

Taxation and Revenue Department  
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**REGULATIONS PERTAINING TO THE  
TAX ADMINISTRATION ACT  
SECTIONS 7-1-1 to 7-1-83 NMSA 1978  
[3.1 NMAC]**

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**TRD Publication 3.1 NMAC**

**TAX ADMINISTRATION ACT REGULATIONS**

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TEMPORARY TAX AMNESTY PROGRAM

\* Two versions of this statute are incorporated into this document. This is a result of the adoption of two separate pieces of legislation that affect the same statute.

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**TRD Publication 3.1 NMAC**  
**REGULATIONS PERTAINING TO THE**  
**TAX ADMINISTRATION ACT**  
**SECTIONS 7-1-1 to 7-1-83 NMSA 1978**

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

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**3.1.1.8 - CITATIONS OF STATUTES**

All statutory references in Chapter 3.1 NMAC are to the New Mexico Statutes Annotated 1978 (NMSA 1978) unless otherwise specified.  
[10/31/96; 3.1.1.8 NMAC - Rn & A, 3 NMAC 1.1.8, 12/29/00]

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**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;**
- (2) Withholding Tax Act;**
- (3) Oil and Gas Proceeds and Pass-Through Entity Withholding Tax Act;**
- (4) Gross Receipts and Compensating Tax Act, Interstate Telecommunications Gross Receipts Tax Act and Leased Vehicle Gross Receipts Tax Act;**
- (5) Liquor Excise Tax Act;**
- (6) Local Liquor Excise Tax Act;**
- (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;**
- (10) Gasoline Tax Act;**
- (11) petroleum products loading fee, which fee shall be considered a tax for the purpose of the Tax Administration Act;**
- (12) Alternative Fuel Tax Act;**
- (13) Cigarette Tax Act;**
- (14) Estate Tax Act;**
- (15) Railroad Car Company Tax Act;**
- (16) Investment Credit Act, rural job tax credit, Laboratory Partnership with Small Business Tax Credit Act, Technology Jobs and Research and Development Tax Credit Act, Film Production Tax Credit Act, Affordable Housing Tax Credit Act and high-wage jobs tax credit;**
- (17) Corporate Income and Franchise Tax Act;**
- (18) Uniform Division of Income for Tax Purposes Act;**
- (19) Multistate Tax Compact;**
- (20) Tobacco Products Tax Act; and**
- (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;**

**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;**
- (2) Severance Tax Act;**
- (3) any severance surtax;**
- (4) Oil and Gas Severance Tax Act;**
- (5) Oil and Gas Conservation Tax Act;**
- (6) Oil and Gas Emergency School Tax Act;**



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(7) Oil and Gas Ad Valorem Production Tax Act;  
(8) Natural Gas Processors Tax Act;  
(9) Oil and Gas Production Equipment Ad Valorem Tax Act;  
(10) Copper Production Ad Valorem Tax Act;  
(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;  
(13) Natural Gas and Crude Oil Production Incentive Act; 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;  
(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);  
(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; 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.

(Laws 2019, Chapter 270, Section 1)

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**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;  
(2) Withholding Tax Act;  
(3) Venture Capital Investment Act;  
(4) Gross Receipts and Compensating Tax Act and any state gross receipts tax;

- (5) Liquor Excise Tax Act;**
- (6) Local Liquor Excise Tax Act;**
- (7) any municipal local option gross receipts tax;**
- (8) any county local option gross receipts tax;**
- (9) Special Fuels Supplier Tax Act;**
- (10) Gasoline Tax Act;**
- (11) petroleum products loading fee, which fee shall be considered a tax for the purpose of the Tax Administration Act;**
- (12) Alternative Fuel Tax Act;**
- (13) Cigarette Tax Act;**
- (14) Estate Tax Act;**
- (15) Railroad Car Company Tax Act;**
- (16) Investment Credit Act, rural job tax credit, Laboratory Partnership with Small Business Tax Credit Act, Technology Jobs and Research and Development Tax Credit Act, Film Production Tax Credit Act, Affordable Housing Tax Credit Act and high-wage jobs tax credit;**
- (17) Corporate Income and Franchise Tax Act;**
- (18) Uniform Division of Income for Tax Purposes Act;**
- (19) Multistate Tax Compact;**
- (20) Tobacco Products Tax Act;**
- (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; and**
- (22) the Health Care Quality Surcharge Act;**

**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;**
- (2) Severance Tax Act;**
- (3) any severance surtax;**
- (4) Oil and Gas Severance Tax Act;**
- (5) Oil and Gas Conservation Tax Act;**
- (6) Oil and Gas Emergency School Tax Act;**
- (7) Oil and Gas Ad Valorem Production Tax Act;**
- (8) Natural Gas Processors Tax Act;**
- (9) Oil and Gas Production Equipment Ad Valorem Tax Act;**
- (10) Copper Production Ad Valorem Tax Act;**
- (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;**
- (13) Natural Gas and Crude Oil Production Incentive Act; 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;**
- (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);**
- (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; 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.**

**(Laws 2019, Chapter 53, Section 10)**

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### **3.1.1.9 - INTERPRETATION, ENFORCEMENT AND COLLECTION OF CERTAIN MUNICIPAL AND COUNTY TAXES**

A. The municipal and county tax acts listed below, as they now exist or may hereafter be amended, shall be interpreted, administered and enforced by the secretary under the provisions of the Tax Administration Act.

B. All directives of the secretary shall apply to the administration and enforcement of municipal and county tax acts to the extent that such directives do not conflict with the provisions of the listed municipal and county tax acts:

- (1) Supplemental Gross Receipts Tax Act [7-19-10 to 7-19-18 NMSA 1978]
- (2) Special Municipal Gross Receipts Tax Act [repealed]
- (3) Municipal Local Option Gross Receipts Taxes Act [Chapter 7, Article 19D NMSA 1978]
- (4) Local Hospital Gross Receipts Tax Act [Chapter 7, Article 20C NMSA 1978]
- (5) County Local Option Gross Receipts Taxes Act [Chapter 7, Article 20E NMSA 1978]
- (6) County Correctional Facility Gross Receipts Tax Act [Chapter 7, Article 20F NMSA 1978]
- (7) Local Liquor Excise Tax Act [7-24-8 to 7-24-16 NMSA 1978]

C. In addition to the tax acts enumerated in Subsection 3.1.1.9B NMAC, repealed

local option gross receipts tax acts whose administration and enforcement were charged to the department are also interpreted, administered and enforced by the department insofar as payments, claims for refunds, assessments, other liabilities, litigation and other actions are received or initiated after, or are outstanding on, the effective date of the repeal of the tax act.

D. Section 3.1.1.9 NMAC applies to interpretation, enforcement or administration on or after July 1, 1993.

[7/19/67, 11/5/85, 8/15/90, 2/6/91, 10/28/94, 10/31/96; 3.1.1.9 NMAC - Rn & A, 3 NMAC 1.1.9, 12/29/00]

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**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. "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;**

**C. "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;**

**D. "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;**

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

**F. "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;**

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

**H. "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;**

**I. "local option gross receipts tax" means a tax authorized to be imposed by a county or municipality upon the taxpayer's gross receipts, as that term is defined in the Gross Receipts and Compensating Tax Act, and required to be collected by the department at the same time and in the same manner as the gross receipts tax;**

**J. "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;**

**K. "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;**

**L. "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;**

**M. "paid" includes the term "paid over";**

**N. "pay" includes the term "pay over";**

**O. "payment" includes the term "payment over";**

**P. "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;**

**Q. "property" means property or rights to property;**

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

**S. "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;**

**T. "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;**

**U. "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;**

V. "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;

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

X. "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;

Y. "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;

Z. "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

AA. "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.

~~(Laws 2019, Chapter 274, Section 10)~~

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**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, 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.

(Laws 2019, Chapter 270, Section 2)

### **3.1.1.10 - DELEGATION OF AUTHORITY - GENERAL**

A. The secretary may delegate authority only when specifically authorized to do so in the Tax Administration Act. Where the words “or secretary's delegate” or “or delegate” do not appear in any section, only the secretary may act.

B. Example: As provided in Subsection 7-1-4B NMSA 1978, the secretary alone is invested with the power to issue subpoenas and summonses. The secretary may not delegate the authority to issue subpoenas and summonses.

[7/19/67, 6/15/85, 11/5/85, 8/15/90, 10/31/96; 3.1.1.10 NMAC - Rn & A, 3 NMAC 1.1.10, 12/29/00]

### **3.1.1.11 - DELEGATION OF AUTHORITY - NOT REQUIRED TO BE IN WRITING**

A delegation of authority by the secretary to an “employee of the division” or “an employee of the department” as that term is defined in Section 7-1-3 NMSA 1978 is not required to be in writing.

[11/5/85, 8/15/90, 10/31/96; 3.1.1.11 NMAC - Rn & A, 3 NMAC 1.1.11, 12/29/00]

### **3.1.1.12 - EMPLOYEE OF THE DEPARTMENT**

The following persons shall, for purposes of the Tax Administration Act, be considered to be “employees of the department” when acting as agents or authorized to represent or perform services for the department:

A. the secretary of the department or an employee of the department authorized by the secretary;

B. the New Mexico attorney general, the attorney general's deputies and assistants, district attorneys and the district attorneys' deputies and assistants;

C. persons employed by the multistate tax commission and performing duties under the Multistate Tax Compact, Sections 7-5-1 through 7-5-7 NMSA 1978; and

D. persons acting under professional service contracts with the department.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.1.12 NMAC - Rn & A, 3 NMAC 1.1.12, 12/29/00]

### **3.1.1.13 - UNIDENTIFIED TAXPAYER**

A person who fits the definition of “taxpayer” under the provisions of Section 7-1-3 NMSA 1978 but who has not registered or been identified under provisions of Section 7-1-12 NMSA 1978 is nonetheless a “taxpayer” subject to the provisions of the Tax Administration Act.

[11/5/85, 8/15/90, 10/31/96; 3.1.1.13 NMAC - Rn & A, 3 NMAC 1.1.13, 12/29/00]

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**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.**

**(Laws 2005, Chapter 108, Section 1)**

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**3.1.1.14 - INFORMATION FROM PERSONS OTHER THAN TAXPAYER**

To establish or determine the liability of any taxpayer, to collect any tax or to enforce any statute administered by the department under the Tax Administration Act, the secretary or delegate is authorized to examine and require the production of any pertinent records, books, information or evidence by persons other than taxpayers. Such persons shall include but not be restricted to accountants, banks and financial corporations, lessors, vendors, buyers, corporate officers, corporate stockholders and general and limited partners.

[11/5/85, 8/15/90, 10/31/96; 3.1.1.14 NMAC - Rn, 3 NMAC 1.1.14, 12/29/00]

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**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.**

**(Laws 2017, Chapter 63, Section 5)**

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**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;

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.  
(Laws 2017, Chapter 63, Section 6)**

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**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 the annual income and semiannual combined reporting system tax forms.  
(Laws 2003, Chapter 398, Section 3)

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**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 by January 30 of each calendar year.  
(Laws 2005, Chapter 138, Section 1)

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**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 for 1989 and every subsequent year, money received with respect to the Income Tax Act during the period starting with the fifth day prior to the due date for payment of income tax 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 regulation 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 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 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.

(Laws 2017, Chapter 63, Section 7)

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**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 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.

**(Laws 2007 - 1<sup>st</sup> S.S., Chapter 2, Section 9)**

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**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.

**(Laws 2012, Chapter 5, Section 3)**

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**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 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.

(Laws 2006, Chapter 75, Section 30)

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**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.

(Laws 1984, Chapter 24, Section 2)

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**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.  
(Laws 1983, Chapter 211, Section 11)

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**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.

C. From July 1, 2013 through June 30, 2021, 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:

(1) eighty thousand dollars (\$80,000) monthly from July 1, 2007 through June 30, 2008;

(2) one hundred sixty-seven thousand dollars (\$167,000) monthly from July 1, 2008 through June 30, 2009; and

(3) two hundred fifty thousand dollars (\$250,000) monthly after July 1, 2009.

(Laws 2016, Chapter 87, Section 1 – Effective July 1, 2016)

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**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.  
(Laws 1995, Chapter 6, Section 2)

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**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.**

**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.**

**(Laws 2017, Chapter 63, Section 8)**

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**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 and to the taxes, surtaxes, fees, penalties and interest imposed pursuant to the Special Fuels Supplier Tax Act and the Alternative Fuel Tax Act 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. (Laws 2004, Chapter 109, Section 1)**

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**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 comprehensive cancer center at the university of New Mexico health sciences center in an amount equal to eighty-three 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 shall be made to the New Mexico finance authority in an amount equal to one and twenty-five hundredths percent of the net receipts, exclusive of penalties and interest, attributable to the cigarette tax.**

**C. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to eight and eighty-nine 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, to the New Mexico finance authority.**

**D. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to three and seventy-four 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.**

**E. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to nine and seventy-seven 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.**

**F. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to sixty-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 rural county cancer treatment fund, to the New Mexico finance authority.**

**(Laws 2017, Chapter 63, Section 9)**

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***\*\*Contingent effective the later of November 1, 2017, or 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.\*\****

**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 cancer research and treatment center at the university of New Mexico health sciences center in an amount equal to eighty-three 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 eight and eighty-nine 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, to the New Mexico finance authority.***

***C. A distribution pursuant to Section 7-1-6.1 NMSA 1978 in an amount equal to three and seventy-four 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 nine and seventy-seven 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 sixty-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 rural county cancer treatment fund, to the New Mexico finance authority.***

***(Laws 2017, Chapter 34, Section 2)***

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**7-1-6.12. TRANSFER--REVENUES FROM MUNICIPAL LOCAL OPTION GROSS RECEIPTS 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 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 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 any additional administrative fee withheld pursuant to Subsection C of 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.  
(Laws 2006, Chapter 75, Section 31)**

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**7-1-6.13. TRANSFER--REVENUES FROM COUNTY LOCAL OPTION GROSS RECEIPTS TAXES.**

**A. Except as provided in Subsection B of this section, 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 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 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 any additional administrative fee withheld pursuant to Subsection C of 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.  
(Laws 2014, Chapter 79, Section 1)**

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

**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 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 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.

(Laws 2015, Chapter 89, Section 1 and Laws 2015, Chapter 100, Section 1)

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**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.**

**(Laws 2007, Chapter 331, Section 1)**

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**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).  
(Laws 2016, Chapter 7, Section 1)**

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**7-1-6.19. DISTRIBUTION--COUNTY GOVERNMENT ROAD FUND  
CREATED.--**

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**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.**

**(Laws 1995, Chapter 6, Section 5)**

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**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 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, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act and the Oil and Gas Severance Tax Act 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 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.**

**(Laws 2001, Chapter 230, Section 2)**

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***\*\*Effective July 1, 2018\*\****

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**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 NMSA 1978 and Section 3 of this 2017 act. 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, the Oil and Gas Emergency School Tax Act, the Oil and Gas Ad Valorem Production Tax Act and the Oil and Gas Severance Tax Act 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 NMSA 1978 and Section 3 of this 2017 act. After the necessary distributions and transfers, any balance, except for remittance unidentified as to source or disposition, shall be transferred to the general fund.*  
(Laws 2017 SS, Chapter 3, Section 2)

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**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 the amount equal to two-nineteenths of the net receipts attributable to the tax imposed under the Oil and Gas Conservation Tax Act.**

**B. With respect to any period for which the rate of the tax imposed by Section 7-30-4 NMSA 1978 is eighteen-hundredths percent, a distribution pursuant to Section 7-1-6.20 NMSA 1978 shall be made to the oil and gas reclamation fund in the amount equal to one-eighteenth of the net receipts attributable to the tax imposed under the Oil and Gas Conservation Tax Act.  
(Laws 2003, Chapter 433, Section 1)**

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**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.

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.

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.

**(Laws 1991, Chapter 9, Section 17)**

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**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 and the Oil and Gas Severance Tax Act.

**(Laws 1991, Chapter 9, Section 18)**

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**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.

**(Laws 2017, Chapter 63, Section 10)**

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**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.

**(Laws 1996, Chapter 82, Section 1)**

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**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.

(Laws 2017, Chapter 63, Section 11)

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**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**

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~~(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.

(Laws 1999, Chapter 212, Section 3)

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**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.  
(Laws 1995, Chapter 6, Section 8)

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**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.  
(Laws 1993, Chapter 367, Section 74)

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**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.  
(Laws 2016 SS, Chapter 1, Section 1)

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**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.

(Laws 1993, Chapter 48, Section 1)

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**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 less any administrative fee withheld pursuant to Section 7-1-6.41 NMSA 1978.

(Laws 2017, Chapter 63, Section 12)

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**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.

(Laws 2017, Chapter 63, Section 13)

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**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.

(Laws 1992, Chapter 108, Section 3)

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**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.

(Laws 1993, Chapter 30, Section 4)

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**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 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.

(Laws 1992, Chapter 67, Section 13)

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**7-1-6.38. DISTRIBUTION--GOVERNMENTAL GROSS RECEIPTS TAX.--**

**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 net receipts attributable to the governmental gross receipts tax.**

**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 net receipts attributable to the governmental gross receipts tax. 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 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.**

**C. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the office of cultural affairs in an amount equal to one percent of the net receipts attributable to the governmental gross receipts tax for capital improvements at state museums and monuments administered by the office of cultural affairs.**

**D. 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.**

**(Laws 2003, Chapter 430, Section 1)**

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**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.  
(Laws 2003 (1<sup>st</sup> S.S.), Chapter 3, Section 2)**

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**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.  
(Laws 2018, Chapter 48, Section 1)**

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**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.**  
**(Laws 1997, Chapter 125, Section 1)**

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**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 [7-9-1 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.

(Laws 2007, Chapter 64, Section 2)

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*~~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. 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.*

*(Laws 2009, Chapter 114, Section 3 – Contingent effective date provisions not yet met)*

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**7-1-6.43. DISTRIBUTION TO LEGISLATIVE RETIREMENT FUND.--**

**A. Beginning on July 1, 2019, 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 shall be made 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 distribution to the legislative retirement fund, in December 2003 and in each December thereafter, except in 2017, 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.**

**(Laws 2017 SS, Chapter 3, Section 6)**

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**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, 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.**

**(Laws 2004, Chapter 109, Section 2)**

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**7-1-6.46. DISTRIBUTION TO MUNICIPALITIES--OFFSET FOR FOOD DEDUCTION AND HEALTH CARE PRACTITIONER SERVICES DEDUCTION.--**

**A. For a municipality that has not elected to impose 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 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:**

**(1) the total deductions claimed pursuant to Section 7-9-92 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**

**(2) 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 for the month plus one and two hundred twenty-five thousandths percent.**

**B. For a municipality not described in Subsection A 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 sum of:**

**(1) the total deductions claimed pursuant to Section 7-9-92 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 the following percentages:**

- (a) prior to July 1, 2015, one hundred percent;**
- (b) on or after July 1, 2015 and prior to July 1, 2016, ninety-four percent;**
- (c) on or after July 1, 2016 and prior to July 1, 2017, eighty-eight percent;**
- (d) on or after July 1, 2017 and prior to July 1, 2018, eighty-two percent;**
- (e) on or after July 1, 2018 and prior to July 1, 2019, seventy-six percent;**
- (f) on or after July 1, 2019 and prior to July 1, 2020, seventy percent;**
- (g) on or after July 1, 2020 and prior to July 1, 2021, sixty-three percent;**
- (h) on or after July 1, 2021 and prior to July 1, 2022, fifty-six percent;**
- (i) on or after July 1, 2022 and prior to July 1, 2023,**

forty-nine percent;  
forty-two percent;  
thirty-five percent;  
twenty-eight percent;  
twenty-one percent;  
fourteen percent; and  
seven percent; and

(2) 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 the following percentages:

(a) prior to July 1, 2015, one hundred percent;  
ninety-four percent;  
eighty-eight percent;  
eighty-two percent;  
seventy-six percent;  
seventy percent;  
sixty-three percent;  
fifty-six percent;  
forty-nine percent;  
forty-two percent;  
thirty-five percent;  
twenty-eight percent;  
twenty-one percent;



fourteen percent; and

(o) on or after July 1, 2028 and prior to July 1, 2029, seven percent.

C. The distribution pursuant to Subsections A and B of 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. 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.

D. If the reductions made by this 2013 act to the distributions made pursuant to Subsections A and B of 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, 2013 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, 2013.

E. 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.

F. 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.  
(Laws 2013, Chapter 160, Section 1)**

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**7-1-6.47. DISTRIBUTION TO COUNTIES--OFFSET FOR FOOD DEDUCTION AND HEALTH CARE PRACTITIONER SERVICES DEDUCTION.--**

**A. For a county that has not elected to impose 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 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:**

**(1) the total deductions claimed pursuant to Section 7-9-92 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;**

**(2) the total deductions claimed pursuant to Section 7-9-92 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;**

**(3) the total deductions claimed pursuant to Section 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**

**(4) 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 for the month that are imposed in the county area not within a municipality.**

**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 sum of:**

**(1) the total deductions claimed pursuant to Section 7-9-92 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 in the following percentages:**

- (a) prior to July 1, 2015, one hundred percent;**
- (b) on or after July 1, 2015 and prior to July 1, 2016, ninety-four percent;**
- (c) on or after July 1, 2016 and prior to July 1, 2017, eighty-eight percent;**
- (d) on or after July 1, 2017 and prior to July 1, 2018,**

eighty-two percent;  
seventy-six percent;  
seventy percent;  
sixty-three percent;  
fifty-six percent;  
forty-nine percent;  
forty-two percent;  
thirty-five percent;  
twenty-eight percent;  
twenty-one percent;  
fourteen percent; and  
seven percent;

(2) the total deductions claimed pursuant to Section 7-9-92 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 the following percentages:

(a) prior to July 1, 2015, one hundred percent;  
ninety-four percent;  
eighty-eight percent;  
eighty-two percent;  
seventy-six percent;  
seventy percent;  
sixty-three percent;  
fifty-six percent;

forty-nine percent;  
(j) on or after July 1, 2023 and prior to July 1, 2024,  
forty-two percent;  
(k) on or after July 1, 2024 and prior to July 1, 2025,  
thirty-five percent;  
(l) on or after July 1, 2025 and prior to July 1, 2026,  
twenty-eight percent;  
(m) on or after July 1, 2026 and prior to July 1, 2027,  
twenty-one percent;  
(n) on or after July 1, 2027 and prior to July 1, 2028,  
fourteen percent; and  
(o) on or after July 1, 2028 and prior to July 1, 2029,  
seven percent;

(3) the total deductions claimed pursuant to Section 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 in the following percentages:

(a) prior to July 1, 2015, one hundred percent;  
(b) on or after July 1, 2015 and prior to July 1, 2016,  
ninety-four percent;  
(c) on or after July 1, 2016 and prior to July 1, 2017,  
eighty-eight percent;  
(d) on or after July 1, 2017 and prior to July 1, 2018,  
eighty-two percent;  
(e) on or after July 1, 2018 and prior to July 1, 2019,  
seventy-six percent;  
(f) on or after July 1, 2019 and prior to July 1, 2020,  
seventy percent;  
(g) on or after July 1, 2020 and prior to July 1, 2021,  
sixty-three percent;  
(h) on or after July 1, 2021 and prior to July 1, 2022,  
fifty-six percent;  
(i) on or after July 1, 2022 and prior to July 1, 2023,  
forty-nine percent;  
(j) on or after July 1, 2023 and prior to July 1, 2024,  
forty-two percent;  
(k) on or after July 1, 2024 and prior to July 1, 2025,  
thirty-five percent;  
(l) on or after July 1, 2025 and prior to July 1, 2026,  
twenty-eight percent;  
(m) on or after July 1, 2026 and prior to July 1, 2027,  
twenty-one percent;  
(n) on or after July 1, 2027 and prior to July 1, 2028,  
fourteen percent; and

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

(4) 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 the following percentages:

- (a) prior to July 1, 2015, one hundred percent;
- (b) on or after July 1, 2015 and prior to July 1, 2016, ninety-four percent;
- (c) on or after July 1, 2016 and prior to July 1, 2017, eighty-eight percent;
- (d) on or after July 1, 2017 and prior to July 1, 2018, eighty-two percent;
- (e) on or after July 1, 2018 and prior to July 1, 2019, seventy-six percent;
- (f) on or after July 1, 2019 and prior to July 1, 2020, seventy percent;
- (g) on or after July 1, 2020 and prior to July 1, 2021, sixty-three percent;
- (h) on or after July 1, 2021 and prior to July 1, 2022, fifty-six percent;
- (i) on or after July 1, 2022 and prior to July 1, 2023, forty-nine percent;
- (j) on or after July 1, 2023 and prior to July 1, 2024, forty-two percent;
- (k) on or after July 1, 2024 and prior to July 1, 2025, thirty-five percent;
- (l) on or after July 1, 2025 and prior to July 1, 2026, twenty-eight percent;
- (m) on or after July 1, 2026 and prior to July 1, 2027, twenty-one percent;
- (n) on or after July 1, 2027 and prior to July 1, 2028, fourteen percent; and
- (o) on or after July 1, 2028 and prior to July 1, 2029, seven percent.

C. The distribution pursuant to Subsections A and B of 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. 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.**

**D. If the reductions made by this 2013 act to the distributions made pursuant to Subsections A and B of 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, 2013 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, 2013.**

**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.**

**(Laws 2013, Chapter 160, Section 2)**

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**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.  
(Laws 2017, Chapter 63, Section 14)

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**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.  
(Laws 2017, Chapter 63, Section 15)

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**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.  
(Laws 2018, Chapter 4, Section 1)

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**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.**

**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.**

**(Laws 2005, Chapter 351, Section 1)**

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**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 for receipts from the sale of services for resale.**

**(Laws 2005, Chapter 104, Section 1)**

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**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 in an amount necessary to make the required bond debt service payments pursuant to the Energy Efficiency and Renewable Energy Bonding Act 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.

(Laws 2005, Chapter 176, Section 11)

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**7-1-6.54. DISTRIBUTIONS--TAX INCREMENT DEVELOPMENT DISTRICTS.--** A distribution to a tax increment development district shall be made by the department, in accordance with a notice that is filed pursuant to the Tax Increment for Development Act with respect to a taxing entity's dedication of a portion of a gross receipts tax increment to the tax increment development district.

(Laws 2006, Chapter 75, Section 29)

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**7-1-6.55. DISTRIBUTION TO MUNICIPALITY EQUIVALENT TO A PORTION OF COMPENSATING TAX.--**

**A. A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to each municipality in an amount calculated pursuant to Subsection B of this section, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978; provided that the distribution shall be phased in according to the following schedule:**

**(1) from July 1, 2008 until June 30, 2009, the distribution shall be equal to ten percent of the amount calculated according to Subsection B of this section; and**

**(2) on or after July 1, 2009, the distribution shall be equal to thirty percent of the amount calculated according to Subsection B of this section.**

**B. The amount of the distribution provided for in this section shall be calculated for each month in the six-month period beginning on each July 1 and January 1 and shall be equal to the reported taxable gross receipts for all business locations in the municipality for the month multiplied by:**

**(1) the ratio of net compensating tax receipts for the entire six-month period beginning the previous November 1 or May 1, respectively, to the reported taxable gross receipts for all business locations for the entire six-month period beginning the previous November 1 or May 1, respectively; and further multiplied by:**

**(2) the ratio of one and two hundred twenty-five thousandths percent to the average tax rate imposed by Section 7-9-7 NMSA 1978 in effect for the six-month period beginning on January 1 or July 1, respectively.**

**(Laws 2007, Chapter 331, Section 4)**

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***\*\*Repealed effective January 1, 2017***

***by Laws 2016 SS, Chapter 1, Section 3\*\****

***7-1-6.56. DISTRIBUTION--RETIREE HEALTH CARE FUND.--In addition to the distribution made pursuant to Section 7-1-6.30 NMSA 1978, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the retiree health care fund in the amount of two hundred fifty thousand dollars (\$250,000). (Laws 2009, Chapter 288, Section 1; Laws 2009, Chapter 287, Section 1)***

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**7-1-6.57. DISTRIBUTION ADJUSTMENT--TAX ADMINISTRATION SUSPENSE FUND--CREDIT FOR RECEIPTS OF HOSPITALS.--** Distributions from the tax administration suspense fund to the general fund of net receipts attributable to the gross receipts tax shall be adjusted for the full cost of credits issued pursuant to the Gross Receipts and Compensating Tax Act for receipts of hospitals licensed by the department of health.  
(Laws 2007, Chapter 361, Section 1)

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**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.  
(Laws 2007 (1<sup>st</sup> S.S.), Chapter 2, Section 8)

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**7-1-6.59. DISTRIBUTION--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 the Income Tax Act as contributions to the veterans' services department for the operation, maintenance and improvement of the Vietnam veterans memorial near Angel Fire, New Mexico.  
(Laws 2017, Chapter 115, Section 1)

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**7-1-6.59. DISTRIBUTION--VETERANS MEMORIAL OPERATION, MAINTENANCE AND IMPROVEMENT.--**A distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the state parks division of the energy, minerals and natural resources department in an amount equal to the money designated pursuant to Section 7-2-30.4 NMSA 1978 as contributions to the state parks division of the energy, minerals and natural resources department for the operation, maintenance and improvement of the Vietnam veterans memorial state park near Angel Fire, New Mexico.  
(Laws 2017, Chapter 63, Section 17)

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**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.  
(Laws 2010, Chapter 31, Section 2)

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**7-1-6.61.-- DISTRIBUTION--TAX STABILIZATION RESERVE FROM THE OIL AND GAS EMERGENCY SCHOOL TAX.--**

A. A distribution pursuant to Section 7-1-6.20 NMSA 1978 shall be made to the tax stabilization reserve 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 to the tax stabilization reserve. If there is not an excess amount, no distribution shall be made to the tax stabilization reserve. Each month the department shall make the calculation to determine if an excess amount should be distributed.

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.

(Laws 2017 SS, Chapter 3, Section 3)

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**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.**

**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.**

**(Laws 2019, Chapter 53, Section 9 –Delayed repeal January 1, 2023)**

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**7-1-6.64.-- DISTRIBUTION--MUNICIPALITIES AND COUNTIES.-**

**A. Prior to July 1, 2021, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to municipalities from the net receipts attributable to the gross receipts tax in an amount equal to one million two hundred fifty thousand dollars (\$1,250,000). The amount to be distributed to each municipality shall be in proportion to the population of each municipality in the proportion that the population of each municipality is to the total population of all municipalities, according to the most recent federal decennial census.**

**B. Prior to July 1, 2021, a distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be made to counties from the net receipts attributable to the gross receipts tax in an amount equal to seven hundred fifty thousand dollars (\$750,000). The amount to be distributed to each county shall be in the proportion that the population of each county is to the total population of all counties, according to the most recent federal decennial census.**

**(Laws 2019, Chapter 270, Section 9 –Delayed repeal January 1, 2023)**

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**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.**

**(Laws 2017, Chapter 63, Section 18)**

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**3.1.3.8 - STATE WARRANTS FOR PAYMENT OF TAX REFUNDS AND TAX REBATES**

**A. Generally, information contained on a state warrant issued in response to a tax return submitted by a taxpayer, including electronic data processing records relative to the warrant, is confidential information for purposes of Section 7-1-8 NMSA 1978. Warrants issued**



in response to a claim for a refund, the record of which is required to be available for public inspection under Section 7-1-29 NMSA 1978, are not confidential information.

B. Example: A loan company requests from an employee of the department the mailing address of a taxpayer and the dollar amount of a state warrant which was processed as a refund or rebate from an income tax return. The information requested was derived from information contained in the return of a taxpayer, and it is unlawful for the employee to reveal this information.

[11/5/85, 8/15/90, 10/31/96; 3.1.3.8 NMAC - Rn & A, 3 NMAC 1.3.8, 12/29/00]

### **3.1.3.9 - RECIPROCAL AGREEMENTS WITH OTHER STATES OR TRIBES**

The secretary shall retain all reciprocal exchange-of-information agreements between the department and the authorized representatives of other states or of Indian nations, tribes or pueblos which permit designated employees of the department to reveal to the receiving state or Indian nation, tribe or pueblo, for tax purposes only, information contained in the return of a taxpayer or other information about a taxpayer.

[11/5/85, 8/15/90, 10/31/96; 3.1.3.9 NMAC - Rn, 3 NMAC 1.3.9, 12/29/00]

### **3.1.3.10 - RECIPROCAL AGREEMENT - UNITED STATES SECRETARY OF THE TREASURY'S AUTHORIZED REPRESENTATIVE**

A. The secretary shall maintain a permanent record of the reciprocal agreement between the department and the representative of the secretary of the treasury for exchange of tax information. The proper representative of the secretary of the treasury shall be identified in the reciprocal agreement with the department. Identification of proper representatives may be made by job title or job description.

B. Example: A representative of the United States treasury department's alcohol, tobacco and firearms bureau (ATFB) requests from a department employee information contained in the return of a taxpayer. The representative explains that the organization is a branch of the treasury department, and the tax information requested will aid the state of New Mexico in collecting more tobacco taxes. Since the ATFB of the treasury department is not the authorized representative of the secretary of the treasury under a reciprocal agreement, it is unlawful for any employee of the department to fulfill the ATFB representative's request.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.3.10 NMAC - Rn, 3 NMAC 1.3.10, 12/29/00]

### **3.1.3.11 - TAXPAYER "WAIVER" OF CONFIDENTIALITY**

A. For the purpose of Section 7-1-8 NMSA 1978, and except as provided in Subsection 7-1-24E NMSA 1978 for a taxpayer request for an administrative hearing to be open to the public, there is no provision in the Tax Administration Act for a taxpayer to "waive" the provisions of Section 7-1-8 NMSA 1978 as applied to an employee or former employee of the department. The provisions of Section 7-1-8 NMSA 1978 and the punitive provisions of Section 7-1-76 NMSA 1978 are imposed on an employee or former employee and cannot be released by a taxpayer. The secretary will not accept or approve a purported "waiver" of confidentiality under Section 7-1-8 NMSA 1978 from taxpayers who attempt to make lawful that which is unlawful for employees and former employees of the department.

B. Example: A taxpayer and the taxpayer's attorney attend an informal conference with the secretary and department attorneys to discuss the tax consequences of the taxpayer's

activities as a seller of tangible personal property in New Mexico. The taxpayer's attorney announces that a buyer (who is also a taxpayer) of the client's property has no objections to information from the buyer's tax returns being revealed by the secretary to those present in the conference. The attorney, although not representing the buyer, has a signed letter from the buyer "waiving" confidentiality of information in the buyer's returns which are in the possession of the department. This "waiver" does not make it lawful for the secretary or any other department employee to act upon this request by revealing the buyer's tax records or to give any information about the buyer acquired as a result of employment by the department. The buyer can obtain the information from the department and make any use of it the buyer deems proper. Or, in the alternative, the buyer could appoint the attorney in question the buyer's "authorized representative" to receive this information.

[11/5/85, 8/15/90, 10/31/96; 3.1.3.11 NMAC - Rn & A, 3 NMAC 1.3.11, 12/29/00]

### **3.1.3.12 - DISCLOSURE OF TAX INFORMATION TO A COURT**

A. The exception in Subsection 7-1-8D NMSA 1978, permitting disclosure in response to an order of a district court, an appellate court or a federal court, shall be restricted to those actions:

- (1) relating to taxes, where the state is a party and where the information sought is material to the inquiry;
- (2) where the department is attempting to collect a tax; or
- (3) where the taxpayer has put the taxpayer's own tax liability at issue.

B. Unless the order of the court concerns an action that meets all three of the restrictions in Paragraph 3.1.3.12A(1) NMAC, or the restrictions in Paragraphs (2) and (3) of Subsection 3.1.3.12A NMAC, it is unlawful for an employee of the department or any former employee of the department to breach taxpayer confidentiality.

C. No provision in Subsection 7-1-8D NMSA 1978 precludes any employee from making tax information available to the taxpayer or the taxpayer's authorized representative when a court orders the taxpayer to obtain such information for purposes of discovery. Nothing in Subsection 7-1-8E NMSA 1978 shall be construed to require any employee to testify in a judicial proceeding except as provided in Subsection 7-1-8D NMSA 1978.

D. Example: A taxpayer in the business of selling construction services files a civil suit in a district court against the owner of a construction project and seeks judgment against the owner for an increase in the contract price as reimbursement for gross receipts taxes. Upon the taxpayer's request the court issues a subpoena duces tecum to an employee of the department to appear as a witness in the court action and bring certain records of the defendant. Although the court action relates to taxes and the information sought is material to the inquiry, the state is not a party to the suit nor does the information sought concern a taxpayer who has put the taxpayer's own tax liability at issue. It is unlawful for the employee to reveal tax information as a witness. Should the employee comply with the court's order, the employee may be guilty of a misdemeanor under Section 7-1-76 NMSA 1978 and upon conviction suffer the penalties prescribed by law. The secretary, through counsel, normally will present a motion to the court asking that the subpoena duces tecum be quashed.

(1) If time does not permit a motion to quash to be prepared and presented before the court, the employee will appear at the appointed time and make the following statement to the court:

“Your honor, I respectfully decline to disclose the information upon the advice of the Secretary of Taxation and Revenue and my legal counsel. The information requested is privileged under Rule 11-502 of the New Mexico Rules of Evidence. Also, the disclosure of this information will subject me to possible criminal prosecution under Section 7-1-8 and Section 7-1-76, New Mexico Statutes Annotated 1978. The disclosure of this information might also subject me to criminal prosecution by the United States pursuant to Section 7213(a)(2) of the United States Internal Revenue Code. Since the disclosure of this information might tend to incriminate me in a later criminal proceeding, I hereby invoke my rights under the Fifth Amendment to the United States constitution and Article II, Section 15 of the constitution of New Mexico.”

(2) The employee may further advise the court that the department may release the information to the taxpayer or the taxpayer's authorized representative and the court may then order the taxpayer to reveal the information as appropriate.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.3.12 NMAC - Rn & A, 3 NMAC 1.3.12, 12/29/00]

### **3.1.3.13 - AUTHORIZED REPRESENTATIVE**

**A.** The authorization of any person to be a representative of a taxpayer must be in writing, must contain sufficient information for the department to identify the taxpayer and the representative and must be signed by the taxpayer. The authorization must be in a form prescribed by the department, and renewed at an interval set by the department.

**B.** Upon presentation of a proper authorization from a taxpayer's representative, the secretary or employee may reveal information concerning the taxpayer and the taxpayer's return. If, however, the adversarial position of the representative or some change of circumstance in the relationship between the taxpayer and the taxpayer's authorized representative leads the secretary or employee to question the continued validity of the authorization, the secretary or employee may inquire of the taxpayer whether the authorization remains valid. A taxpayer may revoke an authorization of a person to be the taxpayer's representative by filing a document with the department so stating.

[11/5/85, 8/15/90, 10/31/96; 3.1.3.13 NMAC - Rn & A, 3 NMAC 1.3.13, 12/29/00, 9/25/2018]

### **3.1.3.14 - BANKRUPTCY**

**A.** Whenever an order for relief is entered under Title 11 of the United States Code with respect to a taxpayer, the taxpayer shall be deemed to have put his liability for taxes at issue and the department shall be deemed to be a party to the bankruptcy proceeding. The bankruptcy court may enter an order allowing any other party in the bankruptcy case to obtain information from the department regarding the debtor-taxpayer upon the party showing relevance and need for the information. The department may release information pursuant to such an order.

**B.** The bankruptcy trustee serving in the case in which the taxpayer is the debtor, the United States trustee and any court-appointed examiner or liquidating agent in a Chapter 11 case will be deemed the taxpayer's authorized representative. The department may release information concerning the taxpayer and the taxpayer's tax liabilities to such a representative.

[2/9/95, 10/31/96; 3.1.3.14 NMAC - Rn, 3 NMAC 1.3.14, 12/29/00]

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**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.**

**(Laws 2009, Chapter 243, Section 3)**

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**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 tax on gasoline imposed by the Gasoline Tax Act, make available for public inspection at monthly intervals a report covering the number of gallons of gasoline and ethanol blended fuels received and deducted and the amount of tax paid by each person required to file a gasoline tax return or pay gasoline 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.**

**(Laws 2009, Chapter 243, Section 4)**

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**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 and the Severance Tax Act 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 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.**

**(Laws 2015, Chapter 73, Section 12)**

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**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.**

**(Laws 2015, Chapter 73, Section 13)**

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**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.**

**(Laws 2009, Chapter 243, Section 7)**

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**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.**

**(Laws 2009, Chapter 243, Section 8)**

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**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.**

**(Laws 2015 S.S., Chapter 2, Section 1)**

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**7-1-8.8. INFORMATION THAT MAY BE REVEALED TO OTHER STATE AGENCIES.-- An employee of the department may reveal to:**

**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;**

**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, 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;**

**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 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 secretary of human services or the secretary's delegate; provided that a person who receives the confidential return information on behalf of the human services department shall not reveal the information and shall be subject to the penalties in Section 7-1-76 NMSA 1978 if the person fails to maintain the confidentiality required:**

**(1) that return information needed for reports required to be made to the federal government concerning the use of federal funds for low-income working families; and**

**(2) the names and addresses of low-income taxpayers for the limited purpose of outreach to those taxpayers; provided that the human services department shall pay the department for expenses incurred by the department to derive the information requested by the human services department if the information requested is not readily available in reports for which the department's information systems are programmed;**

**O. the secretary of finance and administration or the secretary's delegate, aggregate return information concerning credits pursuant to the Film Production Tax Credit Act; and**

**P. the secretary of economic development or the secretary's delegate, aggregate return information concerning a credit pursuant to the Film Production Tax Credit Act.**

**(Laws 2019, Chapter 87, Section 1)**

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***\*\*Effective January 1, 2020\*\****

***7-1-8.8. INFORMATION THAT MAY BE REVEALED TO OTHER STATE AGENCIES.--An employee of the department may reveal to:***

***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;***

***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, 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;*

*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 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 secretary of human services or the secretary's delegate; provided that a person who receives the confidential return information on behalf of the human services department shall not reveal the information and shall be subject to the penalties in Section 7-1-76 NMSA 1978 if the person fails to maintain the confidentiality required:*

*(1) that return information needed for reports required to be made to the federal government concerning the use of federal funds for low-income working families; and*

*(2) the names and addresses of low-income taxpayers for the limited purpose of outreach to those taxpayers; provided that the human services department shall pay the department for expenses incurred by the department to derive the information requested by the human services department if the information requested is not readily available in reports for which the department's information systems are programmed;*

*O. the superintendent of insurance, return information with respect to the premium tax and the health insurance premium surtax;*

*P. the secretary of finance and administration or the secretary's delegate, aggregate return information concerning a credit pursuant to the Film Production Tax Credit Act; and*

*Q. the secretary of economic development or the secretary's delegate, aggregate return information concerning a credit pursuant to the Film Production Tax Credit Act.*

*(Laws 2019, Chapter 87, Section 2)*

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**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 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.

(Laws 2015, Chapter 89, Section 2; and Laws 2015, Chapter 100, Section 2)

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**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, Special Fuels Supplier Tax Act or Alternative Fuel Tax Act, 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; and**

**D. a corporation authorized to be formed under the Educational Assistance Act, 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.**

**(Laws 2009, Chapter 243, Section 12)**

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**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.**

**(Laws 2017, Chapter 63, Section 20)**

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**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.

**(Laws 1997, Chapter 66, Section 2)**

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**3.1.4.9 - THE REQUIREMENT OF A CORRECT MAILING ADDRESS:**

A. All notices, returns or applications required to be made by the taxpayer must include the correct mailing address of the taxpayer and the taxpayer must promptly advise the department in writing of any change in mailing address. If the department has prescribed a form or format for reporting a change of address, the form or format must be followed provided that, if the required information is contained in a change of address form or notice of the United States postal service, the United States postal service change of address form or notice may be used in lieu of the department form.

B. If a taxpayer notifies the United States postal service of a change in the taxpayer's mailing address and this information is given by the United States postal service to the department either voluntarily or upon the department's request, the taxpayer shall have fulfilled the taxpayer's obligation to notify the department of a change in mailing address. Unless the taxpayer specifically notifies the department that the change of mailing address does not apply to mailings from the department to the taxpayer, the notice by the taxpayer to the United States postal service of a change in the taxpayer's mailing address and given by the United States postal service to the department applies to mailings from the department.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.4.9 NMAC - Rn, 3 NMAC 1.4.9, 12/29/00; A, 12/15/11]

**3.1.4.10 - DUE DATES AND TIMELINESS**

**B. TIMELINESS OF ELECTRONIC TRANSMISSIONS:**

(1) Notices, returns and applications authorized or required to be made or given by electronic transmission, are timely if the notice, return or application is electronically transmitted to the department and accepted on or before the last date prescribed for filing the

notice, return or application. Accordingly, the sender who relies upon the applicability of Section 7-1-13 NMSA 1978 assumes the responsibility to provide the department proof that the electronic transmission to the department was initiated on or before the last date prescribed for filing the notice, return or application.

(2) Returns required by regulation or statute to be filed electronically shall not be considered filed until filed electronically if filed by any means other than as specified in that regulation or statute unless the taxpayer receives an exception or waiver to electronic filing in writing from the department, and taxpayer will be subject to penalties under Section 7-1-69 NMSA 1978 for a late filed return until an electronic return is filed.

**C. DETERMINATION OF TIMELINESS:**

(1) Notices, returns, applications and payments, other than payments specified by Section 7-1-13.1 NMSA 1978, authorized or required to be made or given by mail are timely if the postmark on the envelope made by the United States postal service bears the date on or before the last date prescribed for filing the notice, return or application or for making the payment. The date affixed on an envelope by a postage meter stamp will be considered the postmark date if it is not superseded by a postmark made by the United States postal service. If the postmark does not bear a date on or before the last date prescribed for filing the notice, return or application, or for making the payment, the notice, return, application or payment will be presumed to be late. Accordingly, the sender who relies upon the applicability of Section 7-1-9 NMSA 1978 assumes the responsibility that the postmark will bear a date on or before the last date prescribed for filing the notice, return or application, or for making the payment.

(2) If a mailing is not received by the department, the contents of the mailing are not timely. If an envelope is improperly addressed and is returned to the sender by the post office, there has been no timely mailing within the meaning of the statute. The postmark date on the improperly addressed envelope will not be deemed the date of receipt by the department.

(3) A facsimile transmittal of a notice, return or application will be considered a timely filing of the notice, return or application only if:

(a) the facsimile is received by the due date for filing the notice, return or application; and

(b) the original is delivered by the due date or, if mailed, postmarked on or before the due date.

**D. ILLEGIBLE POSTMARK:**

(1) If the postmark on the envelope is not legible and the contents are received by the department by the second business day following the due date, filing of the return, payment or other action will be deemed timely. If the contents are received by the department after the second business day following the due date, the person who is required to file notices, returns or applications, or make payments, has the burden of proving the time when the postmark was made.

(2) The provisions of Subsection D of 3.1.4.10 NMAC apply only to actions required or permitted to be performed by mail.

(3) If the notice, return, application or payment other than payments specified by Section 7-1-13.1 NMSA 1978 is sent or delivered to the department by any means other than by mailing with the United States postal service, it must be received by the department on or before the due date for filing the notice, return or application or making the payment.

**I. TIMELINESS OF ELECTRONIC PAYMENTS:**

(1) Payments, other than payments specified by Section 7-1-13.1 NMSA 1978, authorized or required to be made or given by electronic payment, are timely if the payment is electronically transmitted to the department and accepted, on or before the last date prescribed for making the payment. Accordingly, the sender who relies upon the applicability of Section 7-1-13.4 NMSA 1978 assumes the responsibility to provide the department proof that the electronic transmission to the department was initiated on or before the last date prescribed for making the payment.

(2) Payments specified by Section 7-1-13.1 NMSA 1978, authorized or required to be made or given by electronic payment, are timely if the result of the electronic payment is that the funds are available to the state of New Mexico on or before the last date prescribed for making the payment. The date that an electronic payment was transmitted to the department is not an indicator of whether the payment was timely. The sender who relies upon the applicability of Section 7-1-13.4 NMSA 1978 assumes the responsibility that the funds were available to the department on or before the last date prescribed for making the payment.

[7/19/67, 9/9/71, 11/5/85, 8/15/90, 11/7/90, 12/13/91, 9/20/93, 10/31/96; 3.1.4.10 NMAC - Rn & A, 3 NMAC 1.4.10, 12/29/00; A, 10/31/07; A, 6/30/10]

#### **3.1.4.16 - PRIVATE DELIVERY SERVICE POSTMARKS**

Delivery to a private delivery service designated by the secretary of the Treasury under 26 USCA 7502 during the time the designation is in effect will be considered a timely mailing for purposes of the Tax Administration Act if the date recorded or marked by the private delivery service is on or before the date by which mailing is required. Section 3.1.4.16 NMAC applies to deliveries to a designated private delivery service after June 30, 1999.

[8/16/99; 3.1.4.16 NMAC - Rn & A, 3 NMAC 1.4.16, 12/29/00]

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**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.

(Laws 2007, Chapter 275, Section 1)

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#### **3.1.4.14 - PRESCRIBED FORMAT OF NON-PAPER RETURNS MUST BE FOLLOWED**

Whenever the secretary permits or requires returns to be filed electronically or in electromagnetic media, such as tapes or disks, the return information must be in the format prescribed by the department. Failure to follow the prescribed format may result in non-acceptance of an attempted filing. If a return is not accepted because of formatting errors and re-submission of the return occurs after the due date, the return has not been timely filed.

[4/30/97; 3.1.4.14 NMAC - Rn, 3 NMAC 1.4.14, 12/29/00]

#### **3.1.4.15 - REPORTING PERIOD - PERMISSION REQUIRED FOR USE OF NON-STANDARD "MONTH"**

For purposes of reporting taxes due on a monthly basis, the reporting period is a calendar month unless the taxpayer has obtained the secretary's permission to use another period, such as reporting based on standardized calendar quarters of 4 weeks, 4 weeks and 5 weeks or thirteen months of 4 weeks. Because of complications introduced by deviations from the calendar month reporting, the secretary may require substantial justification before approving any significant departure from the calendar month reporting cycle.

[12/31/97; 3.1.4.15 NMAC - Rn, 3 NMAC 1.4.15 12/29/00]

#### **3.1.5.8 - SUFFICIENCY OF RECORDS**

A. Books of account, documents and other records shall be kept and maintained by a taxpayer in a manner that will permit the accurate computation of state taxes and provide information required by the statutes under which the taxpayer is required to keep records. The Tax Administration Act sets no time requirement for taxpayer retention of books of account or other records but Section 7-1-18 NMSA 1978 sets the statute of limitations for the assessing of tax asserted to be due. If state taxes cannot be accurately or readily computed by the secretary or secretary's delegate from the records, the records are not sufficient or adequate for the purpose of Section 7-1-10 NMSA 1978. The adequacy or inadequacy of taxpayer records is a matter of fact to be determined by the secretary or secretary's delegate. Taxpayers have a duty to provide the secretary or secretary's delegate, upon request, with books of account and other records upon which to establish a basis for taxation.

B. Failure of a taxpayer to keep adequate books of account or other records will cause the department to use alternative methods to determine or estimate taxes due.

C. Alternative methods which may be used by the department include, but are not limited to:

- (1) bank deposit method;
- (2) documents and records of persons other than the taxpayer;
- (3) federal returns and other government reports;
- (4) cost of sales markup -- weighted percentage;
- (5) net worth analysis;
- (6) industry comparison; and
- (7) provisional assessment of taxes based on best available information and

allowing for any increase which may have occurred due to inflation, increased economic activity or other reasons.

D. Any one, or a combination, of the methods listed above or other methods may be used for taxpayer records reconstruction or verification.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.5.8 NMAC - Rn & A, 3 NMAC 1.5.8, 12/29/00]

### **3.1.5.9 - RECORDS RECONSTRUCTION**

A. The secretary or secretary's delegate is authorized to reconstruct records of a person to establish or determine the extent of tax liability. The nonexistence or inadequacy of the records, for whatever reason, is the pertinent fact permitting reconstruction.

B. Example: A taxpayer's records for one audit year were destroyed accidentally. The department auditor is permitted to use the bank deposit method to reconstruct sales and income for that year.

[11/5/85, 8/15/90, 10/31/96; 3.1.5.9 NMAC - Rn, 3 NMAC 1.5.9, 12/29/00]

### **3.1.5.10 - CONSISTENCY IN METHOD OF ACCOUNTING**

The method of accounting used by taxpayers for state tax computation or for accumulating information required by state tax statutes shall be consistent for the same business. There is no requirement that the method of accounting for one type of state tax be the same method of accounting for another type of state tax. For example, a taxpayer may account for and report the taxpayer's gross receipts tax on the cash basis, while accounting for and reporting the taxpayer's income tax on an accrual basis. But a taxpayer may not account for and report January's gross receipts on the cash accounting method, and then account for and report February's gross receipts on the accrual accounting method without first securing the consent of the secretary or secretary's delegate.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.5.10 NMAC - Rn, 3 NMAC 1.5.10, 12/29/00]

### **3.1.5.11 - ACCOUNTING FOR GOVERNMENTAL GROSS RECEIPTS TAX**

Agencies, institutions, instrumentalities and political subdivisions of the state of New Mexico which are subject to the governmental gross receipts tax may treat different taxable activities as different lines of business. Accordingly, one or more activities may be accounted for and reported on a cash basis and one or more other activities may be accounted for and reported on an accrual or modified accrual basis. Once the cash basis, accrual or modified accrual basis has been selected as the method of accounting for and reporting receipts from a particular activity, the activity must continue to be accounted for and reported on the same basis in subsequent periods unless prior permission is received from the department to change the method of accounting or reporting.

[9/17/91, 10/31/96; 3.1.5.11 NMAC - Rn, 3 NMAC 1.5.11, 12/29/00]

### **3.1.5.15 - RECORDKEEPING AND RETENTION REQUIREMENTS**

#### **A. RECORDKEEPING REQUIREMENTS - DEFINITIONS**

For purposes of Section 3.1.5.15 NMAC, these terms shall be defined as follows:

(1) “Database management system” means a software system that controls, relates, retrieves and provides accessibility to data stored in a database.

(2) “Electronic data interchange” or “EDI technology” means the computer to computer exchange of business transactions in a standardized structured electronic format.

(3) “Hardcopy” means any documents, records, reports or other data printed on paper.

(4) “Machine-sensible record” means a collection of related information in an electronic format. Machine-sensible records do not include hardcopy records that are created or recorded on paper or stored in or by an imaging system such as microfilm, microfiche or storage-only imaging systems.

(5) “Storage-only imaging system” means a system of computer hardware and software that provides for the storage, retention and retrieval of documents originally created on paper. It does not include any system, or part of a system, that manipulates or processes any information or data contained on the document in any manner other than to reproduce the document in hardcopy or as an optical image.

#### **B. RECORDKEEPING REQUIREMENTS - GENERAL**

(1) A taxpayer shall maintain all records that are necessary to a determination of the correct tax liability under the taxes and tax acts the administration and enforcement of which is governed by the Tax Administration Act. All required records must be made available on request by the department or its authorized representatives as provided for in Section 7-1-11 NMSA 1978. Such records shall include, but not be necessarily limited to the records required under Section 7-1-10 NMSA 1978.

(2) If a taxpayer retains records required to be retained under Section 3.1.5.15 NMAC in both machine-sensible and hardcopy formats, the taxpayer shall make the records available to the department in machine-sensible format upon request of the department.

(3) Nothing in Section 3.1.5.15 NMAC shall be construed to prohibit a taxpayer from demonstrating tax compliance with traditional hardcopy documents or reproductions thereof, in whole or in part, whether or not such taxpayer also has retained or has the capability to retain records on electronic or other storage media in accordance with Section 3.1.5.15 NMAC. However, this paragraph shall not relieve the taxpayer of the obligation to comply with Paragraph 3.1.5.15B(2) NMAC.

#### **C. RECORDKEEPING REQUIREMENTS - MACHINE SENSIBLE RECORDS**

(1) General Requirements.

(a) Machine-sensible records used to establish tax compliance shall contain sufficient transaction-level detail information so that the details underlying the machine-sensible records can be identified and made available to the department upon request. A taxpayer has discretion to discard duplicated records and redundant information provided its responsibilities under Section 3.1.5.15 NMAC are met.

(b) At the time of an examination, the retained records must be capable of being retrieved and converted to a standard record format.

(c) Taxpayers are not required to construct machine-sensible records other



than those created in the ordinary course of business. A taxpayer who does not create the electronic equivalent of a traditional paper document or store the information in machine-sensible records in the ordinary course of business is not required to construct a machine-sensible record for tax purposes.

(2) Electronic Data Interchange Requirements.

(a) Where a taxpayer uses electronic data interchange processes and technology, the level of record detail, in combination with other records related to the transactions, must be equivalent to that contained in an acceptable paper record. For example, the retained records should contain such information as vendor name, invoice date, product description, quantity purchased, price, amount of tax, indication of tax status, shipping detail, etc. Codes may be used to identify some or all of the data elements, provided that the taxpayer provides a method which allows the department to interpret the coded information.

(b) The taxpayer may capture the information necessary to satisfy Paragraph 3.1.5.15C(1) NMAC at any level within the accounting system and need not retain the original EDI transaction records provided the audit trail, authenticity and integrity of the retained records can be established. For example, a taxpayer using electronic data interchange technology receives electronic invoices from its suppliers. The taxpayer decides to retain the invoice data from completed and verified EDI transactions in its accounts payable system rather than to retain the EDI transactions themselves. Since neither the EDI transaction nor the accounts payable system capture information from the invoice pertaining to product description and vendor name (i.e., they contain only codes for that information), the taxpayer also retains other records, such as its vendor master file and product code description lists and makes them available to the department. In this example, the taxpayer need not retain its EDI transaction for tax purposes.

(3) Electronic Data Processing Systems Requirements. The requirements for an electronic data processing accounting system are similar to that of a manual accounting system, in that an adequately designed accounting system should incorporate methods and records that will satisfy the requirements of Section 3.1.5.15 NMAC.

(4) Business Process Information.

(a) Upon the request of the department, the taxpayer shall provide a description of the business process that created the retained records. Such description shall include the relationship between the records and the tax documents prepared by the taxpayer and the measures employed to ensure the integrity of the records.

(b) The taxpayer shall be capable of demonstrating:

(i) the functions being performed as they relate to the flow of data through the system;

(ii) the internal controls used to ensure accurate and reliable processing, and;

(iii) the internal controls used to prevent unauthorized addition, alteration or deletion of retained records.

(c) The following specific documentation is required for machine sensible records retained pursuant to Section 3.1.5.15 NMAC:

(i) record formats or layouts;

(ii) field definitions (including the meaning of all codes used to represent information);

(iii) file descriptions (e.g., data set name); and

(iv) detailed charts of accounts and account descriptions.

**D. RECORDKEEPING REQUIREMENTS - RECORDS MAINTENANCE REQUIREMENTS**

(1) The department recommends but does not require that taxpayers refer to the national archives and record administration's (NARA) standards for guidance on the maintenance and storage of electronic records, such as the labeling of records, the location and security of the storage environment, the creation of back-up copies, and the use of periodic testing to confirm the continued integrity of the records. The NARA standards may be found at 36 Code of Federal Regulations, Part 1234.

(2) The taxpayer's computer hardware or software shall accommodate the extraction and conversion of retained machine-sensible records.

**E. RECORDKEEPING REQUIREMENTS - ACCESS TO MACHINE-SENSIBLE RECORDS**

(1) The manner in which the department is provided access to machine-sensible records as required in Paragraph 3.1.5.15C(2) NMAC may be satisfied through a variety of means that shall take into account a taxpayer's facts and circumstances through consultation with the taxpayer.

(2) Such access will be provided in one or more of the following manners:

(a) the taxpayer may arrange to provide the department with the hardware, software and personnel resources to access the machine sensible records;

(b) the taxpayer may arrange for a third party to provide the hardware, software and personnel resources necessary to access the machine sensible records;

(c) the taxpayer may convert the machine sensible records to a standard record format specified by the department, including copies of files, on a magnetic medium that is agreed to by the department;

(d) the taxpayer and the department may agree on other means of providing access to the machine sensible records.

**F. RECORDKEEPING REQUIREMENTS - TAXPAYER RESPONSIBILITY AND DISCRETIONARY AUTHORITY**

(1) In conjunction with meeting the requirements of Subsection 3.1.5.15C NMAC, a taxpayer may create files solely for the use of the department. For example, if a database management system is used, it is consistent with Section 3.1.5.15 NMAC for the taxpayer to create and retain a file that contains the transaction-level detail from the database management system and that meets the requirements of Subsection 3.1.5.15C NMAC. The taxpayer should document the process that created the separate file to show the relationship between that file and the original records.

(2) A taxpayer may contract with a third party to provide custodial or management services of the records. Such a contract shall not relieve the taxpayer of its responsibilities under Section 3.1.5.15 NMAC.

**G. RECORDKEEPING REQUIREMENTS - ALTERNATIVE STORAGE MEDIA**

(1) For purposes of storage and retention, taxpayers may convert hardcopy documents received or produced in the normal course of business and required to be retained under Section 3.1.5.15 NMAC to microfilm, microfiche or other storage-only imaging systems and may discard the original hardcopy documents, provided the conditions of Section 3.1.5.15

NMAC are met. Documents which may be stored on these media include, but are not limited to general books of account, journals, voucher registers, general and subsidiary ledgers and supporting records of details, such as sales invoices, purchase invoices, exemption certificates and credit memoranda.

(2) Microfilm, microfiche and other storage-only imaging systems shall meet the following requirements.

(a) Documentation establishing the procedures for converting the hardcopy documents to microfilm, microfiche or other storage only imaging system must be maintained and made available on request. Such documentation shall, at a minimum, contain a sufficient description to allow an original document to be followed through the conversion system as well as internal procedures established for inspection and quality assurance.

(b) Procedures must be established for the effective identification, processing, storage and preservation of the stored documents and for making them available for the period they are required to be retained under Subsection 3.1.5.15I NMAC.

(c) Upon request by the department, a taxpayer must provide facilities and equipment for reading, locating, and reproducing any documents maintained on microfilm, microfiche or other storage-only imaging system.

(d) When displayed on such equipment or reproduced on paper, the documents must exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.

(e) All data stored on microfilm, microfiche or other storage-only imaging systems must be maintained and arranged in a manner that permits the location of any particular record.

(f) There is no substantial evidence that the microfilm, microfiche or other storage-only imaging system lacks authenticity or integrity.

#### **H. RECORDKEEPING REQUIREMENTS - EFFECT ON HARDCOPY RECORDKEEPING REQUIREMENTS**

(1) Except as otherwise provided in Subsection 3.1.5.15H NMAC, the provisions of Section 3.1.5.15 NMAC do not relieve taxpayers of the responsibility to retain hardcopy records that are created or received in the ordinary course of business as required by existing law and regulations. Hardcopy records may be retained on a recordkeeping medium as provided in Subsection 3.1.5.15G NMAC.

(2) If hardcopy records are not produced or received in the ordinary course of transacting business (e.g., when the taxpayer uses electronic data interchange technology), such hardcopy records need not be created.

(3) Hardcopy records generated at the time of a transaction using a credit or debit card must be retained unless all the details necessary to determine correct tax liability relating to the transaction are subsequently received and retained by the taxpayer in accordance with Section 3.1.5.15 NMAC. Such details include those listed in Subparagraph 3.1.5.15C(2)(a) NMAC.

(4) Computer printouts that are created for validation, control, or other temporary purposes need not be retained.

(5) Nothing in Section 3.1.5.15 NMAC shall prevent the department from

requesting hardcopy printouts in lieu of retained machine-sensible records at the time of examination.

#### **I. RECORDKEEPING REQUIREMENTS - RECORDS RETENTION PERIOD**

All records required to be retained under Section 3.1.5.15 NMAC shall be preserved pursuant to Section 7-1-10 NMSA 1978 unless the department has provided in writing that the records are no longer required.

[4/30/97; 3.1.5.15 NMAC - Rn & A, 3 NMAC 1.5.15, 12/29/00]

#### **3.1.12.8 - REPORTING SALE OR USE OF FUEL FOR TURBOPROP OR JET-TYPE ENGINES**

A. Each month, the department shall distribute to the state aviation fund a percentage of the gross receipts or value attributable to the sale or use of fuel specially prepared and sold for use in turboprop or jet-type engines as specified in Section 7-1-6.7 NMSA 1978.

B. In order for the department to be able to determine the correct amount to be distributed to the aviation fund, the department requires, pursuant to Subsection 7-1-10E NMSA 1978, taxpayers who are in the business of selling fuel for use in turboprop and jet engines, users who are direct purchasers of such fuel from out-of-state sources and users who purchase such fuel through the use of nontaxable transaction certificates are required to report the dollar amount of such sales or purchases to the department on forms to be supplied by the department. This information shall be submitted to the department as an attachment to the taxpayer's monthly CRS-1 report and is due by the 25th day of the month following the end of the period covered by the CRS-1 report.

[7/2/82, 11/5/85, 8/15/90, 10/31/96; 3.1.12.8 NMAC - Rn & A, 3 NMAC 1.12.8, 1/15/01; A, 12/15/11]

#### **3.1.12.9 - ETHANOL PRODUCERS' REPORTING REQUIREMENTS**

Any person doing business in the state of New Mexico as an ethanol producer (manufacturer) shall file monthly reports, providing information necessary to the administration of the Gasoline Tax Act, in form and content as prescribed by the department.

[2/19/86, 8/15/90, 10/31/96; 3.1.12.9 NMAC - Rn, 3 NMAC 1.12.9, 1/15/01]

#### **3.1.12.12 - LIQUOR WHOLESALE REPORTING REQUIREMENTS**

Any person doing business in the state of New Mexico as a liquor wholesaler shall file monthly reports, providing sales information necessary to the administration of the Gross Receipts and Compensating Tax Act, in form and content as prescribed by the department. The monthly report is due by the 25<sup>th</sup> day of the month following the close of the calendar month in which the alcoholic beverages are sold.

[3.1.12.12 NMAC - N, 4/28/06]

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**7-1-11. INSPECTION OF BOOKS OF TAXPAYERS--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. 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.**

**C. 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.**

**D. 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 but not limited to using information about similar persons, businesses or industries to estimate the taxpayer's liability.**

**E. 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.**

**F. 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.**

**G. 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 methodology" 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; and

(6) "metadata" means data that provides information about other data.

(Laws 2017, Chapter 63, Section 21)

### **3.1.5.12 - RECORDS INCLUDE GOVERNMENTAL RETURNS, DOCUMENTS, REPORTS AND OTHER ATTACHMENTS**

For the purpose of inspection or audit of taxpayers' records and books of account by the secretary or secretary's delegate, "records" shall include, but not be restricted to, all copies of returns or reports filed by taxpayers with agencies of the federal government, agencies of the state of New Mexico and agencies of any sovereign state or Indian nation, tribe or pueblo located nationally or worldwide. Records shall include all returns, documents and reports, as well as any attachments thereto, to any political subdivision of any state.

[11/5/85, 8/15/90, 10/31/96; 3.1.5.12 NMAC - Rn, 3 NMAC 1.5.12, 12/29/00]

### **3.1.5.13 - ENFORCEMENT BY SUBPOENA**

The secretary may serve or cause to be served a subpoena duces tecum upon a taxpayer or other person having custody of the taxpayer's records and books of account.

[11/5/85, 8/15/90, 10/31/96; 3.1.5.13 NMAC - Rn, 3 NMAC 1.5.13, 12/29/00]

### **3.1.5.14 - REASONABLE HOURS**

Reasonable hours for taxpayers to make their records and books of account available for inspection means any time during taxpayer's business hours but not less than between the hours of 8:00 a.m. and 5:00 p.m. of any day except Saturday, Sunday and state and federal holidays.

[11/5/85, 8/15/90, 10/31/96; 3.1.5.14 NMAC - Rn, 3 NMAC 1.5.14, 12/29/00]

### **3.1.5.16 - TAXPAYER'S RECORDS IN POSSESSION OF ANOTHER**

Section 7-1-11 NMSA 1978 applies to records of a taxpayer in the possession, whether permanent or temporary, of another person. Except for possessors who are banks, savings and loan associations, credit unions or similar financial institutions, the possessor is required to allow the inspection or audit by the department of the records upon written request of the department just as if the records were in the possession of the taxpayer. Failure of the possessor to allow inspection or audit of the records by the department upon a reasonable request of the department is a violation of Section 7-1-74 NMSA 1978. Requests by the department to inspect or audit

records of a taxpayer in the possession of a bank, savings and loan association, credit union or similar financial institution will be made in accordance with Sections 14-7-1 and 14-7-2 NMSA 1978.

[3.1.5.16 NMAC - N, 12/29/00]

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**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.  
(Laws 2003, Chapter 398, Section 6)**

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**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.  
(Laws 2007, Chapter 262, Section 2)**

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**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.**

**(Laws 2000, Chapter 28, Section 4)**

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**3.1.1.15 - TAXPAYER REGISTRATION**

**A. TAXPAYER IDENTIFICATION**

(1) The secretary shall cause to be developed and maintained multiple systems for the registration and identification of taxpayers who are subject to taxes or tax acts listed in Section 7-1-2 NMSA 1978 and taxpayers shall comply therewith. The systems shall include application forms combining tax programs whenever feasible. The systems shall include an identification number for each individual taxpayer using a state assigned number, federal social security number, federal employer identification number or a combination of these numbers for cross-reference purposes. The systems shall be devised to facilitate the exchange of information with other states and the United States, and to aid in statistical computations. Nothing contained in Section 7-1-12 NMSA 1978 precludes the secretary from utilizing electronic data processing programs to manage registration and identification systems.

(2) The secretary shall include in registration and identification systems a dimension enabling the department to identify purchasers or lessees who, by reason of their status or the nature of their use of property or service purchased or leased, may be entitled to make nontaxable transactions and shall include a procedure for providing nontaxable transaction certificates (NTTCs) to persons not otherwise required to be registered but who, because of the nature of their transactions with New Mexico businesses, must provide NTTCs pursuant to the provisions of the Gross Receipts and Compensating Tax Act.

**B. REGISTRATION OF PERSONS FILING INCOME TAX AND ESTATE TAX**

Persons who file income or estate tax returns for the purpose of declaring tax payable or refunds or rebates due are not required to preregister with the department by application to secure an identification number. The filing of a tax return containing a federal social security number shall constitute registration for the purposes of Section 7-1-12 NMSA 1978 and

Subsection 7-1-8Q NMSA 1978.

**C. AMENDMENT OF REGISTRATION BY SECRETARY**

(1) When the secretary determines that a taxpayer registration incorrectly identifies the ownership or the type of ownership of a business by either omission or misinformation, the secretary shall amend the registration to show the correct information.

(2) Notice of such amendment shall be made by mail to the registered taxpayer, and in those cases where the secretary amends the ownership to add new parties, notice shall also be mailed to those new parties which have been registered pursuant to department action.

(3) Notice of such action shall contain information with respect to remedies available under Section 7-1-24 NMSA 1978.

**D. TAX IDENTIFICATION NUMBER ISSUED BY INTERNAL REVENUE SERVICE**

A tax identification number issued by the internal revenue service to individuals not qualified to be issued a social security number will be accepted by the department in lieu of the social security number in all cases in which reporting a social security number is required under the Tax Administration Act or any tax or tax act administered by the department in accordance with the Tax Administration Act.

[7/19/67, 11/5/85, 8/15/90, 10/31/96, 3/31/98; 3.1.1.15 NMAC - Rn & A, 3 NMAC 1.1.15, 12/29/00]

**3.1.12.10 - TAX IDENTIFICATION ON VENDING MACHINES**

All coin-operated vending machine owners shall prominently display on the front of each machine a plaque or sticker which bears the owner's name, complete address and combined reporting system (CRS) taxpayer identification number.

[10/12/71, 11/5/85, 8/15/90, 10/31/96; 3.1.12.10 NMAC - Rn, 3 NMAC 1.12.10, 1/15/01]

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**7-1-12.1. OIL -- AND GAS ACCOUNTING DIVISION 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, such 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.

(Laws of 1993, Chapter 30, Section 7)

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**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.

(Laws of 2017, Chapter 63, Section 22)

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**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. If any adjustment is made in the basis for computation of any federal tax as a result of an audit by the internal revenue service or the filing of an amended federal return changing a prior election or making any other change for which federal approval is required by the Internal Revenue Code, the taxpayer affected shall, within one hundred eighty days of final determination of the adjustment, file an amended return with the department. Payment of any additional tax due shall accompany the return.**

**D. 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.**

**E. 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 under 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.**

**F. As used in this section, "final determination" means:**

**(1) the taxpayer has:**

**(a) made payment on any additional income tax liability resulting from the federal audit; and**

**(b) not filed a petition for redetermination or claim for**

**refund for the portions of the audit on which payment was made;**

**(2) the taxpayer has received a refund from the United States department of the treasury resulting from the federal audit;**

**(3) the taxpayer has signed federal form 870 or other internal revenue service form consenting to the deficiency or accepting any overassessment;**

**(4) the taxpayer's time period for filing a federal petition for redetermination to the United States tax court has expired;**

**(5) the taxpayer enters into a closing agreement with the internal revenue service as provided in Section 7121 of the Internal Revenue Code; or**

**(6) a decision from the United States tax court, United States district court, United States court of appeals, United States court of claims or United States supreme court becomes final.**

**(Laws 2013, Chapter 27, Section 1)**

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#### **3.1.4.8 - FILING RETURNS - FORMS**

A. Information concerning the method of completing and filing a return, the filing date and the due date for paying taxes administered by the department may be found under the specific tax statutes, the secretary's regulations thereunder, on the prescribed forms and on the instructions accompanying the forms. Returns are considered complete and timely filed when the requirements of these documents, including requirements on obtaining extensions of time to file, are complied with by taxpayers.

B. Copies of return forms and instructions will be furnished by the department to taxpayers and to those persons filing returns for the purpose of securing refunds and rebates. The failure to receive a return form, however, does not relieve taxpayers from their duty to report and pay taxes. The forms and instructions may be obtained from the department and from district offices.

[7/19/67, 11/5/85, 8/15/90, 12/13/91, 10/31/96; 3.1.4.8 NMAC - Rn, 3 NMAC 1.4.8, 12/29/00]

#### **3.1.4.10 - DUE DATES AND TIMELINESS**

A. **FILING RETURNS - DUE DATE:** A taxpayer becomes liable for tax as soon as the taxable event occurs; payment is not due, however, until on and after the date established by tax acts for the payment of tax. The statutory words "and after" used in the preceding sentence mean that taxes remain due until paid. A taxpayer becomes liable for interest if the tax is not paid when it becomes due. If the tax is not paid when it becomes due or if a report is not filed when due because of negligence of the taxpayer or taxpayer's representative, the taxpayer will also become liable for penalty. The fact that a taxpayer has not registered as a taxpayer is not material to the taxpayer's liability for payment of tax.

[7/19/67, 9/9/71, 11/5/85, 8/15/90, 11/7/90, 12/13/91, 9/20/93, 10/31/96; 3.1.4.10 NMAC - Rn & A, 3 NMAC 1.4.10, 12/29/00; A, 10/31/07; A, 6/30/10]

#### **3.1.4.12 - EXTENSIONS**

A. **GOOD CAUSE FOR EXTENSIONS:**

(1) "Good cause" for which the secretary or secretary's delegate may grant

extensions is construed strictly. Such extensions for no more than a total of 12 months will be granted only in situations in which the taxpayer shows a good faith effort to comply with the statute.

(2) Example 1: If the taxpayer operates a multistate business and the filing of returns for New Mexico taxes at the statutory due date would cause the taxpayer unreasonable bookwork and recordkeeping, an extension will be given favorable consideration by the secretary or secretary's delegate.

(3) Example 2: If the taxpayer is temporarily disabled because of injury or prolonged illness and the taxpayer can show that the taxpayer is unable to procure the services of a person to complete the taxpayer's return, an extension will be given favorable consideration.

(4) Example 3: If the conduct of the taxpayer's business has been substantially impaired due to the disability of a principal officer of the taxpayer, physical damage to the taxpayer's business or other similar impairments to the conduct of the taxpayer's business causing the taxpayer an inability to compute taxes before the due date, an extension of time will be given favorable consideration.

(5) Example 4: If the taxpayer's accountant has suddenly died or has become disabled and unable to perform services for the taxpayer and the taxpayer can show that the taxpayer is unable either to complete the return or to procure the services of a person to complete the return before the due date, an extension will be given favorable consideration.

(6) Example 5: If the taxpayer is awaiting the outcome of a court or administrative proceeding or the action of the internal revenue service on a federal tax claim, an extension will be given favorable consideration provided that the extension does not contravene the time limits established by this statute or other New Mexico or federal statute.

#### **B. PROCEDURE FOR OBTAINING EXTENSIONS - PERIOD OF EXTENSION:**

(1) The procedures in Subsection B of 3.1.4.12 NMAC apply only to extensions which the applicant must request; these procedures do not apply to automatic extensions under Subsection E of 3.1.4.12 NMAC.

(2) Any taxpayer may request an extension of time in which to file a tax return. Such a request must be in writing and must be received by the department on or before the date that the tax is due. The application for extension must clearly set forth:

- (a) the tax or tax return to which the extension, if granted, will apply;
- (b) a clear statement of the reasons for the requested extension; and
- (c) the signature of the taxpayer or the taxpayer's authorized representative.

(3) The extension will not be granted unless a reason satisfactory to the secretary or secretary's delegate appears in the request.

(4) An approved extension will ordinarily be granted for a period of 30 days. A request for longer extensions must state the reason why the 30 days is insufficient. Additional 30-day extensions or a longer extension may be granted by the secretary or secretary's delegate for up to a maximum aggregate extension of 12 months.

(5) Example 1: P is in the business of preparing tax returns. P realizes that, because of the great volume of business, P will be unable to complete all of P's customers' tax returns before the due date. P submits to the secretary a request for an extension of time on behalf of each customer whose return P is unable to complete. The request will be denied. It is irrelevant to consider whether or not P's request states a good cause because an extension will



not be granted unless the taxpayer's personal necessity is the basis of the request. In this case, each of the taxpayers must request an extension and give "good cause" for this privilege.

(6) Example 2: On April 20, 20XX, T is granted a 30-day extension for payment of March, 20XX, taxes due April 25, 20XX. On May 20, 20XX, T, showing good cause, requests a further extension of the March taxes for 12 months. A 12-month extension will not be granted because the payment or filing date for any tax liability may not be extended for more than 12 months after the date on which the taxes were due and no series of extensions exceeding 12 months when aggregated will be granted to any taxpayer. The maximum extension that could be granted to T is until April 25 of the year following 20XX.

**C. EXTENSIONS GRANTED WHEN NO LIABILITY HAS ARISEN:**

(1) An extension may be granted even though the tax liability has not yet arisen. The following examples illustrate the application of Subsection E of 7-1-13 NMSA 1978.

(2) Example 1: B's business is destroyed by flood on June 1, 20XX. B, a cash-basis taxpayer, is expecting to receive payment in July for items sold in May. In June B requests a six-month extension for those taxes for which B will be liable in July and which will become due August 25, 20XX. Upon a showing of good cause, the request may be granted notwithstanding that the liability for the tax has not yet arisen.

(3) Example 2: Under the same facts as in Example 1, in January of the following year, B, showing good cause, requests a further extension of the July, 20XX taxes for a period of nine months to September 25 of the year following 20XX. The nine-month extension will not be granted because the reporting period for any tax liability may not be extended for an aggregate period of more than 12 months after the date the taxes were due. The maximum extension which could have been granted was until August 25 of the year following 20XX.

**D. AUTOMATIC EXTENSION FOR REPORT OF FEDERAL FORM 990-T INCOME:** A taxpayer who is required to file a New Mexico corporate income and franchise tax return to report taxable income from unrelated activities included in a federal Form 990-T is hereby granted an automatic extension to the 15th day of the fifth month following the close of the taxable year to file a return reporting that income. Interest will accrue during the period of the automatic extension.

**E. AUTOMATIC FEDERAL INCOME TAX EXTENSIONS - GENERAL:**

(1) An automatic extension of time to file a federal income tax return as provided in the Internal Revenue Code shall be considered to be an approved federal extension of time and shall be sufficient to extend the time for filing the New Mexico income tax return. If it is necessary to submit a form to the internal revenue service to claim an automatic extension for filing the federal income tax return, then a copy of the federal form claiming the automatic extension for federal tax purposes shall be attached to the taxpayer's New Mexico income tax return and shall serve as the basis for extending the time for filing the New Mexico return to the date of filing the federal return under the automatic extension provided by the Internal Revenue Code. If it is not necessary to submit a form to the internal revenue service to claim an automatic extension for filing the federal income tax return, then the due date for filing the New Mexico income tax return shall be extended automatically to the same date as the extension for the federal return unless the federal extended date is more than six months from the original due date, in which case the extended due date for the New Mexico return shall be six months after the original due date.

(2) If the taxpayer desires additional time beyond the automatic extension for

filing the New Mexico income tax return, a written request for the additional time must be made by the taxpayer prior to the expiration of the extended federal date. If it is necessary to submit a form to the internal revenue service to claim an automatic extension for filing the federal return, then a copy of the federal form requesting the automatic extension for filing the federal return must accompany the taxpayer's request for additional time to file the New Mexico income tax return beyond the extended federal date. The total combined extension for filing the New Mexico return shall not exceed 12 months beyond the actual due date for that return.

F. **INVALIDATION OF FEDERAL EXTENSION:** If an extension of time to file a federal income tax return is invalidated for any reason for federal income tax purposes, it is also invalidated for New Mexico income tax purposes.

G. **FAILURE TO FILE, PAY OR PROTEST BY EXTENDED DUE DATE:**

(1) The term "extended due date" means:

(a) for income tax returns, the latest date to which the due date for filing the New Mexico income tax return has been extended by either an extension granted by the internal revenue service with respect to the taxpayer's federal income tax return or by an extension granted by the department; and

(b) for all other tax returns, the latest date to which the due date for filing the tax return has been extended by the department.

(2) A taxpayer becomes a delinquent taxpayer if the taxpayer fails by the extended due date either to file the required return and, if a tax is due, to pay the tax due or to protest in accordance with Section 7-1-24 NMSA 1978 the payment or filing requirement.

H. **AUTOMATIC EXTENSION FOR CERTAIN INFORMATION RETURNS:**

The due date for Form 1099-MISC or *pro forma* 1099-MISC information returns that are required to be electronically filed pursuant to 3.3.5.19 NMAC is automatically extended to the first day of April of the year following the year for which the statement is made. This extended due date conforms to the federal due date for electronic filings of Form 1099-MISC.

[7/19/67, 11/5/85, 3/31/86, 8/22/88, 8/15/90, 12/13/91, 9/20/93, 10/31/96; 3.1.4.12 NMAC - Rn & A, 3 NMAC 1.4.12, 12/29/00; A, 12/30/03; A, 10/31/07; A, 6/28/13]

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**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, the Gross Receipts and Compensating Tax Act, local option gross receipts tax acts, the Interstate Telecommunications Gross Receipts Tax Act and the Leased Vehicle Gross Receipts Tax Act;**

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

**(3) Group 3: the tax due under the Natural Gas Processors Tax Act; or**

**(4) Group 4: all taxes and fees due under the Gasoline Tax Act, the Special Fuels Supplier Tax Act and the Petroleum Products Loading Fee Act.**

**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.**  
**(Laws 2005, Chapter 109, Section 3)**

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### **3.1.4.10 - DUE DATES AND TIMELINESS**

#### **F. STATE OBSERVANCE OF STATE HOLIDAY ON DAY OTHER THAN THAT DESIGNATED FOR PUBLIC OBSERVANCE:**

(1) Whenever the New Mexico state government and its employees are directed by competent authority to observe a state legal public holiday on a day other than that specified in Section 12-5-2 NMSA 1978 for that holiday, the day upon which the holiday is observed by the New Mexico state government is deemed to be a “legal state holiday” for the purposes of the Tax Administration Act.

(2) Example: Section 12-5-2 NMSA 1978 designates the third Monday in February as a legal holiday, President's Day. Traditionally, state offices are open on the third Monday in February and the holiday is observed by state government on the Friday following Thanksgiving. Accordingly, when state government is closed on the Friday after Thanksgiving in a delayed observance of President's Day, the due date for any notices, returns, applications or payments to be made by taxpayers on the Friday after Thanksgiving is the following Monday. For purposes of making payment of tax in accordance with Section 7-1-13.1 NMSA 1978 in this situation, the first banking day preceding the due date is the Friday after Thanksgiving. Because the third Monday in February is observed by the United States postal service and by the national banks, any notices, returns, applications or payments to be made by taxpayers on that date are due the following day, even though state offices are open on President's Day.

#### **G. “RECEIVED BY THE DEPARTMENT” DEFINED:**

(1) Unless the secretary by instruction or other directive permits or requires otherwise, “received by the department” for the purposes of Section 7-1-13.1 NMSA 1978 means received at the Santa Fe headquarters of the department during the department's normal business hours.

(2) The secretary through instruction or other directive may permit or require payment by check of taxes subject to the provisions of Section 7-1-13.1 NMSA 1978 at any other location of the department or at the location of the state fiscal agent or other agent of the department or during times other than normal business hours of the department. When the secretary has so permitted or required payment by check at such locations or times, “received by the department” for the purposes of Section 7-1-13.1 NMSA 1978 includes such locations or times.

#### **H. “BANKING DAY” DEFINED:**

(1) A banking day is a day which is not a Saturday, Sunday, national bank holiday or a day deemed by regulation of the secretary to be a state legal holiday for purposes of making payment under Subsection 7-1-13.1B NMSA 1978.

(2) Examples:

(a) When Memorial Day falls on Monday, May 27th, the preceding banking day is Friday, May 24th.

(b) The Wednesday immediately prior to Thanksgiving is the first banking day preceding Thanksgiving.

[7/19/67, 9/9/71, 11/5/85, 8/15/90, 11/7/90, 12/13/91, 9/20/93, 10/31/96; 3.1.4.10 NMAC - Rn &

A, 3 NMAC 1.4.10, 12/29/00; A, 10/31/07; A, 6/30/10]

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**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. (Laws 2000, Chapter 28, Section 6)**

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**7-1-14. SECRETARY MAY DETERMINE WHERE CERTAIN GROSS RECEIPTS ARE TO BE REPORTED--PLACE OF BUSINESS FOR CONSTRUCTION PROJECTS AND CERTAIN REAL PROPERTY SALES--**

**A. By regulation, the secretary may require any person maintaining one or more places of business to report the person's taxable gross receipts and deductions for each municipality or county or area within an Indian reservation or pueblo grant in which the person maintains a place of business.**

**B. For persons engaged in the construction business, the place where the construction project is performed is a "place of business", and all receipts from that project are to be reported from that place of business.**

**C. The secretary may, by regulation, also require any person maintaining a business outside the boundaries of a municipality on land owned by that municipality to report the person's taxable gross receipts for that municipality.**

**D. For a person engaged in the business of selling real estate, the location of the real property sold is the "place of business", and all receipts from that sale are to be reported from that place of business.**  
**(Laws of 1995, Chapter 100, Section 1)**

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**3.1.4.13 - REPORTING ACCORDING TO BUSINESS LOCATION**

**A. REPORTING ACCORDING TO BUSINESS LOCATION - GENERAL**

(1) Any person maintaining more than one place of business in New Mexico and reporting under one identification number is required to report the taxable gross receipts for each location on a single CRS-1 form. Receipts from locations in each municipality or in each county outside a municipality where a place or places of business are maintained must be indicated separately on the CRS-1 form.

(2) A person who maintains multiple places of business in a single municipality or multiple places of business not within a municipality but within a single county and who reports under one identification number is required to combine the taxable gross receipts from these places of business, indicating the total taxable gross receipts derived from all locations in each municipality or county on the CRS-1 form.

(3) For persons engaged in the construction business, "place of business" includes each place where construction is performed.

(4) The "place of business" of a person who has no other place of business in New Mexico, but who has sales personnel who reside in New Mexico, includes each place where such personnel reside. Such persons are required to report gross receipts in the manner provided in Paragraphs (1) and (2) of Subsection A of 3.1.4.13 NMAC. The place of business of a person who has no other place of business and does not have sales personnel who reside in New Mexico but who does have service technicians who perform service calls in New Mexico is "out of state", whether the service technicians live in New Mexico or elsewhere. For the purposes of Paragraph (4) of Subsection A of 3.1.4.13 NMAC, a "service technician" is an employee whose primary work responsibility is the repair, servicing and maintenance of the products sold or serviced by the employer and whose sales activities are at most incidental.

(5) A person who is liable for the gross receipts tax and who has no “place of business” or resident sales personnel in New Mexico is required to indicate on the CRS-1 form that the business location is “out-of-state”.

(6) A person is required to report receipts for the location where the place of business is maintained even though the sale or delivery of goods or services was not performed at or from the place of business, except as provided in Subsection J of this section. It should be noted, however, that each construction site, as indicated in Paragraph (3) of Subsection A of 3.1.4.13 NMAC, is a “place of business” for this purpose.

(7) If a person has more than one place of business in New Mexico, the department will accept, on audit, this person's method of crediting sales to each place of business, provided the method of crediting is in accordance with the person's regular accounting practice and contains no obvious distortion.

(8) Example 1: The X company maintains its only place of business in Roswell, but sends its sales personnel to different cities in New Mexico to solicit sales and take orders. X is not required to report its gross receipts for each municipality in which its sales personnel are operating. X reports its gross receipts only for Roswell because its sole place of business is Roswell.

(9) Example 2: The Z company maintains its only place of business in Grants. It makes deliveries in its own trucks to customers in various other cities within New Mexico. Z is not required to report its gross receipts for each municipality in which it makes deliveries. Z reports its gross receipts only for Grants. It is not maintaining a place of business in municipalities outside Grants solely because of its deliveries.

(10) Example 3: The W furniture company maintains its only office and showroom inside the city limits of Carrizozo. W's furniture warehouse is located outside the Carrizozo city limits. Furniture sold by W is, for the most part, delivered from its warehouse. W's “place of business” is in Carrizozo and it must report all its gross receipts for that municipality, regardless of the location of its warehouse.

(11) Example 4: The X appliance company maintains offices and showrooms in both Truth or Consequences and Las Cruces. The Truth or Consequences place of business initiates a sale of a refrigerator. The refrigerator is delivered from stock held in the Las Cruces place of business. X's place of business to which it credits the sale will be accepted on audit, if the crediting is in accordance with X's method of crediting sales in its regular accounting practice and contains no obvious distortion. If X credits the sale to its Truth or Consequences place of business, the department will accept Truth or Consequences as the location of the sale. The same result will occur if X credits the sale to its Las Cruces place of business.

**B. REPORTING ACCORDING TO BUSINESS LOCATION - UTILITIES:**

(1) Each municipality and the portion of each county outside a municipality in which customers of a utility are located constitute separate places of business. The physical location of the customer's premises or other place to which the utility's product or service is delivered to the customer is a business location of the utility.

(2) The department will accept, on audit, a utility's method of crediting its sales to its places of business, provided the method of crediting is based on the location of its customers as business locations and the method of crediting contains no obvious distortion.

(3) For the purposes of 3.1.4.13 NMAC, “utility” means a public utility or any other person selling and delivering or causing to be delivered to the customer's residence or



place of business water via pipeline, electricity, natural gas or propane, butane, heating oil or similar fuel or providing cable television service, telephone service or internet access service to the customer's residence or place of business.

**C. REPORTING BY PERSONS ENGAGED IN THE LEASING BUSINESS:** A person from out of state who is engaged in the business of leasing as defined in Subsection E of Section 7-9-3 NMSA 1978 and who has no place of business or resident sales personnel in New Mexico is required to indicate "out-of-state" on the CRS-1 report form and to calculate gross receipts tax due using the tax rate for the state. An out-of-state person engaged in the business of leasing who has a place of business or resident sales personnel in New Mexico is required to report gross receipts for each municipality or area within a county outside of any municipalities in which the person maintains a place of business or resident sales personnel. An in-state person engaged in the business of leasing with more than one place of business is required to report gross receipts for each municipality or area within a county outside of any municipality in which the person maintains a place of business.

**D. REPORTING TAXABLE GROSS RECEIPTS BY A PERSON MAINTAINING A BUSINESS OUTSIDE THE BOUNDARIES OF A MUNICIPALITY ON LAND OWNED BY THAT MUNICIPALITY:** For the purpose of distribution of the amount provided in Section 7-1-6.4 NMSA 1978, persons maintaining a place of business outside the boundaries of a municipality on land owned by that municipality are required to report their gross receipts for that location. For the purpose of calculating the amount of state and local gross receipts tax due, such persons shall use the sum of the gross receipts tax rate for the state plus all applicable tax rates for county-imposed taxes administered at the same time and in the same manner as the gross receipts tax.

**E. ITINERANT PEDDLERS - TEMPORARY BUSINESS LOCATIONS:**

(1) An itinerant peddler is a person who sells from a nonreserved location chosen for temporary periods on a first-come, first-served basis. An itinerant peddler does no advertising or soliciting, has no one employed to sell and is not employed as a salesperson.

(2) An itinerant peddler shall report taxable gross receipts by the municipality or the area of a county outside any municipality where the peddler maintains a place of business. If the itinerant peddler sells from only one location, that location shall be the place of business. If an individual peddler has no set sales location, the place of business shall be the peddler's temporary or permanent residence within New Mexico.

(3) Example: X occasionally places a blanket on a sidewalk in a town wherever X can find space for the blanket and sells homemade pies. X is an itinerant peddler because the space is not reserved specifically for X, it is chosen for temporary periods, and X is not employed nor does X have employees. Additionally, because X cannot be expected to be found regularly carrying on business at the same sidewalk location every day, X's place of business, for reporting purposes, is X's residence.

(4) Any person who pays a fee to occupy a particular location or space for a determined period of time and who sells any item or performs any service at that location is not an itinerant peddler and shall report that location as a place of business.

(5) Example: X pays fifty dollars (\$50.00) to rent a space for a booth for two days during a festival. X is not an itinerant peddler because the space was assigned, and during the festival X could normally be expected to be found carrying on business at that place. X must therefore report the gross receipts from sales made during the festival to the location of the

space.

(6) Any person who, in advance, advertises through print or broadcast media or otherwise represents to the public that the person will be at a particular location for a specified period of time and who sells property or performs service at that location shall report that location as a place of business.

(7) Example: X sells fish from a truck in a shopping center parking lot. X places an advertisement in the local paper informing the public where X will be located and the dates when X will sell fish at that location. X is not an itinerant peddler because X advertises and solicits business, and X can normally be expected to be found at that location during the time designated in the advertisement. The shopping center is X's place of business and X must report all activity occurring there to that location.

F. **OBVIOUS DISTORTION:** For purposes of 3.1.4.13 NMAC, obvious distortion shall be presumed whenever the method used to credit sales to a place of business treats similar transactions inconsistently. Any method which intentionally credits sales to a location with a lower combined tax rate primarily for the purpose of reducing the taxpayer's total tax liability shall be presumed to contain obvious distortion, shall not be allowed and may be the basis of establishing intent to evade or defeat tax under the provisions of Section 7-1-72 NMSA 1978.

G. **SPACE PROVIDED BY CLIENT CONSTITUTES BUSINESS LOCATION:**

(1) Except as provided otherwise in Paragraph (6) of Subsection G of 3.1.4.13 NMAC, any person performing a service who occupies space provided by the purchaser of the service being performed has established a business location if the following conditions are present:

(a) the space is occupied by the provider of the service for a period of six consecutive months or longer;

(b) the provider or employees of the provider of the service are expected, by the purchaser of the services or representatives of the purchaser, to be available at that location during established times; and

(c) critical elements of the service are performed at, managed or coordinated from the purchaser's location.

(2) The following indicia will be considered in determining if the above conditions are present:

(a) the provider of the service has assigned employees to the client's location as a condition of employment;

(b) telephone is assigned for the exclusive use by the service provider;

(c) the space has been designated for the use of the service provider;

(d) the space contains office furniture or equipment furnished by either the client or the service provider for the sole use of the service provider;

(e) the service provider is identified by business name on a sign located in or adjacent to the provided space;

(f) the client or other persons can expect to communicate, either in person or by telephone, with the service provider or employees or representatives of the service provider at the space provided by the client; and

(g) the contract between the client and the service provider requires the client to provide space to the service provider.

(3) Any person meeting the three conditions as evidenced by the listed indicia must report the receipts derived from the performance of the service at the client's location to the municipality or county in which the furnished space is located.

(4) Example 1: X has entered into a contract to perform research and development services for the army at a location on White Sands missile range within Doña Ana county. The term of the contract is one year and is renewable annually. X is required by the contract to assign employees to the project at White Sands missile base on a full-time basis. The assigned employees consider White Sands as their place of employment. The army furnishes X with office and shop space as well as furniture and equipment. The space is identified as X's location by a sign containing X's business name at the main entrance to the assigned space. A specific telephone number has been assigned for X's exclusive use during the term of the contract. X shall report the receipts from services performed at the White Sands location under this contract using Doña Ana county as the location of business for gross receipts tax purposes.

(5) Example 2: Y has entered into a maintenance contract with a state agency to maintain and repair computer equipment. The state agency provides storage facilities to Y for the storage of equipment and parts which will be used by Y in the maintenance and repair of computer equipment. Y's employees are present at the location of the state agency only when required to repair the computers. The agency contacts Y at Y's regular place of business to report equipment problems and to request necessary repairs. On receipt of a request from the agency, Y dispatches an employee to the agency's location to repair the equipment. The location of the state agency does not constitute a separate business location for Y. Y shall report its receipts from the state agency under this contract to the location where Y maintains a regular place of business.

(6) The provisions of Subsection G of 3.1.4.13 NMAC do not apply when:

(a) the provider of the service is a co-employer or joint employer with the client of the employees at the client's location or has entered into a contract to provide temporary employees to work at the client's facilities under the client's supervision and control; and

(b) the provider of the service has no employees at the client's location other than employees described in Subparagraph (a) of Paragraph (6) of Subsection G of 3.1.4.13 NMAC above.

**H. REPORTING ACCORDING TO BUSINESS LOCATION - PERSONS SUBJECT TO INTERSTATE TELECOMMUNICATIONS GROSS RECEIPTS TAX ACT:**

(1) Each municipality and the portion of each county outside all municipalities in which customers of a person who is engaging in an interstate telecommunications business and who is subject to the interstate telecommunications gross receipts tax are located constitute separate places of business. Except for commercial mobile radio service as defined by 47 C.F.R. 20.3, the location of the person's customer is the location of the telephone sets, other receiving devices or other points of delivery of the interstate telecommunications service.

(2) The department will accept, on audit, the person's method of crediting its sales to its places of business, provided the method of crediting is based on the location of its customers as business locations and the method of crediting contains no obvious distortion.

(3) This version of Subsection H of 3.1.4.13 NMAC applies to all interstate telecommunications gross receipts tax returns due after January 1, 2000.

**I. REPORTING ACCORDING TO BUSINESS LOCATION - COMMERCIAL MOBILE RADIO SERVICE PROVIDERS:** For interstate

telecommunications gross receipts tax returns due after January 1, 2000, each municipality and the portion of each county outside all municipalities in which customers of the provider of a commercial mobile radio service as defined by 47 C.F.R. 20.3 are located constitute separate places of business. With respect to the provision of commercial mobile radio service, the business location of a customer will be determined by the customer's service location. A customer's service location is determined first by the customer's billing address within the licensed service area. If the customer does not have a billing address within the licensed service area or if the customer's billing address is a post office box or mail-drop, then the customer's service location is the street or rural address of the customer's residence or business facility within that service area.

J. **TRANSACTIONS ON TRIBAL TERRITORY:** A person selling or delivering goods or performing services on the tribal land of a tribe or pueblo that has entered into a gross receipts tax cooperative agreement with the state of New Mexico pursuant to Section 9-11-12.1 NMSA 1978 is required to report those receipts based on the tribal location of the sale or delivery of the goods or performance of the service rather than the person's business location. [3/5/70, 7/6/79, 11/20/79, 4/11/83, 11/5/85, 1/4/88, 8/22/88, 12/29/89, 8/15/90, 9/3/92, 2/22/95, 10/31/96, 7/30/99, 10/29/99; 3.1.4.13 NMAC - Rn & A, 3 NMAC 1.4.13, 12/29/00; A, 12/30/03; A, 1/17/06; A, 4/30/07; A, 12/15/11]

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**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. (Laws 1998, Chapter 105, Section 2)**

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### **3.1.4.7 - DEFINITIONS**

As used in Part 3.1.4 NMAC, “CRS liability” means the total of state gross receipts tax due for a period plus the amounts due for the same period for all other taxes collected with the state gross receipts tax, such as local option gross receipts taxes, governmental gross receipts tax, leased vehicle gross receipts tax, leased vehicle surcharge, compensating tax and withholding tax.

[6/15/96, 6/15/98; 3.1.4.7 NMAC - Rn & A, 3 NMAC 1.4.7, 12/29/00]

### **3.1.4.11 - SEMIANNUAL OR QUARTERLY FILING**

#### **A. SEMIANNUAL OR QUARTERLY REPORTING - RESOURCES EXCISE AND SEVERANCE TAXES**

(1) Persons who are liable for reporting taxes under the Resources Excise Tax Act (Sections 7-25-1 to 7-25-9 NMSA 1978) or the Severance Tax Act (Sections 7-26-1 to 7-26-8 NMSA 1978) and whose anticipated aggregate tax liability for both of these taxes is less than \$200 a month may report and pay these taxes at quarterly or semiannual intervals if the taxpayer applies for and obtains the prior approval of the secretary or secretary's delegate. The semiannual reporting and payment intervals shall be only for the periods of January through June and July through December of any calendar year and the quarterly intervals shall be only for the three-month periods ending March 31, June 30, September 30 and December 31 of any calendar year.

(2) The taxpayer may not change from one reporting interval to another without the prior written approval of the secretary or secretary's delegate.

(3) As a condition of approving semiannual or quarterly reporting, the secretary may require the posting of a surety bond or other acceptable security in an appropriate amount payable to the State of New Mexico guaranteeing payment to the State of New Mexico of the taxpayer's tax liability under the Resources Excise Tax Act or Severance Tax Act.

#### **B. SEMIANNUAL OR QUARTERLY REPORTING - CRS LIABILITY**

(1) Any taxpayer with an anticipated CRS liability of less than \$200 per month may report and pay these taxes at quarterly or semiannual intervals if the taxpayer applies for and obtains the prior approval of the secretary or secretary's delegate. Prior approval is also required when a taxpayer, having received permission to file on a quarterly or semiannual basis, wishes to change from quarterly to semiannual or semiannual to quarterly. Quarterly reporting and payment intervals shall be only the three-month periods ending March 31, June 30, September 30 and December 31. Semiannual reporting and payment intervals shall be only for the reporting periods of January through June and July through December. Approval, once granted, applies only so long as the taxpayer's actual average liability for the reporting periods does not exceed

\$200 per month.

(2) Any taxpayer who is registered to report and pay on a quarterly or semiannual basis and who subsequently has an average CRS liability over any one-year period of two hundred dollars or more per month must report and pay on a monthly basis, beginning with the first month following the close of the last quarterly or semi-annual reporting period within that year. In addition, when the department, upon examination of its records, discovers a taxpayer who is registered to report and pay on a quarterly or semiannual basis but who has an average monthly CRS liability of two hundred dollars or more over a one-year period may withdraw its approval and require the taxpayer to report and pay on a monthly basis, beginning with a month selected by the department.

(3) The secretary shall furnish the necessary forms to apply for filing tax returns at semiannual or quarterly intervals and to change the reporting interval. A taxpayer may change from quarterly or semiannual intervals to monthly without prior approval of the secretary or the secretary's delegate if the taxpayer begins monthly reporting with the first month following the end of a quarter or semiannual period.

(4) Except as otherwise provided in Paragraphs 3.1.4.11B(2) and (3) NMAC, the taxpayer may not change from one reporting interval to another without the prior written approval of the secretary or secretary's delegate.

(5) As a condition of approving semiannual or quarterly reporting, the secretary may require the posting of a surety bond or other acceptable security in an appropriate amount payable to the state of New Mexico guaranteeing payment to the state of New Mexico of the taxpayer's CRS liability.

#### **C. QUARTERLY OR SEMIANNUAL REPORTING - WATER CONSERVATION FEE**

(1) Persons who are liable for reporting the water conservation fee under Section 74-1-13 NMSA 1978 and whose anticipated aggregate liability for the fee is less than \$200 a month may report and pay this fee at quarterly or semiannual intervals if the taxpayer applies for and obtains the prior approval of the secretary or the secretary's delegate. The semiannual reporting and payment intervals shall be only for the periods of January through June and July through December of any calendar year. The quarterly reporting and payment intervals shall be only for the three-month periods ending March 31, June 30, September 30 and December 31 of any calendar year.

(2) Persons who are liable for reporting the water conservation fee may not change from one reporting interval to another without the prior written approval of the secretary or the secretary's delegate except that the person may change without prior approval from quarterly or semiannual reporting to monthly if the person begins the monthly reporting with either the January or July reporting period.

(3) As a condition of approving quarterly or semiannual reporting, the secretary or the secretary's delegate may require the posting of a security bond or other acceptable security in an appropriate amount payable to the State of New Mexico guaranteeing payment to the State of New Mexico of the person's water conservation fee liability.

#### **D. FILING PERIODS FOR ALTERNATIVE FUEL TAX DISTRIBUTORS**

(1) In anticipation that distributors who are required to file and pay the alternative fuel excise tax will have a tax liability of less than \$200 per month, distributors are authorized to report and pay this tax on a quarterly basis without advance approval of the secretary. The

quarterly reporting and payment intervals shall only be for the three-month periods ending March 31, June 30, September 30 and December 31.

(2) After December 31, 1996, any distributor reporting and paying on a quarterly basis whose alternative fuel excise tax liability averages more than \$200 per month during a calendar quarter will be required to report and pay alternative fuel excise tax on a monthly basis. After December 31, 1996, any distributor reporting on a monthly basis but whose alternative fuel tax liability is less than \$200 per month may report and pay the alternative fuel excise tax on a quarterly basis if the distributor obtains the prior approval of the secretary or the secretary's delegate.

(3) This regulation is retroactively applicable to tax periods beginning on or after January 1, 1996.

**E. QUARTERLY REPORTING - WITHHOLDING BY FEDERAL AGENCIES:** Agencies of the federal government responsible for withholding and paying over state taxes pursuant to federal law, the Withholding Tax Act or any voluntary agreement between the agency and federal employees or retired federal employees may report and pay on a quarterly basis, regardless of the dollar limitation set in Section 7-1-15 NMSA 1978 because of the provisions of the Constitution of the United States.

[5/15/70, 12/3/76, 11/5/85, 8/15/90, 6/28/91, 9/17/91, 9/20/93, 6/15/96, 10/31/96, 9/15/97, 6/15/98; 3.1.4.11 NMAC - Rn & A, 3 NMAC 1.4.11, 12/29/00]

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**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.**

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**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. (Laws 1998, Chapter 105, Section 1)**

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**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.**

**(Laws 2019, Chapter 157, Section 1)**

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**3.1.6.8 - PAYMENT OF UNPROTESTED AMOUNTS**

Any taxpayer who protests under the provisions of Section 7-1-24 NMSA 1978 only a portion of an assessment and either does not pay the portion of the assessment not protested within 30 days after the date of assessment or does not post security covering the unprotested amount pursuant to Section 7-1-54 NMSA 1978 shall be a delinquent taxpayer until the unprotested amount has been paid or security covering the unprotested amount has been posted.

[7/19/67, 11/5/85, 8/22/88, 8/15/90, 10/31/96; 3.1.6.1 NMAC - Rn & A, 3 NMAC 1.6.1, 1/15/01]

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**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 twenty-five dollars (\$25.00) 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.**

**(Laws 2007, Chapter 45, Section 1)**

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**3.1.6.9 - [RESERVED]**

[11/5/85, 8/15/90, 10/31/96; 3.1.6.1 NMAC - Rn & A, 3 NMAC 1.6.1, 1/15/01; Repealed, 12/30/10]

**3.1.6.10 - SELF-ASSESSMENT**

When a tax return has been submitted by a taxpayer and received by the department, this self-assessment constitutes an effective assessment under Section 7-1-17 NMSA 1978. Self-assessments by taxpayers are not, however, presumed to be correct under Subsection 7-1-17C NMSA 1978.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.6.1 NMAC - Rn & A, 3 NMAC 1.6.1, 1/15/01]

**3.1.6.11 - TAXPAYER'S REMEDIES**

The remedies available to taxpayers upon the delivery of notice of assessment of taxes shall be included with the document entitled "Notice of Assessment of Taxes".

[11/5/85, 8/15/90, 10/31/96; 3.1.6.1 NMAC - Rn, 3 NMAC 1.6.1, 1/15/01]

### **3.1.6.12 - PRESUMPTION OF CORRECTNESS OF ASSESSMENT**

A. Once a “Notice of Assessment of Taxes” has been mailed or personally delivered to a taxpayer, the statutory presumption of the correctness of the assessment will apply. The effect of the presumption of correctness is that the taxpayer has the burden of coming forward with some countervailing evidence tending to dispute the factual correctness of the assessment made by the secretary. Unsubstantiated statements that the assessment is incorrect cannot overcome the presumption of correctness.

B. The presumption exists even if the secretary has issued assessments using alternative methods of reconstruction of a tax or has estimated the tax.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.6.1 NMAC - Rn, 3 NMAC 1.6.1, 1/15/01]

### **3.1.6.13 - PRESUMPTION OF CORRECTNESS OF INTEREST AND PENALTY**

The presumption of correctness also applies to any interest imposed under Section 7-1-67 NMSA 1978 and any penalty imposed under Section 7-1-69 NMSA 1978.

[11/5/85, 8/15/90, 10/31/96; 3.1.6.1 NMAC - Rn & A, 3 NMAC 1.6.1, 1/15/01]

### **3.1.6.16 - [Reserved.]**

[10/31/96; 3.1.6.16 NMAC - Rn and Repealed, 3 NMAC 1.6.16, 1/15/01]

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**7-1-17.1. TAX LIABILITY--SPOUSE OR FORMER SPOUSE.--**

**A. If the secretary determines that, taking into account all the facts and circumstances, it is inequitable to hold the spouse or former spouse of a taxpayer liable for payment of all or part of any unpaid tax, assessment or other deficiency for a tax administered under the Tax Administration Act, the secretary may decline to bring an action or proceeding to collect such taxes against the spouse or former spouse of the taxpayer.**

**B. Nothing in Subsection A of this section shall be construed to authorize the abatement of taxes or enforcement of any provisions of the Tax Administration Act against the taxpayer.**

**C. The secretary shall adopt and promulgate regulations as necessary for making the determinations pursuant to this section.**

**(Laws 2003, Chapter 398, Section 15)**

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**3.1.12.13 - COLLECTION OF COMMUNITY DEBT AGAINST A SPOUSE OR FORMER SPOUSE**

The secretary or secretary's delegate may decline to bring an action or proceeding to collect community debt against a spouse or former spouse when bringing an action or proceeding would be inequitable.

A. In the case of community tax debt arising from a jointly-filed income tax return, the secretary or the secretary's delegate may decline to bring an action or proceeding to collect such taxes against the spouse or former spouse of a taxpayer who is granted relief by the internal revenue service (IRS) pursuant to 26 U.S.C. Section 6015. Where relief is granted in writing by the IRS, the spouse who received such relief may provide a copy of the IRS's determination and request that the secretary cease any collection activity against that spouse or former spouse to the extent such relief was allowed by the IRS. The secretary or the secretary's delegate may decline to pursue collection activity against a spouse or former spouse for community debt while an application for such relief is pending before the IRS, but the failure to seek or obtain such relief shall not preclude the secretary or secretary's delegate from declining to bring an action or proceeding against a spouse or former spouse for collection of a community debt when bringing an action or proceeding would be inequitable. The secretary or the secretary's delegate shall consider the following facts and circumstances when determining whether to bring an action or proceeding to collect community debt:

(1) Did the spouse or former spouse have knowledge of the tax liability at the time that liability arose?

(2) Did the spouse or former spouse have a meaningful opportunity to contest the assessment of tax at the time the assessment was made?

(3) Has the spouse or former spouse cooperated with the department in collection and compliance efforts?

(4) Can the state protect its interests without pursuing active collection efforts against the spouse or former spouse, including collection efforts against the other spouse or former spouse?

(5) Has the spouse or former spouse benefited from the transfer of significant

amounts of property from the other spouse or former spouse?

(6) Was the spouse or former spouse given an opportunity to participate in the business decisions of the household during the periods when the debt arose?

B. In addition to the facts and circumstances listed in Subsection A above, in the case of a community debt arising from the conduct of a business within the state, including taxes collected under the combined reporting system, the secretary or the secretary's delegate shall also consider the following facts and circumstances when determining whether to bring an action or proceeding to collect community debt:

(1) Did the spouse or former spouse participate in the conduct of the business, including responsibility for payment of taxes and other debts?

(2) Has the spouse or former spouse benefited from the conduct of the business?

(3) Did the spouse or former spouse know that the other spouse or former spouse had a business?

C. The secretary or the secretary's delegate shall weigh all applicable factors when determining whether to decline to bring an action or proceeding. No one factor shall be considered determinative. Each of these factors may be given different relative weight, depending on the facts and circumstances of each case, therefore the presence of a majority of said factors tending to indicate "innocent spouse" in a particular case may not necessarily indicate that the taxpayer in question qualifies as an "innocent spouse" for New Mexico tax purposes.

D. Nothing in this regulation shall be construed to apply to offsets of refunds or credits to collect on community debts.

E. The secretary and the secretary's delegate has discretion to allow relief under this section. A spouse or former spouse who believes he or she is entitled to relief under this section may petition for such relief to the secretary in writing. The spouse or former spouse has the burden of proof in establishing his or her entitlement to the relief requested. A spouse or former spouse who believes that the request for relief under this section has been improperly denied may protest that decision under Section 7-1-24 NMSA 1978.

[3.1.12.13 NMAC – N, 10/31/07]

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**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 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 an amended return is required by Subsection C 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. (Laws of 2013, Chapter 27, Section 3)

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**3.1.1.16 - TAX DEFINED FOR PURPOSES OF SECTION 7-1-18 NMSA 1978**

A. The term “tax” as it is used in Section 7-1-18 NMSA 1978 means the amount of any tax imposed and required to be paid or collected and paid over by any tax act made subject to administration and enforcement under the Tax Administration Act pursuant to the provisions of Section 7-1-2 NMSA 1978 and includes the amount of any interest or civil penalty relating thereto.

B. If the return of a taxpayer includes reporting for two or more taxes imposed by

separate tax programs, and if any of the separate taxes is understated by more than 25% of the amount of liability for the separate tax for the period to which the return relates, the secretary or secretary's delegate may make assessments for taxes imposed by any of the separate tax programs the liability for which was so understated at any time within six years from the end of the calendar year in which payment of the separate tax was due.

[7/19/67, 11/5/85, 1/4/88, 8/15/90, 10/31/96; 3.1.1.16 NMAC - Rn & A, 3 NMAC 1.1.16, 12/29/00]

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**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.**  
**(Laws 2013, Chapter 27, Section 4)**

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**3.1.1.17 - “ACTION OR PROCEEDING” DEFINED FOR PURPOSES OF SECTION 7-1-19 NMSA 1978**

As used in Section 7-1-19 NMSA 1978, the term “action or proceeding” means any effort initiated by the secretary or secretary's delegate under the provisions of the Tax Administration Act and shall include the filing of a lien, seizure of property through service of a warrant of levy, demand for security to cover the liability, sale of security which has previously been posted, demand for payment, civil action in district court, injunction to enjoin the taxpayer from engaging in business or foreclosure of a lien. “Action or proceeding” does not include processing any payment made by a taxpayer when no other act has been initiated by the secretary or secretary's delegate after ten years from the date.

[8/22/88, 8/15/90, 10/31/96; 3.1.1.17 NMAC - Rn & A, 3 NMAC 1.1.17, 12/29/00]



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**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.**

**(Laws 1995, Chapter 70, Section 1)**

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**3.1.6.14 - SECRETARY'S GOOD FAITH DOUBT OF LIABILITY**

A. The secretary may compromise the assessed liability of a taxpayer by entering into a written closing agreement only if and when there is a good faith doubt as to the liability. The written agreement must adequately protect the interests of the state and be approved by the attorney general. The secretary may not compromise a taxpayer's liability because of the taxpayer's inability to pay. The secretary may not compromise a taxpayer's liability solely because of the threat of litigation or as an expedient means of disposing of a controversy unless the secretary has a good faith doubt as to the liability.

B. Each written closing agreement entered into by the secretary must address the factual aspects of the liability that has created a good faith doubt in the mind of the secretary. The specific periods of assessed liabilities must be detailed in the written agreement.

C. The burden is upon the taxpayer to convince the secretary that a good faith doubt exists by presenting evidence sufficient to overcome the presumption of correctness of an assessed liability. A written closing agreement is conclusive only as to liability covered by the agreement.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.6.1 NMAC - Rn, 3 NMAC 1.6.1, 1/15/01]

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**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.**

**(Laws 2017, Chapter 63, Section 23)**

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**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.**

**(Laws 2013, Chapter 87, Section 1)**

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**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.  
(Laws 2015, Chapter 73, Section 14)**

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**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 (Laws 2019, Chapter 157, Section 2)**

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### **3.1.7.8 - TAXPAYER ELECTION OF REMEDIES**

A. The election provided for in Section 7-1-23 NMSA 1978 is made when a taxpayer files a timely protest to an assessment or makes a timely claim for refund with the department. The taxpayer may not withdraw a protest, pay the assessment and then claim a refund without permission from the secretary or delegate.

B. There is no provision in the Tax Administration Act for a taxpayer to “Pay Under Protest”.

C. Example 1: A taxpayer files a timely protest to a notice of assessment of taxes. Prior to the time for the administrative hearing under Section 7-1-24 NMSA 1978, the taxpayer realizes that, if the taxpayer had paid the assessment and claimed a refund, under Section 7-1-26 NMSA 1978 after the denial by the secretary of the claim for refund the taxpayer would be able to commence a civil action in the district court instead of having an administrative hearing on the protest. The taxpayer therefore commences the civil action and asks that the administrative proceedings be discontinued. The secretary will move to dismiss the action brought in district court on the grounds that the taxpayer has made an election to pursue the administrative remedy by filing the protest and is, therefore, precluded by Section 7-1-23 NMSA 1978 from pursuing a district court action.

D. Example 2: A taxpayer writes a letter to the department objecting to paying an assessment. The taxpayer does not state in the letter the nature of the complaint or the affirmative relief requested, nor is the complaint received within 30 days of the date of the assessment by the secretary. The taxpayer has not filed a protest as provided by Section 7-1-24 NMSA 1978. The taxpayer still has the right, however, to pay the assessment and claim a refund. Any one of the three defects noted above in the taxpayer's written objection would disqualify the document from being a valid protest.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.7.8 NMAC - Rn & A, 3 NMAC 1.7.8, 1/15/01]

### **3.1.7.9 - ACCEPTANCE OF PAYMENT OF ASSESSMENT AFTER PROTEST**

Tender by a taxpayer and acceptance by the secretary or secretary's delegate of payment of a protested assessment prior to resolution of the protest constitutes an agreement:

A. by the secretary to waive the taxpayer's election of remedies under Section 7-1-23 NMSA 1978 upon a resolution of the protest favorably to the taxpayer so as to permit the taxpayer to file a claim for refund for the portion of the protested assessment resolved in favor of the taxpayer; and

B. by the taxpayer to waive the accrual of interest on any refund arising from the portion of the protested assessment resolved in favor of the taxpayer.

[11/5/85, 8/15/90, 11/17/95, 10/31/96; 3.1.7.9 NMAC - Rn & A, 3 NMAC 1.7.9, 1/15/01]

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**7-1-24. DISPUTING LIABILITIES--ADMINISTRATIVE PROTEST.--**

**A. A taxpayer may dispute:**

- (1) the assessment to the taxpayer of any amount of tax;**
- (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 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 unprotected 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 unprotected 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**
- (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.

(Laws 2019, Chapter 157, Section 3)

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### **3.1.7.10 - DEFINITION OF "PROTEST" - PAYMENT OF UNPROTESTED AMOUNTS REQUIRED**

A. To be effective, a protest must be in writing, must be filed with the secretary within the time required and must identify the taxpayer, identify the tax or taxes involved, state the grounds for the taxpayer's protest and state the affirmative relief requested.

B. If a notice of assessment of taxes includes taxes due under more than one tax program, taxes assessed in that portion of the assessment not being disputed by a taxpayer are due and payable. The secretary may proceed to enforce collection of any tax which the taxpayer has not protested and which is otherwise delinquent within the meaning of Section 7-1-16 NMSA 1978.

C. Any purported protest which does not comply with the requirements of Section 7-1-24 NMSA 1978 will not be accepted as a "protest" within the meaning of Section 7-1-24 NMSA 1978. The secretary may require the taxpayer to state with greater particularity the nature and basis of a protest and the relief sought.

[7/19/67, 11/5/85, 8/15/90, 10/28/94, 10/31/96; 3.1.7.10 NMAC - Rn & A, 3 NMAC 1.7.10, 1/15/01]

### **3.1.7.11 - TIME FOR PROTEST**



Ordinarily, a protest must be made by a taxpayer within 30 days of the date of mailing by the department of the notice of assessment, or mailing or service upon the taxpayer of other notice or demand, or the date of filing or mailing of a tax return. As provided in Section 7-1-24 NMSA 1978, the secretary may, in the secretary's discretion, grant an extension of up to 60 days additional time to file a protest. Failure by a taxpayer to file a protest within a maximum of 90 days is jurisdictional, and the secretary is without authority to consider any protest filed after that period.

[7/19/67, 11/5/85, 8/15/90, 10/28/94, 10/31/96; 3.1.7.11 NMAC - Rn & A, 3 NMAC 1.7.11, 1/15/01]

### **3.1.7.12 - STATEMENT OF GROUNDS OF A PROTEST**

A. A statement of the grounds for a protest must include an explanation of the law and facts supporting the protest. It should include for each ground asserted the legal basis under the constitution, statute, regulation, or case law for the challenge to the assessment or other action of the department and a summary of the evidence expected to be produced. A summary of the evidence to be produced means the facts expected to be proven by testimony and documentary evidence surrounding the taxpayer's transactions that support relief under the cited legal standards. It is the facts alleged, not the evidence to prove them, that must be stated. If the taxpayer changes the legal theory or facts supporting the protest, the taxpayer must file a supplemental statement of grounds for the protest prior to the date of the hearing or, if a scheduling order has been issued, by the date set in the scheduling order. For protests filed on or after July 1, 2000, the statement of grounds for the protest must be supplemented no later than ten (10) days prior to the date of the hearing or, if a scheduling order has been issued, by the date set in the scheduling order. A prehearing statement filed in conformance with a scheduling order issued by the hearing officer will qualify as a supplemental statement of grounds for the protest.

B To accelerate the processing and review of the protest, copies of the evidence may be included with the statement of the grounds for protest. Evidence included with a protest still must be introduced and admitted at the formal hearing on the protest before it will be considered by the hearing officer.

C. Example: A taxpayer's protest of penalty and interest for late payment of gross receipts tax would be valid if it stated "Taxpayer, I.D. No. 00-123456-00-0, protests Assessment No. 1234567 issued December 14, 1993, imposing interest and penalty pursuant to Sections 7-1-67 and 7-1-69 NMSA 1978 (allegedly for late payment) on the grounds that taxpayer's payment of gross receipts tax for August, 1993, was timely delivered to the department on September 24, 1993". It would be helpful, but not necessary, to specify with submission of the statement of grounds what documentary or testimonial evidence will prove the facts alleged by the taxpayer, such as, "The date of delivery of the payment will be shown by the date of deposit on the canceled check." It would be even more helpful to attach a copy of the canceled check, which, in this circumstance, would probably permit the department to resolve the matter in the taxpayer's favor without even a hearing. The taxpayer may choose to submit the evidence at a later time, but not later than the hearing.

[3/11/94, 10/31/96; 3.1.7.12 NMAC - Rn, 3 NMAC 1.7.12, 1/15/01; A, 8/30/01]

### **3.1.7.13 - INFORMAL CONFERENCES**

A. Upon the taxpayer's written request or the department's own initiative, the

department will provide for an informal conference before setting a hearing on the protest. When requested, an informal conference will be scheduled at a time and place agreed to by both parties. The secretary may attend or designate a delegate to attend. Both parties may bring representatives of their own choosing to the conference, and both parties may bring any records or documents that are pertinent to the issues to be discussed. An informal conference will be vacated if the parties resolve the protest prior to the scheduled date.

B. The purpose of the informal conference is to discuss the facts and the legal issues. The result of an informal conference will usually be one of the following:

- (1) an agreement that the taxpayer will withdraw all or part of the protest;
- (2) an agreement that the department will abate all or part of the assessment protested, or will refund all or part of the amount of refund claimed;
- (3) an agreement to enter into a closing agreement;
- (4) an agreement that one or more issues will be litigated upon stipulated facts or a statement of the case;
- (5) an agreement to schedule a formal hearing; or
- (6) any combination of the above agreements.

C. The taxpayer or the department may be given the opportunity to provide more facts if the situation warrants. There is no statutory restriction on the number of informal conferences that may be scheduled with a taxpayer but, after the initial informal conference, additional informal conferences will be scheduled only if the secretary believes that the additional informal conferences will be useful in resolving the issues. In the event that the taxpayer fails to appear at the informal conference without reasonable notice to the secretary, the protest may be scheduled for a formal hearing without further opportunity for an informal conference.

[11/5/85, 8/15/90, 10/31/96; 3.1.7.13 NMAC - Rn & A, 3 NMAC 1.7.13, 1/15/01, A, 8/30/01; A, 4/30/07]

### **3.1.8.8 - GENERAL RULES ON FORMAL HEARINGS**

A. Formal hearings are held in Santa Fe. Hearings are not open to the public except upon request of the taxpayer. Taxpayers may appear at a hearing for themselves or be represented by a bona fide employee or an attorney licensed to practice in New Mexico, certified public accountant or registered public accountant.

B. Every party shall have the right of due notice, cross-examination, presentation of evidence, objection, motion, argument and all other rights essential to a fair hearing, including the right to discovery as provided in these rules.

C. An adverse party, or an officer, agent or employee thereof, and any witness who appears to be hostile, unwilling or evasive may be interrogated by leading questions and may also be contradicted and impeached by the party calling that person.

D. The parties may agree to, and the hearing officer may accept, the joint submission of stipulated facts relevant to the issue or issues. The hearing officer may order the parties to stipulate, subject to objections as to relevance or materiality, to uncontested facts and to exhibits. The hearing officer may also order the parties to stipulate to basic documents concerning the controversy, such as audit reports of the department, assessments issued by the department, returns and payments filed by the party taxpayers and correspondence between the parties, and to basic facts concerning the identity and business of a taxpayer, such as the taxpayer's business

locations in New Mexico and elsewhere, the location of its business headquarters and, if applicable, the state of its incorporation or registration.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.8.8 NMAC - Rn, 3 NMAC 1.8.8, 1/15/01, A, 8/30/01; A, 4/30/07]

### **3.1.8.9 - HEARING OFFICER**

A. Hearings in adjudicative proceedings shall be presided over by a hearing officer designated by the secretary who will be referred to herein as the hearing officer.

B. The hearing officer shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the proceedings and to maintain order. The hearing officer shall have the powers necessary to carry out these duties, including the following:

- (1) to administer or have administered oaths and affirmations;
- (2) to cause depositions to be taken;
- (3) to require the production and/or inspection of documents and other items;
- (4) to require the answering of interrogatories and requests for admissions;
- (5) to rule upon offers of proof and receive evidence;
- (6) to regulate the course of the hearings and the conduct of the parties and their representatives therein;
- (7) to issue a scheduling order, schedule a prehearing conference for simplification of the issues, or any other proper purpose;
- (8) to schedule, continue and reschedule formal hearings;
- (9) to consider and rule upon all procedural and other motions appropriate in proceeding;
- (10) to require the filing of briefs on specific legal issues prior to or after the formal hearing;
- (11) to cause a complete record of proceedings in formal hearings to be made; and
- (12) to make and issue decisions and orders.

C. In the performance of these functions, the hearing officer shall not be responsible to or subject to the direction of any officer, employee or agent of the department.

D. In the performance of these adjudicative functions, the hearing officer is prohibited from ex parte discussions with either party on any protested matter.

E. Disqualification of a hearing officer.

(1) When a hearing officer has substantial doubt as to whether the hearing officer has a conflicting interest, the hearing officer shall disqualify himself or herself and withdraw from the hearing by notice on the record.

(2) Whenever any party believes the hearing officer for any reason should be disqualified in a particular proceeding, such party may file with the secretary a motion to disqualify and remove the hearing officer, such motion to be supported by affidavits setting forth the alleged grounds for disqualification. A copy of the motion shall be served on the opposing party and on the hearing officer whose removal is sought. The hearing officer shall have 25 days from such service within which to accede or to reply to the allegations. If the hearing officer does not disqualify himself or herself within that time, the secretary shall promptly review the validity of the grounds alleged and determine whether or not the hearing officer shall be disqualified. The secretary's decision shall be final.

(3) If the hearing officer is disqualified, the secretary shall designate another person to act as hearing officer.  
[11/5/85, 1/4/88, 5/24/90, 8/15/90, 10/31/96; 3.1.8.9 NMAC - Rn, 3 NMAC 1.8.9, 1/15/01; A, 8/30/01]

#### **3.1.8.10 - EVIDENCE**

- A. The taxpayer shall have the burden of proof, except as otherwise provided by law.
- B. Relevant and material evidence shall be admitted. Irrelevant, immaterial, unreliable or unduly repetitious evidence may be excluded. Immaterial or irrelevant parts of an admissible document shall be segregated and excluded so far as is practicable. The hearing officer shall consider all evidence admitted.
- C. The hearing officer shall take administrative notice of facts to the extent provided in the New Mexico Rules of Civil Procedure for District Courts. When any decision of the hearing officer rests, in whole or in part, upon the taking of administrative notice of a material fact not appearing in evidence of record, opportunity to disprove such noticed fact shall be granted any party making timely motion therefore.
- D. Parties objecting to evidence shall timely and briefly state the grounds relied upon. Rulings of the hearing officer on all objections shall appear in the record.
- E. Formal exception to an adverse ruling is not required.
- F. When an objection to a question propounded to a witness is sustained, the examining representative may make a specific offer of what the representative expects to prove by the answer of the witness, or the hearing officer may, with discretion, receive and have reported the evidence in full. Excluded exhibits, adequately marked for identification, shall be retained in the record so as to be available for consideration by any reviewing authority.  
[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.8.10 NMAC - Rn, 3 NMAC 1.8.10, 1/15/01; A, 8/30/01]

#### **3.1.8.11 - RECORD**

Hearings shall be electronically recorded unless the hearing officer allows recording by any alternative means approved by the New Mexico supreme court for the recording of judicial proceedings. Any party may request that a hearing be recorded by such an alternative means. Unless otherwise ordered by the hearing officer, the party requesting recording by an alternative means will be responsible for the full cost thereof, including the provision of the original transcript to the hearing officer and copies to opposing parties.  
[11/5/85, 5/24/90, 8/15/90, 10/31/96, 1/15/98; 3.1.8.11 NMAC - Rn, 3 NMAC 1.8.11, 1/15/01; A, 8/30/01]

#### **3.1.8.12 - PROPOSED FINDINGS, CONCLUSIONS AND BRIEFS**

At the close of the reception of evidence, or within a reasonable time thereafter fixed by the hearing officer, the hearing officer may require or any party may file with the hearing officer proposed orders, proposed findings of fact and proposed conclusions of law, together with reasons therefore and briefs in support thereof.  
[11/5/85, 8/15/90, 10/31/96; 3.1.8.12 NMAC - Rn, 3 NMAC 1.8.12, 1/15/01]

#### **3.1.8.13 - DISCOVERY**

The parties are expected to accomplish adequate discovery by the time a formal hearing is held. This discovery is to be achieved by informal consultation, stipulation, deposition, requests for admissions and production of documents and written interrogatories. If adequate discovery is not achieved within a reasonable time prior to the time a formal hearing is scheduled, any party may apply to the hearing officer for an order to require depositions, production of records or answers to interrogatories. Depositions may be taken orally or upon written interrogatories and cross-interrogatories. Unless ordered otherwise by the hearing officer, responses to interrogatories, requests for production of documents and requests for admission shall be due thirty days after service of same on a party. Unless ordered otherwise by the hearing officer, any notice of deposition shall be served on all opposing parties at least five working days prior to the date of the deposition. The parties have an obligation to cooperate in the scheduling of depositions to avoid unnecessary expense to the parties and inconvenience to witnesses. [11/5/85, 1/4/88, 5/24/90, 8/15/90, 10/31/96, 1/15/98; 3.1.8.13 NMAC - Rn, 3 NMAC 1.8.13, 1/15/01]

### **3.1.8.14 - CONSEQUENCES OF FAILURE TO COMPLY WITH ORDERS**

A. If a party or an officer or agent of a party fails to comply with an order of the hearing officer for the taking of a deposition or otherwise relating to discovery, the hearing officer may, for the purpose of resolving issues and disposing of the proceeding without unnecessary delay despite such failure, take such action in regard thereto as is just, including but not limited to the following:

- (1) infer that the admission, testimony, documents or other evidence sought by discovery would have been adverse to the party failing to comply;
- (2) rule that, for the purposes of the proceeding, the matter or matters concerning which the order was issued be taken as established adversely to the party failing to comply;
- (3) rule that the noncomplying party may not introduce into evidence or otherwise rely, in support of any claim or defense, upon testimony by such party, officer or agent or upon the documents or other evidence discovery of which has been denied;
- (4) rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents or other evidence would have shown; or
- (5) dismiss the protest or order that the protest be granted.

B. Any such action may be taken by written or oral order issued in the course of the proceeding or by inclusion in the decision of the hearing officer. It shall be the duty of parties to seek and the hearing officer to grant such of the foregoing means of relief or other appropriate relief as may be sufficient to compensate for the withheld testimony, documents or other evidence.

C. Any party who previously requested the secretary to issue a subpoena may request the secretary to seek the assistance of the court in the enforcement of any subpoena issued to any person who fails to provide the information or documents requested in the subpoena under the provisions of Subsection 7-1-4D NMSA 1978. [11/5/85, 8/15/90, 10/31/96; 3.1.8.14 NMAC - Rn & A, 3 NMAC 1.8.14, 1/15/01; A, 8/30/01]

### **3.1.8.15 - PREHEARING CONFERENCES**

A. The hearing officer may, and upon motion of any party shall, direct

representatives for all parties to meet with the hearing officer for a prehearing conference to consider any or all of the following:

- (1) simplification and clarification of the issues;
- (2) stipulations and admissions of fact and of the contents and authenticity of documents;
- (3) expedition in the discovery and presentation of evidence, including, but not limited to, restriction on the number of expert, economic or technical witnesses;
- (4) matters of which administrative notice will be taken; and
- (5) such other matters as may aid in the orderly and expeditious disposition of the proceeding, including disclosure of the names of witnesses and the identity of documents or other physical exhibits which will be introduced in evidence in the course of the proceeding.

B. Prehearing conferences may be recorded in the discretion of the hearing officer.

C. The hearing officer may enter in the record an order which recites the results of the conference. Such order shall include the hearing officer's rulings upon matters considered at the conference, together with appropriate directions to the parties. The hearing officer's order shall control the subsequent course of the proceeding, unless modified to prevent manifest injustice.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.8.15 NMAC - Rn, 3 NMAC 1.8.15, 1/15/01; A, 8/30/01]

### **3.1.8.16 - MOTIONS**

A. After a formal hearing is scheduled on a protest, all motions shall be addressed to the hearing officer with copies to the opposing parties and shall be ruled upon by the hearing officer.

B. All written motions shall state the particular order, ruling or action desired and the grounds therefore.

C. Within ten calendar days after personal service or service by facsimile transmission of any written motion, or within thirteen calendar days after the motion is mailed or within such longer or shorter time as may be designated by the hearing officer, the opposing party shall answer or shall be deemed to have consented to the granting of the relief asked for in the motion. The moving party shall have no right to reply, except as permitted by the hearing officer.

[11/5/85, 8/15/90, 10/31/96; 3.1.8.16 NMAC - Rn, 3 NMAC 1.8.16, 1/15/01; A, 8/30/01]

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**\*\*\*REPEALED EFFECTIVE JULY 1, 2015  
LAWS OF 2015, CHAPTER 73, SECTION 37.\*\*\***

**7-1-24.1. DISPUTING LIABILITIES--CONDUCT OF HEARINGS--  
HEARING OFFICER.--**

*A. Upon timely receipt of a protest filed pursuant to Section 7-1-24 NMSA 1978, the department or a hearing officer shall set a date for a hearing within ninety days.*

*B. A hearing officer shall be designated by the secretary to conduct the hearing. A taxpayer may appear at a hearing on the taxpayer's own behalf or may be represented by a bona fide employee, an attorney, a certified public accountant, a registered public accountant or, with respect only to tax imposed pursuant to the Income Tax Act, a person who is an enrolled agent for federal income tax purposes. If the department and the taxpayer agree, the hearing may be conducted via videoconference. A hearing shall not be open to the public except upon request of the taxpayer. A hearing officer may postpone or continue a hearing at the hearing officer's discretion.*

*C. A hearing officer shall not engage or participate as an employee of the department in the enforcement or formulation of general tax policy, other than to conduct hearings. A taxpayer may request that the secretary determine whether a hearing officer engaged or participated in the enforcement or formulation of general tax policy and whether that engagement or participation affects the hearing officer's impartiality in a particular matter. The secretary may designate another hearing officer for the matter to avoid actual or apparent prejudice.*

*D. A hearing officer shall not engage in ex-parte communications concerning the substantive issues of any matter that has been protested while that matter is still pending. If the secretary determines that a hearing officer has engaged in prohibited ex-parte communications, the secretary shall designate another hearing officer for that matter.*

*E. The rules of evidence shall not apply in a hearing. The hearing officer may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt, to rule on the admissibility of evidence. A taxpayer may request a written ruling on a contested question of evidence in a matter in which the taxpayer has filed a written protest and for which that protest is pending.*

*F. In hearings before a hearing officer, the Rules of Civil Procedure for the District Courts shall not apply. The hearing officer shall conduct a hearing to allow the ample and fair presentation of both complaints and defenses. The hearing officer shall hear arguments, permit discovery, entertain and dispose of motions, require written expositions of the case as the circumstances justify and render a decision in accordance with the law and the evidence presented and admitted. 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 for which that protest is pending.*

*G. In the case of a hearing of any protest, the hearing officer shall make and preserve a complete record of the proceedings. At the beginning of the hearing, the hearing officer shall inform the taxpayer of the taxpayer's right to representation. The hearing officer, within thirty days of the conclusion of the hearing, shall inform the protestant in writing of the decision and of the protestant's right to, and the requirements for perfection of, an appeal from the decision to the court of appeals and of the consequences of a failure to appeal. The written decision shall embody an order granting or denying the relief requested or granting or denying a part of the relief requested as appropriate.*

*H. A taxpayer with two or more protests containing related issues may request that the protests be combined and heard jointly. The hearing officer shall grant the request to combine protests unless it would create an unreasonable burden on the department.*

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*(Laws 2013, Chapter 27, Section 7)*



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**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.**

**(Laws 2015, Chapter 73, Section 16)**

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**3.1.8.17 - DATE OF MAILING OR DELIVERY**

Use of the phrase "date of mailing or delivery" in Subsection 7-1-25A NMSA 1978 authorizes the department to choose between mailing and hand-delivering the written decision and order of the hearing officer. "Date of mailing" means the time that the hearing officer's decision and order enclosed in properly addressed envelope or wrapper was postmarked by the U.S. postal service. "Delivery" means time of hand delivery of the written decision and order to the taxpayer's business or residence.

[11/5/85, 8/15/90, 10/31/96; 3.1.8.17 NMAC - Rn & A, 3 NMAC 1.8.17, 1/15/01]

**3.1.8.18 - TIMELY FILING**

The filing of an appeal from the hearing officer's decision and order is governed by the Supreme Court Rules of Appellate Procedure.

[11/5/85, 8/15/90, 10/31/96; 3.1.8.18 NMAC - Rn, 3 NMAC 1.8.18, 1/15/01]

**3.1.8.19 - ISSUES ON APPEAL**

Only issues raised before the hearing officer may be heard on appeal. A party may appeal from a decision only on the same theory as presented to the hearing officer.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.8.19 NMAC - Rn, 3 NMAC 1.8.19, 1/15/01]

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**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 under 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 may be allowed or made to a person:

(1) only within three years after the end of the calendar year in which:

(a) 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;

(b) 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 under 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 or the Natural Gas Processors Tax Act;

(c) property was levied upon as provided in the Tax Administration Act; or

(d) an overpayment of New Mexico tax resulted from: 1) an internal revenue service audit adjustment or a federal refund paid due to an adjustment of an audit by the internal revenue service or an amended federal return; or 2) the amendment to a federal return for which federal approval is required by the Internal Revenue Code;

(2) in the case of a denial of a claim for credit under the

**Investment Credit Act, Laboratory Partnership with Small Business Tax Credit Act or Technology Jobs and Research and Development Tax Credit Act 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 under 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 under 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 under 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 under 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.

K. The filing of a fully completed original income tax return, corporate income tax return, corporate income and franchise tax return, estate tax return or special fuel excise 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 or an amended oil and gas 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.

(Laws 2019, Chapter 157, Section 4)

### **3.1.9.8 - CLAIM FOR REFUND - GENERAL**

A. Any person may submit a written claim for refund to the department when the person believes the person: 1) has made payment of or had withheld from that person any tax in excess of that for which the person was liable; 2) has been denied any credit or rebate claimed; or 3) has a claim of prior right to property possessed by the department pursuant to a levy. The secretary has not been given statutory authority to initiate action in the circumstances specified in numbers 1), 2) and 3) above. The person affected must initiate the claim for refund. The filing of a fully completed income, corporate income and franchise, estate or special fuel excise tax return or a fully completed amended income, corporate income and franchise, estate or special fuel excise tax return showing an overpayment of tax, a credit or rebate claimed will constitute the filing of a claim for refund and no separate claim for refund is required.

B. "Fully completed" means a return which complies with all the instructions for the return and contains all attachments required by those instructions.

C. A written claim for refund is timely if it meets the requirements for validity of Section 3.1.9.8 NMAC and is transmitted, delivered or mailed to the department prior to the expiration of the statutory time limits in Section 7-1-26 NMSA 1978.

D. A claim for refund is valid if it states the nature of the complaint and affirmative relief requested and if it contains information sufficient to allow the processing of the claim.

E. Information sufficient to allow processing of a claim includes:

- (1) taxpayer's name, address and identification number;
- (2) the type or types of tax for which the refund is being claimed;
- (3) the sum of money being claimed;
- (4) the period for which the overpayment was made;
- (5) the basis for the refund; and

(6) a copy of the appropriate, fully completed amended return for each period for which a refund is claimed.

F. A claim that does not include the information required by Subsections D and E of

3.1.9.8 NMAC is invalid. The department may return any invalid claim to the taxpayer. Alternatively the department may advise the taxpayer of the missing information and that the claim is invalid without submission of the missing information. If the taxpayer re-submits the claim with the required information or, when the return is not returned, submits all required information, the claim becomes valid only at the time the claim is re-submitted or the required information is supplied.

G. Example: A taxpayer submits an income tax return showing an amount due the taxpayer. The taxpayer either omits entering a social security account number or enters an obviously incorrect number. In either case, the income tax return is not fully completed and the taxpayer has failed to provide a proper identification number. The return is not a valid claim for refund.

H. Effective January 1, 2012, an information return is not a claim for refund.  
[7/19/67, 11/5/85, 8/15/90, 10/28/94, 10/31/96, 1/15/99; 3.1.9.8 NMAC - Rn & A, 3 NMAC 1.9.8, 1/15/01; A, 12/15/10]

### **3.1.9.9 - REMEDIES OF CLAIMANT**

A. A person who has been denied a claim for refund or who has submitted a valid claim for refund upon which the department has taken no action within 120 days may submit to the secretary a written protest against the denial of, or failure to either allow or deny, the claim pursuant to Section 7-1-26 NMSA 1978. The protest must be received by the department either:

(1) on or before 90 days after the date that the department has mailed to the claimant a written denial of the claim for refund; or

(2) within 90 days after the expiration of 120 days after the mailing of a claim to the department on which no action has been taken by the department.

B. A person who has been denied a claim for refund or who has submitted a valid claim for refund upon which the department has taken no action within 120 days may commence a civil action against the secretary pursuant to Paragraph 7-1-26C(2) NMSA 1978. The civil action must be commenced within 90 days of the denial by the department or within 90 days after the expiration of 120 days after the mailing of the claim to the department upon which no action has been taken by the department.

C. A claimant may not refile a claim which has been denied in whole or in part. If the claimant wishes to challenge the department's denial, the claimant must pursue one of the two remedies specified above. A claimant may, however, refile a claim within the statutory period if the department has not denied the claim in whole or in part and has taken no action on that claim within 120 days from the filing of the claim.

D. For the purposes of Section 3.1.9.9 NMAC, a request for additional information by the department does not constitute "action".

E. This version of Section 3.1.9.9 NMAC is retroactively applicable to protests on refund claims denied by the department or upon which the department has taken no action within 120 days on or after July 1, 1993.

[7/19/67, 11/5/85, 8/15/90, 10/28/94, 10/31/96; 3.1.9.9 NMAC - Rn & A, 3 NMAC 1.9.9, 1/15/01]

### **3.1.9.10 - CLAIM FOR REFUND OF CORPORATE INCOME TAX BASED ON ADJUSTMENT TO FEDERAL INCOME TAX**

A. The department may require that a claim for refund of state corporate income tax resulting from an adjustment to or claim for refund of federal income tax include proof of the approval and/or payment of such claim by the United States treasury department as a prerequisite to approval and payment of such claim by the state of New Mexico.

B. The supporting documentation requested may include copies of the internal revenue service revenue agent report (RAR); IRS form 1139, corporation application for tentative refund; and IRS form 1120X, amended u.s. corporation income tax return.

[5/8/87, 8/15/90, 10/31/96; 3.1.9.10 NMAC - Rn, 3 NMAC 1.9.10, 1/15/01]

### **3.1.9.11 - CLAIM FOR REFUND OF INCOME TAXES OR BANKING AND FINANCIAL CORPORATIONS TAXES BASED ON A NET OPERATING LOSS CARRYBACK OR CARRYFORWARD - 1990 AND PRIOR INCOME TAX YEARS**

A. For the 1990 and prior income tax years, New Mexico tax law had no provision for net operating loss carrybacks or carryforwards. The only way the federal Internal Revenue Code provisions concerning net operating loss carrybacks and carryforwards can affect New Mexico taxes for the 1990 and prior income tax years is through the fact that New Mexico taxes are based on federal tax computations and federal net operating loss carryback or carryforward provisions change those federal tax computations.

B. The New Mexico individual income tax, corporate income tax and banking and financial corporations taxes are based on either adjusted gross income of individuals or federal taxable income of corporations, subject to various modifications. Application of federal law concerning net operating loss carrybacks may thus result in a reduction of adjusted gross income or federal taxable income for a past tax year. This reduction in federal adjusted gross income or taxable income for that past year will then result in a reduction of the New Mexico tax owed under one of those tax acts. In such case, a taxpayer may claim a refund on those taxes within one year of the date on which the adjustment of federal tax became fixed or within the period limited by Subsection 7-1-26D NMSA 1978, whichever expires later. No other provision for a net operating loss carryback exists under New Mexico tax law for the 1990 and prior income tax years.

C. Example: X Bank is permitted under federal law to carryback a net operating loss for ten years. In 1986 X has a net operating loss of \$10,000. In 1976 X had federal taxable income reflecting a net loss. Under federal law, the net operating loss cannot be carried back to a previous loss year. Thus, even though the add-back provision under Subsection 7-6-2F NMSA 1978 of the New Mexico Banking and Financial Corporation Tax Act produced net income resulting in state tax liability in 1976, no modification is permitted to the state tax in the 1976 tax year. If X had federal taxable income of \$10,000 in 1977, federal tax law does allow X to carry back the 1986 net operating loss to 1977, thereby reducing the 1977 federal taxable income to \$0. X could then recompute its 1977 state tax under the Banking and Financial Corporations Tax Act by starting with a federal taxable income of \$0 instead of \$10,000 and completing its computation using the appropriate add backs for that year. The result would be a lessened state tax liability for 1977. X would then have one year from the adjustment in the federal tax to file a claim for refund of the excess New Mexico bank tax paid in 1977.

[5/8/87, 8/15/90, 10/31/96; 3.1.9.11 NMAC - Rn & A, 3 NMAC 1.9.11, 1/15/01]

### **3.1.9.12 - PERIODS FOR WHICH CERTAIN REFUNDS MAY BE CLAIMED**

A. When the department has assessed tax for any part of a period covered by a waiver signed on or after July 1, 1993, by the taxpayer pursuant to Subsection 7-1-18F NMSA 1978, the taxpayer may submit a claim for refund for any part of the waiver period with respect to the taxes covered by the waiver, regardless of whether tax is assessed for that part of the waiver period. Any such claim for refund must be submitted within one year of the date of the assessment.

B. When the department has assessed tax for periods specified in Subsections 7-1-18 B, C or D NMSA 1978 and the assessment applies to a period ending at least three years prior to the beginning of the year in which the assessment is made, the taxpayer may submit a claim for refund with respect to those periods for which an assessment is made. Any such claim for refund must be submitted within one year of the date of the assessment.

C. Example: Taxpayer, a monthly filer, underreported by more than 25% gross receipts taxes due in the period November 1988 through December 1991. The department audits Taxpayer in 1993. On May 1, 1993, the department assessed Taxpayer with respect to underreported taxes for the entire period. In May 1993, the November 1988 through December 1989 portion of the period is beyond the time described in Subsection 7-1-18A NMSA 1978. The taxpayer may claim a refund at any time until April 30, 1994 with respect to gross receipts taxes paid in the period November 1988 through December 1989.

[6/3/94, 10/31/96; 3.1.9.12 NMAC - Rn & A, 3 NMAC 1.9.12, 1/15/01]



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**\*\*\*REPEALED EFFECTIVE JULY 1, 1997 BY LAWS OF 1997,  
CHAPTER 66, SECTION 10.\*\*\***

**7-1-26.1. LIMITATION ON CLAIMS FOR REFUND BASED ON NET OPERATING LOSSES.** -- For taxable years beginning prior to January 1, 1991, a credit or refund of income tax or corporate income tax that is the result of a net operating loss carryback, as that term is defined by the Income Tax Act or the Corporate Income and Franchise Tax Act, as appropriate, may be claimed and allowed if the claim for refund is made in conformance with Section 7-1-26 NMSA 1978 within three years of the end of the calendar year in which the return for the taxable year in which there was a net operating loss was originally due. The limitation provided by this section on the time in which a claim for refund of income tax or corporate income tax may be filed is in addition to the limitations provided in Section 7-1-26 NMSA 1978 on the time in which a claim for refund may be filed.

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**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.  
(Laws 1999, Chapter 84, Section 3)

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**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, 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, abatements of gasoline tax made under Section 7-13-17 NMSA 1978 and abatements of cigarette tax made under the Cigarette Tax Act 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.  
(Laws 2013, Chapter 27, Section 9)**

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### **3.1.6.15 - CANCELLATION OF ASSESSMENT**

Pursuant to Section 7-1-17 NMSA 1978, a document denominated “Notice of Assessment of Taxes” is not effective until mailed or delivered to the taxpayer. At any time before this action occurs, an assessment document can be cancelled by the secretary or secretary's delegate. A cancellation is an accounting process and is not an abatement of an assessment as defined by Section 7-1-28 NMSA 1978.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.6.1 NMAC - Rn & A, 3 NMAC 1.6.1, 1/15/01]

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**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, 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, Section 7-13-17 NMSA 1978 and the Cigarette Tax Act 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 or rebate or made an overpayment of tax, the secretary shall authorize the payment to the person of the amount thereof.**

**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.

(Laws 2017, Chapter 63, Section 27)

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### **3.1.9.13 - CONDITIONS FOR REFUND OR CREDIT**

A. A refund or credit of tax may be granted to a taxpayer by the secretary or secretary's delegate only if all the following conditions are satisfied:

- (1) the tax has been erroneously paid and payment has been verified from the department's or taxpayer's records;
- (2) the taxpayer has submitted a proper claim for refund pursuant to Section 7-1-26 NMSA 1978 and the regulations thereunder; and
- (3) the secretary has secured the prior approval of the attorney general for any refund of tax and interest erroneously paid when such approval is required in Subsection A of Section 7-1-29 NMSA 1978.

B. The secretary or secretary's delegate, in response to a claim for refund for one type of tax, may credit the amount to be refunded against the amount of any other tax due from the taxpayer. The secretary or secretary's delegate shall give a full accounting of the crediting transaction to the claimant.

C. A taxpayer may not create a credit for a discovered overpayment of tax by understating the amount due on current tax returns to offset amounts paid on prior returns.  
[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.9.13 NMAC - Rn, 3 NMAC 1.9.13, 1/15/01; A, 12/15/11]

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**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.

(Laws 2019, Chapter 157, Section 5)

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**7-1-29.2. CREDIT CLAIMS. -- Any taxpayer who requests approval of a statutory tax credit is deemed to have received such approval if the request has not been granted or denied within one hundred eighty 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.  
(Laws 2003, Chapter 398, Section 10)**

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**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.**

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**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 and the Uniform Electronic Transactions Act.**

**(Laws 2015, Chapter 15, Section 1)**

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**3.1.10.8 - SEIZURE OF REAL PROPERTY BY LEVY**

A levy on real property is made by personal service of a copy of the warrant of levy on the taxpayer-owner of the property, and by recording a copy of the levy in the county in which the property is located. The secretary or delegate shall make every reasonable effort to send notice of the levy to each party with a recorded interest in the property. Real property seized under warrant of levy shall be sold pursuant to the provisions of Sections 7-1-44 through 7-1-51 NMSA 1978.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.10.8 NMAC - Rn & A, 3 NMAC 1.10.8, 1/15/01]

**3.1.10.9 - SURRENDER OF PROPERTY UPON SERVICE OF LEVY ON A FINANCIAL INSTITUTION**

**A.** If a warrant of levy is served upon a financial institution in New Mexico, the financial institution must survey all checking accounts, savings accounts, escrows for collection, safety deposit boxes, trusts, certificates of deposit and all other accounts or places in which it may possess or hold any property or rights to property belonging to the taxpayer as of the date of service of the warrant of levy.

**B.** The financial institution upon which a warrant of levy is served must immediately surrender to the department any property or rights to property of the taxpayer which that institution possesses or holds as of the date of service of the warrant. Failure to do so makes the financial institution liable to the state of New Mexico in a sum equal to the value of the property

or rights not surrendered. If a financial institution upon which a warrant of levy is served knows of property or rights to property of the taxpayer in the possession of another as of the date of the service of the warrant of levy, it must immediately report this fact to the agent of the department. A mere expectation that funds of the taxpayer will come into the possession of the institution, however, absent a contractual or other legal obligation between the taxpayer, the financial institution or any third parties, is not required to be revealed by the financial institution since the mere expectation does not constitute possession of funds by the institution.

C. If a financial institution upon which a levy has been served complies with all of the requirements of Sections 7-1-31 and 7-1-34 NMSA 1978, and the taxpayer subsequently deposits funds or property with the institution, the institution is not required to reveal this fact to the department until a new warrant of levy is served.

D. For the purposes of Section 3.1.10.9 NMAC, the term “financial institution” shall mean any bank, savings and loan association, credit union, pawn shop or any other similar entity which acts as a depository for another person's funds.

E. Example: X Bank is served with a warrant of levy in an amount of \$2,000 by the department pursuant to Sections 7-1-31 and 7-1-32. The bank is required by the warrant of levy to reveal the amount of property in its possession that belongs to D, a delinquent taxpayer, and to surrender the property up to \$2,000, if available. D's account at X Bank contains a balance of \$100 on the date the warrant of levy is served on X. X also knows that D makes a deposit of \$1,000 every month and receives a \$50 royalty check every month; but on the date the warrant of levy is served, these deposits have not been made and will not be made for another week. X Bank is not required to reveal or surrender the \$1,050 which will come into its possession one week after the date the warrant of levy is served. It is required to disclose and surrender the \$100 of D's account which is in its possession on the date the warrant of levy is served. If X Bank is served with another levy, pursuant to the provisions of Section 7-1-33 NMSA 1978, after D has deposited the additional \$1,050, it will then be required to disclose and surrender that amount.

[5/24/90, 8/15/90, 10/31/96; 3.1.10.9 NMAC - Rn & A, 3 NMAC 1.10.9, 1/15/01]

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**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 and the Uniform Electronic Transactions Act 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.**

**(Laws 2015, Chapter 15, Section 2)**

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**7-1-33. SUCCESSIVE.--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.**

**(Laws of 1993, Chapter 242, Section 3)**

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**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 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.**

**(Laws of 1993, Chapter 242, Section 4)**

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**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.

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**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 federal minimum hourly wage rate. The superintendent of the regulation and licensing department shall provide a table giving equivalent exemptions for pay periods of other than one week.

C. As used in this section:

(1) "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; and

(2) "federal minimum hourly wage" means the current highest federal minimum hourly wage rate for an eight-hour day and a forty-hour week. It is immaterial whether the employer is exempt under federal law from paying the federal minimum hourly wage rate.

**(Laws of 1993, Chapter 242, Section 5)**

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**7-1-37. ASSESSMENT AS LIEN.--**

**A. If any person liable for any tax neglects or refuses to pay after assessment and demand for payment thereof 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 Sections 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.**

**(Laws of 1993, Chapter 242, Section 6)**

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**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. (Laws 1996, Chapter 15, Section 6)**

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**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.**

**(Laws 2013, Chapter 214, Section 1)**

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**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.

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**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.  
(Laws 2001, Chapter 56, Section 5)

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**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.  
(Laws 2001, Chapter 56, Section 6)

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**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.  
(Laws 2001, Chapter 56, Section 7)

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**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.

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**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.  
(Laws 2001, Chapter 56, Section 8)

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**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.  
(Laws 2001, Chapter 56, Section 9)

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**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.  
(Laws 2001, Chapter 56, Section 10)**

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**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.  
(Laws 2001, Chapter 56, Section 11)**

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**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.**

**(Laws 2001, Chapter 56, Section 12)**

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**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.

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**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.

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**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.  
(Laws 2001, Chapter 56, Section 13)**

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**3.1.10.10 - RELEASE OF LEVY**

The secretary or secretary's delegate is authorized by Section 7-1-52 NMSA 1978 to release all or any part of property levied upon under the following conditions:

- A. the release of levy will cause the collection of the taxes to be facilitated; and
- B. the interests of the state will continue to be protected.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.10.10 NMAC - Rn & A, 3 NMAC 1.10.10, 1/15/01]

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**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.**  
**(Laws 2003, Chapter 439, Section 5)**

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### **3.1.10.11 – INJUNCTIONS**

The secretary has statutory authority to apply to a district court of New Mexico to have any delinquent taxpayer or other person who may be or may become liable for any tax enjoined from engaging in business in the state. The following examples illustrate some, but not all, situations where the secretary may make application to a district court for a temporary restraining order and an injunction against delinquent taxpayers or persons for the purpose of protecting the revenues of the state:

A. a taxpayer who has established a record of recurring tax delinquency as defined by Section 7-1-16 NMSA 1978;

B. a taxpayer who has neglected or refused to respond to a jeopardy assessment, issued pursuant to Section 7-1-59 NMSA 1978, by either paying the amount of tax demanded or furnishing satisfactory security;

C. a taxpayer who has established a recurring record of attempting to pay taxes due with bad checks as defined in Section 7-1-70 NMSA 1978;

D. a successor in business who has wrongfully failed to withhold and pay over tax or has not made payment or surrendered property after demand as provided by Section 7-1-63 NMSA 1978;

E. a person who self-denominates by declaration or actions as a “tax protestor” and who, as a means of protesting taxation or other issues, refuses to comply with the provisions of the Tax Administration Act;

F. a person who fails, neglects or refuses to collect and pay over withholding tax from that person's employees who perform personal services in New Mexico as provided by the Withholding Tax Act;

G. a prime construction contractor with principal place of business located outside New Mexico, performing construction services in New Mexico, and who has failed to comply with acceptable security requirements pursuant to Section 7-1-55 NMSA 1978;

H. a person who has failed within 90 days to respond to a demand from the department to file any tax return which was required to be filed on a date which occurred at least 45 days prior to the date the demand to file was made by the department.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.10.11 NMAC - Rn & A, 3 NMAC 1.10.11, 1/15/01]

### **3.1.10.12 - METHODS TO AVOID IMPENDING INJUNCTION**

Persons who are subject to an impending injunction action by the secretary may take any of the following actions to avoid an injunction:

A. pay the assessed tax and, if applicable, submit a claim for refund pursuant to Section 7-1-26 NMSA 1978;

B. furnish acceptable security as provided by Section 7-1-54 and Section 7-1-55



NMSA 1978;

C. make application for an extension of time as provided by Section 7-1-13 NMSA 1978; or

D. make application for and enter into an installment agreement as provided by Section 7-1-21 NMSA 1978.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.10.12 NMAC - Rn & A, 3 NMAC 1.10.12, 1/15/01]

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**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.

(Laws 1986, Chapter 20, Section 23)

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**3.1.10.13 - GENERAL PROVISIONS FOR PROVIDING SECURITY**

**A.** When the secretary or secretary's delegate believes that it is necessary to ensure payment of any tax due, or reasonably expected to become due, the secretary or secretary's delegate may require or allow a person subject to the Tax Administration Act

to furnish acceptable security. The secretary or secretary's delegate will notify the person by mailing or hand-delivering a written notice of requirement to furnish security in the amount stated in the notice. If the person addressed does not promptly comply, the secretary or secretary's delegate will make a written demand of the person by certified mail or in person that the person furnish security in the stated amount. Upon the failure of any person to comply within ten days of the date of the written demand for furnishing security, the secretary may institute a proceeding to enjoin that person from engaging in business in the state as provided in Section 7-1-53 NMSA 1978. The following examples illustrate some, but not all, situations in which the secretary or secretary's delegate may require or allow the furnishing of security:

- (1) the taxpayer is a delinquent taxpayer;
- (2) the taxpayer is granted an extension of time to pay taxes;
- (3) the taxpayer enters into an installment agreement;
- (4) the taxpayer requests a stay of levy;
- (5) the taxpayer requests permission to report and pay certain taxes on a quarterly or semiannual basis;
- (6) the taxpayer wishes to avoid an impending restraining order or an injunction proceeding;
- (7) the taxpayer wishes to stay the enforcement of a jeopardy assessment;
- (8) a successor in business has failed to withhold the amount of the tax liability of the predecessor or to pay the tax or surrender the property;
- (9) a corporation is dissolving or withdrawing from the state;
- (10) the taxpayer is conducting a business of a transient nature;
- (11) the taxpayer has a recurring record of attempted payment of tax liabilities with bad checks;
- (12) the taxpayer has failed to file any required tax returns within 45 days from the date the return was required to be filed;
- (13) the taxpayer has engaged in business for more than three months during which period of time the taxpayer was not registered with the department or did not maintain an active identification number issued by the department.

B. The furnishing of security by a person liable for the payment of taxes will not prevent the imposition of interest due on deficiencies as provided by Section 7-1-67 NMSA 1978 nor prevent the imposition of civil penalty for failure to pay tax or file a return as provided by Section 7-1-69 NMSA 1978.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.10.13 NMAC - Rn & A, 3 NMAC 1.10.13, 1/15/01]

### **3.1.12.11 - SECURITY POSTED BY GASOLINE DISTRIBUTORS**

Registered gasoline distributors shall post security as required by the secretary or secretary's delegate pursuant to 3.16.7.10 NMAC.

[2/19/86, 8/15/90, 10/31/96; 3.1.12.11 NMAC - Rn & A, 3 NMAC 1.12.11, 1/15/01]

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**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.  
(Laws of 2003, Chapter 272, Section 1)**

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**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.**

**(Laws 2001, Chapter 56, Section 15)**

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**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.  
(Laws 2001, Chapter 56, Section 16)**

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#### **3.1.10.14 - SURETY BONDS**

The secretary will accept only those surety bonds underwritten by a company qualified to do business in New Mexico.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.10.14 NMAC - Rn, 3 NMAC 1.10.14, 1/15/01]

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**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 judgements for taxes may be enforced in appropriate courts of other states by the secretary or 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.  
(Laws of 1992, Chapter 55, Section 14)

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### **3.1.10.15 - LIMITATION ON ACTIONS**

A. **LIMITATION ON ACTIONS TO COLLECT TAX DEBT:** Pursuant to the provisions of Section 7-1-19 NMSA 1978, the secretary or attorney general may not bring an action or proceeding to collect taxes after ten years from the date of the assessment of taxes.

B. **INTEREST ASSESSED FOR PRIOR TAX LIABILITIES:** When the secretary or delegate has, within the last ten years, caused interest to be assessed on a tax liability due under a self-assessment or notice of assessment of taxes made more than ten years ago, no action or proceeding to collect on the interest assessments may be brought by the secretary or secretary's delegate after ten years from the date of the underlying assessment, even though the interest assessment may have been made less than ten years ago. Subsection 3.1.10.15B NMAC is applicable to liabilities which originally became due on or after October 31, 1986 and to the related interest assessments.

C. **TEN-YEAR LIMITATION OVERRIDES OTHER STATUTES:** The ten-year limitation in Section 7-1-19 NMSA 1978 overrides the permanence of tax debt provided for in Section 7-1-58 NMSA 1978 and Subsection 7-1-17D NMSA 1978.  
[7/19/67, 11/5/85, 8/15/90, 10/31/96, 7/31/97; 3.1.10.15 NMAC - Rn & A, 3 NMAC 1.10.15, 1/15/01]



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**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 he 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 him to the state, demanding of him the immediate payment thereof and briefly informing the taxpayer of the steps that may be taken against him as well as of the remedies available to him.

**C.** Notwithstanding any other provision of the Tax Administration Act, if any person against whom a jeopardy assessment has been made neglects or refuses either to pay the amount of tax demanded of him or furnish satisfactory security therefor within five days of the service upon him 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, or the secretary may 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 by furnishing security and otherwise following the procedures set forth in Section 7-1-24 NMSA 1978, or he may pay the tax and claim a refund thereof as provided by Section 7-1-26 NMSA 1978.

(Laws of 1993, Chapter 30, Section 9)

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**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 him 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.  
(Laws of 1993, Chapter 30, Section 10)**

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**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.**

**(Laws 2017, Chapter 63, Section 28)**

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**3.1.10.16 - DETERMINATION OF SUCCESSOR IN BUSINESS**

A. The following indicia are used by the secretary or secretary's delegate as factors in determining whether a business is a successor:

(1) Has a sale and purchase of a major part of the materials, supplies, equipment, merchandise or other inventory of a business enterprise occurred between a transferor and a transferee in a single or limited number of transactions?

(2) Was a transfer not in the ordinary course of the transferor's business?

(3) Was a substantial part of both equipment and inventories transferred?

(4) Was a substantial portion of the business enterprise that had been conducted by the transferor continued by the transferee?

(5) By express or implied agreement did the transferor's goodwill follow the transfer of the business properties?

(6) Were uncompleted sales, service or lease contracts of the transferor honored by the transferee?

(7) Was unpaid indebtedness to suppliers, utility companies, service contractors, landlords or employees of the transferor paid by the transferee?

(8) Was there an agreement precluding the transferor from engaging in a competing business to that which was transferred?

B. If one or more of the indicia mentioned above are present, the secretary or secretary's delegate may presume that ownership of a business enterprise has transferred to a successor in business.

C. Example 1: A father owning a business enterprise in sole proprietorship decided to retire. He transferred the substantial part of all tangible and intangible business property to his son. The father was liable for payment of state, municipal and county gross receipts taxes in the amount of \$10,000 on the date of transfer. The son continued the business enterprise, but changed the trade name, added some new product lines, sold off some obsolete equipment and

rented new store, warehouse and office business locations. The son is a successor in business to his father and shall follow the provisions of Subsection 7-1-61C NMSA 1978 by withholding or paying over the amount due.

D. Example 2: A person owning a road construction company sold one-half of the company's new and used heavy equipment to another person to reduce the company's inventory of construction equipment because the person planned to discontinue bidding on out-of-state road projects. The person plans to continue road construction services in New Mexico using the remaining equipment. The purchaser of the heavy equipment is not a successor in business to the seller since few of the indicia are present for determination of a successor in business.

E. Example 3: A title and abstract company which had been inactive for several months sold its remaining assets to a purchaser who incorporated the tangible and intangible property into the purchaser's own business. The seller was liable for payment of gross receipts taxes on the date of the transfer of the business assets and the purchaser failed to withhold and place into a trust account a sufficient amount of the purchase price to cover the taxes owed or to pay over to the department the seller's unpaid assessments of gross receipts taxes. The purchaser claimed to be unaware of the seller's tax liabilities. The department made a demand on the purchaser for payment and gave the amount and basis of the unpaid assessments of tax for which the seller was liable, in accordance with Subsection 7-1-63A NMSA 1978. The New Mexico court of appeals upheld the department's determination that a business which changes hands need not be an active or solvent business to come under the provisions of Section 7-1-61 NMSA 1978. Although not all the separate indicia listed in Section 3.1.10.16 NMAC were applicable to this illustration, the indicia of Paragraphs 3.1.10.16A(1) through (4) NMAC used by the department did apply and supported a presumption to meet the statutory requirements of Section 7-1-61 NMSA 1978. (*Sterling Title Co. v. Commissioner of Revenue*, 85 N.M. 279)

F. For the purposes of Sections 7-1-61 through 7-1-63 NMSA 1978 and Section 3.1.10.16 NMAC:

(1) “mere continuation” is determined by the “substantial continuity test” used in other contexts where the government is seeking to impose successor liability and is determined by addressing whether the successor maintains the same business with the same employees doing the same jobs under the same supervisors, work conditions and production process and produces the same product for the same customers. See *B.F. Goodrich v. Betkoski*, 99 F.3d 505 (2<sup>nd</sup> Cir. 1996);

(2) “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. A “successor” may include a business that is a mere continuation of the predecessor after those connected with the business re-acquire at a foreclosure sale property used in the predecessor’s business, a business that is acquired and run for indefinite period by a creditor of the predecessor and any business that assumes the liabilities of the predecessor. A “successor” does not include a disinterested third party who purchases property at a commercially reasonable foreclosure sale, a bank or other financial institution or government that acquires and operates a business for a limited period of time in order to protect its collateral for eventual resale in a commercially reasonable manner or a franchisor that cancels a franchise agreement due to material default by the franchisee;

(3) “transfer” means every mode, direct or indirect, absolute or conditional,

voluntary or involuntary, of disposing of or parting with the property of a business; and

(4) “used in any business” means reasonably necessary for the business’s continued operations, whether or not the property is actually owned by the business.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 6/15/98; 3.1.10.16 NMAC - Rn & A, 3 NMAC 1.10.16, 1/15/01]

**3.1.10.17** - [Reserved.]

[10/31/96; 6/15/98 - Repealed; 3.1.10.17 NMAC - Rn, 3 NMAC 1.10.17, 1/15/01]

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**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.

(Laws 1997, Chapter 66, Section 6)

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**7-1-63. ASSESSMENT OF TAX--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.

(Laws 1997, Chapter 66, Section 7)

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**\*\*\*REPEALED EFFECTIVE JULY 1, 1997 BY  
LAWS OF 1997, CHAPTER 66, SECTION 10.\*\*\***

**7-1-64. FAILURE TO WITHHOLD.--**

A. *If the purchaser has wrongfully failed to withhold and pay over as provided by Subsection C of Section 7-1-61 NMSA 1978, or has not made payment after demand by the director or his delegate as provided in Section 7-1-63 NMSA 1978, he becomes a delinquent taxpayer.*

B. *The purchaser hereunder may completely discharge his responsibility under the provisions of this section by surrendering and assigning all his interest in the tangible and intangible property acquired, or the proceeds thereof, to the director or his delegate for disposition by him in the manner provided for disposition of property levied upon by Section 7-1-31 NMSA 1978.*

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**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.

(Laws of 1994, Chapter 48, Section 1)

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**7-1-66. IMMUNITY OF PROPERTY OF INDIAN TRIBES 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.

(Laws 1995, Chapter 70, Section 3)

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**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.**

**(Laws 2013, Chapter 27, Section 11)**

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### **3.1.10.18 - INTEREST**

#### **A. INTEREST**

(1) Interest on the unpaid portion of a tax indebtedness is due to the State of New Mexico at the rate of 15% per year computed on a daily basis for amounts due on or after January 1, 2001. The daily rate will be determined by dividing the annual rate by 365 or 366 as appropriate.

(2) Except as otherwise provided in Subsection 7-1-67A NMSA 1978, interest on the unpaid portion of a tax indebtedness shall begin to accrue on the day following the date on which payment of the tax is required by law. Interest shall continue to accrue until the tax indebtedness is paid.

(3) [Reserved.]

(4) The following are instances when interest is accrued on the unpaid balance of a taxpayer's tax indebtedness under the Tax Administration Act from the day following the due date:

(a) granting of an extension of time pursuant to Subsection 7-1-13E NMSA 1978;

(b) entering into a closing agreement pursuant to Section 7-1-20 NMSA 1978;

(c) entering into an installment agreement pursuant to Section 7-1-21 NMSA 1978;

(d) making of a protest of an assessment of tax pursuant to Section 7-1-24 NMSA 1978 unless payment has been made under the provisions of Section 3.1.7.9 NMAC, in which case interest will accrue only until the date payment is tendered to the department;

(e) an appeal by a taxpayer from an adverse decision rendered at an administrative hearing;

(f) the granting of a partial abatement of an assessment of tax;

(g) seizure of property under levy pursuant to Section 7-1-34 NMSA 1978;

(h) imposition of an injunction or temporary restraining order against a taxpayer pursuant to Section 7-1-53;

(i) furnishing of security by the taxpayer pursuant to Sections 7-1-54 and 7-1-55 NMSA 1978;

(j) in the case where a tax liability was incurred by a predecessor in business, ignorance of a successor in business of a tax liability;

(k) an attempt to pay tax by a bad check; and

(l) proper dissolution of a corporation.

(5) In the case where the due date has not yet passed, interest will begin to accrue on the sixth day following the jeopardy assessment made pursuant to Section 7-1-59 NMSA 1978.

**B. APPLICATION OF INTEREST PROVISIONS TO GOVERNMENTS**

(1) Interest on the unpaid portion of a tax indebtedness is due to the state of New Mexico when the tax indebtedness is owed by any agency, institution, instrumentality or political subdivision of the state of New Mexico.

(2) To the extent permitted by the constitution, treaties and laws of the United States, interest on the unpaid portion of a tax indebtedness is due to the state of New Mexico when the tax indebtedness is owed by any other state, any Indian tribe, nation or pueblo, the United States, any alien government or any agency, institution, instrumentality or political subdivision of any of the foregoing.

(3) Subsection 3.1.10.18B NMAC is retroactively applicable to unpaid tax indebtedness due on or after July 1, 1992.

**C. WHEN INTEREST APPLIES TO REPAYMENTS OF EXCESS REFUNDS**

(1) "Tax", as defined by the Tax Administration Act, includes any amount of any credit, rebate or refund paid by the department contrary to any law subject to administration under the Tax Administration Act. An excess credit, rebate or refund paid is a tax owed to the state. When no due date is specified by statute, the due date of such a tax is thirty days after the excess credit, rebate or refund is received by the taxpayer. Interest shall be applied for each month or fraction thereof from the due date until the excess credit, rebate or refund is paid.

(2) Unless the preponderance of evidence indicates another date, the person to whom the department mails an excess credit, rebate or refund shall be presumed to have received the excess credit, rebate or refund seven days after the department mailing.

(3) Subsection 3.1.10.18C NMAC applies to any excess credit, rebate or refund paid by the department after January 1, 1994.

[7/19/67, 11/5/85, 8/15/90, 10/31/96, 7/31/97; 3.1.10.18 NMAC - Rn & A, 3 NMAC 1.10.18, 1/15/01]

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**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 or the Corporate Income and Franchise Tax Act 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, the Severance Tax Act, 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; 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, Laboratory Partnership with Small Business Tax Credit Act, Technology Jobs and Research and Development Tax Credit Act, Film Production Tax Credit Act, Affordable Housing Tax Credit Act 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.

(Laws 2017, Chapter 63, Section 29)

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### **3.1.9.14 - INTEREST ON REFUNDS OF TAXES SELF-ASSESSED BY THE TAXPAYER**

A. When an overpayment results from a self-assessment of taxes based on a return filed by the taxpayer, interest on a refund of that overpayment of taxes shall be computed from the date of filing of the claim for refund when the refund is not paid within the appropriate 60, 75 or 120 day limit specified in Subsection 7-1-68D NMSA 1978 and when the overpayment results from a self-assessment of taxes based on a return filed by the taxpayer. The fact that a subsequent notice of assessment is issued by the department due to failure of the taxpayer to accompany the return with full payment does not change the date from which interest is computed.

B. The determinative factor in deciding whether an overpayment is an "overpayment arising from an assessment by the department"- requiring interest on a refund to be computed from the date of overpayment rather than the date of a claim for refund - is whether the action establishing the amount of liability for taxes was initiated by the taxpayer or by the department. Actions initiated by the taxpayer include, but are not limited to, the filing of a tax return reporting a tax liability, whether or not payment accompanies the return. Actions initiated by the department include, but are not limited to, an audit of the taxpayers books and records or the issuance of a provisional assessment as a result of a taxpayer's failure to file any return or returns.

[7/19/67, 11/5/85, 1/14/86, 8/15/90, 10/28/94, 10/31/96; 3.1.9.14 NMAC - Rn & A, 3 NMAC 1.9.14, 1/15/01]

### **3.1.9.15 - INTEREST ON REFUNDS BASED ON ADJUSTMENT TO FEDERAL INCOME TAX**

Interest on refunds based on an adjustment to federal tax pursuant to Subsection 7-1-26F NMSA 1978 shall be allowed from the date 120 days after the claim is filed until the date the final authorizing signature approves the claim.

[5/20/94, 10/31/96; 3.1.9.15 NMAC - Rn & A, 3 NMAC 1.9.15, 1/15/01]

**3.1.9.16 - REFUND OF CERTAIN INTEREST OR PENALTY PAID**

A. When a taxpayer has paid interest with respect to an amount of tax that is paid after the time it is due to be paid and the taxpayer subsequently becomes entitled to a refund of part or all of the tax, the taxpayer is also entitled to a refund of a proportionate amount of the interest paid by the taxpayer whether or not the taxpayer specifically requests refund of the interest.

B. When a taxpayer has paid penalty pursuant to Section 7-1-69 NMSA 1978 with respect to an amount of tax that is paid after the time it is due to be paid and the taxpayer subsequently becomes entitled to a refund of part or all of the tax, the taxpayer is also entitled to a proportionate refund of the penalty paid by the taxpayer whether or not the taxpayer specifically requests refund of the penalty.

[3.1.9.16 NMAC - N, 1/15/01]

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**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 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.**

**(Laws 2007, Chapter 45, Section 4)**

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### **3.1.11.8 - ASSESSMENT AND PROTEST OF PENALTY**

A. Civil penalty is assessed by the secretary or delegate in the manner provided for issuing assessments in Paragraph 7-1-17B(2) NMSA 1978 and any regulations thereunder. Any assessment of civil penalty or demand for payment made by the department is presumed to be correct under Subsection 7-1-17C NMSA 1978.

B. Civil penalty shall be collected in the same manner as, and concurrently with, the amount of tax to which it relates, in accordance with Section 7-1-30 NMSA 1978.

C. A taxpayer who has been assessed civil penalty and who believes that the taxpayer has been neither negligent nor in disregard of rules or regulations has available all the legal remedies in the Tax Administration Act that are available for any assessed taxpayer, whether for tax, taxes, interest or penalty.

D. The effect of the presumption of correctness of assessment of civil penalty is that the taxpayer has the burden of coming forward with some evidence showing that the assessment made by the department is not correct. When not correct, the assessment shall be abated by the secretary or secretary's delegate as provided by Section 7-1-28 NMSA 1978.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.11.8 NMAC - Rn & A, 3 NMAC 1.11.8, 1/15/01]

### **3.1.11.9 - COMPROMISE BY SECRETARY**

The secretary may compromise the assessment of civil penalty by entering into a written closing agreement if and when the secretary has a good faith doubt of the taxpayer's liability. The secretary may not compromise the civil penalty because of the taxpayer's inability to pay. The secretary may not compromise the civil penalty solely because of the threat of litigation. The secretary may not compromise the civil penalty solely as an expedient means of disposing of a controversy.

[11/5/85, 8/15/90, 10/31/96; 3.1.11.9 NMAC - Rn & A, 3 NMAC 1.11.9, 1/15/01]

### **3.1.11.10 - NEGLIGENCE**

Taxpayer "negligence" under Subsection 7-1-69A NMSA 1978 means:

A. failure to exercise that degree of ordinary business care and prudence which reasonable taxpayers would exercise under like circumstances;

B. inaction by taxpayers where action is required;

C. inadvertance, indifference, thoughtlessness, carelessness, erroneous belief or inattention.

[11/5/85, 8/15/90, 10/31/96; 3.1.11.10 NMAC - Rn & A, 3 NMAC 1.11.10, 1/15/01]

### **3.1.11.11 - INDICATIONS OF NONNEGLIGENCE**

The following situations may indicate that a taxpayer has not been negligent or in disregard of rules and regulations and the secretary will consider these circumstances in deciding whether to assess civil penalty as provided by Section 7-1-69 NMSA 1978, or whether to abate assessed civil penalty as provided by Section 7-1-28 NMSA 1978:

A. the taxpayer proves the taxpayer was affirmatively misled by a department employee;

B. the taxpayer, disabled because of injury or prolonged illness, demonstrates the inability to prepare a return and make payment and was unable to procure the services of another person to prepare a return because of the injury or illness;

C. the taxpayer shows that physical damage to the taxpayer's records or place of business caused a delay in filing a return or making payment of tax;

D. the taxpayer proves that the failure to pay tax or to file a return was caused by reasonable reliance on the advice of competent tax counsel or accountant as to the taxpayer's liability after full disclosure of all relevant facts; failure to make a timely filing of a tax return, however, is not excused by the taxpayer's reliance on an agent;

E. a taxpayer, within twelve months of the filing of a return by the original due date or by the extended due date and without action of the secretary or delegate, files an amended return reflecting tax due or additional tax due and full payment of any tax due accompanies the amended return;

F. with regard to income tax returns only, the internal revenue service abates federal penalty originally assessed for the same or similar reason as the New Mexico penalty. If the taxpayer, however, without requesting and receiving an extension of time in which to file under the provisions of Subsection 7-1-13E NMSA 1978, has failed to timely file and pay additional income tax due within the time required in Subsection 7-1-13C NMSA 1978, the penalty will be assessed;

G. with regard to oil and gas tax returns only, the taxpayer receives final approval from the appropriate government agency of the taxpayer's participation in production from a state or federal property and pays all oil and gas taxes due on production from the property attributable to the taxpayer no later than the twenty-fifth day of the second month following the month in which the approval is received; or

H. with regard to an out-of-state business when a good faith doubt exists as to whether the taxpayer has established nexus with New Mexico and whether the state has jurisdiction over the taxpayer and its transactions into New Mexico for current or prior reporting periods, the business volunteers to enter into an agreement with the department to register, report and pay gross receipts tax, corporate income tax or franchise tax or to collect and remit compensating tax as an agent under the provisions of Section 7-9-10 NMSA 1978.

[11/5/85, 1/4/88, 5/24/90, 9/20/93, 2/9/95, 3/15/96, 4/15/98; 3.1.11.11 NMAC - Rn & A, 3 NMAC 1.11.11, 1/15/01]

### **3.1.11.12 - FAILURE TO FILE A RETURN**

If a taxpayer does not file a return on the date on which payment of tax is due, as required by Subsection 7-1-13B NMSA 1978, the minimum penalty of \$5.00 imposed by Section 7-1-69



NMSA 1978 will apply only once per return, regardless of the number of tax programs included in the return.

[11/5/85, 8/15/90, 10/31/96; 3.1.11.12 NMAC - Rn & A, 3 NMAC 1.11.12, 1/15/01]

### **3.1.11.13 - FRAUDULENT RETURN FILED WHEN NO TAX IS DUE**

When a taxpayer files a return with intent to defraud the state by making a claim for a tax credit or rebate, and no amount of tax is required to be paid on the return, the provisions of Section 7-1-69 NMSA 1978 will not apply. Nothing in Section 3.1.11.13 NMAC, however, shall be construed to prohibit criminal prosecution of such person for false statement and fraud under Section 7-1-73 NMSA 1978.

[11/5/85, 8/15/90, 10/31/96; 3.1.11.13 NMAC - Rn & A, 3 NMAC 1.11.13, 1/15/01]

### **3.1.11.14 - APPLICATION OF PENALTY PROVISIONS TO GOVERNMENTS**

A. Penalty with respect to the unpaid portion of a tax indebtedness or with respect to the failure to file a return by the date required is due to the state of New Mexico when the tax indebtedness is owed by any agency, institution, instrumentality or political subdivision of the state of New Mexico.

B. To the extent permitted by the constitution, treaties and laws of the United States, penalty with respect to the unpaid portion of a tax indebtedness or with respect to the failure to file a return by the date required is due to the state of New Mexico when the tax indebtedness is owed by any other state, any Indian tribe, nation or pueblo, the United States, any alien government or any agency, institution, instrumentality or political subdivision of any of the foregoing.

C. Section 3.1.11.14 NMAC is retroactively applicable on July 1, 1992.  
[7/3/92, 10/31/96; 3.1.11.14 NMAC - Rn & A, 3 NMAC 1.11.14, 1/15/01]

### **3.1.11.15 - APPLICATION OF PENALTY UPON EXPIRATION OF EXTENSION**

Penalty for failing to file a required return or, if tax is due, to pay tax by an extended due date will be computed beginning with the first day following the extended due date.

[9/20/93, 10/31/96; 3.1.11.15 NMAC - Rn, 3 NMAC 1.11.15, 1/15/01]

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**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 or the Special Fuels Supplier Tax Act shall pay a penalty of fifty dollars (\$50.00) for each late report. This penalty shall be in addition to other applicable penalties.**

**(Laws 2007, Chapter 45, Section 5)**

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**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 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.**

**(Laws 2016 SS, Chapter 3, Section 3)**

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**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. (Laws 1996, Chapter 15, Section 10)**

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### **3.1.11.16 - DEFINITION OF BAD CHECK**

A bad check is a check or draft to the order of the department which the bank, as drawee, dishonors upon presentment by the department. "Dishonor" means the bank refuses to pay the amount of the check to the order of the department. The burden is on the taxpayer to prove that the taxpayer was not responsible for the bank's dishonoring of the check. "Bank" includes any financial institution upon which a check or draft is drawn.

[7/19/67, 11/5/85, 8/15/90, 10/31/96; 3.1.11.16 NMAC - Rn, 3 NMAC 1.11.16, 1/15/01]

### **3.1.11.17 - IMPOSITION OF PENALTY ON BAD CHECKS**

A. A penalty in the amount of twenty dollars (\$20.00) will be imposed under Section 7-1-70 NMAC 1978 for each instance in which a check tendered to the department is not paid upon presentment. This penalty is in addition to any penalty imposed under Section 7-1-69 NMAC 1978.

B. This version of Section 3.1.11.17 NMAC is applicable January 1, 1995.  
[7/19/67, 11/5/85, 8/15/90, 10/28/94, 10/31/96; 3.1.11.17 NMAC - Rn & A, 3 NMAC 1.11.17, 1/15/01]

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**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.

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**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 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.**

**(Laws 2001, Chapter 56, Section 17)**

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**3.1.1.7 - DEFINITIONS: "SIGN" DEFINED**

As used in Section 7-1-71.1 NMSA 1978 and Section 3.1.1.18 NMAC the term "sign" means to affix a name or cause it to be attached using one of the following methods:

- A. handwritten;
- B. rubber stamp;
- C. mechanical device (such as a mechanical pen);
- D. computer software program; or
- E. any other method of signature acceptable under the Internal Revenue Code.

[10/31/96; 3.1.1.7 NMAC - Rn, 3 NMAC 1.1.7, 12/29/00; A, 4/28/06]

**3.1.1.18 - REQUIREMENTS FOR TAX RETURN PREPARERS**

Every tax return preparer, as that term is defined in Section 7-1-3 NMSA 1978, shall furnish that preparer's identification number with, and sign, each income tax return or claim of refund with respect to income tax that the preparer completes. For the purposes of 3.1.1.18 NMAC, a tax return preparer's identification number is one of the following: the preparer's department-issued CRS identification number, the preparer's social security number or the

preparer's internal revenue service-issued practitioner's tax identification number (PTIN).  
[11/5/85, 8/15/90, 10/31/96; 3.1.1.18 NMAC - Rn & A, 3 NMAC 1.1.18, 12/29/00; A, 5/15/01]

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**\*\*\*REPEALED EFFECTIVE JULY 1, 2007 BY LAWS OF 2007,  
CHAPTER 45, SECTION 14.\*\*\***

***7-1-71.2. PENALTY FOR INCORRECT REPORTING OF FOOD DEDUCTION OR HEALTH CARE PRACTITIONER SERVICES DEDUCTION.--A taxpayer who claims a deduction pursuant to Section 7-9-92 or 7-9-93 NMSA 1978 and fails to correctly report the amount of the deduction to which the taxpayer is entitled shall pay a penalty in the amount of the difference between the incorrect deduction amount and the correct deduction amount multiplied by twice the total local option tax rates in effect at the taxpayer's business location for which the deduction was claimed. This penalty shall be in addition to other applicable penalties.***

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**3.1.11.19 - [Reserved]**

[3.1.11.19 NMAC - N, 1/31/05; A, 11/30/05; Repealed, 1/31/08]

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**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.**

**(Laws 2005, Section 108, Section 4)**

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**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. (Laws 2007, Chapter 127, Section 2)**

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**3.1.4.17 - APPROVED ELECTRONIC MEDIA:** Department approved electronic media includes an electronic transmission of the personal income tax return data submitted in an approved format using a computer language designated by the department.

[3.1.4.17 NMAC - N, 1/31/2008; A, 2/26/2019]

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**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.**

**(Laws 1965, Chapter 248, Section 73)**

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**7-1-72.1. CIVIL PENALTY--WILLFUL ATTEMPT TO CAUSE EVASION OF ANOTHER'S TAX PENALTY.--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.**  
**(Laws 1997, Chapter 66, Section 9)**

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### **3.1.11.18 - WILLFUL ATTEMPT TO EVADE OR DEFEAT TAX**

#### **A. "WILLFUL ATTEMPT TO EVADE OR DEFEAT" DEFINED**

(1) As used in the Tax Administration Act, the term "willful attempt to evade" or "willful attempt to evade or defeat" means conscious awareness of the obligation to pay taxes coupled with either reckless disregard for, or gross negligence with respect to, whether the tax obligation is paid. A willful attempt to evade or a willful attempt to evade or defeat may occur either with respect to the obligation to report or the obligation to pay.

(2) A willful attempt to evade or defeat may include, but is not limited to:

(a) engaging in business while not filing tax returns coupled with the knowledge that the business is subject to tax;

(b) filing tax returns without payment for an extended period of time while staying in business and paying other creditors;

(c) knowingly completing false tax returns or claiming exemptions, deductions, credits or other reductions of taxable amounts or taxes to which the taxpayer knows he is not entitled;

(d) hiding or transferring assets to hinder collection activity of the department; or

(e) advising or counseling any of the foregoing in the course of one's business as an attorney, accountant, bookkeeper, business consulting firm or tax preparer.

(3) The following are examples of a willful attempt to evade or defeat a tax or to cause or attempt to cause the evasion of another's tax.

(a) A is the primary shareholder, controlling officer and sole employee of B, a closely held corporation. B is engaged in an on-going business and, on its billings to its customers, separately states and collects an amount denominated "gross receipts tax". B has not filed monthly gross receipts returns for eight consecutive months. B, however, has received frequent notices from the department and has received telephone calls from department personnel requesting that the returns be filed for the non-filed months and any tax due be paid. As a result of the frequent contact from the department, B files the gross receipts tax returns, each of which shows tax due, but refuses to pay the outstanding tax, penalty and interest due and does not protest the tax due. B is willfully evading or defeating the gross receipts tax due and A is willfully causing B to evade that tax.

(b) C is the primary shareholder and controlling officer of D, a corporation. D hires the services of a professional accounting firm. The firm prepares D's tax returns and forwards them to C. C receives the returns but simply stores them. D never files the tax returns or pays the taxes due. C has willfully caused the evasion of D's taxes.

(c) B keeps C's books. C is a corporation. E is the primary shareholder and

controlling officer of C. B prepares the tax returns for C and drafts checks for E to sign. E signs the returns and the checks. B never sends the returns or checks to the department but endorses the checks to himself. B intercepts all mail and telephone calls from the department. When E becomes aware of what B is doing, E promptly contacts the department to make arrangements for the filing of the returns and payment of the taxes. Making the payments, however, proves unfeasible and C goes out of business. B has willfully caused C to evade its taxes but E has not.

(d) L is an attorney who is familiar with business and tax law and is the primary shareholder in PC, a professional corporation. PC has reported and paid gross receipts tax in the past. PC stops reporting and paying gross receipts tax; L is aware of this. L has willfully caused the evasion of PC's taxes.

(e) N is the primary shareholder and controlling officer of C, a corporation. C is assessed a substantial amount of tax as the result of an audit. N causes C to cease operations. N's brother, M, who has also worked in the business forms a new corporation D. D takes over C's business and assets, including C's customer lists, employees and goodwill. D operates at C's place of business, with strictly cosmetic changes in signs and stationery. Both N and M know of C's tax obligations and intended the change in form to strip the tax liability from the on-going business. Both N and M have willfully caused C to evade taxes.

(f) O is a company that researches tax liens. It contacts businesses with tax trouble as indicated by the existence of tax liens. It advises businesses in the use of techniques to avoid holding balances in bank accounts, thereby defeating any levy by the department on the business's bank accounts. O is willfully causing or attempting to cause another to evade or defeat taxes owed and may be assessed for the amount its clients acting owe in tax.

(4) The following examples illustrate situations which do not give rise to a willful attempt to evade or defeat tax.

(a) G is the primary shareholder and principal officer of C, a corporation. C is audited and is assessed a substantial amount of tax. C had never reported or paid gross receipts tax because G erroneously believed C's business was exempt from gross receipts tax. C files bankruptcy under Chapter 11 and attempts to resolve the tax liability under the bankruptcy laws. While in bankruptcy, C reports and pays its current gross receipts tax obligations. Regardless of the outcome of the bankruptcy proceedings, G has not willfully caused C to evade tax.

(b) H owns C, a corporation. C encounters considerable cash flow problems. It becomes obvious that C is insolvent. C files three monthly tax returns without payment before going out of business. H has not willfully caused C to evade tax.

## **B. BURDEN OF PROOF**

(1) The department has the burden of proving tax evasion or the causing or attempting to cause another to evade tax.

(2) In a protest before a department hearing officer pursuant to Section 7-1-24 NMSA 1978, the hearing officer must find by a preponderance of the evidence that either the taxpayer or other person who has been assessed for causing or attempting to cause the evasion of another's tax knew of the obligation to pay tax. The issue of whether the taxpayer or the other person actually knew of the obligation to pay tax can be proved by reasonable inference from circumstantial evidence, and notwithstanding testimony to the contrary which the hearing officer finds not credible.

(3) The issue of whether the taxpayer or other person exercised gross negligence or willful disregard for whether taxes were paid is an objective standard to be determined by the

facts and circumstances.

**C. INTEREST CONTINUES TO RUN ON ORIGINAL PRINCIPAL OF TAX ATTEMPTED TO BE EVADED:** Although interest does not run ordinarily on penalty pursuant to Subsection 7-1-67D NMSA 1978, interest continues to run on the penalty imposed under Section 7-1-72.1 NMSA 1978 to the extent of the unpaid principal of the underlying tax liability because Section 7-1-72.1 NMSA 1978 specifically authorizes the assessment of penalty and interest upon the tax which was evaded or attempted to be evaded.

[6/15/98; 3.1.11.18 NMAC - Rn & A, 3 NMAC 1.11.18, 1/15/01]

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**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; or**

**(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.**

**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) "tax" does not include civil penalties or interest; and**

**(2) "willfully" means intentionally, deliberately or purposely,**

**but not necessarily maliciously.**

**(Laws 2006, Chapter 29, Section 1)**

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**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.  
(Laws 1965, Chapter 248, Section 75)

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**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.  
(Laws 1979, Chapter 144, Section 61)

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**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.  
(Laws 2017, Chapter 63, Section 30)

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**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.**  
**(Laws 1965, Chapter 248, Section 80)**

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#### **3.1.4.10 - DUE DATES AND TIMELINESS**

##### **E. SATURDAY, SUNDAY OR HOLIDAY DUE DATE:**

(1) If the last date for filing notices, returns or applications or for making payment of taxes falls on Saturday, Sunday or a state of New Mexico or national holiday, the filing of notices, returns and applications or the making of the payment of taxes, other than payments specified by Section 7-1-13.1 NMSA 1978, shall be considered timely if postmarked on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

(2) Example: The due date for taxpayers to file gross receipts tax returns for April receipts is May 25. If May 25th is a Saturday and the following Monday is Memorial Day, a legal holiday designated in Section 12-5-2 NMSA 1978, the due date for filing the gross receipts tax returns is Tuesday, May 28th. The first banking day preceding Tuesday, May 28th is Friday, May 24th.

##### **F. STATE OBSERVANCE OF STATE HOLIDAY ON DAY OTHER THAN THAT DESIGNATED FOR PUBLIC OBSERVANCE:**

(1) Whenever the New Mexico state government and its employees are directed by competent authority to observe a state legal public holiday on a day other than that specified in Section 12-5-2 NMSA 1978 for that holiday, the day upon which the holiday is observed by the New Mexico state government is deemed to be a "legal state holiday" for the purposes of the Tax Administration Act.

(2) Example: Section 12-5-2 NMSA 1978 designates the third Monday in February as a legal holiday, President's Day. Traditionally, state offices are open on the third Monday in February and the holiday is observed by state government on the Friday following Thanksgiving. Accordingly, when state government is closed on the Friday after Thanksgiving in a delayed observance of President's Day, the due date for any notices, returns, applications or payments to be made by taxpayers on the Friday after Thanksgiving is the following Monday. For purposes of making payment of tax in accordance with Section 7-1-13.1 NMSA 1978 in this situation, the first banking day preceding the due date is the Friday after Thanksgiving. Because the third Monday in February is observed by the United States postal service and by the national banks, any notices, returns, applications or payments to be made by taxpayers on that date are due the following day, even though state offices are open on President's Day.

[7/19/67, 9/9/71, 11/5/85, 8/15/90, 11/7/90, 12/13/91, 9/20/93, 10/31/96; 3.1.4.10 NMAC - Rn & A, 3 NMAC 1.4.10, 12/29/00; A, 10/31/07; A, 6/30/10]

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**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.

**(Laws 2001, Chapter 56, Section 18)**

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**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.

**(Laws 1979, Chapter 144, Section 64)**

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**7-1-80. DISSOLUTION OR WITHDRAWAL OF CORPORATION.--**The state corporation commission 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 state corporation commission a certificate signed by the secretary or the secretary'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; or

B. a successor, acceptable to the secretary or 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 or 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 or secretary's delegate.

**(Laws of 1993, Chapter 30, Section 11)**

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**7-1-82. TRANSFER, ASSIGNMENT, SALE, LEASE OR RENEWAL OF LIQUOR LICENSE.--**

**A. The director of the alcohol and gaming 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 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 defined in Section 7-1-16 NMSA 1978; 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 which may become due from engaging in business authorized by the liquor license.**

**B. The director of the alcohol and gaming 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) 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**

**(2) there are no unfiled tax returns due from engaging in business authorized by the liquor license**

**(Laws 1995, Chapter 70, Section 4)**

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**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.

(Laws 2016, Chapter 59, Section 2)

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**TEMPORARY TAX AMNESTY PROGRAM.--**

*A. For the taxes owed and taxes administered pursuant to the Tax Administration Act, the secretary of taxation and revenue, with the concurrence of the governor, is authorized to declare an amnesty period of no more than one hundred eighty days; provided that any amnesty period shall occur within fiscal years 2010 and 2011 and the terms of the tax amnesty program conform with the provisions of Section 7-1-11.1 NMSA 1978. All revenue collected as a result of the tax amnesty program shall be identified specifically and reported to the first session of the fifty-first legislature.*

*B. The secretary of taxation and revenue is authorized to waive, during the amnesty period only, the consideration of the relevant factors listed in Subsection D of Section 7-1-11.1 NMSA 1978. The taxpayer shall meet the other requirements for a managed audit set forth in Section 7-1-11.1 NMSA 1978 and shall not have been assessed taxes for which the managed audit is requested; provided that the department has not issued a notice of commencement of an audit to the taxpayer before the taxpayer requests a managed audit pursuant to this section. No interest or penalty shall be imposed on taxes due as the result of a managed audit entered into during the amnesty period if the requirements of Paragraph (4) of Subsection A of Section 7-1-67 NMSA 1978 and Paragraph (2) of Subsection G of Section 7-1-69 NMSA 1978 are met.*

*(Laws 2010, Chapter 2, Section 1)*

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