

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

Taxpayers have the right to protest assessments of tax, denials of tax refunds, collection actions, or other actions/inactions by the New Mexico Taxation and Revenue Department (TRD) under the Tax Administration Act.

Protests are required by statute to be filed with TRD. TRD assigns an auditor and attorney to review the protest and may contact the Taxpayer to discuss the protest. Protests can often be resolved at this stage without a hearing.

When a protest cannot be resolved, either party may request a hearing with the Administrative Hearings Office (AHO), an agency independent of TRD. TRD must request a hearing within 180 days of its written acknowledgment of the protest. A request by TRD must include its answer to the protest. If a Taxpayer requests a hearing, by statute the request may not be submitted until 60 days after the filing of the protest. When a Taxpayer requests a hearing, TRD has 30 days to file its answer to the protest. AHO has no knowledge of a protest and will not set a hearing until a party files a request for hearing with AHO.

How do I file with AHO?

Hearing 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 AHO should be simultaneously sent to the opposing party. To file with AHO, send documents to: tax.pleadings@aho.nm.gov; or P.O. Box 6400, Santa Fe, NM 87502-6400. Additional information about the hearing process, form templates, statutes, and regulations are available at 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 (AHO tax hearing procedures); statutes and regulations may be located at www.aho.state.nm.us/HearingsConducted/TaxProtestHearingInformation.

What happens after a hearing is requested?

The protest is assigned to a Hearing Officer who will set a hearing within 90 days of the date the request for hearing was filed. The hearing may be set for scheduling or for consideration of the merits. The hearing may be conducted in-person, by telephone, or by videoconference. Parties may express their preference in the request for hearing. An in-person hearing may be required to produce a complete and accurate record or to ensure fairness of the proceedings. A party may object to a telephone or videoconference hearing setting.

A scheduling hearing allows the parties to identify disputed and undisputed issues, consider deadlines for conducting discovery and filing motions, and participate in scheduling the merits hearing. Either party may request a scheduling hearing which is generally conducted by telephone.

A merits hearing allows the parties to present sworn testimony and other evidence in support of their case. Parties may also discuss how the law supports their case. A Taxpayer may testify on his/her own behalf and may call witnesses to testify. Merits hearings are generally conducted in-person at the AHO offices in Santa Fe, NM or in Albuquerque, NM. Parties may also agree to conduct merits hearings by telephone or videoconference. Requests for subpoenas may be submitted to AHO if needed to ensure the presence of witnesses or to access documents.

How will I know about the hearing?

AHO will send a notice of hearing to the parties. Notices specify the type of hearing, its date and time, location, or other information such as how to join a telephone or videoconference hearing. Notices will be sent to the address or email address on the request for hearing, in the protest, on an entry of appearance, or in a taxpayer

How will I know about the hearing (Continued)?

information authorization from filed with TRD and provided to AHO. Orders and decisions will be sent using the same method. Changes to a Taxpayer's address must be submitted to AHO in writing. Parties expecting to receive communications by email should regularly check their spam/junk folders to ensure notices are not mistakenly discarded.

What if I need to reschedule a hearing?

Parties may request that a hearing be continued (rescheduled). Requests to continue must be submitted to AHO as soon as possible. Except in cases of illness or emergency, last-minute requests are unlikely to be approved. Requests for continuance should say if the opposing party was consulted on the request and if they agree, oppose, take no position, or have not responded to an inquiry. A request to continue the first hearing, set within 90 days of the request for hearing, must include a written agreement to waive the 90-day requirement.

What are the rules of the hearing?

Formal rules of evidence and civil procedure do not apply. Parties should not communicate with the Hearing Officer outside of the formal hearing without the opposing party's presence. Pleadings, requests, and motions should be sent to the opposing party before or at the same time that they are filed with AHO. At the hearing, both parties may present the testimony of witnesses, records, question the other party's witnesses, and argue in favor of their case. 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. A Taxpayer challenging an assessment or other action/inaction taken by TRD has the initial burden of production in the case to put forward evidence (other than unsubstantiated statements) tending to dispute the assessment/action/inaction of TRD and bears the burden of persuasion that TRD's actions/inactions do not comply with the law or the facts.

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

The Hearing Officer does not work for 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 sets and enforces deadlines. At the merits hearing, the Hearing Officer listens to the facts and arguments from both sides. The Hearing Officer will issue a decision in writing that either grants the protest, denies the protest, or partially grants or denies the protest. Decisions are based on the evidentiary record and the law. A protest may not be granted because the law is believed to be unfair or would create an undue hardship. Final decisions are publicly available at 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 represent himself/herself. A Taxpayer may also be represented 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 arrange for representation at their own expense. 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?

If a Taxpayer fails to appear on their own behalf or through an authorized representative, their protest will be denied, and a decision will be issued in favor of TRD. A Taxpayer who protests an assessment that is not paid in full, and fails to appear at a hearing is a "delinquent taxpayer" allowing TRD to proceed with collection. *See* NMSA, Section 7-1-16.

What if a Taxpayer or TRD disagrees with the final decision?

Parties dissatisfied by the decision and order may appeal to the New Mexico Court of Appeals within 30 days of the date the decision is issued. Appeals are decided on the evidence and arguments presented on the record at the hearing.