STATE OF NEW MEXICO
ADMINISTRATIVE HEARINGS OFFICE
TAX ADMINISTRATION ACT

IN THE MATTER OF THE PROTEST OF
JACOB & JEANNE KURIYAN **No. 15-40**
TO DEPARTMENT'S DENIAL OF REFUND ISSUED UNDER
LETTER ID NO. L1600681936

DECISION AND ORDER

A protest hearing occurred on the above captioned matter on November 16, 2015 before Brian VanDenzen, Esq., Interim Chief Hearing Officer, in Santa Fe. At the hearing, Dr. Jacob Kuriyan appeared *pro se* for Jacob & Jeanne Kuriyan ("Taxpayers"). Staff Attorney Cordelia Friedman appeared representing the State of New Mexico Taxation and Revenue Department ("Department"). Protest Auditor Sonya Varela appeared as a witness for the Department. Taxpayers Exhibits #1 through #4 were admitted into the record. Department Exhibit A through E were admitted into the record. The record was left open for the Department to submit a blank copy of the applicable application of refund form at the time, RPD Form #4107 (rev. 8/2/2012), discussed repeatedly at hearing. The record closed and this matter became ripe for decision when the Department filed the correct version of that RPD form on November 24, 2015. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. On January 13, 2015, under letter id. no. L1600681936, the Department denied Taxpayers' claim for $14,957.00 in refund of 2009 New Mexico personal income tax. That letter stated that for the Department "[t]o consider such a claim, New Mexico statutes require that it be filed within three (3) years of the end of the calendar year in which payment was due, Section 7-1-26 NMSA 1978." [Dept. Ex. E].

2. On April 9, 2015, Taxpayer submitted a protest to the Department's denial of the claim for refund.

3. On April 22, 2015, the Department's protest office acknowledged receipt of a valid protest.

4. On June 16, 2015, the Department filed a request for hearing in this matter with the Hearings Bureau[1].

5. On June 16, 2015, the Administrative Hearings Office set this matter for a telephonic scheduling hearing on July 7, 2015.

6. On July 7, 2015, a scheduling hearing in fact was held. Neither party objected that holding the scheduling hearing satisfied the 90-day hearing requirement of the statute.

7. On July 7, 2015, the Administrative Hearings Office issued Notice of Administrative Hearing, setting a merits hearing in this matter on November 16, 2015 at 1:30 p.m.

8. The hearing on the merits occurred on November 16, 2015. At the end of the hearing, the record was left open for the limited purpose of production of the applicable version of RPD form 4107, which although discussed repeatedly by both parties throughout the hearing, had not been provided into the record by either party.

9. On November 17, 2015, Taxpayers filed a letter with the Administrative Hearings Office arguing the merits of the case and raising complaints not addressed at hearing.

10. On November 18, 2015, the Department filed its response to Taxpayers' submission.

11. On November 19, 2015, Taxpayers filed a reply to the Department's response.

[1] On July 1, 2015, pursuant to enacted Senate Bill 356, the Hearings Bureau became the Administrative Hearings Office ("AHO"), separate and independent of the Taxation and Revenue Department.

12. On November 20, 2015, in accord with the hearing officer's instructions at the hearing, the Department filed RPD Form 41071 into the record.

13. On November 24, 2015, the Department filed two Amended Filings containing RPD Form 41071 in an effort to provide the correct, applicable version of the form. The record became final and ripe for decision upon receipt of this correct form into the record on November 24, 2015.

14. Taxpayers employed an accountant, Mr. Ron Zerlingo, CPA, to prepare their income tax returns during the relevant period at issue in this protest.

15. On or about October 13, 2010 (Mr. Kuriyan and Mr. Zerlingo, CPA, dated the document on October 13th while Mrs. Kuriyan dated the document on October 14th), Taxpayers submitted their 2009 New Mexico PIT-1 personal income tax return. [Dept. Ex. A, p.2].

16. Taxpayers claimed a refund of $19,757.00 in overpayment of tax on their 2009 PIT-1 return, of which they requested that $4,800.00 be applied to their estimated 2010 personal income taxes while the remaining $14,957.00 be refunded to them. [Dept. Ex. A, p.2; Taxpayers Ex. #2, p.2].

17. The Department received Taxpayers' 2009 PIT-1 return on October 14, 2010. [Dept. Ex. A, p.1].

18. The Department took no action to either approve or deny the claim for refund of $14,957.00 by February 11, 2011, which was 120-days after Taxpayers' October 14, 2010 filing of the 2009 PIT-1 return containing their claim for refund.

19. Taxpayers did not initiate a civil action in district court or file a protest with the Department by May 12, 2011, 210-days after the filing of their claim for refund on their 2009 PIT-1 tax return.

20. Around April of 2013, Taxpayers realized they had not received their requested claim for refund of 2009 personal income taxes.

21. Once they realized they had not received their requested refund of 2009 personal income taxes, Taxpayers contacted their account Mr. Zerlingo to determine what had happened. [Taxpayers Ex. #1].

22. While it is unclear whether because of Department's own initiative or because of Mr. Zerlingo's prompting, in early 2013 the Department determined that it had never received Taxpayers' 2008 personal income tax return and communicated that fact with Taxpayers' accountant.

23. At the protest hearing, the Department suggested that its failure to take action on the claim for refund contained in the 2009 PIT-1 return stemmed from the absence of Taxpayers 2008 personal income tax return in the system, which affectively placed Taxpayers account in Gentax on hold pending full reconciliation of outstanding returns could be completed.

24. On April 17, 2013, Taxpayers resubmitted their 2008 personal income tax return. [Dept. Ex. A].

25. Between April and November of 2013, Mr. Zerlingo made three to four phone calls to the Department checking the status on this previous return. Mr. Zerlingo apparently received verbal confirmation during these phone conversations that all previous returns had been filed and there were no filing deficiencies in previous returns. Mr. Zerlingo also was never informed of the need to file an application for refund for the 2009 personal income tax. [Taxpayers Ex. #1].

26. Sometime in December of 2013, Taxpayers received a letter from the Department containing three Applications for Refund, RPD Forms 41071 (rev. 8/2/2012) to request refunds in three separate years, including the 2009 personal incomes taxes at issue.

27. Taxpayers completed all three Applications for Refund and mailed them in one envelope to the Department sometime on or before December 24, 2013. [Taxpayers Ex. #4].

28. Taxpayers received refund checks for two of their Applications for Refund submitted to the Department contemporaneously with the third claim they submitted for 2009 personal income tax, but did not receive a check for their Application of Refund of the 2009 personal income tax.

29. Taxpayers credibly established through testimony and the fact that the Department issued refund checks on the other two claims mailed contemporaneously that they submitted the application for refund of 2009 personal income tax before the December 31, 2013 statute of limitation for a claim for refund for that period had expired.

30. The Department took no action to approve or deny of Taxpayers' December 2013 application for refund within 120-days, on or before April 23, 2014.

31. Taxpayers did not initiate a civil action in district court or file a protest with the Department within 210-days, on or before July 22, 2014, of their December 2013 application for refund of their 2009 personal incomes taxes.

DISCUSSION

At issue in this protest is whether Taxpayers' claim for refund of 2009 personal income tax made with the original filing of the return in 2010 and again through application of refund in December of 2013 may be granted under NMSA 1978, Section 7-1-26 (2013). In a post-hearing briefing, the parties also made numerous arguments that will also be addressed in more detail.

Because no assessment was issued in this case, other than Taxpayers' initial self-assessment of tax in filing their 2009 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, Taxpayers had the obligation to both timely file their claim for refund and preserve their claim through resolution

In pertinent part under NMSA 1978, Section 7-1-26 (D) (1) (2013), 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 2009 personal income tax. Under NMSA 1978, Section 7-2-12 (2003), 2009 personal income tax returns were due on April 15, 2010, making December 31, 2013 the end of the calendar year from which the taxes were due. Therefore, under Section 7-1-26 (D) (1), Taxpayers had until December 31, 2013 to make any claim for refund to the Department for 2009 personal income taxes.

In this case, Taxpayers in fact made two claims for refund that were filed before that December 31, 2013 statute of limitations deadline, each of which will be addressed in turn. Taxpayers' first claim of refund for the 2009 personal income tax occurred when Taxpayers filed their 2009 PIT-1 return on October 14, 2010, asking that they be refunded $14,957 in overpaid tax. The Department took no action on Taxpayers claim for refund, which the Department explained at hearing was because Taxpayers' 2008 return had not been received or processed, placing the 2009 return into a holding status. Taxpayers again filed a claim for refund of 2009 personal income tax when they submitted the application for refund on RPD form 41071 (rev. 8/2/2012) in December of 2013. The Department took no action to either approve or deny the December 2013 claim for refund.

Under Section 7-1-26 (B)(2), when the Department takes no action on a claim for refund within 120-days from that claim for refund, a taxpayer has 90-days to either file a protest or commence a civil action in the Santa Fe County District Court. In other words, in the face of Department inaction, a taxpayer has 210-days from the original filing date of the claim for refund to preserve their claim by either filing a protest or a civil action. *See Unisys Corp. v. N.M. Taxation & Revenue Dep't,* 1994-NMCA-059, 117 NM 609 (Section 7-1-26 gives taxpayers a method to challenges the Department's inaction on a claim for refund).

Reading Section 7-1-26 (B) (2) in conjunction with relevant case law establishes that a taxpayer's failure to preserve the claim for refund divests the Department of authority to act on the stale claim. In *Kilmer v. Goodwin*, 2004-NMCA-122, 136 N.M. 440, the New Mexico Court of Appeals addressed claims for refund under Section 7-1-26. The facts in *Kilmer* established that the Department took no action on the *Kilmer* taxpayers' claim for refund within 120-days of the initial filing of that claim. *See id*. ¶9, 444. The *Kilmer* taxpayers failed to preserve their claim for refund within 90-days of the Department's inaction by either filing a protest or a civil suit. *See id*. ¶15, 445. The expiration of the statute of limitations prevented the *Kilmer* taxpayers from refilling a new claim for refund. *See id.* The New Mexico Court of Appeals noted in *Kilmer* that the Legislative purpose of the deadlines under 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." *id*. ¶16, 446. The *Kilmer* court further found that the Legislature placed the responsibility on taxpayers to maintain an active claim and to timely confront the Department's inactions on a claim. *See id*. The *Kilmer* court ultimately held that the Department lacked either express statutory authority under Section 7-1-26 or implied authority as an

administrative agency to grant those taxpayers' stale claim for refund beyond the 210-days from the initial filing of that refund. *See id*. ¶19-24, 445-446.

Applying Section 7-1-26 (B) and the rationale of *Kilmer* to the claims for refund at issue in this protest, both claims became stale due to Taxpayers inaction in preserving the claims and the Department lacked authority to grant those claims. Under the statutory 210-day deadline when the Department failed to act on Taxpayers' first October 14, 2010 claim for refund made on the PIT-1 within 120-days—February 11, 2011—Taxpayers had 90-days (for a total of 210-days from the original claim) to either file a protest or a civil action in order to preserve that claim for refund. Taxpayers took no such action within 210-days. When Taxpayers' failed to file a protest or civil action by the 210-day deadline on May 12, 2011, Taxpayers abandoned their October 14, 2010 claim for refund and the Department was prohibited under Section 7-1-26 (B) (2), as explained by *Kilmer*, from either approving or disapproving that claim for refund.

Taxpayers also did not preserve their December 2013 claim for refund. While the Department seemed reluctant to accept the fact that Taxpayers filed this application in 2013, Dr. Kuriyan's testimony on this point was entirely credible, particularly because the Department processed and received the other two claims for refund Dr. Kuriyan contemporaneously submitted along with the claim for refund of 2009 personal income taxes. Since Taxpayers filed the claim before the expiration of the statute of limitations on December 31, 2013, their claim for refund of 2009 personal income tax was viable under Section 7-1-26. However, when the Department failed to act on the claim within 120-days, Taxpayers had an obligation to preserve that claim by filing either a civil action or a protest within 210-days (90-days after the Department failed to act within 120-days). Although there is evidence that Taxpayers' accountant may have followed up with the Department over the phone about the refund claim,

there is no evidence that Taxpayers filed a civil action or a protest by the July 22, 2014 210-day deadline, as required to preserve the claim under Section 7-1-26 (B) (2). Because Taxpayers did not preserve their December 2013 claim for refund in the face of Departmental inaction, the Department is prohibited from approving that claim for refund. *See Kilmer*. Since Taxpayers did not preserve either claim for refund and since the statute of limitations lapsed on December 31, 2013, in the January 13, 2015 denial letter at protest the Department properly denied Taxpayers' claim for refund as untimely under Section 7-1-26.

Much of Mr. Kuriyan's frustration in this matter is understandable given that Taxpayers made two attempts to obtain their refund, and in both instances the Department took no action to either grant or deny the claim for refund. Nevertheless, some of Mr. Kuriyan's arguments at hearing, and particularly after hearing, suggest that Taxpayers believed that because they timely filed two claims, the Department had the burden to either grant the claims or justify at hearing why the claims could not be granted. Because of the Department's lack of communication to Taxpayers about the steps necessary to preserve the claims and the Department's own failings in processing the claims, Mr. Kuriyan believed that Taxpayers were entitled to the claim. However, under New Mexico's self-reporting tax system, every person is charged with the reasonable duty to ascertain the possible tax consequences of his or her actions. *See Tiffany Construction Co. v. Bureau of Revenue*, 1976-NMCA-127, ¶5, 90 N.M. 16. As case law in New Mexico makes clear, the Legislature has placed the obligation to preserve a claim for refund on taxpayers. *See Kilmer*, ¶16. Whether Taxpayers fully understood the deadlines to preserve the claim in the face of Departmental inaction, it was ultimately Taxpayers responsibility under the statute and case law to do so.

Related to this point, Mr. Zarlengo, CPA, mentioned in his November 16, 2015 email that in phone calls to the Department, Department employees assured him that all returns had been filed, did not report any deficiencies in Taxpayers' filings, and did not tell him of the necessity of filing an application for refund. Although none of these statements arise to a promise or suggestion that the Department would approve the specific claim for refund, this evidence in conjunction with Taxpayers' argument in closing that it was unfair to punish them when they submitted multiple claims for refund and the Department's refund process was disorganized amounts to a claim for equitable relief.

In *Kilmer*, the Court of Appeals also considered that taxpayers' claims for equitable relief because of numerous alleged errors the Department made in that case. *See id*. ¶25, 446-447. As part of its analysis of the issues, the *Kilmer* Court of Appeals provided a broad outline of equitable estoppel in the tax context. Generally, courts are reluctant to apply the doctrine of equitable estoppel against the state. *See Kilmer*, ¶26, 447 (internal citations omitted). This is particularly true of cases involving taxation. *id*. (internal citations omitted). The *Kilmer* Court of Appeals noted that estoppel can only apply when "there is a shocking degree of aggravated and overreaching conduct or where right and justice demand it." *id.* (internal citations omitted). Moreover, like here where the claim for refund does not comply with the requirements of Section 7-1-26, "equitable estoppel cannot lie against the state when the act sought would be contrary to the requirements expressed by statute." *id*. (internal citations omitted).

The *Kilmer* Court of Appeals found that the Department's own failings in that case were mitigated by the fact that the *Kilmer* taxpayer was represented by an accountant, a "professional, capable of performing her own research… on New Mexico tax law." *id*., ¶41, 700, 450. The *Kilmer* Court of Appeals found that estoppel could not apply because of the accountant's

"expertise, the resources available to [the accountant], and the language in Section 7-1-26 addressing the action a taxpayer should take when Department inaction exceeds 120 days…" *id.* The telephonic statements of the Department employees to Mr. Zerlingo in this case, which do not actually promise Taxpayers any relief (usually some sort of promise of a particular result action/relief is a predicate for reasonable reliance and estoppel), are not grounds to grant Taxpayers equitable relief. Just like in *Kilmer*, Taxpayers had an accountant capable of researching the legal requirements of preserving a refund claim regardless of the alleged lack of information provided by the Department. Like in *Kilmer*, because Taxpayers and their accountant failed to preserve their claims, the Department lacks authority to grant the claim.

After the hearing, Mr. Kuriyan submitted two letters citing numerous concerns about the admission of some evidence into the record that Mr. Kuriyan argued was not timely disclosed, due process challenges to the Department's theory of the case as presented at the hearing, and complaints about Ms. Friedman's statements to him about the law on claims for refund and the potential results if he proceeded with the hearing process. The Department, through Staff Attorney Ms. Friedman, filed a response to Taxpayers' letters.

The Administrative Hearings Office is tasked with conducting fair and impartial hearings to both participants in the proceeding. *See* NMSA 1978, § 7-1B-6 (D)(2) (2015) (hearing officer shall allow ample and fair presentation of complaints and defenses). The Administrative Hearings Office sends out a detailed FAQ sheet with every hearing notice, explaining the hearing process and the role of the different parties and the Administrative Hearings Office. Under the Administrative Hearings Office Act, the Department has no authority or supervision over the separate and independent Administrative Hearings Office's conduct of tax protest hearings and rulings, and any implied or express suggestion to the contrary is incorrect. However, in

conducting hearings and making its rulings, the Administrative Hearings Office must follow the requirements of statute and apply controlling legal precedent to the evidence presented by the parties, making legitimate discussion of the application of controlling legal precedent to the facts of a protest germane. As should be relatively apparent from this decision (and other decisions and orders of the Hearings Bureau and the Administrative Hearings Office), the law surrounding the timeliness of claims for refund is relatively inflexible and places specific obligations on taxpayers both to timely present their claims and preserve their claims for refund in the face of inaction. While it is understandable that Mr. Kuriyan may have been frustrated to hear this from Ms. Friedman in their discussions before the hearing, Ms. Friedman in her written response generally articulated a good-faith, legal basis consistent with legal precedents in her discussions with Mr. Kuriyan.

Nevertheless, it is worth reiterating that Department employees have a specific obligation to treat taxpayers with dignity and respect. *See* NMSA 1978, § 7-1-4.1 (B) (2003). Under NMSA 1978, Section 7-1-4.2, taxpayers are entitled to courteous assistance, to the right to seek review (a hearing) under the Tax Administration Act, and to nontechnical explanations of the procedures, remedies, and rights available at protest and appeal. While an administrative hearing is an adversarial process between two litigants, which naturally involves some level of disagreement and self-interest in their discussion of the legal underpinnings of a case, these provisions make it clear that the Legislature still imposes requirements on the Department to conduct itself in a professional, fair, and courteous manner throughout the proceeding, including in preparation for a hearing that a taxpayer is entitled to under the Taxpayer Bill of Rights. The Administrative Hearings Office fully expects Department employees to behave professionally in accord with this Legislative mandate at all stages of the hearing proceeding.

In the post-hearing letters, Taxpayers moved for exclusion of Department exhibits A, B-2, and B-3 (Taxpayers PIT-1 returns in 2008, 2010, and 2011) because the Department did not provide copies to Taxpayers before the scheduled hearing. This issue was already ruled upon on the record, and Taxpayers do not identify any grounds that would cause the Hearing Officer to reconsider the admission of these documents. The exhibits in question are Taxpayers own tax returns in the years surrounding the claimed refund, which the Department used to try to explain why it failed to act on the 2009 claim for refund. While technically relevant under the applicable broad standard of that concept, the reason for the Department's inaction on the 2009 claim for refund included in Taxpayers' 2009 PIT-1 is not particularly probative in the specific legal analysis used to determine whether a taxpayer preserved a claim for refund. Nevertheless, the documents were admitted over objection because they are documents that Taxpayers prepared (and presumably possessed copies), the documents were for a limited contextual purpose, and admission of the documents prepared by Taxpayers was not prejudicial to Taxpayers given their limited purpose. Moreover, the Department's objection at hearing to the admission of Taxpayers' Exhibit #3 not provided to the Department before the hearing was equally unpersuasive. In other words, both sides presented documents into the record that had not previously been provided to the opposing party. These non-disclosed documents provided by both parties were admitted over objection because neither could articulate any actual, material prejudice for the breach.

Taxpayers' due process complaints focus on allegations that the Department allegedly changed its factual theory of the case from the time of the scheduling conference until the merits hearings, thereby surprising Taxpayers and preventing Taxpayers from subpoenaing an envelope showing that the December 2013 claim for refund was timely made[2]. The triggering documents

[2] The hearing officer has already found that Taxpayers made the December 2013 claim for refund timely even without the envelope, so the absence of the envelope was not prejudicial to Taxpayer's case. Although there were

in this protest are the Department's denial of claim for refund under letter id. no. L1600681936, and Taxpayers' protest of that denial. In the Department's denial of protest letter, the Department indicated that Taxpayers refund claim was untimely under Section 7-1-26. Taxpayers filed a protest citing the specific reasons why it disagreed with that timeliness determination. The grounds cited in that protest letter became the grounds of the hearing protest proceeding, unless amended before the hearing. *See* NMSA 1978, § 7-1-24 (B). At the scheduling conference, both sides in the proceeding were asked to address the issues at protest. The purpose of summarizing the issues at protest is both so that the assigned hearing officer can gauge the potential length of the discovery process, the potential length of hearing, and to encourage the basic communication between parties that is necessary to have an efficient and productive hearing process. While this discussion of issues during the scheduling conference is certainly pertinent to how the hearing proceeds, it is not generally a substitute for the original Department's action/inactions and a taxpayer's protest to that action, which controls the grounds of the proceeding under Section 7-1-24 (B). In this case, Taxpayer was notified by the Department that the basis of the denial of claim for refund was untimeliness under Section 7-1-26. The Department's discussion of the 2008, 2010, and 2011 returns in the context of providing explanation as to why the 2009 return and claim for refund was not processed does not alter the basis legal analysis under Section 7-1-26 whether Taxpayers' claims for refund could be granted under the relevant statutory deadlines. The essence of due process is that the person has notice, and an opportunity to be heard. *See Albuquerque Bernalillo County Water Util. Auth. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-013, ¶28, 148 N.M. 21 (in administrative law, due process generally means "notice of the opposing party's claims and a reasonable opportunity to meet them."). Taxpayers had a hearing

some disputed facts in this matter, this matter turns on the legal analysis rather than any disputed fact. Even under Taxpayers view of the facts, the legal analysis discussed above does not allow for granting a claim for refund that Taxpayers did not preserve.

that focused on timeliness of and entitlement to their refund claim under Section 7-1-26, which was the stated basis of the Department's denial of the claim for refund in its denial letter that Taxpayers protested, satisfying due process requirements.

CONCLUSIONS OF LAW

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

B. Holding the July 7, 2015 Scheduling Hearing satisfied the 90-day hearing requirement of NMSA 1978, Section 7-1B-8 (2015).

C. Taxpayers had notice and an opportunity to be heard on the Department's denial of claim for refund as untimely under Section 7-1-26.

D. Taxpayers failed to either protest or file a civil action challenging the Department's inaction on their October 14, 2010 claim for refund filed with their 2009 PIT-1 within 210-days as required under NMSA 1978, Section 7-1-26 (B), rendering that claim stale. The Department lacks either express or inherent authority to grant Taxpayers' stale claim for refund. *See Kilmer v. Goodwin*, 2004-NMCA-122, 136 N.M. 440.

E. Taxpayers timely filed another claim for refund in December of 2013 before expiration of the statute of limitations on a claim for refund of 2009 personal incomes taxes.

F. Taxpayers failed to either protest or file a civil action challenging the Department's inaction on their December 2013 claim for refund within 210-days as required under NMSA 1978, Section 7-1-26 (B), rendering that claim stale. The Department lacks either express or inherent authority to grant Taxpayers' stale claim for refund. *See Kilmer v. Goodwin*, 2004-NMCA-122, 136 N.M. 440.

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

DATED: December 17, 2015.

Brian VanDenzen
Interim Chief Hearing Officer
Administrative Hearings Office
P.O. Box 6400
Santa Fe, NM 87502

NOTICE OF RIGHT TO APPEAL

Pursuant to NMSA 1978, Section 7-1-25 (1989), 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. Either party filing an appeal shall file a courtesy copy of the appeal with the Administrative Hearings Office contemporaneous with the Court of Appeals filing so that the Administrative Hearings Office may being preparing the record proper.

CERTIFICATE OF SERVICE

On December 17, 2015, a copy of the foregoing Decision and Order was submitted to the parties listed below in the following manner:

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