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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 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
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;

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

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

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

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

17 SECTION 2. 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 over fifty dollars (\$50.00);

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 that:

10 (1) identifies the taxpayer and the
11 tax credit, rebate, property or provision of the
12 Tax Administration Act involved;

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

16 (3) states the affirmative relief requested.

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

1 before acting on a claim for refund.

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

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

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

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

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

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

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

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

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

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

12 G. The fact that the department did not mail the
13 assessment or other peremptory notice or demand by certified
14 or registered mail or otherwise demand and receive
15 acknowledgment of receipt by the taxpayer shall not be deemed
16 to demonstrate the taxpayer's inability to protest within the
17 required time.

18 H. A proceeding other than one to enforce
19 collection of an amount assessed as tax and to protect the
20 interest of the state by injunction, as provided by
21 Sections 7-1-31, 7-1-33, 7-1-34, 7-1-40, 7-1-53, 7-1-56 and
22 7-1-58 NMSA 1978, is not stayed by timely filing of a protest
23 in accordance with this section.

24 I. Nothing in this section shall be construed to
25 authorize a criminal proceeding or to authorize an

1 administrative protest of the issuance of a subpoena or
2 summons."

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

5 "7-1-29.2. CREDIT CLAIMS.--

6 A. A taxpayer who submits a complete application
7 for a tax credit is deemed to have received approval of the
8 application if the application has not been granted or denied
9 within one hundred twenty days of the date it was filed.

10 Nothing in this section shall be construed to prevent the
11 department from auditing taxes paid or from assessing taxes
12 owed, including any tax resulting from tax credits found not
13 to be valid.

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

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

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

7 E. The secretary or the secretary's delegate may
8 approve or deny an application for a tax credit in whole or
9 in part. An approval or denial by the secretary or the
10 secretary's delegate shall be in writing. If the application
11 is denied in whole or in part, the taxpayer shall not refile
12 the denied application, but the taxpayer, within
13 one hundred twenty days after the mailing or delivery of the
14 denial of all or any part of the application, may elect to
15 pursue only one of the remedies provided in this subsection.
16 A taxpayer who timely pursues more than one remedy is deemed
17 to have elected the first remedy requested. The taxpayer
18 may:

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

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

24 (b) an allegation that, because of the
25 denial, the state is indebted to the taxpayer for a specified

1 amount, including any allowed interest;

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

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

6 (2) commence a civil action in the
7 district court for Santa Fe county by filing a complaint
8 setting forth the circumstance of the denied application for
9 the tax credit; alleging that on account of the denial, the
10 state is indebted to the taxpayer for a specified amount,
11 together with any interest allowable; demanding approval of
12 the application for the tax credit of that amount; and
13 reciting the facts of the application for the tax credit.

14 The taxpayer or the secretary may appeal from any final
15 decision or order of the district court to the
16 court of appeals."

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

19 "7-1-73. TAX FRAUD.--

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

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

1 matter;

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

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

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

17 (3) files any return electronically, knowing
18 the information in the return is not true and correct as to
19 every material matter;

20 (4) with intent to evade or defeat the
21 payment or collection of any tax, or, knowing that the
22 probable consequences of the person's act will be to evade or
23 defeat the payment or collection of any tax, removes,
24 conceals or releases any property on which levy is authorized
25 or that is liable for payment of tax under the provisions of

1 Section 7-1-61 NMSA 1978, or aids in accomplishing or causes
2 the accomplishment of any of the foregoing;

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

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

16 B. Whoever commits tax fraud when the amount of
17 the tax owed is two hundred fifty dollars (\$250) or less is
18 guilty of a petty misdemeanor and shall be sentenced pursuant
19 to the provisions of Section 31-19-1 NMSA 1978.

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

25 D. Whoever commits tax fraud when the amount of

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

5 E. Whoever commits tax fraud when the amount of
6 the tax owed is over two thousand five hundred dollars
7 (\$2,500) but not more than twenty thousand dollars (\$20,000)
8 is guilty of a third degree felony and shall be sentenced
9 pursuant to the provisions of Section 31-18-15 NMSA 1978.

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

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

17 H. As used in this section:

18 (1) "sales suppression software" means
19 hidden or concealed computer software, also known as
20 phantomware, for a point-of-sale system that can create a
21 second set of records or eliminate or manipulate transaction
22 records that may or may not be preserved in digital formats
23 in order to misrepresent the existence or the true record
24 of a transaction in the point-of-sale system.

25 "Sales suppression software" includes an electronic device

1 that carries or contains sales suppression software;

2 (2) "tax" does not include civil penalties
3 or interest; and

4 (3) "willfully" means intentionally,
5 deliberately or purposely, but not necessarily maliciously."

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

8 "7-38-21. PROTESTS--COUNTY-ASSESSED PROPERTY--ELECTION
9 OF REMEDIES.--

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

16 (1) filing a petition with the county
17 assessor as provided in the Property Tax Code; or

18 (2) filing a claim for refund after
19 paying the property owner's taxes as provided in the
20 Property Tax Code.

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

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

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

8 "7-38-21.1. PROTESTS--STATE-ASSESSED PROPERTY--ELECTION
9 OF REMEDIES.--

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

15 (1) filing a petition of protest with
16 the administrative hearings office, as provided in the
17 Property Tax Code; or

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

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

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

3 "7-38-22. PROTESTING VALUES, CLASSIFICATION, ALLOCATION
4 OF VALUES AND DENIAL OF EXEMPTION DETERMINED BY THE
5 DEPARTMENT.--

6 A. A property owner may protest the value or
7 classification determined by the department for the property
8 owner's property for property taxation purposes or the
9 department's allocation of value of the property owner's
10 property to a particular governmental unit or the denial of a
11 claim for an exemption by filing a petition with the
12 administrative hearings office. Filing a petition in
13 accordance with this section entitles a property owner to a
14 hearing on the property owner's protest.

15 B. Petitions shall:

16 (1) be filed no later than thirty days
17 after:

18 (a) the mailing by the department of
19 the notice of valuation; or

20 (b) the mailing of a property tax bill
21 on omitted property pursuant to Section 7-38-76 NMSA 1978;

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

24 (3) state why the property owner believes
25 the value, classification, allocation of value or denial of

1 an exemption is incorrect and what the property owner
2 believes the correct value, classification, allocation of
3 value or exemption to be;

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

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

9 C. The administrative hearings office shall notify
10 the secretary and the property owner by certified mail of the
11 date, time and place that the parties may appear before the
12 administrative hearings office to present evidence related to
13 the petition; provided that the parties may request, consent
14 or agree to an alternative service method for the notice of
15 hearing. The notice shall be sent at least fifteen days
16 prior to the hearing date.

17 D. The secretary may provide for an informal
18 conference on the protest before the hearing."

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

21 "7-38-28. APPEALS FROM ORDERS OF THE COUNTY VALUATION
22 PROTESTS BOARDS.--A property owner may appeal an order made
23 by a county valuation protests board by filing an appeal
24 pursuant to the provisions of Section 39-3-1.1 NMSA 1978."

25 SECTION 9. A new section of Chapter 7, Article 38

1 NMSA 1978 is enacted to read:

2 "APPEALS FROM DECISIONS AND ORDERS OF THE HEARING
3 OFFICER OF THE ADMINISTRATIVE HEARINGS OFFICE.--

4 A. A property owner or the secretary may appeal a
5 decision and order of a hearing officer of the administrative
6 hearings office to the court of appeals for further relief,
7 but only to the same extent and on the same theory as was
8 asserted in the hearing before the hearing officer. All such
9 appeals shall be on the record made at the hearing and shall
10 not be de novo. All such appeals shall be taken within
11 thirty days of the date of mailing or delivery of the written
12 decision and order of the hearing officer to the property
13 owner, and, if not so taken, the decision and order are
14 conclusive.

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

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

21 (1) arbitrary, capricious or an abuse of
22 discretion;

23 (2) not supported by substantial evidence in
24 the record; or

25 (3) otherwise not in accordance with the

1 law.

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

10 E. The secretary shall notify the appropriate
11 county assessor of any decision and order or appellate court
12 opinion and shall direct the assessor to take appropriate
13 action to comply with the decision and order."

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

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