

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

**IN THE MATTER OF THE PROTEST OF  
PEREZ TRUCKING  
ID NO. 02-278207-00-9  
DENIAL OF CLAIM FOR REFUND**

**No. 01-33**

**DECISION AND ORDER**

A formal hearing on the above-referenced protest was held December 13, 2001, before Margaret B. Alcock, Hearing Officer. Perez Trucking ("Taxpayer") was represented by Anna Zazueta, one of its owners. The Taxation and Revenue Department ("Department") was represented by Javier Lopez, Special Assistant Attorney General. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

**FINDINGS OF FACT**

1. The Taxpayer is engaged in the business of hauling asphalt and other materials.
2. In July 1997, Anna Zazueta, the owner's wife, took over the company's accounting functions.
3. Ms. Zazueta was not familiar with New Mexico's gross receipts tax and it took time for her to learn the proper way to complete the Taxpayer's gross receipts tax returns.
4. Sometime in 2001, Ms. Zazueta realized that during the three-month period July through September 1997, she failed to claim a gross receipts tax deduction for receipts from performing hauling services for a company that had provided the Taxpayer with a Type 2 nontaxable transaction certificate ("NTTC").
5. On July 19, 2001, the Taxpayer filed a claim for refund of \$1,094.42 of gross receipts tax paid for reporting periods July through September 1997 and included a copy of the Type 2 NTTC.

6. On August 6, 2001, the Department sent the Taxpayer a letter denying the claim for refund because it was filed beyond the limitations period set out in Section 7-1-26 NMSA 1978.

7. On August 22, 2001, the Taxpayer filed a written protest to the denial of its claim for refund.

### **DISCUSSION**

The issue to be determined is whether the Department properly denied the Taxpayer's claim for refund of \$1,094.42 of gross receipts tax paid for tax periods July through September 1997. At the December 13, 2001 hearing, the Department stated that the refund was denied for two reasons: (1) because it was filed beyond the limitations period set out in Section 7-9-26 NMSA 1978 and (2) because the form of NTTC submitted by the Taxpayer only applied to the sale of tangible personal property and did not cover the Taxpayer's receipts from hauling.

Section 7-1-26(D) NMSA 1978 sets out the time limits for claiming a refund of tax paid to the Department and provides, in pertinent part:

[N]o credit or refund of any amount may be allowed or made to any person unless as the result of a claim made by that person as provided in this section:

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

(a) the payment was originally due or the overpayment resulted from an assessment by the department pursuant to Section 7-1-17 NMSA 1978, whichever is later;

No assessment was made against the Taxpayer. Accordingly, Taxpayer's claim for refund of gross receipts tax was required to be filed within three years of the end of the calendar year in which payment of tax was originally due for the reporting periods at issue.

Section 7-9-12 NMSA 1978 states that gross receipts taxes "are to be paid on or before the twenty-fifth day of the month following the month in which the taxable event occurs." Gross receipts

taxes for reporting period July 1997 were due August 25, 1997; gross receipts taxes for reporting period August 1997 were due September 25, 1997; and gross receipts taxes for reporting period September 1997 were due October 25, 1997. In each case, the time within which the Taxpayer could claim a refund of these taxes expired December 31, 2000. The Taxpayer's claim for refund was not filed with the Department until July 19, 2001. Because the claim was not filed within the limitations period required by Section 7-1-26(D), it was properly denied by the Department.<sup>1</sup>

The Taxpayer asks the Department to consider the fact that it is a small, struggling business and that its failure to file a timely refund claim was due to the owners' lack of knowledge of New Mexico's tax laws. These factors are not something the Department can consider. In *State ex rel. Taylor v. Johnson*, 1998-NMSC-015 ¶ 022, 961 P.2d 768, 774-775, the New Mexico Supreme Court made the following observations concerning the power of administrative agencies:

Generally, the Legislature, not the administrative agency, declares the policy and establishes primary standards to which the agency must conform. *See State ex rel. State Park & Recreation Comm'n v. New Mexico State Authority*, 76 N.M. 1, 13, 411 P.2d 984, 993 (1966). The administrative agency's discretion may not justify altering, modifying or extending the reach of a law created by the Legislature. [citations omitted].

In this case, the law prohibits the Department from granting claims for refund that are not filed within the time limits set out in Section 7-1-26 NMSA 1978. The legislature has not granted the Department or its hearing officer the authority to ignore or make exceptions to the law based on the financial or personal circumstances of individual taxpayers.

### CONCLUSIONS OF LAW

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

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<sup>1</sup> Based on this conclusion, there is no need to address the NTTC issue.

2. The Taxpayer's July 19, 2001 claim for refund of \$1,094.42 of gross receipts tax paid for reporting periods July through September 1997 is barred by the limitations period set out in Section 7-1-26 NMSA 1978.

3. The hearing officer does not have authority to override the provisions of New Mexico's tax laws to grant a claim for refund filed beyond the limitations period set out in Section 7-1-26 NMSA 1978.

For the foregoing reasons, the Taxpayer's protest IS DENIED.

DATED December 17, 2001.