

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

IN THE MATTER OF THE PROTEST OF
DAIN RAUSCHER, INC., FORMERLY KNOWN
AS RAUSCHER PIERCE REFSNES, INC.,
ID. NO. 01-718277-00 8, PROTEST TO
DENIAL OF REQUEST FOR EXTENSION OF TIME

NO. 98-46

DECISION AND ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

This matter comes on for determination before Gerald B. Richardson, Hearing Officer, upon cross-motions for summary judgment filed by the parties. Dain Rauscher, Inc, formerly known as Rauscher Pierce Refsnes, Inc., hereinafter, "Taxpayer", is represented by Mary E. McDonald, Esq. of Sutin, Thayer & Browne, P.C. The Taxation & Revenue Department, hereinafter, "Department", is represented by Frank D. Katz, Esq., Chief Counsel. Based upon the undisputed facts, set forth below, and the arguments of the parties, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. On December 23, 1996, the Taxpayer filed a claim for refund of gross receipts tax paid to the Department in 1993.
2. The Department neither granted nor denied the claim for refund within 120 days after the claim for refund was filed.

3. July 21, 1997, was the date which was 90 days after 120 days after the Taxpayer's claim for refund was filed.

4. On July 31, 1997, the Taxpayer filed a request for a retroactive extension of time, pursuant to the authority granted the Secretary in § 7-1-24(B), to file a protest to the Department's failure to either grant or deny the Taxpayer's claim for refund. The same day, along with the request for extension of time, the Taxpayer filed a protest of the Department's failure to either grant or deny the claim for refund, pursuant to § 7-1-24(A) NMSA 1978 (1995 Repl. Pamp.) and § 7-1-26(B)(1) NMSA 1978 (1997 Cum. Supp.).

5. By letter dated August 18, 1997, the Department denied Rauscher's request for an extension of time within which to protest the Department's failure to grant or deny the claim for refund, stating the basis for the denial as:

Paragraph B of § 7-1-24 states that...**Any protest by a taxpayer shall be filed within thirty days of the date of mailing of the notice of assessment or mailing to, or service upon, the taxpayer of other peremptory notice or demand, or the date of mailing or filing a return.** In order to qualify for a retroactive extension as spelled out in Paragraph B, the incident under question must fall within the criteria set in the statute as bolded above. Since you did not receive a notice of assessment or other peremptory notice or demand, Paragraph B of § 7-1-24 does not apply. The authority to protest the department's failure to take action on the refund claim, and period of time for protest is controlled by § 7-1-26.

By letter dated August 28, 1997, The Taxpayer protested the Department's denial of Rauscher's request for an extension of time and rejection of Rauscher's protest.

DISCUSSION

This issue to be determined herein is the jurisdiction of this administrative forum to consider the protest¹ filed by the Taxpayer to the Department's denial of its claim for refund. It is beyond dispute that the Taxpayer's protest was not filed within the 90-day time limit provided for in Section 7-1-26(B)(1) NMSA 1978 (1997 Cum. Supp.) for filing a protest to the Department's failure to take action on a claim for refund within 120 days. It is also beyond dispute that the Taxpayer filed a written request with the Secretary of the Department for an extension of time to file its protest pursuant to Section 7-1-24 (B) NMSA 1978 (1995 Repl. Pamp.), and such request was made within the 60-day time limit for making such requests. What is in dispute, however, is whether the provisions of Section 7-1-24(B) NMSA 1978 (1995 Repl. Pamp.) apply to allow extensions of time to be granted, at the discretion of the Secretary, when the matter in protest is the denial of a claim for refund. The parties have ably briefed the issue and the legislative history of the statutory provisions at issue, and their efforts have been very helpful to my understanding of this complex and difficult matter.

Section 7-1-24(B) NMSA 1978 (1995 Repl. Pamp.)² provides as follows:

Any protest by a taxpayer shall be filed within thirty days of the date of the mailing to the taxpayer by the department of the notice of assessment or mailing to, or service upon, the taxpayer of other peremptory notice or demand, or the date of mailing or filing a return. Upon written request of the taxpayer made within the time permitted for filing a protest, the secretary may grant an extension of time, not to exceed sixty days, within which to file the protest. If a protest is not filed within the time required for filing a protest, or if an extension has not been granted within the extended time, the secretary may proceed to enforce collection of any tax if the taxpayer is delinquent within the meaning of Section 7-

¹ Because this issue is jurisdictional, the merits of the Taxpayer's protest are irrelevant to the issues raised on summary judgment and are not considered herein.

² This version was enacted by Laws 1993, ch. 5, §8.

1-16 NMSA 1978. Upon written request of the taxpayer made after the time for filing a protest but not more than sixty days after the expiration of the time for filing a protest, the secretary may grant a retroactive extension of time, not to exceed sixty days, within which to file the protest provided that the taxpayer demonstrates to the secretary's satisfaction that the taxpayer was not able to file a protest or to request an extension with the time to file the protest and that the grounds for the protest have substantial merit. The fact that the department did not mail the assessment or other preemptory notice or demand by certified or registered mail or otherwise demand and receive acknowledgment of receipt by the taxpayer shall not be deemed to demonstrate the taxpayer's inability to protest or request an extension within the time for filing a protest within the required time. The secretary shall not grant a retroactive extension if a levy has already been served under sections 7-1-31, 7-1-33 and 7-1-34 NMSA 1978 or a jeopardy assessment under section 7-1-59 NMSA 1978. No proceedings other than those to enforce collection of any amount assessed as tax and to protect the interest of the state by injunction, as provided in Sections 7-1-31, 7-1-33, 7-1-34, 7-1-40, 7-1-53, 7-1-56, and 7-1-58 NMSA 1978, are stayed by timely filing of a protest under this section.

The Taxpayer argues that the language in the provision allowing the Secretary to grant retroactive extensions of time to file "a protest" is unambiguous and applies to any type of allowable protest under the provisions of the Tax Administration Act, including the Taxpayer's protest to the Department's failure to act upon its refund claim. The Department claims that the language in the first sentence of the provision evidences a legislative intent to limit the Secretary's authority to grant retroactive extensions of time in which to file a protest to only those types of protests listed in that sentence, thereby precluding the Secretary from even considering a request for an extension of time to file a protest where the denial of a claim for refund or the Department's failure to act upon such a claim is at issue. Additionally, the Department points out that the Legislature

amended both § 7-1-24(B) and § 7-1-26(A) in the same enactment of the 1993 legislative session, being Laws 1993, ch. 5. At the same time the legislature amended § 7-1-24(B) to allow for retroactive extensions of up to 60 days after the 30-day time limit for filing protests had passed, it also amended § 7-1-26(A) to increase the time for filing a protest to a denial or failure to act upon a claim for refund from 30 to 90 days. The Department argues that this provides an identical maximum of 90 days for filing a protest, whether it is a protest to an assessment of tax, a protest to some other peremptory demand or notice from the Department, or a protest to a denial of or failure to act upon a refund claim. Arguing that there is no evident reason to provide a longer period of time for contesting the denial of or failure to act upon a refund claim than for protesting an assessment of tax or other peremptory notice or demand, the Department suggests that the simultaneous amendment of both §§ 7-1-24 and 7-1-26 supports its restrictive interpretation of § 7-1-24(B).

Given the language in the first sentence of § 7-1-24(B), which refers to “any” protest, but then specifically lists only protests to certain enumerated actions, I find the provision to be ambiguous and in need of construction. In construing the meaning of a particular statute, the reviewing authority’s central concern is to determine and give effect to the intention of the legislature. *State ex rel. Kline v. Blackhurst*, 106 N.M. 732, 749 P.2d 1111 (1988). Additionally, because both §§ 7-1-24 and 7-1-26 deal with administrative protests of tax matters and cross reference each other, those statutes should be construed *in pari materia* to determine legislative intent. Finally, the evolution of those two sections is instructive to the analysis of legislative intent.

As suggested by the Taxpayer, the starting point in the analysis of §§ 7-1-26 and 7-1-24 is the version of them enacted by Laws, 1986, Ch. 20, §§ 15 and 17. Those enactments provided two separate protest procedures, depending upon whether a taxpayer was protesting the Department's denial of or failure to act upon a claim for refund, or whether an assessment of tax or other peremptory demand was being protested. Section 7-1-26, which governs claims for refund provided in pertinent part as follows:

A. If any person believes that he has made payment of or had withheld from him any tax in excess of that for which he was liable...he may claim a refund by directing to the secretary, within the time limited by the provisions of Subsections B and C of this section, a written claim for refund.

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 or if no action is taken on the claim the person may either:

(1) direct to the secretary, within thirty days after the mailing of the denial of a claim or within thirty days after the expiration of one hundred twenty days after the mailing of a claim on which no action has been taken, *a written request for hearing of his claim*, which shall be granted and set for hearing by a hearing officer designated by the secretary within thirty days after the receipt of the request in accordance with the provisions of Section 7-1-24 NMSA 1978 and pursue the remedies of appeal from decisions adverse to him as provided in Section 7-1-25 NMSA 1978, or

(2) commence a civil action...in the district court for Santa Fe county...demanding the refund...

Laws 1986, ch. 20, § 17. Thus, the way in which a taxpayer administratively contested the denial of or failure to act upon its refund claim was to make a written request for a hearing, which was then granted and the hearing was to be conducted in accordance with the procedures for an administrative hearing set out in § 7-1-24.

Section 7-1-24 provided in pertinent part as follows:

A. Any taxpayer may dispute the assessment to him or payment by him of any amount of tax or the application to him of any provision of the Tax Administration Act **by filing with the secretary** a written protest against the assessment or against the application to him of the provision or **a written claim for refund in the amount claimed to have been erroneously paid as tax**. Every protest shall state the nature of the taxpayer's complaint and the affirmative relief requested. The secretary may, in appropriate cases, provide for an informal conference before setting a hearing of the protest or acting on any claim for refund.

B. Any protest by a taxpayer shall be filed within thirty days of the date of the mailing to him by the department of the notice of assessment or mailing to, or service upon, him of other peremptory notice or demand, or the date of mailing or filing his return, and if not filed within that time or such other reasonable time, not to exceed thirty additional days, as the secretary may grant as an extension of time for filing of a written protest, the secretary may proceed to enforce collection of any tax if the taxpayer is delinquent within the meaning of Section 7-1-16 NMSA 1978. To be effective, any notice of assessment or other peremptory notice or demand shall briefly inform the taxpayer of his rights of appeal under this section and of the consequences of his failure to appeal. No proceedings other than those to enforce collection of any amount assessed as tax and to protect the interest of the state by injunction, as provided in Sections 7-1-31, 7-1-33, 7-1-34, 7-1-40, 7-1-53, 7-1-56 and 7-1-58 NMSA 1978, are stayed by timely filing of a protest under this section.

C. Claims for refund shall be filed as provided for in Section 7-1-26 NMSA 1978.

(emphasis added.)

Laws 1986, ch. 20, 15. It should also be noted that the remaining subsections of § 7-1-24, that is, subsections D through I, dealt with the conduct of the administrative hearing. As written, the 1986 version of § 7-1-24 did not cover the method for protesting the denial of or failure to act upon a claim for refund. Subsection A provided that a taxpayer could

dispute the payment of any amount of tax by filing a written claim for refund, and it allowed the Secretary to set an informal conference before acting on any claim for refund. Subsection B only referenced protests to notices of assessment or of other preemptory notice or demand or of filing a return, which is another method of assessing a tax. *See*, § 7-1-17(B)(1) NMSA 1978 (1983 Repl. Pamp.) By the Taxpayer's own admission, under the 1986 version of § 7-1-24, the procedure to be followed by a taxpayer disputing the Department's denial of, or failure to act upon a claim for refund was not a protest under § 7-1-24, but rather, was to file a request for hearing of its claim for refund under § 7-1-26.³ *See*, Taxpayer's Reply brief, p. 3. It is also noteworthy that § 7-1-26 provided for an absolute 30 day period of time to contest the Department's denial of a claim for refund or failure to act on such a claim within 120 days of its filing, while § 7-1-24(B) allowed the Secretary to extend the time for protesting an assessment or other preemptory notice or demand by an additional 30 days beyond the standard 30 day time limit.

These sections of law were amended again in 1989. *See*, Laws 1989, ch. 325, §§ 6 and 8. Section 7-1-26(A)(1) was substantially amended. In Subsection A language was added addressing a matter which the previous versions of the statute had not addressed, whether a claim for refund could be refiled. The amended statute provided that claims for refund which were either wholly or partially denied in writing could not be refiled. By

³ In spite of this admission, the Hearing Officer did consider whether denials of claims for refund might be considered to fall under the categorization of a "preemptory notice" under § 7-1-24(B). Section 7-1-26 is the more specific provision outlining the procedure for disputing a denial of a claim for refund, however, which, under rules of statutory construction, would govern over the more general provision of § 7-1-24(B). Even more persuasive, however, is that sometimes, as in the instant case, the Department takes no action to either grant or deny a claim for refund. It simply fails to act upon it. In such a case, the Department issues nothing which could be considered to be a "preemptory notice". Since the Department's failure to act upon a refund claim acts as a *de facto* denial, it wouldn't make sense for the legislature to intend that actual refund denials, but not *de facto* denials, be covered under the rubric of a preemptory notice.

implication, claims that were not acted upon could be refiled, so long as they were refiled within the statute of limitations for filing refund claims found elsewhere in § 7-1-26.

Additionally, § 7-1-26(A) was reordered somewhat. While retaining the 30 day time limit for contesting the Department's denial of a refund claim or for contesting the Department's failure to act upon a refund claim after 120 days have expired, it moved those time limits from subsections (A)1 and (A)2, which apply, respectively to actions invoking the administrative forum to contest the Department's actions and actions filed in District Court, to the main body of Subsection A. Since the same time limits were applicable, it made some sense to only state them once, rather than twice. Subsection (A)1 was rewritten to allow a taxpayer wishing to pursue an administrative remedy to address his dispute over the Department's denial of or failure to act upon his claim for refund to⁴:

(1) direct to the secretary [~~within thirty days after the mailing of the denial of a claim or within thirty days after the expiration of one hundred twenty days after the mailing of a claim on which no action has been taken,~~] a written [~~request for hearing of his claim~~] protest against the denial of, or failure to either allow or deny, the claim, which shall be [~~granted and~~] set for hearing by a hearing officer designated by the secretary within thirty days after the receipt of the [~~request~~] protest in accordance with the provisions of Section 7-1-24 NMSA 1978 and pursue the remedies of appeal from decisions adverse to [~~him~~] the protestant as provided in Section 7-1-25 NMSA 1978;

Thus, the method for contesting a refund denial or the Department's failure to act upon a claim for refund was changed from filing a request for a hearing on the taxpayer's claim for refund, to filing a protest with the Secretary. Now, any taxpayer choosing the

administrative forum to contest the Department's actions, whether it be an assessment of tax, the application of the Tax Administration Act, a peremptory notice or demand, or a denial of or failure to act upon a refund claim does so by filing a written protest with the Secretary.

Section 7-1-24(A) was amended to reflect this change as well, providing in pertinent part⁵:

A. Any taxpayer may dispute the assessment to [~~him or payment by him~~] the taxpayer of any amount of tax [~~or~~] , the application to [~~him~~] the taxpayer of any provision of the Tax Administration Act or the denial of or failure to either allow or deny, a claim for refund made in accordance with Section 7-1-26 NMSA 1978 by filing with the secretary a written protest against the assessment or against the application to him of the provision or a written claim for refund of the amount claimed to have been erroneously paid as tax.

Unfortunately, although language was added to include the denial of or failure to act upon a refund claim to the actions of the Department which a taxpayer could dispute, the old language referring to the claim for refund, rather than to a written protest, was retained. Although somewhat confusing, when read *in pari materia* with the more specific provisions of § 7-1-26, it was sufficiently clear that a written protest was the means now provided for administratively contesting the denial of or failure to act upon a refund claim. It should also be noted that even though the means for contesting the Department's denial of or failure to act upon a claim for refund changed to filing a protest, no amendments were made to the language of Subsection B of § 7-1-24 which

⁴ Legislative drafting style is adopted to show the changes to the statute as amended by placing in brackets and striking through the language which was deleted by the amendment. Language added by the amendment is shown by underlining.

only referenced protests to notices of assessment, peremptory notices or demands from the Department, or the filing of a return.

In 1993, the Legislature amended both § 7-1-24 and § 7-1-26 again in the same act. As noted in the session laws, Ch. 5 of the Laws of 1993 was passed by the Legislature as House Bill 44, as amended, approved on February 23, 1993.⁶ Subsection A of § 7-1-24 was amended to fix the problem created by the 1989 amendment, clarifying that a taxpayer could contest the Department's denial of or failure to act upon a claim for refund by filing a protest to the Department's denial or failure to act.

Subsection B of § 7-1-24 was substantially amended with respect to extensions of time for filing protests. The former provision had simply provided the Secretary the authority to grant an extension of time, not to exceed 30 days, to file a protest. As amended, Subsection B allowed the Secretary to grant an extension of time of up to 60 additional days to file a protest. The Secretary's authority was separately addressed, depending upon whether the request for an extension of time was made within the original 30 days for filing the protest, or after the 30 days had expired. If requested within the 30 days, the Secretary is simply given the power to extend the deadline by

⁵ Legislative drafting style is used.

⁶ The Taxpayer argued that the Department had failed to prove that House Bill 44 was the bill which became Ch. 5 of the Laws of 1993, but the reference in the Session Laws is sufficient for this tribunal to take administrative notice of the fact.

another 60 days. If an extension was not requested within the 30 days to file a protest, then the Secretary can still grant an extension of up to 60 days provided that the taxpayer demonstrates to the secretary's satisfaction that the taxpayer was not able to file a protest or to request an extension of time within the time to file the protest and that the grounds for the protest have substantial merit. Additionally, the language which provided that to be effective, the notice of assessment or peremptory notice or demand must inform the taxpayer of his rights of protest was deleted from the subsection. New language was added stating that the fact that the Department did not mail the assessment or peremptory notice or demand by certified or registered mail or otherwise receive acknowledgment of receipt by the taxpayer would not be deemed to demonstrate a taxpayer's inability to protest or request an extension of time to file a protest. Finally, new language was added prohibiting the Secretary from exercising his or her discretion to grant a retroactive extension of time where a levy or jeopardy assessment has been issued.

Section 7-1-26(A) was also substantially amended by the same legislation. First, language was added which expressly recognized the previously implicit right to refile a claim for refund if the Department has not taken action to either grant or deny any portion of the claim for refund within 120 days of the filing of the claim, so long as it is refiled within the time limits of Subsection B of § 7-1-26. More pertinent to this matter, the 30-day time limit for administratively protesting the denial of or failure to act upon a refund claim was changed to 90 days from the denial or 90 days after 120 days had passed since the filing of the claim. Finally, the language in Subsection (A)(1) which had directed that the administrative hearing be set within thirty days of the filing of the protest was changed to only require that the hearing be set "promptly".

The Taxpayer argues that the 1993 amendments to § 7-1-24(A) completed the job which was begun by the 1989 amendments, that is, to make clear that a taxpayer's dispute of the Department's denial of, or failure to grant or deny a claim for refund is to be filed as a protest and will be subject to the same requirements and procedures as any other protest under § 7-1-24. While the first part of this proposition, that the filing of a protest is the means of contesting the Department's denial or failure to act upon a claim for refund is undoubtedly true, this was previously made clear by the 1989 amendments to § 7-1-26, and the legislative oversight in failing to change all of the relevant language of § 7-1-24(A) was not critical to this change, since the more specific provisions of § 7-1-26 would govern in any event. It is the second part of this argument, that the 1993 amendments clarified that the legislature intended that a protest to a denial of or failure to act upon a claim for refund be subject to the same requirements and procedures as any other protest under § 7-1-24 which remains in dispute.

The Taxpayer, in support of this proposition, relies heavily upon the way that the legislature amended Subsection B of § 7-1-24 to address extensions of time. The 1989 version of Subsection B contained the requirement that protests to assessments or peremptory notices or demands be filed within thirty days of the mailing of the assessment or mailing or service of the peremptory notice and demand and granted the Secretary the authority to grant a 30 day extension of time for such protests in the same sentence of the subsection, linking the two provisions with an "and". The 1993 amendments put the language granting the Secretary the authority to grant an extension of time into a separate sentence from the first sentence which specifically listed only protests to assessments and peremptory notices and demands. The Taxpayer argues that by doing

so, the Legislature evidenced an intention to de-link the limiting language of the first sentence of the subsection with respect to types of protests, from the language of the rest of the subsection dealing with extensions of time.

I think the Taxpayer makes too much of the removal of an “and”. In the first place, the 1993 amendment not only extended from 30 days to 60 days the Secretary’s authority to grant extensions of time to file protests, it also made provision for two different circumstances in which the extensions may be granted, depending upon whether the extension of time is requested within the original 30 days for filing a protest or after that time, and it provided for different matters to be considered by the Secretary, depending upon which type of extension is requested. Rather than indicating a legislative intention to de-link the restrictive language of the first sentence from the provisions about extensions of time, it is at least as likely that the revision simply reflected the Legislature’s intent to avoid creating an incredibly complex run-on sentence which would have made the subsection unwieldy and difficult to decipher. Besides, the restrictive language of the first sentence still remains in the same subsection of the statute as the new provisions allowing the more liberal time limits for extensions of time and would be read together under ordinary rules of statutory construction. If the legislature had truly intended the more liberal time limits for extensions expressed in Subsection B to apply to all protests, no matter what departmental actions were being protested, it would have been more reasonable to do it expressly, by adding language to the first sentence of Subsection B, expressly referring to protests of denials of or failure to act upon claims for refund to overcome the restrictive language in the first sentence.

Even more compelling evidence that the 1993 Legislature did not intend the extensions of time provided for in Subsection B to apply to refund claims is the new sentence added immediately after the language granting the Secretary additional authority to extend the time for filing protests. It provides:

The fact that the department did not mail *the assessment or other peremptory notice or demand* by certified or registered mail or otherwise demand and receive acknowledgement of receipt by the taxpayer *shall not be deemed to demonstrate the taxpayer's inability to protest or request an extension within the time for filing a protest within the required time.* (emphasis added).

This language reiterates the restrictive language of the first sentence of Subsection B limiting the types of protest and it does so in the same sentence that discusses the criteria for the Secretary to consider in granting the precise type of extension of time this Taxpayer was seeking under the new law, a retroactive extension of time. This is a clear indication that the extensions of time referenced in that subsection are limited to those in which an assessment or other peremptory notice or demand is being protested.

Also persuasive of the legislative intent to restrict the language of Subsection B to extensions of time for the enumerated types of protest is the fact that at the same time the legislature added sixty additional days to the time limits for filing protests under § 7-1-24(B), it also amended § 7-1-26(A) which expressly deals with the time limits for protesting the Department's denial of or failure to act upon a claim for refund to add an identical 60 days. This creates a parity in the time allowed for filing a protest regardless of the Departmental action (or non-action in the case of a failure to grant or deny a refund claim) which is being protested. The Taxpayer has failed to posit any reason for the Legislature to provide for longer periods of time to protest the Department's denial of or

failure to act upon a refund claim than for protesting an assessment of tax or other peremptory notice or demand of the Department, other than to state that the Legislature intended to liberalize the protest procedures. While this is true, the protest procedures would also be liberalized under the Department's more restrictive view of the effect of the 1993 amendments, and there still remains no persuasive reasoning to support even more liberal provisions for protesting refund claims than other types of protests. It would seem especially unlikely that the Legislature would have intended to provide a longer amount of time to protest the Department's denial of or failure to act on refund claims than it would to assessments by the Department given the requirement that the Department pay interest on claims for refund which are not granted and upon which the taxpayer ultimately prevails since it could potentially add to the amount of interest the state would be required to pay. *See*, § 7-1-68 (C) NMSA 1978.

Additionally, the differential treatment argued for by the Taxpayer is not supported by Department's explanation of the substantive changes which House Bill 44 would create as provided to the Legislature in the Department's fiscal impact report submitted for consideration during the legislative process.⁷

Finally, although not discussed by the parties in their memoranda of law, the interpretation of § 7-1-24(B) argued by the Taxpayer would create yet another unexplainable differential treatment of taxpayers under the Tax Administration Act. In this case, we have been dealing only with administrative protests to the Department's

⁷ Because the Department's fiscal impact report was a contemporaneous document presented to the Legislature during the course of enactment of House Bill 44, it may properly be considered in determining legislative intent. *State ex rel. Helman v. Gallegos*, 117 N.M. 346, 355, 872 P.2d 1352 (1994).

denials of or failure to act upon refund claims under §§ 7-1-24 and 7-1-26(A)(1). Taxpayers may also choose to sue the Department in District Court to contest the Department's denial of or failure to act upon a refund claim, pursuant to § 7-1-26(A)(2). Had the Legislature intended the extension of time language of § 7-1-24(B) to apply to protests of the Department's denials of or failure to act upon refund claims, then a taxpayer choosing the administrative remedy rather than filing suit in District Court would have sixty more days to contest the Department's actions than a taxpayer filing in District Court. If there is a basis for such differential treatment, it is not at all obvious to this decision maker what that may be.

For all of the above reasons, it is concluded that the Legislature did not intend that the provisions of § 7-1-24(B) apply to protests to the Department's denial of or failure to act upon a claim for refund.

CONCLUSIONS OF LAW

1. The Taxpayer filed a timely written protest, pursuant to § 7-1-24 NMSA 1978 to the Department's application of § 7-1-24(B) of the Tax Administration Act to determine that the Secretary did not have the authority to consider granting the Taxpayer an extension of time to file a protest to the Department's failure to act upon its claim for refund. Therefore, jurisdiction lies over both the parties and the subject matter of this protest.

2. The Secretary's authority, pursuant to § 7-1-24(B) NMSA 1978 (1995 Repl. Pamph.) to grant extensions of time to file protests, is limited to protests of notices of assessment and other peremptory notices or demands of the Department and does not

extend to protests of the Department's denial of or failure to act upon claims for refund filed pursuant to § 7-1-26(A)(1) NMSA 1978.

For the foregoing reasons, IT IS HEREBY ORDERED that the Department's Motion for Summary Judgment IS HEREBY GRANTED and the Taxpayer's Motion for Summary Judgment IS HEREBY DENIED. Because this ruling also disposes of the Taxpayer's protest, the Taxpayer's protest IS HEREBY DENIED.

DONE, this 31st day of August, 1998.