

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

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

AN ACT

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

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

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

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

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

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underscored material = new
[bracketed material] = delete

1 Section 7-1-24 NMSA 1978 or furnish security for payment as
2 provided by Section 7-1-54 NMSA 1978 becomes a delinquent
3 taxpayer and 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 taxpayer who fails to provide security as
10 required by Subsection D of Section 7-1-54 NMSA 1978 shall be
11 deemed to be a delinquent taxpayer.

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

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

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

3 "7-1-23. DISPUTING LIABILITIES--ELECTION OF REMEDIES.--
4 ~~[Any]~~ A taxpayer ~~[must elect to]~~ may dispute the taxpayer's
5 liability for ~~[the payment of]~~ taxes ~~[either]~~ only by
6 protesting the assessment ~~[thereof]~~ of taxes as provided in
7 Section 7-1-24 NMSA 1978 without making payment ~~[of the~~
8 ~~disputed tax liability]~~ or by claiming a refund ~~[thereof]~~ as
9 provided in Section 7-1-26 NMSA 1978 after making payment of
10 the ~~[disputed tax liability]~~ taxes the department asserts are
11 owed. The pursuit of one of the two remedies ~~[described~~
12 ~~herein]~~ constitutes an unconditional waiver of the right to
13 pursue the other."

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

16 "7-1-24. DISPUTING LIABILITIES--ADMINISTRATIVE PROTEST.--

17 A. A taxpayer may dispute:

- 18 (1) the assessment to the taxpayer of any
19 amount of tax;
- 20 (2) the application to the taxpayer of any
21 provision of the Tax Administration Act except the issuance of
22 a subpoena or summons; or
- 23 (3) the denial of or failure either to allow
24 or to deny a:
- 25 (a) tax credit ~~[or rebate]~~ application

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1 or claim;

2 (b) rebate; or

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

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

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

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

16 (3) states the affirmative relief requested.

17 C. A taxpayer may ~~[supplement the]~~ amend a
18 statement made by the taxpayer in accordance with Paragraphs
19 (2) and (3) of Subsection B of this section at any time prior
20 to ten days before the hearing conducted on the protest
21 ~~[pursuant to the provisions of]~~ in accordance with the
22 Administrative Hearings Office Act or, if a scheduling order
23 has been issued, in accordance with the scheduling order. The
24 secretary may, in appropriate cases, provide for an informal
25 conference before a hearing of the protest is set by the

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1 administrative hearings office or before acting on a claim for
2 refund.

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

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

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

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

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

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

21 (c) the date of the application to the
22 taxpayer of the applicable provision of the Tax Administration
23 Act; or

24 (d) the date of denial of a claim
25 pursuant to Section 7-1-26 NMSA 1978 or the last date upon

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1 which the department was required to take action on the claim
2 but failed to take action.

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

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

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

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

16 F. The fact that the department did not mail the
17 assessment or other peremptory notice or demand by certified or
18 registered mail or otherwise demand and receive acknowledgment
19 of receipt by the taxpayer shall not be deemed to demonstrate
20 the taxpayer's inability to protest within the required time.

21 G. [~~No proceedings~~] A proceeding other than [~~those~~]
22 one to enforce collection of an amount assessed as tax and to
23 protect the interest of the state by injunction, as provided
24 [~~in~~] by Sections 7-1-31, 7-1-33, 7-1-34, 7-1-40, 7-1-53, 7-1-56
25 and 7-1-58 NMSA 1978, [~~are~~] is not stayed by timely filing of a

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1 protest [~~pursuant to the provisions of~~] in accordance with this
2 section.

3 H. Nothing in this section shall be construed to
4 authorize a criminal proceeding or to authorize an
5 administrative protest of the issuance of a subpoena or
6 summons."

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

9 "7-1-26. DISPUTING LIABILITIES--CLAIM FOR CREDIT, REBATE
10 OR REFUND.--

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

23 (1) the taxpayer's name, address and
24 identification number;

25 (2) the type of tax for which a refund is

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1 being claimed, the credit or rebate denied or the property
2 levied upon;

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

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

7 (5) a brief statement of the facts and the law
8 on which the claim is based, which may be referred to as the
9 "basis for the refund", which ~~shall~~ may include documentation
10 that substantiates the written claim and supports the
11 taxpayer's basis for the refund; and

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

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

22 C. If the department requests additional relevant
23 documentation from a taxpayer who has submitted a claim for
24 refund, the claim for refund ~~will~~ shall not be considered
25 ~~[complete until the taxpayer provides the requested~~

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1 ~~documentation. The provisions of Paragraph (2) of Subsection D~~
 2 ~~of this section and of Section 7-1-68 NMSA 1978 do not apply~~
 3 ~~until a refund claim is complete] incomplete as long as the~~
 4 ~~taxpayer provides sufficient information for the department to~~
 5 ~~make a determination.~~

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

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

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

23 E. A person may elect to pursue ~~[no more than]~~ only
 24 one of the remedies provided in ~~[Paragraphs (1) and (2) of]~~
 25 this subsection. A person who timely pursues more than one

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1 remedy [~~shall be~~] is deemed to have elected the first [~~remedy~~
2 ~~invoked~~]. The person may:

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

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

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

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

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

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

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1 of the claim for refund. The plaintiff or the secretary may
 2 appeal from any final decision or order of the district court
 3 to the court of appeals.

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

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

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

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

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

25 (d) an overpayment of New Mexico tax

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

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

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

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

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

17 G. No credit or refund shall be allowed or made to
 18 [~~any~~] a person claiming a refund of gasoline tax under Section
 19 7-13-11 NMSA 1978 unless notice of the destruction of the
 20 gasoline was given to the department within thirty days of the
 21 actual destruction and the claim for refund is made within six
 22 months of the date of destruction. No credit or refund shall
 23 be allowed or made to [~~any~~] a person claiming a refund of
 24 gasoline tax under Section 7-13-17 NMSA 1978 unless the refund
 25 is claimed within six months of the date of purchase of the

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1 gasoline and the gasoline has been used at the time the claim
2 for refund is made.

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

11 I. [~~Any~~] A refund of tax paid under any tax or tax
12 act administered under Subsection B of Section 7-1-2 NMSA 1978
13 may be made, at the discretion of the department, in the form
14 of credit against future tax payments if future tax liabilities
15 in an amount at least equal to the credit amount reasonably may
16 be expected to become due.

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

25 K. The filing of a fully completed original income

1 tax return, corporate income tax return, corporate income and
 2 franchise tax return, estate tax return or special fuel excise
 3 tax return that shows a balance due the taxpayer or a fully
 4 completed amended income tax return, an amended corporate
 5 income tax return, an amended corporate income and franchise
 6 tax return, an amended estate tax return, an amended special
 7 fuel excise tax return or an amended oil and gas tax return
 8 that shows a lesser tax liability than the original return
 9 constitutes the filing of a claim for refund for the difference
 10 in tax due shown on the original and amended returns."

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

13 "7-1-29.1. AWARDING OF COSTS AND FEES.--

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

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1 B. As used in this section:

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

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

7 (3) "reasonable administrative costs" means:

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

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

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

21 (a) reasonable court costs; and

22 (b) actual charges for: 1) filing fees,
23 court reporter fees, service of process fees and similar
24 expenses; 2) the services of expert witnesses; 3) any study,
25 analysis, report, test or project reasonably necessary for the

1 preparation of the party's case; and 4) fees and costs paid or
2 incurred for the services of attorneys in connection with the
3 proceeding.

4 C. For purposes of this section:

5 (1) the taxpayer is the prevailing party if
6 the taxpayer has:

7 (a) substantially prevailed with respect
8 to the amount in controversy; or

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

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

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

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

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

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

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

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

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

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

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

22 (1) reasonable litigation costs and attorney
23 fees pursuant to Subsection A of this section in a court
24 proceeding may be incorporated as a part of the court's
25 decision or judgment [~~in the court proceeding~~] and [~~shall be~~]

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1 are subject to appeal in the same manner as the decision or
 2 judgment [~~A decision or order granting or denying in whole or~~
 3 ~~in part an award for~~]; and

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

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

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

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

25 "7-1B-1. SHORT TITLE.-- [~~Sections 1 through 9 of this act]~~

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1 Chapter 7, Article 1B NMSA 1978 may be cited as the
2 "Administrative Hearings Office Act".

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

5 "7-1B-6. HEARING OFFICER CODE OF CONDUCT--INDEPENDENCE.--

6 A. The chief hearing officer shall:

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

9 (2) [~~periodically~~] annually, evaluate each
10 hearing officer's performance for competency, efficiency and
11 professional demeanor in accord with relevant legal standards
12 and the hearing officer code of conduct, including through the
13 use of a survey of practitioners who appear before the hearing
14 officer.

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

18 (1) consult with a hearing officer about a
19 genuine question of law; and

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

22 C. The administrative hearings office shall:

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

25 (2) hear property tax protests pursuant to the

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1 provisions of the Property Tax Code;

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

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

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

8 (6) make and preserve a complete record of all
9 proceedings; and

10 (7) maintain confidentiality regarding
11 taxpayer information as required by [~~the provisions of~~] Section
12 7-1-8 NMSA 1978.

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

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

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1 time the ruling is issued to the taxpayer;

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

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

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

25 "7-1B-8. TAX PROTESTS--PROCEDURES.--

.214260.7

1 A. Upon timely receipt of a tax protest filed
2 ~~[pursuant to]~~ in accordance with the provisions of Section
3 7-1-24 NMSA 1978, the taxation and revenue department shall
4 promptly acknowledge the protest by letter to the protesting
5 taxpayer or the taxpayer's representative. If the department
6 determines that the protest ~~[is]~~ has not been filed in
7 accordance with ~~[the provisions of]~~ that section ~~[7-1-24 NMSA~~
8 ~~1978]~~, the department shall, within twenty-one days of receipt
9 of the protest, inform the taxpayer of the deficiency and ~~[the]~~
10 provide the taxpayer, within twenty-one days of the taxpayer
11 being informed, one opportunity to correct it. ~~[Within forty-~~
12 ~~five days after receipt of a protest filed pursuant to the~~
13 ~~provisions of Section 7-1-24 NMSA 1978 that has not been~~
14 ~~resolved, the taxation and revenue department shall request~~
15 ~~from the administrative hearings office a hearing and shall~~
16 ~~send to the office a copy of the protest. The chief hearing~~
17 ~~officer shall promptly designate a hearing officer and shall~~
18 ~~set a date for a hearing to take place within ninety days after~~
19 ~~receipt of a protest filed pursuant to Section 7-1-24 NMSA~~
20 ~~1978.]~~ If the taxpayer corrects the deficiency, the protest
21 shall be considered timely if the initial protest was filed
22 within ninety days in accordance with Subsection D of Section
23 7-1-24 NMSA 1978. A determination by the department that a
24 protest has not been filed in accordance with that section may
25 be protested by the taxpayer.

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1 B. Within sixty days of the date of the protest,
2 the taxation and revenue department or the taxpayer may request
3 an informal conference. If the department requests an informal
4 conference, the conference shall occur only if agreed to by the
5 taxpayer. If requested or agreed to by the taxpayer, the
6 informal conference shall occur within one hundred twenty days
7 of the taxpayer's filing of the protest. Within thirty days of
8 the completion of the informal conference, the department shall
9 send a letter response to the taxpayer identifying any issues
10 that have been resolved and any issues still in dispute in the
11 protest. In the event an informal conference has been
12 requested and has not resolved the protest, the department
13 shall, no later than one hundred eighty days of the date of the
14 protest, file a request for a hearing with the administrative
15 hearings office.

16 C. If no party requests an informal conference
17 within sixty days of the date of the protest or if the taxpayer
18 does not agree to such a conference, the taxpayer may file a
19 request for a hearing with the administrative hearings office.
20 If within ninety days of the date of the protest no informal
21 conference has been requested or agreed to and the taxpayer has
22 not requested a hearing with the administrative hearings
23 office, the taxation and revenue department shall file a
24 request for a hearing with the administrative hearings office.

25 D. The taxation and revenue department shall

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1 include with its request for a hearing a detailed statement of
2 position describing the legal and factual bases supporting the
3 department's position beyond an assertion of the presumption of
4 correctness, including any issues that were resolved at an
5 informal conference and articulating the remaining disputed
6 issues at protest. In the event the taxpayer first requests a
7 hearing with the administrative hearings office, the department
8 shall, within thirty days after the taxpayer's request for a
9 hearing, file its detailed statement of position describing the
10 legal and factual bases supporting the department's position
11 beyond an assertion of the presumption of correctness,
12 including any issues that were resolved at an informal
13 conference and articulating the remaining disputed issues at
14 protest. The department may amend its detailed statement of
15 position up until ten days before the scheduled hearing or
16 other deadline specified in a controlling scheduling order;
17 provided, however, that if the administrative hearings office
18 determines that the department created an unfair surprise or
19 other fundamental unfairness, the administrative hearings
20 office may rule that the presumption of correctness rests with
21 the taxpayer. The hearing shall be limited to the grounds
22 provided in the taxpayer's protest letter and in the
23 department's detailed statement of position.

24 E. If the taxation and revenue department fails to
25 comply with the deadlines set forth in Subsections A through D

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1 of this section, the presumption of correctness shall rest with
2 the taxpayer.

3 F. If the taxpayer files the request for a hearing,
4 the chief hearing officer shall set a hearing to take place
5 within ninety days of the taxation and revenue department's
6 responsive detailed statement of position, but in no case later
7 than one hundred twenty days after the taxpayer's request for a
8 hearing. If the department files the request for hearing with
9 the detailed statement of position, the chief hearing officer
10 shall set a hearing to take place within ninety days of that
11 request. Absent a conflict of interest requiring the assigned
12 hearing officer to recuse from the case pursuant to the
13 administrative hearings office code of conduct or an unforeseen
14 emergency circumstance such as an accident, unexpected medical
15 condition or illness, or vacancy of the position of the
16 assigned hearing officer, the chief hearing officer shall not
17 reassign a hearing officer to a case without giving the
18 department and the taxpayer notice of that reassignment at
19 least fourteen days before the hearing. Either party may,
20 within ten days of notice of hearing assigning a hearing
21 officer or notice of reassignment of a hearing officer,
22 exercise one time the peremptory right to excuse the hearing
23 officer designated to conduct the hearing; provided that the
24 party has not moved for a discretionary ruling from the
25 assigned hearing officer, nor previously exercised its right of

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1 peremptory excusal. Once a hearing officer has been
2 peremptorily excused, that hearing officer shall not be
3 assigned to the case again.

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

10 ~~[B-]~~ H. A taxpayer may appear at the hearing on the
11 taxpayer's own behalf, ~~[or may be represented by]~~ may appear
12 through a bona fide employee or may be represented by an
13 attorney, a certified public accountant, an employee of a New
14 Mexico licensed certified public accounting firm whose
15 authorization by the firm and by the taxpayer to appear is
16 evidenced in writing or ~~[with respect only to tax imposed~~
17 pursuant to the Income Tax Act, a person who is] an enrolled
18 agent ~~[for federal income tax purposes]. An attorney, a~~
19 certified public accountant, an employee of a New Mexico
20 licensed certified public accounting firm or an enrolled agent
21 shall abide by their respective controlling professional or
22 ethical standards of conduct at all stages of the
23 administrative proceeding before the administrative hearings
24 office. If the taxation and revenue department and the
25 taxpayer agree, the hearing may be conducted via

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1 videoconference. The party that does not have the presumption
2 of correctness shall present its case first at the hearing. At
3 the beginning of the hearing, the hearing officer shall inform
4 the taxpayer of the taxpayer's right to representation. A
5 hearing shall ~~not~~ be ~~open~~ closed to the public except upon
6 request of the taxpayer. A hearing officer may postpone or
7 continue a hearing at the hearing officer's discretion. As
8 used in this subsection, "enrolled agent" means a federally
9 licensed tax practitioner with unlimited rights to represent
10 taxpayers before the internal revenue service.

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

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

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

25 ~~[D.]~~ J. A taxpayer with two or more protests

1 containing related issues may request that the protests be
 2 combined and heard jointly. The hearing officer shall grant
 3 the request to combine protests unless it would create an
 4 unreasonable burden on the administrative hearings office or
 5 the taxation and revenue department.

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

10 **SECTION 9.** A new section of the Administrative Hearings
 11 Office Act is enacted to read:

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

16 - 29 -

underscored material = new
 [bracketed material] = delete