

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

IN THE MATTER OF THE PROTEST OF
CRST, INC., ID. NO. 02-067509-00 7
PROTEST TO ASSESSMENT NO. 2082617

NO. 98-49

DECISION AND ORDER

This matter comes on for determination before Gerald B. Richardson, Hearing Officer, based upon a joint stipulation of facts and memoranda of law. CRST, Inc., hereinafter, "Taxpayer", was represented by Ms. Debra Wood, its Tax Supervisor. The Taxation and Revenue Department, hereinafter, "Department", was represented by Monica M. Ontiveros, Special Assistant Attorney General. Based upon the stipulated facts and arguments of the parties, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. The Taxpayer is a corporation which is headquartered in Cedar Rapids, Iowa and which operates an interstate trucking operation.
2. The Department audited the Taxpayer for the 1992, 1993 and 1994 and tax years and determined that the Taxpayer had underreported its corporation income taxes owing to the Department during those years.
3. As a result of the Department's audit, the Department issued Assessment No. 2082617 to the Taxpayer on November 8, 1996, assessing \$5,417.00 in corporation income tax, \$541.70 in penalty and \$2,215.85 in interest for the 1992 through 1994 tax years.

4. The amount of underpaid corporation income tax attributable to each of the tax years was \$1,631 for tax year 1992, \$2,482 for tax year 1993 and \$1,273 for tax year 1994.

5. On December 4, 1996, the Taxpayer requested an extension of time to file a protest pursuant to § 7-1-24 (B) NMSA 1978.

6. On December 17, 1996 the Department granted the Taxpayer's request for an extension of time, granting until February 1, 1997 for the Taxpayer to file its protest.

7. On January 27, 1997, the Taxpayer filed a protest to Assessment No. 2082617.

8. On September 15, 1993, the Taxpayer filed its 1992 New Mexico corporation income tax return with the Department. Line 16 on that return indicated that the Taxpayer had overpaid its 1992 corporation income taxes by \$2,436.00. The Taxpayer had the option of having that amount refunded to it by filling in line 16b, or it had the option of having the overpayment applied to the 1993 tax year by filling in line 16a. The Taxpayer filled in line 16a, electing to have the overpayment applied to the 1993 tax year.

9. On September 15, 1994, the Taxpayer filed its 1993 New Mexico corporation income tax return with the Department. Line 17 on that return indicated that the Taxpayer had overpaid its 1993 corporation income taxes by \$11,144. The Taxpayer had the option of having that amount refunded to it by filling in line 17b, or it had the option of having that amount applied to the 1994 tax year by filling in line 17a. The Taxpayer filled in line 17a, electing to have the overpayment applied to the 1994 tax year.

10. On September 15, 1995 the Taxpayer filed its 1994 New Mexico corporation income tax return with the Department. Line 20 on that return indicated that the Taxpayer had overpaid its corporation income taxes in the amount of \$4,144. The Taxpayer had the option of having that amount refunded to it by filling in line 20B, or it had the option of having that amount applied to the 1995 tax year by filling in line 20A. The Taxpayer filled in line 20A, electing to have the overpayment applied to the 1995 tax year.

11. The tax overpayments were applied by the Department to the following year liabilities of the Taxpayer. In fact, the Taxpayer ensured that they were applied in that manner by reporting the overpayments reported on September 15, 1993 and September 15, 1994 as all or part of its quarterly estimated payments of tax, due on September 15th of each year, for the 1993 and 1994 tax years. (No information was provided with respect to the application of the 1994 overpayment to the quarterly payment of 1995 taxes due on September 15, 1995, but it is assumed that the Taxpayer handled its payment in the same manner).

DISCUSSION

The issue to be determined is whether the Department properly calculated the amount of interest in Assessment No. 2082617. The Taxpayer argues that its overpayments as reported on its 1992, 1993 and 1994 returns should be treated as

payments for those years, respectively, and applied to the Department's assessments for those years, thereby reducing the amount of interest assessed.

The Department argues that the overpayments were applied exactly as the Taxpayer requested them to be applied, to the Taxpayer's quarterly estimated tax payments. The Taxpayer was required to make such payments by the provisions of § 7-2A-9.1 NMSA 1978, and if the Taxpayer had failed to make such payments in the requisite amounts, it would have been subject to the imposition of interest on any underpayments of estimated taxes. The Department also argues that it had no authority under the provisions of the tax statutes it administers to apply the overpayments to any liabilities other than future year liabilities. Finally, the Department argues that *Amoco Production Company v. New Mexico Taxation and Revenue Department*, 118 N.M. 72, 878 P.2d 1021 (Ct. App., 1994) supports its position in this matter.

The Department is correct on all three counts. The Taxpayer's argument assumes that because there were overpayments reported on its original returns, that the overpayment was somehow on deposit with the Department and that overpayment could be applied to the Taxpayer's later determined underpayment. There was no money "on deposit" with the Department to be applied to the tax year for which the overpayment was reported, however, because the Taxpayer applied that money immediately, upon the filing of its returns showing an overpayment, to the payment of quarterly estimated taxes for the following year. If quarterly estimated taxes had not paid in sufficient amount and in a timely manner, there would have been interest applicable to any underpayment of those taxes. Section 7-2A-9.1(C) NMSA 1978.

An identical argument to that being made here by the Taxpayer was raised by the taxpayer in the *Amoco* case. The only distinction between that case and this one is that in *Amoco*, because of the peculiarities of the oil and gas business, the taxpayer did not know the exact amount of its monthly oil and gas tax liability and so, when it filed its returns, it estimated its liability. Thus, the original returns did not show either overpayments or underpayments. It was only later, when the taxpayer filed amended returns that the overpayments and underpayments were identified. The taxpayer requested offsetting of its overpayments against the underpayments to reduce the assessment of interest. The Court of Appeals rejected the taxpayer's argument that such offsetting was allowed under the Tax Administration Act, Chapter 7, Article 1, NMSA 1978. That act governs not only the administration of the oil and gas taxes, but also many other taxes administered by the department, including the corporation income tax. *See*, § 7-1-2(A) NMSA 1978. The court noted that §7-1-29 NMSA 1978 only authorizes the Department to either refund overpayments of tax, or to credit them against *future* tax liabilities, not past tax liabilities, and held that "interest on underpayment of taxes is calculated without regard to receipt by the Department of any overpayment of taxes." *Amoco, supra.*, 118 N.M. at 76.

The ruling in the *Amoco* case governs the determination of the Taxpayer's protest.

CONCLUSIONS OF LAW

1. The Taxpayer filed a timely, written protest to Assessment No. 2082617 and jurisdiction lies over both the parties and the subject matter of this protest.

2. There is no statutory authority for the Department to offset overpayments of tax against underpayments of tax for purposes of the calculation of interest. In the absence of such authority, such offsetting is not allowed.

For the foregoing reasons, THE TAXPAYER'S PROTEST IS HEREBY DENIED.

DONE, this 18th day of September, 1998.