STATE OF NEW MEXICO
ADMINISTRATIVE HEARINGS OFFICE
TAX ADMINISTRATION ACT

SELECT WATER SOLUTIONS, LLC,

v. **AHO Case Number 24.04-017A, D&O# 26-06**

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

DECISION AND ORDER
GRANTING SUMMARY JUDGMENT FOR TAXPAYER

This matter came before the Administrative Hearings Office upon the following: (1) Select Water Solutions, LLC's Cross-Motion for Summary Judgment ("Taxpayer's Motion"); (2) New Mexico Taxation and Revenue Department's Cross-Motion for Summary Judgment ("Department's Motion"); (3) the Department's Response to Taxpayer's Motion; and (4) Taxpayer's Response to Department's Motion.

The parties submitted a Stipulation of Facts and agree there are no genuine issues of material fact requiring an evidentiary hearing. The dispute concerns the proper sourcing of Taxpayer's gross receipts for tax periods January 2018 through June 2020 ("Refund Period"), and whether the Department properly assessed tax after previously issuing refunds to Taxpayer.

Taxpayer protests assessments issued by the Department on August 11, 2023, totaling $1,171,228.17, arising from the Department's determination that refunds previously issued to Taxpayer were paid in error. Taxpayer does not dispute taxability of its receipts from engaging in business, but contends its receipts should have been sourced to customer wellhead locations in Lea County and Eddy County rather than to the City of Carlsbad because Taxpayer qualifies as a utility under Paragraph (3) of Subsection B of 3.1.4.13 NMAC, as in effect for the Refund

Period.[1] Taxpayer also argues that certain assessments were untimely under NMSA 1978, Section 7-1-18(A). The Department contends Taxpayer's receipts are properly sourced to Carlsbad under the pre–July 1, 2021 version of Section 7-1-14 because Taxpayer maintained a place of business in Carlsbad and does not qualify for utility or transportation exceptions.

A hearing on the foregoing motions was held by videoconference on April 28, 2026. Taxpayer appeared by and through Nathan Runyan, Esq. The Department appeared by and through David Mittle, Esq.

Because the Hearing Officer finds that Taxpayer qualifies as a utility as defined by Paragraph (3) of Subsection B of 3.1.4.13 NMAC, as in effect for the Refund Period, and that its receipts were properly sourced to customer delivery locations in Lea County and Eddy County under the utility-specific sourcing rule in Paragraph (1) of Subsection B of that regulation, Taxpayer's Motion and protest should be granted and the Department's Motion should be denied. Independently, and in the alternative, the Department's August 11, 2023 assessments for January 2018 through November 2019 were issued outside the limitations period established by Section 7-1-18(A).

IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

The following facts derive from the parties' Stipulation of Facts and are accepted as true and undisputed for purposes of the parties' Cross-Motions for Summary Judgment.

Undisputed Material Facts

1. Taxpayer is in the business of providing water management and fluid chemistry

[1] The current version of 3.1.4.13 NMAC was effective July 7, 2021 and applies to periods beginning July 1, 2021. Because the Refund Period here is January 2018 through June 2020, this Decision and Order applies the prior version of 3.1.4.13 NMAC in effect during the Refund Period.

solutions, including produced water treatment, water recycling and reuse, disposal solutions, water infrastructure, and water transportation services to customers, including customers in New Mexico. As part of these services, Taxpayer offers high-volume, high-rate water transfer and transportation services through automated equipment and a variety of mobile piping systems, including environmentally safe, no-leak pipe systems such as lay-flat hose, to support hydraulic fracturing operations. Taxpayer often provides these services to oil and gas companies by transporting water to and from wellheads in Lea County and Eddy County. [Stipulation]

2. Taxpayer maintains an office within the City of Carlsbad, New Mexico. Aside from its office in Carlsbad, Taxpayer maintains multiple offices in multiple states, including its headquarters in Gainesville, Texas. [Stipulation]

3. During the tax periods January 2018 through June 2020, Taxpayer provided the Services at issue through above-ground pipeline infrastructure introducing water into the pipeline system in either Lea County or Eddy County, but not within the boundaries of Carlsbad. During the Refund Period, Taxpayer's services did not originate in, pass through, or conclude within Carlsbad. The services were provided to Taxpayer's customers within Lea County and Eddy County, but not within Carlsbad. The final delivery points for the water from the pipeline system were also located in Lea County or Eddy County and not within the boundaries of Carlsbad. Other than the fact that Taxpayer maintained an office in Carlsbad, Carlsbad had no connection to the delivery of Taxpayer's services during the Refund Period. [Stipulation]

4. The Department asserts that the correct location code for the transactions at issue during the Refund Period was the gross receipts tax rate for Carlsbad. [Stipulation]

5. Taxpayer asserts that the correct location code for the transactions at issue during the Refund Period was either the Lea County or Eddy County gross receipts tax rate, as

determined by the location of the wellhead to which Taxpayer transported the water for the particular transaction. [Stipulation]

6. Taxpayer files monthly gross receipts tax returns with the Department. Gross receipts tax returns and payments are due on the twenty-fifth day of the month following the month in which the taxable event occurs. *See* NMSA 1978, Section 7-9-11. In Taxpayer's case, a gross receipts tax return is due each month on the twenty-fifth day of the month for the prior month's taxable transactions. [Stipulation]

7. For the Refund Period, Taxpayer initially calculated, reported, and paid gross receipts tax using the Carlsbad rate. [Stipulation]

8. After further review and consultation with its customers, Taxpayer determined it had incorrectly paid gross receipts taxes using the Carlsbad rate and concluded that the correct reporting location should have been Lea County or Eddy County based on the location of the customer wellhead for the particular transaction. [Stipulation]

9. On or about April 26, 2021, Taxpayer filed a refund request in the amount of $1,110,422.33. In October 2022, Taxpayer filed a supplemental refund request in the amount of $55,534.05. The total refund request was $1,165,956.38. [Stipulation]

10. The Department approved and issued both refunds to Taxpayer. [Stipulation]

11. On April 25, 2023, the Department sent Taxpayer a letter asserting that the refunds had been issued in error and demanding repayment. The letter did not purport to be an official Notice of Assessment of Taxes Due and did not include protest instructions. [Stipulation]

12. On August 11, 2023, the Department issued 29 formal Notices of Assessment of Taxes and Demand for Payment totaling $1,171,228.17 for the periods at issue. [Stipulation]

13. Taxpayer timely filed a written protest on November 7, 2023. [Stipulation]

14. Taxpayer and OXY USA Inc. entered into a Water Transfer Agreement under which Taxpayer agreed to convey title to water and to transport that water to the customer's designated delivery point through temporary or semi-permanent pipeline systems owned, installed, maintained, and operated by Taxpayer. [Affidavit of Tristan]

15. The Water Transfer Agreement provides that Taxpayer sells and delivers water to the customer, title transfers at the delivery point, and the customer pays Taxpayer for transportation services associated with delivery of the water. [Affidavit of Tristan]

Procedural Background

16. The Department filed a Request for Hearing on April 23, 2024 together with its answer to Taxpayer's protest. [Administrative File]

17. On April 25, 2024, the Administrative Hearings Office entered a Notice of Telephonic Scheduling Hearing which set an initial hearing to occur on May 17, 2024. [Administrative File]

18. An initial telephonic scheduling hearing was held on May 17, 2024 at which time neither party objected that the hearing held on that date would satisfy the 90-day hearing requirement established by the Administrative Hearings Office Act. [Administrative File]

19. On May 22, 2024, the parties filed a Joint Proposed Scheduling Order. [Administrative File]

20. On September 25, 2024, the parties filed a Notice of Extension of Deadlines to File Cross-Motion for Summary Judgment. [Administrative File]

21. On July 18, 2025, the Administrative Hearings Office set a telephonic status hearing to occur on August 15, 2025. The hearing was subsequently continued to November 7, 2025 upon the Joint Motion to Vacate Status Hearing that was filed on August 12, 2025.

[Administrative File]

22. As a result of the hearing on November 7, 2025, a Scheduling Order and Notice of Administrative Hearing was entered which set a hearing on the merits of the protest to commence on April 28, 2026 and set other deadlines, including deadlines for dispositive motions. [Administrative File]

23. On March 17, 2026, the parties filed Cross-Motions for Summary Judgment asserting there were no genuine disputes of material fact and that the matter should be resolved as a question of law based on the stipulated record. [Administrative File]

24. On April 15, 2026, the parties responded to each other's motions for summary judgment. [Administrative File]

25. Upon agreement of the parties, a hearing on the parties' respective motions was held in lieu of a merits hearing on April 28, 2026.

DISCUSSION

Summary Judgment Standard

Summary judgment is appropriate where there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. In controversies involving a pure question of law, or the application of law to undisputed facts, disposition by summary judgment is proper. *See Koenig v. Perez*, 1986-NMSC-066, ¶¶ 10–11.

Once the movant makes a prima facie showing of entitlement to judgment as a matter of law, the burden shifts to the opposing party to demonstrate specific evidentiary facts requiring a trial on the merits. *See Roth v. Thompson*, 1992-NMSC-011, ¶ 17. A non-moving party may not rely solely on allegations or argument to defeat summary judgment. *See Oschwald v. Christie*, 1980-NMSC-136, ¶ 6. Rather, the opposing party must show the existence of a genuine issue of material fact through affidavits, depositions, or other competent evidence. *See Juneau v. Intel Corp.*, 2006-NMSC-002, ¶ 15.

Here, the parties jointly submitted a Stipulation of Facts and expressly agree there are no genuine disputes of material fact requiring an evidentiary hearing. The dispute concerns only the legal effect of those stipulated facts, or more specifically, the proper sourcing of Taxpayer's gross receipts under the Gross Receipts and Compensating Tax Act and whether the Department's assessments for January 2018 through November 2019 were timely under the Tax Administration Act. Resolution by summary judgment is therefore appropriate.

Because the material facts are stipulated, the Hearing Officer's task is to apply the governing statutes and regulations to the undisputed record rather than resolve disputed evidentiary issues.

<u>*Burden of Proof and Principles of Statutory Construction*</u>

Taxation is the rule, and the claimant must show that its demand is within both the letter and the spirit of the law. *See TPL, Inc. v. New Mexico Taxation & Revenue Dep't*, 2003-NMSC-007, ¶ 9.

For the privilege of engaging in business in New Mexico, the Gross Receipts and Compensating Tax Act imposes an excise tax on gross receipts. To prevent evasion of the tax and to aid in administration, it is presumed that all receipts of a person engaging in business are subject to gross receipts tax. *See* NMSA 1978, Sections 7-9-4 and 7-9-5.

Taxpayer bears the burden of proving entitlement to the requested refund and of showing that the Department's assessments were incorrect. That burden remains even where, as here, the Department initially approved and issued the requested refunds and later determined that those refunds had been paid in error. The Department's subsequent issuance of formal assessments does not eliminate Taxpayer's obligation to establish that its receipts were properly sourced and that the assessments were improper.

The primary goal in interpreting tax statutes is to give effect to legislative intent. Courts first look to the plain meaning of the statutory language and read related provisions together to produce a harmonious whole. Statutes and regulations must be afforded a fair, unbiased, and reasonable construction so that legislative intent is effectuated. *See Robison Medical Research Group, LLC v. N.M. Taxation & Revenue Dep't*, 2023-NMCA-065, ¶ 8; *Sacred Garden, Inc. v. N.M. Taxation & Revenue Dep't*, 2021-NMCA-038, ¶¶ 5–6.

When statutory language does not fully resolve the question presented, duly promulgated regulations may supply the operative rule. In *Robison*, the Court of Appeals held that where statutory text did not clearly identify who could claim a deduction, "the regulations fill the gap," and the Court enforced the Department's regulation according to its plain language rather than the Department's narrower litigation position. The Court further emphasized that regulations issued by the Department are presumed to be a proper implementation of the law and are entitled to substantial weight. *See Robison*, 2023-NMCA-065, ¶¶ 10–13.

That principle is central here. NMSA 1978, Section 7-1-14 (1995, Amended 2023) does not itself impose a single default reporting location. Instead, Section 7-1-14(A) provides:

> By regulation, the secretary may require any person maintaining one or more places of business to report the person's taxable gross receipts and deductions for each municipality or county… in which the person maintains a place of business.

Thus, the Legislature expressly delegated to the Secretary the authority to determine reporting locations through regulation. The statute further demonstrates that a "place of business" is not limited to a taxpayer's administrative office. For persons engaged in construction, for example, "the place where the construction project is performed is a 'place of business,'" and for persons selling real estate, "the location of the real property sold is the 'place of business.'" *See* Section 7-1-

14(B), (D).

This statutory structure shows that reporting location is determined through the regulations promulgated under Section 7-1-14, rather than by a freestanding office-location rule. The applicable regulation here is Subsection B of 3.1.4.13 NMAC, as in effect for the Refund Period, including Paragraph (3), which defines utilities selling and delivering water via pipeline. Thus, the dispositive question is whether Taxpayer falls within the regulatory definition of a utility. If so, the utility regulation, not the mere location of Taxpayer's Carlsbad office, controls sourcing.

The parties do not dispute that the Refund Period covers January 2018 through June 2020. Because those periods predate July 1, 2021, the current version of 3.1.4.13 NMAC does not govern this protest. The sourcing question must therefore be resolved under the prior version of 3.1.4.13 NMAC in effect during the Refund Period, including the utility-specific provisions in Subsection B.

I. Taxpayer Qualifies as a Utility Under Regulation 3.1.4.13(B)(3) NMAC (2011)

The principal dispute is whether Taxpayer's receipts during the Refund Period were properly sourced to Carlsbad based on the location of its office or to the customer delivery locations in Lea County and Eddy County under the utility provisions of the pre–July 1, 2021 version of Regulation 3.1.4.13(B) NMAC. Because the Refund Period predates July 1, 2021, the later destination-based sourcing amendments do not control. The question is whether Taxpayer qualifies as a utility under the regulation then in effect.

The Department argues that because Taxpayer maintained an office in Carlsbad, its receipts should be reported there. That argument fails because it disregards the Department's own utility regulation.

A. The Regulation Supplies Its Own Definition

For sourcing purposes, Regulation 3.1.4.13(B)(3) (2011) NMAC defines "utility" as follows:

> "utility" means a public utility or any other person selling and delivering or causing to be delivered to the customer's residence or place of business water via pipeline…

This language is broad and unambiguous. The regulation does not limit utility status to regulated public utilities. Instead, it expressly includes "any other person" who satisfies the stated regulatory criteria by selling and delivering, or causing to be delivered, water via pipeline.

New Mexico courts do not add words to a statute or rule that the drafters did not include. *See High Ridge Hinkle Joint Venture v. City of Albuquerque*, 1998-NMSC-050, ¶ 5, 126 N.M. 413, 414, 970 P.2d 599, 600. That principle applies where the text makes sense as written and the proposed interpretation would require the tribunal to insert an additional requirement, exception, or limitation. *See State ex rel. Barela v. New Mexico State Bd. of Ed.*, 1969-NMSC-038, ¶ 7, 80 N.M. 220, 222, 453 P.2d 583, 585. Because administrative rules are construed under the same principles as statutes, the same restraint applies here. *See Romero v. Laidlaw Transit Services, Inc.*, 2015-NMCA-107, ¶ 20, 357 P.3d 463, 468 ("In interpreting sections of the administrative code, we employ the same rules as used in statutory construction.").

The Department relies on *Llano, Inc. v. Southern Union Gas Co.*, 1964-NMSC-257, and argues that Taxpayer must resemble a traditional regulated public utility that holds itself out to serve the public. However, *Llano* is not controlling.

Llano interpreted the Public Utility Act and addressed whether a natural gas supplier qualified as a "public utility" for purposes of regulation by the Public Service Commission. The Court focused on whether the entity furnished gas "to or for the public" and held that it did not because it served only selected private industrial users and did not hold itself out to serve the public generally.

This case presents a different question under a different legal framework. The Department's tax regulation expressly provides that a utility means "a public utility *or any other person*" selling and delivering water via pipeline. The use of the disjunctive "or" expands utility status beyond entities regulated as public utilities under the Public Utility Act.

More fundamentally, the Department's reliance on cases interpreting the New Mexico Public Utility Act conflates two distinct legal frameworks. The Public Utility Act governs the regulation of entities that furnish services to the public and addresses issues such as rate control, service obligations, and public access. By contrast, Regulation 3.1.4.13(B)(3) NMAC supplies a definition of "utility" solely for purposes of determining the proper reporting location of gross receipts under the tax code.

Nothing in the regulation incorporates the Public Utility Act or limits its application to entities subject to that Act. To the contrary, the regulation expressly extends beyond regulated public utilities by including "any other person" selling and delivering water via pipeline. Importing Public Utility Act concepts, such as a requirement that the taxpayer hold itself out to serve the public, would improperly narrow the regulation and render the phrase "or any other person" superfluous contrary to the longstanding rule that "no part of the statute is rendered surplusage or superfluous." *See Katz v. New Mexico Dep't of Human Servs.*, 1981-NMSC-012, ¶ 18, 95 N.M. 530, 534, 624 P.2d 39, 43. The Hearing Officer also declines to graft regulatory requirements from an unrelated statutory scheme onto a tax regulation that provides its own operative definition.

Consistent with *Robison*, where the Department has promulgated a specific definition applicable "for purposes of" the regulation, that definition controls over broader common-law or dictionary concepts of what may traditionally be considered a utility.

B. Taxpayer Sells and Delivers Water Via Pipeline

The stipulated facts establish that Taxpayer provides water management and transportation services by delivering water to customer wellheads in Lea County and Eddy County through a continuous conduit system consisting of above-ground pipeline infrastructure, including connected lay-flat hose, pipe, and transfer-line systems.

Taxpayer introduces water into this system outside Carlsbad, and the water moves through Taxpayer's connected infrastructure to final delivery points at customer wellheads located in Lea County and Eddy County. The parties stipulated that the services at issue did not originate in, pass through, or conclude within Carlsbad and that, aside from Taxpayer maintaining an office there, Carlsbad had no connection to the delivery of the services.

The Water Transfer Agreement confirms that Taxpayer conveys title to the water and delivers that water through temporary or semi-permanent pipeline systems owned, installed, maintained, and operated by Taxpayer. The Agreement identifies a delivery point, provides that title transfers at delivery, and requires the customer to pay for transportation services associated with that delivery.

These facts satisfy the plain language of Regulation 3.1.4.13(B)(3) (2011) NMAC. Taxpayer is a person "selling and delivering or causing to be delivered" water "via pipeline" to the customer's place of business.

C. Delivery Through Lay-Flat Hose Constitutes Delivery Via Pipeline

The Department argues that delivery through lay-flat hose or temporary transfer lines is materially different from delivery "via pipeline" and therefore falls outside the regulation. That distinction is not supported by the text of the regulation or the stipulated facts.

Regulation 3.1.4.13(B)(3) NMAC (2011) does not distinguish between permanent underground pipelines and temporary or above-ground conduit systems. It contains no limitation based on the permanence, location, or configuration of the infrastructure used to deliver water. Had the regulation intended to restrict "pipeline" to fixed underground systems, it could have done so. It did not.

On the stipulated record, Taxpayer delivers water through a continuous, connected conduit system that transports water from the point of introduction to identified customer delivery points. Whether that connected conduit system is described as pipe, hose, or transfer line does not remove it from the regulatory phrase "via pipeline."

The Department's position elevates nomenclature over operational reality. Because Taxpayer delivers water through a connected conduit system functioning as a pipeline, the method of delivery falls squarely within the regulation.

Likewise, the fact that Taxpayer transfers title to the water does not remove it from the regulation. The regulation expressly applies to persons "selling and delivering" water, and the transfer of title at delivery is consistent with, rather than contrary to, that language.

D. Customer Wellheads Are the Relevant Business Locations

The pre–July 1, 2021 regulation did not treat the utility's administrative office as the sole reporting location. Instead, Subsection B created a specific sourcing rule for utilities by treating customer delivery locations as business locations of the utility. That utility-specific rule controls here because Taxpayer's receipts arise from selling and delivering water via pipeline to customer locations during the Refund Period.

Regulation 3.1.4.13(B)(1) NMAC (2011) provides:

> The physical location of the customer's premises or other place to which the utility's product or service is delivered to the customer is a business location of the utility.

This language is direct and controlling. For utilities, the customer's premises become a business location of the utility for reporting purposes.

This is also consistent with Section 7-1-14 itself, which recognizes that a "place of business" may be defined by where the transaction is performed rather than where an administrative office is maintained. Just as a construction project site or the location of real property sold may constitute the place of business under Section 7-1-14(B) and (D), the customer delivery point controls where the utility's service is performed for purposes of 3.1.4.13(B)(1).

Here, the customer delivery points are the wellhead locations in Lea County and Eddy County. Those locations, not Taxpayer's administrative office in Carlsbad, are the relevant business locations for sourcing the receipts at issue. The existence of the Carlsbad office is undisputed, but under the utility-specific regulation it is not the reporting location for receipts derived from deliveries to customer locations outside Carlsbad.

Carlsbad's only connection to the transactions was the existence of Taxpayer's office. The services did not originate there, pass through there, or conclude there. The final delivery points were customer wellheads outside Carlsbad. Under the Department's own regulation, that is where the receipts must be sourced.

Because Taxpayer fits squarely within the express definition of utility under 3.1.4.13(B)(3), its gross receipts were properly reportable to Lea County and Eddy County rather than to Carlsbad.

II. FYI-290 Supports but Does Not Control the Result

Taxpayer also relies on FYI-290, the Department's publication addressing transportation services. FYI-290 explains that when transportation occurs entirely within a county but not entirely within a municipality, municipal gross receipts tax does not apply.

Taxpayer's services, transporting water through a continuous conduit system to customer wellheads, bear some resemblance to transportation of property. In that sense, FYI-290 is consistent with the conclusion that Carlsbad municipal tax should not apply where the origination, route, and delivery of the services all occur outside Carlsbad.

However, FYI publications are general guidance and do not control over duly promulgated regulations. Because Regulation 3.1.4.13(B)(3) NMAC specifically governs taxpayers selling and delivering water via pipeline, this case is properly resolved under that regulation rather than under FYI-290.

FYI-290 therefore provides confirmatory context but does not supply the rule of decision.

This conclusion is also consistent with New Mexico law recognizing that agreements may separately provide for transportation services related to produced water. *See* NMSA 1978, Section 70-13-5(A). While not controlling on tax sourcing, this reinforces that the movement of water may constitute a distinct commercial service apart from ownership of the water itself.

III. The General Place-of-Business Rule Does Not Override the Specific Utility Regulation

Section 7-1-14 delegated to the Secretary the authority to determine reporting locations by regulation. The Department exercised that authority through the pre–July 1, 2021 version of 3.1.4.13 NMAC, including the specific sourcing provisions applicable to utilities during the Refund Period.

Where the Legislature delegates implementation of a statutory scheme to the Department and the Department promulgates a specific regulation governing the transaction at issue, that regulation supplies the operative rule. In *Robison*, the Court of Appeals held that where statutory text did not fully resolve the tax question presented, "the regulations fill the gap," and the Court enforced the Department's regulation according to its plain language rather than the Department's narrower litigation position. *See Robison*, 2023-NMCA-065, ¶¶ 10–13. Likewise, New Mexico follows the settled rule that where both a general provision and a specific provision address the same subject, the specific provision controls. *See Lopez v. Barreras*, 1966-NMSC-209, ¶ 12, 77 N.M. 52, 54, 419 P.2d 251, 253.

Here, the general concept of reporting by place of business applies broadly, while Regulation 3.1.4.13(B)(3) (2011) NMAC specifically governs taxpayers selling and delivering water via pipeline. The general office-location provisions of 3.1.4.13(A) NMAC do not displace Subsection B because Subsection B independently defines customer delivery locations as separate places of business for utilities. Once Taxpayer falls within that specific utility definition, the Department cannot rely on the broader office-location theory to override the customer-location sourcing rule expressly created by its own regulation.

IV. The Assessments for January 2018 Through November 2019 Were Untimely

Although the sourcing ruling independently requires abatement of all assessments, the Hearing Officer addresses limitations as an alternative ground applicable to the January 2018 through November 2019 periods.

A. Recovery of an Allegedly Erroneous Refund Does Not Restart Limitations

Under NMSA 1978, Section 7-1-18(A), no assessment of tax may be made by the Department after three years from the end of the calendar year in which payment of the tax was due, unless a statutory exception applies. The Department does not contend that any exception under Section 7-1-18(B) through (E) applies here.

Nothing in the stipulated record would support application of those exceptions in any event. There is no allegation or evidence that Taxpayer filed a false or fraudulent return with intent to evade tax, and no assertion that Taxpayer underreported its gross receipts by twenty-five percent or greater. To the contrary, the parties stipulated that Taxpayer initially reported and paid gross receipts tax using the Carlsbad rate and later sought refunds based on a change in sourcing position. The dispute concerns the proper reporting location of fully disclosed receipts, not the failure to report receipts or any attempt to evade tax. The Department has not invoked, and the stipulated record does not support, application of the twenty-five percent underreporting exception. Accordingly, on this record, the extended limitations provisions of Section 7-1-18(B) through (E) are inapplicable.

For gross receipts tax, the due date of payment is established by NMSA 1978, Section 7-9-11, which provides that gross receipts taxes are due on the twenty-fifth day of the month following the month in which the taxable event occurs. The parties stipulated that Taxpayer filed monthly gross receipts tax returns and that returns and payments were due monthly under that statute.

The Department argues that because the dispute arises from refunds previously issued and later reversed, no payment of tax became due until the Department issued its August 11, 2023 Notices of Assessment. Under that theory, the assessment itself would create the due date for purposes of Section 7-1-18(A).

The Hearing Officer rejects that interpretation because it requires that language be read into the statute that is not there.

An assessment is the Department's enforcement mechanism for an existing tax liability; it does not create a new tax obligation or establish a new statutory due date. The underlying gross receipts tax liability arose when the original taxable transactions occurred and became due under Section 7-9-11. The Department's later issuance of refunds, and its subsequent determination that those refunds were issued in error, did not restart the limitations period or create a new due date for the original tax.

Section 7-1-18(A) measures the limitations period from when payment of the tax was due, not from when the Department later decides to assess. *See Hess Corp. v. New Mexico Taxation & Revenue Department*, 2011-NMCA-043, ¶ 23 ("With limited exceptions, the Department is required to issue tax assessments within three years from the end of the calendar year in which payment of a tax is due.”).

Accepting the Department’s interpretation would effectively eliminate the limitations period established by Section 7-1-18(A), because the Department could revive otherwise closed periods simply by issuing an assessment years later and asserting that the assessment itself created the due date. That construction is inconsistent with the statutory text and the purpose of limitations statutes.

B. The Operative Assessment Date Is August 11, 2023

The Department sent Taxpayer a letter on April 25, 2023 asserting that previously issued refunds had been paid in error and demanding repayment. The Department did not issue an assessment at that time. The operative assessments were subsequently issued on August 11, 2023.

Because gross receipts tax became due monthly under Section 7-9-11, the assessments for tax periods January 2018 through November 2019 were untimely. The December 2019 period, for which payment was due in January 2020, falls within the three-year assessment period and is not barred on limitations grounds. Accordingly, the Department’s August 11, 2023 assessments for January 2018 through November 2019 are untimely and unenforceable under Section 7-1-18(A).

Conclusion

Taxpayer has established entitlement to summary judgment as a matter of law. Under the pre–July 1, 2021 version of 3.1.4.13(B) NMAC, Taxpayer qualifies as a utility because it sold and delivered water via pipeline to customer wellhead locations in Lea County and Eddy County. Under 3.1.4.13(B)(1) NMAC, those customer delivery locations were business locations of the utility for reporting purposes. Taxpayer’s receipts were therefore properly reportable to Lea County and Eddy County rather than to Carlsbad, and the Department’s assessments seeking repayment of the refunds are improper.

Independently, and in the alternative, the Department’s August 11, 2023 assessments for

January 2018 through November 2019 were untimely under NMSA 1978, Section 7-1-18(A). The December 2019 period and later periods are not barred on limitations grounds, but those assessments are abated because Taxpayer prevails on sourcing.

For these reasons, Taxpayer's Cross-Motion for Summary Judgment is granted. The Department's Cross-Motion for Summary Judgment is denied. Taxpayer's protest is granted. The Department's August 11, 2023 Notices of Assessment of Taxes and Demand for Payment are abated.

CONCLUSIONS OF LAW

A. Taxpayer filed a timely, written protest of the Department's assessments and jurisdiction lies over the parties and the subject matter of the request for hearing.

B. The initial scheduling hearing was timely set and held within 90 days of the Department's answer and request for hearing, and, absent any timely objection by either party, satisfied the hearing requirement under NMSA 1978, Section 7-1B-8 and 22.600.3.8(I)–(J) NMAC.

C. Summary judgment is appropriate where there are no genuine issues of material fact and the movant is entitled to judgment as a matter of law. *See Koenig v. Perez*, 1986-NMSC-066, ¶¶ 10–11.

D. Where the parties have stipulated to the material facts and the dispute presents questions of statutory and regulatory interpretation, summary judgment is proper.

E. Taxpayer bears the burden of proving entitlement to the requested relief and of showing that the Department's assessments were incorrect. *See TPL, Inc. v. New Mexico Taxation & Revenue Dep't*, 2003-NMSC-007, ¶ 9; NMSA 1978, Sections 7-9-4 and 7-9-5.

F. Section 7-1-14(A) authorizes the Secretary, by regulation, to require reporting of taxable gross receipts by municipality or county where a taxpayer maintains a place of business.

G. Section 7-1-14 does not require that "place of business" be limited to a taxpayer's administrative office.

H. Duly promulgated Department regulations may supply the operative rule for determining the proper reporting location of gross receipts. *See Robison Medical Research Group, LLC v. N.M. Taxation & Revenue Dep't*, 2023-NMCA-065, ¶¶ 10–13.

I. Regulations issued by the Department are presumed to be a proper implementation of the law and are entitled to substantial weight. *See* NMSA 1978, Section 9-11-6.2; *Robison*, 2023-NMCA-065, ¶¶ 10–13.

J. Under 3.1.4.13(B)(3) NMAC, a "utility" includes "a public utility or any other person selling and delivering or causing to be delivered" water via pipeline to the customer's residence or place of business.

K. The phrase "or any other person" in 3.1.4.13(B)(3) NMAC is not limited to entities regulated as public utilities under the Public Utility Act.

L. *Llano, Inc. v. Southern Union Gas Co.*, 1964-NMSC-257, does not control the meaning of "utility" under 3.1.4.13(B)(3) NMAC because *Llano* interpreted the Public Utility Act, not the Department's gross receipts tax sourcing regulation.

M. Delivery of water through temporary or above-ground connected conduit infrastructure may constitute delivery "via pipeline" within the meaning of 3.1.4.13(B)(3) NMAC.

N. Transfer of title to water does not preclude application of 3.1.4.13(B)(3) NMAC because the regulation expressly applies to persons "selling and delivering" water.

O. Under 3.1.4.13(B)(1) NMAC, "[t]he physical location of the customer's premises or other place to which the utility's product or service is delivered to the customer is a business location of the utility."

P. Where both a general statutory framework and a specific regulation promulgated under that framework address the same sourcing issue, the specific regulation controls. *See Robison Medical Research Group, LLC v. N.M. Taxation & Revenue Dep't*, 2023-NMCA-065, ¶¶ 10–13; *Lopez v. Barreras*, 1966-NMSC-209, ¶ 12, 77 N.M. 52, 54, 419 P.2d 251, 253.

Q. Taxpayer qualifies as a utility under 3.1.4.13(B)(3) NMAC.

R. Under 3.1.4.13(B)(1) and (B)(3) NMAC, Taxpayer's gross receipts for the Refund Period were properly reportable to the customer delivery locations in Lea County and Eddy County, rather than to Carlsbad.

S. Taxpayer has established that the refunds were not issued in error because its receipts were properly sourced under the pre–July 1, 2021 version of 3.1.4.13(B) NMAC.

T. Under NMSA 1978, Section 7-1-18(A), no assessment of tax may be made after three years from the end of the calendar year in which payment of the tax was due unless a statutory exception applies.

U. For gross receipts tax, payment is due monthly on the twenty-fifth day of the month following the month in which the taxable event occurs. *See* NMSA 1978, Section 7-9-11.

V. A Department demand letter that is not a formal Notice of Assessment of Taxes Due does not constitute an assessment for purposes of Section 7-1-18(A).

W. The Department's later determination that a refund was issued in error does not create a new tax liability, restart the limitations period, or establish a new due date for the original gross receipts tax obligation. *See* NMSA 1978, Sections 7-1-18(A) and 7-9-11.

X. The Department's August 11, 2023 assessments for the January 2018 through November 2019 tax periods were untimely under Section 7-1-18(A). The December 2019 period was not barred by Section 7-1-18(A), but the assessment for that period and relevant periods thereafter is abated because Taxpayer's gross receipts were properly reportable to the customer delivery locations in Lea County and Eddy County rather than to Carlsbad.

For the reasons stated above, Taxpayer's Cross-Motion for Summary Judgment is granted. The Department's Cross-Motion for Summary Judgment is denied. Taxpayer's protest is granted. The Department's August 11, 2023 Notices of Assessment of Taxes and Demand for Payment are abated.

DATED: May 8, 2026

Chris Romero
Hearing Officer
Administrative Hearings Office
P.O. Box 6400
Santa Fe, NM 87502

NOTICE OF RIGHT TO APPEAL

Pursuant to NMSA 1978, Section 7-1-25 (2015), 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. If an appeal is not timely filed with the Court of Appeals within 30 days, this Decision and Order will become final. Rule of Appellate Procedure 12-601 NMRA articulates the requirements of perfecting an appeal of an administrative decision with the Court of Appeals. Either party filing an appeal shall file a courtesy copy of the appeal with the Administrative Hearings Office contemporaneous with the Court of Appeals filing so that the Administrative Hearings Office may begin preparing the record proper. The parties will each be provided with a copy of the record proper at the time of the filing of the record proper with the Court of Appeals, which occurs within 14 days of the Administrative Hearings Office receipt of the docketing statement from the appealing party. *See* Rule 12-209 NMRA.

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing on the parties listed below this 8th day of May, 2026 in the following manner:

INTENTIONALLY BLANK