

1
2
3
4
5
6
7

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

8
9
10
11
12
13
14
15
16
17

**IN THE MATTER OF THE PROTEST OF
ROY A. CHARLETTA
TO THE DENIAL OF REFUND
ISSUED UNDER LETTER ID NO. L1674236336**

18

v.

AHO No. 21.10-061R, D&O No. 21-24

19
20
21
22
23

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

DECISION AND ORDER

24
25

On November 30, 2021, Hearing Officer Dee Dee Hoxie, Esq. conducted a videoconference hearing on the merits of the protest to the denial of refund. The Taxation and Revenue Department (Department) was represented by Richard Pener, Staff Attorney, who appeared by internet. Sonya Varela, Auditor, also appeared by internet on behalf of the Department. Roy Charletta (Taxpayer) appeared by internet and telephone for the hearing. The Taxpayer 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 Department properly denied the claim for refund for the 2013 tax year. The Hearing Officer considered all of the evidence and arguments presented by both parties. Because the Taxpayer's claim for refund was filed beyond the three-year statute of limitations, the Hearing Officer finds in favor of the Department. IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. On March 1, 2021, the Department issued a denial of refund for the 2013 tax year. [Admin. file L1674236336; Testimony of Taxpayer].

1 2. On March 31, 2021, the Taxpayer filed a timely written protest to the denial of
2 refund. [Admin. file protest].

3 3. On April 30, 2021, the Department acknowledged its receipt of the protest.
4 [Admin. file L1781438896].

5 4. On October 25, 2021, the Department filed a request for hearing with the
6 Administrative Hearings Office. [Admin. file request].

7 5. The hearing on the merits occurred on November 30, 2021, which was within 90
8 days of the request as required by statute. [Admin. file].

9 6. In February or March 2018, the Taxpayer discovered that his employer had been
10 withholding New Mexico income tax from his pay since he began employment with them in
11 2013. [Testimony of Taxpayer; Admin. file].

12 7. The Taxpayer is a resident of New York. [Testimony of Taxpayer; Admin. file].

13 8. Apparently, an employee handling the pay for the company had inadvertently
14 checked the boxes for both New Mexico and New York withholding. [Testimony of Taxpayer].

15 9. After communicating with the Department in March or April 2018, the Taxpayer
16 filed requests for refund for the 2014, 2015, and 2016 tax years, which the Department granted.
17 [Testimony of Taxpayer; Admin. file].

18 10. The Department's employee did not mention the statute of limitations to the
19 Taxpayer during their communications. [Testimony of Taxpayer].

20 11. In June 2018, the Taxpayer filed a return and requested a refund for the 2013 tax
21 year. [Testimony of Taxpayer; Admin. file].

1 12. In January 2021, the Department sent the Taxpayer a return adjustment notice that
2 indicated that the Taxpayer had an outstanding tax liability for the 2013 tax year. [Testimony of
3 Taxpayer; Admin. file L1142690224].

4 13. The Taxpayer did not make any payments to the Department based on this return
5 adjustment notice; rather, the Taxpayer contacted the Department to inquire about the notice. An
6 employee from the Department told the Taxpayer that the notice indicated that his 2013 tax year
7 had been reopened, that the statute of limitations was void, and that his refund would be
8 processed and approved. [Testimony of Taxpayer].

9 14. In February 2021, the Department sent the Taxpayer a return adjustment notice
10 that indicated that the Taxpayer had no outstanding tax liability for the 2013 tax year.
11 [Testimony of Taxpayer; Admin. file L0143839664].

12 15. On March 1, 2021, the Department denied the request for refund based on the
13 statute of limitations. [Testimony of Taxpayer; Admin. file L1674236336].

14 DISCUSSION

15 Statute of Limitations for Filing a Claim for Refund.

16 Generally, a claim for refund may be made “only within three years after the end of the
17 calendar year in which” the tax payment was originally due or when the overpayment resulted from
18 an assessment, whichever is later. *See* NMSA 1978, § 7-1-26 (F) (1) (2019)¹. New Mexico income
19 taxes are generally due on April 15th of the year following the taxable year, in accordance with the
20 federal income taxable year and return due dates. *See* NMSA 1978, § 7-2-12 (2016). Therefore, the
21 return and taxes for the 2013 taxable year were due on April 15, 2014. *See id.* The Taxpayer’s

¹ For ease of reference, the most current version of the statute is cited. The previous versions of the statute also contained the general three-year statute of limitations. *See generally* NMSA 1978, § 7-1-26.

1 overpayment resulted from withholding tax payments made by his company, not from an
2 assessment. [Testimony of Taxpayer]. Three years from the end of 2014 was December 31, 2017.
3 The Taxpayer's return with the claim for refund was filed in June 2018. [Testimony of Taxpayer;
4 Admin. file]. Therefore, the Taxpayer's claim for refund of the 2013 taxable year was filed
5 approximately six months beyond the three-year statute of limitations. *See* NMSA 1978, § 7-1-26.
6 [Testimony of Taxpayer; Admin. file].

7 The Taxpayer argues that the Department's return adjustment notices in January and
8 February 2021 reopened the 2013 tax year for claims for refund and effectively voided the statute of
9 limitations. The statute provides for an extended statute of limitations for claiming a refund when a
10 taxpayer is assessed for a tax period that occurred more than three years prior to the assessment.
11 *See* NMSA 1978, § 7-1-26 (F) (5). In that instance, the taxpayer may file a claim for refund within
12 one year of the assessment date for the same tax period assessed or for any period following the
13 assessed tax period. *See id.*

14 The return adjustment notice is not an assessment. *See* NMSA 1978, § 7-1-17 (B) (2007)
15 (indicating what constitutes a notice of assessment). The return adjustment notice showing a
16 liability advised that a notice of assessment might be issued in the future. [L1142690224]. A letter
17 that advises a taxpayer of an essential conclusion made by the Department does not restart time
18 limitations. *See In Re Kilmer*, 2004-NMCA-122, ¶ 43, 136 N.M. 440. The purpose of statutory
19 deadlines for claiming a refund is to avoid stale claims. *See id.* at ¶ 16. A taxpayer has the
20 burden of claiming the refund within the statutory time limits because the taxpayer is in the best
21 position to know the status of their tax liability. *See id.*

22 **Estoppel.**

1 The Taxpayer argues that the Department’s employee also told him that the statute of
2 limitations would be void and that his claim would be processed and approved. The Taxpayer’s
3 argument is essentially one for equitable estoppel. Equitable estoppel may be found against the
4 state where there is “a shocking degree of aggravated and overreaching conduct or where right
5 and justice demand it.” *Wisznia v. State, Human Servs. Dep’t*, 1998-NMSC-011, ¶ 17, 125 N.M.
6 140. Equitable estoppel against the state is disfavored, especially in cases involving taxes. *See*
7 *Taxation and Revenue Dep’t v. Bien Mur Indian Market*, 1989-NMSC-015, ¶9-10, 108 N.M.
8 228. Equitable estoppel will not apply against the state when it would be contrary to the
9 requirements of statute or law. *See Rainaldi v. Pub. Employees Ret. Bd.*, 1993-NMSC-028, ¶ 18-
10 19, 115 N.M. 650. *See also In Re Kilmer*, 2004-NMCA-122, ¶ 26.

11 An essential element of equitable estoppel is that the Taxpayer relied on the
12 government’s conduct to his detriment. *See In Re Kilmer*, 2004-NMCA-122, ¶ 27. The
13 Taxpayer clearly did not rely on the return adjustment notice since it was issued more than two
14 years after he made his claim for refund. [Testimony of Taxpayer; Admin. file L1142690224].
15 Also, the issue of equitable estoppel is moot in the context of this protest because the
16 Administrative Hearings Office has not been granted statutory authority to exercise an equitable
17 judicial remedy. *See AA Oilfield Serv. v. N.M. State Corp. Comm’n*, 1994-NMSC-085, ¶ 18, 118
18 N.M. 273 (holding that the quasi-judicial powers of an administrative body did not empower it to
19 grant equitable relief, such as estoppel, because the authority is limited to making factual and
20 legal determinations as authorized by the statute). *See Gzaskow v. Pub. Employees Ret. Bd.*,
21 2017-NMCA-064, ¶35 (recognizing *AA Oilfield Serv.* for the proposition that an agency with
22 quasi-judicial powers did not have authority to grant an equitable remedy). *See also* NMSA
23 1978, § 7-1B-1, *et seq.*

1 **CONCLUSIONS OF LAW**

2 A. The Taxpayer filed a timely, written protest of the Department’s denial of refund,
3 and jurisdiction lies over the parties and the subject matter of this protest. *See* NMSA 1978, § 7-1B-
4 8 (2019).

5 B. The hearing was timely set and held within 90 days of the date that the request for
6 hearing was filed. *See id.*

7 C. The Taxpayer’s claim for refund was not filed within the three-year statute of
8 limitations. *See* NMSA 1978, § 7-1-26.

9 D. The Department properly denied the claim for refund as it was barred by the statute
10 of limitations. *See id. See In Re Kilmer, 2004-NMCA-122.*

11 For the foregoing reasons, the Taxpayer’s protest **IS DENIED**.

12 *Dee Dee Hoxie*

13 Dee Dee Hoxie
14 Hearing Officer
15 Administrative Hearings Office
16 P.O. Box 6400
17 Santa Fe, NM 87502

18 **NOTICE OF RIGHT TO APPEAL**

19 Pursuant to NMSA 1978, Section 7-1-25 (2015), the parties have the right to appeal this
20 decision by *filing a notice of appeal with the New Mexico Court of Appeals* within 30 days of the
21 date shown above. If an appeal is not timely filed with the Court of Appeals within 30 days, this
22 Decision and Order will become final. Rule of Appellate Procedure 12-601 NMRA articulates
23 the requirements of perfecting an appeal of an administrative decision with the Court of Appeals.
24 Either party filing an appeal shall file a courtesy copy of the appeal with the Administrative
25 Hearings Office contemporaneous with the Court of Appeals filing so that the Administrative

1 Hearings Office may begin preparing the record proper. The parties will each be provided with a
2 copy of the record proper at the time of the filing of the record proper with the Court of Appeals,
3 which occurs within 14 days of the Administrative Hearings Office receipt of the docketing
4 statement from the appealing party. *See* Rule 12-209 NMRA.

5 **CERTIFICATE OF SERVICE**

6 On December 15, 2021, a copy of the foregoing Decision and Order was submitted to the
7 parties listed below in the following manner:

8 INTENTIONALLY BLANK