

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

**IN THE MATTER OF THE PROTEST OF
EDUARDO CONTRERAS
TO DENIAL OF CLAIM FOR REFUND OF
1997 PERSONAL INCOME TAXES**

No. 06-05

DECISION AND ORDER

A formal hearing on the above-referenced protest was held on April 18, 2006, before Margaret B. Alcock, Hearing Officer. The Taxation and Revenue Department ("Department") was represented by Peter Breen, Special Assistant Attorney General. Eduardo Contreras represented himself. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. Eduardo Contreras was married to Blanca Contreras during 1997.
2. The Contrerases were having marital difficulties, which resulted in a final decree of divorce being entered in June 1999.
3. Blanca Contreras left the couple's home in 1997, taking various tax records and other information needed to prepare their federal and state tax returns.
4. Mr. Contreras was unable to obtain the information he needed to file his tax returns until 2002.
5. In May 2002, Mr. Contreras filed his New Mexico personal income tax return, showing a refund due of \$615.00.

6. On December 4, 2002, the Department denied Mr. Contreras's claim for refund because it was filed beyond the statute of limitations provided in NMSA 1978, § 7-1-26.

7. On December 31, 2002, Mr. Contreras filed a written protest to the denial of his claim for refund.

DISCUSSION

The issue to be determined is whether the Department properly denied Eduardo Contreras's claim for refund of personal income taxes paid during the 1997 tax year. The Department's reason for denying the taxpayer's refund claim was the expiration of the limitations period set out in NMSA 1978, § 7-1-26 (D)(1)(a), which 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;

In this case, Mr. Contreras's personal income taxes for 1997 were due on April 15, 1998.

The three-year period for claiming a refund of 1997 taxes ended on December 31, 2001.

The taxpayer's May 2002 refund claim was not filed within the limitations period required by NMSA 1978, § 7-1-26, and was properly denied by the Department.

Mr. Contreras's failure to file a timely claim for refund was due to personal difficulties that arose between Mr. Contreras and his wife during their divorce, and Mr. Contreras asks the Department to take this into consideration when ruling on his claim for refund. This is not possible. 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.

The job of the Department's hearing officer is to determine whether the Department has properly applied the law as written. Neither the Department nor its hearing officer has authority to question the wisdom of the laws passed by the legislature or modify the application of those laws based on the financial or personal situations of individual taxpayers. The law enacted by the legislature prohibits the Department from granting refunds filed beyond the three-year limitations period set out in Section 7-1-26 NMSA 1978, and the Department must follow the directive of the statute.

CONCLUSIONS OF LAW

A. Eduardo Contreras filed a timely, written protest to the Department's denial of his claim for refund, and jurisdiction lies over the parties and the subject matter of this protest.

B. Mr. Contreras's May 2002 claim for refund of 1997 personal income taxes is barred by the limitations period set out in NMSA 1978, § 7-1-26.

C. The hearing officer does not have authority to override the provisions of New Mexico's tax laws and waive the limitations period set out in NMSA 1978, § 7-1-26.

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

DATED April 19, 2006.