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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
COPPER CANYON INVESTMENTS, LLC
TO THE DENIAL OF REFUND
ISSUED UNDER LETTER ID NO. L1406019248**

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v.

AHO No. 21.01-001R, D&O No. 21-09

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

DECISION AND ORDER

On March 26, 2021, Hearing Officer Dee Dee Hoxie, Esq. conducted a videoconference hearing on the merits of the protest to the denial of refund. The Taxation and Revenue Department (Department) was represented by Kenneth Fladager, Staff Attorney, who appeared by videoconference. Elvis Dingha, Auditor, also appeared by videoconference on behalf of the Department. Copper Canyon Investments, LLC (Taxpayer) was represented by its managing member and employee, Miles Gray and Sherry Gray, who appeared by videoconference. Mr. Gray, Ms. Gray, and Mr. Dingha testified. The Hearing Officer took notice of all documents in the administrative file. Taxpayer's exhibits #1 (statement); #2 (notes); #3 (Letter L0191436592); #4 (form); #5 (emails); #7 (affidavit); #8 (emails); and #10 (refund application)¹ were admitted without objection. Skipped numbers are the result of proposed exhibits that were disallowed as they duplicated documents, such as the protest and hearing notice, that were already contained in the administrative file.

The main issue to be decided is whether the Taxpayer is entitled to a refund for tax periods from March 31, 2016 through November 30, 2016. The Department denied the claim for refund solely based on the statute of limitations. The Hearing Officer considered all of the

¹ Citations to exhibits in the decision will be noted as "Ex. #".

1 evidence and arguments presented by both parties. Based on the preponderance of the evidence,
2 the Taxpayer's claim for refund was delivered to the Department on December 30, 2019, so it
3 was made within the three-year statute of limitations, and the Hearing Officer finds in favor of
4 the Taxpayer. IT IS DECIDED AND ORDERED AS FOLLOWS:

5 **FINDINGS OF FACT**

6 1. On April 25, 2020, under letter id. no. L1406019248, the Department issued a
7 partial denial of refund to the Taxpayer. The Taxpayer applied for a refund of \$10,023.51 for the
8 tax periods from March 31, 2016 through February 28, 2017. The refund was partially granted
9 in the amount of \$2,011.95. The Taxpayer's remaining claim for refund of \$8,011.56 was denied
10 for the tax periods in 2016 based on the statute of limitations. [Admin. file L1406019248;
11 Testimony of Mr. Dingha].

12 2. On July 23, 2020, the Taxpayer filed a timely written protest to the denial of
13 refund. [Admin. file protest].

14 3. On July 29, 2020, the Department acknowledged its receipt of the protest.
15 [Admin. file L1483732656].

16 4. On January 11, 2021, the Administrative Hearings Office first learned of the
17 Taxpayer's protest when the Department filed a request for hearing. [Admin. file request].

18 5. On February 5, 2021, a telephonic scheduling hearing was conducted, which was
19 within 90 days of the request as required by statute. [Admin. file].

20 6. The Taxpayer was audited in 2017 and learned that it might be entitled to a refund
21 on gross receipts taxes. [Testimony of Ms. Gray; Ex. #1].

1 7. Either in late 2017 or early 2018, the Taxpayer filed a claim for refund for the tax
2 periods from December 31, 2014 through February 28, 2017. [Testimony of Ms. Gray; Ex. #1;
3 Ex. #3].

4 8. The Taxpayer's claim for refund was neither approved nor denied at that time;
5 rather, the Department advised the Taxpayer that its claim was improperly filed as it lacked
6 information on the basis of the refund claim. [Testimony of Ms. Gray; Ex. #3].

7 9. Both before it filed its claim for refund and after it received the rejection of the
8 improperly filed claim, Ms. Gray spoke to Department employees about the process. She
9 inquired about timeframes and was never told that there was a deadline, which she documented
10 with handwritten notes. [Testimony of Ms. Gray; Ex. #2, Ex. #3].

11 10. The Department's application for refund form does not inform taxpayers of a
12 deadline for filing. [Ex. #4].

13 11. The Department's letter rejecting the improperly filed claim informed the
14 Taxpayer that it could refile its application for refund, and it advised that "[t]here is a limitation
15 of time to file a claim with the Department pursuant to Section 7-1-26 NMSA 1978." [Ex. #3].

16 12. On or about November 2, 2019, the Taxpayer prepared a second application for
17 refund for the tax periods from March 2016 to February 2017 and attached documentation as the
18 basis of its claim. [Testimony of Ms. Gray; Testimony of Mr. Gray; Ex. #10].

19 13. On December 30, 2019, a packet of information was delivered to the
20 Department's office on Central Avenue in Albuquerque, New Mexico on behalf of the Taxpayer.
21 [Testimony of Mr. Gray; Testimony of Ms. Gray; Ex. #7].

22 14. The packet of information included the documentation that formed the basis of the
23 claim for refund. [Testimony of Mr. Gray; Testimony of Ms. Gray].

1 protest for a hearing in August or September 2020, and again in November 2020, but the hearing
2 was not requested until January 2021. [Ex. #8; Admin. file request]. Either party may file a
3 request for hearing with the Administrative Hearings Office no earlier than 60 days after the
4 protest was filed, and the Department is required to file a request for hearing within 180 days.
5 *See* NMSA 1978, § 7-1B-8 (2019). Generally, the deadlines will be calculated from the
6 Department's acknowledgment of the protest. *See* 22.600.3.8 NMAC (2018). The Department
7 advised the Taxpayer in its acknowledgment letter that the Taxpayer had the right to request the
8 hearing from the Administrative Hearings Office and that the deadline for requesting a hearing
9 was 180 days. [Admin. file L1483732656]. The Taxpayer never filed a request for hearing with
10 the Administrative Hearings Office. [Admin. file]. The Department filed the request for hearing
11 with the Administrative Hearings Office on January 11, 2021. [Admin. file request]. Using the
12 date that the protest was filed, the 180th day on which to request a hearing was January 19, 2021.
13 Using the date that the protest was acknowledged, the 180th day on which to request a hearing
14 was January 25, 2021. Using either timeframe, the Department's request for hearing was filed
15 timely.

16 After a request for hearing is filed by the Department, the Administrative Hearings Office
17 is required to set a hearing within 90 days of the request². *See* NMSA 1978, § 7-1B-8. As the
18 Department's request for hearing was filed on January 11, 2021, the deadline to set a hearing is
19 April 12, 2021³. A hearing was set and held on February 5, 2021, at which the Taxpayer failed
20 to appear. The hearing on the merits was set and held on March 26, 2021. Therefore, the
21 hearing was held within 90 days of the request for hearing, as required by statute. *See id.*

² If a taxpayer files the request, then it is within 120 days from the request or within 90 days of the Department's answer, whichever is sooner. *See id.*

³ The 90th day is April 11, 2021, which falls on a Sunday, so the deadline becomes the following business day, which is April 12, 2021.

1 **Statute of limitations for claiming a refund.**

2 The Taxpayer argues it was not informed of the time limits by the Department’s employees
3 or forms. [Ex. #2, Ex. #3, Ex. #4]. The Taxpayer argues that it would be fundamentally unfair to
4 apply a time limit to it for that reason. A person may claim a refund within the time limits. *See*
5 NMSA 1978, § 7-1-26 (A) (2019). Generally, the deadline to file a claim for refund is three years
6 from the end of the calendar year in which “the payment was originally due or the overpayment
7 resulted from an assessment.” NMSA 1978, § 7-1-26 (F). Although the Department’s employees
8 may have denied that any timeframe existed for filing a claim, the Department’s letter to the
9 Taxpayer informed it that its first claim for refund was improperly filed as it was incomplete and
10 clearly stated that there was a time limit governed by the statute. [Ex. #3]. *See also Kilmer v.*
11 *Goodwin*, 2004-NMCA-122, 136 N.M. 440 (holding that representations by the Department’s
12 employees did not rise to the level of estoppel and that the statute of limitations still applied). The
13 payments for the 2016 tax periods were due in 2016. Therefore, the Taxpayer had three years from
14 the end of 2016 to file its claim for refund. The deadline to file its claim for refund was December
15 31, 2019.

16 **Date that the refund claim was filed.**

17 The critical issue in this protest is when the second claim for refund was filed. The
18 Taxpayer has consistently stated that it filed its initial claim, that the Department requested more
19 information, that it compiled more information and submitted it to the Department, that the
20 Department then asked for further documentation, that it requested a short extension due to the
21 ongoing public health state of emergency and then provided further documentation, and then the
22 claim was partially denied. [Testimony of Mr. Gray; Testimony of Ms. Gray; Ex. #1; Admin. file

1 protest]. The documents provided also support the Taxpayer's general timeline. [Ex. #3; Ex. #5;
2 Ex. #7; Ex. #10].

3 The exact date that the Taxpayer filed its second claim for refund was not explicitly clear
4 from the evidence presented. The Taxpayer argues that it filed its second claim for refund in
5 November 2019, as evidenced by the date it was signed. [Ex. #10]. The Taxpayer argues that the
6 packet delivered to the Department on December 30, 2019 was in response to the Department's
7 request for further information. [Ex. #5, Ex. #7]. However, it appears that the Department
8 requested additional information from the Taxpayer in March 2020. [Ex. #1, Ex. #5]. It was clear
9 from the evidence that the Taxpayer filed an initial claim for refund that was rejected in 2018 as
10 improper. [Ex. #1, Ex. #3, Testimony of Ms. Gray]. The Taxpayer then compiled more
11 information and resubmitted a claim for refund. [Testimony of Mr. Gray; Testimony of Ms. Gray;
12 Ex. #1; Ex. #10]. The Taxpayer submitted a packet of information to the Department, which was
13 hand-delivered on December 30, 2019. [Testimony of Mr. Gray; Testimony of Ms. Gray; Ex. #7].
14 The Department had certainly received the second claim for refund by January 3, 2020. [Ex. #10].
15 The Department then requested additional information from the Taxpayer, which was provided in
16 April 2020. [Testimony of Mr. Gray; Testimony of Ms. Gray; Testimony of Mr. Dingha; Ex. #5].
17 The Taxpayer provided sufficient evidence to prove that it submitted documents related to its claim
18 for refund to the Department a total of three times: the initial claim that was rejected in 2018, the
19 packet of documents on December 30, 2019, and the additional documentation in April 2020.
20 [Testimony of Mr. Gray; Testimony of Ms. Gray; Ex. #3; Ex. #5; Ex. #7; Ex. #10]. Looking at this
21 evidence in conjunction with the date that the Department stamped the second claim for refund⁴, the

⁴ The date stamped was January 3, 2020, which was within a few days of the hand-delivery of documents on December 30, 2019. December 30, 2019 was a Monday, January 1, 2020 was a federal holiday and fell on a Wednesday, and January 3, 2020 was a Friday.

1 Hearing Officer finds it more likely than not that the second claim for refund was contained in the
2 packet of information that was hand-delivered to the Department's Albuquerque office on
3 December 30, 2019. The totality of the evidence, including circumstantial evidence and affidavit, is
4 sufficient to establish this as a fact by the preponderance. *See Schneider National, Inc. v. State of*
5 *N.M. Taxation and Revenue Dep't*, 2006-NMCA-128, 140 N.M. 561 (holding that affidavits from
6 Department's employees about their normal mailing practices combined with evidence that the mail
7 was delivered was sufficient prima facie evidence to establish when the mailing occurred). A claim
8 for refund is timely when it is delivered to the Department prior to the expiration of the statutory
9 time limits. *See* 3.1.9.8 NMAC (2010). Therefore, the Taxpayer's claim for refund was filed
10 timely. *See id.* *See also* NMSA 1978, § 7-1-26.

11 A party relying on service by mail has the burden of proving that the mailing was done. *See*
12 *Myers v. Kapnison*, 1979-NMCA-085, ¶ 8, 93 N.M. 215. However, a party may rebut the
13 presumption that notice sent in a properly addressed letter was received. *See State Farm Fire and*
14 *Casualty Co. v. Price*, 1984, NMCA-036, ¶ 24, 101 N.M. 438. The Taxpayer is not relying on
15 mailing; it is relying on the hand-delivery of the packet on December 30, 2019. [Testimony of Mr.
16 Gray; Testimony of Ms. Gray; Ex. #7]. Nevertheless, the Department has the opportunity to rebut
17 the evidence presented. The Department argues that the second claim for refund was filed when it
18 was stamped by the Albuquerque office on January 3, 2020. [Ex. #10]. Given the Taxpayer's
19 evidence that it submitted documents to the Department three times in relation to this refund claim⁵,
20 the date stamp, by itself, is not sufficient to establish the date of filing. Based on the close proximity
21 of time, the date stamp bolsters the Taxpayer's claim that it submitted the second packet of
22 documents to the Department on December 30, 2019. The Department's witness did not assert that

⁵ The first time that was rejected in 2018, the second time on December 30, 2019, and the final time in April 2020.

1 the claim was filed in January. [Testimony of Mr. Dingha]. He testified that the second claim for
2 refund was made on July 23, 2020. [Testimony of Mr. Dingha]. That is the date when the protest
3 was filed. [Testimony of Mr. Dingha; Admin. file protest]. As the Department denied the claim for
4 refund on April 25, 2020, almost 90 days prior to July 23, 2020, this testimony is clearly inaccurate.
5 [Admin. file L1406019248]. The Taxpayer and the Department asked a number of questions to try
6 to clarify when the second claim for refund was filed, and the witness continued to assert that the
7 claim was made when the protest was filed⁶. [Testimony of Mr. Dingha]. The Department failed to
8 rebut the Taxpayer's evidence.

9 The Department argues the Taxpayer's claim for refund was not timely because its claim
10 was not complete until it provided the additional information in April 2020. Under a previous
11 version of the statute, when the Department requests additional information, "the claim for refund
12 will not be considered complete until the taxpayer provides the requested documentation." NMSA
13 1978, § 7-1-26 (C) (2017). Under the current version of the statute⁷, when the Department requests
14 additional information, "the claim for refund *shall not be considered incomplete* provided the
15 taxpayer submits sufficient information for the department to make a determination." NMSA 1978,
16 § 7-1-26 (C) (2019) (emphasis added). Use of the word "shall" indicates that the provision is
17 mandatory, not discretionary. *See Marbob Energy Corp. v. N.M. Oil Conservation Comm'n.*,
18 2009-NMSC-013, ¶22, 146 N.M. 24. The Taxpayer provided sufficient information as its claim
19 for later tax periods was granted and the only reason for denying the 2016 tax periods was the
20 statute of limitations. [Testimony of Mr. Dingha; Admin. file L1406019248]. Consequently, the
21 Taxpayer's claim for refund of the 2016 tax periods was not considered incomplete when the

⁶ The Hearing Officer does not believe that Mr. Dingha was attempting to be deceitful or willfully misleading; rather, it seems that Mr. Dingha was genuinely confused, did not understand the difference between the claim for refund and the protest, and was conflating the two processes.

⁷ Which was in effect at the time that the Taxpayer filed its second claim for refund.

1 Department requested additional information. *See* NMSA 1978, § 7-1-26 (C). Therefore, the
2 Taxpayer’s claim for refund was filed timely. *See id.*

3 **CONCLUSIONS OF LAW**

4 A. The Taxpayer filed a timely, written protest of the Department’s denial of refund and
5 jurisdiction lies over the parties and the subject matter of this protest.

6 B. The hearing was timely set and held within 90 days of the request for hearing, which
7 was filed timely by the Department. *See* NMSA 1978, § 7-1B-8 (2019).

8 C. There was sufficient circumstantial evidence in combination with the direct evidence
9 to establish that the Taxpayer’s claim for refund was filed when its packet of information was
10 delivered to the Department on December 30, 2019. *See Schneider National, Inc.*, 2006-NMCA-
11 128. *See also* 3.1.9.8 NMAC.

12 D. The Taxpayer’s claim for refund was not considered incomplete based on the
13 Department’s request for additional information. *See* NMSA 1978, § 7-1-26.

14 E. The Taxpayer’s claim for refund was filed within three years of the end of the
15 calendar year when the payment was originally due. *See id.*

16 F. Since the Taxpayer’s claim for refund was filed timely and there was no other reason
17 for the denial, the refund shall be granted. *See id.*

18 For the foregoing reasons, the Taxpayer’s protest **IS GRANTED. IT IS ORDERED** that
19 the Department issue the Taxpayer’s refund of \$8,011.56.

20 DATED: April 15, 2021.

21 *Dee Dee Hoxie*

22 _____
23 Dee Dee Hoxie
Hearing Officer

1 Administrative Hearings Office
2 P.O. Box 6400
3 Santa Fe, NM 87502

4 **NOTICE OF RIGHT TO APPEAL**

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

16 **CERTIFICATE OF SERVICE**

17 On April 15, 2021, a copy of the foregoing Decision and Order was submitted to the parties
18 listed below in the following manner:

19 *Email*

Email

20 INTENTIONALLY BLANK

21 _____
22 John Griego
23 Legal Assistant
24 Administrative Hearings Office
25 P.O. Box 6400
26 Santa Fe, NM 87502