

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

**IN THE MATTER OF THE PROTEST OF
ROSE BILAT TO DENIAL OF CLAIM FOR
REFUND OF 2001 PERSONAL INCOME TAX
ISSUED UNDER LETTER ID L026474776**

No. 07-17

DECISION AND ORDER

An administrative hearing on the above-referenced protest was held on October 9, 2007 before Margaret B. Alcock, Hearing Officer. The Taxation and Revenue Department (“Department”) was represented by Elizabeth K. Korsmo, Special Assistant Attorney General. Rose Bilat (“Taxpayer”) represented herself. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. The Taxpayer is a senior citizen who supports herself on her social security income and the income from her full-time job and the occasional sale of her art work.
2. During the 2001 tax year, the amount of New Mexico personal income tax withheld from the Taxpayer’s wages exceeded her tax liability by \$828.00.
3. Because the Taxpayer knew she did not owe any tax to the state, she did not feel any urgency in filing her 2001 tax return.
4. Between 2002 and 2006, both the Taxpayer and her accountant in California experienced a number of serious medical problems. In addition, the Taxpayer was robbed three times and had to assist a family member located out-of-state.

5. At some point, the Taxpayer's accountant mailed a 2001 New Mexico personal income tax return to the Taxpayer for her review and signature.

6. The tax return was lost in the mail and it was not until December 2006 that the Taxpayer obtained a replacement copy and filed her 2001 tax return showing a refund due in the amount of \$828.00.

7. On January 25, 2007, the Department denied the Taxpayer's claim for refund because it was filed beyond the limitations period set out in NMSA 1978, § 7-1-26.

8. On February 21, 2007, the Taxpayer filed a written protest to the denial of her claim for refund.

DISCUSSION

The issue to be determined is whether the Department properly denied the Taxpayer's claim for refund of 2001 personal income taxes withheld from her 2001 wages. The Department denied the refund claim because it was filed after 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, the time within which the Taxpayer could claim a refund of 2001 personal income taxes, which were originally due on April 15, 2002, expired on December 31, 2005. The

Taxpayer's December 2006 refund claim was filed one year late. For this reason, it was properly denied by the Department.

The Taxpayer's failure to file a timely claim was attributable, at least in part, to a series of personal misfortunes that she and her accountant suffered during the period 2002 through 2006. The Taxpayer asks the Department to take this into consideration when ruling on her claim for refund. The Taxpayer also asks the Department to recognize that she is a senior citizen who has incurred substantial medical bills and that she has a real need for the \$828.00 of taxes she overpaid to the state. Unfortunately, these factors are not something the Department can consider. In *Kilmer v. Goodwin*, 2004-NMCA-122, ¶ 16, 136 N.M. 440, 99 P.3d 690, the New Mexico Court of Appeals noted that the purpose of the deadlines set out in § 7-1-26 "is to avoid stale claims, which protects the Department's ability to stabilize and predict, with some degree of certainty, the funds it collects and manages." The court specifically rejected the taxpayer's argument that the Department had implied authority to grant a refund after the statutory deadline, holding that an administrative agency may not exercise authority beyond the powers granted to it by the state legislature. *Id.* at ¶ 24. This is consistent with the New Mexico Supreme Court's decision in *State ex rel. Taylor v. Johnson*, 1998-NMSC-015 ¶ 022, 961 P.2d 768, 774-775, which made the following observation 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.

Neither the Department nor its hearing officer is authorized to ignore or modify the state's tax laws based on the personal circumstances of individual taxpayers. Pursuant to NMSA 1978, § 7-

1-26, no refund may be granted beyond the specified limitations period, and the Department is required to follow the directive of the statute.

CONCLUSIONS OF LAW

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

B. The Taxpayer's December 2006 claim for refund of 2001 personal income taxes is barred by the limitations period set out in NMSA 1978, § 7-1-26.

C. The Department does not have authority to override the provisions of New Mexico's tax laws and waive the statutory limitations period applicable to the Taxpayer's claim.

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