STATE OF NEW MEXICO
ADMINISTRATIVE HEARINGS OFFICE
ADMINISTRATIVE HEARINGS OFFICE ACT RULEMAKING

IN THE MATTER OF
ADOPTION OF FINAL RULES

Title 22, Chapter 600, Part 3

OF THE ADMINISTRATIVE HEARINGS OFFICE **No. P20-01**

ORDER ADOPTING FINAL RULES

On June 9, 2020, the Administrative Hearings Office proposed to repeal and replace 22.600.3 NMAC ("Hearings under the Tax Administration Act"). Notice of Rule Making and Public Rule Hearing was provided consistent with the requirements of NMSA 1978, Section 14-4-1 to -11, as documented in detail in the Report of Hearing Officer attached to this order as Order Exhibit B. Public comment was solicited for a period of at least thirty days and the public had thirty days notice of the Rule Hearing.

A rule hearing occurred on July 29, 2020 at 10:00 a.m., presided over by Hearing Officer Chris Romero, who prepared a Report of Hearing Officer summarizing the rule-making record and rule hearing. On August 4, 2020, Hearing Officer Romero issued his "Report of Hearing Officer," which made 26 findings of fact. That Hearing Officer Report, as well as all findings of fact contained in that report, are adopted and fully incorporated herein with this order. After reviewing the record of rulemaking, the public comments received on the proposed rules, and the Report of the Hearing Officer, the proposed rules were modified in a manner reflective of the public comment received, resulting in the attached final rules.

WHEREFORE, pursuant to NMSA 1978, Section 7-1B-5 (2015) and consistent with the

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requirements of the State Rules Act, NMSA 1978, Section 14-1-1 through 11 (2017), **IT IS ORDERED** that the previous version of 22.600.3 NMAC **IS REPEALED AND IS REPLACED** with the attached final rule, 22.600.3 NMAC (Order Ex. A), which **IS HEREBY ADOPTED** upon publication in the New Mexico register, expected to be on August 25, 2020, Volume XXXI, Issue 16.

DATED: August 10, 2020

Brian VanDenzen, Esq.
Chief Hearing Officer
Administrative Hearings Office
P.O. Box 6400
Santa Fe, NM 87502

TITLE 22: COURTS
CHAPTER 600: ADMINISTRATIVE HEARINGS OFFICE
PART 3: HEARINGS UNDER THE TAX ADMINISTRATION ACT

22.600.3.1 ISSUING AGENCY: Administrative Hearings Office, Wendell Chino Building, 1220 South St. Francis Drive, P.O. Box 6400, Santa Fe, NM 87502.
[22.600.3.1 NMAC - Rp. 22.600.3.1, 8/25/2020]

22.600.3.2 SCOPE: This part applies to the taxation and revenue department and all taxpayers, their agents and representatives protesting an action of the taxation and revenue department under Section 7-1-24 NMSA 1978 of the Tax Administration Act and seeking a hearing under Section 7-1B-8 NMSA 1978 of the Administrative Hearings Office Act.
[22.600.3.2 NMAC - Rp. 22.600.3.2, 8/25/2020]

22.600.3.3 STATUTORY AUTHORITY: Paragraph (1) of Subsection A of 7-1.B-5 NMSA 1978.
[22.600.3.3 NMAC - Rp. 22.600.3.3, 8/25/2020]

22.600.3.4 DURATION: Permanent.
[22.600.3.4 NMAC - Rp. 22.600.3.4, 8/25/2020]

22.600.3.5 EFFECTIVE DATE: August 25, 2020, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[22.600.3.5 NMAC - Rp. 22.600.3.5, 8/25/2020]

22.600.3.6 OBJECTIVE: The objective of this part is to provide procedural rules and guidance about the tax protest hearing process before the administrative hearings office under the provisions of the Tax Administration Act and the Administrative Hearings Office Act.
[22.600.3.6 NMAC - Rp. 22.600.3.6, 8/25/2020]

22.600.3.7 DEFINITIONS: As used in 22.600.3 NMAC:

A. "Administrative hearings office" is the agency established under Section 7-1B-1 NMSA 1978.

B. "Answer" is TRD's written statement in response to claims or defenses asserted by a Taxpayer in opposition to any action subject to protest providing with reasonable specificity the legal and factual bases for its position.

C. "Bona fide employee" means any legitimate employee, owner, or member of any board of directors or other governing body of a company, business, or otherwise recognized entity, including trustees acting on behalf of a trust and personal representatives acting on behalf of a decedent's estate. A bona fide employee is not a person hired for the limited purpose, scope, or duration of representing a taxpayer before the administrative hearings office during the protest proceeding.

D. "Chief hearing officer" is the appointed head of the administrative hearings office under the Administrative Hearings Office Act, Section 7-1B-3 NMSA 1978, or the chief hearing officer's designee during the absence of the chief hearing officer, or the acting, interim chief hearing officer pending appointment of that position.

E. "Enrolled agent" means a federally licensed tax practitioner with unlimited rights to represent taxpayers before the internal revenue service.

F. "Hearing" is an on-the-record proceeding before the hearing officer addressing the procedural, evidentiary, or substantive issues of the protest. A hearing includes a merits hearing, a scheduling hearing, or a motion's hearing.

G. "Merits Hearing" is the formal, administrative hearing focused on the adjudication of the disputed issues under protest.

H. "Scheduling Hearing" is a hearing where the parties appear to discuss the issues involved in the protest, to discuss the need for a discovery and motions practice before the merits hearing, to discuss how much time the parties need to ensure compliance with the statutory fair hearing requirements under Paragraph (2) of Subsection D of Section 7-1B-6 NMSA 1978, and to select a merits hearing date and time. The scheduling hearing is part of the record of the proceeding.

I. "Taxpayer" for the limited purposes of this rule is the generic party name of the individual, person, entity association, business, corporation, partnership or other recognized entity protesting against TRD in the

proceeding before the administrative hearings office. This definition shall not be construed in any manner to change, clarify, or expound the statutory definition of taxpayer contained under the Tax Administration Act.

J. **"TRD"** is the New Mexico taxation and revenue department.

[22.600.3.7 NMAC - Rp. 22.600.3.7, 8/25/2020]

22.600.3.8 REQUESTS FOR HEARING, ANSWERS, SCHEDULING OF MERITS HEARINGS, SCHEDULING HEARINGS, SCHEDULING ORDERS, AND PEREMPTORY EXCUSALS:

A. Pursuant to Subsection B of Section 7-1B-8 NMSA 1978, TRD shall file a request for hearing with the administrative hearings office no less than 60 days and no more than 180 days from the date of its acknowledgement of a valid protest on a form and in a manner specified by the chief hearing officer

B. In instances where TRD has not yet filed a hearing request, pursuant to Subsection B of Section 7-1B-8 NMSA 1978, a taxpayer may but is not required to file a request for hearing with the administrative hearings office on or after the 60th day from the date on which TRD acknowledged its protest.

C. If neither party has filed a request for hearing by 180 days from the acknowledgement of a valid protest, a Taxpayer may request relief from interest under Subsection E of 22.600.3.18 NMAC.

D. In addition to other requirements of this section, a hearing request submitted by TRD shall be accompanied by an answer to a taxpayer's protest. If the taxpayer is the party requesting a hearing, then TRD shall file and serve its answer to the protest within 30 days of the filing of Taxpayer's request for hearing.

E. An answer shall state TRD's response to a taxpayer's protest, including the legal and factual bases for TRD's position plus other issues it perceives as relevant or in dispute. Matters asserted in the protest which TRD's answer does not explicitly oppose or dispute with reasonable specificity may be deemed admitted or conceded. An answer may be amended no less than 10 days before a scheduled hearing on the merits of the protest, unless another deadline is stated in the governing scheduling order. An amended answer, even if otherwise timely filed, may still be disallowed if the hearing officer determines that the lateness of the amendment unfairly prejudices the taxpayer. In evaluating the issue of prejudice, the hearing officer shall consider whether any newly asserted facts, legal conclusions, or other matters contained in the amended answer were known or should have been known to TRD earlier. Alleging new facts, legal conclusions, or other matters that were known or should have been known earlier will weigh in favor of finding the amended answer to be prejudicial.

F. Requests for hearing shall include (if available) a copy of TRD's initiating document (such as a notice of assessment or denial of claim for refund or credit), action, or inaction that led to the protest, a copy of the taxpayer's protest letter, TRD's acknowledgement letter, any taxpayer information authorization filed with TRD allowing someone other than the named taxpayer (or bona fide employee of the taxpayer) to represent the taxpayer before TRD, the address of record of the taxpayer with TRD, and TRD's answer to the protest if TRD is the party requesting the hearing. If the taxpayer submits the request for hearing, it shall not be required to include TRD's answer, but may do so if it is in the taxpayer's possession. The administrative hearings office may require additional information on any request for hearing or referral and may require the parties to submit such request on a form developed by the administrative hearings office.

G. If both parties submit timely hearing requests in reference to the same protest, the request filed later in time shall be merged with the request filed earlier in time, and the first-filed timely hearing request shall control the establishment of pertinent deadlines.

H. The party requesting the hearing shall specify whether they believe the matter will be ripe for a merits hearing within 90-days of the request for hearing or whether the parties need additional time to complete discovery, prepare motions, and to ensure both sides have ample and fair opportunity to present their respective cases. The chief hearing officer shall give consideration to the requests of either party for a scheduling hearing but is not bound to such requests if in the view of the chief hearing officer after reviewing the record and the docket, another hearing type is more appropriate to the case.

I. Upon receipt of the hearing request, the chief hearing officer or designee thereof shall review the matter to assess the complexity of the case, the potential discovery required, the potential need for motions practice before conducting the merits hearing, the tax hearing docket, and the preference of the party that filed the hearing request to determine whether the matter should be set promptly for a merits hearing or set for a scheduling hearing within 90 days of the date on which TRD's answer to the protest was filed.

J. Absent a timely objection before or at the time of the scheduling hearing, conducting a scheduling hearing within 90 days of TRD's answer was filed or within 120 days from the filing of taxpayer's request for hearing satisfies the under Subsection F of Section 7-1B-8 NMSA 1978 while allowing sufficient and meaningful time for completion of the statutory requirements contained under Paragraph (2) of Subsection D of Section 7-1B-6

NMSA 1978. Upon completion of the scheduling hearing, the hearing officer will issue a scheduling order and notice of administrative hearing or other form of notice or order as the circumstances require.

K. Upon objection to conducting a scheduling hearing, the administrative hearings office may set the matter for a merits hearing on an expedited basis with a minimum of seven days notice unless the parties consent to a lesser period for notice. All other notices will be sent at least 14 days before the scheduled hearing unless the parties consent to a lesser period for notice.

L. Upon receipt of the notice of scheduling hearing, the parties may consult with each other and agree to a proposed scheduling order, in a format specified by the administrative hearings office, articulating discovery and motions deadlines, length of the potential hearing, a proposed month or months of merits hearing, and an express waiver of the hearing deadlines under Subsection F of Section 7-1B-8 NMSA 1978. If the assigned hearing officer accepts or substantially adopts the proposed scheduling order, the scheduling hearing will be vacated.

M. At the sole discretion of the chief hearing officer, a series of cases involving similar substantive issues or involving small controversies may be scheduled to be heard individually as part of a trailing docket commencing at the beginning of the day, to be heard at some indefinite point during that day after the time of commencement of the docket. If the protest is to be heard as part of a trailing docket:

(1) All parties and their representatives in a case set on a trailing docket shall report at the time and place specified in the notice of hearing for commencement of the trailing docket in a method and manner specified by the administrative hearings office.

(2) Failure to report at the commencement of a trailing docket shall be deemed a non-appearance for the purposes of Section 7-1-16 NMSA 1978.

(3) After the reporting time for the trailing docket, the assigned hearing officer or hearing officers for the conduct of the trailing docket will determine the order of the cases to be heard that day, considering the appearance or nonappearance of the various parties on that day's docket, the complexity of the cases, the number and availability of witnesses, and if possible, accommodating any scheduling conflicts of the parties on that date.

(4) Upon receipt of notice of hearing set on a trailing docket, a party may file a written objection at least seven days before the scheduled hearing citing good cause as to why the matter should be given a unique setting rather than heard as part of a trailing docket, which the chief hearing officer or the assigned hearing officer may review and determine whether the case should be continued to a specific date with a firm time of commencement of the proceeding.

N. All notices of hearing, including notice of scheduling hearing, notice of administrative hearing, and scheduling order shall be mailed via regular, first class mail to the taxpayer's address of record or the address of taxpayer's representative of record, as well as TRD either through interdepartmental mail or first class mail. Additionally, if the parties provide an email address on the protest letter, entry of appearance, or other subsequent communication, a copy of the notice may be emailed to the party. Notice may be given orally on the record of any proceeding where all parties are present and all parties agree to the proposed hearing date.
[22.600.3.8 NMAC - Rp. 22.600.3.8, 8/25/2020]

22.600.3.9 PEREMPTORY EXCUSAL OF PRESIDING HEARING OFFICER:

A. Hearing officers shall be assigned to preside over protests as determined by the chief hearing officer upon consideration of a hearing officer's experience, availability or other considerations bearing on the management of the administrative docket. Notice of an assignment shall be provided in the notice of the initial merits or scheduling hearing set in response to the request for hearing. Unless otherwise stated in such notice, or in a preceding notice of assignment, the hearing officer assigned to the protest shall be identified by referring to the signature block in the notice of the initial hearing.

B. Either party may exercise its one-time right of peremptory excusal of the assigned hearing officer within 10 days of the notice of hearing or other notice of assignment, whichever is earlier in time, provided that the party seeking the excusal has not previously sought a discretionary ruling of the hearing officer to be excused. Upon a timely and proper notice of excusal, the chief hearing officer shall reassign the protest and provide notice to the parties.

C. In the event both parties seek to excuse the same hearing officer in response to the same notice, only the excusal submitted earlier in time shall be effective and the party whose excusal was filed subsequent to the other shall retain its right to excuse the next-assigned hearing officer provided its notice is filed within 10 days of a notice of reassignment and it has not sought a discretionary ruling of the hearing officer to be excused.

D. At any time while a protest is pending, the chief hearing officer may be required to reassign a case due to unforeseen circumstances, docket management, or agency resource concerns. Circumstances permitting, the chief hearing officer will provide at least 14-day notice of a reassignment. A party that has not previously exercised

its peremptory right of excusal shall be permitted 10 days from such notice to excuse the hearing officer provided that they have not sought a discretionary ruling of that hearing officer.

E. A notice of reassignment within 14 days of a scheduled hearing shall not be grounds to necessarily continue the scheduled hearing. Continuance requests under such conditions shall be considered based on the unique circumstances presented by the specific protest.

F. For the purpose of this rule, the term "party" shall include all members of a group of parties. In identifying the group comprising a party, the administrative hearings office may consider whether the parties are represented by the same law firm, accounting firm, or other authorized representative; whether the parties filed a joint protest or have filed joint pleadings; and whether the parties consist of a business entity or other organization and its owners, parents, subsidiaries officers, directors, or major shareholders.

G. An objection to the timeliness or validity of a peremptory excusal may be raised by any party or by the administrative hearings office on its own motion. The chief hearing officer or the presiding hearing officer may rule on the timeliness or validity of any such objection, provided that an order prepared by and signed by the presiding hearing officer shall also be concurrently signed by the chief hearing officer. If the hearing officer or chief hearing officer determines that the excusal has met the applicable procedural and legal requirements in this rule, the hearing officer shall proceed no further in the protest. If the presiding hearing officer or chief hearing officer determines that the excusal has not met the applicable procedural and legal requirements in this rule, the hearing officer may continue to preside over the protest.

[22.600.3.9 NMAC - Rp. 22.600.3.9, 8/25/2020]

22.600.3.10 LOCATION OF HEARINGS: Merits hearings are held in Santa Fe. At the sole discretion of the chief hearing officer, and considering the location of the respective parties, their representatives, the assigned hearing officer, the resources of the administrative hearings office, and the docket, a hearing may be set at the administrative hearings office's Albuquerque office. If setting a hearing at the Albuquerque office would cause an unreasonable, undue burden to either party, the party may file a written objection to the hearing location within 10 days of issuance of the notice of hearing, articulating the reasons supporting the objection. The chief hearing officer or designee will promptly review the objection and upon a showing of an unreasonable, undue burden, will order the hearing to occur in Santa Fe. Such changes in hearing location may require the reassignment of the case to another hearing officer as determined necessary by the chief hearing officer.

[22.600.3.10 NMAC - Rp. 22.600.3.10, 8/25/2020]

22.600.3.11 VIDEO-CONFERENCE HEARINGS, TELEPHONIC HEARINGS, AND TELEPHONIC TESTIMONY:

A. Scheduling hearings and other preliminary, preconference, motions, or prehearing motions hearings may be conducted via telephone, or videoconference or equivalent electronic method without consent or waiver of either party.

B. If both TRD and the taxpayer agree, they may petition the assigned hearing officer at least seven days before the scheduled merits hearing to conduct the merits hearing via secure videoconference pursuant to Subsection H of Section 7-1B-8 NMSA 1978. The hearing officer may grant or deny the request after considering whether a complete and accurate record can be made and a fair hearing can be conducted in the matter via secure videoconference. Even if the initial request is granted, the hearing officer always retains the discretion at any point in the proceeding to order the personal appearance of the parties and witnesses if in the hearing officer's determination resolution of the disputed facts, evidence, credibility of a witness, question of law, or development of a complete and accurate record requires it.

C. The administrative hearings office may also schedule a merits hearing as a videoconference hearing with consent of the parties, which shall be deemed to have been granted absent either party filing a written objection within 14 days of notice a videoconference merits hearing.

D. If a hearing is scheduled to be conducted via videoconference:

(1) all parties, witnesses, and the hearing officer will appear via videoconference service specified by the administrative hearings office. The administrative hearings office shall take reasonable precautions to ensure that the videoconference is secure and confidential. However, by requesting or consenting to a videoconference hearing, the parties shall be deemed to understand that the administrative hearings office may contract, license or utilize a third-party service provider to facilitate videoconferencing and that all electronic communications are vulnerable to security breaches beyond the reasonable control or knowledge of the administrative hearings office. If such electronic security breaches were to occur, they constitute unintentional, inadvertent disclosures and do not amount to a breach of statutory confidentiality requirements under relevant law

by any party or the hearing officer appearing via videoconference. The parties shall also waive any claims against the administrative hearings office, its employees, agents or contractors, arising from any disclosure and shall be deemed to have assumed risk of disclosure by requesting or agreeing to appear via videoconference;

(2) the parties shall ensure that they have exchanged all exhibits with each other and provided the assigned hearing officer with an exhibit binder before commencement of the approved videoconference hearing;

(3) the parties also shall provide contact phone numbers where they will be available at the time of the hearing in case there are technical errors or other issues with conducting the videoconference;

(4) in the event that technical or other computer problems prevent the videoconference hearing from occurring or interfere with maintaining or developing a complete record at the hearing, the parties agree and consent upon their submission of a request to conduct the matter via videoconference that the assigned hearing officer at their discretion may continue the matter to a different time without regard to any other statutory deadline, may order the parties to appear for an in-person hearing, or may conduct the hearing via telephone;

(5) in the event of a videoconference hearing, the hearing record will only be the audio recording or transcription of the proceeding and will not include the video portion of the proceeding.

E. Telephonic appearances by the parties, (or their representatives) at a merits hearing are not generally permitted and will only be considered in the event of a genuine medical emergency/hardship, in cases where there is no genuine dispute of fact and parties intend to simply make legal argument, or when a technical problem prevents the conduct of a scheduled videoconference hearing.

F. Telephonic testimony from third-party witnesses may only be permitted in the event that in person or videoconference testimony would create an undue hardship or expense to the third-party witness. In addition to potential undue hardship, the assigned hearing officer in deciding whether to permit the telephonic testimony will consider the nature and purpose of the purported testimony, potential credibility issues regarding the testimony, the potential weight of the testimony as it relates to the particular issues at protest, and whether the testimony is being offered in rebuttal.

[22.600.3.11 NMAC - Rp. 22.600.3.11, 8/25/2020]

22.600.3.12 APPEARANCES BY AUTHORIZED REPRESENTATIVES:

A. Taxpayers may appear at a hearing for themselves or may be represented by any person expressly authorized under the Tax Administration Act or the Administrative Hearings Office Act to represent a taxpayer before the administrative hearings office. Unless otherwise changed, amended or repealed, Subsection H of Section 7-1B-8 NMSA 1978 expressly authorizes a taxpayer to represent themselves, or be represented by a bona fide employee, an attorney, a certified public accountant, an expressly authorized employee of a New Mexico licensed certified public accounting firm, or an enrolled agent. When the taxpayer is two individuals who have been jointly assessed, such as a married couple who filed a joint personal income tax return, either individual may serve as the taxpayer's representative.

B. Any attorney representing a taxpayer before the administrative hearings office shall file an entry of appearance in the matter. If the attorney has prepared the protest letter on behalf of the taxpayer, the protest letter signed by the attorney constitutes a valid entry of appearance unless otherwise expressly limited by the taxpayer or the attorney. An attorney's entry of appearance constitutes a written authorization for representation of a taxpayer without need for the specific, separate, signed taxpayer authorization specified in Subsection C. Any attorney, including those employed as in-house counsel, representing taxpayers in the filing of any motion, conduct of motions hearing, or conduct of a merits hearing must be licensed in good standing to practice law in New Mexico or in compliance with the pro hac vice requirements found under Rule 24-106 NMRA.

C. If a taxpayer intends to be represented by the authorized employee of a New Mexico licensed certified public accounting firm, then that firm shall provide a written authorization permitting its employee to act in a representative capacity for the taxpayer, on behalf of the firm. The authorization shall be executed by an individual having supervisory responsibility over the designated employee and authority to bind the New Mexico licensed certified public accounting firm in contract.

D. Except as otherwise provided, a taxpayer shall file a signed, written authorization with the administrative hearings office designating any person, except an attorney, expressly authorized under the Tax Administration Act or the administrative hearings office to represent the taxpayer in a specific protest proceeding. When the taxpayer is an entity, the signature of any bona fide employee of the taxpayer shall be deemed to be the taxpayer's signature. The written authorization need not be a specific or technical form, but may be included as a statement in the protest designating an authorized representative, on a taxpayer information authorization form filed with TRD, or as a statement in a subsequent pleading filed with the administrative hearings office.

E. All written authorizations or entries of appearance should include the name, mailing address, phone number, and electronic mail address of the authorized representative. The taxpayer and any representative who has entered an appearance or written authorization to appear has an ongoing duty to inform the administrative hearings office and the opposing party of any change of mailing address, contact phone number, or contact email address.

F. After a written authorization or entry of appearance has been filed in a case, a change in a taxpayer's representation requires a new, signed written authorization from the taxpayer, an entry of appearance from an attorney if no attorney has previously represented the taxpayer, or a substitution of counsel and new entry of appearance in the event that a taxpayer has engaged a different attorney to represent the taxpayer in the protest.

G. Any person designated by the taxpayer in the protest letter, through a written authorization or entry of appearance shall be deemed to be an authorized representative of the taxpayer for the purposes of conducting the scheduling hearing(s) before the administrative hearings office. At the scheduling hearing, the taxpayer and their representative (if any) will be advised of the statutory right to and limitations of representation during the hearing process.

H. After the scheduling hearing and advisement of the statutory right to and limitations of representation during the hearing process, if the taxpayer's representative is not a person who is expressly authorized to represent the taxpayer before the administrative hearings office under the Tax Administration Act or the Administrative Hearings Office Act, that person may not serve as a representative of the taxpayer in the proceeding before the administrative hearings office. In that event, the taxpayer may be granted an additional opportunity before conduct of the hearing to arrange for appropriate representation. Any delay in the hearing process for this reason will be attributed to the taxpayer.

I. All parties shall have a responsibility of candor to the administrative hearings office and shall not knowingly make false statements to the hearing officer. The administrative hearings office is a tribunal for purposes of Rule 16-303 NMRA. An attorney, a certified public accountant, the authorized employee of a New Mexico certified public accountant, an enrolled agent, or any other statutorily permitted representative of a taxpayer in a protest hearing shall abide by their respective controlling professional or ethical standards of conduct at all stages of the administrative proceeding before the administrative hearings office. In the event of an apparent breach of applicable standards of conduct, ethics or professionalism, in addition to reporting the breach to the appropriate disciplinary board, the assigned hearing officer may take other reasonable and appropriate measures within the hearing officer's statutory and regulatory authority necessary to maintain order and ensure a fair hearing process for all parties, up to and including disqualification.
[22.600.3.12 NMAC - Rp. 22.600.3.12, 8/25/2020]

22.600.3.13 TAX PROTEST HEARINGS CLOSED TO PUBLIC, FILE IS CONFIDENTIAL, AND SEALING OF RECORDS IN THE PROCEEDING:

A. Hearings are not open to the public except upon request of the taxpayer.

B. Pursuant to Section 7-1-8.3 NMSA 1978, all documents, exhibits, pleadings and materials contained in the administrative tax file and the record of the administrative hearing are confidential and may not be released to the public, except that the final decision and order without redaction and any evidentiary or procedural ruling made by the hearing officer with redaction of identifiable taxpayer information may be revealed.

C. Either party may ask for, and submit, a proposed order sealing particular records, documents, or exhibits that may contain confidential third-party taxpayer information or as is required by relevant internal revenue service information sharing agreements or other applicable federal law. Upon issuance of an order sealing such documents of exhibits, those records will remain under seal throughout the proceeding and shall be returned to the submitting party at the conclusion of the appeal period or the appeal. The opposing party shall be entitled to promptly review those documents in preparing for the hearing, and may rely on those documents during the hearing as necessary to ensure a fair hearing process, but shall not maintain its own copy of the sealed document after conclusion of the hearing nor reveal, discuss, or disclose the contents of those sealed documents to any other party outside of the hearing process.

D. In the event of an appeal, the complete record of the proceeding, including any sealed records, will be provided to the relevant judicial body, as required under Section 7-1-8.4 NMSA 1978.

E. The hearing officer's notes taken during the course of the hearing, any written discussions with another hearing officer related to the deliberative process, and any draft orders or draft decisions are confidential as part of the deliberative process and are not subject to public disclosure under any recognized exception contained under Section 7-1-8.3 NMSA 1978. Only the hearing officer's final decision and order and other final procedural or

evidentiary orders (with appropriate taxpayer information redacted) may be revealed to the public under Section 7-1-8.3 NMSA 1978.
[22.600.3.13 NMAC - Rp. 22.600.3.13, 8/25/2020]

22.600.3.14 WITHDRAWAL OF PROTESTS:

A. A taxpayer electing to withdraw a protest pending before the administrative hearings office shall execute a written withdrawal of protest. The written withdrawal must include the taxpayer's signature or the signature of a bona fide employee of the taxpayer, even when the taxpayer has an authorized representative. The written withdrawal need not include the taxpayer's reasons for withdrawing the protest. The written withdrawal must include adequate information to properly identify the taxpayer and the file at protest, such as the administrative hearings office's case number, TRD's assessment letter i.d. number or the date the protest was filed. A written withdrawal form provided and approved by TRD is sufficient to adequately identify the taxpayer and the protest.

B. A properly executed withdrawal of protest satisfying the requirements of this section shall result in the issuance of an order closing of the protest, the administrative file, and vacating any scheduled hearings in the matter. The withdrawal shall be deemed conclusive and dispositive as to all issues that were raised, or could have been raised, in the protest.

C. Upon receipt of a withdrawal of protest which does not satisfy the requirement stated herein, which appears irregular on its face, which fails to adequately address all issues pending in a protest, or which is indefinite, uncertain, or ambiguous, the hearing officer may require the parties to address the deficiencies, may reject the withdrawal as inadequate, may leave the matter on the calendar as scheduled, may set a status conference to address the issues with the withdrawal, or may order the parties to submit a new withdrawal, if they are able to, addressing the deficiencies. The hearing officer may also choose to accept an inadequate withdrawal as is, noting the deficiency for the record and giving the parties a period of time to correct the deficiencies or make any objections in light of the identified deficiencies before the withdrawal is adopted as conclusive in the matter.
[22.600.3.14 NMAC - Rp. 22.600.3.14, 8/25/2020]

22.600.3.15 SUMMARY DISPOSITIONS OF PROTESTS. Where there is well-settled law addressing the issue identified on the face of the pleadings, or when it appears from the face of the pleadings in the administrative file that there is no genuine issue as to any material fact, the hearing officer may propose a summary disposition of the protest under the following procedure:

A. The hearing officer shall provide to the parties, their attorneys, or authorized representatives a written proposed summary disposition based on a review of the administrative file.

B. The parties, their attorneys, or authorized representatives shall be provided with no less than 15 days in which to respond to the proposed summary disposition.

C. A response to a proposed summary disposition shall include the factual or legal basis in support of or in opposition to the proposed summary disposition.

D. No reply to a response shall be allowed.

E. The failure to respond to a proposed summary disposition may be deemed as concurrence in the proposed summary disposition.

F. Upon review of the responses to a proposed summary disposition, the hearing officer shall withdraw the proposed summary disposition and schedule the matter to be heard if either party makes a bona fide objection and argument, or enter a decision and order consistent with the proposed summary disposition if the parties consent, concede, fail to object or otherwise fail to meaningfully address the proposed summary disposition.
[22.600.3.15 NMAC - Rp. 22.600.3.15, 8/25/2020]

22.600.3.16 FILING METHODS AND MOTIONS:

A. All pleadings may be filed with the administrative hearings office through mail, facsimile, or electronic mail as specified in the relevant notice of hearing, with a copy of such pleading contemporaneously provided to the opposing party through the same method of service of the filing. The moving party should include an attestation, or equivalent statement or information, that they provided a copy of the pleading to the opposing party.

B. A filing by facsimile shall include a cover sheet indicating the name of the matter, the name of the individual submitting the filing, the number of pages contained in the transmission, and a telephone number to contact in the event there are any errors with the transmission.

C. Documents filed by email or other electronic means shall not be submitted in an editable format unless specifically requested by the hearing officer. Absent specific instructions to do so, pleadings, motions or other papers shall not be submitted directly to the assigned hearing officer.

D. All motions, except motions made on the record during the hearing or a continuance request made in a genuine unforeseen emergency circumstance (such as an unexpected accident, force majeure, or major medical emergency occurring in such close proximity to the date of the scheduled hearing that a written motion could not be completed), shall be in writing and shall state with particularity the grounds and the relief sought.

E. Before submission of any motion, request for relief, or request for continuance, the requesting party should make reasonable efforts to consult with the opposing party about that party's position on the motion unless the nature of the pleading is such that it can be reasonably assumed the opposing party would oppose the requested relief. The party shall state the position of the opposing party in the pleading.

F. A party moving to obtain an order compelling discovery shall explicitly confirm that the parties have made a good faith effort to resolve the issue prior to filing the motion to compel. A motion failing to explicitly confirm such effort may be summarily denied.

G. An unopposed motion may be accompanied by a stipulated order indicating approval by the parties, attorneys, or authorized representatives. Approval may be indicated by an original, photocopy, facsimile, or electronic signature of the individual providing approval, or by a statement indicating approval by other means such as by email. The hearing officer retains the authority to deny the relief requested in an unopposed or stipulated motion and may adopt, modify, or reject any stipulated order accompanying an unopposed motion.

H. Unless a different deadline applies under an applicable order of the assigned hearing officer, the opposing party has 14 calendar days to file a written response to a pleading. If any deadline falls on a Saturday, Sunday, or state-recognized holiday, the deadline falls on the next business day. The assigned hearing officer may require a shorter response deadline, especially for time-sensitive or basic motions like continuance requests. Failure to file a response in opposition may be presumed to be consent to the relief sought, although the hearing officer is not required to make such a default ruling on the motion if the relief would be contrary to the hearing officer's view of the facts or law on the issues. The moving party shall file a notice that the matter is ripe for ruling upon receipt of the opposing party's response or in the event that the opposing party has not filed a timely response upon expiration of the response period.

I. Unless otherwise provided in a scheduling order, dispositive motions shall be filed no less than 75 days preceding a hearing on the merits of a protest and shall specify whether the moving party seeks to convert the scheduling hearing to a hearing on the motion. Dispositive motions shall be ruled upon no less than 30 days prior to a merits hearing. The chief hearing officer or the presiding hearing officer retains discretion, subject to objections from the parties, to continue or vacate a merits hearing pending a ruling on a dispositive motion if in the hearing officer's opinion, thorough consideration and preparation of a proper written ruling might cause the ruling to be rendered less than 30 days prior to a scheduled hearing.

J. A party attaching one or more exhibits to a pleading, motion, or other paper shall designate the exhibit in a manner to specifically associate it with the pleading, motion, or other paper which it is intended to accompany. An appropriate designation for an exhibit to a motion will include an abbreviation for the type of motion, and an identifying letter for TRD or a number for the taxpayer. For example only, an exhibit to a motion for summary judgment presented by a taxpayer may be designated as "Taxpayer MSJ #1". An exhibit to a response to the motion filed by TRD may be designated as "Dept. Resp. MSJ A".

K. Absent express permission of the assigned hearing officer with good cause shown, no pleading, including motions and attached memorandums of support, filed in a hearing involving the tax administration act or property tax code shall exceed 20 pages, not including the certificate of service, of double-spaced (except for block quotations), 12-point font.

[22.600.3.16 NMAC - Rp. 22.600.3.16, 8/25/2020]

22.600.3.17 DISCOVERY: New Mexico is a liberal discovery state and to that end the parties are expected to cooperate in good faith to accomplish adequate discovery by the time the formal hearing is held without a specific order or intervention of the hearing officer. Discovery need not be a formal, time-consuming, litigious, or burdensome process; instead, the parties should make a good-faith effort to achieve discovery through informal consultation, discussion, stipulations, and good-faith, efficient exchange of relevant materials. If adequate discovery is not achieved informally within a reasonable time prior to the time a formal hearing is scheduled or by the deadline contained in a scheduling order issued by the hearing officer, any party may apply to the hearing officer for an order requiring a more formalized discovery process, including requiring depositions, production of records or answers to interrogatories/requests for admissions. The parties shall file only certificates of service regarding discovery

requests and productions unless the hearing officer requires otherwise, such as when there is a motion to compel. Depositions may be taken orally or by written interrogatories and cross-interrogatories. Unless ordered otherwise by the hearing officer, responses to interrogatories, requests for production of documents and requests for admission shall be due thirty days after service on a party. Unless ordered otherwise by the hearing officer, any notice of deposition shall be served on all opposing parties at least 14 days prior to the date of the deposition. The parties have an obligation to cooperate in the scheduling of depositions to avoid unnecessary expense to the parties and inconvenience to witnesses.
[22.600.3.17 NMAC - Rp. 22.600.3.17, 8/25/2020]

22.600.3.18 CONSEQUENCES OF FAILURE TO COMPLY WITH ORDERS AND STATUTORY DEADLINES:

A. If a party or an officer or agent of a party fails to comply with an order of the hearing officer, the hearing officer may, for the purpose of resolving issues and disposing of the proceeding without unnecessary delay despite such failure, take such action in regard thereto as is just, including but not limited to the following:

(1) infer that the admission, testimony, documents or other evidence sought by discovery would have been adverse to the party failing to comply;

(2) issue an order to show cause;

(3) rule that, for the purposes of the proceeding, the matter or matters concerning which the order was issued be taken as established adversely to the party failing to comply;

(4) rule that the noncomplying party may not introduce into evidence or otherwise rely, in support of any claim or defense, upon testimony by such party, officer or agent or upon the documents or other evidence discovery of which has been denied;

(5) rule that the party may not be heard to object to introduction and use of secondary evidence to show what the withheld admission, testimony, documents or other evidence would have shown;

(6) disregard the content of any document filed after the deadline for filing said document has passed;

(7) disregard the content of any document filed after the merits hearing has been conducted, unless the hearing officer has granted permission to file such document; or

(8) dismiss the protest or order that the protest be granted.

B. Any such action may be taken by written or oral order issued in the course of the proceeding or by inclusion in the decision of the hearing officer. It shall be the duty of parties to seek and the hearing officer to grant such of the foregoing means of relief or other appropriate relief as may be sufficient to remedy the failure to comply with the order or withheld testimony, documents or other evidence.

C. The failure to comply in good faith with the orders of the hearing officer may be taken into consideration regarding the reasonableness of administrative costs or the reasonableness of a party's position when there is a motion for costs and fees under Section 7-1-29.1 NMSA 1978.

D. In the event a third-party refuses to comply with a valid subpoena, the hearing officer may allow the party who requested the subpoena to make a proffer of evidence that the party believes would have been obtained had the third-party complied with the subpoena. The opposing party shall have the opportunity to refute the proffer, including by making a proffer of its own as to what it believes would have been shown if the third-party complied with the subpoena. The hearing officer may give the proffers whatever weight she/he deems reasonable in light of all of the evidence presented and with due consideration of the statutory presumption of correctness.

E. Upon motion of the taxpayer or upon its own initiative, the administrative hearings office may evaluate whether TRD satisfied the applicable statutory requirements and deadlines for acknowledging a valid protest, for providing notice and an opportunity to correct an invalid protest, for conducting an informal conference, for requesting a hearing on the protest or in filing a timely and adequate answer consistent with Subsection E of Section 7-1B-8 NMSA 1978, as amended. Except upon good cause shown, finding that TRD failed to comply with applicable statutory requirements and deadlines may cause the accrual of interest on the protested liability to be suspended from the day after the date on which TRD should have, but did not act, or from another date considering the unique circumstances at issue in the protest.
[22.600.3.18 NMAC - Rp. 22.600.3.18, 8/25/2020]

22.600.3.19 PREHEARING CONFERENCES, STATUS CONFERENCES, AND STATUS CHECKS:

A. The hearing officer may direct the parties or their representatives to meet together or with the hearing officer present for a prehearing conference to consider any or all of the following:

(1) simplify, clarify, narrow or resolve the pending issues;

(2) stipulations and admissions of fact and of the contents and authenticity of documents;
(3) expedition in the discovery and presentation of evidence, including, but not limited to, restriction of the number of expert, economic or technical witnesses;
(4) matters of which administrative notice will be taken; and
(5) such other matters as may aid in the orderly and expeditious disposition of the proceeding, including disclosure of the names of witnesses and the identity of documents or other physical exhibits which will be introduced in evidence in the course of the proceeding.
B. Prehearing conferences conducted by the hearing officer will be recorded.
C. The hearing officer may enter in the record an order that recites the results of the conference conducted by the hearing officer. Such order shall include the hearing officer's rulings upon matters considered at the conference, together with appropriate directions to the parties. The hearing officer's order shall control the subsequent course of the proceeding, unless modified to prevent manifest injustice.
D. The hearing officer may require the parties to submit a written report of any conference ordered to be conducted between the parties updating the status of the proceeding in light of the conference.
E. The hearing officer may conduct a status conference upon the request of either party or on the hearing officer’s own initiative, at which time the hearing officer may require the parties, attorneys, or authorized representatives, to provide information regarding the status of a protest in order that the administrative hearings office may arrange its docket to expedite the disposition of cases.
F. As part of basic docket management and to ensure efficient use of staff resources, the chief hearing officer, or a designee of the chief hearing officer other than the assigned hearing officer on the case, at any point in the proceeding may contact the parties and inquire about the status of any scheduled or pending case or cases.
[22.600.3.19 NMAC - Rp. 22.600.3.19, 8/25/2020]

22.600.3.20 SUBPOENAS: Any request for issuance of subpoenas in matters before the administrative hearings office shall be guided by Rule 45 of the rules of civil procedure for the district courts of New Mexico, except where provisions of that rule conflict with the limited powers of the administrative hearings office. Any subpoena issued shall be in the name of the chief hearing officer of the administrative hearings office. The party requesting the subpoena shall prepare a proposed subpoena using a form approved by the administrative hearings office, submit the proposed subpoena to the administrative hearings office for approval and to the opposing party, and to timely and reasonably serve the subpoena on the person or entity subject to the subpoena. Unless good cause is shown for a shorter period, a subpoena shall provide at least 10 day notice before compelled attendance at a hearing or deposition, and at least 10 day notice before compelled production of materials. All returns or certificates of service on served subpoenas shall be filed with the administrative hearings office, copied to the opposing party, and shall be made part of the record of the proceeding.
[22.600.3.20 NMAC - Rp. 22.600.3.20, 8/25/2020

22.600.3.21 REQUESTS FOR CONTINUANCES:
A. Either party may request that a scheduled hearing be continued until a different date and time by filing a written request for continuance. The request for continuance should include a description of the reason why the requesting party would like the matter rescheduled, the opposing party’s position on the request unless the opposing party does not respond after reasonable efforts were made to contact them, how much additional time the moving party seeks before the matter is rescheduled, and any dates where the parties are unavailable for rescheduling the matter.
B. The hearing officer will generally only consider requests for a continuance made in writing at least seven days before the scheduled hearing and supported by good cause, absent extraordinary, unforeseen circumstances which the requesting party could not have known earlier than seven days before the hearing. Within seven days of the scheduled hearing, the hearing officer may reject a continuance request even if the opposing party has stipulated or does not oppose the request. Unless and until the parties are affirmatively informed by order or other communication of an administrative hearings office employee that the continuance request has been granted, the scheduled hearing remains on the calendar and the parties must appear at the hearing. Failure to appear at the scheduled time of the hearing shall be deemed a non-appearance for the purposes of Section 7-1-16 NMSA 1978.
C. As part of the continuance request, the moving party must waive the 90-day hearing requirement. In the absence of such express waiver, as a condition of granting the request, the hearing officer may deem that the 90-day hearing requirement was met and attribute any delay in the conduct of the hearing to the moving party.

D. The assigned hearing officer and the chief hearing officer or designee may continue or reschedule a scheduled hearing, or reassign a scheduled hearing to another hearing officer, as necessary to manage the tax docket and state resources in an efficient manner and account for changes in office staffing.
[22.600.3.21 NMAC - Rp. 22.600.3.21, 8/25/2020]

22.600.1.22 FAILURE TO APPEAR:
A. A taxpayer's failure to appear at the scheduled time of the noticed protest hearing shall be deemed a non-appearance for the purposes of Section 7-1-16 NMSA 1978.
B. If a taxpayer has appeared but a representative of TRD fails to appear at a noticed hearing, the hearing officer may issue an order to show cause as to why the protest shall not be granted, may allow the taxpayer to present their case in the absence of TRD's representative and rule upon the protest, or take other appropriate actions within the hearing officer's power.
C. In considering the non-appearance and whether the person received appropriate notice, the hearing officer may consider the contents of the administrative file, information conveyed to or known by administrative hearings office staff, information related to mailing, including mail tracking, returned receipt information, and notes written on returned envelopes of the United States postal service or other mail tracking services, and arguments offered by the present party, all of which shall be addressed on the record of the hearing or in any subsequent order.
D. Oral rulings based on failure to appear are not final until reduced to writing. Such rulings may be changed in the written order as new information arises after the hearing related to whether the notice of hearing was properly sent to the correct address or otherwise properly served.
[22.600.3.22 NMAC - Rp. 22.600.3.22, 8/25/2020]

22.600.3.23 HEARING OFFICER POWERS AND RESPONSIBILITIES:
A. Hearings in adjudicative proceedings shall be presided over by a hearing officer designated by the chief hearing officer of the administrative hearings office.
B. The hearing officer shall have the duty to conduct fair and impartial hearings, to take all necessary action to avoid delay in the proceedings and to maintain order. The hearing officer shall have the powers necessary to carry out these duties, including the following:
(1) to administer or have administered oaths and affirmations;
(2) to cause depositions to be taken;
(3) to require the production or inspection of documents and other items;
(4) to require the answering of interrogatories and requests for admissions;
(5) to rule upon offers of proof and receive evidence;
(6) to regulate the course of hearings and the conduct of the parties and their representatives therein;
(7) to issue a scheduling order, schedule a prehearing conference for simplification of the issues, or any other proper purpose;
(8) to schedule, continue and reschedule formal hearings;
(9) to consider and rule upon all procedural and other motions appropriate in proceeding;
(10) to require the filing of briefs on specific legal issues prior to or after the formal hearing;
(11) to cause a complete record of proceedings in formal hearings to be made;
(12) to make and issue decisions and orders; and
(13) to reprimand, or, with warning in extreme instances exclude from the hearing, any person for engaging in a continuing pattern of indecorous, obstinate, recalcitrant, obstreperous, unethical, unprofessional or improper conduct that interferes with the conduct of a fair and orderly hearing or development of a complete record.
C. In the performance of these functions, the hearing officer shall not be responsible to or subject to the direction of any officer, employee or agent of the taxation and revenue department or the department of finance and administration.
D. In the performance of these adjudicative functions, the hearing officer is prohibited from engaging in any improper ex parte communications about the substantive issues with any party on any matter, as addressed in regulation 22.600.2.16 NMAC. An improper ex parte communication occurs when the hearing officer discusses the substance of a case without the opposing party being present, except that it is not an improper ex parte communication for the hearing officer to go on the record with only one party when the other party has failed to appear at a scheduled hearing.
[22.600.3.23 NMAC - Rp. 22.600.3.23, 8/25/2020]

22.600.3.24 EVIDENCE AT HEARING:

A. Every party shall have the right of notice, cross-examination, presentation of evidence, objection, motion, argument and all other rights essential to a fair hearing.

B. The taxpayer shall have the burden of proof, except as otherwise provided by law. Because the taxpayer must overcome the presumption of correctness or otherwise establish entitlement to the claim or relief sought during the protest, the taxpayer will ordinarily present their case first, followed by TRD, except as otherwise provided by law or as otherwise ordered by the hearing officer for good cause. The party with the burden in the case shall have an opportunity to make a final rebuttal argument at the hearing. However, in the event closing argument is submitted after the hearing in writing, the hearing officer may require that each side submit simultaneous written closing arguments in the matter without an opportunity for rebuttal argument.

C. The New Mexico rules of evidence and New Mexico rules of civil procedure shall not apply in any matter before the administrative hearings office unless otherwise expressly and specifically prescribed by statute, regulation, or order of the hearing officer. Relevant and material evidence shall be admissible. Irrelevant, immaterial, unreliable, or unduly repetitious evidence may be excluded. Immaterial or irrelevant portions of an otherwise admissible document shall be segregated or redacted and excluded so far as is practicable. The hearing officer shall consider and give appropriate weight to all relevant and material evidence admitted in rendering a final decision on the merits of a matter.

D. Reliable hearsay evidence is admissible during the protest proceeding.

E. An adverse party, or an officer, agent or employee thereof, and any witness who appears to be hostile, unwilling or evasive may be interrogated by leading questions and may also be contradicted and impeached by the party calling that person.

F. The parties may agree to, and the hearing officer may accept, the joint submission of stipulated facts relevant to the issue or issues. The hearing officer may order the parties to stipulate, subject to objections as to relevance or materiality, to uncontested facts and to exhibits. The hearing officer may also order the parties to stipulate to the admissibility of basic documents concerning the controversy, such as audit reports of TRD, assessments issued by TRD, returns and payments filed by taxpayer, correspondence between the parties, and to basic facts concerning the identity and business of a taxpayer, such as the taxpayer's business locations in New Mexico and elsewhere, the location of its business headquarters and, if applicable, the state of its incorporation or registration.

G. The hearing officer may take administrative notice of facts not subject to reasonable dispute that are generally known within the community, capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably disputed, or as provided by an applicable statute. Administrative notice may be taken at any stage in the proceeding whether or not requested by the parties. A party is entitled to respond as to the propriety of taking administrative notice which shall include the opportunity to refute a noticed fact.

H. Parties objecting to evidence shall timely and briefly state the grounds for the objection. Rulings on evidentiary objections may be addressed on the record at the time of the objection, or reserved for ruling in a subsequent written order.

I. Formal exception to an adverse ruling is not required.

J. When an objection to admission of an exhibit or to a question propounded to a witness is sustained, the proponent may make a specific offer of what the representative expects to prove by introduction of the exhibit or by the answer of the witness, or the hearing officer may, with discretion, receive and have reported the evidence in full. Excluded exhibits, adequately marked for identification, may be retained in the record so as to be available for consideration by any reviewing authority.

K. In general, documentary evidence should be no larger than 8.5 inches by 11 inches unless expressly allowed by the hearing officer. The hearing officer may admit a documentary exhibit presented at hearing which exceeds 8.5 inches by 11 inches or which cannot be folded, provided the proponent of such exhibit provide the administrative hearings office a copy of the exhibit reduced to 8.5 inches by 11 inches. After the hearing at which the exhibit was admitted, the reduced copy shall be substituted for the larger exhibit and made part of the record of the hearing. The administrative hearings office may permit the proponent of a large exhibit to make arrangements to obtain a reduced copy, provided that a failure by the proponent to provide a reduced copy shall be construed as a withdrawal of the exhibit. For the purposes of maintaining an adequate record for submission to the Court of Appeals upon an appeal of either party, the hearing officer may request or require the submission of electronic copies of all tendered exhibits either in addition to or in lieu of the physical copies of tendered exhibits.

L. Objects introduced as exhibits shall be returned to the proponent at the conclusion of the hearing unless otherwise ordered by the hearing officer. In lieu of the object itself, the hearing officer may require the moving party to submit a photograph, video, or other appropriate substitute such as verbal description of the

pertinent characteristics of the object for the record. If an object is retained for the record, it may be returned to the proponent no less than 45 days after a final decision and order is rendered on the merits of a protest provided that a party has not filed a notice of appeal.
[22.600.3.24 NMAC - Rp. 22.600.3.24, 8/25/2020]

22.600.3.25 RECORD: Hearings shall be electronically recorded unless the hearing officer allows recording by any alternative means approved by the New Mexico supreme court for the recording of judicial proceedings. Any party may request that a hearing be recorded by such an alternative in writing at least seven days before the scheduled hearing. Unless otherwise ordered by the hearing officer, the party requesting recording by an alternate means will be responsible for the full cost thereof, including the provision of the original transcript to the hearing officer and copies to opposing parties. In the event of a videoconference hearing, only the audio portion of the recording shall be maintained as part of the record.
[22.600.3.25 NMAC - Rp. 22.600.3.25, 8/25/2020]

22.600.3.26 PROPOSED FINDINGS, CONCLUSIONS AND BRIEFS: At the close of the reception of evidence, or within a reasonable time thereafter fixed by the hearing officer, the hearing officer may require or allow any party to file with the hearing officer proposed orders, proposed findings of fact, and proposed conclusions of law, together with reasons therefore and briefs in support thereof. The hearing officer may adopt the proposed findings in part, in whole, or may make his or her own findings. The period for preparing the final decision and order shall not commence until after the final pleadings, including any ordered briefings, findings of fact, or conclusions of law, are filed.
[22.600.3.26 NMAC - Rp. 22.600.3.26, 8/25/2020]

22.600.3.27 DATE OF MAILING OR DELIVERY:
A. Use of the phrase “date of mailing or delivery” in Section 7-1-25A NMSA 1978 authorizes the administrative hearings office to choose between mailing and hand-delivering the written decision and order of the hearing officer.
B. “Date of mailing” means the time that the hearing officer's decision and order enclosed in properly addressed envelope or wrapper was postmarked by the U.S. postal service. “Delivery” means time of hand delivery of the written decision and order to the party’s business residence.
[22.600.3.27 NMAC - Rp. 22.600.3.27, 8/25/2020]

22.600.3.28 REASONABLE ADMINISTRATIVE COSTS, LITIGATION COSTS AND ATTORNEY FEES:
A. At any time after the evidentiary record has closed in reference to the merits of a protest, the presiding hearing officer may request additional information from the parties relevant to determining whether the taxpayer should be awarded reasonable administrative costs, litigation costs and attorney fees pursuant to Section 7-1-29.1 NMSA 1978. The hearing officer may make such request regardless of whether the administrative record contains an explicit prior request for fees and costs. For the purpose of this subsection, additional information may include legal briefing, affidavits, documents, or live testimony or legal argument limited to the issue of whether a taxpayer should be considered a prevailing party, whether TRD’s position in the proceeding was based upon a reasonable application of the law to the facts of the case, or for determining the reasonableness of a potential award.
B. In circumstances where the issue of reasonable administrative costs, litigation costs and attorney fees remains outstanding after the parties have resolved, compromised, or conceded all other disputed issues in the protest, taxpayer shall by motion or other written communication, notify TRD and the administrative hearings office that it is seeking a determination on that issue prior to withdrawing its protest. A request for an award of reasonable administrative costs, litigation costs and attorney fees will not be considered subsequent to the withdrawal of the protest in which the taxpayer alleges the fees and costs were incurred. In any manner where a request for hearing before the administrative hearings office has been filed by either party, the jurisdiction of the administrative hearings office to consider reasonable administrative costs, litigation costs and attorney fees shall not be extinguished by the full abatement of an assessment, full allowance of a refund or credit, or other concession which if not for the issue of fees and costs, would resolve the protest in favor of the taxpayer without the need for a hearing.
[22.600.3.28 NMAC - N, 8/25/2020]

22.600.3.29 RECONSIDERATIONS:

A. A party may file a motion for reconsideration no more than seven calendar days after the date on the final decision and order. The opposing party may file a response no more than seven calendar days after the motion for reconsideration was filed. Motions for reconsideration that are not filed within this deadline may be denied automatically.

B. The prevailing party shall not file a motion for reconsideration. However, if a requested action is granted in part and denied in part, either party may file a motion for reconsideration.

C. Motions for reconsideration shall not endeavor to present new evidence previously available, or discoverable through reasonable diligence, to the parties before the hearing. Motions for reconsideration shall not reargue the weight of evidence already ruled upon and shall not reiterate legal arguments already ruled upon. However, a motion for reconsideration may address gross factual or legal errors/omissions in the final decision and order.

D. An order shall be issued within seven calendar days of the response deadline or the motion to reconsider shall be deemed denied.

E. The parties should not presume that the filing of a motion for reconsideration will extend the deadline to appeal a decision and order under the Tax Administration Act, even if reconsideration is sought within the specified deadlines.

[22.600.3.29 NMAC - N 8/25/2020]

22.600.3.30 APPEALS:

A. Appeals of a final tax decision and order of the administrative hearings office are taken by filing a timely notice of appeal directly with the New Mexico court of appeals in accord with the New Mexico rules of appellate procedure. Writing or otherwise communicating to the administrative hearings office a general intent to appeal a final decision is insufficient to perfect an appeal of the case.

B. Upon filing the required docketing statement with the New Mexico court of appeals, the appellant shall serve a copy of the docketing statement with the administrative hearings office. The administrative hearings office will then prepare and file the record proper with the New Mexico court of appeals in accord with the New Mexico rules of appellate procedure, providing a copy to the appellant and the other party.

C. The administrative hearings office, as the adjudicative body, is not a party to the appeal and all requests for positions related to motions in the appeal should be addressed to the opposing party or where appropriate, to the relevant appellate court.

[22.600.3.30 NMAC - N 8/25/2020]

HISTORY of 22.600.3 NMAC: [RESERVED]

History of Repealed Material:

22.600.3 NMAC, Hearings Under The Tax Administrative Act, filed 1/17/2018 - Repealed 8/25/2020.

Other History:

22.600.3 NMAC, Hearings Under The Tax Administrative Act, filed 1/17/2018 Replaced 22.600.3 NMAC, Hearings Under The Tax Administrative Act, effective 8/25/2020.