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SENATE BILL

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

INTRODUCED BY

DISCUSSION DRAFT

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]~~ a taxpayer to whom taxes have been assessed as provided ~~[in]~~ by Section 7-1-17 NMSA 1978 or upon whom demand for payment has been made as provided ~~[in]~~ by Section 7-1-63 NMSA 1978 who does not ~~[within ninety days after the date of assessment or demand for payment]~~ timely protest the assessment or demand for payment as provided by Section

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1 7-1-24 NMSA 1978 or furnish security for payment as provided by
2 Section 7-1-54 NMSA 1978 [~~becomes~~] is a delinquent taxpayer and
3 remains such until:

4 (1) payment of the total amount of all such
5 taxes is made;

6 (2) security is furnished for payment; or

7 (3) no part of the assessment remains
8 unabated.

9 B. [~~Any~~] A taxpayer who fails to provide security
10 as required by Subsection D of Section 7-1-54 NMSA 1978 [~~shall~~
11 ~~be deemed to be~~] is a delinquent taxpayer.

12 C. A taxpayer is a delinquent taxpayer if [~~a~~] the
13 taxpayer files a protest as provided [~~in~~] by Section 7-1-24
14 NMSA 1978 [~~the taxpayer nevertheless becomes a delinquent~~
15 ~~taxpayer upon failure of the taxpayer to appear~~] and fails, in
16 person or by authorized representative, to appear at the
17 hearing set or [~~upon failure~~] fails to perfect an appeal from
18 [~~any~~] a decision or part [~~thereof~~] of a decision adverse to the
19 taxpayer to the next higher appellate level, as provided in
20 that section, unless the taxpayer makes payment of the total
21 amount of all taxes assessed and remaining unabated or
22 furnishes security for payment.

23 D. A taxpayer [~~does~~] is not [~~become~~] a delinquent
24 taxpayer if the taxpayer has been issued an assessment as a
25 result of a managed audit but is still within the allowed time

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1 period to pay the tax due as specified in Paragraph (4) of
2 Subsection A of Section 7-1-67 NMSA 1978."

3 SECTION 2. Section 7-1-17 NMSA 1978 (being Laws 1965,
4 Chapter 248, Section 20, as amended) is amended to read:

5 "7-1-17. ASSESSMENT OF TAX--NOTICE--PRESUMPTION OF
6 CORRECTNESS.--

7 A. If the secretary or the secretary's delegate
8 determines that a taxpayer is liable for taxes in excess of
9 twenty-five dollars (\$25.00) that are due and that have not
10 been previously assessed to the taxpayer, the secretary or the
11 secretary's delegate shall promptly assess the amount thereof
12 to the taxpayer.

13 [~~B. Assessments of tax are~~] Such an assessment is
14 effective when:

15 (1) [~~when a return of~~] a taxpayer [~~is received~~
16 ~~by~~] files a return with the department showing a liability for
17 taxes;

18 (2) [~~when a document denominated "notice of~~
19 ~~assessment of taxes", issued in the name of the secretary, is~~
20 ~~mailed or delivered in person~~] the department, by certified
21 United States mail, mails to the taxpayer against whom the
22 liability for tax is asserted [~~stating the nature and amount of~~
23 ~~the taxes assertedly owed by the taxpayer to the state,~~
24 ~~demanding of the taxpayer the immediate~~] a document titled
25 "notice of assessment of taxes" and a demand for payment [~~of~~

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1 ~~the taxes and briefly informing the taxpayer of the remedies~~
2 ~~available to the taxpayer]; or~~

3 (3) ~~[when]~~ an effective jeopardy assessment is
4 made as provided in the Tax Administration Act.

5 B. In making a notice of assessment of taxes and
6 demand for payment under Paragraphs (2) and (3) of Subsection A
7 of this section, the department shall:

8 (1) issue the notice and demand in the name of
9 the secretary to the taxpayer;

10 (2) state the type and amount of taxes the
11 department asserts are owed by the taxpayer;

12 (3) demand that the taxpayer immediately pay
13 the taxes;

14 (4) briefly inform the taxpayer of remedies
15 available to the taxpayer; and

16 (5) state the grounds for assessments.

17 C. If, within twenty-five days after the department
18 sends a notice of assessment of taxes and demand for payment
19 under this section, a taxpayer fails to accept delivery of the
20 mailing, a duplicate notice sent by first-class United States
21 mail to the taxpayer's last known address constitutes
22 sufficient notice to the taxpayer of the assessment.

23 [~~G.—Any~~] D. An assessment of taxes or demand for
24 payment made by the department is presumed to be correct.

25 [~~D.—When taxes have been assessed to any taxpayer~~

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1 ~~and remain unpaid]~~ E. The secretary or the secretary's
2 delegate may demand payment of unpaid taxes assessed to a
3 taxpayer at any time except as provided otherwise by Section
4 7-1-19 NMSA 1978."

5 SECTION 3. Section 7-1-23 NMSA 1978 (being Laws 1965,
6 Chapter 248, Section 25, as amended) is amended to read:

7 "7-1-23. DISPUTING LIABILITIES--ELECTION OF REMEDIES.--
8 [~~Any~~] A taxpayer [~~must elect to~~] may dispute the taxpayer's
9 liability for [~~the payment of~~] taxes [~~either~~] only by
10 protesting the assessment [~~thereof~~] of taxes as provided in
11 Section 7-1-24 NMSA 1978 without making payment [~~of the~~
12 ~~disputed tax liability~~] or by claiming a refund [~~thereof~~] as
13 provided in Section 7-1-26 NMSA 1978 after making payment of
14 the [~~disputed tax liability~~] taxes the department asserts are
15 owed. The pursuit of one of the two remedies [~~described~~
16 ~~herein~~] constitutes an unconditional waiver of the right to
17 pursue the other."

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

20 "7-1-24. DISPUTING LIABILITIES--ADMINISTRATIVE PROTEST.--

21 A. A taxpayer may dispute:

22 (1) the assessment to the taxpayer of any
23 amount of tax;

24 (2) the application to the taxpayer of any
25 provision of the Tax Administration Act except the issuance of

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1 a subpoena or summons; or

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

4 (a) tax credit [or rebate] application
5 or claim;

6 (b) rebate; or

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

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

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

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

20 (3) states the affirmative relief requested.

21 C. A taxpayer may supplement [the] a statement made
22 by the taxpayer in accordance with Paragraphs (2) and (3) of
23 Subsection B of this section at any time prior to ten days
24 before the hearing conducted on the protest ~~[pursuant to the~~
25 ~~provisions of]~~ in accordance with the Administrative Hearings

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1 Office Act or, if a scheduling order has been issued, in
2 accordance with the scheduling order. The secretary may, in
3 appropriate cases, provide for an informal conference before a
4 hearing of the protest is set by the administrative hearings
5 office or before acting on a claim for refund.

6 ~~[G.]~~ D. In the case of an assessment of tax by the
7 department, a taxpayer may file a protest ~~[may be filed]~~ of the
8 assessment:

9 (1) without making payment of the amount
10 assessed ~~[provided that, if only a portion of the assessment is~~
11 ~~in dispute, any unprotested amounts of tax, interest or penalty~~
12 ~~shall be paid, or, if applicable, an installment agreement~~
13 ~~pursuant to Section 7-1-21 NMSA 1978 shall be entered into for~~
14 ~~the unprotested amounts, on or before the due date for the~~
15 ~~protest.~~

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

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

18 (a) the date of the mailing to ~~[or~~
19 ~~service upon]~~ the taxpayer by the department of the notice of
20 assessment ~~[or]~~ and demand for payment as provided in Paragraph
21 (2) of Subsection A or in Subsection E of Section 7-1-17 NMSA
22 1978;

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

25 (c) the date of the application to the

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1 taxpayer of the applicable provision of the Tax Administration
2 Act; or

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

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

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

12 (2) the taxpayer is deemed to have waived ~~[and~~
13 ~~abandoned]~~ the right to ~~[question the amount of tax determined~~
14 ~~to be due]~~ protest the assessment, unless the taxpayer pays the
15 tax and claims a refund of the tax pursuant to Section
16 7-1-26 NMSA 1978; and

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

20 ~~[F. The fact that the department did not mail the~~
21 ~~assessment or other peremptory notice or demand by certified or~~
22 ~~registered mail or otherwise demand and receive acknowledgment~~
23 ~~of receipt by the taxpayer shall not be deemed to demonstrate~~
24 ~~the taxpayer's inability to protest within the required time.~~

25 ~~G. No proceedings]~~ F. A proceeding other than

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1 ~~[those]~~ one to enforce collection of an amount assessed as tax
2 and to protect the interest of the state by injunction, as
3 provided ~~[in]~~ by Sections 7-1-31, 7-1-33, 7-1-34, 7-1-40,
4 7-1-53, 7-1-56 and 7-1-58 NMSA 1978, ~~[are]~~ is not stayed by
5 timely filing of a protest ~~[pursuant to the provisions of]~~ in
6 accordance with this section.

7 ~~[H.]~~ G. Nothing in this section shall be construed
8 to authorize a criminal proceeding or to authorize an
9 administrative protest of the issuance of a subpoena or
10 summons."

11 SECTION 5. Section 7-1-26 NMSA 1978 (being Laws 1965,
12 Chapter 248, Section 28, as amended) is amended to read:

13 "7-1-26. DISPUTING LIABILITIES--CLAIM FOR CREDIT, REBATE
14 OR REFUND.--

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

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1 ~~refund claim shall include~~ 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 law
12 on which the claim is based, which may be referred to as the
13 "basis for the refund" [~~which shall include documentation that~~
14 ~~substantiates the written claim and supports the taxpayer's~~
15 ~~basis for the refund~~]; and

16 (6) if applicable, a copy of an amended return
17 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 [~~shall be~~] and that is filed
20 within the time limitations provided by Subsections E and F of
21 this 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 refund.
24 [~~provided that the claim for refund is filed within the time~~
25 ~~limitations provided in Subsections F and G of this section.~~

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1 ~~C. If the department requests additional relevant~~
2 ~~documentation from a taxpayer who has submitted a claim for~~
3 ~~refund, the claim for refund will not be considered complete~~
4 ~~until the taxpayer provides the requested documentation. The~~
5 ~~provisions of Paragraph (2) of Subsection D of this section and~~
6 ~~of Section 7-1-68 NMSA 1978 do not apply until a refund claim~~
7 ~~is complete.~~

8 ~~D.]~~ C. The secretary or the secretary's delegate
9 may allow the claim in whole or in part or may deny the claim.
10 If the:

11 (1) claim is denied in whole or in part in
12 writing, ~~[no]~~ the person shall not refile the denied claim,
13 ~~[may be refiled with respect to that which was denied]~~ but the
14 person, within ninety days after either the mailing or delivery
15 of the denial of all or any part of the claim, may elect to
16 pursue only one ~~[but not more than one]~~ of the remedies
17 provided in Subsection ~~[E]~~ D of this section; and

18 (2) department has neither granted nor denied
19 any portion of a complete claim for refund within one hundred
20 eighty days ~~[of the date]~~ after the claim was mailed or
21 otherwise delivered to the department, the person may elect to
22 treat the claim as denied and elect to pursue one ~~[but not more~~
23 ~~than one]~~ of the remedies provided in Subsection D of this
24 section.

25 ~~[E.]~~ D. A person may elect to pursue ~~[no more than]~~

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1 only one of the remedies provided in [~~Paragraphs (1) and (2)~~
2 ~~of~~] this subsection. A person who timely pursues more than one
3 remedy [~~shall be~~] is deemed to have elected the first [~~remedy~~
4 ~~invoked~~]. The person may:

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

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

12 (b) an allegation that, because of that
13 overpayment or denial, the state is indebted to the taxpayer
14 for a specified amount, including any allowed interest, or for
15 the property;

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

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

20 (2) commence a civil action in the district
21 court for Santa Fe county by filing a complaint setting forth
22 the circumstance of the claimed overpayment, denied credit or
23 rebate or denial of a prior right to property levied upon by
24 the department alleging that on account thereof the state is
25 indebted to the plaintiff in the amount or property stated,

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1 together with any interest allowable, demanding the refund to
2 the plaintiff of that amount or property and reciting the facts
3 of the claim for refund. The plaintiff or the secretary may
4 appeal from any final decision or order of the district court
5 to the court of appeals.

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

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

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

16 (b) the final determination of value
17 occurs with respect to any overpayment that resulted from a
18 disapproval by any agency of the United States or the state of
19 New Mexico or any court of increase in value of a product
20 subject to taxation under the Oil and Gas Severance Tax Act,
21 the Oil and Gas Conservation Tax Act, the Oil and Gas Emergency
22 School Tax Act, the Oil and Gas Ad Valorem Production Tax Act
23 or the Natural Gas Processors Tax Act;

24 (c) property was levied upon ~~[pursuant~~
25 ~~to the provisions of]~~ as provided in the Tax Administration

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1 Act; or

2 (d) an overpayment of New Mexico tax
3 resulted from: 1) an internal revenue service audit adjustment
4 or a federal refund paid due to an adjustment of an audit by
5 the internal revenue service or an amended federal return; or
6 2) ~~[making a change]~~ the amendment to a federal return for
7 which federal approval is required by the Internal Revenue
8 Code;

9 (2) ~~[when an amount]~~ in the case of a denial
10 of a claim for credit under ~~[the provisions of]~~ the Investment
11 Credit Act, Laboratory Partnership with Small Business Tax
12 Credit Act or Technology Jobs and Research and Development Tax
13 Credit Act or for the rural job tax credit ~~[pursuant to]~~
14 provided by Section 7-2E-1.1 NMSA 1978 or similar credit, ~~[has~~
15 ~~been denied, the taxpayer may claim a refund of the credit no~~
16 ~~later than]~~ only within one year after the date of the denial;

17 (3) ~~[when]~~ in the case of a taxpayer under
18 audit by the department who has signed a waiver of the
19 limitation on assessments on or after July 1, 1993 ~~[pursuant~~
20 ~~to]~~ under Subsection F of Section 7-1-18 NMSA 1978, ~~[the~~
21 ~~taxpayer may file a claim]~~ only for a refund of the same tax
22 paid for the same period for which the waiver was given, and
23 only until a date one year after the later of the date of the
24 mailing of an assessment issued pursuant to the audit, the date
25 of the mailing of final audit findings to the taxpayer or the

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1 date a proceeding is begun in court by the department with
2 respect to the same tax and the same period;

3 (4) [~~if~~] in the case of a payment of an amount
4 of tax [~~was~~] not made within three years of the end of the
5 calendar year in which the original due date of the tax or date
6 of the assessment of the department occurred, only for a claim
7 for refund of that amount of tax [~~can be made~~] and only within
8 one year of the date on which the tax was paid; or

9 (5) [~~when~~] in the case of a taxpayer who has
10 been assessed a tax on or after July 1, 1993 under Subsection
11 B, C or D of Section 7-1-18 NMSA 1978 and [~~when the~~] an
12 assessment that applies to a period ending at least three years
13 prior to the beginning of the year in which the assessment was
14 made, [~~the taxpayer may claim~~] only for a refund for the same
15 tax for the period of the assessment or for any period
16 following that period within one year of the date of the
17 assessment unless a longer period for claiming a refund is
18 provided in this section.

19 [~~G. No~~] F. The department shall not allow or make
20 a credit or refund [~~shall be allowed or made~~] to [~~any~~] a person
21 claiming a refund of gasoline tax under Section 7-13-11 NMSA
22 1978 unless:

23 (1) notice of the destruction of the gasoline
24 was given to the department within thirty days of the actual
25 destruction; [~~and~~]

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

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

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

9 ~~[H.]~~ G. If, as a result of an audit by the
10 department or a managed audit covering multiple periods, an
11 overpayment of tax is found in any period under the audit and
12 if the taxpayer files a claim for refund for the overpayments
13 identified in the audit, that overpayment may be credited
14 against an underpayment of the same tax found in another period
15 under audit pursuant to Section 7-1-29 NMSA 1978. ~~[provided~~
16 ~~that the taxpayer files a claim for refund for the overpayments~~
17 ~~identified in the audit~~

18 ~~I. Any]~~ H. A refund of tax paid under any tax or
19 tax act administered under Subsection B of Section 7-1-2 NMSA
20 1978 may be made, at the discretion of the department, in the
21 form of credit against future tax payments if future tax
22 liabilities in an amount at least equal to the credit amount
23 reasonably may be expected to become due.

24 ~~[J.]~~ I. For the purposes of this section, "oil and
25 gas tax return" means a return reporting tax due with respect

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1 to oil, natural gas, liquid hydrocarbons, carbon dioxide,
2 helium or nonhydrocarbon gas pursuant to the Oil and Gas
3 Severance Tax Act, the Oil and Gas Conservation Tax Act, the
4 Oil and Gas Emergency School Tax Act, the Oil and Gas Ad
5 Valorem Production Tax Act, the Natural Gas Processors Tax Act
6 or the Oil and Gas Production Equipment Ad Valorem Tax Act.

7 ~~[K-]~~ J. The filing of a fully completed original
8 income tax return, corporate income tax return, corporate
9 income and franchise tax return, estate tax return or special
10 fuel excise tax return that shows a balance due the taxpayer or
11 a fully completed amended income tax return, an amended
12 corporate income tax return, an amended corporate income and
13 franchise tax return, an amended estate tax return, an amended
14 special fuel excise tax return or an amended oil and gas tax
15 return that shows a lesser tax liability than the original
16 return constitutes the filing of a claim for refund for the
17 difference in tax due shown on the original and amended
18 returns."

19 **SECTION 6.** Section 7-1-29 NMSA 1978 (being Laws 1965,
20 Chapter 248, Section 31, as amended) is amended to read:

21 "7-1-29. **AUTHORITY TO MAKE REFUNDS OR CREDITS.--**

22 A. In response to a claim for refund, credit or
23 rebate made as provided in Section 7-1-26 NMSA 1978, but before
24 a court acquires jurisdiction of the matter, the secretary or
25 the secretary's delegate may authorize payment to a person in

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1 the amount of the credit or rebate claimed or refund an
2 overpayment of tax determined by the secretary or the
3 secretary's delegate to have been erroneously made by the
4 person, together with allowable interest. A payment of a
5 credit rebate claimed or a refund of tax and interest
6 erroneously paid amounting to twenty thousand dollars (\$20,000)
7 or more shall be made with the prior approval of the attorney
8 general, except that the secretary or the secretary's delegate
9 may make refunds with respect to the Oil and Gas Severance Tax
10 Act, the Oil and Gas Conservation Tax Act, the Oil and Gas
11 Emergency School Tax Act, the Oil and Gas Ad Valorem Production
12 Tax Act, the Natural Gas Processors Tax Act or the Oil and Gas
13 Production Equipment Ad Valorem Tax Act, Section 7-13-17 NMSA
14 1978 and the Cigarette Tax Act without the prior approval of
15 the attorney general regardless of the amount.

16 B. Pursuant to the final order of the district
17 court, the court of appeals, the supreme court of New Mexico or
18 a federal court, from which order, appeal or review is not
19 successfully taken, adjudging that a person has properly
20 claimed a credit or rebate or made an overpayment of tax, the
21 secretary shall authorize the payment to the person of the
22 amount thereof.

23 C. In the discretion of the secretary, any amount
24 of credit or rebate to be paid or tax to be refunded may be
25 offset against any amount of tax for which the person due to

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1 receive the credit, rebate payment or refund is liable. The
2 secretary or the secretary's delegate shall give notice to the
3 taxpayer that the credit, rebate payment or refund will be made
4 in this manner, and the taxpayer shall be entitled to interest
5 pursuant to Section 7-1-68 NMSA 1978 until the tax liability is
6 credited with the credit, rebate or refund amount.

7 D. In an audit by the department or a managed audit
8 covering multiple reporting periods in which both underpayments
9 and overpayments of a tax have been made in different reporting
10 periods, the department shall credit the tax overpayments
11 against the underpayments, provided that the taxpayer files a
12 claim for refund of the overpayments. An overpayment shall be
13 applied as a credit first to the earliest underpayment and then
14 to succeeding underpayments. An underpayment of tax to which
15 an overpayment is credited pursuant to this section shall be
16 deemed paid in the period in which the overpayment was made or
17 the period to which the overpayment was credited against an
18 underpayment, whichever is later. If the overpayments credited
19 pursuant to this section exceed the underpayments of a tax, the
20 amount of the net overpayment for the periods covered in the
21 audit shall be refunded to the taxpayer.

22 E. When a taxpayer makes a payment identified to a
23 particular return or assessment, and the department determines
24 that the payment exceeds the amount due pursuant to that return
25 or assessment, the secretary may apply the excess to the

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1 taxpayer's other liabilities pursuant to the tax acts to which
2 the return or assessment applies, without requiring the
3 taxpayer to file a claim for a refund. The liability to which
4 an overpayment is applied pursuant to this section shall be
5 deemed paid in the period in which the overpayment was made or
6 the period to which the overpayment was applied, whichever is
7 later.

8 F. If the department determines, upon review of an
9 original or amended income tax return, corporate income and
10 franchise tax return, estate tax return, special fuels excise
11 tax return or oil and gas tax return, that there has been an
12 overpayment of tax for the taxable period to which the return
13 or amended return relates in excess of the amount due to be
14 refunded to the taxpayer [~~pursuant to the provisions of~~] under
15 Subsection [~~K~~] J of Section 7-1-26 NMSA 1978, the department
16 may refund that excess amount to the taxpayer without requiring
17 the taxpayer to file a refund claim.

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

23 H. In response to a timely refund claim pursuant to
24 Section 7-1-26 NMSA 1978 and notwithstanding any other
25 provision of the Tax Administration Act, the secretary or the

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1 secretary's delegate may refund or credit a portion of an
2 assessment of tax paid, including applicable penalties and
3 interest representing the amount of tax previously paid by
4 another person on behalf of the taxpayer on the same
5 transaction, provided that the requirements of equitable
6 recoupment are met. For purposes of this subsection, the
7 refund claim may be filed by the taxpayer to whom the
8 assessment was issued or by another person who claims to have
9 previously paid the tax on behalf of the taxpayer. Prior to
10 granting the refund or credit, the secretary may require a
11 waiver of all rights to claim a refund or credit of the tax
12 previously paid by another person paying a tax on behalf of the
13 taxpayer."

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

16 "7-1-29.1. AWARDING OF COSTS AND FEES.--

17 A. In ~~[any]~~ an administrative proceeding or court
18 proceeding ~~[that is]~~ brought by or against ~~[the]~~ a taxpayer ~~[on~~
19 ~~or after July 1, 2003]~~ and conducted in connection with the
20 determination, collection or refund of ~~[any]~~ a tax or the
21 interest or penalty for a tax governed by ~~[the provisions of]~~
22 the Tax Administration Act, the taxpayer shall be awarded a
23 judgment or a settlement for reasonable administrative costs or
24 reasonable litigation costs incurred in connection with ~~[an~~
25 ~~administrative]~~ the proceeding ~~[with the department or the~~

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1 ~~administrative hearings office or reasonable litigation costs~~
2 ~~incurred in connection with a court proceeding]~~ if the taxpayer
3 is the prevailing party.

4 B. As used in this section:

5 (1) "administrative proceeding" means any
6 procedure or other action before the department or the
7 administrative hearings office;

8 (2) "court proceeding" means any civil action
9 brought in state district court;

10 (3) "reasonable administrative costs" means:

11 (a) any administrative fees or similar
12 charges imposed by the department or the administrative
13 hearings office; and

14 (b) actual charges for: 1) filing fees,
15 court reporter fees, service of process fees and similar
16 expenses; 2) the services of expert witnesses; 3) any study,
17 analysis, report, test or project reasonably necessary for the
18 preparation of the party's case; and 4) fees and costs paid or
19 incurred for the services in connection with the proceeding of
20 attorneys or of certified public accountants who are authorized
21 to practice in the context of an administrative proceeding; and

22 (4) "reasonable litigation costs" means:

23 (a) reasonable court costs; 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 of attorneys in connection with the
5 proceeding.

6 C. For purposes of this section:

7 (1) the taxpayer is the prevailing party if
8 the taxpayer has:

9 (a) substantially prevailed with respect
10 to the amount in controversy; or

11 (b) substantially prevailed with respect
12 to most of the issues involved in the case or the most
13 significant issue or set of issues involved in the case;

14 (2) the taxpayer ~~[shall]~~ is not ~~[be treated~~
15 ~~as]~~ the prevailing party if ~~[prior to July 1, 2015, the~~
16 ~~department establishes or, on or after July 1, 2015]~~ the
17 ~~[hearing officer]~~ administrative hearings office finds that the
18 position of the department in the proceeding was based upon a
19 reasonable application of the law to the facts of the case.
20 For purposes of this paragraph, the position of the department
21 shall be presumed not to be based upon a reasonable application
22 of the law to the facts of the case if:

23 (a) the department did not follow
24 applicable published guidance in the proceeding; or

25 (b) the assessment giving rise to the

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1 proceeding is not supported by substantial evidence determined
2 at the time of the issuance of the assessment;

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

5 (a) department or administrative
6 hearings office regulations, information releases,
7 instructions, notices, technical advice memoranda and
8 announcements; and

9 (b) private letter rulings and letters
10 issued by the department to the taxpayer; and

11 (4) the determination of whether the taxpayer
12 is the prevailing party and the amount of reasonable litigation
13 costs or reasonable administrative costs shall be made by
14 agreement of the parties or:

15 (a) in the case [~~where the final~~
16 ~~determination with respect to the tax, interest or penalty is~~
17 ~~made in~~] of an administrative proceeding, by the hearing
18 officer; or

19 (b) in the case [~~where the final~~
20 ~~determination is made by the~~] of a court proceeding, by the
21 court.

22 D. An order granting or denying in whole or in part
23 an award for:

24 (1) reasonable litigation costs [~~pursuant to~~
25 ~~Subsection A of~~] under this section in a court proceeding may

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1 be incorporated as a part of the court's decision or judgment
2 [~~in the court proceeding~~] and [~~shall be~~] are subject to appeal
3 in the same manner as the decision or judgment [~~A decision or~~
4 ~~order granting or denying in whole or in part an award for~~];
5 and

6 (2) reasonable administrative costs [~~pursuant~~
7 ~~to Subsection A of~~] under this section [~~by a hearing officer~~
8 ~~shall be~~] in an administrative proceeding are reviewable in the
9 same manner as a decision of [~~a hearing officer~~] the
10 administrative hearings office.

11 E. [~~No~~] An agreement for or award of reasonable
12 administrative costs or reasonable litigation costs in any
13 administrative proceeding or court proceeding [~~pursuant to~~
14 ~~Subsection A of~~] under this section shall not exceed the lesser
15 of twenty percent of the amount of the settlement or judgment
16 or [~~fifty thousand dollars (\$50,000). A taxpayer awarded~~
17 ~~administrative litigation costs pursuant to this section may~~
18 ~~not receive an award of attorney fees pursuant to Subsection D~~
19 ~~of Section 7-1-25 NMSA 1978~~] seventy-five thousand dollars
20 (\$75,000).

21 F. The department shall annually report to the
22 legislative finance committee and the revenue stabilization and
23 tax policy committee on the costs it incurs under this
24 section."

25 SECTION 8. Section 7-1-39 NMSA 1978 (being Laws 1965,

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1 Chapter 248, Section 41, as amended) is amended to read:

2 "7-1-39. RELEASE OR EXTINGUISHMENT OF LIEN--LIMITATION ON
3 ACTIONS TO ENFORCE LIEN.--

4 A. When any substantial part of the amount of tax
5 due from a taxpayer is paid, the department shall immediately
6 file, in the same county in which a notice of lien was filed,
7 and in the same records, a document completely or partially
8 releasing the lien. The county clerk to whom such a document
9 is presented shall record it without charge.

10 B. The department may file, in the same county as
11 the notice of lien was filed, a document releasing or partially
12 releasing any lien filed in accordance with Section 7-1-38 NMSA
13 1978 when the filing of the lien was premature or did not
14 follow requirements of law or when release or partial release
15 would facilitate collection of taxes due. The county clerk to
16 whom the document is presented shall record it without charge.

17 C. [~~In all cases when~~] After the filing of a notice
18 of lien for taxes, penalties and interest [~~has been filed~~]
19 under Section 7-1-38 NMSA 1978 and [~~a period of~~] once ten years
20 [~~has~~] have passed from the date of assessment of the last of
21 the assessments of taxes, penalties and interest covered by the
22 lien, [~~was filed~~] as shown on the notice of lien:

23 (1) the liened taxes, penalties and interest
24 [~~for which the lien is claimed shall be~~] are conclusively
25 presumed to have been paid; [~~and~~]

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1 (2) the lien for those taxes is [~~thereby~~]
2 extinguished;

3 (3) no action shall be brought to enforce [~~any~~
4 ~~lien extinguished in accordance with this subsection~~] the lien;
5 and

6 (4) at the request of the liened taxpayer, the
7 department shall immediately file a release of lien in the
8 county in which the notice of lien was filed."

9 SECTION 9. Section 7-1-61 NMSA 1978 (being Laws 1965,
10 Chapter 248, Section 62, as amended) is amended to read:

11 "7-1-61. DUTY OF SUCCESSOR IN BUSINESS.--

12 A. [~~As used in~~] For the purposes of Sections 7-1-61
13 through 7-1-63 NMSA 1978:

14 (1) a person liable for tax transfers a
15 business if that person transfers all or substantially all of
16 the tangible and intangible property used in the operation of
17 that business to another person; and

18 (2) "tax" means the amount of tax due,
19 including penalties and interest, [~~imposed by provisions of the~~
20 ~~taxes or~~] as provided by the tax acts set forth in Subsections
21 A and B of Section 7-1-2 NMSA 1978, except the Income Tax Act.

22 B. The tangible and intangible property used in
23 [~~any~~] a business remains subject to liability for payment of
24 the tax due on account of that business to the extent stated
25 [~~herein~~] in this section, even though the business changes

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1 hands.

2 C. If any person liable for any amount of tax from
3 operating a business transfers that business to a successor,
4 the successor shall place in a trust account sufficient money
5 from the purchase price or other source to cover such amount of
6 tax until the secretary or secretary's delegate issues a
7 certificate stating that no amount is due, or the successor
8 shall pay over the amount due to the department upon proper
9 demand for, or assessment of, that amount due by the
10 secretary."

11 SECTION 10. Section 7-1-63 NMSA 1978 (being Laws 1965,
12 Chapter 248, Section 64, as amended) is amended to read:

13 "7-1-63. ASSESSMENT OF TAX DUE--APPLICATION OF PAYMENT.--

14 A. If, after [~~any~~] a business is transferred to a
15 successor, any tax from operating the business for which the
16 [~~former owner~~] transferor is liable remains due, the successor
17 shall pay the amount due within thirty days after the transfer.
18 If the successor fails to pay within thirty days of the date
19 notice provided for in Section 7-1-62 NMSA 1978 was mailed or
20 if a certificate was not requested, the department shall assess
21 the successor the amount due.

22 B. Upon the payment of the amount due from the
23 amount placed in a trust account as provided by Subsection C of
24 Section 7-1-61 NMSA 1978, the balance, if any, remaining may be
25 released to the [~~former owner~~] transferor or otherwise lawfully

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1 disposed of. The [~~former owner~~] transferor shall be credited
2 with the payment of tax.

3 C. A successor may discharge an assessment made
4 pursuant to this section by paying to the department the full
5 value of the transferred tangible and intangible property. The
6 successor shall remain liable for the amount assessed, however,
7 until the amount is paid if:

8 (1) the business has been transferred to evade
9 or defeat any tax;

10 (2) the transfer of the business amounts to a
11 de facto merger, consolidation or mere continuation of the
12 transferor's business; or

13 (3) the successor has assumed the tax
14 liability."

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

17 "7-1B-1. SHORT TITLE.--~~[Sections 1 through 9 of this act]~~
18 Chapter 7, Article 1B NMSA 1978 may be cited as the
19 "Administrative Hearings Office Act"."

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

22 "7-1B-6. HEARING OFFICER CODE OF CONDUCT--INDEPENDENCE.--

23 A. The chief hearing officer shall:

24 (1) adopt and promulgate a hearing officer
25 code of conduct; and

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1 (2) [~~periodically~~] annually, evaluate each
2 hearing officer's performance for competency, efficiency and
3 professional demeanor in accord with relevant legal standards
4 and the hearing officer code of conduct, including through the
5 use of a survey of practitioners who appear before the hearing
6 officer.

7 B. The chief hearing officer shall ensure that each
8 hearing officer has decisional independence; however, the chief
9 hearing officer may:

10 (1) consult with a hearing officer about a
11 genuine question of law; and

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

14 C. The administrative hearings office shall:

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

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

19 (3) hear all certificate-denial protests
20 [~~pursuant to the provisions of~~] under Section 13-1-22 NMSA
21 1978;

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

24 (5) conduct all driver's license revocation
25 hearings [~~pursuant to the provisions of~~] under the Implied

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1 Consent Act;

2 (6) make and preserve a complete record of all
3 proceedings; and

4 (7) maintain confidentiality regarding
5 taxpayer information as required by [~~the provisions of~~] Section
6 7-1-8 NMSA 1978.

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

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

21 (2) the Rules of Civil Procedure for the
22 District Courts do not apply. The hearing officer shall
23 conduct a hearing to allow the ample and fair presentation of
24 complaints and defenses. The hearing officer shall hear
25 arguments, permit discovery, entertain and dispose of motions,

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1 require written expositions of the case as the circumstances
2 justify and render a decision in accordance with the law and
3 the evidence presented and admitted. A taxpayer or the
4 taxation and revenue department may request a written ruling on
5 a contested question of procedure in a matter in which the
6 taxpayer has filed a written protest and for which that protest
7 is pending. The administrative hearings office shall issue a
8 copy of its written ruling to the [~~taxation and revenue~~]
9 department at the time the ruling is issued to the taxpayer;
10 and

11 (3) the hearing officer may administer oaths
12 and issue subpoenas for the attendance of witnesses and the
13 production of relevant books and papers, and for hearings
14 conducted for a license suspension [~~pursuant to~~] under Section
15 66-5-30 NMSA 1978, the hearing officer may require a
16 reexamination of the licensee."

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

19 "7-1B-8. TAX PROTESTS--PROCEDURES.--

20 A. Upon timely receipt of a tax protest filed
21 [~~pursuant to~~] in accordance with the provisions of Section
22 7-1-24 NMSA 1978, the taxation and revenue department shall
23 promptly acknowledge the protest by letter to the protesting
24 taxpayer or the taxpayer's representative. If the department
25 determines that the protest [~~is~~] has not been filed in

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

16 B. Prior to the taxation and revenue department
17 requesting a formal hearing, at the taxpayer's written request,
18 the department shall meet with the taxpayer or the taxpayer's
19 representative in an informal conference to attempt in good
20 faith to resolve the disputed issues at protest. The
21 department shall hold the informal conference within sixty days
22 of the date the department received the taxpayer's written
23 request for an informal conference. Within thirty days of the
24 date of the informal conference, the department shall provide a
25 written report to the taxpayer that discusses a response to the

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1 taxpayer's protest and the issues at the informal conference,
2 including a detailed description of the legal and factual bases
3 supporting the department's position beyond an assertion of the
4 presumption of correctness and a summary of the good faith
5 efforts made as part of the informal conference process,
6 including any issues that were resolved and an articulation of
7 the remaining disputed issues at protest. The department shall
8 articulate its position in detail on the disputed matters.

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

25 D. The chief hearing officer shall promptly

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1 designate a hearing officer and shall set a date for a hearing
2 to take place within ninety days of receipt of the protest.
3 The chief hearing officer shall not reassign a hearing officer
4 to a case without giving the department and the taxpayer notice
5 of that reassignment at least fourteen days before the hearing.
6 If the chief hearing officer reassigns a hearing officer to a
7 case, the taxpayer may, within seven days before the hearing,
8 exercise once the peremptory right to disqualify the hearing
9 officer; otherwise, the taxpayer may, at least thirty days
10 before the hearing, exercise the peremptory right to disqualify
11 the hearing officer designated to conduct the hearing.

12 E. The administrative hearings office shall rule on
13 a dispositive motion, including a motion for summary judgment,
14 a motion for partial summary judgment or a motion to dismiss,
15 filed by the department or the taxpayer at least thirty days
16 before the hearing.

17 ~~[B-]~~ F. A taxpayer may appear at the hearing on the
18 taxpayer's own behalf or may be represented by a bona fide
19 employee, an attorney, a certified public accountant, an
20 employee of a law firm or certified public accounting firm
21 whose authorization by the taxpayer to appear is evidenced in
22 writing or ~~[with respect only to tax imposed pursuant to the~~
23 ~~Income Tax Act, a person who is]~~ an enrolled agent ~~[for federal~~
24 ~~income tax purposes]~~. If the taxation and revenue department
25 and the taxpayer agree, the hearing may be conducted via

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1 videoconference. At the beginning of the hearing, the hearing
2 officer shall inform the taxpayer of the taxpayer's right to
3 representation. The taxpayer shall decide which party presents
4 its case first at the hearing and shall provide written notice
5 to the department and the administrative hearings office of the
6 taxpayer's decision no later than fifteen days prior to the
7 hearing. If the taxpayer fails to provide written notice, the
8 taxpayer shall present the taxpayer's case first. A hearing
9 shall ~~not~~ be ~~open~~ closed to the public except upon request
10 of the taxpayer. A hearing officer may postpone or continue a
11 hearing at the hearing officer's discretion. As used in this
12 subsection, "enrolled agent" means a federally licensed tax
13 practitioner with unlimited rights to represent taxpayers
14 before the internal revenue service.

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

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

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

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

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

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