
FYI-402

New Mexico Taxation and Revenue Department

FOR YOUR INFORMATION

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

TAXPAYER REMEDIES

This publication tells you how to dispute tax liability or other administrative action the Taxation and Revenue Department (Department) takes against you. The New Mexico Tax Administration Act provides two formal remedies for settling such differences, but it is the Department's experience that taxpayers often can resolve them without need for formal remedy. You may wish to call the phone number on the letter in question, the call center or contact your district office listed in "FOR FURTHER ASSISTANCE", on the following page to discuss your situation before deciding how to proceed. Please have your letter ID on the top right-hand corner of the correspondence from the Department available when calling the Department. **NOTE:** if you fail to follow the formal remedies outlined below in the time and manner the law requires, you lose the right to use either remedy to address the dispute.

OVERVIEW

You may dispute a tax liability or certain actions the Department might take against you under the Tax Administration Act in one of two ways:

- 1.) file a written protest with the Secretary of the Department without making payment of the protested amount, **OR**
- 2.) pay the tax liability as assessed and then file a refund claim as allowed under Section 7-1-26 NMSA 1978 for the disputed amount.

Choosing one remedy is an automatic waiver of the right to pursue the other. **Please note:** You must pay any outstanding portion of the tax, penalty or interest that is not included in the protest in order to avoid accruing further penalty and interest on the unprotested amount.

REMEDY 1: PROTEST

If you choose to protest, you must do so in writing within 90 days of the date of the event you are protesting. That event may be the mailing of a notice of assessment of tax in excess of \$50, the Department's application of a provision of the Tax Administration Act to your situation (excluding a subpoena or summons) or the denial of or failure to deny a credit, rebate, or claim for refund. Form **ACD-31094**, *Formal Protest* outlines the requirements for a written protest and provides instructions on the different ways that a protest can be submitted to the Department. You may obtain a copy of this form from any of our district offices or from our web site at <https://www.tax.newmexico.gov/fill-print-go/>. For more information see **FYI-400**, *Tax Audits and Protest Procedures*. You may obtain a copy from any of our district offices or from our web site at <https://www.tax.newmexico.gov/forms-publications/>. Select "Forms and Publications" and then open the "Publications" folder.

The Protest Office will review your written protest and will reply letting you know if the protest has been accepted, is denied (with a reason for the denial), or a reply letting you know that the protest has not been filed properly. If your written protest was not filed properly, the Department must notify you within 21 days and inform you why the protest was not properly filed and allow one opportunity to fix the error and resubmit the protest withing 21 days of notice from the Department. The Protest Office will review protests received and if there is a disagreement with your position; the Department or taxpayer can request a hearing with the Administrative Hearings Office on the protested issue (no earlier than 60 days after the date of the protest but within 180 days of the filing of a protest).

Within 60 days of the date the protest has been filed, the taxpayer in writing can request an informal conference with the Department to resolve the disagreement. The informal conference must be held by the Department with the taxpayer within 30 days after the request is received. If the taxpayer and the Department are not able to resolve the protest informally, either party can request a formal hearing as explained above. After the administrative hearing, the hearing officer issues a Decision and Order on the protested facts and section of law.

Appeal

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

REMEDY 2: CLAIM FOR REFUND

If you believe any tax you have paid or had withheld from you is more than you owe, you may file a refund claim with the Secretary of the Department. You must claim the refund within three years from the end of the calendar year in which the tax was due or in which you paid the Department assessment associated with the protest. For more information on how to claim a refund please look at the form instructions for the tax program your refund claim is for.

If the Refund Is Denied

The Department treats a protest of a denial or departmental inaction on a complete claim for refund in the same way as a protest of an assessment. See, "REMEDY 1: PROTEST" on the page 1 for information on what needs to be included in a written protest.

If the Secretary **denies** a claim for refund made based on Section 7-1-26 NMSA 1978, in whole or in part, you may file a protest with the Department or file a civil action suit in the District Court for Santa Fe County. You must do so within 90 days of the date the denial of your refund claim is mailed. If you fail to protest or bring a suit in Santa Fe District Court within 90 days of the date of a written denial, the decision is final. You may not re-file that claim.

IF THE DEPARTMENT HAS NOT GRANTED OR DENIED YOUR CLAIM

In the event the Department has not granted or denied any portion of a complete claim for refund within 180 days after the claim was mailed or otherwise delivered to the Department, you may elect to treat the claim as denied. If you decide to treat the claim for refund as denied, you have 90 days in which to file a protest with the Department or file a civil action suit in the District Court for Santa Fe County.

Note: if you elect to bring a civil action suit, lawsuits are subject to the rules of the district courts. You or the Department may appeal an adverse ruling by the hearing officer or the district court to the New Mexico Court of Appeals. See "Appeal".

TRANSACTIONS ON TRIBAL LAND

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

FOR FURTHER ASSISTANCE

Local tax offices and the call center can provide full service and information about the Department's taxes, programs, forms and specific information about your situation.

Albuquerque 10500 Copper Pointe Avenue NE Albuquerque, NM 87123	Farmington 3501 E. Main St. Farmington, NM 87499-0479	Las Cruces 2540 El Paseo, Bldg. #2 Las Cruces, NM 88004-0607	Roswell 400 N. Pennsylvania, Ste. 200 Roswell, NM 88202-1557	Santa Fe 1200 S. St. Francis Dr. Santa Fe, NM 87504-5374
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Call Center: 1-866-285-2996

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