

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

**IN THE MATTER OF THE PROTEST OF
DAVID AND KRISTINE GREIG,
TO THE DENIAL OF REFUND ISSUED UNDER
LETTER ID NO. L2057050160**

No. 16-07

DECISION AND ORDER

A formal hearing on the above-referenced protest was held on February 18, 2016 before Hearing Officer Dee Dee Hoxie. The Taxation and Revenue Department (Department) was represented by Ms. Melinda Wolinsky, Staff Attorney. Ms. Sonya Varela, Auditor, also appeared on behalf of the Department. Mr. David Greig and Ms. Kristine Greig (Taxpayers) appeared for the hearing and represented themselves. 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 October 15, 2015, the Department denied the Taxpayers' request for refund regarding an overpayment of personal income tax (PIT) in 2008.
2. On November 16, 2015, the Taxpayers filed a formal protest letter.
3. On December 29, 2015, the Department filed a Request for Hearing asking that the Taxpayers' protest be scheduled for a formal administrative hearing.
4. On December 31, 2015, the Hearings Office issued a notice of hearing. The hearing date was set within ninety days of the receipt of the protest.
5. The Taxpayers requested a continuance of the hearing, which was granted.
6. An Amended Notice of Hearing was sent to the parties on January 12, 2016.

7. For the 2008 tax year, the Taxpayers were granted an extension of time to file their PIT return. The Taxpayers made an estimated tax payment of \$1,610.00 in April 2009 and filed their return in October 2009.
8. On their return, the Taxpayers claimed a refund of \$224.00, which was granted and paid to them.
9. The Taxpayers' return failed to account for their estimated tax payment, which they were also entitled to claim for refund.
10. On December 23, 2009, the Department issued a letter to the Taxpayers and advised that there was an overpayment of PIT for the 2008 tax year in the amount of \$1,610.00, which was the amount of their estimated payment.
11. Enclosed with the letter was an application for refund.
12. The Taxpayers filed the application for refund with the Department on or about January 25, 2010.
13. The Taxpayers consulted with an accountant, who recommended that they also file an amended PIT return for 2008. The Taxpayers filed the amended return requesting a refund with the Department on or about October 17, 2010.
14. Both of these requests occurred within the statute of limitations as they both occurred within three years of the year when the tax was due.
15. The Department took no action on either of the Taxpayers claims for refund.
16. In 2015, the Taxpayers contacted the Department and inquired about the status of their refund claim.
17. The Department employee at the office saw that the money was still there and advised the Taxpayers to file another claim for refund.

18. On October 8, 2015, the Taxpayers filed another claim for refund for the 2008 tax year.
19. The Department denied the claim based on the statute of limitations.

DISCUSSION

The issue to be decided is whether the Taxpayers' claim for refund is 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 Taxpayers' 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 two timely claims for refund in 2010. However, the claims were neither granted nor denied within 120 days from the date of the claims.

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 refileing 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 Taxpayers refiled their claim on October 8, 2015. 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 Taxpayers' 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 Taxpayers failed to perfect their right to appeal the inaction by the Department within 210 days from the filing of the claims.

The Taxpayers argued that it is fundamentally unfair for the Department to keep the funds that they overpaid in 2008. The Taxpayers argued that the \$1,610.00 is legally theirs and that the Department should not be able to keep it. The statute absolutely bars the Department from acting on a claim for refund that is beyond the statute of limitations even when the claim was originally filed within the statute of limitations. *See In re Kilmer*, 2004-NMCA-122, 136 N.M. 440. The statute of limitations prevents stale claims and effectively places the onus on taxpayers to pursue their claim in a timely manner because the taxpayers are the one who can more easily keep track of their claims for refund. *See Kilmer*, 2004-NMCA-122, ¶ 16.

The claims for refund were filed in 2010. The Department neither granted nor denied the refund within 120 days from the dates of the claims. The Taxpayer neither filed a protest nor an action in district court within 210 days from the dates of the claims. 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 Taxpayers refiled their claim on October 8, 2015. 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).

Unclaimed Property.

The Taxpayers asked if they could still obtain their money from the Department as unclaimed property. The Department did not know the answer to that question. The Department is responsible for unclaimed property under an entirely different statute. *See* NMSA 1978, § 7-8A-1 *et seq.* The Taxpayers claims for refund were made under the Tax Administration Act.

See NMSA 1978, § 7-1-1 *et seq.* These are separate statutory sections with separate requirements and deadlines. As the Taxpayers' claim, by means of applications for refund and an amended return, was under the Tax Administration Act, the Taxpayers' claim is barred by the statute of limitations. *See* NMSA 1978, § 7-1-26. The issues of the protest did not include any claim under the Uniform Unclaimed Property Act, and no opinion is rendered on that issue.

CONCLUSIONS OF LAW

A. The Taxpayers filed a timely written protest to the denial of refund issued under Letter ID number L2057050160, and jurisdiction lies over the parties and the subject matter of this protest.

B. The Taxpayers failed to take appropriate action when the Department failed to deny or to grant their refund in 2010. *See* NMSA 1978, § 7-1-26.

C. The Taxpayers failed to refile their claim for refund by December 31, 2012; therefore, the claim for refund was barred by the statute of limitations. *See id.*

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

DATED: March 7, 2016.

Dee Dee Hoxie

DEE DEE HOXIE
Hearing Officer
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