

**STATE OF NEW MEXICO
ADMINISTRATIVE HEARINGS OFFICE
TAX ADMINISTRATION ACT**

**IN THE MATTER OF THE PROTEST OF
LYNDA Q. GIANG,
TO THE DENIALS OF REFUND ISSUED UNDER
LETTER ID NOS. L1523222480 and L0201639888**

No. 15-23

DECISION AND ORDER

A formal hearing on the above-referenced protest was held June 19, 2015, before Hearing Officer Dee Dee Hoxie. The Taxation and Revenue Department (Department) was represented by Ms. Elena Morgan, Staff Attorney. Mr. Danny Pogan, Auditor, also appeared on behalf of the Department. Ms. Lynda Giang (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. On November 7, 2014, the Department denied the Taxpayer's request for refund on her 2008 personal income taxes (PIT).
2. On December 4, 2014, the Department denied the Taxpayer's request for refund on her 2009 personal income taxes.
3. On January 5, 2015, the Taxpayer filed a formal protest letter.
4. On January 26, 2015, the Department filed a Request for Hearing asking that the Taxpayer's protest be scheduled for a formal administrative hearing.
5. On January 27, 2015, the Hearings Office issued a notice of hearing. The hearing date was set within ninety days of the protest.
6. On February 4, 2015, the Taxpayer requested a continuance of the hearing.

7. On February 5, 2015, the request for continuance was granted, and the delay of the hearing was attributable to the Taxpayer.
8. On February 5, 2015, the Hearings Bureau sent amended notices of hearing.
9. The Taxpayer filed her PIT returns for several tax years in 2014.
10. In 2014, the Taxpayer filed the PIT returns for her 2008 and 2009 taxes.
11. The Department issued refunds for some of the tax years, but denied the refunds for the 2008 and 2009 tax years based upon the statute of limitations.
12. The Taxpayer filed her PIT returns late because of serious and extended medical issues.

DISCUSSION

The issue to be decided is whether the Department properly denied the claims for refund for the 2008 and 2009 tax years.

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 2008 claim was required to be filed by the end of 2012, and the 2009 claim was required to be filed by the end of 2013. Both claims were filed in 2014, so both claims were beyond the three-year statute of limitations.

The Taxpayer explained that she was experiencing serious medical issues that continued over an extended period of time. The Taxpayer was still working during that time, but doing the paperwork to claim her refunds was not a priority. The Taxpayer argued that it was unfair for the Department to keep money she was entitled to be refunded simply because she missed a deadline. The Department argued that the statute of limitations is a strict deadline, and that the

Taxpayer's circumstances, although unfortunate and sympathetic, 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. There are some exceptions to the three-year statute of limitations, such as when an adjustment is made by the IRS. *See NMSA 1978, § 7-1-26.* The Taxpayer did not prove or even claim any statutory exception to the three-year limitation. *See NMSA 1978, § 7-1-26.*

CONCLUSIONS OF LAW

A. The Taxpayer filed a timely written protest to the denials of refund for the 2008 and 2009 tax years issued under Letter ID numbers L1523222480 and L0201639888, and jurisdiction lies over the parties and the subject matter of this protest.

B. 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: July 10, 2015.

Dee Dee Hoaxie

DEE DEE HOXIE
Hearing Officer
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