

FREQUENTLY ASKED QUESTIONS CONCERNING ADMINISTRATIVE TAX HEARINGS BEFORE THE NEW MEXICO ADMINISTRATIVE HEARINGS OFFICE

Taxpayers have the legal right to protest any assessment of tax, any denial of a claim for a tax refund, any collection action, or any other action/inaction taken by the New Mexico Taxation and Revenue Department (TRD) under the provisions of the Tax Administration Act.

Protests are filed with TRD. An auditor and an attorney are assigned to review the protest for TRD. The auditor and the attorney may contact the Taxpayer and ask for additional information. Often, the parties can resolve the protest informally.

When the parties are not able to resolve the protest informally, one of the parties must file a request for a formal hearing with the Administrative Hearings Office (AHO). If TRD files the request for hearing, the request must be filed within 180 days of TRD's receipt of the protest. A request filed by TRD must include its written answer to the protest. If a Taxpayer files the request for hearing, the request may not be filed until 60 days after the protest was filed with TRD. When a Taxpayer files a request for hearing, TRD has 30 days to file its answer to the protest.

How do I file things with the AHO?

All requests, motions, and other pleadings may be filed by mail or email. Documents should be attached to emails as a pdf file. Copies of all documents filed with the AHO should also be sent to the opposing party at the same time. To file with the AHO, send documents to: tax.pleadings@state.nm.us; or PO Box 6400, Santa Fe, NM 87502-6400. Additional information about the hearing process, including form templates, statutes, and regulations can be found on the Administrative Hearings Office website, www.aho.state.nm.us.

What are some statutes and regulations that deal with protests?

Section 7-1-24 NMSA 1978 (the right to protest and how to file a protest with TRD)

Section 7-1-26 NMSA 1978 (the requirements for filing a protest to a denial of refund)

Sections 7-1B-6 through 7-1B-8 NMSA 1978 (the rules for conducting the hearing on the protest)

Regulation 22.600.3 NMAC (tax hearing procedures before AHO)

Once the request for hearing has been filed, what happens?

The protest will be assigned to a Hearing Officer. The Hearing Officer will set the protest for a hearing to be held within 90 days of the date that the request for hearing was filed. The Hearing Officer may set the hearing to be held in-person, by telephone, or by videoconference. Either party may ask for the hearing to be held in-person, by telephone, or by videoconference. A Hearing Officer may require that a hearing be conducted in-person if it is deemed necessary to ensure that a complete and accurate record be made in a fair manner. Either party may object to a hearing that has been set to be held by telephone or by videoconference. The Hearing Officer may set the hearing as a scheduling hearing or as a merits hearing.

A scheduling hearing allows the parties to outline the issues of the protest, to set deadlines for discovery and filing motions, to estimate the time needed to prepare for the merits hearing, to estimate how long the merits hearing will take, and to select a date on which to hold the merits hearing. Either party may request a scheduling hearing. Scheduling hearings are generally conducted by telephone.

A merits hearing allows the parties to present testimony and other evidence to prove the facts of their case. The parties may also argue how the law supports their case. The parties may call witnesses to testify under oath, and a Taxpayer may testify on his/her own behalf. If either party needs a subpoena to ensure that a witness will appear at the hearing or provide copies of documents, they may file a request that AHO issue a subpoena. Merits hearings are generally conducted in-person at the AHO offices in Santa Fe, NM or in Albuquerque, NM. If the parties agree, merits hearings may be conducted by telephone or videoconference.

How will I know about the hearing?

The AHO will send a notice of hearing to the parties. The AHO will also send other orders and the final decision to the parties. Notices will say what type of hearing is scheduled, will give the date and time of the hearing, and will give information on where to go for an in-person hearing or how to call or login for a telephone or videoconference hearing. The notice for a Taxpayer will be mailed, emailed, or both. The notice for a Taxpayer will be sent to the

address or email address provided on the request for hearing or contained in the protest. Orders and decisions will be sent using the same method. If a Taxpayer's address changes, they must notify the AHO of the change in writing. As much as possible, notices are being sent by email. A Taxpayer should regularly check their spam or junk folders to ensure that they receive notices sent by email.

What if I have other things scheduled when the hearing is set?

Either party may request that a hearing be continued. Requests to continue must be filed with the AHO as soon as possible. Except in cases of illness or other emergency, last-minute requests for continuance are not likely to be granted. Requests for continuance should say if the opposing party agrees, opposes, or has been notified but has not responded. If the request for continuance is for the first hearing set, which will be within 90 days of the request for hearing, the parties must agree in writing in the motion to waive the 90-day requirement.

What rules must we follow at the hearing?

Formal rules of evidence and civil procedure do not apply to the administrative hearings. The parties may discuss the protest amongst themselves. Neither party should attempt to discuss the protest with the Hearing Officer outside of the formal hearing. Any pleadings, requests, and motions should be sent to the opposing party before or at the same time that they are filed with the AHO. At the hearing, both parties may present testimony, other evidence, and argue in favor of their case. Each side may call witnesses, and the other side may ask questions of those witnesses. Each side is responsible for collecting and presenting documents or other evidence to support their position. Examples of documents that may be submitted as exhibits at a hearing are nontaxable transaction certificates, tax returns, invoices, bank statements, etc. As a Taxpayer is challenging the action/inaction taken by TRD, the Taxpayer has the burden of proving that TRD's actions/inactions do not comply with the law.

What is the role of the Hearing Officer at the hearing?

The AHO is an agency that is independent and separate from TRD. The Hearing Officer ensures that the hearing process is conducted in a fair and impartial manner. The Hearing Officer sends notices, rules on motions, and gives and enforces deadlines. At the merits hearing, the Hearing Officer listens to the facts and arguments from both sides.

After the hearing is finished, the Hearing Officer will decide whether the assessment, the denial of refund, or the other action/inaction taken by TRD is supported by the facts and the law. The Hearing Officer will issue a decision in writing that either grants the protest, denies the protest, or partially grants and partially denies the protest. Decisions are based on evidentiary record presented and the law, and a Hearing Officer cannot grant a protest based on arguments that the law is unfair or would create an undue hardship. Decisions may be posted online by TRD. Previous decisions and orders issued by the Administrative Hearings Office may be found on TRD's web site (www.tax.state.nm.us or <http://www.tax.newmexico.gov/tax-decisions-orders.aspx>).

Can a Taxpayer have an attorney? Is a Taxpayer required to have an attorney?

A Taxpayer may have an attorney, but a Taxpayer is not required to have an attorney. A Taxpayer may represent himself/herself. A Taxpayer may also be represented at a hearing by a bona fide employee, an attorney, a certified public accountant, a designated employee of a certified public accountancy firm, or an enrolled agent. A Taxpayer must make their own arrangements at their own expense for representation. Attorneys appearing for hearings must be authorized to practice law in New Mexico, either through licensure or in compliance with Rule 21-106 NMRA.

What happens if a Taxpayer fails to appear at a hearing?

The law provides that a Taxpayer who protests an assessment but has not paid in full and fails to appear at a hearing is a "delinquent taxpayer." See NMSA, Section 7-1-16. If a Taxpayer fails to appear at a hearing, either himself/herself or through an authorized representative, the Taxpayer's protest will be denied, and a decision will be issued in favor of TRD. At that point, TRD may proceed with collection action.

What if a Taxpayer disagrees with the final decision?

Either party may appeal a decision not in their favor that is made by the Hearing Officer. The party may file an appeal with the New Mexico Court of Appeals within 30 days of the date that the decision is issued. Appeals are decided based solely on the evidence and arguments presented on the record at the hearing. All hearings are digitally recorded, and the record is then used by the New Mexico Court of Appeals when an appeal is filed by either party.