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AN ACT

RELATING TO TAX ADMINISTRATION; MODIFYING TERMS GOVERNING  
TAX-RELATED PROTESTS AND PROCEEDINGS AND THE ADMINISTRATIVE  
HEARINGS OFFICE.

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

SECTION 1. Section 7-1-16 NMSA 1978 (being Laws 1965,  
Chapter 248, Section 19, as amended) is amended to read:

"7-1-16. DELINQUENT TAXPAYER.--

A. Except as provided in Subsection D of this  
section, any taxpayer to whom taxes have been assessed as  
provided in Section 7-1-17 NMSA 1978 or upon whom demand for  
payment has been made as provided in Section 7-1-63 NMSA 1978  
who does not within ninety days after the date of assessment  
or demand for payment make payment of the undisputed amount,  
protest the assessment or demand for payment as provided by  
Section 7-1-24 NMSA 1978 or furnish security for payment as  
provided by Section 7-1-54 NMSA 1978 becomes a delinquent  
taxpayer and remains such until:

- (1) payment of the total amount of all such  
taxes is made;
- (2) security is furnished for payment; or
- (3) no part of the assessment remains  
unabated.

B. Any taxpayer who fails to provide security as

1 required by Subsection D of Section 7-1-54 NMSA 1978 shall be  
2 deemed to be a delinquent taxpayer.

3 C. If a taxpayer files a protest as provided in  
4 Section 7-1-24 NMSA 1978, the taxpayer nevertheless becomes a  
5 delinquent taxpayer upon failure of the taxpayer to appear,  
6 in person or by authorized representative, at the hearing set  
7 or upon failure to perfect an appeal from any decision or  
8 part thereof adverse to the taxpayer to the next higher  
9 appellate level, as provided in that section, unless the  
10 taxpayer makes payment of the total amount of all taxes  
11 assessed and remaining unabated or furnishes security for  
12 payment.

13 D. A taxpayer does not become a delinquent  
14 taxpayer if the taxpayer has been issued an assessment as a  
15 result of a managed audit but is still within the allowed  
16 time period to pay the tax due as specified in Paragraph (4)  
17 of Subsection A of Section 7-1-67 NMSA 1978."

18 SECTION 2. Section 7-1-23 NMSA 1978 (being Laws 1965,  
19 Chapter 248, Section 25, as amended) is amended to read:

20 "7-1-23. DISPUTING LIABILITIES--ELECTION OF REMEDIES.--  
21 A taxpayer may dispute the taxpayer's liability for taxes  
22 only by protesting the assessment of taxes as provided in  
23 Section 7-1-24 NMSA 1978 without making payment or by  
24 claiming a refund as provided in Section 7-1-26 NMSA 1978  
25 after making payment of the taxes the department asserts are

1 owed. The pursuit of one of the two remedies constitutes an  
2 unconditional waiver of the right to pursue the other."

3 SECTION 3. Section 7-1-24 NMSA 1978 (being Laws 1965,  
4 Chapter 248, Section 26, as amended) is amended to read:

5 "7-1-24. DISPUTING LIABILITIES--ADMINISTRATIVE  
6 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  
12 of a subpoena or summons; or

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

15 (a) credit or rebate; or

16 (b) claim for refund made in accordance  
17 with Section 7-1-26 NMSA 1978.

18 B. The taxpayer may dispute a matter described in  
19 Subsection A of this section by filing with the secretary a  
20 written protest that:

21 (1) identifies the taxpayer and the tax  
22 credit, rebate, property or provision of the Tax  
23 Administration Act involved;

24 (2) states the grounds on which the protest  
25 is based and summarizes evidence supporting each ground

1 asserted; and

2 (3) states the affirmative relief requested.

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

13 D. A taxpayer may file a protest, in the case of  
14 an assessment of tax by the department, without making  
15 payment of the amount assessed; provided that, if only a  
16 portion of the assessment is in dispute, any unprotested  
17 amounts of tax, interest or penalty shall be paid, or, if  
18 applicable, an installment agreement pursuant to Section  
19 7-1-21 NMSA 1978 shall be entered into for the unprotested  
20 amounts, on or before the due date for the protest.

21 E. A protest by a taxpayer shall be filed within  
22 ninety days after:

23 (1) the date of the mailing to the taxpayer  
24 by the department of the notice of assessment and demand for  
25 payment as provided in Subsection A or D of Section 7-1-17

1 NMSA 1978;

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

4 (3) the date of the application to the  
5 taxpayer of the applicable provision of the Tax  
6 Administration Act; or

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

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

13 (1) the undisputed amount of tax assessed  
14 and not protested becomes final;

15 (2) the taxpayer is deemed to have waived  
16 the right to protest the assessment, unless the taxpayer pays  
17 the tax and claims a refund of the tax pursuant to Section  
18 7-1-26 NMSA 1978; and

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

22 G. The fact that the department did not mail the  
23 assessment or other peremptory notice or demand by certified  
24 or registered mail or otherwise demand and receive  
25 acknowledgment of receipt by the taxpayer shall not be deemed

1 to demonstrate the taxpayer's inability to protest within the  
2 required time.

3 H. A proceeding other than one to enforce  
4 collection of an amount assessed as tax and to protect the  
5 interest of the state by injunction, as provided by Sections  
6 7-1-31, 7-1-33, 7-1-34, 7-1-40, 7-1-53, 7-1-56 and 7-1-58  
7 NMSA 1978, is not stayed by timely filing of a protest in  
8 accordance with this section.

9 I. Nothing in this section shall be construed to  
10 authorize a criminal proceeding or to authorize an  
11 administrative protest of the issuance of a subpoena or  
12 summons."

13 SECTION 4. Section 7-1-26 NMSA 1978 (being Laws 1965,  
14 Chapter 248, Section 28, as amended) is amended to read:

15 "7-1-26. DISPUTING LIABILITIES--CLAIM FOR CREDIT,  
16 REBATE OR REFUND.--

17 A. A person who believes that an amount of tax has  
18 been paid by or withheld from that person in excess of that  
19 for which the person was liable, who has been denied a credit  
20 or rebate claimed or who claims a prior right to property in  
21 the possession of the department pursuant to a levy made  
22 under authority of Sections 7-1-31 through 7-1-34 NMSA 1978  
23 may claim a refund by directing to the secretary, within the  
24 time limitations provided by Subsections F and G of this  
25 section, a written claim for refund that, except as provided

1 in Subsection K of this section, includes:

2 (1) the taxpayer's name, address and  
3 identification number;

4 (2) the type of tax for which a refund is  
5 being claimed, the credit or rebate denied or the property  
6 levied upon;

7 (3) the sum of money or other property being  
8 claimed;

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

11 (5) a brief statement of the facts and the  
12 law on which the claim is based, which may be referred to as  
13 the "basis for the refund", which may include documentation  
14 that substantiates the written claim and supports the  
15 taxpayer's basis for the refund; and

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

18 B. A claim for refund that meets the requirements  
19 of Subsection A of this section and that is filed within the  
20 time limitations provided by Subsections F and G of this  
21 section is deemed to be properly before the department for  
22 consideration, regardless of whether the department requests  
23 additional documentation after receipt of the claim for  
24 refund.

25 C. If the department requests additional relevant

1 documentation from a taxpayer who has submitted a claim for  
2 refund, the claim for refund shall not be considered  
3 incomplete provided the taxpayer submits sufficient  
4 information for the department to make a determination.

5 D. The secretary or the secretary's delegate may  
6 allow the claim in whole or in part or may deny the claim.

7 If the:

8 (1) claim is denied in whole or in part in  
9 writing, the person shall not refile the denied claim, but  
10 the person, within ninety days after either the mailing or  
11 delivery of the denial of all or any part of the claim, may  
12 elect to pursue only one of the remedies provided in  
13 Subsection E of this section; and

14 (2) department has neither granted nor  
15 denied any portion of a complete claim for refund within one  
16 hundred eighty days after the claim was mailed or otherwise  
17 delivered to the department, the person may elect to treat  
18 the claim as denied and elect to pursue only one of the  
19 remedies provided in Subsection E of this section.

20 E. A person may elect to pursue only one of the  
21 remedies provided in this subsection. A person who timely  
22 pursues more than one remedy is deemed to have elected the  
23 first. The person may:

24 (1) direct to the secretary, pursuant to the  
25 provisions of Section 7-1-24 NMSA 1978, a written protest



1 that sets forth:

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

6 (b) an allegation that, because of that  
7 overpayment or denial, the state is indebted to the taxpayer  
8 for a specified amount, including any allowed interest, or  
9 for the property;

10 (c) a demand for the refund to the  
11 taxpayer of that amount or that property; and

12 (d) a recitation of the facts of the  
13 claim for refund; or

14 (2) commence a civil action in the district  
15 court for Santa Fe county by filing a complaint setting forth  
16 the circumstance of the claimed overpayment, denied credit or  
17 rebate or denial of a prior right to property levied upon by  
18 the department alleging that on account thereof the state is  
19 indebted to the plaintiff in the amount or property stated,  
20 together with any interest allowable, demanding the refund to  
21 the plaintiff of that amount or property and reciting the  
22 facts of the claim for refund. The plaintiff or the  
23 secretary may appeal from any final decision or order of the  
24 district court to the court of appeals.

25 F. Except as otherwise provided in Subsection G of

1 this section, a credit or refund of any amount may be allowed  
2 or made to a person:

3 (1) only within three years after the end of  
4 the calendar year in which:

5 (a) the payment was originally due or  
6 the overpayment resulted from an assessment by the department  
7 as provided in Section 7-1-17 NMSA 1978, whichever is later;

8 (b) the final determination of value  
9 occurs with respect to any overpayment that resulted from a  
10 disapproval by any agency of the United States or the state  
11 of New Mexico or any court of increase in value of a product  
12 subject to taxation under the Oil and Gas Severance Tax Act,  
13 the Oil and Gas Conservation Tax Act, the Oil and Gas  
14 Emergency School Tax Act, the Oil and Gas Ad Valorem  
15 Production Tax Act or the Natural Gas Processors Tax Act;

16 (c) property was levied upon as  
17 provided in the Tax Administration Act; or

18 (d) an overpayment of New Mexico tax  
19 resulted from: 1) an internal revenue service audit  
20 adjustment or a federal refund paid due to an adjustment of  
21 an audit by the internal revenue service or an amended  
22 federal return; or 2) the amendment to a federal return for  
23 which federal approval is required by the Internal Revenue  
24 Code;

25 (2) in the case of a denial of a claim for

1 credit under the Investment Credit Act, Laboratory  
2 Partnership with Small Business Tax Credit Act or Technology  
3 Jobs and Research and Development Tax Credit Act or for the  
4 rural job tax credit provided by Section 7-2E-1.1 NMSA 1978  
5 or similar credit, only within one year after the date of the  
6 denial;

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

17 (4) in the case of a payment of an amount of  
18 tax not made within three years of the end of the calendar  
19 year in which the original due date of the tax or date of the  
20 assessment of the department occurred, only for a claim for  
21 refund of that amount of tax and only within one year of the  
22 date on which the tax was paid; or

23 (5) in the case of a taxpayer who has been  
24 assessed a tax on or after July 1, 1993 under Subsection B, C  
25 or D of Section 7-1-18 NMSA 1978 and an assessment that

1 applies to a period ending at least three years prior to the  
2 beginning of the year in which the assessment was made, only  
3 for a refund for the same tax for the period of the  
4 assessment or for any period following that period within one  
5 year of the date of the assessment unless a longer period for  
6 claiming a refund is provided in this section.

7 G. No credit or refund shall be allowed or made to  
8 a person claiming a refund of gasoline tax under Section  
9 7-13-11 NMSA 1978 unless notice of the destruction of the  
10 gasoline was given to the department within thirty days of  
11 the actual destruction and the claim for refund is made  
12 within six months of the date of destruction. No credit or  
13 refund shall be allowed or made to a person claiming a refund  
14 of gasoline tax under Section 7-13-17 NMSA 1978 unless the  
15 refund is claimed within six months of the date of purchase  
16 of the gasoline and the gasoline has been used at the time  
17 the claim for refund is made.

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

25 I. A refund of tax paid under any tax or tax act

1 administered under Subsection B of Section 7-1-2 NMSA 1978  
2 may be made, at the discretion of the department, in the form  
3 of credit against future tax payments if future tax  
4 liabilities in an amount at least equal to the credit amount  
5 reasonably may be expected to become due.

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

14 K. The filing of a fully completed original income  
15 tax return, corporate income tax return, corporate income and  
16 franchise tax return, estate tax return or special fuel  
17 excise tax return that shows a balance due the taxpayer or a  
18 fully completed amended income tax return, an amended  
19 corporate income tax return, an amended corporate income and  
20 franchise tax return, an amended estate tax return, an  
21 amended special fuel excise tax return or an amended oil and  
22 gas tax return that shows a lesser tax liability than the  
23 original return constitutes the filing of a claim for refund  
24 for the difference in tax due shown on the original and  
25 amended returns."

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

3 "7-1-29.1. AWARDING OF COSTS AND FEES.--

4 A. In an administrative proceeding or court  
5 proceeding brought by or against a taxpayer and conducted in  
6 connection with the determination, collection or refund of a  
7 tax or the interest or penalty for a tax governed by the Tax  
8 Administration Act, the taxpayer shall be awarded a judgment  
9 or a settlement for reasonable administrative costs and  
10 reasonable litigation costs and attorney fees incurred in  
11 connection with the proceeding if the taxpayer is the  
12 prevailing party.

13 B. As used in this section:

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

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

19 (3) "reasonable administrative costs" means:

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

23 (b) actual charges for: 1) filing  
24 fees, court reporter fees, service of process fees and  
25 similar expenses; 2) the services of expert witnesses; 3) any

1 study, analysis, report, test or project reasonably necessary  
2 for the preparation of the party's case; and 4) fees and  
3 costs paid or incurred for the services in connection with  
4 the proceeding of attorneys, certified public accountants,  
5 employees of a New Mexico licensed certified public  
6 accounting firm or enrolled agents who are authorized to  
7 practice in the context of an administrative proceeding; and

8 (4) "reasonable litigation costs and  
9 attorney fees" means:

10 (a) reasonable court costs; and

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

18 C. For purposes of this section:

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

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

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

1                   (2) the taxpayer is not the prevailing party  
2 if the administrative hearings office finds that the position  
3 of the department in the proceeding was based upon a  
4 reasonable application of the law to the facts of the case.  
5 For purposes of this paragraph, the position of the  
6 department shall be presumed not to be based upon a  
7 reasonable application of the law to the facts of the case  
8 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  
13 determined 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"  
16 means:

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

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

23                   (4) the determination of whether the  
24 taxpayer is the prevailing party and the amount of reasonable  
25 litigation costs or reasonable administrative costs shall be



1 made by agreement of the parties or:

2 (a) in the case of an administrative  
3 proceeding, by the hearing officer; or

4 (b) in the case of a court proceeding,  
5 by the court.

6 D. An order granting or denying in whole or in  
7 part an award for:

8 (1) reasonable litigation costs and attorney  
9 fees pursuant to Subsection A of this section in a court  
10 proceeding may be incorporated as a part of the court's  
11 decision or judgment and are subject to appeal in the same  
12 manner as the decision or judgment; and

13 (2) reasonable administrative costs pursuant  
14 to Subsection A of this section in an administrative  
15 proceeding are reviewable in the same manner as a decision of  
16 the administrative hearings office.

17 E. An agreement for or award of reasonable  
18 administrative costs or reasonable litigation costs in any  
19 administrative proceeding or court proceeding pursuant to  
20 Subsection A of this section shall not exceed the lesser of  
21 twenty percent of the amount of the settlement or judgment or  
22 seventy-five thousand dollars (\$75,000).

23 F. The department shall annually report to the  
24 legislative finance committee and the revenue stabilization  
25 and tax policy committee on the costs it incurs pursuant to

1 this section."

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

4 "7-1B-1. SHORT TITLE.--Chapter 7, Article 1B NMSA 1978  
5 may be cited as the "Administrative Hearings Office Act"."

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

8 "7-1B-6. HEARING OFFICER CODE OF CONDUCT--  
9 INDEPENDENCE.--

10 A. The chief hearing officer shall:

11 (1) adopt and promulgate a hearing officer  
12 code of conduct; and

13 (2) annually, evaluate each hearing  
14 officer's performance for competency, efficiency and  
15 professional demeanor in accord with relevant legal standards  
16 and the hearing officer code of conduct, including through  
17 the use of a survey of practitioners who appear before the  
18 hearing officer.

19 B. The chief hearing officer shall ensure that  
20 each hearing officer has decisional independence; however,  
21 the chief hearing officer may:

22 (1) consult with a hearing officer about a  
23 genuine question of law; and

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

1 C. The administrative hearings office shall:

2 (1) hear all tax protests pursuant to the  
3 provisions of the Tax Administration Act;

4 (2) hear property tax protests pursuant to  
5 the provisions of the Property Tax Code;

6 (3) hear all certificate-denial protests  
7 pursuant to the provisions of Section 13-1-22 NMSA 1978;

8 (4) conduct all adjudicatory hearings  
9 pursuant to the Motor Vehicle Code;

10 (5) conduct all driver's license revocation  
11 hearings pursuant to the provisions of the Implied Consent  
12 Act;

13 (6) make and preserve a complete record of  
14 all proceedings; and

15 (7) maintain confidentiality regarding  
16 taxpayer information as required by Section 7-1-8 NMSA 1978.

17 D. In hearings conducted in accordance with the  
18 Tax Administration Act, Section 13-1-22 NMSA 1978 and the  
19 Motor Vehicle Code:

20 (1) the Rules of Evidence do not apply. The  
21 hearing officer may require reasonable substantiation of  
22 statements or records tendered, the accuracy or truth of  
23 which is in reasonable doubt, to rule on the admissibility of  
24 evidence. A taxpayer or the taxation and revenue department  
25 may request a written ruling on a contested question of

1 evidence in a matter in which the taxpayer has filed a  
2 written protest and for which that protest is pending. The  
3 administrative hearings office shall issue a copy of its  
4 written ruling to the department at the time the ruling is  
5 issued to the taxpayer;

6 (2) the Rules of Civil Procedure for the  
7 District Courts do not apply. The hearing officer shall  
8 conduct a hearing to allow the ample and fair presentation of  
9 complaints and defenses. The hearing officer shall hear  
10 arguments, permit discovery, entertain and dispose of  
11 motions, require written expositions of the case as the  
12 circumstances justify and render a decision in accordance  
13 with the law and the evidence presented and admitted. A  
14 taxpayer or the taxation and revenue department may request a  
15 written ruling on a contested question of procedure in a  
16 matter in which the taxpayer has filed a written protest and  
17 for which that protest is pending. The administrative  
18 hearings office shall issue a copy of its written ruling to  
19 the department at the time the ruling is issued to the  
20 taxpayer; and

21 (3) the hearing officer may administer oaths  
22 and issue subpoenas for the attendance of witnesses and the  
23 production of relevant books and papers, and for hearings  
24 conducted for a license suspension pursuant to Section  
25 66-5-30 NMSA 1978, the hearing officer may require a

1 reexamination of the licensee."

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

4 "7-1B-8. TAX PROTESTS--PROCEDURES.--

5 A. Upon timely receipt of a tax protest filed in  
6 accordance with the provisions of Section 7-1-24 NMSA 1978,  
7 the taxation and revenue department shall promptly  
8 acknowledge the protest by letter to the protesting taxpayer  
9 or the taxpayer's representative. If the department  
10 determines that the protest has not been filed in accordance  
11 with that section, the department shall, within twenty-one  
12 days of receipt of the protest, inform the taxpayer of the  
13 deficiency and provide the taxpayer, within twenty-one days  
14 of the taxpayer being informed, one opportunity to correct  
15 it. If the taxpayer corrects the deficiency, the protest  
16 shall be considered timely if the initial protest was filed  
17 within ninety days in accordance with Subsection D of Section  
18 7-1-24 NMSA 1978. A determination by the department that a  
19 protest has not been filed in accordance with that section  
20 may be protested by the taxpayer.

21 B. Within one hundred eighty days, but no earlier  
22 than sixty days after the date of the protest, the taxation  
23 and revenue department shall request a hearing with the  
24 administrative hearings office. A taxpayer may request in  
25 writing an informal conference with the department within

1 sixty days after the date of the protest, and the department  
2 shall conduct the requested informal conference within thirty  
3 days of the receipt of the request. Whether or not a  
4 taxpayer requests an informal conference with the department,  
5 a taxpayer may request a hearing with the administrative  
6 hearings office no earlier than sixty days from the date of  
7 the protest.

8 C. The taxation and revenue department shall  
9 include with its request for a hearing an answer to the  
10 protest describing the legal and factual bases supporting the  
11 department's position beyond an assertion of the presumption  
12 of correctness and articulating the remaining protested  
13 issues.

14 D. In the event the taxpayer first requests a  
15 hearing with the administrative hearings office, the taxation  
16 and revenue department shall, within thirty days of service  
17 of the taxpayer's request for a hearing, file its answer to  
18 the protest describing the legal and factual bases supporting  
19 the department's position beyond an assertion of the  
20 presumption of correctness. The department may amend its  
21 answer to the protest up until ten days before the scheduled  
22 hearing or other deadline specified in a controlling  
23 scheduling order; provided that if the administrative  
24 hearings office determines that the department's amended  
25 answer unfairly prejudices the taxpayer, the administrative

1 hearings office may disallow the amended answer. The hearing  
2 shall be limited to the grounds provided in the taxpayer's  
3 protest letter and in the department's answer to the protest.

4 E. If the hearing officer finds that the taxation  
5 and revenue department failed to comply with the deadlines  
6 set forth in Subsections A and B of this section, the hearing  
7 officer may order that no further interest may accrue on the  
8 protested liability.

9 F. If the taxpayer files the request for a  
10 hearing, the chief hearing officer shall set a hearing to  
11 take place within ninety days of the taxation and revenue  
12 department's answer to the protest, but in no case later than  
13 one hundred twenty days after the taxpayer's request for a  
14 hearing. If the department files the request for hearing  
15 with the answer to the protest, the chief hearing officer  
16 shall set a hearing to take place within ninety days of that  
17 request. Absent a conflict of interest requiring the  
18 assigned hearing officer to recuse from the case pursuant to  
19 the administrative hearings office code of conduct or an  
20 unforeseen emergency circumstance such as an accident,  
21 unexpected medical condition or illness, or vacancy of the  
22 position of the assigned hearing officer, the chief hearing  
23 officer shall not reassign a hearing officer to a case  
24 without giving the department and the taxpayer notice of that  
25 reassignment at least fourteen days before the hearing.

1 Either party may, within ten days of notice of hearing  
2 assigning a hearing officer or notice of reassignment of a  
3 hearing officer, exercise one time the peremptory right to  
4 excuse the hearing officer designated to conduct the hearing;  
5 provided that the party has not moved for a discretionary  
6 ruling from the assigned hearing officer, nor previously  
7 exercised its right of peremptory excusal. Once a hearing  
8 officer has been peremptorily excused, that hearing officer  
9 shall not be assigned to the case again.

10 G. The administrative hearings office shall rule  
11 on a dispositive motion, including a motion for summary  
12 judgment, a motion for partial summary judgment or a motion  
13 to dismiss, filed by the taxation and revenue department or  
14 the taxpayer at least thirty days before the hearing unless  
15 the parties consent to a different deadline in a scheduling  
16 order.

17 H. A taxpayer may appear at the hearing on the  
18 taxpayer's own behalf, may appear through a bona fide  
19 employee or may be represented by an attorney, a certified  
20 public accountant, an employee of a New Mexico licensed  
21 certified public accounting firm whose authorization by the  
22 firm and by the taxpayer to appear is evidenced in writing or  
23 an enrolled agent. An attorney, a certified public  
24 accountant, an employee of a New Mexico licensed certified  
25 public accounting firm or an enrolled agent shall abide by



1 their respective controlling professional or ethical  
2 standards of conduct at all stages of the administrative  
3 proceeding before the administrative hearings office. If the  
4 taxation and revenue department and the taxpayer agree, the  
5 hearing may be conducted via videoconference. At the  
6 beginning of the hearing, the hearing officer shall inform  
7 the taxpayer of the taxpayer's right to representation. A  
8 hearing shall be closed to the public except upon request of  
9 the taxpayer. A hearing officer may postpone or continue a  
10 hearing at the hearing officer's discretion. As used in this  
11 subsection, "enrolled agent" means a federally licensed tax  
12 practitioner with unlimited rights to represent taxpayers  
13 before the internal revenue service.

14 I. Within thirty days after the hearing, the  
15 hearing officer shall inform the taxation and revenue  
16 department and the taxpayer in writing of the decision and,  
17 in accordance with Section 7-1-25 NMSA 1978, of the aggrieved  
18 party's right to, and the requirements for perfection of, an  
19 appeal from the decision to the court of appeals and of the  
20 consequences of a failure to appeal. The written decision  
21 shall embody:

22 (1) an order granting or denying the relief  
23 requested or granting or denying a part of the relief  
24 requested, as appropriate; and

25 (2) findings of fact and law and a thorough

1 discussion of the reasoning used to support the order with  
2 citations to the record and applicable law.

3 J. A taxpayer with two or more protests containing  
4 related issues may request that the protests be combined and  
5 heard jointly. The hearing officer shall grant the request  
6 to combine protests unless it would create an unreasonable  
7 burden on the administrative hearings office or the taxation  
8 and revenue department.

9 K. Nothing in this section shall be construed to  
10 authorize a criminal proceeding or to authorize an  
11 administrative protest of the issuance of a subpoena or  
12 summons." \_\_\_\_\_

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