

FORMAL PROTEST Instructions

Who is required to submit ACD-31094

Use this form to file a formal protest pursuant to Section 7-1-24 NMSA 1978.

A taxpayer may dispute:

- (1) the assessment to the taxpayer of any amount over \$50 of tax;
- (2) the application to the taxpayer of any provision of the Tax Administration Act (TAA) except of a subpoena or summons; **OR**
- (3) the denial of or a failure either to allow or to deny a:
 - (a) credit or rebate **OR**
 - (b) claim for refund made in accordance with Section 7-1-26 NMSA 1978.

In the case that your protest is as a result of a partial denial or a full denial of a refund, you are able to use one of the two methods below based on Section 7-1-26(E) NMSA 1978:

(1) direct to the secretary, pursuant to the provisions of Section 7-1-24 NMSA 1978, a written protest that sets forth:

(a) the circumstances of:

- 1) an alleged overpayment;
- 2) a denied credit;
- 3) a denied rebate; **or**
- 4) a denial of a prior right to property levied upon by

Tax & Rev;

(b) an allegation that, because of that overpayment or denial, the state is indebted to the taxpayer for a specified amount, including any allowed interest, or for the property;

(c) a demand for the refund to the taxpayer of that amount or that property; **and**

(d) a recitation of the facts of the claim for refund; **OR**

(2) commence a civil action in the district court for Santa Fe county by filing a complaint setting forth the circumstance of the claimed overpayment, denied credit or rebate or denial of a prior right to property levied upon by Tax & Rev alleging that on account thereof the state is indebted to the plaintiff in the amount or property stated, together with any interest allowable, demanding the refund to the plaintiff of that amount or property and reciting the facts of the claim for refund. The plaintiff or the secretary may appeal from any final decision or order of the district court to the court of appeals.

Deadline for a protest submission

A protest by a taxpayer shall be filed within 90 days after:

- (1) the date of the mailing to the taxpayer by Tax & Rev of the notice of assessment and demand for payment as provided in Subsection A or D of Section 7-1-17 NMSA 1978;
- (2) the mailing of the other peremptory notice or demand;
- (3) the date of the application to the taxpayer of the applicable provision of the TAA; **or**
- (4) the date of denial of a claim pursuant to Section 7-1-26 NMSA 1978 or the last date upon which Tax & Rev was required to take action on the claim but failed to take action (180 days after the claim for refund was mailed or otherwise delivered, the taxpayer may choose to treat the claim as denied to pursue protest as a remedy).

Using the Taxpayer Access Point (TAP) to submit a protest

Log into the taxpayers Taxpayer Access Point (TAP) <https://tap.state.nm.us/Tab> account that the protest is going to be filed for.

Go to the tax program tile that you will be filing the protest for and select "More Account Options". On the "Protest" tile, select "Protest a Letter". You will then need to enter the Letter ID from the top right hand corner of the letter from Tax & Rev. If that letter is seen by the system as being eligible for a protest it will ask you further questions. You may electronically attach any supporting documentation before submitting your protest.

If for some reason you are unable to file your protest through TAP based on the letter ID, and the 90 day window for your protest is still open or you do not have a Letter ID to submit through TAP, please fill out this paper application and submit it as outlined in the *How to submit this form to Tax & Rev* section of these instructions.

If you are successful in submitting your protest in TAP, you will be provided with a confirmation number that you can use when talking with a Tax & Rev staff member about the submission. If you have a questions about your filed protest you can email Protest.Office@tax.nm.gov.

How to submit this form to Tax & Rev

You are able to submit this form and start the process for a formal protest by using any of the following methods:

- Signing up or logging into your Taxpayer Access Point (TAP) <https://tap.state.nm.us/Tab>;
- Emailing Protest.Office@tax.nm.gov;
- Mailing: Taxation and Revenue Department,
Attention: Protest Office
P.O. Box 1671 Santa Fe, NM 87504-1671; **OR**
- Delivery by private carrier delivery to the
Protest Office, Joseph Montoya Building,
1100 S. St Francis Drive, Suite 1100,
Santa Fe, NM 87505-4147

NOTE: Tax & Rev strongly recommends submitting the protest through the Taxpayer Access Point (TAP) to ensure the protection of sensitive personally identifiable information such as Social Security numbers.

Form Instructions:

1 - Name(s) of Taxpayer

Write the name(s) of the taxpayer identified on the letter that you are filing a protest for or the name(s) of the taxpayer registered for the tax program that you are filing a protest for. In the case of a protest for personal income tax for a married filing joint return provide the name of both taxpayers.

2 - FEIN/SSN/ITIN

Provide the Federal Employee Identification Number (FEIN) Social Security Number (SSN), or Individual Taxpayer Identification Number (ITIN). If married filing joint, please provide both taxpayer's identification numbers.

3 - NMBTIN

If your protest is for a business program, provide your New Mexico Business Tax Identification Number (NMBTIN).

4 - Mailing Address - City, State, Zip Code

FORMAL PROTEST Instructions

Provide the mailing address for the taxpayer.

5 - Contact Name and Title

Provide the full first and last name of the contact that either is the taxpayer or works in the business for the taxpayer. If this protest is for an personal income tax issue there is no need to add a title. If this protest is concerning a business, please add the title of the business contact.

6 - Contact Email

Provide the email address of the contact that you would like Tax & Rev to use during this protest.

7 - Contact Phone Number

Provide the phone number for the contact that you would like Tax & Rev to use during this protest. Provide the area code. For example, 1-505-123-4567.

8 - Representative(s) Name (if applicable)

Provide the name of the representative. **If you do not have a representative for the protest leave the next three items blank.** If you will be having a representative for the protest process please complete Form [ACD-31102, Tax Information Authorization Tax Disclosure](#) and include it with your submission. You can locate this form by clicking on the link above or going to the Tax & Rev website here: <https://www.tax.newmexico.gov/fill-print-go/>

Please note, the Tax Information Authorization Tax Disclosure (TIA) is required to be signed by the taxpayer or taxpayers, if married filing joint. If the form is being submitted for a business or estate, the TIA must be signed by a corporate officer, partner, or fiduciary.

9 - Representative(s) Email Address (if applicable)

Provide the email address of the contact that you would like Tax & Rev to use during this protest.

10 - Representative(s) Phone Number (if applicable)

Provide the phone number for the contact that you would like Tax & Rev to use during this protest. Provide the area code. For example, 1-505-123-4567.

11 - Tax Program

Name the tax program that your protest relates to. For example, gross receipts tax.

12 - Tax Period(s)

Enter the tax period(s) that your protest relates to. Enter these dates as mm/dd/yyyy. For example, 01/01/2022 through 05/30/2023.

13 - Letter ID

If your protest is being filed as the result of a letter that was received from Tax & Rev enter the Letter ID that is located on the top right hand corner of the letter.

14 - Description of property levied by Tax & Rev (if applicable)

If this protest is the result of property that has been levied by the Tax & Rev and you have submitted a claim for refund but it has been denied provide a description of the property that was levied in this field.

15 - Dollar Amount of the Protest

Enter the dollar amount of your protest for the amount of tax penalty, interest, and the total dollar amount that you are protesting that is due that is included in the protested amount.

If the subject of your protest is the denial of a credit or rebate enter the amount of the credit in the tax and total sections.

Important: Section 7-1-24 (D) NMSA 1978 specifies if there is a portion of an assessment that you are not protesting the unprotested amount should be paid or, if applicable, you must enter into a payment plan with Tax & Rev on or before the due date for the protest. More information on payment plans can be located on the Tax & Rev website here <https://www.tax.newmexico.gov/all-nm-taxes/2020/10/20/payment-plan/> or call 1-866-285-2996.

16 - The facts relating to this protest are as follows:

Please specify the facts related to your protest. Provide information on your original application, submission, or requests that were sent by the taxpayer to Tax & Rev. Provide information on any denials or letters received by the Taxpayer from Tax & Rev.

17 - The statutory or regulatory grounds on which this protest is based:

If your protest is based on a specific credit, rebate, deduction, exemption, statute, regulation, form or instructions provide that information here. For more information see Regulation 3.1.7.12 NMAC.

18 - You may provide the supporting documentation related to the facts and ground of the protest:

Here you will provide a list of the evidence that you will be submitting with your protest and a brief summary of what that evidence supports.

For example, if you have filed an amended gross receipts tax return, claimed a deduction, and submitted an application for refund that has been denied. Submit the original application for refund, the amended returns, and any documentation that supports your claim to those deductions.

To make sure that the filing for a protest goes smoothly, submit a completed form and you may provide any supporting documentation with your submission that you believe will assist the protest staff in understanding your protest.

19 - The affirmative relief requested:

Provide detail on what relief you are requesting from Tax & Rev.

For example, if you believe that your claim for a refund or credit was denied in error state the amount of credit or refund that you believe was denied in error. Or if your protest is based on the application of a provision of the TAA place information here on what resolution you would find favorable.

Protest submission and signature block:

At this stage, review your submission and make sure that you have provided all of the information you would like to.

FORMAL PROTEST Instructions

Signature

This request needs to be signed by the taxpayer or the representative of the taxpayer. If this form is being signed by a representative, a completed Form [ACD-31102, Tax Information Authorization Tax Disclosure](#) must be submitted with this form.

If the form is being submitted for a business or estate, it must be signed by a corporate officer, partner, or fiduciary.

Type or print the first and last name of the individual that will be signing this document, provide the title of the individual signing (if the taxpayer is a business enter the title that the signing individual holds in the business), and enter the date that this document is signed.

Additional Information and Contact Information

Depending on the information that is provided in the request for protest Tax & Rev may be able to work with the taxpayer in an informal conference as outlined in Regulation 3.1.7.13 NMAC to find resolution.

If a resolution between the two parties cannot be reached the protest will then be taken to the Administrative Hearings Office for a decision. More information on that process can be located here: <https://www.aho.state.nm.us/HearingsConducted/TaxProtestHearingInformation>

For more information on the protest process please see **FYI-400, Tax Audits and Protest Procedures**, which can be located at <https://www.tax.newmexico.gov/forms-publications/>.

For questions, email Protest.Office@tax.nm.gov