

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HOUSE BILL 339

51ST LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2014

INTRODUCED BY

George Dodge, Jr.

AN ACT

RELATING TO TAXATION; CLARIFYING THE STATUS OF CERTAIN TAX REVENUES HELD BY THE STATE; REVISING PROCEDURES FOR ADJUSTING DISTRIBUTIONS AND TRANSFERS TO LOCAL GOVERNMENTS; PROVIDING PROCEDURES FOR MUNICIPALITIES AND COUNTIES TO DISPUTE REDUCTIONS IN DISTRIBUTIONS; AMENDING AND ENACTING SECTIONS OF THE NMSA 1978.

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

SECTION 1. Section 7-1-6.1 NMSA 1978 (being Laws 1983, Chapter 211, Section 6, as amended) is amended to read:

"7-1-6.1. IDENTIFICATION OF MONEY IN TAX ADMINISTRATION SUSPENSE FUND--DISTRIBUTION.--

A. After the necessary disbursements have been made from the tax administration suspense fund, the money remaining, except for ~~[remittances received within the previous sixty days~~

.196387.1

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 ~~that are unidentified as to source or disposition]~~ amounts
2 described in Subsection B of this section, in the suspense fund
3 as of the last day of the month shall be identified by tax
4 source and distributed or transferred in accordance with the
5 applicable provisions of the Tax Administration Act. After the
6 necessary distributions and transfers, any balance shall be
7 distributed to the general fund.

8 B. The following amounts are to be retained in the
9 tax administration suspense fund at the end of each month:

10 (1) remittances received within the previous
11 two months that are unidentified as to source or disposition;

12 (2) amounts of county business retention gross
13 receipts tax that are pending annual transfer pursuant to
14 Section 7-1-6.60 NMSA 1978; and

15 (3) amounts withheld pursuant to Section
16 7-1-6.15 NMSA 1978.

17 C. For purposes of this section and every section
18 of law that makes a distribution or transfer pursuant to this
19 section, a payment over by the state of receipts from a tax or
20 fee imposed by a political subdivision or the government of an
21 Indian nation, tribe or pueblo, another state or the United
22 States to the entity that imposed the tax or fee is a transfer
23 and not an appropriation."

24 **SECTION 2.** Section 7-1-6.12 NMSA 1978 (being Laws 1983,
25 Chapter 211, Section 17, as amended) is amended to read:

.196387.1

underscored material = new
[bracketed material] = delete

1 "7-1-6.12. TRANSFER--REVENUES FROM MUNICIPAL LOCAL OPTION
2 GROSS RECEIPTS TAXES.--

3 A. A transfer pursuant to Section 7-1-6.1 NMSA 1978
4 shall be made to each municipality for which the department is
5 collecting a local option gross receipts tax imposed by that
6 municipality in an amount [~~subject to any increase or decrease~~
7 ~~made pursuant to Section 7-1-6.15 NMSA 1978, equal to the net~~
8 ~~receipts attributable to the local option gross receipts tax~~
9 ~~imposed by that municipality, less any deduction for~~
10 ~~administrative cost determined and made by the department~~
11 ~~pursuant to the provisions of the act authorizing imposition by~~
12 ~~that municipality of the local option gross receipts tax and~~
13 ~~any additional administrative fee withheld pursuant to~~
14 ~~Subsection C of Section 7-1-6.41 NMSA 1978.~~

15 B.] equal to the net receipts attributable to the
16 local option gross receipts tax imposed by that municipality:

17 (1) plus any increase made pursuant to Section
18 7-1-6.15 NMSA 1978 and any other amounts specified by law; and

19 (2) less any decrease made pursuant to Section
20 7-1-6.15 NMSA 1978, any applicable deduction for administrative
21 cost pursuant to Subsection B of this section and any other
22 amounts specified by law.

23 B. The deduction for administrative cost applicable
24 to a transfer of municipal local option gross receipts tax
25 shall equal a rate of three percent multiplied by that portion

.196387.1

1 of the net receipts subject to deduction for administrative
2 cost.

3 C. A transfer pursuant to this section may be
4 adjusted for a distribution made to a tax increment development
5 district with respect to a portion of a gross receipts tax
6 increment dedicated by a municipality pursuant to the Tax
7 Increment for Development Act."

8 SECTION 3. Section 7-1-6.13 NMSA 1978 (being Laws 1983,
9 Chapter 211, Section 18, as amended) is amended to read:

10 "7-1-6.13. TRANSFER--REVENUES FROM COUNTY LOCAL OPTION
11 GROSS RECEIPTS TAXES.--

12 A. Except as provided in [~~Subsections B and C of~~
13 ~~this section~~] Section 7-1-6.60 NMSA 1978, a transfer pursuant
14 to Section 7-1-6.1 NMSA 1978 shall be made to each county for
15 which the department is collecting a local option gross
16 receipts tax imposed by that county in an amount [~~subject to~~
17 ~~any increase or decrease made pursuant to Section 7-1-6.15 NMSA~~
18 ~~1978~~] equal to the net receipts attributable to the local
19 option gross receipts tax imposed by that county: [~~less any~~
20 ~~deduction for administrative cost determined and made by the~~
21 ~~department pursuant to the provisions of the act authorizing~~
22 ~~imposition by that county of the local option gross receipts~~
23 ~~tax and any additional administrative fee withheld pursuant to~~
24 ~~Subsection C of Section 7-1-6.41 NMSA 1978.~~

25 ~~B.~~] (1) plus any increase made pursuant to

.196387.1

underscored material = new
[bracketed material] = delete

1 Section 7-1-6.15 NMSA 1978 and any other amounts specified by
2 law; and

3 (2) less any decrease made pursuant to Section
4 7-1-6.15 NMSA 1978, any applicable deduction for administrative
5 cost pursuant to Subsection B of this section and any other
6 amounts specified by law.

7 B. The deduction for administrative cost applicable
8 to a transfer of county local option gross receipts tax shall
9 equal a rate of three percent multiplied by that portion of the
10 net receipts subject to deduction for administrative cost.

11 C. A transfer pursuant to Subsection A of this
12 section may be adjusted for a distribution made to a tax
13 increment development district with respect to a portion of a
14 gross receipts tax increment dedicated by a county pursuant to
15 the Tax Increment for Development Act.

16 ~~[G. Through June 30, 2009, a distribution pursuant~~
17 ~~to Section 7-1-6.1 NMSA 1978 shall be made to the sole~~
18 ~~community provider fund from revenue attributable to the county~~
19 ~~gross receipts tax imposed by a county pursuant to Section~~
20 ~~7-20E-9 NMSA 1978, subject to the approval of the board of~~
21 ~~county commissioners of that county. The distribution shall be~~
22 ~~in an amount equal to one-twelfth of the county's annual~~
23 ~~approved contribution for support of sole community provider~~
24 ~~payments. Revenue in excess of the amount required for the~~
25 ~~contribution shall be transferred to the county pursuant to the~~

.196387.1

underscored material = new
[bracketed material] = delete

1 ~~provisions of Subsection A of this section.]"~~

2 SECTION 4. Section 7-1-6.15 NMSA 1978 (being Laws 1983,
3 Chapter 211, Section 20, as amended) is amended to read:

4 "7-1-6.15. ADJUSTMENTS OF DISTRIBUTIONS OR TRANSFERS TO
5 MUNICIPALITIES OR COUNTIES.--

6 A. The provisions of this section apply to:

7 (1) any distribution to a municipality [~~of~~
8 ~~gross receipts taxes~~] pursuant to Section 7-1-6.4, [~~NMSA 1978~~
9 ~~or of interstate telecommunications gross receipts tax pursuant~~
10 ~~to Section~~] 7-1-6.36 or 7-1-6.46 NMSA 1978;

11 (2) any transfer to a municipality with
12 respect to any local option gross receipts tax imposed by that
13 municipality;

14 (3) any transfer to a county with respect to
15 any local option gross receipts tax imposed by that county;

16 (4) any distribution to a county pursuant to
17 Section 7-1-6.16 or 7-1-6.47 NMSA 1978;

18 (5) any distribution to a municipality or a
19 county of gasoline taxes pursuant to Section 7-1-6.9 NMSA 1978;

20 (6) any transfer to a county with respect to
21 any tax imposed in accordance with the Local Liquor Excise Tax
22 Act;

23 (7) any distribution to a municipality or a
24 county of cigarette taxes pursuant to Sections 7-1-6.11,
25 7-12-15 and 7-12-16 NMSA 1978;

.196387.1

underscored material = new
[bracketed material] = delete

1 (8) any distribution to a county from the
2 county government road fund pursuant to Section 7-1-6.26 NMSA
3 1978;

4 (9) any distribution to a municipality of
5 gasoline taxes pursuant to Section 7-1-6.27 NMSA 1978; and

6 (10) any distribution to a municipality of
7 compensating taxes pursuant to Section 7-1-6.55 NMSA 1978.

8 ~~[B. If the secretary determines that any prior~~
9 ~~distribution or transfer to a political subdivision was~~
10 ~~erroneous, the secretary shall increase or decrease the next~~
11 ~~distribution or transfer amount for that political subdivision~~
12 ~~after the determination, except as provided in Subsection C, D~~
13 ~~or E of this section, by the amount necessary to correct the~~
14 ~~error. Subject to the provisions of Subsection E of this~~
15 ~~section, the secretary shall notify the political subdivision~~
16 ~~of the amount of each increase or decrease.~~

17 ~~C. No decrease shall be made to current or future~~
18 ~~distributions or transfers to a political subdivision for any~~
19 ~~excess distribution or transfer made to that political~~
20 ~~subdivision more than one year prior to the calendar year in~~
21 ~~which the determination of the secretary was made.~~

22 ~~D. The secretary, in lieu of recovery from the next~~
23 ~~distribution or transfer amount, may recover an excess~~
24 ~~distribution or transfer of one hundred dollars (\$100) or more~~
25 ~~to the political subdivision in installments from current and~~

.196387.1

underscored material = new
[bracketed material] = delete

1 ~~future distributions or transfers to that political subdivision~~
2 ~~pursuant to an agreement with the officials of the political~~
3 ~~subdivision whenever the amount of the distribution or transfer~~
4 ~~decrease for the political subdivision exceeds ten percent of~~
5 ~~the average distribution or transfer amount for that political~~
6 ~~subdivision for the twelve months preceding the month in which~~
7 ~~the secretary's determination is made; provided that for the~~
8 ~~purposes of this subsection, the "average distribution or~~
9 ~~transfer amount" shall be the arithmetic mean of the~~
10 ~~distribution or transfer amounts within the twelve months~~
11 ~~immediately preceding the month in which the determination is~~
12 ~~made.~~

13 ~~E. Except for the provisions of this section, if~~
14 ~~the amount by which a distribution or transfer would be~~
15 ~~adjusted pursuant to Subsection B of this section is one~~
16 ~~hundred dollars (\$100) or less, no adjustment or notice need be~~
17 ~~made.~~

18 ~~F.]~~ B. Except as otherwise provided in this
19 section, the secretary has the authority and duty with respect
20 to the distributions and transfers enumerated in Subsection A
21 of this section to adjust the amount of a distribution or
22 transfer to a municipality or county when information received,
23 whether the information derives from amended returns, approved
24 claims for refund, payments of department-issued assessments,
25 processing of audit adjustments, detection of department error

.196387.1

underscored material = new
[bracketed material] = delete

1 or other source, clearly indicates that such an adjustment is
2 appropriate. No increase or decrease to the current month
3 distribution or transfer amount shall be made with respect to
4 an overpayment or underpayment of tax prior to the beginning of
5 the calendar year prior to the year of the current month.

6 C. The amount of a distribution or transfer for a
7 current month shall not include a decrease determined that
8 month to be a qualifying amount. The department shall
9 determine whether a decrease is a qualifying amount. Prior to
10 taking action to collect that qualifying amount in subsequent
11 months, the department shall:

12 (1) reduce the qualifying amount by the sum of
13 any component negative amounts related to periods more than one
14 year prior to the calendar year in which the determination was
15 made plus any positive component amounts related to any periods
16 not more than one year prior to the calendar year in which the
17 determination was made; and

18 (2) notify the affected municipality or county
19 of the reduced qualifying amount that the department intends to
20 collect beginning with the distributions or transfers to that
21 municipality or county for months beginning in the second month
22 following the month in which notice is given. If practicable,
23 the notice shall be made concurrently with the current month's
24 distribution or transfer to that municipality or county.

25 D. Within sixty days from the date notice is given,

.196387.1

underscored material = new
~~[bracketed material] = delete~~

1 or if notice is not provided, from the date of first
2 application of a qualifying amount, the municipality or county
3 must either agree to collection of the reduced qualifying
4 amount by entering into a repayment agreement or protest
5 pursuant to Section 7-1-24.2 NMSA 1978. In either case, a
6 municipality or county shall be provided adequate opportunity
7 to review department records concerning the application or
8 proposed application. If a protest is entered, collection of
9 the reduced qualifying amount shall be deferred or, if already
10 collected, returned forthwith until the protest is resolved,
11 but if any portion of the reduced qualifying amount is admitted
12 to be due, that portion may be collected beginning with the
13 next distribution or transfer. If the municipality or county
14 fails to act within the sixty days, the municipality or county
15 will be deemed to have entered into a twenty-four-month
16 repayment agreement.

17 E. The secretary is authorized to decrease a
18 distribution to a municipality or county upon being directed to
19 do so by the secretary of finance and administration pursuant
20 to the State Aid Intercept Act or to redirect a distribution to
21 the New Mexico finance authority pursuant to an ordinance or a
22 resolution passed by the county or municipality and a written
23 agreement of the municipality or county and the New Mexico
24 finance authority. Upon direction to decrease a distribution
25 or notice to redirect a distribution to a municipality or

.196387.1

underscored material = new
[bracketed material] = delete

1 county, the secretary shall decrease or redirect the next
2 designated distribution, and succeeding distributions as
3 necessary, by the amount of the state distributions intercept
4 authorized by the secretary of finance and administration
5 pursuant to the State Aid Intercept Act or by the amount of the
6 state distribution intercept authorized pursuant to an
7 ordinance or a resolution passed by the county or municipality
8 and a written agreement with the New Mexico finance authority.
9 The secretary shall transfer the state distributions intercept
10 amount to the municipal or county treasurer or other person
11 designated by the secretary of finance and administration or to
12 the New Mexico finance authority pursuant to written agreement
13 to pay the debt service to avoid default on qualified local
14 revenue bonds or meet other local revenue bond, loan or other
15 debt obligations of the municipality or county to the New
16 Mexico finance authority. A decrease to or redirection of a
17 distribution pursuant to this subsection takes precedence over
18 any collection of a decrease pursuant to Subsections B through
19 D of this section, which may be made only from the net amount
20 of the distribution remaining after application of the decrease
21 or redirection pursuant to this subsection.

22 [~~G.~~] F. Upon the direction of the secretary of
23 finance and administration pursuant to Section 9-6-5.2 NMSA
24 1978, the secretary shall temporarily withhold the balance of a
25 distribution to a municipality or county, net of any decrease

.196387.1

underscored material = new
[bracketed material] = delete

1 or redirected amount pursuant to Subsection E of this section
2 and any repayment amount pursuant to Subsection D of this
3 section, that has failed to submit an audit report required by
4 the Audit Act or a financial report required by Subsection F of
5 Section 6-6-2 NMSA 1978. The amount to be withheld, the source
6 of the withheld distribution and the number of months that the
7 distribution is to be withheld shall be as directed by the
8 secretary of finance and administration. A distribution
9 withheld pursuant to this subsection shall remain in the tax
10 administration suspense fund until distributed to the
11 municipality or county and shall not be distributed to the
12 general fund.

13 G. As used in this section:

14 (1) "average distribution or transfer amount"
15 means the arithmetic mean of the amounts of a distribution or
16 transfer to a municipality or county for the twelve consecutive
17 months immediately preceding the current month or, if a
18 distribution or transfer has been made for fewer than twelve
19 months, the mean for the number of months that distribution or
20 transfer has been made; provided that:

21 (a) if the rate for a state or locally
22 imposed tax changes during the twelve-month period, actual
23 revenues for a month with a tax rate differing from the month
24 immediately preceding the current month shall be standardized
25 by multiplying those revenues by the ratio of the tax rate for

.196387.1

underscored material = new
[bracketed material] = delete

1 the month preceding the current month to the subject month's
2 tax rate; and

3 (b) if the applicable percentage of the
4 distribution pursuant to Section 7-1-6.46 or 7-1-6.47 NMSA 1978
5 changes during the twelve-month period, actual distribution
6 amounts for months prior to the change shall be multiplied by
7 the ratio of the percentage in place after the change to the
8 percentage in place prior to the change; and

9 (2) "qualifying amount" means the combined
10 negative amounts relating to prior periods for a single
11 taxpayer that, absent the provisions of this section, would be
12 included in the computation of the aggregate distribution or
13 transfer amount for a particular political subdivision for the
14 current month if the combined amounts exceed both one hundred
15 dollars (\$100) and twenty-five percent of the average
16 distribution or transfer amount for that political
17 subdivision."

18 SECTION 5. Section 7-1-8.9 NMSA 1978 (being Laws 2009,
19 Chapter 243, Section 11) is amended to read:

20 "7-1-8.9. INFORMATION THAT MAY BE REVEALED TO LOCAL
21 GOVERNMENTS AND THEIR AGENCIES.--

22 A. An employee of the department may reveal to:

23 ~~[A.]~~ (1) the officials or employees of a
24 municipality of this state authorized in a written request by
25 the municipality for a period specified in the request within

.196387.1

underscoring material = new
[bracketed material] = delete

1 the twelve months preceding the request:

2 [~~(1)~~] (a) the names, taxpayer
3 identification numbers, [~~and~~] addresses and taxable gross
4 receipts of registered gross receipts taxpayers reporting gross
5 receipts for that municipality under the Gross Receipts and
6 Compensating Tax Act or a local option gross receipts tax
7 imposed by that municipality. The department may also reveal
8 the information described in this [~~paragraph~~] subparagraph
9 quarterly or upon such other periodic basis as the secretary
10 and the municipality may agree in writing; and

11 [~~(2)~~] (b) information indicating whether
12 persons shown on a list of businesses located within that
13 municipality furnished by the municipality have reported gross
14 receipts to the department but have not reported gross receipts
15 for that municipality under the Gross Receipts and Compensating
16 Tax Act or a local option gross receipts tax imposed by that
17 municipality;

18 [~~B-~~] (2) the officials or employees of a
19 county of this state authorized in a written request by the
20 county for a period specified in the request within the twelve
21 months preceding the request:

22 [~~(1)~~] (a) the names, taxpayer
23 identification numbers, [~~and~~] addresses and taxable gross
24 receipts of registered gross receipts taxpayers reporting gross
25 receipts either for that county in the case of a local option

.196387.1

underscoring material = new
[bracketed material] = delete

1 gross receipts tax imposed on a countywide basis or only for
2 the areas of that county outside of any incorporated
3 municipalities within that county in the case of a county local
4 option gross receipts tax imposed only in areas of the county
5 outside of any incorporated municipalities. The department may
6 also reveal the information described in this ~~[paragraph]~~
7 subparagraph quarterly or upon such other periodic basis as the
8 secretary and the county may agree in writing;

9 ~~[(2)]~~ (b) in the case of a local option
10 gross receipts tax imposed by a county on a countywide basis,
11 information indicating whether persons shown on a list of
12 businesses located within the county furnished by the county
13 have reported gross receipts to the department but have not
14 reported gross receipts for that county under the Gross
15 Receipts and Compensating Tax Act or a local option gross
16 receipts tax imposed by that county on a countywide basis; and

17 ~~[(3)]~~ (c) in the case of a local option
18 gross receipts tax imposed by a county only on persons engaging
19 in business in that area of the county outside of incorporated
20 municipalities, information indicating whether persons on a
21 list of businesses located in that county outside of the
22 incorporated municipalities but within that county furnished by
23 the county have reported gross receipts to the department but
24 have not reported gross receipts for that county outside of the
25 incorporated municipalities within that county under the Gross

.196387.1

underscored material = new
[bracketed material] = delete

1 Receipts and Compensating Tax Act or a local option gross
2 receipts tax imposed by the county only on persons engaging in
3 business in that county outside of the incorporated
4 municipalities; and

5 ~~[6.]~~ (3) officials or employees of a
6 municipality or county of this state, authorized in a written
7 request of the municipality or county, for purposes of
8 inspection, the records of the department pertaining to an
9 increase or decrease to the net receipts forming the basis for
10 a distribution or transfer made pursuant to Section 7-1-6.15
11 NMSA 1978; the proposed application pursuant to Section
12 7-1-6.15 NMSA 1978 or transfer due the municipality or county;
13 or a distribution of gross receipts tax or a transfer of an
14 imposed local option gross receipts tax equaling zero or a
15 negative amount for the purpose of reviewing the basis for the
16 increase or decrease, application or zero or negative amount.

17 B. Information received by a county or municipal
18 official or employee pursuant to Subsection A of this section
19 is return or return information revealed pursuant to a written
20 agreement between the department and the county or municipality
21 and is subject to the provisions of Section 7-1-8 NMSA 1978.
22 Any written agreement pursuant to this section may restrict
23 receipt of the information to one or more officials or
24 employees of the municipality or county. The department may
25 require that the municipal or county official or employee

.196387.1

underscored material = new
[bracketed material] = delete

1 satisfactorily complete appropriate training. The authorized
2 officials or employees may only reveal the information provided
3 in this subsection to another authorized official or employee,
4 to an employee of the department, or a district court, an
5 appellate court or a federal court in a proceeding relating to
6 a disputed distribution and in which both the state and the
7 municipality or county are parties."

8 SECTION 6. Section 7-1-24.1 NMSA 1978 (being Laws 2013,
9 Chapter 27, Section 7) is amended to read:

10 "7-1-24.1. DISPUTING LIABILITIES--CONDUCT OF HEARINGS--
11 HEARING OFFICER.--

12 A. Upon timely receipt of a protest filed pursuant
13 to Section 7-1-24 or 7-1-24.2 NMSA 1978, the department or a
14 hearing officer shall set a date for a hearing within ninety
15 days.

16 B. A hearing officer shall be designated by the
17 secretary to conduct the hearing. A ~~[taxpayer]~~ protestant may
18 appear at a hearing on the ~~[taxpayer's]~~ protestant's own behalf
19 or may be represented by a bona fide employee, an attorney, a
20 certified public accountant, a registered public accountant or,
21 with respect only to tax imposed pursuant to the Income Tax
22 Act, a person who is an enrolled agent for federal income tax
23 purposes. If the department and the ~~[taxpayer]~~ protestant
24 agree, the hearing may be conducted via videoconference. A
25 hearing shall not be open to the public except upon request of

.196387.1

underscored material = new
[bracketed material] = delete

1 the ~~[taxpayer]~~ protestant. A hearing officer may postpone or
2 continue a hearing at the hearing officer's discretion.

3 C. A hearing officer shall not engage or
4 participate as an employee of the department in the enforcement
5 or formulation of general tax policy, other than to conduct
6 hearings. A ~~[taxpayer]~~ protestant may request that the
7 secretary determine whether a hearing officer engaged or
8 participated in the enforcement or formulation of general tax
9 policy and whether that engagement or participation affects the
10 hearing officer's impartiality in a particular matter. The
11 secretary may designate another hearing officer for the matter
12 to avoid actual or apparent prejudice.

13 D. A hearing officer shall not engage in ex-parte
14 communications concerning the substantive issues of any matter
15 that has been protested while that matter is still pending. If
16 the secretary determines that a hearing officer has engaged in
17 prohibited ex-parte communications, the secretary shall
18 designate another hearing officer for that matter.

19 E. The rules of evidence shall not apply in a
20 hearing. The hearing officer may require reasonable
21 substantiation of statements or records tendered, the accuracy
22 or truth of which is in reasonable doubt, to rule on the
23 admissibility of evidence. A ~~[taxpayer]~~ protestant may request
24 a written ruling on a contested question of evidence in a
25 matter in which the ~~[taxpayer]~~ protestant has filed a written

.196387.1

underscored material = new
[bracketed material] = delete

1 protest and for which that protest is pending.

2 F. In hearings before a hearing officer, the Rules
3 of Civil Procedure for the District Courts shall not apply.
4 The hearing officer shall conduct a hearing to allow the ample
5 and fair presentation of both complaints and defenses. The
6 hearing officer shall hear arguments, permit discovery,
7 entertain and dispose of motions, require written expositions
8 of the case as the circumstances justify and render a decision
9 in accordance with the law and the evidence presented and
10 admitted. A [~~taxpayer~~] protestant may request a written ruling
11 on any contested question of procedure in a matter in which the
12 [~~taxpayer~~] protestant has filed a written protest and for which
13 that protest is pending.

14 G. In the case of a hearing of any protest, the
15 hearing officer shall make and preserve a complete record of
16 the proceedings. At the beginning of the hearing, the hearing
17 officer shall inform the [~~taxpayer~~] protestant of the
18 [~~taxpayer's~~] protestant's right to representation. The hearing
19 officer, within thirty days of the conclusion of the hearing,
20 shall inform the protestant in writing of the decision and of
21 the protestant's right to, and the requirements for perfection
22 of, an appeal from the decision to the court of appeals and of
23 the consequences of a failure to appeal. The written decision
24 shall embody an order granting or denying the relief requested
25 or granting or denying a part of the relief requested as

.196387.1

underscored material = new
[bracketed material] = delete

1 appropriate.

2 H. A [~~taxpayer~~] protestant with two or more protests
3 containing related issues may request that the protests be
4 combined and heard jointly. The hearing officer shall grant
5 the request to combine protests unless it would create an
6 unreasonable burden on the department."

7 SECTION 7. A new Section 7-1-24.2 NMSA 1978 is enacted to
8 read:

9 "7-1-24.2. [NEW MATERIAL] DISPUTING APPLICATION OF
10 QUALIFYING AMOUNT--MUNICIPALITIES AND COUNTIES.--

11 A. A municipality or county may dispute an
12 application or proposed application of a qualifying amount to
13 any distribution or transfer to the municipality or county
14 pursuant to Section 7-1-6.15 NMSA 1978. The municipality or
15 county shall be provided adequate opportunity to review
16 department records concerning the application or proposed
17 application.

18 B. The municipality or county may dispute an
19 application or proposed application of a qualifying amount by
20 electing either to file an action in district court or to file
21 with the secretary a written protest, but not both. The
22 pursuit of one of the remedies constitutes an unconditional
23 waiver to pursue the other.

24 C. Every protest pursuant to this section shall
25 identify the municipality or county, the total amount of the

.196387.1

underscoring material = new
~~[bracketed material] = delete~~

1 qualifying amount involved, if known, and the month in which
2 the qualifying amount was applied or is proposed to be applied
3 to a distribution or transfer and state the grounds for the
4 protest and the affirmative relief requested. The statement of
5 grounds for protest shall specify individual grounds upon which
6 the protest is based and a summary statement of the evidence,
7 if any, expected to be produced supporting each ground asserted
8 or to demonstrate that the action underlying the qualifying
9 amount was erroneous; provided that the municipality or county
10 may supplement the statement at any time prior to ten days
11 before any hearing conducted on the protest pursuant to Section
12 7-1-24.1 NMSA 1978 or, if a scheduling order has been issued,
13 in accordance with the scheduling order. The secretary, to
14 expedite resolution, shall provide for informal conferences and
15 exchanges of information with the municipality or county before
16 setting a hearing of the protest.

17 D. Any protest by a municipality or county pursuant
18 to this section shall be filed within the sixty-day period
19 provided by Subsection D of Section 7-1-6.15 NMSA 1978. If a
20 protest is not filed within the time required, the secretary
21 may apply a proposed application to the next distribution or
22 transfer or, if the qualifying amount at issue had been applied
23 to a distribution or transfer, the application shall stand.

24 E. Nothing in this section shall be construed to
25 authorize any criminal proceedings hereunder or to authorize an

.196387.1

underscoring material = new
~~[bracketed material] = delete~~

1 administrative protest of a subpoena or summons."

2 SECTION 8. EFFECTIVE DATE.--The effective date of the
3 provisions of this act is July 1, 2014.

4 - 22 -

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25