

1 AN ACT

2 RELATING TO TAX ADMINISTRATION; AMENDING DEFINITIONS IN THE
3 TAX ADMINISTRATION ACT; MAKING CHANGES TO SECTIONS OF LAW
4 RELATING TO DISPUTING TAX LIABILITIES; CLARIFYING THAT THE
5 MEANING OF "TAX" MEANS AMOUNT OF TAX DUE AND PENALTIES AND
6 INTEREST; PROVIDING THAT NO INTEREST ON A CLAIM FOR REFUND OF
7 AN OVERPAID TAX SHALL BE PAID UNLESS A COMPLETE CLAIM IS
8 FILED WITHIN A SPECIFIED AMOUNT OF TIME; CONFORMING SECTIONS
9 OF LAW IN THE NMSA 1978; REPEALING LAWS 2009, CHAPTER 241,
10 SECTION 1 AND LAWS 2009, CHAPTER 242, SECTION 2.

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

13 SECTION 1. Section 6-21-6.7 NMSA 1978 (being Laws 2003,
14 Chapter 341, Section 5, as amended) is amended to read:

15 "6-21-6.7. CREDIT ENHANCEMENT ACCOUNT CREATED--USE OF
16 ACCOUNT--RELEASE OF MONEY TO THE GENERAL FUND.--

17 A. The "credit enhancement account" is created as
18 a separate account within the authority for use only as
19 provided in this section.

20 B. All cigarette tax proceeds distributed each
21 month to the authority pursuant to Subsection E of Section
22 7-1-6.11 NMSA 1978 shall be deposited in the credit
23 enhancement account.

24 C. Amounts deposited in the credit enhancement
25 account may be pledged irrevocably as additional security for

1 the payment of the principal, interest, premiums and expenses
2 on bonds issued by the authority for:

3 (1) designing, constructing, equipping and
4 furnishing additions and improvements to the university of
5 New Mexico hospital and the comprehensive cancer center at
6 the university of New Mexico health sciences center; and

7 (2) land acquisition and the planning,
8 designing, construction and equipping of department of health
9 facilities or improvements to such facilities.

10 D. The authority shall determine monthly upon
11 receipt of cigarette tax proceeds if the individual amounts
12 of cigarette tax proceeds distributed pursuant to Subsection
13 C or Subsection D, respectively, of Section 7-1-6.11 NMSA
14 1978 are sufficient to meet the monthly amount required for
15 immediate payment or designation for payment of principal,
16 interest, premiums and expenses on bonds additionally secured
17 by the credit enhancement account. Any insufficient amount
18 shall be paid immediately from the credit enhancement
19 account. A payment from the credit enhancement account shall
20 be reimbursed in succeeding months from the individual amount
21 of cigarette tax proceeds distributed pursuant to Subsection
22 C or Subsection D, as applicable, of Section 7-1-6.11 NMSA
23 1978 in excess of the amount required for immediate payment
24 or designation for payment of principal, interest, premiums
25 and expenses on bonds. All money in the credit enhancement

1 account in excess of the monthly amount required for
2 immediate payment or designation for payment of principal,
3 interest, premiums and expenses on bonds shall be transferred
4 monthly by the authority to the general fund.

5 E. Upon payment of all principal, interest,
6 premiums and expenses on bonds additionally secured by a
7 pledge of amounts deposited in the credit enhancement
8 account, the authority shall certify to the secretary of
9 taxation and revenue that all obligations for bonds have been
10 fully discharged and shall direct the secretary of taxation
11 and revenue and the state treasurer to cease distributing
12 cigarette tax proceeds to the authority pursuant to
13 Subsection E of Section 7-1-6.11 NMSA 1978 and to distribute
14 those cigarette tax proceeds to the general fund.

15 F. Any law authorizing the imposition, collection
16 or distribution of the cigarette tax or that affects the
17 cigarette tax shall not be amended, repealed or otherwise
18 directly or indirectly modified so as to impair or reduce
19 debt service coverage for any outstanding revenue bonds that
20 may be secured by a pledge of those cigarette tax proceeds
21 distributed to the credit enhancement account, unless the
22 revenue bonds have been discharged in full or provisions have
23 been made for a full discharge."

24 SECTION 2. Section 6-21-6.10 NMSA 1978 (being Laws
25 2005, Chapter 58, Section 1, as amended) is amended to read:

1 "6-21-6.10. NEW MEXICO FINANCE AUTHORITY REVENUE

2 BONDS-- PURPOSE--APPROPRIATION.--

3 A. The authority may issue and sell revenue bonds
4 in compliance with the New Mexico Finance Authority Act in an
5 amount not exceeding two million five hundred thousand
6 dollars (\$2,500,000) for the behavioral health capital fund
7 to make loans to eligible entities for capital projects
8 pursuant to the Behavioral Health Capital Funding Act.

9 B. The net proceeds from the sale of the bonds are
10 appropriated to the behavioral health capital fund for the
11 purposes described in Subsection A of this section.

12 C. The cigarette tax proceeds distributed to the
13 authority pursuant to Subsection B of Section 7-1-6.11 NMSA
14 1978:

15 (1) are appropriated to the authority to be
16 pledged irrevocably for the payment of the principal,
17 interest, premiums and related expenses on the bonds and for
18 payment of the expenses incurred by the authority related to
19 the issuance, sale and administration of the bonds; and

20 (2) shall be deposited in a separate fund or
21 account of the authority; provided that money in the separate
22 fund or account in excess of the amount necessary for payment
23 of principal and interest on the bonds and necessary reserves
24 or sinking funds may be transferred to any other account of
25 the authority and used for purposes of the New Mexico Finance

1 Authority Act.

2 D. The authority may issue and sell revenue bonds
3 in compliance with the New Mexico Finance Authority Act in an
4 amount not to exceed five million dollars (\$5,000,000) for
5 acquiring land for and planning, designing, constructing and
6 equipping department of health facilities or improvements to
7 those facilities, upon certification from the secretary of
8 health that such projects are needed. The costs associated
9 with issuing the bonds shall be paid from the net proceeds
10 from the sale of the bonds, and the remainder is appropriated
11 to the facilities management division of the general services
12 department for the projects certified pursuant to this
13 subsection.

14 E. The cigarette tax proceeds distributed to the
15 authority pursuant to Subsection D of Section 7-1-6.11 NMSA
16 1978:

17 (1) are appropriated to the authority to be
18 pledged irrevocably for the payment of the principal,
19 interest, premiums and related expenses of the bonds and for
20 payment of the expenses incurred by the authority related to
21 the issuance, sale and administration of the bonds; and

22 (2) shall be deposited in a separate fund or
23 account of the authority.

24 F. Any law authorizing the imposition, collection
25 or distribution of the cigarette tax or that affects the

1 cigarette tax shall not be amended, repealed or otherwise
2 directly or indirectly modified so as to impair or reduce
3 debt service coverage for any outstanding revenue bonds that
4 may be secured by a pledge of those cigarette tax revenues,
5 unless the revenue bonds have been discharged in full or
6 provisions have been made for a full discharge.

7 G. The authority may secure the revenue bonds
8 issued pursuant to this section by a pledge of money in the
9 public project revolving fund with a lien priority on the
10 money in the public project revolving fund as determined by
11 the authority."

12 SECTION 3. Section 6-22-2 NMSA 1978 (being Laws 1992,
13 Chapter 105, Section 2) is amended to read:

14 "6-22-2. DEFINITIONS.--As used in the State Aid
15 Intercept Act:

16 A. "default" means the actual nonpayment of
17 principal or interest on a local revenue bond when payment is
18 scheduled by the indenture relating the local revenue bond;

19 B. "local government" means a municipality or
20 county;

21 C. "local revenue bond" means a bond issued after
22 July 1, 1992 pursuant to Sections 3-33-1 through 3-33-43 NMSA
23 1978 or Chapter 4, Article 62 NMSA 1978;

24 D. "qualified local revenue bond" means a local
25 revenue bond for which a state distributions intercept

1 authorization has been granted pursuant to this section;

2 E. "secretary" means the secretary of finance and
3 administration; and

4 F. "state distributions" means any or all of the
5 funds distributed to local governments pursuant to Sections
6 7-1-6.4 and 7-1-6.9 NMSA 1978."

7 SECTION 4. Section 7-1-3 NMSA 1978 (being Laws 1965,
8 Chapter 248, Section 3, as amended) is amended to read:

9 "7-1-3. DEFINITIONS.--Unless the context clearly
10 indicates a different meaning, the definitions of words and
11 phrases as they are stated in this section are to be used,
12 and whenever in the Tax Administration Act these words and
13 phrases appear, the singular includes the plural and the
14 plural includes the singular:

15 A. "automated clearinghouse transaction" means an
16 electronic credit or debit transmitted through an automated
17 clearinghouse payable to the state treasurer and deposited
18 with the fiscal agent of New Mexico;

19 B. "department" means the taxation and revenue
20 department, the secretary or any employee of the department
21 exercising authority lawfully delegated to that employee by
22 the secretary;

23 C. "electronic payment" means a payment made by
24 automated clearinghouse deposit, any funds wire transfer
25 system or a credit card, debit card or electronic cash

1 transaction through the internet;

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

8 E. "financial institution" means any state or
9 federally chartered, federally insured depository
10 institution;

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

14 (1) the chief hearing officer;

15 (2) an employee of the administrative
16 hearings office; or

17 (3) a contractor of the administrative
18 hearings office;

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

22 H. "levy" means the lawful power, hereby invested
23 in the secretary, to take into possession or to require the
24 present or future surrender to the secretary or the
25 secretary's delegate of any property or rights to property

1 belonging to a delinquent taxpayer;

2 I. "local option gross receipts tax" means a tax
3 authorized to be imposed by a county or municipality upon the
4 taxpayer's gross receipts, as that term is defined in the
5 Gross Receipts and Compensating Tax Act, and required to be
6 collected by the department at the same time and in the same
7 manner as the gross receipts tax; "local option gross
8 receipts tax" includes the taxes imposed pursuant to the
9 Municipal Local Option Gross Receipts Taxes Act, Supplemental
10 Municipal Gross Receipts Tax Act, County Local Option Gross
11 Receipts Taxes Act, Local Hospital Gross Receipts Tax Act and
12 County Correctional Facility Gross Receipts Tax Act and such
13 other acts as may be enacted authorizing counties or
14 municipalities to impose taxes on gross receipts, which taxes
15 are to be collected by the department in the same time and in
16 the same manner as it collects the gross receipts tax;

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

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

1 respect to that tax or tax act;

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

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

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

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

11 P. "person" means any individual, estate, trust,
12 receiver, cooperative association, club, corporation,
13 company, firm, partnership, limited liability company,
14 limited liability partnership, joint venture, syndicate,
15 other association or gas, water or electric utility owned or
16 operated by a county or municipality; "person" also means, to
17 the extent permitted by law, a federal, state or other
18 governmental unit or subdivision, or an agency, department or
19 instrumentality thereof; and "person", as used in Sections
20 7-1-72 through 7-1-74 NMSA 1978, also includes an officer or
21 employee of a corporation, a member or employee of a
22 partnership or any individual who, as such, is under a duty
23 to perform any act in respect of which a violation occurs;

24 Q. "property" means property or rights to
25 property;

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

4 S. "return" means any tax or information return,
5 application or form, declaration of estimated tax or claim
6 for refund, including any amendments or supplements to the
7 return, required or permitted pursuant to a law subject to
8 administration and enforcement pursuant to the Tax
9 Administration Act and filed with the secretary or the
10 secretary's delegate by or on behalf of any person;

11 T. "return information" means a taxpayer's name,
12 address, government-issued identification number and other
13 identifying information; any information contained in or
14 derived from a taxpayer's return; any information with
15 respect to any actual or possible administrative or legal
16 action by an employee of the department concerning a
17 taxpayer's return, such as audits, managed audits, denial of
18 credits or refunds, assessments of tax, penalty or interest,
19 protests of assessments or denial of refunds or credits,
20 levies or liens; or any other information with respect to a
21 taxpayer's return or tax liability that was not obtained from
22 public sources or that was created by an employee of the
23 department; but "return information" does not include
24 statistical data or other information that cannot be
25 associated with or directly or indirectly identify a

1 particular taxpayer;

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

7 V. "secretary or the secretary's delegate" means
8 the secretary or any employee of the department exercising
9 authority lawfully delegated to that employee by the
10 secretary;

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

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

16 Y. "tax" means the total amount of each tax
17 imposed and required to be paid, withheld and paid or
18 collected and paid under provision of any law made subject to
19 administration and enforcement according to the provisions of
20 the Tax Administration Act, including the amount of any
21 interest or civil penalty relating thereto; "tax" also means
22 any amount of any abatement of tax made or any credit, rebate
23 or refund paid or credited by the department under any law
24 subject to administration and enforcement under the
25 provisions of the Tax Administration Act to any person

1 contrary to law, including the amount of any interest or
2 civil penalty relating thereto;

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

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

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

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

21 AA. "taxpayer" means a person liable for payment
22 of any tax; a person responsible for withholding and payment
23 or for collection and payment of any tax; a person to whom an
24 assessment has been made, if the assessment remains unabated
25 or the amount thereof has not been paid; or a person who

1 entered into a special agreement pursuant to Section 7-1-21.1
2 NMSA 1978 to assume the liability of gross receipts tax or
3 governmental gross receipts tax of another person and the
4 special agreement was approved by the secretary pursuant to
5 the Tax Administration Act."

6 SECTION 5. Section 7-1-4.1 NMSA 1978 (being Laws 2003,
7 Chapter 398, Section 1) is amended to read:

8 "7-1-4.1. NEW MEXICO TAXPAYER BILL OF RIGHTS CREATED--
9 PURPOSE.--The "New Mexico Taxpayer Bill of Rights" is
10 created. It is the purpose of the New Mexico Taxpayer Bill
11 of Rights to:

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

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

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

22 SECTION 6. Section 7-1-4.2 NMSA 1978 (being Laws 2003,
23 Chapter 398, Section 2, as amended) is amended to read:

24 "7-1-4.2. NEW MEXICO TAXPAYER BILL OF RIGHTS.--The
25 rights afforded New Mexico taxpayers during the assessment,

1 collection and enforcement of any tax administered by the
2 department as set forth in the Tax Administration Act
3 include:

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

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

12 C. the right to have audits, inspections of
13 records and meetings conducted at a reasonable time and place
14 in accordance with the provisions of Section 7-1-11 NMSA
15 1978;

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

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

24 F. the right to be provided with an explanation of
25 the results of and the basis for audits, assessments or

1 denials of refunds that identify any amount of tax, interest
2 or penalty due;

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

8 H. the right to have the taxpayer's tax
9 information kept confidential unless otherwise specified by
10 law, in accordance with Sections 7-1-8 through 7-1-8.11 NMSA
11 1978;

12 I. the right to abatement of an assessment of
13 taxes determined to have been incorrectly, erroneously or
14 illegally made, as provided in Section 7-1-28 NMSA 1978 and
15 the right to seek a compromise of an asserted tax liability
16 by obtaining a written determination of liability or
17 nonliability when the secretary in good faith is in doubt of
18 the liability as provided in Section 7-1-20 NMSA 1978;

19 J. upon receipt of a tax assessment, the right to
20 be informed clearly that if the assessment is not paid,
21 secured, protested or otherwise provided for in accordance
22 with the provisions of Section 7-1-16 NMSA 1978, the taxpayer
23 will be a delinquent taxpayer and, upon notice of
24 delinquency, the right to timely notice of any collection
25 actions that will require sale or seizure of the taxpayer's

1 property in accordance with the provisions of the Tax
2 Administration Act; and

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

6 SECTION 7. Section 7-1-6 NMSA 1978 (being Laws 1978,
7 Chapter 55, Section 1, as amended) is amended to read:

8 "7-1-6. RECEIPTS--DISBURSEMENTS--FUNDS CREATED.--

9 A. All money received by the department with
10 respect to laws administered pursuant to the provisions of
11 the Tax Administration Act shall be deposited with the state
12 treasurer before the close of the next succeeding business
13 day after receipt of the money, except that for 1989 and
14 every subsequent year, money received with respect to the
15 Income Tax Act during the period starting with the fifth day
16 prior to the due date for payment of income tax for the year
17 and ending on the tenth day following that due date shall be
18 deposited before the close of the tenth business day after
19 receipt of the money.

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

23 C. Disbursements for tax credits, tax rebates,
24 refunds, the payment of interest, the payment of fees charged
25 by attorneys or collection agencies for collection of

1 accounts as agent for the department, attorney fees and costs
2 awarded by a court or hearing officer, as the result of oil
3 and gas litigation, the payment of credit card service
4 charges on payments of taxes by use of credit cards,
5 distributions and transfers shall be made by the department
6 of finance and administration upon request and certification
7 of their appropriateness by the secretary or the secretary's
8 delegate.

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

14 E. All revenues collected or received by the
15 department pursuant to the provisions of the taxes and tax
16 acts set forth in Subsection A of Section 7-1-2 NMSA 1978
17 and, through June 30, 2009, federal funds from the temporary
18 assistance for needy families program pursuant to an
19 agreement that the department and the human services
20 department may enter into for the payment of tax refunds, tax
21 rebates and tax credits to low-income families with dependent
22 children otherwise authorized by state and federal law shall
23 be credited to the tax administration suspense fund and are
24 appropriated for the purpose of making the disbursements
25 authorized in this section or otherwise authorized or

1 required by law to be made from the tax administration
2 suspense fund.

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

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

18 H. All revenues collected or received by the
19 department pursuant to the provisions of Section 52-5-19 NMSA
20 1978 shall be credited to the workers' compensation
21 collections suspense fund and are appropriated for the
22 purpose of making the disbursements authorized in this
23 section or otherwise authorized or required by law to be made
24 from the workers' compensation collections suspense fund.

25 I. Disbursements to cover expenditures of the

1 department shall be made only upon approval of the secretary
2 or the secretary's delegate.

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

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

13 SECTION 8. Section 7-1-6.9 NMSA 1978 (being Laws 1991,
14 Chapter 9, Section 11, as amended) is amended to read:

15 "7-1-6.9. DISTRIBUTION OF GASOLINE TAXES TO
16 MUNICIPALITIES AND COUNTIES.--

17 A. A distribution pursuant to Section 7-1-6.1 NMSA
18 1978 shall be made in an amount equal to ten and thirty-eight
19 hundredths percent of the net receipts attributable to the
20 taxes, exclusive of penalties and interest, imposed by the
21 Gasoline Tax Act.

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

24 (1) ninety percent of the amount shall be
25 paid to the treasurers of municipalities and H class counties

1 in the proportion that the taxable motor fuel sales in each
2 of the municipalities and H class counties bears to the
3 aggregate taxable motor fuel sales in all of these
4 municipalities and H class counties; and

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

12 C. Except as provided in Subsection D of this
13 section, this distribution shall be paid into a separate road
14 fund in the municipal treasury or county road fund for
15 expenditure only for construction, reconstruction,
16 resurfacing or other improvement or maintenance of public
17 roads, streets, alleys or bridges, including right-of-way and
18 materials acquisition. Money distributed pursuant to this
19 section may be used by a municipality or county to provide
20 matching funds for projects subject to cooperative agreements
21 entered into with the department of transportation pursuant
22 to Section 67-3-28 NMSA 1978. Any municipality or H class
23 county that has created or that creates a "street improvement
24 fund" to which gasoline tax revenues or distributions are
25 irrevocably pledged under Sections 3-34-1 through 3-34-4 NMSA

1 1978 or that has pledged all or a portion of gasoline tax
2 revenues or distributions to the payment of bonds shall
3 receive its proportion of the distribution of revenues under
4 this section impressed with and subject to these pledges.

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

9 SECTION 9. Section 7-1-6.11 NMSA 1978 (being Laws 1983,
10 Chapter 211, Section 16, as amended) is amended to read:

11 "7-1-6.11. DISTRIBUTIONS OF CIGARETTE TAXES.--

12 A. A distribution pursuant to Section 7-1-6.1 NMSA
13 1978 shall be made to the comprehensive cancer center at the
14 university of New Mexico health sciences center in an amount
15 equal to eighty-three hundredths percent of the net receipts,
16 exclusive of penalties and interest, attributable to the
17 cigarette tax.

18 B. A distribution pursuant to Section 7-1-6.1 NMSA
19 1978 shall be made to the New Mexico finance authority in an
20 amount equal to one and twenty-five hundredths percent of the
21 net receipts, exclusive of penalties and interest,
22 attributable to the cigarette tax.

23 C. A distribution pursuant to Section 7-1-6.1 NMSA
24 1978 in an amount equal to eight and eighty-nine hundredths
25 percent of the net receipts, exclusive of penalties and

1 interest, attributable to the cigarette tax, shall be made,
2 on behalf of and for the benefit of the university of New
3 Mexico health sciences center, to the New Mexico finance
4 authority.

5 D. A distribution pursuant to Section 7-1-6.1 NMSA
6 1978 in an amount equal to three and seventy-four hundredths
7 percent of the net receipts, exclusive of penalties and
8 interest, attributable to the cigarette tax shall be made to
9 the New Mexico finance authority for land acquisition and the
10 planning, designing, construction and equipping of department
11 of health facilities or improvements to such facilities.

12 E. A distribution pursuant to Section 7-1-6.1 NMSA
13 1978 in an amount equal to nine and seventy-seven hundredths
14 percent of the net receipts, exclusive of penalties and
15 interest, attributable to the cigarette tax shall be made to
16 the New Mexico finance authority for deposit in the credit
17 enhancement account created in the authority.

18 F. A distribution pursuant to Section 7-1-6.1 NMSA
19 1978 in an amount equal to sixty-two hundredths percent of
20 the net receipts, exclusive of penalties and interest,
21 attributable to the cigarette tax shall be made, on behalf of
22 and for the benefit of the rural county cancer treatment
23 fund, to the New Mexico finance authority."

24 SECTION 10. Section 7-1-6.24 NMSA 1978 (being Laws
25 1987, Chapter 265, Section 3) is amended to read:

1 "7-1-6.24. DISTRIBUTION--SUBSTANCE ABUSE EDUCATION
2 FUND.--A distribution pursuant to Section 7-1-6.1 NMSA 1978
3 shall be made to the substance abuse education fund of the
4 amounts designated pursuant to Section 7-2-30 NMSA 1978 as
5 contributions to that fund."

6 SECTION 11. Section 7-1-6.26 NMSA 1978 (being Laws
7 1987, Chapter 347, Section 11, as amended) is amended to
8 read:

9 "7-1-6.26. COUNTY GOVERNMENT ROAD FUND--DISTRIBUTION.--

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

17 B. The secretary of transportation shall determine
18 and certify on or before July 1 of each year the total miles
19 of public roads maintained by each county pursuant to Section
20 66-6-23 NMSA 1978. For the purposes of this subsection, if
21 the certified mileage of public roads maintained by a county
22 is less than four hundred miles, the state treasurer shall
23 increase the number of miles of public roads maintained by
24 that county by fifty percent and revise the total miles of
25 public roads maintained by all counties accordingly. Except

1 as provided otherwise in Subsection D of this section, each
2 county shall receive an amount equal to its proportionate
3 share of miles of public roads maintained, as the number of
4 miles for the county may have been revised pursuant to this
5 subsection, to the total miles of public roads maintained by
6 all counties, as that total may have been revised pursuant to
7 this subsection, times fifty percent of the distributable
8 amount in the county government road fund.

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

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

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

23 If the sum of the amounts to be distributed pursuant to
24 Paragraphs (1) and (2) of this subsection exceeds fifty
25 percent of the distributable amount in the county government

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

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

21 E. If a county has not made the required mileage
22 certification pursuant to Section 67-3-28.3 NMSA 1978 by
23 April 1 of every year of the year for which distribution is
24 being made, the secretary of transportation shall estimate
25 the mileage maintained by those counties for the purpose of

1 making distribution to all counties, and the amount
2 calculated to be distributed each month to those counties not
3 certifying mileage shall be reduced by one-third each month
4 for that fiscal year and that amount not distributed to those
5 counties shall be distributed equally to all counties that
6 have certified mileages.

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

16 SECTION 12. Section 7-1-6.32 NMSA 1978 (being Laws
17 1990, Chapter 99, Section 44, as amended) is amended to read:

18 "7-1-6.32. DISTRIBUTION--SOLID WASTE ASSESSMENT FEE.--A
19 distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be
20 made to the solid waste facility grant fund of the net
21 receipts attributable to the solid waste assessment fee
22 authorized under the Solid Waste Act less any administrative
23 fee withheld pursuant to Section 7-1-6.41 NMSA 1978."

24 SECTION 13. Section 7-1-6.33 NMSA 1978 (being Laws
25 1991, Chapter 212, Section 15) is amended to read:

1 "7-1-6.33. DISTRIBUTION TO COUNTY-SUPPORTED MEDICAID
2 FUND.--A distribution pursuant to Section 7-1-6.1 NMSA 1978
3 shall be made to the county-supported medicaid fund of the
4 net receipts attributable to the taxes imposed pursuant to
5 Section 7-20E-18 NMSA 1978."

6 SECTION 14. Section 7-1-6.48 NMSA 1978 (being Laws
7 2005, Chapter 56, Section 1) is amended to read:

8 "7-1-6.48. DISTRIBUTION--CONTRIBUTIONS TO DEPARTMENT OF
9 HEALTH--AMYOTROPHIC LATERAL SCLEROSIS RESEARCH.--A
10 distribution pursuant to Section 7-1-6.1 NMSA 1978 shall be
11 made to the amyotrophic lateral sclerosis research fund in an
12 amount equal to the money designated pursuant to Section
13 7-2-30.1 NMSA 1978 as contributions to the amyotrophic
14 lateral sclerosis research fund."

15 SECTION 15. Section 7-1-6.49 NMSA 1978 (being Laws
16 2005, Chapter 87, Section 1) is amended to read:

17 "7-1-6.49. DISTRIBUTION--CONTRIBUTIONS TO THE STATE
18 PARKS DIVISION.--A distribution pursuant to Section 7-1-6.1
19 NMSA 1978 shall be made to the energy, minerals and natural
20 resources department in an amount equal to the money
21 designated pursuant to Section 7-2-30.2 NMSA 1978 as
22 contributions to the state parks division of the energy,
23 minerals and natural resources department for the kids in
24 parks education program. The energy, minerals and natural
25 resources department shall remit the amount designated for

1 the state parks division to the state parks division for
2 expenditure for the kids in parks education program."

3 SECTION 16. Section 7-1-6.50 NMSA 1978 (being Laws
4 2005, Chapter 220, Section 1, as amended) is amended to read:

5 "7-1-6.50. DISTRIBUTION--CONTRIBUTIONS FOR NATIONAL
6 GUARD MEMBER AND FAMILY ASSISTANCE.--A distribution pursuant
7 to Section 7-1-6.1 NMSA 1978 shall be made to the department
8 of military affairs in an amount equal to the money
9 designated pursuant to Section 7-2-30.3 NMSA 1978 as
10 contributions for assistance to members of the New Mexico
11 national guard deployed overseas for a period of thirty or
12 more consecutive days and to their families. The department
13 of military affairs shall deposit the money in a temporary
14 suspense account for distribution to members of the New
15 Mexico national guard and to their families."

16 SECTION 17. Section 7-1-6.59 NMSA 1978 (being Laws
17 2009, Chapter 175, Section 1) is amended to read:

18 "7-1-6.59. DISTRIBUTION--VETERANS MEMORIAL OPERATION,
19 MAINTENANCE AND IMPROVEMENT.--A distribution pursuant to
20 Section 7-1-6.1 NMSA 1978 shall be made to the state parks
21 division of the energy, minerals and natural resources
22 department in an amount equal to the money designated
23 pursuant to Section 7-2-30.4 NMSA 1978 as contributions to
24 the state parks division of the energy, minerals and natural
25 resources department for the operation, maintenance and

1 improvement of the Vietnam veterans memorial state park near
2 Angel Fire, New Mexico."

3 SECTION 18. Section 7-1-8 NMSA 1978 (being Laws 1965,
4 Chapter 248, Section 13, as amended by Laws 2009, Chapter
5 241, Section 1 and by Laws 2009, Chapter 242, Section 2 and
6 also by Laws 2009, Chapter 243, Section 2) is amended to
7 read:

8 "7-1-8. CONFIDENTIALITY OF RETURNS AND OTHER
9 INFORMATION.--

10 A. It is unlawful for any person other than the
11 taxpayer to reveal to any other person the taxpayer's return
12 or return information, except as provided in Sections 7-1-8.1
13 through 7-1-8.11 NMSA 1978.

14 B. A return or return information revealed under
15 Sections 7-1-8.1 through 7-1-8.11 NMSA 1978:

16 (1) may only be revealed to a person
17 specifically authorized to receive the return or return
18 information and the employees, directors, officers and agents
19 of such person whose official duties or duties in the course
20 of their employment require the return or return information
21 and to an employee of the department;

22 (2) may only be revealed for the authorized
23 purpose and only to the extent necessary to perform that
24 authorized purpose;

25 (3) shall at all times be protected from

1 being revealed to an unauthorized person by physical,
2 electronic or any other safeguards specified by directive by
3 the secretary; and

4 (4) shall be returned to the secretary or
5 the secretary's delegate or destroyed as soon as it is no
6 longer required for the authorized purpose.

7 C. If any provision of Sections 7-1-8.1 through
8 7-1-8.11 NMSA 1978 requires that a return or return
9 information will only be revealed pursuant to a written
10 agreement between a person and the department, the written
11 agreement shall:

12 (1) list the name and position of any
13 official or employee of the person to whom a return or return
14 information is authorized to be revealed under the provision;

15 (2) describe the specific purpose for which
16 the return or return information is to be used;

17 (3) describe the procedures and safeguards
18 the person has in place to ensure that the requirements of
19 Subsection B of this section are met; and

20 (4) provide for reimbursement to the
21 department for all costs incurred by the department in
22 supplying the returns or return information to, and
23 administering the agreement with, the person.

24 D. A return or return information that is lawfully
25 made public by an employee of the department or any other

1 person, or that is made public by the taxpayer, is not
2 subject to the provisions of this section once it is made
3 public."

4 SECTION 19. Section 7-1-8.8 NMSA 1978 (being Laws 2009,
5 Chapter 243, Section 10, as amended) is amended to read:

6 "7-1-8.8. INFORMATION THAT MAY BE REVEALED TO OTHER
7 STATE AGENCIES.--An employee of the department may reveal to:

8 A. a committee of the legislature for a valid
9 legislative purpose, return information concerning any tax or
10 fee imposed pursuant to the Cigarette Tax Act;

11 B. the attorney general, return information
12 acquired pursuant to the Cigarette Tax Act for purposes of
13 Section 6-4-13 NMSA 1978 and the master settlement agreement
14 defined in Section 6-4-12 NMSA 1978;

15 C. the commissioner of public lands, return
16 information for use in auditing that pertains to rentals,
17 royalties, fees and other payments due the state under land
18 sale, land lease or other land use contracts;

19 D. the secretary of human services or the
20 secretary's delegate under a written agreement with the
21 department, the last known address with date of all names
22 certified to the department as being absent parents of
23 children receiving public financial assistance, but only for
24 the purpose of enforcing the support liability of the absent
25 parents by the child support enforcement division or any

1 successor organizational unit;

2 E. the department of information technology, by
3 electronic media, a database updated quarterly that contains
4 the names, addresses, county of address and taxpayer
5 identification numbers of New Mexico personal income tax
6 filers, but only for the purpose of producing the random jury
7 list for the selection of petit or grand jurors for the state
8 courts pursuant to Section 38-5-3 NMSA 1978;

9 F. the state courts, the random jury lists
10 produced by the department of information technology under
11 Subsection E of this section;

12 G. the director of the New Mexico department of
13 agriculture or the director's authorized representative, upon
14 request of the director or representative, the names and
15 addresses of all gasoline or special fuel distributors,
16 wholesalers and retailers;

17 H. the public regulation commission, return
18 information with respect to the Corporate Income and
19 Franchise Tax Act required to enable the commission to carry
20 out its duties;

21 I. the state racing commission, return information
22 with respect to the state, municipal and county gross
23 receipts taxes paid by racetracks;

24 J. the gaming control board, tax returns of
25 license applicants and their affiliates as provided in

1 Subsection E of Section 60-2E-14 NMSA 1978;

2 K. the director of the workers' compensation
3 administration or to the director's representatives
4 authorized for this purpose, return information to facilitate
5 the identification of taxpayers that are delinquent or
6 noncompliant in payment of fees required by Section 52-1-9.1
7 or 52-5-19 NMSA 1978;

8 L. the secretary of workforce solutions or the
9 secretary's delegate, return information for use in
10 enforcement of unemployment insurance collections pursuant to
11 the terms of a written reciprocal agreement entered into by
12 the department with the secretary of workforce solutions for
13 exchange of information;

14 M. the New Mexico finance authority, information
15 with respect to the amount of municipal and county gross
16 receipts taxes collected by municipalities and counties
17 pursuant to any local option municipal or county gross
18 receipts taxes imposed, and information with respect to the
19 amount of governmental gross receipts taxes paid by every
20 agency, institution, instrumentality or political subdivision
21 of the state pursuant to Section 7-9-4.3 NMSA 1978; and

22 N. the secretary of human services or the
23 secretary's delegate; provided that a person who receives the
24 confidential return information on behalf of the human
25 services department shall not reveal the information and

1 shall be subject to the penalties in Section 7-1-76 NMSA 1978
2 if the person fails to maintain the confidentiality required:

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

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

15 **SECTION 20.** A new section of the Tax Administration
16 Act, Section 7-1-8.11 NMSA 1978, is enacted to read:

17 "7-1-8.11. INFORMATION THAT MAY BE REVEALED TO A WATER
18 AND SANITATION DISTRICT.--

19 A. An employee of the department may reveal to the
20 officials and employees of a water and sanitation district of
21 this state that has in effect a water and sanitation gross
22 receipts tax imposed by the water and sanitation district
23 upon its request for a period specified by that water and
24 sanitation district within the twelve months preceding the
25 request for the information by those officials and employees:

1 (1) the names, taxpayer identification
2 numbers and addresses of registered gross receipts taxpayers
3 reporting gross receipts for that water and sanitation
4 district; the department may also release the information
5 described in this paragraph quarterly or upon any other
6 periodic basis to which the secretary and the district agree;
7 and

8 (2) information indicating whether the
9 persons shown on a list of businesses within the water and
10 sanitation district have reported gross receipts to the
11 department but have not reported gross receipts for that
12 water and sanitation district.

13 B. The officials and employees of water and
14 sanitation districts receiving information as provided in
15 this section shall be subject to the confidentiality
16 provisions of Section 7-1-8 NMSA 1978 and the penalty
17 provisions of Section 7-1-76 NMSA 1978."

18 **SECTION 21.** Section 7-1-11 NMSA 1978 (being Laws 1965,
19 Chapter 248, Section 16, as amended) is amended to read:

20 "7-1-11. INSPECTION OF BOOKS OF TAXPAYERS--
21 CREDENTIALS.--

22 A. To determine the correct amount of tax due, the
23 department shall cause the records and books of account of
24 taxpayers to be inspected or audited at such times as the
25 department deems necessary for the effective execution of the

1 department's responsibilities.

2 B. Auditors and other officials of the department
3 designated by the secretary are authorized to request and
4 require the production for examination of the records and
5 books of account of a taxpayer. Auditors and officials of
6 the department designated by the secretary shall be furnished
7 with credentials identifying them as such, which they shall
8 display to any taxpayer whose books are sought to be
9 examined.

10 C. Taxpayers shall upon request make their records
11 and books of account available for inspection at reasonable
12 hours to the secretary or the secretary's delegate who
13 presents proper identification to the taxpayer.

14 D. If the taxpayer's records and books of account
15 do not exist or are insufficient to determine the taxpayer's
16 tax liability, if any, the department may use any reasonable
17 method of estimating the tax liability, including but not
18 limited to using information about similar persons,
19 businesses or industries to estimate the taxpayer's
20 liability.

21 E. The secretary or the secretary's delegate shall
22 develop and maintain written audit policies and procedures
23 for all audit programs in which the department routinely
24 conducts field audits of taxpayers, including policies and
25 procedures concerning audit notification, scheduling, records

1 that may be examined, analysis that may be done, sampling
2 procedures, gathering information or evidence from third
3 parties, policies concerning the rights of taxpayers under
4 audit and related matters. Department audit policies and
5 procedures shall be made available to a person who requests
6 them, at a reasonable charge to defray the cost of preparing
7 and distributing those policies and procedures.

8 F. Nothing in this section shall be construed to
9 require the department to provide the following:

10 (1) information that is confidential
11 pursuant to Section 7-1-8 NMSA 1978; or

12 (2) methods, techniques and analysis used to
13 select taxpayers for audit, including the use of:

- 14 (a) data analytics;
- 15 (b) data mining;
- 16 (c) a scoring model;
- 17 (d) internal controls; and
- 18 (e) metadata used to detect fraud and
19 noncompliance.

20 G. For purposes of this section:

21 (1) "data analytics" means the science of
22 examining data with the purpose of drawing conclusions about
23 the information;

24 (2) "data mining" means the process of
25 analyzing data from different perspectives and summarizing it

1 into useful information by collecting data into data sets for
2 the purpose of discovering patterns;

3 (3) "scoring model" means a predictive model
4 that can predict the chance of occurring of a fact and its
5 occurrence;

6 (4) "methods, techniques and methodology"
7 means a systematic way to accomplish a tactic, qualitative or
8 quantitative component of research and the use of a specific
9 method;

10 (5) "internal controls" means a process of
11 assuring achievement of an organization's objectives in
12 operational effectiveness and efficiency, reliable financial
13 reporting and compliance with laws, regulations and policies;
14 and

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

17 **SECTION 22.** Section 7-1-12.2 NMSA 1978 (being Laws
18 1985, Chapter 65, Section 13, as amended) is amended to read:

19 "7-1-12.2. NOTICE OF IDENTIFICATION NUMBER ASSIGNED--
20 OPERATOR MAY REQUEST IDENTIFICATION NUMBER.--The department
21 shall inform each operator of a production unit as to the
22 identification number or symbol assigned to such production
23 unit. Such number or symbol may be changed or revised and
24 information regarding such change or revision shall likewise
25 be given the operator. In the creation of a new production

1 unit or in the event of a change of ownership or revision in
2 a production unit, the operator may request the department to
3 assign a new identification number or symbol, and the
4 department shall notify the operator of the identification
5 number or symbol to be used."

6 SECTION 23. Section 7-1-21 NMSA 1978 (being Laws 1965,
7 Chapter 248, Section 23, as amended) is amended to read:

8 "7-1-21. INSTALLMENT PAYMENTS OF TAXES--INSTALLMENT
9 AGREEMENTS.--

10 A. Whenever justified by the circumstances, the
11 secretary or the secretary's delegate may enter into a
12 written agreement with a taxpayer in which the taxpayer
13 admits conclusive liability for the entire amount of taxes
14 due and agrees to make monthly installment payments according
15 to the terms of the agreement, but not for a period longer
16 than seventy-two months. No installment agreement shall
17 prevent the accrual of interest otherwise provided by law.

18 B. The agreement provided for in this section is
19 to be known as an "installment agreement". If entered into
20 after a court acquires jurisdiction over the matter, the
21 agreement shall be part of a stipulated order or judgment
22 disposing of the case.

23 C. At the time of entering into an installment
24 agreement, the secretary shall require the affected taxpayer
25 or person to furnish security for payment of the taxes

1 admitted to be due according to the terms of the agreement,
2 but if the taxpayer does not provide security, the secretary
3 shall cause a notice of lien to be filed in accordance with
4 the provisions of Section 7-1-38 NMSA 1978, and when so filed
5 it shall constitute a lien upon all the property or rights to
6 property of the taxpayer in that county in the same manner as
7 in the case of the lien provided for in Section 7-1-37 NMSA
8 1978.

9 D. An installment agreement is conclusive as to
10 liability for payment of the amount of taxes specified
11 therein but does not preclude the assessment of any
12 additional tax.

13 E. After entering into the agreement, except in
14 unusual circumstances as require the secretary in the
15 secretary's discretion to take further action to protect the
16 interests of the state, no further attempts to enforce
17 payment of the tax by levy or injunction shall be made;
18 however, if installment payments are not made on or before
19 the times specified in the agreement, if any other condition
20 contained in the agreement is not met or if the taxpayer does
21 not make payment of all other taxes for which the taxpayer
22 becomes liable as they are due, the secretary may proceed to
23 enforce collection of the tax as if the agreement had not
24 been made or may proceed, as provided in Section 7-1-54 NMSA
25 1978, against the security furnished.

1 F. Records of installment agreements in excess of
2 one thousand dollars (\$1,000) shall be available for
3 inspection by the public. The department shall keep the
4 records for a minimum of three years from the date of the
5 installment agreement."

6 SECTION 24. Section 7-1-23 NMSA 1978 (being Laws 1965,
7 Chapter 248, Section 25, as amended) is amended to read:

8 "7-1-23. DISPUTING LIABILITIES--ELECTION OF REMEDIES.--
9 Any taxpayer must elect to dispute the taxpayer's liability
10 for the payment of taxes either by protesting the assessment
11 thereof as provided in Section 7-1-24 NMSA 1978 without
12 making payment of the disputed tax liability or by claiming a
13 refund thereof as provided in Section 7-1-26 NMSA 1978 after
14 making payment of the disputed tax liability. The pursuit of
15 one of the two remedies described herein constitutes an
16 unconditional waiver of the right to pursue the other."

17 SECTION 25. Section 7-1-24 NMSA 1978 (being Laws 1965,
18 Chapter 248, Section 26, as amended) is amended to read:

19 "7-1-24. DISPUTING LIABILITIES--ADMINISTRATIVE
20 PROTEST.--

21 A. A taxpayer may dispute:

22 (1) the assessment to the taxpayer of any
23 amount of tax;

24 (2) the application to the taxpayer of any
25 provision of the Tax Administration Act except the issuance

1 of a subpoena or summons; or

2 (3) the denial of or failure either to allow
3 or to deny a:

4 (a) credit or rebate; or

5 (b) claim for refund made in accordance
6 with Section 7-1-26 NMSA 1978.

7 B. The taxpayer may dispute a matter described in
8 Subsection A of this section by filing with the secretary a
9 written protest. Every protest shall identify the taxpayer
10 and the tax credit, rebate, property or provision of the Tax
11 Administration Act involved and state the grounds for the
12 taxpayer's protest and the affirmative relief requested. The
13 statement of grounds for protest shall specify individual
14 grounds upon which the protest is based and evidence
15 supporting each ground asserted; provided that the taxpayer
16 may supplement the statement at any time prior to ten days
17 before the hearing conducted on the protest pursuant to the
18 provisions of the Administrative Hearings Office Act or, if a
19 scheduling order has been issued, in accordance with the
20 scheduling order. The secretary may, in appropriate cases,
21 provide for an informal conference before a hearing of the
22 protest is set by the administrative hearings office or
23 before acting on a claim for refund.

24 C. In the case of an assessment of tax by the
25 department, a protest may be filed without making payment of

1 the amount assessed; provided that, if only a portion of the
2 assessment is in dispute, any unprotested amounts of tax,
3 interest or penalty shall be paid, or, if applicable, an
4 installment agreement pursuant to Section 7-1-21 NMSA 1978
5 shall be entered into for the unprotested amounts, on or
6 before the due date for the protest.

7 D. A protest by a taxpayer shall be filed within
8 ninety days of the date of the mailing to or service upon the
9 taxpayer by the department of the notice of assessment or
10 other peremptory notice or demand, the date of mailing or
11 filing a return, the date of the application to the taxpayer
12 of the applicable provision of the Tax Administration Act,
13 the date of denial of a claim pursuant to Section 7-1-26 NMSA
14 1978 or the last date upon which the department was required
15 to take action on the claim but failed to take action.

16 E. If a protest to a notice of assessment is not
17 filed within the time required:

18 (1) the amount of tax determined to be due
19 becomes final;

20 (2) the taxpayer is deemed to have waived
21 and abandoned the right to question the amount of tax
22 determined to be due, unless the taxpayer pays the tax and
23 claims a refund of the tax pursuant to Section 7-1-26 NMSA
24 1978; and

25 (3) the secretary may proceed to enforce

1 collection of any tax if the taxpayer is delinquent within
2 the meaning of Section 7-1-16 NMSA 1978.

3 F. The fact that the department did not mail the
4 assessment or other peremptory notice or demand by certified
5 or registered mail or otherwise demand and receive
6 acknowledgment of receipt by the taxpayer shall not be deemed
7 to demonstrate the taxpayer's inability to protest within the
8 required time.

9 G. No proceedings other than those to enforce
10 collection of an amount assessed as tax and to protect the
11 interest of the state by injunction, as provided in Sections
12 7-1-31, 7-1-33, 7-1-34, 7-1-40, 7-1-53, 7-1-56 and 7-1-58
13 NMSA 1978, are stayed by timely filing of a protest pursuant
14 to the provisions of this section.

15 H. Nothing in this section shall be construed to
16 authorize a criminal proceeding or to authorize an
17 administrative protest of the issuance of a subpoena or
18 summons."

19 **SECTION 26.** Section 7-1-26 NMSA 1978 (being Laws 1965,
20 Chapter 248, Section 28, as amended) is amended to read:

21 "7-1-26. DISPUTING LIABILITIES--CLAIM FOR CREDIT,
22 REBATE OR REFUND.--

23 A. A person who believes that an amount of tax has
24 been paid by or withheld from that person in excess of that
25 for which the person was liable, who has been denied any

1 credit or rebate claimed or who claims a prior right to
2 property in the possession of the department pursuant to a
3 levy made under authority of Sections 7-1-31 through 7-1-34
4 NMSA 1978 may claim a refund by directing to the secretary,
5 within the time limited by the provisions of Subsections F
6 and G of this section, a written claim for refund. At the
7 time the written claim is submitted, except as provided in
8 Subsection K of this section, a refund claim shall include:

9 (1) the taxpayer's name, address and
10 identification number;

11 (2) the type of tax for which a refund is
12 being claimed, the credit or rebate denied or the property
13 levied upon;

14 (3) the sum of money or other property being
15 claimed;

16 (4) with respect to refund, the period for
17 which overpayment was made;

18 (5) a brief statement of the facts and the
19 law on which the claim is based, which may be referred to as
20 the "basis for the refund", which shall include documentation
21 that substantiates the written claim and supports the
22 taxpayer's basis for the refund; and

23 (6) a copy of an amended return for each tax
24 period for which the refund is claimed.

25 B. A claim for refund that meets the requirements

1 of Subsection A of this section shall be deemed to be
2 properly before the department for consideration, regardless
3 of whether the department requests additional documentation
4 after receipt of the claim for refund; provided that the
5 claim for refund is filed within the time limitations
6 provided in Subsections F and G of this section.

7 C. If the department requests additional relevant
8 documentation from a taxpayer who has submitted a claim for
9 refund, the claim for refund will not be considered complete
10 until the taxpayer provides the requested documentation. The
11 provisions of Paragraph (2) of Subsection D of this section
12 and of Section 7-1-68 NMSA 1978 do not apply until a refund
13 claim is complete.

14 D. The secretary or the secretary's delegate may
15 allow the claim in whole or in part or may deny the claim.
16 If the:

17 (1) claim is denied in whole or in part in
18 writing, no claim may be refiled with respect to that which
19 was denied, but the person, within ninety days after either
20 the mailing or delivery of the denial of all or any part of
21 the claim, may elect to pursue one, but not more than one, of
22 the remedies in Subsection E of this section; and

23 (2) department has neither granted nor
24 denied any portion of a complete claim for refund within one
25 hundred eighty days of the date the claim was mailed or

1 otherwise delivered to the department, the person may elect
2 to treat the claim as denied and elect to pursue one, but not
3 more than one, of the remedies provided in Subsection D of
4 this section.

5 E. A person may elect to pursue no more than one
6 of the remedies in Paragraphs (1) and (2) of this subsection.
7 A person who timely pursues more than one remedy shall be
8 deemed to have elected the first remedy invoked. The person
9 may:

10 (1) direct to the secretary, pursuant to the
11 provisions of Section 7-1-24 NMSA 1978, a written protest
12 that shall set forth:

13 (a) the circumstances of: 1) an
14 alleged overpayment; 2) a denied credit; 3) a denied rebate;
15 or 4) a denial of a prior right to property levied upon by
16 the department;

17 (b) an allegation that, because of that
18 overpayment or denial, the state is indebted to the taxpayer
19 for a specified amount, including any allowed interest, or
20 for the property;

21 (c) demanding the refund to the
22 taxpayer of that amount or that property; and

23 (d) reciting the facts of the claim for
24 refund; or

25 (2) commence a civil action in the district

1 court for Santa Fe county by filing a complaint setting forth
2 the circumstance of the claimed overpayment, denied credit or
3 rebate or denial of a prior right to property levied upon by
4 the department alleging that on account thereof the state is
5 indebted to the plaintiff in the amount or property stated,
6 together with any interest allowable, demanding the refund to
7 the plaintiff of that amount or property and reciting the
8 facts of the claim for refund. The plaintiff or the
9 secretary may appeal from any final decision or order of the
10 district court to the court of appeals.

11 F. Except as otherwise provided in Subsection G of
12 this section, no credit or refund of any amount may be
13 allowed or made to any person unless as the result of a claim
14 made by that person as provided in this section:

15 (1) within three years of the end of the
16 calendar year in which:

17 (a) the payment was originally due or
18 the overpayment resulted from an assessment by the department
19 pursuant to Section 7-1-17 NMSA 1978, whichever is later;

20 (b) the final determination of value
21 occurs with respect to any overpayment that resulted from a
22 disapproval by any agency of the United States or the state
23 of New Mexico or any court of increase in value of a product
24 subject to taxation under the Oil and Gas Severance Tax Act,
25 the Oil and Gas Conservation Tax Act, the Oil and Gas

1 Emergency School Tax Act, the Oil and Gas Ad Valorem

2 Production Tax Act or the Natural Gas Processors Tax Act;

3 (c) property was levied upon pursuant
4 to the provisions of the Tax Administration Act; or

5 (d) an overpayment of New Mexico tax
6 resulted from: 1) an internal revenue service audit
7 adjustment or a federal refund paid due to an adjustment of
8 an audit by the internal revenue service or an amended
9 federal return; or 2) making a change to a federal return for
10 which federal approval is required by the Internal Revenue
11 Code;

12 (2) when an amount of a claim for credit
13 under the provisions of the Investment Credit Act, Laboratory
14 Partnership with Small Business Tax Credit Act or Technology
15 Jobs and Research and Development Tax Credit Act or for the
16 rural job tax credit pursuant to Section 7-2E-1.1 NMSA 1978
17 or similar credit has been denied, the taxpayer may claim a
18 refund of the credit no later than one year after the date of
19 the denial;

20 (3) when a taxpayer under audit by the
21 department has signed a waiver of the limitation on
22 assessments on or after July 1, 1993 pursuant to Subsection F
23 of Section 7-1-18 NMSA 1978, the taxpayer may file a claim
24 for refund of the same tax paid for the same period for which
25 the waiver was given, until a date one year after the later

1 of the date of the mailing of an assessment issued pursuant
2 to the audit, the date of the mailing of final audit findings
3 to the taxpayer or the date a proceeding is begun in court by
4 the department with respect to the same tax and the same
5 period;

6 (4) if the payment of an amount of tax was
7 not made within three years of the end of the calendar year
8 in which the original due date of the tax or date of the
9 assessment of the department occurred, a claim for refund of
10 that amount of tax can be made within one year of the date on
11 which the tax was paid; or

12 (5) when a taxpayer has been assessed a
13 tax on or after July 1, 1993 under Subsection B, C or D of
14 Section 7-1-18 NMSA 1978 and when the assessment applies to a
15 period ending at least three years prior to the beginning of
16 the year in which the assessment was made, the taxpayer may
17 claim a refund for the same tax for the period of the
18 assessment or for any period following that period within one
19 year of the date of the assessment unless a longer period for
20 claiming a refund is provided in this section.

21 G. No credit or refund shall be allowed or made to
22 any person claiming a refund of gasoline tax under Section
23 7-13-11 NMSA 1978 unless notice of the destruction of the
24 gasoline was given to the department within thirty days of
25 the actual destruction and the claim for refund is made

1 within six months of the date of destruction. No credit or
2 refund shall be allowed or made to any person claiming a
3 refund of gasoline tax under Section 7-13-17 NMSA 1978 unless
4 the refund is claimed within six months of the date of
5 purchase of the gasoline and the gasoline has been used at
6 the time the claim for refund is made.

7 H. If as a result of an audit by the department or
8 a managed audit covering multiple periods an overpayment of
9 tax is found in any period under the audit, that overpayment
10 may be credited against an underpayment of the same tax found
11 in another period under audit pursuant to Section 7-1-29 NMSA
12 1978, provided that the taxpayer files a claim for refund for
13 the overpayments identified in the audit.

14 I. Any refund of tax paid under any tax or tax act
15 administered under Subsection B of Section 7-1-2 NMSA 1978
16 may be made, at the discretion of the department, in the form
17 of credit against future tax payments if future tax
18 liabilities in an amount at least equal to the credit amount
19 reasonably may be expected to become due.

20 J. For the purposes of this section, "oil and gas
21 tax return" means a return reporting tax due with respect to
22 oil, natural gas, liquid hydrocarbons, carbon dioxide, helium
23 or nonhydrocarbon gas pursuant to the Oil and Gas Severance
24 Tax Act, the Oil and Gas Conservation Tax Act, the Oil and
25 Gas Emergency School Tax Act, the Oil and Gas Ad Valorem

1 Production Tax Act, the Natural Gas Processors Tax Act or the
2 Oil and Gas Production Equipment Ad Valorem Tax Act.

3 K. The filing of a fully completed original income
4 tax return, corporate income tax return, corporate income and
5 franchise tax return, estate tax return or special fuel
6 excise tax return that shows a balance due the taxpayer or a
7 fully completed amended income tax return, an amended
8 corporate income tax return, an amended corporate income and
9 franchise tax return, an amended estate tax return, an
10 amended special fuel excise tax return or an amended oil and
11 gas tax return that shows a lesser tax liability than the
12 original return constitutes the filing of a claim for refund
13 for the difference in tax due shown on the original and
14 amended returns."

15 SECTION 27. Section 7-1-29 NMSA 1978 (being Laws 1965,
16 Chapter 248, Section 31, as amended) is amended to read:

17 "7-1-29. AUTHORITY TO MAKE REFUNDS OR CREDITS.--

18 A. In response to a claim for refund, credit or
19 rebate made as provided in Section 7-1-26 NMSA 1978, but
20 before a court acquires jurisdiction of the matter, the
21 secretary or the secretary's delegate may authorize payment
22 to a person in the amount of the credit or rebate claimed or
23 refund an overpayment of tax determined by the secretary or
24 the secretary's delegate to have been erroneously made by the
25 person, together with allowable interest. A payment of a

1 credit rebate claimed or a refund of tax and interest
2 erroneously paid amounting to twenty thousand dollars
3 (\$20,000) or more shall be made with the prior approval of
4 the attorney general, except that the secretary or the
5 secretary's delegate may make refunds with respect to the Oil
6 and Gas Severance Tax Act, the Oil and Gas Conservation Tax
7 Act, the Oil and Gas Emergency School Tax Act, the Oil and
8 Gas Ad Valorem Production Tax Act, the Natural Gas Processors
9 Tax Act or the Oil and Gas Production Equipment Ad Valorem
10 Tax Act, Section 7-13-17 NMSA 1978 and the Cigarette Tax Act
11 without the prior approval of the attorney general regardless
12 of the amount.

13 B. Pursuant to the final order of the district
14 court, the court of appeals, the supreme court of New Mexico
15 or a federal court, from which order, appeal or review is not
16 successfully taken, adjudging that a person has properly
17 claimed a credit or rebate or made an overpayment of tax, the
18 secretary shall authorize the payment to the person of the
19 amount thereof.

20 C. In the discretion of the secretary, any amount
21 of credit or rebate to be paid or tax to be refunded may be
22 offset against any amount of tax for which the person due to
23 receive the credit, rebate payment or refund is liable. The
24 secretary or the secretary's delegate shall give notice to
25 the taxpayer that the credit, rebate payment or refund will

1 be made in this manner, and the taxpayer shall be entitled to
2 interest pursuant to Section 7-1-68 NMSA 1978 until the tax
3 liability is credited with the credit, rebate or refund
4 amount.

5 D. In an audit by the department or a managed
6 audit covering multiple reporting periods in which both
7 underpayments and overpayments of a tax have been made in
8 different reporting periods, the department shall credit the
9 tax overpayments against the underpayments, provided that the
10 taxpayer files a claim for refund of the overpayments. An
11 overpayment shall be applied as a credit first to the
12 earliest underpayment and then to succeeding underpayments.
13 An underpayment of tax to which an overpayment is credited
14 pursuant to this section shall be deemed paid in the period
15 in which the overpayment was made or the period to which the
16 overpayment was credited against an underpayment, whichever
17 is later. If the overpayments credited pursuant to this
18 section exceed the underpayments of a tax, the amount of the
19 net overpayment for the periods covered in the audit shall be
20 refunded to the taxpayer.

21 E. When a taxpayer makes a payment identified to a
22 particular return or assessment, and the department
23 determines that the payment exceeds the amount due pursuant
24 to that return or assessment, the secretary may apply the
25 excess to the taxpayer's other liabilities pursuant to the

1 tax acts to which the return or assessment applies, without
2 requiring the taxpayer to file a claim for a refund. The
3 liability to which an overpayment is applied pursuant to this
4 section shall be deemed paid in the period in which the
5 overpayment was made or the period to which the overpayment
6 was applied, whichever is later.

7 F. If the department determines, upon review of an
8 original or amended income tax return, corporate income and
9 franchise tax return, estate tax return, special fuels excise
10 tax return or oil and gas tax return, that there has been an
11 overpayment of tax for the taxable period to which the return
12 or amended return relates in excess of the amount due to be
13 refunded to the taxpayer pursuant to the provisions of
14 Subsection K of Section 7-1-26 NMSA 1978, the department may
15 refund that excess amount to the taxpayer without requiring
16 the taxpayer to file a refund claim.

17 G. Records of refunds and credits made in excess
18 of ten thousand dollars (\$10,000) shall be available for
19 inspection by the public. The department shall keep such
20 records for a minimum of three years from the date of the
21 refund or credit.

22 H. In response to a timely refund claim pursuant
23 to Section 7-1-26 NMSA 1978 and notwithstanding any other
24 provision of the Tax Administration Act, the secretary or the
25 secretary's delegate may refund or credit a portion of an

1 assessment of tax paid, including applicable penalties and
2 interest representing the amount of tax previously paid by
3 another person on behalf of the taxpayer on the same
4 transaction, provided that the requirements of equitable
5 recoupment are met. For purposes of this subsection, the
6 refund claim may be filed by the taxpayer to whom the
7 assessment was issued or by another person who claims to have
8 previously paid the tax on behalf of the taxpayer. Prior to
9 granting the refund or credit, the secretary may require a
10 waiver of all rights to claim a refund or credit of the tax
11 previously paid by another person paying a tax on behalf of
12 the taxpayer."

13 SECTION 28. Section 7-1-61 NMSA 1978 (being Laws 1965,
14 Chapter 248, Section 62, as amended) is amended to read:

15 "7-1-61. DUTY OF SUCCESSOR IN BUSINESS.--

16 A. As used in Sections 7-1-61 through 7-1-63 NMSA
17 1978, "tax" means the amount of tax due, including penalties
18 and interest, imposed by provisions of the taxes or tax acts
19 set forth in Subsections A and B of Section 7-1-2 NMSA 1978,
20 except the Income Tax Act.

21 B. The tangible and intangible property used in
22 any business remains subject to liability for payment of the
23 tax due on account of that business to the extent stated
24 herein, even though the business changes hands.

25 C. If any person liable for any amount of tax from HB 408
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1 operating a business transfers that business to a successor,
2 the successor shall place in a trust account sufficient money
3 from the purchase price or other source to cover such amount
4 of tax until the secretary or secretary's delegate issues a
5 certificate stating that no amount is due, or the successor
6 shall pay over the amount due to the department upon proper
7 demand for, or assessment of, that amount due by the
8 secretary."

9 SECTION 29. Section 7-1-68 NMSA 1978 (being Laws 1965,
10 Chapter 248, Section 69, as amended) is amended to read:

11 "7-1-68. INTEREST ON OVERPAYMENTS.--

12 A. As provided in this section, interest shall be
13 allowed and paid on the amount of tax overpaid by a person
14 that is subsequently refunded or credited to that person.

15 B. Interest on overpayments of tax shall accrue
16 and be paid at the underpayment rate established pursuant to
17 Section 6621 of the Internal Revenue Code, computed on a
18 daily basis; provided that if a different rate is specified
19 by a compact or other interstate agreement to which New
20 Mexico is a party, that rate shall apply to amounts due under
21 the compact or other agreement.

22 C. Unless otherwise provided by this section,
23 interest on an overpayment not arising from an assessment by
24 the department shall be paid from the date of the claim for
25 refund until a date preceding by not more than thirty days

1 the date of the credit or refund to any person; and interest
2 on an overpayment arising from an assessment by the
3 department shall be paid from the date of overpayment until a
4 date preceding by not more than thirty days the date of the
5 credit or refund to any person.

6 D. No interest shall be allowed or paid with
7 respect to an amount credited or refunded if:

8 (1) the amount of interest due is less than
9 one dollar (\$1.00);

10 (2) the credit or refund is made within:

11 (a) fifty-five days of the date of the
12 complete claim for refund of income tax, pursuant to either
13 the Income Tax Act or the Corporate Income and Franchise Tax
14 Act for the tax year immediately preceding the tax year in
15 which the claim is made;

16 (b) sixty days of the date of the
17 complete claim for refund of any tax not provided for in this
18 paragraph;

19 (c) seventy-five days of the date of
20 the complete claim for refund of gasoline tax to users of
21 gasoline off the highways;

22 (d) one hundred twenty days of the date
23 of the complete claim for refund of tax imposed pursuant to
24 the Resources Excise Tax Act, the Severance Tax Act, the Oil
25 and Gas Severance Tax Act, the Oil and Gas Conservation Tax

1 Act, the Oil and Gas Emergency School Tax Act, the Oil and
2 Gas Ad Valorem Production Tax Act, the Natural Gas Processors
3 Tax Act or the Oil and Gas Production Equipment Ad Valorem
4 Tax Act; or

5 (e) one hundred twenty days of the date
6 of the complete claim for refund of income tax, pursuant to
7 the Income Tax Act or the Corporate Income and Franchise Tax
8 Act, for any tax year more than one year prior to the year in
9 which the claim is made;

10 (3) Sections 6611(f) and 6611(g) of the
11 Internal Revenue Code, as those sections may be amended or
12 renumbered, prohibit payment of interest for federal income
13 tax purposes;

14 (4) the credit results from overpayments
15 found in an audit of multiple reporting periods and applied
16 to underpayments found in that audit or refunded as a net
17 overpayment to the taxpayer pursuant to Section 7-1-29 NMSA
18 1978;

19 (5) the department applies the credit or
20 refund to an intercept program, to the taxpayer's estimated
21 payment prior to the due date for the estimated payment or to
22 offset prior liabilities of the taxpayer pursuant to
23 Subsection E of Section 7-1-29 NMSA 1978;

24 (6) the credit or refund results from
25 overpayments the department finds pursuant to Subsection F of

1 Section 7-1-29 NMSA 1978 that exceed the refund claimed by
2 the taxpayer on the return; or

3 (7) the refund results from a tax credit
4 pursuant to the Investment Credit Act, Laboratory Partnership
5 with Small Business Tax Credit Act, Technology Jobs and
6 Research and Development Tax Credit Act, Film Production Tax
7 Credit Act, Affordable Housing Tax Credit Act or a rural job
8 tax credit or high-wage jobs tax credit.

9 E. Nothing in this section shall be construed to
10 require the payment of interest upon interest."

11 **SECTION 30.** Section 7-1-76 NMSA 1978 (being Laws 1965,
12 Chapter 248, Section 76, as amended) is amended to read:

13 "7-1-76. REVEALING INFORMATION CONCERNING TAXPAYERS.--A
14 person who reveals to another person any return or return
15 information that is prohibited from being revealed pursuant
16 to Section 7-1-8 NMSA 1978 or who uses a return or return
17 information for any purpose that is not authorized by
18 Sections 7-1-8 through 7-1-8.11 NMSA 1978 is guilty of a
19 misdemeanor and shall, upon conviction thereof, be fined not
20 more than one thousand dollars (\$1,000) or imprisoned up to
21 one year, or both, together with costs of prosecution, and
22 shall not be employed by the state for a period of five years
23 after the date of the conviction."

24 **SECTION 31. REPEAL.--**Laws 2009, Chapter 241, Section 1
25 and Laws 2009, Chapter 242, Section 2 are repealed. _____