

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

**IN THE MATTER OF THE PROTEST OF  
MOUNTAIN MOVING & STORAGE INC.,  
TO DENIAL OF REFUNDS ISSUED UNDER  
ID NO. L1173277504**

**No. 13-28**

**DECISION AND ORDER**

A formal hearing on the above-referenced protest was held September 19, 2013, before Dee Dee Hoxie, Hearing Officer. The Taxation and Revenue Department (Department) was represented by Mr. Aaron Rodriguez, Staff Attorney. Mr. Tom Dillon, Auditor, also appeared on behalf of the Department. Mountain Moving and Storage Inc. (Taxpayer) appeared for the hearing by and through its President, Ms. Fabi Romero. The Taxpayer represented itself. The Hearing Officer took notice of all documents in the administrative file. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

**FINDINGS OF FACT**

1. The Taxpayer was engaged in a storage business in New Mexico from 1999 through 2008.
2. The Taxpayer filed and paid gross receipts taxes from 1999 through 2008.
3. In 2013, the Taxpayer learned from another business owner that its gross receipts taxes were deductible.
4. In March 2013, the Taxpayer filed claims for refund for gross receipts taxes it paid from 1999 through 2008.
5. On April 12, 2013, the Department issued a letter denying the refund.
6. On June 3, 2013, the Taxpayer filed a formal protest to the denial of refund.
7. On July 22, 2013, the Department filed a Request for Hearing asking that the Taxpayer's protest be scheduled for a formal administrative hearing.

8. Notice of Hearing was sent to the parties on July 29, 2013.

### **DISCUSSION**

The issue to be decided is whether the Taxpayer is entitled to a refund on gross receipts taxes when the Taxpayer filed the claims for refund more than three years after the taxes were due.

#### **Time Limits on Refund Claims.**

All claims for refund must be filed within three years of the end of the calendar year in which the payment was originally due. *See* NMSA 1978, § 7-1-26 (D). Therefore, the latest claim, for the 2008 taxes, was required to be filed by the end of 2012 as the taxes for it were due in 2009. All of the claims were filed in 2013, so each claim was beyond its three-year statute of limitations.

The Taxpayer argued that it did not have to pay that tax and was entitled to a refund no matter when the claim was made. The Department argued that the statute provides a strict limitation on time to claim a refund. The statute of limitations prevents stale claims and effectively places the onus on the taxpayer to pursue their claim in a timely manner because the taxpayer is the one who can more easily keep track of their claims for refund. *See In Re Kilmer*, 2004-NMCA-122, ¶ 16, 136 N.M. 440. If the claim is not filed within the three-year statute of limitations, the claim is barred by the statute. *See* NMSA 1978, § 7-1-26. *See also Kilmer*, 2004-NMCA-122. No exception to the three-year limitation was established. *See* NMSA 1978, § 7-1-26. The Taxpayer's claims for refunds were not filed within three years of the tax due date. Therefore, the claims are barred by the statute.

#### **Estoppel.**

The Taxpayer explained that it changed its business in 1995. At that time, Ms. Romero called the Department to ascertain what changes in taxation would occur with the change in operations. Ms. Romero was told that everyone doing business in the state is required to pay gross receipts tax, except for Indian tribes. So, the Taxpayer continued to file and pay its gross receipts

tax. The Taxpayer argued that it was given bad information by the Department and that it should still be entitled to the refunds. The Department pointed out the default position is that everyone doing business in the state is required to pay gross receipts tax. The Department also pointed out that the Taxpayer is required to file and pay gross receipts tax even if it is entitled to deductions.

The Taxpayer's argument is essentially an argument for equitable estoppel. Estoppel may be found against the state where there is "a shocking degree of aggravated and overreaching conduct or where right and justice demand it." *Wisznia v. Human Servs. Dep't*, 1998-NMSC-011, ¶ 17, 125 N.M. 140. When estoppel is invoked to avoid application of a statute of limitations, the issue is whether the party to be estopped has taken some action to prevent the other party from bringing suit within the prescribed period. *Kern v. St. Joseph Hosp.*, 1985-NMSC-031, 102 N.M. 452, 455-456. There is no evidence that the Department acted in order to prevent Taxpayer from bringing the claims within the time allowed by the statute. In addition, the party seeking estoppel must demonstrate "affirmative misconduct on the part of the government." *Kilmer*, 2004-NMCA-122, ¶ 27. Even if estoppel were to apply, the Hearing Officer could not grant it. *See AA Oilfield Serv. v. New Mexico SCC*, 1994-NMSC-085, 118 N.M. 273 (holding that an administrative agency cannot grant the equitable remedy of estoppel because that power is held exclusively by the judiciary).

### **CONCLUSIONS OF LAW**

1. The Taxpayer filed a timely written protest to the denial of refunds issued under Letter ID number L1173277504, and jurisdiction lies over the parties and the subject matter of this protest.
2. The Taxpayer filed its claims for refunds more than three years after the tax was due.
3. The claims for refunds are barred by the statute of limitations.

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

DATED: October 3, 2013.

*Dee Dee Hoxie*

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DEE DEE HOXIE  
Hearing Officer  
Taxation & Revenue Department  
Post Office Box 630  
Santa Fe, NM 87504-0630

### **NOTICE OF RIGHT TO APPEAL**

Pursuant to NMSA 1978, § 7-1-25, the parties have the right to appeal this decision by filing a notice of appeal with the New Mexico Court of Appeals within 30 days of the date shown above. *See* Rule 12-601 NMRA. If an appeal is not filed within 30 days, this Decision and Order will become final. A copy of the Notice of Appeal should be mailed to John Griego, P. O. Box 630, Santa Fe, New Mexico 87504-0630. Mr. Griego may be contacted at 505-827-0466.

### **CERTIFICATE OF SERVICE**

I hereby certify that I mailed the foregoing Order to the parties listed below this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ in the following manner:

***First Class Mail***

Mountain Moving & Storage Inc.  
Fabi Romero, President  
120 Bertha St.  
Taos, NM 87571-5117

***Interoffice Mail***

Aaron Rodriguez  
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1100 S. St. Francis  
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