

Repeals. — Laws 1988, ch. 126, § 7 repealed 7-1A-5 NMSA 1978, as enacted by Laws 1988, ch. 126, § 5, relating to employment tax credit, amount, claimant, procedures, effective July 1, 1990.

ARTICLE 1B

Administrative Hearings Office

7-1B-1. Short title.

Chapter 7, Article 1B NMSA 1978 may be cited as the "Administrative Hearings Office Act".

History: Laws 2015, ch. 73, § 1; 2019, ch. 157, § 6.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, changed "Sections 1 through 9 of this act" to "Chapter 7, Article 1B NMSA 1978".

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.

History: Laws 2015, ch. 73, § 2.

ANNOTATIONS

Effective dates. — Laws 2015, ch. 73, § 38 made the Administrative Hearings Office Act, §§ 7-1B-1 through 7-1B-9 NMSA 1978, effective July 1, 2015.

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 [administrative hearings office] 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.

History: Laws 2015, ch. 73, § 3.

ANNOTATIONS

Bracketed material. — Laws 2015, ch. 73, § 36 provided that on July 1, 2015, all references in statute to the hearings bureau of the office of the secretary of taxation and revenue or hearing officers of the taxation and revenue department in Chapters 7 and 66 NMSA 1978 shall be deemed to be references to the administrative hearings office or a hearing officer of the office.

Effective dates. — Laws 2015, ch. 73, § 38 made Laws 2015, ch. 73, § 3 effective July 1, 2015.

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 [administrative hearings office] of the taxation and revenue department, a former chief hearing officer or another person with extensive knowledge of the tax law.

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.

History: Laws 2015, ch. 73, § 4.

ANNOTATIONS

Bracketed material. — Laws 2015, ch. 73, § 36 provided that on July 1, 2015, all references in statute to the hearings bureau of the office of the secretary of taxation and revenue or hearing officers of the taxation and revenue department in Chapters 7 and 66 NMSA 1978 shall be deemed to be references to the administrative hearings office or a hearing officer of the office.

Effective dates. — Laws 2015, ch. 73, § 38 made Laws 2015, ch. 73, § 4 effective July 1, 2015.

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 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 [Chapter 10, Article 9 NMSA 1978].

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.

History: Laws 2015, ch. 73, § 5.

ANNOTATIONS

Effective dates. — Laws 2015, ch. 73, § 38 made Laws 2015, ch. 73, § 5 effective July 1, 2015.

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) annually, 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, including through the use of a survey of practitioners who appear before the hearing officer.

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 Section 7-1-8 NMSA 1978.

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

(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 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 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.

History: Laws 2015, ch. 73, § 6; 2019, ch. 157, § 7.

ANNOTATIONS

Cross references. — For the Rules of Evidence, see 11-101 NMRA et seq.

For the Rules of Civil Procedure for the District Courts see 1-001 NMRA et seq.

The 2019 amendment, effective June 14, 2019, required the chief hearing officer to annually evaluate each hearing officer's performance, including through the use of a survey of practitioners; and in Subsection A, Paragraph A(2), deleted "periodically" and added "annually", and after "officer code of conduct", added "including through the use of a survey of practitioners who appear before the hearing officer".

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

History: Laws 2015, ch. 73, § 7.

ANNOTATIONS

Effective dates. — Laws 2015, ch. 73, § 38 made Laws 2015, ch. 73, § 7 effective July 1, 2015.

7-1B-8. Tax protests; procedures.

A. Upon timely receipt of a tax protest filed in accordance with 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 department determines that the protest has not been filed in accordance with that section, the department shall, within twenty-one days of receipt of the protest, inform the taxpayer of the deficiency and provide the taxpayer, within twenty-one days of the taxpayer being informed, one opportunity to correct it. If the taxpayer corrects the deficiency, the protest shall be considered timely if the initial protest was filed within ninety days in accordance with Subsection D of Section 7-1-24 NMSA 1978. A determination by the department that a protest has not been filed in accordance with that section may be protested by the taxpayer.

B. Within one hundred eighty days, but no earlier than sixty days after the date of the protest, the taxation and revenue department shall request a hearing with the administrative hearings office. A taxpayer may request in writing an informal conference with the department within sixty days after the date of the protest, and the department shall conduct the requested informal conference within thirty days of the receipt of the request. Whether or not a taxpayer requests an informal conference with the department, a taxpayer may request a hearing with the administrative hearings office no earlier than sixty days from the date of the protest.

C. The taxation and revenue department shall include with its request for a hearing an answer to the protest describing the legal and factual bases supporting the department's position beyond an assertion of the presumption of correctness and articulating the remaining protested issues.

D. In the event the taxpayer first requests a hearing with the administrative hearings office, the taxation and revenue department shall, within thirty days of service of the taxpayer's request for a hearing, file its answer to the protest describing the legal and factual bases supporting the department's position beyond an assertion of the presumption of correctness. The department may amend its answer to the protest up until ten days before the scheduled hearing or other deadline specified in a controlling scheduling order; provided that if the administrative hearings office determines that the department's amended answer unfairly prejudices the taxpayer, the administrative hearings office may disallow the amended answer. The hearing shall be limited to the grounds provided in the taxpayer's protest letter and in the department's answer to the protest.

E. If the hearing officer finds that the taxation and revenue department failed to comply with the deadlines set forth in Subsections A and B of this section, the hearing officer may order that no further interest may accrue on the protested liability.

F. If the taxpayer files the request for a hearing, the chief hearing officer shall set a hearing to take place within ninety days of the taxation and revenue department's answer to the protest, but in no case later than one hundred twenty days after the taxpayer's request for a hearing. If the department files the request for hearing with the answer to the protest, the chief hearing officer shall set a hearing to take place within ninety days of that request. Absent a conflict of interest requiring the assigned hearing officer to recuse from the case pursuant to the administrative hearings office code of conduct or an unforeseen emergency circumstance such as an accident, unexpected medical condition or illness, or vacancy of the position of the assigned hearing officer, the chief hearing officer shall not reassign a hearing officer to a case without giving the department and the taxpayer notice of that reassignment at least fourteen days before the hearing. Either party may, within ten days of notice of hearing assigning a hearing officer or notice of reassignment of a hearing officer, exercise one time the peremptory right to excuse the hearing officer designated to conduct the hearing; provided that the party has not moved for a discretionary ruling from the assigned hearing officer, nor previously exercised its right of peremptory excusal. Once a hearing officer has been peremptorily excused, that hearing officer shall not be assigned to the case again.

G. The administrative hearings office shall rule on a dispositive motion, including a motion for summary judgment, a motion for partial summary judgment or a motion to dismiss, filed by the taxation and revenue department or the taxpayer at least thirty days before the hearing unless the parties consent to a different deadline in a scheduling order.

H. A taxpayer may appear at the hearing on the taxpayer's own behalf, may appear through a bona fide employee or may be represented by an attorney, a certified public accountant, an employee of a New Mexico licensed certified public accounting firm whose authorization by the firm and by the taxpayer to appear is evidenced in writing or an enrolled agent. An attorney, a certified public accountant, an employee of a New Mexico licensed certified public accounting firm or an enrolled agent shall abide by their respective controlling professional or ethical standards of conduct at all stages of the administrative proceeding before the administrative hearings office. 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 be closed to the public except upon request of the taxpayer. A hearing officer may postpone or continue a hearing at the hearing officer's discretion. As used in this subsection, "enrolled agent" means a federally licensed tax practitioner with unlimited rights to represent taxpayers before the internal revenue service.

I. 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, in accordance with 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:

(1) an order granting or denying the relief requested or granting or denying a part of the relief requested, as appropriate; and

(2) findings of fact and law and a thorough discussion of the reasoning used to support the order with citations to the record and applicable law.

J. 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.

K. 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.

History: Laws 2015, ch. 73, § 8; 2019, ch. 157, § 8.

ANNOTATIONS

The 2019 amendment, effective June 14, 2019, revised the procedures for tax protests; in Subsection A, after "in accordance with that section", deleted "7-1-24 NMSA 1978", added "within twenty-one days of receipt of the protest", after "deficiency and", deleted "the" and added "provide the taxpayer, within twenty-one days of the taxpayer being informed, one", deleted "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" and added "If the taxpayer corrects the deficiency, the protest shall be considered timely if the initial protest was filed within ninety days in accordance with Subsection D of Section 7-1-24 NMSA 1978. A determination by the department that a protest has not been filed in accordance with that section may be protested by the taxpayer."; added new Subsections B through G and redesignated former Subsections B through E as Subsections H through K, respectively; in Subsection H, after "certified public accountant", added "an employee of a New Mexico licensed certified public accounting firm whose authorization by the firm and by the taxpayer to appear is evidenced in writing", deleted "with respect only to tax imposed pursuant to the Income Tax Act, a person who is", after "enrolled agent", deleted "for federal income tax purposes" and added "An attorney, a certified public accountant, an employee of a New Mexico licensed certified public accounting firm or an enrolled agent shall abide by their respective controlling professional or ethical standards of conduct at all stages of the administrative proceeding before the administrative hearings office.", and added the last sentence of the subsection; and in Subsection I, added Paragraph I(2).

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 [Chapter 66, Articles 1 through 8 NMSA 1978]. 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 [66-8-105 to 66-8-112 NMSA 1978] 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.