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

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**IN THE MATTER OF THE PROTEST OF
ELITE WELL SERVICES, LLC
TO THE DENIAL OF REFUND ISSUED UNDER
LETTER ID NO. L1028136752**

v.

**Case No. 18.12-307R
D&O No. 20-11**

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NEW MEXICO TAXATION AND REVENUE DEPARTMENT

DECISION AND ORDER

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On June 11, 2020, Hearing Officer Dee Dee Hoxie, Esq. conducted a telephonic hearing on the Department's motion for summary judgment (SJ Motion). The Taxation and Revenue Department (Department) was represented by Kenneth Fladager and Richard Peneer, Staff Attorneys. Elite Well Services, LLC (Taxpayer) was represented by its attorney, Joe Lennihan. Florence Livingstone, an employee of the Taxpayer, and Steven Bartlett, from Axiom Certified Public Accountants and Business Advisors, LLC (Axiom), also appeared for the hearing. The Hearing Officer took notice of all documents in the administrative file. The Department's motion for summary judgment was filed on January 30, 2020. The Taxpayer's response was filed on February 21, 2020. The Taxpayer previously filed a motion to determine jurisdiction on December 18, 2019. Pursuant to the order on jurisdiction, the Taxpayer's arguments in the motion to determine jurisdiction will also be considered in response to the Department's motion for summary judgment.

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The summary judgment issue is whether the Taxpayer may file a claim for refund as an alternative to a timely protest for a denial of an application for a tax credit. The Hearing Officer considered all of the evidence and arguments presented by both parties. The Hearing Officer

1 finds that the appropriate and only available remedy for a denial of an application for a tax credit
2 in this case was to file a protest within 90 days of the denial, pursuant to the statute. *See* NMSA
3 1978, § 7-1-24 (2017)¹. Consequently, the Hearing Officer finds in favor of the Department, and
4 the Department’s motion for summary judgment is HEREBY GRANTED. IT IS DECIDED
5 AND ORDERED AS FOLLOWS:

6 **FINDINGS OF FACT**

7 *Procedural History*

8 1. On July 10, 2018, under letter id. no. L1028136752, the Department denied the
9 Taxpayer’s claim for refund of \$3,287,058.23 for the calendar years from 2011 to 2016. The
10 refund was denied “due to the denial of the High Wage Tax Credit as per Letter ID number
11 L1131498800.” [Administrative File and SJ Motion Exhibit E].

12 2. On October 9, 2018, the Taxpayer filed a formal written protest to the denial of
13 the claim for refund. The protest included several exhibits. [Protest in Administrative File].

14 3. On October 31, 2018, the Department acknowledged its receipt of the protest.
15 [Letter ID No. L0630427824 in Administrative File].

16 4. On December 3, 2018, the Department filed a Hearing Request. [Administrative
17 File].

18 5. On December 3, 2018, the Department also filed a motion to strike and disqualify
19 the Taxpayer’s representatives (Motion to Strike), which at that time were employees of Axiom.
20 [Administrative File].

21 6. On December 5, 2018, the Administrative Hearings Office issued a Notice of
22 Telephonic Scheduling Hearing, which set a hearing on January 2, 2019. [Administrative File]

¹ The 2017 version of the statute is referenced because it was the statute in effect at the time when the events material to this protest occurred.

1 7. On December 17, 2018, the Taxpayer filed its response to the Motion to Strike.
2 [Administrative File].

3 8. On December 31, 2018, the Administrative Hearings Office issued the order
4 denying the Motion to Strike. [Administrative File].

5 9. On January 2, 2019, a telephonic scheduling hearing was conducted. The hearing
6 was held within 90 days of the protest, as required by statute. [Administrative File]. *See* NMSA
7 1978, § 7-1B-8 (2015)².

8 10. On January 16, 2019, the Administrative Hearings Office issued the order holding
9 the protest in abeyance, which was done at the Taxpayer's request and over the Department's
10 objection. [Administrative File].

11 11. On August 19, 2019, the Taxpayer filed a motion to place the protest back on the
12 docket. [Administrative File].

13 12. On September 25, 2019, the Administrative Hearings Office issued a Notice for a
14 Second Telephonic Scheduling Hearing, which was set for October 16, 2019. [Administrative
15 File].

16 13. On October 10, 2019, the Taxpayer's attorney entered his appearance.
17 [Administrative File].

18 14. On October 16, 2019, a telephonic scheduling hearing was conducted.
19 [Administrative File].

20 15. On October 23, 2019, the Administrative Hearings Office issued a Scheduling
21 Order and Notice of Hearing on the Merits, which was set for May 22, 2020. [Administrative
22 File].

² This statute has since been amended to require a hearing within 90 days of the request for hearing. *See* NMSA 1978, § 7-1B-8 (2019).

1 16. On December 4, 2019, the Administrative Hearings Office issued an Amended
2 Scheduling Order and Notice, which updated the location of the hearing. [Administrative File].

3 17. On December 18, 2019, the Taxpayer filed a motion to determine jurisdiction and
4 an amended and corrected motion to determine jurisdiction (Jurisdiction Motion).
5 [Administrative File].

6 18. On January 6, 2020, the parties filed a joint stipulated order to extend the
7 Department's deadline to respond to the Taxpayer's Jurisdiction Motion. [Administrative File].

8 19. On January 24, 2020, the Department filed its response to the Taxpayer's
9 Jurisdiction Motion. [Administrative File].

10 20. On January 27, 2020, the Administrative Hearings Office issued an order on
11 jurisdiction. [Administrative File].

12 21. On January 28, 2020, the Taxpayer filed a motion for leave to reply and a request
13 for hearing on its Jurisdiction Motion. [Administrative File].

14 22. As the order on the Jurisdiction Motion had already been issued and indicated that
15 the Jurisdiction Motion would be considered as part of the arguments on any future-filed motions
16 for summary judgment, no further action was taken on the Jurisdiction Motion at that time.
17 [Administrative File].

18 23. On January 30, 2020, the Department filed its SJ Motion. [Administrative File].

19 24. On February 21, 2020, the Taxpayer filed its response to the SJ Motion
20 (Response) and a request for hearing on the SJ Motion. [Administrative File].

21 25. On February 26, 2020, the Taxpayer provided its packet of exhibits to go with its
22 Response. [Administrative File].

1 no dispute of the material facts. The parties also agreed that the outcome of the SJ Motion in
2 favor of the Department would be dispositive to the issues of the protest and that a final decision
3 and order could be issued if the Department prevailed.

4 The question of law in this protest is whether the Taxpayer must file a protest to the
5 denial of its Credit Application within 90 days of that denial, or whether the Taxpayer may file a
6 claim for refund more than 90 days after that denial as an alternative method of protesting the
7 denial of the Credit Application. The Department argues that Section 7-1-24 controls because it
8 requires taxpayers to file a protest within 90 days of the denial of a “credit or rebate”. *See*
9 NMSA 1978, § 7-1-24 (2017)³. The Taxpayer argues that Section 7-1-26 controls because it
10 allows a taxpayer “who has been denied any credit or rebate claimed” to file a claim for refund.
11 *See* NMSA 1978, § 7-1-26 (2017)⁴. The statutes’ meaning and construction are the main source
12 of the dispute regarding summary judgment.

13 **Jurisdiction.**

14 The Taxpayer argues that the Administrative Hearings Office has no jurisdiction to
15 determine the legal issue raised in the SJ Motion. [Jurisdiction Motion]. The Taxpayer argues
16 that the legal issue has been conclusively decided by the district court in at least two cases and
17 argues that the legislative history supports the district court’s orders. [Jurisdiction Motion;
18 Response, pages 2-11, 26]. The Taxpayer argues that the district court denied similar motions
19 for summary judgment “based on their interpretations of the applicable law” with the same legal
20 issue as this protest. [Jurisdiction Motion, page 9]. The Taxpayer argues that the only
21 jurisdiction in this protest is to determine whether the refund claim was properly denied on the

³ Throughout the decision, references are made to the 2017 version of the statute since it was in effect at the time the Taxpayer’s Credit Application was denied and at the time of the Taxpayer’s claim for refund.

⁴ Throughout the decision, references are made to the 2017 version of the statute since it was in effect at the time that the Taxpayer’s Credit Application was denied and at the time of the Taxpayer’s claim for refund.

1 substantive eligibility of the Taxpayer to claim the credit, that is “to hear Elite Well’s protest on
2 its merits.” [Jurisdiction Motion, page 15].

3 The Department correctly pointed out that the orders in the district court do not expound
4 on the reasons for the denial of summary judgment. [Protest Exhibit B.23; Response Exhibit
5 “Elite Well MSJ Response Exhibit 1”; Response Exhibit “Plaintiff’s Exhibit 12”]. One order
6 only states that “being advised in the premises of the motion, the Court hereby denies the
7 motion”. [Protest Exhibit B.23; Response Exhibit “Elite Well MSJ Response Exhibit 1”]. The
8 other order indicates that the court is not bound to defer to an administrative agency’s
9 interpretation, and then states merely that “[b]ased upon this Court’s review of the applicable
10 statutes and applicable law, the Court determines that the Defendants’ Motion for Summary
11 Judgment is not well taken and should be denied.” [Response Exhibit “Plaintiff’s Exhibit 12”].

12 The Taxpayer cites a number of cases to support its proposition that the district court’s
13 orders have effectively bound the Administrative Hearings Office on this issue; however, these
14 cases refer to an administrative agency’s or a lower court’s failure to follow a published decision
15 or order. *See Flores v. Sect. of Health, Educ. & Welfare*, 228 F. Supp. 877, at 877-878 (U.S.
16 Dist. Ct. P.R. 1964) (noting that the hearing examiner refused to follow two published decisions
17 on the issue). *See Hillhouse v. Harris*, 547 F. Supp. 88, at 91-93 (U.S. Dist. Ct. Arkansas 1982)
18 (reiterating that lower courts must follow precedent). *See Thomas v. N.C. Dep’t of Human*
19 *Resources*, 478 S.E. 2d 816 (Ct. App. N.C. 1996), at 818 (noting the previously published
20 precedent on the issue), at 823 (noting that administrative agencies must give full effect to
21 precedent established by the court). *See Costarell v. Fla. Unemployment Appeals Comm’n*, 916
22 So. 2d 778 (Fla. Sup. Ct. 2005) at 779 (reviewing the published precedent on the issue), at 782
23 (noting that precedential holdings of the court are binding on administrative agencies). *See*

1 *Hecker v. Stark County Social Serv. Bd.*, 527 N.W. 2d 226 (Sup. Ct. N.D. 1994) at 232 (holding
2 an agency's regulation was void because it attempted to supersede published caselaw). *See also*
3 *Bd. Of County Comm'rs v. Industrial Com.*, 650 P.2d 1297 (Ct. App. Colo. 1982), at 1298-99
4 (noting that the court previously interpreted a statute in a published decision and holding that the
5 agency's regulation could not overrule the precedent), *reversed by Industrial Com. Of Colorado*
6 *v. Bd. Of County Comm'rs*, 690 P. 2d 839 (Sup. Ct. Colo. 1984) (overruling the previous caselaw
7 that was contrary to the agency's regulation).

8 Even if the district court orders provided the analysis of the issue, they are not published
9 precedent. *See generally* Rule 23-112 NMRA (2013) (indicating that precedential opinions are
10 those published and issued by the Supreme Court of New Mexico and the New Mexico Court of
11 Appeals). Therefore, the district court's orders are not binding precedent. *See id.* *See also* Rule
12 12-405 NMRA (2012) (stating that unpublished decisions are not precedent but may still be
13 persuasive). *See also Hess Corp. v. N.M. Taxation & Revenue Dep't*, 2011-NMCA-043, ¶ 35,
14 149 N.M. 527 (indicating that unpublished opinions and orders are written solely for the benefit
15 of the parties and have no controlling precedential value). *See also Inc. County of Los Alamos v.*
16 *Montoya*, 1989-NMCA-004, ¶ 6, 108 N.M. 361 (noting that unpublished caselaw is not binding
17 precedent). *See State v. Granillo-Macias*, 2008-NMCA-021, ¶ 11, 143 N.M. 455 (noting that
18 unpublished orders, decisions, and opinions are not controlling and are written solely for the
19 benefit of the parties). *See State v. Gonzales*, 1990-NMCA-040, ¶ 47-48, 110 N.M. 218 (noting
20 that unpublished orders, decisions, and opinions are not meant to be controlling authority and
21 that they rarely describe the context of the issue at length, which may be of controlling
22 importance to the decision).

1 The Administrative Hearings Office has the jurisdiction to hear all protests under the Tax
2 Administration Act. *See* NMSA 1978, § 7-1B-6 (2019). The Administrative Hearings Office
3 has the jurisdiction to rule on summary judgment motions, a power that necessarily includes the
4 jurisdiction to decide a legal issue. *See* NMSA 1978, § 7-1B-8 (G) (2019). *See also Elane*
5 *Photography, LLC*, 2013-NMSC-040, ¶ 12. *See also Romero*, 2010-NMSC-035, ¶ 7. *See also*
6 *Roth*, 1992-NMSC-011. *See also Ute Park Summer Homes Ass’n*, 1967-NMSC-086. Therefore,
7 the Administrative Hearings Office has the jurisdiction to decide the issues of the SJ Motion.

8 **High-wage jobs tax credit.**

9 The Taxpayer argues that the requirements of the high-wage jobs tax credit statute are
10 irrelevant to the Taxpayer’s ability to claim the credit through the refund process after the Credit
11 Application was denied. The Taxpayer’s argument is untenable. All parts of a statute are to be
12 read together, in conjunction with other statutes, to achieve a harmonious whole. *See Team*
13 *Specialty Prods. v. N.M. Taxation & Revenue Dep’t*, 2005-NMCA-020, ¶ 9, 137 N.M. 50. *See*
14 *also Key v. Chrysler Motors Corp.*, 1996-NMSC-038, ¶ 14, 121 N.M. 764. *See also State ex rel.*
15 *Quintana v. Schnedar*, 1993-NMSC-033, ¶ 4, 115 NM 573.

16 “A taxpayer who is an eligible employer *may apply for*, and the department may allow, a
17 tax credit for each new high-wage economic-based job.” NMSA 1978, § 7-9G-1 (A) (2016)⁵
18 (emphasis added). “To receive a high-wage jobs tax credit, a taxpayer shall file *an application for*
19 *approval of the credit* with the department”. NMSA 1978, § 7-9G-1 (D) (emphasis added). “[A]n
20 *approved* high-wage jobs tax credit shall be claimed against the taxpayer’s modified combined tax
21 liability”. NMSA 1978, § 7-9G-1 (M) (emphasis added). Therefore, approval of the high-wage
22 jobs tax credit is a condition precedent to claiming the tax credit against one’s tax liability. *See id.*

⁵ Throughout the decision, references are made to the 2016 version of the statute since it was in effect at the time the Taxpayer’s Credit Application and claim for refund were made.

1 See also *Team Specialty Prods.*, 2005-NMCA-020, ¶ 9 (noting that tax credits are strictly matters
2 of legislative grace and to be construed against a taxpayer).

3 **Section 7-1-24.**

4 A taxpayer has the right to protest the application to them of any provision of the Tax
5 Administration Act or to “the denial of or failure either to allow or to deny a: (a) credit or rebate;
6 or (b) claim for refund made in accordance with Section 7-1-26 NMSA 1978.” NMSA 1978, §
7 7-1-24 (A). Protests must be filed within 90 days of the date that the tax provision was applied
8 to them or to the date that the claim for refund was denied⁶. See NMSA 1978, § 7-1-24 (E). See
9 *Lopez v. N.M. Dep’t of Taxation & Revenue*, 1997-NMCA-115, ¶ 6-10, 124 N.M. 270 (holding
10 that the taxpayer could not protest the application of a part of the Tax Administration Act beyond
11 the statutory time limit for filing a protest in Section 7-1-24).

12 The Department denied the Taxpayer’s Credit Application on June 27, 2017. Therefore,
13 the Taxpayer had 90 days from that date to file a protest. See NMSA 1978, § 7-1-24.
14 Consequently, the last day for the Taxpayer to file a protest to the denial of the Credit
15 Application was September 25, 2017. The Taxpayer did not file a protest by September 25,
16 2017. The Taxpayer may not protest the denial of its Credit Application beyond the statutory
17 time limit. See *id.* See also *Lopez*, 1997-NMCA-115. See also *Associated Petroleum Transp.,*
18 *Ltd. v. Shepard*, 1949-NMSC-002, ¶ 6-11, 53 N.M. 52 (holding that when a protest is not timely
19 filed as required by the statute, the protest may not be entertained). Due to the failure to file a
20 protest within 90 days of the denial of the Credit Application, the Department’s denial became
21 indisputable. See NMSA 1978, § 7-1-24. See *Lopez*, 1997-NMCA-115. See also *Associated*
22 *Petroleum*, 1949-NMSC-002.

⁶ If the Department failed to take action on the claim for refund, it is 90 days from the last date that the Department could have taken action.

1 The Taxpayer argues that the Legislature could not have intended this result because
2 Section 7-1-24 did not originally have the language allowing a taxpayer to protest the denial of a
3 credit or rebate; that language was added in the 2013 amendment. [Response, page 18]. The
4 Taxpayer argues that “[w]hen it added a protest remedy in 2013, the legislature added a remedy
5 where none existed before. The legislature’s addition of the protest remedy indicates that prior
6 to 2013 taxpayers did not have one. If, as the Department claims here, taxpayers had no refund
7 remedy either, then prior to 2013, taxpayers had no remedy at all.” [Response, page 18]. The
8 Taxpayer’s argument disregards the statutory opportunity to protest “the application to the
9 taxpayer of any provision of the Tax Administration Act”. See NMSA 1978, § 7-1-24 (2003)⁷.
10 The Taxpayer’s argument also overlooks a 2005 published case in which the taxpayer filed an
11 administrative protest for a denial of an application for a tax credit, a remedy that the Taxpayer
12 argues did not exist before the 2013 amendment to the statute. See *Team Specialty Prods.* 2005-
13 NMCA-020 (an appeal from an administrative hearing where the taxpayer protested the
14 Department’s denial of its application for a tax credit). Consequently, the Taxpayer’s argument
15 is unpersuasive.

16 The Taxpayer questions why the Legislature would add the language to Section 7-1-24 in
17 2013 and argues that it “was apparently concerned that New Mexico’s tax procedures were
18 inadequate.” [Response, page 18]. However, the Taxpayer also acknowledges that the Fiscal
19 Impact Report regarding the 2013 amendment “says that the legislature intended to ‘make clear
20 that administrative processes apply to the denial or granting of a credit or rebate.’” [Response,
21 page 18]. Apparently, the 2013 amendment was meant to be a clarification. A clarification
22 occurs when, rather than changing an existing law, an amendment serves to make explicit what

⁷ This is the version of the statute immediately prior to the 2013 amendment.

1 was previously implicit in the law. *See Wood v. State Educ. Ret. Bd.*, 2011-NMCA-020, ¶ 25,
2 149 N.M. 455.

3 **Section 7-1-26.**

4 The Taxpayer argues that Section 7-1-26 allows taxpayers to file claims for refund when
5 the Department denies a tax credit. [Response, page 12]. The Taxpayer contends that “[t]he
6 language of Section 7-1-26(A) is not ambiguous. If the Department denies a tax credit or rebate,
7 then a taxpayer may claim a refund.” [Response, page 12].

8 The first step in statutory interpretation is to look at the plain language of the statute and
9 to refrain from further interpretation if the plain language is not ambiguous. *See Marbob Energy*
10 *Corp. v. N.M. Oil Conservation Comm’n.*, 2009-NMSC-013, 146 N.M. 24. Statutes are to be
11 applied as written unless a literal use of the words would lead to an absurd result. *See New*
12 *Mexico Real Estate Comm’n. v. Barger*, 2012-NMCA-081, ¶ 7. If a statute is ambiguous or
13 would lead to an absurd result, then it should be construed in accordance with the legislative
14 intent or spirit and reason for the statute, even though it may require a substitution or addition of
15 words. *See id.* *See also State ex rel. Helman v. Gallegos*, 1994-NMSC-023, 117 N.M. 346. *See*
16 *also Kewanee Indus., Inc. v. Reese*, 1993-NMSC-006, 114 N.M. 784. When a statute is
17 ambiguous or would lead to an absurd result, it should be construed according to its obvious
18 purpose. *See T-N-T Taxi Co. v. N.M. Pub. Regulation Comm’n.*, 2006-NMSC-016, ¶ 5, 139 N.M.
19 550.

20 Statutes are to be interpreted so that all of their terms are given effect and no term is
21 rendered surplusage or superfluous. *See Helman*, 1994-NMSC-023, ¶ 32. *See also Pub. Serv. Co.*
22 *v. N.M. Taxation & Revenue Dep’t*, 2007-NMCA-050, ¶ 39, 141 N.M. 520. *See also Schneider*
23 *Nat’l, Inc. v. Taxation & Revenue Dep’t*, 2006-NMCA-128, ¶ 10, 140 N.M. 561. “A person who

1 believes that an amount of tax has been paid by or withheld from that person in excess of that for
2 which the person was liable, who has been denied any credit or rebate *claimed* or who claims a
3 prior right to property in the possession of the department...may claim a refund”. NMSA 1978, §
4 7-1-26 (A) (emphasis added).

5 The Taxpayer argues that the term “claimed” in Section 7-1-26 does not require a prior
6 approval of the credit by the Department. [Response, pages 15-17]. The Taxpayer argues that the
7 term “claim” should be given its ordinary meaning, which is to assert a legal right. [Response,
8 page 16]. A claim is generally the assertion of a legal right or “[a] demand for money or property
9 to which one asserts a right”. *Black’s Law Dictionary*, page 100 (pocket ed. 1996). A right is
10 “[a]n interest or expectation guaranteed by law”. *Id.*, page 551.

11 The Taxpayer argues that a taxpayer does not apply for a credit; rather, a taxpayer just
12 claims a credit. [Response, page 20]. It is generally true that a taxpayer will claim a credit at the
13 same time that it claims a refund. A taxpayer claims the high-wage jobs tax credit by filing a
14 return, which will result in a refund if the credit exceeds liability. *See* NMSA 1978, § 7-9G-1 (M).
15 *See also* 3.1.9.8 NMAC (2010) (indicating that a completed return with overpayment or credit
16 claimed constitutes a claim for refund). However, the Taxpayer’s right to claim the tax credit is
17 not contemporaneous to and synonymous with the right to claim the refund. *See* NMSA 1978, § 7-
18 9G-1. The right to claim the high-wage jobs tax credit is afforded by statute, and the credit may
19 only be claimed once the application for the credit is approved by the Department. *See* NMSA
20 1978, § 7-9G-1. The Taxpayer’s Credit Application was denied, and the Taxpayer did not protest
21 that denial within 90 days. *See* NMSA 1978, § 7-1-24. Because the Credit Application was not
22 approved, there was no tax credit for which the Taxpayer could later assert a claim.

1 The Taxpayer argues that “taxpayers may claim a refund any time the Department denies a
2 claim for a credit or rebate.” [Response, page 15]. The Taxpayer argues that the statute cannot
3 mean to apply “only ‘where the Department has denied the taxpayer’s claim of a credit that was
4 previously approved’”. [Response, page 15]. The Taxpayer argues that the Department cannot
5 approve a credit and also deny it. [Response, page 15]. The Taxpayer’s argument does not take
6 into account the provisions of the high-wage jobs tax credit statute. *See* NMSA 1978, § 7-9G-1.
7 The statute itself illustrates an example of when the Department has approved an application for
8 the credit, and then is required later to deny the claiming of that credit. *See* NMSA 1978, § 7-9G-1
9 (N) (requiring the Department to extinguish any amount of approved credit that has not already
10 been claimed when the taxpayer ceases doing business in New Mexico). The Taxpayer also
11 acknowledges that an application for credit might be approved by function of the statute when the
12 Department takes no action on the application, while the Department still retains the authority to
13 audit the taxes paid, including taxes that it determines result from tax credits found not to be valid.
14 [Response, pages 21-22]. *See also* NMSA 1978, § 7-1-29.2 (2003). Moreover, the statute itself
15 refers to various tax credit statutes, all of which place conditions on applying previously approved
16 credits toward tax liabilities. *See* NMSA 1978, § 7-1-26 (F) (2). In other words, claims for refund
17 are meant to address how a credit claimed is to be applied toward a tax liability, not to address a
18 taxpayer’s underlying eligibility for a tax credit that requires approval prior to being claimed. *See*
19 *id.* *See also e.g.* NMSA 1978, Section 7-9A-8 B (“A taxpayer having applied for and been granted
20 approval for a credit...”); NMSA 1978, Section 7-9E-5 and Section 7-9E-8 (eligibility must be
21 established prior to claiming credit); NMSA 1978, Section 7-9F-9 B (“A taxpayer having applied
22 for and been granted approval for a credit...”); NMSA 1978, Section 7-2E-1.1 G (“The holder of a

1 tax credit document may apply all or a portion of the rural job tax credit granted by the
2 department...”).

3 The Taxpayer argues that limiting the claim for refund in this manner would render the
4 entire statute a nullity because it would require that the Department pre-approve all claims made
5 under that statute, which would effectively deny taxpayers the administrative remedy of claiming a
6 refund. [Response, page 19]. The Taxpayer again overlooks the specific requirements of the high-
7 wage jobs tax credit statute. *See* NMSA 1978, § 7-9G-1. The high-wage jobs tax credit statute
8 requires that the tax credit be approved prior to being claimed. *See id.* Not all tax credits require
9 an application and its approval before they may be claimed. *See* NMSA 1978, § 7-2A-14 (1995)
10 (the corporate-supported child care credit). *See also Intel Corp. v. Taxation & Revenue Dep’t*,
11 1995-NMCA-005, 122 N.M. 760 (the taxpayer filed a claim for refund based on the corporate-
12 supported child care credit and then protested the Department’s denial of the credit). Again, all
13 parts of a statute are to be read together, in conjunction with other statutes, to achieve a
14 harmonious whole. *See Team Specialty Prods.*, 2005-NMCA-020, ¶ 9. *See also Key*, 1996-
15 NMSC-038, ¶ 14. *See also State ex rel. Quintana*, 1993-NMSC-033, ¶ 4.

16 The Taxpayer argues that the term “credit” and “tax credit” commonly are used
17 interchangeably, including in the Tax Administration Act and in the Department’s forms.
18 [Response, pages 24-26]. The Taxpayer also argues that the term “credit” in the statute cannot
19 mean a balance in favor of a taxpayer because some tax credits result in a reduction of taxable
20 income, rather than a reduction in the tax liability. [Response, pages 22-24]. The plain language
21 of the statute reveals the Legislature’s intent that it relate to claims for refund in which the state, as
22 a result of an overpayment or denial of a credit or rebate, becomes “*indebted* to the taxpayer for a
23 specified amount” of money. NMSA 1978, § 7-1-26 (E) (1) (b) (emphasis added). The plain

1 meaning of the word “credit” is “2a: the balance in a person’s favor in an account” or “f: a
2 deduction from an amount otherwise due[.]” See <https://www.merriam-webster.com/dictionary/>
3 credit.

4 In other words, the statute requires that a taxpayer establish that a balance, in the form of a
5 credit claimed, actually exists in its favor, which results in the state’s indebtedness to the taxpayer.
6 See NMSA 1978, § 7-1-26. In this case, the Taxpayer cannot claim any high-wage jobs tax credit
7 because its application was not approved. See NMSA 1978, § 7-9G-1. Therefore, the Taxpayer
8 failed to establish that the state was indebted to it in any amount. See *id.* See also NMSA 1978, §
9 7-1-26.

10 **Statutory interpretation should not lead to an absurd result.**

11 The Taxpayer’s interpretation of Section 7-1-26 would, in effect, abolish many statutory
12 limitations. If Section 7-1-26 were to afford a separate and additional opportunity to protest the
13 denial of an application for a tax credit, it would render the deadlines to protest the denial of a tax
14 credit in Section 7-1-24 superfluous and meaningless. See NMSA 1978, § 7-1-24 (requiring a
15 protest be filed within 90 days). Again, statutes are to be interpreted so that all of their terms are
16 given effect and no term is rendered surplusage or superfluous. See *Helman*, 1994-NMSC-023, ¶
17 32. See also *Pub. Serv. Co.*, 2007-NMCA-050, ¶ 39. See also *Schneider Nat’l, Inc.*, 2006-NMCA-
18 128, ¶ 10.

19 The Taxpayer’s interpretation would also render parts of Section 7-1-26 superfluous and
20 meaningless. See NMSA 1978, § 7-1-26. Again, a taxpayer often asserts a claim to a tax credit by
21 making a claim for refund, and not all tax credits require an application and its approval before
22 they may be claimed. See NMSA 1978, § 7-2A-14 (1995) (the corporate-supported child care
23 credit). See also NMSA 1978, § 7-9G-1 (M). See also 3.1.9.8 NMAC (2010). If the Department

1 denied the claim for refund based on its denial of a claimed credit that did not require an
2 application and pre-approval, then under the Taxpayer's interpretation, the taxpayer could refile the
3 claim for refund instead of filing a protest or an action in court because "taxpayers may claim a
4 refund any time the Department denies a claim for a credit or rebate." [Response, page 15]. Such
5 a result would be in direct contravention to the statute itself because "no claim may be refiled with
6 respect to that which was denied". NMSA 1978, § 7-1-26 (D) (1). Reading a statute so that it
7 contradicts itself would lead to an absurd result, and interpretations of statutes that lead to absurd
8 results are not favored. *See New Mexico Real Estate Comm'n.*, 2012-NMCA-081. *See also*
9 *Helman*, 1994-NMSC-023. *See also Kewanee Indus., Inc.*, 1993-NMSC-006. *See also T-N-T*
10 *Taxi Co.*, 2006-NMSC-016.

11 A taxpayer generally has two available administrative remedies, to file a protest or to file a
12 claim for refund. *See Neff v. State ex rel. Taxation & Revenue Dep't*, 1993-NMCA-116, ¶ 16, 116
13 N.M. 240. The facts of the situation govern which remedy is available. *See* NMSA 1978, § 7-1-24
14 and § 7-1-26. Generally, when a taxpayer wishes to protest some action that the Department took
15 against the taxpayer, then a protest must be filed. *See* NMSA 1978, § 7-1-24 (indicating that
16 protests may be filed for an assessment, an application of the act, or a denial⁸). Generally, when a
17 taxpayer wishes to prompt the Department to take an action in the taxpayer's favor, then a claim
18 for refund must be filed. *See* NMSA 1978, § 7-1-26 (indicating that claims for refund may be filed
19 when a taxpayer is trying to get a sum of money or property from the Department). *See also*
20 3.1.9.8 NMAC (A) (2010) (indicating that the Department does not have the authority to initiate an
21 action in these circumstances without a claim for refund).

⁸ A denial also encompasses when the Department fails to take any action for a certain amount of time.

1 In this case, the Taxpayer wishes to protest the action that the Department took against it
2 when the Department denied its Credit Application. Therefore, the Taxpayer should have filed a
3 protest within 90 days of that denial. *See* NMSA 1978, § 7-1-24. The Taxpayer failed to do so.
4 The Taxpayer then sought to file a claim for refund based upon a tax credit to which it had no right
5 because the Department had denied its Credit Application. *See* NMSA 1978, § 7-9G-1 and § 7-1-
6 26. The Taxpayer may not attempt to circumvent the statutory limitations on filing a protest by
7 filing a claim for refund. *See* NMSA 1978, § 7-1-24. *See* NMSA 1978, § 7-1-26.

8 CONCLUSIONS OF LAW

9 A. The Taxpayer filed a timely, written protest to the Department's denial to its claim
10 for refund, and jurisdiction lies over the parties and the subject matter of this protest. *See* NMSA
11 1978, § 7-1-24 and § 7-1-26.

12 B. A hearing was conducted within 90 days of the protest, as required by the statute at
13 the time that the protest was filed. *See* NMSA 1978, Section 7-1B-8 (2015).

14 C. There is no genuine dispute as to any material fact, and summary judgment is
15 appropriate. *See Elane Photography, LLC*, 2013-NMSC-040. *See also Romero*, 2010-NMSC-
16 035. *See also Roth*, 1992-NMSC-011. *See also Ute Park Summer Homes Ass'n*, 1967-NMSC-
17 086. *See also* NMSA 1978, § 7-1B-8 (G) (2019).

18 D. The right to claim the high-wage jobs tax credit requires that the application for
19 the tax credit be approved by the Department. *See* NMSA 1978, § 7-9G-1.

20 E. The right to protest a denial of an application for the high-wage jobs tax credit is
21 contained exclusively in Section 7-1-24. *See* NMSA 1978, § 7-1-24.

1 F. The right to claim a refund for the denial of a claimed credit does not provide an
2 alternative method to protest the denial of the tax credit application. *See* NMSA 1978, § 7-1-26
3 and § 7-1-24.

4 G. The Taxpayer failed to file a protest to the denial of the Credit Application within
5 90 days, at which time, the Department's denial of the credit became indisputable. *See* NMSA
6 1978, § 7-1-24. *See also Lopez*, 1997-NMCA-115. *See also Associated Petroleum Transp., Ltd.*,
7 1949-NMSC-002.

8 For the foregoing reasons, the Department's Motion for Summary Judgment **IS HEREBY**
9 **GRANTED**, and the Taxpayer's protest **IS DENIED**.

10 DATED: July 23, 2020.

11 *Dee Dee Hoxie*

12 Dee Dee Hoxie
13 Hearing Officer
14 Administrative Hearings Office
15 P.O. Box 6400
16 Santa Fe, NM 87502

17 **NOTICE OF RIGHT TO APPEAL**

18 Pursuant to NMSA 1978, Section 7-1-25 (2015), the parties have the right to appeal this decision
19 by *filing a notice of appeal with the New Mexico Court of Appeals* within 30 days of the date shown
20 above. If an appeal is not timely filed with the Court of Appeals within 30 days, this Decision and Order
21 will become final. Rule of Appellate Procedure 12-601 NMRA articulates the requirements of perfecting
22 an appeal of an administrative decision with the Court of Appeals. Either party filing an appeal shall file
23 a courtesy copy of the appeal with the Administrative Hearings Office contemporaneous with the Court of
24 Appeals filing so that the Administrative Hearings Office may begin preparing the record proper. The
25 parties will each be provided with a copy of the record proper at the time of the filing of the record proper

1 with the Court of Appeals, which occurs within 14 days of the Administrative Hearings Office receipt of
2 the docketing statement from the appealing party. *See* Rule 12-209 NMRA.

3 **CERTIFICATE OF SERVICE**

4 On July 23, 2020, a copy of the foregoing Decision and Order was submitted to the parties listed
5 below in the following manner:

6 *Email*

Email

7 INTENTIONALLY BLANK

8
9
10 _____
11 John Griego
12 Legal Assistant
13 Administrative Hearings Office
P.O. Box 6400
Santa Fe, NM 87502