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# FYI-405

New Mexico  
Taxation and Revenue Department

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## FOR YOUR INFORMATION

Tax Information/Policy Office ♦ P.O. Box 630 ♦ Santa Fe, New Mexico 87504-0630

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### TAXPAYER BILL OF RIGHTS Your Rights as a Taxpayer

As a New Mexico taxpayer you enjoy a wide-ranging Taxpayer Bill of Rights. The Bill covers everything from guarantees of privacy and confidentiality to a careful protest-and-remedy procedure when you and the Taxation and Revenue Department disagree. The law preserves these rights in the Tax Administration Act under a section of the tax code enacted in 2003, Section 7-1-4.2 NMSA 1978. Its purpose is to:

- Ensure that the rights of New Mexico taxpayers are adequately safeguarded and protected during the assessment, collection and enforcement of any tax administered by the Department pursuant to the Tax Administration Act;
- Ensure that the taxpayer is treated with dignity and respect, and
- Provide brief but comprehensive statements that explain in simple, non-technical terms the rights of taxpayers as set forth in the statute.

The Secretary of Taxation and Revenue also adopts rules and regulations that protect you. This publication supplies a brief summary of those rights and outlines the steps to take when you and the Department differ.

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## ELIMINATING PROBLEMS AT THE OUTSET

The Taxation and Revenue Department is the state agency accountable for compliance with revenue laws. These laws help New Mexico to collect the money that pays for services for you, your fellow citizens and visitors to the state. When there is a problem, it is to your advantage and ours to solve it before it grows too large. Good communication from the beginning avoids a number of problems.

As always, you have the right to information and timely, polite, correct responses to questions and requests for tax assistance. Information on how to reach the right offices to answer your questions is on the TRD web site at [www.tax.state.nm.us](http://www.tax.state.nm.us) (click on "phone list"). It is also on the tax forms or publications you receive in the mail or at your local New Mexico tax office. Telephone numbers for Taxation and Revenue Department district offices around the state are on page 6 of this booklet. We answer telephones Mondays through Fridays from 8 a.m. to 5 p.m. Mountain Time. If we don't know the answer, we will find it for you or direct you to someone who can help with your individual account. Confidentiality laws prevent our discussing an account with anyone but the taxpayer or the taxpayer's authorized representative.

The Department offers free workshops on gross receipts, compensating and withholding taxes in each local tax office. You can find the schedule by going to our web site at [www.tax.state.nm.us](http://www.tax.state.nm.us). Click on "public events." Free publications are available on the web site (Go to the web address and click on "publications") or through your local tax office.

## YOUR RIGHTS

Most tax transactions occur without problems. Sometimes, though, troubles arise through misunderstanding, mathematical error, missed deadlines, lost papers, high volume of transactions, and many other situations. Changes in the law may make earlier information outdated. Over the years the Legislature and the Department have created ways to handle difficulties according to the state tax code. Following are some of your rights. Their statutory source is Section 7-9-4.2 NMSA 1978 if you wish to consult the law itself.

- The right to available public information and prompt, courteous tax assistance;
- The right to representation by counsel or other qualified representative at any time during your contacts with us according to Section 7-1-24 NMSA 1978;
- The right to have audits, inspections of records and meetings take place at a reasonable time and place (Section 7-1-11 NMSA 1978);
- The right to simple, non-technical information explaining procedures, remedies and rights during audit, protest and collection proceedings under the Tax Administration Act;
- The right to an explanation of audit results and the basis for audits, assessments or denials of refund that identify tax, interest or penalty due;
- The right to seek review, through formal or informal proceedings, of findings or unfavorable decisions that occur during audit or protest procedures (Section 7-1-24 NMSA 1978);
- The right for your tax information to remain confidential unless otherwise specified by law in Sections 7-1-8.1 through 7-1-8.10 NMSA 1978;
- The right to abatement (forgiveness) of an assessment of taxes that has been incorrectly, erroneously or illegally made (Section 7-1-28 NMSA 1978) and a right to seek a compromise of a stated tax liability. When the Secretary of Taxation and Revenue in good faith doubts that you owe us the amount we claim, you have the right to seek compromise if a way exists in your particular case according to Section 7-1-20 NMSA 1978;
- The right to clear information about penalties if a tax assessment is not paid,

secured, protested or otherwise provided for according to Section 7-1-16 NMSA 1978. If you become a delinquent taxpayer, upon notice of delinquency you have the right to timely notice of collection actions that require sale or seizure of your property under the Tax Administration Act, and

- The right to ask to pay your tax obligations by installment agreements according to Section 7-1-21 NMSA 1978.

## **CONFIDENTIALITY PROVISIONS**

Statutes protecting the privacy of your taxes are strict. Section 7-1-8.2 NMSA 1978 limits the Department to answering only whether a taxpayer is registered to do business in New Mexico or is registered for other tax programs. It does not allow employees to say whether you have filed a return. Employees may discuss your account only with you or your authorized representative.

A hearing officer's written ruling on questions of evidence or procedure according to Sections 7-1-24 and 7-1-4.2 NSMA 1978 are in the public domain. The name and identification number of the taxpayer requesting the ruling are not public record.

Public record has grown to include monthly gasoline tax reports of numbers of gallons of gasoline and ethanol-blended fuels received and deducted, and the tax each filer or taxpayer pays. Identities of rack operators, importers, blenders, suppliers or distributors and the number of gallons of gasoline and other fuels are public record.

The Department also may reveal tax returns of license applicants and their affiliates to the Gaming Control Board.

## **AUDIT PROVISIONS**

When the Department carries out audits on behalf of the state to ensure fair and impartial tax collection, it takes a number of steps to clarify differences. These steps protect both you and the state when there is a difference of opinion on what, if anything, you owe. You can learn the details of the audit procedure by calling (505) 827-0900.

The Department also offers managed audits for persons who have not yet reported or paid taxes they owe under the Tax Administration Act. *Managed audits, supervised by TRD personnel, are not for persons who already have received assessments.* When the managed audit is complete, the taxpayer must pay the tax assessment within 180 days. No penalty or interest applies to an assessment arising from a managed audit. See FYI-404, *Managed Audits for Taxpayers*, on the "managed audit" button on our web site at [www.tax.state.nm.us](http://www.tax.state.nm.us) or call (505) 841-6216.

## **PROTEST PROCEDURES**

If you and the Department cannot settle differences at the audit level, the law offers ways for you to protest your assessment. Steps begin with informal meetings. They continue, if needed, with a hearing before a Department hearing officer. If you wish, you can go to district court when a hearing officer's decision and order are not in your favor. If you are successful in an administrative or court proceeding brought by you or against you under the Tax Administration Act, you may claim reasonable administrative costs connected to the action. To learn more about the protest procedure, please call (505) 827-0916.

## **CREDIT CLAIMS AND REFUNDS**

Your claim for credit may be late in reaching you by mail, direct deposit or other means. There are many reasons for this besides misdirected mail. Certain state agencies, by law, may direct your tax refund to satisfy some of your prior liabilities that they oversee. It is also possible that the law has applied your refund as payment for past-due taxes or fees. The Secretary of Taxation and Revenue decides whether to apply an expected refund to another overdue tax amount. You will receive notice from us if this is the case.

Recent legislation allows the Department to refund overpaid taxes to you directly without your having to file a claim for refund first.

If the Department receives a claim for credit, it has 180 days from the date you file the claim to approve or deny a statutory tax credit. If it does not act, the credit is approved.

Please note that the Department does not pay interest on credits or refunds if your refund goes to a tax-interception program or an estimated tax payment, or to offset your outstanding tax liabilities.

## **PENALTY**

The Department may not assess *penalty* against you for failing to pay tax due when you make a mistake of law in good faith and on reasonable grounds. Note, however, that *interest* continues to mount. Current New Mexico law offers no abatement (forgiveness) of interest on tax owed except in the case of a managed audit (See "Audit Provisions, page 3).

If the Secretary determines that it is unfair to hold a spouse or former spouse liable for unpaid taxes, the Secretary may decide not to take action against the innocent party.

In extreme cases of delinquency under Section 7-1-53 NSMA 1978 the Department, after a hearing, may enjoin (stop) a taxpayer from conducting business until the delinquency is cleared.

## TAXPAYER INFORMATION

The Department offers a variety of taxpayer information. Most information is free. Other information must be purchased.

**General Information.** FYIs, bulletins and brochures present general information with a minimum of technical language. All FYIs, bulletins and brochures are free and available through all local tax offices, the Tax Information and Policy Office and on the Internet. The Taxation and Revenue Department's Internet address is:

<http://www.state.nm.us/tax>

**Regulations.** The Department circulates regulations to interpret and exemplify the various tax acts administered by the Department. The Taxation and Revenue Department regulation book is available from the New Mexico Compilation Commission on a prepaid basis. The Compilation Commission also has a compact disc with all statutes and regulations. The order form is available at all local tax offices, through the Tax Information and Policy Office and on the Department's web page at [www.state.nm.us/tax](http://www.state.nm.us/tax). Click on "forms". Specific regulations are also accessible at the State Records Center or on its web page at [www.nmcpr.state.nm.us/nmac](http://www.nmcpr.state.nm.us/nmac). Follow the prompts.

Order regulation books directly from:

New Mexico Compilation Commission  
P.O. Box 15549  
Santa Fe, NM 87506-5549  
Telephone 505/827-4821  
Fax 505/827-4869

**Rulings.** Rulings, signed by the Department Secretary and approved by the Attorney General, are written statements that apply to one or a small number of taxpayers. A taxpayer may request a ruling (at no charge) to clarify its tax liability or responsibility under specific circumstances. The request for a ruling must be in writing, include accurate taxpayer identification and the details about the taxpayer's situation, and be addressed to the Secretary of the Taxation and Revenue Department, at P.O. Box 630, Santa Fe, NM 87504-0630. The taxpayer's representative, such as an accountant or attorney, may request a ruling on behalf of the taxpayer but must disclose the taxpayer's name. While the Department is not required to issue a ruling when requested to do so, the Department carefully considers every request.

The Department will not issue a ruling to a taxpayer who is undergoing an audit, who has an outstanding assessment on the issue, or who is involved in a protest or litigation with the Department over the subject matter of the request. The Secretary may modify or withdraw any previously issued ruling and is required to withdraw or modify any ruling when subsequent legislation, regulations, final court decisions or other rulings invalidate a ruling or portions of a ruling. Taxation and Revenue Department rulings are compiled and available on the Department's web page free of charge at [www.tax.state.nm.us](http://www.tax.state.nm.us). Click on "publications."

**Public Decisions & Orders.** All public decisions and orders issued by the hearing officers since July 1994 are compiled and available on the Department's web page free of charge at [www.tax.state.nm.us](http://www.tax.state.nm.us). Click on "publications."

## FOR FURTHER ASSISTANCE

Local tax offices can provide full service and information about the Department's taxes, programs, and forms as well as specific information about your filing situation.

**ALBUQUERQUE (505) 841-6200**

Taxation and Revenue Department  
5301 Central NE  
P.O. Box 8485  
Albuquerque, NM 87198-8485

**SANTA FE (505) 827-0951**

Taxation and Revenue Department  
Manuel Lujan Sr. Bldg.  
1200 S. St. Francis Dr.  
P.O. Box 5374  
Santa Fe, NM 87502-5374

**FARMINGTON (505) 325-5049**

Taxation and Revenue Department  
3501 E. Main St.  
P.O. Box 479  
Farmington, NM 87499-0479

**LAS CRUCES (575) 524-6225**

Taxation and Revenue Department  
2540 El Paseo Building #2  
P.O. Box 607  
Las Cruces, NM 88001-0607

**ROSWELL (575) 624-6065**

Taxation and Revenue Department  
400 N. Pennsylvania Ave., Suite 200  
P.O. Box 1557  
Roswell, NM 88202-1557

**ALAMOGORDO (575) 437-2322**

**SILVER CITY (575) 388-4403**  
(above calls transfer to Las Cruces)

**CARLSBAD (575) 885-5616**

**CLOVIS (575) 763-5515**

**HOBBS (575) 393-0163**

(above calls transfer to Roswell)

Main switchboard (Santa Fe): 505/827-0700

*This publication provides general information. It does not constitute a regulation, ruling, or decision issued by the Secretary of the New Mexico Taxation and Revenue Department. The Department is legally bound only by a regulation or a ruling [7-1-60, New Mexico Statutes Annotated, 1978]. In the event of a conflict between FYI and statute, regulation, case law or policy, the information in FYIs is overridden by statutes, regulations and case law. Taxpayers and preparers are responsible for being aware of New Mexico tax laws and rules. Consult the Department directly if you have questions or concerns about information provided in this FYI.*