
FYI-402

New Mexico
Taxation and Revenue Department

FOR YOUR INFORMATION

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

TAXPAYER REMEDIES

This publication tells you how to dispute a tax liability or other administrative action the Taxation and Revenue Department takes against you.

The New Mexico Tax Administration Act provides two formal remedies for settling such differences, but it is the department's experience that taxpayers often can resolve them without need for formal remedy. You may wish to call your district office (listed in FOR FURTHER ASSISTANCE, on the following page to discuss your situation before deciding how to proceed. Please note that if you fail to follow the formal remedies outlined below in the time and manner the law requires, you lose the right to use either remedy to address the dispute.

OVERVIEW

You may dispute a tax liability or certain actions the department might take against you under the Tax Administration Act in one of two ways: **1) file a written protest with the Secretary of Taxation and Revenue without making payment, or 2) pay the tax liability and then file a refund claim. Please note that you cannot protest an assessment or partial assessment that you have already paid. You must first apply for a refund.** Choosing one remedy is an automatic waiver of the right to pursue the other.

REMEDY 1: PROTEST

If you choose to protest, you must do so in writing within 90 days of the date of the event you are protesting. That event may be the mailing of a notice of assessment of tax, your filing of a tax return showing a liability, or the department's application of a provision of the Tax Administration Act to your situation. The protest must state the taxpayer's name and identifying number (social security number for individuals; New Mexico CRS number or federal employer identification number for businesses), the assessment number or letter identification number, the taxes involved, the grounds for the protest, a summary statement of the evidence you expect to produce to support each ground asserted, and the affirmative relief you want.

The department's Protest Office will review protests received and if the department does not agree with your position; a formal hearing will be scheduled (within ninety days of filing a protest) before a hearing officer on the protested issues. You or the department may ask for an informal conference prior to the formal hearing. Many disputes are settled during information conferences. Should the protest reach formal hearing, the hearing officer hands down a Decision and Order.

Appeal

Either party (you or the department) may appeal the hearing officer's Decision and Order to the New Mexico Court of Appeals. You must file the appeal within 30 days of the date the Decision and Order is mailed to you, or the hearing officer's decision is final. Because appeals are based solely on the information presented to the hearing officer at the formal hearing, you may not present new evidence to the Court of Appeals.

REMEDY 2: CLAIM FOR REFUND

If you believe any tax you have paid or had withheld from you is more than you actually owe, you may file a refund claim with the Secretary of Taxation and Revenue. You must claim the refund within three years from the end of the calendar year in which the tax was due or in which you paid a Department assessment. The Department treats a protest of a denial or departmental inaction on a claim for refund in the same way as a protest of an assessment. The protest must state the taxpayer's name and identifying number (social security number for individuals; New Mexico CRS number or federal employer identification number for businesses), letter identification number if applicable, the taxes involved, the grounds for the protest,

a summary statement of the evidence you expect to produce to support each ground asserted, and the affirmative relief you want.

If the Refund Is Denied

If the Secretary **denies** the claim in whole or in part, you may file a protest with the Department or file a lawsuit in Santa Fe District Court. You must do so within 90 days of the date the denial of your refund claim is mailed. If you fail to protest or bring suit in Santa Fe District Court within 90 days of the date of a written denial, the decision is final. You may not re-file that claim.

If the Department Has Not Granted or Denied Your Claim

In the event the department has not granted or denied a claim for refund within 120 days, you may protest, bring suit, or re-file your claim subject to the three-year limitation described above. If you do not hear from the department within 120 days, you have 90 days in which to file a protest. **You** must act if you have not heard from TRD within 120 days. Section 7-1-26 NMSA 1978 stops the Department from approving or denying your claim when 210 days have passed, and you have not filed a formal protest or a suit in district court.

Please note: if you elect to bring suit, lawsuits are subject to the rules of district courts. You or the department may appeal an adverse ruling by the hearing officer or the district court to the New Mexico Court of Appeals. See "Appeal," on the previous page.

TRANSACTIONS ON TRIBAL LAND

If you are engaged in business on tribal land and your 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.

FOR FURTHER ASSISTANCE

Mail all protests to the New Mexico Taxation and Revenue Department, Protest Office, P.O. Box 1671, Santa Fe, NM 87504-1671. The street address for private carrier delivery is 1100 St. Francis Drive, Suite 1100, Santa Fe, NM 87505. Mail all claims for refund to the New Mexico Taxation and Revenue Department, Administrative Resolution and Services Bureau, P.O. Box 630, Santa Fe, NM 87504-0630. Local tax offices can provide full service and information about the department's taxes, programs, forms and specific information about your situation. Main switchboard (Santa Fe): (505) 827-0700.

ALBUQUERQUE	(505) 841-6200	ROSWELL	(575) 624-6065
FARMINGTON	(505) 325-5049	SANTA FE	(505) 827-0951
LAS CRUCES	(575) 524-6225		

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.