

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

**IN THE MATTER OF THE PROTEST OF
THE ESTATE OF MARY C. SATTERLA
TO DENIAL OF REFUND CLAIM LETTER
ISSUED ON AUGUST 31, 2007**

No. 11-18

DECISION AND ORDER

A hearing was held on the above captioned matter on July 26, 2011 before Brian VanDenzen Esq., Hearing Officer, in Santa Fe. Attorney Wallace D. Cegavske appeared on behalf of the Estate of Mary C. Satterla (“Taxpayer”). The Taxation and Revenue Department of the State of New Mexico (“Department”) was represented by Staff Attorney Ida M. Lujan, Taxation and Revenue Department. Protest Auditor Silvia Sena appeared as a witness for the Department. In addition to the documents contained in the Administrative File, the parties stipulation of facts, and attached Stipulated Exhibits A-S, are admitted into the record. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. The parties have stipulated to facts listed as 1-36 in the Parties Joint Stipulation of Facts, Section I, Filed July 26, 2011. The parties have also stipulated to the admission of Exhibits A-S. Those stipulations and stipulated exhibits are the basis of the findings of facts in this matter.
2. Mary Satterla (“Decedent”) and her husband Gordon Satterla were long time New Mexico residents.

3. Decedent and her husband Gordon Satterla filed personal income tax returns in New Mexico from at least tax years 1994 through 2000, in addition to the 2001 estate tax return at issue in this protest.

4. Decedent suffered from Alzheimers.

5. In 2000, the Satterlas moved to Oregon to live closer to their son. Shortly after that move, Decedent became incapacitated. Mr. Satterla cared for Decedent at their home until he became too ill to care for her. Decedent was thereafter placed in a nursing home. Mr. Satterla died in Oregon on April 14, 2000 at the age of 87.

6. Decedent remained incapacitated until her death in Oregon on July 14, 2001.

7. From the time of their move to Oregon until the time of Gordon Satterla's and Decedent's deaths, the Satterlas retained their residence, personal property and business assets in New Mexico.

8. While living in Oregon, the Satterlas maintained their voter registration in New Mexico.

9. While living in Oregon, the Satterlas registered their vehicles in New Mexico.

10. While living in Oregon, the Satterlas also maintained their bank accounts in New Mexico.

11. After Decedent's death, Taxpayer filed a New Mexico estate tax return for tax year 2001 on April 15, 2002 and paid estimated resident estate taxes of \$525,314.00.

12. Taxpayer's April 15, 2002 New Mexico estate tax return for tax year 2001 reflects the Decedent's New Mexico residential address.

13. On April 15, 2002, Taxpayer also made an estate tax payment to the State of Oregon in the amount of \$28,289.00.

14. On October 11, 2002, Taxpayer filed an amended Estate Tax Return listing the tax due as \$434,759.00 rather than the previously paid \$525,314.00 and requesting \$99,455.00 refund on New Mexico estate tax.

15. On November 20, 2002, the Department acted on Taxpayer's claim for refund by making a partial refund of \$90,555 to Taxpayer and denying the remaining claim for refund.

16. The Taxpayer did not file a protest or commence a civil action in response to the Department's partial denial of refund within 90-days, which was February 18, 2003.

17. In June 2003, the Internal Revenue Service ("IRS") initiated an audit of Taxpayer, limited only to the Taxpayer's federal estate tax return and any federal credits allowed for payment of estate taxes to New Mexico and Oregon.

18. On IRS Form 3614-A, likely generated as part of this IRS audit, Taxpayer claimed a \$456,867.00 credit for State death taxes. [Stipulated Exhibit E]

19. On August 14, 2003, the State of Oregon issued a determination that the Satterlas were full-time Oregon residents since 1991 for income tax purposes. The record is unclear as to the form of the State of Oregon's determination.

20. Because of Taxpayer's concern that the State of Oregon's inquiry into the Satterlas residency for income tax purposes would also lead to an inquiry about Taxpayer's residency for Oregon estate tax purposes, Taxpayer on June 1, 2004 submitted an amended New Mexico Estate Tax Return and a protective claim for refund in the amount of \$394,406.00. [Stipulated Exhibit F]

21. Taxpayer's June 1, 2004 protective claim for refund was submitted before the December 31, 2005 expiration of the statute of limitations.

22. The Department did not take any action on Taxpayer's June 1, 2004 protective claim for refund by September 29, 2004, 120-days later.

23. Taxpayer did not protest or file a civil action within 90-days of the Department's failure to act by September 29, 2004. Consequently, more than 210 days elapsed from Taxpayer's June 1, 2004 filing of a claim for refund on December 28, 2004 without any protest or action by Taxpayer to preserve its claim for refund.

24. On June 7, 2006, Taxpayer paid an additional \$55,000.00 estimated estate tax to New Mexico during the pendency of the United States Tax Court case resulting from the IRS audit. [Stipulated Exhibit H]

25. On August 9, 2006, Taxpayer filed an amended New Mexico return dated August 9, 2006 that included a \$3,070.00 refund claim. [Stipulated Exhibit I]

26. On August 17, 2006, Taxpayer and the IRS, parties to the United States Tax Court case, stipulated to a federal net estate tax deficiency. Under that stipulation, Taxpayer was prohibited from claiming a federal credit for additional State estate, inheritance, legacy, or succession tax. [Stipulated Exhibit J]

27. In light of the stipulation limiting Taxpayer's ability to claim additional State estate tax beyond the previous credit of \$456,867.00, on September 7, 2006, Taxpayer filed an amended New Mexico Estate Tax Return claiming an additional refund of \$48,742.54 because Taxpayer had already paid Oregon \$15,850.54 in estate tax, leaving only \$441,016.46 for New Mexico estate tax. [Stipulated Exhibit K]

28. On November 22, 2006, the Department processed a \$48,742.54 refund, consistent with the stipulation filed in the U.S. Tax Court case. [Stipulated Exhibit L]

29. The total of Taxpayer's estate tax payments made, less granted refunds, was \$441,016.46, exactly the amount calculated in the U.S. Tax Court case stipulation.

30. On April 23, 2007, Taxpayer, through counsel, wrote the Department to inform the Department of the State of Oregon's April 12, 2007 Notice of Deficiency of estate tax in the amount of \$825,536 in principal and interest. [Stipulated Exhibit M]

31. In light of Oregon's belated claim, Taxpayer advised the Department that it was withdrawing the amended returns filed on August 11, 2006 and September 7, 2006, and standing solely on the Taxpayer's protective claim filed on June 1, 2004. [Stipulated Exhibit M]

32. On May 17, 2007, Taxpayer submitted an amended return requesting a refund of \$393,502.00 on the basis that Oregon had determined that the Decedent was a non-resident of New Mexico and that Oregon disputed the amount of estate tax due or paid to New Mexico. [Stipulated Exhibit N]

33. By letter dated June 26, 2007, the Department advised Taxpayer that the amended return/claim was incomplete because it failed to select a residency/non-residency status and failed to include requisite proof of Decedent's non-residence in New Mexico. [Stipulated Exhibit O]

34. On July 10, 2007, Taxpayer challenged Oregon's determination of the Decedent's domicile.

35. As of the date of this hearing, Taxpayer's appeal in Oregon has yet to be resolved.

36. Taxpayer protested the Department's June 26, 2007 letter asking for more information, which Taxpayer took as a denial of its claim for refund on November 6, 2007.

37. On November 19, 2007, the Department acknowledged receipt of Taxpayer's protest to the denial of claim for refund.

38. Protest hearings previously scheduled for August 5, 2008 and October 14, 2008 were vacated upon Taxpayer's unopposed requests for continuances and motions to stay the proceedings related to the pendency of the IRS federal audit, the United States Tax Court proceedings, and Taxpayer's appeal of Oregon's determination concerning Decedent's domicile.

39. On April 15, 2011, the Department requested a setting in this protest.

40. On May 3, 2011, the Hearing Bureau sent Notice of Administrative Hearing, scheduling the hearing on July 26, 2011 at 9:00 AM.

DISCUSSION

Despite a fairly complex set of facts, the legal question at protest in this matter is straightforward in light of controlling statute and case-law: whether the Department has any authority to grant claims for refund after the statute of limitations for such claims have passed and after the Taxpayer failed to timely confront the Department's inaction on a claim for refund? For the purposes of this protest, that legal question needs to be considered for three of Taxpayer's claims for refund: first, Taxpayer's June 1, 2004 protective claim for refund; second, Taxpayer's September 7, 2006 claim for refund after conclusion of the IRS audit; and third, Taxpayer's May 17, 2007 claim for refund. In short, regardless of the merits of Taxpayer's claim for refund, the Department may not grant either Taxpayer's June 1, 2004 or the May 17, 2007 claim for refund because those claims are time-barred by operation of law.

Statute of Limitations on Claims for Refund.

Under NMSA 1978, Section 7-1-26 (D) (1) (2003), no refund can be granted unless as a result of a claim made within three-years of the end of the calendar year in which the tax was due or the overpayment resulted from an assessment by the Department under NMSA 7-1-17.

In this case, Mary Satterla died on July 14, 2001. Taxpayer prepared, filed, and paid New Mexico Estate Tax when due on April 15, 2002. The end of the calendar year from that April 15, 2002 New Mexico Estate Tax payment was December 31, 2002. Under NMSA 1978, Section 7-1-26 (D) (1) (2003), Taxpayer had until December 31, 2005 to make any claim for refund on Estate Tax paid to the Department.

a. Taxpayer's June 1, 2004 Claim for Refund

Taxpayer timely filed a claim for refund on June 1, 2004 attaching the Amended New Mexico Return and Claim for refund. [Stipulated Exhibit F]. Taxpayer intended that June 1, 2004 claim for refund as a protective claim for refund while it addressed the State of Oregon's later claims of residency against Taxpayer.

The Department took no action on Taxpayer's June 1, 2004 protective claim for refund within 120-days. Under NMSA 1978, Section 7-1-26 (b)(2) (2003), when the Department takes no action on a claim for refund within 120-days from that claim for refund, a taxpayer has 90-days to either file a protest or commence a civil action in the Santa Fe County District Court. If there is time still left under the statute of limitations, a taxpayer can also choose to refile the claim for refund. In other words, a taxpayer has 210-days from the date of filing a claim for refund to either protest the Department's inaction or commence a civil action.

In this case, when the Department failed to act on Taxpayer's June 1, 2004 claim for refund by September 29, 2004, Taxpayer needed to either file a written protest or commence a civil action by December 28, 2004. Taxpayer did not assert either option by that December 28, 2004 deadline. By not filing either a protest or civil action, Taxpayer abandoned the June 1, 2004 protective claim for refund.

Relevant case law affirms that when the Department fails to timely act on a claim for protective refund, that refund is time barred unless preserved through timely filing of either a protest or a civil action. In *Kilmer v. Goodwin*, 136 N.M. 440, 2004 NMCA122, 99 P.3d 690 (N.M. Ct. App. 2004), the New Mexico Court of Appeals dealt with a similar set of facts and circumstances as this present protest. In *Kilmer*, the taxpayer had filed a New Mexico personal income tax return for tax year 1995. *See id.* at 443. In 1998, the State of California began auditing the *Kilmer* taxpayer because California believed that the taxpayer had been a resident of California in 1995 rather than New Mexico. *See id.* In response to this California audit, in 1999 the *Kilmer* taxpayer filed a protective claim for refund with the Department for the 1995 personal income taxes paid to New Mexico. *See id.* While in *Kilmer* there was some factual dispute about whether that protective claim for refund was accepted by a Department employee or lost, the facts in *Kilmer* nevertheless establish that the Department took no action on the *Kilmer* taxpayer's protective claim for refund within 120-days of the initial filing of that claim. *See id.* at 444. Like in the present protest, the *Kilmer* taxpayer failed to preserve her claim for refund within 90-days of the Department's inaction by either filing a protest or a civil suit. *See id.* at 445. And like in the present protest, the statute of limitations prevented the *Kilmer* taxpayer from refiling a new claim for refund. *See id.*

The New Mexico Court of Appeals found in *Kilmer* that the legislature intended the purpose of the deadlines set out in NMSA 1978, § 7-1-26 (D) (1) (2003) "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." *id.* at 445. The *Kilmer* court further found that the legislature placed the responsibility on a taxpayer to maintain an active claim and to timely confront the Department's inactions on a claim. *See id.* The *Kilmer* court ultimately held that the Department

lacked either explicit statutory authority under NMSA 1978, § 7-1-26 (D) (1) (2003) or implied authority as an administrative agency to grant that taxpayer's stale claim for refund beyond the 210-days from the initial filing of that refund. *See id.* 444-446.

Like in *Kilmer*, because Taxpayer in this matter failed to either protest or initiate a civil action for its protective claim for refund within 210-days of filing that claim, Taxpayer's protective claim for refund became stale and the Department was statutorily barred from considering that June 1, 2004 protective claim for refund any further. Taxpayer made no further claim for refund by the expiration of the statute of limitations on December 31, 2005.

b. Taxpayer's two post- December 31, 2005 Claim for Refunds

Taxpayer did make two claims of refund after that December 31, 2005 expiration of the statute of limitations for a refund. Despite being past the statutory limit, the Department correctly granted one of these claims, Taxpayer's September 7, 2006 claim for refund. Taxpayer's September 7, 2006 refund claim was related to an amended June 7, 2006 filing and payment of New Mexico Estate Tax as a result of IRS audit. Under NMSA 1978, Section 7-1-26 (F) (2003), a taxpayer has one-year to make a refund claim of *only* the adjusted amount of an IRS audit, assuming the audit established an overpayment during the taxable audit period. In other words, in the event of an overpayment, a taxpayer can claim a refund only of the adjusted amount under the IRS audit for one-year, but cannot claim a refund greater than that adjustment. By limiting that claimed refund to the adjustment only, the legislature clearly did not intend NMSA 1978, Section 7-1-26 (F) (2003) to reopen the entire amount to a refund after the expiration of the statute of limitations for filing a refund. Therefore, while it was proper for the Department to grant Taxpayer's September 7, 2006 claim for refund resulting from the adjustment from the IRS audit, neither the IRS audit nor the Department's granting of the claim for refund related to the

IRS audit action triggered anew the possibility of a claim for refund against the entire amount of estate tax beyond the expired December 31, 2005 statutory bar.

Taxpayer's other May 17, 2007 claim for refund, the denial of which triggered this protest, was filed beyond the December 31, 2005 statute of limitations on a claim for refund. Rather than relating to the IRS audit, the May 17, 2007 claim for refund resulted from Oregon's belated claim that Decedent was a resident of Oregon. Therefore, NMSA 1978, Section 7-1-26 (F) (2003) does not assist Taxpayer with the May 17, 2007 claim for refund. Since Taxpayer's May 17, 2007 claim for refund was made after the December 31, 2005 statute of limitations, the Department had no statutory authority to grant that claim for refund under NMSA 1978, Section 7-1-26 (D) (1) (2003). The Department thus properly denied that May 17, 2007 claim for refund.

In conclusion, since Taxpayer did not timely preserve its initial June 1, 2004 protective claim for refund, and did not file any additional claim for refund by the expiration of the statute of limitation on December 31, 2005, Taxpayer was statutorily time barred from making any additional claims of refund (other than the IRS adjusted amount discussed above) against its April 15, 2002 payment of New Mexico Estate Tax. Consequently, Taxpayer is not entitled to any additional refund for the April 15, 2002 payment of New Mexico Estate Tax regardless of the legal merits of that refund claim, and the Department properly denied Taxpayer's May 17, 2007 claim for refund.

CONCLUSIONS OF LAW

A. 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.

B. Taxpayer failed to timely preserve its June 1, 2004 protective claim for refund of 2002 New Mexico Estate Tax under the time limitations set out in NMSA 1978, § 7-1-26.

C. The Department lacks the statutory authority to refund any additional amount of New Mexico Estate Tax to Taxpayer because the statute of limitations on a refund expired on December 31, 2005.

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

DATED: August 29, 2011.