

## New Mexico Establishes Independent Hearings Office for Tax Disputes

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### Overview

New Mexico Governor Susana Martinez recently signed into law Senate Bill 356,<sup>1</sup> establishing an “Administrative Hearings Office” (“AHO”) for tax-related disputes. Effective July 1, 2015, the AHO will function under the New Mexico Department of Finance and Administration and operate independently from the New Mexico Taxation and Revenue Department (“TRD”), replacing the TRD’s current Hearings Bureau. In this Tax Alert we summarize the significant tax-related sections of the new law regarding the establishment and administration of the AHO and the procedures for tax-related protests.

### Responsibilities of Administrative Hearings Office

The AHO will be led by a Chief Hearing Officer (“CHO”) who is to be appointed by the New Mexico Governor upon recommendation of a selection committee. The CHO may implement rules pertaining to administrative hearings, oversee the AHO, hire and evaluate AHO personnel and assign and distribute work of the AHO. The CHO is required to implement a hearing officer code of conduct and ensure that each hearing officer has decisional independence.

In addition to other non-tax related matters, the AHO shall:

1. Hear all administrative hearings under the Tax Administration Act and other tax statutes;
2. Hear all administrative hearings under the Property Tax Code;<sup>2</sup>
3. Make and preserve a complete record of all proceedings; and
4. Maintain confidentiality regarding taxpayer information.

Taxes imposed under the Tax Administration Act include, but are not limited to, individual income tax, corporate income and franchise tax, gross receipts and compensating tax, estate tax, gasoline tax, withholdings tax and severance tax.<sup>3</sup>

### Tax Protest Procedures

Pursuant to N.M. Stat. § 7-1-24, a taxpayer has the right to dispute: the assessment of any amount of tax; the application to the taxpayer of any provision of the Tax Administrative Act;<sup>4</sup> or the denial of or failure of the TRD to either allow or deny a credit, rebate or claim for refund. To do so, the taxpayer must file a written protest with the TRD secretary within 90 days of the postmark date of the notice of assessment,<sup>5</sup> the date of mailing or filing of a return, the date of denial of a refund claim, or the last date the TRD was required but failed to take action on a claim. The written protest should include the following information:

1. Taxpayer identifying information;
2. The credit, rebate, property or provision of the Tax Administrative Act involved;<sup>6</sup>
3. The grounds for the taxpayer’s protest, including a summary statement of evidence supporting the grounds asserted;<sup>7</sup> and,
4. The relief requested by the taxpayer.

The TRD must promptly acknowledge in writing the receipt of the timely filed protest. In the event the protest is not properly filed, the TRD must inform the taxpayer and provide the taxpayer the opportunity to correct it. Upon

<sup>1</sup> Laws 2015, Chapter 73, 1<sup>st</sup> Regular Session (Apr. 7, 2015).

<sup>2</sup> AHO protest procedures and information regarding property taxes are outside the scope of this Tax Alert.

<sup>3</sup> N.M. Stat. § 7-1-2.

<sup>4</sup> A taxpayer may not dispute the issuance of a subpoena or summons.

<sup>5</sup> Pursuant to N.M. Stat § 7-1-24(B), a protest may be filed without payment of the amount assessed.

<sup>6</sup> In the case of a protest involving a credit, rebate or claim for refund, additional information is required to be provided in the protest letter pursuant to N.M. Stat § 7-1-26(C)(1).

<sup>7</sup> Pursuant to N.M. Stat § 7-1-24(B), the taxpayer may supplement the statement at any time prior to 10 days before the hearing or in accordance with the scheduling order if one is issued.

receipt of the written protest, the TRD secretary may provide for an informal conference before a hearing is set by the AHO.

If the protest remains unresolved after 45 days from its receipt by the TRD, the TRD must request a hearing from the AHO. The CHO shall designate a hearing officer and set a hearing date within 90 days after receipt of the protest. A hearing officer may postpone or continue a hearing at the hearing officer's discretion. A hearing is not open to the public except upon request by the taxpayer. In hearings conducted by the AHO, the New Mexico Rules of Evidence and the Rules of Civil Procedure do not apply. The hearing officer may administer oaths and issue subpoenas for witnesses and books and records.

The hearing officer's written decision must be issued within 30 days after the AHO hearing and provided to the taxpayer and TRD. Any appeal brought by either party must be made to the New Mexico Court of Appeals within 30 days from the postmark date of the decision. An appeal may only be made to the same extent and upon the same theory as was asserted in the AHO hearing. As such, the AHO hearing establishes the record for further appeals.

## Contacts

If you have questions regarding the AHO or other New Mexico state or local tax matters, please contact either of the following Deloitte Tax professionals.

Bryan Hoesly  
Senior Manager  
Deloitte Tax LLP, Phoenix  
[bhoesly@deloitte.com](mailto:bhoesly@deloitte.com)  
(602) 631-4686

Cindy James  
Senior Manager  
Deloitte Tax LLP, Phoenix  
[cjames@deloitte.com](mailto:cjames@deloitte.com)  
(602) 234-5158

The authors of this alert would like to acknowledge the contributions of Lindsay Crews to the drafting process. Lindsay is a Tax Senior working in the Phoenix Multistate Tax Practice of Deloitte Tax LLP.

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