

**TITLE 3: TAXATION**  
**CHAPTER 1: TAX ADMINISTRATION**  
**PART 3: DISCLOSURE OF TAXPAYER INFORMATION**

**3.1.3.1 ISSUING AGENCY:** Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630.  
[10/31/1996; 3.1.3.1 NMAC - Rn, 3 NMAC 1.3.1, 12/29/2000]

**3.1.3.2 SCOPE:** This part applies to all taxpayers, their agents and representatives and all persons required to submit a return or information to the taxation and revenue department under any tax, tax act or other law administered and enforced pursuant to the Tax Administration Act.  
[10/31/1996; 3.1.3.2 NMAC - Rn, 3 NMAC 1.3.2, 12/29/2000]

**3.1.3.3 STATUTORY AUTHORITY:** Section 9-11-6.2 NMSA 1978.  
[10/31/1996; 3.1.3.3 NMAC - Rn, 3 NMAC 1.3.3, 12/29/2000]

**3.1.3.4 DURATION:** Permanent.  
[10/31/1996; 3.1.3.4 NMAC - Rn, 3 NMAC 1.3.4, 12/29/2000]

**3.1.3.5 EFFECTIVE DATE:** October 31, 1996, unless a later date is cited at the end of a section, in which case the later date is the effective date.  
[10/31/1996; 3.1.3.5 NMAC - Rn & A, 3 NMAC 1.3.5, 12/29/2000]

**3.1.3.6 OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Tax Administration Act.  
[10/31/1996; 3.1.3.6 NMAC - Rn, 3 NMAC 1.3.6, 12/29/2000]

**3.1.3.7 DEFINITIONS:** [RESERVED]  
[10/31/1996; 3.1.3.7 NMAC - Rn, 3 NMAC 1.3.7, 12/29/2000]

**3.1.3.8 STATE WARRANTS FOR PAYMENT OF TAX REFUNDS AND TAX REBATES:**  
**A.** Generally, information contained on a state warrant issued in response to a tax return submitted by a taxpayer, including electronic data processing records relative to the warrant, is confidential information for purposes of Section 7-1-8 NMSA 1978. Warrants issued in response to a claim for a refund, the record of which is required to be available for public inspection under Section 7-1-29 NMSA 1978, are not confidential information.  
**B.** Example: A loan company requests from an employee of the department the mailing address of a taxpayer and the dollar amount of a state warrant which was processed as a refund or rebate from an income tax return. The information requested was derived from information contained in the return of a taxpayer, and it is unlawful for the employee to reveal this information.  
[11/5/1985, 8/15/1990, 10/31/1996; 3.1.3.8 NMAC - Rn & A, 3 NMAC 1.3.8, 12/29/2000]

**3.1.3.9 RECIPROCAL AGREEMENTS WITH OTHER STATES OR TRIBES:** The secretary shall retain all reciprocal exchange-of-information agreements between the department and the authorized representatives of other states or of Indian nations, tribes or pueblos which permit designated employees of the department to reveal to the receiving state or Indian nation, tribe or pueblo, for tax purposes only, information contained in the return of a taxpayer or other information about a taxpayer.  
[11/5/1985, 8/15/1990, 10/31/1996; 3.1.3.9 NMAC - Rn, 3 NMAC 1.3.9, 12/29/2000]

**3.1.3.10 RECIPROCAL AGREEMENT - UNITED STATES SECRETARY OF THE TREASURY'S AUTHORIZED REPRESENTATIVE:**  
**A.** The secretary shall maintain a permanent record of the reciprocal agreement between the department and the representative of the secretary of the treasury for exchange of tax information. The proper representative of the secretary of the treasury shall be identified in the reciprocal agreement with the department. Identification of proper representatives may be made by job title or job description.  
**B.** Example: A representative of the United States treasury department's alcohol, tobacco and firearms bureau (ATFB) requests from a department employee information contained in the return of a taxpayer.

The representative explains that the organization is a branch of the treasury department, and the tax information requested will aid the state of New Mexico in collecting more tobacco taxes. Since the ATFB of the treasury department is not the authorized representative of the secretary of the treasury under a reciprocal agreement, it is unlawful for any employee of the department to fulfill the ATFB representative's request.  
[7/19/1967, 11/5/1985, 8/15/1990, 10/31/1996; 3.1.3.10 NMAC - Rn, 3 NMAC 1.3.10, 12/29/2000]

### **3.1.3.11 TAXPAYER "WAIVER" OF CONFIDENTIALITY:**

**A.** For the purpose of Section 7-1-8 NMSA 1978, and except as provided in Subsection 7-1-24E NMSA 1978 for a taxpayer request for an administrative hearing to be open to the public, there is no provision in the Tax Administration Act for a taxpayer to "waive" the provisions of Section 7-1-8 NMSA 1978 as applied to an employee or former employee of the department. The provisions of Section 7-1-8 NMSA 1978 and the punitive provisions of Section 7-1-76 NMSA 1978 are imposed on an employee or former employee and cannot be released by a taxpayer. The secretary will not accept or approve a purported "waiver" of confidentiality under Section 7-1-8 NMSA 1978 from taxpayers who attempt to make lawful that which is unlawful for employees and former employees of the department.

**B.** Example: A taxpayer and the taxpayer's attorney attend an informal conference with the secretary and department attorneys to discuss the tax consequences of the taxpayer's activities as a seller of tangible personal property in New Mexico. The taxpayer's attorney announces that a buyer (who is also a taxpayer) of the client's property has no objections to information from the buyer's tax returns being revealed by the secretary to those present in the conference. The attorney, although not representing the buyer, has a signed letter from the buyer "waiving" confidentiality of information in the buyer's returns which are in the possession of the department. This "waiver" does not make it lawful for the secretary or any other department employee to act upon this request by revealing the buyer's tax records or to give any information about the buyer acquired as a result of employment by the department. The buyer can obtain the information from the department and make any use of it the buyer deems proper. Or, in the alternative, the buyer could appoint the attorney in question the buyer's "authorized representative" to receive this information.

[11/5/1985, 8/15/1990, 10/31/1996; 3.1.3.11 NMAC - Rn & A, 3 NMAC 1.3.11, 12/29/2000]

### **3.1.3.12 DISCLOSURE OF TAX INFORMATION TO A COURT:**

**A.** The exception in Subsection 7-1-8D NMSA 1978, permitting disclosure in response to an order of a district court, an appellate court or a federal court, shall be restricted to those actions:

- (1) relating to taxes, where the state is a party and where the information sought is material to the inquiry;
- (2) where the department is attempting to collect a tax; or
- (3) where the taxpayer has put the taxpayer's own tax liability at issue.

**B.** Unless the order of the court concerns an action that meets all three of the restrictions in Paragraph (1) of Subsection 3.1.3.12A NMAC, or the restrictions in Paragraphs (2) and (3) of Subsection 3.1.3.12A NMAC, it is unlawful for an employee of the department or any former employee of the department to breach taxpayer confidentiality.

**C.** No provision in Subsection 7-1-8D NMSA 1978 precludes any employee from making tax information available to the taxpayer or the taxpayer's authorized representative when a court orders the taxpayer to obtain such information for purposes of discovery. Nothing in Subsection 7-1-8E NMSA 1978 shall be construed to require any employee to testify in a judicial proceeding except as provided in Subsection 7-1-8D NMSA 1978.

**D.** Example: A taxpayer in the business of selling construction services files a civil suit in a district court against the owner of a construction project and seeks judgment against the owner for an increase in the contract price as reimbursement for gross receipts taxes. Upon the taxpayer's request the court issues a subpoena duces tecum to an employee of the department to appear as a witness in the court action and bring certain records of the defendant. Although the court action relates to taxes and the information sought is material to the inquiry, the state is not a party to the suit nor does the information sought concern a taxpayer who has put the taxpayer's own tax liability at issue. It is unlawful for the employee to reveal tax information as a witness. Should the employee comply with the court's order, the employee may be guilty of a misdemeanor under Section 7-1-76 NMSA 1978 and upon conviction suffer the penalties prescribed by law. The secretary, through counsel, normally will present a motion to the court asking that the subpoena duces tecum be quashed.

(1) If time does not permit a motion to quash to be prepared and presented before the court, the employee will appear at the appointed time and make the following statement to the court:

"Your honor, I respectfully decline to disclose the information upon the advice of the Secretary of Taxation

and Revenue and my legal counsel. The information requested is privileged under Rule 11-502 of the New Mexico Rules of Evidence. Also, the disclosure of this information will subject me to possible criminal prosecution under Section 7-1-8 and Section 7-1-76, New Mexico Statutes Annotated 1978. The disclosure of this information might also subject me to criminal prosecution by the United States pursuant to Section 7213(a)(2) of the United States Internal Revenue Code. Since the disclosure of this information might tend to incriminate me in a later criminal proceeding, I hereby invoke my rights under the Fifth Amendment to the United States constitution and Article II, Section 15 of the constitution of New Mexico.”

(2) The employee may further advise the court that the department may release the information to the taxpayer or the taxpayer's authorized representative and the court may then order the taxpayer to reveal the information as appropriate.

[7/19/1967, 11/5/1985, 8/15/1990, 10/31/1996; 3.1.3.12 NMAC - Rn & A, 3 NMAC 1.3.12, 12/29/2000]

### **3.1.3.13 AUTHORIZED REPRESENTATIVE**

**A.** The authorization of any person to be a representative of a taxpayer must be in writing, must contain sufficient information for the department to identify the taxpayer and the representative and must be signed by the taxpayer. The authorization must be in a form prescribed by the department, and renewed at an interval set by the department.

**B.** Upon presentation of a proper authorization from a taxpayer's representative, the secretary or employee may reveal information concerning the taxpayer and the taxpayer's return. If, however, the adversarial position of the representative or some change of circumstance in the relationship between the taxpayer and the taxpayer's authorized representative leads the secretary or employee to question the continued validity of the authorization, the secretary or employee may inquire of the taxpayer whether the authorization remains valid. A taxpayer may revoke an authorization of a person to be the taxpayer's representative by filing a document with the department so stating.

[11/5/1985, 8/15/1990, 10/31/1996; 3.1.3.13 NMAC - Rn & A, 3 NMAC 1.3.13, 12/29/2000; A, 9/25/2018]

### **3.1.3.14 BANKRUPTCY:**

**A.** Whenever an order for relief is entered under Title 11 of the United States Code with respect to a taxpayer, the taxpayer shall be deemed to have put his liability for taxes at issue and the department shall be deemed to be a party to the bankruptcy proceeding. The bankruptcy court may enter an order allowing any other party in the bankruptcy case to obtain information from the department regarding the debtor-taxpayer upon the party showing relevance and need for the information. The department may release information pursuant to such an order.

**B.** The bankruptcy trustee serving in the case in which the taxpayer is the debtor, the United States trustee and any court-appointed examiner or liquidating agent in a Chapter 11 case will be deemed the taxpayer's authorized representative. The department may release information concerning the taxpayer and the taxpayer's tax liabilities to such a representative.

[2/9/1995, 10/31/1996; 3.1.3.14 NMAC - Rn, 3 NMAC 1.3.14, 12/29/2000]

### **HISTORY OF 3.1.3 NMAC:**

Pre-NMAC History: The material in this part was derived from that previously filed with the State Records Center: BOR 67-1, Tax Administration Act, 7/19/1967, filed 7/28/1967.

R.D./OGAD Rule No. 1985, Regulations Pertaining to the Tax Administration Act, filed 11/5/1985.

TRD Rule TA-90, Regulations Pertaining to the Tax Administration Act, Sections 7-1-1 to 7-1-82 NMSA 1978, filed 8/15/1990.

### **History of Repealed Material: [RESERVED]**

#### **NMAC History:**

3 NMAC 1.3, Tax Administration - Disclosure of Taxpayer Information, filed 10/17/1996.

3.1.3 NMAC, Tax Administration - Disclosure of Taxpayer Information, filed 12/15/2000.