

ADMINISTRATIVE HEARINGS OFFICE ACT

7-1B-1.-- SHORT TITLE.--Sections 1 through 9 of this act may be cited as the "Administrative Hearings Office Act".
(Laws 2015, Chapter 73, Section 1)

7-1B-2.-- ADMINISTRATIVE HEARINGS OFFICE--CREATED.-- The "administrative hearings office" is created and is administratively attached pursuant to the provisions of Section 9-1-7 NMSA 1978 to the department of finance and administration.
(Laws 2015, Chapter 73, Section 2)

7-1B-3.-- CHIEF HEARING OFFICER--APPOINTMENT.--The head of the administrative hearings office is the "chief hearing officer", who shall be appointed for a term of six years, except that the initial term shall begin on July 1, 2015 and shall end on December 31, 2015. The chief hearing officer may be reappointed to successive terms. An appointed chief hearing officer shall serve and have all the duties, responsibilities and authority of that office during the period of time prior to appointment of a new chief hearing officer. The initial chief hearing officer shall be the person who is the chief of the hearings bureau of the taxation and revenue department on July 1, 2015. The chief hearing officer shall be removed only for malfeasance, misfeasance or abuse of office.
(Laws 2015, Chapter 73, Section 3)

7-1B-4.-- CHIEF HEARING OFFICER SELECTION COMMITTEE--DUTIES.--

A. The "chief hearing officer selection committee" is created and consists of nine members, including:

(1) four members who are selected by the New Mexico legislative council, no more than two of whom are from the same political party;

(2) four members who are selected by the governor, no more than two of whom are from the same political party; and

(3) a committee chair, whom a majority of the other eight members select and who is:

(a) not a candidate for the position of chief hearing officer; and

(b) either a former chief of the hearings bureau of the taxation and revenue department, a former chief hearing officer or another person with extensive knowledge of the tax law.

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B. The chief hearing officer selection committee shall meet exclusively for the purpose of nominating persons to fill a current or impending vacancy in the position of chief hearing officer of the administrative hearings office. The committee shall actively solicit, accept and evaluate applications for the position of chief hearing officer and may require applicants to submit any information that the committee deems relevant to the consideration of applications. Within ninety days before the date on which the term of a chief hearing officer ends or no later than thirty days after the occurrence of a vacancy in the chief hearing officer position, the chief hearing officer selection committee shall convene and, within thirty days after convening, submit to the governor the names of persons who:

(1) are attorneys licensed to practice law in New Mexico or another state;

(2) have knowledge of the tax law and substantial experience making the record in an administrative hearing suitable for judicial review; and

(3) are recommended for appointment to the position by a majority of the committee.

C. Immediately after receiving nominations for chief hearing officer, the governor may make one request of the committee for submission of additional names. The committee shall promptly submit those additional names if a majority of the committee finds that additional persons would be qualified and recommends those persons for appointment as chief hearing officer. The governor shall fill a vacancy or appoint a successor to fill an impending vacancy in the office of chief hearing officer within thirty days after receiving final nominations from the committee by appointing one of the persons nominated by the committee.

**D. The chief hearing officer selection committee is administratively attached pursuant to the provisions of Section 9-1-7 NMSA 1978 to the department of finance and administration.
(Laws 2015, Chapter 73, Section 4)**

7-1B-5.-- CHIEF HEARING OFFICER--POWERS AND DUTIES--EMPLOYEES OF THE OFFICE.--

A. The chief hearing officer may:

(1) adopt and promulgate rules pertaining to administrative hearings; and

(2) subject to appropriations, hire and contract for such professional, technical and support staff as needed to carry out the functions of the administrative hearings office; provided that such hiring and contracting be without regard to party affiliation and solely on the grounds

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of competence and fitness to perform the duties of the position. Employees of the administrative hearings office, except the chief hearing officer, are subject to the provisions of the Personnel Act.

B. The chief hearing officer shall:

- (1) oversee the administrative hearings office; and**
 - (2) considering the knowledge and experience of particular hearing officers, efficiency in the hearing process and potential conflicts of interest, assign and distribute the work of the office.**
- (Laws 2015, Chapter 73, Section 5)**
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7-1B-6.-- HEARING OFFICER CODE OF CONDUCT-- INDEPENDENCE.--

A. The chief hearing officer shall:

- (1) adopt and promulgate a hearing officer code of conduct;**
- and**
- (2) periodically evaluate each hearing officer's performance for competency, efficiency and professional demeanor in accord with relevant legal standards and the hearing officer code of conduct.**

B. The chief hearing officer shall ensure that each hearing officer has decisional independence; however, the chief hearing officer may:

- (1) consult with a hearing officer about a genuine question of law; and**
- (2) review with a hearing officer any issue on appeal addressed by a court of this state.**

C. The administrative hearings office shall:

- (1) hear all tax protests pursuant to the provisions of the Tax Administration Act;**
 - (2) hear property tax protests pursuant to the provisions of the Property Tax Code;**
 - (3) hear all certificate-denial protests pursuant to the provisions of Section 13-1-22 NMSA 1978;**
 - (4) conduct all adjudicatory hearings pursuant to the Motor Vehicle Code;**
 - (5) conduct all driver's license revocation hearings pursuant to the provisions of the Implied Consent Act;**
 - (6) make and preserve a complete record of all proceedings;**
- and**
- (7) maintain confidentiality regarding taxpayer information as required by the provisions of Section 7-1-8 NMSA 1978.**

D. In hearings conducted pursuant to the Tax Administration Act, Section 13-1-22 NMSA 1978 and the Motor Vehicle Code:

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(1) the Rules of Evidence do not apply. The hearing officer may require reasonable substantiation of statements or records tendered, the accuracy or truth of which is in reasonable doubt, to rule on the admissibility of evidence. A taxpayer or the taxation and revenue department may request a written ruling on a contested question of evidence in a matter in which the taxpayer has filed a written protest and for which that protest is pending. The administrative hearings office shall issue a copy of its written ruling to the taxation and revenue department at the time the ruling is issued to the taxpayer;

(2) the Rules of Civil Procedure for the District Courts do not apply. The hearing officer shall conduct a hearing to allow the ample and fair presentation of complaints and defenses. The hearing officer shall hear arguments, permit discovery, entertain and dispose of motions, require written expositions of the case as the circumstances justify and render a decision in accordance with the law and the evidence presented and admitted. A taxpayer or the taxation and revenue department may request a written ruling on a contested question of procedure in a matter in which the taxpayer has filed a written protest and for which that protest is pending. The administrative hearings office shall issue a copy of its written ruling to the taxation and revenue department at the time the ruling is issued to the taxpayer; and

(3) the hearing officer may administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books and papers, and for hearings conducted for a license suspension pursuant to Section 66-5-30 NMSA 1978, the hearing officer may require a reexamination of the licensee.

(Laws 2015, Chapter 73, Section 6)

7-1B-7.-- CERTAIN ACTIONS PROHIBITED.--A hearing officer shall not:

A. engage or participate in any way in the enforcement or formulation of general tax policy other than to conduct hearings. A taxpayer or the taxation and revenue department may request that the chief hearing officer determine whether a hearing officer has engaged or participated in the enforcement or formulation of general tax policy and whether that engagement or participation affects the hearing officer's impartiality in a particular matter. To avoid actual or apparent prejudice, the chief hearing officer may designate another hearing officer for the matter; and

B. engage in ex-parte communications concerning the substantive issues of any matter that has been protested while that matter is pending. If the chief hearing officer determines that a hearing officer has engaged in

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prohibited ex-parte communications, the chief hearing officer shall designate another hearing officer for that matter.

(Laws 2015, Chapter 73, Section 7)

7-1B-8.-- TAX PROTESTS--PROCEDURES.—

A. Upon timely receipt of a tax protest filed pursuant to the provisions of Section 7-1-24 NMSA 1978, the taxation and revenue department shall promptly acknowledge the protest by letter to the protesting taxpayer or the taxpayer's representative. If the protest is not filed in accordance with the provisions of Section 7-1-24 NMSA 1978, the department shall inform the taxpayer of the deficiency and the opportunity to correct it. Within forty-five days after receipt of a protest filed pursuant to the provisions of Section 7-1-24 NMSA 1978 that has not been resolved, the taxation and revenue department shall request from the administrative hearings office a hearing and shall send to the office a copy of the protest. The chief hearing officer shall promptly designate a hearing officer and shall set a date for a hearing to take place within ninety days after receipt of a protest filed pursuant to Section 7-1-24 NMSA 1978.

B. A taxpayer may appear at the hearing on the taxpayer's own behalf or may be represented by a bona fide employee, an attorney, a certified public accountant or, with respect only to tax imposed pursuant to the Income Tax Act, a person who is an enrolled agent for federal income tax purposes. If the taxation and revenue department and the taxpayer agree, the hearing may be conducted via videoconference. At the beginning of the hearing, the hearing officer shall inform the taxpayer of the taxpayer's right to representation. A hearing shall not be open to the public except upon request of the taxpayer. A hearing officer may postpone or continue a hearing at the hearing officer's discretion.

C. Within thirty days after the hearing, the hearing officer shall inform the taxation and revenue department and the taxpayer in writing of the decision and, pursuant to the provisions of Section 7-1-25 NMSA 1978, of the aggrieved party's right to, and the requirements for perfection of, an appeal from the decision to the court of appeals and of the consequences of a failure to appeal. The written decision shall embody an order granting or denying the relief requested or granting or denying a part of the relief requested, as appropriate.

D. A taxpayer with two or more protests containing related issues may request that the protests be combined and heard jointly. The hearing officer shall grant the request to combine protests unless it would create an unreasonable burden on the administrative hearings office or the taxation and revenue department.

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E. Nothing in this section shall be construed to authorize a criminal proceeding or to authorize an administrative protest of the issuance of a subpoena or summons.

(Laws 2015, Chapter 73, Section 8)

7-1B-9.-- MOTOR VEHICLE ADMINISTRATIVE HEARINGS-- PROCEDURES.--

A. A person may dispute the denial of or failure to either allow or deny a license, permit, placard or registration provided for in the Motor Vehicle Code. Upon timely receipt of a protest, the chief hearing officer shall promptly designate a hearing officer to conduct a hearing and shall set a date for the hearing. On that date, the hearing officer shall hear the protest.

B. A person may appear at a hearing set pursuant to the provisions of Subsection A of this section for the person's self or be represented by a bona fide employee or an attorney. A hearing shall not be open to the public except if held pursuant to the provisions of the Implied Consent Act or upon request of the person. A hearing officer may postpone or continue a hearing.

C. At the beginning of the hearing, the hearing officer shall inform the person of the person's right to representation. Within thirty days after the hearing, the hearing officer shall inform the protestant in writing of the decision and of the protestant's right to, and the requirements for perfection of, an appeal from the decision to the district court and of the consequences of a failure to appeal. The written decision shall embody an order granting or denying the relief requested or granting such part of the relief requested, as appropriate.

D. If the protestant or the secretary of taxation and revenue is dissatisfied with the decision and order of the hearing officer, the party may appeal pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

E. No court of this state has jurisdiction to entertain a proceeding by any person in which the person calls into question the application to that person of any provision of the Motor Vehicle Code, except as a consequence of the appeal by that person to the district court from the action and order of the hearing officer as provided for in this section.

F. Nothing in this section shall be construed to authorize a criminal proceeding or to authorize an administrative protest of the issuance of a subpoena or summons.

(Laws 2015, Chapter 73, Section 9)
