

**BEFORE THE HEARING OFFICER
OF THE TAXATION AND REVENUE DEPARTMENT
OF THE STATE OF NEW MEXICO**

**IN THE MATTER OF THE PROTEST OF
ACADEMY LEASING CORPORATION
ID NO. 02-233251-00 0
DENIAL OF REFUND OF GROSS RECEIPTS
TAXES PAID FOR REPORTING PERIODS
OCTOBER 1996 THROUGH OCTOBER 1998**

No. 03-23

DECISION AND ORDER

A formal hearing on the above-referenced protest was held December 4, 2003, before Margaret B. Alcock, Hearing Officer. The Taxation and Revenue Department ("Department") was represented by Bridget A. Jacober, Special Assistant Attorney General. Academy Leasing Corporation ("Taxpayer") was represented by Gerald Landgraf, its president, and Matthew Terry, its accountant. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. During the periods at issue, the Taxpayer was engaged in business in New Mexico and was registered with the Department for payment of gross receipts, compensating, and withholding taxes, which are required to be paid monthly under the Department's combined reporting system ("CRS").
2. In 1999, the Taxpayer conducted an internal audit of reporting periods October 1996 through October 1998 and determined that its gross receipts taxes had been underpaid in certain months and overpaid in other months. The amount of the underpayments was \$465; the amount of the overpayments was \$10,112.
3. The Taxpayer subsequently prepared amended CRS returns for reporting periods October 1996 through October 1998 to correct the errors on the original returns.

4. On October 29, 1998, the Taxpayer mailed the amended returns to the Department with a reconciliation sheet detailing the underpayments and overpayments on a month-by-month basis.

5. The amended returns and reconciliation sheet were mailed by certified mail, return receipt requested, and were received by the Department on November 2, 1999.

6. Upon receiving the returns, the Department sent the amended returns showing a balance due to its collection unit. There is no record that the Department took any action on the amended returns showing a refund due to the Taxpayer.

7. In May 2000, the Taxpayer received a collection letter concerning the unpaid gross receipts taxes shown on its amended returns.

8. In response to the collection letter, the Taxpayer filed another copy of its amended returns showing a refund due of \$10,112. The Department's records show that this set of amended returns was received on May 25, 2000.

9. The Department continued to send collection letters to the Taxpayer for the unpaid gross receipts taxes shown on the Taxpayer's amended returns.

10. On March 27, 2001, Gerald Landgraf, the Taxpayer's president, sent the Department a letter stating that he was in receipt of the Department's demands for payment of gross receipts taxes in the amount of \$464.72. His letter explained that he had not paid this amount because the amended returns filed with the Department also showed overpayments in excess of \$10,000. Mr. Landgraf stated that he "would appreciate it if you would review this matter soon and refund the requested amount."

11. On April 6, 2001, Mr. Landgraf called the Department and provided the collector with a new address and telephone number for the Taxpayer. When Mr. Landgraf asked about the

refund amount shown on the Taxpayer's amended returns, the collector told Mr. Landgraf that the Department's system had no record of any overpayments.

12. On April 9, 2001, Matthew Terry, the Taxpayer's accountant, personally delivered a third set of the Taxpayer's amended CRS returns to the Department's Albuquerque office.

13. The collector who accepted the returns told Mr. Terry the returns would be forwarded to the Department's Revenue Processing Division in Santa Fe. Mr. Terry asked to have someone from the Department call him once the amended returns were processed.

14. On May 29, 2001, the Taxpayer filed a registration update to correct the Taxpayer's address on the Department's records.

15. On July 9, 2001, Gerald Landgraf sent the Department a letter enclosing a check to cover the Taxpayer's outstanding gross receipts taxes. Mr. Landgraf's letter then noted that the Taxpayer still had not heard from the Department concerning the Taxpayer's \$10,000 of gross receipts tax overpayments. His letter concluded: "I would appreciate hearing from you on this overpayment matter."

16. The Department did not respond to Mr. Landgraf's July 9, 2001 letter.

17. On September 21, 2001, Mr. Terry called the Department to find out whether the Taxpayer's amended CRS returns had been processed. The collector told Mr. Terry that only the returns showing a liability had been posted, but said he would try to determine what had happened to the amended returns showing a refund due.

18. On September 24, 2001, the Department's collector notified Mr. Terry that the Department had returned the packet of amended CRS returns to the Taxpayer on April 17, 2001 because the packet "needed a claim for refund & NTTC's."

19. On October 4, 2002, the Taxpayer submitted a fourth set of its amended CRS returns for reporting periods October 1996 through 1998. This time, the Taxpayer included the Department's refund form, Application for Tax Refund, with the returns.

20. On October 25, 2002, the Department sent the Taxpayer a letter denying its claim for refund of CRS taxes in the amount of \$10,112. The reason given for the denial was that the claim had not been filed within the limitations period set out in NMSA 1978, § 7-1-26, which requires all claims to be filed within three years of the end of the calendar year in which the payment was originally due.

21. On January 14, 2003, the Taxpayer filed a written protest to the denial of its claim for refund.

DISCUSSION

The issue presented is whether the Taxpayer is entitled to a refund of the \$10,112 of gross receipts taxes it overpaid during the period October 1996 through October 1998. The Taxpayer points out that its original refund claim was filed in October 1999, which was within the three-year limitations period set out in NMSA 1978, § 7-1-26. After failing to hear from the Department and then being told that the Department had no record of its amended returns, the Taxpayer refiled its refund claim in May 2000, in April 2001, and again in October 2002. Based on this history, the Taxpayer argues that its claim should be accepted as timely. The Department responds that it was statutorily prohibited from taking action on the Taxpayer's refund claims once 120 days had passed from the date of filing. In order to protect its claims, the Taxpayer was required to file a timely protest of the Department's inaction, which the Taxpayer failed to do.

With some exceptions not applicable here, NMSA 1978, § 7-1-26 limits the time within which a claim for refund may be filed to three years from the end of the calendar year in which the

payment was originally due. The Department's authority to grant refund claims filed within this period—and the remedies available to a taxpayer whose refund has not been granted—are set out in Subsection B of § 7-1-26. In October 1999, that section read, in pertinent part:

B. The secretary or the secretary's delegate may allow the claim in whole or in part or may deny the claim. If the claim is denied in whole or in part in writing, the claim may not be refiled. If the claim is not granted in full, the person, within ninety days after either the mailing or delivery of the denial of all or any part of the claim, may elect to pursue one, but not more than one, of the remedies in Paragraphs (1) and (2) of this subsection. *If the department has neither granted nor denied any portion of a claim for refund within one hundred twenty days of the date the claim was mailed or delivered to the department, the department may not approve or deny the claim, but the person may refile it within the time limits set forth in Subsection C of this section or may within ninety days elect to pursue one, but only one, of the remedies in Paragraphs (1) and (2) of this subsection....* (emphasis added.)

Effective July 1, 2000, Subsection B was amended to extend the time within which the Department is authorized to act on a refund claim from 120 days to 210 days after the date of filing. After the expiration of 210 days, the Department is prohibited from acting on the claim unless the Taxpayer has filed a timely protest to the Department's inaction.

In this case, the Taxpayer's original claim for refund was filed on October 29, 1999, the date its amended returns and reconciliation sheet were mailed to the Department. The Department failed to take any action on the claim during the next 120 days. As of February 26, 2000, the Department lost its authority to either grant or deny the refund. At that point, the Taxpayer had 90 days within which to protest the Department's inaction. Because the Taxpayer failed to file a protest during the 90-day period between February 26, 2000 and May 27, 2000, the October 1999 refund claim was extinguished, and the Taxpayer's only option was to refile the claim.

On May 25, 2000, the Taxpayer refiled its amended CRS returns with the Department. By this time, the 1996 tax year was outside the three-year limitations period set out in § 7-1-26, but taxes paid from January 1997 forward were still eligible for refund. The Department failed to take

any action on the Taxpayer's claim before September 22, 2000, the expiration of the 120 days within the Department was authorized to act. The Taxpayer failed to file a protest to the Department's inaction during the 90-day period between September 22, 2000 and December 21, 2000. As a result, the May 2000 refund claim became moot.

On April 9, 2001, the Taxpayer refiled its claim for refund, by which time only the 1998 tax year was still within the three-year limitations period. The Department did not take action to grant or deny the claim, and the Taxpayer did not protest the Department's failure to act during the 90-day protest period of August 7, 2001 and November 5, 2001.

On October 22, 2002, the Taxpayer filed its refund claim for the fourth time. All of the reporting periods covered by the refund claim were now outside the three-year limitations period and, on October 25, 2002, the Department denied the Taxpayer's claim on this basis.

Based on the specific time limitations § 7-1-26 places on the Department's authority to act on refund claims, and on the Taxpayer's failure to protest the Department's failure to act, the Taxpayer's refund cannot be granted. The Taxpayer is understandably frustrated by the sequence of events relating to its claim. The Department's refusal to act on the claim—or even to acknowledge receipt of the Taxpayer's amended returns—is difficult to explain or defend. Nonetheless, the law clearly places the burden on the Taxpayer to protect its refund claim by filing a written protest to the Department's inaction. Because the Taxpayer did not file a protest within the time period provided in the statute, the Department is statutorily prohibited from granting the Taxpayer's claim.

CONCLUSIONS OF LAW

1. The Taxpayer filed a timely, written protest to the Department's denial of the Taxpayer's claim for refund of gross receipts taxes, and jurisdiction lies over the parties and the subject matter of this protest.

2. Because the Taxpayer failed to file a timely protest to the Department's failure to act on the refund claims filed in October 1999, May 2000, and April 2001, the Department is statutorily prohibited from granting those claims.

3. Because the Taxpayer's October 2002 refund claim was filed more than three years after the end of the calendar year in which payment of taxes for the October 1996 through October 1998 reporting periods was due, the Department is prohibited from granting that claim.

For the foregoing reasons, the Taxpayer's protest IS DENIED.

DATED December 9, 2003.