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

4 **IN THE MATTER OF THE PROTEST OF**
5 **MICHAEL CORWIN**
6 **TO ASSESSMENT ISSUED UNDER**
7 **LETTER ID NO. L0072396592**

8 **AND**

9 **IN THE MATTER OF THE PROTEST OF**
10 **CORWIN RESEARCH & INVESTIGATIONS LLC**
11 **TO ASSESSMENTS ISSUED UNDER**
12 **LETTERS ID NOs. L2142842160 and L0593455664**

13 **v.**

**AHO Case #18.11-287A
D&O #19-14**

15 **NEW MEXICO TAXATION AND REVENUE DEPARTMENT**

16 **DECISION AND ORDER**

17 A hearing in the above-captioned protest occurred on March 27, 2019, before Chris Romero,
18 Esq., Hearing Officer, in Santa Fe, New Mexico. Mr. Michael Corwin appeared representing himself
19 (“Taxpayer”). Staff Attorney, Mr. David Mittle, Esq., appeared representing the Taxation and
20 Revenue Department of the State of New Mexico (“Department”) and was accompanied by Ms.
21 Mary Griego, protest auditor. Protest auditor, Ms. Angelica Rodriguez, was also present to observe
22 for training purposes.

23 Department Exhibits A – C, and E, and Taxpayer Exhibits 1 – 17 were admitted. Based on
24 the evidence and arguments presented, the Hearing Officer finds that Taxpayer’s protest should be
25 DENIED because Taxpayer has not demonstrated by a preponderance of evidence that he is entitled
26 to protest any assessments or notices which were issued more than 90 days prior to his formal written
27 protest, mailed to the Department on September 21, 2018. With regard for any assessments which
28 the protest should be deemed timely, those assessments were either abated prior to the hearing, or
29 negated by subsequent amended returns.

1 IT IS DECIDED AND ORDERED AS FOLLOWS:

2 **FINDINGS OF FACT**

3 1. On April 20, 2016, the Department issued a Notice of Assessment of Taxes and
4 Demand for Payment under Letter ID No. L0593455664 to Corwin Research & Investigations, LLC,
5 CRS No. 02-368082-00-2, in the amount of \$14,854.88, comprised of \$11,107.62 in gross receipts
6 tax, \$2,221.52 in penalty, and \$1,525.74 in interest for the periods between January 1, 2010 to
7 December 31, 2012. **[Administrative File]**

8 2. Taxpayer exchanged pre-assessment emails with Tax Accounts Auditor, Mr.
9 Michael Montalvo, between December 21, 2015 and April 18, 2016. Those emails referenced Case
10 No. 679751 which eventually resulted in the assessment issued under Letter ID No. L0593455664.
11 **[Taxpayer Ex. 12]**

12 3. Final communications between Taxpayer and Mr. Montalvo occurred on April 18,
13 2016, two days prior to the assessment issued under Letter ID No. L0593455664. Mr. Montalvo
14 explained in relevant part, "I have made those adjustments to the case. I certainly understand your
15 frustrations and I encourage you to exercise your protest rights. I have assessed the case. Soon you
16 will receive the notice in the mail." **[Taxpayer Ex. 12.14]**

17 4. Ninety days from the date appearing on the face of the assessment bearing Letter ID
18 No. L0593455664 was Tuesday, July 19, 2016. **[Administrative Notice]**

19 5. There were no further email communications between Taxpayer and Mr. Montalvo
20 after April 18, 2016, but on October 21, 2016, Taxpayer attempted to reach Mr. Montalvo to obtain
21 a copy of the notice subject of Mr. Montalvo's last pre-assessment email. Taxpayer explained that
22 "[he] misplaced the notice." **[Taxpayer Ex. 12.17]**

23 6. After receiving an automatic reply that Mr. Montalvo was no longer employed with

1 the Department, Taxpayer contacted Ms. Kathryn Jost, and once again explained that he misplaced
2 “the notice” and needed to obtain a copy. The email to Ms. Jost forwards the email from Mr.
3 Montalvo, dated April 18, 2016, in which Mr. Montalvo explained that the matter subject of Case
4 679751 was assessed, and that Taxpayer would soon receive a notice. **[Taxpayer Ex. 12.18 – 12.19]**

5 7. One-hundred and eighty-four days elapsed from the date of the assessment under
6 Letter ID No. L0593455664 until Taxpayer’s next attempted communication with Mr. Montalvo
7 and email to Ms. Jost in which he explained that he had misplaced the notice. **[Administrative**
8 **Notice]**

9 8. On September 1, 2017, the Department issued a Notice of Assessment of Taxes and
10 Demand for Payment under Letter ID No. L2142842160 to Corwin Research & Investigations, LLC,
11 CRS No. 02-368082-00-2, in the amount of \$7,754.31 comprised of \$5,931.26 in gross receipts tax,
12 \$1,186.26 in penalty, and \$636.79 in interest for the periods between January 1, 2013 to December
13 31, 2014. **[Administrative File]**

14 9. Taxpayer exchanged pre-assessment emails with Tax Auditor, Ms. Denise Marquez,
15 on August 30, 2017 and August 31, 2017. Those emails referenced Case No. 717898 which
16 eventually resulted in the assessment issued under Letter ID No. L2142842160. There were no post-
17 assessment communications between Taxpayer and Ms. Marquez regarding Case No. 717898 or the
18 resulting assessment. **[Taxpayer Ex. 14]**

19 10. On August 31, 2017, Ms. Marquez explained the procedure the Department would
20 employ in reference to Case No. 717898. She said, “[o]nce the case is assessed a notice of amount
21 due will be mailed, this will have contact information for customer service to discuss possible
22 payment arrangements and Protest Rights.” **[Taxpayer Ex. 14.6]**

23 11. Taxpayer had no further post-assessment communications with Ms. Marquez.

1 **[Taxpayer Exs. 11, 12, 14, 16, 17]**

2 12. Ninety days from the date appearing on the face of the assessment bearing Letter ID
3 No. L2142842160 was Thursday, November 30, 2017. **[Administrative Notice]**

4 13. On March 23, 2018, Taxpayer exchanged emails with Department auditor, Ms. Lara
5 Gage, in reference to Case No. 912788, which did not appear to correlate directly with either
6 assessment from 2016 or 2017, but even if they had, were 702 days after the assessment issued on
7 April 20, 2016 and 203 days after the assessment dated September 1, 2017. **[Taxpayer Ex. 16]**

8 14. Communications with Ms. Gage on March 23, 2018 were in reference to another
9 limited scope audit, in which Ms. Gage approved a request for extension of time to provide
10 documents specific to that audit. The communications were not in reference to the 2016 or 2017
11 assessments. **[Taxpayer Ex. 16]**

12 15. On May 11, 2018, the Department issued a Statement of Account indicating that
13 Corwin Research & Investigations, LLC had an outstanding Combined Reporting System (CRS)
14 liability in the total amount of \$33,319.22 for the periods between June 30, 2010 and August 31,
15 2017. **[Taxpayer Ex. 8.1]**

16 16. On May 16, 2018, the Department issued a Notice of Intent to Lien to Corwin
17 Research & Investigations, LLC in reference to the outstanding liability due of \$33,257.67 for the
18 periods between June 30, 2010 to August 31, 2017. **[Taxpayer Ex. 9]**

19 17. Ninety days from May 16, 2018 was Tuesday, August 14, 2018, representing the
20 deadline to file a protest of the Notice of Intent to Lien issued under Letter ID No. L0925372208.
21 **[Administrative Notice]**

22 18. On May 31, 2018, the Department issued a Final Notice Before Seizure to Corwin
23 Research & Investigations, LLC indicating a total outstanding liability of \$33,319.20. **[Taxpayer**

1 **Ex. 10]**

2 19. Ninety days from May 31, 2018 was Wednesday, August 29, 2018, representing the
3 deadline to file a protest of the Final Notice Before Seizure issued under Letter ID No.
4 L1527566128. **[Administrative Notice]**

5 20. On June 12, 2018, Taxpayer emailed Ms. Gage to inform her that he was “working
6 with Jessica from collections [at the Department] on several issues.” **[Taxpayer Ex. 16.7]**

7 21. On June 25, 2018, the Department issued a Notice of Assessment of Taxes and
8 Demand for Payment under Letter ID No. L0072396592 to Michael Corwin, CRS No. 03-408684-
9 00-6, in the amount of \$5,389.16 comprised of \$4,135.57 in gross receipts tax, \$827.11 in penalty,
10 and \$426.48 in interest for the periods between January 1, 2015 to December 31, 2015.
11 **[Administrative File]**

12 22. On June 26, 2018 and July 16, 2018, the Department issued a series of Notices of
13 Assessment of Taxes and Demands for Payment to Corwin Research & Investigations, LLC, CRS
14 No. 02-368082-00-2. The assessed amounts were comprised of gross receipts tax, and associated
15 penalty and interest. Those assessments were as follows:

16 a) Letter ID No. L0387657520 in the total amount of \$246.80 for the reporting
17 period ending December 31, 2017 **[Taxpayer Ex. 1.1];**

18 b) Letter ID No. L1729834800 in the total amount of \$146.77 for the reporting
19 period ending November 30, 2017 **[Taxpayer Ex. 1.2];**

20 c) Letter ID No. L0656092976 in the total amount of \$261.67 for the reporting
21 period ending October 31, 2017 **[Taxpayer Ex. 1.3];**

22 d) Letter ID No. L1192963888 in the total amount of \$200.80 for the reporting
23 period ending September 30, 2017 **[Taxpayer Ex. 1.4];**

1 e) Letter ID No. L0253439792 in the total amount of \$336.39 for the reporting
2 period ending April 30, 2018 [**Taxpayer Ex. 1.5**];

3 f) Letter ID No. L1998270256 in the total amount of \$163.10 for the reporting
4 period ending March 31, 2018 [**Taxpayer Ex. 1.6**];

5 g) Letter ID No. L0924528432 in the total amount of \$223.04 for the reporting
6 period ending February 28, 2018 [**Taxpayer Ex. 1.7**];

7 h) Letter ID No. L1461399344 in the total amount of \$318.44 for the reporting
8 period ending January 31, 2018 [**Taxpayer Ex. 1.8**].

9 i) A final notice of assessment was also issued on July 16, 2018 under Letter
10 ID No. L1027292976 in the total amount of \$330.83 for the reporting period ending May 31, 2018
11 [**Taxpayer Ex. 1.9**].

12 23. On June 26, 2018, Taxpayer exchanged email communications with Ms. Jessica
13 McParlin from the Department in which he indicated that he disputed one or more assessments to
14 which he or his business were subjected. The email was 797 days after the assessment issued on
15 April 20, 2016 and 289 days after the assessment dated September 1, 2017. The email disputed the
16 legal correctness of all outstanding assessments and attached a position statement that would
17 eventually serve as the basis for Taxpayer's formal protest. [**Direct Examination of Mr. Corwin;**
18 **Taxpayer Ex. 11.11; Administrative File**]

19 24. On June 29, 2018, Taxpayer transmitted an email to Ms. McParlin which indicated
20 his intention to file a lawsuit and seek that the court "have any enforcement action tabled for the
21 pendency of the litigation, and will likely seek class action status as well." [**Taxpayer Ex. 11.11**]

22 25. On July 5, 2018, Taxpayer transmitted an email to Ms. McParlin which indicated
23 among other contentions that "I'm pretty certain that I have many times met the burden of

1 communicating my protest regarding assessments that my services are even taxable to [Department]
2 staff, but despite the requirement, [Department staff] did not forward those protests to the protest
3 division to set up a hearing.” **[Taxpayer Ex. 11.8]**

4 26. Taxpayer’s emails to Ms. McParlin implied his knowledge of the protest process,
5 particularly that he understood that none of his previous email communications would satisfy the
6 requirements of a formal protest under NMSA 1978, Section 7-1-24. **[Taxpayer Ex. 11.17 – 11.19]**

7 a) On July 24, 2018, Taxpayer inquired regarding the dates that any assessments
8 were issued, stating “...I don’t think I’ve received the final assessments with appeal information so
9 that I can go ahead and prepare the appeal based on that.” He went on to acknowledge that he would
10 have 90 days to appeal and wanted to verify “where I need to file the appeal.” **[Taxpayer Ex. 11.17]**

11 b) On August 16, 2018, Taxpayer made an additional inquiry regarding the date
12 of the assessments, and stated, “I don’t want to miss my 90 day window, but also want to make sure
13 that I have the information needed to file the appeal, and to whom I need to send it.” **[Taxpayer Ex.
14 11.18]**

15 c) On September 21, 2018, Taxpayer stated in the subject line of his email, “I
16 mailed my appeal today” and went on to explain that he “didn’t just do the personal assessment, but
17 submitted on all my arguments.” **[Taxpayer Ex. 11.19]**

18 27. On September 24, 2018, the Department received Taxpayer’s protest which stated
19 the intention to protest assessments and tax lien notices against Taxpayer in his individual capacity
20 as well as against his limited liability company, Corwin Research & Investigations, LLC. Taxpayer
21 stated “I, hereby file a formal protest with the Taxation and Revenue Department pursuant to Section
22 7-1-24 NMSA 1978, against Assessments and Notice of Tax Liens (company and individual). TRD
23 is in possession of all assessment and NTL documents for relevant periods.” **[Administrative File;**

1 **Department Ex. A; Taxpayer Ex. 2.1]**

2 28. Taxpayer's protest was mailed on September 21, 2018. **[Testimony of Mr. Corwin]**

3 29. With regard for the assessments dated June 26, 2018 and July 16, 2018 **[FOF No.**
4 **22]**, on or about September 26, 2018, Taxpayer amended his returns for those relevant periods of
5 time, which as of the date of the hearing, had fully addressed and resolved the outstanding liabilities
6 subject of those assessments, and Taxpayer's liability under those assessments as of the date of the
7 hearing was zero. **[Testimony of Ms. Griego; Department Ex. B]**

8 30. On September 26, 2018, the Department issued a Statement of Account indicating
9 that Corwin Research & Investigations, LLC had an outstanding Combined Reporting System
10 (CRS) liability in the total amount of \$26,224.21 for the periods between June 30, 2010 and July
11 31, 2018. **[Taxpayer Ex. 8.3]**

12 31. The CRS number for Mr. Corwin, in his capacity as proprietor is 03-408684-00-6.
13 The CRS number for Corwin Research & Investigations, LLC is 02-368082-00-2. **[Administrative**
14 **File]**

15 32. On October 2, 2018, the Department acknowledged Taxpayer's protest under Letter
16 ID No. L1302565040 in reference to the assessment dated June 25, 2018 in the amount of \$5,389.16
17 for the periods from January 1, 2015 through December 31, 2015. The acknowledgment referenced
18 CRS No. 03-408684-00-6. **[Administrative File]**

19 33. On October 2, 2018, under Letter ID No. L0412336304, the Department denied the
20 protests of the assessments and notices of tax lien, first referencing Letter ID No. L0593455664
21 dated April 20, 2016 for periods January 1, 2010 through December 31, 2012, and referring second
22 to Letter ID No. L2142842160 dated September 1, 2017 for periods January 31, 2013 through
23 December 31, 2014. The denial was issued under Letter ID No. L0412336304. **[Administrative**

1 **File; Taxpayer Ex. 3]**

2 34. On November 15, 2018, the Department filed a Hearing Request in which it
3 requested a scheduling hearing. **[Administrative File]**

4 35. Although the Department denied as untimely Taxpayer's protests of Letter ID Nos.
5 L0593455664 and L2142842160, those assessments accompanied the Department's Hearing
6 Request in the above-captioned protest, which also included the assessment issued on June 25, 2018
7 under Letter ID No. L0072396592. **[Administrative File]**

8 36. On November 15, 2018, the Administrative Hearings Office entered and Notice of
9 Telephonic Scheduling Hearing that set a scheduling conference to occur on December 7, 2018.
10 **[Administrative File]**

11 37. A scheduling hearing occurred on December 7, 2018 and the Administrative
12 Hearings Office entered a Scheduling Order and Notice of Administrative Hearing which set a
13 hearing on the merits of the protest for March 27, 2019. **[Administrative File]**

14 38. On December 26, 2018, the Department issued a Statement of Account indicating
15 that Corwin Research & Investigations, LLC had an outstanding Combined Reporting System
16 (CRS) liability in the total amount of \$26,465.53 for the periods between June 30, 2010 and October
17 31, 2018. **[Taxpayer Ex. 8.5]**

18 39. On March 7, 2019, the Department filed Department's Notice of Abatement and
19 Request that the Protest be Closed which attached a Notice of Abatement of Tax Assessment under
20 Letter ID No. L1890998448, dated February 28, 2019 indicating that "[t]he balance for period from
21 30-Jun-2015 to 31-Dec-2015, after this abatement listed in the TOTAL column above is 0.00." The
22 total abatement was \$5,389.16 consisting of tax in the amount of \$4,135.57, penalty in the amount
23 of \$827.11, and \$426.48 in interest. **[Administrative File]**

1 40. On March 7, 2019, Taxpayer filed Taxpayer’s Motion to Partially Strike the State’s
2 Notice of Abatement and Request that Protest be Closed on the Grounds that it is Untimely and
3 False. **[Administrative File]**

4 41. On March 8, 2019, Taxpayer filed its Supplement to Prehearing Statement of
5 Michael Corwin on Behalf of Himself and Corwin Research & Investigations, LLC.
6 **[Administrative File]**

7 42. On March 8, 2019, the Department filed Department’s Amended Notice of
8 Abatement which attached a Notice of Abatement of Tax Assessment under Letter ID No.
9 L1890998448, dated February 28, 2019 indicating that “[t]he balance for period from 30-Jun-2015
10 to 31-Dec-2015, after this abatement listed in the TOTAL column above is 0.00.” The total
11 abatement was \$5,389.16 consisting of tax in the amount of \$4,135.57, \$827.11 in penalty, and
12 \$426.48 in interest. **[Administrative File]**

13 43. On March 11, 2019, the Department filed Department’s Prehearing Statement.
14 **[Administrative File]**

15 44. On March 11, 2019, the Administrative Hearings Office entered a Notice of
16 Telephonic Status Hearing that set a status hearing to occur on March 12, 2019 to address various
17 prehearing issues. **[Administrative File]**

18 45. On March 11, 2019, the parties agreed that the scope of the hearing would
19 incorporate the issue of whether Taxpayer had timely protested assessments issued to Corwin
20 Research & Investigations LLC under Letter ID Nos. L2142842160 and L0593455664. **[Record of**
21 **Hearing (3/11/2019)]**

22 46. On March 13, 2019, Taxpayer filed his Second Supplement to Prehearing Statement
23 of Michael Corwin on Behalf of Himself and Corwin Research & Investigations, LLC.

1 **[Administrative File]**

2 **DISCUSSION**

3 Although Taxpayer presents assorted issues for consideration, the central component in the
4 protest reduces to whether Taxpayer's formal written protest, particularly in reference to the
5 assessments against Corwin Research & Investigations, LLC, is timely. The Department fully
6 abated the assessment in reference to Taxpayer in his personal capacity and although there are issues
7 underlying that assessment which Taxpayer might continue to disagree, it was undisputed at the
8 hearing that he has no present liability under that fully-abated assessment.

9 The same is true for all other assessments contained in Taxpayer Exhibit 1, except those
10 assessments were resolved through Taxpayer's subsequent CRS amendments. Although there
11 remains a possibility, in reference to the assessments contained in Taxpayer Exhibit 1, that the same
12 periods could be subject to audit or re-assessment, Taxpayer's outstanding liability under those
13 assessments, as of the date of the hearing, was zero.

14 Given the general rule that courts do not decide academic or moot questions, the Hearing
15 Officer declines to address the issues raised by Taxpayer regarding the now fully-abated assessment,
16 issued under Letter ID No. L0072396592, or other assessments contained in Taxpayer Exhibit 1
17 which were resolved through Taxpayer's subsequent CRS amendments. With respect to those
18 particular assessments, Taxpayer has not identified any form of relief the Hearing Officer can now
19 afford, which the abatement and amended returns, have not already afforded. *See Crutchfield v.*
20 *N.M. Dep't of Taxation & Revenue*, 2005-NMCA-022, ¶36, 137 N.M. 26, 106 P.3d 1273 ("A
21 reviewing court generally does not decide academic or moot questions."); *See State v. Ordunez*,
22 2012-NMSC-024, ¶22, 283 P.3d 282 ("It is not within the province of an appellate court to decide
23 abstract, hypothetical or moot questions in cases wherein no actual relief can be afforded.")

1 (alteration, internal quotation marks, and citation omitted)).

2 The only outstanding issue is whether Taxpayer should be entitled to protest any Department
3 action, particularly notices of assessment issued before June 23, 2018, because Taxpayer's protest
4 of September 21, 2018, could not be timely as to any action before that date.

5 Under the evidence presented in this protest, the starting point is to simply recognize that the
6 relevant assessments and notices are entitled to the presumption of administrative regularity. *See*
7 *Wing Pawn Shop v. Taxation & Revenue Dep't*, 1991-NMCA-024, ¶29, 111 N.M. 735. Taxpayer
8 did not present evidence or argument directed at rebutting that presumption.

9 The next fact to recognize is that upon mailing the assessments dated April 20, 2016 and
10 September 1, 2017, the Department acquired the rebuttable presumption that those assessments were
11 correct under NMSA 1978, Section 7-1-17 (C). Consequently, a taxpayer's burden upon
12 effectuating a timely protest, is to overcome the presumption that the assessments are correct. *See*
13 *Archuleta v. O'Cheskey*, 1972-NMCA-165, ¶11, 84 N.M. 428.

14 If a taxpayer is to preserve its opportunity to rebut the presumption of correctness, then that
15 right must be asserted within 90 days of the assessment by filing a written protest with the secretary
16 of the Department. *See* NMSA 1978, Section 7-1-24. In pertinent part, Section 7-1-24 (C) (emphasis
17 added), establishes that such protest "*shall be filed within ninety days* of the date of the mailing to
18 or service upon the taxpayer by the department[.]" Use of "shall" imposes an unqualified
19 prerequisite that the protest must be filed within 90-days. *See Marbob Energy Corp. v. N.M. Oil*
20 *Conservation Comm'n*, 2009-NMSC-013, ¶22, 146 N.M. 24 (use of the word "shall" in a statute
21 indicates a provision is mandatory absent clear indication to the contrary).

22 Under Regulation 3.1.7.11 NMAC, the 90-day protest deadline is jurisdictional, and because
23 Department regulations interpreting a statute are presumed proper, they are to be given substantial

1 weight. *See Chevron U.S.A., Inc. v. State ex rel. Dep't of Taxation & Revenue*, 2006-NMCA-50, ¶16,
2 139 N.M. 498.

3 It is also well-established by long-standing precedent that the failure to adhere to a statutory
4 deadline to protest Department action forms a jurisdictional bar to protest. Approximately 70 years
5 ago in *Associated Petroleum Transp. v. Shepard*, 1949-NMSC-002, ¶6 & ¶11, 53 N.M. 52, the New
6 Mexico Supreme Court observed that a taxpayer's failure to adhere to a deadline, as it existed at the
7 time relevant to that case, deprived the State's taxing authority of jurisdiction over a protest, and
8 our courts have maintained that interpretation of the law ever since.

9 More recently, the New Mexico Court of Appeals ordered the dismissal of a property
10 taxpayer's complaints for refund when it determined that the complaints were not timely filed in
11 compliance with statutory deadlines. *See Chan v. Montoya*, 2011-NMCA-72, 150 N.M. 44.

12 In another example observed in *Lopez v. New Mexico Dep't of Taxation & Revenue*, 1997-
13 NMCA-115, 124 N.M. 270, the Court of Appeals considered whether a taxpayer timely and properly
14 filed a protest against a notice of audit, in which a tax hearing officer determined that the protest
15 was untimely under Section 7-1-24 (which then required a protest within 30-days rather than 90-
16 days under the current statute). *See Lopez*, 1997-NMCA-115, ¶6. The Court of Appeals noted in that
17 case that Section 7-1-24 imposed a strict time restriction on a protest and affirmed that hearing
18 officer's conclusion that the taxpayer did not timely protest the Department's audit, but not before
19 searching the record for the sorts of communications that might arguably be construed as a timely
20 protest.

21 The Hearing Officer engaged in a similar analysis, and determined that Taxpayer had until
22 Tuesday, July 19, 2016, to protest the assessment dated April 20, 2016 under Letter ID No.
23 L0593455664, and until Thursday, November 30, 2017, to protest the assessment dated September

1 1, 2017 under Letter ID No. L2142842160. Taxpayer, however, did neither, and although Taxpayer
2 presents a compilation of emails in which he discussed various matters relating to his potential
3 liabilities, a careful review of those email reveals a chronological pattern that the Hearing Officer
4 finds to be enlightening and dispositive. That review revealed that all emails in reference to the 2016
5 and 2017 assessments were either pre-assessment, or long after the applicable 90-day deadline.

6 The evidence illustrated that Taxpayer exchanged a handful of *pre-assessment* emails with
7 Mr. Montalvo between December 21, 2015 and April 18, 2016 in reference to Case No. 679751,
8 which eventually resulted in the assessment issued under Letter ID No. L0593455664. Mr.
9 Montalvo's final communication to Taxpayer was on April 18, 2016, two days prior to the
10 assessment, and stated in relevant part, "I have made those adjustments to the case. I certainly
11 understand your frustrations and I encourage you to exercise your protest rights. I have assessed the
12 case. Soon you will receive the notice in the mail." **[Taxpayer Ex. 12.14]**

13 The assessment was dated two days later on April 20, 2016, and 90 days from the date
14 appearing on the face of the assessment was Tuesday, July 19, 2016. There were no further
15 communications until October 21, 2016, when Taxpayer attempted to reach Mr. Montalvo to obtain
16 a copy of the notice subject of Mr. Montalvo's last pre-assessment email. Taxpayer, at that time,
17 explained that "[he] misplaced the notice." **[Taxpayer Ex. 12.17]**

18 After receiving an automatic reply that Mr. Montalvo was no longer employed with the
19 Department, Taxpayer contacted Ms. Kathryn Jost, and once again explained that he misplaced "the
20 notice" and needed to obtain a copy. **[Taxpayer Ex. 12.18 – 12.19]** To the extent any of these
21 communications could be construed as a protest, which they cannot, they occurred 184 days after
22 the assessment under Letter ID No. L0593455664, well after the 90-day protest deadline. It is also
23 helpful to note that they also pre-dated any other assessments or notices potentially relevant to this

1 protest.

2 Even if it were abundantly clear from the pre-assessment communications with Mr.
3 Montalvo, that Taxpayer did not agree with the Department's position, it was not reasonable for him
4 to assume that his pre-assessment contentions would preserve his post-assessment right of protest.
5 Instead, Taxpayer's post-assessment conduct as established by the evidence is best described as
6 silence.

7 Next, the record reveals a gap of more than nine months before Taxpayer again exchanged
8 a variety of *pre-assessment* emails with Ms. Marquez on August 30, 2017 and August 31, 2017.
9 Those emails referenced Case No. 717898 which eventually resulted in the assessment issued under
10 Letter ID No. L2142842160. On August 31, 2017, Ms. Marquez explained the procedure she
11 intended to employ in reference to Case No. 717898 and said, "[o]nce the case is assessed a notice
12 of amount due will be mailed, this will have contact information for customer service to discuss
13 possible payment arrangements and Protest Rights." **[Taxpayer Ex. 14.6]**

14 The resulting assessment was issued the very next day, on September 1, 2017. The deadline
15 to protest that assessment, being 90 days from the date of the assessment, was Thursday, November
16 30, 2017. Yet the record contains no further communications between September 1, 2017 and
17 November 30, 2017 specific to this assessment, including any communications that could be
18 construed as a protest of that assessment. **[Taxpayer Exs. 11, 12, 14, 16, 17]**

19 The next recorded series of communications commenced with Department auditor, Lara
20 Gage, on March 23, 2018 in reference to Case No. 912788, which did not correlate directly with
21 either assessment from 2016 or 2017, but even if they had, were already well-past due if intended
22 to be construed as a formal protest. Instead, communications were once again, *pre-assessment*
23 communications, presumably regarding the series of assessments that would eventually be issued in

1 June and July of 2018, and which for the purpose of this protest, are now moot.

2 Then, on July 5, 2018, Taxpayer emailed Ms. Jessica McParlin and explained that his
3 intentions to protest should have always been obvious, but that various employees with whom he
4 had communicated “did not forward those protests to the protest division to set up a hearing.” Even
5 if Taxpayer’s email of July 5, 2018 were to be liberally construed as a protest of the assessments
6 issued under Letter ID Nos. L0593455664 and L2142842160, the deadlines that attached to those
7 assessments had long since passed, and the assessments were already presumed correct and final.
8 There was no jurisdiction to challenge their correctness at that time, or now. *See Associated*
9 *Petroleum Transp.*, 1949-NMSC-002, ¶6; *Lopez*, 1997-NMCA-115, ¶6.

10 Similar to the scenario that arose in *Lopez*, where that taxpayer also argued that he preserved
11 his right to protest by filing actual or constructive notices, the Hearing Officer searched the record
12 and found no basis upon which to find that any communication might qualify as a timely protest.
13 Instead, the chronology clearly reveals that all 2016 and 2017 communications were either pre-
14 assessment or long after the 90-day deadline had passed, not by mere days, but by months.

15 In the light most favorable to Taxpayer, his June or July 2018 communications could have
16 represented valid protests as to the Notice of Lien dated May 26, 2018 [**Taxpayer Ex. 9**] or the
17 Final Notice Before Seizure dated May 31, 2018 [**Taxpayer Ex. 10**]. However, by that time, there
18 would be no jurisdiction to protest the underlying assessments, and Taxpayer’s email did not raise
19 any technical challenges to the Department’s enforcement procedure. *See e.g. Lopez*, 1997-NMCA-
20 115, ¶6 - ¶10.

21 In other words, if Taxpayer’s emails from June or July of 2018 could be construed as
22 protests, then they would only be timely as to the Department’s collection activities, and would be
23 limited to whether the Department had adhered to the technical requirements for collecting the

1 previously assessed outstanding liabilities, not whether the underlying liability was erroneous. *See*
2 *e.g. In the Matter of the Protest of Eunice Sports Broadcasting*, D&O No. 17-32 (non-precedential).

3 Yet, Taxpayer never raised such a technical challenge, whether by email in June or July of
4 2018, in his September 21, 2018 protest, in any pre-hearing statement, or at the hearing on the merits.
5 Therefore, if communications with Ms. McParlin in June or July of 2018 can be construed as a
6 protest, then it would only be valid to the issue of whether the Department’s collection activities
7 were procedurally or technically correct. However, Taxpayer presented no evidence or argument on
8 that issue and the Hearing Officer observed nothing irregular on the face of either the Notice of
9 Intent to Lien or the Final Notice Before Seizure.

10 Taxpayer nevertheless presents an assortment of arguments that, if accepted, might either:
11 (1) enlarge the deadline for filing a protest under Section 7-1-24; or (2) relax the requirements of
12 initiating a formal protest so that virtually any email communication, which could be construed as
13 challenging the Department, could be regarded as a “protest.”

14 Taxpayer’s protest, at Taxpayer Exhibit 2.1, states “[Taxpayer] believes that due to
15 communications with [the Department] covering an extended period of time, that the [Taxpayer]
16 has through constructive notice to [the Department] preserved the ability to appeal beyond the three
17 year [sic] period of assessments.” (Emphasis in Original)

18 Communications, as claimed by Taxpayer, can essentially be separated into two categories.
19 The first category represents “demands” or “assessments” which are initiated by the Department.
20 Taxpayer argues that “demands” and “assessments” need not be formal, as in a Notice of
21 Assessment of Taxes and Demand for Payment, but they can also be informal.

22 The second category represents “protests” which Taxpayer similarly asserts need not be
23 formal but can be asserted through an email in which Taxpayer’s disagreement with a Department

1 is explicit, or even perhaps, implied.

2 **“Demands” and “Assessments”**

3 The terms “demand” and “assessment” are significant to Taxpayer because according to the
4 Department’s website, as observed in the last sentence of Taxpayer Exhibit 6, “[a] taxpayer must
5 make a protest within 90 days of the mailing date of a tax *assessment*, of the mailing or service of
6 another notice or *demand*, or of the date of filing or mailing of a tax return[.]” (Emphases Added)

7 Therefore, Taxpayer fundamentally asserts that any correspondence, including casual
8 emails, could be construed as a “demand” or “assessment” depending on the substance of the
9 communication. Therefore, according to Taxpayer, an informal email from the Department, if
10 making reference to an assessment, could be construed as a new “demand” or “assessment”,
11 affording a new 90-day protest period.

12 Taxpayer’s position might best be illustrated through example. Thus, if on day 89 after
13 issuance of a Notice of Assessment, a taxpayer exchanges emails with Department personnel
14 regarding issues underlying the assessment, then the 90-day deadline should begin anew from that
15 date, presuming the communication did not resolve the underlying assessment because the
16 Department’s failure to concede to a taxpayer’s position is essentially equivalent to a new “demand”
17 or “assessment.”

18 Taxpayer argues that “demand” should be defined broadly and encourages the Hearing
19 Officer to refer to 45 CFR Section 30.11 (b). However, the Hearing Officer is unpersuaded by
20 Taxpayer’s reference to that regulation for a variety of reasons, one of which is that it is a federal
21 regulation which has no correlation to the implementation of any New Mexico tax law. Second is
22 that the regulation does not even address taxation issues. Instead, it addresses procedures for the
23 collection of debts owed to a federal agency, the U.S. Department of Health and Human Services,

1 and in no way associates to the collection of taxes, even at the federal level.

2 NMSA 1978, Section 7-1-24 is the controlling statute. Section 7-1-24 (A) (1) provides that
3 “[a] taxpayer may dispute: (1) the *assessment* to the taxpayer of any amount of tax.” In
4 circumstances where a taxpayer wishes to avail themselves of the opportunity to dispute an
5 assessment, as provided in Section 7-1-24 (A) (1), then Section 7-1-24 (B) provides that “[t]he
6 taxpayer may dispute a matter ... by filing with the secretary a written protest.”

7 The term, “assessment,” is critical. The Legislature has assigned the term specific
8 significance under Section 7-1-17 (B) (2) where it prescribes the prerequisites of an effective
9 assessment of taxes. It provides that “[a]ssessments of tax are effective: (2) when a document
10 denominated ‘notice of assessment of taxes’, issued in the name of the secretary, is mailed or
11 delivered in person to the taxpayer against whom the liability for tax is asserted, stating the nature
12 and amount of the taxes assertedly owed by the taxpayer to the state, demanding of the taxpayer the
13 immediate payment of the taxes and briefly informing the taxpayer of the remedies available to the
14 taxpayer[.]” Assessments, as required by the statute must contain a “demand” for payment.

15 Yet, Taxpayer insists that informal emails between himself and Department personnel
16 should be construed as “assessments” or “demands” so that the 90-day protest period should run
17 from the dates of those communications, all subsequent to the formal notices of assessment
18 remaining for consideration in this protest.

19 Taxpayer misunderstands the law, and if his interpretation were implemented, would have
20 absurd results. For example, under Taxpayer’s construction of the law, the Department would be
21 encouraged to *cease all communications* for a period not less than 90 days in order for an assessment
22 to become final, meaning that an assessed taxpayer wishing to discuss an assessment with the
23 Department would be met with silence. However, the New Mexico Taxpayer Bill of Rights, NMSA

1 1978, Section 7-1-4.2 requires, among other obligations, that the Department communicate with a
2 taxpayer regarding the basis for an assessment. *See* NMSA 1978, Section 7-1-4.2 (F). Yet, refusing
3 to communicate with an assessed taxpayer, for the purpose of assuring that an assessment becomes
4 final, obviates the stated purpose of the Legislature when it codified those very same rights. NMSA
5 1978, Section 7-1-4.1 provides:

6 The “New Mexico Taxpayer Bill of Rights” is created. It is the
7 purpose of the New Mexico Taxpayer Bill of Rights to:

8 A. ensure that the rights of New Mexico taxpayers are adequately
9 safeguarded and protected during the assessment, collection and
10 enforcement of any tax administered by the department pursuant to
11 the Tax Administration Act;

12 B. ensure that the taxpayer is treated with dignity and respect; and

13 C. provide brief but comprehensive statements that explain in simple,
14 nontechnical terms the rights of taxpayers as set forth in Section 7-1-
15 4.2 NMSA 1978.

16 New Mexico courts have also been clear with regard for the manner in which agencies of
17 the State should be expected to behave and have previously avoided construing statutes in a manner
18 that would encourage State agencies to simply disregard or ignore constituent matters as a legitimate
19 method of conducting State business. In the context of considering the timeliness of a claim for
20 refund, the Court of Appeals has stated in response to a similar argument, “[w]e decline to encourage
21 a state agency to behave in this fashion. It makes far more sense for the Department to be able to
22 respond[.]” *See Kilmer v. Goodwin*, 2004-NMCA-122, ¶21, 136 N.M. 440, 99 P.3d 690.

23 If on the other hand, the Department were to communicate freely as contemplated by the
24 Legislature, then the protest period might remain open indefinitely. This result, however, is also
25 absurd. Again, although not necessarily within the context of assessments, *Kilmer*, 2004-NMCA-
26 122, ¶16, explained that the purpose of deadlines is to “avoid stale claims, which protect the
27 Department’s ability to stabilize and predict, with some degree of certainty, the funds it collects or

1 manages.” The same rationale similarly applies to the Department’s efforts to collect assessed taxes.

2 The law does not intend for an informal email, in which the Department expresses
3 disagreement with the position of a taxpayer, with concern for an assessment, to extend the statutory
4 deadline for protesting that same assessment. Deadlines are firmly established by Section 7-1-24,
5 which in the cases of Letter ID Nos. L2142842160 and L0593455664, lapsed well before the earliest
6 email that might liberally be construed as a protest. *See e.g. In the Matter of the Protest of Robert*
7 *G. Hooper*, D&O No. 16-20 (non-precedential).

8 Even if Taxpayer nevertheless intended to protest some other general matter, such as an
9 email suggesting that the Department has not conceded to his arguments, then the Hearing Officer
10 continues to remain unpersuaded. Although Section 7-1-24 (A) (2) allows a taxpayer to protest the
11 application of any provision of the Tax Administration Act, except the issuance of a subpoena or
12 summons, there is no this authority for construing that section to provide a second opportunity to
13 protest the merits of an assessment when the 90-day period for such a protest has clearly lapsed.

14 A general rule of statutory construction provides that a specific provision applies over a
15 general provision in the same subject matter. *See Hi-Country Buick GMC, Inc. v. Taxation &*
16 *Revenue Dep't of N.M.*, 2016-NMCA-027, ¶21. Thus, with respect to challenging an assessment,
17 which is specifically listed under Section 7-1-24 (A) (1), Taxpayer had 90-days to file his protest.
18 The more general provision under Section 7-1-24 (A) (2) does not revive the 90-day period to
19 protest the merits of an underlying assessment.

20 Construing Section 7-1-24 (A) (2) as permitting Taxpayer to challenge a previously un-
21 protested assessment, merely because Taxpayer exchanged a post-assessment email with someone
22 from the Department past the 90-day deadline would lead to absurd results, in similar vein to the
23 scenarios discussed previously. Moreover, such construction would create discord with other

1 provisions of the TAA addressing related subject matter, an approach disfavored by the rules of
2 statutory construction. *See State v. Trujillo*, 2009-NMSC-012, ¶22, 146 NM 14 and *Hayes v.*
3 *Hagemeier*, 1963-NMSC-095, ¶9, 75 N.M. 70 (Statutes are to be read in harmony with other
4 provisions of the law dealing with the same subject matter). The Legislature did not intend for
5 assessments to be protested more than 90 days after issuance. Any construction of the law which
6 avoids that result requires that the Hearing Officer disregard well-established rules of statutory
7 construction, an approach that the Hearing Officer declines.

8 Incidentally, the Hearing Officer notes that Taxpayer’s formal protest makes an intriguing
9 statement, which shines an alternate light on the reason that Taxpayer may not have protested the
10 assessments under Letter ID Nos. L2142842160 and L0593455664 within the 90 days allotted for
11 filing a protest. At Taxpayer Exhibit 2.1, Taxpayer explained that his communications with the
12 Department “preserved the ability to appeal beyond the three-year period of assessments.” This
13 statement suggests that the Taxpayer may have simply misunderstood the law by presuming that the
14 protest deadline were three years instead of 90 days.

15 Although sympathetic to such error, *if* that is what occurred in this case, each assessment
16 was accompanied by a notice of Taxpayer’s rights under the law, and Taxpayer had actual notice of
17 the relevant deadlines for disputing the assessed liabilities.

18 **“Protests”**

19 The next issue to consider, in the alternative, is whether any electronic communications from
20 Taxpayer, earlier than September 21, 2018, might satisfy the elements of a valid, written protest.
21 Taxpayer proffered ACD-31094 Rev. 5/15 [**Taxpayer Ex. 5**] for the proposition that his electronic
22 communications encapsulated the basic information required of any formal written protest, and
23 argued that his emails satisfied the essential elements of notice, relying heavily on the provisions of

1 the Tort Claims Act to identify the minimum components in such notice. However, the Tort Claims
2 Act, NMSA 1978, Section 41-4-16, is not germane to the application of Section 7-1-24 despite
3 Taxpayer's most-admirable efforts at identifying similarities.

4 The assessments under Letter ID Nos. L0593455664 and L2142842160 direct Taxpayer to
5 review an enclosed publication, entitled *FYI-406: Your Rights Under the Tax Laws*. The same
6 publication is similarly referenced in Taxpayer Exhibit 6, and clearly states:

7 To protest an assessment, file a written protest within 90 days of the
8 date of the assessment. Mail your protest to: New Mexico Department
9 of Taxation and Revenue, Protest Office, P.O. Box 1671, Santa Fe,
10 NM 87504-1671. If using a private carrier, the street address is 1100
11 S. St. Francis Drive, Suite 1100, Santa Fe, NM 87505. The protest
12 must state the taxpayer's name and identifying number (Social
13 Security Number for individuals; New Mexico CRS number or
14 Federal Employer Identification Number for businesses), letter
15 identification number if applicable, the amount and kind of tax you
16 are protesting, grounds for protest, a summary statement of the
17 evidence you expect to produce to support each ground asserted, and
18 the affirmative relief you want.

19 Not only were Taxpayer's emails untimely with concern for the 2016 and 2017 assessments,
20 but Taxpayer's email communications failed to adhere to the Department's published instructions
21 on how and where to file a protest, which were not only provided to Taxpayer along with the
22 assessments, but which were also readily accessible to Taxpayer as demonstrated from a review of
23 his own exhibits. Taxpayer had actual notice that a protest needed to be mailed as instructed in *FYI-*
24 *406*, above.

25 In addition to the observations concerning the timeliness of the emails, it was also not
26 reasonable for Taxpayer to rely on his email correspondence to Department personnel, who were
27 not affiliated with the protest office, to perfect a valid formal protest of the 2016 and 2017
28 assessments. As discussed previously, the record illustrates how all emails were *pre-assessment*, or
29 several months after the 90-day protest deadline had already expired.

1 Furthermore, a thorough review of Taxpayer’s own exhibits tends to demonstrate his
2 understanding that email communications would not be regarded as formal protests under Section
3 7-1-24. For example, if Taxpayer genuinely believed, on July 24, 2018, that email correspondence
4 could initiate a formal protest of an assessment, then he would not have requested, as he did in
5 Taxpayer Exhibit 11.17, verification of applicable dates while explaining his then-present intentions
6 to “prepare the appeal,” acknowledge that the assessments contain “appeal information[,]” and
7 express interest for “where I need to file the appeal.” Moreover, on August 16, 2018 in Taxpayer
8 Exhibit 11.18, he would not have followed up stating “I don’t want to miss my 90 day window, but
9 also want to make sure that I have the information needed to file the appeal, and to whom I need to
10 send it.” Finally, he would not have, on September 21, 2018 in Taxpayer Exhibit 11.19, explained
11 that his appeal “didn’t just do the personal assessment, but submitted on all my arguments.” This
12 final statement suggests to the Hearing Officer that Taxpayer recognized that his protests in
13 reference to the 2016 and 2017 assessments would be untimely, but that he would nevertheless
14 present them as if they were timely because he perceived himself as having nothing to lose by trying.

15 It was not evident that Taxpayer ever intended for his pre-assessment email communications
16 to be regarded as formal protests of subsequent assessments under Section 7-1-24. But even if those
17 were his intentions, and even if he were entitled to essentially pre-protest a potential assessment, the
18 Department had not implemented any procedure for any protests to be filed by email. Taxpayer
19 argued that the distinction between mail and email is immaterial, explaining that “email” contains
20 the word “mail” in its title. The Hearing Officer finds Taxpayer’s reasoning to be unpersuasive.

21 It is accurate that email has supplanted traditional mail for many purposes, and the
22 Department provides a variety of services by electronic means. However, the Department has not
23 yet implemented a standard procedure for accepting protests by email. Although the Department

1 could afford any taxpayer an alternative filing method on a case-by-case basis, such as email or
2 facsimile, there is insufficient evidence to establish that occurred in this case, and Taxpayer clearly
3 did not adhere to the standard procedure with concern for any purported protest prior to September
4 21, 2018.

5 Taxpayer's first and only formal protest was mailed on or about September 21, 2018 and
6 received by the Department's Protest Office on September 24, 2018, well beyond the deadlines for
7 protesting Letter ID Nos. L2142842160 and L0593455664, or any other Department action prior to
8 June 23, 2018.

9 **Statutory or Equitable Estoppel**

10 Taxpayer claims that the Department should be estopped from disputing the timeliness of
11 his protest, relying on email communications, particularly with Ms. Denise Marquez stating that
12 "she went and made major, blanket statements that were designed to prevent me from going any
13 further." [Record of Hearing, 3/27/2019 (Taxpayer's Closing Argument)]

14 However, a review of all of Taxpayer's evidence, including Taxpayer Exhibit 14, containing
15 communications with Ms. Marquez, fails to reveal any communications which might suggest that
16 estoppel should apply. There are two forms of estoppel that are relevant for discussion.

17 The first form of estoppel is statutory. NMSA 1978, Section 7-1-60 (1993) provides for
18 statutory estoppel in certain circumstances, particularly when a taxpayer's actions were "in
19 accordance with any regulation effective during the time the asserted liability for tax arose or in
20 accordance with any ruling addressed to the party personally and in writing by the secretary..." The
21 evidence presented in this protest did not establish that the Taxpayer's actions, at any time relevant
22 to the issues in protest, were in accordance with any regulation effective during the time the asserted
23 liability arose, or in accordance with any ruling addressed to Taxpayer personally in writing by the

1 secretary.

2 Taxpayer's argument may also be construed as asserting a claim for equitable estoppel.
3 However, the availability of equitable estoppel for providing the relief Taxpayer seeks is uncertain
4 in an administrative protest hearing. *See AA Oilfield Service v. New Mexico State Corporation*
5 *Commission*, 1994-NMSC-085, ¶18, 118 N.M. 273 (equitable remedies are not part of the “quasi-
6 judicial” powers of administrative agencies). Even if it were available in this context, courts are
7 reluctant to apply the doctrine of equitable estoppel against the state in cases involving the
8 assessment and collection of taxes. *See Taxation & Revenue Dep't v. Bien Mur Indian Mkt. Ctr.,*
9 *Inc.*, 1989-NMSC-015, ¶9, 108 N.M. 22. In such cases, estoppel applies only pursuant to statute or
10 when “right and justice demand it.” *See Bien Mur Indian Market*, 1989-NMSC-015, ¶9.

11 In order for Taxpayer to establish an equitable estoppel claim against the Department, the
12 taxpayer must show that (1) the government knew the facts; (2) the government intended its conduct
13 to be acted upon or so acted that plaintiffs had the right to believe it was so intended; (3) plaintiffs
14 must have been ignorant of the true facts; and (4) plaintiffs reasonably relied on the government's
15 conduct to their injury. *See Kilmer*, 2004-NMCA-122, ¶26.

16 Finally, Taxpayer must also show “affirmative misconduct on the part of the government.”
17 *See Kilmer*, 2004-NMCA-122, ¶26. In this protest, there is simply no evidence to suggest affirmative
18 misconduct by any employee of the Department with whom Taxpayer may have communicated at
19 any time relevant to this protest, including Ms. Marquez. Nor is there any other evidence to establish
20 any of the other elements of equitable estoppel.

21 Moreover, it is well established that even if Taxpayer produces a written communication in
22 which he could infer that his 90-day window for filing a protest had been extended, that estoppel
23 cannot lie against the state when the act sought would be contrary to the requirements expressed by

1 statute. See *Rainaldi v. Public Employees Retirement Board*, 1993-NMSC-028, ¶18-19, 115 N.M.
2 650.

3 Because Section 7-1-24 expresses in very clear terms that a protest must be filed within 90
4 days, estoppel may not be employed to extend the deadline beyond what is permissible by law.

5 Taxpayer's protest should be DENIED. Taxpayer filed one formal protest on September 21,
6 2018 which was untimely as to any Department action preceding that date by 90 days, or before
7 June 23, 2018, including the assessments issued under Letter ID Nos. L2142842160 and
8 L0593455664. Taxpayer's protest in reference to the personal assessment, which was subsequently
9 abated, or the assessments which were resolved by the submission of amended returns, is MOOT.

10 CONCLUSIONS OF LAW

11 A. All assessments addressed on the record¹ to which Taxpayer's protest may be deemed
12 timely have been abated or have been subject to amendment resulting in no present liability to
13 Taxpayer. Although the Administrative Hearings Office has jurisdiction over the parties and the subject
14 matter of this protest, issues arising from those assessments are moot. *Crutchfield v. N.M. Dep't of*
15 *Taxation & Revenue*, 2005-NMCA-022, ¶ 36, 137 N.M. 26, 106 P.3d 1273 ("A reviewing court
16 generally does not decide academic or moot questions."); *State v. Ordunez*, 2012-NMSC-024, ¶22,
17 283 P.3d 282 ("It is not within the province of an appellate court to decide abstract, hypothetical or
18 moot questions in cases wherein no actual relief can be afforded.")

19 B. The initial scheduling hearing conducted on December 7, 2018 satisfied the 90-day
20 hearing requirement of NMSA 1978, Section 7-1B-8(A) (2015).

21 C. Taxpayer's formal written protest, mailed to the Department on September 21, 2018,

¹ Letter ID Nos. L0387657520; L1729834800; L0656092976; L1192963888; L0253439792; L1998270256;
L0924528432; L1461399344; and L1027292976. [Taxpayer Exhibit 1.1 – 1.9]; Letter ID No. L0072396592
[Administrative File]

1 and received by its Protest Office on September 24, 2018, is not timely in reference to any protestable
2 action occurring more than 90 days prior to the date it was mailed, or before June 23, 2018, including
3 Letter ID Nos. L2142842160 and L0593455664. *See* NMSA 1978, Section 7-1-24; *Associated*
4 *Petroleum Transp. v. Shepard*, 1949-NMSC-002, ¶6 & ¶11, 53 N.M. 52; *Chan v. Montoya*, 2011-
5 NMCA-72, 150 N.M. 44; *Lopez v. New Mexico Dep't of Taxation & Revenue*, 1997-NMCA-115,
6 124 N.M. 270.

7 D. Taxpayer's email communications prior to submitting a written protest on September
8 21, 2018, do not constitute timely or valid protests under Section 7-1-24; *See also* FYI-406; *See*
9 NMSA 1978, Section 9-11-6.2 (G) ("Any regulation, ruling, instruction or order issued by the
10 secretary or delegate of the secretary is presumed to be a proper implementation of the provisions
11 of the laws that are charged to the department, the secretary, any division of the department or any
12 director of any division of the department.")

13 E. Taxpayer is not entitled to any relief in the form of statutory or equitable estoppel.
14 *See Kilmer v. Goodwin*, 2004-NMCA-122, 136 N.M. 440; *See* NMSA 1978, Section 7-1-60.

15 Taxpayer's protest in reference to any Department action earlier than June 23, 2018 is
16 untimely or unsupported by sufficient evidence, and his protest in reference to any Department
17 actions on or after June 23, 2018 is moot. Taxpayer's protest **IS DENIED**.

18 DATED: May 24, 2019

19
20 

21 Chris Romero
22 Hearing Officer
23 Administrative Hearings Office
24 P.O. Box 6400
25 Santa Fe, NM 87502

1 **CERTIFICATE OF SERVICE**

2 On May 24, 2019, a copy of the foregoing Decision and Order was served on the parties listed
3 below in the following manner::

4 *First Class Mail*

Interdepartmental State Mail

5
6 INTENTIONALLY BLANK

7
8 _____
9 John D. Griego
10 Legal Assistant
11 Administrative Hearings Office
12 Post Office Box 6400
13 Santa Fe, NM 87502
14 PH: (505)827-0466
15 FX: (505)827-9732
john.griego1@state.nm.us