

FOR YOUR INFORMATION

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

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 and amended in 2015 and 2017, 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 Section 7-1-4.2 NMSA 1978.

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. 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. Information on how to reach the right offices to answer your questions is on the Taxation and Revenue Department web site at www.tax.newmexico.gov/ on the "contact us" page. Contact information for the office can also be found on the letters, tax forms and publications you receive in the mail. Addresses for the Department's district offices around the state are on page 7 of this FYI. The Department's internal office's answers telephones Mondays through Fridays from 8 a.m. to 5 p.m. Mountain Time. The Department's call center answers telephones Monday through Thursday 8 a.m. to 5:45 p.m. and Fridays 8 a.m. to 4:45 p.m. Mountain Time. Please note, confidentiality laws prevent the Department from discussing an account with anyone but the taxpayer or the taxpayer's authorized representative.

Free publications are available on the web site (www.tax.newmexico.gov/forms-publications.aspx) or through your local tax office. The Department offers free workshops on gross receipts, compensating and withholding taxes in each local tax office. You can find the workshop schedules by going to our web site at <http://www.tax.newmexico.gov/workshop-schedule.aspx>.

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 as outlined in Section 7-1-4.2 through 7-1-4.3 NMSA 1978.

- ◆ 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 or with the Administrative Hearings Office according to the Administrative Hearings Office Act;
- ◆ 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 have the Department conduct its audits in a timely and efficient manner and be entitled to the correct calculation of interest as provided in the Tax Administration Act under Section 7-1-67 and 7-1-68 NMSA 1978;
- ◆ The right to simple, non-technical information explaining procedures, remedies and rights during audit, protest, appeals 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 and the Administrative Hearings Office Act);

- ◆ The right for your tax information to remain confidential unless otherwise specified by law in Sections 7-1-8 through 7-1-8.11 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 and are outlined in Sections 7-1-8 through 7-1-8.11 NMSA 1978. 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 with the Department. Employees may discuss your account only with you or your authorized representative. If you have an authorized representative you will need to submit **Form ACD-31102, Tax Information Authorization** to the Department. This form will be active and in place for a year after it is executed. If an authorized representative should no longer have access to your account before that time make sure to notify the Department.

A hearing officer's written ruling on questions of evidence or procedure pursuant to the Administrative Hearings Office Act are in the public domain. The name and identification number of the taxpayer requesting the ruling are not public record.

Pursuant to Section 7-1-8.3 NMSA 1978, all documents, exhibits, pleadings and materials contained in the administrative tax file and the record of the administrative hearing are confidential and may not be released to the public, except that the final decision and order without redaction and any evidentiary or procedural ruling made by the hearing officer with redaction of identifiable taxpayer information may be revealed.

Public record includes the 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 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 must provide you with written, dated notice that an audit is about to begin on a specific date, and the notice must tell you which tax programs and reporting periods will be covered. We must issue a second notice, which states any outstanding records or books of account requested and not yet received, between 60 and 180 days after the audit begins. If you do not produce the records within 90 days, the Department can issue an assessment of tax on the basis of the information as it stands. If you need additional time, you must submit a specific request in writing. Interest on outstanding liabilities accrues if the Department does not issue an assessment within 180 days of the notice of outstanding records or books, or within 90 days after time has expired under your request for additional time; however, you are entitled to an abatement of interest for the period of time after you have complied with Department requests and the Department has not acted on the audit.

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 Department 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 if paid within the 180 days. See FYI-404, *Managed Audits for Taxpayers*, on the “managed audit” button under “news and alerts” on our web site at www.tax.newmexico.gov/ or call (505) 841-6216.

PROTEST PROVISIONS

If you and the Department cannot settle differences through correspondence or at the audit level, the law offers ways for you to protest your assessment. Within 60 days of filing your protest you can request an informal conference with the Department’s protest office. This will allow time to settle differences before scheduling a hearing with the Administrative Hearing Office. The hearings office will look at the facts as presented and make a decision and order. If you wish, you can file an appeal with the Court of Appeals within 30 days of the issuance of the decision and order if it is 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 be entitled to claim reasonable administrative costs and fees connected to the action.

CREDIT, REBATE AND REFUND CLAIMS

A person who believes that tax they have paid tax in excess of what they owe, who has been denied a credit or rebate claimed, or who claims a right to property that is in the possession of the Department is able to file a claim for credit, rebate or refund as outlined in Section 7-1-26 NMSA 1978. To file a claim for refund submit a completed **Form RPD-41071**, *Application for Refund*.

Your claim for credit, rebate or refund 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 the Department if this is the case.

For a person that files an original or amended return for personal income tax, corporate income and franchise tax, estate tax, or special fuel excise tax return showing an overpayment of tax, credit or rebate is considered a claim for refund.

If the Department receives a claim for a statutory 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 per

Section 7-1-29.2 NMSA 1978.

If the Department has not approved or denied any portion of a complete claim for refund within 180 days of the date the claim was mailed or otherwise delivered to the Department, you may elect to treat the claim as denied and elect to either file a protest with the Department or file a civil action in the district court in Santa Fe County.

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) under specific circumstances during the procedures of a protest if the hearing officer finds that the Department failed to meet deadlines they can order that further interest not accrue on the protested liabilities.

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. If you believe you might qualify for innocent spouse relief, contact your local district office to discuss your situation. If your situation applies the Department will send you **Form RPD-41337, *Innocent or Injured Spouse Relief Request Form***.

In extreme cases of delinquency under Section 7-1-53 NMSA 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. Some information is free and other information must be purchased.

General Information. FYIs and Bulletins present general information with a minimum of technical language. All FYIs and Bulletins 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.tax.newmexico.gov>

Regulations. The Department establishes regulations to interpret and exemplify the various tax acts it administers. 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 disk of all statutes and regulations. Specific regulations are also available at the State Records Center or on its web page at www.nmcpr.state.nm.us/nmac.

Order regulation books directly from:

New Mexico Compilation Commission

<http://www.nmcompcomm.us/index.html>

Rulings. Rulings signed by the 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 name of the taxpayer. While the Department is not required to issue a ruling when requested to do so, every request is carefully considered.

The Department will not issue a ruling to a taxpayer who is undergoing an audit, who has an outstanding assessment, 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 <http://www.tax.newmexico.gov/rulings.aspx>.

Public Decisions & Orders. All public decisions and orders issued since July 1994 are compiled and available on the Department's web page free of charge at <http://www.tax.newmexico.gov/tax-decisions-orders.aspx>.

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

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

LAS CRUCES

Taxation and Revenue Department
2540 S. El Paseo Bldg. #2
P.O. Box 607
Las Cruces, NM 88004-0607

SANTA FE

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

ROSWELL

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

FARMINGTON

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

Call Center: 1-866-285-2996

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.