



## NEW MEXICO ADMINISTRATIVE HEARINGS OFFICE

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### **STANDING ORDER #21-02 OF THE CHIEF HEARING OFFICER**

#### **ORDER RESUMING IN-PERSON TAX ADMINISTRATION ACT AND PROPERTY TAX CODE ADMINISTRATIVE HEARINGS BEGINNING ON JUNE 1, 2021**

WHEREAS, on March 13, 2020, pursuant to Standing Order 2020-02, consistent with the mandatory directives of the relevant Executive Order, Public Health Emergency Order, and consistent with my statutory authority to manage the operations of the Administrative Hearings Office and my regulatory authority under 22.600.1.9 NMAC, I issued a standing order suspending in-person hearings under the Tax Administration Act and the Property Tax Code in favor of remote telephonic and videoconference hearings.

WHEREAS, in May of 2021, the Administrative Hearings Office received executive branch direction and approval to resume in-person hearings beginning in the month of June 2021.

NOW THEREFORE, I, Brian VanDenzen, Chief Hearing Officer, in accordance with the preceding information, and consistent with my statutory authority to manage the operations of the Administrative Hearings Office and my regulatory authority under 22.600.1.9 NMAC to issue standing orders, do hereby **ORDER** that the Administrative Hearings Office will resume in-person hearings, consistent with hearing protocols #1-8 attached and incorporated herein, *beginning on June 1<sup>st</sup>, 2021*. **IT IS FURTHER ORDERED** that all parties appearing before the Administrative Hearings Office comply with hearing protocols #1-8 incorporated into this hearing in order to ensure a safe, orderly, respectful, and fair hearing process for all hearing participants. **IT IS FINALLY ORDERED THAT** Standing Order #20-02 is revoked on June 1, 2021 in favor of this order.

**IT IS SO ORDERED on this 18<sup>th</sup> day of May 2021.**

A handwritten signature in blue ink, appearing to read "B. VanDenzen".

Brian VanDenzen  
Chief Hearing Officer  
Administrative Hearings Office



## **In-Person Hearing Protocols**

While the Administrative Hearings Office still encourages continuing use of video conference hearings for the safety of all parties involved in the hearing process, the Administrative Hearings Office plans to resume in-person administrative hearings under the Tax Administration Act and the Property Tax beginning June 1, 2021 under the following hearing protocols:

### **1) Scheduling of Hearings**

- a. Per NMSA 1978, Section 7-1B-8(H) and Regulation 22.600.3.10 NMAC, TRD and a taxpayer may still request or consent to a videoconference hearing.
- b. All merits hearings will continue to be initially set as a videoconference hearing pursuant to Regulation 22.600.3.10 (C) NMAC, subject to timely objection of the parties under that regulation.
- c. Upon written, timely objection under Regulation 22.600.3.10 (C) NMAC, the case will be set for an in-person hearing.

### **2) Health Screening and Entry into Facility**

- a. To the fullest extent possible given its facilities and requirement to conduct hearings, the Administrative Hearings Office will follow the New Mexico Department of Health guidelines, applicable public health orders, and emergency orders of the Governor, or any more restrictive order applicable in the location of the hearing.
- b. For in-person hearings, there will be no general access to the lobby before the scheduled hearing.
- c. Hearing Participants will check-in for their in-person hearing as indicated by the instructions included with the notice of hearing, the subpoena, or requirements articulated at each specific hearing facility. Hearing

participants may be required to provide a cellular phone number to the Scheduling Unit to facilitate that check-in process.

- d. Hearing Participants will not enter the facility until expressly directed to do so at the time of commencement of the hearing.
- e. Any employee, person, or hearing participant entering an Administrative Hearings Office facility or other facility where hearings are scheduled to occur may be subject to temperature check and must satisfactorily answer screening questions before entering the facility.
  - i. Any person with a temperature above 100.4 degrees, or who declines a temperature check, or does not satisfactorily answer the screening questions shall be denied entry into the facility.
  - ii. No employee, staff, hearing participant, attorney, accountant, witness or other person shall be allowed into the facility if they are ill or exhibiting any overt signs of illness.
    - 1. Any hearing participant exhibiting signs of illness will be directed to leave the hearing facility immediately. The hearing may continue with a remote appearance, may be continued, or other appropriate action determined by the hearing officer.
    - 2. Any employee who is ill in any manner shall not attempt to work in the office and instead must consult with their supervisor about taking sick leave and/or working remotely.
- f. All people entering the facility shall complete and submit the relevant screening requirement before admitted into the facility.
- g. All people entering the facility agree to notify the Administrative Hearings Office if they are diagnosed with COVID-19, or otherwise ordered to quarantine or self-isolate for any reason related to COVID-19, within 14-days before or after their entry into the facility.
- h. If a hearing facility is closed due to a COVID-19 exposure or public health order related to the pandemic, the hearing may be converted to a

videoconference hearing or continued to a later date when the facility reopens.

### **3) Face Mask Requirements**

- a. All employees of the Administrative Hearings Office, all hearing participants, and any member of the public or person wishing to attend to a hearing or other business before the Administrative Hearings Office shall wear a mask over their mouth and nose at all times while in the hearing facility, including during the hearing, with the following exceptions:
  - i. A person provides a written exemption from a licensed healthcare provider.
  - ii. A person that is under the age of 5.
  - iii. Any person who is unconscious, incapacitated, or otherwise unable to remove a face covering without assistance.
  - iv. If there is a legitimate question of identity of a particular witness or party related to the hearing or other legal justification related to development of an adequate hearing record, the hearing officer may permit or require that the person briefly remove their mask for those limited purposes.
  - v. An employee of the Administrative Hearings Office may remove their mask within their assigned office when no one else is present in the room and the office door is closed.
- b. Individuals without masks shall be provided masks.
- c. Any hearing participant who refuses to wear a mask without presenting proof of an applicable exception to this protocol will not be admitted into the facility, will be required to exit the facility if already inside, and will be deemed to have consented to a remote hearing in lieu of the in-person hearing.

4) **Social Distancing, the Hearing Room, Witnesses, and Limited Participation in the Hearing.**

- a. All hearings shall be conducted in a manner to promote the social distancing requirements of the relevant public health order, or any more restrictive rule applicable at the location of the hearing.
- b. To the fullest extent possible, all hearing participants shall remain six feet apart while in the facility, including throughout the hearing, entering and exiting the hearing room and facility, and any other activities in the facility.
- c. In order to provide for social distancing, only the hearing officer and other essential hearing personnel needed by the hearing officer such as a court monitor or court reporter, the parties with their authorized representatives, and the testifying witness shall be permitted in the hearing room.
  - i. If the facility is large enough to accommodate socially distanced space for other observation by non-hearing participants, the hearing officer at their discretion may permit additional individuals in the hearing room during the hearing, but in no case shall safe social distancing space be compromised for a person not actively a participant or party at the hearing.
  - ii. All other witnesses or observers will be asked to remain socially-distanced in the lobby until it is their turn to testify.
  - iii. A hearing officer may also permit others in the hearing room only if the hearing officer determines that the law so requires within the context of the specific hearing being conducted.
- d. Because the continuing pandemic creates significant health and safety concerns with traveling, Regulation 22.600.3.10 (F) NMAC should be construed liberally by the assigned hearing officer in favor of allowing a witness or witnesses to testify via videoconference even at an in-person hearing, absent a compelling credibility question or other valid evidentiary reason requiring in-person testimony.

## 5) Exhibits

- a. Exchange of physical copies of documentary exhibits between the parties during the course of the in-person hearings is strongly discouraged.
- b. Before commencement of the in-person hearing, or by a date otherwise specified in the applicable scheduling order, the parties shall provide three copies of an exhibit binder containing all copies of their proffered exhibits: one copy provided to the opposing party, one provided copy for the hearing officer, and one copy for the witnesses.
  - i. In order to minimize close contact between the hearing participants, each party's respective proffered exhibit binders will be distributed before the hearing to the relevant work station in the hearing room
  - ii. Submission of a binder of proffered exhibits does not mean that such exhibits are or will be admitted into the record. The proffered exhibits will still need to be tendered formally for the record at the hearing, subject to objection of the opposing party and ruling of the assigned hearing officer.
  - iii. Where possible, exhibits shall be exchanged and displayed during the hearing electronically.
- c. For exhibits in remote proceedings occurring by telephone or videoconference, the parties may be required to submit the proffered exhibits before the hearing in accord with the instructions contained in the notice of hearing or the subpoena to appear.
  - i. Tendering of such exhibits before the hearing helps facilitates an effective hearing process but does not mean such exhibits will be admitted into the evidentiary record of the proceeding. The parties may still make appropriate objections to the admission of any pre-filed exhibit during the course of the remote hearing.

## **6) Hearing Officer Discretion**

- a. In the event that any person, party, or witness fails to abide by these protocols or the applicable New Mexico Public Health Orders, the assigned hearing officer has discretion to *sua sponte*:
  - i. Order the non-complying individual(s) to exit the facility immediately;
  - ii. Deem that the non-complying individual(s) inability to comply with the protocols for the conduct of an in-person hearing amounts to consent to conduct a remote hearing by telephone or video
    1. Order the non-complying individual(s) to appear for the remainder of the hearing via an available remote hearing method, such as telephone or videoconference;
    2. Order an immediate continuance in the case and reset the hearing via telephone or videoconference;
  - iii. Order that the hearing reconvene in another location or via telephone/videoconference on the same date;
  - iv. In the event of egregious and continuous non-compliance by an individual that interferes with the conduct of the hearing, prejudices the opposing party, or needlessly jeopardize the safety and well-being of all hearing participants, the hearing officer under Regulation 22.600.3.22 (B) (13) NMAC may exclude the non-complying individual from further participation in the hearing and rule accordingly.

## **7) Cleaning of Hearing Room**

- a. High contact places in the Hearing Room will be sanitized before and after the conduct of each hearing by the assigned hearing officer or other staff.
- b. Air purifiers will be used during that hearing at Administrative Hearings Office controlled facilities, and to the extent possible, at third party facilities where hearings occur.

- c. Plexiglass barriers may be installed between the hearing officers and the hearing participants at Administrative Hearings Office controlled facilities, and to the extent possible, at third party facilities where hearings occur.
  - d. In-person hearings shall be staggered with at least an additional ½ hour between hearings to allow for cleaning and air purification turnover between proceedings.
- 8) **Modification of these Protocols:** Conduct of in-person hearings and the conditions of this order are subject to change as public health orders are issued/modified/cancelled or as otherwise required by emergency declarations of the Governor or issuance of other executive branch policy related to the pandemic.