

**STATE OF NEW MEXICO  
ADMINISTRATIVE HEARINGS OFFICE  
TAX ADMINISTRATION ACT**

**IN THE MATTER OF THE PROTEST OF  
BED BATH & BEYOND, INC.,  
TO THE DENIAL OF REFUND ISSUED UNDER  
LETTER ID NO. L0575362000**

**No. 15-26**

**DECISION AND ORDER**

A formal hearing on the above-referenced protest was held June 18, 2014, before Hearing Officer Dee Dee Hoxie. The Taxation and Revenue Department (Department) was represented by Ms. Melinda Wolinsky, Staff Attorney. Ms. Mary Griego, Auditor, also appeared on behalf of the Department. Mr. Steven Taplits, Vice President of Tax for Bed Bath & Beyond, Inc. (Taxpayer) appeared for the hearing and represented the Taxpayer. The Hearing Officer took notice of all documents in the administrative file. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

**FINDINGS OF FACT**

1. On November 26, 2013, the Taxpayer filed a claim for refund of penalty paid on gross receipts taxes from September 2011 and October 2011.
2. On June 20, 2014, the Department denied the claim for refund.
3. On July 8, 2014, the Taxpayer filed a formal protest letter.
4. On August 20, 2014, the Department filed a Request for Hearing asking that the Taxpayer's protest be scheduled for a formal administrative hearing.
5. On August 21, 2014, the Hearings Office issued a notice of hearing. The hearing date was set within ninety days of the protest.
6. On September 2, 2014, the Department requested that the hearing date be utilized as a telephonic scheduling conference, and the Taxpayer concurred. The request was granted.

7. On September 18, 2014, a scheduling hearing was conducted. The order and notice of hearing was issued on September 19, 2014.
8. On January 14, 2015, the Department filed a motion to continue the hearing, and the Taxpayer concurred.
9. On February 23, 2015, the request was granted and amended notices of hearing were sent.
10. The Taxpayer began filing its CRS returns electronically in September and October 2011. The Taxpayer also began to pay its gross receipts taxes electronically at that time.
11. The Taxpayer made a mistake in setting up its electronic payments for September 2011 and October 2011. An identifying number or a routing number was entered incorrectly. Due to this mistake, the payments failed to go through during those months.
12. The Taxpayer became aware of the problem, corrected it, and successfully submitted the payments for September 2011 and October 2011, although they were late.
13. The Department assessed the Taxpayer for penalty and interest for the late payments for September and October 2011.
14. On May 31, 2012, the Taxpayer sent a letter to the Department regarding the delinquency for September and October 2011. The Taxpayer expressed its frustration with the process and advised the Department that it was receiving documents from the Department by fax that it had not received previously.
15. Those documents showed that they were mailed to the Taxpayer at “Bed Bath and Beyond Inc, 650 Liberty Ave ATTN Payro, Union, NJ 07083”. The parties stipulated that “Payro” referred to Payroll.
16. The Taxpayer advised the Department that those documents were apparently being sent to its payroll department, which was incorrect. The Taxpayer advised that the Department should

be corresponding with its Tax Department and that it was not receiving letters that were erroneously sent to Payroll.

17. The Taxpayer paid the assessment.
18. On June 25, 2012, the Taxpayer requested a refund of the payments regarding penalty for September and October 2011. The Taxpayer's application for refund included its address and the name of a contact person. Nowhere on that application does it refer to or list Payroll as a contact for the Taxpayer.
19. On July 2, 2012, the Department issued a denial of refund to the Taxpayer by mailing it to "Bed Bath and Beyond Inc, 650 Liberty Ave ATTN Payro, Union, NJ 07083", which was the same address as on the documents that the Taxpayer referenced as being incorrectly addressed in its May 31, 2012 letter.
20. The Taxpayer did not receive the denial letter.
21. After some time, the Taxpayer began checking on its claim for refund. When it learned of the denial, the Taxpayer filed a letter protesting the denial. The letter was dated October 10, 2013.
22. On October 28, 2013, the Department issued a denial of the protest as untimely since it was made more than a maximum of 90 days from the date of the denial on July 2, 2012.
23. The Taxpayer refiled its claim for refund on November 26, 2013.
24. The claim was denied on June 20, 2014.

### **DISCUSSION**

The issues to be decided are whether the Department's denial of refund issued on July 2, 2012 was effective and barred the Taxpayer's subsequent refiling of the claim, and if the denial was not effective, whether the Taxpayer's claim for refund properly denied.

#### **Bar to refiling a claim for refund.**

If a claim for refund is denied in writing, that claim may not be refiled, but may be protested within 90 days. *See* NMSA 1978, § 7-1-26 (B) (2013). If the Department takes no action on claim for refund, the claim may be refiled within the statute of limitations or the inaction may be protested. *See id.* Generally, notice is effective if it is mailed to the correct last known address. *See* NMSA 1978, § 7-1-9. Generally, actual notice is not required and notice is presumed when it was given by means reasonably calculated to apprise the parties. *See Maso v. State*, 2004-NMSC-028, ¶ 10, 136 N.M. 161. *See also Cordova v. State*, 2005-NMCA-009, 136 N.M. 713. However, a party may rebut the presumption that notice sent in a properly addressed letter was received. *See State Farm Fire and Casualty Co. v. Price*, 1984, NMCA-036, ¶ 24, 101 N.M. 438.

The Taxpayer argued that the denial issued on July 2, 2012 was not properly addressed as it was sent to Payroll. The Taxpayer also explained that items addressed to Payroll are forwarded to an outside company that provides its payroll services. The Department argued that the street address was correct, so the notice was valid. The Taxpayer argued that notice sent to the proper street address is not sufficient when the address is multi-office building and when the Department had multiple notices that the items should not be mailed to Payroll. The Taxpayer pointed out that its registration with the Department did not indicate that notices should be sent to Payroll. At least one registration document specified that the notices should be sent to the Tax Department. The Taxpayer also pointed out that its claim for refund had a specific contact person named, and did not include Payroll. The Taxpayer had also notified the Department in writing in its letter of May 31, 2012, that the Department was incorrectly addressing items to Payroll and that those items were not being received by the Taxpayer. The Department offered no explanation for why items were ever addressed to Payroll. The Department offered no explanation for why it persisted in addressing items to Payroll after the Taxpayer notified it in writing that doing so was incorrect.

“A properly addressed letter that is mailed is presumed to be received.” *Garmond v. Kinney*, 1978-NMSC-043, ¶6, 91 N.M. 646. In this case, the denial of refund was not properly addressed as it was erroneously sent to Payroll after the Department was notified in writing that items were not to be sent to Payroll. The Department was also notified that items purportedly sent to Payroll were not reaching the Taxpayer and that items should be addressed to the Tax Department. Given the facts and circumstances of this case, the denial of refund issued on July 2, 2012 was not effective and did not bar the Taxpayer from refileing its claim for refund within the statute of limitations.

**Denial of claim for refund.**

The basis of the claim for refund was that the Taxpayer made an honest mistake in setting up its electronic payments. That mistake resulted in payments for September and October 2011 being made late. The Taxpayer argued that it was not negligent based on an honest mistake. The Department argued that an honest mistake is negligence.

Penalty “*shall* be added to the amount assessed” when a tax is not paid on time due to negligence. *See* NMSA 1978, § 7-1-69 (2007) (emphasis added). The word “shall” indicates that the assessment of penalty is mandatory, not discretionary. *See Marbob Energy Corp. v. N.M. Oil Conservation Comm’n.*, 2009-NMSC-013, ¶ 22, 146 N.M. 24. Assessments of penalty are presumed to be correct and it is a taxpayer’s burden to show that the assessment was not correct. *See* 3.1.11.8 NMAC (2001). *See* NMSA 1978, § 7-1-17. *See also El Centro Villa Nursing Ctr. v. Taxation and Revenue Department*, 1989-NMCA-070, 108 N.M. 795. It is a taxpayer’s responsibility to make payments, whether they are done electronically or in another fashion. *See* NMSA 1978, § 7-1-13.1 (2005). If the payment fails to go through, and the tax is paid late, the payment is subject to penalty and interest. *See id.* *See also* NMSA 1978, § 7-1-13.4 (2000). Negligence includes inadvertence. *See* 3.1.11.10 (C) (2001). Under the statute and regulations, an honest mistake is tantamount to inadvertence, and is subject to penalty. *See id.* Because the tax was not paid when it was due and the

Taxpayer made an inadvertent mistake in arranging its electronic payment, penalty was owed on the late payments. Therefore, the request for refund was properly denied.

**CONCLUSIONS OF LAW**

A. The Taxpayer filed a timely written protest to the Denial of Refund for penalty paid on September 2011 and October 2011 issued under Letter ID number L0575362000, and jurisdiction lies over the parties and the subject matter of this protest.

B. The Taxpayer was not barred from refiling its claim for refund as the Department's initial denial letter was not properly addressed. *See* NMSA 1978, §§ 7-1-9 and 7-1-26.

C. The Department properly denied the claim for refund as the penalty applied due to the Taxpayer's negligence in setting up its electronic payments. *See* NMSA 1978, §§ 7-1-13.1, 7-1-13.4, and 7-1-69.

For the foregoing reasons, the Taxpayer's protest is **DENIED**.

DATED: July 20, 2015.

*Dee Dee Hoxie*

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DEE DEE HOXIE  
Hearing Officer  
Administrative Hearings Office  
Post Office Box 6400  
Santa Fe, NM 87502