

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

**IN THE MATTER OF THE PROTEST OF
CHRISTINA L. EVARO
TO THE DENIAL OF REFUND ISSUED
UNDER LETTER ID NO. L0281210832**

No. 15-39

DECISION AND ORDER

A protest hearing occurred on the above captioned matter on December 7, 2015 before Brian VanDenzen, Esq., Interim Chief Hearing Officer, in Santa Fe. At the hearing, Christina L. Evaro (“Taxpayer”) appeared *pro se*. Theresa Lopez was also present with Taxpayer. Staff Attorney Gabrielle Dorian appeared representing the State of New Mexico Taxation and Revenue Department (“Department”). Protest Auditor Veronica Galewaler appeared as a witness for the Department. Taxpayer Exhibits #1-2 were admitted into the record. Department Exhibit A and C were admitted into the record. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. On April 6, 2015, through letter id. no. L0281210832, the Department denied Taxpayer’s claim for refund of paid 2010 personal incomes taxes, citing that the statute of limitations had expired for the claim.
2. On June 25, 2015, Taxpayer protested the Department’s denial of claim for refund.
3. On July 27, 2015, the Department’s protest office acknowledged receipt of a valid protest.

4. On August 25, 2015, the Department filed a request for hearing in this matter with the Administrative Hearings Office.

5. On August 27, 2015, the Administrative Hearings Office set this matter for a scheduling hearing on September 23, 2015.

6. On September 18, 2015, Taxpayer moved to continue the September 23, 2015 hearing and waived the 90-day hearing requirement.

7. On September 21, 2015, the Administrative Hearings Office issued a Continuance Order and Amended Notice of Administrative Hearing, setting the hearing for December 7, 2015 at 1:00 p.m.

8. Taxpayer recalls mailing in her 2010 PIT-1 return on or before April 15, 2011, claiming a refund of \$595.00, however the Department has no record of receiving Taxpayer's 2010 PIT-1 return.

9. Taxpayer's 2010 wage withholdings received by the Department in 2010 were sufficient to pay her entire 2010 personal income tax liability.

10. Even if the Department had received Taxpayer's 2010 PIT-1 Return in April of 2011 and failed to act on Taxpayer's claim for refund on that return, Taxpayer did not protest or file civil suit within 210-days of the Department's inaction.

11. In March of 2015, Taxpayer logged into the Department TAP system to file her 2014 PIT-1 Return. While reviewing her account, she noticed that the Department had not received her 2010 PIT-1 Return.

12. On March 17, 2015, using a paper copy of her 2010 PIT-1 Return, Taxpayer completed and submitted her 2010 PIT-1 Return online through TAP, showing that Taxpayer was due a refund of \$595.00.

13. As referenced in finding of fact number one, on April 6, 2015 the Department denied Taxpayer's claim for refund of 2010 personal income tax because more than three years from the end of the calendar year from which the 2010 personal income taxes were due had lapsed.

14. On April 16, 2015, Taxpayer made a \$74.00 payment towards her 2010 personal income taxes, an amount that Taxpayer did not owe.

15. The Department did refund this \$74.00 payment, as Taxpayer's 2010 PIT-1 return did not establish any tax liability.

DISCUSSION

At issue in this protest is whether Taxpayer's claim for refund was barred under the statute of limitations. Citing an online summary of federal law, Taxpayer argues that since she filed and paid her 2010 personal incomes taxes when she logged into TAP in 2015, she has an additional two-years to make a claim for refund. The Department argues that since Taxpayer paid the tax in 2010 with her 2010 wage withholdings, three years from the end of the calendar year in which the 2010 personal income taxes were due had lapsed by the time Taxpayer finally filed her return in March of 2015.

Because no assessment was issued in this case, other than Taxpayer's self-assessment of tax in her 2010 PIT-1 return, no presumption of correctness attaches in this protest. *See* NMSA 1978, § 7-1-17 (2007) and Regulation 3.1.6.10 NMAC. Nevertheless, for reasons that will be discussed in more detail throughout the decision, under the relevant statute and controlling case law, Taxpayer had the obligation to both timely file her claim for refund and preserve their claim through resolution of the claim.

In pertinent part under NMSA 1978, Section 7-1-26 (D) (1) (2007), 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. At issue in this protest is the payment of 2010 personal income tax. Under NMSA 1978, Section 7-2-12 (2003), 2010 personal income tax returns were due on April 15, 2011, making December 31, 2011 the end of the calendar year from which the taxes were due. Therefore, under Section 7-1-26 (D) (1), Taxpayer had until December 31, 2014 to make any claim for refund to the Department for 2010 personal income taxes.

After this December 31, 2014 date, any claim for refund for the paid 2010 personal income tax period was time barred by the general statute of limitations on refund claims unless if another provision of Section 7-1-26 (D) applied. Taxpayer's March 17, 2015 tax return filing claiming refund was made after this three-year deadline, making it untimely under Section 7-1-26 (D)(1). Under the plain language of Section 7-1-26 (D) (1), the Department had no statutory authority to grant a claim for refund made after three years from the end of the calendar year in which the tax was due. In *Kilmer v. Goodwin*, 2004-NMCA-122, ¶16, 136 N.M. 440, the Court of Appeals noted that the Legislative purpose of the deadlines under NMSA 1978, Section 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."

The only other New Mexico provision¹ that might allow this claim for refund is found under Section 7-1-26 (D)(4):

if the payment of an amount of tax was not made within three years of the end of the calendar year in which the original due date of the tax or date of the assessment of the department occurred, a claim for refund of that amount of tax can be made within one year of the date on which the tax was paid

¹ Taxpayer presented an online summary of a similar IRS rule that allows a two-year additional window instead of the one-year reference under New Mexico statute.

Essentially, if payment is not initially made within the traditional three year statute of limitation window, Section 7-1-26 (D)(4) allows a claim for refund for one year from when the tax was paid. However, in this case Taxpayer's withholdings provided to the Department in 2010 paid Taxpayer's 2010 personal income tax liability. While the tax return had not been filed, the taxes were paid in 2010 from withholdings, within the three year window and rendering Section 7-1-26 (D)(4) inapplicable in this protest. However, the erroneous \$74.00 payment that was never due or owing, which Taxpayer made after the Department's denial of the claim for refund, was refundable under Section 7-1-26 (D)(4).

The fact that Taxpayer argued she filed her 2010 PIT-1 return by mail in April of 2011 does not alter the analysis. That is because even assuming that the return was filed, Taxpayer had an obligation to either file a protest or a civil action within 210-days of the Department's inaction of the claim for refund became state. *See Kilmer*. The Department properly denied the refund claim because it lacked authority to grant Taxpayer's claim for refund filed after the expiration of the statute of limitations. *See Kilmer*, ¶24.

CONCLUSIONS OF LAW

A. Taxpayer filed a timely, written protest to the Department's denial of the claim for refund, and jurisdiction lies over the parties and the subject matter of this protest.

B. Taxpayer's March 17, 2015 claim for refund of 2010 personal income tax was beyond the three-year statute of limitations deadline for the filing of a claim for refund under NMSA 1978, Section 7-1-26 (D) (1) (2007).

D. Since Taxpayer paid the 2010 personal income tax in 2010 with her wage withholdings, NMSA 1978, Section 7-1-26 (D)(4) did not provide Taxpayer an additional one-year to claim the refund beyond the normal statute of limitations under Section 7-1-26 (D) (1).

For the foregoing reasons, the Taxpayers' protest **IS DENIED**.

DATED: December 16, 2015.

Brian VanDenzen
Interim Chief Hearing Officer
Administrative Hearings Office
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