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New Mexico: Overpayments from one period deemed paid against deficiencies in another period



Authored by: Kate Thurber

The New Mexico Taxation and Revenue Department held that a taxpayer's tax liabilities were deemed paid to the extent overpayments were made in subsequent years. In addition, interest is calculated on the tax liabilities to the date of overpayment. [[In the Matter of the Protest of Burlington Northern Santa Fe Corp.](#), No. 12-01, 12/28/11, released 2/7/12.]

Background

Burlington Northern Santa Fe Corporation ("Burlington") underwent a federal audit for the tax years 1995 through 1999. Subsequently, on November 3, 2008, Burlington filed amended New Mexico corporate income tax returns for tax years 1995 through 1999 reflecting final IRS adjustments. The amended returns resulted in additional tax liability for tax years 1995 and 1996, totaling \$545,599, and overpayments for tax years 1997 through 1999, totaling \$479,275.

Burlington paid \$347,202 in tax and interest, which it determined it still owed, when it filed its amended returns. Burlington calculated the interest from the due dates of the taxes for the 1995 and 1996 years until the overpayments in 1997 through 1999, and until the final payment of tax in November 2008.

The Department disagreed with Burlington's interest calculation method and instead assessed interest from the due dates of the taxes for 1995 and 1996 until the amended return was filed in November 2008.

Interest properly calculated

The taxpayer argued, and the hearing officer agreed, that the additional tax due was deemed paid when the overpayments occurred. Under Section 7-1-29(E), "[W]hen a taxpayer makes a payment identified to a particular return or assessment, and the department determines that the payment exceeds the amount due pursuant to that return or assessment, the secretary may apply the excess to the taxpayer's other liabilities under the tax acts to which the return or assessment applies, without requiring the taxpayer to file a claim for a refund. The liability to which an overpayment is applied pursuant to this section shall be deemed paid in the period in which the overpayment was made or the period to which the overpayment was applied, whichever is later."

The hearing officer found that the plain language of the statute supported Burlington's position that the Department must apply the overpayments to Burlington's other tax liabilities. In this case, the overpayments made in 1997 through 1999 were identified to particular returns and were applied to Burlington's other liabilities for the 1995 and 1996 tax years. As a result, the 1995 and 1996 tax liabilities were deemed paid in 1997, 1998, and 1999 to the extent of the overpayments in those years. The remaining outstanding tax was paid in 2008 when the amended returns were filed.

The hearing officer was unpersuaded by the Department's arguments that subsection (E) did not apply because there was not a payment identified with a particular return because the returns were amended in 2008 and the payments were made in 1997, 1998, and 1999. The Department also argued that claims for refund should be distinguished from returns. In New Mexico, as a matter of law there is no distinction between an originally filed return and an amended return. As such, the hearing officer held that Burlington properly calculated the interest to the dates in 1997, 1998, 1999, and 2008 when the taxes were deemed paid and fully paid.

PwC Observes

"In light of the decision reached by the hearing officer in *Burlington*, taxpayers that were assessed interest on tax underpayments until amended returns were filed but had intervening years of overpayments should consider filing claims for refund with the Department of Taxation and Revenue," notes Joe Motola, PwC SALT Director in Phoenix, AZ.

For more information, please do not hesitate to contact:

Joseph Motola *(602) 364-8131* *joseph.m.motola@us.pwc.com*

Kate Thurber *(202) 346-5122* *kathryn.thurber@us.pwc.com*

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