

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

**IN THE MATTER OF THE PROTEST OF  
MARK SERROS,  
TO DENIAL OF REFUNDS ISSUED UNDER  
ID NOS. L0562804288, L1904981568, and L0177272384**

**No. 12-10**

**DECISION AND ORDER**

A formal hearing on the above-referenced protest was held March 8, 2012, before Dee Dee Hoxie, Hearing Officer. The Taxation and Revenue Department (Department) was represented by Mr. Nelson Goodin, Chief Legal Counsel. Ms. J. Amanda Carlisle, Auditor, also appeared on behalf of the Department. Mr. Mark Serros (Taxpayer) appeared for the hearing and represented himself. The Hearing Officer took notice of all documents in the administrative file. Taxpayer #1 and TRD #1, #2, and #3 were admitted into the record at the hearing. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

**FINDINGS OF FACT**

1. The Taxpayer was incarcerated sometime in 2007 and remained in custody until sometime in 2011.
2. After his release, the Taxpayer filed Personal Income Tax (PIT) returns with the Department for the tax years of 2004, 2005, and 2006.
3. Each of the returns was filed on or about September 17, 2011, and each claimed a refund.
4. On October 4, 2011, the Department issued letters denying each of the claims for refunds for 2004, 2005, and 2006 based upon the statute of limitations.
5. On October 12, 2011, the Taxpayer filed a formal protest letter.
6. On November 4, 2011, the Department filed a Request for Hearing asking that the Taxpayer's protest be scheduled for a formal administrative hearing.
7. The Taxpayer's claims for refund are barred by the statute of limitations.

## DISCUSSION

The issue to be decided is whether the Department properly denied the claims for refund for the tax years of 2004, 2005, and 2006.

### Statute of Limitations for Filing a Claim.

All claims for refund must be filed within three years of the end of the calendar year in which the payment was originally due. *See* NMSA 1978, § 7-1-26 (D). Therefore, the 2004 claim was required to be filed by the end of 2008, the 2005 claim was required to be filed by the end of 2009, and the 2006 claim was required to be filed by the end of 2010. All three claims were filed in 2011, so each claim was beyond its three-year statute of limitations.

The Taxpayer explained that he could not file the claims for refund in a timely manner because he was incarcerated when the deadlines passed. The Taxpayer argued that the unique circumstances of his case should excuse his late filing. The Department argued that the statute of limitations is a strict deadline, and that the Taxpayer's circumstances, although unfortunate, do not excuse late filing under the statute.

The statute of limitations prevents stale claims and effectively places the onus on the taxpayer to pursue their claim in a timely manner because the taxpayer is the one who can more easily keep track of their claims for refund. *See Kilmer v. Goodwin*, 2004-NMCA-122, ¶ 16, 136 N.M. 440, 99 P.3d 690. If the claim is not filed within the three-year statute of limitations, the claim is barred by the statute. *See* NMSA 1978, § 7-1-26. *See also Kilmer*, 2004-NMCA-122. No exception to the three-year limitation was established. *See* NMSA 1978, § 7-1-26.

## CONCLUSIONS OF LAW

1. The Taxpayer filed a timely written protest to the denials of refund for the 2004, 2005, and 2006 tax years issued under Letter ID numbers L0562804288, L1904981568, and L0177272384, and jurisdiction lies over the parties and the subject matter of this protest.

2. The claims for refund were properly denied as they were barred by the statute of limitations. *See* NMSA 1978, § 7-1-26.

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

DATED: March 30, 2012.

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DEE DEE HOXIE  
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