

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

**IN THE MATTER OF THE PROTEST OF  
WESTERN DISPOSAL SERVICES, INC.  
TO THE DENIAL OF CLAIM FOR REFUND  
LETTER ID NO. L1576971392**

**No. 10-11**

**DECISION AND ORDER**

A formal hearing on the above-referenced protest was held August 19, 2010, before Dee Dee Hoxie, Hearing Officer. The Taxation and Revenue Department ("Department") was represented by Mr. Peter Breen, Special Assistant Attorney General. Ms. Andrea Umpleby, Auditor, also appeared on behalf of the Department. Ms. Christy Richardson and Mr. John Richardson, president and vice-president respectively of Western Disposal Services, Inc. ("Taxpayer"), appeared for the hearing and represented Taxpayer. 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. Taxpayer filed a timely CRS report and made payment for the December 2003 reporting period.
2. The Department misapplied the payment to another account and lost the report.
3. The Department notified Taxpayer on March 11, 2004 that they had failed to file a CRS report for the December 2003 period.
4. Taxpayer was unable to locate the previously filed report and was unable to find proof of payment for the December 2003 period. Therefore, Taxpayer filed the report again and made another payment, which included interest and penalty, on March 20, 2004.

5. In March 2009, Taxpayer was informed during a phone call that the Department was still missing the December 2003 CRS report.
6. Taxpayer researched their records and found the original CRS report and payment that was made in January 2004 for that tax period. Taxpayer also located the CRS report and additional payment that had been made in March 2004 for the same tax period. Taxpayer was able to locate these records due to a change in its structure and in the person responsible for maintaining and locating their records. Taxpayer provided copies of these documents to the Department on April 10, 2009.
7. On April 29, 2009, Taxpayer filed a claim for refund for the payment made in March 2004 after speaking to a Department employee who advised them to do so.
8. On May 20, 2009, the Department denied the claim for refund.
9. On June 17, 2009, Taxpayer filed a formal protest to the denial.
10. On May 21, 2010, the Department filed a Request for Hearing asking that the Taxpayer's protest be scheduled for a formal administrative hearing.

### **DISCUSSION**

The issue to be decided is whether the Taxpayer's claim for refund on the December 2003 tax period was properly denied by the statute of limitations.

#### **Statute of Limitations.**

No refund or credit is allowed unless it is claimed within three years of the end of the calendar year of the original due date of the payment or within three years of the overpayment, if the overpayment resulted from an assessment by the Department. *See* NMSA 1978, § 7-1-26 (D). The original payment was due in January 2004 for the December 2003 reporting period. The overpayment occurred in March 2004. There was not an assessment in this case, so there would not be any extension of time to file for the refund. Therefore, the statute of limitations would expire at the end

of the 2007 calendar year. 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 Protest of Kilmer*, 2004-NMCA-122, ¶ 16, 136 N.M. 440, 99 P.3d 690. No exception to the three-year limitation was established. *See* NMSA 1978, § 7-1-26.

### **Equitable Estoppel.**

Taxpayer argued that it was unfair for the Department to deny their claim for refund based on the statute of limitations because the Department's actions and misapplication of the original payment are what caused the overpayment. This 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. State, Human Servs. Dep't*, 1998-NMSC-011, ¶ 17, 125 N.M. 140, 958 P.2d 98. 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 Hospital, Inc.*, 102 N.M. 452, 455-456, 697 P.2d 135, 138-139 (1985). There is no evidence that the Department acted in order to prevent Taxpayer from bringing the claim 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, at ¶ 27. Even if estoppel were to apply, the Hearing Officer could not grant it. *See AA Oilfield Service v. New Mexico State Corp. Comm'n*, 118 N.M. 273, 881 P.2d 18 (1994) (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. Taxpayer filed a timely written protest to the denial of refund issued under Letter ID number L1576971392 and jurisdiction lies over the parties and the subject matter of this protest.

2. The claim for refund was not made within three years of the end of the calendar year in which the original payment was due.

3. The claim for refund was barred by the statute of limitations in NMSA 1978, § 7-1-26 (D).

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

DATED: September 13, 2010.