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

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**IN THE MATTER OF THE PROTEST OF
BRIAN AND LORETTA GARRETT
TO THE DENIAL OF REFUND
ISSUED UNDER LETTER ID NO. L0684550832**

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v. AHO No. 20.10-129R, D&O No. 21-01

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NEW MEXICO TAXATION AND REVENUE DEPARTMENT

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DECISION AND ORDER

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On January 7, 2021, Hearing Officer Dee Dee Hoxie, Esq. conducted a videoconference hearing on the merits of the denial of refund. The Taxation and Revenue Department (Department) was represented by Richard Peneer, Staff Attorney, who was present by internet without video. Alma Tapia, Auditor, appeared by videoconference on behalf of the Department. Loretta Garrett¹ (Taxpayer) appeared by videoconference and represented herself. The Taxpayer and Ms. Tapia testified. The Hearing Officer took notice of all documents in the administrative file. No exhibits were submitted.

The main issue to be decided is whether the Taxpayer's claim for refund was barred by the statute of limitations. The Hearing Officer considered all of the evidence and arguments presented by both parties. The Hearing Officer finds in favor of the Department. IT IS

DECIDED AND ORDERED AS FOLLOWS:

¹ Brian and Loretta Garrett are a married couple who filed jointly. The denial of refund at issue is in regards to Loretta Garrett's claim of a credit as a rural healthcare practitioner. Therefore, the singular "Taxpayer" is used throughout this decision.

FINDINGS OF FACT

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2 1. On February 7, 2020, under letter id. no. L0684550832, the Department issued a
3 denial of refund to the Taxpayer based on the statute of limitations for filing a claim for refund.
4 [Administrative file, Testimony of Taxpayer, Testimony of Ms. Tapia].

5 2. On March 25, 2020, the Taxpayer filed a written protest to the denial.
6 [Administrative file, Testimony of Taxpayer, Testimony of Ms. Tapia].

7 3. On April 30, 2020, the Department acknowledged its receipt of the protest.
8 [Administrative file].

9 4. On October 27, 2020, the Department filed a Request for Hearing.
10 [Administrative File].

11 5. On October 27, 2020, the Administrative Hearings Office sent notice of
12 administrative hearing by videoconference to the parties. [Administrative file].

13 6. The hearing was held within 90 days of the request for hearing, as required by
14 statute. *See* NMSA 1978, § 7-1B-8 (2019).

15 7. During the 2015 tax year, the Taxpayer was working in New Mexico as a rural
16 healthcare practitioner. [Testimony of Taxpayer].

17 8. Personal income taxes and returns for the 2015 tax year were due in April 2016,
18 but the Taxpayer had an extension to file her return to October 2016. [Testimony of Taxpayer].
19 *See also* NMSA 1978, § 7-2-12 (2016).

20 9. The Taxpayer filed her 2015 tax return on November 21, 2016. [Testimony of
21 Taxpayer].

1 10. The Taxpayer did not claim a rural healthcare practitioner credit when she
2 initially filed her 2015 tax return. [Testimony of Taxpayer]. *See* NMSA 1978, § 7-2-18.22
3 (2007).

4 11. Some time after she filed her 2015 tax return, the Taxpayer became aware of the
5 rural healthcare practitioner credit (the credit). The Taxpayer then applied for a certificate of
6 eligibility for the credit. [Testimony of Taxpayer]. *See* NMSA 1978, § 7-2-18.22.

7 12. A certificate of eligibility for the credit for the 2015 tax year was issued to the
8 Taxpayer on March 1, 2019. [Testimony of Taxpayer, Administrative file].

9 13. On January 24, 2020, the Taxpayer's accountant prepared an amended 2015 tax
10 return, claiming the credit and a refund. The Department received and filed the amended return
11 on January 28, 2020. [Testimony of Taxpayer, Testimony of Ms. Tapia, Administrative file].

12 **DISCUSSION**

13 **Statute of Limitations for Filing a Claim.**

14 Generally, a claim for refund must be filed within three years of the end of the calendar
15 year in which the payment was originally due. *See* NMSA 1978, §7-1-26 (F) (2019)². The
16 Taxpayer's personal income taxes for the 2015 tax year were due and paid in 2016. Therefore,
17 the Taxpayer could file a claim for refund for the 2015 tax year three years from the end of 2016
18 when the taxes were due. Three years from the end of 2016 was December 31, 2019. The
19 Taxpayer's claim for refund for the 2015 tax year was filed with the Department on January 28,
20 2020. Consequently, the Taxpayer's claim for refund was not timely and was properly denied.

² For ease of reference, the 2019 version of the statute is used, but previous versions of the statute also contained the three-year limitation and would apply to the 2015 tax year.

1 For the foregoing reasons, the Taxpayer's protest **IS DENIED**.

2 DATED: January 20, 2021.

3 *Dee Dee Hoxie*

4 Dee Dee Hoxie
5 Hearing Officer
6 Administrative Hearings Office
7 P.O. Box 6400
8 Santa Fe, NM 87502

9 **NOTICE OF RIGHT TO APPEAL**

10 Pursuant to NMSA 1978, Section 7-1-25 (2015), the parties have the right to appeal this
11 decision by *filing a notice of appeal with the New Mexico Court of Appeals* within 30 days of the
12 date shown above. If an appeal is not timely filed with the Court of Appeals within 30 days, this
13 Decision and Order will become final. Rule of Appellate Procedure 12-601 NMRA articulates the
14 requirements of perfecting an appeal of an administrative decision with the Court of Appeals. Either
15 party filing an appeal shall file a courtesy copy of the appeal with the Administrative Hearings Office
16 contemporaneous with the Court of Appeals filing so that the Administrative Hearings Office may
17 begin preparing the record proper. The parties will each be provided with a copy of the record proper
18 at the time of the filing of the record proper with the Court of Appeals, which occurs within 14 days
19 of the Administrative Hearings Office receipt of the docketing statement from the appealing party.

20 *See* Rule 12-209 NMRA.

CERTIFICATE OF SERVICE

On January 20, 2021, a copy of the foregoing Decision and Order was submitted to the parties listed below in the following manner:

Email *Email*

INTENTIONALLY BLANK

John Griego
Legal Assistant
Administrative Hearings Office
P.O. Box 6400
Santa Fe, NM 87502