

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE CORPORATIONS AND TRANSPORTATION COMMITTEE SUBSTITUTE FOR
SENATE BILL 129

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

Pursuant to House Rule 24-1, this document incorporates amendments that have been adopted prior to consideration of this measure by the House. It is a tool to show the amendments in context and is not to be used for the purpose of amendments.

AN ACT

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

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.--

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

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

B. Any taxpayer who fails to provide security as required by Subsection D of Section 7-1-54 NMSA 1978 shall be deemed to be a delinquent taxpayer.

C. If a taxpayer files a protest as provided in Section 7-1-24 NMSA 1978, the taxpayer nevertheless becomes a delinquent taxpayer upon failure of the taxpayer to appear, in person or by authorized representative, at the hearing set or upon failure to perfect an appeal from any decision or part thereof adverse to the taxpayer to the next higher appellate level, as provided in that section, unless the taxpayer makes

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payment of the total amount of all taxes assessed and remaining unabated or furnishes security for payment.

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

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

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

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

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

A. A taxpayer may dispute:

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

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

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

(a) ~~HTRC~~→~~tax~~←~~HTRC~~ credit [~~or rebate~~]
HTRC→~~or rebate~~←HTRC HTRC→~~application or claim;~~←HTRC; ~~or~~←HTRC
HTRC→~~(b) rebate; or~~←HTRC

[~~(b)~~] HTRC→~~(e)~~ (b)←HTRC claim for refund made in accordance with Section 7-1-26 NMSA 1978.

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

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

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

(3) states the affirmative relief requested.

C. A taxpayer may [~~supplement the~~] amend a statement made by the taxpayer in accordance with Paragraphs (2) and (3) of Subsection B of this section at any time prior

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to ten days before the hearing conducted on the protest
[pursuant to the provisions of] in accordance with the
Administrative Hearings Office Act or, if a scheduling order
has been issued, in accordance with the scheduling order. The
secretary may, in appropriate cases, provide for an informal
conference before a hearing of the protest is set by the
administrative hearings office or before acting on a claim for
refund.

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

HTRC→; , ←HTRC

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

HTRC→~~D. E.~~ ←HTRC ~~A protest by a taxpayer shall be~~

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filed] HTRC→**A protest by a taxpayer shall be filed** ; ~~and~~←HTRC

HTRC→~~(2)~~←HTRC within ninety days [of] after:

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

HTRC→~~(b)~~ (2)←HTRC the mailing of the other peremptory notice or demand [~~the date of mailing or filing a return~~];

HTRC→~~(c)~~ (3)←HTRC the date of the application to the taxpayer of the applicable provision of the Tax Administration Act; or

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

HTRC→~~E.~~ **F.**←HTRC If a taxpayer fails to timely protest [~~to a notice of~~] an assessment [~~is not filed within the time required~~] of tax, penalty or interest:

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

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

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7-1-26 NMSA 1978; and

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

HTRC→**F.** **G.**←HTRC The fact that the department did not mail the assessment or other peremptory notice or demand by certified or registered mail or otherwise demand and receive acknowledgment of receipt by the taxpayer shall not be deemed to demonstrate the taxpayer's inability to protest within the required time.

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

HTRC→**H.** **I.**←HTRC Nothing in this section shall be construed to authorize a criminal proceeding or to authorize an administrative protest of the issuance of a subpoena or summons."

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

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

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

- (1) the taxpayer's name, address and identification number;
- (2) the type of tax for which a refund is being claimed, the credit or rebate denied or the property levied upon;
- (3) the sum of money or other property being claimed;
- (4) with respect to a refund, the period for which overpayment was made;
- (5) a brief statement of the facts and the law on which the claim is based, which may be referred to as the "basis for the refund", which ~~[shall]~~ may include documentation that substantiates the written claim and supports the

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taxpayer's basis for the refund; and

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

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

C. If the department requests additional relevant documentation from a taxpayer who has submitted a claim for refund, the claim for refund [~~will~~] shall not be considered [~~complete until the taxpayer provides the requested documentation. The provisions of Paragraph (2) of Subsection D of this section and of Section 7-1-68 NMSA 1978 do not apply until a refund claim is complete~~] incomplete HTRC→as long as the←HTRC HTRC→provided←HTRC taxpayer HTRC→provides←HTRC HTRC→submits←HTRC sufficient information for the department to make a determination.

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

(1) claim is denied in whole or in part in writing, [~~no~~] the person shall not refile the denied claim,

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~~[may be refiled with respect to that which was denied]~~ but the person, within ninety days after either the mailing or delivery of the denial of all or any part of the claim, may elect to pursue only one ~~[but not more than one]~~ of the remedies provided in Subsection E of this section; and

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

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

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

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

(b) an allegation that, because of that

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overpayment or denial, the state is indebted to the taxpayer for a specified amount, including any allowed interest, or for the property;

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

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

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

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

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

(a) the payment was originally due or the overpayment resulted from an assessment by the department

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~~[pursuant to]~~ as provided in Section 7-1-17 NMSA 1978,
whichever is later;

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

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

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

(2) ~~[when an amount]~~ in the case of a denial of a claim for credit under ~~[the provisions of]~~ the Investment Credit Act, Laboratory Partnership with Small Business Tax Credit Act or Technology Jobs and Research and Development Tax Credit Act or for the rural job tax credit ~~[pursuant to]~~

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provided by Section 7-2E-1.1 NMSA 1978 or similar credit, [~~has been denied, the taxpayer may claim a refund of the credit no later than~~] only within one year after the date of the denial;

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

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

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

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tax for the period of the assessment or for any period following that period within one year of the date of the assessment unless a longer period for claiming a refund is provided in this section.

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

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

I. ~~[Any]~~ A refund of tax paid under any tax or tax act administered under Subsection B of Section 7-1-2 NMSA 1978

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may be made, at the discretion of the department, in the form of credit against future tax payments if future tax liabilities in an amount at least equal to the credit amount reasonably may be expected to become due.

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

K. The filing of a fully completed original income tax return, corporate income tax return, corporate income and franchise tax return, estate tax return or special fuel excise tax return that shows a balance due the taxpayer or a fully completed amended income tax return, an amended corporate income tax return, an amended corporate income and franchise tax return, an amended estate tax return, an amended special fuel excise tax return or an amended oil and gas tax return that shows a lesser tax liability than the original return constitutes the filing of a claim for refund for the difference in tax due shown on the original and amended returns."

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

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

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

B. As used in this section:

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

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

(3) "reasonable administrative costs" means:

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

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

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

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

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

C. For purposes of this section:

- (1) the taxpayer is the prevailing party if the taxpayer has:
 - (a) substantially prevailed with respect to the amount in controversy; or
 - (b) substantially prevailed with respect to most of the issues involved in the case or the most significant issue or set of issues involved in the case;

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

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

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

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

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

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

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

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agreement of the parties or:

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

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

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

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

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

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

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

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

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

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

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

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

A. The chief hearing officer shall:

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

(2) ~~[periodically]~~ annually, evaluate each hearing officer's performance for competency, efficiency and professional demeanor in accord with relevant legal standards

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and the hearing officer code of conduct, including through the use of a survey of practitioners who appear before the hearing officer.

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

- (1) consult with a hearing officer about a genuine question of law; and
- (2) review with a hearing officer any issue on appeal addressed by a court of this state.

C. The administrative hearings office shall:

- (1) hear all tax protests pursuant to the provisions of the Tax Administration Act;
- (2) hear property tax protests pursuant to the provisions of the Property Tax Code;
- (3) hear all certificate-denial protests pursuant to the provisions of Section 13-1-22 NMSA 1978;
- (4) conduct all adjudicatory hearings pursuant to the Motor Vehicle Code;
- (5) conduct all driver's license revocation hearings pursuant to the provisions of the Implied Consent Act;
- (6) make and preserve a complete record of all proceedings; and
- (7) maintain confidentiality regarding taxpayer information as required by ~~[the provisions of]~~ Section 7-1-8 NMSA 1978.

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

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

(2) the Rules of Civil Procedure for the District Courts do not apply. The hearing officer shall conduct a hearing to allow the ample and fair presentation of complaints and defenses. The hearing officer shall hear arguments, permit discovery, entertain and dispose of motions, require written expositions of the case as the circumstances justify and render a decision in accordance with the law and the evidence presented and admitted. A taxpayer or the taxation and revenue department may request a written ruling on a contested question of procedure in a matter in which the taxpayer has filed a written protest and for which that protest

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is pending. The administrative hearings office shall issue a copy of its written ruling to the [~~taxation and revenue~~] department at the time the ruling is issued to the taxpayer; and

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

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

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

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

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~~resolved, the taxation and revenue department shall request from the administrative hearings office a hearing and shall send to the office a copy of the protest. The chief hearing officer shall promptly designate a hearing officer and shall set a date for a hearing to take place within ninety days after receipt of a protest filed pursuant to Section 7-1-24 NMSA 1978.]~~ If the taxpayer corrects the deficiency, the protest shall be considered timely if the initial protest was filed within ninety days in accordance with Subsection D of Section 7-1-24 NMSA 1978. A determination by the department that a protest has not been filed in accordance with that section may be protested by the taxpayer.

~~HTRC~~ ~~B. Within sixty days of the date of the protest, the taxation and revenue department or the taxpayer may request an informal conference. If the department requests an informal conference, the conference shall occur only if agreed to by the taxpayer. If requested or agreed to by the taxpayer, the informal conference shall occur within one hundred twenty days of the taxpayer's filing of the protest. Within thirty days of the completion of the informal conference, the department shall send a letter response to the taxpayer identifying any issues that have been resolved and any issues still in dispute in the protest. In the event an informal conference has been requested and has not resolved the protest, the department shall, no later than one hundred eighty~~

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~~days of the date of the protest, file a request for a hearing with the administrative hearings office.~~

~~C. If no party requests an informal conference within sixty days of the date of the protest or if the taxpayer does not agree to such a conference, the taxpayer may file a request for a hearing with the administrative hearings office. If within ninety days of the date of the protest no informal conference has been requested or agreed to and the taxpayer has not requested a hearing with the administrative hearings office, the taxation and revenue department shall file a request for a hearing with the administrative hearings office.~~ ←HTRC

HTRC → B. Within one hundred eighty days, but no earlier than sixty days after the date of the protest, the taxation and revenue department shall request a hearing with the administrative hearings office. A taxpayer may request in writing an informal conference with the department within sixty days after the date of the protest, and the department shall conduct the requested informal conference within thirty days of the receipt of the request. Whether or not a taxpayer requests an informal conference with the department, a taxpayer may request a hearing with the administrative hearings office no earlier than sixty days from the date of the protest.

C. The taxation and revenue department shall include with its request for a hearing an answer to the protest

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describing the legal and factual bases supporting the department's position beyond an assertion of the presumption of correctness and articulating the remaining protested issues. ←HTRC

~~HTRC→D. The taxation and revenue department shall include with its request for a hearing a detailed statement of position describing the legal and factual bases supporting the department's position beyond an assertion of the presumption of correctness, including any issues that were resolved at an informal conference and articulating the remaining disputed issues at protest.~~ ←HTRC

HTRC→D. ←HTRC In the event the taxpayer first requests a hearing with the administrative hearings office, the HTRC→taxation and revenue ←HTRC department shall, within thirty days HTRC→after of service of ←HTRC the taxpayer's request for a hearing, file its HTRC→detailed statement of position ←HTRC HTRC→answer to the protest ←HTRC describing the legal and factual bases supporting the department's position beyond an assertion of the presumption of correctness HTRC→. , including any issues that were resolved at an informal conference and articulating the remaining disputed issues at protest. ←HTRC

The department may amend its HTRC→detailed statement of position ←HTRC HTRC→answer to the protest ←HTRC up until ten days before the scheduled hearing or other deadline specified in a controlling scheduling order; provided HTRC→, ,

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~~however,~~ HTRC that if the administrative hearings office determines that the HTRC ~~department created an unfair surprise or other fundamental unfairness, the administrative hearings office may rule that the presumption of correctness rests with the taxpayer.~~ department's amended answer unfairly prejudices the taxpayer, the administrative hearings office may disallow the amended answer. HTRC The hearing shall be limited to the grounds provided in the taxpayer's protest letter and in the department's HTRC ~~detailed statement of position~~ HTRC answer to the protest HTRC.

E. If HTRC ~~the hearing officer finds that~~ HTRC the taxation and revenue department HTRC ~~fails~~ HTRC HTRC ~~failed~~ HTRC to comply with the deadlines set forth in Subsections A HTRC ~~through D~~ HTRC HTRC ~~and B~~ HTRC of this section, HTRC ~~the presumption of correctness shall rest with the taxpayer.~~ HTRC HTRC ~~the hearing officer may order that no further interest may accrue on the protested liability.~~ HTRC

F. If the taxpayer files the request for a hearing, the chief hearing officer shall set a hearing to take place within ninety days of the taxation and revenue department's HTRC ~~responsive detailed statement of position~~ HTRC HTRC ~~answer to the protest~~ HTRC, but in no case later than one hundred twenty days after the taxpayer's request for a hearing. If the department files the request for hearing with the HTRC ~~detailed statement of position~~ HTRC HTRC ~~answer to the~~

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protest ← HTRC, the chief hearing officer shall set a hearing to take place within ninety days of that request. Absent a conflict of interest requiring the assigned hearing officer to recuse from the case pursuant to the administrative hearings office code of conduct or an unforeseen emergency circumstance such as an accident, unexpected medical condition or illness, or vacancy of the position of the assigned hearing officer, the chief hearing officer shall not reassign a hearing officer to a case without giving the department and the taxpayer notice of that reassignment at least fourteen days before the hearing. Either party may, within ten days of notice of hearing assigning a hearing officer or notice of reassignment of a hearing officer, exercise one time the peremptory right to excuse the hearing officer designated to conduct the hearing; provided that the party has not moved for a discretionary ruling from the assigned hearing officer, nor previously exercised its right of peremptory excusal. Once a hearing officer has been peremptorily excused, that hearing officer shall not be assigned to the case again.

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

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[B-] H. A taxpayer may appear at the hearing on the taxpayer's own behalf, ~~[or may be represented by]~~ may appear through a bona fide employee or may be represented by an attorney, a certified public accountant, an employee of a New Mexico licensed certified public accounting firm whose authorization by the firm and by the taxpayer to appear is evidenced in writing or [with respect only to tax imposed pursuant to the Income Tax Act, a person who is] an enrolled agent [for federal income tax purposes]. An attorney, a certified public accountant, an employee of a New Mexico licensed certified public accounting firm or an enrolled agent shall abide by their respective controlling professional or ethical standards of conduct at all stages of the administrative proceeding before the administrative hearings office. If the taxation and revenue department and the taxpayer agree, the hearing may be conducted via videoconference. HTRC→~~The party that does not have the presumption of correctness shall present its case first at the hearing.~~←HTRC At the beginning of the hearing, the hearing officer shall inform the taxpayer of the taxpayer's right to representation. A hearing shall ~~[not]~~ be ~~[open]~~ closed to the public except upon request of the taxpayer. A hearing officer may postpone or continue a hearing at the hearing officer's discretion. As used in this subsection, "enrolled agent" means a federally licensed tax practitioner with unlimited rights to represent taxpayers before the internal revenue service.

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

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

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

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

[E.] K. Nothing in this section shall be construed to authorize a criminal proceeding or to authorize an administrative protest of the issuance of a subpoena or summons."

HTRC → ~~SECTION 9. A new section of the Administrative~~

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~~Hearings Office Act is enacted to read:~~

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

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