STATE OF NEW MEXICO
ADMINISTRATIVE HEARINGS OFFICE
TAX ADMINISTRATION ACT

WILLIAM GARDNER DDS/WILLIAM GARDNER DDS PA,

v. **Case Number 26.05-008A, D&O 26-07**

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

DECISION AND ORDER GRANTING DEPARTMENT'S MOTIONS FOR PARTIAL SUMMARY JUDGMENT, DENYING TAXPAYER'S MOTION FOR SUMMARY JUDGMENT, AND RESOLVING OUTSTANDING MOTIONS

This matter came before the Administrative Hearings Office, Hearing Officer Chris Romero, Esq., on two tax protests consolidated in AHO No. 26.05-008A, pursuant to the Tax Administration Act and the Administrative Hearings Office Act. The Hearing Officer held a telephonic prehearing conference on June 16, 2026. William Gardner ("Gardner" or "Taxpayer") appeared representing himself. David Mittle, Esq., appeared representing the Taxation and Revenue Department ("Department"), accompanied by Nicholas Pacheco, protest auditor. The parties were afforded an opportunity to address the pending dispositive motions, related procedural issues, discovery, subpoenas, witnesses, and scheduling.

The Administrative Hearings Office ("AHO") is an independent adjudicatory agency charged with providing a fair and impartial forum for the resolution of tax protests under the Tax Administration Act. *See* Regulation 22.600.1.20(C) NMAC. The Hearing Officer is not responsible to or subject to the direction of any officer, employee, or agent of the Taxation and Revenue Department.

This consolidated matter presents two related but distinct disputes. The first concerns whether Taxpayer may use a protest of subsequent collection activity, including a Final Notice Before Seizure, to relitigate the validity of a previously protested assessment adjudicated by AHO in AHO No. 24.01-006A, and affirmed on appeal by the New Mexico Court of Appeals.

The second dispute concerns whether Taxpayer has established a statutory basis for release or extinguishment of Notice of Claim of Tax Lien No. 1129031, filed in Bernalillo County for $1,424.95.

Having reviewed the parties' motions, responses, exhibits, verified statements, prior administrative and appellate decisions submitted by the parties, the administrative file, and the parties' oral arguments, the Hearing Officer concludes that the Department is entitled to partial summary judgment on both issues. The Hearing Officer further concludes that Taxpayer is not entitled to summary judgment, that the remaining discovery, subpoena, evidentiary, and scheduling requests are moot or immaterial in light of the dispositive rulings, and that because no triable issues remain, the scheduled merits hearing should be vacated.

IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

A. <u>The Approximately $160,000 Protest</u>

1. William C. Gardner entered into a Plea and Disposition Agreement in his personal capacity in a criminal proceeding involving tax fraud allegations. Under that agreement, Mr. Gardner agreed to pay restitution to the State for unpaid taxes and interest in the total amount of $162,534.06. [Department's Motion for Partial Summary Judgment directed to the approximately $160,000 protest ("Dept. $160,000 MSJ"), UMF ¶¶ 1-2; AHO Decision and Order No. 24-10, FOF ¶¶ 25-26, 29]

2. On or about November 22, 2023, the Department issued a Notice of Assessment to Mr. Gardner in the amount of $162,534.06. Mr. Gardner protested that assessment in AHO No. 24.01-006A. [Dept. $160,000 MSJ, UMF ¶¶ 3-4, 7; AHO D&O No. 24-10, FOF ¶¶ 1-2, 5]

3. In AHO No. 24.01-006A, Mr. Gardner argued, among other things, that the

Department could not assess him personally for gross receipts taxes, that he did not owe gross receipts tax in his individual capacity, that the assessment was connected to an improper criminal prosecution, and that he was denied rights under the Taxpayer Bill of Rights. [Dept. $160,000 MSJ, UMF ¶¶ 5-6; Verification of Nicholas Pacheco supporting Dept. $160,000 MSJ (“Pacheco $160,000 Verif.”) ¶¶ 6-8 and Exs. B-D]

4. The Department moved for summary judgment in AHO No. 24.01-006A. The assigned hearing officer denied that motion and conducted a merits hearing. [Dept. $160,000 MSJ, UMF ¶¶ 8-11; AHO D&O No. 24-10, p. 1 and FOF ¶¶ 17, 19]

5. On July 12, 2024, the assigned hearing officer issued D&O No. 24-10, resolving the protest of the November 22, 2023 assessment against Mr. Gardner. [Dept. $160,000 MSJ, UMF ¶¶ 12-13; AHO D&O No. 24-10]

6. D&O No. 24-10 rejected Mr. Gardner’s challenge to the assessment, concluded that Mr. Gardner’s admission of responsibility in the Plea and Disposition Agreement was binding, and rejected Mr. Gardner’s attempt to avoid the assessment based on asserted civil-rights or taxpayer-rights violations connected to the plea or underlying criminal matter. [Dept. $160,000 MSJ, UMF ¶ 13; AHO D&O No. 24-10, p. 9]

7. Mr. Gardner appealed D&O No. 24-10 to the New Mexico Court of Appeals. In that appeal, he argued, among other things, that the Department erred in assessing him personally and that the assessment was not issued in compliance with the Taxpayer Bill of Rights. [Dept. $160,000 MSJ, UMF ¶¶ 14-15; Pacheco $160,000 Verif. ¶ 8 and Ex. D, p. 4; *William Gardner v. New Mexico Tax’n and Revenue Dep’t*, A-1-CA-42090, mem. op. (N.M. Ct. App. May 5, 2025) (nonprecedential)]

8. The Court of Appeals affirmed D&O No. 24-10. [Dept. $160,000 MSJ, UMF ¶¶

16-17; Pacheco $160,000 Verif. ¶¶ 9-10 and Exs. E-F; W*illiam Gardner v. New Mexico Tax'n and Revenue Dep't*, A-1-CA-42090, mem. op. (N.M. Ct. App. May 5, 2025) (nonprecedential)]

9. On November 26, 2025, the Department issued a Final Notice Before Seizure related to the remaining balance on the assessment. The Final Notice Before Seizure identified Letter ID L0888545136 and a remaining balance of $160,173.06. [Dept. $160,000 MSJ, UMF ¶ 19; Pacheco $160,000 Verif. ¶ 11 and Ex. G]

10. The difference between the original $162,534.06 assessment and the $160,173.06 amount identified in later collection documents is attributable to payments applied to the assessment. [Dept. $160,000 MSJ, UMF ¶ 21; Pacheco $160,000 Verif. ¶ 13]

11. On November 26, 2025, the Department filed a Notice of Claim of Tax Lien in Sandoval County concerning the same $160,173.06 balance. The lien associated with that collection activity was later executed and released. [Dept. $160,000 MSJ, UMF ¶¶ 20, 22-23; Pacheco $160,000 Verif. ¶¶ 12, 14-15]

12. On April 30, 2026, Taxpayer filed a formal protest identifying Letter ID No. L0888-5454-5136 and a total amount in controversy of $160,173.03. [Administrative File]

13. In the formal protest concerning Letter ID No. L0888-5454-5136, Taxpayer asserted, in substance, that collection or assessment of the liability against him personally was improper, raised constitutional and Tax Administration Act objections, referred to a prior summary judgment ruling, and requested complete abatement and an exoneration letter. [Administrative File]

14. In the current protest concerning the approximately $160,000 liability, Mr. Gardner again challenges the Department's authority to assess or collect the liability from him personally. He again argues, among other things, that gross receipts tax cannot be assessed or

collected from him personally, that the Department used an incorrect CRS/BTID account or Social Security number, that Department documents improperly reference "DDS," his professional association, his former spouse, or other persons or identifiers, that a prior November 13, 2023 abatement bars collection, and that the Department violated the Taxpayer Bill of Rights, due process, and other legal protections. In his June 1, 2026 motion for summary judgment, Taxpayer further contends that the November 22, 2023 assessment and November 26, 2025 Final Notice Before Seizure are void because they use an incorrect account or identifier; that the assessment is untimely under Section 7-1-18; that the November 13, 2023 abatement precludes the assessment; that the plea agreement covers only two months and criminal restitution is not a civil tax assessment; and that the Department may not rely on the presumption of correctness. [Pacheco $160,000 Verif. ¶ 5 and Ex. A; Dept. $160,000 MSJ, UMF ¶ 18; Taxpayer's Consolidated Response in Opposition to Department's Partial Motion to Dismiss; Protestant's Motion for Summary Judgment and Incorporated Memorandum of Points and Authorities ("Taxpayer MSJ"); Taxpayer's Motion in Limine to Limit the Scope of the Merits Hearing, to Preclude Preclusive or Controlling Effect of the 2024 Decision, and to Compel Discovery concerning BTID 03-637127-00-0 ("Taxpayer Motion in Limine"), and Exs. 2, 3, 5]

15. Although the caption contains references to William Gardner DDS and William Gardner DDS PA, the operative dispute concerning the approximately $160,000 liability is whether the Department may continue collection activity against Mr. Gardner on the personal assessment previously adjudicated in AHO No. 24.01-006A.

B. <u>The $1,424.95 Lien Protest</u>

16. Separately, the Department issued Notices of Assessment of Taxes and Demand for Payment to William Gardner DDS on January 10, 2022 for unpaid gross receipts tax, on

January 18, 2022 for unpaid compensating tax, on September 27, 2023 for unpaid corporate income tax, and on February 12, 2024 for unpaid corporate income tax. The Department mailed copies of those assessments to the address maintained with the Department. [Department's Motion for Partial Summary Judgment directed to the $1,424.95 lien protest ("Dept. Lien MSJ"), UMF ¶¶ 1-4; Verification of Nicholas Pacheco supporting Dept. Lien MSJ ("Pacheco Lien Verif.") ¶¶ 5-8 and Exs. A-D]

17. On January 12, 2026, the Department issued a Notice of Intent to Lien concerning the unpaid liabilities described in the Department's lien motion. [Dept. Lien MSJ, UMF ¶ 5; Pacheco Lien Verif. ¶ 9 and Ex. E]

18. On February 2, 2026, the Department filed Notice of Claim of Tax Lien No. 1129031 in Bernalillo County, New Mexico. Notice of Claim of Tax Lien No. 1129031 identified an unpaid amount of $1,424.95. [Dept. Lien MSJ, UMF ¶ 6; Pacheco Lien Verif. ¶ 10 and Ex. E; Taxpayer's Formal Protest attached to Pacheco Lien Verif. as Ex. F]

19. The Department mailed a copy of Notice of Claim of Tax Lien No. 1129031 to Taxpayer at the address maintained with the Department. [Dept. Lien MSJ, UMF ¶ 7; Pacheco Lien Verif. ¶ 11]

20. On or about February 20, 2026, Taxpayer filed a formal protest concerning the $1,424.95 lien. [Dept. Lien MSJ, UMF ¶ 8; Pacheco Lien Verif. ¶ 12 and Ex. F]

21. On April 30, 2026, Taxpayer filed a Request for Hearing with AHO concerning Letter ID No. L1374183664. The Request for Hearing identified William Gardner DDS PA as the taxpayer, indicated that the protest arose from an assessment of tax, and identified gross receipts tax and corporate income/franchise tax as tax programs in dispute. [Administrative File]

22. The Request for Hearing concerning Letter ID No. L1374183664 identified a total

amount in controversy of $1,424.95. The Department's exhibit copy of the lien schedule for Notice of Claim of Tax Lien No. 1129031 identifies $923.32 in tax, $248.02 in penalty, and $253.61 in interest, for a total amount of $1,424.95. [Administrative File; Pacheco Lien Verif. Ex. E]

23. The record concerning the $1,424.95 lien includes the Request for Hearing identifying William Gardner DDS PA, taxpayer identification number ending 4937, Lien No. 1129031, and a total amount in controversy of $1,424.95. The Department's exhibit copy of Notice of Claim of Tax Lien No. 1129031 identifies "GARDNER WILLIAM C DDS," FEIN ending 4937, a Bernalillo County filing, and a total amount of $1,424.95. The lien schedule identifies the tax programs, periods, tax, penalty, interest, and total included in the lien. [Administrative File; Pacheco Lien Verif. Exs. E-F]

24. The Request for Hearing concerning Letter ID No. L1374183664 indicated that Taxpayer was self-represented, that the hearing was requested by Taxpayer, and that Taxpayer requested a scheduling hearing rather than an immediate merits hearing. [Administrative File]

25. Taxpayer disputed the taxpayer identity, taxpayer name, FEIN, CRS/BTID, letter identifier, and account identifier associated with the $1,424.95 lien and requested discovery concerning the taxpayer identifiers used on the assessment, Notice of Intent to Lien, and lien, including documents reconciling any FEIN to BTID 02-368292-00-2. AHO has considered those identity and identifier arguments for purposes of determining whether Taxpayer established a statutory basis for release or extinguishment of Notice of Claim of Tax Lien No. 1129031. [Taxpayer's June 11, 2026 discovery requests concerning Notice of Claim of Tax Lien No. 1129031]

26. Taxpayer has not paid all or any part of the $1,424.95 lien. Notice of Claim of Tax

Lien No. 1129031 was filed in 2026, and ten years have not passed since its filing. [Dept. Lien MSJ, UMF ¶¶ 6, 9; Pacheco Lien Verif. ¶¶ 10, 13 and Ex. E]

C. <u>Procedural Background, Consolidation, And Dispositive-Motion Practice</u>

27. On May 6, 2026, AHO issued a Notice of Videoconference Merits Hearing, assigned the matter to Hearing Officer Dee Dee Hoxie, and set a merits hearing for June 29, 2026. [Administrative File]

28. On May 6, 2026, Taxpayer filed a notice of peremptory excusal of Hearing Officer Hoxie. [Administrative File]

29. On May 7, 2026, Chief Hearing Officer Brian VanDenzen reassigned the matter to Hearing Officer Chris Romero and advised that the May 6, 2026 Notice of Videoconference Merits Hearing remained valid and in effect except for the change in hearing officer assignment. [Administrative File]

30. On May 8, 2026, David Mittle entered his appearance for the Department in substitution for prior counsel. [Administrative File]

31. Also on May 8, 2026, AHO entered an Order Consolidating Tax Protests, consolidating under AHO Case No. 26.05-008A the protest involving the approximately $160,173.06 amount and the protest involving Letter ID L1374183664 in the amount of $1,424.95. The Order Consolidating Tax Protests provided that the hearing on the consolidated matters would proceed under the May 6, 2026 Notice of Videoconference Merits Hearing. [Administrative File]

32. On May 12, 2026, the Department filed its Original Answer. The Department asserted that the approximately $160,000 protest was barred by res judicata and collateral estoppel and that the separate protest concerning the smaller lien amount was barred by Section

7-1-24. [Administrative File]

33. On May 19, 2026, the Department filed a Partial Motion to Dismiss directed to the approximately $160,000 protest, arguing that the protest was barred by res judicata because the same assessment had already been adjudicated in AHO No. 24.01-006A and affirmed on appeal. [Administrative File]

34. On May 28, 2026, Taxpayer filed a Consolidated Response in Opposition to the Department's Partial Motion to Dismiss. In addition to opposing dismissal, Taxpayer requested that AHO determine as a matter of law that the November 2023 reassessment and the November 2025 demand were void or otherwise unenforceable and abate the approximately $160,000 liability in full. On June 1, 2026, Taxpayer filed Protestant's Motion for Summary Judgment and Incorporated Memorandum of Points and Authorities, seeking summary judgment on the approximately $160,000 protest and abatement of the November 22, 2023 assessment and November 26, 2025 collection demand. [Administrative File; Taxpayer's Consolidated Response in Opposition to the Department's Partial Motion to Dismiss; Taxpayer MSJ]

35. On June 2, 2026, the Department filed a Motion for Partial Summary Judgment directed to the approximately $160,000 protest, supported by exhibits and the verification of Nicholas Pacheco. [Administrative File; Dept. $160,000 MSJ; Pacheco $160,000 Verif.]

36. After filing the June 2, 2026 Motion for Partial Summary Judgment directed to the approximately $160,000 protest, the Department withdrew its earlier Partial Motion to Dismiss. [Administrative File]

37. Also on June 2, 2026, the Department filed a separate Motion for Partial Summary Judgment directed to the $1,424.95 lien protest, supported by exhibits and a separate verification of Nicholas Pacheco. [Administrative File; Dept. Lien MSJ; Pacheco Lien Verif.]

38. On June 2, 2026, the Department filed a Motion to Strike Gardner's Motion for Summary Judgment, directed to Taxpayer's June 1, 2026 motion. [Administrative File; Department's Motion to Strike Gardner's Motion for Summary Judgment]

39. On June 3, 2026, Taxpayer filed a response opposing the Department's motion to strike, requesting that AHO rule on the merits of his June 1, 2026 motion, and requesting sanctions. [Administrative File; Taxpayer's Response in Opposition to the Department's Motion to Strike Taxpayer's Motion for Summary Judgment and for Sanctions]

40. On June 11, 2026, Taxpayer filed a response opposing the Department's Motion for Partial Summary Judgment directed to the $1,424.95 lien protest. In that response, Taxpayer stated that he intended to file his own motion for summary judgment directed to the lien assessment after discovery and separately stated that his June 1, 2026 Motion for Summary Judgment directed to the approximately $160,000 protest remained pending. No separately captioned motion for summary judgment directed to the $1,424.95 lien protest was filed. [Administrative File; Taxpayer's Response in Opposition to the Department's Motion for Partial Summary Judgment]

41. On June 16, 2026, AHO held a telephonic prehearing conference. William Gardner appeared representing himself. David Mittle appeared for the Department, accompanied by Nicholas Pacheco. The parties were afforded an opportunity to address the pending dispositive motions, procedural issues, discovery, subpoenas, witnesses, and scheduling. [Administrative File]

42. Taxpayer filed written responses, exhibits, and arguments in opposition to the Department's dispositive filings, requested affirmative dispositive relief concerning the approximately $160,000 protest in his May 28, 2026 Consolidated Response and June 1, 2026

Motion for Summary Judgment, and addressed the dispositive issues at the June 16, 2026 prehearing conference. [Administrative File; Taxpayer MSJ]

D. Discovery, Subpoenas, Depositions, Witnesses, Motion in Limine, and Related Procedural Requests

43. On May 7, 2026, Taxpayer filed a request for production of documents. [Administrative File]

44. On May 10, 2026, Taxpayer filed a witness list identifying numerous anticipated witnesses, including witnesses associated with the Department, the Office of Superintendent of Insurance, the district attorney, and Delta Dental. [Administrative File]

45. On or about May 10 or 11, 2026, Taxpayer served combined discovery requests directed to the Department. The discovery document is dated May 11, 2026, while the certificate of service and a separately filed certificate identify May 10, 2026 as the service date. [Administrative File; Taxpayer's Combined First and Second Sets of Discovery Requests; Certificate of Service]

46. On May 20, 2026, AHO entered a Supplemental Order Setting Prehearing Conference and Requiring Witness Proffers. The Supplemental Order set a June 16, 2026 prehearing conference, required witness lists and proffers by June 5, 2026, set deadlines for motions or objections concerning witnesses or subpoenas, and stated that the merits hearing would be limited to issues properly raised by the protest and the Department's answer. [Administrative File]

47. In order to facilitate consideration of the various objections or motions, AHO on May 21, 2026 entered an Order Requiring Filing of Certificates of Service and Responses to Subpoena-Related Motions. [Administrative File]

48. In May 2026, subpoena-related motions and objections were filed by or

concerning various nonparties and the Department, including filings relating to subpoenas directed to Cabinet Secretary Stephanie Schardin Clarke. [Administrative File]

49. On May 22, 2026, Taxpayer filed a response to the motion to quash and request for protective order directed to Cabinet Secretary Stephanie Schardin Clarke. [Administrative File]

50. On May 22, 2026, AHO entered an Order on Cabinet Secretary Stephanie Schardin Clarke's Motion to Quash and for Protective Order, quashing the subpoena and document production directed to the Cabinet Secretary and requiring any future request for her testimony or documents to comply with applicable law and demonstrate relevance, materiality, necessity, non-duplication, and the absence of a less burdensome source. [Administrative File]

51. Also on May 22, 2026, AHO entered an Order Temporarily Staying Issuance, Service, and Enforcement of Subpoenas. The order stayed existing subpoenas, prohibited new subpoenas without leave of the Hearing Officer, reserved remaining subpoena-related issues, and provided that remaining subpoena, witness, or scheduling issues would be addressed as appropriate at the June 16, 2026 prehearing conference. [Administrative File]

52. On June 11, 2026, Taxpayer filed a Motion to Compel Discovery Responses and for Expedited Consideration, requesting, among other relief, compelled discovery responses, admissions or adverse inferences, and deferral of the Department's pending dispositive motion until discovery was completed. [Administrative File; Taxpayer's Motion to Compel Discovery Responses and for Expedited Consideration]

53. On June 15, 2026, the Department filed objections concerning witnesses and anticipated testimony. [Administrative File]

54. The pre-hearing conference occurred on June 16, 2026 at which time the parties

were heard on all issues outstanding as of that date, including the determination to continue the merits hearing originally noticed for June 29, 2026 to August 12, 2026. [Administrative File]

55. On June 18, 2026, Taxpayer filed a Motion in Limine to Limit the Scope of the Merits Hearing, to Preclude Preclusive or Controlling Effect of the 2024 Decision, and to Compel Discovery concerning BTID 03-637127-00-0. [Taxpayer Motion in Limine]

56. On July 2, 2026, the Department filed a Motion to Strike Taxpayer's Motion in Limine. [Department's Motion to Strike Taxpayer's Motion in Limine]

57. On July 3, 2026, Taxpayer filed a Motion for Clarification of the Discovery Schedule and, in the alternative, to permit depositions and compel outstanding discovery. [Taxpayer's Motion for Clarification of the Discovery Schedule and, in the Alternative, to Permit Depositions and Compel Outstanding Discovery]

58. As of issuance of this Decision and Order, the pending matters before AHO included the Department's dispositive motions directed to both consolidated protests, Taxpayer's requests for affirmative dispositive relief concerning the approximately $160,000 protest, the Department's motions to strike, and Taxpayer's related requests concerning discovery, subpoenas, depositions, witness testimony, evidentiary limits, hearing scope, and scheduling. [Administrative File]

DISCUSSION

I. Overview

This consolidated case presents two related but distinct disputes.

The first dispute concerns Taxpayer's protest of later collection activity, including the November 26, 2025 Final Notice Before Seizure, relating to the Department's November 22, 2023 assessment issued to William C. Gardner personally in the amount of $162,534.06. That assessment was previously protested in AHO No. 24.01-006A, resolved by Decision and Order No. 24-10, and affirmed on appeal by the New Mexico Court of Appeals. The dispositive question is whether Taxpayer may use this later protest to relitigate the validity of that same personal assessment. He may not.

The second dispute concerns Notice of Claim of Tax Lien No. 1129031, filed in Bernalillo County in the amount of $1,424.95. That lien arises from separate assessments for gross receipts tax, compensating tax, and corporate income tax. The dispositive question is whether Taxpayer has established a statutory basis for release or extinguishment of the lien under the Tax Administration Act. He has not.

The Department moved for partial summary judgment on both protests. Taxpayer opposed the Department's motions and moved for summary judgment in his own favor. Taxpayer also filed or pursued related requests concerning discovery, subpoenas, depositions, witnesses, evidentiary limitations, hearing scope, and scheduling. For the reasons below, the Department is entitled to partial summary judgment on both protests. Taxpayer is not entitled to summary judgment. The remaining procedural, discovery, subpoena, deposition, witness, evidentiary, hearing-scope, and scheduling requests are moot or immaterial in light of the dispositive rulings.

Although the Department's motions were styled as motions for partial summary judgment, the rulings below dispose of all claims, protests, and requests for relief remaining in this consolidated matter.

II. AHO's Authority to Resolve the Pending Motions

AHO has jurisdiction to hear tax protests under the Tax Administration Act. *See* NMSA 1978, Section 7-1B-6(C)(1). In tax protest proceedings, the Rules of Civil Procedure for the

District Courts do not apply unless otherwise specifically prescribed by statute, regulation, or order of the hearing officer. *See* NMSA 1978, Section 7-1B-6(D)(2); Regulation 22.600.3.24(C) NMAC.

The hearing officer must allow the fair and ample presentation of complaints and defenses, hear arguments, permit appropriate discovery, entertain and dispose of motions, and render a decision in accordance with the law and the evidence presented and admitted. *See* NMSA 1978, Section 7-1B-6(D)(2); Regulation 22.600.3.24(C) NMAC. AHO is expressly authorized to decide dispositive motions, including motions for summary judgment, motions for partial summary judgment, and motions to dismiss. *See* NMSA 1978, Section 7-1B-8(G); Regulation 22.600.3.16(I) NMAC.

The Department initially filed a partial motion to dismiss directed to the approximately $160,000 protest. The Department later withdrew that motion and substituted a motion for partial summary judgment supported by exhibits and verification. Accordingly, AHO does not decide the withdrawn motion to dismiss. The operative dispositive filing concerning the approximately $160,000 protest is the Department's motion for partial summary judgment. Taxpayer had notice of the Department's preclusion theory, filed written responses, submitted exhibits and argument, filed his own motion for summary judgment, and addressed the dispositive issues at the June 16, 2026 prehearing conference.

AHO also takes administrative notice of its own file in this consolidated matter and of the prior AHO and appellate proceedings referenced by the parties. The parties submitted or addressed those materials in connection with the pending motions and were afforded an opportunity to respond. AHO considers those materials for the limited purpose of resolving the pending dispositive motions, including the procedural history, finality, scope, and preclusive effect of the prior adjudication.

III. Summary Judgment Standard

Summary judgment is appropriate when there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law. *See Romero v. Philip Morris, Inc.*, 2010-NMSC-035, ¶ 7, 148 N.M. 713; *Koenig v. Perez*, 1986-NMSC-066, ¶¶ 10-11, 104 N.M. 664. Summary judgment is particularly appropriate where the material facts are not genuinely disputed and the issue is the legal effect of those facts. *See Koenig*, 1986-NMSC-066, ¶¶ 10-11.

The moving party bears the initial burden of making a prima facie showing that it is entitled to judgment as a matter of law. *See Romero*, 2010-NMSC-035, ¶ 10; *Roth v. Thompson*, 1992-NMSC-011, ¶ 17, 113 N.M. 331. Once that showing is made, the burden shifts to the opposing party to demonstrate specific evidentiary facts requiring a trial or merits hearing. *See Romero*, 2010-NMSC-035, ¶ 10; *Roth*, 1992-NMSC-011, ¶ 17. Unsupported assertions, legal conclusions, speculation, and allegations that do not create a genuine dispute of material fact are insufficient. *See Romero*, 2010-NMSC-035, ¶¶ 10-11.

A fact is material only if it affects the outcome under the governing substantive law. *See Romero*, 2010-NMSC-035, ¶ 11. Accordingly, factual disputes that are collateral, precluded, outside AHO's jurisdiction, or immaterial under the governing statutes do not prevent summary judgment.

IV. Taxpayer May Not Use the Approximately $160,000 Protest to Relitigate the Prior Assessment

The dispositive issue concerning the approximately $160,000 protest is whether Taxpayer may use a protest of later collection activity to relitigate the validity of the same personal assessment previously adjudicated in AHO No. 24.01-006A and affirmed on appeal. He may not.

Res judicata, also referred to as claim preclusion, bars relitigation of claims that were raised or could have been raised in a prior proceeding. *See Kirby v. Guardian Life Ins. Co. of Am.*, 2010-NMSC-014, ¶ 61, 148 N.M. 106; *Bank of Santa Fe v. Marcy Plaza Assocs.*, 2002-NMCA-014, ¶ 14, 131 N.M. 537. The doctrine relieves parties of the cost and burden of repeated litigation, conserves adjudicatory resources, prevents inconsistent decisions, and promotes reliance on final adjudications. *See Potter v. Pierce*, 2015-NMSC-002, ¶ 10, 342 P.3d 54; *Computer One, Inc. v. Grisham & Lawless, P.A.*, 2008-NMSC-038, ¶ 31, 144 N.M. 424.

A party asserting claim preclusion must establish that: (1) there was a final judgment in an earlier action; (2) the earlier judgment was on the merits; (3) the parties in the two proceedings are the same or in privity; and (4) the cause of action is the same in both proceedings. *See Potter*, 2015-NMSC-002, ¶ 10; *Kirby*, 2010-NMSC-014, ¶ 61; *Deflon v. Sawyers*, 2006-NMSC-025, ¶ 2, 139 N.M. 637. Whether claim preclusion applies is a question of law. *See Kirby*, 2010-NMSC-014, ¶ 61.

New Mexico applies a transactional approach to determine whether two proceedings involve the same cause of action. *See Potter*, 2015-NMSC-002, ¶ 11; *Three Rivers Land Co. v. Maddoux*, 1982-NMSC-111, ¶ 27, 98 N.M. 690, overruled on other grounds by *Universal Life Church v. Coxon*, 1986-NMSC-086, 105 N.M. 57. Under that approach, claims arising from a common nucleus of operative facts are treated as the same cause of action for preclusion purposes. *See Potter*, 2015-NMSC-002, ¶¶ 11-14; *Anaya v. City of Albuquerque*, 1996-NMCA-092, ¶¶ 8, 12, 122 N.M. 326. Claim preclusion also requires consideration of whether the party against whom preclusion is asserted had a full and fair opportunity to litigate. *See Potter*, 2015-NMSC-002, ¶ 15; *Brooks Trucking Co. v. Bull Rogers, Inc.*, 2006-NMCA-025, ¶ 11, 139 N.M. 99.

Administrative adjudications may have preclusive effect when the agency acted in a judicial capacity, resolved issues properly before it, and the parties had an opportunity to fully and fairly litigate. *See Shovelin v. Central N.M. Elec. Coop., Inc.*, 1993-NMSC-015, ¶¶ 10-14, 115 N.M. 293. AHO No. 24.01-006A was an adjudicative tax protest proceeding conducted under the Tax Administration Act and the Administrative Hearings Office Act. Mr. Gardner also pursued appellate review under Section 7-1-25. This case therefore presents stronger grounds for preclusion than an informal or expedited administrative determination. The prior AHO proceeding involved the same assessment, the same taxpayer, a merits hearing, a written decision, and direct appellate review. An appeal from an AHO decision is on the record and is not de novo, and if no timely appeal is taken the hearing officer's decision is conclusive. *See* NMSA 1978, Section 7-1-25(A). Where, as here, appellate review was pursued and the decision was affirmed, the adjudication is final between the parties.

The Department has established the elements of claim preclusion. First, there was a final decision in the prior proceeding. D&O No. 24-10 resolved Taxpayer's protest of the November 22, 2023 assessment, and the Court of Appeals affirmed that decision. The fact that the appellate disposition was nonprecedential does not prevent it from having finality between these parties. Rule 12-405(A) NMRA provides that nonprecedential dispositions are not precedent, but may be cited for persuasive value and under the doctrines of law of the case, claim preclusion, and issue preclusion. Thus, the appellate disposition does not have precedential value for unrelated cases, but it does not lack finality between the parties to that appeal.

Second, the prior decision was on the merits. The assigned hearing officer denied the Department's summary judgment motion, conducted a merits hearing, and issued a decision resolving the validity of the assessment. Mr. Gardner therefore received a full and fair opportunity to litigate the issues he now seeks to raise again. He also pursued appellate review.

Third, the parties are the same for preclusion purposes. The prior proceeding involved William C. Gardner personally and the Department. The present protest again seeks to prevent the Department from collecting the same personal assessment from Mr. Gardner. Although the caption in this consolidated matter contains references to William Gardner DDS and William Gardner DDS PA, and although some Department documents contain references to "DDS," the operative dispute concerning the approximately $160,000 balance concerns the Department's assessment and collection of the liability from Mr. Gardner personally. That is the same dispute that was presented in AHO No. 24.01-006A.

To the extent Taxpayer relies on the caption's reference to William Gardner DDS or William Gardner DDS PA to argue that the current protest involves a different party, AHO rejects that argument. The operative relief sought in the approximately $160,000 protest is relief from collection of the same personal assessment previously issued to and adjudicated against William C. Gardner. Taxpayer's own protest challenges collection from him personally and asserts that the Department may not assess or collect the liability from him individually. The caption's business-name references do not alter the identity of the real party in interest for purposes of claim preclusion. In any event, the interests asserted in the current protest are aligned with, controlled by, and derivative of Mr. Gardner's challenge to the same personal assessment previously adjudicated in AHO No. 24.01-006A.

Fourth, the cause of action is the same. Both proceedings arise from the Department's November 22, 2023 assessment issued in the amount of $162,534.06 based on the unpaid-tax restitution obligation contained in Mr. Gardner's Plea and Disposition Agreement. Both proceedings concern whether the Department may assess and collect that liability from Mr. Gardner personally. Both proceedings involve the same common nucleus of operative facts: the plea agreement, the restitution amount, the Department's issuance of the assessment, Mr. Gardner's contention that he is not personally liable for gross receipts tax, and his assertion that the Department lacked authority or failed to comply with taxpayer-rights requirements.

The present proceeding includes later collection activity, including the November 26, 2025 Final Notice Before Seizure. But later collection activity does not create a new cause of action on the merits of the already-adjudicated assessment. A taxpayer may protest an assessment or other application of the Tax Administration Act in the manner and within the time provided by Section 7-1-24. *See* NMSA 1978, Section 7-1-24(A), (B), (E). If a taxpayer fails to timely protest an assessment, the undisputed amount assessed and not protested becomes final, the taxpayer is deemed to have waived the right to protest the assessment, and the Secretary may proceed to enforce collection if the taxpayer is delinquent. *See* NMSA 1978, Section 7-1-24(F). Here, Mr. Gardner timely protested the November 22, 2023 assessment, but that protest was adjudicated against him and affirmed on appeal. The later collection notice did not reopen the underlying assessment, create a new opportunity to litigate personal liability, or permit Taxpayer to raise again arguments that were or could have been raised in the prior protest and appeal.

AHO does not hold that collection activity can never be protested under Section 7-1-24. Section 7-1-24 permits a taxpayer to dispute certain applications of the Tax Administration Act and certain peremptory notices or demands. The point here is narrower. Even assuming the November 26, 2025 Final Notice Before Seizure was protestable as later collection activity, the scope of that protest did not include a renewed merits challenge to the November 22, 2023 assessment after that assessment had already been adjudicated and affirmed on appeal.

Taxpayer's arguments concerning allegedly incorrect BTID, CRS account, Social Security number, taxpayer name, professional association, former spouse, and other identifiers do not avoid claim preclusion. AHO recognizes that Taxpayer places substantial emphasis on those asserted defects. He argues that gross receipts tax may be imposed only on a person engaging in business, that the Department may not impose gross receipts tax on the wrong taxpayer, and that Department records or account identifiers show that the assessment or collection activity was directed to the wrong person or account. Even assuming those arguments would be relevant in an original protest of the assessment, they do not defeat preclusion here. Taxpayer's personal-liability theory was central to the prior protest. He argued in the prior matter that he was an individual and did not owe gross receipts tax personally. He also challenged the Department's authority to assess him based on the plea agreement and restitution obligation. Those arguments were rejected in D&O No. 24-10 and on appeal. Claim preclusion bars not only claims actually raised, but also claims arising from the same transaction that could have been raised in the first proceeding. *See Kirby*, 2010-NMSC-014, ¶ 61; *Bank of Santa Fe*, 2002-NMCA-014, ¶ 14.

Taxpayer's citation to *New Mexico Depo v. New Mexico Taxation & Revenue Department*, 2021-NMCA-011, 485 P.3d 773, does not change this result. *New Mexico Depo* involved a timely protest of the original gross receipts tax assessment and addressed whether substantial evidence supported the hearing officer's merits determination that the assessed taxpayer was the person engaging in business during the taxable period. The Court of Appeals held that gross receipts tax may be imposed only on the person engaging in business and reversed because the record showed that the LLC, not the individual taxpayer as sole proprietor, was the person engaging in business during the period at issue.

This case is materially different. The approximately $160,000 protest is not a timely original merits protest of a newly issued gross receipts tax assessment based solely on

Department registration records. It is a later protest of collection activity on the same personal assessment that was already protested, adjudicated in AHO No. 24.01-006A, and affirmed on appeal. *New Mexico Depo* did not involve a prior final administrative decision, an affirmed appeal, a criminal plea and restitution obligation, or a taxpayer's attempt to use later collection activity to relitigate personal liability after final adjudication. Accordingly, *New Mexico Depo* may describe the merits inquiry that can apply in a timely original assessment protest, but it does not authorize AHO to disregard claim preclusion, reopen the November 22, 2023 assessment, or conduct a second merits hearing on issues that were or could have been raised in the prior protest and appeal.

New Mexico Depo would be most material in a timely original assessment protest before final adjudication of the assessed taxpayer's liability. It does not create an exception to claim preclusion after the assessment has been finally adjudicated.

Nor does any alleged imprecision in later collection documents transform the November 26, 2025 Final Notice Before Seizure into a new assessment. AHO's ruling does not depend on whether every later Department collection document used the most precise taxpayer name, account label, or identifier. The dispositive point is that the record identifies the November 26, 2025 Final Notice Before Seizure as collection activity on the same November 22, 2023 assessment previously sustained in AHO No. 24.01-006A and affirmed on appeal. The Department's verified evidence explains that the difference between the original $162,534.06 assessment and the later approximately $160,000 balance resulted from payments applied to the assessment. Taxpayer has not identified evidence showing that the Department issued a new assessment in 2025 or that the later collection notice created a new substantive liability.

Taxpayer's reliance on the November 13, 2023 abatement also does not avoid preclusion.

Taxpayer argues that the abatement extinguished the relevant tax liability and bars the Department from collecting the later personal assessment. The argument is not persuasive in this procedural posture. The personal assessment at issue in AHO No. 24.01-006A was issued after the abatement on which Taxpayer relies. Taxpayer protested that personal assessment. The assigned hearing officer considered the parties' evidence and arguments and sustained the assessment. The Court of Appeals affirmed. If Taxpayer believed the November 13, 2023 abatement barred the later personal assessment, that issue arose from the same common nucleus of operative facts and was required to be raised in the prior protest and appeal. *See Potter*, 2015-NMSC-002, ¶¶ 11-15; *Kirby*, 2010-NMSC-014, ¶ 61. AHO cannot use the earlier abatement to nullify the later final adjudication. To do so would permit an administrative collateral attack on D&O No. 24-10.

Taxpayer's arguments concerning the Office of Superintendent of Insurance, the criminal prosecution, alleged misrepresentations in the criminal matter, the legal effect of his no-contest plea, and the validity or effect of his plea agreement also do not defeat the Department's motion. AHO hears tax protests under the Tax Administration Act. *See* NMSA 1978, Section 7-1B-6(C)(1). Nothing in the tax protest statutes authorizes AHO to reopen, supervise, or modify a criminal proceeding. *See* NMSA 1978, Sections 7-1B-8(K), 7-1-24(I). AHO is not the criminal court. It does not have authority in this tax protest to vacate a criminal plea agreement, modify a criminal restitution obligation, adjudicate claims against OSI, determine whether a criminal prosecution was properly initiated, or award civil-rights relief. To the extent those matters were relevant to the validity of the Department's assessment, they were or could have been raised in the prior protest and appeal. To the extent they constitute independent challenges to the criminal case or alleged civil-rights violations, they belong in a different forum.

Taxpayer's Taxpayer Bill of Rights, due process, statute of limitations, no-contest plea, restitution-versus-tax, taxpayer-identity, and civil-rights arguments likewise do not create a triable issue in this proceeding. Those arguments either were raised, were necessarily implicated, or could have been raised in the prior protest and appeal. A party may not avoid claim preclusion by presenting a new version of an old claim through additional labels, facts, or legal theories after the first proceeding has become final. *See Kirby*, 2010-NMSC-014, ¶ 61; *Bank of Santa Fe*, 2002-NMCA-014, ¶ 14.

The Department is therefore entitled to partial summary judgment on the approximately $160,000 protest. Taxpayer's renewed challenge to the validity or personal enforceability of the November 22, 2023 assessment is barred by claim preclusion and constitutes an impermissible collateral attack on the prior administrative and appellate adjudication.

V. The $1,424.95 Lien Protest Does Not Establish a Basis for Release or Extinguishment

The $1,424.95 protest is analytically separate from the approximately $160,000 protest because it concerns Notice of Claim of Tax Lien No. 1129031, filed in Bernalillo County. The question is not whether Taxpayer may relitigate each underlying assessment included in the lien. The question is whether Taxpayer has established a statutory basis for release or extinguishment of the filed lien. AHO therefore considers Taxpayer's identity and identifier arguments only to the extent they bear on whether the filed lien itself complied with sections 7-1-38 and 7-1-39.

Under the Tax Administration Act, if a person liable for tax neglects or refuses to pay after assessment and demand, the amount of tax becomes a lien in favor of the State of New Mexico upon all property and rights to property of that person. *See* NMSA 1978, Section 7-1-37(A). The lien arises when assessment and demand have been made and continues until the liability is satisfied, extinguished, or released. *See* NMSA 1978, Section 7-1-37(B). A notice of lien may be recorded in any county in the state or with the Secretary of State, and recording of the notice is effective as to all property and rights to property of the taxpayer. *See* NMSA 1978, Section 7-1-38.

Once a tax lien has been filed, Section 7-1-39 governs release or extinguishment. A lien must be released or partially released when any substantial part of the amount of tax due is paid. *See* NMSA 1978, Section 7-1-39(A). The Department may release or partially release a lien when the filing was premature, did not follow requirements of law, or when release or partial release would facilitate collection. *See* NMSA 1978, Section 7-1-39(B). A lien is extinguished by operation of law when ten years have passed from the date the notice of lien was filed. *See* NMSA 1978, Section 7-1-39(C).

Section 7-1-39 does not provide a general opportunity to relitigate the underlying assessments whenever a lien is filed. A taxpayer who wishes to dispute an assessment must do so within the time and manner provided by Section 7-1-24. *See* NMSA 1978, Section 7-1-24(E). If the taxpayer fails to timely protest an assessment, the undisputed amount assessed and not protested becomes final, the taxpayer is deemed to have waived the right to protest the assessment, and the Secretary may proceed to enforce collection if the taxpayer is delinquent. *See* NMSA 1978, Section 7-1-24(F).

The Department made a prima facie showing that Notice of Claim of Tax Lien No. 1129031 was filed after the Department issued assessments and a Notice of Intent to Lien. The Department submitted verified evidence that the assessments were mailed to the taxpayer's address of record, that Notice of Claim of Tax Lien No. 1129031 was filed in Bernalillo County, that the unpaid amount was $1,424.95, that Taxpayer has not paid all or any part of the lien, and that ten years have not passed since the lien was filed.

Taxpayer disputes the taxpayer identity, taxpayer name, FEIN, CRS/BTID, letter identifier, and account identifier associated with Notice of Claim of Tax Lien No. 1129031. AHO has considered those arguments for the limited purpose for which they are material in this lien protest: whether the notice of lien failed to identify the taxpayer whose liability was sought to be enforced, whether the lien was filed against property or rights to property of a person whose liability was not identified in the notice, or whether an identity or identifier defect otherwise establishes that the lien was premature or did not follow requirements of law. *See* NMSA 1978, Sections 7-1-38, 7-1-39(B).

On the record presented, Taxpayer has not established a genuine dispute of material fact requiring a merits hearing on that limited lien-identity issue. The protest concerning the $1,424.95 amount was associated with Letter ID No. L1374183664 and concerned Notice of Claim of Tax Lien No. 1129031. The Department's exhibit copy of the recorded lien identifies Notice of Claim of Tax Lien No. 1129031, the taxpayer name, the taxpayer identifier ending 4937, the Bernalillo County filing, the amount of $1,424.95, the tax programs and filing periods included in the lien, and a schedule allocating the total among tax, penalty, and interest. Taxpayer's Request for Hearing likewise identified William Gardner DDS PA, taxpayer identification number ending 4937, Letter ID No. L1374183664, and the same $1,424.95 amount. Although the record contains different letter identifiers or name styles associated with the lien and related documents, the parties' filings and exhibits identify the same filed lien number, the same amount, the same taxpayer identifier ending 4937, and the same collection matter. Taxpayer has not shown that any letter-ID, caption, name-style, or identifier discrepancy caused the lien to be filed against property or rights to property of a person whose liability was not identified in the notice.

To the extent Taxpayer contends that the underlying assessments should not have been issued to William Gardner DDS, William Gardner DDS PA, or an account associated with FEIN ending 4937 or a particular BTID, that argument challenges the validity of the assessments rather than the statutory sufficiency of the filed lien notice. Such an argument was required to be raised through a timely protest of the underlying assessments under Section 7-1-24. A protest of a later-filed lien does not revive the time to contest the merits of assessments that have become final by operation of law. The identity and identifier arguments are therefore rejected on the merits to the extent they challenge the statutory sufficiency of Notice of Claim of Tax Lien No. 1129031, and rejected as untimely to the extent they seek to reopen the underlying assessments.

Nor does *New Mexico Depo* require release or extinguishment of Notice of Claim of Tax Lien No. 1129031. Unlike *New Mexico Depo*, this protest concerns a filed lien and the limited statutory grounds for release or extinguishment under Section 7-1-39. AHO has considered Taxpayer's taxpayer-identity and taxpayer-identifier arguments for purposes of statutory lien compliance, but a lien protest does not revive the time to litigate the merits of the underlying assessments. *New Mexico Depo* therefore does not establish that this lien was premature, failed to follow requirements of law, or is otherwise subject to release or extinguishment.

Taxpayer also asserted that he did not receive one or more assessments and that he believes the amounts were paid or otherwise incorrect. Those assertions do not defeat summary judgment on the record presented. The Department submitted verified evidence of mailing and nonpayment. Taxpayer has not submitted evidence sufficient to create a genuine dispute of material fact concerning payment, abatement, premature filing, unlawful filing, extinguishment by operation of time, or any other statutory basis for lien release under Section 7-1-39.

AHO does not hold that a taxpayer can never obtain relief from a tax lien in a proper case. AHO concludes only that, on this record, Taxpayer has not identified evidence or law that would permit release or extinguishment of Notice of Claim of Tax Lien No. 1129031 or permit relitigation of the underlying assessments through this lien protest. The Department is therefore entitled to partial summary judgment on the $1,424.95 lien protest.

VI. Taxpayer Is Not Entitled to Summary Judgment

Taxpayer's June 1, 2026 motion seeks summary judgment on the approximately $160,000 protest. He advances five related theories: (1) the November 22, 2023 assessment and November 26, 2025 Final Notice Before Seizure are void because they use an incorrect CRS/BTID, Social Security number, taxpayer name, or other identifier; (2) the assessment is untimely under Section 7-1-18; (3) the November 13, 2023 abatement precludes the Department from enforcing the assessment; (4) the plea agreement covers only two months and criminal restitution cannot support the multi-period civil assessment; and (5) the Department cannot rely on the presumption of correctness or otherwise carry the summary-judgment burden.

None of those theories entitles Taxpayer to judgment. With the limited exception of identifying details appearing for the first time in the 2025 collection notice, each theory attacks the validity of the November 22, 2023 assessment itself. That assessment was the subject of AHO No. 24.01-006A, a merits hearing, D&O No. 24-10, and an unsuccessful appeal. Claim preclusion bars a party from relitigating the same claim by offering a new legal theory, a different characterization of the claim, or additional evidence that was available in the first proceeding. *See Kirby*, 2010-NMSC-014, ¶ 61; *Bank of Santa Fe*, 2002-NMCA-014, ¶ 14.

Taxpayer's description of the assessment as "void" does not change the analysis. The asserted account, limitations, abatement, plea-scope, restitution, and burden-of-proof defects are merits challenges to the assessment. Taxpayer has not identified a jurisdictional defect in AHO

No. 24.01-006A or authority permitting AHO to collaterally disregard that final adjudication in a later protest of collection activity.

Section 7-1-18 governs the time within which an assessment may be made. The November 26, 2025 Final Notice Before Seizure was collection activity on the previously adjudicated assessment, not a new assessment. Any limitations defense to the November 22, 2023 assessment was available in the prior protest. AHO therefore does not reach which limitations period would have applied had the issue been timely litigated in the original assessment protest.

The same is true of the November 13, 2023 abatement and the asserted scope or legal effect of the plea agreement. The abatement predated both the November 22, 2023 assessment and the prior protest, and its asserted preclusive effect could have been presented in AHO No. 24.01-006A. The prior decision also expressly resolved the Department's reliance on the plea agreement and restitution obligation, and that decision was affirmed. The earlier abatement does not authorize AHO in this later proceeding to disregard the subsequent final adjudication of the personal assessment.

To the extent Taxpayer relies on identifying details that first appeared in the November 26, 2025 collection notice, AHO does not treat those facts as having been available in the prior case. They nevertheless do not establish entitlement to judgment. The undisputed record identifies the notice as collection activity on the same November 22, 2023 assessment and explains the lower balance as the result of payments. Taxpayer has not identified evidence that the Department made a new assessment in 2025, imposed a new substantive liability, or that any identifier discrepancy changed the identity of the adjudicated liability being collected.

Finally, the Department's entitlement to partial summary judgment on the approximately

$160,000 protest rests on the finality and preclusive effect of the prior adjudication, not on the presumption of correctness of the assessment. Taxpayer's arguments concerning the presumption and the Department's merits burden therefore do not create a material factual dispute or establish his entitlement to judgment.

Taxpayer's motion for summary judgment is denied.

VII. Discovery, Subpoenas, Depositions, Witnesses, Motion in Limine, and Related Procedural Requests

Taxpayer pursued additional relief concerning discovery, subpoenas, depositions, witnesses, evidentiary limitations, hearing scope, and scheduling. Those requests are denied as moot or immaterial in light of the dispositive rulings.

Section 7-1B-6(D)(2) requires the hearing officer to permit appropriate discovery, and Regulation 22.600.3.17 NMAC provides the procedural framework for discovery in tax protest proceedings. Those provisions do not require discovery into matters that are precluded, collateral, outside AHO's jurisdiction, or immaterial to the issues remaining for decision. Likewise, although a hearing officer may issue subpoenas for attendance of witnesses and production of relevant books and papers, *see* NMSA 1978, Section 7-1B-6(D)(3), subpoena authority does not require a merits hearing or discovery into matters that cannot affect the outcome of a protest.

Because Taxpayer's renewed challenge to the validity or personal enforceability of the November 22, 2023 assessment is barred by claim preclusion, additional discovery concerning BTID origin records, account labels, OSI, the criminal prosecution, communications surrounding the plea agreement, alleged misconduct in the criminal matter, or the Department's later collection documents would not alter the preclusive effect of D&O No. 24-10 and the subsequent appeal. Even accepting Taxpayer's position that Department collection documents contain disputed or confusing identifying information, that would not create a new assessment, defeat the finality of the prior adjudication, or authorize AHO to permit relitigation of the same personal liability. Stated differently, even if the requested discovery confirmed the identifier discrepancies Taxpayer alleges, those facts would not alter the dispositive preclusion analysis.

Because the $1,424.95 lien protest turns on statutory lien compliance and the limited grounds for release or extinguishment under Section 7-1-39, additional discovery concerning the merits of the underlying assessments is likewise immaterial. AHO has considered Taxpayer's identity and identifier objections to the lien for purposes of summary judgment. Even assuming additional discovery would further document those asserted discrepancies, the discrepancies would not establish payment, extinguishment, premature filing, failure to follow filing requirements, or any other statutory basis for release under Section 7-1-39. Additional discovery is unnecessary because the asserted discrepancies, even if treated as raised and preserved, do not establish that the notice of lien failed to identify the taxpayer whose liability was sought to be enforced, do not establish that the lien was filed against property or rights to property of a person whose liability was not identified in the notice, and do not reopen the underlying assessments.

Taxpayer's motion in limine is also denied. Although styled as an evidentiary motion, the filing largely restates Taxpayer's opposition to the Department's preclusion argument and repeats Taxpayer's contention that the November 26, 2025 Final Notice Before Seizure and related collection documents create a new opportunity to litigate the validity of the November 22, 2023 assessment. For the reasons already stated, AHO rejects that contention. The later collection notice does not reopen the assessment previously adjudicated in AHO No. 24.01-006A and affirmed on appeal.

Because the Department is entitled to summary judgment on both consolidated protests, no merits hearing, additional discovery schedule, subpoena enforcement, deposition, witness testimony, or evidentiary limitation is necessary. AHO therefore denies Taxpayer's motion in limine, motion to compel, motion for clarification of the discovery schedule, alternative request for depositions, subpoena-related requests, witness-related requests, evidentiary requests, scheduling requests, and any related prehearing requests as moot or immaterial.

The Department's motions to strike are denied as moot. AHO has considered Taxpayer's filings to the extent relevant and material to the dispositive motions. Denial of the Department's motions to strike does not alter AHO's conclusion that Taxpayer is not entitled to summary judgment and that no further proceedings are required.

VIII. Conclusion

To the extent the approximately $160,000 protest seeks to relitigate the validity or personal enforceability of the November 22, 2023 assessment, it is barred by claim preclusion. The validity of the November 22, 2023 assessment was previously adjudicated in AHO No. 24.01-006A and affirmed on appeal. The November 26, 2025 Final Notice Before Seizure and related collection activity did not create a new assessment or a new right to relitigate the merits of that assessment.

The $1,424.95 lien protest also fails. AHO has considered Taxpayer's taxpayer-identity and taxpayer-identifier arguments as challenges to statutory lien compliance under Sections 7-1-38 and 7-1-39. On the record presented, Taxpayer has not established that Notice of Claim of Tax Lien No. 1129031 failed to identify the taxpayer whose liability was sought to be enforced, was filed against property or rights to property of a person whose liability was not identified in the notice, was premature, failed to follow requirements of law, or was otherwise subject to release or extinguishment. To the extent Taxpayer challenges the correctness of the underlying assessments, the lien protest does not provide a basis to reopen the merits of those assessments after the protest period expired.

Because the Department is entitled to partial summary judgment on both consolidated protests, Taxpayer is not entitled to summary judgment, and the remaining procedural requests are moot or immaterial, no issues remain for merits hearing before AHO. This Decision and Order is therefore a final decision and order of the Administrative Hearings Office, and Taxpayer's protests are denied.

CONCLUSIONS OF LAW

A. AHO has jurisdiction over the parties and the subject matter of these consolidated protests and has authority to resolve the pending dispositive motions. *See* NMSA 1978, Sections 7-1B-6(C)(1), 7-1B-6(D)(2), 7-1B-8(G); Regulations 22.600.3.16(I) NMAC; 22.600.3.24(C) NMAC.

B. Summary judgment is appropriate when there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law. Once the moving party makes a prima facie showing of entitlement to judgment, the opposing party must demonstrate specific evidentiary facts requiring a trial or merits hearing. Unsupported assertions, legal conclusions, and speculation are insufficient. *See Romero v. Philip Morris, Inc.*, 2010-NMSC-035, ¶¶ 7, 10-11, 148 N.M. 713; *Koenig v. Perez*, 1986-NMSC-066, ¶¶ 10-11, 104 N.M. 664; *Roth v. Thompson*, 1992-NMSC-011, ¶ 17, 113 N.M. 331.

C. Claim preclusion bars relitigation of claims that were raised or could have been raised in a prior proceeding when there was a final judgment on the merits, the parties are the same or in privity, and both proceedings involve the same cause of action. New Mexico applies the transactional approach, under which claims arising from a common nucleus of operative facts are treated as the same cause of action. *See Kirby v. Guardian Life Ins. Co. of Am.*, 2010-NMSC-

014, ¶ 61, 148 N.M. 106; *Bank of Santa Fe v. Marcy Plaza Assocs.*, 2002-NMCA-014, ¶ 14, 131 N.M. 537; *Potter v. Pierce*, 2015-NMSC-002, ¶¶ 10-14, 342 P.3d 54; *Anaya v. City of Albuquerque*, 1996-NMCA-092, ¶¶ 8, 12, 122 N.M. 326.

D. Administrative adjudications may have preclusive effect when the agency acted in a judicial capacity, resolved issues properly before it, and the parties had a full and fair opportunity to litigate. *See Shovelin v. Cent. N.M. Elec. Coop., Inc.*, 1993-NMSC-015, ¶¶ 10-14, 115 N.M. 293.

E. The protest of the Department's November 22, 2023 assessment to William C. Gardner was finally adjudicated in AHO No. 24.01-006A, resolved by Decision and Order No. 24-10, and affirmed on appeal. *See William Gardner v. New Mexico Tax'n and Revenue Dep't*, A-1-CA-42090, mem. op (N.M. Ct. App. May 5, 2025) (nonprecedential); *see also* Rule 12-405(A) NMRA.

F. To the extent the present protest challenges the validity, personal enforceability, or underlying merits of the approximately $160,000 assessment, it involves the same parties, the same assessment, and the same common nucleus of operative facts as AHO No. 24.01-006A.

G. The November 26, 2025 Final Notice Before Seizure and related collection activity did not create a new assessment or reopen the merits of the November 22, 2023 assessment. *See* NMSA 1978, Section 7-1-24(F).

H. Taxpayer's challenges to the approximately $160,000 liability, including arguments concerning BTID, Social Security number, taxpayer name, prior abatement, OSI involvement, Taxpayer Bill of Rights, criminal restitution, the scope and effect of the no-contest plea, due process, limitations, the presumption of correctness, and civil-rights issues, are barred to the extent they attack the validity or personal enforceability of the November 22, 2023 assessment because they were raised or could have been raised in the prior protest and appeal. To the extent Taxpayer relies on identifying details first appearing in the November 26, 2025 collection notice, those details do not establish a new assessment, a new substantive liability, or a different taxpayer liability. *See Kirby*, 2010-NMSC-014, ¶ 61; *Bank of Santa Fe*, 2002-NMCA-014, ¶ 14.

I. The Department is entitled to partial summary judgment on the protest challenging the approximately $160,000 liability.

J. If a person liable for tax neglects or refuses to pay after assessment and demand, the amount of tax becomes a lien in favor of the State of New Mexico upon all property and rights to property of that person. A notice of tax lien may be recorded as provided by law and is effective as to all property and rights to property of the taxpayer. *See* NMSA 1978, Sections 7-1-37(A)-(B), 7-1-38.

K. Release or extinguishment of a filed tax lien is governed by NMSA 1978, Section 7-1-39, including payment of a substantial part of the tax due, premature filing, failure to follow legal requirements, facilitation of collection, or extinguishment by operation of law ten years after filing. *See* NMSA 1978, Section 7-1-39(A)-(C).

L. On the record presented, Taxpayer's protest of Notice of Claim of Tax Lien No. 1129031 does not reopen the merits of the underlying assessments or substitute for a timely protest of those assessments. *See* NMSA 1978, Section 7-1-24(E), (F).

M. Taxpayer has not established a statutory basis for release or extinguishment of Notice of Claim of Tax Lien No. 1129031. *See* NMSA 1978, Section 7-1-39(A)-(C).

N. To the extent Taxpayer disputed the taxpayer identity, taxpayer name, FEIN, CRS/BTID, letter identifier, or account identifier associated with Notice of Claim of Tax Lien

No. 1129031, AHO considered that argument as a challenge to statutory lien compliance under Sections 7-1-38 and 7-1-39. Taxpayer did not establish that the notice of lien failed to identify the taxpayer whose liability was sought to be enforced, that the lien was filed against property or rights to property of a person whose liability was not identified in the notice, that the filing was premature, or that the filing otherwise failed to follow requirements of law. To the extent Taxpayer's identity argument challenges the correctness of the underlying assessments, the argument is untimely and does not provide a basis for release or extinguishment of the filed lien. *See* NMSA 1978, Sections 7-1-24(E)-(F), 7-1-38, 7-1-39.

O. The Department is entitled to partial summary judgment on the $1,424.95 lien protest.

P. Taxpayer's June 1, 2026 motion for summary judgment directed to the approximately $160,000 protest is denied.

Q. Taxpayer's pending discovery, subpoena, deposition, witness, evidentiary, scheduling, motion in limine, and clarification requests are denied as moot or immaterial to the dispositive issues. *See* NMSA 1978, Section 7-1B-6(D)(2)-(3); Regulations 22.600.3.17 NMAC; 22.600.3.20 NMAC; 22.600.3.16(I) NMAC.

R. The Department's motions to strike are denied as moot and its motion to dismiss is withdrawn.

S. Because no issues remain for hearing, the merits hearing is vacated.

THEREFORE, IT IS ORDERED:

1. The Department's motion for partial summary judgment directed to the approximately $160,000 protest is GRANTED.

2. Taxpayer's protest of the November 26, 2025 Final Notice Before Seizure and

related collection activity on the approximately $160,000 liability is DENIED.

3. The Department's motion for partial summary judgment directed to the $1,424.95 lien protest is GRANTED.

4. Taxpayer's protest of Notice of Claim of Tax Lien No. 1129031, including Taxpayer's taxpayer-identity and taxpayer-identifier objections to that lien, is DENIED.

5. Taxpayer's June 1, 2026 motion for summary judgment is DENIED.

6. Taxpayer's motion in limine and request to compel discovery concerning BTID 03-637127-00-0 are DENIED.

7. Taxpayer's motion for clarification of the discovery schedule and alternative requests to permit depositions or compel outstanding discovery are DENIED as moot or immaterial.

8. The Department's motions to strike are DENIED as moot.

9. Any pending motion to compel, subpoena request, discovery request, witness request, deposition request, evidentiary request, scheduling request, or related prehearing request not expressly granted is DENIED as moot or immaterial.

10. The merits hearing set for August 12, 2026 is VACATED.

11. All remaining requests for relief are DENIED.

12. Taxpayer's protests are DENIED.

DATED: July 10, 2026

Chris Romero
Hearing Officer
Administrative Hearings Office
Post Office Box 6400
Santa Fe, NM 87502

NOTICE OF RIGHT TO APPEAL

Pursuant to NMSA 1978, Section 7-1-25 (2015), the parties have the right to appeal this decision by *filing a notice of appeal with the New Mexico Court of Appeals* within 30 days of the date shown above. If an appeal is not timely filed with the Court of Appeals within 30 days, this Decision and Order will become final. Rule of Appellate Procedure 12-601 NMRA articulates the requirements of perfecting an appeal of an administrative decision with the Court of Appeals. Either party filing an appeal shall file a courtesy copy of the appeal with the Administrative Hearings Office contemporaneous with the Court of Appeals filing so that the Administrative Hearings Office may begin preparing the record proper. The parties will each be provided with a copy of the record proper at the time of the filing of the record proper with the Court of Appeals, which occurs within 14 days of the Administrative Hearings Office receipt of the docketing statement from the appealing party. *See* Rule 12-209 NMRA.

CERTIFICATE OF SERVICE

INTENTIONALLY BLANK