GENERAL OVERVIEW OF TAX PROTEST PROCEDURE

Protest Initiation Phase at Tax. & Rev.: Taxpayer may protest assessment of tax over \$50, application of provision of the Tax Administration Act (except issuance of subpoena or summons), the denial of or failure to allow or to deny a credit or rebate or claim for refund. or determination of invalid protest. [See Sec. 7-1-24 & Sec. 7-1B-8 A] **Written Answer** Required:

Scheduling Hearing: A scheduling hearing may be set when requested by a party or when the circumstances of the protest suggest that discovery. motions, or other prehearing activities are necessary to ensure an ample and fair opportunity for the parties to present their claims and defense.

[Sec. 7-1B-6 D (2); 22.600.3.8 H & I NMAC]

Purpose of Scheduling Hearing: Parties discuss deadlines for discovery, motions, other prehearing activities, and set the date(s) for a hearing to address the merits of the protest. Sometimes the parties will seek additional time to narrow or resolve the protest before the formal merits hearings. After scheduling hearing, Hearing Officer typically issues a Scheduling Order articulating specific deadlines and the merits hearing date.

[Sec. 7-1B-6 D (2)]

Objection to Scheduling Hearing meeting 90-day requirement: If Taxpayer objects that the scheduling hearing satisfies the 90-day hearing requirement, a merits hearing will be promptly set on an expedited basis to meet the 90-day hearing deadline. [22.600.3 K NMAC]

Filing a Protest: Taxpayer files a written protest with Tax & Rev. Protests are not filed with AHO. [Sec. 7-1-24 & Sec. 7-1B-8 A]

Valid Protest: Tax. & Rev

Tax. & Rev. Protest Review: If Tax. & Rev. determines that the protest is defective or incomplete, it must notify Taxpayer of the deficiency within 21 days of protest receipt. [Sec. 7-1B-8 A]

and meets statutory requirements.

determines the protest is complete

Protest Acknowledgement:

Tax. & Rev. shall promptly of a Taxpayer request for acknowledge a valid protest in writing.

[Sec. 7-1B-8 A]

Informal Conference: Within 60 days of protest acknowledgement, Taxpayer may request an informal conference with Tax. & Rev. Although nothing prohibits the parties from agreeing to conduct an informal conference at any time, an informal conference requested under Sec. 7-1B-8 B must be held within 30 days of the request for informal conference.

[Sec. 7-1B-8 B]

Hearing Request Deadline:

Tax. & Rev. prepares a

written answer to

Taxpayer's protest to be

filed with its request for

hearing or within 30-days

hearing.

Tax. & Rev. requests a hearing not less than 60 days, nor more than 180 days from date of acknowledgment. The request shall include a copy of its answer.

> [Sec. 7-1B-8 B & Sec. 7-1B-8 C]

Hearing Phase at AHO Begins:

Filing a hearing request with AHO invokes AHO's jurisdiction; AHO is not involved in a protest prior to the hearing request. In responses to a request, AHO assigns a hearing officer and a hearing is set to occur either: within 90 days of Tax. & Rev.'s hearing request or within 90 days of Tax. & Rev.'s written answer to protest when Taxpayer files hearing request (not to exceed 120-days from the hearing request).

[Sec. 7-1B-8 F]

Taxpayer Request for AHO Hearing:

If Taxpayer requests a hearing, NMTRD files a written answer to Taxpayer's protest within 30 days of Taxpayer's hearing request.

[Sec. 7-1B-8 C]

Taxpayer Request for AHO Hearing:

If Tax. & Rev. detects protest deficiencies:

Taxpayer has 21 days from the notification to

correct deficiencies. A protest corrected within

21 days is deemed timely and will be

acknowledged Tax. & Rev.

Tax. & Rev's determination that the initial protest

is not valid may be protested by Taxpayer.

[Sec. 7-1B-8 A]

Taxpayer may request a hearing directly from AHO after 60 days from date of acknowledgement of protest whether or not an informal conference is requested.

[Sec. 7-1B-8 B]

Notice of Protest Hearings: AHO

provides written notice of a scheduling hearing or a merits hearing. It contains the hearing officer assignment, date, time, and other information to attend the hearing. Hearings may be held in person, by videoconference, or by telephone.

Peremptory Excusal: Each party may exercise **one** peremptory excusal of an assigned hearing officer within 10 days of the hearing officer assignment. A party may not excuse a hearing officer if it has sought a discretionary ruling from the hearing officer it seeks to excuse.

[Sec. 7-1B-8 F; 22.600.3.9 NMAC]

Formal Merits Hearing: Each party has an opportunity to present evidence and arguments in accord with their respective positions in the protest and the answer. The parties may make opening statements, introduce evidence through testimony of witnesses and presentation of documents, cross examination of opposing witnesses, make objections, make closing arguments, and all other rights essential for a fair hearing. The rules of civil procedure and rules of evidence, including the rules against hearsay, do not are apply. The Hearing Officer decides the protest in a written Decision and Order. A party dissatisfied by the results may appeal directly to the New Mexico Court of Appeals within 30-days.

[Regulation 22.600.3 NMAC; Sec. 7-1B-6 D; Sec. 7-1-25]

THE FOLLOWING COLORS GENERALLY REFER TO THE PARTY INITIATING THE STEP: