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# FYI-400

## FOR YOUR INFORMATION

Tax Information/Policy Office ♦ P.O. Box 630 ♦ Santa Fe, New Mexico 87504-0630

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### TAX AUDITS AND PROTEST PROCEDURES YOUR RIGHTS AS A TAXPAYER

As a New Mexico taxpayer you enjoy an extensive bill of rights covering everything from guarantees of privacy and confidentiality to a thorough protest procedure should you and the Taxation and Revenue Department (Department) disagree. These rights are preserved in the Tax Administration Act and in rules and regulations adopted by the Secretary of the Department. This publication gives you a brief summary of those rights, and it lists the steps open to you when you and the Department differ.

The remainder of this FYI discusses what to expect if the Department selects you for an audit, if you receive an assessment of tax due, or a tax return adjustment notice. A tax return adjustment notice tells you whether your income tax refund is denied, less than expected, or more than expected. The Department mails a refund denial letter when it denies a claim for refund of business taxes such as gross receipts tax and withholding taxes.

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## **ELIMINATING PROBLEMS AT THE OUTSET**

The Taxation and Revenue Department (Department) is the state government agency responsible for compliance with the revenue laws, so New Mexico has adequate financial resources to provide services for you and your fellow citizens. When there is a problem, it is to your advantage and the Department's to solve it before it grows to an unmanageable size. Good communication from the beginning can avoid any number of difficulties.

As a taxpayer you have the right to receive information and prompt, courteous, and accurate responses to questions and requests for tax assistance. If the Department staff member does not know the answer, staff will either find it or direct you to another staff member who can help with your individual account.

Information on how to reach the appropriate bureaus in the Department to answer your questions is available on tax forms, at the end of publications, on a letter that you received in the mail, the Department web site at <https://www.tax.newmexico.gov/> under the "contact us" page, or at your local New Mexico tax office. Please note, confidentiality laws prevent the Department from discussing an account with anyone but the taxpayer or the taxpayer's authorized representative.

Free publications are available on the Department's web site <https://www.tax.newmexico.gov/forms-publications/> through your local tax office. You can also locate a lot of great information on the Department's YouTube page here: [https://www.youtube.com/channel/UC5cM2t8EvaVfktionhMwDgNw?view\\_as=subscriber](https://www.youtube.com/channel/UC5cM2t8EvaVfktionhMwDgNw?view_as=subscriber)

## **TAXPAYER BILL OF RIGHTS**

Most tax transactions occur without problems. Sometimes, though, troubles arise through misunderstanding, mathematical error, missed deadlines, lost papers, high volume of transactions, and many other situations. Changes in the law may make earlier information outdated. Over the years the Legislature and the Department have created ways to handle difficulties according to the state tax code.

Following are some of your taxpayer rights as outlined in Section 7-1-4.2 through 7-1-4.3 NMSA 1978.

- ◆ The right to available public information and prompt, courteous tax assistance;
- ◆ The right to representation by counsel or other qualified representative at any time during your contacts with us according to Section 7-1-24 NMSA 1978 or with the Administrative Hearings Office according to the Administrative Hearings Office Act;
- ◆ The right to have audits, inspections of records and meetings take place at a reasonable time and place (Section 7-1-11 NMSA 1978);
- ◆ The right to have the Department conduct its audits in a timely and efficient manner and be entitled to the correct calculation of interest as provided in the Tax Administration Act under Section 7-1-67 and 7-1-68 NMSA 1978;
- ◆ The right to simple, non-technical information explaining procedures, remedies and rights during audit, protest, appeals and collection proceedings under the Tax Administration Act;
- ◆ The right to an explanation of audit results and the basis for audits, assessments or denials of refund that identify tax, interest, or penalty due;
- ◆ The right to seek review, through formal or informal proceedings, of findings or unfavorable decisions that occur during audit or protest procedures (Section 7-1-24 NMSA 1978 and the Administrative Hearings Office Act);
- ◆ The right for your tax information to remain confidential unless otherwise specified by law in Sections 7-1-8 through 7-1-8.11 NMSA 1978;
- ◆ The right to abatement (forgiveness) of an assessment of taxes that has been incorrectly, erroneously, or illegally made (Section 7-1-28 NMSA 1978) and a right to seek a compromise of a stated tax liability. When the Secretary of Taxation and Revenue in good faith doubts that you owe us the amount we claim, you have the right to seek a compromise according to Section 7-1-20 NMSA 1978;

- ◆ The right to clear information about penalties if a tax assessment is not paid, secured, protested, or otherwise provided for according to Section 7-1-16 NMSA 1978. If you become a delinquent taxpayer, upon notice of delinquency you have the right to timely notice of collection actions that require sale or seizure of your property under the Tax Administration Act, and
- ◆ The right to ask to pay your tax obligations by entering into an installment agreement according to Section 7-1-21 NMSA 1978.

## **BASIC AUDIT INFORMATION**

The Department's goal is that every taxpayer pays the correct amount of tax due under state law. Two ways to reach this goal are by checking the calculations on individual tax returns claiming refunds and by auditing taxpayers' books and records. Audits verify the accuracy of tax returns whether or not a refund is expected.

Audits also allow the Department to learn about modifications in business practice and advances in technology that may lead to changes in tax liabilities and simpler reporting requirements. The ending result could be an update to Department processes, amended statutes, or amended regulations.

Our audit and protest procedures are designed to take the Taxpayer Bill Of RIGHTS, as outlined starting on page 2 into account.

### ***Two Types of Audits***

There are two general types of audits:

**Routine** - Routine audits are audits selected by the Department using data analytics to determine possible reporting inconsistencies. If selected for routine audit, the taxpayer is given an opportunity to request a managed audit.

**Managed** – These audits are requested by the taxpayer. Two types of managed audits are available to taxpayers. **Type A** – taxpayer conducts a self-audit and self-assesses. The audit periods remain open for possible audit. **Type B** – taxpayer works with a Department auditor, using Department procedures, to determine if the taxpayer should be assessed. The audit periods are closed from further audit.

### ***Selection***

There are various reasons why the Department selects a taxpayer for an audit. The most common are random selection, frequent or consistent errors or insufficient information on tax returns, or a request by a taxpayer for a managed audit. Selection for audit is not an accusation of dishonesty. An audit in no way suggests that a taxpayer is intentionally withholding information or taxes from the Department.

### ***Confidentiality***

All information provided to the Department during an audit is confidential, and the Department is required to actively protect the confidentiality of this information (Section 7-1-8 NMSA 1978). If a lien or lawsuit is filed against a taxpayer, however, certain aspects of your tax case will become public knowledge. The Decision and Order issued by the Administrative Hearings Office (AHO) hearing officer after a formal hearing is also public knowledge. For more information on Decision and Order's please see the Protest Process section of this document starting on page 6.

### ***Notification***

Although New Mexico's laws do not mandate prior notification, the Department usually informs the taxpayer by mailing a first notice of a pending audit. This notification generally allows sufficient time for the taxpayer to gather

business records. In most cases, the second notice is from a Department auditor who notifies the taxpayer by mail or telephone of the assignment to audit a taxpayer's books and records. The audit officially begins either with the second notice or when the auditor has started an examination of records with reasonably prompt notice to the taxpayer or the taxpayer's representative.

### ***Location***

The audit may take place at the taxpayer's home, place of business, or the office of the taxpayer's accountant or attorney, depending on the complexity of the audit or records being provided. The Department tries to select the place most convenient for the taxpayer. If the location is inconvenient, the Department and taxpayer will work together to try to find a more suitable place. The Department encourages the submission of electronic records either through secure email or TAP or submitting paper documents through the United States Postal Service.

Wherever the audit is conducted, the taxpayer has the right to have someone represent or accompany them such as an attorney or certified public accountant. If the taxpayer cannot attend the audit, the taxpayer may select an authorized representative like an attorney or accountant to represent you in their absence (see below).

### ***Authorized Representative***

The authorization must contain sufficient information so the Department can identify both the taxpayer and the representative. It must bear the signature of the taxpayer. At that point, the Department may reveal information to your representative about you or your return.

If you have an authorized representative you will need to submit **Form ACD-31102, Tax Information Authorization** to the Department. If an authorized representative should no longer have access to your account before that time specified on the form, make sure to notify the Department.

## **AUDIT FINDINGS**

### ***Audits:***

Most audits leave the taxpayer's account unchanged. Some result in an assessment of tax due.

Upon completion of an audit, the auditor will give the taxpayer or authorized representative a copy of the audit work papers and explain audit findings that affect your tax liability. The auditor also will explain why the taxpayer may owe additional tax or be entitled to a refund. Most audits are agreed to and closed at this level, but if you do not agree with the audit findings, you have the right to protest any resulting assessment.

### **Ask Your Auditor**

The Department believes it is important that you understand the reason for any additional tax due or for any refund. The Department encourages you to question anything that is not clear to you.

### **If You Agree with the Audit Findings**

After a final review, the Department provides the taxpayer with a copy of the audit report. The taxpayer is generally allowed ten days for review, but an extension may be granted if needed. If the taxpayer does not contact the Department staff member, they are working with by the end of the ten days, the audit will become final, and the taxpayer will be issued an assessment.

If you are assessed additional tax, you have 90 days from the date of mailing of the assessment to pay or use the REMEDIES outlined in this FYI (Section 7-1-24 NMSA 1978). If you agree with only part of the assessment, pay

the portion you agree with or enter a payment plan for the part of the assessment that you agree with. Interest will continue to accrue until that tax due has been paid in full. For the contested portion, see “Remedies” on page 5.

**Note:** if the Department assesses interest and penalty on unpaid taxes Section 7-1-67 NMSA 1978 sets the rate to match the quarterly rate set by the United States Internal Revenue Code. Interest rates for the current and prior quarters are located on the Department web site at: <https://www.tax.newmexico.gov/individuals/file-your-taxes-overview/penalty-interest-rates/>

The maximum penalty is 20% of the outstanding tax liability. When the auditor discusses the results with you, you may ask for a preliminary estimate of the uncontested tax due if you agree with all or part of the findings. Paying the **undisputed** amount prevents interest accrual on that amount while the audit is finalized.

| <b>Audit Results</b> |                                                                                                                                          |
|----------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| 1.                   | No Change. The audit confirms the accuracy of your reports. No further action is necessary.                                              |
| 2.                   | Refund. The audit shows you have overpaid, and you are advised of your right to file a claim for refund.                                 |
| 3.                   | Assessment. The audit shows underreported tax. This generates an assessment for additional tax due plus applicable penalty and interest. |

**If You Disagree with the Audit Findings**

If the taxpayer disagrees with the audit findings, they will need to review the copy of the audit work papers provided to them and thoroughly discusses the results within the ten days with the contact the Department provided. The taxpayer may request a conference with the Department to explain their position and present any evidence or documentation that supports the taxpayer’s position. The conference request is granted unless there are unusual circumstances.

If the Department agrees with the auditor's findings, the audit report proceeds to assessment. The taxpayer may pursue one of two remedies explained below if they remain dissatisfied with the auditor's findings after receiving the final audit report and assessment.

**REMEDIES**

There are two remedies when a taxpayer disagrees with the audit:

Remedy 1 is a written protest;

Remedy 2 is pay the tax, penalty, and interest due and submit a claim for refund.

**When one remedy is chosen, the taxpayer automatically waives their right to pursue the other.**

|                                                                                                                                                                                                                                                                                                           |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Note: An assessment becomes final if the taxpayer:</b></p> <ul style="list-style-type: none"> <li>◆ does not file a timely protest; <i>or</i></li> <li>◆ fails to appear at a formal hearing, <i>or</i></li> <li>◆ fails to appeal an adverse Decision and Order of the hearing officer.</li> </ul> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**REMEDY 1: Written Protest**

The taxpayer must file a written protest:

- within 90 days of the mailing date on the notice of assessment of tax of any amount over \$50 of tax, *or*
- within 90 days of the date the Department receives the taxpayer’s return showing a liability for tax.

If notice has been mailed previously to the taxpayer, but the taxpayer refused acceptance, hand-delivery does not give the taxpayer an additional 90 days to protest. Time elapses from the actual mailing date to the last known address.

Form [ACD-31094, Formal Protest](#) outlines the requirements for a written protest and can be submitted as outlined on that form. The written protest to the Secretary must include the taxpayer's name and identification number (social security number for individuals; New Mexico Business Tax Identification Number (NMBTIN) or Federal Employee Identification Number (FEIN) for a business), the tax, credit, rebate, property, or provision of the Tax Administration Act involved (if it is based on an assessment or correspondence from the Department, include the assessment number or identification number), a summary statement of the grounds of the protest, the evidence supporting those grounds, and the affirmative relief being requested.

**Note:** To expedite the protest, include documentation supporting your position. Documentation may be invoices, canceled checks, prior-year tax returns, contracts, etc.

Any amount of tax, penalty, or interest that is owed to the Department that is not covered in the protest being filed by the taxpayer needs to either be paid or the taxpayer will need to enter a payment plan with the Department for tax, penalty, and interest not in dispute on or before the due date of the protest. More information on payment plans can be located on our website here: <https://www.tax.newmexico.gov/all-nm-taxes/2020/10/20/payment-plan/>

## PROTEST PROCESS

Upon receipt of the completed Form [ACD-31094, Formal Protest](#), the Department has 21 days from the receipt of the protest to inform the taxpayer of any deficiencies in the submission and allow one opportunity and 21 days for the taxpayer to correct it. If it is corrected (Section 7-1B-8(A) NMSA 1978), the protest shall be considered timely if it was initially submitted within the 90-day deadline as outlined in Section 7-1-24(E) NMSA 1978.

Upon receipt of a valid formal protest, the Protest Office sends a letter acknowledging the protest. This confirmation includes the name and telephone number of the Department staff member who will handle your protest. At this point the protest may be resolved by mail, email, and telephone, but the taxpayer or the Department may request an informal conference as outlined in Regulation 3.1.7.13 NMAC. The informal conference must be requested within 60 days of the protest acknowledgement and is between the taxpayer and the Department.

Although most differences are settled informally with the protest staff, a formal hearing with the Administrative Hearings Office (AHO) can be scheduled by the taxpayer or the Department (no earlier than 60 days after the date of the protest acknowledgement but within 180 days of filing the protest) if earlier communication reaches no conclusion. The formal hearing provides the taxpayer with an opportunity to explain why you feel the tax is not due and to present evidence to support the taxpayer's position. A taxpayer may represent yourself at the formal hearing or may be represented by a bona fide employee, an attorney, or a certified or registered public accountant.

To change the legal theory or facts supporting a protest, the taxpayer may supplement the statement of grounds for the protest no later than ten days before the formal hearing date.

At the formal hearing, a hearing officer with the AHO, who has no prior knowledge of the case, evaluates the protest, evidence provided, statutes, and regulations and then issues a written decision, which is called a "Decision and Order." The AHO is independent of the Department and more information about them, and the hearing process can be located here: <https://www.aho.state.nm.us/>.

A Decision and Order includes the facts of the case and is the order of the hearing officer granting or denying the taxpayer's protest. The Decision and Order is not confidential and is posted on the Department's website here <https://www.tax.newmexico.gov/all-nm-taxes/tax-decisions-orders/>.

There are two possible outcomes of a formal hearing:

1. If the hearing officer's Decision and Order is to the taxpayer's satisfaction, the protest is resolved and there is no further action required on the taxpayer's part, unless an appeal is filed by the Department within 30 days of the date of the mailing or delivery of the written Decision and Order.
2. If the Decision and Order favors the Department, and tax, penalty and interest are due and payable, the taxpayer may either appeal the decision within 30 days of the date of the mailing or delivery of the written Decision and Order or pay the tax, penalty, and interest. The taxpayer will become a delinquent taxpayer if there is not an appeal filed *and* the tax, penalty and interest that remains due is not paid. Note: penalty and interest will continue to accrue until the tax has been paid in full. The maximum penalty is 20% of the outstanding tax liability.

Either the taxpayer or the Department may appeal the Decision and Order to the New Mexico Court of Appeals and then to other appellate courts if the protest is not settled to the taxpayer's or the Department's satisfaction. The Court of Appeals will review the record made at the formal hearing before the AHO and will not accept additional evidence or information. For that reason, it is important that the taxpayer present all arguments and evidence during the formal hearing before the AHO.

In the event the Department appeals the hearing officer's Decision and Order, and the courts uphold the decision in whole or in part, the courts award reasonable attorney fees to the taxpayer.

If the Department does not appeal the hearing officer's Decision and Order, Department staff will take the steps needed to implement the Decision and Order from the AHO hearing officer. If the protest is in favor of the taxpayer necessary changes will be made to the taxpayer's account and the Department staff will be in contact with the taxpayer if necessary. If the protest is in favor of the Department and tax is due, the Department will wait the specified 30 days before the taxpayer will become a delinquent taxpayer and collection efforts will take place.

### ***Transactions on Tribal Land***

If a taxpayer is engaged in business on tribal land and the taxpayer's transactions are subject to a tribal gross receipts tax that the Department administers on behalf of the tribe pursuant to a Gross Receipts Tax Cooperative Agreement, the protest process can be somewhat different. **For Class 1 receipts** (sales to a tribe or tribal member by a non-tribal business), the Department will process the protest and will make a recommendation to the tribe, but the final decision is left up to the Tribe or Pueblo. **For Class 2 receipts** (sales to tribal non-members by a non-tribal business), the tribe has authority over the tribe's portion of the tax and the Department has authority over the state portion of the tax and will issue a decision as is done in the other protests described above. To determine whether the Tribe, Pueblo, or Nation on whose land you conduct business is a party to a cooperative agreement, please consult the current gross receipts and compensating tax rate schedule. On the rate schedule, the Tribes, Pueblos, and Nations who have cooperative agreements are listed under the counties in which they are located and will have either a "(1)" or "(2)" immediately following the name.

### **REMEDY 2: Claim for Refund**

Rather than protest an assessment, if the tax due is less than \$50, or if the time to protest has passed, a taxpayer may pay the assessment and file a claim for refund for any part of the payment that the taxpayer does not believe was due. **The Taxpayer may file a claim for refund any time within three years from the end of the calendar year in which the overpayment was made as the result of an assessment of tax by the Department.**

To claim a refund of income taxes (e.g., corporate income tax, personal income tax, fiduciary income tax) and oil and gas taxes, the taxpayer needs to submit an amended tax return for the year or period involved. Use the appropriate tax return form for the year being amended, and if there is a box for an "amended return," make sure that it is checked. To each amended return, attach a statement supporting the claim. The statement should contain the reason each item of income, deduction, or credit on which the taxpayer based the claim for refund and filed the amended return. Include such items as canceled checks (front and back), prior-year tax returns, and anything else that explains the reason for the refund claim.

To claim a refund for all other taxes (e.g., gross receipts tax, withholding tax, gasoline tax) the taxpayer needs to submit a **Form RPD-41071, Application for Tax Refund** with each amended return for the specific tax program. The taxpayer should attach any other schedules or supporting documents proving your claim. Examples of supporting documentation are non-taxable transaction certificates, evidence of a tax rate change in a particular municipality or county, or proof that a tax return was filed and the tax paid twice.

### ***Limitations for Filing Claims for Refund***

In general, you must file your claim within three years of the end of the calendar year in which:

- 1) the payment was due, or an assessment by the Department resulted in an overpayment (Section 7-1-17 NMSA 1978), whichever is later, **OR**
- 2) a levy was placed on the property (Section 7-1-26 NMSA 1978).

### ***Processing Claims for Refund***

A claim for refund may be accepted as filed or be subject to examination. If additional information is requested by the Department the claim for refund will not be considered complete until the requested documents have been provided for review. After review, the Department may allow or deny all or part of the claim.

### ***Denial of Claim for Refund***

You have a choice when the Department denies the refund claim or has failed to grant or deny a complete claim for refund within 180 days to elect to treat the claim as denied: you may either protest that denial under the procedures for a written protest as outlined above, or you may file a civil action in the district court for Santa Fe County.

The choice to protest means you must do so within 90 days from the mailing of the denial. After the Department receives the taxpayer's protest, within 60 days the taxpayer can request in writing an informal hearing with the Department and the Department must hold the informal conference within 30 days of the taxpayer's request. If no resolution is reached and if circumstances dictate, the Department or the taxpayer may schedule a formal hearing not before 60 days of the date the protest was requested but within 180 days of the request.

If the taxpayer chooses to take a denial of claim for refund and file a civil action lawsuit directly in the District Court for Santa Fe County, the taxpayer may *at the taxpayer's own expense* begin a civil action suit for the refund within 90 days after the claim is denied, or after the expiration of 180 days after the taxpayer files a claim which the Department has failed to grant or deny and the taxpayer has elected to treat the claim as denied. (**Note:** This is the only avenue for obtaining a hearing in the District Court for Santa Fe County. An unpaid assessment may not be heard as a case in the District Court for Santa Fe County).

The taxpayer or the Department may go to the New Mexico Court of Appeals to appeal the decision issued by the District Court or by the Administrative Hearing Office (AHO) hearing officer. The taxpayer must appeal within 30 days of either the date of mailing or delivery to the taxpayer of the hearing officer's Decision and Order on the protest, or the date of the District Court's decision. Should the taxpayer or the Department fail to appeal by the

deadline, the decision of the hearing officer or the District Court is final. A taxpayer may be entitled to claim reasonable administrative costs connected to the action if the taxpayer is successful in an administrative or court proceeding brought by the taxpayer or against the taxpayer under Section 7-1-29.1 NMSA 1978.

**Tax Return Adjustment Notices:** The procedure above is also the course to follow for contested income tax return adjustment notices involving denials of refund over which the Department has jurisdiction.

### ***Transactions on Tribal Land***

If the taxpayer is engaged in business on tribal land and the taxpayer's transactions are subject to a tribal gross receipts tax that the Department administers pursuant to a Gross Receipts Tax Cooperative Agreement, the protest or refund processes are different. **For Class 1 receipts** (sales to a tribe or tribal member by a non-tribal business that are exempt from state tax), the Department is not authorized to process a protest related to Class 1 receipts and will refer the protest to the appropriate Tribe, Pueblo, or Nation for a final decision. **For Class 2 receipts** (sales to tribal non-members by a non-tribal business that are subject to both tribal and state tax), the Tribe, Pueblo, or Nation, has authority over the tribal portion of the tax and the Department has authority over the state portion of the tax. The Department will process the protest related to the state tax and will proceed in the manner described in the protest and refund sections of the Tax Administration Act. The Department will make a recommendation to the Tribe, Pueblo Nation for the tribal tax portion of the protest, but the final decision is left up to the Tribe, Pueblo, or Nation. The Tribes, Pueblos and Nations who have cooperative agreements are listed on the gross receipts tax rate schedule under the counties in which they are located and will have either a "(1)" or "(2)" immediately following the name.

## **INTERCEPTION OF REFUNDS**

The Department may grant a refund for a taxpayer's request but then apply some, or all, of the amount to debts the taxpayer owes the Department or other state agencies. The refund is applied to the debt, and the balance, if any exists, and any remaining amount will be sent to the taxpayer by check or direct deposit as specified. If this is the case, the taxpayer will receive a *tax return adjustment notice* with the information of the agency that your refund was intercepted by. If the refund was intercepted by the Department and the taxpayer disagree with the tax return adjustment notice, the procedures are similar to disagreement with audit findings. See "Remedies," beginning on page 5, and "Denial of a Claim for Refund," on page 8.

The Tax Refund Intercept Program requires the Department to intercept all or part of a refund when specific agencies request it. The alleged debt may involve child support payments, an unpaid traffic citation, failure to repay a student loan, excess unemployment insurance payments or other issues. If so, the notice should tell you which agency has intercepted your refund and the reason for the interception. *You will need to contact that agency directly for resolution.*

**NOTE:** Section 7-2C-9 NMSA 1978 (*Tax Refund Intercept Program*) places jurisdiction for notice and opportunity for hearing on the agency making the claim. The law exempts the Department from the obligation to grant a hearing to any debtor or spouse about actions taken or issues arising under the Tax Refund Intercept Program unless the Taxation and Revenue Department is the agency requesting the interception.

## **CONFERENCES AND HEARINGS**

Depending on whether a taxpayer is satisfied with decisions made throughout the protest procedure, the taxpayer may encounter a variety of opportunities to meet in conferences or hearings with representatives from the Department. Following is a summary of the different conferences and hearing levels:

◆ A **district conference** is usually conducted by the district tax bureau chief with the auditor and the taxpayer or taxpayer's authorized representative present. It is held after the auditor makes their findings but before those

audit findings are finalized and an assessment is made. At this level you may introduce any additional information that may affect the final results, including records or documentation that may not have been available at the time of the audit.

◆ An **informal conference** may be conducted by a representative of the Department, the auditor and the taxpayer or taxpayer's representative after the taxpayer has filed a timely, written protest. At an informal conference you may present facts and arguments in addition to those you've included in your written protest. Although the proceedings may be recorded as a convenience, the recording may not be used as evidence in subsequent proceedings.

◆ A **formal hearing** is conducted by a hearing officer appointed by the Administrative Hearings Office. The hearing officer *chosen has no prior knowledge of the case and listens to both sides of the protest* before preparing a Decision and Order. We suggest that the taxpayer at this level be represented by someone familiar with the proceedings because the taped hearing will become part of the only record upon which any appeal to the Court of Appeals will be based. Taxpayers may be represented by a bona fide employee, an attorney or a certified or registered public accountant.

◆ **Appellate procedures** involve judicial bodies outside the Department. Decisions of the Court of Appeals may be reviewed by the New Mexico Supreme Court at the Supreme Court's discretion upon appeal by either the taxpayer or the Department. In turn, New Mexico Supreme Court decisions may be appealed to the U.S. Supreme Court if constitutional issues are raised.

## **TAXPAYER INFORMATION**

**General Information.** FYIs and Bulletins present general information with minimum technical language. All FYIs and Bulletins are free of charge and available through all local tax offices and on the Taxation and Revenue Department's website at <https://www.tax.newmexico.gov/forms-publications/>.

**Regulations.** The Department establishes regulations to interpret and exemplify the various tax acts it administers. Current statutes with regulations can be located on the Department's website for free at <https://www.tax.newmexico.gov/all-nm-taxes/statutes-with-regulations/>. Specific regulations are also available at the State Records Center and Archives or on its web page at <http://www.srca.nm.gov/>

The Taxation and Revenue Department regulation book is available for purchase from the New Mexico Compilation Commission. Order regulation books directly from the New Mexico Compilation Commission at <https://www.nmcompcomm.us/>

**Rulings.** Rulings signed by the Secretary and approved by the Attorney General are written statements that apply to one or a small number of taxpayers. A taxpayer may request a ruling (at no charge) to clarify its tax liability or responsibility under specific circumstances. The Department will not issue a ruling to a taxpayer who is undergoing an audit, who has an outstanding assessment, or who is involved in a protest or litigation with the Department over the subject matter of the request. The Department's rulings are compiled and available on free of charge at <https://www.tax.newmexico.gov/all-nm-taxes/rulings/>.

The request for a ruling must be in writing, include accurate taxpayer identification and the details about the taxpayer's situation, and be addressed to the Secretary of the Taxation and Revenue Department at P.O. Box 630, Santa Fe, NM 87504-0630. The taxpayer's representative, such as an accountant or attorney, may request a ruling on behalf of the taxpayer but must disclose the name of the taxpayer. While the Department is not required to issue a ruling when requested to do so, every request is carefully considered.

The Secretary may modify or withdraw any previously issued ruling and is required to withdraw or modify any ruling when subsequent legislation, regulations, final court decisions or other rulings invalidate a ruling or portions of a ruling.

**Public Decisions & Orders.** All public decisions and orders issued since July 1994 are compiled and available on the Department's web page free of charge at <https://www.tax.newmexico.gov/all-nm-taxes/tax-decisions-orders/>.

*This publication provides general information. It does not constitute a regulation, ruling, or decision issued by the Secretary of the New Mexico Taxation and Revenue Department. The Department is legally bound only by a regulation or a ruling [7-1-60, New Mexico Statutes Annotated, 1978]. In the event of a conflict between FYI and statute, regulation, case law or policy, the information in FYIs is overridden by statutes, regulations, and case law. Taxpayers and preparers are responsible for being aware of New Mexico tax laws and rules. Consult the Department directly if you have questions or concerns about information provided in this FYI.*

## **FOR FURTHER ASSISTANCE**

Tax District Field Offices and the Department's call center can provide full service and general information about the Department's taxes, taxpayer access point, programs, classes, and forms. Information specific to your filing situation, payment plans and delinquent accounts.

### **TAX DISTRICT FIELD OFFICES**

#### **ALBUQUERQUE**

10500 Copper Avenue NE, Ste C  
Albuquerque, NM 87123

#### **SANTA FE**

Manuel Lujan Sr. Bldg.  
1200 S. St. Francis Dr.  
Santa Fe, NM 87505

#### **FARMINGTON**

3501 E Main St, Ste N  
Farmington, NM 87402

#### **LAS CRUCES**

2540 El Paseo Rd, Bldg 2  
Las Cruces, NM 88001

#### **ROSWELL**

400 N Pennsylvania Ave, Ste 200  
Roswell, NM 88201

For forms and instructions visit the Department's web site at <https://www.tax.newmexico.gov/>

#### **Call Center Number:**

**1-866-285-2996**

**If faxing something to a tax district field office, please fax to:**

#### **Call Center Fax Number:**

**1-505-841-6327**

**If mailing information to a tax district field office, please mail to:**

Taxation and Revenue Department  
P.O. Box 8485  
Albuquerque, NM 87198-8485

For additional contact information please visit the Department's website at <https://www.tax.newmexico.gov/contact-us/>

*This information is as accurate as possible as of the date specified on the publication. Subsequent legislation, new state regulations and case law may affect its accuracy. For the latest information please check the Taxation and Revenue Department's web site at [www.tax.newmexico.gov](http://www.tax.newmexico.gov).*

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