

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

**IN THE MATTER OF THE PROTEST OF  
JOHN C. & SUSAN GRAZIER  
TO DENIAL OF REFUNDS ISSUED UNDER LETTER  
ID NOs. L0541053488, L1614795312, and L0196366896**

**No. 16-14**

**DECISION AND ORDER**

A formal hearing on the above-referenced protest was held on April 13, 2016, before Monica Ontiveros, Hearing Officer. The Taxation and Revenue Department (“Department”) was represented by Julia Belles, attorney for the Department. Ms. Sonya Varela, protest auditor, appeared and testified as a witness for the Department. John C. and Susan Grazier (“Taxpayers”) appeared and testified on their own behalf. No exhibits were offered by either party.

Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

**FINDINGS OF FACT**

1. Taxpayers failed to file timely personal income tax returns for tax years 2008, 2009 and 2010.
2. Taxpayers filed personal income tax returns for tax years 2008, 2009 and 2010 on or about November 19, 2015, claiming a refund for each tax year.
3. Taxpayers claimed a refund in the amount of \$557.00 for tax year 2008. **[Letter Id. No. 0541053488]**.
4. The Department denied the refund request on January 21, 2016 because the tax

return was filed beyond the three year statute of limitations. **[Letter Id. No. 0541053488].**

5. Taxpayers claimed a refund in the amount of \$380.00 for tax year 2009. **[Letter Id. No. 1614795312].**

6. The Department denied the refund request on January 21, 2016 because the tax return was filed beyond the three year statute of limitations. **[Letter Id. No. 1614795312].**

7. Taxpayers claimed a refund in the amount of \$282.00 for tax year 2010. **[Letter Id. No. 0196366896].**

8. The Department denied the refund request on January 20, 2016 because the tax return was filed beyond the three year statute of limitations. **[Letter Id. No. 1614795312].**

9. Taxpayers protested the three denials of refund on January 30, 2016.

10. The Department acknowledged the three denials on February 9, 2016. **[Letter Id. No. 0700265008].**

11. The Department requested a hearing in this matter on March 16, 2016.

12. On March 17, 2016, the Administrative Hearings Office mailed a Notice of Administrative Hearing setting the hearing for April 13, 2016.

13. Taxpayers were both employed by a retirement community center. They both lost their jobs sometime in August 2007 within a short period of time of each other. **(CD 8:05-8:44; 9:25-9:35).**

14. Mrs. Grazier became ill sometime after losing her job. **(CD 9:44-10:05).**

15. Prior to and during the tax periods at issue, Taxpayers supported themselves, their daughter and two grandchildren. **(CD 8:44-9:00).**

16. Taxpayers became overwhelmed by the loss of their jobs and Mrs. Grazier's

illness. **(CD 10:22–10:26).**

17. Taxpayers could not afford to hire someone to prepare their tax returns during the tax periods at issue. **(CD 10:18–10:26).**

18. Taxpayers spoke with two Department employees, Daniel Trujillo and Jessica, in 2009 and later who told them that tax years 2006, 2007, 2008, 2009, and 2010 were being audited/reviewed and that the Department would owe them money or the most they owed was \$25.00. **(CD 12:57-14:00; 15:11-15:28).**

19. In 2009 and 2010, the Department assessed Taxpayers for tax years 2006 and 2007 and the Department made partial abatements. **(CD 35:50-35:55; 36:34-36:40).**

20. Mrs. Grazier did not know there was a statute of limitations for filing refund claims. **(CD 20:15-20:35).**

## **DISCUSSION**

The issue to be determined is whether Taxpayers are entitled to refund amounts of \$557.00, \$380.00 and \$282.00 which they requested on November 19, 2015. There are no factual issues in dispute. Taxpayers argued that they were unable to file timely refund claims because they did not realize that there was a statute of limitations and because the Department employees provided misleading information to them.

### ***Claims for Refund.***

Generally speaking, a claim for refund must be filed within three years from the end of the calendar year in which the payment was originally due or the overpayment was made. The statute is fairly clear and states that: "...no credit or refund of any amount may be allowed or made to any person ... (1) within three years of the end of the calendar year in which: (a) the

payment was originally due or the overpayment resulted from an assessment...”. NMSA 1978, §7-1-26(D)(1)(a) (2015). A return must be filed by the 15th of April following the taxable year. NMSA 1978, §7-2-12 (2003). If a credit or rebate is being requested, a taxpayer has three years from the end of the calendar year which follows the calendar year in which the return was due to claim a credit or rebate. NMSA 1978, §7-2-12.1 (1990).

The claim for refund statute absolutely bars the Department from acting on a claim for refund that is not filed within the time period set out in the statute. *See Kilmer v. Goodwin*, 2004-NMCA-122, 136 N.M. 440, 99 P.3d 690. While not referring to the specific paragraph of Section 7-1-26 which is at issue in this case, the court in *Kilmer* stated that, “(t)he purpose of the time deadline in 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.” *See id.* at ¶16.

In this case, the refund amounts of \$557.00, \$380.00 and \$282.00, which were requested on November 19, 2015, were filed untimely for all of the tax periods of 2008, 2009 and 2010. Taxpayers were required to file their 2008 personal income tax claim for refund, which was due on April 15, 2009, no later than December 31, 2012; the 2009 personal income tax claim for refund, which was due on April 15, 2010, was due no later than December 31, 2013; and the 2010 personal income tax claim for refund, which was due on April 15, 2011, was due no later than December 31, 2014. Each return or claim for refund was filed outside of the three year period. Therefore, the claims for refund were filed untimely by Taxpayers.

***No Information.***

Taxpayers argued that they did not know that there was a statute of limitations in which

to file a claim for refund. However, Taxpayers testified that they were in contact with Department employees when they received the Notice of Assessments in 2009 and 2010, and they could certainly have asked the Department's employees when the deadline was for filing the claims for refund.

***Equitable Estoppel.***

Taxpayers did not use the phrase "equitable estoppel" when they argued that they were entitled to a refund, but a quick review of the elements of equitable estoppel will be discussed. The argument proposed by Taxpayers is that the statements made by Department employees, Daniel Trujillo and Jessica, in 2009 and later indicating that the Department would owe them money or they only owe \$25.00 misled them and now requires the Department to refund them the requested amounts of \$557.00, \$380.00 and \$282.00.

Generally, the courts are reluctant to apply equitable estoppel against a government to agency. *Gallegos v. Pueblo of Tesuque*, 2002-NMSC-12, §24, 132 N.M. 207, 46 P.3d 668. Before the courts will apply estoppel, the state's conduct must be "shocking degree of aggravated and overreaching conduct or where right and justice demand it." *Wisznia v. State, Human Servs. Dep't*, 1998-NMSC-11, §17, 125 N.M. 140, 958 P.2d 98. Moreover, the courts are reluctant to apply equitable estoppel against a government agency if there are no written assurances made and only oral representations exist. *Bien Mur Indian Mkt. Ctr.*, 1988-NMCA-104, 108 N.M. 355, 772 P.2d 885. The elements Taxpayers would need to prove that estoppel applies against the Department are: "(1) the government knew the facts; (2) the government intended its conduct to be acted upon or so acted that plaintiffs had the right to believe it was so intended; (3) plaintiffs must have been ignorant of the true facts; and (4) plaintiffs reasonably relied on the

government's conduct to their injury." *Gallegos* 2002-NMSC-12, §24 n.5. In addition to these four elements, there must be "affirmative misconduct on the part of the government." *Gallegos* 2002-NMSC-12, §24 n.5.

In applying these principals to Taxpayers' argument, the statements made by Daniel Trujillo and Jessica were not incorrect. In 2009 or later, when they spoke with the employees, Taxpayers should have filed their personal income tax returns for 2008, 2009 and 2010 and they would have been eligible for refunds for 2008, 2009 and 2010. By waiting six years to file their returns, Taxpayers were precluded from receiving a refund. For estoppel to apply, there needs to be affirmative misconduct on the part of the government employees. Since there is no affirmative misconduct and since there are no statements that are inaccurate, equitable estoppel does not apply in this case.

### **CONCLUSIONS OF LAW**

A. Taxpayers filed three timely written protests on January 30, 2016 to the denial of the claims for refund in the amounts of \$557.00, \$380.00 and \$282.00, and jurisdiction lies over the parties and the subject matter of this protest.

B. The hearing was timely set and held within 90-days from the date of the protest pursuant to NMSA 1978, Section 7-1B-8(A) (2015).

C. The personal income tax returns or claims for refund for tax years 2008, 2009 and 2010 were filed on November 19, 2015, and they were filed untimely pursuant to NMSA 1978, §7-1-26(D) (2015).

D. Taxpayers were not misled by the Department's employees and equitable estoppel does not apply in this matter because there was no affirmative misconduct by the Department.

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

DATED: May 9, 2016

*Monica Ontiveros*

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Monica Ontiveros  
Hearing Officer  
Taxation & Revenue Department  
Post Office Box 630  
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**NOTICE OF RIGHT TO APPEAL**

Pursuant to NMSA 1978, Section 7-1-25 (1989), Taxpayers 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 shall become final. A copy of the Notice of Appeal should be mailed to John Griego, Taxation & Revenue Hearings Bureau at P.O. Box 630 Santa Fe, New Mexico 87504-0630. Mr. Griego may be contacted at 505-827-0466.