

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

**IN THE MATTER OF THE PROTEST OF
JOAN E. OLLER TO DENIAL OF CLAIM
FOR REFUND OF 2006 PERSONAL INCOME
TAX ISSUED UNDER LETTER ID L0521578240**

No. 07-19

DECISION AND ORDER

A formal hearing on the above-referenced protest was held on October 30, 2007 before Margaret B. Alcock, Hearing Officer. The Taxation and Revenue Department (“Department”) was represented by Elizabeth K. Korsmo, Special Assistant Attorney General. Joan E. Oller represented herself. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. Joan Oller incurred \$1,900 of medical expenses during the 2006 tax year.
2. New Mexico law provides the following tax relief for taxpayers who incur unreimbursed medical expenses:

(a) NMSA 1978, § 7-2-35 allows a taxpayer to claim a deduction for unreimbursed medical care expenses the taxpayer incurred during the tax year if those expenses are not included in the taxpayer’s itemized deductions for federal tax purposes. The amount of the deduction is calculated as a percentage of the unreimbursed medical expenses, with lower income taxpayers entitled to claim a greater percentage of their expenses than higher income taxpayers.

(b) NMSA 1978, § 7-2-5.9 allows a taxpayer over the age of 65 to claim an additional exemption of \$3,000 for unreimbursed medical care expenses the taxpayer incurred during the tax year if those expenses exceed \$28,000.

(c) NMSA 1978, § 7-2-18.13 allows a taxpayer over the age of 65 to claim a refundable credit of \$2,800 for unreimbursed medical care expenses the taxpayer incurred during the tax year if those expenses equal \$28,000 or more.

3. In preparing her 2006 New Mexico income tax return, Ms. Oller was entitled to claim the deduction provided in NMSA 1978, § 7-2-35. Based on her adjusted gross income, Ms. Oller was eligible for a deduction equal to 25 percent of her \$1,900 unreimbursed medical expenses. This \$475 deduction, together with her other exemptions and deductions, reduced her New Mexico taxable income to zero.

4. Because Ms. Oller's medical expenses did not equal or exceed \$28,000 during the 2006 tax year, she was not eligible for the exemption provided in NMSA 1978, § 7-2-5.9 or the refundable credit provided in NMSA 1978, § 7-2-18.13.

5. Because Ms. Oller found the Department's instructions confusing, she erroneously claimed 25 percent of her unreimbursed medical expenses as a refundable credit on her 2006 income tax return. As a result, her return showed a refund due in the amount of \$475.

6. On June 14, 2006, the Department notified Ms. Oller that she did not qualify for the credit claimed on her 2006 return and her \$475 refund had been denied.

7. On June 26, 2007, Ms. Oller filed a written protest to the denial of her refund.

DISCUSSION

Ms. Oller maintains that she is entitled to the refundable credit for unreimbursed medical expenses claimed on her 2006 return because she received a rebate in earlier years. At the administrative hearing, the Department's attorney explained that the rebate Ms. Oller received was the low-income comprehensive tax rebate provided in NMSA 1978, § 7-2-14. This section allows taxpayers with modified gross incomes below \$22,000 to claim a rebate which is calculated on a sliding scale based on the taxpayer's income and exemptions. Ms. Oller qualified for and received this rebate for tax years 2000 through 2005. In 2006, her modified gross income was just over the \$22,000 limit and she was not eligible for the rebate in that year. The credit for unreimbursed medical expenses was not an issue in earlier tax years and, after reading the pertinent statute, Ms. Oller conceded that she did not qualify for this credit in the 2006 tax year because her medical expenses were less than \$28,000.

CONCLUSIONS OF LAW

A. Joan Oller filed a timely, written protest to the Department's denial of her refund claim for the 2006 tax year, and jurisdiction lies over the parties and the subject matter of this protest.

B. Because Ms. Oller's unreimbursed medical expenses were less than \$28,000 during the 2006 tax year, she was not eligible for the refundable credit provided in NMSA 1978, § 7-2-18.3.

C. Ms. Oller's refund claim for tax year 2006 was properly denied.

Dated October 31, 2007.