

1 Department's objection to Taxpayer Exhibit 12 was sustained,¹ and although excluded from the
2 evidentiary record, it is retained in the administrative file for appellate review. The Department
3 did not offer any evidentiary exhibits but did refer to a demonstrative exhibit during the hearing,
4 which is also maintained in the administrative file.

5 This protest concerns whether the Department must recognize the revised net operating
6 loss ("NOL") carryforward amounts reported on Taxpayer's amended 2021 New Mexico
7 corporate income tax return, which are based on corrected apportionment factors for the 2016–
8 2018 and 2020 loss years. Although the amended 2021 return was timely as to tax year 2021,
9 those earlier loss years were already closed to amendment under the statutory limitation periods
10 in NMSA 1978, Sections 7-1-18, 7-1-13, and 7-1-26. The 2019 tax year is not in dispute. Thus,
11 the central legal question is whether a taxpayer may revise closed loss years by incorporating
12 updated loss-year computations into a timely amended return for 2021. A secondary issue
13 concerns statutory interest.

14 For the reasons explained below, the Hearing Officer concludes that the Department is
15 not required, and indeed lacks statutory authority, to accept revised NOL information that
16 conflicts with the amounts reported for loss years now closed under law. The assessed interest
17 must likewise be upheld, except as limited by Taxpayer's mid-protest payment. Accordingly, the
18 protest is denied.

19 IT IS DECIDED AND ORDERED AS FOLLOWS:

20 **FINDINGS OF FACT**

21 The Taxpayer and Its Real Estate Investments

¹ Although the New Mexico Rules of Evidence do not apply under NMSA 1978, Section 7-1B-6(D) (2019), the Hearing Officer sustained the Department's objection relying on guidance from Rule 11-408 which provides that offers to compromise are generally inadmissible.

1 1. Mr. Peter Frohlich is the director and shareholder of Taxpayer. He resides in and
2 appeared by video conference from Australia. [Direct Examination of P. Frohlich]

3 2. Since 2006, Taxpayer has invested in real estate in the United States as a passive
4 investor and one of two members of Sarex Setai, LLC. [Direct Examination of P. Frohlich;
5 Taxpayer Ex. 1]

6 3. In 2016, Taxpayer and the other member of Sarex Setai, LLC executed a Second
7 Amended and Restated Operating Agreement that initiated the gradual dissolution of Sarex Setai,
8 LLC. [Direct Examination of P. Frohlich; Taxpayer Ex. 1]

9 4. Before 2016, Taxpayer had no New Mexico tax obligations. Its New Mexico
10 reporting obligations began when Sarex Setai, LLC, and Taxpayer as a member of that company,
11 acquired real property situated in Albuquerque, New Mexico. [Direct Examination of P.
12 Frohlich; Taxpayer Ex. 1]

13 5. Sarex Setai, LLC thereafter filed New Mexico returns and supporting schedules
14 relevant to the years it held the Albuquerque property, from which Taxpayer's individual New
15 Mexico reporting obligations similarly arose. [Direct Examination of P. Frohlich; Taxpayer Exs.
16 1; 2; 3; 4; 5; 6; and 7]

17 6. The ownership and allocation structure set forth in the operating agreement
18 required allocation of New Mexico property and income between members, which complicated
19 apportionment calculations and tax reporting. [Direct Examination of P. Frohlich; Taxpayer Ex.
20 1]

21 7. Sarex Setai, LLC held the Albuquerque property until the end of 2018, at which
22 time Taxpayer's membership interest in Sarex Setai, LLC was terminated, and Taxpayer
23 received the property outright, effective January 1, 2019. [Direct Examination of P. Frohlich;

1 Taxpayer Exs. 1; 8]

2 Loss-Year Apportionment and Original Return Preparation

3 8. For 2016–2018, determining Taxpayer’s New Mexico income required
4 calculation of Sarex Setai, LLC’s New Mexico income and Taxpayer’s proportional share.

5 [Direct Examination of P. Frohlich; Taxpayer Exs. 1; 2; 3; 4; 5; 6; 7; and 8]

6 9. Taxpayer described the apportionment computations for 2016–2020 as difficult,
7 particularly given the absence of taxable income in those years. [Direct Examination of P.

8 Frohlich; Taxpayer Exs. 1; 2; 3; 4; 5; 6; 7; and 8]

9 10. Taxpayer explained the discrepancies between the apportionment factors reported
10 on the original New Mexico returns and the corrected computations reflected in Taxpayer

11 Exhibit 8. For example, the 2016 return reported a New Mexico apportionment factor of zero

12 percent, which Taxpayer contends should have been approximately 27 percent. The 2017 return

13 reported 19 percent, which Taxpayer contends should have been approximately 60 percent. The

14 2018 return reported zero percent, which Taxpayer contends should have been approximately 61

15 percent. [Direct Examination of P. Frohlich; Taxpayer Exs. 2; 3; 4; and 8]

16 11. With respect to 2020, “Property factor calculation included in form CIT-A was
17 based off market values of properties held rather than historical cost. Sales factor was calculated

18 correctly.” [Direct Examination of P. Frohlich; Taxpayer Exs. 6 and 8]

19 12. The effect of the reported apportionment factors became apparent after the sale of
20 the New Mexico property in 2021, when the NOL carryforward directly affected the reported

21 gain. [Direct Examination of P. Frohlich; Taxpayer Ex. 8]

22 13. Taxpayer later concluded that its preparers did not exercise adequate attention to
23 detail in the apportionment and NOL-related computations. [Direct Examination of P. Frohlich;

1 Taxpayer Ex. 8]

2 14. Despite Taxpayer’s reliance on its tax professionals, those professionals likewise
3 relied on Taxpayer and Sarex Setai, LLC to provide complete and accurate information.

4 [Taxpayer Ex. 2.27 (“We prepared the returns from information you furnished us without
5 verification.”)]

6 Statutory Limitations and Closed Tax Years

7 15. Taxpayer did not file amended New Mexico returns for tax years 2016, 2017, or
8 2018. [Direct Examination of P. Frohlich; Direct Examination of M. Griego; Taxpayer Ex. 8.1 –
9 8.2]

10 16. By the time Taxpayer filed the amended 2021 return on April 15, 2025, the 2016,
11 2017, 2018, and 2020 tax years were closed to amendment under the applicable limitations
12 period. [Direct Examination of M. Griego]

13 17. The amended 2021 return was submitted and intended to correct historical errors
14 in the apportionment and NOL computations for 2016–2018 and 2020, including adjustments to
15 apportionment percentages and property factor methodology. [Taxpayer Ex. 8]

16 18. On February 6, 2024, the Department issued a Return Adjustment Notice
17 reducing Taxpayer’s claimed 2021 NOL deduction, asserting that the original filing contained
18 errors in the NOL-related computations. [Administrative File (Department’s Answer referring to
19 Letter ID L0866375280)]

20 19. On March 14, 2024, Taxpayer submitted a formal written protest through the
21 Taxpayer Access Point system. [Administrative File (Request for Hearing; Screenshot for
22 “Protest 1675284”)]

23 20. On April 18, 2024, the Department issued a Notice of Assessment of Taxes and

1 Demand for Payment relating to tax year 2021. [Administrative File (Department’s Answer
2 referring to Letter ID No. L1686158960)]

3 21. The Department’s adjustment to Taxpayer’s 2021 return reduced the available net
4 operating loss (“NOL”) carryforward to \$23,976, resulting in an assessed tax liability of
5 \$1,398.52 and the assessment of statutory interest. [Administrative File; Direct Examination of
6 M. Griego]

7 22. Taxpayer’s amended 2021 return, incorporating revised apportionment factors for
8 the 2016–2018 and 2020 loss years, calculated an available NOL carryforward of approximately
9 \$117,087, which would have eliminated the 2021 tax liability in full. [Taxpayer Exs. 8; 9]

10 23. The difference between the parties’ respective NOL carryforward computations is
11 approximately \$93,111 and is attributable to the 2016–2018 and 2020 tax years.

12 24. The mathematical accuracy of the parties’ respective calculations was not
13 disputed at hearing. The sole dispute concerns whether revised loss-year apportionment factors
14 may be used after the loss years themselves have closed to amendment. [Direct Examination of
15 P. Frohlich; Direct Examination of M. Griego]

16 Department Staff Roles and Representations

17 25. Amanda Thomas is a senior tax coordinator with the Department, a position
18 formerly known as tax examiner (advanced), and has held that or similar positions for
19 approximately two years. [Direct Examination of A. Thomas]

20 26. Taxpayer testified it believed amended returns could be submitted at any time
21 based on conversations with Ms. Thomas. [Direct Examination of P. Frohlich; Taxpayer Ex. 9]

22 27. Ms. Thomas clarified that amended returns may be submitted at any time, but
23 submission does not determine timeliness for statute-of-limitations purposes. [Direct

1 Examination of A. Thomas]

2 28. Ms. Thomas did not process any returns or amended returns for the years at issue.
3 Her role was limited to assisting Taxpayer with electronically filing its amended 2021 return
4 through the Taxpayer Access Point (TAP) system. [Direct Examination of A. Thomas]

5 29. Department personnel lack discretion to override statutory deadlines. [Direct
6 Examination of A. Thomas]

7 30. Taxpayer does not assert estoppel based on statements attributed to Ms. Thomas.
8 [Direct Examination of P. Frohlich]

9 Filing of the Amended 2021 Return

10 31. On or about April 15, 2025, Taxpayer electronically filed an amended 2021 CIT-1
11 return while the protest was pending, including written explanations and revised NOL
12 carryforward amounts based on recalculated apportionment factors for 2016–2018 and 2020.
13 [Direct Examination of P. Frohlich; Taxpayer Exs. 8 – 9]

14 Department's Calculation of the 2021 NOL Deduction

15 32. The Department calculated the 2021 NOL deduction using the apportionment
16 percentages reported on the originally filed New Mexico returns, applying 0 percent for 2016
17 and 2018, approximately 19 percent for 2017, and approximately 55 percent for 2020. Using
18 these percentages, the Department determined \$23,976 of NOL was available for 2021. [Direct
19 Examination of M. Griego; Taxpayer Ex. 8]

20 33. Taxpayer's revised computations used higher apportionment percentages for each
21 loss year, resulting in a calculated NOL carryforward of approximately \$117,087. [Direct
22 Examination of M. Griego; Taxpayer Exs. 2 – 4; 8; 9]

23 34. Taxpayer asserted that the corrected NOL information more accurately reflected

1 its actual New Mexico losses for 2016–2018 and 2020. [Direct Examination of P. Frohlich]

2 Protest Auditor’s Review and Department Correspondence

3 35. Mary Griego is a protest auditor with approximately 17 years of Department
4 experience, including about 13 years in the protest division. [Direct Examination of M. Griego]

5 36. Ms. Griego reviewed Taxpayer’s original and amended 2021 returns and
6 supporting schedules and noted that the amended 2021 return used loss-year apportionment
7 percentages that differed from those reported in the originally filed returns. [Direct Examination
8 of M. Griego]

9 37. For purposes of this protest, the parties proceeded on the premise that the
10 apportionment factor applicable to an NOL is the apportionment factor for the tax year in which
11 the loss was incurred. [Testimony of M. Griego]

12 38. In January 2025, Ms. Griego advised Taxpayer that its RPD-41379 NOL
13 schedules were “completed incorrectly” and recalculated the available 2021 NOL as \$23,976
14 using apportionment factors from the originally filed returns. [Taxpayer Ex. 13]

15 39. Throughout 2024 and 2025, the Department issued multiple conflicting liability
16 notices. Department staff later instructed Taxpayer to disregard at least one of those notices on
17 grounds that it had been reversed. [Taxpayer Ex. 13]

18 40. The record includes evidence of periods of limited staff availability, short-
19 staffing, and a system upgrade during which the case was not actively reviewed. [Taxpayer Ex.
20 13; Taxpayer Ex. 9]

21 41. Because a protest hold was not placed on the account when the protest was first
22 received, the Department issued a collection notice in error. Ms. Griego later acknowledged the
23 Department’s oversight and instructed Taxpayer to disregard the notice, confirming that the

1 protest hold had since been applied. [Taxpayer Ex. 13.5]

2 The 2019 Tax Year

3 42. Taxpayer filed an amended 2019 New Mexico return correcting federal income,
4 and on April 16, 2025, Department employee Amanda Thomas confirmed that the amended 2019
5 return had been processed over the original and was now the official Department record.

6 [Taxpayer Ex. 9]

7 43. Neither party disputes any 2019 figures, including income, apportionment, or loss
8 amounts, because the Department accepted the amended 2019 return. [Taxpayer Ex. 9; Taxpayer
9 Ex. 11]

10 Procedural History, Payment, and Interest

11 44. On September 4, 2024, the Department acknowledged Taxpayer's protest.
12 [Administrative File (Letter ID No. L2010290544)]

13 45. On January 28, 2025, the Department issued a Notice of Abatement of Tax
14 Assessment in the total amount of \$1,362.68. [Administrative File (Letter ID: L1906404720)]

15 46. On January 29, 2025, the Department issued a Notice of Abatement of Tax
16 Assessment in the total amount of \$35.84. [Administrative File (Letter ID L1910828400)]

17 47. On February 7, 2025, Taxpayer made a payment through TAP that satisfied all
18 outstanding tax principal. As of that date, statutory interest had accrued through February 7,
19 2025; Taxpayer's payment satisfied that accrued interest except \$390.97, which remained
20 outstanding. Taxpayer denied any admission of liability, explaining that the payment was
21 intended to halt further accrual of interest by paying the tax principal. [Administrative File
22 (Department's Answer)]

23 48. In an associated email the Taxpayer indicated it was making the payment to stop

1 the further accrual of interest but was not admitting any liability or agreeing to the Department's
2 calculations. [Administrative File (Department's Answer); Taxpayer Exs. 9; 13]

3 49. On February 21, 2025, the Department filed a Request for Hearing and its
4 Original Answer to the Protest. [Administrative File]

5 50. On February 24, 2025, the Administrative Hearings Office entered a Notice of
6 Telephonic Scheduling Hearing which set an initial hearing in the protest for March 21, 2025.
7 [Administrative File]

8 51. On March 20, 2025, Taxpayer filed a summary of relevant facts and its legal
9 position. The summary was entitled Submission. [Administrative File]

10 52. A telephonic scheduling hearing was held on March 21, 2025, at which time the
11 parties agreed that additional time might assist them in narrowing or resolving issues. Neither
12 party objected that the hearing satisfied the deadline to conduct a hearing under Section 7-1B-8
13 of the Administrative Hearings Office Act. [Administrative File]

14 53. A second telephonic scheduling hearing occurred on June 13, 2025, at which time
15 the parties concurred that a hearing on the merits of the protest should be set. A Scheduling
16 Order and Notice of Administrative Hearing was entered which set a merits hearing for October
17 20, 2025, in addition to all other attendant deadlines. [Administrative File]

18 54. On September 19, 2025, the Administrative Hearings Office issued a subpoena
19 upon Taxpayer's request to compel the appearance of Amanda Thomas. [Administrative File]

20 55. On September 19, 2025, Taxpayer filed a request for production of documents.
21 [Administrative File]

22 56. On October 6, 2025, both parties to the protest filed their prehearing statements.
23 [Administrative File]

1 determined that \$23,976 of NOL remained available to offset Taxpayer's 2021 income, resulting in
2 an assessed tax liability of \$1,398.52 and the assessment of statutory interest, of which \$390.97
3 remained outstanding after Taxpayer's February 7, 2025 payment. By contrast, Taxpayer's
4 amended 2021 return, using revised loss-year apportionment percentages, calculated an available
5 NOL carryforward of approximately \$117,087, which would eliminate the 2021 liability in full. The
6 dispute therefore concerns recognition of approximately \$93,111 in additional NOL carryforward
7 amounts and the resulting tax and interest consequences.

8 Taxpayer's Position

9 Taxpayer contends that the Department overstated its 2021 New Mexico corporate income
10 tax liability by refusing to consider the corrected NOL carryforward amounts included with its
11 amended 2021 return. Taxpayer argues that the NOLs generated in tax years 2016, 2017, and 2018
12 were legitimate losses that should properly offset 2021 income, and that its originally filed New
13 Mexico returns for those years understated the New Mexico portion of those losses due solely to
14 preparer error. Taxpayer testified that its outside certified public accountants failed to include
15 accurate apportionment factors or complete accurate NOL schedules, despite the presence of federal
16 losses and New Mexico business activity.

17 Taxpayer maintains that because the amended 2021 return was filed within the period
18 permitted for amending that year, the Department should accept the corrected apportionment factors
19 and NOL computations supplied with that filing. Taxpayer argues that the revised figures more
20 accurately reflect the economic reality of its operations and that reliance on the inaccurate historical
21 filings results in an artificially inflated 2021 liability. In Taxpayer's view, the Department's refusal
22 to incorporate the corrected loss-year information elevates procedural finality over substantive
23 accuracy.

1 Taxpayer further asserts that the State's self-assessment framework, including 3.1.6.10
2 NMAC, supports its ability to correct prior-year errors through a later amended return, reasoning
3 that no statute expressly requires consistency between amended and previously filed returns.
4 Taxpayer also emphasizes that periods of Department delay contributed to the posture of the case.
5 Taxpayer paid the disputed assessment during the protest to halt further accrual of interest and
6 argues that any remaining interest should be reduced or abated on fairness grounds and under the
7 Taxpayer Bill of Rights, NMSA 1978, Section 7-1-4.2.

8 Department's Position

9 The Department maintains that it correctly calculated Taxpayer's 2021 NOL deduction by
10 relying on the apportionment factors and NOL amounts reported on the originally filed 2016, 2017,
11 and 2018 New Mexico corporate income tax returns. The Department asserts that accepting
12 Taxpayer's revised loss-year computation for those years through an amended 2021 return would be
13 tantamount to permitting untimely amended returns for previous loss years, in violation of Sections
14 7-1-13 and 7-1-18. Because those years were closed to amendment, the Department argues that it is
15 legally prohibited from considering revised apportionment factors or NOL amounts for those years.

16 The Department further asserts that its re-computation of the 2021 NOL deduction follows
17 Form RPD-41379 and long-standing administrative practice, both of which require the
18 apportionment factor from the loss year, not the year of application, to determine the New Mexico
19 portion of an NOL. Applying this methodology to the loss-year data on file, the Department
20 determined that only a small amount of NOL remained available to offset Taxpayer's 2021 income.

21 With respect to interest, the Department maintains that interest is mandatory unless
22 Department error or delay caused the underlying deficiency. Because the deficiency resulted from
23 incorrect information supplied by Taxpayer in the original filings, the Department asserts that the

1 statutory interest must be upheld. No penalty was assessed in connection with the Department's
2 adjustment, and neither party raised any issue relating to penalty. Accordingly, penalty is not before
3 the Administrative Hearings Office in this protest.

4 Burdens of Production and Persuasion

5 Assessments issued by the Department are presumed correct. *See Corr. Corp. of Am. v.*
6 *State of N.M.*, 2007-NMCA-148, ¶ 17; *TPL, Inc. v. N.M. Taxation & Revenue Dep't*, 2003-NMSC-
7 007, ¶ 10. This presumption applies equally where the Department recalculates or adjusts a
8 taxpayer's return. A taxpayer may overcome this presumption by producing some countervailing
9 evidence. The evidence need not be persuasive at that stage, and whether the presumption has been
10 overcome is a question of law.

11 Once the presumption is overcome, the burden shifts to the Department to produce evidence
12 supporting its assessment, while the taxpayer bears the ultimate burden of persuasion to show that
13 the Department's determination is incorrect. *See Gemini Las Colinas, LLC v. N.M. Taxation &*
14 *Revenue Dep't*, 2023-NMCA-039, ¶¶ 23–26; 3.1.6.12(A) NMAC.

15 Here, Taxpayer presented sufficient testimony and documentation to overcome the
16 presumption. The Department met its burden of production by demonstrating that the 2016–2018
17 and 2020 tax years were closed under Sections 7-1-13 and 7-1-18, as reinforced by Section 7-1-26,
18 and that Taxpayer's revised NOL computations were therefore untimely attempts to alter closed
19 years. The question that remains is whether Taxpayer has met its ultimate burden of persuasion to
20 show that the corrected loss-year computations may nevertheless be recognized.

21 Statute of Limitations and NOL Computations

22 The threshold question is whether a timely amendment of the 2021 return may incorporate
23 revised loss-year information from years that cannot be reopened under the statutory limitations

1 framework. Resolution of that issue turns on the statutory definition of a net operating loss
2 carryover under New Mexico law.

3 The phrase “properly reported” must be read within New Mexico’s statutory framework
4 governing the filing and amendment of returns. A tax attribute is “reported” only through a legally
5 effective return, and the Legislature has prescribed the exclusive time periods within which such
6 reporting may be revised. *See* NMSA 1978, Sections 7-1-13, 7-1-18, 7-1-26. New Mexico courts
7 have recognized that these limitation provisions reflect a legislative policy choice favoring finality
8 and administrability in tax matters. In *Kilmer v. Goodwin*, 2004-NMCA-122, ¶ 16, 136 N.M. 440,
9 the Court of Appeals explained that the statutory time limits in the Tax Administration Act serve to
10 avoid stale claims and to permit the Department to “stabilize and predict, with some degree of
11 certainty, the funds it collects and manages,” and that the statutory framework places the burden on
12 the taxpayer to act within the prescribed deadlines. Consistent with that legislative design, an
13 amended return filed outside the statutory period is not legally effective to revise that year’s tax
14 attributes for purposes of Section 7-2A-2(N)’s “properly reported” definition when determining
15 liability for a later year.

16 The statute therefore does not define the carryover as the “correct” net loss or as a loss later
17 shown to be mathematically different; instead, by incorporating “properly reported” into the
18 definition itself, the Legislature made compliance with the return and amendment framework part of
19 the substantive attribute. Accordingly, the NOL carryover in New Mexico is a return-based tax
20 attribute fixed by what was legally reported within the time permitted by statute. The word
21 “properly,” read in context with “reported” and within the statutory amendment framework, denotes
22 reporting accomplished in conformity with the procedures and time limitations established by law.

23 The term “properly reported” is not defined in Section 7-2A-2. The analysis begins with the

1 plain language of the statute, giving the words their ordinary meaning. *See Jaramillo v. N.M.*
2 *Taxation & Revenue Dep't & Risk Mgmt.*, 2024-NMCA-028, ¶ 4. When construing statutes,
3 however, the guiding principle is to determine and give effect to legislative intent. *See Baker v.*
4 *Hedstrom*, 2013-NMSC-043, ¶ 11. The phrase must therefore be interpreted in harmony with the
5 Tax Administration Act as a whole. Statutes are construed so that all provisions are read together
6 and no part is rendered surplusage or internally inconsistent. *See Regents of Univ. of N.M. v. N.M.*
7 *Fed'n of Teachers*, 1998-NMSC-020, ¶ 28.

8 Interpreting “properly reported” to mean “accurately reported regardless of statutory
9 timeliness” would sever the definitional section from the Legislature’s carefully constructed
10 amendment and limitation provisions. Nothing in Section 7-2A-2 creates an exception to, or
11 displacement of, the statutory deadlines governing revision of the reported attributes of a loss year.
12 Taxpayer also relies on the Department’s self-assessment regulation, 3.1.6.10 NMAC, to argue that
13 it may correct prior-year errors through a timely amended return for 2021 without filing amended
14 returns for the loss years themselves. That regulation does not alter the statutory limitation and
15 amendment framework established in the Tax Administration Act. Sections 7-1-13 and 7-1-18
16 prescribe the exclusive periods for amending returns and revising the reported tax attributes of a
17 taxable year. New Mexico courts, as seen in *Kilmer*, have consistently treated the limitation periods
18 in the Tax Administration Act as mandatory and controlling. Allowing a taxpayer to revise closed-
19 year attributes indirectly through an amended return for a different year would undermine the
20 Legislature’s chosen limitation framework. An administrative regulation cannot expand those
21 legislatively imposed limitation periods or authorize revision of closed-year attributes indirectly
22 through an amended return for a different year. *See Rainbo Baking Co. of El Paso, Tex. v. Comm’r*
23 *of Revenue*, 1972-NMCA-139, ¶ 12 (holding an agency’s regulatory authority “did not extend to

1 imposing a time requirement which would abridge or modify the deduction authorized by the
2 Legislature”).

3 Accordingly, 3.1.6.10 NMAC does not provide a legal basis to recognize revised loss-year
4 apportionment factors or NOL carryforward amounts for years closed by statute. The Legislature’s
5 decision to define the carryover in return-based terms reflects a policy judgment within its broad
6 authority over taxation, and that legislative choice governs here. *See Pinghua Zhao v. Montoya*,
7 2014-NMSC-025, ¶ 29 (“[T]ax laws are complex creations with inherently political aspects and,
8 therefore, the Legislature enjoys broad discretion in formulating tax policies[.]”).

9 This approach differs from the federal scheme. Under 26 U.S.C. Section 172 and related
10 provisions, federal courts have long permitted taxpayers and the Commissioner to recompute a
11 closed loss year as a computational step when necessary to determine the correct tax liability for an
12 open year, treating statutes of limitation as restricting assessment or refund, but not the accuracy of
13 calculations relevant to the open year. *See Phoenix Coal Co. v. Commissioner*, 231 F.2d 420, 421–
14 22 (2d Cir. 1956); *ABKCO Indus., Inc. v. Commissioner*, 56 T.C. 1083, 1088–89 (1971). New
15 Mexico’s Legislature adopted materially different language. Unlike 26 U.S.C. Section 172, which
16 defines the carryover mechanically and independently of return reporting, Section 7-2A-2(N)
17 conditions the carryover on what was “properly reported” on a legally effective return. By defining
18 the carryover as the loss “properly reported” on a return, the statute links the existence and amount
19 of the carryover to legally effective reporting within the statutory framework. The federal approach
20 is cited only for contrast; New Mexico’s statutory definition and limitation framework control this
21 protest.

22 Other jurisdictions have permitted recomputation of a closed loss year when a carryover is
23 claimed in an open year. *See, e.g., Hillenga v. Dep’t of Revenue*, 358 Or. 178, 361 P.3d 598 (2015).

1 Those decisions arise under materially different statutory language. Section 7-2A-2(N) reflects a
2 different legislative choice, one that ties the existence and amount of a carryover to the return
3 reporting process rather than to a free-standing computational recalculation of prior-year income.

4 This does not mean the statute elevates procedural form over substantive accuracy. Rather, it
5 reflects a legislative judgment that tax attributes are established through the return process and are
6 subject to revision only within the periods expressly authorized by statute. Sections 7-1-13 and 7-1-
7 18 define the time within which a return may be amended or a refund may be claimed. Once that
8 period expires, the reported attributes of that year cannot be revised through a later amended return
9 for a different year.

10 Here, Taxpayer did not file amended returns for 2016, 2017, 2018, or 2020 within the
11 statutory period. The amended 2021 return therefore seeks, in substance, to revise the apportioned
12 net losses reported for those closed years. In other words, Taxpayer is not merely asking the
13 Department to recompute a closed year as an evidentiary step in determining the open year; it is
14 asking the Department to substitute revised loss-year apportionment factors and loss amounts as the
15 operative New Mexico attributes for those closed years. Unlike the federal cases, this protest does
16 not involve recomputation of a closed year solely as a computational step in determining a carryover
17 whose amount is defined independently of return reporting. It involves substitution of revised loss-
18 year attributes in place of the amounts legally reported for those years. Because the statutory
19 framework permits revision of loss-year attributes only through timely amended returns for those
20 years, the amended 2021 filing cannot operate to alter them indirectly.

21 New Mexico courts have cautioned against statutory constructions that effectively nullify
22 legislatively imposed deadlines. In *Kilmer*, 2004-NMCA-122, ¶ 20, the Court of Appeals rejected
23 an interpretation that would read the statutory time limit out of the statute and emphasized that the

1 Legislature intended a clear and definite limit on the authority conferred by the Tax Administration
2 Act. Permitting revision of closed loss-year attributes through a timely amendment of a later year
3 would undermine that limitation framework by allowing, in substance, an extension of the deadlines
4 governing the loss years themselves.

5 To hold otherwise would permit a taxpayer to accomplish indirectly, through an amended
6 return for an open year, what the Legislature has expressly prohibited directly once the amendment
7 period for the loss year has expired.

8 Accordingly, the Department properly calculated the 2021 net operating loss deduction
9 using the apportioned net losses reported on the original returns for the closed loss years.

10 Department Delay and Administrative Process

11 The record reflects periods of limited Department availability and processing backlogs that
12 understandably contributed to Taxpayer's frustration. The Department acknowledged Taxpayer's
13 diligence and cooperation during the protest.

14 However, the kinds of administrative slowdowns Taxpayer experienced do not permit
15 recognition of revised NOL information derived from years that are closed by statute. The
16 limitations period established under Section 7-1-18 remains controlling regardless of the pace of
17 administrative review or communication.

18 Although Taxpayer cites the Taxpayer Bill of Rights, Section 7-1-4.2, that provision does
19 not expand this tribunal's jurisdiction or create a separate remedy for administrative delay. Any
20 question regarding the application of statutory interest is addressed in the following section.

21 Interest

22 Under New Mexico law, "[i]f a tax imposed is not paid on or before the day on which it
23 becomes due, interest shall be paid to the state on that amount from the first day following the day

1 on which the tax becomes due.” See NMSA 1978, Section 7-1-67. Interest is compensatory and
2 reimburses the state for the time value of money. Because Section 7-1-67 uses the word “shall,” the
3 imposition of interest is mandatory. See *Marbob Energy Corp. v. N.M. Oil Conservation Comm'n*,
4 2009-NMSC-013, ¶ 22, 146 N.M. 24. Interest follows from an unpaid tax, and absent a specific
5 statutory abatement mechanism tied to Department-caused delay or error, this tribunal must apply
6 Section 7-1-67 as written. Interest begins to run from the original due date of the tax until the tax
7 principal is paid in full. Once the tax principal is paid, no further interest accrues on that principal,
8 although any interest that accrued before payment remains due until paid.

9 Here, the underpayment resulted from information reflected in the original 2016–2018 and
10 2020 filings. Although the protest process involved periods of delay, the deficiency arose from the
11 tax attributes reported in the original loss-year filings. Administrative delay in resolving a dispute
12 does not alter the statutory accrual of interest under Section 7-1-67. Although the protest process
13 extended over several months, the governing statutes do not authorize abatement of interest based
14 on the pace of administrative review. Taxpayer’s payment during the protest properly halted the
15 accrual of additional interest, but the statutes do not allow retroactive abatement for periods before
16 payment.

17 The Hearing Officer also considered whether Taxpayer could be entitled to a partial
18 abatement of interest under NMSA 1978, Section 7-1B-8(E), but a review of the record did not
19 reveal a basis for halting the accrual of interest under that statute or its implementing regulations.
20 See 22.600.3.8(A), 22.600.3.18(E) NMAC. Under 22.600.3.8(A) NMAC, the Department was
21 required to request a hearing no less than sixty days and no more than one hundred eighty days after
22 acknowledging Taxpayer’s valid protest. The Department acknowledged the protest on September
23 4, 2024, and requested a hearing on February 21, 2025, well within the regulatory timeframe.

1 Accordingly, Section 7-1B-8(E) and 22.600.3.18(E) NMAC do not provide a basis to suspend
2 further accrual of interest.

3 CONCLUSIONS OF LAW

4 A. Taxpayer timely protested the Department's action, and the Department timely
5 requested a hearing on the protest. The Administrative Hearings Office conducted a telephonic
6 scheduling hearing on March 21, 2025, within the period required by NMSA 1978, Section 7-1B-8
7 (2019). A subsequent merits hearing was conducted on October 20, 2025.

8 B. The Administrative Hearings Office has jurisdiction over the parties and the subject
9 matter of this protest pursuant to NMSA 1978, Sections 7-1-24 and 7-1B-8, and 22.600.3 NMAC.

10 C. The Department's assessments are presumed correct. *See Corr. Corp. of Am. v.*
11 *State*, 2007-NMCA-148, ¶ 17; *TPL, Inc. v. N.M. Taxation & Revenue Dep't*, 2003-NMSC-007, ¶
12 10.

13 D. A taxpayer may overcome the presumption of correctness by producing some
14 countervailing evidence; the evidence need not be ultimately persuasive at that stage, and whether
15 the presumption has been overcome is a question of law. *See Gemini Las Colinas, LLC v. N.M.*
16 *Taxation & Revenue Dep't*, 2023-NMCA-039, ¶ 25, 531 P.3d 622; Regulation 3.1.6.12(A) NMAC.

17 E. Once the presumption is overcome, the Department bears a burden of production to
18 support its assessment, while the taxpayer retains the ultimate burden of persuasion. *See Gemini Las*
19 *Colinas, LLC v. N.M. Taxation & Revenue Dep't*, 2023-NMCA-039, ¶¶ 23–24, 26, 29, 531 P.3d
20 622.

21 F. Under NMSA 1978, Sections 7-1-13, 7-1-18, and 7-1-26, a taxpayer may amend a
22 return or seek revision of a tax year only within the period provided by statute. Once that period
23 expires, the year is closed for purposes of establishing or revising that year's tax attributes,

1 including the New Mexico portion of any net operating loss. Because the 2016, 2017, 2018, and
2 2020 tax years were not timely amended, their reported apportionment factors and NOL attributes
3 are final and may not be altered through an amended return for 2021.

4 G. “Net operating loss carryover” is defined as the apportioned net loss properly
5 reported on an original or amended tax return for taxable years. *See* NMSA 1978, Section 7-2A-
6 2(N).

7 H. Taxpayer did not file amended New Mexico corporate income tax returns for the
8 2016, 2017, 2018 and 2020 loss years within the period allowed by Sections 7-1-13 and 7-1-18.

9 I. The Administrative Hearings Office lacks equitable authority and may not reopen or
10 revise closed tax years, whether directly or indirectly. *See* NMSA 1978, Section 7-1B-8; *AA Oilfield*
11 *Servs., Inc. v. N.M. State Corp. Comm’n*, 1994-NMSC-085, ¶ 18, 118 N.M. 273, 279, 881 P.2d 18,
12 24.

13 J. Interest on underpayments of tax is mandatory absent statutory authorization for
14 abatement. *See* NMSA 1978, Section 7-1-67.

15 K. Taxpayer’s February 7, 2025 payment satisfied the tax principal; interest accrued
16 under Section 7-1-67 through that date remains due until paid. No statutory provision authorizes
17 abatement of interest that accrued before payment of the principal. *See* NMSA 1978, Section 7-1-
18 67.

19 L. As a matter of law, the Department correctly calculated the net operating loss
20 deduction available for tax year 2021 using the loss amounts properly reported for the closed loss
21 years.

22 Taxpayer has not met its ultimate burden of persuasion to demonstrate that the Department
23 erred in calculating the net operating loss deduction available for 2021 or that the revised loss-year

1 computations submitted with the amended 2021 return may be recognized as a matter of law.

2 For the reasons stated, Taxpayer's protest is DENIED.

3 DATED: February 27, 2026



4
5 Chris Romero
6 Hearing Officer
7 Administrative Hearings Office
8 P.O. Box 6400
9 Santa Fe, NM 87502

10 **NOTICE OF RIGHT TO APPEAL**

11 Pursuant to NMSA 1978, Section 7-1-25 (2015), the parties have the right to appeal this
12 decision by *filing a notice of appeal with the New Mexico Court of Appeals* within 30 days of the
13 date shown above. If an appeal is not timely filed with the Court of Appeals within 30 days, this
14 Decision and Order will become final. Rule of Appellate Procedure 12-601 NMRA articulates
15 the requirements of perfecting an appeal of an administrative decision with the Court of Appeals.
16 Either party filing an appeal shall file a courtesy copy of the appeal with the Administrative
17 Hearings Office contemporaneous with the Court of Appeals filing so that the Administrative
18 Hearings Office may begin preparing the record proper. The parties will each be provided with a
19 copy of the record proper at the time of the filing of the record proper with the Court of Appeals,
20 which occurs within 14 days of the Administrative Hearings Office receipt of the docketing
21 statement from the appealing party. *See* Rule 12-209 NMRA.
22

