



Administrative Hearings Office Fiscal Year 2021 Appropriation Request

Legislative Finance Committee

Chief Hearing Officer Brian VanDenzen

October 30, 2019

About the Administrative Hearings Office

- ▶ The Administrative Hearings Office **conducts and adjudicates** state administrative protest hearings under the **Tax Administration Act**, the **Property Tax Code**, the **Motor Vehicle Code**, and the **Implied Consent Act**.
- ▶ Beginning in January of 2020, under legislation passed last session, AHO will also conduct and adjudicate protest hearings related to Health Insurance Premium Collection Tax Act and expedited proceedings under Medicaid Provider and Managed Care Act.
- ▶ The Administrative Hearings Office has 17 FTEs, with one newly created position needed to be filled.
 - ▶ 10 Administrative Law Judge/Hearing Officers (including the Chief Hearing Officer position)
 - ▶ 5 program support positions. Schedulers, Court Clerks, and Paralegals.
 - ▶ 1 Chief Financial Officer position.
 - ▶ 1 new Business Operations Specialist designed to assist the operations of the agency.
- ▶ GSD will be renovating the Chino Building in Santa Fe next year, the location of AHO's main office



The Work of the Administrative Hearings Office in FY19

Average case docket per ALJ position: 393.1 hearings in FY19.

Two Main Hearing Categories: DWI Hearings and Tax Hearings.

1. Implied Consent Act, DWI license revocation hearings and other MVD hearings.

- ▶ In FY2019, AHO conducted **3,533 Implied Consent Act-DWI hearings** and 32 other MVD-type hearings across the state.
- ▶ AHO has had 6.75 ALJ-hearing officer positions that focus mostly on conducting Implied Consent Act and other MVD hearings.

2. State Tax Protest Hearings pursuant to the Tax Administrative Act or Property Tax Code. A taxpayer is challenging TRD's assessment, denials of refunds, credits, notices of property valuation, etc.

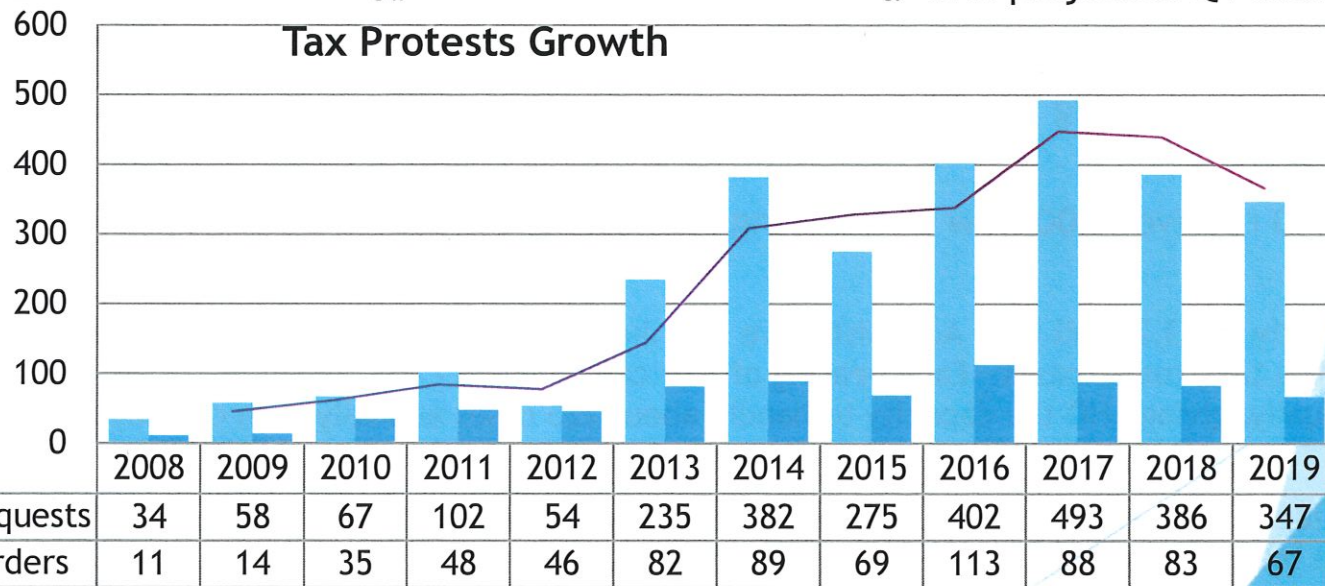
- ▶ In FY2019, AHO received **400 new tax hearing requests & conducted 366 tax hearings.**
 - ▶ AHO currently has 3.25 full time Administrative Law Judge-hearing officers positions dedicated to tax protest cases. Each hearing officer can handle a case load of about 50-70 cases annually, giving AHO the capacity to handle about 225 cases annually with current resources.
 - ▶ As next slide shows, while slowing, the tax docket remained well above historical averages and above resource capacity.



Growth in the Tax Docket (by Calendar Year)

Calendar Year	New Hearing Requests (cases) Filed	Decisions and Orders Issued
2008	34	11
2009	58	14
2010	67	35
2011	102	48
2012	54	46
2013	235	82
2014	382	89
2015	275	69
2016	402	113
2017	493	88
2018	386	83
2019	347	67

*2019 includes actual data through Q3, with projected Q4 data.



Administrative Hearings Office FY19 Highlights

- ▶ Met Two Performance Measures in FY19:
 - ▶ Of the 3,533 ICA cases, only three cases (0.08%) were rescinded due to AHO error, satisfying AHO's performance measure target of <0.5%.
 - ▶ AHO conducted four annual trainings for hearing participants.
- ▶ Unfortunately, due to circumstances outside of its control, AHO missed its performance measure to conduct tax hearings within 90-days (<2.5%) because it was unable to conduct 10 (3.09%) hearings within 90-days.
 - ▶ In 8 of those cases, the Taxation and Revenue Department untimely filed a hearing request after the 90-day deadline had already expired.
 - ▶ In the other 2 cases, TRD's untimely hearing request left insufficient time for adequate notice of a hearing before expiration of the 90-day requirement.
 - ▶ Symbolic of how the workload of AHO is impacted by workload of TRD and the pressures of the tax docket.
- ▶ At the end of FY19, 66% of new cases filed in FY were resolved, with an average disposition time of 70-days.
 - ▶ 19% of cases remained active and open
 - ▶ 15% of cases are stayed pending appeal.



Administrative Hearings Office 2019 Highlights (Continued)

- ▶ AHO's decisions and orders in tax cases are detailed and appropriate for the record and issues presented.
- ▶ *General Electric, D&O No. 18-12*: Lexis listed it as one of the top state 5 tax decision issued in 2018, on the same list as two US Supreme Court decisions including *Wayfair*.
- ▶ Two recent AHO decisions and orders were cited and discussed before a national audience at the University of California Davis Law School's Summer Tax Camp, one of the preeminent national corporate income tax trainings.
- ▶ In 2019, the New Mexico Court of Appeals has affirmed AHO's decisions in 14 out of 14 resolved appeals. Some highlights:
 - ▶ *Peabody Coalsales Company v. NM TRD*, No. A-1-CA-36632, ¶6 (May 31, 2019): In an important case addressing the chemical reagents deduction, Court of Appeals affirmed the AHO decision and noted that "the AHO issued extensive findings of fact and conclusions of law."
 - ▶ *ConAgra Foods, v. NM TRD*, No. A-1-CA-36871: In the proposed summary affirmance of the Department's appeal of that decision, then Court of Appeals judge and now Justice Michael Vigil of the Supreme Court, went out of his way to state in a footnote that the hearing officer "thoroughly analyzed" the main issue in the case.
 - ▶ *Helmerich Payne Int'l Drilling Co. v. N.M. Taxation & Revenue Dep't*, 2019-NMCA-054, 448 P.3d 1126: Court of Appeal found that AHO's awarding of costs and fees to the prevailing taxpayer was appropriate given the purpose of Section 7-1-29.1 to deter the Department from unfair treatment of taxpayers.
- ▶ AHO this year has issued:
 - ▶ A 121-page decision on a refund case involving the claim for deduction under Section 7-9-57 for the performance of a service for an out-of-state buyer.
 - ▶ A 83-page decision on the chemical and reagents issue related to hydraulic fracturing.
 - ▶ A 64-page decision in a corporate income tax fair apportionment case.
 - ▶ Although quantity itself does not necessarily equate with quality, it certainly undercuts a claim made by some over the years that AHO decisions are superficial or unsupported by the record.



AHO's FY2021 Budget Appropriation Request

- ▶ The Administrative Hearings Office's request **seeks an 8.5% increase** above FY20's operating budget, a total of \$173,600.00
- ▶ In the **category 200's**, AHO again seeks an expansion advanced hearing officer position totaling \$117,200.00 in salary and benefits.
 - ▶ This position will assist with the over-capacity tax docket: AHO currently has capacity to adjudicate 250-280 tax protests a year (50-70 cases per FTE tax hearing officer) but receives over 300 new tax cases a year.
 - ▶ Assist with implementation of new recusal provision under the amendment Administrative Hearings Office Act.
 - ▶ This position will be able to adjudicate Health Insurance Premium Tax protest cases, a new type of hearing for AHO added beginning in January of 2020 under HB 162 enacted last session.
- ▶ In the **category 300's**, AHO seeks a modest increase of \$33,400.00 to increase our professional services contracting.
 - ▶ This increase relates to contracting with a hearing officer to implement the changes to the Medicaid Provider and Managed Care Act under Senate Bill 41 enacted last session.
- ▶ In the **category 400's**, AHO is requesting an additional \$23,000.00 related to upgrading and installing new video conference equipment and hearing room equipment as GSD renovates the Chino Building, which will result an additional large hearing room in our main facility.



Conclusion and Questions

- ▶ The Administrative Hearings Office appropriation request for FY21 seeking an 8.5% budget increase is consistent with LFC's stated target of limiting budget increases in FY20~~10~~²¹ to no more than 10%.
- ▶ Yet, this modest 8.5% increase allows AHO to increase its tax hearing capacity and implement two new hearing programs transferred to AHO during the last session.
- ▶ With that, we stand for questions.

