

1 SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
2 SENATE BILL 129

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54TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2019

AN ACT

RELATING TO TAX ADMINISTRATION; MODIFYING TERMS GOVERNING TAX-RELATED PROTESTS AND PROCEEDINGS AND THE ADMINISTRATIVE HEARINGS OFFICE; PROVIDING FOR HEARING OFFICER COMPENSATION.

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

SECTION 1. Section 7-1-23 NMSA 1978 (being Laws 1965, Chapter 248, Section 25, as amended) is amended to read:

"7-1-23. DISPUTING LIABILITIES--ELECTION OF REMEDIES.--
[Any] A taxpayer [~~must elect to~~] may dispute the taxpayer's liability for [~~the payment of~~] taxes [~~either~~] only by protesting the assessment [~~thereof~~] of taxes as provided in Section 7-1-24 NMSA 1978 without making payment [~~of the disputed tax liability~~] or by claiming a refund [~~thereof~~] as provided in Section 7-1-26 NMSA 1978 after making payment of the [~~disputed tax liability~~] taxes the department asserts are

1 owed. The pursuit of one of the two remedies [~~described~~
2 ~~herein~~] constitutes an unconditional waiver of the right to
3 pursue the other."

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

6 "7-1-24. DISPUTING LIABILITIES--ADMINISTRATIVE PROTEST.--

7 A. A taxpayer may dispute:

8 (1) the assessment to the taxpayer of any
9 amount of tax;

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

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

15 (a) tax credit [~~or rebate~~] application
16 or claim;

17 (b) rebate; or

18 [~~(b)~~] (c) claim for refund made in
19 accordance with Section 7-1-26 NMSA 1978.

20 B. The taxpayer may dispute a matter described in
21 Subsection A of this section by filing with the secretary a
22 written protest [~~Every protest shall identify~~] that:

23 (1) identifies the taxpayer and the tax
24 credit, rebate, property or provision of the Tax Administration
25 Act involved; [~~and state~~]

1 (2) states the grounds ~~[for the taxpayer's~~
 2 ~~protest and the affirmative relief requested. The statement of~~
 3 ~~grounds for protest shall specify individual grounds upon]~~ on
 4 which the protest is based and summarizes evidence supporting
 5 each ground asserted; ~~[provided that the]~~ and

6 (3) states the affirmative relief requested.

7 C. A taxpayer may supplement [the] a statement made
 8 by the taxpayer in accordance with Paragraphs (2) and (3) of
 9 Subsection B of this section at any time prior to ten days
 10 before the hearing conducted on the protest ~~[pursuant to the~~
 11 ~~provisions of]~~ in accordance with the Administrative Hearings
 12 Office Act or, if a scheduling order has been issued, in
 13 accordance with the scheduling order. The secretary may, in
 14 appropriate cases, provide for an informal conference before a
 15 hearing of the protest is set by the administrative hearings
 16 office or before acting on a claim for refund.

17 ~~[G. In the case of an assessment of tax by the~~
 18 ~~department]~~ D. A taxpayer may file a protest ~~[may be filed]:~~

19 (1) in the case of an assessment of tax by the
 20 department, without making payment of the amount assessed
 21 ~~[provided that, if only a portion of the assessment is in~~
 22 ~~dispute, any unprotested amounts of tax, interest or penalty~~
 23 ~~shall be paid, or, if applicable, an installment agreement~~
 24 ~~pursuant to Section 7-1-21 NMSA 1978 shall be entered into for~~
 25 ~~the unprotested amounts, on or before the due date for the~~

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1 protest.

2 D. ~~A protest by a taxpayer shall be filed~~; and

3 (2) within ninety days ~~[of]~~ after:

4 (a) the date of the mailing to ~~[or~~
5 ~~service upon]~~ the taxpayer by the department of the notice of
6 assessment ~~[or]~~ and demand for payment as provided in
7 Subsection A or D of Section 7-1-17 NMSA 1978;

8 (b) the mailing of the other peremptory
9 notice or demand ~~[the date of mailing or filing a return];~~

10 (c) the date of the application to the
11 taxpayer of the applicable provision of the Tax Administration
12 Act; or

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

17 E. If a taxpayer fails to timely protest ~~[to a~~
18 ~~notice of]~~ an assessment ~~[is not filed within the time~~
19 ~~required]~~ of tax, penalty or interest:

20 (1) the amount of tax ~~[determined to be due]~~
21 assessed and not protested becomes final;

22 (2) the taxpayer is deemed to have waived ~~[and~~
23 ~~abandoned]~~ the right to ~~[question the amount of tax determined~~
24 ~~to be due]~~ protest the assessment, unless the taxpayer pays the
25 tax and claims a refund of the tax pursuant to Section

1 7-1-26 NMSA 1978; and

2 (3) the secretary may proceed to enforce
3 collection of ~~[any]~~ the tax if the taxpayer is delinquent
4 ~~[within the meaning of]~~ as defined by Section 7-1-16 NMSA 1978.

5 F. The fact that the department did not mail the
6 assessment or other peremptory notice or demand by certified or
7 registered mail or otherwise demand and receive acknowledgment
8 of receipt by the taxpayer shall not be deemed to demonstrate
9 the taxpayer's inability to protest within the required time.

10 G. ~~[No proceedings]~~ A proceeding other than ~~[those]~~
11 one to enforce collection of an amount assessed as tax and to
12 protect the interest of the state by injunction, as provided
13 ~~[in]~~ by Sections 7-1-31, 7-1-33, 7-1-34, 7-1-40, 7-1-53, 7-1-56
14 and 7-1-58 NMSA 1978, ~~[are]~~ is not stayed by timely filing of a
15 protest ~~[pursuant to the provisions of]~~ in accordance with this
16 section.

17 H. Nothing in this section shall be construed to
18 authorize a criminal proceeding or to authorize an
19 administrative protest of the issuance of a subpoena or
20 summons."

21 **SECTION 3.** Section 7-1-26 NMSA 1978 (being Laws 1965,
22 Chapter 248, Section 28, as amended) is amended to read:

23 "7-1-26. DISPUTING LIABILITIES--CLAIM FOR CREDIT, REBATE
24 OR REFUND.--

25 A. A person who believes that an amount of tax has

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1 been paid by or withheld from that person in excess of that for
2 which the person was liable, who has been denied ~~[any]~~ a credit
3 or rebate claimed or who claims a prior right to property in
4 the possession of the department pursuant to a levy made under
5 authority of Sections 7-1-31 through 7-1-34 NMSA 1978 may claim
6 a refund by directing to the secretary, within the time
7 ~~[limited by the provisions of]~~ limitations provided by
8 Subsections E and F ~~[and G]~~ of this section, a written claim
9 for refund ~~[At the time the written claim is submitted]~~ that,
10 except as provided in Subsection ~~[K]~~ J of this section, ~~[a~~
11 ~~refund claim shall include]~~ includes:

12 (1) the taxpayer's name, address and
13 identification number;

14 (2) the type of tax for which a refund is
15 being claimed, the credit or rebate denied or the property
16 levied upon;

17 (3) the sum of money or other property being
18 claimed;

19 (4) with respect to a refund, the period for
20 which overpayment was made;

21 (5) a brief statement of the facts and the law
22 on which the claim is based, which may be referred to as the
23 "basis for the refund" ~~[which shall include documentation that~~
24 ~~substantiates the written claim and supports the taxpayer's~~
25 ~~basis for the refund]~~; and

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1 (6) if applicable, a copy of an amended return
2 for each tax period for which the refund is claimed.

3 B. A claim for refund that meets the requirements
4 of Subsection A of this section [~~shall be~~] and that is filed
5 within the time limitations provided by Subsections E and F of
6 this section is deemed to be properly before the department for
7 consideration, regardless of whether the department requests
8 additional documentation after receipt of the claim for refund.
9 [~~provided that the claim for refund is filed within the time~~
10 ~~limitations provided in Subsections F and G of this section.~~

11 ~~G. If the department requests additional relevant~~
12 ~~documentation from a taxpayer who has submitted a claim for~~
13 ~~refund, the claim for refund will not be considered complete~~
14 ~~until the taxpayer provides the requested documentation. The~~
15 ~~provisions of Paragraph (2) of Subsection D of this section and~~
16 ~~of Section 7-1-68 NMSA 1978 do not apply until a refund claim~~
17 ~~is complete.~~

18 ~~D.]~~ C. The secretary or the secretary's delegate
19 may allow the claim in whole or in part or may deny the claim.
20 If the:

21 (1) claim is denied in whole or in part in
22 writing, [~~no~~] the person shall not refile the denied claim,
23 [~~may be refiled with respect to that which was denied~~] but the
24 person, within ninety days after either the mailing or delivery
25 of the denial of all or any part of the claim, may elect to

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1 pursue only one [~~but not more than one~~] of the remedies
2 provided in Subsection [~~E~~] D of this section; and

3 (2) department has neither granted nor denied
4 any portion of a complete claim for refund within one hundred
5 eighty days [~~of the date~~] after the claim was mailed or
6 otherwise delivered to the department, the person may elect to
7 treat the claim as denied and elect to pursue one [~~but not more~~
8 ~~than one~~] of the remedies provided in Subsection D of this
9 section.

10 [~~E.~~] D. A person may elect to pursue [~~no more than~~]
11 only one of the remedies provided in [~~Paragraphs (1) and (2)~~
12 ~~of~~] this subsection. A person who timely pursues more than one
13 remedy [~~shall be~~] is deemed to have elected the first [~~remedy~~
14 ~~invoked~~]. The person may:

15 (1) direct to the secretary, pursuant to the
16 provisions of Section 7-1-24 NMSA 1978, a written protest that
17 [~~shall set~~] sets forth:

18 (a) the circumstances of: 1) an alleged
19 overpayment; 2) a denied credit; 3) a denied rebate; or 4) a
20 denial of a prior right to property levied upon by the
21 department;

22 (b) an allegation that, because of that
23 overpayment or denial, the state is indebted to the taxpayer
24 for a specified amount, including any allowed interest, or for
25 the property;

1 (c) [~~demanding~~] a demand for the refund
 2 to the taxpayer of that amount or that property; and

3 (d) [~~reciting~~] a recitation of the facts
 4 of the claim for refund; or

5 (2) commence a civil action in the district
 6 court for Santa Fe county by filing a complaint setting forth
 7 the circumstance of the claimed overpayment, denied credit or
 8 rebate or denial of a prior right to property levied upon by
 9 the department alleging that on account thereof the state is
 10 indebted to the plaintiff in the amount or property stated,
 11 together with any interest allowable, demanding the refund to
 12 the plaintiff of that amount or property and reciting the facts
 13 of the claim for refund. The plaintiff or the secretary may
 14 appeal from any final decision or order of the district court
 15 to the court of appeals.

16 [~~F.~~] E. Except as otherwise provided in Subsection
 17 [~~G~~] F of this section, [~~no~~] a credit or refund of any amount
 18 may be allowed or made to [~~any~~] a person [~~unless as the result~~
 19 ~~of a claim made by that person as provided in this section~~]:

20 (1) only within three years [~~of~~] after the end
 21 of the calendar year in which:

22 (a) the payment was originally due or
 23 the overpayment resulted from an assessment by the department
 24 [~~pursuant to~~] as provided in Section 7-1-17 NMSA 1978,
 25 whichever is later;

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underscored material = new
 [bracketed material] = delete

1 (b) the final determination of value
2 occurs with respect to any overpayment that resulted from a
3 disapproval by any agency of the United States or the state of
4 New Mexico or any court of increase in value of a product
5 subject to taxation under the Oil and Gas Severance Tax Act,
6 the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency
7 School Tax Act, the Oil and Gas Ad Valorem Production Tax Act
8 or the Natural Gas Processors Tax Act;

9 (c) property was levied upon ~~[pursuant~~
10 ~~to the provisions of]~~ as provided in the Tax Administration
11 Act; or

12 (d) an overpayment of New Mexico tax
13 resulted from: 1) an internal revenue service audit adjustment
14 or a federal refund paid due to an adjustment of an audit by
15 the internal revenue service or an amended federal return; or
16 2) ~~[making a change]~~ the amendment to a federal return for
17 which federal approval is required by the Internal Revenue
18 Code;

19 (2) ~~[when an amount]~~ in the case of a denial
20 of a claim for credit under ~~[the provisions of]~~ the Investment
21 Credit Act, Laboratory Partnership with Small Business Tax
22 Credit Act or Technology Jobs and Research and Development Tax
23 Credit Act or for the rural job tax credit ~~[pursuant to]~~
24 provided by Section 7-2E-1.1 NMSA 1978 or similar credit, ~~[has~~
25 ~~been denied, the taxpayer may claim a refund of the credit no~~

1 ~~later than~~ only within one year after the date of the denial;

2 (3) ~~when~~ in the case of a taxpayer under
 3 audit by the department who has signed a waiver of the
 4 limitation on assessments on or after July 1, 1993 ~~pursuant~~
 5 ~~to~~ under Subsection F of Section 7-1-18 NMSA 1978, ~~the~~
 6 ~~taxpayer may file a claim~~ only for a refund of the same tax
 7 paid for the same period for which the waiver was given, and
 8 only until a date one year after the later of the date of the
 9 mailing of an assessment issued pursuant to the audit, the date
 10 of the mailing of final audit findings to the taxpayer or the
 11 date a proceeding is begun in court by the department with
 12 respect to the same tax and the same period;

13 (4) ~~if~~ in the case of a payment of an amount
 14 of tax ~~was~~ not made within three years of the end of the
 15 calendar year in which the original due date of the tax or date
 16 of the assessment of the department occurred, only for a claim
 17 for refund of that amount of tax ~~can be made~~ and only within
 18 one year of the date on which the tax was paid; or

19 (5) ~~when~~ in the case of a taxpayer who has
 20 been assessed a tax on or after July 1, 1993 under Subsection
 21 B, C or D of Section 7-1-18 NMSA 1978 and ~~when the~~ an
 22 assessment that applies to a period ending at least three years
 23 prior to the beginning of the year in which the assessment was
 24 made, ~~the taxpayer may claim~~ only for a refund for the same
 25 tax for the period of the assessment or for any period

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1 following that period within one year of the date of the
2 assessment unless a longer period for claiming a refund is
3 provided in this section.

4 ~~[G. No]~~ F. The department shall not allow or make
5 a credit or refund [shall be allowed or made] to [any] a person
6 claiming a refund of gasoline tax under Section 7-13-11 NMSA
7 1978 unless:

8 (1) notice of the destruction of the gasoline
9 was given to the department within thirty days of the actual
10 destruction; ~~and~~

11 (2) the claim for refund is made within six
12 months of the date of destruction; ~~[No credit or refund shall~~
13 ~~be allowed or made to any person claiming a refund of gasoline~~
14 ~~tax under Section 7-13-17 NMSA 1978 unless]~~

15 (3) the refund is claimed within six months of
16 the date of purchase of the gasoline; and

17 (4) the gasoline has been used at the time the
18 claim for refund is made.

19 ~~[H.]~~ G. If, as a result of an audit by the
20 department or a managed audit covering multiple periods, an
21 overpayment of tax is found in any period under the audit and
22 if the taxpayer files a claim for refund for the overpayments
23 identified in the audit, that overpayment may be credited
24 against an underpayment of the same tax found in another period
25 under audit pursuant to Section 7-1-29 NMSA 1978. ~~[provided~~

1 ~~that the taxpayer files a claim for refund for the overpayments~~
 2 ~~identified in the audit.~~

3 ~~I. Any~~ H. A refund of tax paid under any tax or
 4 tax act administered under Subsection B of Section 7-1-2 NMSA
 5 1978 may be made, at the discretion of the department, in the
 6 form of credit against future tax payments if future tax
 7 liabilities in an amount at least equal to the credit amount
 8 reasonably may be expected to become due.

9 ~~[J.]~~ I. For the purposes of this section, "oil and
 10 gas tax return" means a return reporting tax due with respect
 11 to oil, natural gas, liquid hydrocarbons, carbon dioxide,
 12 helium or nonhydrocarbon gas pursuant to the Oil and Gas
 13 Severance Tax Act, the Oil and Gas Conservation Tax Act, the
 14 Oil and Gas Emergency School Tax Act, the Oil and Gas Ad
 15 Valorem Production Tax Act, the Natural Gas Processors Tax Act
 16 or the Oil and Gas Production Equipment Ad Valorem Tax Act.

17 ~~[K.]~~ J. The filing of a fully completed original
 18 income tax return, corporate income tax return, corporate
 19 income and franchise tax return, estate tax return or special
 20 fuel excise tax return that shows a balance due the taxpayer or
 21 a fully completed amended income tax return, an amended
 22 corporate income tax return, an amended corporate income and
 23 franchise tax return, an amended estate tax return, an amended
 24 special fuel excise tax return or an amended oil and gas tax
 25 return that shows a lesser tax liability than the original

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1 return constitutes the filing of a claim for refund for the
2 difference in tax due shown on the original and amended
3 returns."

4 SECTION 4. Section 7-1-29 NMSA 1978 (being Laws 1965,
5 Chapter 248, Section 31, as amended) is amended to read:

6 "7-1-29. AUTHORITY TO MAKE REFUNDS OR CREDITS.--

7 A. In response to a claim for refund, credit or
8 rebate made as provided in Section 7-1-26 NMSA 1978, but before
9 a court acquires jurisdiction of the matter, the secretary or
10 the secretary's delegate may authorize payment to a person in
11 the amount of the credit or rebate claimed or refund an
12 overpayment of tax determined by the secretary or the
13 secretary's delegate to have been erroneously made by the
14 person, together with allowable interest. A payment of a
15 credit rebate claimed or a refund of tax and interest
16 erroneously paid amounting to twenty thousand dollars (\$20,000)
17 or more shall be made with the prior approval of the attorney
18 general, except that the secretary or the secretary's delegate
19 may make refunds with respect to the Oil and Gas Severance Tax
20 Act, the Oil and Gas Conservation Tax Act, the Oil and Gas
21 Emergency School Tax Act, the Oil and Gas Ad Valorem Production
22 Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas
23 Production Equipment Ad Valorem Tax Act, Section 7-13-17 NMSA
24 1978 and the Cigarette Tax Act without the prior approval of
25 the attorney general regardless of the amount.

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1 B. Pursuant to the final order of the district
2 court, the court of appeals, the supreme court of New Mexico or
3 a federal court, from which order, appeal or review is not
4 successfully taken, adjudging that a person has properly
5 claimed a credit or rebate or made an overpayment of tax, the
6 secretary shall authorize the payment to the person of the
7 amount thereof.

8 C. In the discretion of the secretary, any amount
9 of credit or rebate to be paid or tax to be refunded may be
10 offset against any amount of tax for which the person due to
11 receive the credit, rebate payment or refund is liable. The
12 secretary or the secretary's delegate shall give notice to the
13 taxpayer that the credit, rebate payment or refund will be made
14 in this manner, and the taxpayer shall be entitled to interest
15 pursuant to Section 7-1-68 NMSA 1978 until the tax liability is
16 credited with the credit, rebate or refund amount.

17 D. In an audit by the department or a managed audit
18 covering multiple reporting periods in which both underpayments
19 and overpayments of a tax have been made in different reporting
20 periods, the department shall credit the tax overpayments
21 against the underpayments, provided that the taxpayer files a
22 claim for refund of the overpayments. An overpayment shall be
23 applied as a credit first to the earliest underpayment and then
24 to succeeding underpayments. An underpayment of tax to which
25 an overpayment is credited pursuant to this section shall be

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1 deemed paid in the period in which the overpayment was made or
2 the period to which the overpayment was credited against an
3 underpayment, whichever is later. If the overpayments credited
4 pursuant to this section exceed the underpayments of a tax, the
5 amount of the net overpayment for the periods covered in the
6 audit shall be refunded to the taxpayer.

7 E. When a taxpayer makes a payment identified to a
8 particular return or assessment, and the department determines
9 that the payment exceeds the amount due pursuant to that return
10 or assessment, the secretary may apply the excess to the
11 taxpayer's other liabilities pursuant to the tax acts to which
12 the return or assessment applies, without requiring the
13 taxpayer to file a claim for a refund. The liability to which
14 an overpayment is applied pursuant to this section shall be
15 deemed paid in the period in which the overpayment was made or
16 the period to which the overpayment was applied, whichever is
17 later.

18 F. If the department determines, upon review of an
19 original or amended income tax return, corporate income and
20 franchise tax return, estate tax return, special fuels excise
21 tax return or oil and gas tax return, that there has been an
22 overpayment of tax for the taxable period to which the return
23 or amended return relates in excess of the amount due to be
24 refunded to the taxpayer [~~pursuant to the provisions of~~] under
25 Subsection [K] J of Section 7-1-26 NMSA 1978, the department

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1 may refund that excess amount to the taxpayer without requiring
2 the taxpayer to file a refund claim.

3 G. Records of refunds and credits made in excess of
4 ten thousand dollars (\$10,000) shall be available for
5 inspection by the public. The department shall keep such
6 records for a minimum of three years from the date of the
7 refund or credit.

8 H. In response to a timely refund claim pursuant to
9 Section 7-1-26 NMSA 1978 and notwithstanding any other
10 provision of the Tax Administration Act, the secretary or the
11 secretary's delegate may refund or credit a portion of an
12 assessment of tax paid, including applicable penalties and
13 interest representing the amount of tax previously paid by
14 another person on behalf of the taxpayer on the same
15 transaction, provided that the requirements of equitable
16 recoupment are met. For purposes of this subsection, the
17 refund claim may be filed by the taxpayer to whom the
18 assessment was issued or by another person who claims to have
19 previously paid the tax on behalf of the taxpayer. Prior to
20 granting the refund or credit, the secretary may require a
21 waiver of all rights to claim a refund or credit of the tax
22 previously paid by another person paying a tax on behalf of the
23 taxpayer."

24 SECTION 5. Section 7-1-29.1 NMSA 1978 (being Laws 2003,
25 Chapter 398, Section 12, as amended) is amended to read:

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1 "7-1-29.1. AWARDING OF COSTS AND FEES.--

2 A. In [~~any~~] an administrative proceeding or court
3 proceeding [~~that is~~] brought by or against [~~the~~] a taxpayer [~~on~~
4 ~~or after July 1, 2003~~] and conducted in connection with the
5 determination, collection or refund of [~~any~~] a tax or the
6 interest or penalty for a tax governed by [~~the provisions of~~]
7 the Tax Administration Act, the taxpayer shall be awarded a
8 judgment or a settlement for reasonable administrative costs or
9 reasonable litigation costs and attorney fees incurred in
10 connection with [~~an administrative~~] the proceeding [~~with the~~
11 ~~department or the administrative hearings office or reasonable~~
12 ~~litigation costs incurred in connection with a court~~
13 ~~proceeding~~] if the taxpayer is the prevailing party.

14 B. As used in this section:

15 (1) "administrative proceeding" means any
16 procedure or other action before the department or the
17 administrative hearings office;

18 (2) "court proceeding" means any civil action
19 brought in state district court;

20 (3) "reasonable administrative costs" means:

21 (a) any administrative fees or similar
22 charges imposed by the department or the administrative
23 hearings office; and

24 (b) actual charges for: 1) filing fees,
25 court reporter fees, service of process fees and similar

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1 expenses; 2) the services of expert witnesses; 3) any study,
 2 analysis, report, test or project reasonably necessary for the
 3 preparation of the party's case; and 4) fees and costs paid or
 4 incurred for the services in connection with the proceeding of
 5 attorneys or of certified public accountants who are authorized
 6 to practice in the context of an administrative proceeding; and

7 (4) "reasonable litigation costs" means:

8 (a) reasonable court costs; [~~and~~]

9 (b) reasonable attorney fees; and

10 [~~(b)~~] (c) actual charges for: 1) filing
 11 fees, court reporter fees, service of process fees and similar
 12 expenses; 2) the services of expert witnesses; 3) any study,
 13 analysis, report, test or project reasonably necessary for the
 14 preparation of the party's case; and 4) fees and costs paid or
 15 incurred for the services of attorneys in connection with the
 16 proceeding.

17 C. For purposes of this section:

18 (1) the taxpayer is the prevailing party if
 19 the taxpayer has:

20 (a) substantially prevailed with respect
 21 to the amount in controversy; or

22 (b) substantially prevailed with respect
 23 to most of the issues involved in the case or the most
 24 significant issue or set of issues involved in the case;

25 (2) the taxpayer [~~shall~~] is not [~~be treated~~]

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underscored material = new
 [bracketed material] = delete

1 as] the prevailing party if [~~prior to July 1, 2015, the~~
2 ~~department establishes or, on or after July 1, 2015]~~ the
3 [~~hearing officer]~~ administrative hearings office finds that the
4 position of the department in the proceeding was based upon a
5 reasonable application of the law to the facts of the case.
6 For purposes of this paragraph, the position of the department
7 shall be presumed not to be based upon a reasonable application
8 of the law to the facts of the case if:

9 (a) the department did not follow
10 applicable published guidance in the proceeding; or

11 (b) the assessment giving rise to the
12 proceeding is not supported by substantial evidence determined
13 at the time of the issuance of the assessment;

14 (3) as used in Subparagraph (a) of Paragraph
15 (2) of this subsection, "applicable published guidance" means:

16 (a) department or administrative
17 hearings office regulations, information releases,
18 instructions, notices, technical advice memoranda and
19 announcements; and

20 (b) private letter rulings and letters
21 issued by the department to the taxpayer; and

22 (4) the determination of whether the taxpayer
23 is the prevailing party and the amount of reasonable litigation
24 costs or reasonable administrative costs shall be made by
25 agreement of the parties or:

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1 (a) in the case [~~where the final~~
 2 ~~determination with respect to the tax, interest or penalty is~~
 3 ~~made in~~] of an administrative proceeding, by the hearing
 4 officer; or

5 (b) in the case [~~where the final~~
 6 ~~determination is made by the~~] of a court proceeding, by the
 7 court.

8 D. An order granting or denying in whole or in part
 9 an award for:

10 (1) reasonable litigation costs [~~pursuant to~~
 11 ~~Subsection A of~~] under this section in a court proceeding may
 12 be incorporated as a part of the court's decision or judgment
 13 [~~in the court proceeding~~] and [~~shall be~~] are subject to appeal
 14 in the same manner as the decision or judgment [~~A decision or~~
 15 ~~order granting or denying in whole or in part an award for~~];
 16 and

17 (2) reasonable administrative costs [~~pursuant~~
 18 ~~to Subsection A of~~] under this section [~~by a hearing officer~~
 19 ~~shall be~~] in an administrative proceeding are reviewable in the
 20 same manner as a decision of [~~a hearing officer~~] the
 21 administrative hearings office.

22 E. [~~No~~] An agreement for or award of reasonable
 23 administrative costs or reasonable litigation costs in any
 24 administrative proceeding or court proceeding [~~pursuant to~~
 25 ~~Subsection A of~~] under this section shall not exceed the lesser

1 of twenty percent of the amount of the settlement or judgment
2 or ~~[fifty thousand dollars (\$50,000)]. A taxpayer awarded~~
3 ~~administrative litigation costs pursuant to this section may~~
4 ~~not receive an award of attorney fees pursuant to Subsection D~~
5 ~~of Section 7-1-25 NMSA 1978]~~ seventy-five thousand dollars
6 (\$75,000).

7 F. The department shall annually report to the
8 legislative finance committee and the revenue stabilization and
9 tax policy committee on the costs it incurs under this
10 section."

11 SECTION 6. Section 7-1B-1 NMSA 1978 (being Laws 2015,
12 Chapter 73, Section 1) is amended to read:

13 "7-1B-1. SHORT TITLE.--~~[Sections 1 through 9 of this act]~~
14 Chapter 7, Article 1B NMSA 1978 may be cited as the
15 "Administrative Hearings Office Act"."

16 SECTION 7. Section 7-1B-6 NMSA 1978 (being Laws 2015,
17 Chapter 73, Section 6) is amended to read:

18 "7-1B-6. HEARING OFFICER CODE OF CONDUCT--INDEPENDENCE.--

19 A. The chief hearing officer shall:

20 (1) adopt and promulgate a hearing officer
21 code of conduct; and

22 (2) ~~[periodically]~~ annually, evaluate each
23 hearing officer's performance for competency, efficiency and
24 professional demeanor in accord with relevant legal standards
25 and the hearing officer code of conduct, including through the

1 use of a survey of practitioners who appear before the hearing
 2 officer.

3 B. The chief hearing officer shall ensure that each
 4 hearing officer has decisional independence; however, the chief
 5 hearing officer may:

6 (1) consult with a hearing officer about a
 7 genuine question of law; and

8 (2) review with a hearing officer any issue on
 9 appeal addressed by a court of this state.

10 C. The administrative hearings office shall:

11 (1) hear all tax protests [~~pursuant to the~~
 12 ~~provisions of~~] under the Tax Administration Act;

13 (2) hear property tax protests [~~pursuant to~~
 14 ~~the provisions of~~] under the Property Tax Code;

15 (3) hear all certificate-denial protests
 16 [~~pursuant to the provisions of~~] under Section 13-1-22 NMSA
 17 1978;

18 (4) conduct all adjudicatory hearings
 19 [~~pursuant to~~] under the Motor Vehicle Code;

20 (5) conduct all driver's license revocation
 21 hearings [~~pursuant to the provisions of~~] under the Implied
 22 Consent Act;

23 (6) make and preserve a complete record of all
 24 proceedings; and

25 (7) maintain confidentiality regarding

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underscored material = new
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1 taxpayer information as required by [~~the provisions of~~] Section
2 7-1-8 NMSA 1978.

3 D. In hearings conducted [~~pursuant to~~] in
4 accordance with the Tax Administration Act, Section 13-1-22
5 NMSA 1978 and the Motor Vehicle Code:

6 (1) the Rules of Evidence do not apply. The
7 hearing officer may require reasonable substantiation of
8 statements or records tendered, the accuracy or truth of which
9 is in reasonable doubt, to rule on the admissibility of
10 evidence. A taxpayer or the taxation and revenue department
11 may request a written ruling on a contested question of
12 evidence in a matter in which the taxpayer has filed a written
13 protest and for which that protest is pending. The
14 administrative hearings office shall issue a copy of its
15 written ruling to the [~~taxation and revenue~~] department at the
16 time the ruling is issued to the taxpayer;

17 (2) the Rules of Civil Procedure for the
18 District Courts do not apply. The hearing officer shall
19 conduct a hearing to allow the ample and fair presentation of
20 complaints and defenses. The hearing officer shall hear
21 arguments, permit discovery, entertain and dispose of motions,
22 require written expositions of the case as the circumstances
23 justify and render a decision in accordance with the law and
24 the evidence presented and admitted. A taxpayer or the
25 taxation and revenue department may request a written ruling on

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1 a contested question of procedure in a matter in which the
 2 taxpayer has filed a written protest and for which that protest
 3 is pending. The administrative hearings office shall issue a
 4 copy of its written ruling to the ~~[taxation and revenue]~~
 5 department at the time the ruling is issued to the taxpayer;
 6 and

7 (3) the hearing officer may administer oaths
 8 and issue subpoenas for the attendance of witnesses and the
 9 production of relevant books and papers, and for hearings
 10 conducted for a license suspension ~~[pursuant to]~~ under Section
 11 66-5-30 NMSA 1978, the hearing officer may require a
 12 reexamination of the licensee."

13 SECTION 8. Section 7-1B-8 NMSA 1978 (being Laws 2015,
 14 Chapter 73, Section 8) is amended to read:

15 "7-1B-8. TAX PROTESTS--PROCEDURES.--

16 A. Upon timely receipt of a tax protest filed
 17 ~~[pursuant to]~~ in accordance with the provisions of Section
 18 7-1-24 NMSA 1978, the taxation and revenue department shall
 19 promptly acknowledge the protest by letter to the protesting
 20 taxpayer or the taxpayer's representative. If the department
 21 determines that the protest [is] has not been filed in
 22 accordance with ~~[the provisions of]~~ that section ~~[7-1-24 NMSA~~
 23 ~~1978]~~, the department shall inform the taxpayer of the
 24 deficiency and provide the taxpayer, within twenty-one days of
 25 the taxpayer being informed, the opportunity to correct it.

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1 ~~[Within forty-five days after receipt of a protest filed~~
2 ~~pursuant to the provisions of Section 7-1-24 NMSA 1978 that has~~
3 ~~not been resolved, the taxation and revenue department shall~~
4 ~~request from the administrative hearings office a hearing and~~
5 ~~shall send to the office a copy of the protest. The chief~~
6 ~~hearing officer shall promptly designate a hearing officer and~~
7 ~~shall set a date for a hearing to take place within ninety days~~
8 ~~after receipt of a protest filed pursuant to Section 7-1-24~~
9 ~~NMSA 1978.] A determination by the department that a protest~~
10 ~~has not been filed in accordance with that section may be~~
11 ~~protested by the taxpayer.~~

12 B. Prior to the taxation and revenue department
13 requesting a formal hearing, at the taxpayer's written request,
14 the department shall meet with the taxpayer or the taxpayer's
15 representative in an informal conference to attempt in good
16 faith to resolve the disputed issues at protest. The
17 department shall hold the informal conference within sixty days
18 of the date the department received the taxpayer's written
19 request for an informal conference. Within thirty days after
20 the date of the informal conference, the department shall
21 provide a written report to the taxpayer that discusses a
22 response to the taxpayer's protest and the issues at the
23 informal conference, including a detailed description of the
24 legal and factual bases supporting the department's position
25 beyond an assertion of the presumption of correctness and a

1 summary of the good faith efforts made as part of the informal
2 conference process, including any issues that were resolved and
3 an articulation of the remaining disputed issues at protest.
4 The department shall articulate its position in detail on the
5 disputed matters.

6 C. Within one hundred eighty days after the receipt
7 of a protest that the taxation and revenue department has
8 determined was not filed in accordance with Section 7-1-24 NMSA
9 1978 that has not been resolved, or within one hundred eighty
10 days after the receipt of a protest filed in accordance with
11 Section 7-1-24 NMSA 1978 that has not been resolved, the
12 taxation and revenue department shall request from the
13 administrative hearings office a hearing and shall send to the
14 office a copy of the protest, a detailed statement of position
15 describing the legal and factual bases supporting the
16 department's position beyond an assertion of the presumption of
17 correctness and, if the taxpayer requested an informal
18 conference, a summary of the good faith efforts made as part of
19 the informal conference process, including any issues that were
20 resolved and an articulation of the remaining disputed issues
21 at protest. The department may amend its detailed statement of
22 position up until ten days before the scheduled hearing or
23 other deadline specified in a controlling scheduling order.
24 The hearing shall be limited to the grounds provided in the
25 taxpayer's protest letter and in the department's detailed

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1 statement of position.

2 D. The chief hearing officer shall promptly
3 designate a hearing officer and shall set a date for a hearing
4 to take place within ninety days of receipt of the protest.
5 Absent a conflict of interest requiring the assigned hearing
6 officer to recuse from the case pursuant to the administrative
7 hearings office code of conduct or an unforeseen emergency
8 circumstance such as an accident, unexpected medical condition
9 or illness, or vacancy of the position of the assigned hearing
10 officer, the chief hearing officer shall not reassign a hearing
11 officer to a case without giving the taxation and revenue
12 department and the taxpayer notice of that reassignment at
13 least fourteen days before the hearing. If the chief hearing
14 officer reassigns a hearing officer to a case, the taxpayer and
15 the taxation and revenue department may, within seven days
16 before the hearing, exercise once the peremptory right to
17 disqualify the hearing officer; otherwise, the taxpayer and the
18 taxation and revenue department may, at least thirty days
19 before the hearing, exercise the peremptory right to disqualify
20 the hearing officer designated to conduct the hearing; provided
21 that the taxpayer or the taxation and revenue department has
22 not previously moved for and received a discretionary ruling
23 from the assigned hearing officer.

24 E. The administrative hearings office shall rule on
25 a dispositive motion, including a motion for summary judgment,

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1 a motion for partial summary judgment or a motion to dismiss,
2 filed by the taxation and revenue department or the taxpayer at
3 least thirty days before the hearing unless the parties consent
4 to a different deadline in a scheduling order.

5 ~~[B.]~~ F. A taxpayer may appear at the hearing on the
6 taxpayer's own behalf or may be represented by a bona fide
7 employee, an attorney, a certified public accountant, an
8 employee of a law firm or certified public accounting firm
9 whose authorization by the taxpayer to appear is evidenced in
10 writing or ~~[with respect only to tax imposed pursuant to the~~
11 ~~Income Tax Act, a person who is]~~ an enrolled agent ~~[for federal~~
12 ~~income tax purposes]~~. If the taxation and revenue department
13 and the taxpayer agree, the hearing may be conducted via
14 videoconference. At the beginning of the hearing, the hearing
15 officer shall inform the taxpayer of the taxpayer's right to
16 representation. The taxpayer shall decide which party presents
17 its case first at the hearing and shall provide written notice
18 to the department and the administrative hearings office of the
19 taxpayer's decision no later than fifteen days prior to the
20 hearing. If the taxpayer fails to provide written notice, the
21 taxpayer shall present the taxpayer's case first. A hearing
22 shall ~~[not]~~ be ~~[open]~~ closed to the public except upon request
23 of the taxpayer. A hearing officer may postpone or continue a
24 hearing at the hearing officer's discretion. As used in this
25 subsection, "enrolled agent" means a federally licensed tax

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1 practitioner with unlimited rights to represent taxpayers
2 before the internal revenue service.

3 ~~[G.]~~ G. Within thirty days after the hearing, the
4 hearing officer shall inform the taxation and revenue
5 department and the taxpayer in writing of the decision and,
6 ~~[pursuant to the provisions of]~~ in accordance with Section
7 7-1-25 NMSA 1978, of the aggrieved party's right to, and the
8 requirements for perfection of, an appeal from the decision to
9 the court of appeals and of the consequences of a failure to
10 appeal. The written decision shall embody:

11 (1) an order granting or denying the relief
12 requested or granting or denying a part of the relief
13 requested, as appropriate; and

14 (2) findings of fact and law and a thorough
15 discussion of the reasoning used to support the order with
16 citations to the record and applicable law.

17 ~~[D.]~~ H. A taxpayer with two or more protests
18 containing related issues may request that the protests be
19 combined and heard jointly. The hearing officer shall grant
20 the request to combine protests unless it would create an
21 unreasonable burden on the administrative hearings office or
22 the taxation and revenue department.

23 ~~[E.]~~ I. Nothing in this section shall be construed
24 to authorize a criminal proceeding or to authorize an
25 administrative protest of the issuance of a subpoena or

1 summons."

2 SECTION 9. A new section of the Administrative Hearings
3 Office Act is enacted to read:

4 "[NEW MATERIAL] HEARING OFFICERS--COMPENSATION.--Hearing
5 officers shall receive an annual salary that is ninety percent
6 of the annual salary of a district court judge pursuant to
7 Paragraph (2) of Subsection D of Section 34-1-9 NMSA 1978."

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underscoring material = new
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