

**Taxation and Revenue Department
P. O. Box 630
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**REGULATIONS PERTAINING TO THE
TAXATION AND REVENUE DEPARTMENT ACT
SELECTED SECTIONS 9-11-1 TO 9-11-15 NMSA 1978**

3.1.2 NMAC

Revised February 2016

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Table of Contents

- 9-11-1. SHORT TITLE
- 9-11-2. DEFINITIONS
- 9-11-3. PURPOSE
- 9-11-4. DEPARTMENT ESTABLISHED
- 9-11-5. SECRETARY OF TAXATION OF REVENUE – APPOINTMENT
- 9-11-6. SECRETARY--DUTIES AND GENERAL POWERS
 - 9-11-6.1. ADDITIONAL POWERS OF SECRETARY
 - 9-11-6.2. ADMINISTRATIVE REGULATIONS, RULINGS, INSTRUCTIONS AND ORDERS--PRESUMPTION OF CORRECTNESS
 - 3.1.2.8 - Rulings - general
 - 3.1.2.9 - Hearing for proposed regulations
 - 9-11-6.4. ELECTRONIC FILING
 - 3.1.4.18 – Electronic filing
 - 3.1.4.19 – Electronic filing of information returns and reports
- 9-11-8. DIVISION DIRECTORS
- 9-11-9. BUREAUS AS ORGANIZATIONAL UNITS
- 9-11-10. PERSONNEL ACT COVERAGE
 - 9-11-10.1. BACKGROUND INVESTIGATIONS – DUTIES – EMPLOYEES – CONDITION OF EMPLOYMENT
- 9-11-11. LEGAL ADVISOR
- 9-11-12. COOPERATIVE AGREEMENTS AMONG JURISDICTIONS
 - 9-11-12.1. TRIBAL COOPERATIVE AGREEMENTS
 - 3.1.2.10 – Cooperative agreement effective date
 - 3.1.2.11 – Secretary may designate reporting requirements of some receipts
 - 9-11-12.2. COOPERATIVE AGREEMENTS WITH NAVAJO NATION

9-11-13. TAXATION AND REVENUE DEPARTMENT; ADDITIONAL DUTIES

9-11-14. POWER TO EMPLOY LAW ENFORCEMENT OFFICERS FOR TAX FRAUD INVESTIGATIONS DIVISION

3.28.2.7 – Definitions

3.28.2.8 – Standard of Conduct

9-11-15. COLLECTION OF DELINQUENT OBLIGATIONS THROUGH COLLECTION AGENCY

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9-11-1. SHORT TITLE. –Chapter 9, Article 11 NMSA 1978 may be cited as the “Taxation and Revenue Department Act”.
(Laws 1986, Chapter 20, Section 121)

9-11-2. DEFINITIONS.--As used in the Taxation and Revenue Department Act:

A. "department" means the taxation and revenue department created under the Taxation and Revenue Department Act; and

B. "secretary" means the secretary of taxation and revenue.

(Laws 1995, Chapter 31, Section 1)

9-11-3. PURPOSE. – The purpose of the Taxation and Revenue Department Act is to establish a single, unified department to administer all laws and exercise all functions relating to taxation, revenue and vehicles charged to the department.

(Laws 1987, Chapter 268, Section 2)

9-11-4. DEPARTMENT ESTABLISHED.-- There is created in the executive branch the "taxation and revenue department". The department shall be a cabinet department and shall consist of, but not be limited to, seven divisions as follows:

A. the audit and compliance division;

B. the property tax division;

C. the revenue processing division;

D. the tax fraud investigations division;

E. the motor vehicle division;

F. the administrative services division; and

G. the information technology division.

(Laws 2015, Chapter 125, Section 1)

9-11-5. SECRETARY OF TAXATION AND REVENUE; APPOINTMENT.

A. The chief executive and administrative office of the department is the “secretary of taxation and revenue.” The secretary shall be appointed by the governor with the consent of the senate. The secretary shall hold that office at the pleasure of the governor and shall serve in the executive cabinet.

B. An appointed secretary shall serve and have all of the duties, responsibilities and authority of that office during the period of time prior to final action by the senate confirming or rejecting his appointment.

(Laws 1977, Chapter 249, Section 6)

9-11-6. SECRETARY--DUTIES AND GENERAL POWERS.--

A. The secretary is responsible to the governor for the operation of the department. It is the secretary's duty to manage all operations of the department and to administer and enforce the laws with which the secretary or the department is charged.

B. To perform these duties, the secretary has every power expressly enumerated in the laws, whether granted to the secretary or the department or any division of the department or any director of any division of the department, except where authority conferred upon any director or division is explicitly exempted from the secretary's authority by statute. In accordance with these provisions, the secretary shall:

(1) except as otherwise provided in the Taxation and Revenue Department Act, exercise general supervisory and appointing authority over all department employees, subject to any applicable personnel laws and regulations;

(2) delegate authority to subordinates as the secretary deems necessary and appropriate, clearly delineating such delegated authority and the limitations thereto;

(3) organize the department into those organizational units the secretary deems will enable it to function most efficiently, subject to any provisions of law requiring or establishing specific organizational units;

(4) within the limitations of available appropriations and applicable laws, employ and fix the compensation of those persons necessary to discharge the secretary's duties;

(5) purchase or lease personal property, purchase services and lease real property for use by the department as the secretary deems necessary, subject to approval of state agencies if any is required;

(6) conduct research and studies that will improve the operations of the department and the provision of services to the citizens of the state;

(7) provide courses of instruction and practical training for employees of the department and other persons involved in the administration of programs with the objective of improving the operations and efficiency of administration;

(8) prepare an annual budget of the department;

(9) provide cooperation, at the request of heads of administratively attached agencies and adjunct agencies, in order to:

(a) minimize or eliminate duplication of services and jurisdictional conflicts;

(b) coordinate activities and resolve problems of mutual concern; and

(c) resolve by agreement the manner and extent to which the department shall provide budgeting, recordkeeping and related

clerical assistance to administratively attached agencies;

(10) appoint, with the governor's consent, a "director" for each division. These appointed positions are exempt from the provisions of the Personnel Act. Persons appointed to these positions shall serve at the pleasure of the secretary;

(11) give bond in the penal sum of twenty-five thousand dollars (\$25,000) and require directors to each give bond in the penal sum of ten thousand dollars (\$10,000) conditioned upon the faithful performance of duties, as provided in the Surety Bond Act. The department shall pay the costs of these bonds; and

(12) require performance bonds of such department employees and officers as the secretary deems necessary, as provided in the Surety Bond Act. The department shall pay the costs of these bonds.

C. The secretary may apply for and receive, with the governor's approval, in the name of the department any public or private funds, including but not limited to United States government funds, available to the department to carry out its programs, duties or services.

D. Where functions of departments overlap or a function assigned to one department could better be performed by another department, a secretary may recommend appropriate legislation to the legislature for its approval.

E. The secretary may adopt an official seal for the use of the department or any of its divisions.

(Laws 1995, Chapter 31, Section 2)

**9-11-6.1. ADDITIONAL POWERS OF SECRETARY – In addition to the powers granted to the secretary in Section 9-11-6 NMSA 1978, the secretary is authorized to set, by regulation, after notification to the legislative finance committee, fees to cover the expense of providing additional services for the convenience of the public. Any fee for a service adopted under this section shall not be charged to or payable by any person not taking advantage of the service. Amounts collected pursuant to this section are appropriated to the department to defray the expense of providing the service.
(Laws 1990, Chapter 70, Section 1)**

9-11-6.2. ADMINISTRATIVE REGULATIONS, RULINGS, INSTRUCTIONS AND ORDERS--PRESUMPTION OF CORRECTNESS.--

A. The secretary is empowered and directed to issue and file as required by law all regulations, rulings, instructions or orders necessary to implement and enforce any provision of any law the administration and enforcement of which the department, the secretary, any division of the department or any director of any division of the department is charged, including all rules and regulations necessary by reason of any alteration of any such law. In order to accomplish its purpose, this provision is to be liberally construed.

B. Directives issued by the secretary shall be in form substantially as follows:

(1) regulations shall be written statements of the secretary of general application, interpreting and exemplifying the statutes to which they relate;

(2) rulings shall be written statements of the secretary, of limited application to one or a small number of persons, interpreting the statutes to which they relate, ordinarily issued in response to a request for clarification of the consequences of a specified set of circumstances;

(3) orders shall be written statements of the secretary or delegate of the secretary to implement a decision after a hearing; and

(4) instructions shall be other written statements or directives of the secretary or secretary's delegate not dealing with the merits of any law but otherwise in aid of the accomplishment of the duties of the secretary.

C. To be effective, any ruling or regulation issued by the secretary shall be reviewed by the attorney general or other legal counsel of the department prior to being filed as required by law, and the fact of the review shall be indicated on the ruling or regulation.

D. To be effective, a regulation shall first be issued as a proposed regulation and filed for public inspection in the office of the secretary. Unless otherwise provided by statute, no regulation affecting any person or agency outside the department shall be adopted, amended or repealed without a public hearing on the proposed action before the secretary or a hearing officer designated by the secretary. The public hearing shall be held in Santa Fe unless otherwise permitted by statute. Notice of the subject matter of the regulation, the action proposed to be taken, the time and place of the hearing, the manner in which interested parties may present their views and the method by which copies of the proposed regulation, proposed amendment or repeal of an existing regulation may be obtained shall be published at least thirty days prior to the hearing date in the New Mexico register and mailed at least thirty days prior to the hearing date to all persons who have made a written request for advance notice of hearing. After the proposed regulation has been on file for not less than sixty days and

a public hearing on the proposed action has been held by the secretary or a hearing officer designated by the secretary, the secretary may issue it as a final regulation by signing the regulation and filing the regulation in the manner required by law. The secretary shall not delegate the authority to sign regulations.

E. In addition to filing copies of regulations with the state records administrator as required by law, the secretary shall maintain in the office of the secretary a duplicate official set of current and superseded regulations, a set of current and superseded rulings and such additional sets of those regulations and rulings as appear necessary, which duplicate or additional sets shall be available for inspection by the public, but superseded regulations need be maintained for no longer than ten years from the date of supersession.

F. The secretary shall develop and maintain a file of names and addresses of individuals and professional and industry groups having an interest in the promulgation of new, revised or proposed regulations. At convenient times, the secretary shall distribute to these persons all such regulations and all pertinent rulings, making such charges as will defray the expense incurred in their physical preparation and mailing. Such charges are appropriated to the department to defray the costs of preparing and distributing regulations and rulings.

G. Any regulation, ruling, instruction or order issued by the secretary or delegate of the secretary is presumed to be a proper implementation of the provisions of the laws that are charged to the department, the secretary, any division of the department or any director of any division of the department.

H. The extent to which regulations, rulings and orders will have retroactive effect shall be stated, and if no such statement is made, they will be applied prospectively only.

(Laws 2015, Chapter 73, Section 23)

3.1.2.8 - RULINGS - GENERAL

A. Persons may request a ruling from the secretary for clarification of the consequences of a specified set of circumstances or interpretation of any statute the administration or enforcement of which is charged to the taxation and revenue department. The request must be in writing. The department may require the requester to state whether the requester is under audit by the department, has an outstanding assessment related to the subject matter of the request or is involved in a protest or litigation with the department over the subject matter of the request. The secretary's ruling will be in writing addressed to the requesting party with an assigned ruling number, signed by the secretary and by counsel to show that it has been reviewed by the attorney general or other legal counsel of the department.

B. In a proceeding pursuant to the Tax Administration Act, the department shall be estopped pursuant to Section 7-1-60 NMSA 1978 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

subject to dispute was in accordance with any ruling addressed to the party by the secretary, unless the ruling had been rendered invalid or had been superseded by regulation or by another ruling addressed to the party at the time the asserted liability for tax arose.

C. A person or persons requesting a ruling from the secretary must be subject to the statute for which an interpretation is requested or to which the set of circumstances relate. In particular the requester must be a taxpayer as defined in Section 7-1-3 NMSA 1978 for taxes and tax acts covered by the Tax Administration Act. A representative, such as an accountant or attorney, of the requester may request the ruling on behalf of the requester but must disclose the name of the requester. The secretary will not issue a ruling addressed to the requester's representative, whether or not the name of the requester is disclosed. A copy of a ruling addressed to the requester will be sent to a requester's representative when requested.

D. The secretary may modify or withdraw any previously issued ruling and shall withdraw or modify any ruling when subsequent legislation, regulations, final court decision or other rulings have invalidated a ruling or portions of a ruling.

E. Although the secretary is not required by statute to issue a ruling even if the request is in proper form, every ruling request shall be given careful and diligent consideration. [11/17/95, 4/15/97, 3/31/99; 3.1.2.8 NMAC - Rn & A, 3 NMAC 1.2.8, 12/29/00]

3.1.2.9 - HEARING FOR PROPOSED REGULATIONS

A. For the purpose of obtaining comments of interested persons regarding issuance of regulations, the secretary shall schedule a public hearing on a date approximately 45 days from the day of issuing and filing a proposed regulation in the office of the secretary for public inspection. The hearing date shall be publicized in a manner so that individuals, professionals and industry groups who have an interest in the promulgation of proposed regulations will have an opportunity to attend the meeting and express their comments. The secretary or a designated hearing officer shall hear and weigh all comments and suggestions on the proposed regulation. The secretary may incorporate revisions into the proposed regulations including those derived from written or verbal comments of interested persons. The decision of the secretary on the substance and form of the regulation is final.

B. Revisions to a proposed regulation may be incorporated by the secretary at any time during the 60-day waiting period, and the modified regulation need not be reissued as proposed before becoming final.

[11/17/95, 4/15/97; 3.1.2.9 NMAC - Rn, 3 NMAC 1.2.9, 12/29/00]

9-11-6.4. ELECTRONIC FILING.--The department is authorized to require where practical, in lieu of the filing of paper documents, the filing by electronic or optical means of any return, application, report or other document required under any law or program administered by the department. The department, using reasonable criteria, may require some classes of persons to file electronically or optically while not so requiring others to file in that manner. The date of filing shall be the date the return, application, report or other document is transmitted to the department in a form able to be processed.
(Laws 1995, Chapter 31, Section 5)

3.1.4.18 - ELECTRONIC FILING:

A. This regulation is adopted pursuant to the secretary's authority in Section 9-11-6.4 NMSA 1978.

B. For returns due after August 1, 2010, the returns and reports for the following taxes must be filed electronically using approved electronic media on or before the due date of the return or report:

(1) taxes due under the Gross Receipts and Compensating Tax Act, local options gross receipts tax acts, Leased Vehicle Gross Receipts Tax Act, and Interstate Telecommunication Gross Receipts Tax Act and taxes due under the Withholding Tax Act which are due at the same time as gross receipts tax, if the taxpayer's average monthly tax payment for this group of taxes during the preceding calendar year equaled or exceeded twenty thousand dollars (\$20,000); and

(2) weight distance tax if the taxpayer must pay taxes for two or more trucks.

C. For returns due after January 1, 2011, the returns for taxes due under the Gross Receipts and Compensating Tax Act, local options gross receipts tax acts, Leased Vehicle Gross Receipts Tax Act, and Interstate Telecommunication Gross Receipts Tax Act and taxes due under the Withholding Tax Act which are due at the same time as gross receipts tax, if the taxpayer's average monthly tax payment for this group of taxes during the preceding calendar year equaled or exceeded ten thousand dollars (\$10,000) must be filed electronically on or before the due date of the return.

D. For returns due after July 1, 2011, the returns for taxes due under the Gross Receipts and Compensating Tax Act, local options gross receipts tax acts, Leased Vehicle Gross Receipts Tax Act, and Interstate Telecommunication Gross Receipts Tax Act and taxes due under the Withholding Tax Act which are due at the same time as gross receipts tax, if the taxpayer's average monthly tax liability for this group of taxes during the preceding calendar year equaled or exceeded one thousand dollars (\$1,000), must be filed electronically on or before the due date of the return.

E. Confirmation of electronic filing of a return must accompany payment of taxes by taxpayer. If taxpayer does not have confirmation of electronic filing when the taxpayer submits payment to the department, taxpayer must ensure that taxpayer's tax identification number is on the payment. Payments without confirmation or tax identification number may not be properly

applied to the taxpayer's account and interest and penalty may be assessed.

F. Once a taxpayer is required to file returns electronically pursuant to this regulation, the taxpayer may not file future returns by mail or any method other than electronically.

G. For the purposes of this section, "average monthly tax payment" means the total amount of taxes paid with respect to a group of taxes under Paragraph (1) of Subsection B, Subsection C or Subsection D 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.

H. A taxpayer may request an exception to the requirement of electronic filing. The request must be in writing, addressed to the secretary of the taxation and revenue department and must be received by the department at least 30 days before the taxpayer's electronic return is due. Exceptions will be granted in writing and only upon a showing of hardship including that there is no reasonable access to the internet in taxpayer's community. The taxpayer must also show a good faith effort to comply with the electronic filing requirements before an exception will be considered. The request for an exception must include the tax or tax return to which the exception if granted will apply; a clear statement of the reasons for the exception; and the signature of the taxpayer.

I. A taxpayer may be granted a waiver to the requirement of electronic filing for a single tax return. The request for a waiver must be in writing and received by the department on or before the date that the tax return is due and must include the tax or tax return to which the waiver if granted will apply, a clear statement of the reasons for the waiver, and the signature of the taxpayer. A waiver may be granted for the following reasons:

(1) 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 and file it electronically;

(2) 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 electronically file; or

(3) if the taxpayer's accountant or other agent or employee who routinely electronically files for taxpayer 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 electronically file the return or to procure the services of a person to electronically file the return before the due date.

J. If a taxpayer is granted an exception or waiver, the taxpayer must file a paper return in a timely fashion unless an extension pursuant to 3.1.4.12 NMAC has been granted. If a paper return is not timely filed, interest will be due even if an extension is granted.

[3.1.4.18 NMAC – N, 6/30/10; A, 1/17/12]

3.1.4.19 - ELECTRONIC FILING OF INFORMATION RETURNS AND REPORTS

A. Annual income and withholding information returns, federal Form 1099-MISC, *pro forma* 1099-MISC or successor forms must be filed with the department using a department-approved electronic medium if a pass-through entity has more than fifty (50) New Mexico

payees in a tax year, unless the pass-through entity obtains an exception pursuant to Subsection C of 3.1.4.19 NMAC.

B. The annual income and withholding detail report of pass-through entity allocable net income must be filed using a department-approved electronic medium if the pass-through entity has more than fifty New Mexico payees in a tax year, unless the pass-through entity obtains an exception pursuant to Subsection C of 3.1.4.19 NMAC.

C. A taxpayer may request an exception to the requirement of electronic filing. The request must be in writing, addressed to the secretary of the taxation and revenue department and must be received by the department at least thirty (30) days before the taxpayer's electronic information return or report is due. Exceptions will be granted in writing and only upon a showing of hardship including that there is no reasonable access to the internet in taxpayer's community. The taxpayer must also show a good faith effort to comply with the electronic filing requirements before an exception will be considered. The request for an exception must include the information return or report to which the exception if granted will apply; a clear statement of the reasons for the exception; and the signature of the taxpayer.

D. If a pass-through entity is required by regulation or statute to file information returns or reports electronically, the information return or report shall not be considered filed until filed electronically if filed by any means other than as specified in that regulation or statute. [3.1.4.19 NMAC – N, 6/28/13]

9-11-8. DIVISION DIRECTORS -- Each division in the department, whether established by law or order of the secretary, shall be headed by a “director.” Directors shall be appointed by the secretary with the approval of the governor.
(Laws 1977, Chapter 249, Section 9)

9-11-9. BUREAUS AS ORGANIZATIONAL UNITS -- The division of the department may have established within them organizational units to be known as “bureaus.” Bureaus shall be headed by a “chief” appointed by the secretary.
(Laws 1977, Chapter 249, Section 10)

9-11-10. PERSONNEL ACT COVERAGE -- All employment positions in the department, except for the positions of secretary and division director, are covered by and subject to the provisions of the Personnel Act. The secretary is the appointing authority.
(Laws 1977, Chapter 249, Section 11)

**9-11-10.1. BACKGROUND INVESTIGATIONS--DUTIES--EMPLOYEES--
CONDITION OF EMPLOYMENT**

A. An employee of the department who has access to or who is assigned to perform work associated with driver's licenses shall submit to a background investigation as required by the secretary.

B. An applicant seeking employment with the department who may have access to or who may be assigned to perform work associated with driver's licenses shall submit to a background investigation as required by the secretary.

C. The secretary shall ensure that fingerprints as required for a national criminal history records search and state background investigation are provided by:

(1) an employee of the department who has access to or is assigned to perform work associated with driver's licenses; or

(2) an applicant seeking employment with the department who may have access to or who may be assigned to perform work associated with driver's licenses.

D. The information obtained in a background investigation shall be used only to determine if a person required to submit to a background investigation pursuant to this section has been convicted of a crime that has a direct impact on the ability of that person to meet federal requirements or to perform the specific duties assigned to that person. The secretary may determine not to continue to employ or not to initiate employment of a person whose criminal background investigation contains information that the person has been convicted of a crime that involved actions that:

(1) directly reflect on the person's ability to perform the specific duties of that person's position or proposed position; or

(2) would conflict with federal requirements.

E. Information obtained pursuant to a background investigation shall be confidential and shall only be used for determining the fitness of a person to remain or become employed with the department or to comply with federal requirements regarding employees who have access to or who may be assigned to perform work associated with driver's licenses.

(Laws 2007, Chapter 319, Section 66)

9-11-11. LEGAL ADVISOR – The attorney general is the legal advisor to the secretary, but the secretary may employ other counsel and, in so doing, shall consult the attorney general.

(Laws 1977, Chapter 249, Section 13)

9-11-12. COOPERATIVE AGREEMENTS AMONG JURISDICTIONS.

A. The secretary may enter into cooperative agreements with other states, the district of Columbia or with any appropriate authority empowered to administer multi-state cooperative agreements for the exchange of information, the reciprocal, joint or common enforcement and administration of revenue or transportation laws of the party jurisdictions or the reciprocal, joint or common collection, remittance and audit of revenues of the party jurisdictions.

B. Funds collected by the department on behalf of another jurisdiction in accordance with an agreement entered into pursuant to this section are not funds of this state and shall be collected and disbursed in accordance with the terms of the agreement, notwithstanding any other provision of law.

C. The secretary is empowered to promulgate such rules and regulations and to establish such procedures as the secretary deems appropriate for the collection and disbursement of funds due other party jurisdictions and for the receipt of funds collected by other party jurisdictions for the account of this state under the terms of a cooperative agreement entered into under the authority of this section.

(Laws 1988, Chapter 24, Section 1)

9-11-12.1. TRIBAL COOPERATIVE AGREEMENTS.--

A. The secretary may enter into cooperative agreements with the Pueblos of Acoma, Cochiti, Jemez, Isleta, Laguna, Nambe, Picuris, Pojoaque, Sandia, San Felipe, San Ildefonso, San Juan, Santa Ana, Santa Clara, Santo Domingo, Taos, Tesuque, Zia and Zuni; the Jicarilla Apache Nation; the Mescalero Apache Tribe; and with the nineteen pueblos acting collectively for the exchange of information and the reciprocal, joint or common enforcement, administration, collection, remittance and audit of gross receipts tax revenues of the party jurisdictions.

B. Money collected by the department on behalf of a tribe in accordance with an agreement entered into pursuant to this section is not money of this state and shall be collected and disbursed in accordance with the terms of the agreement, notwithstanding any other provision of law.

C. The secretary is empowered to promulgate such rules and to establish such procedures as the secretary deems appropriate for the collection and disbursement of funds due a tribe and for the receipt of money collected by a tribe for the account of this state under the terms of a cooperative agreement entered into under the authority of this section, including procedures for identification of taxpayers or transactions that are subject only to the taxing authority of the tribe, taxpayers or transactions that are subject only to the taxing authority of this state and taxpayers or transactions that are subject to the taxing authority of both party jurisdictions.

D. Nothing in an agreement entered into pursuant to this section shall be construed as authorizing this state or a tribe to tax persons or transactions that federal law prohibits that government from taxing or as authorizing a state or tribal court to assert jurisdiction over persons who are not otherwise subject to that court's jurisdiction or as affecting any issue of the respective civil or criminal jurisdictions of this state or the tribe. Nothing in an agreement entered into pursuant to this section shall be construed as an assertion or an admission by either this state or a tribe that the taxes of one have precedence over the taxes of the other when the person or transaction is subject to the taxing authority of both governments. An agreement entered into pursuant to this section shall be construed solely as an agreement between the two party governments and shall not alter or affect the government-to-government relations between this state and any other tribe.

E. As used in this section:

(1) "tribal" means of or pertaining to a tribe; and

(2) "tribe" means an Indian nation, tribe or pueblo located

entirely in New Mexico.

(Laws 2003, Chapter 414, Section 2)

3.1.2.10 - COOPERATIVE AGREEMENT EFFECTIVE DATE

A. A cooperative agreement or an amended cooperative agreement entered into

pursuant to Section 9-11-12.1 NMSA 1978 or Section 9-11-12.2 NMSA 1978, shall become effective on July 1 or January 1, whichever date occurs first after the expiration of at least three months from the date the cooperative agreement or amended cooperative agreement is signed by both the pueblo or tribe and the secretary.

B. To be effective as of January 1, cooperative agreements or amendments to cooperative agreements must be executed by both the pueblo or tribe and the secretary on or before September 30 of the previous year. To be effective as of July 1, cooperative agreements or amendments to cooperative agreements must be executed by both the pueblo or tribe and the secretary on or before March 30 of the same year.

[3.1.2.10 NMAC – N, 6/15/04; A, 1/17/06]

3.1.2.11 - SECRETARY MAY DESIGNATE REPORTING REQUIREMENTS OF SOME RECEIPTS

The secretary may require receipts from sales that occur on the tribal land of a pueblo or tribe 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 to be reported as located on tribal land regardless of where the taxpayer's place of business is maintained.

[3.1.2.11 NMAC – N, 1/17/06]

9-11-12.2. COOPERATIVE AGREEMENTS WITH NAVAJO NATION.--

A. The secretary may enter into cooperative agreements with the Navajo Nation for the exchange of information and the reciprocal, joint or common enforcement, administration, collection, remittance and audit of tax revenues of the party jurisdictions.

B. Money collected by the department on behalf of the Navajo Nation in accordance with an agreement entered into pursuant to this section is not money of this state and shall be collected and disbursed in accordance with the terms of the agreement, notwithstanding any other provision of law.

C. The secretary is empowered to promulgate such rules and to establish such procedures as the secretary deems appropriate for the collection and disbursement of funds due the Navajo Nation and for the receipt of money collected by the Navajo Nation for the account of this state under the terms of a cooperative agreement entered into under the authority of this section, including procedures for identification of taxpayers or transactions that are subject only to the taxing authority of the Navajo Nation, taxpayers or transactions that are subject only to the taxing authority of this state and taxpayers or transactions that are subject to the taxing authority of both party jurisdictions.

D. Nothing in an agreement entered into pursuant to this section shall be construed as authorizing this state or the Navajo Nation to tax persons or transactions that federal law prohibits that government from taxing, or as authorizing a state or tribal court to assert jurisdiction over persons who are not otherwise subject to that court's jurisdiction or as affecting any issue of the respective civil or criminal jurisdictions of this state or the Navajo Nation. Nothing in an agreement entered into pursuant to this section shall be construed as an assertion or an admission by either this state or the Navajo Nation that the taxes of one have precedence over the taxes of the other when the person or transaction is subject to the taxing authority of both governments. An agreement entered into pursuant to this section shall be construed solely as an agreement between the two party governments and shall not alter or affect the government-to-government relations between this state and any other Indian nation, tribe or pueblo.

(Laws 2001, Chapter 134, Section 3)

9-11-13. TAXATION AND REVENUE DEPARTMENT; ADDITIONAL DUTIES.--The taxation and revenue department shall develop and implement a program to conduct audits and related investigations with respect to royalties paid for oil and gas and other minerals produced from federal lands within New Mexico. Pursuant to the Federal Oil and Gas Royalty management Act of 1982, the secretary of taxation and revenue shall petition the secretary of the United States department of the interior for a delegation of authority to conduct the audits and related investigations. After the delegation of authority is made, the secretary of taxation and revenue shall seek reimbursement from the United States department of the interior for all costs associated with any activities undertaken pursuant to the delegation.

(Laws 1993, Chapter 88, Section 1)

9-11-14. POWER TO EMPLOY LAW ENFORCEMENT OFFICERS FOR TAX FRAUD INVESTIGATIONS DIVISION.--

A. The secretary shall employ police officers as commissioned tax fraud enforcement officers as needed in the tax fraud investigations division of the department to enforce the tax laws or to investigate fraud and other crimes that may affect the collection of taxes due to the state.

B. Tax fraud enforcement officers shall be certified as having completed basic law enforcement training at the New Mexico law enforcement academy or at another recognized certified regional or federal law enforcement training program equivalent to or more stringent than the basic law enforcement training at the New Mexico law enforcement academy.

C. The secretary may require specialized training in addition to the requirements of Subsection B of this section.

**D. The secretary shall require continuing in-service law enforcement training for tax fraud enforcement officers as required by the New Mexico law enforcement academy for all police officers.
(Laws 2005, Chapter 108, Section 6)**

3.28.2.7 – DEFINITIONS

As used in Section 9-11-14 NMSA 1978 and in this part:

A. “academy” means a law enforcement academy that offers accredited courses and curricula for law enforcement officer certification;

B. “certified firearms instructor” is an individual who is certified by the New Mexico department of public safety to instruct and test individuals on the use of firearms;

C. “certified law enforcement officer” is an individual who has received a certification from the New Mexico law enforcement academy board;

D. “code of conduct” means the department’s code of conduct for all employees;

E. “commissioned personnel” means any commissioned tax fraud enforcement officer with the TFID;

F. “days” means, unless otherwise stated, that days will be considered to be working days, or days which are regularly scheduled to be worked. For suspension purposes, a holiday is considered to be a working day;

G. “department” means the New Mexico taxation and revenue department;

H. “employee” means certified and commissioned tax fraud enforcement officers within the TFID who are vested by law with a duty to maintain public order or make arrests for crimes, as limited herein to crimes associated with violations of the Tax Administration Act, and non-commissioned TFID employees while they are actively pursuing commission;

I. “firearm” means one of the following:

(1) revolver or semi-automatic handgun, issued or personal; must be a glock .40 caliber or other caliber which is approved and authorized by the appropriate chain of command within TFID;

(2) shotgun, issue only, 12 gauge, which is approved and authorized by the appropriate chain of command within the TFID; or

(3) special team weapon identified, approved and authorized by the

appropriate chain of command within the TFID;

J. “New Mexico law enforcement academy board” means the board created by Section 29-7-3 NMSA 1978;

K. “non-commissioned employee” means TFID employees actively pursuing their commissions pursuant to the requirements of Section 29-7-6 NMSA 1978;

L. “order” means a lawful authoritative command, either verbal or written;

M. “policy” means a mandatory guide designated to meet a situation and circumstance;

N. “procedures” means a written method which delineates the implementation of a policy;

O. “qualification” means the process established by the department of public safety for a certified firearms instructor to test a candidate’s firearm skills;

P. “secretary” means the cabinet secretary of the New Mexico taxation and revenue department;

Q. “suspension” means an involuntary leave of absence without pay for disciplinary reasons for a period not to exceed thirty calendar days;

R. “tax fraud enforcement officer” means a certified law enforcement officer who has been commissioned by the secretary to investigate fraud and other crimes that may affect the collection of taxes due to the state;

S. “termination” means the act of permanently terminating the service of a commissioned tax fraud enforcement officer; a discharge or removal from position of hire, for cause, pursuant to provisions of the Personnel Act (Chapter 10, Article 9 NMSA 1978), as applicable to all employees of the department pursuant to Section 9-11-10 NMSA 1978; and

T. “TFID” means the tax fraud investigations division of the New Mexico taxation and revenue department.

[3.28.2.7 NMAC - N, 2/29/16]

3.28.2.8 - STANDARD OF CONDUCT

All employees are expected to adhere to the provisions of this rule and are subject to such disciplinary action for violation of any of these rules as deemed appropriate by their supervisors or the secretary of the department.

A. Employees shall obey all:

(1) laws of the United States, or any state and local jurisdiction in which the employees are present; and

(2) department and TFID code of conduct, rules and regulations, policies, procedures, directives and lawful orders issued by supervisors.

B. Employees shall satisfactorily perform their duties and assume the responsibilities of their positions. Unsatisfactory performance may be demonstrated by violating any one of the following provisions:

(1) a lack of knowledge of the application of laws required to be enforced;

(2) an unwillingness or inability to perform assigned tasks; or

(3) the failure to conform to work standards established to the employees’ rank, grade or position as set forth in the job specifications.

C. Employees shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on the department. Conduct unbecoming an employee shall include that which brings the department into disrepute or reflects discredit upon the employee as a member of the department, or that which impairs the operation or efficiency of the

department or employee. Employees are subject to all rules, policies, and the code of conduct of the department, and, in addition:

(1) employees shall carry out all proper, lawful orders given them by supervisors in the line of duty without hesitation or criticism. Employees will take up matters affecting themselves, their position and departmental business with their immediate supervisor, or through their chain of command or through other TFID designated and proper channels;

(2) employees shall promptly obey any lawful orders of any supervisor. This will include orders relayed from a supervisor by an employee of the same rank or a subordinate employee;

(3) employees who are given an otherwise lawful and proper order which is in conflict with a previous order, rule, regulation or directive shall respectfully inform the supervisor issuing the conflicting order. If the supervisor issuing the order does not alter or retract the conflicting order, the new order shall stand. Under these circumstances, the responsibility for the conflict shall be upon the supervisor. Employees shall obey the conflicting order and shall not be held responsible for disobedience of the order, rule, regulation or directive previously issued;

(4) employees shall not obey any order which they know or should know would require them to commit any illegal act. If in doubt as to the legality of an order, employees shall request the issuing supervisor to either clarify the order or to confer with higher authority;

(5) all employees shall be courteous to the public, supervisors and all other employees, as well as any person the employee has contact with during the performance of his/her duties and responsibilities. Employees shall be tactful in the performance of their duties, shall control their tempers, and exercise the utmost patience and discretion, and shall not engage in argumentative discussions even in the face of extreme provocation. In the performance of their duties, employees shall not use coarse, violent, profane, or insolent language or gestures, and shall not express any prejudice concerning race, religion, politics, national origin, sex, lifestyle, or similar characteristics. When any person requests assistance or advice, all pertinent information will be obtained in an official and courteous manner and will be properly and judiciously acted upon; and

(6) employees shall maintain a level of good moral character in their personal and business affairs, which is in keeping with the highest standards of the law enforcement profession. Employees shall not participate in any incident which impairs their ability to perform their duties or impedes the operation of the department or causes the department to be brought into disrepute. An employee's direct supervisor shall determine if an employee is fit for duty.

D. Employees will properly care for and maintain all state equipment issued to or used by the employee.

E. An employee will not represent themselves as speaking on behalf of the department in any court proceeding, civil or criminal, for purpose of being a character witness.

F. All employees shall follow all applicable rules and protocols established by the department as regards to confidentiality of taxpayer and motor vehicle division information.

G. Commissioned tax fraud enforcement officers shall carry their badges and commissions on their person at all times, while on duty or while carrying a loaded concealed firearm off duty as provided by the department's policy and procedures. Commissioned tax fraud enforcement officers shall furnish their name to any person requesting that information when they are on duty or while representing themselves in an official capacity, except when the

withholding of such information is necessary for the performance of law enforcement officer or department duties.

H. Employees shall submit all necessary reports and official documents on time and in accordance with established documents and in accordance with established departmental or TFID procedures. Reports and documents submitted by employees shall be truthful and complete, and no employees shall knowingly enter or cause to be entered any inaccurate, false, or improper information. All departmental law enforcement reports, records and evidence are privileged and confidential and may be released only upon written authority of the secretary, and by verbal authority if written authority cannot reasonably be obtained except as required by court order.

I. All employees are expected to meet their financial obligations in a timely manner and live within their financial means. This does not preclude any employee from properly proceeding in bankruptcy.

J. The purpose of this subsection is to provide direction and guidance regarding supplemental employment.

(1) Supplemental employment includes any tasks performed for which the employee is compensated in any way.

(2) Employees who wish to obtain supplemental employment shall secure written permission from their direct supervisor.

(3) In addition to department policies regarding supplemental employment, TFID may impose specific additional conditions on TFID employees.

(4) This subsection applies to all TFID employees including those on any type of leave or suspension.

K. All employees will be physically and mentally fit for duty. The secretary or the employee's direct supervisor may order a physical or psychological examination to assure compliance with this rule, and may mandate counseling or coursework to assist an employee to meet appropriate standards.

L. Employees will not accept anything, including, but not limited to loans, offered to them which is intended to influence the employee in the performance of their duties and responsibilities or for tasks performed as part of their duties.

M. The purpose of this subsection is to provide direction and guidance to all employees regarding political activity.

(1) While off duty and not representing the department, employees shall be permitted to:

(a) express opinion(s) as individuals on political issues and candidates;

(b) attend political conventions, rallies, fund raising functions and similar political gatherings in an unofficial capacity;

(c) actively engage in any non-partisan political function, partisan meaning an adherent to a party, faction, cause or person; actively engaging in activities of private, fraternal or social organizations which do not conflict with the mission of the department and associated responsibilities is permissible;

(d) sign political petitions as individuals;

(e) make financial contributions to political organizations;

(f) perform non-partisan duties as prescribed by state or local laws;

(g) hold membership in a political party and participate in its functions to the extent consistent with the law and consistent with this regulation; and

(h) otherwise participate fully in public affairs, except as provided by law, to the extent that such endeavors do not impair the neutral and efficient performance of official duties, or create real or apparent conflicts of interest.

(2) Employees are prohibited at all times from:

(a) using their official capacity to influence, interfere with, or affect the results of an election;

(b) assuming active roles in management, organization or financial activities of partisan political clubs, campaigns or parties;

(c) serving as officers of partisan political parties and clubs;

(d) becoming candidates for, seeking election to, or running for, or campaigning for, a partisan elective public or political office;

(e) soliciting votes in support of, or in opposition to, any partisan candidates;

(f) serving as delegates to a political party convention;

(g) endorsing or opposing a partisan candidate for public office in a political advertisement, broadcast or campaign literature;

(h) initiating or circulating a partisan nominating petition;

(i) organizing, selling tickets to, or actively participating in a fund-raising function for a partisan political party or candidate;

(j) addressing political gatherings in support of, or in opposition to, a partisan candidate; and

(k) otherwise engaging in prohibited partisan activities on the federal, state, county or municipal level.

N. In their capacity as department employees, employees will not seek self-publicity through the news media or any other media by furnishing information obtained or generated from their work for the department for the primary purpose of personal publicity.

O. Employees will not use their position or permit use of their position for personal or financial gain whether directly or indirectly for themselves or any other individual or group.

P. All commissioned tax fraud enforcement officers shall use the utmost care and caution in handling firearms at all times. The following regulate the authorized use of a firearm. An employee shall use their department issued firearm:

(1) as authorized by department use of force and carrying of firearms policies or any other department policy and procedure, drawing or displaying the firearm only for a legal use or for inspection (including cleaning, oiling and storing);

(2) for practice, preferably on an approved range under the auspices of an approved range master; however, should an approved range master not be available, the employee may, at his or her discretion, still utilize the approved range for target practice;

(3) to kill a critically wounded or dangerous animal, when other disposition is impractical; or

(4) to give an alarm or call for assistance for an important purpose when no other means can be used.

Q. In every instance in which a commissioned tax fraud enforcement officers discharges a firearm while on duty, with the exception of target practice, the employee will, without delay, make a written report as required by TFID protocols. The secretary will be apprised of all incidents of discharged firearms other than target practice. Any unauthorized discharge of a firearm could result in disciplinary action up to and including termination. Any unauthorized use or discharge of a firearm could result in disciplinary action up to and including

termination.

R. Non-commissioned TFID employees who are actively pursuing commission are authorized to use department firearms only:

- (1) with a certified firearms instructor for qualification; and
- (2) when attending an academy and shall use department firearms only during academy directed exercises, classes and events.

S. Duty issued firearms and other department issued weapons shall not be used off-duty except for duty related matters.

T. Employees will maintain a neat appearance in groom and dress, as required for all department employees by department policy. Other practical requirements may be made so that the employee can properly use duty issued firearms and other department equipment. All additional requirements will be made by employee's supervisors and discussed with the employee prior to implementation.

U. Any and all disciplinary action shall be taken in accordance with the regulations of the state personnel board, department policies and code of conduct and this subsection.

(1) Administrative leave with pay shall not have any effect on a commissioned tax fraud enforcement officer's retention of their department commission;

(2) During all periods of suspension, an employee will be relieved of their commission card and any other TFID identity card; any TFID badge(s); their department issued firearm and firearm holster; and their department issued equipment, including but not limited to department purchased or otherwise owned body armor; insignia garments; investigative accessories; vehicles and computers. During all periods of or discipline based administrative leave taken in accordance with the regulations of the state personnel board, an employee shall not access or attempt to access department e-mail; data bases; or computers; and

(3) If disciplinary action includes termination, a commissioned tax fraud enforcement officer's commission shall be revoked at the time the termination is made pursuant to department policies. In addition to any requirements imposed by department policies, the commissioned tax fraud enforcement officer's commission shall be immediately returned to the department. All terminated employees shall return to the department any TFID identity card; any TFID badge(s); any department issued firearm and firearm holster; and department issued equipment, including but not limited to department purchased or otherwise owned body armor; insignia garments; investigative accessories; vehicles and computers.

V. Any commissioned tax fraud enforcement officer who is relieved of their law enforcement certification will be relieved of their TFID commission.

[3.28.2.8 NMAC - N, 2/29/16]

9-11-15.--COLLECTION OF DELINQUENT OBLIGATIONS THROUGH COLLECTION AGENCY.--The department, by competitive bid, may select one or more collection agencies to collect or assist in the collection of an obligation due to the state or a political subdivision of the state pursuant to a tax or law administered by the department, provided that the obligation is at least one hundred twenty days past due. Notwithstanding any contract for collection of an obligation entered into pursuant to this section, the department retains authority to settle an obligation or to accept payments on an obligation.

(Laws 2006, Chapter 40, Section 1)
