

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

IN THE MATTER OF THE PROTEST OF
SPRINT/UNITED MANAGEMENT COMPANY
I.D. NO. 02-150510-00 1 PROTEST
TO DENIAL OF CLAIM FOR REFUND.

No. 96-16

DECISION AND ORDER

This matter came on for determination before Gerald B. Richardson, Hearing Officer. Sprint/United Management Company (hereinafter "SUMC") was represented by Anthony M. Whalen, Esq. The Taxation and Revenue Department (hereinafter "Department") was represented by Margaret B. Alcock, Special Assistant Attorney General. The parties agreed to submit the matter for decision upon a Stipulation of Facts and written argument of the parties.

Based upon those submissions, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. SUMC is a corporation registered with the Department for payment of gross receipts tax under I.D. No. 02-150510-00 1.
2. In 1993, the Department conducted an audit of SUMC's payment of gross receipts tax for tax periods January 1, 1990 through February 28, 1993.
3. On February 14, 1994, the Department sent an audit report to SUMC identifying a gross receipts tax liability of \$105,893.82, plus applicable interest and penalty, resulting from SUMC's failure to report gross receipts tax on receipts derived from the sale, within New Mexico, of administrative services to U.S. Sprint Communications Company ("SPRT"), a limited partnership.
4. Sprint Corporation owns 100 percent of the stock of SUMC, UCOM, Inc. US Telecom, Inc., and Utelcom, Inc. Utelcom, Inc. owns 100 percent of the stock of Sprint International Communications Corporation. Together, UCOM, Inc., US Telecom, Inc., Utelcom,

Inc. and Sprint International Communications Corporation own a 100 percent interest in the limited partnership known as SPRT.

5. On June 21, 1994, the Department mailed Assessment No. 1813025 to SUMC, assessing gross receipts tax in the amount of \$105,893.82 plus interest and penalty.

6. On September 23, 1994, SUMC paid the Department \$151,214.93, representing \$105,893.82 of tax principal and \$45,321.11 of interest. On September 26, 1994, SUMC filed a claim for refund of this payment.

7. On October 3, 1994, the Department denied SUMC's refund claim.

8. On December 15, 1994, SUMC filed a protest of the Department's denial of its claim for refund of the amounts paid under Assessment No. 1813025. By letter dated January 20, 1995, the Department acknowledged SUMC's protest.

9. During the 1995 legislative session, Senate Bill 927 was introduced in the New Mexico legislature, proposing to amend Section 7-9-69 NMSA 1978 to expand the deduction therein provided for receipts of corporations for administrative, managerial and accounting services performed for an affiliated corporation. The bill substituted the word "business entity" for "corporation" in Section 7-9-69 and defined "business entity" broadly to include a corporation, partnership, limited liability company, sole proprietorship or other business entity. Senate Bill 927 failed to pass the legislature.

10. During the 1996 legislative session, Senate Bill 292 was introduced in the New Mexico legislature proposing to amend Section 7-9-69 to expand the deduction therein provided to allow the deduction of receipts of a corporation for administrative, managerial and accounting services performed for an affiliated limited partnership. The bill defined affiliated limited partnership broadly enough that it would have covered SPRT. Although this bill passed the legislature, it was vetoed by the Governor.

DISCUSSION

The sole issue to be determined herein is whether the deduction provided at Section 7-1-69 NMSA 1978 applies to Sprint/ United Management Company's ("SUMC's") receipts from performing administrative and accounting services for U.S. Sprint Communications Company ("SPRT"), a limited partnership wholly owned by corporations affiliated with SUMC. Section 7-9-69 provides as follows:

- A. Receipts of a corporation for administrative, managerial and accounting services performed by it for an *affiliated corporation* upon a nonprofit or cost basis and receipts from an affiliated corporation for the joint use or sharing of office machines and facilities upon a nonprofit or cost basis may be deducted from gross receipts.
- B. For the purposes of this section, "*affiliated corporation*" means a corporation that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with the subject corporation. For the purposes of this subsection "control" means ownership of stock in a corporation which:

- (1) represents at least fifty percent of the total voting power of that *corporation*; and
- (2) has a value equal to at least fifty percent of the total value of the stock of that corporation. (emphasis added).

SUMC argues that "corporation" should be construed broadly to include non-corporate entities such as limited partnerships, which, directly, or indirectly, through one or more intermediaries, control, are controlled by or are under common control. In support of this construction, SUMC argues that this would be within the spirit and intent of the deduction, which was intended to provide a deduction from tax for the provision of administrative services on a non-profit basis between affiliated business entities. Unfortunately, for SUMC, their argument runs afoul of both well settled rules of statutory construction, and in this case, direct evidence that the legislative intent was not to so broadly define a corporation for purposes of the deduction at issue.

There is no room for courts to even engage in the exercise of statutory construction where the statutory language is clear and unambiguous. *State v. Elliott*, 89 N.M. 756, 557 P.2d 1105 (1977). Such is the case, here. The statute refers only to corporations and makes no reference to

any other form of business entity. If there was any doubt whatsoever that the legislature meant to refer only to corporations, one need look no further than Subsection B of the statute itself, where "affiliated corporation" is defined to mean "a corporation" which directly or indirectly controls or is controlled by the subject corporation claiming the deduction. "Control" is defined to mean a specified "ownership of stock in a corporation" under the terms of the deduction. Since only corporations issue stock, there can be no doubt that in using the term "corporation", the legislature intended it to have its ordinary and plain meaning, and not broadly encompass other forms of business associations, such as the limited partnership at issue herein.

Even if we were to engage in statutory construction, the result would not favor SUMC. In construing a statute, the primary concern is to determine the legislature's intent. *State ex rel. Kline v. Blackhurst*, 106 N.M. 732, 735, 749 P.2d 1111, 1114 (1988). In doing so, words are to be given their ordinary meaning unless a different intent is clearly indicated. *Hammonds v. Freymiller Trucking*, 115 N.M. 364, 367, 851 P.2d 486, 489 (Ct. App. 1993). The plain and ordinary meaning of "corporation" is just that, a business entity incorporated under the laws providing for incorporation. If the legislature had intended to cover limited or other types of partnerships, it could have said so. It did not, and courts will not read language into statutes which isn't there, particularly where the statute makes sense as written. *Burroughs v. Board of County Commissioners*, 88 N.M. 303, 540 P.2d 233 (1975).

Equally fatal to SUMC's position is the Legislature's recent efforts to amend Section 7-9-69 to broaden it so that it would encompass the activities at issue herein. In the 1995 Legislature a bill, Senate Bill 927 was introduced to amend Section 7-9-69 to allow a "business entity" performing services for an "affiliated business entity" to take the deduction. That bill failed to pass the legislature. The 1996 Legislature did pass a bill, Senate Bill 292, which proposed to amend section 7-9-69 to allow a corporation performing services for an "affiliated corporation or affiliated limited partnership" to claim the deduction provided in that section. This

bill passed the legislature but was vetoed. These legislative acts demonstrate that the legislature was aware that the present language would not encompass the performance of administrative services for an affiliated limited partnership and that the statute would need to be amended to cover such a situation. This is because when the legislature amends a statute, it is presumed to have intended to modify the act. *State v. Cotton*, 109 N.M. 769, 772, 790 P.2d 1050, 1053, (Ct. App.), *cert. denied*, 109 N.M. 751, 790 P.2d 1032 (1990).

It is well established in New Mexico jurisprudence that exemptions and deductions from tax are strictly matters of legislative grace. Thus:
When an exemption or deduction from tax is claimed, the statute must be construed strictly in favor of the taxing authority, the right to an exemption or deduction must be clearly and unambiguously expressed in the statute and the right must be clearly established by the taxpayer.

Wing Pawn Shop v. Taxation and Revenue Department, 111 N.M. 735, 741, 809 P.2d 649, 655 (Ct. App. 1991)(quoting *Security Escrow Corp. v. State Taxation and Revenue Department*, 107 N.M. 540, 543, 760 P.2d 1306-1309 (Ct. App. 1988). In this case, the taxpayer has failed to clearly establish its right to the deduction claimed, and the protest must be denied.

CONCLUSIONS OF LAW

1. The Taxpayer filed a timely, written protest to the Department's denial of its refund claim and jurisdiction lies over both the parties and the subject matter of this protest.

2. Section 7-9-69 NMSA 1978 is clear and unambiguous in limiting the deduction for administrative services performed for an affiliated corporation to business entities which are, in fact, corporations, and as such, there is no reason to engage in statutory construction to determine if the deduction should be available to SUMC under the facts and circumstances of this case.

3. Even if statutory construction is engaged in, the deduction for administrative services provided in Section 7-9-69 is limited to cases where such services are performed for an

affiliated corporation and no other form of affiliated business entity.

For the foregoing reasons, SUMC's protest IS HEREBY DENIED.

DONE, this 30th day of April, 1996.