

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

**IN THE MATTER OF THE PROTEST OF
YVONNE C. GOMEZ
THE DENIAL OF REFUND ISSUED UNDER
LETTER ID NO L1797305920**

No. 13-32

DECISION AND ORDER

A formal hearing on the above-referenced protest was held September 26, 2013, before Richard Jacquez, Hearing Officer. The Taxation and Revenue Department (Department) was represented by Staff Attorney, Mr. Aaron Rodriguez. Ms. Mary Griego, Auditor, also appeared on behalf of the Department. Ms. Yvonne Gomez (Taxpayer) appeared for the hearing and represented herself. The Hearing Officer took notice of all documents in the administrative file. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. The Taxpayer filed a personal income tax return on April 15, 2007, which claimed that the Taxpayer had tax due to the Department in the amount of \$112.00 for tax year 2006. The Taxpayer submitted payment to the Department in the amount of \$112.00 along with her personal income tax return.
2. The Department determined that the Taxpayer failed to claim a low to mid income exemption which would have reduced her tax liability, and resulted in a refund owed to the Taxpayer in the amount of \$37.00.
3. The Department issued the Taxpayer a refund in the amount of \$37.00.

4. On May 13, 2011, the Taxpayer filed an application for refund, for tax year 2006, requesting a refund in the amount of \$112.00.
5. On June 28, 2011, the Department sent a letter to the Taxpayer denying the claim for refund because the request for refund was not filed with three (3) years of the end of the calendar year in which payment was due.
6. On July 15, 2013, the Taxpayer filed a formal protest letter.
7. On July 25, 2013, the Department filed a Request for Hearing asking that the Taxpayer's protest be scheduled for a formal administrative hearing.
8. On July 25, 2013, the Hearings Bureau mailed a Notice of Administrative Hearing setting the hearing for September 26, 2013.

DISCUSSION

The issue to be decided is whether the Department properly denied the Taxpayer's the claim for refund for the tax year 2006, in the amount of \$112.00. The Taxpayer argued that the Department waited until the end of the statute of limitation period to give her notice that she could claim a refund, and that because she was caring for her ill mother she did not have time to submit an application for refund. The Department argued that the Taxpayer's application for refund was filed after the statutory deadline and the Department was barred from issuing the refund.

A claim for refund must be filed within the limitations period as 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;

The Taxpayer filed a personal income tax return on April 15, 2007, for tax year 2006 which she claimed that the Taxpayer had tax due to the Department in the amount of \$112.00. Along with the filing of her personal income tax return, the Taxpayer submitted payment to the Department in the amount of \$112.00. The Department entered the information reported by the Taxpayer on her personal income tax return and determined that the Taxpayer failed to claim a low to mid income exemption which would have reduced the Taxpayer's liability, and resulted in a refund owed to the Taxpayer in the amount of \$37.00. Without requesting a refund, the Department issued the Taxpayer a refund in the amount of \$37.00.

On May 31, 2011, the Taxpayer filed an application for refund, for tax year 2006, requesting a refund in the amount of \$112.00. On June 28, 2011, the Department sent a letter to the Taxpayer denying the claim for refund because the request for refund was not filed within three (3) years of the end of the calendar year in which payment was due.

In this case, the time within which the Taxpayer could claim a refund of 2006 personal income taxes, which were originally due on April 15, 2007, expired on December 31, 2010. The Taxpayer's May 2011 application for refund was filed five months late. For this reason, the Department properly denied the application for refund.

The Taxpayer explained that she was never informed of the overpayment until it was near the end of the statute of limitations. The Taxpayer also explained that she was attending to a very ill mother which prevented her from filing a claim for refund prior to the expiration of the statute of limitations. The Taxpayer testified that she feels that it is unjust that the Department did not notify her of her overpayment soon after she filed her 2006 personal income tax return.

The Taxpayer testified that she filed her subsequent tax returns for tax years 2007, 2008, and 2009, and at no time did the Department advise her of being owed a refund for tax year 2006.

The Taxpayer testified that after she received a letter from the Department denying her application for refund she contacted the Department by telephone on numerous occasions, and each time she spoke with a different employee from the Department. The Taxpayer testified that one employee explained that her refund was being held because the Department believed she was going to file an amended return. The last employee that the Taxpayer talked to advised her to submit the application for refund, which would be denied, and for her to file an appeal which would result in the refund being granted. The Taxpayer acknowledged that she did not obtain any names of the Department's employees that she spoke with over the telephone and none of the statements made to the Taxpayer were in writing.

The statute of limitations requires taxpayers to timely file claims for refund to protect the treasury. The Taxpayer argued that the failure to file a timely claim for refund was attributable, at least in part, to the Taxpayer having to attend to her ailing mother. The Taxpayer asked the Hearing Officer to take this into consideration when ruling on her claim for refund. 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.” No exception to the three-year limitation was established. See NMSA 1978, § 7-1-26. 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.*

CONCLUSIONS OF LAW

1. The Taxpayer filed a timely written protest to the denial of refund for the 2006 tax year issued under Letter ID number L1797305920, and jurisdiction lies over the parties and the subject matter of this protest.

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

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

DATED: October 29, 2013.

Richard M. Jacquez

RICHARD M. JACQUEZ

Hearing Officer

Taxation & Revenue Department

Post Office Box 630

Santa Fe, NM 87504-0630

NOTICE OF RIGHT TO APPEAL

Pursuant to NMSA 1978, § 7-1-25, the parties have the right to appeal this decision by filing a notice of appeal with the New Mexico Court of Appeals within 30 days of the date shown above. *See* Rule 12-601 NMRA. If an appeal is not filed within 30 days, this Decision and Order will become final. A copy of the Notice of Appeal should be mailed to John Griego, P. O. Box 630, Santa Fe, New Mexico 87504-0630. Mr. Griego may be contacted at 505-827-0466.

CERTIFICATE OF SERVICE

I hereby certify that I mailed the foregoing Order to the parties listed below this ____ day of _____, 2013 in the following manner:

First Class Mail # _____

Interoffice Mail

Yvonne Gomez
4709 Delamar Avenue NE
Albuquerque, NM 87110-1186

Aaron Rodriguez
Staff Attorney
Taxation and Revenue Department

John Griego
Legal Assistant
Hearing Bureau
Taxation & Revenue Department
Post Office Box 630
Santa Fe, NM 87504-0630