing that division (now department) failed to follow statutory provisions. — An assessment made by the bureau (now department) is presumptively correct. This presumption may be overcome by showing that the bureau (now department) failed to follow the statutory provisions contained in the Tax Administration Act. *Regents of N.M. Coll. of Agric. & Mechanic Arts v. Academy of Aviation, Inc*., 1971-NMSC-087, 83 N.M. 86, 488 P.2d 343.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 596 to 602; 72 Am. Jur. 2d State and Local Taxation §§ 704 to 738.

Who may complain of underassessment or nonassessment of property for taxation, 5 A.L.R.2d 576, 9 A.L.R.4th 428.

Judicial notice as to assessed valuations, 42 A.L.R.3d 1439.

Separate assessment and taxation of air rights, 56 A.L.R.3d 1300.

84 C.J.S. Taxation §§ 423 to 454, 478 to 531.

7-1-17.1. Tax liability; spouse or former spouse.

A. If the secretary or the secretary's delegate determines that, taking into account the facts and circumstances in Subsections F and G of this section, it is inequitable to hold a spouse liable for payment of all or part of any unpaid tax, assessment or other deficiency for a tax, the secretary may decline to bring an action or proceeding to collect such taxes from the spouse, including collection from the spouse's interest in community property.

B. The secretary or the secretary's delegate may grant innocent spouse relief to a spouse who files a joint tax return and all or part of the spouse's portion of any overpayment was, or is expected to be, applied to the tax liability for which the spouse is not liable because the liability is determined to be separate debt, as defined in Subsection A of Section 40-3-9 NMSA 1978.

C. If on review it is determined that the information relied on to make the innocent spouse relief determination was incorrect or fraudulent, the department may rescind the innocent spouse relief and proceed to collect the affected taxes from the spouse.

D. Innocent spouse relief does not authorize the abatement of taxes or enforcement of any provisions of the Tax Administration Act against the taxpayer.

E. A lien or levy imposed on a spouse or property of a spouse who qualifies for innocent spouse relief may be released as to taxes deemed inequitable to collect pursuant to this section.

F. If the federal internal revenue service granted the spouse relief pursuant to 26 U.S.C. Section 6015, the spouse may request similar relief from the department on a form prescribed by the department, regardless of whether the spouse is a joint or separate filer for New Mexico income tax. The spouse shall provide a copy of the federal internal revenue service's determination with the request that the secretary or the secretary's delegate cease collection activity against the spouse to the extent relief was allowed by the federal internal revenue service. The department shall grant innocent spouse relief for the same tax periods and tax programs granted relief by the federal internal revenue service; provided that the request for relief is submitted on the form prescribed by the department. The secretary or the secretary's delegate may decline to pursue collection activity against a spouse while an application for relief is pending before the federal internal revenue service, but the failure to seek or obtain relief shall not preclude the secretary or secretary's delegate from declining to collect tax from a spouse when collection would be inequitable. An item giving rise to a deficiency on a joint return shall be allocated to an individual filing the return in the same

manner as it would have been allocated if the individual had filed separate returns for the taxable year.

G. The secretary or the secretary's delegate shall consider at least the following facts and circumstances when determining whether to grant innocent spouse relief if the federal internal revenue service has not granted the spouse personal income tax relief pursuant to 26 U.S.C. Section 6015:

(1) whether the spouse had knowledge of the tax liability at the time the liability arose;

(2) whether the spouse had a meaningful opportunity to contest the assessment of tax at the time the assessment was made;

(3) whether the spouse cooperated with the department in collection and compliance efforts, to the extent the spouse had knowledge of collection and compliance efforts;

(4) whether the state can protect its interests without pursuing active collection efforts against the spouse, including collection efforts against the taxpayer;

(5) whether the spouse benefited from the transfer of income, receipts or significant amounts of property from the taxpayer;

(6) whether the spouse participated in the business and financial decisions of the household during the periods when the tax liability arose;

(7) whether the spouse participated in operating a business with the taxpayer;

(8) whether the spouse had responsibility for the finances of a business for which the spouse participated;

(9) whether the spouse had responsibility for payment of taxes for a business for which the spouse participated; and

(10) whether the spouse knew that the taxpayer engaged in business.

H. No one factor contemplated to Subsection G of this section shall be considered determinative in considering whether tax collection from a spouse would be inequitable. Each factor may be given different relative weight, depending on the facts and circumstances presented; therefore, the presence of a majority of factors considered tending to support innocent spouse relief in a particular case may not necessarily indicate that the spouse in question qualifies for innocent spouse relief for New Mexico tax purposes.

I. The secretary shall adopt and promulgate regulations as necessary for making the determinations pursuant to this section.

J. As used in this section:

(1) "innocent spouse relief" means the relief from collection of tax liabilities pursuant to this section;

(2) "spouse" means a current or former spouse of a taxpayer; and

(3) "taxpayer" means a taxpayer who is or was married to a spouse who is seeking innocent spouse relief pursuant to this section.

History: Laws 2003, ch. 398, § 15; 2021, ch. 65, § 3.

ANNOTATIONS

The 2021 amendment, effective July 1, 2021, clarified provisions related to innocent spouse tax relief, required the taxation and revenue department to grant innocent spouse relief in instances where the IRS has already granted a taxpayer innocent spouse relief for the same tax period, provided factors that the secretary of the taxation and revenue department must consider when determining whether to grant innocent spouse relief if the IRS has not granted the spouse personal income tax relief; in Subsection A, after "secretary", added "or the secretary's delegate", after "facts and circumstances", added "in Subsections F and G of this section", after the first occurrence of "spouse", deleted "or former spouse of a taxpayer", after "deficiency for a tax", deleted "administered under the Tax Administration Act", after "proceeding to collet such taxes", deleted "against the spouse or former spouse of the taxpayer"; deleted former subsection designation "B." and the language "Nothing in Subsection A of this section shall be construed to" and added "from the spouse, including collection from the spouse's interest in community property"; added new Subsections B through H and redesignated former Subsection C as Subsection I; and added Subsection J.

7-1-18. Limitation on assessment by department.

A. Except as otherwise provided in this section, no assessment of tax may be made by the department after three years from the end of the calendar year in which payment of the tax was due, and no proceeding in court for the collection of such tax without the prior assessment thereof shall be begun after the expiration of such period.

B. In case of a false or fraudulent return made by a taxpayer with intent to evade tax, the amount thereof may be assessed at any time within ten years from the end of the calendar year in which the tax was due, and no proceeding in court for the collection of such tax without the prior assessment thereof shall be begun after the expiration of such period.

C. In case of the failure by a taxpayer to complete and file any required return, the tax relating to the period for which the return was required may be assessed at any time within seven years from the end of the calendar year in which the tax was due, and no proceeding in court for the collection of such tax without the prior assessment thereof shall be begun after the expiration of such period.

D. If a taxpayer in a return understates by more than twenty-five percent the amount of liability for any tax for the period to which the return relates, appropriate assessments may be made by the department at any time within six years from the end of the calendar year in which payment of the tax was due.

E. If any adjustment in the basis for computation of any federal tax is made as a result of an audit by the internal revenue service or the filing of an amended federal return or administrative adjustment request changing a prior election or making any other change for which federal approval is required by the Internal Revenue Code that results in liability for any tax, the amount thereof may be assessed at any time, but not after three years from the end of the calendar year in which filing of a federal adjustments report is required by Subsections E through J of Section 7-1-13 NMSA 1978.

F. If the taxpayer has signed a waiver of the limitations on assessment imposed by this section, an assessment of tax may be made or a proceeding in court begun without regard to the time at which payment of the tax was due.

G. As used in this section:

(1) "administrative adjustment request" means "administrative adjustment request" as used in Section 7-1-13 NMSA 1978; and

(2) "federal adjustments report" means "federal adjustments report" as used in Section 7-1-13 NMSA 1978.

History: 1953 Comp., § 72-13-33, enacted by Laws 1965, ch. 248, § 21; 1970, ch. 18, § 1; 1979, ch. 144, § 17; 1983, ch. 211, § 26; 1993, ch. 5, § 7; 1994, ch. 51, § 4; 2013, ch. 27, § 3; 2021, ch. 83, § 2.

ANNOTATIONS

The 2021 amendment, effective June 18, 2021, amended sections of the tax administration act to address federal partnership audit or adjustment requests resulting in underpayment or overpayment of state taxes, and defined terms as used in this section; in Subsection E, after "an amended federal return", added "or administrative adjustment request", after "filing of", deleted "an amended return" and added "a federal adjustment report", and after "required by", changed "Subsection C" to "Subsection E through J"; and added Subsection G.

The 2013 amendment, effective July 1, 2013, permitted an assessment if an Internal Revenue Service audit or change in a return that required Internal Revenue Service approval results in tax liability; in Subsection E, added the language between "computation of any federal tax is made" and "that results in liability for any tax".

The 1994 amendment, effective July 1, 1994, substituted the language at the end of Subsection E, beginning with "three years", for "one year after the date of the receipt of the amended return or not after the end of the period limited by Subsection A of this section, whichever is later".

The 1993 amendment, effective July 1, 1993, substituted "department" for "director" in the catchline and in Subsection D and for "director or his delegate" in Subsection A, and made a minor stylistic change in Subsection E.

Extension of limitations period. — The taxation and revenue department is required to extend the general three-year limitation on assessments to six years when making an assessment if a taxpayer underreported taxes in excess of 25 percent, and the principles of estoppel do not affect the department's application of the longer period. *Taxation & Revenue Dep't v. Bien Mur Indian Mkt. Ctr., Inc*., 1989-NMSC-015, 108 N.M. 228, 770 P.2d 873.

Seven-year statute of limitation applied where taxpayers failed to file returns. — Where taxpayers appealed a 2018 assessment of taxes for tax years 2008 through 2011, arising from the operation of an automotive technician business, and where defendant argued that the administrative hearing officer incorrectly applied a ten-year, rather than a seven-year statute of limitations to their failure to file gross receipts tax returns for 2008, 2009, and 2010, the hearing officer erred in finding that taxpayers filed fraudulent returns and applying the ten-year statute of limitation to the assessments, because although taxpayers filed federal and pass-through entities (PTE) returns for the years 2008, 2009, and 2010, the evidence did not demonstrate that the filed federal and PTE returns were false or fraudulent, and the hearing officer explicitly found that taxpayers did not file state gross receipts tax returns for the years 2008, 2009, and 2010. The seven-year limitation period found in § 7-1-18(C) NMSA 1978, relating to the failure to file a return, applied to the facts of this case and barred the taxation and revenue department from assessing taxpayers personally for the years 2008, 2009, and 2010. *Vigil v. N.M. Tax'n and Revenue Dep't*, 2022-NMCA-032.

Assessment of severance taxes was not barred. — Where taxpayer was party to a settlement agreement that was approved by a federal district court in a class action involving the underpayment of royalties on the production of carbon dioxide gas; the settlement agreement constituted an order that increased the value of the carbon dioxide gas previously reported by taxpayer and constituted a taxable event under Section 7-29-4.3 NMSA 1978; taxpayer did not prepare or file any tax returns that reported any of the settlement proceeds paid by taxpayer to royalty interest owners as additional amounts subject to severance tax liability; the settlement agreement was approved in 1998; and a severance tax assessment was issued in 2004, the

assessment was not barred by the statute of limitations. *Hess Corp. v. N.M. Taxation & Revenue Dep't*, 2011-NMCA-043, 149 N.M. 527, 252 P.3d 751 cert. denied, 2011-NMCERT-003, 150 N.M. 619, 264 P.3d 520.

Proof of effective date of notice of assessment. — The department failed to make out a prima facie case of entitlement to summary judgment on the issue of the backward reach of an assessment where, on the basis of an erroneous assumption that the date of the written notice of assessment was immaterial because the taxpayer was under an independent duty of self-assessment, it did not offer any evidence establishing the effective date of the notice of assessment. *Sonic Indus., Inc. v. State*, 2000-NMCA-087, 129 N.M. 657, 11 P.3d 1219, *rev'd on other grounds*, 2006-NMSC-038, 140 N.M. 212, 141 P.3d 1266.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation §§ 719, 788.

Civil liability of tax assessor to taxpayer for excessive or improper assessment of real property, 82 A.L.R.2d 1148.

Suspension of running of period of limitation, under 26 U.S.C.A. § 6503, for federal tax assessment or collection, 160 A.L.R. Fed. 1

85 C.J.S. Taxation §§ 1514 to 1524.

7-1-19. Limitation of actions.

No action or proceeding shall be brought to collect taxes administered under the provisions of the Tax Administration Act and due under an assessment or notice of the assessment of taxes after the later of either ten years from the date of such assessment or notice or, with respect to undischarged amounts in a bankruptcy proceeding, one year after the later of the issuance of the final order or the date of the last scheduled payment.

History: 1953 Comp., § 72-7-35.1, enacted by Laws 1971, ch. 21, § 1; 1972, ch. 73, § 2; recompiled as 1953 Comp., § 72-13-33.1, by Laws 1973, ch. 258, § 154; 1979, ch. 144, § 18; 1986, ch. 20, § 14; 2000, ch. 28, § 7; 2013, ch. 27, § 4.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, corrected a spelling error, changing "afer" to "after".

The 2000 amendment, effective July 1, 2000, inserted "the later of either" and added "or, with respect to undischarged amounts in a bankruptcy proceeding, one year after the later of the issuance of the final order or the date of the last scheduled payment."

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation §§ 876, 877, 896, 1141.

Claim of government against taxpayer which is barred by lapse of time as available to defeat or diminish claim of taxpayer against government, or vice versa, 109 A.L.R. 1354, 130 A.L.R. 838, 154 A.L.R. 1052, 12 A.L.R.2d 815.

84 C.J.S. Taxation §§ 1041 to 1043; 85 C.J.S. Taxation § 1982 et seq.

7-1-20. Compromise of taxes; closing agreements.

A. At any time after the assessment of any tax, if the secretary in good faith is in doubt of the liability for the payment thereof, the secretary may, with the written approval of the attorney general, compromise the asserted liability for taxes by entering with the taxpayer into a written agreement that adequately protects the interests of the state.

B. The agreement provided for in this section is to be known as a "closing agreement". If entered into after any court acquires jurisdiction of the matter, the agreement shall be part of a stipulated order or judgment disposing of the case.

C. As a condition for entering into a closing agreement, the secretary may require the taxpayer to furnish security for payment of any taxes due according to the terms of the agreement.

D. A closing agreement is conclusive as to liability or nonliability for payment of assessed taxes relating to the periods referred to in the agreement, and except upon a showing of fraud or malfeasance, or misrepresentation or concealment of a material fact:

(1) the agreement shall not be modified by any officer, employee or agent of the state; and

(2) in any suit, action or proceeding, the agreement or any determination, assessment, collection, payment, abatement, refund or credit made in accordance therewith shall not be annulled, modified, set aside or disregarded.

History: 1953 Comp., § 72-13-34, enacted by Laws 1965, ch. 248, § 22; 1979, ch. 144, § 19; 1995, ch. 70, § 1.

ANNOTATIONS

Cross references. — For compromise, satisfaction or release by attorney general or district attorney, *see* 36-1-22 NMSA 1978.

The 1995 amendment, effective July 1, 1995, substituted references to "the secretary" for references to "the director" in Subsections A and C.

Attorney general's approval necessary. — A settlement agreement compromising tax liability was not valid or enforceable since it lacked the attorney general's written approval as required by this section. *Johnson & Johnson v. Taxation & Revenue Dep't*, 1997-NMCA-030, 123 N.M. 190, 936 P.2d 872, cert. denied, 123 N.M. 168, 936 P.2d 337.

No authority for settlement. — Employees of the taxation and revenue department did not have apparent authority to enter into a compromise tax settlement agreement without the attorney general's written approval. *Johnson & Johnson v. Taxation & Revenue Dep't*, 1997-NMCA-030, 123 N.M. 190, 936 P.2d 872, cert. denied, 123 N.M. 168, 936 P.2d 337.

No estoppel to permit enforcement of invalid settlement. — The doctrine of equitable estoppel did not apply to preclude disavowal of a compromise tax settlement agreement entered into without the attorney general's written approval. *Johnson & Johnson v. Taxation & Revenue Dep't*, 1997-NMCA-030, 123 N.M. 190, 936 P.2d 872, cert. denied, 123 N.M. 168, 936 P.2d 337.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation § 310; 72 Am. Jur. 2d State and Local Taxation §§ 853 to 855, 1074.

Power of legislature to remit, release or compromise tax claim, 28 A.L.R.2d 1425.

84 C.J.S. Taxation §§ 907 to 909, 1052.

7-1-21. Installment payments of taxes; installment agreements.

A. Whenever justified by the circumstances, the secretary or the secretary's delegate may enter into a written agreement with a taxpayer in which the taxpayer admits conclusive liability for the entire amount of taxes due and agrees to make monthly installment payments according to the terms of the agreement, but not for a period longer than seventy-two months. No installment agreement shall prevent the accrual of interest otherwise provided by law.

B. The agreement provided for in this section is to be known as an "installment agreement". If entered into after a court acquires jurisdiction over the matter, the agreement shall be part of a stipulated order or judgment disposing of the case.

C. At the time of entering into an installment agreement, the secretary shall require the affected taxpayer or person to furnish security for payment of the taxes admitted to be due according to the terms of the agreement, but if the taxpayer does not provide security, the secretary shall cause a notice of lien to be filed in accordance with the provisions of Section 7-1-38 NMSA 1978, and when so filed it shall constitute a lien

upon all the property or rights to property of the taxpayer in that county in the same manner as in the case of the lien provided for in Section 7-1-37 NMSA 1978.

D. An installment agreement is conclusive as to liability for payment of the amount of taxes specified therein but does not preclude the assessment of any additional tax.

E. After entering into the agreement, except in unusual circumstances as require the secretary in the secretary's discretion to take further action to protect the interests of the state, no further attempts to enforce payment of the tax by levy or injunction shall be made; however, if installment payments are not made on or before the times specified in the agreement, if any other condition contained in the agreement is not met or if the taxpayer does not make payment of all other taxes for which the taxpayer becomes liable as they are due, the secretary may proceed to enforce collection of the tax as if the agreement had not been made or may proceed, as provided in Section 7-1-54 NMSA 1978, against the security furnished.

F. Records of installment agreements in excess of one thousand dollars ($1,000) shall be available for inspection by the public. The department shall keep the records for a minimum of three years from the date of the installment agreement.

History: 1953 Comp., § 72-13-35, enacted by Laws 1965, ch. 248, § 23; 1979, ch. 144, § 20; 1987, ch. 169, § 5; 2003, ch. 439, § 2; 2017, ch. 63, § 23.

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, increased the amount of time over which a taxpayer may make installment payments on taxes due, and made technical changes; in Subsection A, after "for a period no longer than", deleted "sixty" and added "seventy-two"; and in Subsection E, after "the secretary in", deleted "his" and added "the secretary's", and after "all other taxes for which", deleted "he" and added "the taxpayer".

The 2003 amendment, effective July 1, 2003, substituted "sixty months" for "thirty-six months" near the end of Subsection A.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation § 135; 72 Am. Jur. 2d State and Local Taxation § 845.

Constitutionality of statute permitting payment of taxes in installments, 101 A.L.R. 1335.

Failure of property owner to make formal election to avail himself of privilege of paying taxes or special assessment in installments, 140 A.L.R. 1442.

84 C.J.S. Taxation §§ 851 et seq., 884, 915 to 916.

7-1-21.1. Special agreements; alternative gross receipts taxpayer.

A. To allow the payment of gross receipts tax by a person who is not the liable taxpayer, the secretary may approve a request by a person to assume the liability for gross receipts tax or governmental gross receipts tax owed by another provided that the person requesting approval agrees to assume the rights and responsibilities as taxpayer pursuant to the Tax Administration Act for:

(1) an agreement to collect and pay over taxes for persons in a business relationship, which is an agreement that may be entered into by persons who wish to remit gross receipts tax on behalf of another person with whom the taxpayer has a business relationship;

(2) an agreement to collect and pay over taxes for a direct sales company:

(a) which agreement may be entered into by a direct sales company that has distributors of tangible personal property in New Mexico; and

(b) in which the direct sales company agrees to pay the gross receipts tax liability of the distributor at the same time the company remits its own gross receipts tax; and

(3) a manufacturer's agreement to pay gross receipts tax or governmental gross receipts tax on behalf of a utility company, which agreement:

(a) allows a person engaged in manufacturing in New Mexico to pay gross receipts tax or governmental gross receipts tax on behalf of a utility company on receipts from sales of utilities that are: 1) not consumed in the manufacturing process; or 2) not otherwise deductible; and

(b) is only applicable to transactions between a manufacturer and a utility company that are associated with the gross receipts tax deduction pursuant to Subsection B of Section 7-9-46 NMSA 1978.

B. To enter into the agreements authorized in this section, a person shall complete a form prescribed by the secretary and provide any additional information or documentation required by department rules or instructions that will assist in the approval of agreements listed in Subsection A of this section.

C. Once approved, an agreement shall be effective only for the period of time specified in each agreement. Any person entering into an agreement to pay tax on behalf of another person shall fulfill all of the requirements set out in the agreement. Failure to fulfill all of the requirements set out in the agreement may result in the revocation of the agreement by the department. An approved agreement may only be revoked prior to expiration by written notification to all persons who are party to the agreement and shall be applied beginning on the first day of a month that occurs at least one month following the date on which the agreement is revoked.

D. A person approved by the secretary to pay the gross receipts tax or governmental gross receipts tax pursuant to Subsection A of this section shall be deemed to be the taxpayer with respect to that tax pursuant to the Tax Administration Act with respect to all rights and responsibilities related to that tax, except that:

(1) the person shall not be entitled to take any credit against the tax for which the person has assumed liability pursuant to this section; and

(2) the person shall not claim a refund of tax on the basis that the person is not statutorily liable to pay the tax.

E. The department shall relieve from liability and hold harmless from the payment of a tax assumed by another person pursuant to an agreement approved pursuant to this section a taxpayer that would otherwise be liable for that tax.

History: Laws 2013, ch. 87, § 1.

ANNOTATIONS

Emergency clauses. — Laws 2013, ch. 87, § 4 contained an emergency clause and was approved April 1, 2013.

Applicability. — Laws 2013, ch. 87, § 3 provided that the provisions of Laws 2013, ch. 87, §§ 1 and 2 apply to gross receipts or governmental gross receipts received in tax periods beginning on or after May 1, 2013.

7-1-22. Exhaustion of administrative remedies.

No court of this state has jurisdiction to entertain any proceeding by a taxpayer in which the taxpayer calls into question the taxpayer's liability for any tax or the application to the taxpayer of any provision of the Tax Administration Act, except as a consequence of the appeal by the taxpayer to the court of appeals from the order of a hearing officer, or except as a consequence of a claim for refund as specified in Section 7-1-26 NMSA 1978.

History: 1953 Comp., § 72-13-36, enacted by Laws 1965, ch. 248, § 24; 1966, ch. 30, § 1; 1979, ch. 144, § 21; 1995, ch. 70, § 2; 2015, ch. 73, § 14.

ANNOTATIONS

The 2015 amendment, effective July 1, 2015, provided jurisdiction to the court of appeals to review orders of hearing officers; after "court of appeals from the", deleted "action and order of the secretary, all as specified in Section 7-1-24 NMSA 1978" and added "order of a hearing officer".

The 1995 amendment, effective July 1, 1995, substituted "secretary" for "director" near the end of the section, and made gender neutral changes throughout the section.

Exhaustion of remedies required. — Challenges to the validity of the Tax Administration Act must be first presented either through the protest remedy or the refund remedy. *Neff v. State Taxation & Revenue Dep't*, 1993-NMCA-116, 116 N.M. 240, 861 P.2d 281.

Tax Administration Act requires exhaustion of remedies for each denial of a given credit. — Where plaintiff taxpayers (taxpayers) twice challenged the New Mexico taxation and revenue department's (department) denial of applications for high wage jobs tax credits, once in 2015 and again in 2016, and where taxpayers elected to dispute the denial of the 2015 credits by filing a written protest to be heard by the department's administrative hearing officer (AHO), pursuant to § 7-1-24 NMSA 1978, but elected to protest the denial of the 2016 credits by claiming a refund from the department for the credit denied, pursuant to § 7-1-26 NMSA 1978, and where the department filed a motion for summary judgment, claiming that when a taxpayer pursues successive denials of tax credits raising a common issue, the taxpayer must have the issue resolved in the forum where it was initially raised or is otherwise bound by their choice of remedy for the original denial, the district court erred in granting the department's motion for summary judgment, because the Tax Administration Act, §§ 7-1-1 to 7-1-83 NMSA 1978, requires only that a taxpayer denied a given credit exhaust their remedy for that denied credit before seeking relief from the courts. Taxpayers were not required to pursue the same remedy for the denial of the 2016 credits as they pursued for the denial of the 2015 credits; the act requires only that a taxpayer exhaust whatever remedy it has chosen to challenge the denial of a given credit. *Weatherford Artificial Lift Systems v. Clarke*, 2021-NMCA-065.

Doctrine of vicarious or virtual exhaustion of remedies does not apply. — The Tax Administration Act provides the exclusive remedies for tax refunds and requires taxpayers to individually seek a refund. Each member of the class of taxpayers challenging the constitutionality of a tax must individually exhaust their administrative remedies and only after individual exhaustion by each class member can the district court have jurisdiction over the class. The doctrine of vicarious or virtual exhaustion of remedies that allows a class action for tax refunds to proceed when only a few members of the proposed class have exhausted their administrative remedies does not apply to proceedings under the Tax Administration Act. *U.S. Xpress v. N.M. 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.

Federal claims. — Where taxpayers were seeking exemption from taxes under a claimed federal right, the Federal Supremacy Clause did not preclude a state from requiring exhaustion of administrative remedies before its courts will decide state tax matters, unless taxpayers would thereby be denied a plain, adequate and complete remedy. *Neff v. State Taxation & Revenue Dep't*, 1993-NMCA-116, 116 N.M. 240, 861 P.2d 281.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 97, 605; 72 Am. Jur. 2d State and Local Taxation § 811.

85 C.J.S. Taxation § 1091.

7-1-23. Disputing liabilities; election of remedies.

A taxpayer may dispute the taxpayer's liability for taxes only by protesting the assessment of taxes as provided in Section 7-1-24 NMSA 1978 without making payment or by claiming a refund as provided in Section 7-1-26 NMSA 1978 after making payment of the taxes the department asserts are owed. The pursuit of one of the two remedies constitutes an unconditional waiver of the right to pursue the other.

History: 1953 Comp., § 72-13-37, enacted by Laws 1965, ch. 248, § 25; 1979, ch. 144, § 22; 2013, ch. 27, § 5; 2017, ch. 63, § 24; 2019, ch. 157, § 2.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, clarified certain provisions related to disputing tax liabilities; after "A taxpayer", deleted "must elect to" and added "may", after "taxpayer's liability for", deleted "the payment of", after the next occurrence of "taxes", deleted "either" and added "only", after "without making payment", deleted "of the disputed tax liability", and after "making payment of the", deleted "disputed tax liability" and added "taxes the department asserts are owed".

The 2017 amendment, effective June 16, 2017, after each occurrence of "making payment", added "of the disputed tax liability".

The 2013 amendment, effective July 1, 2013, at the beginning of the title, added "Disputing liabilities".

Disputing the denial of an application for a high-wage jobs tax credit. — Where taxpayer submitted an application for a high-wage jobs tax credit, which was denied by the Department of Taxation and Revenue (Department), and where taxpayer did not file a written protest to the department's denial of its credit application, pursuant to 7-1-24 NMSA 1978, but rather filed an application for refund pursuant to 7-1-26 NMSA 1978, based on its original credit application, which was also denied by the department, and where taxpayer filed a written protest to the denial of its refund application, and where, following multiple hearings before the administrative hearing officer, the department filed a motion for summary judgment, and where the administrative hearing officer granted the department's motion, concluding that the only available remedy for a denial of an application for a tax credit was to file a protest within ninety days of the denial pursuant to 7-1-24 NMSA 1978, and that taxpayer's failure to file such a protest rendered the department's denial indisputable, the administrative hearing officer erred in granting the department's motion for summary judgment and denying taxpayer's protest, because neither the applicable statutes nor the department's own guidance suggest that a

taxpayer's sole remedy to dispute the denial of a high-wage jobs tax credit is through the protest procedures provided in 7-1-24 NMSA 1978. The plain language of both 7-1-24 and 7-1-26 NMSA 1978, indicates that the two statutes exist as alternatives and a taxpayer may dispute a denial of a tax credit under either statute. *Elite Well v. N.M. Tax'n & Revenue Dep't*, 2023-NMCA-041.

7-1-24. Disputing liabilities; administrative protest.

A. A taxpayer may dispute:

(1) the assessment to the taxpayer of any amount of tax over fifty dollars ($50.00);

(2) the application to the taxpayer of any provision of the Tax Administration Act except the issuance of a subpoena or summons; or

(3) the denial of or failure either to allow or to deny a:

(a) credit or rebate; or

(b) claim for refund made in accordance with Section 7-1-26 NMSA 1978.

B. The taxpayer may dispute a matter described in Subsection A of this section by filing with the secretary a written protest that:

(1) identifies the taxpayer and the tax credit, rebate, property or provision of the Tax Administration Act involved;

(2) states the grounds on which the protest is based and summarizes evidence supporting each ground asserted; and

(3) states the affirmative relief requested.

C. A taxpayer may amend a statement made by the taxpayer in accordance with Paragraphs (2) and (3) of Subsection B of this section at any time prior to ten days before the hearing conducted on the protest in accordance with the Administrative Hearings Office Act [Chapter 7, Article 1B NMSA 1978] or, if a scheduling order has been issued, in accordance with the scheduling order. The secretary may, in appropriate cases, provide for an informal conference before a hearing of the protest is set by the administrative hearings office or before acting on a claim for refund.

D. A taxpayer may file a protest, in the case of an assessment of tax by the department, without making payment of the amount assessed; provided that, if only a portion of the assessment is in dispute, any unprotested amounts of tax, interest or penalty shall be paid, or, if applicable, an installment agreement pursuant to Section 7-

1-21 NMSA 1978 shall be entered into for the unprotested amounts, on or before the due date for the protest.

E. A protest by a taxpayer shall be filed within ninety days after:

(1) the date of the mailing to the taxpayer by the department of the notice of assessment and demand for payment as provided in Subsection A or D of Section 7-1-17 NMSA 1978;

(2) the mailing of the other peremptory notice or demand;

(3) the date of the application to the taxpayer of the applicable provision of the Tax Administration Act; or

(4) the date of denial of a claim pursuant to Section 7-1-26 NMSA 1978 or the last date upon which the department was required to take action on the claim but failed to take action.

F. If a taxpayer fails to timely protest an assessment of tax, penalty or interest:

(1) the undisputed amount of tax assessed and not protested becomes final;

(2) the taxpayer is deemed to have waived the right to protest the assessment, unless the taxpayer pays the tax and claims a refund of the tax pursuant to Section 7-1-26 NMSA 1978; and

(3) the secretary may proceed to enforce collection of the tax if the taxpayer is delinquent as defined by Section 7-1-16 NMSA 1978.

G. The fact that the department did not mail the assessment or other peremptory notice or demand by certified or registered mail or otherwise demand and receive acknowledgment of receipt by the taxpayer shall not be deemed to demonstrate the taxpayer's inability to protest within the required time.

H. A proceeding other than one to enforce collection of an amount assessed as tax and to protect the interest of the state by injunction, as provided by Sections 7-1-31, 7-1-33, 7-1-34, 7-1-40, 7-1-53, 7-1-56 and 7-1-58 NMSA 1978, is not stayed by timely filing of a protest in accordance with this section.

I. Nothing in this section shall be construed to authorize a criminal proceeding or to authorize an administrative protest of the issuance of a subpoena or summons.

History: 1953 Comp., § 72-13-38, enacted by Laws 1965, ch. 248, § 26; 1966, ch. 30, § 2; 1971, ch. 276, § 8; 1978 Comp., § 7-1-24; 1979, ch. 144, § 23; 1982, ch. 18, § 10; 1986, ch. 20, § 15; 1989, ch. 325, § 6; 1993, ch. 5, § 8; 2000, ch. 28, § 8; 2003, ch. 398,

§ 8; 2013, ch. 27, § 6; 2015, ch. 73, § 15; 2017, ch. 63, § 25; 2019, ch. 157, § 3; 2023, ch. 36, § 2.

ANNOTATIONS

Cross references. — For Rules of Procedure for the District Courts, *see* Rule 1-001 NMRA et seq.

The 2023 amendment, effective July 1, 2023, adjusted the amount of tax liability allowed to be disputed by a taxpayer; and in Subsection A, Paragraph A(1), after "any amount of tax", added "over fifty dollars ($50.00)".

The 2019 amendment, effective June 14, 2019, revised the procedures for protesting a tax liability; in Subsection B, Paragraph B(2), after "grounds", deleted "for the taxpayer's protest and the affirmative relief requested. The statement of grounds for protest shall specify individual grounds upon" and added "on", after "based and", added "summarizes", after "ground asserted", deleted "provided that the" and added "and", and added Paragraph B(3); added new subsection designation "C" and redesignated former Subsections C through H as Subsections D through I, respectively; in Subsection C, after "amend a statement", added "made by the taxpayer in accordance with Paragraphs (2) and (3) of Subsection B of this section"; in Subsection D, deleted "In the case of an assessment of tax by the department" and added "A taxpayer may file", after " a protest", deleted "may be filed" and added "in the case of an assessment of tax by the department"; in Subsection E, Paragraph E(1), after "assessment", deleted "or" and added "and demand for payment as provided in Subsection A or D of Section 7-1-17 NMSA 1978", and in Paragraph E(2), added "the mailing of the"; and in Subsection F, in the introductory clause, after "If a", added "taxpayer fails to timely", after "protest", deleted "to a notice of" and added "an", after "assessment", deleted "is not filed within the time required" and added "of tax, penalty or interest", in Paragraph F(1), after "the", added "undisputed", and after "amount of tax", deleted "determined to be due" and added "assessed and not protested", and in Paragraph F(2), after "the right to", deleted "question the amount of tax determined to be due" and added "protest the assessment".

The 2017 amendment, effective June 16, 2017, revised the list of information that must be included in a taxpayer protest, clarified that, in a taxpayer protest of an assessment, payment of the disputed tax liability is not required in order to protest, but any undisputed amounts are required to be paid, and provided that if a protest to a notice of assessment is not filed within the time required, the amount of tax determined to be due becomes final and the taxpayer is deemed to have waived the right to protest, unless the taxpayer were to pay the tax and claim a refund of the tax; in Subsection B, after "upon which the protest is based and", deleted "a summary statement of the", and after "evidence", deleted "if any, expected to be produced"; designated the last sentence of Subsection B as new Subsection C and designated the first sentence of former Subsection C as Subsection D, designated the second sentence of former Subsection C as Subsection E, and designated the third sentence of former Subsection C as Subsection F, and redesignated former Subsections D and E as Subsections G and H,

respectively; in Subsection C, after "assessed", added "provided that, if only a portion of the assessment is in dispute, any unprotested amounts of tax, interest or penalty shall be paid, or, if applicable, an installment agreement pursuant to Section 7-1-21 NMSA 1978 shall be entered into for the unprotested amounts, on or before the due date for the protest"; and in Subsection E, after "If a protest", added "to a notice of assessment", added Paragraphs E(1) and E(2), and added the paragraph designation "(3)" to the last sentence of the subsection.

The 2015 amendment, effective July 1, 2015, provided that administrative protests are to be conducted pursuant to the Administrative Hearings Office Act; in Subsection A, deleted "Any" and added "A"; in Subsection B, after "ten days before", deleted "any" and added "the", after "pursuant to", deleted "Section 7-1-24.1 NMSA 1978" and added "the provisions of the Administrative Hearings Office Act", after "informal conference before", deleted "setting", after "hearing of the protest", added "is set by the administrative hearings office" and after "or", added "before", and after "acting on", deleted "any " and added "a"; in Subsection C, after "C.", deleted "Any" and added "A", after "pursuant to Section", deleted "7-1-24.1" and added "7-1-26"; in Subsection D, after "collection of", deleted "any" and added "an", and after "filing of a protest", deleted "under" and added "pursuant to the provisions of"; and in Subsection E, after "authorize", deleted "any" and added "a", and after "criminal", deleted "proceedings hereunder" and added "proceeding".

Temporary provisions. — Laws 2015, ch. 73, § 36 provided:

A. On July 1, 2015, all personnel, functions, appropriations, money, records, furniture, equipment and other property of, or attributable to, the hearings bureau of the office of the secretary of taxation and revenue shall be transferred to the administrative hearings office.

B. On July 1, 2015, all contractual obligations of the hearings bureau of the office of the secretary of taxation and revenue shall be binding on the administrative hearings office.

C. On July 1, 2015, all references in statute to the hearings bureau of the office of the secretary of taxation and revenue or hearing officers of the taxation and revenue department in Chapters 7 and 66 NMSA 1978 shall be deemed to be references to the administrative hearings office or a hearing officer of the office.

D. Rules of the taxation and revenue department pertaining to hearing officers and the conduct of hearings pursuant to actions related to Chapter 7 or 66 NMSA 1978 shall be deemed to be the rules of the administrative hearings office until amended or repealed by the office.

The 2013 amendment, effective July 1, 2013, prohibited the disputation of the issuance of a subpoena or summons; permitted the disputation of the denial of a credit or rebate; prescribed the content of a protest; permitted a protest to be filed without making a

payment of the amount assessed; extended the deadline for filing a protest; deleted former provisions governing hearings; at the beginning of the title, added "Disputing liabilities", and after "administrative", deleted "hearing procedure", and added "protest"; in Paragraph (2) of Subsection A, after "Tax Administration Act", added "except the issuance of a subpoena or summons"; added Subparagraph (a) of Paragraph (3) of Subsection A; in Subsection B, at the beginning of the first sentence, added "The taxpayer may dispute a matter described in Subsection A of this section" and after "written protest", deleted "against the assessment or against the application to the taxpayer of the provision or against the denial of or the failure to allow or deny the amount claimed to have been erroneously paid as tax", in the second sentence, after "and the tax", added "credit, rebate, property or provision of the Tax Administration Act", and in the third sentence, after "summary statement of the evidence", added "if any", after "supporting each ground asserted", deleted "if any", and after "protest pursuant to", deleted "Subsection D of this" and after "Section", added "7-1-24.1 NMSA 1978", and added the last sentence; in Subsection C, in the first sentence, after "shall be filed within", deleted "thirty" and added "ninety", after "date of the mailing to", added "or service upon", after "notice of assessment or", deleted "mailing to, or service upon, the taxpayer of", after "peremptory notice or demand", deleted "or", and after "date of mailing or filing a return" added the remainder of the sentence, deleted the former second sentence which provided for an extension of time to file a protest, in the current second sentence, after "within the time required", deleted "for filing a protest or, if an extension has been granted, within the extended time", deleted the former third sentence, which provided for a retroactive extension of time to file a protest, in the current third sentence, after "taxpayer's inability to protest", deleted "or request an extension of time for filing a protest", and deleted the former fourth sentence which prohibited a retroactive extension of time to file a protest if there is a levy or jeopardy assessment; deleted former Subsection C, which provided for claims for refund; deleted former Subsection D, which provided for the setting of a hearing date; deleted former Subsection E, which provided for the appointment of a hearing officer and the procedure for a hearing; deleted former Subsection F, which prohibited a hearing officer from engaging in activity as an employee of the department other than conducting the hearing; deleted former Subsection G, which prohibited ex-parte communications; deleted former Subsection H, which provided guidelines for ruling on the admissibility of evidence; deleted former Subsection I, which provided guidelines for conducting hearings; deleted former Subsection J, which provided for the creation of a record and required the hearing officer to issue a written decision and to inform the taxpayer of the right of appeal; and deleted former Subsection K, which provided for the consolidation of multiple protests.

Applicability. — Laws 2013, ch. 27, § 13 provided that the following time limits for filing a written protest shall apply pursuant to that version of Section 7-1-24 NMSA 1978 in effect:

A. immediately prior to July 1, 2013, if the date of mailing or service of process, application of the applicable provision of the Tax Administration Act, denial or failure to deny or allow with the time prescribed occurred on or before June 1, 2013; or

B. on or after July 1, 2013, if the date of mailing or service of process, application of the applicable provision of the Tax Administration Act, denial or failure to deny or allow with the time prescribed occurred on or after June 2, 2013.

The 2003 amendment, effective July 1, 2003, substituted "D" for "E" following "pursuant to Subsection" near the end of Subsection A; added present Subsections F and G and redesignated the subsequent subsections accordingly; added "A taxpayer may request a written ruling on any contested question of evidence in a matter in which the taxpayer has filed a written protest and that protest is pending" following "is in reasonable doubt." at the end of present Subsection H; added "A taxpayer may request a written ruling on any contested question of procedure in a matter in which the taxpayer has filed a written protest and that protest is pending" following "evidence presented and admitted." at the end of present Subsection L; and added Subsection K and redesignated former Subsection I as present Subsection L.

The 2000 amendment, effective July 1, 2000, in Subsection A, deleted "or taxes" following "shall identify the taxpayer and the tax" in the second sentence and specified that a taxpayer has until ten days before the hearing to supplement his statement of grounds for protest or, if a scheduling order has been issued, must act in accordance with the scheduling order; and substituted "Section 7-1-31 or 7-1-33" for "Sections 7-1-31, 7-1-33 and 7-1-34" in Subsection B.

The 1993 amendment, effective July 1, 1993, in Subsection A, substituted "against the denial of or the failure to allow or deny" for "a written claim for refund of" near the end of the first sentence, rewrote the second sentence which read "Every protest shall state the nature of the taxpayer's complaint and the affirmative relief requested", inserted the current third sentence, and made a minor stylistic change; rewrote Subsection B; and, in Subsection H, deleted the former final sentence which read "All decisions and orders shall be signed by the secretary".

The 1989 amendment, effective June 16, 1989, in Subsection A, inserted "or the denial of, or failure to either allow or deny, a claim for refund made in accordance with Section 7-1-26 NMSA 1978"; in Subsection B, in the next-to-last sentence, substituted "protest" for "appeal" in two places; in Subsection D, deleted "or a request for hearing after denial of a claim for refund" preceding "the department or hearing officer"; in Subsection G, in the last sentence, inserted "permit discovery"; in Subsection H, in the first sentence, deleted "or claim for refund" following "any protest", in the third sentence, deleted "The hearing officer may announce the decision at the conclusion of the hearing or may take the matter under advisement, but he shall, in either case" from the beginning, substituted "The hearing officer" for "The secretary", inserted "of the hearing, shall", deleted "or claimant" preceding "in writing"; and made minor stylistic changes throughout the section.

Established procedural framework for tax protest proceedings. — Under the Tax Administration Act, a tax assessment is presumed to be correct; a taxpayer can attempt to overcome this presumption of correctness by coming forward with some

countervailing evidence tending to dispute the factual correctness of the assessment, and if the taxpayer overcomes the presumption, the burden shifts to the department to demonstrate the correctness of the tax assessment. The burden of proof during an administrative hearing on a tax protest is preponderance of evidence. *Gemini Las Colinas, LLC v. N.M. Tax'n & Revenue Dep't*, 2023-NMCA-039.

Overcoming the presumption of correctness. — To overcome the presumption of correctness of a tax assessment, the taxpayer need not prove, by a preponderance of evidence or otherwise, that the tax assessment performed by the department is incorrect; instead, to rebut the presumption, the taxpayer need only come forward with some countervailing evidence that tends to dispute the assessment, but unsubstantiated statements that the assessment is incorrect do not suffice to overcome the presumption. Determining whether the taxpayer has overcome the presumption of correctness is the first step in resolving a tax protest, and it will only be the last step if the taxpayer fails to overcome the presumption. *Gemini Las Colinas, LLC v. N.M. Tax'n & Revenue Dep't*, 2023-NMCA-039.

Department's burden of showing the correctness of a tax assessment. — If a taxpayer has overcome the presumption of correctness of a tax assessment, the burden that shifts to the department is a burden of production; to overcome this burden the department must put forth evidence to show the correctness of its assessment, that is, evidence sufficient to make the correctness of the department's assessment a question of fact. The burden of persuasion remains with the taxpayer throughout the proceedings. *Gemini Las Colinas, LLC v. N.M. Tax'n & Revenue Dep't*, 2023-NMCA-039.

Administrative hearing officer erred by applying the statutory presumption of correctness in a manner contrary to law. — Where the Department of Taxation and Revenue (Department) audited taxpayer, the owner and operator of an independent living facility that rents apartment to people fifty-five years and older, and where the department concluded that taxpayer had been overstating certain deductions for its gross receipts tax liability, and where taxpayer protested, claiming that the department incorrectly determined the rental value and, consequently, assessed taxes in an amount greater than taxpayer's actual liability, and where the administrative hearing officer (AHO) denied taxpayer's protest, holding that "the taxpayer did not prove by a preponderance of evidence that the method actually employed by the Department resulted in an incorrect assessment," and that "taxpayer did not overcome the presumption of correctness that attached to the assessment," the AHO erred in denying taxpayer's protest, because the AHO sought a preponderance of evidence to overcome the statutory presumption of correctness, and this evidentiary standard was not in accordance with the law. A protesting taxpayer overcomes the presumption of correctness by presenting some countervailing evidence tending to dispute the factual correctness of the assessment. *Gemini Las Colinas, LLC v. N.M. Tax'n & Revenue Dep't*, 2023-NMCA-039.

Disputing the denial of an application for a high-wage jobs tax credit. — Where taxpayer submitted an application for a high-wage jobs tax credit, which was denied by the Department of Taxation and Revenue (Department), and where taxpayer did not file a written protest to the department's denial of its credit application, pursuant to 7-1-24 NMSA 1978, but rather filed an application for refund pursuant to 7-1-26 NMSA 1978, based on its original credit application, which was also denied by the department, and where taxpayer filed a written protest to the denial of its refund application, and where, following multiple hearings before the administrative hearing officer, the department filed a motion for summary judgment, and where the administrative hearing officer granted the department's motion, concluding that the only available remedy for a denial of an application for a tax credit was to file a protest within ninety days of the denial pursuant to 7-1-24 NMSA 1978, and that taxpayer's failure to file such a protest rendered the department's denial indisputable, the administrative hearing officer erred in granting the department's motion for summary judgment and denying taxpayer's protest, because neither the applicable statutes nor the department's own guidance suggest that a taxpayer's sole remedy to dispute the denial of a high-wage jobs tax credit is through the protest procedures provided in 7-1-24 NMSA 1978. The plain language of both 7-1-24 and 7-1-26 NMSA 1978, indicates that the two statutes exist as alternatives and a taxpayer may dispute a denial of a tax credit under either statute. *Gemini Las Colinas, LLC v. N.M. Tax'n & Revenue Dep't*, 2023-NMCA-039.

Claims for refund. — Subsection B of this section does not mention claims for refund. *Kilmer v. Goodwin*, 2004-NMCA-122, 136 N.M. 440, 99 P.3d 690.

Defects in proceedings. — The hearing officer's failure to take an oath or obtain a faithful performance bond; the failure of the hearing officer to submit a written request to the IRS for federal tax information as provided in 26 U.S.C. §6103(d)(1); the reliance by the hearing officer on the IRS Income Tax Examination Changes; and the lack of a valid control number on applicable tax forms as provided in the Paperwork Reduction Act, 44 U.S. C. §§ 3501 to 3520, do not affect the taxpayer's tax liability or absolve the taxpayer of liability. *Stockton v. N.M. Taxation and Revenue Dept*., 2007-NMCA-071, 141 N.M. 860, 161 P.3d 905.

Appealable final order. — Hearing officer's order dismissing taxpayer's appeal was not an appealable final order, since it had not been approved or signed by the secretary of taxation and revenue. *Harris v. Revenue Div. of Taxation & Revenue Dep't*, 1987-NMCA-034, 105 N.M. 721, 737 P.2d 80 (decided under prior law).

Tax Administration Act requires exhaustion of remedies for each denial of a given credit. — Where plaintiff taxpayers (taxpayers) twice challenged the New Mexico taxation and revenue department's (department) denial of applications for high wage jobs tax credits, once in 2015 and again in 2016, and where taxpayers elected to dispute the denial of the 2015 credits by filing a written protest to be heard by the department's administrative hearing officer (AHO), pursuant to § 7-1-24 NMSA 1978, but elected to protest the denial of the 2016 credits by claiming a refund from the department for the credit denied, pursuant to § 7-1-26 NMSA 1978, and where the

department filed a motion for summary judgment, claiming that when a taxpayer pursues successive denials of tax credits raising a common issue, the taxpayer must have the issue resolved in the forum where it was initially raised or is otherwise bound by their choice of remedy for the original denial, the district court erred in granting the department's motion for summary judgment, because the Tax Administration Act, §§ 7-1-1 to 7-1-83 NMSA 1978, requires only that a taxpayer denied a given credit exhaust their remedy for that denied credit before seeking relief from the courts. Taxpayers were not required to pursue the same remedy for the denial of the 2016 credits as they pursued for the denial of the 2015 credits; the Act requires only that a taxpayer exhaust whatever remedy it has chosen to challenge the denial of a given credit. *Weatherford Artificial Lift Systems v. Clarke*, 2021-NMCA-065.

District court erred in invoking primary jurisdiction. — Where plaintiff taxpayers (taxpayers) twice challenged the New Mexico taxation and revenue department's (department) denial of applications for high wage jobs tax credits, once in 2015 and again in 2016, and where taxpayers elected to dispute the denial of the 2015 credits by filing a written protest to be heard by the department's administrative hearing officer (AHO), pursuant to § 7-1-24 NMSA 1978, but elected to protest the denial of the 2016 credits by claiming a refund from the department for the credit denied, pursuant to § 7-1-26 NMSA 1978, and where the department filed a motion for summary judgment, claiming that when a taxpayer pursues successive denials of tax credits raising a common issue, the taxpayer must have the issue resolved in the forum where it was initially raised or is otherwise bound by their choice of remedy for the original denial, the district court erred in granting the department's motion for summary judgment, invoking the doctrine of primary jurisdiction, because in this case, taxpayers exhausted their administrative remedies as to the 2016 credits, thereby depriving the AHO of jurisdiction, the department failed to explain why resolution of specific, factual issues raised in the 2016 credits require the peculiar expertise of the AHO, and the remedy requested by the department, entry of judgment in its favor, is not one available under the doctrine of primary jurisdiction. *Weatherford Artificial Lift Systems v. Clarke*, 2021-NMCA-065.

No abatement of assessment for lack of prompt hearing. — Assessments are not abated merely because taxpayers were not given prompt hearing on protests. *In re Ranchers-Tufco Limestone Project Joint Venture*, 1983-NMCA-126, 100 N.M. 632, 674 P.2d 522, cert denied, 100 N.M. 506, 672 P.2d 1136.

Thirty-day requirement for hearing officer decision does not affect "the essential power" of the hearing officer to decide complex and time-consuming tax protests. *Kmart Props., Inc. v. N.M. Taxation & Revenue Dep't*., 2006-NMCA-026, 139 N.M. 177, 131 P.3d 27, *rev'd on other grounds*, *Kmart Corp. v. N.M. Taxation and Revenue Dep't*, 2006-NMSC-006, 139 N.M. 172, 131 P.3d 22.

Taxpayer appearing alone does so at own peril. — Taxpayer has a right to appear by himself or by an attorney or an accountant, but if he chose to appear alone, he

appeared at his own peril. *McConnell v. State ex rel. Bureau of Revenue*, 1971-NMCA-181, 83 N.M. 386, 492 P.2d 1003.

Hearing officer need not assume duties of counsel at second hearing. — Since taxpayer's rights were amply protected at the first hearing, and the second hearing was a continuation of the first, at which the only issue was taxpayer's duty to secure additional proof that its sales were nontaxable transactions, taxpayer was granted a full and fair hearing, at which he voluntarily and willingly waived his right to counsel, and the hearing officer was not required to assume the duties of counsel for taxpayer at the second hearing. *Al Zuni Traders v. Bureau of Revenue*, 1977-NMCA-025, 90 N.M. 258, 561 P.2d 1351.

Taxpayer must establish timely filing. — Where a taxpayer failed to establish that he filed a protest of an audit by the taxation and revenue department within 30 days of notice, as required by this section, the issue of an improper audit was not before the hearing officer. *Lopez v. N.M. Dep't of Taxation & Revenue*, 1997-NMCA-115, 124 N.M. 270, 949 P.2d 284, cert. denied, 124 N.M. 311, 950 P.2d 284.

Decision upheld when arguments based on taxpayer's unpreparedness. — Since the record showed that hearing officer carefully advised taxpayer as to the statutory procedures and his rights in connection with hearing and it also showed the taxpayer did not come prepared for the hearing, taxpayer's claims that revenue bureau (department) should have given him opportunity to present his evidence at a later time and, although it was his burden to proceed, that he was denied the right to cross-examine a witness who was never called were based on taxpayer's lack of preparation and do not provide a basis for overturning the commissioner's (hearing officer's) decision. *McConnell v. State ex rel. Bureau of Revenue*, 1971-NMCA-181, 83 N.M. 386, 492 P.2d 1003.

Technical rules of evidence do not apply in hearings before the commissioner (hearing officer) and as the oral evidence provided reasonable substantiation of the documents, they were properly admitted. *Garfield Mines Ltd. v. O'Cheskey*, 1973-NMCA-128, 85 N.M. 547, 514 P.2d 304.

Evidential rules governing weight, applicability or materiality not limited. — The rules governing the admissibility of evidence before administrative boards are frequently relaxed to expedite administrative procedure but the rules relating to weight, applicability or materiality of evidence are not thus limited. *Eaton v. Bureau of Revenue*, 1972-NMCA-114, 84 N.M. 226, 501 P.2d 670, cert. denied, 84 N.M. 219, 501 P.2d 663.

Director (hearing officer) has no authority to catalogue which evidence considered. — The state has not given to the commissioner (hearing officer) authority to catalogue which evidence shall be considered in determining a taxpayer's employment status. *Eaton v. Bureau of Revenue*, 1972-NMCA-114, 84 N.M. 226, 501 P.2d 670, cert. denied, 84 N.M. 219, 501 P.2d 663.

If testimony based on supposition, Subsection H not satisfied. — Since taxpayer's books and records are not adequate to permit an accurate computation of the state tax, and his testimony is based on supposition and guess, he does not satisfy the requirements of Subsection H. *Archuleta v. O'Cheskey*, 1972-NMCA-165, 84 N.M. 428, 504 P.2d 638.

Ruling reversed if director (hearing officer) failed to consider all evidence. — Since the commissioner (hearing officer), before arriving at a decision, did not consider all of the evidence presented at the hearing but only that pertaining to the "indicia" under G.R. Regulation 12.5:1 (3.2.105.7 NMAC), the court could not say that he would have reached the same conclusion had all of "the evidence presented and admitted" been considered, as required by Subsection G (Subsection I), and, therefore, held the ruling reversed for arbitrariness. *Eaton v. Bureau of Revenue*, 1972-NMCA-114, 84 N.M. 226, 501 P.2d 670, cert. denied, 84 N.M. 219, 501 P.2d 663.

Evidence presented after hearing. — Where the taxpayer's alternative theory for a deduction was raised in the taxpayer's formal protest; the issue was not set forth in the prehearing statement of issues; and the taxpayer failed to tender any evidence on the issue at the hearing, the hearing officer did abuse the officer's discretion by refusing to consider evidence tendered by the taxpayer in a post-hearing brief forty days after the hearing. *TPL, Inc. v. N.M. Taxation & Revenue Dep't*, 2000-NMCA-083, 129 N.M. 539, 10 P.3d 863, *rev'd on other grounds*, 2003-NMSC-007, 133 N.M. 447, 64 P.3d 474.

Record must indicate reasoning and basis for denial. — Although the commissioner (hearing officer) is not required to make formal findings of fact and conclusions of law, the record presented to the court for review must indicate his reasoning and the basis on which he denied the taxpayer's protest and in the absence of this matter must be remanded to him for further proceedings. *Title Servs., Inc. v. Comm'r of Revenue*, 1974-NMCA-014, 86 N.M. 128, 520 P.2d 284.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 603 to 605; 72 Am. Jur. 2d State and Local Taxation §§ 782 to 787, 802 to 809, 812 to 816.

Notice to property owners of increase in assessment or valuation by board of equalization or review, 24 A.L.R. 331, 84 A.L.R. 197.

Power or duty of tax review or equalization boards to act after date for adjournment or closing of books, 105 A.L.R. 624.

Power of board of tax review to receive evidence as to assessable value, without notice to taxpayer, 113 A.L.R. 990.

Sufficiency of compliance with statute providing for service by mail of notice in tax procedure, 155 A.L.R. 1279.

84 C.J.S. Taxation §§ 678 to 751.

7-1-24.1. Repealed.

History: 1978 Comp., § 7-1-24.1, enacted by Laws 2013, ch. 27, § 7; repealed by Laws 2015, ch. 73, § 37.

ANNOTATIONS

Repeals. — Laws 2015, ch. 73, § 37 repealed 7-1-24.1 NMSA 1978, as enacted by Laws 2013, ch. 27, § 7, relating to hearing officers for disputing liabilities, effective July 1, 2015. For provisions of former section, *see* the 2014 NMSA 1978 on *NMOneSource.com*.

7-1-25. Appeals from hearing officer's decision and order.

A. If the protestant or secretary is dissatisfied with the decision and order of the hearing officer, the party may appeal to the court of appeals for further relief, but only to the same extent and upon the same theory as was asserted in the hearing before the hearing officer. All such appeals shall be upon the record made at the hearing and shall not be de novo. All such appeals to the court of appeals shall be taken within thirty days of the date of mailing or delivery of the written decision and order of the hearing officer to the protestant, and, if not so taken, the decision and order are conclusive.

B. The procedure for perfecting an appeal under this section to the court of appeals shall be as provided by the Rules of Appellate Procedure.

C. Upon appeal, the court shall set aside a decision and order of the hearing officer only if found to be:

(1) arbitrary, capricious or an abuse of discretion;

(2) not supported by substantial evidence in the record; or

(3) otherwise not in accordance with the law.

D. If the secretary appeals a decision of the hearing officer and the court's decision, from which either no appeal is taken or no appeal may be taken, upholds the decision of the hearing officer, the court shall award reasonable attorney fees to the protestant. If the decision upholds the hearing officer's decision only in part, the award shall be limited to reasonable attorney fees associated with the portion upheld.

History: 1953 Comp., § 72-13-39, enacted by Laws 1965, ch. 248, § 27; 1966, ch. 30, § 3; 1973, ch. 167, § 1; 1979, ch. 144, § 24; 1985, ch. 65, § 15; 1986, ch. 20, § 16; 1989, ch. 325, § 7; 2015, ch. 73, § 16.

ANNOTATIONS

Cross references. — For Rules of Appellate Procedure, *see* Rule 12-101 NMRA et seq.

The 2015 amendment, effective July 1, 2015, provided for appeals from hearing officers' decisions; in the catchline, after "Appeals from", deleted "secretary's" and added "hearing officer's"; and in Subsection D, after "shall award reasonable", deleted "attorney's" and added "attorney", and after "limited to reasonable" deleted "attorney's" and added "attorney".

Temporary provisions. — Laws 2015, ch. 73, § 36 provided:

A. On July 1, 2015, all personnel, functions, appropriations, money, records, furniture, equipment and other property of, or attributable to, the hearings bureau of the office of the secretary of taxation and revenue shall be transferred to the administrative hearings office.

B. On July 1, 2015, all contractual obligations of the hearings bureau of the office of the secretary of taxation and revenue shall be binding on the administrative hearings office.

C. On July 1, 2015, all references in statute to the hearings bureau of the office of the secretary of taxation and revenue or hearing officers of the taxation and revenue department in Chapters 7 and 66 NMSA 1978 shall be deemed to be references to the administrative hearings office or a hearing officer of the office.

D. Rules of the taxation and revenue department pertaining to hearing officers and the conduct of hearings pursuant to actions related to Chapter 7 or 66 NMSA 1978 shall be deemed to be the rules of the administrative hearings office until amended or repealed by the office.

The 1989 amendment, effective June 16, 1989, in Subsection A, substituted "protestant or secretary" for "protestant or claimant" and "the hearing officer, the party" for "the secretary, the protestant or claimant" in the first sentence and "the hearing officer to the protestant" for "the secretary to the protestant, or claimant" in the last sentence of the subsection; substituted present Subsection B for the provisions of former Subsections B and C, specifying the procedure for perfecting an appeal under this section; redesignated former Subsection D as present Subsection C, substituting "hearing officer" for "secretary" near the beginning; and added present Subsection D.

I. GENERAL CONSIDERATION.

Section grants court of appeals jurisdiction to review director's (hearing officer's) decisions. — Court of appeals lacks jurisdiction to review decisions of the commissioner (hearing officer) under the Administrative Procedures Act (12-8-1 to 12-8-

25 NMSA 1978), but does have jurisdiction to review such decisions under this section of the Tax Administration Act. *Westland Corp. v. Commissioner of Revenue*, 1971-NMCA-083, 83 N.M. 29, 487 P.2d 1099, cert. denied, 83 N.M. 22, 487 P.2d 1092.

Scope of jurisdiction. — The court of appeals has jurisdiction in appeals from a hearing officer's decision and order whether the issues are deemed to arise out of a claim for refund or out of the protest of an assessment. *Kaiser Steel Corp. v. Revenue Div., Taxation & Revenue Dep't*, 1981-NMCA-042, 96 N.M. 117, 628 P.2d 687, cert. denied, 96 N.M. 116, 628 P.2d 686.

Untimely notice of appeal. — Where taxpayer protested an assessment of tax by the New Mexico taxation and revenue department (department) on gross receipts for commissions earned on the sale of implantable prosthetic devices, and where the hearing officer filed his decision and order in favor of taxpayer, finding that taxpayer's commissions were not subject to the gross receipts tax, and where the hearing officer denied the department's motion for reconsideration, which was filed fifteen days after the hearing officer's decision, and where the department filed its notice of appeal twenty-three days after denial of its motion for reconsideration and thirty-eight days after the filing of the hearing officer's decision and order, the department's appeal was untimely because this section unambiguously requires that appeals be taken within thirty days of the hearing officer's decision and order, and nothing in this section allows for the tolling of the period for filing a notice of appeal. *In re Gelinas*, 2020-NMCA-038, cert. denied.

II. APPEAL.

A. IN GENERAL.

Record must indicate reasoning and basis of denial of protest. — Although the commissioner (hearing officer) is not required to make formal findings of fact and conclusions of law, the record presented to the court for review must indicate his reasoning and the basis on which he denied the taxpayer's protest and in the absence of this matter must be remanded for further proceedings. *Title Servs., Inc. v. Commissioner of Revenue*, 1974-NMCA-014, 86 N.M. 128, 520 P.2d 284.

Meaning of "claimant" and "taxpayer". — The court of appeals had no jurisdiction over the appeal of an Indian tribe which had been denied the right to intervene in a protest brought by a construction company over assessment of gross receipts tax on receipts under a contract between the tribe and the company, despite the fact that contractual indemnity provisions would ultimately render the tribe liable to the company for any tax due; the tribe was not a "claimant," (term "claimant" no longer in statute) since no taxes had yet been paid, and was not a "taxpayer" since the taxes were assessed not to it but to the company. *Mescalero Apache Tribe v. Bureau of Revenue*, 1975-NMCA-130, 88 N.M. 525, 543 P.2d 493, cert. denied, 89 N.M. 206, 549 P.2d 284 (1976).

"Unjust enrichment". — A hearing officer acted in a manner inconsistent with the law in weighing additional equitable factors beyond those required by the doctrine of equitable recoupment, thereby undercutting the required factors, where taxpayer paid correct amount of tax but mistakenly did so as a compensating use, not gross receipts, tax. *Teco Invs., Inc. v. Taxation & Revenue Dep't*, 1998-NMCA-055, 125 N.M. 103, 957 P.2d 532.

B. ISSUE AT HEARING.

Waiver of issues. — The taxation and revenue department waived the issue whether the taxpayer failed to properly pursue its remedies under the Tax Administration Act by not raising the issue prior to appeal. *Kaiser Steel Corp. v. Revenue Div., Taxation & Revenue Dep't*, 1981-NMCA-042, 96 N.M. 117, 628 P.2d 687, cert. denied, 96 N.M. 116, 628 P.2d 686.

Issue not raised at hearing cannot be heard on appeal. — The appeal to a court of appeals from the commissioner's (hearing officer's) decision is on the record made at the hearing. If the record does not show an issue was raised at the hearing, this issue is not before the appellate court for review. *Till v. Jones*, 1972-NMCA-046, 83 N.M. 743, 497 P.2d 745, cert. denied, 83 N.M. 740, 497 P.2d 742.

If an issue is not raised at the formal hearing, it is not an issue in the appeal. *In re Ranchers-Tufco Limestone Project Joint Venture*, 1983-NMCA-126, 100 N.M. 632, 674 P.2d 522, cert. denied, 100 N.M. 505, 672 P2d 1136.

Appeal to same extent and upon same theory as hearing. — This section provides that the appeal to an appellate court is only to the same extent and upon the same theory as was asserted in the hearing. *N.M. Sheriffs & Police Ass'n v. Bureau of Revenue*, 1973-NMCA-130, 85 N.M. 565, 514 P.2d 616.

A party will not be permitted to change his theory of a case on appeal, thus precluding from consideration questions or issues which were not raised at the hearing. *Kaiser Steel Corp. v. Revenue Div*., 1981-NMCA-042, 96 N.M. 117, 628 P.2d 687, cert. denied, 96 N.M. 116, 628 P.2d 686.

Audit items not protested or issue in hearing not reviewable. — Since the appellant did not protest items included in audit and these items were not an issue at the hearing, appellant may not challenge, in the court of appeals, the sufficiency of the evidence as to receipts from these items when they were not an issue in the hearing because this section authorizes appeals to this court only to the same extent and upon the same theory as was asserted in the hearing before the commissioner (hearing officer). *Archuleta v. O'Cheskey*, 1972-NMCA-165, 84 N.M. 428, 504 P.2d 638.

Arguments not raised at hearing not reviewable. — The taxpayer did not raise the argument before the bureau (hearing officer) that the base figure for the gross receipts

tax was not correct and therefore it need not be considered on appeal. *Floyd & Berry Davis Co. v. Bureau of Revenue*, 1975-NMCA-143, 88 N.M. 576, 544 P.2d 291.

III. RECORD.

Question of law not binding but inference from facts conclusive. — As all facts before the commissioner (hearing officer) and relating to both questions were stipulated, accordingly, if but one inference can reasonably be drawn from the stipulated facts, a question of law is presented and a finding of the commissioner (hearing officer) to the contrary is not binding on the reviewing court. If, however, more than one inference can reasonably be drawn, then the finding of the commissioner (hearing officer) is conclusive. *Rust Tractor Co. v. Bureau of Revenue*, 1970-NMCA-107, 82 N.M. 82, 475 P.2d 779, cert. denied, 82 N.M. 81, 475 P.2d 778; *Rock v. Commissioner of Revenue*, 1972-NMCA-012, 83 N.M. 478, 493 P.2d 963.

IV. GROUNDS FOR REVERSAL.

A. ARBITRARY.

If Paragraphs (2) and (3) of Subsection D (now Subsection C) are satisfied, then Paragraph (1) satisfied. — Since the order was supported by substantial evidence and was in accordance with applicable law, it was neither arbitrary nor capricious and its entry was not an abuse of discretion. *Union Cnty. Feedlot, Inc. v. Vigil*, 1968-NMCA-088, 79 N.M. 684, 448 P.2d 485.

Double taxation is not necessarily arbitrary or capricious. *N.M. Sheriffs & Police Ass'n v. Bureau of Revenue*, 1973-NMCA-130, 85 N.M. 565, 514 P.2d 616.

"Income". — The New Mexico taxation and revenue department's determination of the taxpayers' tax liability was not arbitrary and capricious; the taxpayers' arguments that their wages from their employment were not "income" were frivolous and without any legal support. *Holt v. N.M. Dep't of Taxation & Revenue*, 2002-NMSC-034, 133 N.M. 11, 59 P.3d 491.

Ruling arbitrary if all evidence not considered. — Since the commissioner (hearing officer), before arriving at a decision, did not consider all of the evidence presented at the hearing but only that pertaining to the "indicia" under G.R. Regulation 12.5:1 (3.2.105.7 NMAC), the court could not say that the commissioner (hearing officer) would have reached the same conclusion had all of "the evidence presented and admitted" been considered as required by Section 7-1-24G NMSA 1978 (now Section 7-1-24(I) NMSA 1978), and therefore held the ruling reversed for arbitrariness. *Eaton v. Bureau of Revenue*, 1972-NMCA-114, 84 N.M. 226, 501 P.2d 670, cert. denied, 84 N.M. 219, 501 P.2d 663.

B. SUBSTANTIAL EVIDENCE.

Evidence viewed in light most favorable to director's (hearing officer's) decision. — The duty of the court of appeals is to determine whether there is substantial evidence in the record to support the order, viewing all evidence in the light most favorable to the commissioner's (hearing officer's) decision. *Floyd & Berry Davis Co. v. Bureau of Revenue*, 1975-NMCA-143, 88 N.M. 576, 544 P.2d 291.

Review of evidence. — Whether previous owner sold out its business and whether plaintiff purchased that business is a question of fact and, accordingly, this court examines the facts. In doing so, it views the evidence in the light most favorable to the commissioner's (hearing officer's) decision. *Sterling Title Co. v. Commissioner of Revenue*, 1973-NMCA-086, 85 N.M. 279, 511 P.2d 765.

Only favorable evidence considered. — In determining whether there is substantial evidence in the record, the court considers only favorable evidence and views that evidence in a light most favorable to the commissioner's (hearing officer's) decision. *Westland Corp. v. Commissioner of Revenue*, 1972-NMCA-147, 84 N.M. 327, 503 P.2d 151, cert. denied, 83 N.M. 22, 487 P.2d 1092; *C & D Trailer Sales v. Taxation & Revenue Dep't*, 1979-NMCA-151, 93 N.M. 697, 604 P.2d 835.

Director's (hearing officer's) determination conclusive if more than one inference drawn. — If more than one inference can reasonably be drawn from the evidence, then the determination made by the commissioner (hearing officer), that the books and records were inadequate, is conclusive. *Waldroop v. O'Cheskey*, 1973-NMCA-146, 85 N.M. 736, 516 P.2d 1119.

Conclusion must be supported by entire record. — In resolving conflicts in the evidence in support of the findings, it is not contemplated, nor is it consistent with reason, that words, phrases, clauses or sentences may be selected out of context and then combined to give support for a conclusion which is not supportable by the entire text of the testimony of the witnesses on the particular subject or subjects from which the selections are taken. *McVean & Barlow, Inc. v. N.M. Bureau of Revenue*, 1975-NMCA-128, 88 N.M. 521, 543 P.2d 489, cert. denied, 89 N.M. 6, 546 P.2d 71.

Presumption of assessment's correctness overcome when no substantial evidence supports. — The assessment is presumed to be correct; the taxpayer may overcome the presumption of correctness of the assessment by presenting evidence and showing that the decision of the bureau (now department) is not supported by substantial evidence. *Floyd & Berry Davis Co. v. Bureau of Revenue*, 1975-NMCA-143, 88 N.M. 576, 544 P.2d 291.

Presumption not overcome when contradictory evidence presented. — Evidence that the construction contract between the taxpayer, a contracting business, and a corporation created a ceiling price was not compelling in view of the contradictory evidence as to the actual cost of the construction, and the presumption of correctness of the assessment of gross receipts tax was not overcome. *Floyd & Berry Davis Co. v. Bureau of Revenue*, 1975-NMCA-143, 88 N.M. 576, 544 P.2d 291.

Since there was substantial evidence to support decision that the moneys paid to taxpayer were used solely for taxpayer's own obligations and purposes, and the appellate court found nothing in the record to indicate that any of the sums were used by taxpayer to pay the debts of any of the other three corporations, they were properly taxable under Gross Receipts and Compensating Tax Act (Chapter 7, Article 9 NMSA 1978). *Westland Corp. v. Commissioner of Revenue*, 1972-NMCA-147, 84 N.M. 327, 503 P.2d 151, cert. denied, 83 N.M. 22, 487 P.2d 1092.

C. ACCORDANCE WITH LAW.

Decision not in accordance with law if record not complete. — Under Subsection D(3) (Subsection C(3)), the court will set aside a decision and order of the commissioner (hearing officer) if it is found to be not in accordance with law, and the court's review, pursuant to Subsection A, must be based upon the record. Since there was nowhere in the record any indication that the ordinance in question even existed and the court found it impossible to proceed without some knowledge of the considerations underlying the bureau's (department's) action, the case was remanded so that the record could indicate the bureau's (department's) reasoning and basis for denial of taxpayer's request. *Co-Con, Inc. v. Bureau of Revenue*, 1974-NMCA-134, 87 N.M. 118, 529 P.2d 1239, cert. denied, 87 N.M. 111, 529 P.2d 1232.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation §§ 711, 718, 786, 787, 820, 827.

Propriety of certiorari to review decisions of tax boards, 77 A.L.R. 1357.

84 C.J.S. Taxation §§ 452 et seq., 654 to 655, 763 to 773, 815 to 823; 85 C.J.S. Taxation §§ 907 et seq., 1073 et seq., 1762 et seq.

7-1-26. Disputing liabilities; claim for credit, rebate or refund.

A. A person who believes that an amount of tax has been paid by or withheld from that person in excess of that for which the person was liable, who has been denied a credit or rebate claimed or who claims a prior right to property in the possession of the department pursuant to a levy made pursuant to the authority of Sections 7-1-31 through 7-1-34 NMSA 1978 may claim a refund by directing to the secretary, within the time limitations provided by Subsections F and G of this section, a written claim for refund that, except as provided in Subsection K of this section, includes:

(1) the taxpayer's name, address and identification number;

(2) the type of tax for which a refund is being claimed, the credit or rebate denied or the property levied upon;

(3) the sum of money or other property being claimed;

(4) with respect to a refund, the period for which overpayment was made;

(5) a brief statement of the facts and the law on which the claim is based, which may be referred to as the "basis for the refund", which may include documentation that substantiates the written claim and supports the taxpayer's basis for the refund; and

(6) if applicable, a copy of an amended return for each tax period for which the refund is claimed.

B. A claim for refund that meets the requirements of Subsection A of this section and that is filed within the time limitations provided by Subsections F and G of this section is deemed to be properly before the department for consideration, regardless of whether the department requests additional documentation after receipt of the claim for refund.

C. If the department requests additional relevant documentation from a taxpayer who has submitted a claim for refund, the claim for refund shall not be considered incomplete provided the taxpayer submits sufficient information for the department to make a determination.

D. The secretary or the secretary's delegate may allow the claim in whole or in part or may deny the claim. If the:

(1) claim is denied in whole or in part in writing, the person shall not refile the denied claim, but the person, within ninety days after either the mailing or delivery of the denial of all or any part of the claim, may elect to pursue only one of the remedies provided in Subsection E of this section; and

(2) department has neither granted nor denied any portion of a complete claim for refund within one hundred eighty days after the claim was mailed or otherwise delivered to the department, the person may elect to treat the claim as denied and elect to pursue only one of the remedies provided in Subsection E of this section.

E. A person may elect to pursue only one of the remedies provided in this subsection. A person who timely pursues more than one remedy is deemed to have elected the first. The person may:

(1) direct to the secretary, pursuant to the provisions of Section 7-1-24 NMSA 1978, a written protest that sets forth:

(a) the circumstances of: 1) an alleged overpayment; 2) a denied credit; 3) a denied rebate; or 4) a denial of a prior right to property levied upon by the department;

(b) an allegation that, because of that overpayment or denial, the state is indebted to the taxpayer for a specified amount, including any allowed interest, or for the property;

(c) a demand for the refund to the taxpayer of that amount or that property; and

(d) a recitation of the facts of the claim for refund; or

(2) commence a civil action in the district court for Santa Fe county by filing a complaint setting forth the circumstance of the claimed overpayment, denied credit or rebate or denial of a prior right to property levied upon by the department alleging that on account thereof the state is indebted to the plaintiff in the amount or property stated, together with any interest allowable, demanding the refund to the plaintiff of that amount or property and reciting the facts of the claim for refund. The plaintiff or the secretary may appeal from any final decision or order of the district court to the court of appeals.

F. Except as otherwise provided in Subsection G of this section, a credit or refund of any amount of overpaid tax, penalty or interest may be allowed or made to a person if a claim is properly filed:

(1) only within three years after the end of the calendar year in which the applicable event occurs:

(a) in the case of tax paid with an original or amended state return, the date the related tax was originally due;

(b) in the case of tax paid in response to an assessment by the department pursuant to Section 7-1-17 NMSA 1978, the date the tax was paid;

(c) in the case of tax with respect to which a net-negative federal adjustment, as that term is used in Section 7-1-13 NMSA 1978, relates, the final determination date of that federal adjustment, as provided in Section 7-1-13 NMSA 1978;

(d) the final determination of value occurs with respect to any overpayment that resulted from a disapproval by any agency of the United States or the state of New Mexico or any court of increase in value of a product subject to taxation pursuant to the Oil and Gas Severance Tax Act [Chapter 7, Article 29 NMSA 1978], the Oil and Gas Conservation Tax Act [Chapter 7, Article 30 NMSA 1978], the Oil and Gas Emergency School Tax Act [Chapter 7, Article 31 NMSA 1978], the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978] or the Natural Gas Processors Tax Act [Chapter 7, Article 33 NMSA 1978]; or

(e) in the case of a claim related to property taken by levy, the date the property was levied upon as provided in the Tax Administration Act;

(2) in the case of a denial of a claim for credit pursuant to the Investment Credit Act [Chapter 7, Article 9A NMSA 1978], Laboratory Partnership with Small Business Tax Credit Act [Chapter 7, Article 9E NMSA 1978] or Technology Jobs and Research and Development Tax Credit Act [Chapter 7, Article 9F NMSA 1978] or for the rural job tax credit provided by Section 7-2E-1.1 NMSA 1978 or similar credit, only within one year after the date of the denial;

(3) in the case of a taxpayer under audit by the department who has signed a waiver of the limitation on assessments on or after July 1, 1993 pursuant to Subsection F of Section 7-1-18 NMSA 1978, only for a refund of the same tax paid for the same period for which the waiver was given, and only until a date one year after the later of the date of the mailing of an assessment issued pursuant to the audit, the date of the mailing of final audit findings to the taxpayer or the date a proceeding is begun in court by the department with respect to the same tax and the same period;

(4) in the case of a payment of an amount of tax not made within three years of the end of the calendar year in which the original due date of the tax or date of the assessment of the department occurred, only for a claim for refund of that amount of tax and only within one year of the date on which the tax was paid; or

(5) in the case of a taxpayer who has been assessed a tax on or after July 1, 1993 pursuant to Subsection B, C or D of Section 7-1-18 NMSA 1978 and an assessment that applies to a period ending at least three years prior to the beginning of the year in which the assessment was made, only for a refund for the same tax for the period of the assessment or for any period following that period within one year of the date of the assessment unless a longer period for claiming a refund is provided in this section.

G. No credit or refund shall be allowed or made to a person claiming a refund of gasoline tax pursuant to Section 7-13-11 NMSA 1978 unless notice of the destruction of the gasoline was given to the department within thirty days of the actual destruction and the claim for refund is made within six months of the date of destruction. No credit or refund shall be allowed or made to a person claiming a refund of gasoline tax pursuant to Section 7-13-17 NMSA 1978 unless the refund is claimed within six months of the date of purchase of the gasoline and the gasoline has been used at the time the claim for refund is made.

H. If, as a result of an audit by the department or a managed audit covering multiple periods, an overpayment of tax is found in any period under the audit and if the taxpayer files a claim for refund for the overpayments identified in the audit, that overpayment may be credited against an underpayment of the same tax found in another period under audit pursuant to Section 7-1-29 NMSA 1978.

I. A refund of tax paid under any tax or tax act administered pursuant to Subsection B of Section 7-1-2 NMSA 1978 may be made, at the discretion of the department, in the

form of credit against future tax payments if future tax liabilities in an amount at least equal to the credit amount reasonably may be expected to become due.

J. For the purposes of this section, "oil and gas tax return" means a return reporting tax due with respect to oil, natural gas, liquid hydrocarbons, carbon dioxide, helium or nonhydrocarbon gas pursuant to the Oil and Gas Severance Tax Act, the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978].

K. The filing of a fully completed original income tax return, corporate income tax return, corporate income and franchise tax return, estate tax return, special fuel excise tax return or annual insurance premium tax return that shows a balance due the taxpayer or a fully completed amended income tax return, an amended corporate income tax return, an amended corporate income and franchise tax return, an amended estate tax return, an amended special fuel excise tax return, an amended oil and gas tax return or an amended insurance premium tax return that shows a lesser tax liability than the original return constitutes the filing of a claim for refund for the difference in tax due shown on the original and amended returns.

L. In no case may a credit or refund be claimed if the related federal adjustment is taken into account by a partnership in the partnership's tax return for the adjustment year and allocated to the partners in a manner similar to other partnership tax items.

History: 1953 Comp., § 72-13-40, enacted by Laws 1965, ch. 248, § 28; 1966, ch. 30, § 4; 1971, ch. 276, § 9; 1974, ch. 32, § 1; 1975, ch. 213, § 2; 1979, ch. 144, § 25; 1982, ch. 18, § 11; 1983, ch. 211, § 27; 1985, ch. 65, § 16; 1986, ch. 20, § 17; 1989, ch. 325, § 8; 1990, ch. 86, § 7; 1993, ch. 5, § 9; 1994, ch. 51, § 5; 1996, ch. 15, § 4; 1997, ch. 67, § 3; 1999, ch. 84, § 2; 2000, ch. 28, § 9; 2001, ch. 16, § 5; 2003, ch. 398, § 9; 2007, ch. 275, § 2; 2013, ch. 27, § 8; 2015, ch. 73, § 17; 2017, ch. 63, § 26; 2019, ch. 157, § 4; 2021, ch. 83, § 3; 2023, ch. 85, § 5.

ANNOTATIONS

Cross references. — For managed audit, *see* 7-1-11.1 NMSA 1978.

For allowance of interest on overpayments, *see* 7-1-68 NMSA 1978.

For the Internal Revenue Code, *see* 26 U.S.C. § 1 et seq.

The 2023 amendment, effective July 1, 2023, included "annual insurance premium tax returns" and "amended insurance premium tax returns" in an existing provision related to filing a claim for refund; and in Subsection K, after "special fuel excise tax return", added "or annual insurance premium tax return", and after "amended oil and gas tax return", added "or an amended insurance premium tax return".

The 2021 amendment, effective June 18, 2021, amended sections of the tax administration act to address federal partnership audit or adjustment requests resulting in underpayment or overpayment of state taxes; in Subsection F, after "any amount", added "of overpaid tax, penalty or interest", and after "person", added "if a claim is properly filed", in Paragraph F(1), after "year in which", added "the applicable event occurs", in Subparagraph F(1)(a), deleted "the payment was originally due or the overpayment resulted from an assessment by the department as provided in Section 7-1-17 NMSA 1978, whichever is later" and added "in the case of tax paid with an original or amended state return, the date the related tax was originally due", added new Subparagraphs F(1)(b) and F(1)(c) and redesignated former Subparagraphs F(1)(b) and F(1)(c) as Subparagraphs F(1)(d) and F(1)(e), respectively, in Subparagraph F(1)(e), added "in the case of a claim related to property taken by levy, the date the", deleted former Subparagraph F(1)(d); and added Subsection L.

The 2019 amendment, effective June 14, 2019, clarified certain provisions related to making a claim for a tax refund on a disputed tax liability; in Subsection B, after "Subsection A of this section", deleted "shall be" and added "and that is filed within the time limitations provided by Subsections F and G of this section is", and after "receipt of the claim for refund", deleted "provided that the claim for refund is filed within the time limitations provided in Subsections F and G of this section"; in Subsection C, after "shall not be considered", deleted "complete until the taxpayer provides the requested documentation. The provisions of Paragraph (2) of Subsection D of this section and of Section 7-1-68 NMSA 1978 do not apply until a refund claim is complete" and added "incomplete provided the taxpayer submits sufficient information for the department to make a determination"; in Subsection D, Paragraph D(2), after "Subsection", deleted "D" and added "E"; in Subsection F, in the introductory clause, after "a person", deleted "unless as the result of a claim made by that person as provided in this section", in Paragraph F(2), deleted "when an amount" and added "in the case", after "of a", added "denial of a", and after "similar credit", deleted "has been denied, the taxpayer may claim a refund of the credit no later than" and added "only within"; and in Subsection H, after "under the audit" added "and if the taxpayer files a claim for refund for the overpayments identified in the audit", and deleted "provided that the taxpayer files a claim for refund for the overpayments identified in the audit".

The 2017 amendment, effective June 16, 2017, clarified the information required in a refund claim, clarified the time a claim for refund is deemed to be properly before the department for consideration, clarified that, if the department requests additional documentation from a taxpayer who has submitted a claim for refund, the claim for refund is not considered complete until the taxpayer provides the requested documentation, and provided that taxpayers have a right to treat a refund claim denied for purposes of protesting if the department has failed to act on the refund claim within 180 days; in Subsection A, in the introductory paragraph, after "Subsections", changed "D" to "F", and "E" to "G", added "At the time the written claim is submitted", after "Subsection", changed "I" to "K", in Paragraph A(5), added "which shall include documentation that substantiates the written claim and supports the taxpayer’s basis for the refund", and added Paragraph A(6); added new Subsections B and C and

redesignated former Subsections B through I as Subsections D through K, respectively; in Subsection D, added "If the", in Paragraph D(1), deleted "If the", after "Subsection", changed "C" to "E", in Paragraph D(2), deleted "If the", after "any portion of a", added "complete", and after "one hundred", deleted "twenty days of the date the claim was mailed or delivered to the department, the person may refile it within the time limits set forth in Subsection D of this section or may within ninety days elect to pursue one, but only one, of the remedies in Subsection C of this section. After the expiration of the two hundred ten days from the date the claim was mailed or delivered to the department, the department may not approve or disapprove the claim unless the person has pursued one of the remedies under Subsection C of this section" and added the remainder of the paragraph; and in Subsection F, in the introductory clause, after "Subsection", changed "E" to "G", and in Paragraph F(2), after "Technology Jobs", added "and Research and Development".

The 2015 amendment, effective July 1, 2015, provided for the required contents of a written protest of tax liability; in Subsection A, deleted "Any" and added "A"; in Subsection C, after "elect to pursue", deleted "one, but only" and added "no more than", after "subsection", deleted "In any case, if", after "A person", deleted "does timely pursue" and added "who timely pursues", after "one remedy", deleted "the person", and after "The", deleted "remedies are as follows:", deleted the paragraph designation for Paragraph (1) of Subsection C, after "(1)" in former Paragraph (1) of Subsection C, deleted "the", and after "person may" in former Paragraph (1) of Subsection C, designated the remainder of former Paragraph (1) of Subsection C as new Paragraph (1) of Subsection C; in Paragraph (1) of Subsection C, after "written protest", deleted "against the denial of, or failure to either allow or deny, the claim or portion of the claim" and added "that shall set forth:"; added Paragraphs (1)(a), (b), (c) and (d) of Subsection C; and in Subsection C, Paragraph (2), after "(2)", deleted "the person may".

The 2013 amendment, effective July 1, 2013, prescribed the content of a refund claim; in the title, added "Disputing liabilities" and after "claim for", added "credit, rebate or"; in Subsection A, in the first sentence, after "Subsections D", changed "E and F" to "and E"; in Paragraph (2) of Subsection A, after "refund is being claimed", added "the credit or rebate denied or the property levied upon"; in Paragraph (3) of Subsection A, after "sum of money", added "or other property"; in Paragraph (4) of Subsection A, at the beginning of the sentence, added "with respect to refund" and after "overpayment was made; and", deleted "the basis for the refund. As used in this subsection, ‘basis for the refund’ means"; in Paragraph (5) of Subsection A, after "claim is based", added "which may be referred to as the ‘basis for the refund’"; in Paragraph (1) of Subsection C, after "direct to the secretary", added "pursuant to the provisions of Section 7-1-24 NMSA 1978", and after "deny the claim or portion", deleted language which provided for a hearing and appeal and added "of the claim"; in Paragraph (2) of Subsection C, in the first sentence, after "claimed overpayment", added "denied credit or rebate or denial of a prior right to property levied upon by the department", after "plaintiff in the amount", added "or property" and after "plaintiff of that amount", added "or property"; in Subsection D, in the first sentence, after "Except as otherwise provided in", changed "Subsections E and F" to "Subsection E"; added Subparagraph (d) of Paragraph (1) of Subsection D; in

Paragraph (2) of Subsection D, after "rural job tax credit pursuant to", deleted "Sections 7-2E-1 and 7-2E-2" and added "Section 7-2E-1.1"; and deleted former Subsection F which provided for a credit or refund, with interest, when the adjustment of federal tax results in an overpayment of tax.

The 2007 amendment, effective July 1, 2007, eliminated the one-year limitation to claim a credit under the Capital Equipment Tax Credit Act and eliminated returns reporting taxes due with respect to helium and nonhydrocarbon gas from the definition of "oil and gas tax return".

The 2003 amendment, effective July 1, 2003, added "As used in this subsection, 'basis for the refund' means a brief statement of the facts and the law on which the claim is based" following "basis for the refund." at the end of Subsection A.

The 2001 amendment, effective July 1, 2001, rewrote Subsection D, added Subsection G and redesignated the remaining subsections accordingly.

The 2000 amendment, effective July 1, 2000, in Subsection B, inserted the paragraph designations (1) and (2), substituted "no claim may be refiled with respect to that which was denied, but the person" for "the claim may not be refiled. If the claim is not granted in full the person" in Paragraph (1); added the last sentence to Paragraph (2); redesignated part of former Subsection B as present Subsection C, adding the first sentence and redesignating the subsequent subsections; in Subsection D, deleted "the payment was made" following "due" in Paragraph (1)(a); substituted "or Capital Equipment Tax Credit Act or the rural job tax credit pursuant to Sections 7-2E-1 and 7-2E-2 NMSA 1978" for "or Filmmaker's Credit Act" in Paragraph (2)(a) and added Paragraph (2)(d); and substituted "Section 7-13-17" for "Section 7-13-14" in Subsection E.

The 1999 amendment, effective July 1, 1999, inserted "the payment was made" in Subsection C(1)(a).

The 1997 amendment, effective July 1, 1997, redesignated the second paragraph of Subsection A as Subsection B, inserted "or delivery" following "mailing" in the second sentence, inserted "the department may not approve or deny the claim but" preceding "the person may refile" in the third sentence; and redesignated former Subsections B through G as C through H and made related stylistic changes.

The 1996 amendment, effective July 1, 1996, rewrote the second sentence of Subsection A, added Subparagraph B(2)(a) and designated the existing provisions of Paragraph B(2) as Subparagraphs B(2)(b) and (c).

The 1994 amendment, effective July 1, 1994, substituted the exception clause at the end of the second sentence in the introductory paragraph of Subsection A for the former proviso clause, relating to the same subject matter; substituted "person" for "taxpayer" in the next-to-last sentence in the introductory paragraph of Subsection A, in Paragraph

A(1) and in both sentences in Paragraph A(2), and "July 1, 1993" for "the effective date of this act" in Paragraph B(3); and added Subsection G.

The 1993 amendment, effective July 1, 1993, rewrote this section to the extent that a detailed comparison would be impracticable.

Defining a pending case. — A taxpayer's request for a tax refund is a "pending case" within the meaning of N.M. Const., art. IV, § 34. *Phelps Dodge Corp. v. Revenue Div., N.M. Taxation & Revenue Dep't*, 1985-NMCA-055, 103 N.M. 20, 702 P.2d 10.

Tax protestor can avoid hearing process altogether by electing to pay the tax assessed and filing a refund claim with the district court. *Kmart Props., Inc. v. N.M. Taxation & Revenue Dep't*., 2006-NMCA-026, 139 N.M. 177, 131 P.3d 27, *rev'd on other grounds*, 2006-NMSC-006, 139 N.M. 172, 131 P.3d 22.

Disputing the denial of an application for a high-wage jobs tax credit. — Where taxpayer submitted an application for a high-wage jobs tax credit, which was denied by the Department of Taxation and Revenue (Department), and where taxpayer did not file a written protest to the department's denial of its credit application, pursuant to 7-1-24 NMSA 1978, but rather filed an application for refund pursuant to 7-1-26 NMSA 1978, based on its original credit application, which was also denied by the department, and where taxpayer filed a written protest to the denial of its refund application, and where, following multiple hearings before the administrative hearing officer, the department filed a motion for summary judgment, and where the administrative hearing officer granted the department's motion, concluding that the only available remedy for a denial of an application for a tax credit was to file a protest within ninety days of the denial pursuant to 7-1-24 NMSA 1978, and that taxpayer's failure to file such a protest rendered the department's denial indisputable, the administrative hearing officer erred in granting the department's motion for summary judgment and denying taxpayer's protest, because neither the applicable statutes nor the department's own guidance suggest that a taxpayer's sole remedy to dispute the denial of a high-wage jobs tax credit is through the protest procedures provided in 7-1-24 NMSA 1978. The plain language of both 7-1-24 and 7-1-26 NMSA 1978, indicates that the two statutes exist as alternatives and a taxpayer may dispute a denial of a tax credit under either statute. *Elite Well v. N.M. Tax'n & Revenue Dep't,* 2023-NMCA-041.

It was mandatory that taxpayers follow administrative procedures of this section before questioning in court the constitutionality of the tax at issue, and district court correctly determined that it lacked jurisdiction because of the failure to timely appeal. *Neff v. State ex rel. Taxation & Revenue Dep't*, 1993-NMCA-116, 116 N.M. 240, 861 P.2d 281.

Tax Administration Act requires exhaustion of remedies for each denial of a given credit. — Where plaintiff taxpayers (taxpayers) twice challenged the New Mexico taxation and revenue department's (department) denial of applications for high wage jobs tax credits, authorized by § 7-9G-1 NMSA 1978, once in 2015 and again in 2016,

and where taxpayers elected to dispute the denial of the 2015 credits by filing a written protest to be heard by the department's administrative hearing officer (AHO), pursuant to § 7-1-24 NMSA 1978, but elected to protest the denial of the 2016 credits by claiming a refund from the department for the credit denied, pursuant to § 7-1-26 NMSA 1978, and where the department filed a motion for summary judgment, claiming that when a taxpayer pursues successive denials of tax credits raising a common issue, the taxpayer must have the issue resolved in the forum where it was initially raised or is otherwise bound by their choice of remedy for the original denial, the district court erred in granting the department's motion for summary judgment, because the Tax Administration Act, §§ 7-1-1 to 7-1-83 NMSA 1978, requires only that a taxpayer denied a given credit exhaust their remedy for that denied credit before seeking relief from the courts. Taxpayers were not required to pursue the same remedy for the denial of the 2016 credits as they pursued for the denial of the 2015 credits; the act requires only that a taxpayer exhaust whatever remedy it has chosen to challenge the denial of a given credit. *Weatherford Artificial Lift Systems v. Clarke*, 2021-NMCA-065.

District court erred in invoking primary jurisdiction. — Where plaintiff taxpayers (taxpayers) twice challenged the New Mexico taxation and revenue department's (department) denial of applications for high wage jobs tax credits, authorized by § 7-9G-1 NMSA 1978, once in 2015 and again in 2016, and where taxpayers elected to dispute the denial of the 2015 credits by filing a written protest to be heard by the department's administrative hearing officer (AHO), pursuant to § 7-1-24 NMSA 1978, but elected to protest the denial of the 2016 credits by claiming a refund from the department for the credit denied, pursuant to § 7-1-26 NMSA 1978, and where the department filed a motion for summary judgment, claiming that when a taxpayer pursues successive denials of tax credits raising a common issue, the taxpayer must have the issue resolved in the forum where it was initially raised or is otherwise bound by their choice of remedy for the original denial, the district court erred in granting the department's motion for summary judgment, invoking the doctrine of primary jurisdiction, because in this case, taxpayers exhausted their administrative remedies as to the 2016 credits, thereby depriving the AHO of jurisdiction, the department failed to explain why resolution of specific, factual issues raised in the 2016 credits require the peculiar expertise of the AHO, and the remedy requested by the department, entry of judgment in its favor, is not one available under the doctrine of primary jurisdiction. *Weatherford Artificial Lift Systems v. Clarke*, 2021-NMCA-065.

Section provides adequate remedy at law. — Taxpayers have standing under this section to contest the constitutionality of New Mexico taxes assessed against them; thus, under the rule of *National Private Truck Council v. Oklahoma Tax Commission*, 515 U.S. 582, 115 S. Ct. 2351, 132 L. Ed. 2d 509 (1995), a § 1983 action for injunctive or declaratory relief cannot lie with respect to imposition of a state tax, because taxpayers have been provided an adequate remedy at law. *Ramah Navajo Sch. Bd., Inc. v. N.M. Taxation & Revenue Dep't*, 1999-NMCA-050, 127 N.M. 101, 977 P.2d 1021, cert. denied, 127 N.M. 389, 981 P.2d 1207.

Secretary decides actions on refund claims. — Secretary of the taxation and revenue department has discretion to act or refuse to act on refund claims under Sections 7-1-26A and 7-1-29A NMSA 1978. *Unisys Corp. v. N.M. Taxation & Revenue Dep't*, 1994-NMCA-059, 117 N.M. 609, 874 P.2d 1273.

Purpose of time deadline in this section is to avoid stale claims, which protects the department's ability to stabilize and predict, with some degree of certainty, the funds it collects and manages. *Kilmer v. Goodwin*, 2004-NMCA-122, 136 N.M. 440, 99 P.3d 690.

Burden of maintaining active claim. — The time deadline in this section places the burden of maintaining an active claim on the taxpayer and department does not have implied authority to allow claim after 210 days. *Kilmer v. Goodwin*, 2004-NMCA-122, 136 N.M. 440, 99 P.3d 690.

Strictness of time requirement. — The legislature has stated a definite requirement that it was incumbent upon taxpayers to act within the 210-day window in this section. *Kilmer v. Goodwin*, 2004-NMCA-122, 136 N.M. 440, 99 P.3d 690.

Running of statutory period. — The statutory period to pursue a remedy under 7-1-26(B)(1) NMSA 1978 begins from the delivery of a notice of denial of refund when the taxation and revenue department mails rather than hand delivers the notice. *Schneider Nat'l, Inc. v. N.M. Taxation & Revenue Dep't*, 2006-NMCA-128, 140 N.M. 561, 144 P.3d 120.

Letter does not start time running. — Because this section prohibited the department from approving or denying the claim for refund, a letter stating that essential conclusion does not start the time running again. *Kilmer v. Goodwin*, 2004-NMCA-122, 136 N.M. 440, 99 P.3d 690.

Time limitation not denial of plain and speedy remedy. — Fact that this section limits claims for refund to periods three years from the end of the calendar year in which payment of the New Mexico income tax was due did not deny plaintiffs a plain, speedy and efficient remedy under New Mexico law so as to invoke federal jurisdiction in tax refund case. *Lung v. O'Cheskey*, 358 F. Supp. 928 (D.N.M.), *aff'd*, 414 U.S. 802, 94 S. Ct. 159, 38 L. Ed. 2d 39 (1973).

Enactment of limitation not impermissible exercise of state's legislative power. — The enactment of a statute fixing a period of limitations within which to sue the state for a refund does not constitute an impermissible exercise of legislative power of a state. When a statute creates a substantive right and in connection therewith specifies the time within which an action for the enforcement thereof must be instituted, upon failure to institute the action within the specified period, not only the remedy, but the right of action itself, is extinguished. *United States v. Bureau of Revenue*, 217 F. Supp. 849 (D.N.M. 1963).

Failure to institute action constitutes waiver of protest. — Failure of the atomic energy commission, which had become subrogated to the rights of certain uranium producers to protest the imposition of certain taxes on the proceeds of the uranium sold to it, to bring suit within four months constituted a waiver of the protest and of all claims against the state on account of any illegality in the tax so paid, since the statute created the substantive right to sue the state for a refund and fixed the time within which suit for the enforcement of the right must be instituted. *U.S. v. Bureau of Revenue*, 217 F. Supp. 849 (D.N.M. 1963).

Estoppel. — Where the department did not make any written representations during the 210-day period about how taxpayers should proceed, and department representative's statements merely informed parties' accountant to wait to see the manner in which the department would decide the issue, such a generic, oral representation does not provide a basis for estoppel. *Kilmer v. Goodwin*, 2004-NMCA-122, 136 N.M. 440, 99 P.3d 690.

No offset of overpayment against prior liability. — No statute expressly authorizes the taxation and revenue department to apply overpayments of taxes for one reporting period as offsets against underpayments for another prior reporting period. In fact, the legislature has granted the department only the specific authority to credit refunds or overpayments of gas production taxes against future tax payments. The department complied with this provision by allowing taxpayer to net out its overpayment against current tax liabilities on the estimated tax term form when taxpayer filed its amended form reporting an overpayment of taxes for a prior reporting period. *Amoco Prod. Co. v. N.M. Taxation & Revenue Dep't*, 1994-NMCA-086, 118 N.M. 72, 878 P.2d 1021.

Section not applicable to real property taxes. — Refund procedures of this section 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.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 494, 608 to 611, 629; 72 Am. Jur. 2d State and Local Taxation §§ 1039, 1064 to 1114, 1138, 1154.

Recovery of tax paid under unconstitutional statute or ordinance, 48 A.L.R. 1381, 74 A.L.R. 1301.

Action to recover back tax illegally exacted as one upon contract as regards applicability of limitation statutes, 92 A.L.R. 1360.

Mandamus as a proper remedy for return of a tax illegally or erroneously exacted, 93 A.L.R. 585.

Payment of tax in installments as affecting time for claiming refund under statute requiring claim to be made within specified time after payment of tax, 94 A.L.R. 978.

Right to recover back taxes paid upon property assessed in wrong district, 94 A.L.R. 1223.

Constitutionality of statutes providing for refund of taxes illegally or erroneously exacted, 98 A.L.R. 284.

Who as between grantor and grantee, immediate or remote, is entitled to refund of tax or assessment for public improvement against land, 105 A.L.R. 698.

Excessive assessments as within contemplation of statute providing for refunding of taxes "erroneously or illegally charged," 110 A.L.R. 670.

Right to amend claim for refund to taxes after time for filing has expired, 113 A.L.R. 1291.

Grounds stated in protest against payment of property tax as a limitation of grounds upon which recovery of back tax may be claimed, 113 A.L.R. 1479.

Statute repealing or modifying previous statute providing for refunding of taxes illegally or erroneously assessed, collected or paid, as applicable retroactively, 124 A.L.R. 1480.

When statute of limitation commences to run against action to recover tax, 131 A.L.R. 822.

Assignability of claim for tax refund and rights of assignee in respect thereof, 134 A.L.R. 1202.

Right of taxpayer to maintain action for refund of income tax paid by him, without paying the entire tax assessed against him or shown on his return, 138 A.L.R. 1426.

Power or duty, in absence of statute, to allow tax or license fee illegally exacted or erroneously paid as credit on valid tax or license fee, 160 A.L.R. 1423.

Retrospective operation of statute enlarging or shortening period for claim of tax refund, 163 A.L.R. 778.

Right to refund or recovery of back taxes paid on property not owned by taxpayer, 165 A.L.R. 879.

When does special limitation period for filing applications for tax refund begin to run, 175 A.L.R. 1100.

When right to refund of state or local taxes accrues, within statute limiting time for applying for refund, 46 A.L.R.2d 1350.

Propriety of class action in state courts to recover taxes, 10 A.L.R.4th 655.

Effect of delay in receipt or negotiation of refund check in determining right to interest under § 6611 of the Internal Revenue Code (26 USCA § 6611), 145 A.L.R. Fed. 437.

What constitutes payment for purposes of commencing limitations period under Internal Revenue Code (26 U.S.C.A. § 6511(a)) for refund of tax overpayments, 160 A.L.R. Fed. 137.

84 C.J.S. Taxation §§ 910-911; 85 C.J.S. Taxation §§ 1763 to 1764.

7-1-26.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1997, ch. 67, § 10 repealed 7-1-26.1 NMSA 1978, as enacted by Laws 1991, ch. 9, § 23, providing limitation on claims for refund based on net operating losses, effective July 1, 1997. For provisions of former section, *see* the 1996 NMSA 1978 on *NMOneSource.com.*

7-1-27. Conclusiveness of court order on liability for payment of tax.

Whenever the jurisdiction of the district court of Santa Fe county or the court of appeals is invoked according to the provisions of Section 7-1-25, 7-1-26 or 7-1-59 NMSA 1978, or whenever the jurisdiction of any federal court is invoked or whenever the jurisdiction of any district court of this state is invoked according to the provisions of Section 7-1-58 NMSA 1978, a final decision of that court or of any higher court which reviews the matter and from which decision no appeal or review is successfully taken is conclusive as regards the liability or nonliability of any person for payment of any tax.

History: 1953 Comp., § 72-13-41, enacted by Laws 1965, ch. 248, § 29; 1966, ch. 30, § 5; 1999, ch. 84, § 3.

ANNOTATIONS

The 1999 amendment, effective July 1, 1999, updated statutory references.

If liability nonexistent under one theory then also under another theory. — The language of this section does not contemplate that, having imposed tax liability under a theory held to be erroneous, the commissioner (secretary) can then proceed anew against a taxpayer under another theory. *Leaco Rural Tel. Coop., Inc. v. Bureau of Revenue*, 1974-NMCA-076, 86 N.M. 629, 526 P.2d 426.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation §§ 1149, 1150.

84 C.J.S. Taxation §§ 647 to 653, 720 to 723.

7-1-28. Authority for abatements of assessments of tax.

A. In response to a written protest against an assessment, submitted in accordance with the provisions of Section 7-1-24 NMSA 1978, but before any court acquires jurisdiction of the matter, or when a "notice of assessment of taxes" is incorrect, the secretary or the secretary's delegate may abate any part of an assessment determined by the secretary or the secretary's delegate to have been incorrectly, erroneously or illegally made. An abatement in the amount of twenty thousand dollars ($20,000) or more shall be made with the prior approval of the attorney general; except that the secretary or the secretary's delegate may make abatements with respect to the Oil and Gas Severance Tax Act [Chapter 7, Article 29 NMSA 1978], the Oil and Gas Conservation Tax Act [Chapter 7, Article 30 NMSA 1978], the Oil and Gas Emergency School Tax Act [Chapter 7, Article 31 NMSA 1978], the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978], the Natural Gas Processors Tax Act [Chapter 7, Article 33 NMSA 1978] or the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978], abatements of gasoline tax made under Section 7-13-17 NMSA 1978 and abatements of cigarette tax made under the Cigarette Tax Act [Chapter 7, Article 12 NMSA 1978] without the prior approval of the attorney general regardless of the amount.

B. Pursuant to the final order of the district court, the court of appeals, the supreme court of New Mexico or any federal court, from which order, appeal or review is not successfully taken by the department, adjudging that any person is not required to pay any portion of tax assessed to that person, the secretary or the secretary's delegate shall cause that amount of the assessment to be abated.

C. Pursuant to a compromise of taxes agreed to by the secretary and according to the terms of the closing agreement formalizing the compromise, the secretary or the secretary's delegate shall cause the abatement of the appropriate amount of any assessment of tax.

D. The secretary or the secretary's delegate shall cause the abatement of the amount of an assessment of tax that is equal to the amount of fee paid to or retained by an out-of-state attorney or collection agency from a judgment or the amount collected by the attorney or collection agency pursuant to Section 7-1-58 NMSA 1978.

E. Records of abatements made in excess of ten thousand dollars ($10,000) shall be available for inspection by the public. The department shall keep such records for a minimum of three years from the date of the abatement.

F. In response to a timely protest pursuant to Section 7-1-24 NMSA 1978 of an assessment by the department and notwithstanding any other provision of the Tax Administration Act, the secretary or the secretary's delegate may abate that portion of an assessment of tax, including applicable penalties and interest, representing the amount of tax previously paid by another person on behalf of the taxpayer on the same transaction; provided that the requirements of equitable recoupment are met. For

purposes of this subsection, the protest pursuant to Section 7-1-24 NMSA 1978 of the department's assessment may be made by the taxpayer to whom the assessment was issued or by the other person who claims to have previously paid the tax on behalf of the taxpayer.

History: 1953 Comp., § 72-13-42, enacted by Laws 1965, ch. 248, § 30; 1966, ch. 30, § 6; 1971, ch. 32, § 1; 1975, ch. 116, § 2; 1977, ch. 297, § 1; 1979, ch. 144, § 26; 1986, ch. 20, § 18; 1996, ch. 15, § 5; 2000, ch. 28, § 10; 2003, ch. 439, § 3; 2013, ch. 27, § 9.

ANNOTATIONS

Cross references. — For compromises of taxes and closing agreements, *see* 7-1-20 NMSA 1978.

The 2013 amendment, effective July 1, 2013, required the attorney general to approve only abatements of twenty thousand dollars or more; provided for abatement of tax that was paid by a person on behalf of the taxpayer; in Subsection A, in the first sentence, after "the secretary's delegate", deleted "with prior written approval of the attorney general" and added the second sentence; deleted former Paragraph (2) of Subsection A, which required attorney general approval of abatements under the General Income and Franchise Tax Act of amounts of twenty thousand dollars or more; deleted former Paragraph (3) of Subsection A, which required attorney general approval of abatements of ten thousand dollars or more; in Subsection B, after "district court", deleted "for Santa Fe county"; and added Subsection F.

The 2003 amendment, effective July 1, 2003, increased the dollar amount in Paragraph A(3) and Subsection E from $5,000 to $10,000.

The 2000 amendment, effective July 1, 2000, in the introductory paragraph of Subsection A, inserted "prior" preceding "written approval" and deleted "Notwithstanding the above, abatements of assessments incorrectly, erroneously or illegally made to one person amounting to less than five thousand dollars ($5,000) in one calendar year may be made without the prior written approval of the attorney general" preceding "except that"; substituted "Section 7-13-17" for "Sections 7-13-13 through 7-13-15" in Subsection A(1); added Subsection A(3); and deleted "or assessments" preceding "of tax" in Subsection C.

The 1996 amendment, effective July 1, 1996, added "except that:" at the end of the introductory paragraph of Subsection A and made related changes in that subsection, added Paragraphs A(1) and (2), substituted "five thousand dollars ($5,000)" for "one thousand dollars ($1,000)" in Subsection E, and made a minor stylistic change in Subsection D.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation §§ 795 to 816.

84 C.J.S. Taxation §§ 805-823; 85 C.J.S. Taxation § 1762 et seq.

7-1-29. Authority to make refunds or credits.

A. In response to a claim for refund, credit or rebate made as provided in Section 7-1-26 NMSA 1978, but before a court acquires jurisdiction of the matter, the secretary or the secretary's delegate may authorize payment to a person in the amount of the credit or rebate claimed or refund an overpayment of tax determined by the secretary or the secretary's delegate to have been erroneously made by the person, together with allowable interest. A payment of a credit rebate claimed or a refund of tax and interest erroneously paid amounting to twenty thousand dollars ($20,000) or more shall be made with the prior approval of the attorney general, except that the secretary or the secretary's delegate may make refunds with respect to the Oil and Gas Severance Tax Act [Chapter 7, Article 29 NMSA 1978], the Oil and Gas Conservation Tax Act [Chapter 7, Article 30 NMSA 1978], the Oil and Gas Emergency School Tax Act [Chapter 7, Article 31 NMSA 1978], the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978], the Natural Gas Processors Tax Act [Chapter 7, Article 33 NMSA 1978] or the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978], Section 7-13-17 NMSA 1978 and the Cigarette Tax Act [Chapter 7, Article 12 NMSA 1978] without the prior approval of the attorney general regardless of the amount.

B. Pursuant to the final order of the district court, the court of appeals, the supreme court of New Mexico or a federal court, from which order, appeal or review is not successfully taken, adjudging that a person has properly claimed a credit, rebate or a refund of overpaid tax, the secretary shall authorize the payment to the person of the amount thereof. After a court acquires jurisdiction but before it issues a final order, the secretary may authorize payment of a credit, rebate or refund pursuant to a closing agreement pursuant to Section 7-1-20 NMSA 1978.

C. In the discretion of the secretary, any amount of credit or rebate to be paid or tax to be refunded may be offset against any amount of tax for which the person due to receive the credit, rebate payment or refund is liable. The secretary or the secretary's delegate shall give notice to the taxpayer that the credit, rebate payment or refund will be made in this manner, and the taxpayer shall be entitled to interest pursuant to Section 7-1-68 NMSA 1978 until the tax liability is credited with the credit, rebate or refund amount.

D. In an audit by the department or a managed audit covering multiple reporting periods in which both underpayments and overpayments of a tax have been made in different reporting periods, the department shall credit the tax overpayments against the underpayments; provided that the taxpayer files a claim for refund of the overpayments. An overpayment shall be applied as a credit first to the earliest underpayment and then to succeeding underpayments. An underpayment of tax to which an overpayment is credited pursuant to this section shall be deemed paid in the period in which the overpayment was made or the period to which the overpayment was credited against an

underpayment, whichever is later. If the overpayments credited pursuant to this section exceed the underpayments of a tax, the amount of the net overpayment for the periods covered in the audit shall be refunded to the taxpayer.

E. When a taxpayer makes a payment identified to a particular return or assessment, and the department determines that the payment exceeds the amount due pursuant to that return or assessment, the secretary may apply the excess to the taxpayer's other liabilities pursuant to the tax acts to which the return or assessment applies, without requiring the taxpayer to file a claim for a refund. The liability to which an overpayment is applied pursuant to this section shall be deemed paid in the period in which the overpayment was made or the period to which the overpayment was applied, whichever is later.

F. If the department determines, upon review of an original or amended income tax return, corporate income and franchise tax return, estate tax return, special fuels excise tax return or oil and gas tax return, that there has been an overpayment of tax for the taxable period to which the return or amended return relates in excess of the amount due to be refunded to the taxpayer pursuant to the provisions of Subsection K of Section 7-1-26 NMSA 1978, the department may refund that excess amount to the taxpayer without requiring the taxpayer to file a refund claim.

G. Records of refunds and credits made in excess of ten thousand dollars ($10,000) shall be available for inspection by the public. The department shall keep such records for a minimum of three years from the date of the refund or credit.

H. In response to a timely refund claim pursuant to Section 7-1-26 NMSA 1978 and notwithstanding any other provision of the Tax Administration Act, the secretary or the secretary's delegate may refund or credit a portion of an assessment of tax paid, including applicable penalties and interest representing the amount of tax previously paid by another person on behalf of the taxpayer on the same transaction; provided that the requirements of equitable recoupment are met. For purposes of this subsection, the refund claim may be filed by the taxpayer to whom the assessment was issued or by another person who claims to have previously paid the tax on behalf of the taxpayer. Prior to granting the refund or credit, the secretary may require a waiver of all rights to claim a refund or credit of the tax previously paid by another person paying a tax on behalf of the taxpayer.

I. If, as a result of an audit by the department or a managed audit, a person is determined to owe gross receipts tax on receipts from the sale of property or services, the department may credit against the amount owed an amount of compensating tax paid by the purchaser if the person can demonstrate that the purchaser timely paid the compensating tax on the same property or services. The credit provided by this subsection shall not be denied solely because the purchaser cannot timely file for a refund of the compensating tax paid and, if the credit is to be granted, the department shall require, for the purpose of granting the credit, that the purchaser give up any right to claim a refund of that tax.

History: 1953 Comp., § 72-13-43, enacted by Laws 1965, ch. 248, § 31; 1966, ch. 30, § 7; 1970, ch. 17, § 1; 1975, ch. 116, § 3; 1977, ch. 297, § 2; 1979, ch. 144, § 27; 1982, ch. 18, § 12; 1989, ch. 325, § 9; 1992, ch. 55, § 12; 2001, ch. 16, § 6; 2002, ch. 11, § 1; 2003, ch. 398, § 11; 2003, ch. 439, § 4; 2006, ch. 38, § 1; 2013, ch. 27, § 10; 2017, ch. 63, § 27; 2020, ch. 80, § 2; 2021, ch. 83, § 4.

ANNOTATIONS

Cross references. — For managed audits, *see* 7-1-11.1 NMSA 1978.

For compromises of taxes and closing agreements, *see* 7-1-20 NMSA 1978.

For interest on overpayments, *see* 7-1-68 NMSA 1978.

The 2021 amendment, effective June 18, 2021, authorized the secretary of taxation and revenue to authorize payment of a credit, rebate or refund pursuant to a closing agreement in a pending court case, where a person is claiming a credit, rebate or refund, prior to the court issuing a final order; in Subsection B, after "rebate or", deleted "made an overpayment of" and added "a refund of overpaid", and after "thereof", added the remainder of the subsection.

Applicability. — Laws 2021, ch. 83, § 6 provided that the provisions of Laws 2021, ch. 83, §§ 1 and 4 apply to federal adjustments with a final determination date occurring on and after January 1, 2021.

The 2020 amendment allowed offsetting of certain erroneously paid compensating taxes against gross receipts tax due; and added Subsection I.

The 2017 amendment, effective June 16, 2017, in Subsection A, after "the amount of the", deleted "creditor" and added "credit"; and in Subsection F, after "Subsection", changed "I" to "K".

The 2013 amendment, effective July 1, 2013, increased the maximum amount of a refund or a credit that requires attorney general approval; provided for abatement of tax that was paid by a person on behalf of the taxpayer; in Subsection A, in the first sentence, after "claim for refund", added "credit or rebate", after "in the amount of", added "the creditor or rebate claimed or refund", and in the second sentence, after "A", added "payment of a credit rebate claimed or a", after "erroneously paid amounting to", deleted "more than ten thousand dollars ($10,000) may" and added "twenty thousand dollars ($20,000) or more shall"; deleted former Paragraph (2) of Subsection A, which required attorney general approval of abatements under the General Income and Franchise Tax Act of amounts of twenty thousand dollars or more; in Subsection B, after "adjudging that a person has" added "properly claimed a credit or rebate or"; in Subsection C, in the first sentence, after "any amount of", added "credit or rebate to be paid or" and after "due to receive the", added "credit, rebate payment or", and in the second sentence, after "notice to the taxpayer that the", added "credit, rebate payment

or" and after "liability is credited with the", added "credit, rebate or"; and added Subsection H.

The 2006 amendment, effective July 1, 2006, provided in Subsection C that the secretary shall give notice to a taxpayer that a refund will be made and that the taxpayer is entitled to interest and provides in Subsection G that records of refunds and credits in excess of $10,000 shall be available for public inspection.

The 2003 amendment, effective July 1, 2003, added Subsection E and F and redesignated Subsection E as G.

The 2002 amendment, effective July 1, 2002, substituted "ten thousand dollars ($10,000)" for "five thousand dollars ($5,000)" in Subsections A and E.

The 2001 amendment, effective July 1, 2001, updated the internal reference in Paragraph A(1); added Subsection D and redesignated the remaining subsection accordingly.

The 1992 amendment, effective July 1, 1992, in Subsection A, substituted "Any refund" for "Refunds" and deleted "during any one calendar year" following "($5,000)" in the second sentence, inserted the colon and Paragraph (1) designation, and added Paragraph (2); and substituted "five thousand dollars ($5,000)" for "one thousand dollars ($1,000)" in the first sentence of Subsection D.

The 1989 amendment, effective June 16, 1989, in Subsection A, in the first sentence, substituted "secretary or the secretary's delegate" for "director or his delegate" in two places, deleted "with the written approval of the attorney general" preceding "authorize the refund", in the second sentence, deleted "Notwithstanding the above" from the beginning, substituted "more than five thousand dollars" for "less than five thousand dollars", "only with the prior approval" for "without the prior approval" and "through 7-13-15 NMSA 1978" for "through 7-13-16 NMSA 1978" and inserted the language beginning with "except that" and ending with "Oil and Gas Production Equipment Ad Valorem Tax Act"; in Subsections B and C, substituted "the secretary" for "the director or his delegate"; in Subsection D, substituted "department" for "division" in the second sentence; and made minor stylistic changes.

Secretary decides actions on refund claims. — Secretary of the taxation and revenue department has discretion to act or refuse to act on refund claims under Sections 7-1-26A and 7-1-29A NMSA 1978. *Unisys Corp. v. N.M. Taxation & Revenue Dep't*, 1994-NMCA-059, 117 N.M. 609, 874 P.2d 1273.

Director (secretary) was within his discretion in applying amount wrongfully paid to the amount he determined to be owing. *G.M. Shupe, Inc. v. Bureau of Revenue*, 1976-NMCA-040, 89 N.M. 265, 550 P.2d 277, cert. denied, 89 N.M. 321, 551 P.2d 1368.

No offset of overpayment against prior liability. — No statute expressly authorizes the taxation and revenue department to apply overpayments of taxes for one reporting period as offsets against underpayments for another prior reporting period. In fact, the legislature has granted the department only the specific authority to credit refunds or overpayments of gas production taxes against future tax payments. The department complied with this provision by allowing taxpayer to net out its overpayment against current tax liabilities on the estimated tax term form when taxpayer filed its amended form reporting an overpayment of taxes for a prior reporting period. *Amoco Prod. Co. v. N.M. Taxation & Revenue Dep't*, 1994-NMCA-086, 118 N.M. 72, 878 P.2d 1021.

Calculating interest on underpayment. — Interest on underpayment of taxes is calculated without regard to receipt by the taxation and revenue department of any overpayment of taxes. The department, once a claim for refund is made, is authorized only to allow a taxpayer claiming a refund for overpayment of gas production taxes to credit the refund against current or future tax liabilities. *Amoco Prod. Co. v. N.M. Taxation & Revenue Dep't*, 1994-NMCA-086, 118 N.M. 72, 878 P.2d 1021.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 549 to 552; 72 Am. Jur. 2d State and Local Taxation §§ 846, 1064 to 1076.

85 C.J.S. Taxation §§ 910 et seq., 1777 and 1778.

7-1-29.1. Awarding of costs and fees.

A. In an administrative proceeding or court proceeding brought by or against a taxpayer and conducted in connection with the determination, collection or refund of a tax or the interest or penalty for a tax governed by the Tax Administration Act, the taxpayer shall be awarded a judgment or a settlement for reasonable administrative costs and reasonable litigation costs and attorney fees incurred in connection with the proceeding if the taxpayer is the prevailing party.

B. As used in this section:

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

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

(3) "reasonable administrative costs" means:

(a) any administrative fees or similar charges imposed by the department or the administrative hearings office; and

(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 preparation of the party's case; and

4) fees and costs paid or incurred for the services in connection with the proceeding of attorneys, certified public accountants, employees of a New Mexico licensed certified public accounting firm or enrolled agents who are authorized to practice in the context of an administrative proceeding; and

(4) "reasonable litigation costs and attorney fees" means:

(a) reasonable court costs; and

(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 preparation of the party's case; and 4) fees and costs paid or incurred for the services of attorneys in connection with the proceeding.

C. For purposes of this section:

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

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

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

(2) the taxpayer is not the prevailing party if the administrative hearings office finds that the position of the department in the proceeding was based upon a reasonable application of the law to the facts of the case. For purposes of this paragraph, the position of the department shall be presumed not to be based upon a reasonable application of the law to the facts of the case if:

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

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

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

(a) department or administrative hearings office regulations, information releases, instructions, notices, technical advice memoranda and announcements; and

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

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

(a) in the case of an administrative proceeding, by the hearing officer; or

(b) in the case of a court proceeding, by the court.

D. An order granting or denying in whole or in part an award for:

(1) reasonable litigation costs and attorney fees pursuant to Subsection A of this section in a court proceeding may be incorporated as a part of the court's decision or judgment and are subject to appeal in the same manner as the decision or judgment; and

(2) reasonable administrative costs pursuant to Subsection A of this section in an administrative proceeding are reviewable in the same manner as a decision of the administrative hearings office.

E. An agreement for or award of reasonable administrative costs or reasonable litigation costs in any administrative proceeding or court proceeding pursuant to Subsection A of this section shall not exceed the lesser of twenty percent of the amount of the settlement or judgment or seventy-five thousand dollars ($75,000).

F. The department shall annually report to the legislative finance committee and the revenue stabilization and tax policy committee on the costs it incurs pursuant to this section.

History: 1978 Comp., § 7-1-29.1, enacted by Laws 2003, ch. 398, § 12; 2015, ch. 73, § 18; 2019, ch. 157, § 5.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, added additional costs and fees that a taxpayer may be awarded if the taxpayer is the prevailing party in a tax dispute, increased the limit on the amount of administrative costs or litigation costs that may be awarded, and required the taxation and revenue department to make annual reports to the legislative finance committee and the revenue stabilization and tax policy committee on the costs it incurs pursuant to this section; in Subsection A, after "against a taxpayer", deleted "on or after July 1, 2003" and added "and conducted", after "reasonable administrative costs", added "and reasonable litigation costs and attorney fees", and after "in connection with the proceedings", deleted "with the department or the administrative hearing office or reasonable litigation costs incurred in connection with a court proceeding"; in Subsection B, Subparagraph B(3)(b), after "with the proceeding of attorneys", deleted "or of certified public accountants" and added "certified public accountants, employees of a New Mexico licensed certified public

accounting firm or enrolled agents", and in Paragraph B(4), after "litigation costs", added "and attorney fees"; in Subsection C, Paragraph C(2), after "prevailing party if", deleted "prior to July 1, 2015, the department establishes or, on or after July 1, 2015", after the next occurrence of "the", deleted "hearing officer" and added "administrative hearings office", in Subparagraph C(4)(a), after "in the case", deleted "where the final determination with respect to the tax, interest or penalty is made in" and added "of", in Subparagraph C(4)(b), after "in the case", deleted "where the final determination is made by the" and added "of a", and after "court", added "proceeding, by"; in Subsection D, Paragraph D(1), after "reasonable litigation costs", added "and attorney fees", and after "decision or judgment", deleted "A decision or order granting or denying in whole or in part an award for", in Paragraph D(2), after "this section", deleted "by a hearing officer shall be" and added "in an administrative proceeding are", and after "manner as a decision of", deleted "hearing officer" and added "the administrative hearings office"; in Subsection E, deleted "fifty thousand dollars ($50,000). A taxpayer awarded administrative litigation costs pursuant to this section may not receive an award of attorney fees pursuant to Subsection D of Section 7-1-25 NMSA 1978" and added "seventy-five thousand dollars ($75,000)."; and added Subsection F.

The 2015 amendment, effective July 1, 2015, amended the Tax Administration Act to include the administrative hearings office in provisions related to awarding administrative costs and fees; in Subsection A, after "proceeding with the department", added "or the administrative hearings office"; in Subsection B, Paragraph (1), after "department", added "or the administrative hearings office"; in Subsection B, Paragraph (3)(a), after "department", added "or the administrative hearings office"; in Subsection B, Paragraph (3)(b), after "authorized to practice", deleted "before the department" and added "in the context of an administrative proceeding"; in Subsection C, Paragraph (1)(a), after "amount", added "in"; in Subsection C, Paragraph (2), after "prevailing party if," added "prior to July 1, 2015", after "establishes", added "or, on or after July 1, 2015, the hearing officer finds"; in Subsection C, Paragraph (3)(a), after "department", added "or administrative hearings office"; in Subsection C, Paragraph (4)(a), after "proceeding, by the", deleted "department"; and in Subsection D, after "this section by", deleted "the department" and added "a", and after "decision of", deleted "the department" and added “a”.

Prevailing taxpayer entitled to an award of fees and costs. — If a taxpayer is the prevailing party in any administrative proceeding brought by or against a taxpayer, the taxpayer is entitled to an award of reasonable administrative costs. *Helmerich Payne Int'l Drilling Co. v. N.M. Taxation & Revenue Dep't*, 2019-NMCA-054.

Abatement of tax assessment does not deprive the administrative hearings office of jurisdiction. — Where the New Mexico taxation and revenue department (department) audited and assessed nearly $500,000 in tax, penalty and interest against taxpayer, and where the department, after taxpayer filed a formal protest which included a request for an award of fees and costs, abated the entire assessment without explanation, the department did not deprive the administrative hearings office (AHO) of jurisdiction by abating the assessment, and the AHO's assertion of jurisdiction to resolve

the prevailing-party issue was proper. *Helmerich Payne Int'l Drilling Co. v. N.M. Taxation & Revenue Dep't*, 2019-NMCA-054.

Prevailing party. — Where the New Mexico taxation and revenue department (department) audited and assessed nearly $500,000 in tax, penalty and interest against taxpayer, and where the department, after taxpayer filed a formal protest which included a request for an award of fees and costs, abated the entire assessment without explanation, the administrative hearings office did not abuse its discretion in designating taxpayer the prevailing party, thereby entitling taxpayer to an award of costs and fees, where taxpayer prevailed as to the entire amount in controversy when the assessment was abated and where the department failed to respond to taxpayer's motion for summary judgment, failed to respond to taxpayer's renewed request for an award after the abatement, failed to file a written argument on the prevailing-party issue, and failed to present testimony or evidence at the prevailing-party hearing. *Helmerich Payne Int'l Drilling Co. v. N.M. Taxation & Revenue Dep't*, 2019-NMCA-054.

Successor business not entitled to attorney fees. — Where the New Mexico taxation and revenue department assessed appellant, an automobile repossession business, as a successor in business to, and a mere continuation of, a defunct corporation that was also in the business of automobile repossessions, for unpaid gross receipts taxes, and where appellant protested the assessment, claiming that it was not a successor in business to the defunct corporation, and where the administrative hearing officer determined that appellant was a successor in business, as well as a mere continuation, of the defunct corporation, appellant was not entitled to attorney fees, because appellant was not the prevailing party. *High Desert Recovery v. N.M. Tax'n & Revenue Dep't*, 2022-NMCA-048, cert. denied.

7-1-29.2. Credit claims.

A. A taxpayer who submits a complete application for a tax credit is deemed to have received approval of the application if the application has not been granted or denied within one hundred twenty days of the date it was filed. Nothing in this section shall be construed to prevent the department from auditing taxes paid or from assessing taxes owed, including any tax resulting from tax credits found not to be valid.

B. A taxpayer who believes that the taxpayer is eligible to receive a tax credit may apply for approval of the credit by directing to the secretary a complete application on the form and in the manner prescribed by the department.

C. An application for a tax credit that has all fields completed, includes all attachments required by the application instructions and is submitted in accordance with the application instructions is deemed to be properly before the department for consideration, regardless of whether the department requests additional documentation after receipt of the application for credit.

D. If the department requests additional relevant documentation from a taxpayer who has submitted an incomplete application for a tax credit, the application shall be considered complete on the date that the taxpayer mails or delivers sufficient information for the department to consider the application.

E. The secretary or the secretary's delegate may approve or deny an application for a tax credit in whole or in part. An approval or denial by the secretary or the secretary's delegate shall be in writing. If the application is denied in whole or in part, the taxpayer shall not refile the denied application, but the taxpayer, within one hundred twenty days after the mailing or delivery of the denial of all or any part of the application, may elect to pursue only one of the remedies provided in this subsection. A taxpayer who timely pursues more than one remedy is deemed to have elected the first remedy requested. The taxpayer may:

(1) direct to the secretary, pursuant to the provisions of Section 7-1-24 NMSA 1978, a written protest that sets forth:

(a) the circumstances of the denied application for a tax credit;

(b) an allegation that, because of the denial, the state is indebted to the taxpayer for a specified amount, including any allowed interest;

(c) a demand for the approval of the application for the tax credit of the specified amount; and

(d) a recitation of the facts supporting the application for the tax credit; or

(2) commence a civil action in the district court for Santa Fe county by filing a complaint setting forth the circumstance of the denied application for the tax credit; alleging that on account of the denial, the state is indebted to the taxpayer for a specified amount, together with any interest allowable; demanding approval of the application for the tax credit of that amount; and reciting the facts of the application for the tax credit. The taxpayer or the secretary may appeal from any final decision or order of the district court to the court of appeals.

History: Laws 2003, ch. 398, § 10; 2023, ch. 36, § 3.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, revised provisions for submitting an application for a tax credit; in Subsection A, after "A taxpayer who", deleted "requests approval of" and added "submits a complete application for", after "approval", added "of the application", after "if the", deleted "request" and added "application", and after "within one hundred", deleted "eighty" and added "twenty"; and added Subsections B through E.

7-1-30. Collection of penalties and interest.

Any amount of civil penalty and interest may be collected in the same manner as, and concurrently with, the amount of tax to which it relates, without assessment or separate proceedings of any kind.

History: 1953 Comp., § 72-13-44, enacted by Laws 1965, ch. 248, § 32.

ANNOTATIONS

Cross references. — For interest on deficiencies, *see* 7-1-67 NMSA 1978.

For penalties generally, *see* 7-1-69 to 7-1-71 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation §§ 856 to 865, 1068, 1069.

Retroactive effect of statutes relating to interest on or penalties in respect of delinquent taxes, 77 A.L.R. 1034.

Liability to penalty imposed for failure to pay tax of one who in good faith contested its validity, 96 A.L.R. 925, 147 A.L.R. 142.

Penalty for nonpayment of taxes when due as affected by lack of notice to taxpayer, 102 A.L.R. 405.

Doubt as to liability for, or as to person to whom to pay, tax, as affecting liability for penalties and interest, 137 A.L.R. 306.

Time of mailing or time of receipt as determinative of liability for penalty or additional amount for failure to pay tax or license fee within prescribed time, 158 A.L.R. 370.

Debts arising from tax penalties as exceptions to bankruptcy discharge under § 523(a)(7)(A) and (B) of Bankruptcy Code of 1978 (11 U.S.C.A. § 523(a)(7)(A) and (B)), 157 A.L.R. Fed. 313.

85 C.J.S. Taxation §§ 1579 et seq.

7-1-31. Seizure of property by levy for collection of taxes.

A. The secretary or secretary's delegate may proceed to collect tax from a delinquent taxpayer by levy upon all property or rights to property of the delinquent taxpayer and convert the property or rights to property to money by appropriate means.

B. A levy is made by taking possession of property pursuant to authority contained in a warrant of levy or by the service, by the secretary or secretary's delegate or any

sheriff or certified law enforcement employee of the department of public safety, of the warrant upon the taxpayer or other person in possession of property or rights to property of the taxpayer, upon the taxpayer's employer or upon any person or depositary owing or who will owe money to or holding funds of the taxpayer, ordering the taxpayer or other person to reveal the extent thereof and surrender it to the secretary or secretary's delegate forthwith or agree to surrender it or the proceeds therefrom in the future, but in any case on the terms and conditions stated in the warrant.

C. Upon agreement between the department and a financial institution, the department may serve a warrant of levy on the financial institution in electronic format pursuant to the Electronic Authentication of Documents Act [14-15-1 to 14-15-6 NMSA 1978] and the Uniform Electronic Transactions Act [Chapter 14, Article 16 NMSA 1978].

History: 1953 Comp., § 72-13-45, enacted by Laws 1965, ch. 248, § 33; 1979, ch. 144, § 28; 1993, ch. 242, § 1; 2015, ch. 15, § 1.

ANNOTATIONS

The 2015 amendment, effective July 1, 2015, provided the department of taxation and revenue with the authority to collect delinquent property taxes by serving a warrant of levy on a financial institution in electronic format and expanded the authority to collect delinquent property taxes by allowing any certified law enforcement employee of the department of public safety to serve warrants of levy; in Subsection A, after "property of", deleted "such person and the conversion thereof" and added "the delinquent taxpayer and convert the property or rights to property"; in Subsection B, after "sheriff", added "or certified law enforcement employee of the department of public safety", and after "ordering", deleted "him" and added "the taxpayer or other person"; and added Subsection C.

The 1993 amendment, effective July 1, 1993, substituted "secretary or secretary's delegate" for "director or his delegate" in Subsection A and in two places in Subsection B, and inserted "upon the taxpayer's employer" near the middle of Subsection B.

Trustee was obligated by notice of levy to pay over to taxing authority the amount of fees owed. — Where a debtor filed a Chapter 13 bankruptcy petition, and where, after the bankruptcy court confirmed the debtor's Chapter 13 plan, debtor's attorney filed a fee application which was approved by the bankruptcy court, and where the Chapter 13 trustee, prior to paying the attorney fee, was served with a warrant of levy from the state of New Mexico taxation and revenue division (TRD), the bankruptcy court directed the trustee to pay the TRD, because it was the intention of the New Mexico legislature to give the TRD the power to levy on debts owed by third parties to delinquent taxpayers. *In re Gonzales*, 587 B.R. 363 (Bankr. D. N.M. 2018).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation §§ 866 to 880.

Enforceability, against undivided tract, of tax or special assessment levied against part of it at one rate and part at another, 112 A.L.R. 73.

85 C.J.S. Taxation §§ 1032 et seq.

7-1-32. Contents of warrant of levy.

A warrant of levy shall:

A. bear on its face a statement of the authority for its service and compelling compliance with its terms, shall be attested by the secretary by electronic signature, if necessary, unless the warrant is served in electronic format upon a financial institution pursuant to the Electronic Authentication of Documents Act [14-15-1 to 14-15-6 NMSA 1978] and the Uniform Electronic Transactions Act [Chapter 14, Article 16 NMSA 1978] and shall bear the seal of the department;

B. identify the taxpayer whose liability for taxes is sought to be enforced, the amount thereof and the date or approximate date on which the tax became due;

C. order the person on whom it is served to reveal the amount of property or rights to property in the person's possession that belong to the taxpayer and the extent of the person's interest therein and to reveal the amount and kind of property or rights to property of the taxpayer that are, to the best of the person's knowledge, in the possession of others;

D. order the person on whom it is served to surrender the property forthwith but may allow the person to agree in writing to surrender the property or the proceeds therefrom on a certain date in the future when the taxpayer's right to it would otherwise mature;

E. order the employer of the taxpayer to surrender wages or salary of the taxpayer in excess of the amount exempt under Section 7-1-36 NMSA 1978 owed by the employer to the taxpayer at the time of service of the levy and that may become owed by the employer to the taxpayer subsequent to the service of the levy until the full amount of the liability stated on the levy is satisfied or until notified by the secretary or the secretary's delegate;

F. state on its face the penalties for willful failure by any person upon whom it is served to comply with its terms; and

G. state that the state of New Mexico claims a lien for the entire amount of tax asserted to be due, including applicable interest and penalties.

History: 1953 Comp., § 72-13-46, enacted by Laws 1965 , ch. 248, § 34; 1979, ch. 144, § 29; 1986, ch. 20, § 19; 1993, ch. 242, § 2; 2015, ch. 15, § 2.

ANNOTATIONS

The 2015 amendment, effective July 1, 2015, provided for warrants of levy to be signed electronically except for those warrants of levy served in electronic format upon a financial institution pursuant to the Electronic Authentication of Documents Act and the Uniform Electronic Transactions Act; in Subsection A, after "secretary", added "by electronic signature, if necessary, unless the warrant is served in electronic formation upon a financial institution pursuant to the Electronic Authentication of Documents Act and the Uniform Electronic Transactions Act"; in Subsection C, deleted "his" and "his own" and added "the person's" in three places; in Subsection D, after "allow", deleted "him" and added "the person"; and in Subsection E, after "levy and", deleted "which" and added "that", and after "become", deleted "owing" and added "owed".

The 1993 amendment, effective July 1, 1993, added current Subsection E and redesignated former Subsections E and F as Subsections F and G.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation §§ 866, 868.

Use of abbreviations in description of land in tax proceedings, 1 A.L.R. 1228.

Sufficiency of description of property on tax rolls or in tax proceedings, by reference to map, plat or survey, 137 A.L.R. 184.

85 C.J.S. Taxation §§ 1037 to 1048.

7-1-33. Successive seizures.

Whenever any property or right to property upon which levy has been made by virtue of Section 7-1-31 NMSA 1978 is not sufficient to satisfy the claim for which levy is made, the secretary or secretary's delegate may thereafter, and as often as may be necessary, proceed to levy in like manner upon any other property or rights to property subject to levy of the person against whom the claim exists, until the amount due from him is fully paid. Successive levies are not necessary in the case of a levy served on an employer of the taxpayer with respect to wages or salary of the taxpayer.

History: 1953 Comp., § 72-13-47, enacted by Laws 1965, ch. 248, § 35; 1979, ch. 144, § 30; 1993, ch. 242, § 3.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, substituted "secretary or secretary's delegate" for "director or his delegate" in the first sentence and added the second sentence.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Power to make additional tax levy necessitated by failure of some property owners to pay their proportion of original levy, 79 A.L.R. 1157.

85 C.J.S. Taxation §§ 688, 694, 1037, 1041 et seq.

7-1-34. Surrender of property subject to levy; penalty.

A. Any person in possession of or obligated with respect to property or rights to property subject to levy upon which a levy has been made shall surrender the property or rights, or discharge such obligation, to the secretary or the secretary's delegate, except that part of the property or right as is, at the time of such demand, the subject of a bona fide attachment, execution, levy or other similar process, unless the person is entitled to and does redeem it according to the provisions of Section 7-1-47 NMSA 1978.

B. Upon demand of the secretary or the secretary's delegate, any employer owing a taxpayer wages or salary subject to levy upon which a levy has been made shall surrender to the secretary or the secretary's delegate each subsequent pay period that portion of the taxpayer's wages or salary not exempted under Section 7-1-36 NMSA 1978 and not subject to a prior bona fide attachment, execution, levy, garnishment or similar process, until the amount of the levy is satisfied in full or until notified by the secretary or the secretary's delegate. The secretary or secretary's delegate shall notify the employer promptly when the levy has been satisfied.

C. Any person who wrongfully fails or refuses to surrender or redeem, as required by this section, any property or rights to property levied upon, upon demand by the secretary or the secretary's delegate, is liable for a civil penalty in an amount equal to the lesser of the value of the property or rights not so surrendered or the amount of the taxes for the collection of which such levy has been made.

D. Notwithstanding any other provision of law, the surrender by a person in possession of or obligated with respect to property, rights to property or proceeds from the sale or other disposition of property subject to levy upon which a levy has been made by the secretary or the secretary's delegate of such property or rights to property, discharges such obligation to the department. A surrender by a person shall be a defense against the assertion of any obligation or liability to the delinquent taxpayer or any other person with respect to such property or rights to property arising from a surrender or payment.

E. The term "person", as used in this section, includes an officer or employee of a corporation or a member or employee of a partnership, who, as such officer, employee or member, is under a duty to surrender the property or rights to property or to discharge the obligation.

History: 1953 Comp., § 72-13-48, enacted by Laws 1965, ch. 248, § 36; 1979, ch. 144, § 31; 1986, ch. 20, § 20; 1993, ch. 242, § 4.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, deleted "upon demand of the secretary or the secretary's delegate" preceding "surrender the property" in Subsection A; added current Subsections B and D; redesignated former Subsections B and C as Subsections C and E; substituted "is liable for a civil penalty in an amount equal to the lesser of" for "shall be liable in his own person and estate to the state of New Mexico in a sum equal to", substituted "or the amount" for "but not exceeding the amount" and deleted "together with costs and interests on such sum at the rate specified in Section 7-1-67 NMSA 1978 from the date of such levy" at the end, in Subsection C; and deleted "Subsections A and B of" preceding "this section" in Subsection E.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 85 C.J.S. Taxation §§ 1033 to 1040.

7-1-35. Stay of levy.

Levy shall not be made on the property or rights to property of any taxpayer who furnishes security in accordance with the provisions of Section 7-1-54 NMSA 1978. A levy made under authority of Section 7-1-31 NMSA 1978 shall be released as otherwise provided in the Tax Administration Act upon compliance by a taxpayer with the pertinent provisions of Section 7-1-54 NMSA 1978.

History: 1953 Comp., § 72-13-49, enacted by Laws 1965, ch. 248, § 37; 1969, ch. 9, § 1.

7-1-36. Property exempt from levy.

A. There shall be exempt from levy the money or property of a delinquent taxpayer in a total amount or value not in excess of one thousand dollars ($1,000).

B. In addition to the property exempt under Subsection A of this section, there shall also be exempt from levy on an employer of the taxpayer the greater of the following portions of the taxpayer's disposable earnings:

(1) seventy-five percent of the taxpayer's disposable earnings for any pay period; or

(2) an amount each week equal to forty times the minimum wage rate pursuant to Subsection A of Section 50-4-22 NMSA 1978. The superintendent of regulation and licensing shall provide a table giving equivalent exemptions for pay periods of other than one week.

C. As used in this section, "disposable earnings" means that part of a taxpayer's wages or salary remaining after deducting the amounts that are required by law to be withheld.

History: 1953 Comp., § 72-13-50, enacted by Laws 1965, ch. 248, § 38; 1993, ch. 242, § 5; 2021, ch. 65, § 4.

ANNOTATIONS

The 2021 amendment, effective July 1, 2021, prohibited the taxation and revenue department from garnishing a delinquent taxpayer's wages when such wages are under forty times the state minimum wage rather than forty times the federal minimum wage as under the former provision, and removed the definition of "federal minimum hourly wage", as used in this section; in Subsection B, Paragraph B(2), after "forty times the", deleted "federal", after "minimum", deleted "hourly", and after "wage rate", added "pursuant to Subsection A of Section 50-4-22 NMSA 1978"; and in Subsection C, deleted former paragraph designation "(1)" and former Paragraph C(2).

The 1993 amendment, effective July 1, 1993, designated the formerly undesignated provision as Subsection A and added Subsections B and C.

Creditor's assignee entitled to exemption. — Defendant, as assignee for the benefit of creditors of delinquent corporate taxpayer, is entitled to $1,000 exemption of taxpayer's assets under this section. *Regents of N.M. Coll. of Agric. & Mechanic Arts v. Academy of Aviation, Inc*., 1971-NMSC-087, 83 N.M. 86, 488 P.2d 343.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation §§ 866, 869.

Enforcement against tax-exempt property of tax on nonexempt property or on owner of tax-exempt property, 159 A.L.R. 461.

85 C.J.S. Taxation §§ 1037, 1041 to 1043.

7-1-37. Assessment as lien.

A. If any person liable for any tax neglects or refuses to pay the tax after assessment and demand for payment as provided in Section 7-1-17 NMSA 1978 or if any person liable for tax pursuant to Section 7-1-63 NMSA 1978 neglects or refuses to pay after demand has been made, unless and only so long as such a person is entitled to the protection afforded by a valid order of a United States court entered pursuant to Section 362 or 1301 of Title 11 of the United States Code, as amended or renumbered, the amount of the tax shall be a lien in favor of the state upon all property and rights to property of the person.

B. The lien imposed by Subsection A of this section shall arise at the time both assessment and demand, as provided in Section 7-1-17 NMSA 1978, have been made or at the time demand has been made pursuant to Section 7-1-63 NMSA 1978 and shall continue until the liability for payment of the amount demanded is satisfied or extinguished.

C. As against any mortgagee, pledgee, purchaser, judgment creditor, person claiming a lien under Sections 48-2-1 through 48-11-9 NMSA 1978, lienor for value or

other encumbrancer for value, the lien imposed by Subsection A of this section shall not be considered to have arisen or have any effect whatever until notice of the lien has been filed as provided in Section 7-1-38 NMSA 1978.

History: 1953 Comp., § 72-13-51, enacted by Laws 1965, ch. 248, § 39; 1979, ch. 144, § 32; 1982, ch. 18, § 13; 1993, ch. 242, § 6.

ANNOTATIONS

The 1993 amendment, effective July 1, 1993, substituted "person claiming a lien under Sections 48-2-1 through 48-11-9 NMSA 1978, lienor for value" for "lienor" in Subsection C and made minor stylistic changes in Subsection A.

Jeopardy assessments become liens on all property and rights to property of a person when that person neglects or refuses to pay the tax after it has been assessed. *Regents of N.M. Coll. of Agric. & Mechanic Arts v. Academy of Aviation, Inc*., 1971-NMSC-087, 83 N.M. 86, 488 P.2d 343.

The requirements of Section 7-1-38 NMSA 1978 must be met in order to effectuate a lien under this section. *In re What D'Ya Call It, Inc*., 1986-NMSC-098, 105 N.M. 164, 730 P.2d 467.

Liens arising upon transfer of liquor license. — The tax liability referred to in Section 7-1-82 NMSA 1978, governing transfer of a liquor license, may become a lien in favor of the state in the amount of taxes due if the procedures set forth in this section and Section 7-1-38 NMSA 1978 are followed. *In re What D'Ya Call It, Inc*., 1986-NMSC-098, 105 N.M. 164, 730 P.2d 467 (1986).

Wholesaler's lien. — A lien pursuant to former Section 60-6B-3E NMSA 1978, which gives a lien to wholesale creditors of a liquor licensee, has a superpriority status over other lienholders, including the tax lien in favor of the state, unless the latter liens were perfected under Section 7-1-38 NMSA 1978 or under applicable general law prior to the date that the licensee incurred debts owed to wholesale creditors. *In re What D'Ya Call It, Inc*., 1986-NMSC-098, 105 N.M. 164, 730 P.2d 467.

Payment may be required prior to transfer of liquor license. — The state may require payment of delinquent taxes prior to transfer of a liquor license, pursuant to Section 7-1-82 NMSA 1978, where its liens under this section and Section 7-1-38 NMSA 1978 have been foreclosed. *First Interstate Bank v. Taxation & Revenue Dep't*, 1989-NMCA-067, 108 N.M. 756, 779 P.2d 133, cert. denied, 108 N.M. 771, 779 P.2d 549.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation §§ 891 to 897.

Lien for tax imposed by one taxing unit as affected by lien or sale for tax imposed by another taxing unit of same state, 135 A.L.R. 1464.

85 C.J.S. Taxation §§ 804 to 842.

7-1-38. Notice of lien.

A notice of the lien provided for in Section 7-1-37 NMSA 1978 may be recorded in any county in the state in the tax lien index established by Sections 48-1-1 through 48-1-7 NMSA 1978 and a copy thereof shall be sent to the taxpayer affected. Any county clerk to whom the notices are presented shall record them as requested without charge. The notice of lien shall identify the taxpayer whose liability for taxes is sought to be enforced and the date or approximate date on which the tax became due and shall state that New Mexico claims a lien for the entire amount of tax asserted to be due, including applicable interest and penalties. Recording of the notice of lien shall be effective as to all property and rights to property of the taxpayer.

History: 1953 Comp., § 72-13-52, enacted by Laws 1965, ch. 248, § 40; 1979, ch. 144, § 33; 1996, ch. 15, § 6.

ANNOTATIONS

The 1996 amendment, effective July 1, 1996, made stylistic changes in the second and third sentences, and substituted "all property and rights to property of the taxpayer" for "both real and tangible personal property" at the end of the section.

Requirements of this section must be met to effectuate a lien under Section 7-1-37 NMSA 1978. *In re What D'Ya Call It, Inc*., 1986-NMSC-098, 105 N.M. 164, 730 P.2d 467.

Liens arising upon transfer of liquor license. — The tax liability referred to in Section 7-1-82 NMSA 1978, governing transfer of a liquor license, may become a lien in favor of the state in the amount of taxes due if the procedures set forth in Section 7-1-37 NMSA 1978 and this section are followed. *In re What D'Ya Call It, Inc*., 1986-NMSC-098, 105 N.M. 164, 730 P.2d 467.

Wholesaler's lien. — A lien pursuant to former Section 60-6B-3E NMSA 1978, which gives a lien to wholesale creditors of a liquor licensee, has a superpriority status over other lienholders, including the tax lien in favor of the state, unless the latter liens were perfected under this section or under applicable general law prior to the date that the licensee incurred debts owed to wholesale creditors. *In re What D'Ya Call It, Inc*., 1986-NMSC-098, 105 N.M. 164, 730 P.2d 467.

Payment may be required prior to transfer of liquor license. — The state may require payment of delinquent taxes prior to transfer of a liquor license, pursuant to Section 7-1-82 NMSA 1978, where its liens under this section and Section 7-1-37

NMSA 1978 have been foreclosed. *First Interstate Bank v. Taxation & Revenue Dep't*, 1989-NMCA-067, 108 N.M. 756, 779 P.2d 133, cert. denied, 108 N.M. 771, 779 P.2d 549.

The object of the notice of tax lien is to give constructive notice to mortgagees, pledgees, purchasers, and other potential creditors. *In re Hill*, 166 Bankr. 444 (Bankr. D.N.M. 1993).

Priority of tax lien. — Liquor wholesalers have a superpriority lien over all lien holders, with the exception of the state taxation and revenue department, if the tax lien is perfected pursuant to this section. The tax lien is effective as of the date the notice is filed. *In re D & M, Inc*., 114 Bankr. 274 (Bankr. D.N.M. 1990).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation §§ 891 to 894.

Sufficiency of designation of taxpayer in recorded notice of federal tax lien, 3 A.L.R.3d 633.

85 C.J.S. Taxation §§ 824 to 827.

7-1-39. Release or extinguishment of lien; limitation on actions to enforce lien.

A. When any substantial part of the amount of tax due from a taxpayer is paid, the department shall immediately file, in the same county in which a notice of lien was filed, and in the same records, a document completely or partially releasing the lien. The county clerk to whom such a document is presented shall record it without charge.

B. The department may file, in the same county as the notice of lien was filed, a document releasing or partially releasing any lien filed in accordance with Section 7-1-38 NMSA 1978 when the filing of the lien was premature or did not follow requirements of law or when release or partial release would facilitate collection of taxes due. The county clerk to whom the document is presented shall record it without charge.

C. In all cases when a notice of lien for taxes, penalties and interest has been filed under Section 7-1-38 NMSA 1978 and a period of ten years has passed from the date the lien was filed, as shown on the notice of lien, the taxes, penalties and interest for which the lien is claimed shall be conclusively presumed to have been paid and the lien is thereby extinguished. No action shall be brought to enforce any lien extinguished in accordance with this subsection.

History: 1953 Comp., § 72-13-53, enacted by Laws 1965, ch. 248, § 41; 1972, ch. 73, § 1; 1979, ch. 144, § 34; 1985, ch. 58, § 1; 1986, ch. 20, § 21; 1997, ch. 67, § 4; 2013, ch. 214, § 1.

ANNOTATIONS

The 2013 amendment, effective June 14, 2013, removed the notice requirement of the expiration of tax liens; and in Subsection C, in the first sentence, after "presumed to have been paid", deleted "The county clerk shall enter in his records a notice including the words ‘canceled by act of legislature’".

The 1997 amendment, effective July 1, 1997, added Subsection B, redesignated former Subsection B as Subsection C, and made a minor stylistic change.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation §§ 895, 896.

Effect of receiver's failure to discharge tax liens, 39 A.L.R. 1415.

Constitutionality, construction and application of statute permitting release of part of property subject to tax liens or special assessments, 100 A.L.R. 418.

Applicability of general statute of limitations to real estate tax lien foreclosure action, 59 A.L.R.2d 1144.

85 C.J.S. Taxation §§ 831 to 833.

7-1-40. Foreclosure of lien.

The liens provided for in the Tax Administration Act may be foreclosed or satisfied by seizure and sale of property or rights to property as provided in the Tax Administration Act, except the lien provided for in Section 7-1-47 NMSA 1978.

History: 1953 Comp., § 72-13-54, enacted by Laws 1965, ch. 248, § 42; 1979, ch. 144, § 35.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation §§ 896, 897, 904 to 915.

Persons in possession of real property as affected by decree foreclosing tax lien, upon service by publication, or in a proceeding against unknown owners, 128 A.L.R. 114.

Constitutionality, construction and application of statutes providing for impleading other taxing units in suit by taxing unit for foreclosure of tax lien and the sale of the property free from lien of taxes due to such impleaded units, 134 A.L.R. 1286.

Constitutional validity of statute providing for in rem or summary foreclosure of delinquent tax liens on real property, 160 A.L.R. 1026.

85 C.J.S. Taxation §§ 1133 to 1167.

7-1-41. Notice of seizure.

As soon as practicable after the levy, the secretary or the secretary's delegate shall notify the owner thereof of the amount and kind of property seized and of the total amount demanded in payment of tax.

History: 1953 Comp., § 72-13-55, enacted by Laws 1965, ch. 248, § 43; 1979, ch. 144, § 36; 2001, ch. 56, § 5.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, substituted "secretary or the secretary's delegate" for "director or his delegate".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation §§ 868, 916 to 930.

Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party, 45 A.L.R.4th 447.

84 C.J.S. Taxation §§ 359, 605; 85 C.J.S. Taxation § 773.

7-1-42. Notice of sale.

As soon as practicable after the levy, the secretary or the secretary's delegate shall decide on a time and place for the sale of the property, shall make a diligent inquiry as to the identity and whereabouts of the owner of the property and persons having an interest therein and shall notify the owner and persons having an interest therein of the time and place for the sale. The fact that any person entitled thereto does not receive the notice provided for in this section does not affect the validity of the sale.

History: 1953 Comp., § 72-13-56, enacted by Laws 1965, ch. 248, § 44; 1979, ch. 144, § 37; 2001, ch. 56, § 6.

ANNOTATIONS

Cross references. — For publication of notice generally, *see* 14-11-1 to 14-11-13 NMSA 1978.

The 2001 amendment, effective July 1, 2001, substituted "secretary or the secretary's delegate" for "director or his delegate".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation §§ 916 to 930.

Effect of misnomer of landowner or delinquent taxpayer in notice, advertisement, etc., of tax foreclosure or sale, 43 A.L.R.2d 967.

Validity of notice of tax sale or of tax sale proceeding which fails to state tax year or kind or type of taxes covered by tax assessments, 43 A.L.R.2d 988.

What is "public place" within requirements as to posting of notices, 90 A.L.R.2d 1210.

Inclusion or exclusion of first and last days in computing the time for performance of an act or event which must take place a certain number of days before a known future date, 98 A.L.R.2d 1331.

Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party, 45 A.L.R.4th 447.

7-1-43. Sale of indivisible property.

If any property of the taxpayer subject to levy is not divisible so as to enable the secretary or the secretary's delegate by sale of a part thereof to raise the whole amount of the tax and expenses, the whole of the taxpayer's interest in the property shall be sold but is always subject to redemption before sale according to the provisions of Section 7-1-47 NMSA 1978.

History: 1953 Comp., § 72-13-57, enacted by Laws 1965, ch. 248, § 45; 1979, ch. 144, § 38; 2001, ch. 56, § 7.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, substituted "secretary or the secretary's delegate" for "director or his delegate".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation § 938.

Lump-sum assessment for taxes on public improvement against property owned by cotenants in undivided shares, 80 A.L.R. 862.

Interest of spouse in estate by entireties as subject to satisfaction of his or her individual debt, 75 A.L.R.2d 1172.

85 C.J.S. Taxation § 1186.

7-1-44. Requirements of sale.

No sale of imperishable property shall be held until after the expiration of thirty days from the date of the levy thereon, and no sale of imperishable property shall be held

until after publication of notice thereof in a newspaper of general circulation in the county wherein the property was located when levied upon once each week for three successive weeks stating the time and place of the sale and describing the property to be sold. Perishable property may be sold immediately after seizure without publication or notice of the sale. The department shall make special efforts to give notice of the sale to persons with a particular interest in special property and shall, apart from the requirements stated above, advertise the sale in a manner appropriate to the kind of property to be sold.

History: 1953 Comp., § 72-13-58, enacted by Laws 1965, ch. 248, § 46; 1971, ch. 276, § 10; 1979, ch. 144, § 39; 1986, ch. 20, § 22.

ANNOTATIONS

Cross references. — For publication of notice generally, *see* 14-11-1 to 14-11-13 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation §§ 908 to 910.

Use of abbreviations in description of land in tax proceedings, 1 A.L.R. 1228.

Sufficiency of description of land in notice of tax sale, 67 A.L.R. 890.

Failure of advertisement in judicial proceeding for sale of land for delinquent taxes on foreclosure of tax lien, to describe lands affected, as contrary to due process of law or other constitutional objection, 107 A.L.R. 285.

Sufficiency of description of property on tax rolls or in tax proceedings, by reference to map, plat or survey, 137 A.L.R. 184.

Effect of misnomer of landowner on delinquent taxpayer in notice, advertisement, etc., of tax foreclosure or sale, 43 A.L.R.2d 967.

Validity of notice of tax sale or of tax sale proceeding which fails to state tax year or kind or type of taxes covered by tax assessments, 43 A.L.R.2d 988.

85 C.J.S. Taxation §§ 1108 to 1112, 1179 to 1182.

7-1-45. Manner of sale or conversion to money.

All property levied upon, not consisting of money, shall be sold at public auction at one o'clock in the afternoon on the steps or in front of the courthouse of the county in which the property was located when levied upon or may be consigned to an auctioneer for sale. Payment may be accepted only in full and immediately after the acceptance of a bid for the property. Stocks, bonds, securities and similar property may be negotiated

or surrendered for money in accordance with uniform regulations issued by the secretary, notwithstanding the above.

History: 1953 Comp., § 72-13-59, enacted by Laws 1965, ch. 248, § 47; 1979, ch. 144, § 40; 2001, ch. 56, § 8.

ANNOTATIONS

Cross references. — For auctions generally, *see* 61-16-1 and 61-16-2 NMSA 1978.

The 2001 amendment, effective July 1, 2001, substituted "secretary" for "director" at the end of the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation §§ 931 to 939.

Validity of judicial, execution, tax or other public sale as affected by the particular point in courthouse or other place identified by notice, or designated by statute or by mortgage or trust deed, at which the sale was made, or by indefiniteness of notice as regards that point, 120 A.L.R. 660.

What constitutes "public sale," 4 A.L.R.2d 575.

85 C.J.S. Taxation §§ 1178 to 1194.

7-1-46. Minimum prices.

Before the sale, the secretary or the secretary's delegate shall determine a minimum price for which the property shall be sold, and if no person offers for the property at the sale the amount of the minimum price, the property shall not be sold but the sale shall be readvertised and held at a later time. In determining the minimum price, the secretary or the secretary's delegate shall take into account and determine the expense of making the levy and sale.

History: 1953 Comp., § 72-13-60, enacted by Laws 1965, ch. 248, § 48; 1979, ch. 144, § 41; 2001, ch. 56, § 9.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, substituted "secretary or the secretary's delegate" for "director or his delegate" in two places.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation §§ 933, 934.

Sale of property at tax sale for more or less than the amount of taxes, penalties and costs as affecting its validity, 97 A.L.R. 842, 147 A.L.R. 1141.

Constitutionality of statutes authorizing tax sale or resale for less than the amount of the taxes due, 155 A.L.R. 1177.

85 C.J.S. Taxation §§ 1183 to 1185.

7-1-47. Redemption before sale.

Any person whose property has been levied upon shall have the right to pay the amount due, together with the expenses of the proceeding, or furnish acceptable security for the payment thereof according to the provisions of Section 7-1-54 NMSA 1978 to the department at any time prior to the sale thereof, and upon payment or furnishing of security, the secretary or the secretary's delegate shall restore the property to that person, and all further proceedings in connection with the levy on the property shall cease from the time of the payment. Any person who has a sufficient interest in property or rights to property levied upon to entitle the person to redeem it from sale, according to the provisions of this section, who does pay the amount due and accomplishes the redemption shall have a lien against the property in the amount paid and may file a notice thereof in the records of any county in the state in which the property is located and may foreclose the lien as provided by law.

History: 1953 Comp., § 72-13-61, enacted by Laws 1965, ch. 248, § 49; 1979, ch. 144, § 42; 2001, ch. 56, § 10.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, substituted "to the department" for "to the director or his delegate" following "NMSA 1978"; and substituted "secretary or the secretary's delegate" for "director or his delegate".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation §§ 988 to 1030.

Constitutionality of statute extending period for redemption from judicial or tax sale, or sale upon mortgage foreclosure, 1 A.L.R. 143, 38 A.L.R. 229, 89 A.L.R. 966.

Right after redemption from tax sale or forfeiture to maintain action for trespass committed between sale or forfeiture and redemption, 33 A.L.R. 302.

Right of person under disability to redeem from tax sale, 65 A.L.R. 582, 159 A.L.R. 1467.

Payment of tax or redemption from tax sale by public officer for benefit of owner, 66 A.L.R. 1035.

Necessity and sufficiency of statement in notice of application for tax deed, or notice to redeem from tax sale, as regards time for redemption, 82 A.L.R. 502.

Right and remedy of mortgagee who for the protection of his security pays taxes on, or redeems from tax sale of, mortgaged property, 84 A.L.R. 1366, 123 A.L.R. 1248.

Judgment as lien on judgment debtor's equity of redemption in land sold for taxes, 91 A.L.R. 647.

Erroneous or incomplete information by public officials, or refusal to give information, as excusing taxpayer's failure to redeem within required time, 134 A.L.R. 1299, 21 A.L.R.2d 1273.

Refusal of tender, made under protest, of amount required for redemption from tax sale, 142 A.L.R. 1198.

Constitutionality of provision for service by publication of notice of proceeding by purchaser at tax sale to foreclose delinquent owner's right of redemption, or of other proceeding to perfect tax purchaser's title, 145 A.L.R. 597.

Constitutionality, construction and application of statutes providing for partial or proportional redemption from tax sale of land, 145 A.L.R. 1328.

Who entitled to rents and profits, or rental value, during the redemption period following tax sale, 147 A.L.R. 1084.

Retroactive application, to previous sales, of statutes reducing period of redemption from tax sales, as unconstitutional impairment of contract obligations, 147 A.L.R. 1123.

Sufficiency of tax redemption notice which includes more than one tax assessment for which land was sold, or more than one tract of land, 155 A.L.R. 1198.

One in adverse possession as within class of persons entitled to redeem from tax sale, 164 A.L.R. 1285.

What constitutes "execution" of tax deed beginning or ending period for redemption from tax sale, 166 A.L.R. 853.

Holder of tax certificate as affected by public official's waiver of, or failure to require, compliance with conditions of redemption, 21 A.L.R.2d 1273.

Provisions of Soldiers' and Sailors' Civil Relief Act relating to taxation of property of military personnel, 32 A.L.R.2d 618.

Who may redeem, from a tax foreclosure or sale, property to which title or record ownership is held by corporation, 54 A.L.R.2d 1172.

Applicability of tax redemption statutes to separate mineral estates, 56 A.L.R.2d 621.

Right of interested party receiving due notice of tax sale or of right to redeem to assert failure or insufficiency of notice to other interested party, 45 A.L.R.4th 447.

85 C.J.S. Taxation §§ 1242 et seq.

7-1-48. Documents of title.

In case property is sold as above provided, the department, after payment for the property is received, shall prepare and deliver to the purchaser thereof a certificate of sale, in the case of personalty, or, in the case of realty, a deed, in a form as the secretary shall by regulation prescribe. Such documents of title shall recite the authority for the transaction, the date of the sale, the interest in the property that is conveyed and the price paid therefor.

History: 1953 Comp., § 72-13-62, enacted by Laws 1965, ch. 248, § 50; 1979, ch. 144, § 43; 2001, ch. 56, § 11.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, substituted "department" for "director or his delegate" and "secretary" for "director".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation §§ 973 to 987.

Necessity and sufficiency of statement in notice of application for tax deed, or notice to redeem from tax sale, as regards time for redemption, 82 A.L.R. 520.

Payment, tender or deposit of tax as condition of injunction against issuance of tax deed upon ground that it had become barred by lapse of time or that the property had been redeemed, 134 A.L.R. 543.

85 C.J.S. Taxation §§ 1354 et seq.

7-1-49. Legal effect of certificate of sale.

In all cases of sale of property other than real property, the certificate of sale provided for in Section 7-1-48 NMSA 1978 shall:

A. be prima facie evidence of the right of the department to make the sale and conclusive evidence of the regularity of the proceedings in making the sale;

B. transfer to the purchaser all right, title and interest of the delinquent taxpayer in and to the property sold, subject to all outstanding prior interests and encumbrances of record and free of any subsequent encumbrance;

C. if such property consists of stock certificates, be notice, when received, to any corporation, company or association of such transfer and be authority to such corporation, company or association to record the transfer on its books and records in the same manner as if the stock certificates were transferred or assigned by the record owner;

D. if the subject of sale is securities or other evidences of debt, be a good and valid receipt to the person holding the same, as against any person holding or claiming to hold possession of the securities or other evidences of debt; and

E. if such property consists of a motor vehicle as represented by its title, be notice, when received, to any public official charged with the registration of title to motor vehicles of the transfer and be authority to that official to record the transfer on the official's books and records in the same manner as if the certificate of title to the motor vehicle were transferred or assigned by the record owner.

History: 1953 Comp., § 72-13-63, enacted by Laws 1965, ch. 248, § 51; 1979, ch. 144, § 44; 2001, ch. 56, § 12.

ANNOTATIONS

Cross references. — For records and recording generally, *see* 14-1-1 NMSA 1978 et seq.

For record of shareholders of corporation, *see* 53-11-50 NMSA 1978.

For purchase of investment securities generally, *see* 55-8-301 NMSA 1978 et seq.

For registration, certificates of title and transfers of motor vehicles, *see* 66-3-2, 66-3-3 and 66-3-9 NMSA 1978.

The 2001 amendment, effective July 1, 2001, in Subsection A, substituted "department" for "director or his delegate" and "the proceedings" for "his proceedings"; and substituted "the official's books" for "his books" in Subsection E.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Right of public officer to purchase tax certificate or tax titles, 5 A.L.R. 969.

Right of holder of tax title or certificate of sale to reimbursement by taxing authorities where sale proves invalid, 77 A.L.R. 824, 116 A.L.R. 1408.

Statutory enactment or repeal subsequent to tax sale or issuance of tax certificates as affecting rights of holders of tax certificates or purchasers at tax sale, 111 A.L.R. 237.

Doctrine of constructive trust or unjust enrichment as applicable between owner and one who fraudulently procures tax certificates, 175 A.L.R. 700.

Effect of certificate, statement (or refusal thereof), or error by tax collector or other public official regarding unpaid taxes or assessments against specific property, 21 A.L.R.2d 1273.

Void tax deed, tax sale certificate, and the like, as constituting color of title, 38 A.L.R.2d 986.

7-1-50. Legal effect of deed to real property.

In the case of the sale of real property:

A. the deed of sale given pursuant to Section 7-1-48 NMSA 1978 shall be prima facie evidence of the facts therein stated;

B. if the proceedings have been substantially in accordance with the provisions of law, the deed shall be considered and operate as a conveyance of all the right, title and interest of the delinquent taxpayer in and to the real property thus sold at the time the notice of lien was filed as provided in Section 7-1-38 NMSA 1978 or immediately before the sale, whichever is earlier; and

C. neither the taxpayer nor anyone claiming through or under him shall bring an action after one year from the date of sale to challenge the conveyance.

History: 1953 Comp., § 72-13-64, enacted by Laws 1965, ch. 248, § 52; 1979, ch. 144, § 45.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation §§ 982 to 987.

Tax deed and recitals therein as evidence of regularity of tax proceedings as to advertising and notice of sale, and as to time, manner and place of sale, 30 A.L.R. 8, 88 A.L.R. 264.

Necessity of recording tax deed to protect title as against interest derived from former owner, 65 A.L.R. 1015.

What informalities, irregularities or defects in respect to the execution of a tax deed prevent the running of the statute of limitations or period of adverse possession, 113 A.L.R. 1343.

Tax title or deed as subject to attack for want of notice of application for tax deed or of expiration of redemption period, where a statute makes tax deed conclusive evidence of matters preliminary to its issuance or limits attack thereon to specified grounds or exempts deed from attack for procedural irregularities or omissions, 134 A.L.R. 796.

What constitutes "execution" of tax deed beginning or ending period for redemption from tax sale, 166 A.L.R. 853.

Statutory limitation of period for attack on tax deed as affected by failure to comply with statutory requirement as to notice before tax deed, 5 A.L.R.2d 1021.

Void tax deed, tax sale certificate, and the like, as constituting color of title, 38 A.L.R.2d 986.

Property owner's liability for unpaid taxes following acquisition of property by another at tax sale, 100 A.L.R.3d 593.

85 C.J.S. Taxation §§ 1444 et seq.

7-1-51. Proceeds of levy and sale.

A. Money realized by levy or sale under provision of the Tax Administration Act shall be first applied against the expenses of the proceedings;

B. The amount, if any, remaining shall then be applied to the liability for tax in respect of which the levy was made; and

C. The balance, if any, remaining shall be returned to a person legally entitled thereto.

History: 1953 Comp., § 72-13-65, enacted by Laws 1965, ch. 248, § 53.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation § 911.

85 C.J.S. Taxation §§ 1197 et seq.

7-1-52. Release of levy.

It shall be lawful for the secretary or the secretary's delegate, under regulations prescribed by the secretary, to release the levy upon all or part of the property or rights to property levied upon if the secretary or the secretary's delegate determines that such action will facilitate the collection of the liability, but the release shall not operate to prevent any subsequent levy.

History: 1953 Comp., § 72-13-66, enacted by Laws 1965, ch. 248, § 54; 1979, ch. 144, § 46; 2001, ch. 56, § 13.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, substituted "secretary or the secretary's delegate" for "director or his delegate" in two places, and substituted "secretary" for "director".

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation § 215; 72 Am. Jur. 2d State and Local Taxation §§ 895, 896.

Effect of receiver's failure to discharge tax liens, 39 A.L.R. 1415.

Constitutionality, construction and application of statute permitting release of part of property subject to tax liens or special assessments, 100 A.L.R. 418.

85 C.J.S. Taxation §§ 832, 907 to 909, 1007.

7-1-53. Enjoining delinquent taxpayer from continuing in business.

A. To ensure or to compel payment of taxes and to aid in the enforcement of the provisions of the Tax Administration Act, the secretary may apply to a district court of this state to have any delinquent taxpayer or person who may be or may become liable for payment of any tax enjoined from engaging in business until the delinquent taxpayer ceases to be a delinquent taxpayer or until the delinquent taxpayer or person complies with other requirements, reasonably necessary to protect the revenues of the state, placed on the delinquent taxpayer or person by the secretary.

B. Upon application to a court for an injunction against a delinquent taxpayer, the court may forthwith issue an order temporarily restraining the delinquent taxpayer from doing business. The court shall hear the matter within fifteen days. Upon written request of the taxpayer, the hearing may be held earlier. Upon a showing by a preponderance of the evidence that the taxpayer is delinquent and has been given notice of the hearing as required by law, the court may enjoin the taxpayer from engaging in business in New Mexico until the taxpayer ceases to be a delinquent taxpayer. Upon issuing an injunction, the court may also order the business premises of the taxpayer sealed by the sheriff and may allow the taxpayer access thereto only upon approval of the court.

C. Upon application to a court for an injunction against a person other than a delinquent taxpayer, the court:

(1) may issue an order temporarily restraining the person other than the delinquent taxpayer from engaging in business;

(2) shall hear the matter within fifteen days, except that the hearing may be held earlier if requested in writing by the person who is the subject of the temporary restraining order; and

(3) may without delay issue an injunction to the taxpayer in terms commanding the person who is the subject of the temporary restraining order to refrain from engaging in business until that person complies in full with the demand of the department to furnish security, if there is a showing that:

(a) the person who is the subject of the temporary restraining order has been given notice of the hearing for the injunction as required by law;

(b) a demand by the department has been made upon the taxpayer to furnish security;

(c) the taxpayer has not furnished security; and

(d) the secretary considers the collection from the person primarily responsible for the total amount of tax due or reasonably expected to become due to be in jeopardy.

D. A temporary restraining order or injunction shall not issue by provision of this section against any person who has furnished security in accordance with the provisions of Section 7-1-54 NMSA 1978. Upon a showing to the court by any person against whom a temporary restraining order or writ of injunction has issued by provision of this section that that person has furnished security in accordance with the provisions of Section 7-1-54 NMSA 1978, the court shall dissolve or set aside the temporary restraining order or injunction.

History: 1953 Comp., § 72-13-67, enacted by Laws 1965, ch. 248, § 55; 1979, ch. 144, § 47; 2001, ch. 56, § 14; 2003, ch. 439, § 5.

ANNOTATIONS

The 2003 amendment, effective July 1, 2003, rewrote the section.

The 2001 amendment, effective July 1, 2001, substituted "secretary" for "director" throughout the section, in Subsection A, substituted "the delinquent taxpayer ceases" for "he ceases", substituted "the delinquent taxpayer or person complies" for "he complies" and substituted "placed on the delinquent taxpayer or person by the

secretary" for "placed on him by the director"; in Subsection B, substituted "restraining the delinquent taxpayer" for "restraining him" and substituted "the taxpayer" for "he" or "him" throughout the subsection; and substituted "department" for "director" in Paragraph C(4).

Am. Jur. 2d, A.L.R. and C.J.S. references. — Payment of taxes to prevent closing of, or interference with, business as involuntary so as to permit recovery, 80 A.L.R.2d 1040.

7-1-54. Security for payment of tax.

A. Whenever it is necessary to ensure payment of any tax due or reasonably expected to become due, the department is authorized to require or allow any person subject to the provisions of the Tax Administration Act to furnish an acceptable surety bond in an appropriate amount, payable to the state and conditioned upon the payment to the state of the taxes therein identified on a date no later than that on which his liability for the payment thereof becomes conclusive, or to furnish other acceptable security in an appropriate amount and to require any person to furnish additional security as becomes necessary.

B. If, after notice of a requirement that he furnish security, any person neglects or refuses to comply, the department may demand of him by certified mail or in person that he furnish security in a stated amount. Upon the failure of any person to comply within ten days of the date of the making of such demand upon him for the furnishing of security, the secretary may institute a proceeding to enjoin him from doing business as provided in Section 7-1-53 NMSA 1978.

C. When a serious and immediate risk exists that an amount of tax due or reasonably expected to become due will not be paid, the secretary may require any person liable or prospectively liable for tax to furnish security as otherwise provided in the Tax Administration Act, and, upon a refusal by the person immediately to comply with the requirement, the secretary may without further notice of any kind apply to any district court of the state for an injunction as provided in Section 7-1-53 NMSA 1978.

D. The secretary may require taxpayers who protest, in accordance with Section 7-1-24 NMSA 1978, an assessment or the payment of any tax administered by the department under Subsection B of Section 7-1-2 NMSA 1978 to furnish security pursuant to this section with respect to amounts in excess of two hundred thousand dollars ($200,000) whenever the total amount protested, whether by a single protest or a series of protests by a single taxpayer with respect to one or more tax acts administered by the department under Subsection B of Section 7-1-2 NMSA 1978, exceeds two hundred thousand dollars ($200,000). If the taxpayer fails to provide security as required by this subsection, the department may take all appropriate actions authorized by the Tax Administration Act to collect the amount assessed, provided that any proceeds collected shall be held as the security required by this subsection until the protest is resolved.

History: 1953 Comp., § 72-13-68, enacted by Laws 1965, ch. 248, § 56; 1971, ch. 276, § 11; 1979, ch. 144, § 48; 1985, ch. 65, § 17; 1986, ch. 20, § 23.

ANNOTATIONS

Cross references. — For redemption of property before sale, *see* 7-1-47 NMSA 1978.

For when and to whom surety bonds are payable, *see* 7-1-57 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation § 1094.

Bond as condition of injunction in suits by or in interest of state or other political unit, or taxpayer, 83 A.L.R. 205.

Constitutionality, construction and application of statutes requiring bond or security for costs and expenses in taxpayers' action, 41 A.L.R.5th 47.

Constitutionality, construction, and application of statutes requiring bond or other security in taxpayers' action, 41 A.L.R.5th 47.

7-1-55. Contractor's bond for gross receipts; tax; penalty.

A. A person engaged in the construction business who does not have a principal place of business in New Mexico and who enters into a prime construction contract to be performed in this state shall, at the time such contract is entered into, furnish the secretary or the secretary's delegate with a surety bond, or other acceptable security, in a sum equivalent to the gross receipts to be paid under the contract multiplied by the sum of the applicable rate of the gross receipts tax imposed by Section 7-9-4 NMSA 1978 plus the applicable rate or rates of tax imposed pursuant to local option gross receipts taxes to secure payment of the tax imposed on the gross receipts from the contract and shall obtain a certificate from the secretary or the secretary's delegate that the requirements of this subsection have been met.

B. If the total sum to be paid under the contract is changed by ten percent or more subsequent to the date the surety bond or other acceptable security is furnished to the secretary or the secretary's delegate, such person shall increase or decrease, as the case may be, the amount of the bond or security within fourteen days after the change.

C. If a person fails to comply with Subsection A or B of this section, the secretary or the secretary's delegate:

(1) may demand of the person by certified mail or in person that the person comply. Upon the failure of the person to comply within ten days of the date of the mailing of such demand, the secretary may institute a proceeding to enjoin the person from doing business as provided in Section 7-1-53 NMSA 1978; or

(2) may, when a serious and immediate risk exists that an amount of tax due or reasonably expected to become due from the person on gross receipts from a prime construction contract will not be paid, request the person to comply with Subsections A and B of this section, and, upon failure immediately to comply, the secretary may, without further notice of any kind, apply to any district court of the state for an injunction as provided in Section 7-1-53 NMSA 1978.

D. Subsections A, B and C of this section shall not apply if the total gross receipts to be paid under the construction contract, including any change in such amount, are less than fifty thousand dollars ($50,000).

E. As used in this section, "construction" shall have the meaning set forth in Section 7-9-3.4 NMSA 1978 and "engaging in business" shall have the meaning set forth in Section 7-9-3.3 NMSA 1978.

F. A municipality or other political subdivision of the state or any agency of the state shall not issue a building or other construction permit to any person subject to the requirements of Subsection A of this section without first having been furnished by the construction contractor with the certificate from the secretary or the secretary's delegate specified in Subsection A of this section. Any person who issues any such permit before receiving the certificate shall be deemed guilty of a misdemeanor and, upon conviction, be fined not less than fifty dollars ($50.00) nor more than one hundred dollars ($100) for each offense.

History: 1953 Comp., § 72-13-68.1, enacted by Laws 1975, ch. 251, § 3; 1979, ch. 144, § 49; 1986, ch. 20, § 24; 1992, ch. 55, § 13; 2003, ch. 272, § 1.

ANNOTATIONS

Cross references. — For when and to whom surety bonds payable, *see* 7-1-57 NMSA 1978.

The 2003 amendment, effective July 1, 2003, substituted "the" for "any" following "the failure of" in Paragraph C(1) and rewrote Subsection E.

The 1992 amendment, effective July 1, 1992, substituted "local option gross receipts taxes" for "Sections 7-19-1 through 7-21-7 NMSA 1978" near the middle of Subsection A.

Am. Jur. 2d, A.L.R. and C.J.S. references. — State or local government's liability to subcontractors, laborers, or materialmen for failure to require general contractor to post bond, 54 A.L.R.5th 649.

7-1-56. Sale of or proceedings against security.

If liability for any tax for the payment of which security has been furnished becomes conclusive, the department may:

A. redeem for cash or, as specified in the Tax Administration Act for sale of property levied upon, sell such security; or

B. compel the surety directly to discharge the liability for payment of the principal debtor by serving demand upon him therefor.

History: 1953 Comp., § 72-13-69, enacted by Laws 1965, ch. 248, § 57; 1979, ch. 144, § 50; 2001, ch. 56, § 15.

ANNOTATIONS

Cross references. — For sale of property for taxes generally, *see* 7-1-42 to 7-1-52 NMSA 1978.

The 2001 amendment, effective July 1, 2001, substituted "department" for "director or his delegate" in the introductory language of the section.

7-1-57. Surety bonds.

Surety bonds accepted by the secretary as security in compliance with the provisions of Sections 7-1-54 and 7-1-55 NMSA 1978 shall be payable to the state of New Mexico upon demand by the secretary or the secretary's delegate and a showing to the surety that the principal debtor is a delinquent taxpayer.

History: 1953 Comp., § 72-13-70, enacted by Laws 1965, ch. 248, § 58; 1970, ch. 15, § 1; 1975, ch. 251, § 4; 1979, ch. 144, § 51; 2001, ch. 56, § 16.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, substituted "secretary" for "director" and "secretary or the secretary's delegate" for "director or his delegate".

7-1-58. Permanence of tax debt; civil actions to collect tax.

The total amount of all taxes due and assessed is a personal debt of the taxpayer to the state of New Mexico until paid and may be collected by civil action to that end commenced subject to the limitations in Section 7-1-19 NMSA 1978 by the secretary or attorney general in district court or in federal courts. Final judgments for taxes may be enforced in appropriate courts of other states by the secretary or the attorney general pursuant to agreement between the other state and this state or by attorneys or other agents in that state retained by the department or the attorney general. This remedy is in addition to any other remedy provided by law.

History: 1953 Comp., § 72-13-71, enacted by Laws 1965, ch. 248, § 59; 1971, ch. 32, § 2; 1979, ch. 144, § 52; 1992, ch. 55, § 14.

ANNOTATIONS

The 1992 amendment, effective July 1, 1992, deleted "or paid over" following "paid" in the first sentence and substituted all of the present language of that sentence following "commenced" for "by the director or attorney general in district court at any time or by actions commenced in federal courts", and inserted "secretary or the" and "or other agents" in the second sentence.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation § 5; 72 Am. Jur. 2d State and Local Taxation §§ 876 to 878.

Right to maintain action or proceeding in one state or country to collect or enforce tax due to another state or country or political subdivision thereof, 165 A.L.R. 796.

84 C.J.S. Taxation §§ 1 to 3; 85 C.J.S. §§ 1049 to 1080.

7-1-59. Jeopardy assessments.

A. If the secretary at any time reasonably believes that the collection of any tax for which a taxpayer is liable will be jeopardized by delay, the secretary may immediately make a jeopardy assessment of the amount of tax the payment of which to the state the secretary believes to be in jeopardy.

B. A jeopardy assessment is effective upon the delivery, in person or by certified mail, to the taxpayer against whom the liability for tax is asserted, of a document entitled "notice of jeopardy assessment of taxes", issued in the name of the secretary, stating the nature and amount of the taxes assertedly owed by the taxpayer to the state, demanding of the taxpayer the immediate payment of that amount of tax and briefly informing the taxpayer of the steps that may be taken against the taxpayer as well as of the remedies available to the taxpayer.

C. Notwithstanding any other provision of the Tax Administration Act, if any taxpayer against whom a jeopardy assessment has been made neglects or refuses either to pay the amount of tax demanded of the taxpayer or furnish satisfactory security therefor within five days of the service upon the taxpayer of the notice of jeopardy assessment, the secretary may immediately proceed to collect the tax by levy, as provided in Section 7-1-31 NMSA 1978, on sufficient property of the taxpayer to satisfy the deficiency, protect the interests of the state by, as provided in Section 7-1-53 NMSA 1978, enjoining the taxpayer from doing business in New Mexico or both.

D. A taxpayer to whom a jeopardy assessment has been made may cause the procedure of levy or injunction as set forth in Subsection C of this section to be stayed by filing with the department acceptable security in an amount equal to the amount of

taxes assessed, as provided in Section 7-1-54 NMSA 1978. A taxpayer to whom a jeopardy assessment has been made may dispute the jeopardy assessment either by furnishing security and otherwise following the procedures set forth in Section 7-1-24 NMSA 1978 or by paying the tax and claiming a refund as provided by Section 7-1-26 NMSA 1978.

History: 1953 Comp., § 72-13-72, enacted by Laws 1965, ch. 248, § 60; 1979, ch. 144, § 53; 1993, ch. 30, § 9.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "secretary" for "director" in Subsections A, B, and C; substituted "department" for "division" in the first sentence of Subsection D; and made related and other minor stylistic changes.

Enforcement action. State officials are not entitled to absolute immunity for jeopardy tax assessments which are primarily investigatory and administrative in nature. *Perez v. Ellington*, 421 F.3d 1128 (10th Cir. 2005).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation § 711.

7-1-60. Estoppel against state.

In any proceeding pursuant to the provisions of the Tax Administration Act, the department shall be estopped from obtaining or withholding the relief requested if it is shown by the party adverse to the department that the party's action or inaction complained of was in accordance with any regulation effective during the time the asserted liability for tax arose or in accordance with any ruling addressed to the party personally and in writing by the secretary, unless the ruling had been rendered invalid or had been superseded by regulation or by another ruling similarly addressed at the time the asserted liability for tax arose.

History: 1953 Comp., § 72-13-73, enacted by Laws 1965, ch. 248, § 61; 1979, ch. 144, § 54; 1993, ch. 30, § 10.

ANNOTATIONS

The 1993 amendment, effective June 18, 1993, substituted "department" for "director or the division" and for "director" near the beginning; substituted "secretary" for "director" near the end; and made minor stylistic changes.

State was not estopped from applying extended limitation period to taxpayer, since taxpayer had not acted reasonably in relying on taxation and revenue department's oral representations that department would not change its policy regarding taxation of

cigarette sales on Indian reservations. *Taxation & Revenue Dep't v. Bien Mur Indian Mkt. Ctr., Inc*., 1989-NMSC-015, 108 N.M. 228, 770 P.2d 873.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation § 712.

Estoppel of state or local government in tax matters, 21 A.L.R.4th 573.

7-1-61. Duty of successor in business.

A. As used in Sections 7-1-61 through 7-1-63 NMSA 1978, "tax" means the amount of tax due, including penalties and interest, imposed by provisions of the taxes or tax acts set forth in Subsections A and B of Section 7-1-2 NMSA 1978, except the Income Tax Act.

B. The tangible and intangible property used in any business remains subject to liability for payment of the tax due on account of that business to the extent stated herein, even though the business changes hands.

C. If any person liable for any amount of tax from operating a business transfers that business to a successor, the successor shall place in a trust account sufficient money from the purchase price or other source to cover such amount of tax until the secretary or secretary's delegate issues a certificate stating that no amount is due, or the successor shall pay over the amount due to the department upon proper demand for, or assessment of, that amount due by the secretary.

History: 1953 Comp., § 72-13-74, enacted by Laws 1965, ch. 248, § 62; 1966, ch. 56, § 1; 1968, ch. 52, § 1; 1975, ch. 116, § 4; 1979, ch. 144, § 55; 1983, ch. 211, § 28; 1989, ch. 325, § 10; 1997, ch. 67, § 5; 2017, ch. 63, § 28.

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, provided that penalties and interest are included in the meaning of "tax" for certain sections of the Tax Administration Act; in Subsection A, after "through", changed "7-1-64" to "7-1-63", and after "tax due", added "including penalties and interest".

The 1997 amendment, effective July 1, 1997, rewrote Subsections A and C.

The 1989 amendment, effective June 16, 1989, in Subsection A, substituted "or any municipal or county sales or gross receipts tax" for "the County Sales Tax Act, the Municipal Gross Receipts Tax Act or the Supplemental Municipal Gross Receipts Tax Act"; in Subsection C, substituted "the secretary" for "the director or his delegate" in two places and "department" for "division".

Question of fact whether business was sold or purchased. — Whether previous owner sold out its business and whether plaintiff purchased that business is a question of fact and, accordingly, this court examines the facts. In doing so, it views the evidence in the light most favorable to the commissioner's (secretary's) decision. *Sterling Title Co. v. Comm'r of Revenue*, 1973-NMCA-086, 85 N.M. 279, 511 P.2d 765.

Business need not be active for section to apply. — The business which changed hands need not be an active business for the provisions of this section to apply. *Sterling Title Co. v. Comm'r of Revenue*, 1973-NMCA-086, 85 N.M. 279, 511 P.2d 765.

Taking over assets of insolvent business meets requirement. — The taking over of assets of an insolvent or defunct business was sufficient to meet the statutory requirements. *Sterling Title Co. v. Comm'r of Revenue*, 1973-NMCA-086, 85 N.M. 279, 511 P.2d 765.

Successor in business and mere continuation of business. — Where the New Mexico taxation and revenue department assessed appellant, an automobile repossession business, as a successor in business to, and a mere continuation of, a defunct corporation that was also in the business of automobile repossessions, for unpaid gross receipts taxes, and where appellant protested the assessment, claiming that it was not a successor in business to the defunct corporation, the administrative hearing officer did not err in its decision and order determining appellant to be a successor in business, as well as a mere continuation, of the defunct corporation, based on the evidence that appellant took the defunct corporation's office equipment, liability insurance policy and tow truck to provide the same services using the same equipment with the same employees to the same customers and at the same business location. *High Desert Recovery v. N.M. Tax'n & Revenue Dep't*, 2022-NMCA-048, cert. denied.

Duty is on the successor in business to cover tax liability. — This statute places the duty on the successor who acquires the business from the entity liable for the taxes to set aside from the purchase price, or other sources, sufficient funds to cover any remaining tax liability from the previous owner. The policy behind placing this duty on the successor is to secure collection of taxes by imposing derivative liability on purchasers of a business who are generally in a better financial position to collect or pay the tax from the sale price than the seller quitting the business. *Hi-Country Buick GMC v. N.M. Taxation and Revenue Dep't*., 2016-NMCA-027, cert. denied.

This section limits the tax that can be collected. — This section specifically deals with the narrow circumstances involving successor in business tax liability, and limits the tax that can be collected to the amount of tax imposed by the provisions of 7-1-2 NMSA 1978. *Hi-Country Buick GMC v. N.M. Taxation and Revenue Dep't*., 2016-NMCA-027, cert. denied.

Where the taxation and revenue department imposed a tax assessment on appellant, as a successor in business to a car dealership, including penalties and interest, after appellant acquired the car dealership from the prior owners who defaulted on a

promissory note, and where appellant acquired inventory from the prior dealership, entered into a management agreement for the continued operation of the car dealership, and where certain liabilities of the prior dealership were paid, appellant, as a successor in business, was liable for unpaid withholding and gross receipts taxes, but was not liable for penalties and interest, because the provisions of 7-1-2 NMSA 1978 do not impose penalties or interest for withholding tax or gross receipts tax. *Hi-Country Buick GMC v. N.M. Taxation and Revenue Dep't*., 2016-NMCA-027, cert. denied.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation § 216.

Liability of purchaser of personal property for taxes assessed against former owner, 41 A.L.R. 187.

85 C.J.S. Taxation §§ 979 to 983.

7-1-62. Duty of secretary; release of successor.

A. Within thirty days after receiving from the successor a written request for a certificate, or within thirty days from the date the former owner's records are made available for audit, whichever period expires the later, but in any event not later than sixty days after receiving the request, the secretary or secretary's delegate shall either issue the certificate or mail a notice to the successor of the amount of tax due from operating the business for which the former owner is liable and which must be paid as a condition of issuing the certificate.

B. Failure of the department to mail or deliver the notice of tax due within the required time releases the successor from any obligation as a successor under Section 7-1-61 NMSA 1978.

History: 1953 Comp., § 72-13-75, enacted by Laws 1965, ch. 248, § 63; 1979, ch. 144, § 56; 1997, ch. 67, § 6.

ANNOTATIONS

The 1997 amendment, effective July 1, 1997, substituted "secretary" for "director" and "successor" for "purchaser" in the section heading and throughout the section; in Subsection A, inserted "due from operating the business" following "of the amount of tax" and substituted "former owner" for "vendor" at the end of the sentence; and in Subsection B, inserted "or deliver" following "to mail", inserted "of tax due" following "the notice", and substituted "as a successor under" for "to withhold from the purchase price and releases the property from the operation of".

7-1-63. Assessment of tax due; application of payment.

A. If, after any business is transferred to a successor, any tax from operating the business for which the former owner is liable remains due, the successor shall pay the amount due within thirty days. If the successor fails to pay within thirty days of the date notice provided for in Section 7-1-62 NMSA 1978 was mailed or if a certificate was not requested, the department shall assess the successor the amount due.

B. Upon the payment of the amount due from the amount placed in a trust account as provided by Subsection C of Section 7-1-61 NMSA 1978, the balance, if any, remaining may be released to the former owner or otherwise lawfully disposed of. The former owner shall be credited with the payment of tax.

C. A successor may discharge an assessment made pursuant to this section by paying to the department the full value of the transferred tangible and intangible property. The successor shall remain liable for the amount assessed, however, until the amount is paid if:

(1) the business has been transferred to evade or defeat any tax;

(2) the transfer of the business amounts to a de facto merger, consolidation or mere continuation of the transferor's business; or

(3) the successor has assumed the liability.

History: 1953 Comp., § 72-13-76, enacted by Laws 1965, ch. 248, § 64; 1979, ch. 144, § 57; 1997, ch. 67, § 7.

ANNOTATIONS

The 1997 amendment, effective July 1, 1997, substituted "assessment of tax due" for "demand for payment" in the section heading; rewrote Subsection A; substituted "due from the amount placed in a trust account" for "required to be withheld" and made a stylistic change in Subsection B; and added Subsection C.

"Successor" defined. — A successor means any transferee of a business or property of a business, except to the extent it would be materially inconsistent with the rights of secured creditors that have perfected security interests or other perfected liens on the business or property of the business. Implicit in the taxation and revenue department's definition of "successor" is the notion that the future intent of a transferee of a business, once it has received the business, is an important aspect of determining whether it is a "successor". A successor may include a business that is acquired and run for an indefinite period by a creditor of the predecessor, but does not include one who acquires and operates a business for a limited period of time in order to protect its collateral. The distinguishing feature is whether the entity acquiring the business intends to retain and operate the business. *Hi-Country Buick GMC v. N.M. Taxation and Revenue Dep't.*, 2016-NMCA-027, cert. denied.

Where the taxation and revenue department imposed a tax assessment on appellant, as a successor in business to a car dealership, including penalties and interest, after appellant acquired the car dealership from the prior owners who defaulted on a promissory note, and where appellant acquired inventory from the prior dealership, entered into a management agreement for the continued operation of the car dealership, and where certain liabilities of the prior dealership were paid, there was a presumption that appellant was a successor in business and appellant failed to rebut this presumption. *Hi-Country Buick GMC v. N.M. Taxation and Revenue Dep't*., 2016-NMCA-027, cert. denied.

Successor in business and mere continuation of business. — Where the New Mexico taxation and revenue department assessed appellant, an automobile repossession business, as a successor in business to, and a mere continuation of, a defunct corporation that was also in the business of automobile repossessions, for unpaid gross receipts taxes, and where appellant protested the assessment, claiming that it was not a successor in business to the defunct corporation, the administrative hearing officer did not err in its decision and order determining appellant to be a successor in business, as well as a mere continuation, of the defunct corporation, based on the evidence that appellant took the defunct corporation's office equipment, liability insurance policy and tow truck to provide the same services using the same equipment with the same employees to the same customers and at the same business location. *High Desert Recovery v. N.M. Tax'n & Revenue Dep't*, 2022-NMCA-048, cert. denied.

7-1-64. Repealed.

ANNOTATIONS

Repeals. — Laws 1997, ch. 67, § 10 repealed 7-1-64 NMSA 1978, as enacted by Laws 1965, ch. 248, § 65, relating to failure to withhold, effective July 1, 1997. For provisions of former section, *see* the 1996 NMSA 1978 on *NMOneSource.com.*

7-1-65. Reciprocal enforcement of tax judgments.

A. The courts of the state shall recognize and enforce the tax judgments of other jurisdictions to the same extent to which the courts of the other jurisdictions would recognize and enforce similar tax judgments of this state or its political subdivisions, agencies or instrumentalities, except as provided in Subsection C of this section.

B. The secretary, with the permission of the attorney general, or the attorney general may employ on a contingency fee basis only members of the bars of other jurisdictions to recover taxes due this state.

C. All property in this state of a judgment debtor is exempt from execution issuing from a tax judgment of another jurisdiction that is in favor of any state for failure to pay that state's income tax on benefits received from a pension or other retirement plan.

History: 1953 Comp., § 72-13-78, enacted by Laws 1965, ch. 248, § 66; 1992, ch. 55, § 15; 1994, ch. 48, § 1.

ANNOTATIONS

The 1994 amendment, effective May 18, 1994, added the exception clause at the end of Subsection A and added Subsection C.

Applicability. — Laws 1994, ch. 48, § 3 made the act applicable to judgments filed with a court in New Mexico on or after May 18, 1994.

The 1992 amendment, effective July 1, 1992, rewrote Subsection B, which formerly read: "The attorney general may employ members of the bars of other jurisdictions to recover taxes due this state and may fix their fees".

Law reviews. — For article, "Enforcement of tribal court Tax Judgments Outside of Indian Country: The Ways and Means", see 34 N.M.L. Rev. 339 (2004).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation § 878.

Right to maintain action or proceeding in one state or country to collect or enforce tax due to another state or country or political subdivision thereof, 165 A.L.R. 796.

7-1-66. Immunity of property of Indian nations, tribes or pueblos and of the United States.

Liens will attach or levy may be made by terms of any provision of the Tax Administration Act to or on property belonging to the United States of America or to an Indian nation, tribe or pueblo or to any Indian only to the extent allowed by law.

History: 1953 Comp., § 72-13-79, enacted by Laws 1965, ch. 248, § 67; 1995, ch. 70, § 3.

ANNOTATIONS

The 1995 amendment, effective July 1, 1995, inserted "nations" and "or pueblos" in the section heading, and substituted "Indian nation, tribe or pueblo or to any Indian" for "Indian tribe an Indian pueblo or any Indian".

New Mexico may not tax income and gross receipts of Indians residing on a reservation when the income and gross receipts involved are derived solely from activities within the reservation. *Hunt v. O'Cheskey*, 1973-NMCA-026, 85 N.M. 381, 512 P.2d 954, cert. quashed, 85 N.M. 388, 512 P.2d 961.

Indian's fee interest not taxable but non-Indian leasehold is. — Since non-Indians entered into a long-term lease with an Indian tribe, under which the non-Indians were to develop the leased land as a residential subdivision, state's ad valorem tax provision was broad enough to encompass the lessee's interest in the otherwise tax-exempt property. Therefore, whatever interest that was not part of the fee and could be taxed as separate from the fee interest of the Indians was taxable by the state, but any tax that purported to touch or create a lien on the land could not be levied by the state. *Norvell v. Sangre de Cristo Dev. Co*., 372 F. Supp. 348 (D.N.M. 1974), *rev'd on other grounds*, 519 F.2d 370 (10th Cir. 1975).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation §§ 221, 228, 235, 236.

Power of state to tax debts from United States under contracts other than loans, 30 A.L.R. 1462.

Federal government or agencies of federal government as subject to payment of tax or fee imposed upon, or for, recording or filing instrument, 124 A.L.R. 1267.

Consent to state taxation of federal property or instrumentalities as affecting exemption thereof under provision of state enabling act, constitution or statute, 168 A.L.R. 547.

84 C.J.S. Taxation §§ 291 to 304.

7-1-67. Interest on deficiencies.

A. If a tax imposed is not paid on or before the day on which it becomes due, interest shall be paid to the state on that 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 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;

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

(4) if a managed audit is completed by the taxpayer on or before the date required, as provided in the agreement for the managed audit, and payment of any tax found to be due is made in full within one hundred eighty days of the date the secretary

has mailed or delivered an assessment for the tax to the taxpayer, no interest shall be due on the assessed tax;

(5) when, as the result of an audit or a managed audit, an overpayment of a tax is credited against an underpayment of tax pursuant to Section 7-1-29 NMSA 1978, interest shall accrue from the date the tax was due until the tax is deemed paid;

(6) if the department does not issue an assessment for the tax program and period within the time provided in Subsection D of Section 7-1-11.2 NMSA 1978, interest shall be paid from the first day following the day on which the tax becomes due until the tax is paid, excluding the period between either:

(a) the one hundred eightieth day after giving a notice of outstanding records or books of account and the date of the assessment of the tax; or

(b) the ninetieth day after the expiration of the additional time requested by the taxpayer to comply pursuant to Section 7-1-11.2 NMSA 1978, if such request was granted, and the date of the assessment of the tax; and

(7) if the taxpayer was not provided with proper notices as required in Section 7-1-11.2 NMSA 1978, interest shall be paid from the first day following the day on which the tax becomes due until the tax is paid, excluding the period between one hundred eighty days prior to the date of assessment and the date of assessment.

B. Interest due to the state under Subsection A or D of this section shall be at the underpayment rate established for individuals pursuant to Section 6621 of the Internal Revenue Code 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.

History: 1953 Comp., § 72-13-80, enacted by Laws 1965, ch. 248, § 68; 1982, ch. 18, § 14; 1990, ch. 86, § 8; 1991, ch. 97, § 1; 1993, ch. 5, § 10; 1996, ch. 15, § 7; 2000, ch. 28, § 11; 2001, ch. 16, § 7; 2003, ch. 398, § 13; 2007, ch. 45, § 2; 2007, ch. 262, § 4; 2013, ch. 27, § 11.

ANNOTATIONS

Cross references. — For managed audits, *see* 7-1-11.1 NMSA 1978.

For collection of penalties and interest, *see* 7-1-30 NMSA 1978.

The 2013 amendment, effective July 1, 2013, provided that interest shall be paid at the underpayment rate for individuals pursuant to the Internal Revenue Code; in Subparagraph (b) of Paragraph (6) of Subsection A, after "taxpayer to comply", added “pursuant to Section 7-1-11.2 NMSA 1978”; and in Subsection B, after "shall be at the", added "underpayment".

The 2007 amendment, effective July 1, 2007, in Paragraph (4) of Subsection A, increased the time to pay taxes found to be due by a managed audit from thirty to one hundred eighty days.

The 2003 amendment, effective July 1, 2003, added Subsections A(6) and A(7).

The 2001 amendment, effective July 1, 2001, added Paragraphs A(4) and (5).

The 2000 amendment, effective January 1, 2001, substituted "on a daily basis" for "at the rate of one and one-fourth percent per month or any fraction thereof," in Subsection B.

The 1996 amendment, effective July 1, 1996, added the proviso at the end of Subsection B.

The 1993 amendment, effective July 1, 1993, in Subsection A, substituted "except" for "provided, however," at the end of the introductory paragraph, inserted the paragraph designation "(1)", and added Paragraphs (2) and (3); in Subsection B, inserted "or D" and deleted "except that 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"; deleted former Subsection C, relating to the effect of payment of any tax within ten days after demand; redesignated former Subsections D and E as Subsections C and D; and, in the first sentence of Subsection D, deleted "the interest due under this subsection shall be one and one quarter percent of the amount" preceding "required to be paid".

The 1991 amendment, effective April 2, 1991, added the proviso in Subsection A and rewrote the final sentence in Subsection E which read "Interest due under this subsection shall be in addition to any interest due under Subsection A of this section".

The 1990 amendment, effective July 1, 1990, substituted "Interest due to the state under Subsection A of this section shall be" for "Interest shall be due to the state" at the beginning of Subsection B and added Subsection E.

No offset of overpayment against prior liability. — Interest on underpayment of taxes is calculated without regard to receipt by the taxation and revenue department of any overpayment of taxes. The department, once a claim for refund is made, is

authorized only to allow a taxpayer claiming a refund for overpayment of gas production taxes to credit the refund against current or future tax liabilities. *Amoco Prod. Co. v. N.M. Taxation & Revenue Dep't*, 1994-NMCA-086, 118 N.M. 72, 878 P.2d 1021.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation § 858.

85 C.J.S. Taxation §§ 1605, 1617 to 1624.

7-1-67.1. Repealed.

ANNOTATIONS

Repeals. — Laws 1993, ch. 5, § 11, repealed 7-1-67.1 NMSA 1978, as enacted by Laws 1982, ch. 18, § 25, relating to the effective date of the increase in the interest rate pursuant to § 7-1-67 NMSA 1978, effective July 1, 1993. For provisions of former section, *see* the 1992 NMSA 1978 on *NMOneSource.com.*

7-1-68. Interest on overpayments.

A. As provided in this section, interest shall be allowed and paid on the amount of tax overpaid by a person that is subsequently refunded or credited to that person.

B. Interest on overpayments of tax shall accrue and be paid at the underpayment rate established pursuant to Section 6621 of the Internal Revenue Code, 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 apply to amounts due under the compact or other agreement.

C. Unless otherwise provided by this section, interest on an overpayment not arising from an assessment by the department shall be paid from the date of the claim for refund until a date preceding by not more than thirty days the date of the credit or refund to any person; and interest on an overpayment arising from an assessment by the department shall be paid from the date of overpayment until a date preceding by not more than thirty days the date of the credit or refund to any person.

D. No interest shall be allowed or paid with respect to an amount credited or refunded if:

(1) the amount of interest due is less than one dollar ($1.00);

(2) the credit or refund is made within:

(a) fifty-five days of the date of the complete claim for refund of income tax, pursuant to either the Income Tax Act [Chapter 7, Article 2 NMSA 1978] or the

Corporate Income and Franchise Tax Act [Chapter 7, Article 2A NMSA 1978] for the tax year immediately preceding the tax year in which the claim is made;

(b) sixty days of the date of the complete claim for refund of any tax not provided for in this paragraph;

(c) seventy-five days of the date of the complete claim for refund of gasoline tax to users of gasoline off the highways;

(d) one hundred twenty days of the date of the complete claim for refund of tax imposed pursuant to the Resources Excise Tax Act [Chapter 7, Article 25 NMSA 1978], the Severance Tax Act [7-26-1 to 7-26-8 NMSA 1978], the Oil and Gas Severance Tax Act [Chapter 7, Article 29 NMSA 1978], the Oil and Gas Conservation Tax Act [Chapter 7, Article 30 NMSA 1978], the Oil and Gas Emergency School Tax Act [Chapter 7, Article 31 NMSA 1978], the Oil and Gas Ad Valorem Production Tax Act [Chapter 7, Article 32 NMSA 1978], the Natural Gas Processors Tax Act [Chapter 7, Article 33 NMSA 1978] or the Oil and Gas Production Equipment Ad Valorem Tax Act [Chapter 7, Article 34 NMSA 1978]; or

(e) one hundred twenty days of the date of the complete claim for refund of income tax, pursuant to the Income Tax Act or the Corporate Income and Franchise Tax Act, for any tax year more than one year prior to the year in which the claim is made;

(3) Sections 6611(f) and 6611(g) of the Internal Revenue Code, as those sections may be amended or renumbered, prohibit payment of interest for federal income tax purposes;

(4) the credit results from overpayments found in an audit of multiple reporting periods and applied to underpayments found in that audit or refunded as a net overpayment to the taxpayer pursuant to Section 7-1-29 NMSA 1978;

(5) the department applies the credit or refund to an intercept program, to the taxpayer's estimated payment prior to the due date for the estimated payment or to offset prior liabilities of the taxpayer pursuant to Subsection E of Section 7-1-29 NMSA 1978;

(6) the credit or refund results from overpayments the department finds pursuant to Subsection F of Section 7-1-29 NMSA 1978 that exceed the refund claimed by the taxpayer on the return; or

(7) the refund results from a tax credit pursuant to the Investment Credit Act [Chapter 7, Article 9A NMSA 1978], Laboratory Partnership with Small Business Tax Credit Act [Chapter 7, Article 9E NMSA 1978], Technology Jobs and Research and Development Tax Credit Act [Chapter 7, Article 9F NMSA 1978], Film Production Tax Credit Act [Chapter 7, Article 2F NMSA 1978], Affordable Housing Tax Credit Act [Chapter 7, Article 9I NMSA 1978] or a rural job tax credit or high-wage jobs tax credit.

E. Nothing in this section shall be construed to require the payment of interest upon interest.

History: 1953 Comp., § 72-13-81, enacted by Laws 1965, ch. 248, § 69; 1971, ch. 266, § 1; 1979, ch. 144, § 59; 1982, ch. 18, § 15; 1989, ch. 325, § 11; 1994, ch. 44, § 1; 1996, ch. 15, § 8; 2000, ch. 28, § 12; 2001, ch. 16, § 8; 2002, ch. 13, § 1; 2003, ch. 2, § 1; 2003, ch. 439, § 6; 2007, ch. 45, § 3; 2011, ch. 177, § 1; 2013, ch. 27, § 12; 2016 (2nd S.S.), ch. 3, § 2; 2017, ch. 63, § 29.

ANNOTATIONS

Cross references. — For the authority to make refunds or credits, *see* 7-1-29 NMSA 1978.

For Section 6611 of the United States Internal Revenue Code, *see* 26 U.S.C.S. § 6611.

The 2017 amendment, effective June 16, 2017, included additional tax credits to the current list of tax credits for which no interest is allowed or paid, and clarified certain language; in Subsection D, Paragraph D(2), added "complete" preceding each occurrence of "claim for refund" throughout the paragraph, and in Paragraph D(7), added "Investment Credit Act, Laboratory Partnership with Small Business Tax Credit Act, Technology Jobs and Research and Development Tax Credit Act", and "Affordable Housing Tax Credit Act", and after "or a", added "rural job tax credit or".

The 2016 (2nd S.S.) amendment, effective October 19, 2016, provided that no interest shall be allowed or paid with respect to an amount credited or refunded if the refund results from a tax credit pursuant to a high-wage jobs tax credit; in Paragraph D(7), after "refund results from a", deleted "film production", after "tax credit pursuant to", deleted "Section 7-2F-1 NMSA 1978" and added "the Film Production Tax Credit Act or a high-wage jobs tax credit".

The 2013 amendment, effective July 1, 2013, provided that interest shall be paid at the underpayment rate for individuals pursuant to the Internal Revenue Code; prohibits payment of interest on a refund of any tax that is not specifically provided for and that is made within sixty days after a claim for refund; in Subsection B, after "be paid at the", added "underpayment"; added Subparagraph (b) of Paragraph (2) of Subsection D; between Subparagraph (d) of Paragraph (2) of Subsection D and Subparagraph (e) of Paragraph (2) of Subsection D, deleted "(3) the credit or refund is made within"; and deleted former Paragraph (5) of Subsection D, which prohibited payment of interest if a credit or refund is made within sixty days of a claim of refund of any tax other than income tax.

The 2011 amendment, effective July 1, 2011, prohibited the payment of interest on refunds from a film production tax credit.

The 2007 amendment, effective January 1, 2008, in Subsection B, changed the interest rate from fifteen percent a year to the rate established for individuals pursuant to Section 6621 of the Internal Revenue Code and adds Subparagraph (c) of Paragraph (2) of Subsection D.

The 2003 amendments, effective July 1, 2003, in Subsection B, deleted "payable" following "interest" and inserted "accrue and" following "tax shall"; rewrote Paragraph D(2) and added Paragraphs D(7) and (8).

The 2002 amendment, effective May 15, 2002, added the Subparagraph designation D(2)(a), and added Subparagraph D(2)(b); deleted Paragraph D(6), which read: "gasoline tax is refunded or credited under the Gasoline Tax Act to users of gasoline off the highways"; and redesignated the following paragraph accordingly.

The 2001 amendment, effective July 1, 2001, added Paragraph D(7).

The 2000 amendment, effective January 1, 2001, substituted "on a daily basis" for "at the rate of one and one-fourth percent per month or fraction thereof;" in Subsection B; deleted "or the Banking and Financial Corporations Tax Act" following "Franchise Tax Act" in Subsection D(3); and added Subsection E.

The 1996 amendment, effective July 1, 1996, added the proviso at the end of Subsection B and deleted "the Corporate Income Tax Act" following "the Income Tax Act" in Paragraph D(3).

The 1994 amendment, effective July 1, 1994, substituted "sixty" for "one hundred twenty" in Paragraph D(5).

The 1989 amendment, effective June 16, 1989, rewrote the section to the extent that a detailed comparison would be impracticable.

No offset of overpayment against prior liability. — Interest on underpayment of taxes is calculated without regard to receipt by the taxation and revenue department of any overpayment of taxes. The department, once a claim for refund is made, is authorized only to allow a taxpayer claiming a refund for overpayment of gas production taxes to credit the refund against current or future tax liabilities. *Amoco Prod. Co. v. N.M. Taxation & Revenue Dep't*, 1994-NMCA-086, 118 N.M. 72, 878 P.2d 1021.

Refund requirement not state obligation which creates vested right. — Statutory requirement that the state pay interest on refunds of taxes judicially determined to have been illegally collected, cannot be said to create an obligation of the state to the taxpayer which gives rise to a vested right in the taxpayer within the meaning of N.M. Const., art. IV, § 34. *Bradbury & Stamm Constr. Co. v. Bureau of Revenue*, 1962-NMSC-078, 70 N.M. 226, 372 P.2d 808.

Requirement to pay interest statutory liability in nature of penalty. — The requirement that the state pay interest on protested taxes judicially determined to have been illegally collected is only a statutory liability and is in the nature of a penalty. *Bradbury & Stamm Constr. Co. v. Bureau of Revenue*, 1962-NMSC-078, 70 N.M. 226, 372 P.2d 808.

If interest rate changes, old rate before, new rate after. — If the statutory rate of interest on tax refunds is changed after the cause of action accrues, the interest should be allowed at the old rate before, and at the new rate after, the altering enactment takes effect. *Bradbury & Stamm Constr. Co. v. Bureau of Revenue*, 1962-NMSC-078, 70 N.M. 226, 372 P.2d 808.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation §§ 1068, 1069.

Right to interest on tax refunds, 57 A.L.R. 357, 76 A.L.R. 1012, 112 A.L.R. 1183, 88 A.L.R.2d 823.

Interest on tax refund or credit in absence of specific controlling statute, 88 A.L.R.2d 823.

Effect of delay in receipt or negotiation of refund check in determining right to interest under § 6611 of the Internal Revenue Code (26 USCA § 6611), 145 A.L.R. Fed. 437.

7-1-69. Civil penalty for failure to pay tax or file a return.

A. Except as provided in Subsection C of this section, in the case of failure due to negligence or disregard of department rules and regulations, but without intent to evade or defeat a tax, to pay when due the 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 a tax is due, there shall be added to the amount assessed a penalty in an amount equal to 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 twenty 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 twenty 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, Corporate Income and Franchise Tax Act or taxes administered by the department pursuant to Subsection B of Section 7-1-2 NMSA 1978.

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

C. 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.

D. In the case of failure, with willful intent to evade or defeat a tax, to pay when due the 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.

E. If demand is made for payment of a tax, including penalty imposed pursuant to this section, and if the tax is paid within ten days after the date of such demand, no penalty shall be imposed for the period after the date of the demand with respect to the amount paid.

F. If a taxpayer makes electronic payment of a tax but the payment does not include all of the information required by the department pursuant to the provisions of Section 7-1-13.1 NMSA 1978 and if the department does not receive the required information within five business days from the later of the date a request by the department for that information is received by the taxpayer or the due date, the taxpayer shall be subject to a penalty of two percent per month or any fraction of a month from the fifth day following the date the request is received. If a penalty is imposed under Subsection A of this section with respect to the same transaction for the same period, no penalty shall be imposed under this subsection.

G. No penalty shall be imposed on:

(1) tax due in excess of tax paid in accordance with an approved estimated basis pursuant to Section 7-1-10 NMSA 1978;

(2) tax due as the result of a managed audit; or

(3) tax that is deemed paid by crediting overpayments found in an audit or managed audit of multiple periods pursuant to Section 7-1-29 NMSA 1978.

History: 1953 Comp., § 72-13-82, enacted by Laws 1965, ch. 248, § 70; 1970, ch. 20, § 1; 1973, ch. 146, § 1; 1982, ch. 18, § 16; 1985, ch. 65, § 18; 1986, ch. 20, § 25; 1987, ch. 169, § 6; 1988, ch. 99, § 4; 1990, ch. 86, § 9; 1992, ch. 55, § 16; 1996, ch. 15, § 9; 1997, ch. 67, § 8; 2000, ch. 28, § 13; 2001, ch. 16, § 9; 2003, ch. 398, § 14; 2007, ch. 45, § 4; 2021, ch. 65, § 5.

ANNOTATIONS

Cross references. — For managed audits, *see* 7-1-11.1 NMSA 1978.

For collection of penalties and interest, *see* 7-1-30 NMSA 1978.

The 2021 amendment, effective July 1, 2021, provided that a five dollar minimum late filing penalty shall not apply to taxes levied under the Corporate Income and Franchise Tax Act; and in Subsection A, Paragraph A(3), after "Income Tax Act", added "Corporate Income and Franchise Tax Act".

The 2007 amendment, effective January 1, 2008, changed the maximum rate from ten to twenty percent in Paragraphs (1) and (2) of Subsection A.

The 2003 amendment, effective July 1, 2003, in Subsection A substituted "C" for "B" following "provided in Subsection" near the beginning, inserted "department" preceding "rules and regulations" near the middle, substituted "assessed a" for "as" following "added to the amount" near the end, and inserted "in an amount equal to" preceding "the greater of" near the end; and added present Subsection B and redesignated the subsequent subsections accordingly.

The 2001 amendment, effective July 1, 2001, added Subsection F.

The 2000 amendment, effective July 1, 2000, added Subsection E.

The 1996 amendment, effective July 1, 1996, added "Except as provided in Subsection B of this section," at the beginning of Subsection A, added Subsection B, and redesignated former Subsections B and C as Subsections C and D.

The 1992 amendment, effective July 1, 1992, rewrote Subsection A, restructured the former three sentences of Subsection C so as to constitute a single sentence, while making minor stylistic changes therein, and, in Subsection C, substituted all of the present language following "imposed by this subsection" for "shall be in addition to any penalty due under Subsection A of this section".

The 1990 amendment, effective July 1, 1990, added Subsection C.

I. GENERAL CONSIDERATION.

Section is divided into two parts: penalty for fraud and penalty for negligence. *Stohr v. N.M. Bureau of Revenue*, 1976-NMCA-118, 90 N.M. 43, 559 P.2d 420, cert. denied, 90 N.M. 254, 561 P.2d 1347 (1977) (decided under prior law).

Presumption of correctness, in 7-1-17 NMSA 1978, also applies to this penalty section. *Tiffany Constr. Co. v. Bureau of Revenue*, 1976-NMCA-127, 90 N.M. 16, 558 P.2d 1155, cert. denied, 90 N.M. 255, 561 P.2d 1348 (1977).

Penalty provision not denial of equal protection. — Penalties imposed on taxpayers based upon negligent failure to pay taxes when due did not deny the taxpayers equal protection of the law. *Gathings v. Bureau of Revenue*, 1975-NMCA-016, 87 N.M. 334, 533 P.2d 107.

The date of assessment determines the applicable penalty to be imposed. — The statutory penalty is determined at the time of assessment and the law in place at the time of assessment governs the penalty to be imposed. *GEA Integrated Cooling Technology v. N.M. Taxation & Rev. Dep't*, 2012-NMCA-010, 268 P.3d 48.

Application of increased penalty to prior tax period was not retroactive. — The application of a new statutory penalty in place at the time of the assessment of tax liabilities that arose for tax periods occurring prior to the effective date of the statutory amendment that imposes the new penalty gives the amendment proper prospective effect. *GEA Integrated Cooling Technology v. N.M. Taxation & Rev. Dep't*, 2012-NMCA-010, 268 P.3d 48.

The date of assessment determines the applicable penalty to be imposed. — Where the taxpayer failed to pay gross receipts taxes for periods between June 1, 2006 and July 1, 2007; effective January 1, 2008, the legislature increased the maximum statutory penalty to twenty percent of the amount of unpaid taxes; prior to January 1, 2008, the maximum statutory penalty was ten percent; and in 2009, the N.M. taxation and revenue department assessed the taxpayer for unpaid taxes due for periods June 1, 2006 and July 1, 2007 and imposed the twenty percent penalty, the new statutory penalty of twenty percent was the applicable maximum penalty, because it was in effect at the time of the outstanding taxes were assessed. *GEA Integrated Cooling Technology v. N.M. Taxation & Rev. Dep't*, 2012-NMCA-010, 268 P.3d 48.

Every person is charged with reasonable duty to ascertain possible tax consequences of his action. This can be done by consultation with one's legal advisor. *Tiffany Constr. Co. v. Bureau of Revenue*, 1976-NMCA-127, 90 N.M. 16, 558 P.2d 1155, cert. denied, 90 N.M. 255, 561 P.2d 1348 (1977).

Responsibility to ascertain tax consequences. — Every person is charged with the reasonable duty to ascertain the possible tax consequences of his action or inaction, and a taxpayer cannot abdicate this responsibility merely by appointing an accountant as its agent in tax matters. *El Centro Villa Nursing Ctr. v. Taxation & Revenue Dep't*, 1989-NMCA-070, 108 N.M. 795, 779 P.2d 982.

II. NEGLIGENCE.

Taxpayers were not negligent in failing to pay natural gas processor's tax on operation which removed carbon dioxide from coal seam gas where, at the time the applicable tax was enacted, coal seam gas was not processed and the applicable tax law accordingly did not directly address whether the removal of carbon dioxide from

coal seam gas constituted "processing." *Amoco Prod. Co. v. N.M. Taxation & Revenue Dep't*, 2003-NMCA-092, 134 N.M. 162, 74 P.3d 96.

Propriety of penalty. — Taxpayer's penalty was proper where her failure to pay gross receipts tax was negligent based on the hearing officer's finding that the failure was due to the taxpayer's lack of knowledge and her erroneous belief that gross receipts tax was not due on certain transactions. *Grogan v. N.M. Taxation & Revenue Dep't*, 2003-NMCA-033, 133 N.M. 354, 62 P.3d 1236, cert. denied, 133 N.M. 413, 63 P.3d 516.

Reliance on manufacturer's advice. — Where taxpayer, who operated a retail tobacco store, failed to pay gross receipts tax from buy-down and shelf-display contracts with cigarette manufacturers in reliance upon discussions of taxpayer's tax liability with the manufacturers was negligent because taxpayer did not reasonably attempt to determine whether taxpayer's actions were justifiable under the tax statutes and regulations. *Grogan v. N.M. Taxation & Revenue Dep't*, 2002, NMCA-033, 133 N.M. 354, 62 P.3d 1236, cert. denied, 133 N.M. 413, 63 P.3d 516.

Minimum penalty for negligence when no tax due under equitable recoupment. — When the amount erroneously paid by the taxpayer for a particular tax equals the amount that should have been paid for another tax and, under the doctrine of equitable recoupment, no further sums are due from the taxpayer, there is no basis for assessing a penalty as a percentage of the tax due, but the taxpayer may be required to pay the $5 minimum penalty if the error resulted from the taxpayer's negligence. *Teco Invs. v. Taxation & Revenue Dep't*, 1998-NMCA-055, 125 N.M. 103, 957 P.2d 532.

Ordinary business care required. — Taxpayer was liable for civil penalties when taxpayer's failure to pay the gross receipts tax due was based on its erroneous beliefs, inattention, inaction where action would be reasonably required, or a failure to exercise the degree of ordinary business care that similarly situated businesses would exercise. *Arco Materials, Inc. v. State, Taxation & Revenue Dep't*, 1994-NMCA-062, 118 N.M. 12, 878 P.2d 330, *rev'd on other grounds sub nom*. *Blaze Constr. Co. v. Taxation & Revenue Dep't*, 1994-NMSC-110, 118 N.M. 647, 884 P.2d 803, cert. denied, 514 U.S. 1016, 115 S. Ct. 1359, 131 L. Ed. 2d 216 (1995).

Negligence not excused by actions of auditors. — A negligence penalty assessed against a taxpayer for its total failure to pay any compensating tax for a period of years was proper, since the taxpayer's sole excuse was that the failure to pay the tax was not uncovered by the accountants who certified the accuracy of the taxpayer's financial statements for the annual reports to shareholders required by federal securities law. The taxpayer offered no evidence that the outside auditors reviewed the taxpayer's monthly state tax returns, did not explain why the audit for the annual reports should have uncovered the failure to pay the compensating tax, and did not explain why the failure of the auditors to discover the error would excuse the taxpayer's failure to comply with clear state law. *Vivigen, Inc. v. Minzner*, 1994-NMCA-027, 117 N.M. 224, 870 P.2d 1382.

Substantial evidence of negligence. — Substantial evidence supported hearing officer's finding that nursing home's failure to pay tax was due to negligence, since the home failed to show the hearing officer that it acted reasonably in not reporting a medicaid readjustment to income payments as gross receipts. *El Centro Villa Nursing Ctr. v. Taxation & Revenue Dep't*, 1989-NMCA-070, 108 N.M. 795, 779 P.2d 982.

Taxpayer's erroneous belief tantamount to negligence. — A taxpayer's mere belief that he is not liable to pay taxes is tantamount to negligence within the meaning of this section and invocation of the penalty is appropriate. *C & D Trailer Sales v. Taxation & Revenue Dep't*, 1979-NMCA-151, 93 N.M. 697, 604 P.2d 835.

Taxpayer's erroneous belief and no further investigation constituted negligence. — When taxpayer, an Arizona corporation headquartered in Phoenix, failed to file a return for work performed on the Navajo reservation within New Mexico (the first road job taxpayer had done in New Mexico), its belief that no taxes were due and that there were no taxes that they had to file for or register for, without further investigation, constituted negligence so as to justify the penalty imposed. *Tiffany Constr. Co. v. Bureau of Revenue*, 1976-NMCA-127, 90 N.M. 16, 558 P.2d 1155, cert. denied, 90 N.M. 255, 561 P.2d 1348 (1977).

"Negligent" means indifferent, careless or off-hand or lacking reasonable cause. *Tiffany Constr. Co. v. Bureau of Revenue*, 1976-NMCA-127, 90 N.M. 16, 558 P.2d 1155, cert. denied, 90 N.M. 255, 561 P.2d 1348 (1977).

Negligence is general standard defining director's duties. — "Negligence" as used in Subsection A is a general standard capable of reasonable application and sufficient to limit and define the commissioner's (now director's) powers in imposing a penalty. *Gathings v. Bureau of Revenue*, 1975-NMCA-016, 87 N.M. 334, 533 P.2d 107.

Negligence should be equated with federal standard. — "Negligence," as used in Subsection A, should be equated with the federal standard of "lack of reasonable cause" as set forth in 26 U.S.C. § 6651(a). *Gathings v. Bureau of Revenue*, 1975-NMCA-016, 87 N.M. 334, 533 P.2d 107.

III. PROTEST.

Evidence of diligent protest based on informed consultation and advice. — Conclusory and self-serving statements in affidavits of an officer of the taxpayer and a tax attorney were insufficient to give rise to a genuine issue of material fact as to the existence of any acceptable ground for excusing the taxpayer's failure to report and pay gross receipts tax. *Sonic Indus., Inc. v. State*, 2000-NMCA-087, 129 N.M. 657, 11 P.3d 1219, *rev'd on other grounds*, 2006-NMSC-038, 140 N.M. 212, 141 P.3d 1266.

"Diligent protest" negates negligence. — When a taxpayer's failure to pay taxes is the result of a "diligent protest" and his decision to challenge a tax is based on informed consultation and advice (*i.e.*, from his attorney or accountant), the taxpayer negates any

inference of negligence and the application of the penalty provision is inappropriate. *C & D Trailer Sales v. Taxation & Revenue Dep't*, 1979-NMCA-151, 93 N.M. 697, 604 P.2d 835.

Reasonable doubt negates disregard of rules. — Penalty was improperly assessed and taxpayer is not liable for penalty and interest where diligent protest by the taxpayer negated the possibility of negligence, and the taxpayer did not disregard the rules and regulations because there was reasonable doubt as to the correctness of the taxes imposed by the commissioner (now secretary). *Stohr v. N.M. Bureau of Revenue*, 1976-NMCA-118, 90 N.M. 43, 559 P.2d 420, cert. denied, 90 N.M. 254, 561 P.2d 1347 (1977).

Not negligence to protest rulings or disregard where reasonable doubt. — This section provides that a penalty shall be added to the amount owed only in the event of failure to pay an assessed amount due to negligence or disregard of rules and regulations. Taxpayers were neither negligent nor heedless of any rules and regulations where they carried forward a thorough protest against the rulings of the commissioner (now secretary) with reasonable doubt as to the interpretation and applicability of the various taxes sought to be imposed by his order. Any presumptions of correctness which might have attached to the commissioner's (now secretary's) decision had been sufficiently overcome. The decision to assess penalties, not being in accordance with the law, was reversed in its entirety. *Co-Con, Inc. v. Bureau of Revenue,* 1974-NMCA-134, 87 N.M. 118, 529 P.2d 1239, cert. denied, 87 N.M. 111, 529 P.2d 1232.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 72 Am. Jur. 2d State and Local Taxation §§ 856 to 865.

Retroactive effect of statutes relation to interest on or penalties in respect of delinquent taxes, 77 A.L.R. 1034.

Liability to penalty imposed for failure to pay tax of one who in good faith contested its validity, 96 A.L.R. 925, 147 A.L.R. 142.

Penalty for nonpayment of taxes when due as affected by lack of notice to taxpayer, 102 A.L.R. 405.

Doubt as to liability for, or as to person to whom to pay, tax, as affecting liability for penalties and interest, 137 A.L.R. 306.

Time of mailing or time of receipt as determinative of liability for penalty or additional amount for failure to pay tax or license fee within prescribed time, 158 A.L.R. 370.

What amounts to reasonable cause for failure to file, or delay in filing, tax return, 3 A.L.R.2d 617.

Penalties or interest incurred because of delinquency of execution, administration or trustee, in respect of taxes as a charge against him personally or against estate, 47 A.L.R.3d 507.

Retailer's or buyer's defenses against exaction of penalties for failure to file, or deficiency in, state or local sales tax return, 20 A.L.R.4th 952.

85 C.J.S. Taxation §§ 1529 et seq.

7-1-69.1. Civil penalty for failure to file an information return.

A taxpayer, wholesaler, retailer or rack operator who fails to file an information return on time pursuant to the Gasoline Tax Act [Chapter 7, Article 13 NMSA 1978] or the Special Fuels Supplier Tax Act [Chapter 7, Article 16A NMSA 1978] shall pay a penalty of fifty dollars ($50.00) for each late report. This penalty shall be in addition to other applicable penalties.

History: Laws 2005, ch. 109, § 1; 2007, ch. 45, § 5.

ANNOTATIONS

The 2007 amendment, effective January 1, 2008, added "wholesaler, retailer or rack operator".

7-1-69.2. Civil penalty for failure to correctly file certain deductions.

In the case of a taxpayer that deducts gross receipts pursuant to Section 7-9-92 or 7-9-93 NMSA 1978 instead of deducting or exempting gross receipts pursuant to another applicable provision of the Gross Receipts and Compensating Tax Act [Chapter 7, Article 9 NMSA 1978] as required by those sections, there shall be assessed a penalty on the taxpayer in an amount equal to twenty percent of the value of the hold harmless distribution resulting from the incorrect deduction.

History: Laws 2016 (2nd S.S.), ch. 3, § 3.

ANNOTATIONS

Effective dates. — Laws 2016 (2nd S.S.), ch. 3, § 9 made Laws 2016 (2nd S.S.), ch. 3, § 3 November 1, 2016.

7-1-70. Civil penalty for bad checks.

If any payment required to be made by provision of the Tax Administration Act is attempted to be made by check that is not paid upon presentment, such dishonor is presumptive of negligence. The penalty shall never be less than ten dollars ($10.00). This penalty is in addition to any other penalty imposed by law.

History: 1953 Comp., § 72-13-83, enacted by Laws 1965, ch. 248, § 71; 1996, ch. 15, § 10.

ANNOTATIONS

Cross references. — For presentment and dishonor generally, *see* 55-3-501 NMSA 1978 et seq.

The 1996 amendment, effective July 1, 1996, made a minor stylistic change in the first sentence and added the third sentence.

7-1-71. Civil penalty for failure to collect and pay over tax.

If any person required to collect and pay over any tax fails, neglects or refuses to collect such tax or to account for and pay over such tax, he shall either pay the amount of tax himself or he shall pay a penalty equal to the total amount of the tax not collected or not accounted for and paid over, in either case in addition to other penalties provided by law.

History: 1953 Comp., § 72-13-84, enacted by Laws 1965, ch. 248, § 72.

ANNOTATIONS

Cross references. — For defaulting officers and prosecution for shortages, *see* 10-17-9 and 10-17-10 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Retailer's failure to pay to government sales or use tax funds as constituting larceny or embezzlement, 8 A.L.R.4th 1068.

Retailer's or buyer's defenses against exaction of penalties for failure to file, or deficiency in, state or local sales tax return, 20 A.L.R.4th 952.

Sufficient nexus for state to require foreign entity to collect state's compensating, sales, or use tax - post-Complete Auto Transit cases, 71 A.L.R.5th 671.

7-1-71.1. Tax return preparers; requirements; penalties.

A. The secretary may require by regulation any tax return preparer with respect to any return of income tax or claim for refund with respect to income tax to sign such return or claim for refund.

B. The secretary may require by regulation any tax return preparer with respect to any return of income tax or claim for refund with respect to income tax to furnish the tax return preparer's identification number on such return or claim for refund.

C. Any tax return preparer with respect to any return of income tax or claim for refund with respect to income tax who is required by regulations promulgated by the secretary to sign a return or claim for refund or to furnish an identification number on such return or claim for refund and who fails to sign such return or claim for refund or to furnish an identification number on such return or claim for refund shall pay a penalty of twenty-five dollars ($25.00) for such failure unless it is shown that such failure is due to reasonable cause and not due to willful neglect.

D. Any tax return preparer who endorses or otherwise negotiates, either directly or through an agent, any warrant in respect of the Income Tax Act [Chapter 7, Article 2 NMSA 1978] issued to a taxpayer, other than the tax return preparer, shall pay a penalty of five hundred dollars ($500) with respect to each such warrant; provided that the provisions of this subsection shall not apply with respect to the deposit by a bank, savings and loan association, credit union or other financial corporation of the full amount of the warrant in the taxpayer's account for the benefit of the taxpayer.

E. For the purposes of this section, any penalty determined to be due shall be considered to be tax due.

History: 1978 Comp., § 7-1-71.1, enacted by Laws 1985, ch. 65, § 19; 2001, ch. 56, § 17.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, substituted "secretary" for "director" throughout the section.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation § 592.

Who is an "income tax return preparer" under 26 USCS § 7701(a)(36)?, 132 A.L.R. Fed. 265.

7-1-71.2. Repealed.

History: Laws 2004, ch. 116, § 3; 2007, ch. 45, § 14.

ANNOTATIONS

Repeals. — Laws 2007, ch. 45, § 14 repealed 7-1-71.2 NMSA 1978, as enacted by Laws 2004, ch. 116, § 3, relating to the penalty for incorrect reporting of food deduction or health care practitioner services, effective July 1, 2007. For provisions of former section, *see* the 2006 NMSA 1978 on *NMOneSource.com.*

7-1-71.3. Willful failure to collect and pay over taxes.

A. A person who is required to collect, account for and pay over a tax imposed by the state and who willfully, with the intent to defraud, fails to collect or truthfully account for and pay over the tax due to the state is guilty of a felony, and upon conviction thereof, shall be fined not more than five thousand dollars ($5,000) or imprisoned for a period of not less than six months and not more than three years, or both, together with the costs of prosecution.

B. As used in this section:

(1) "tax" does not include civil penalties or interest; and

(2) "willfully" means intentionally, deliberately or purposely, but not necessarily maliciously.

History: Laws 2005, ch. 108, § 4.

ANNOTATIONS

Effective dates. — Laws 2005, ch. 108 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2005, 90 days after adjournment of the legislature.

7-1-71.4. Tax return preparer; electronic filing requirement; penalty.

A. In taxable years beginning on or after January 1, 2008, a tax return preparer who prepares over twenty-five personal income tax returns for a taxable year shall ensure that each return is submitted to the department by a department-approved electronic media, unless a person for whom the preparer files a return requests, in a form prescribed by the department, that the return be filed by other means in accordance with department rule.

B. A tax return preparer shall pay to the department a penalty not to exceed five dollars ($5.00) for each tax return filed in violation of this section.

History: Laws 2007, ch. 127, § 2.

ANNOTATIONS

Cross references. — For electronic payments, *see* 7-1-13.4 NMSA 1978.

Effective dates. — Laws 2007, ch. 127, § 4 made Laws 2007, ch. 127, § 2 effective July 1, 2007.

7-1-72. Attempts to evade or defeat tax.

Any person who willfully attempts to evade or defeat any tax or the payment thereof is, in addition to other penalties provided by law, guilty of a felony and, upon conviction thereof, shall be fined not less than one thousand dollars ($1,000) nor more than ten thousand dollars ($10,000), or imprisoned not less than one year nor more than five years, or both such fine and imprisonment, together with the costs of prosecution.

History: 1953 Comp., § 72-13-85, enacted by Laws 1965, ch. 248, § 73.

ANNOTATIONS

Prior assessment not needed. — This section covers all willful attempts to evade taxes, including willful failure to file returns if that results in evasion of taxes and willful failure to pay taxes required by law if that is motivated by an attempt to evade. There need not be a prior assessment of taxes before a defendant may be convicted of evasion of taxes. *State v. Long*, 1996-NMCA-011, 121 N.M. 333, 911 P.2d 227.

Traditional standard of proof applied in tax fraud cases. — Court of appeals would not require a higher standard of proof in terms of criminal intent in tax fraud cases, choosing instead to follow the traditional standard of appellate review in criminal cases. *State v. Martin*, 1977-NMCA-049, 90 N.M. 524, 565 P.2d 1041, cert. denied, 90 N.M. 636, 567 P.2d 485, *overruled on other grounds by State v. Wilson*, 1994-NMSC-009, 116 N.M. 793, 867 P.2d 1175.

Appropriateness of incarceration as penalty. — It was not error for the trial court to impose a sentence of incarceration pursuant to the plea and disposition agreement where defendant was given an opportunity to explain what efforts he had made to acquire funds for restitution and failed to present evidence sufficient to excuse his inability to present any funds. *State v. Bowie*, 1990-NMCA-068, 110 N.M. 283, 795 P.2d 88.

Attorney convicted for violation of this section was suspended from the practice of law. *In re Cox*, 1994-NMSC-054, 117 N.M. 575, 874 P.2d 783.

Tax evasion is a crime involving moral turpitude, because fraud is an essential part of tax evasion. Wittgenstein v. Immigration & Naturalization Serv., 124 F.3d 1244 (10th Cir. 1997).

Am. Jur. 2d, A.L.R. and C.J.S. references. — 71 Am. Jur. 2d State and Local Taxation § 7.

Right of grantor or transferor or his privies to attack conveyance or transfer made for purpose of evading taxation, 118 A.L.R. 1184.

Actionability of accusation or imputation of tax evasion, 32 A.L.R.3d 1427.

Construction and application of United States Sentencing Guideline § 2T1.4(b)(2) (18 USCS § 2T1.4(b)(2)), authorizing increase in base offense level for individual for use of "sophisticated means" to impede discovery of tax fraud, 131 A.L.R. Fed. 601.

Construction and application of 26 USCA § 6015(b)(1)(C) requiring that spouse not know of understatement of tax arising from erroneous deduction, credit, or basis to obtain innocent spouse exemption from liability for tax, 154 A.L.R. Fed. 233.

Construction and application of 26 U.S.C.A. § 6015(b)(1)(C), requiring that spouse not know of omission of gross income from joint tax return to obtain innocent spouse exemption from liability for tax, 161 A.L.R. Fed. 373.

7-1-72.1. Civil penalty; willful attempt to cause evasion of another's tax.

Any person other than the taxpayer who willfully causes or attempts to cause the evasion of a taxpayer's obligation to report and pay tax may be assessed a civil penalty in an amount equal to the amount of the tax, penalty and interest attempted to be evaded.

History: Laws 1997, ch. 67, § 9.

ANNOTATIONS

Effective dates. — Laws 1997, ch. 67, § 12 made Laws 1997, ch. 67, § 9 effective July 1, 1997.

7-1-73. Tax fraud.

A. A person is guilty of tax fraud if the person:

(1) willfully makes and subscribes any return, statement or other document that contains or is verified by a written declaration that it is true and correct as to every material matter and that the person does not believe it to be true and correct as to every material matter;

(2) willfully assists in, willfully procures, willfully advises or willfully provides counsel regarding the preparation or presentation of a return, affidavit, claim or other document pursuant to or in connection with any matter arising under the Tax Administration Act or a tax administered by the department, knowing that it is fraudulent or knowing that it is false as to a material matter, whether or not that fraud or falsity is with knowledge or consent of:

(a) the taxpayer or other person liable for taxes owed on the return; or

(b) a person who signs a document stating that the return, affidavit, claim or other document is true, correct and complete to the best of that person's knowledge;

(3) files any return electronically, knowing the information in the return is not true and correct as to every material matter;

(4) with intent to evade or defeat the payment or collection of any tax, or, knowing that the probable consequences of the person's act will be to evade or defeat the payment or collection of any tax, removes, conceals or releases any property on which levy is authorized or that is liable for payment of tax under the provisions of Section 7-1-61 NMSA 1978, or aids in accomplishing or causes the accomplishment of any of the foregoing;

(5) with intent to evade or defeat the payment or collection of any tax, or, knowing that the probable consequences of the person's act will be to evade or defeat the payment or collection of any tax, purchases, installs or uses any sales suppression software; or

(6) with the intent to evade or defeat the payment or collection of any tax, or, knowing that the probable consequences of the person's act will be to evade or defeat the payment or collection of any tax, sells, licenses, purchases, installs, transfers, sells as a service, manufactures, develops or possesses any sales suppression software with the purpose to defeat or evade the payment or collection of any tax.

B. Whoever commits tax fraud when the amount of the tax owed is two hundred fifty dollars ($250) or less is guilty of a petty misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

C. Whoever commits tax fraud when the amount of the tax owed is over two hundred fifty dollars ($250) but not more than five hundred dollars ($500) is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

D. Whoever commits tax fraud when the amount of the tax owed is over five hundred dollars ($500) but not more than two thousand five hundred dollars ($2,500) is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

E. Whoever commits tax fraud when the amount of the tax owed is over two thousand five hundred dollars ($2,500) but not more than twenty thousand dollars ($20,000) is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

F. Whoever commits tax fraud when the amount of the tax owed is over twenty thousand dollars ($20,000) is guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

G. In addition to the fines imposed pursuant to this section, a person who commits tax fraud shall pay the costs of the prosecution of the person's case.

H. As used in this section:

(1) "sales suppression software" means hidden or concealed computer software, also known as phantomware, for a point-of-sale system that can create a second set of records or eliminate or manipulate transaction records that may or may not be preserved in digital formats in order to misrepresent the existence or the true record of a transaction in the point-of-sale system. "Sales suppression software" includes an electronic device that carries or contains sales suppression software;

(2) "tax" does not include civil penalties or interest; and

(3) "willfully" means intentionally, deliberately or purposely, but not necessarily maliciously.

History: 1953 Comp., § 72-13-86, enacted by Laws 1965, ch. 248, § 74; 1978 Comp., § 7-1-73; 1979, ch. 144, § 60; 1989, ch. 325, § 12; 1992, ch. 55, § 17; 2005, ch. 108, § 3; 2006, ch. 29, § 1; 2023, ch. 36, § 4.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, provided that evading or defeating a tax with sales suppression software constitutes tax fraud, and defined "sales suppression software"; in Subsection A, added Paragraphs A(5) and A(6); and in Subsection H, added a new Paragraph H(1) and redesignated former Paragraphs H(1) and H(2) as Paragraphs H(2) and H(3), respectively.

The 2006 amendment, effective July 1, 2006, changed the crime from "false statement and fraud" to "tax fraud" in Subsection A; deleted the former provision at the end of Paragraph (4) of Subsection A, which provided that a violation of Subsection A was a felony; added Subsections B through F to provide a schedule for sentencing for different degrees of tax fraud; and added Subsection G to provide that in addition to fines, a person who commits tax fraud shall pay the cost of prosecution.

The 2005 amendment, effective June 17, 2005, added Subsection A(2) to provide that a person is guilty of a felony if the person willfully acts in the preparation or presentation of a document with respect to a matter under the Tax Administration Act or a tax administered by the taxation and revenue department knowing that it is false or fraudulent; deleted from Subsection A(4) the statement of the penalty for conviction of a felony under this section; and added Subsection B to provide definitions of "tax" and "willfully".

The 1992 amendment, effective July 1, 1992, added Subsection B, redesignated former Subsection B as Subsection C, and made minor stylistic changes throughout the section.

The 1989 amendment, effective June 16, 1989, in Subsection A, substituted "that it is true and correct as to every material matter and which the individual or person does not" for "that it is made under the penalties of perjury and which he does not".

Traditional standard of proof applied in tax fraud cases. — Court of appeals would not require a higher standard of proof in terms of criminal intent in tax fraud cases, choosing instead to follow the traditional standard of appellate review in criminal cases. *State v. Martin*, 1977-NMCA-049, 90 N.M. 524, 565 P.2d 1041, cert. denied, 90 N.M. 636, 567 P.2d 485, *overruled on other grounds by State v. Wilson*, 1994-NMSC-009, 116 N.M. 793, 867 P.2d 1175.

To meet willfulness requirement of section, all that is required is proof that the person acted intentionally in the sense that he was aware of what he was doing. *State v. Sparks*, 1985-NMCA-004, 102 N.M. 317, 694 P.2d 1382.

UJI Criminal 1.50 (UJI 14-141 NMRA), the instruction on general criminal intent, is required in prosecutions for false statements on tax returns. *State v. Sparks*, 1985-NMCA-004, 102 N.M. 317, 694 P.2d 1382.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Reliance on attorney, accountant or other expert in preparing income tax returns as defense against fraud penalties, 22 A.L.R.2d 972.

Tax preparer's willful assistance in preparation of false or fraudulent tax returns under § 7206(2) of Internal Revenue Code of 1954 (26 USCS § 7206(2)), 43 A.L.R. Fed. 128.

85 C.J.S. Taxation § 1591.

7-1-74. Interference or attempts corruptly, forcibly or by threat to interfere with administration of revenue laws.

Whoever forcibly, or by bribe, threat or other corrupt practice obstructs or impedes or attempts to obstruct or impede the due administration of the provisions of the Tax Administration Act shall, upon conviction thereof, be fined not less than two hundred fifty dollars ($250) nor more than ten thousand dollars ($10,000) or imprisoned for not less than three months nor more than one year, or both, together with costs of prosecution.

History: 1953 Comp., § 72-13-87, enacted by Laws 1965, ch. 248, § 75.

7-1-75. Assault and battery of a department employee.

Whoever assaults and batters or attempts to assault and batter an employee of the department acting within the scope of his employment shall, upon conviction thereof, be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500) or be imprisoned for not less than three days nor more than six months, or both, together with costs of prosecution. Jurisdiction over actions brought under this section is hereby granted to magistrate courts.

History: 1953 Comp., § 72-13-87.1, enacted by Laws 1971, ch. 276, § 12; 1979, ch. 144, § 61.

7-1-76. Revealing information concerning taxpayers.

A person who reveals to another person any return or return information that is prohibited from being revealed pursuant to Section 7-1-8 NMSA 1978 or who uses a return or return information for any purpose that is not authorized by Sections 7-1-8 through 7-1-8.11 NMSA 1978 is guilty of a misdemeanor and shall, upon conviction thereof, be fined not more than one thousand dollars ($1,000) or imprisoned up to one year, or both, together with costs of prosecution, and shall not be employed by the state for a period of five years after the date of the conviction.

History: 1953 Comp., § 72-13-88, enacted by Laws 1965, ch. 248, § 76; 1979, ch. 144, § 62; 2009, ch. 243, § 13; 2017, ch. 63, § 30.

ANNOTATIONS

The 2017 amendment, effective June 16, 2017, after "Sections 7-1-8 through", changed "7-1-8.10" to "7-1-8.11".

The 2009 amendment, effective July 1, 2009, in the first sentence, after "other disposition", added "of district facilities" and in the fourth sentence, after "pending use", added "pursuant to the provisions of this section".

7-1-77. Timeliness when last day for performance falls on Saturday, Sunday or legal holiday.

When by any provision of the Tax Administration Act the last day for performing any act falls on Saturday, Sunday or a legal state or national holiday, the performance of the act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or a legal state or national holiday.

History: 1953 Comp., § 72-13-89, enacted by Laws 1965, ch. 248, § 80.

ANNOTATIONS

Cross references. — For general rule as to computation of time, *see* 12-2A-7 NMSA 1978.

7-1-78. Burden of proof in fraud cases.

In any proceeding involving the issue of whether any person has been guilty of fraud or corruption, the burden of proof in respect of such issue shall be upon the secretary or the state.

History: 1953 Comp., § 72-13-90, enacted by Laws 1965, ch. 248, § 81; 1979, ch. 144, § 63; 2001, ch. 56, § 18.

ANNOTATIONS

The 2001 amendment, effective July 1, 2001, substituted "secretary" for "director".

7-1-79. Enforcement officials.

Every individual to whom the director delegates the function of enforcing any of the provisions of the Tax Administration Act:

A. shall be furnished with credentials identifying him; and

B. may request the assistance of any sheriff or deputy sheriff or of the state police in order to perform his duties, which assistance shall be afforded in appropriate circumstances.

History: 1953 Comp., § 72-13-91, enacted by Laws 1965, ch. 248, § 82; 1979, ch. 144, § 64.

7-1-80. Dissolution or withdrawal of corporation.

The secretary of state shall not issue any certificate of dissolution to any taxpayer or allow any corporate taxpayer to withdraw from the state until:

A. the taxpayer files with the secretary of state a certificate signed by the secretary of taxation and revenue or the secretary of taxation and revenue's delegate stating that as of a certain date the taxpayer is not liable for any tax and containing a statement verified by a responsible official of the corporation to the effect that the taxpayer has not engaged in business after the date above specified. If the taxpayer has so engaged in business, any certificate of dissolution or withdrawal shall be of no effect and all liabilities of the corporation shall continue as if no certificate had been granted;

B. a successor, acceptable to the secretary of taxation and revenue or the secretary's delegate, to any corporation requesting dissolution or withdrawal enters into a binding agreement by provision of which the successor assumes full liability for payment of all taxes due or expected to become due from the corporation and certification thereof is given by the secretary of taxation and revenue or the secretary's delegate; or

C. satisfactory security for payment of the taxes due or expected to become due from the corporation is furnished in accordance with the provisions of Section 7-1-54 NMSA 1978 and certification thereof is given by the secretary of taxation and revenue or the secretary's delegate.

History: 1953 Comp., § 72-13-92, enacted by Laws 1965, ch. 248, § 83; 1979, ch. 144, § 65; 1985, ch. 65, § 20; 1993, ch. 30, § 11; 2013, ch. 75, § 8.

ANNOTATIONS

Cross references. — For sale of assets of a corporation, *see* 53-15-1 to 53-15-4 NMSA 1978.

For dissolution of corporations generally, *see* 53-16-1 to 53-16-24 NMSA 1978.

The 2013 amendment, effective July 1, 2013, required taxpayers to file certificates signed by the secretary of taxation and revenue that they are not liable for any tax; in the introductory sentence, deleted "state corporation commission" and added "secretary of state"; in Subsection A, after "the taxpayer filed with the", deleted "state corporation commission" and added "secretary of state", after "certificate signed by the secretary", added "of taxation and revenue", after "taxation and revenue or the", deleted "secretary's" and added "secretary of taxation and revenue's"; in Subsection B, after "acceptable to the secretary", added "of taxation and revenue" and after "given by the secretary of", added "of taxation and revenue"; and in Subsection C, after "given by the secretary", added "of taxation and revenue".

The 1993 amendment, effective June 18, 1993, substituted "secretary or the secretary's delegate" for "director of the revenue division or his delegate" in four places and made minor stylistic changes.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 19 Am. Jur. 2d Corporations § 2880; 36 Am. Jur. 2d Foreign Corporations § 313.

19 C.J.S. Corporations §§ 811 to 882.

7-1-81. Repealed.

ANNOTATIONS

Repeals. — Laws 1979, ch. 144, § 67, repealed 7-1-81 NMSA 1978, as enacted by Laws 1971, ch. 276, § 13, relating to bar of actions for tort against bureau employees and limited liability of bureau.

7-1-82. Transfer, assignment, sale, lease or renewal of liquor license.

A. The director of the alcoholic beverage control division of the regulation and licensing department shall not allow the transfer, assignment, lease or sale of any liquor license pursuant to the provisions of the Liquor Control Act [60-3A-1 NMSA 1978] until the director receives written notification from the secretary or secretary's delegate that:

(1) the licensee or any person authorized to use the license is not a delinquent taxpayer as provided in Section 7-1-16 NMSA 1978 only with respect to the liquor excise tax or the gross receipts tax; or

(2) the transferee, assignee, buyer or lessee has entered into a written agreement with the secretary or secretary's delegate in which the transferee, assignee, buyer or lessee has assumed full liability for payment of all taxes due or that may become due from the licensee with respect to the liquor excise tax or the gross receipts tax.

B. The director of the alcoholic beverage control division of the regulation and licensing department shall not allow the renewal of any liquor license pursuant to the provisions of the Liquor Control Act until the director receives notification from the secretary or secretary's delegate that on a certain date:

(1) the licensee is not a delinquent taxpayer as provided in Section 7-1-16 NMSA 1978 only with respect to the liquor excise tax or the gross receipts tax; and

(2) there are no unfiled tax returns due from the licensee with respect to the liquor excise tax or the gross receipts tax.

History: 1953 Comp., § 72-13-94, enacted by Laws 1973, ch. 179, § 1; 1975, ch. 116, § 5; 1979, ch. 144, § 66; 1995, ch. 70, § 4; 2023, ch. 85, § 6.

ANNOTATIONS

The 2023 amendment, effective July 1, 2023, provided that certain licenses shall not be issued or renewed if the licensee is a delinquent taxpayer for certain taxes; in Subsection A, in the introductory clause, after "The director of the", deleted "alcohol and gaming" and added "alcoholic beverage control", in Paragraph A(1), after "Section 7-1-16 NMSA 1978", added "only with respect to the liquor excise tax or the gross receipts tax", and in Paragraph A(2), after "may become due from", deleted "engaging in business authorized by the liquor license" and added "the licensee with respect to the liquor excise tax or the gross receipts tax"; and in Subsection B, in the introductory clause, after "The director of the", deleted "alcohol and gaming" and added "alcoholic beverage control", in Paragraph B(1), deleted "there is no assessed tax liability from engaging in business authorized by the liquor license or, if there is assessed tax liability, the licensee is not a delinquent taxpayer" and added "the licensee is not a delinquent taxpayer as provided in Section 7-1-16 NMSA 1978 only with respect to the liquor excise tax or the gross receipts tax", and in Paragraph B(2), after "tax returns due from",

deleted "engaging in business authorized by the liquor license" and added "the licensee with respect to the liquor excise tax or the gross receipts tax".

The 1995 amendment, effective July 1, 1995, substituted "alcohol and gaming division of the regulation and licensing department" for "department of alcoholic beverage control" and "the director" for "he" in the introductory paragraphs of Subsections A and B, substituted "the transferee, assignee, buyer or lessee" for "he" in Paragraph A(2), and substituted "secretary or secretary's delegate" for "director or his delegate" throughout the section.

Subsections A(1) and (2) are alternatives; if either one is satisfied, the department must issue a clearance for transfer of the license. *Bank of Commerce v. N.M. Taxation & Revenue Dep't*, 1998-NMCA-063, 125 N.M. 183, 958 P.2d 753, cert. denied, 125 N.M. 145, 958 P.2d 103.

Tax liability as lien. — The tax liability referred to in this section may become a lien in favor of the state in the amount of taxes due if the procedures set forth in Sections 7-1-37 and 7-1-38 NMSA 1978 are followed. *In re What D'Ya Call It, Inc.*, 1986-NMSC-098, 105 N.M. 164, 730 P.2d 467.

Payment of delinquent taxes may be required before transfer. — The state may require payment of delinquent taxes prior to transfer of a liquor license, pursuant to this section, where its liens under Sections 7-1-37 and 7-1-38 NMSA 1978 have been foreclosed. *First Interstate Bank v. Taxation & Revenue Dep't*, 1989-NMCA-067, 108 N.M. 756, 779 P.2d 133, cert. denied, 108 N.M. 771, 779 P.2d 549.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 45 Am. Jur. 2d Intoxicating Liquors §§ 174, 177.

48 C.J.S. Intoxicating Liquors §§ 145 to 147, 151.

7-1-83. Business and employee status during disaster response period.

A. An out-of-state business that conducts operations within the state for purposes of performing disaster- or emergency-related work in response to a declared state disaster or emergency during the disaster response period shall not be considered to have established a level of presence that would require that business to register, file or remit state or local taxes or fees, including gross receipts taxes or property tax on equipment brought into the state temporarily for use during the disaster response period and subsequently removed from the state. For purposes of any state or local tax on or measured by, in whole or in part, net or gross income or receipts, all activity of the out-of-state business that is conducted in this state pursuant to this section shall be disregarded with respect to any filing requirements for such tax, including the filing required for a unitary or combined group of which the out-of-state business may be a part. For the purpose of apportioning income, revenue or receipts, the performance by

an out-of-state business of any work in accordance with this section shall not be sourced to or otherwise impact or increase the amount of income, revenue or receipts apportioned to this state.

B. An out-of-state employee shall not be considered to have established residency or a presence in the state that would require that person or that person's employer to file and pay income taxes or to be subjected to tax withholdings or to file and pay any other state or local tax or fee during the disaster response period. This includes any related state or local employer withholding and remittance obligations but does not include any transaction taxes or fees pursuant to Subsection C of this section.

C. Out-of-state businesses and out-of-state employees shall be required to pay transaction taxes and fees, including fuel taxes or gross receipts taxes on materials or services consumed or used in the state subject to gross receipts tax, hotel taxes, car rental taxes or fees that the out-of-state affiliated business or out-of-state employee purchases for use or consumption in the state during the disaster response period, unless such taxes are otherwise exempted during a disaster response period.

D. An out-of-state business or out-of-state employee that remains in the state after the disaster response period will become subject to the state's normal standards for establishing residency or presence or doing business in the state and will therefore become responsible for any business or employee tax requirements that ensue.

E. As used in this section:

(1) "critical infrastructure" means property, equipment and related support facilities that service multiple customers or residents, including real and personal property such as buildings, offices, lines, poles, pipes, structures and equipment that is owned or used by:

(a) communications networks;

(b) electric generation, transmission and distribution systems;

(c) natural gas and natural gas liquids gathering, processing, storage, transmission and distribution systems;

(d) crude oil and refined product pipelines; and

(e) water pipelines;

(2) "declared state disaster or emergency" means a disaster or emergency event for which:

(a) a governor's state of emergency proclamation has been issued;

(b) a presidential declaration of a federal major disaster or emergency has been issued; or

(c) another authorized official of the state receives notification from a registered business of a disaster or emergency and that official designates the event as a declared state disaster or emergency, thereby invoking the provisions of this section;

(3) "disaster- or emergency-related work" means repairing, renovating, installing, building, rendering services or conducting other business activities that relate to critical infrastructure that has been damaged, impaired or destroyed by a declared state disaster or emergency;

(4) "disaster response period" means a period that begins ten days prior to the first day of the governor's proclamation, the president's declaration or the designation by another authorized official of the state of a declared state disaster or emergency and that extends sixty calendar days after the declared state disaster or emergency;

(5) "out-of-state business" means a business entity that, except for disaster- or emergency-related work, has no presence in the state and that conducts no business in the state and whose services are requested by a registered business or by a state or local government for purposes of performing disaster- or emergency-related work in the state. "Out-of-state business" includes a business entity that is affiliated with a registered business in the state solely through common ownership and that has no registrations or tax filings or nexus in the state other than disaster- or emergency-related work during the tax year immediately preceding the declared state disaster or emergency;

(6) "out-of-state employee" means an employee who does not work in the state, except for disaster- or emergency-related work during the disaster response period; and

(7) "registered business in the state" means a business entity that is currently registered to do business in the state prior to the declared state disaster or emergency.

History: Laws 2016, ch. 59, § 2.

ANNOTATIONS

Effective dates. — Laws 2016, ch. 59 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective May 18, 2016, 90 days after the adjournment of the legislature.

7-1-84. Tax expenditure budget.

A. No later than November 15 of each year, the secretary shall compile and present a tax expenditure budget to the governor, the revenue stabilization and tax policy committee and the legislative finance committee and post the tax expenditure budget to the department's website.

B. A tax expenditure budget shall include the following information for each tax expenditure of a tax administered by the department:

(1) the statutory basis;

(2) the year of enactment, amendment or repeal, if any;

(3) a brief description;

(4) the intended purpose, if specified in the law providing for the tax expenditure;

(5) an estimate of the amount of foregone revenue by fiscal year for the three fiscal years preceding the current fiscal year, including the general fund, other state funds and local government revenues;

(6) the number of taxpayers that claimed a tax expenditure for each fiscal year reported, unless reporting of such data is in a form that can be associated with or otherwise identify, directly or indirectly, a particular taxpayer;

(7) the data source used for the estimate;

(8) a description of the reliability of the estimate;

(9) an evaluation of the tax expenditure, if required in statute for the specific expenditure; and

(10) a description of the tax expenditure's effect on tax administration, if any.

C. The department may request from an executive agency or a local government agency or official the information necessary to complete a tax expenditure budget required by this section. The agency or official shall comply with a request made pursuant to this section by the department as permitted by law.

D. As used in this section, "tax expenditure" means a provision of law administered by the department to reflect state tax policy, as determined by the secretary, including promoting the general welfare of citizens, giving preferential tax treatment to a specific industry or reflecting a specific purpose, including incentivizing consumer behavior, economic development or job creation. A tax expenditure does not include provisions of laws enacted to prevent violation of state or federal law, prevent federal preemption, ensure comity between governments, avoid multiple taxation or define a tax base.