

SENATE BILL 146

56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023

INTRODUCED BY

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This document may incorporate amendments proposed by a committee, but not yet adopted, as well as amendments that have been adopted during the current legislative session. The document is a tool to show amendments in context and cannot be used for the purpose of adding amendments to legislation.

AN ACT

RELATING TO TAXATION; AMENDING THE AMOUNT OF TAX LIABILITY
REQUIRING ASSESSMENT BY THE SECRETARY OF TAXATION AND REVENUE
OR ALLOWED TO BE DISPUTED BY A TAXPAYER; AMENDING PROVISIONS
FOR SUBMITTING AN APPLICATION FOR A TAX CREDIT; PROVIDING THAT
EVADING OR DEFEATING A TAX WITH SALES SUPPRESSION SOFTWARE
CONSTITUTES TAX FRAUD; CLARIFYING PROCESSES FOR PROTESTING THE
VALUE OR CLASSIFICATION OF PROPERTY BY A COUNTY ASSESSOR AND
THE STATE AND APPEALS OF ORDERS BY A COUNTY VALUATION PROTESTS

.223113.3SAAIC February 17, 2023 (5:44pm)

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BOARD.

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

SECTION 1. Section 7-1-17 NMSA 1978 (being Laws 1965, Chapter 248, Section 20, as amended) is amended to read:

"7-1-17. ASSESSMENT OF TAX--PRESUMPTION OF CORRECTNESS.--

A. If the secretary or the secretary's delegate determines that a taxpayer is liable for taxes in excess of ~~[twenty-five dollars (\$25.00)]~~ fifty dollars (\$50.00) that are due and that have not been previously assessed to the taxpayer, the secretary or the secretary's delegate shall promptly assess the amount thereof to the taxpayer.

B. Assessments of tax are effective:

(1) when a return of a taxpayer is received by the department showing a liability for taxes;

(2) when a document denominated "notice of assessment of taxes", issued in the name of the secretary, is mailed or delivered in person to the taxpayer against whom the liability for tax is asserted, stating the nature and amount of the taxes assertedly owed by the taxpayer to the state, demanding of the taxpayer the immediate payment of the taxes and briefly informing the taxpayer of the remedies available to the taxpayer; or

(3) when an effective jeopardy assessment is made as provided in the Tax Administration Act.

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C. Any assessment of taxes or demand for payment made by the department is presumed to be correct.

D. When taxes have been assessed to any taxpayer and remain unpaid, the secretary or the secretary's delegate may demand payment at any time except as provided otherwise by Section 7-1-19 NMSA 1978."

SECTION 2. Section 7-1-24 NMSA 1978 (being Laws 1965, Chapter 248, Section 26, as amended) is amended to read:

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

A. A taxpayer may dispute:

(1) the assessment to the taxpayer of any amount of tax over fifty dollars (\$50.00);

(2) the application to the taxpayer of any provision of the Tax Administration Act except the issuance of a subpoena or summons; or

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

(a) credit or rebate; or

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

B. The taxpayer may dispute a matter described in Subsection A of this section by filing with the secretary a written protest that:

(1) identifies the taxpayer and the tax credit, rebate, property or provision of the Tax Administration

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Act involved;

(2) states the grounds on which the protest is based and summarizes evidence supporting each ground asserted; and

(3) states the affirmative relief requested.

C. A taxpayer may amend a statement made by the taxpayer in accordance with Paragraphs (2) and (3) of Subsection B of this section at any time prior to ten days before the hearing conducted on the protest in accordance with the Administrative Hearings Office Act or, if a scheduling order has been issued, in accordance with the scheduling order. The secretary may, in appropriate cases, provide for an informal conference before a hearing of the protest is set by the administrative hearings office or before acting on a claim for refund.

D. A taxpayer may file a protest, in the case of an assessment of tax by the department, without making payment of the amount assessed; provided that, if only a portion of the assessment is in dispute, any unprotested amounts of tax, interest or penalty shall be paid, or, if applicable, an installment agreement pursuant to Section 7-1-21 NMSA 1978 shall be entered into for the unprotested amounts, on or before the due date for the protest.

E. A protest by a taxpayer shall be filed within ninety days after:

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(1) the date of the mailing to the taxpayer by the department of the notice of assessment and demand for payment as provided in Subsection A or D of Section 7-1-17 NMSA 1978;

(2) the mailing of the other peremptory notice or demand;

(3) the date of the application to the taxpayer of the applicable provision of the Tax Administration Act; or

(4) the date of denial of a claim pursuant to Section 7-1-26 NMSA 1978 or the last date upon which the department was required to take action on the claim but failed to take action.

F. If a taxpayer fails to timely protest an assessment of tax, penalty or interest:

(1) the undisputed amount of tax assessed and not protested becomes final;

(2) the taxpayer is deemed to have waived the right to protest the assessment, unless the taxpayer pays the tax and claims a refund of the tax pursuant to Section 7-1-26 NMSA 1978; and

(3) the secretary may proceed to enforce collection of the tax if the taxpayer is delinquent as defined by Section 7-1-16 NMSA 1978.

G. The fact that the department did not mail the

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assessment or other peremptory notice or demand by certified or registered mail or otherwise demand and receive acknowledgment of receipt by the taxpayer shall not be deemed to demonstrate the taxpayer's inability to protest within the required time.

H. A proceeding other than one to enforce collection of an amount assessed as tax and to protect the interest of the state by injunction, as provided by Sections 7-1-31, 7-1-33, 7-1-34, 7-1-40, 7-1-53, 7-1-56 and 7-1-58 NMSA 1978, is not stayed by timely filing of a protest in accordance with this section.

I. Nothing in this section shall be construed to authorize a criminal proceeding or to authorize an administrative protest of the issuance of a subpoena or summons."

SECTION 3. Section 7-1-29.2 NMSA 1978 (being Laws 2003, Chapter 398, Section 10) is amended to read:

"7-1-29.2. CREDIT CLAIMS.--[Any]

A. A taxpayer who [~~requests approval of~~] submits a complete application for a [~~statutory~~] tax credit is deemed to have received [~~such~~] approval of the application if the [~~request~~] application has not been granted or denied within one hundred [~~eighty~~] twenty days of the date it was filed. Nothing in this section shall be construed to prevent the department from auditing taxes paid or from assessing taxes owed, including any tax resulting from tax credits found not to be

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valid.

B. A taxpayer who believes that the taxpayer is eligible to receive a tax credit may apply for approval of the credit by directing to the secretary a complete application on the form and in the manner prescribed by the department.

C. An application for a tax credit that has all fields completed, includes all attachments required by the application instructions and is submitted in accordance with the application instructions is deemed to be properly before the department for consideration, regardless of whether the department requests additional documentation after receipt of the application for credit.

D. If the department requests additional relevant documentation from a taxpayer who has submitted an incomplete application for a tax credit, the application shall be considered complete on the date that the taxpayer mails or delivers sufficient information for the department to consider the application.

E. The secretary or the secretary's delegate may approve or deny an application for a tax credit in whole or in part. An approval or denial by the secretary or the secretary's delegate shall be in writing. If the application is denied in whole or in part, the taxpayer shall not refile the denied application, but the taxpayer, within one hundred twenty days after the mailing or delivery of the denial of all

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or any part of the application, may elect to pursue only one of the remedies provided in this subsection. A taxpayer who timely pursues more than one remedy is deemed to have elected the first remedy requested. The taxpayer may:

(1) direct to the secretary, pursuant to the provisions of Section 7-1-24 NMSA 1978, a written protest that sets forth:

(a) the circumstances of the denied application for a tax credit;

(b) an allegation that, because of the denial, the state is indebted to the taxpayer for a specified amount, including any allowed interest;

(c) a demand for the approval of the application for the tax credit of the specified amount; and

(d) a recitation of the facts supporting the application for the tax credit; or

(2) commence a civil action in the district court for Santa Fe county by filing a complaint setting forth the circumstance of the denied application for the tax credit; alleging that on account of the denial, the state is indebted to the taxpayer for a specified amount, together with any interest allowable; demanding approval of the application for the tax credit of that amount; and reciting the facts of the application for the tax credit. The taxpayer or the secretary may appeal from any final decision or order of the district

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court to the court of appeals."

SECTION 4. Section 7-1-73 NMSA 1978 (being Laws 1965, Chapter 248, Section 74, as amended) is amended to read:

"7-1-73. TAX FRAUD.--

A. A person is guilty of tax fraud if the person:

(1) willfully makes and subscribes any return, statement or other document that contains or is verified by a written declaration that it is true and correct as to every material matter and that the person does not believe it to be true and correct as to every material matter;

(2) willfully assists in, willfully procures, willfully advises or willfully provides counsel regarding the preparation or presentation of a return, affidavit, claim or other document pursuant to or in connection with any matter arising under the Tax Administration Act or a tax administered by the department, knowing that it is fraudulent or knowing that it is false as to a material matter, whether or not that fraud or falsity is with knowledge or consent of:

(a) the taxpayer or other person liable for taxes owed on the return; or

(b) a person who signs a document stating that the return, affidavit, claim or other document is true, correct and complete to the best of that person's knowledge;

(3) files any return electronically, knowing

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the information in the return is not true and correct as to every material matter; [ø]

(4) with intent to evade or defeat the payment or collection of any tax, or, knowing that the probable consequences of the person's act will be to evade or defeat the payment or collection of any tax, removes, conceals or releases any property on which levy is authorized or that is liable for payment of tax under the provisions of Section 7-1-61 NMSA 1978, or aids in accomplishing or causes the accomplishment of any of the foregoing;

(5) with intent to evade or defeat the payment or collection of any tax, or, knowing that the probable consequences of the person's act will be to evade or defeat the payment or collection of any tax, purchases, installs or uses any sales suppression software; or

(6) with the intent to evade or defeat the payment or collection of any tax, or, knowing that the probable consequences of the person's act will be to evade or defeat the payment or collection of any tax, sells, licenses, purchases, installs, transfers, sells as a service, manufactures, develops or possesses any sales suppression software with the purpose to defeat or evade the payment or collection of any tax.

B. Whoever commits tax fraud when the amount of the tax owed is two hundred fifty dollars (\$250) or less is guilty of a petty misdemeanor and shall be sentenced pursuant to the

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provisions of Section 31-19-1 NMSA 1978.

C. Whoever commits tax fraud when the amount of the tax owed is over two hundred fifty dollars (\$250) but not more than five hundred dollars (\$500) is guilty of a misdemeanor and shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

D. Whoever commits tax fraud when the amount of the tax owed is over five hundred dollars (\$500) but not more than two thousand five hundred dollars (\$2,500) is guilty of a fourth degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

E. Whoever commits tax fraud when the amount of the tax owed is over two thousand five hundred dollars (\$2,500) but not more than twenty thousand dollars (\$20,000) is guilty of a third degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

F. Whoever commits tax fraud when the amount of the tax owed is over twenty thousand dollars (\$20,000) is guilty of a second degree felony and shall be sentenced pursuant to the provisions of Section 31-18-15 NMSA 1978.

G. In addition to the fines imposed pursuant to this section, a person who commits tax fraud shall pay the costs of the prosecution of the person's case.

H. As used in this section:

(1) "sales suppression software" means hidden

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or concealed computer software, also known as phantomware, for a point-of-sale system that can create a second set of records or eliminate or manipulate transaction records that may or may not be preserved in digital formats in order to misrepresent the existence or the true record of a transaction in the point-of-sale system. "Sales suppression software" includes an electronic device that carries or contains sales suppression software;

[~~(1)~~] (2) "tax" does not include civil penalties or interest; and

[~~(2)~~] (3) "willfully" means intentionally, deliberately or purposely, but not necessarily maliciously."

SECTION 5. Section 7-38-21 NMSA 1978 (being Laws 1973, Chapter 258, Section 61, as amended) is amended to read:

"7-38-21. PROTESTS--COUNTY-ASSESSED PROPERTY--ELECTION OF REMEDIES.--

A. A property owner may protest the value or classification determined by the county assessor for the property owner's property for property taxation purposes, the allocation of value of the property to a particular governmental unit or a denial of a claim for an exemption or for a limitation on increase in value either by:

(1) filing a petition with the county assessor as provided in the Property Tax Code [~~a petition of protest with:~~

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~~(a) the administrative hearings office;~~
or
~~(b) the county assessor];~~ or
(2) filing a claim for refund after paying the property owner's taxes as provided in the Property Tax Code.

B. The initiation of a protest under Paragraph (1) of Subsection A of this section is an election to pursue that remedy and is an unconditional and irrevocable waiver of the right to pursue the remedy provided in Paragraph (2) of Subsection A of this section.

C. A property owner may also protest the application to the property owner's property of any administrative fee adopted pursuant to Section 7-38-36.1 NMSA 1978 by filing a claim for refund after paying the property owner's taxes as provided in the Property Tax Code."

SECTION 6. A new Section 7-38-21.1 NMSA 1978 is enacted to read:

"7-38-21.1. [NEW MATERIAL] PROTESTS--STATE-ASSESSED PROPERTY--ELECTION OF REMEDIES.--

A. A property owner may protest the value or classification determined by the department for the property owner's property for property taxation purposes, the allocation of value of the property to a particular governmental unit or a denial of a claim for an exemption by:

(1) filing a petition of protest with the

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administrative hearings office, as provided in the Property Tax Code; or

(2) filing a claim for refund with a district court after paying the property owner's taxes as provided in the Property Tax Code.

B. The initiation of a protest under Paragraph (1) of Subsection A of this section is an election to pursue that remedy and is an unconditional and irrevocable waiver of the right to pursue the alternative remedy provided in Paragraph (2) of Subsection A of this section."

SECTION 7. Section 7-38-22 NMSA 1978 (being Laws 1973, Chapter 258, Section 62, as amended) is amended to read:

"7-38-22. PROTESTING VALUES, CLASSIFICATION, ALLOCATION OF VALUES AND DENIAL OF EXEMPTION DETERMINED BY THE ~~[DIVISION]~~ DEPARTMENT.--

A. A property owner may protest the value or classification determined by the ~~[division]~~ department for the property owner's property for property taxation purposes or the ~~[division's]~~ department's allocation of value of the property owner's property to a particular governmental unit or the denial of a claim for an exemption by filing a petition with the administrative hearings office. Filing a petition in accordance with this section entitles a property owner to a hearing on the property owner's protest.

B. Petitions shall:

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(1) be filed no later than thirty days after:
(a) the mailing by the [division]
department of the notice of valuation; or
(b) the mailing of a property tax bill
on omitted property pursuant to Section 7-38-76 NMSA 1978;

(2) state the property owner's name and address and the description of the property;

(3) state why the property owner believes the value, classification, allocation of value or denial of an exemption is incorrect and what the property owner believes the correct value, classification, allocation of value or exemption to be;

(4) state the value, classification, allocation of value or exemption that is not in controversy; and

(5) contain such other information as the administrative hearings office may by rule require.

C. The administrative hearings office shall notify the [~~director~~] secretary and the property owner by certified mail of the date, time and place that the parties may appear before the administrative hearings office to present evidence related to the petition STBTC→; provided that the parties may request, consent or agree to an alternative service method for the notice of hearing←STBTC . The notice shall be STBTC→mailed←STBTC STBTC→sent←STBTC at least fifteen days

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prior to the hearing date.

D. The [~~director~~] secretary may provide for an informal conference on the protest before the hearing."

SECTION 8. Section 7-38-28 NMSA 1978 (being Laws 1973, Chapter 258, Section 68, as amended) is amended to read:

"7-38-28. APPEALS FROM ORDERS OF THE [~~HEARING OFFICER OR~~] COUNTY VALUATION PROTESTS BOARDS.--[A.] A property owner may appeal an order made by [~~a hearing officer or~~] a county valuation protests board by filing an appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

[~~B. The director shall notify the appropriate county assessor of the decision and order of the district court and shall direct the assessor to take appropriate action to comply with the decision and order.~~]"

SECTION 9. A new section of Chapter 7, Article 38 NMSA 1978 is enacted to read:

"[NEW MATERIAL] APPEALS FROM DECISIONS AND ORDERS OF THE HEARING OFFICER STBTC→**OF THE ADMINISTRATIVE HEARINGS OFFICE**←STBTC .--

A. A property owner or the secretary may appeal a decision and order of a hearing officer STBTC→**of the administrative hearings office**←STBTC to the court of appeals for further relief, but only to the same extent and on the same theory as was asserted in the hearing before the hearing officer. All such appeals shall be on the record made at the

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hearing and shall not be de novo. All such appeals shall be taken within thirty days of the date of mailing or delivery of the written decision and order of the hearing officer to the property owner, and, if not so taken, the decision and order are conclusive.

B. The procedure for perfecting an appeal pursuant to this section shall be as provided by the Rules of Appellate Procedure.

C. On appeal, the court shall set aside a decision and order of the hearing officer only if the decision and order is found to be:

- (1) arbitrary, capricious or an abuse of discretion;
- (2) not supported by substantial evidence in the record; or
- (3) otherwise not in accordance with the law.

D. If the secretary appeals a decision and order of the hearing officer and the court's decision, from which either no appeal is taken or no appeal may be taken, upholds the decision of the hearing officer, the court shall award reasonable attorney fees to the property owner. If the court's decision upholds the hearing officer's decision only in part, the award shall be limited to reasonable attorney fees associated with the portion upheld.

E. The secretary shall notify the appropriate

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county assessor of any decision and order or appellate court opinion and shall direct the assessor to take appropriate action to comply with the decision and order."

SECTION 10. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2023.

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