

1    **STATE OF NEW MEXICO**  
2    **ADMINISTRATIVE HEARINGS OFFICE**  
3    **TAX ADMINISTRATION ACT**

4   **IN THE MATTER OF THE PROTEST OF**  
5   **WILLIAM J. WATSON**  
6   **TO PARTIAL DENIAL OF REFUND ISSUED UNDER**  
7   **LETTER ID NO. L0879008176**

8    **v.**    **AHO Case Number 22.01-007R, D&O No. 22-21**

9   **NEW MEXICO TAXATION AND REVENUE DEPARTMENT**

10    **DECISION AND ORDER**

11                    On May 5, 2022, Hearing Officer Ignacio V. Gallegos, Esq., conducted an administrative  
12 hearing on the merits of the matter of the tax protest of William J. Watson (Taxpayer) pursuant  
13 to the Tax Administration Act and the Administrative Hearings Office Act. At the video  
14 conference hearing, Mr. William J. Watson appeared, accompanied by his spouse and business  
15 bookkeeper Melany Watson, who both testified as Taxpayer’s witnesses. Staff Attorney Peter  
16 Breen appeared, representing the opposing party in the protest, the Taxation and Revenue  
17 Department (Department). Department protest auditor Elvis Dingha appeared as a witness for the  
18 Department. Taxpayer offered Exhibit #1-001 through #1-293 at the hearing and was allowed to  
19 submit additional documentation following the hearing. Within the time allowed, Taxpayer  
20 offered Exhibit #2-01 through #2-25 (reprints of original CRS returns) and Exhibit #3-01  
21 through #3-25 (reprints of amended CRS returns, as available on the Department’s TAP web  
22 access portal). Without objection, Taxpayer’s exhibits were admitted. Department offered no  
23 exhibits. Exhibits are more fully described in the Exhibit Log. The administrative file is  
24 considered part of the record.

25                    In quick summary, this protest involves Taxpayer’s claim that he was owed a refund for  
26 gross receipts taxes paid over the course of several years after receiving information of the taxability

1 of his business from the Department. After someone from the Department thereafter affirmed that  
2 the business receipts for services performed out of state were not taxable, Taxpayer requested a  
3 refund. The first submission in 2020 of amended CRS-1 returns zeroing out the tax was incomplete,  
4 and the Taxpayer thereafter sent a letter providing the Department notice of the refund claim, still  
5 within 2020. The Department requested additional information in 2021, then, once a complete  
6 refund request was provided, the Department partially granted and partially denied the refund  
7 request. The Department's partial denial was for timeliness of the refund request. Taxpayer protests  
8 the partial denial, as he believed the request for refund was timely. Ultimately, after making findings  
9 of fact and discussing the issue in more detail throughout this decision, the hearing officer finds  
10 Taxpayer's refund claim for 2016 to be untimely and the denial of that year to be proper;  
11 Taxpayer's refund claim for 2017 was timely and the denial of that year to be improper. Therefore  
12 the protest is denied in part and granted in part. IT IS DECIDED AND ORDERED AS  
13 FOLLOWS:

## 14 FINDINGS OF FACT

### 15 Procedural Findings

16 1. On April 27, 2021, under Letter Id. No. L0879008176, the Department issued a  
17 partial denial of refund letter to Taxpayer. Under the title "Refund Denied in Part" the  
18 Department allowed a refund of \$5,423.11 for Gross Receipts Tax reporting periods December  
19 2017 through June of 2020. The Department denied a credit of \$4,563.38 for tax reporting  
20 periods from September 2016 through November of 2017. [Administrative File].

21 2. On July 23, 2021, Taxpayer submitted a Formal Protest letter, alleging that the  
22 Department was incorrect in its denial of refund of taxes paid because the tax was paid during

1 the timeframes at protest solely due to Taxpayer’s receipt of inaccurate information from the  
2 Department about the taxability of the business activity. Taxpayer noted further that the language  
3 of the statute NMSA 1978, Section 7-1-26 (F)(1) allows refunds “only within three years after  
4 the end of the calendar year in which the applicable event occurs”, thus, Taxpayer claimed  
5 entitlement to the entire 2017 year of refunds.<sup>1</sup> [Administrative File].

6 3. On July 31, 2021, under Letter Id. No. L0629026224 the Department issued a  
7 letter informing the Taxpayer that the Department acknowledged receipt of Taxpayer’s protest of  
8 Gross Receipts Tax Refund Denial for tax periods beginning September 1, 2016 through June 30,  
9 2020 in the amount of \$4,563.38. [Administrative File].

10 4. On January 27, 2022, the Department submitted a Request for Hearing to the  
11 Administrative Hearings Office, requesting a scheduling hearing to address Taxpayer’s protest.  
12 The Request for Hearing stated that the total at issue was \$4,563.38. [Administrative File].

13 5. On January 27, 2022, the Department submitted its Answer to Protest to the  
14 Administrative Hearings Office, claiming that the Taxpayer’s request for refund was untimely,  
15 pursuant to NMSA 1978, Section 7-1-26 (F)(1). [Administrative File].

16 6. On January 31, 2022, the Administrative Hearings Office issued a Notice of  
17 Administrative Hearing in Albuquerque. The Notice provided parties information concerning an  
18 in-person hearing scheduled to occur on April 5, 2022 at the Administrative Hearings Office’s  
19 Albuquerque location. The notice was delivered to parties by email only. [Administrative File].

20 7. At the in-person hearing of April 5, 2022, the Department appeared. Neither  
21 Taxpayer William J. Watson nor any authorized representative appeared on Taxpayer’s behalf.  
22 Attorney Peter Breen appeared on behalf of the Department, accompanied by Protest Auditor

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<sup>1</sup> The quotation comes from the 2021 version of the statute, which took effect June 18, 2021.

1 Elvis Dingha. The parties present did not object that conducting the scheduling hearing satisfied  
2 the 90-day hearing requirements of Section 7-1B-8 (F) (2019). *See also* Regulation 22.600.3.8  
3 (I) NMAC (08/25/2020). The Hearing Officer preserved a recording of the hearing. The  
4 Department did not object to resetting as a videoconference hearing rather than in-person with  
5 notice by email and regular mail. [Administrative File].

6 8. On April 6, 2022, the Administrative Hearings Office issued a Second Notice of  
7 Administrative Hearing to the parties, scheduling the matter for a hearing on the merits of  
8 Taxpayer’s protest on May 5, 2022, by video conference. The Second Notice was sent by USPS  
9 mail and email. [Administrative File].

10 9. The undersigned Administrative Hearing Officer Ignacio V. Gallegos conducted  
11 the merits hearing on May 5, 2022, with the parties and witnesses present by video conference.  
12 The Administrative Hearings Officer preserved a recording of the hearing (“Hearing Record” or  
13 “H.R.”). [Administrative File].

14 10. Taxpayer submitted additional exhibits, within the timeframes allowed, by email  
15 on May 17, 2022. [Administrative File].

## 16 **Substantive Findings**

17 11. Taxpayer William J. Watson operates a sole proprietorship under his name in  
18 Albuquerque, New Mexico. [Administrative File; Testimony of W. Watson].

19 12. Melany N. Watson is Taxpayer’s spouse and bookkeeper for the sole  
20 proprietorship. [Administrative File; Testimony of M. Watson H.R. 29:00-30:00].

21 13. The business provides forensic science and consulting services to out-of-state  
22 customers. [Administrative File; Exhibit 1-047 through 1-267].

1           14.     When Mrs. Watson sought information about the taxability of a minor household  
2 member’s business receipts in 2018, she contacted the Department. [Administrative File; Exhibit  
3 1-005 (email correspondence of December 18, 2018)].

4           15.     The Department informed Mrs. Watson that generally, business receipts were  
5 taxable as gross receipts. [Administrative File; Exhibit 1-004 (email correspondence of  
6 December 21, 2018)].

7           16.     Mr. Watson filed CRS-1 forms and paid gross receipts taxes at first quarterly,  
8 then monthly from 2016 until 2020. [Administrative File; Exhibits 2-01 through 2-25 (Original  
9 electronically filed returns)].

10          17.     In 2020, Mr. Watson spoke with colleagues and relatives using an “identical”  
11 business model about their tax status. Based on the information Taxpayer obtained from  
12 colleagues, Mrs. Watson again contacted the Department. [Administrative File; Exhibit 1-006  
13 (Emails October 2020); Testimony of W. Watson, H.R. 17:00-18:30].

14          18.     On October 15, 2020, the Department informed Mr. Watson that his business  
15 receipts from sales of services to out of state buyers where delivery was made out of state were  
16 not taxable as gross receipts, contradicting its earlier generalized determination. [Administrative  
17 File; Exhibit 1-006 through 1-007 (email from M. Coca), Taxpayer Ex. 1-019 through 1-020;  
18 Testimony of W. Watson, H.R. 18:00-19:20].

19          19.     After receiving this information, on October 28, 2020, using the Department’s  
20 TAP filing system, Mr. Watson submitted amended CRS-1 returns for each of the quarterly and  
21 monthly gross receipts tax filing periods from 2020 dating back to September 30, 2016. He could  
22 not produce copies of the amended returns he submitted for the timeframes denied by the  
23 Department at or after the hearing, but provided what the TAP website maintained.

1 [Administrative File; Testimony; Taxpayer Exhibit 1-038 (refund request letter), 1-042, 1-011  
2 (undated letter concerning amended returns); Exhibits 2-01 through 2-25; Testimony of M.  
3 Watson, H.R. 18:30-19:30; 35:15-39:25].

4 20. The Department did not consider the submission of amended CRS-1 returns as a  
5 fully completed request for refund. However, the Department’s receipt of amended returns and  
6 the subsequent activity prior to November 10, 2020 was considered an incomplete request for  
7 refund. [Administrative File; Testimony of E. Dingha, H.R. 51:50-52:30].

8 21. On November 10, 2020, the Department issued a letter to Taxpayer titled  
9 “Improperly Filed Claim for Refund.” [Administrative File; Taxpayer Exhibit 1-045 (Letter ID  
10 No. L1659748016); Testimony of E. Dingha, H.R. 48:30-49:40; 1:00:00-1:03:30].

11 22. On November 23, 2020, Taxpayer sent an email and fax to the Department with  
12 attachment describing Gross Receipts tax amendments. Taxpayer, recognizing that the document  
13 did not have all the required elements of a request for refund under the regulation, considered  
14 this substantially similar to the request for refund form. The document contained his name,  
15 taxpayer identification number, referred to amended returns filed, the rationale for filing  
16 amendments, the time frame the amendments covered, and a request that the Department  
17 “expedite processing the amended returns.” [Administrative File; Taxpayer Exhibit 1-011, 1-036,  
18 1-038; Testimony of W. Watson, H.R. 19:30-20:30, 43:45-44:30; Testimony of M. Watson, H.R.  
19 34:00-36:30, 1:08:30-1:09:00; Testimony of E. Dingha, H.R. 55:45-1:00:00].

20 23. On November 25, 2020, the Department acknowledged receipt of the request and  
21 indicated that the request was sent for processing. [Administrative File; Taxpayer Exhibit 1-036  
22 (email from Registration Team), Testimony of W. Watson, H.R. 43:45-45:00].

1           24.     On February 19, 2021, the Taxpayer followed up with an email to the  
2 Department, to determine the status of the refund request. [Administrative File; Taxpayer Exhibit  
3 1-042].

4           25.     On February 19, 2021, the Department replied by email to Taxpayer indicating  
5 that a formal refund application was required. [Administrative File; Taxpayer Exhibit 1-042  
6 through 1-043, Testimony of W. Watson, H.R. 19:30-20:50].

7           26.     On February 26, 2021, the Taxpayer submitted a formal Application for Refund.  
8 The Department misunderstood the date to be 01/16/2021. This completed the Taxpayer's  
9 request for refund. The application form indicates that "you are required to complete this form or  
10 submit a letter with substantially the same information to apply for a tax refund."  
11 [Administrative File; Taxpayer Exhibit 1-010 (application for refund), Testimony of W. Watson,  
12 H.R. 20:00-21:00; Testimony of E. Dingha, 48:30-49:40; 51:50-58:40; 1:03:30-1:05:40].

13           27.     On March 29, 2021, the Department issued a Request for Additional Information  
14 letter to Taxpayer [Administrative File; Taxpayer Exhibit 1-268 (Letter ID #L1361979824)].

15           28.     On April 27, 2021, the Department issued the partial denial of refund letter that is  
16 the subject of this protest. The refund was partially granted and a refund issued by the  
17 Department in the amount of \$5,423.11. The refund was partially denied in the amount of  
18 \$4,563.38. [Administrative File; Letter ID # L0879008176; Taxpayer Exhibit 1-009].

19           29.     Taxpayer conceded that the year 2016 was outside the scope of the limits on  
20 refunds, and does not contest the denial of refund of gross receipts tax for the last two quarters of  
21 2016 (\$191.95 and \$468.00). [Administrative File; Taxpayer Exhibit 1-278; Taxpayer Exhibit 2-  
22 01, 2-02; Exhibit 3-01, 3-02].





1 fact that the refund request, although it had begun in 2020, was not complete until February of  
2 2021. Taxpayer conceded that the 2016 tax year was outside the scope of the refund statute, and  
3 conceded two months of periods within 2017, where Taxpayer acknowledged liability for gross  
4 receipts in New Mexico, therefore the timeframes are limited to the months of January, February,  
5 April, May, June, July, August, October, November and December of 2017, for a total claim of  
6 \$2,284.69.

7 The primary issue is whether amended CRS returns and a letter satisfy the Taxpayer's  
8 obligations set out in NMSA 1978, Section 7-1-26 and Regulation § 3.1.9.8 NMAC. The issue  
9 requires some statutory and regulatory interpretation to aid in resolution.

#### 10 **Presumption of correctness and burden of proof.**

11 The presumption of correctness under NMSA 1978, Section 7-1-17 (C) (2007) does not  
12 strictly attach in this matter because the protest does not stem from the issuance of an assessment  
13 under Section 7-1-17. Taxpayer nevertheless has the burden to establish that he was entitled to  
14 the claims for refund pursuant to Regulation §3.1.8.10 (A) NMAC (08/30/2001). The  
15 Department's denial of Taxpayers' claim for refund is viewed under the lens of a presumption of  
16 correctness. *See Corr. Corp. of Am. of Tenn. v. State*, 2007-NMCA-148, ¶17 & ¶29, 142 N.M.  
17 779.

#### 18 **Did Taxpayer satisfy the requirements of Section 7-1-26 by filing amended CRS-1 returns** 19 **and submitting a letter?**

20 The statute in effect in 2020, when the Taxpayer first attempted to claim a refund by  
21 submitting amended CRS-1 returns through the Department's TAP website in October of 2020,  
22 provided a window of three years to file a written claim for refund for overpaid taxes. *See*

1 NMSA 1978, Section 7-1-26 (F) (2019)<sup>2</sup>. So, a refund request filed in 2021 can cover 2020,  
2 2019, and 2018. A refund request filed in 2020 could also cover 2017.

3 Likewise, statutory law determines what is required information for a taxpayer to provide  
4 in a request for refund. NMSA 1978, Section 7-1-26 (A) requires that a written claim for refund  
5 must include:

- 6 (1) the taxpayer's name, address and identification number;
- 7 (2) the type of tax for which a refund is being claimed, the credit or rebate denied  
8 or the property levied upon;
- 9 (3) the sum of money or other property being claimed;
- 10 (4) with respect to a refund, the period for which overpayment was made;
- 11 (5) a brief statement of the facts and the law on which the claim is based, which  
12 may be referred to as the "basis for the refund", which may include  
13 documentation that substantiates the written claim and supports the taxpayer's  
14 basis for the refund; and
- 15 (6) if applicable, a copy of an amended return for each tax period for which the  
16 refund is claimed.

17 Taxpayer argues that the initial refund request was submitted in the form of amending his  
18 CRS-1 returns, which took place October 28, 2020. The amended returns contain Taxpayer's  
19 name, address and identification number, the type of tax for which a refund is being claimed, and  
20 the period for which overpayment was made, satisfying parts (1), (2), (4), and (6). The amended  
21 return did not include the sum of money being claimed, or a brief statement of the basis for the  
22 refund, so parts (3) and (5) are left unsatisfied.

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<sup>2</sup> NMSA 1978, Section 7-1-26 (F) (2019) reads: "F. Except as otherwise provided in Subsection G of this section, a credit or refund of any amount may be allowed or made to a person:

(1) only within three years after the end of the calendar year in which:

(a) the payment was originally due..."

The statute was amended as the protest was pending in 2021. *See* NMSA 1978, Section 7-1-26 (2021).

1           The regulations governing the principles of refund requests provide that under special  
2 itemized circumstances, simply the filing of a return or amended return qualifies as submission  
3 of a request for refund. *See* Regulation 3.1.9.8 (A) NMAC (12/15/2010). These circumstances  
4 include “[t]he filing of a fully completed income, corporate income and franchise, estate or  
5 special fuel excise tax return” and amendments to those returns. *Id.* The regulation does not  
6 include CRS-1 returns or amended CRS-1 returns for gross receipts tax reporting. So, filing of  
7 amended CRS-1 returns, without all the necessary information contained in the statute, does not  
8 meet the requirements of Section 7-1-26 (A). *See also CIBL, Inc. & Subsidiaries v. New Mexico*  
9 *Taxation and Rev. Department*, Unpub. Mem. Op. #A-1CA-37122 (10/26/2020), 2020 WL  
10 6278228 (non-precedential) (when a taxpayer’s refund request meets requirements of statute, but  
11 not of regulations interpreting the statute, the refund request is timely). Because the CRS-1 return  
12 is not listed among those returns whose amendment automatically provides the necessary  
13 elements for a request for refund, under Reg. 3.1.9.8 NMAC, and for failure of the amended  
14 returns to provide necessary information under the statute, there must be more.

15           Thereafter, the Department notified the Taxpayer of the deficiency. And the Taxpayer,  
16 still before the end of 2020, submitted a letter to “ATTN: Account Resolution” at the  
17 Albuquerque office by email. Credible testimony, coupled with exhibits of emails, validated that  
18 the undated letter was sent on November 23, 2020. *See Schneider National, Inc. v. State of N.M.*  
19 *Taxation and Revenue Dep’t*, 2006-NMCA-128, 140 N.M. 561 (holding that affidavits from  
20 Department’s employees about their normal mailing practices combined with evidence that the  
21 mail was delivered was sufficient prima facie evidence to establish when the mailing occurred).  
22 The letter explained the reason for amending Taxpayer’s gross receipts tax, cited the email from  
23 Marcy Coca, and asked for help to “expedite processing the amended returns.” This identifies the

1 taxpayer, the tax account number, the periods for which amendments were made, and very  
2 importantly the basis or rationale for the request. Nowhere in the letter does it mention the word  
3 “refund” or the amount of refund requested, so part (3) is left unsatisfied. The submission of  
4 amended returns zeroing out the tax due, compared to the tax paid during the same periods, may  
5 provide the Department adequate information as to the amount of the claim and the fact that the  
6 Taxpayer asks to “expedite processing” the amended returns, may provide the Department  
7 adequate information that a refund is being sought. But in this case, no Department action on the  
8 refund request was taken, other than to provide Taxpayer a notice that the request was received.

9         Again, does the emailed letter with the refund claim met the statutory requirements of  
10 Section 7-1-26 (A). Perfunctory, incomplete requests have been barred from action when they do  
11 not meet the requirements of the statute. *See Protest of Mosaic Potash Carlsbad, Inc.*, Decision  
12 and Order # 17-15, March 29, 2017 (non-precedential) 2017 WL 1324604. Likewise, inaction or  
13 repeated calls for unnecessary documentation by the Department when sufficient information  
14 exists has been subject of critique. *See Id.*; *see also Protest of Michael Corwin*, Decision and  
15 Order #19-14, May 24, 2019 (non-precedential) 2019-WL 2334385.

16         As noted by another Hearing Officer in a recent decision of this tribunal, previous  
17 versions of the statute have indicated that the “claim for refund will *not be considered complete*  
18 until the taxpayer provides the requested documentation.” NMSA 1978, Section 7-1-26 (C)  
19 (2017) (previous statute) (emphasis added). However, the statute in effect at the time of this  
20 submission said the opposite: “a claim for refund shall *not be considered incomplete* provided  
21 the taxpayer submits sufficient information for the department to make a determination.” NMSA  
22 1978, Section 7-1-26 (C) (2019) (statute in effect at the time of this refund request) (emphasis  
23 added). *See Protest of Copper Canyon Investments, LLC*, Decision & Order No 21-09, issued

1 April 15, 2021 (non-precedential) 2021 WL 1931823. The language of the statute clearly  
2 provides the Taxpayer opportunity to supplement an incomplete claim for refund. Although the  
3 final supplement didn't occur until February of 2021, the Department was on notice of the  
4 Taxpayer's refund claim in November of 2020.

5 **Application of regulations.**

6 The Department's application of regulations explains its denial of the 2017 tax year. The  
7 Department claimed that a "fully completed" request for refund was necessary to establish the  
8 timeline to begin the look-back process. *See* Regulation 3.1.9.8 NMAC (12/15/2010). Because  
9 the Taxpayer's claim was not "fully completed" until February of 2021, the Department justified  
10 its denial of the 2017 year as beyond the three-year period.

11 In New Mexico, the instructions and regulations issued by the Secretary of the Taxation and  
12 Revenue Department are presumed to be an accurate implementation of the law. NMSA 1978,  
13 Section 9-11-6.2 (G) indicates: "[a]ny regulation, ruling, instruction or order issued by the secretary  
14 or delegate of the secretary is presumed to be a proper implementation of the provisions of the laws  
15 that are charged to the department, the secretary, any division of the department or any director of  
16 any division of the department." In New Mexico, "[t]he legislature may not delegate authority to a  
17 board or commission to adopt rules or regulations which abridge, enlarge, extend or modify the  
18 statute creating the right or imposing the duty." *Rainbo Banking Co. of El Paso, Tex. v. Comm'r*  
19 *of Revenue*, 1972 NMCA-139, 84 N.M. 303, 502 P.2d 406. When an agency is charged with the  
20 application of a statute, its construction is given some deference, but its construction will be  
21 disregarded if its interpretation of the statute is found to be unreasonable or unlawful. *See N.M.*  
22 *AG v. N.M. Pub. Regulation Comm'n*, 2013-NMSC-042, ¶ 12. When statutes and regulations are  
23 inconsistent, the statute prevails. *See Picket Ranch, LLC v. Curry*, 2006-NMCA-082, ¶ 10, 140

1 N.M. 49. A regulation cannot overrule a statute. *See Jones v. Employment Servs. Div.*, 1980-  
2 NMSC-120, 95 N.M. 97.

3 It is clear that the intent of the legislature in changing statutory language from “a claim  
4 for refund will *not be considered complete* until the taxpayer provides the requested  
5 documentation” to “a claim for refund shall *not be considered incomplete* provided the taxpayer  
6 submits sufficient information for the department to make a determination” reflects the intention  
7 to allow taxpayers greater leeway in their (sometimes incomplete) initial submissions requesting  
8 refund. Use of the word “shall” indicates that the provision is mandatory, not  
9 discretionary. *See Marbob Energy Corp. v. N.M. Oil Conservation Comm'*, 2009-NMSC-013,  
10 ¶22, 146 N.M. 24. Regulation 3.1.9.8 NMAC (12/15/2010), even though it was issued before the  
11 change to the statute, provides: “C. A written claim for refund is timely if it meets the  
12 requirements for validity of 3.1.9.8 NMAC and is transmitted, delivered or mailed to the  
13 department prior to the expiration of the statutory time limits in Section 7-1-26 NMSA 1978.”  
14 The statutory language shift does not change the fact that a complete submission is necessary, the  
15 shift in language means that supplemental information can be received later after the Department  
16 has reviewed the refund claim without penalizing the taxpayer by barring the claim as untimely  
17 under the statute of limitation, if in fact the incomplete submission is supplemented thereafter.  
18 The regulation’s timeliness reference requires “fully completed” refund claims only in reference  
19 to the returns that are self-sufficient as a refund request (i.e., income tax returns, etc., discussed  
20 above). The “fully completed” language does not apply to claims for refunds of overpaid Gross  
21 Receipts taxes. The regulations the Department issued may be outdated – published in 2010 – but  
22 they remain useful to a degree. It is just the Department’s interpretation as it relates to this  
23 protest is incorrect. While there is no new regulation that reflects the legislature’s intent in

1 enacting the revised statute, the Taxpayer's interpretation is more in line with the statute, and the  
2 Department cannot bar the refund for timeliness simply because the refund request was initially  
3 lacking in some respect then later supplemented by additional documentation. The Department  
4 was on notice of the refund request by the end of November of 2020, and the later supplement to  
5 make the refund request complete does not affect its timeliness. The claim for refund of the 2017  
6 Gross Receipts taxes was improperly barred, and a refund is due to the Taxpayer in this instance.

7 Because this issue is dispositive, Taxpayer's otherwise cognizable estoppel argument  
8 need not be ruled upon.

9 **Conclusion.**

10 Taxpayer provided evidence to support that he had submitted a request for refund before the  
11 end of 2020. The request for refund covered 2016, outside the scope of the limitation, which he  
12 conceded. The request for refund covered 2017, which the Department denied because the request  
13 did not contain certain aspects of a "fully completed" request. After providing supplemental  
14 information in February of 2021, the Department granted a partial refund and denied the request as  
15 to the 2016 and 2017 years. The denial of 2016 was proper. The denial of 2017 was improper,  
16 excluding the two months Taxpayer acknowledged receipts in New Mexico, because the refund  
17 request was sent by Taxpayer and received by the Department before the expiration of the 2020  
18 calendar year.

19 The protest is granted in part and denied in part.

20 **CONCLUSIONS OF LAW**

21 A. Taxpayer filed a timely, written protest of the Department's Partial Denial of claim  
22 for refund letter L0879008176 and jurisdiction lies over the parties and the subject matter of this

1 protest. *See* NMSA 1978, Section 7-1-24 (A) & (B) (2019); *see also* NMSA 1978, Section 7-1-26  
2 (A) (2019)

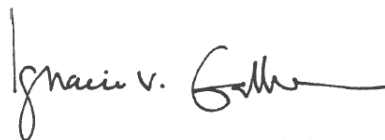
3 B. A hearing was timely set and held within 90-days of protest under NMSA 1978,  
4 Section 7-1B-8 (F) (2019). Parties did not object that the hearing satisfied the 90-day hearing  
5 requirement of Section 7-1B-8. *See also* Regulation 22.600.3.8 NMAC (08/25/2020).

6 C. Taxpayer bears the burden of establishing entitlement to the claimed refund at  
7 issue. The Taxpayer has satisfactorily met the burden of establishing the entitlement to the claimed  
8 refund at issue as to 2017 overpaid gross receipts taxes. The Department's refund denial is viewed  
9 under a lens of a presumption of correctness, therefore it is the Taxpayers burden to establish that  
10 they were entitled to their claim for refund. *See* Regulation §3.1.8.10 NMAC (08/30/2001); *see also*  
11 *Corr. Corp. of Am. of Tenn. v. State*, 2007-NMCA-148, ¶17 & ¶29, 142 N.M. 779. *See* NMSA  
12 1978, Section 7-1-17 (C) (2007).

13 D. Taxpayer's request for refund for tax year 2016 was untimely pursuant to NMSA  
14 1978, Section 7-1-26.

15 For the foregoing reasons, the Taxpayer's protest **IS DENIED in part and GRANTED in**  
16 **part. IT IS ORDERED** that the Department provide the Taxpayer a refund of overpaid gross  
17 receipts taxes in the amount of \$2,884.69.

18 DATED: October 25, 2022.



19  
20 Ignacio V. Gallegos  
21 Hearing Officer  
22 Administrative Hearings Office  
23 P.O. Box 6400  
24 Santa Fe, NM 87502



1 **NOTICE OF RIGHT TO APPEAL**

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

13 **CERTIFICATE OF SERVICE**

14 On October 25, 2022, a copy of the foregoing Decision and Order was submitted to the  
15 parties listed below in the following manner:

16 *First Class Mail and Email*

*First Class Mail and Email*

17  
18 *INTENTIONALLY BLANK*