

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

**IN THE MATTER OF THE PROTEST OF
JOSEPHINE MISKOWIEC,
TO THE DENIAL OF REFUND ISSUED UNDER
ID NO. L1585204688**

No. 14-22

DECISION AND ORDER

A formal hearing on the above-referenced protest was held April 23, 2014, before Dee Dee Hoxie, Hearing Officer. The Taxation and Revenue Department (Department) was represented by Ms. Elena Morgan, Staff Attorney. Ms. Sonya Varela, Auditor, also appeared on behalf of the Department. Mr. Ural Decker, CPA appeared for the hearing and represented Ms. Josephine Miskowiec (Taxpayer). Mr. Decker and Ms. Varela testified at the hearing. 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. On February 5, 2014, the Department denied the Taxpayer's request for refund for the 2008 tax year on personal income tax (PIT) because the statute of limitations had run.
2. On February 10, 2014, the Taxpayer filed a formal protest to the denial.
3. On April 1, 2014, the Department filed a Request for Hearing asking that the Taxpayer's protest be scheduled for a formal administrative hearing.
4. The Taxpayer filed timely PIT returns for the 2008, 2009, and 2010 tax years.
5. In 2012, the Taxpayer realized that she was eligible for an additional medical credit for those tax years.

6. On April 9, 2012, the Taxpayer filed amended PIT returns for the 2008, 2009, and 2010 tax years. The amended returns reflected the additional medical credit and claimed refunds for each year.
7. The Taxpayer was refunded the amounts claimed for the 2009 and 2010 tax years. There was some communication between the Department and the Taxpayer regarding additional documentation on the 2008 tax year.
8. The Taxpayer died on July 13, 2012. The Taxpayer's accountant and executor continued to pursue the refund on behalf of her estate. However, responding to the Department and finding the appropriate documents was more complicated and time-consuming.
9. No action was taken by the Department either granting or denying the refund for the 2008 tax year by November 5, 2012.
10. On February 20, 2013, the Taxpayer refiled her claim for refund of the 2008 tax year with all of the supporting documents that had been sent in previously.
11. The Department continued to communicate with the Taxpayer about the claim. The Taxpayer again provided the documents requested.
12. The Taxpayer argues that the claim for refund was originally filed before the statute of limitations expired. The Taxpayer argues that the Department's continued communication with the Taxpayer regarding the claim should have stayed the limitations period from running.

DISCUSSION

The issue to be decided is whether the Taxpayer's claim for refund for the 2008 tax year was barred by the statute of limitations.

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). The Taxpayer's PIT for 2008 was due on April 15, 2009. Therefore, the final date on which to file a claim for refund would have been December 31, 2012. The Taxpayer filed a timely claim for refund on April 9, 2012. However, the claim was neither granted nor denied by August 7, 2012, which was 120 days from the date of the claim.

Remedies for Inaction by the Department.

When a claim for refund is neither granted nor denied within 120 days of the date the claim was filed, taxpayers have the option of refiling the claim or of pursuing a legal or administrative remedy within 90 days of the 120th day, that is within 210 days of the date of the claim. *See* NMSA 1978, § 7-1-26 (B).

The Taxpayer refiled her claim on February 20, 2013. However, taxpayers may only refile the claim if there is still time to do so under the statute of limitations. *See* NMSA 1978, § 7-1-26 (B) and (D). The Taxpayer's refiled claim was not timely.

Taxpayers may opt to file an administrative protest or a lawsuit in district court, and those actions must be filed within 210 days of the date that the claim was filed. *See* NMSA 1978, § 7-1-26 (B) and (C). The Taxpayer failed to perfect her right to appeal the inaction by the Department by November 5, 2012, which was 210 days from the filing of the claim on April 9, 2012.

The Taxpayer argues that the Department's repeated communications with the Taxpayer regarding the claim from the time it was filed in April 2012 to the denial in February 2014 should have stayed the statute of limitations from running. The Taxpayer argues that there is such a rule for federal tax claims and that New Mexico should follow the same rule. However, the statute absolutely bars the Department from acting on a claim for refund that is more than 210 days old even when the claim was originally filed within the statute of limitations. *See In re Kilmer*, 2004-NMCA-

122, 136 N.M. 440. It is incumbent on a taxpayer to file the protest or action in court within the 210-day period. *See id.* at ¶ 1. A taxpayer's failure to file a protest or an action within the 210-day period is not excused by the taxpayer's reliance on oral statements of an employee of the Department. *See id.* at ¶ 45. Moreover, requests for additional information by the Department are not considered to be "actions" for purposes of the statute. *See* 3.1.9.9 NMAC.

The claim for refund was filed on April 9, 2012. The Department neither granted nor denied the refund by August 7, 2012, which was 120 days from the date of the claim. The Taxpayer neither filed a protest nor an action in district court by November 5, 2012, which was 210 days from the date of the claim. Therefore, the Taxpayer failed to perfect its right to appeal the inaction of the Department on the original claim. Consequently, the Department is statutorily prohibited from acting on the claim. *See* NMSA 1978, § 7-1-26 (B). *See also Kilmer*, 2004-NMCA-122. The Taxpayer refiled her claim on February 20, 2013. However, the deadline to refile the claim was December 31, 2012. Therefore, the Department is statutorily prohibited from granting the claim. *See* NMSA 1978, § 7-1-26 (D).

CONCLUSIONS OF LAW

1. The Taxpayer filed a timely written protest to the denial of refund for the 2008 personal income taxes, and jurisdiction lies over the parties and the subject matter of this protest.
2. The claim for refund was barred by the statute of limitations. Therefore, the claim was properly denied.

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

DATED: June 10, 2014.

Dee Dee Hoxie

DEE DEE HOXIE
Hearing Officer
Taxation & Revenue Department

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