

FYI-406

New Mexico Taxation and Revenue Department

FOR YOUR INFORMATION

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

YOUR RIGHTS UNDER THE TAX LAWS

This publication describes what happens when you report or pay tax in an amount different from the amount the Taxation and Revenue Department (Department) calculated is due. There are three types of notices you may receive when there is a difference between the amount you report or pay and the amount the Department calculated is due: 1) a tax return adjustment notice for additional tax due; 2) a tax return adjustment notice which reduces or denies an income tax refund; or 3) a notice of assessment of taxes and demand for payment if the amount is in excess of \$50.

Please note: You must act whenever you disagree with the Department's notice, even when you receive a refund that is larger than you expect. **You may be held liable if you keep a refund to which you are not entitled.**

The Tax Administration Act governs how tax programs are administered. The law gives you specific rights and responsibilities to exercise within certain time limits. For a full explanation of those rights, see publication **FYI-402, Taxpayer Remedies** and **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.

Sometimes you can correct a problem faster by amending a return or sending in supporting documentation for the amount adjusted on the return as specified on the return adjustment notice. **Send general correspondence, amended returns and refund applications to:** New Mexico Taxation and Revenue Department, Administrative Resolution and Services Bureau, P.O. Box 630, Santa Fe, NM 87504-0630. Do not send official protest actions to that address.

IF YOU HAVE RECEIVED A TAX RETURN ADJUSTMENT NOTICE FOR ADDITIONAL TAX DUE

A tax return adjustment notice for additional tax due means that the Department has calculated that you owe additional tax. You should contact the Department if you disagree with the notice. The list below shows the district office locations and provides the call center contact number. A tax return adjustment notice for additional tax due is not an assessment; a protest cannot be submitted in response to a tax return adjustment notice that is showing additional tax due unless the tax due is a result of a refund or credit denial. If, however, you do not pay the tax or resolve the liability, you may receive a notice of assessment. You may protest the notice of assessment if it is in excess of \$50. The procedure for filing a protest of an assessment is described on page 2 under the section titled "If You Received a Notice of Assessment of Taxes and Demand for Payment."

PLEASE SEE REVERSE FOR INFORMATION ON OTHER TYPES OF NOTICES

New Mexico Taxation and Revenue Department district offices and the call center telephone number:

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 applicable 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.

WHEN YOU PROVIDE A CHECK AS PAYMENT, YOU AUTHORIZE THE DEPARTMENT TO USE INFORMATION FROM YOUR CHECK TO MAKE A ONE-TIME ELECTRONIC FUND TRANSFER FROM YOUR ACCOUNT. WHEN WE USE INFORMATION FROM YOUR CHECK TO MAKE AN ELECTRONIC FUND TRANSFER, FUNDS MAY BE WITHDRAWN FROM YOUR ACCOUNT AS SOON AS THE SAME DAY YOU MAKE YOUR PAYMENT

IF YOU RECEIVED A NEW MEXICO TAX RETURN ADJUSTMENT NOTICE – REFUND DENIED

If you have received a tax return adjustment notice or a Department letter that denies in whole or part a claim for refund, your request for refund has been denied. You may either 1.) file a protest with the Department, or 2.) you may file a civil suit in the District Court for Santa Fe County. Choosing one alternative means you unconditionally waive your right to pursue the other. Whichever route you take, you must file your protest or lawsuit within 90 days of the mailing of the tax return adjustment notice that denies in whole or part a claim for refund. You can file a written protest to a tax return adjustment notice that denies in whole or part a claim for refund or a denial of a tax refund by writing to the Department. If you fail to file a protest or bring suit within 90 days of the denial of your refund, you may not re-file the same claim for refund.

The **written protest** to the Secretary can be submitted using Form **ACD-31094**, *Formal Protest* outlines the requirements for a written protest and provides instruction 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.

Note: Should the notice you receive tell you that a part of your overpayment (refund) is intercepted for an agency other than the Taxation and Revenue Department, contact that agency listed on the notice directly for resolution.

IF YOU RECEIVED A NOTICE OF ASSESSMENT OF TAXES AND DEMAND FOR PAYMENT

A notice of assessment of taxes and demand for payment is a determination by the Department that you owe additional tax. If you receive such a notice, you may wish contact the Department to obtain additional information regarding the assessment. The addresses and telephone numbers for the Department appear on the first page of this publication. You may also view your return information on the Taxpayer Access Point at <https://tap.state.nm.us/>.

If you disagree with an assessment in excess of \$50 and desire an administrative hearing, you may file a written protest with the Department within 90 days. If you choose to file a protest with the Department, you must pay any amount of tax, penalty or interest not being protested, but you do not need to pay the tax, penalty or interest for the disputed amount until your protest is resolved. Interest (and penalty, if applicable), however, will continue to accrue on the tax owed during the protest period. Alternatively or if the assessment is under \$50, you may pay the tax, including penalty and interest and file a claim for refund. within the statute of limitations. In the event the Department denies your claim for refund, you may file a protest with the Department or file a civil action in the Santa Fe District Court for Santa Fe County contesting the Department’s denial of your claim for refund.

You can file a written protest to an assessment, a protest must be filed within 90 days of the date of assessment in writing to the Department. If you fail to file a protest or bring suit within 90 days of the denial of your refund, you may not re-file the same 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 a protest filed and if the Department disagrees with your position, a formal hearing before a hearing officer will be scheduled (within 180 days but no earlier than 60 days of filing a protest) to settle the issues in the protest. You may request in writing an informal conference within 60 days and the Department must conduct the informal conference within 30 days after the written request is received. Many disputes can be settled during an informal conference. Should the protest reach a formal hearing, the hearing officer issues a Decision and Order on the protested facts and section of law. See **FYI-400**, *Tax Audits and Protest Procedures* for details on hearings.

The Secretary will not consider any protest submitted more than 90 days after the date the assessment was mailed. If a protest is not filed within the allowed period, the amount assessed becomes final. The Secretary at that time can pursue collection on the tax due. The taxpayer can pay the tax and submit a claim for refund per Section 7-1-26 NMSA 1978.