

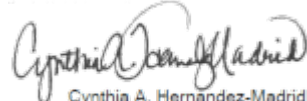
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1 **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **THE GEO GROUP INC.,**

Court of Appeals of New Mexico
Filed 2/21/2024 11:19 AM

3 Protestant-Appellant,



Cynthia A. Hernandez-Madrid
Acting Chief Clerk

4 v.

No. A-1-CA-39471

5 **NEW MEXICO TAXATION & REVENUE**
6 **DEPARTMENT,**

7 Respondent-Appellee,

8 **IN THE MATTER OF THE PROTEST OF THE**
9 **GEO GROUP INC. TO ASSESSMENT ISSUED**
10 **UNDER LETTER ID NO. L0928375088.**

11 **APPEAL FROM THE ADMINISTRATIVE HEARING OFFICE**
12 **Brian VanDenzen, Hearing Officer**

13 Rodey, Dickason, Sloan, Akin & Robb, P.A.
14 Charles K. Purcell
15 Albuquerque, NM

16 for Appellant

17 Peifer, Hanson, Mullins & Baker, P.A.
18 Mark T. Baker
19 Matthew E. Jackson
20 Albuquerque, NM

21 for Appellee

22 **MEMORANDUM OPINION**

23 **HANISEE, Judge.**

24 {1} The Geo Group, Inc. (Taxpayer) is a private prison company that contracted
25 with two counties to build and maintain two prisons, then subsequently supervise,

1 house, and provide services to prisoners within the New Mexico Corrections
2 Department (NMCD). Taxpayer had claimed a deduction for many of the gross
3 receipts taken in service of the aforementioned contracts under NMSA 1978, Section
4 7-9-47 (1994, amended 2021)¹ on grounds that the receipts were for the resale of a
5 license rather than that of services. Though the Department of Taxation and Revenue
6 (the Department) had previously approved this deduction, the Department
7 subsequently conducted an assessment and audit of Taxpayer and, reversing course,
8 determined that Taxpayer was ineligible to claim the deduction.

9 {2} Taxpayer protested the Department's assessment and, following an
10 administrative merits hearing, the administrative hearing officer (AHO) issued a
11 fifty page written decision and order including findings of fact and conclusions of
12 law. The AHO found in pertinent part: (1) Taxpayer was not entitled to the deduction
13 under Section 7-9-47 because the contracts between Taxpayer and the counties were
14 for the sale of services rather than the resale of licenses; (2) the good faith, safe
15 harbor provision under NMSA 1978, Section 7-9-43(A) (2011, amended 2018)² was
16 inapplicable in Taxpayer's protest because Taxpayer did not accept nontaxable
17 transaction certificates (NTTCs) from the counties in good faith; and (3) Taxpayer

¹The relevant activity in this case occurred before Section 7-9-47 was amended in 2021, and further reference to the statute is to the 2012 version.

²The relevant activity in this case occurred before Section 7-9-43(A) was amended in 2018, and further reference to the statute is to the 2012 version.

1 was not entitled to equitable relief because the Department’s actions did not “rise to
2 the level of affirmative misconduct or . . . overreach[ing]” needed to support
3 equitable relief. Taxpayer appeals the decision and order of the AHO, asserting error
4 as to the above findings.

5 {3} Two recent opinions guide our analysis of two of Taxpayer’s arguments. First,
6 this Court’s nonprecedential memorandum opinion in *CCA of Tennessee, LLC v.*
7 *N.M. Tax’n & Revenue Dep’t*, No. A-1-CA-37548, mem. op. (N.M. Ct. App. Jan.
8 21, 2021) (nonprecedential) (*CCA of Tennessee I*), *rev’d by CCA of Tennessee, LLC*
9 *v. N.M. Tax’n & Revenue Dep’t*, ___-NMSC-___, ___ P.3d ___ (S-1-SC-38681, Jan.
10 16, 2024) (*CCA of Tennessee II*). Second, our Supreme Court’s opinion in *CCA of*
11 *Tennessee II*, ___-NMSC-___.

12 {4} In *CCA of Tennessee I*, this Court addressed a situation similar to that of the
13 instant case: the taxpayer, a private prison corporation that contracted with a county
14 to provide facilities and services to operate prisons, sought and was approved for a
15 refund of gross receipts tax paid for multiple reporting years. *CCA of Tennessee I*,
16 A-1-CA-37548, mem. op. ¶¶ 2, 4. Years after the approval of the taxpayer’s refund,
17 the Department conducted an audit of the taxpayer and found—as happened here—
18 that the taxpayer was not entitled to the previously issued refund. *Id.* ¶ 7. The
19 Department thereafter assessed the taxpayer for gross receipts tax, withholding tax,
20 penalties, and interest. *Id.* The taxpayer filed a protest of the Department’s

1 assessment, which was later denied by an AHO. *Id.* On appeal by the taxpayer, this
2 Court addressed two issues: (1) whether the AHO erred as a matter of law in
3 determining that the contracts between the taxpayer and the county were for the sale
4 of services, rather than for the sale of a license, and the taxpayer therefore did not
5 qualify for a deduction under Section 7-9-47; and (2) whether the AHO erred in
6 denying the taxpayer the “safe harbor” protection in Section 7-9-43(A) on the basis
7 that the taxpayer did not accept the NTTC in good faith. *CCA of Tennessee I*, A-1-
8 CA-37548, mem. op. ¶¶ 8, 23, 27. As to the first issue, this Court concluded that the
9 AHO had properly applied the “predominant ingredient” test, set forth in NMSA
10 1978, Section 7-9-3(M) (2007, amended 2023),³ in determining that the activities
11 contemplated by the contracts between the taxpayer and the county “involve[d]
12 predominantly the performance of a service as distinguished from selling
13 ... property” and that sufficient evidence supported such a conclusion. *CCA of*
14 *Tennessee I*, A-1-CA-37548, mem. op. ¶¶ 12, 22 (internal quotation marks and
15 citation omitted); *Rauscher, Pierce, Refsnes, Inc. v. N.M. Tax’n & Revenue Dep’t*,
16 2002-NMSC-013, ¶ 36, 132 N.M. 226, 46 P.3d 687 (explaining that the
17 “predominant ingredient” test “is applied when a transaction includes both the
18 performance of services and the sale or lease of property to determine which of these

³The relevant activity in this case occurred before Section 7-9-3(M) was amended in 2023, and further reference to the statute is to the 2007 version.

1 constitutes the predominant ingredient of the transaction”). This Court affirmed the
2 AHO’s decision as to this first issue. *CCA of Tennessee I*, A-1-CA-37548, mem. op.
3 ¶¶ 12, 22, 28. As to the second issue regarding good faith acceptance of the NTTCs,
4 this Court concluded that the AHO erred in denying the taxpayer the safe harbor
5 protection provided by Section 7-9-43(A) and reversed on such basis. *Id.* ¶¶ 27-28.

6 {5} Thereafter, the Department petitioned our Supreme Court for certiorari review
7 of *CCA of Tennessee I*, which granted such petition. This Court then issued an order
8 staying the instant appeal pending our Supreme Court’s review of *CCA of Tennessee*
9 *I*. In January 2024, our Supreme Court filed *CCA of Tennessee II*, reversing only that
10 aspect of *CCA of Tennessee I* that reversed the AHO as to the issue of safe harbor
11 protection under Section 7-9-43(A), and thus affirmed the AHO’s underlying
12 decision in full. *Id.* ¶¶ 1, 3, 9, 28. Notably, the petition for certiorari review did not
13 include an appeal of this Court’s affirmance of the AHO’s determination that the
14 contracts between the taxpayer and the county related to the sale of services, rather
15 than to the sale of a license, and our Supreme Court therefore did not address that
16 issue in affirming the AHO’s decision. *See CCA of Tennessee II*, ___-NMSC-___,
17 ¶¶ 9 n.3, 28.

18 {6} Here, *CCA of Tennessee II*—and to some extent *CCA of Tennessee I*—
19 governs our analysis of two of the three issues Taxpayer raises on appeal. Indeed,
20 Taxpayer raises two issues that are closely related to those affirmed in *CCA of*

1 *Tennessee II*: here, Taxpayer argues that the AHO erred in concluding that (1)
2 Taxpayer’s contracts with the counties were for the sale of services rather than for
3 resale of licenses—and therefore Taxpayer was not entitled to the requested refund,
4 and, (2) the safe-harbor provisions of Section 7-9-43(A) were unavailable to
5 Taxpayer because Taxpayer did not receive the NTTCs in good faith. We address
6 these issues in turn, as well as Taxpayer’s additional argument concerning equitable
7 relief.

8 {7} “We will set aside a decision and order of an administrative hearing officer
9 only if it is ‘(1) arbitrary, capricious or an abuse of discretion; (2) not supported by
10 substantial evidence in the record; or (3) otherwise not in accordance with the law.’”
11 *CCA of Tennessee II*, ___-NMSC-___, ¶ 10 (quoting NMSA 1978, § 7-1-25(C)
12 (2015)). “In reviewing the administrative hearing officer’s decision we apply a
13 whole-record standard of review.” *CCA of Tennessee II*, ___-NMSC-___, ¶ 10
14 (internal quotation marks and citation omitted). “We view the evidence in the light
15 most favorable to the hearing officer’s decision to determine whether that decision
16 is supported by substantial evidence.” *Id.*

17 {8} Regarding the first issue, Taxpayer contends—as did the taxpayer in *CCA of*
18 *Tennessee I*—that the central error by the AHO in determining whether Taxpayer is
19 entitled to deductions under Section 7-9-47 was that the AHO incorrectly applied
20 the “predominant ingredient” analysis under Section 7-9-3(M) to find that the

1 contracts at issue governed the sale of services rather than the resale of licenses. *See*
2 *CCA of Tennessee I*, A-1-CA-37548, mem. op. ¶ 8. The 2012 version of Section 7-
3 9-47 in effect at the time of Taxpayer’s protest stated that

4 [r]eceipts from selling tangible personal property or licenses may be
5 deducted from gross receipts or from governmental gross receipts if the
6 sale is made to a person who delivers a nontaxable transaction
7 certificate to the seller. The buyer delivering the nontaxable transaction
8 certificate must resell the tangible personal property or license either by
9 itself or in combination with other tangible personal property or
10 licenses in the ordinary course of business.

11 In other words, as the AHO explained in its decision, a deduction under Section 7-
12 9-47 “applies when Taxpayer establishes three conditions. First, Taxpayer must be
13 selling a license[, rather than services]. Second, the buyer of that license must deliver
14 a NTTC to Taxpayer. And third, the buyer of Taxpayer’s license must resell that
15 license in the ordinary course of business.” The version of Section 7-9-3(M) in effect
16 at the time of Taxpayer’s administrative protest provided in relevant part:

17 “[S]ervice” means all activities engaged in for other persons for a
18 consideration, which activities involve predominantly the performance
19 of a service as distinguished from selling or leasing property. . . . In
20 determining what is a service, the intended use, principal objective or
21 ultimate objective of the contracting parties shall not be controlling.

22 This Court has recognized, as we did in *CCA of Tennessee I*, A-1-CA-37548, mem.
23 op. ¶ 11, that the Legislature’s adoption of the “predominant ingredient” test in
24 Section 7-9-3(M), “changed the test from one focusing on the end product’s value
25 to the purchaser to one focusing on the nature of seller’s activity[as well as] seller’s

1 relative investment of skills and materials.” *E G & G, Inc. v. Dir., Revenue Div.*
2 *Tax’n & Revenue Dep’t*, 1979-NMCA-139, ¶ 7, 94 N.M. 143, 607 P.2d 1161.

3 ¶9} Here, Taxpayer argues that “the provision of secured facilities for the
4 confinement of inmates, rather than the performance of related services, was the
5 predominant focus” of the contracts with the counties, and Taxpayer was therefore
6 selling licenses for resale rather than selling services. This argument does not
7 comport with the above-stated and longstanding focus on the *nature of the seller’s*
8 *activity* rather than that seller’s intended result for the purchaser in determining
9 whether a service is being provided by a seller. *See id.*; § 7-9-3(M). Moreover,
10 Taxpayer’s assertion is undercut by the AHO’s findings—which are supported by
11 the record on appeal—that demonstrate the number and nature of the services
12 necessary for Taxpayer to provide such facilities for the confinement of inmates, as
13 well as the lack of evidence demonstrating that the focus of the contracts was the
14 sale of licenses. In its decision, the AHO stated,

15 [T]he contracted services Taxpayer provided are critical to providing a
16 functioning and lawful correctional facility. Without trained guards,
17 security protocols, and maintained premises, a jail cannot meet its
18 essential function as a secure detention facility. Nor can a correctional
19 facility meet its rehabilitation purpose without the programming
20 services contained in [the contracts]. Without appropriate medical care,
21 legal visits, and court transportation services, a correctional facility
22 cannot comply with its legal obligations. Without all of those services,
23 the ostensible license that Taxpayer claims would be meaningless for
24 the purposes of housing NMCD prisoners because there would not be a
25 functional correctional facility.

1 Indeed, Taxpayer does not dispute the fact that the contracts with the counties
2 involved the sale of services, but it argues that the provision of such services is
3 merely a necessary component of Taxpayer’s broader contractual obligation to
4 provide facilities for the confinement of inmates. Upon review of the record before
5 us, and in light of the AHO’s thorough and well-supported decision—as well as the
6 relevant portion of *CCA of Tennessee I* and the underlying AHO decision that was
7 ultimately affirmed in *CCA of Tennessee II*, ___-NMSC-___, ¶¶ 7, 28—we discern
8 no error on the part of the AHO in determining that the contracts between Taxpayer
9 and the counties involved predominantly the sale of services rather than the sale of
10 licenses, thus precluding Taxpayer from the deduction afforded by Section 7-9-47.

11 {10} We turn next to the second issue, this now fully controlled by *CCA of*
12 *Tennessee II*, that is, whether the AHO erred in finding that the safe-harbor
13 provisions of Section 7-9-43(A) were unavailable to Taxpayer because Taxpayer did
14 not receive the NTTCs in good faith. As explained by our Supreme Court in *CCA of*
15 *Tennessee II*, “[a]n NTTC establishes a taxpayer’s entitlement to claim a deduction
16 for the gross receipts it receives from the sale of certain licenses or services.” ___-
17 NMSC-___, ¶ 1. *CCA of Tennessee II* further explains:

18 The issuance of an NTTC for such sales is predicated on the buyer
19 reselling the license or services it purchased from the taxpayer. When
20 the taxpayer accepts a properly executed NTTC in good faith, the
21 NTTC is conclusive evidence that the proceeds are deductible from that
22 taxpayer’s otherwise taxable gross receipts. Generally speaking, this
23 provides the taxpayer with safe harbor protection from liability for

1 payment of gross receipts tax in situations where, unbeknownst to the
2 seller, the buyer is not reselling the license or services in the intended
3 manner.

4 *Id.* (citations omitted); *see* § 7-9-43(A).

5 {11} In *CCA of Tennessee II*, the Court clarified that “[t]he purpose of the safe
6 harbor provision[of Section 7-9-43(A) is] to protect sellers whose products or
7 services are initially sold to buyers for a nontaxable purpose but where, unbeknownst
8 to the seller, the buyers do not actually use those products or services in the required
9 manner.” *CCA of Tennessee II*, ___-NMSC-___, ¶ 16. Such is not the situation here.

10 Rather, here, Taxpayer sought authorization from the Department for the counties to
11 be permitted to issue NTTCs to Taxpayer. Typically, government entities were not
12 permitted to execute NTTCs, but the Department informed Taxpayer that it would
13 allow the counties to issue the NTTCs based on the Department’s review of
14 Taxpayer’s documentation asserting that the contracts governed a lease for resale—
15 which, as explained above, was not actually the case. The eventual audit of Taxpayer
16 by the Department—the potential occurrence of which Taxpayer was aware—
17 revealed that Taxpayer was billing NMCD directly rather than billing the counties.
18 The Department ultimately concluded that Taxpayer was not protected by the safe
19 harbor provision of Section 7-9-43(A) because there was no eligible underlying
20 deduction that applied to Taxpayer’s contracts with the counties, given that Taxpayer
21 was billing NMCD rather than the counties.

1 {12} In its decision, the AHO found that Taxpayer, as the seller, did not in good
2 faith accept the NTTCs, executed by the counties as the buyers, and therefore was
3 not entitled to the deduction from gross receipts. The AHO’s reasoning, in pertinent
4 part, was as follows:

5 The buyer of a license, not the seller, is required to seek permission
6 from the Department to issue a NTTC. Yet in this case it was Taxpayer
7 as the seller of the ostensible license, not [the counties] as the buyers of
8 the license, who went directly to the Department to seek approval for
9 those counties to issue the correct type of NTTCs. Although not
10 necessarily indicative of any bad-faith by either Taxpayer or the
11 counties, it is hard to say that Taxpayer could develop a good faith
12 belief that the buyer intended to use the seller’s ostensible license in a
13 nontaxable manner when the Taxpayer was aware that the counties
14 were unable to use the NTTCs and it was Taxpayer as the seller rather
15 than the buyer that solicited permission from the Department to
16 authorize the sellers to issue NTTCs. In this situation, where it was the
17 seller of the goods that sought permission from the Department for the
18 buyer to issue the NTTC, the purpose of that safe harbor protection . . .
19 cannot be fully achieved. Thus, even if the safe harbor provision could
20 render a taxable transaction not supported by applicable deduction into
21 [a] non[]taxable transaction by mere possession of a NTTC, giv[en] the
22 timing and circumstance of the NTTCs in this case, Taxpayer could not
23 develop the good faith protection contemplated under the structure and
24 purpose of the safe harbor provision.

25 Because Taxpayer did not establish it was entitled to the Section
26 7-9-47 deduction, the transaction is not covered by a recognized
27 deduction and Taxpayer cannot rely on its acceptance of the NTTC to
28 convert this taxable transaction into a nontaxable transaction.

29 (citations omitted). In reviewing the AHO’s decision regarding this issue, we turn to
30 the objective standards set forth by *CCA of Tennessee II* concluding that “the
31 applicable legal standard is an objective one, where the determination of whether a

1 taxpayer accepts an NTTC in good faith is based on the facts and circumstances
2 reasonably known to the taxpayer at the time it accepted the NTTC.” *CCA of*
3 *Tennessee II*, ___-NMSC-___, ¶ 25. As the Court explained in *CCA of Tennessee II*,

4 [t]he good faith standard in the safe harbor provision in Section 7-9-
5 43(A) protects sellers from tax liability when buyers do not use goods
6 or services in the intended manner. It does not protect a seller who is
7 fully aware that the goods or services it sells are not being utilized by
8 the buyer in the manner justifying the issuance or execution of the
9 NTTC. This is an objective standard, based on the facts and
10 circumstances reasonably known to the taxpayer at the time of the
11 transaction. It relies on the ordinary meaning of “good faith,” which
12 here is most simply expressed as honesty in belief or purpose.

13 *Id.* ¶ 22. Further, “[t]he administrative regulations for gross receipts taxes support
14 the inference that the Department understands that the term ‘good faith’ in Section
15 7-9-43(A) requires an objective review of the facts and circumstances known to the
16 seller at the time it accepted the NTTC. This approach is consistent with prior case
17 law, where facts and circumstances reasonably known to the taxpayer were part of
18 the good faith analysis under Section 7-9-43(A).” *CCA of Tennessee II*, ___-NMSC-
19 ___, ¶ 17.

20 {13} *CCA of Tennessee II* establishes an additional consideration significant to the
21 instant appeal: there, the Court held that the taxpayer did not accept the NTTC in
22 good faith based in part on facts demonstrating that the taxpayer (1) “knew that there
23 was no resale of services or a license because it was directly billing the [United
24 States] Marshals Service” rather than the counties, and (2) “that the Marshals Service

1 was paying” the taxpayer directly. *Id.* ¶ 27. Similarly, here, the record reflects that
2 Taxpayer reasonably knew there was no resale of services or a license to the
3 counties, given that Taxpayer was billing NMCD rather than the counties, and
4 NMCD was paying Taxpayer. We consider these facts, although not relied on by the
5 AHO, to be persuasive, especially in light of *CCA of Tennessee II*, which was filed
6 after the AHO’s decision in this case. *See Tucson Elec. Power Co. v. Tax’n &*
7 *Revenue Dep’t*, 2020-NMCA-011, ¶ 6, 456 P.3d 1085 (“We may affirm the AHO’s
8 ruling on a ground not relied upon by the AHO if reliance on the new ground would
9 not be unfair to [the t]axpayer.”). Under the new authority of *CCA of Tennessee II*,
10 we discern no basis upon which we could reverse the AHO’s decision. *See* ____-
11 NMSC-____, ¶ 10. Indeed, the record reflects the following: (1) Taxpayer requested
12 approval from the Department for the counties—who were not otherwise typically
13 permitted to do so—to issue NTTCs; (2) the Department’s approval of such request
14 was premised upon Taxpayer’s representations that the contracts with the counties
15 related to a lease for resale; and (3) the eventual audit of Taxpayer revealed that
16 Taxpayer was billing NMCD, and not the counties, for its performance of the
17 contract terms. Under our principles of administrative appellate review as well as
18 the new precedent of *CCA of Tennessee II*, we conclude there to be no error in the
19 AHO’s determination that, on these particular facts, Taxpayer failed to demonstrate

1 its entitlement to the protection afforded by the safe harbor provision of Section 7-
2 9-43(A).

3 {14} Turning now to the final issue raised by Taxpayer, we address whether the
4 AHO erred in finding that Taxpayer was not entitled to equitable relief. Taxpayer
5 argues that the Department was equitably estopped from conducting the audit and
6 assessment that ultimately led to the Department’s conclusion that Taxpayer was not
7 eligible to claim a deduction under Section 7-9-47. Taxpayer contends that “right
8 and justice demand” equitable relief in this case, given that Taxpayer reasonably
9 relied on the Department’s initial approval of Taxpayer’s claim of the Section 7-9-
10 47 deduction. *See Waters-Haskins v. N.M. Human Servs. Dep’t*, 2009-NMSC-031,
11 ¶ 23, 146 N.M. 391, 210 P.3d 817. Taxpayer focuses its assertion on the length of
12 time Taxpayer relied on the Department’s approval of Taxpayer’s claimed
13 deduction, which, at most, was over three years.

14 {15} “We generally disfavor applying the doctrine of equitable estoppel against the
15 [s]tate. The doctrine is rarely applied against the [s]tate and then only in exceptional
16 circumstances where there is a shocking degree of aggravated and overreaching
17 conduct or where right and justice demand it.” *Id.* ¶ 16 (internal quotation marks and
18 citation omitted). Where equitable estoppel might be applied against the state,

19 [t]he essential elements that apply to the state agency to be estopped are
20 (1) the agency’s conduct amounting to a false representation or
21 concealment of material facts or, at least, that is calculated to convey
22 the impression that the facts are otherwise than, and inconsistent with,

1 those which the party subsequently attempts to assert; (2) the agency's
2 intention, or at least expectation, that the other party will act upon such
3 conduct; and (3) the agency's knowledge, actual or constructive, of the
4 real facts. The essential elements that apply to the party raising
5 equitable estoppel as a defense are (1) lack of knowledge and of the
6 means of knowledge of the truth as to the facts in question; (2) reliance
7 upon the conduct of the party estopped; and (3) action based thereon of
8 such a character as to change his position prejudicially.

9 *Id.* ¶ 22 (citations omitted) (text only).

10 {16} Here, the AHO ultimately concluded that equitable relief was unavailable to
11 Taxpayer because Taxpayer had failed to demonstrate that the Department engaged
12 in a shocking degree of aggravated overreach. The AHO stated,

13 The [AHO] certainly agrees with Taxpayer that the Department's
14 handling of this situation does not represent reliable tax policy or
15 consistent tax administration. However, poor decision-making and
16 inconsistent policy applications do not amount to the type of affirmative
17 misconduct or rise to the level of aggravated overreach needed to
18 support equitable estoppel against the government, especially regarding
19 the non[]discretionary act of pursuing a tax liability.

20 Indeed, even if a party were to satisfy all of the above-stated elements as set forth in
21 *Waters-Haskins*, 2009-NMSC-031, ¶ 22, to justify the application of the doctrine of
22 equitable estoppel against the Department, there must also exist some demonstration
23 that the Department engaged in a "shocking degree of aggravated and overreaching
24 conduct" or that "right and justice demand it." *See id.* ¶ 23 (internal quotation marks
25 and citation omitted). Here, we find no evidence of such conduct, and are
26 unpersuaded by Taxpayer's argument that the length of time between the
27 Department's initial approval of Taxpayer's claimed deduction and ultimate

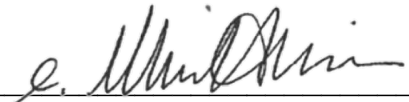
1 assessment indicates as much. In *Waters-Haskins*, on which Taxpayer relies, the
2 taxpayer unknowingly received overpayment in food stamp benefits for
3 approximately eight years based on the Department's mistaken conferring of such
4 benefits and a change in status that did not obviously impact eligibility for the
5 program. *Id.* ¶¶ 23, 29, 31. By contrast, Taxpayer received overpayment in the form
6 of entitlement to deduction for what it asserts was approximately three-and-a-half
7 years based on the Department's mistaken approval. Moreover, the record does not
8 reflect further affirmative misconduct or error by the Department following its initial
9 erroneous approval of Taxpayer's claimed Section 7-9-47 deduction. In fact, in
10 making the initial but incorrect decision to approve the refund claim, the Department
11 appeared to engage in a reasoned process with high-level management to analyze
12 both the factual and legal issue. We acknowledge—as did the AHO—the
13 unfortunately flawed application of the Department's policies in this case, yet we
14 remain unpersuaded that Taxpayer has demonstrated a shocking degree of
15 aggravated and overreaching conduct by the Department or that right and justice
16 demand the application of estoppel. We therefore discern no error in the AHO's
17 decision that, under the facts of this appeal, Taxpayer is not entitled to equitable
18 relief.

19 **CONCLUSION**

20 {17} For the above reasons, we affirm.

1 {18} IT IS SO ORDERED.

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J. MILES HANISEE, Judge

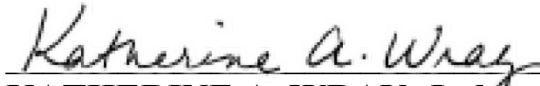
4 WE CONCUR:

5
6



KRISTINA BOGARDUS, Judge

7
8



KATHERINE A. WRAY, Judge