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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
ETHOSENERGY LIGHT TURBINES, LLC
TO THE DENIAL OF REFUND
ISSUED UNDER LETTER ID NO. L1728993392**

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v.

AHO No. 23.08-034R, D&O No. 23-14

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NEW MEXICO TAXATION AND REVENUE DEPARTMENT

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DECISION AND ORDER

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On September 29, 2023, 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 Timothy Williams, Staff Attorney. Lizette Rivera and Arturo Archuleta, Auditors, also appeared for the Department. EthosEnergy Light Turbines, LLC (Taxpayer) was represented by its employee, Arla Vickery. Ms. Vickery and Ms. Rivera testified. The Hearing Officer took notice of all documents in the administrative file. The Department's exhibit D (amended return), and exhibit F (original return) were admitted.

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The main issue to be decided is whether the Taxpayer is entitled to a refund for the tax period of November 2018 that was paid in December 2018. 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:**

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FINDINGS OF FACT

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1. On December 8, 2022, the Department issued a partial denial of refund to the Taxpayer on gross receipts taxes (GRT). The Taxpayer's refund claim was denied for \$844.92 for the tax period of November 2018, that was paid in December 2018. The Taxpayer's refund

1 claim was granted for \$102.91 for the tax periods from January 2019 to October 2020. [Admin.
2 file L1728993392; Testimony of Ms. Vickery; Testimony of Ms. Rivera].

3 2. On January 12, 2023, the Taxpayer filed a timely written protest to the denial of
4 refund. [Admin. file protest].

5 3. On March 31, 2023, the Department acknowledged its receipt of the protest.
6 [Admin. file L0572951664].

7 4. On August 28, 2023, the Department filed a request for hearing and its answer to
8 the protest with the Administrative Hearings Office. [Admin. file request].

9 5. The Taxpayer requested a remote hearing, which was granted. [Admin. file].

10 6. The hearing on the merits was conducted by videoconference on September 29,
11 2023, which was within 90 days of the request for hearing as required by statute. [Admin. file].

12 7. On December 2, 2022, the Taxpayer filed its request for refund on the GRT paid
13 from December 2018 to October 2020. [Admin. file; Testimony of Ms. Vickery; Testimony of
14 Ms. Rivera].

15 8. The GRT paid in December 2018 were for the tax period of November 2018, and
16 the taxes and return were due on December 25, 2018¹. [Testimony of Ms. Vickery; Testimony
17 of Ms. Rivera]. *See also* NMSA 1978, § 7-9-11 (1969) (indicating that GRT is due on the 25th of
18 the month following the taxable event). *See also* NMSA 1978, § 7-1-13 (B) (2021) (indicating
19 that returns are due the same date as the tax is due).

20 9. The Department denied the Taxpayer's request for refund with respect to the GRT
21 paid in December 2018 because the request was made more than three years from end of the year

¹ December 25th is a recognized holiday, and when the 25th day of the month falls on a weekend or a holiday, the deadline is extended to the following business day. *See* 3.2.2.10 NMAC (2001).

1 that the taxes were due and paid. [Testimony of Ms. Rivera]. *See* NMSA 1978, § 7-1-26 (F)
2 (2021).

3 10. The Taxpayer admitted that its request for refund was made more than three years
4 from the end of the year 2018. [Testimony of Ms. Vickery].

5 11. The Taxpayer explained that the position in their organization responsible for
6 handling the taxes was vacant for a period of time and that the need to file the request for refund
7 was overlooked until it was done in December 2022. [Testimony of Ms. Vickery].

8 DISCUSSION

9 **Burden of proof.**

10 “The taxpayer shall have the burden of proof, except as otherwise provided by law.”
11 22.600.3.24 (B) NMAC (2020).

12 **Statute of limitations for claiming a refund.**

13 Generally, a claim for refund must be made within three years of the end of the year in
14 which the tax was originally due. *See* NMSA 1978, § 7-1-26 (F). The Taxpayer admitted that the
15 tax was due and paid in December 2018. [Testimony of Ms. Vickery]. Three years from the end of
16 2018 was December 31, 2021. The Taxpayer’s claim for refund was made on December 2, 2022,
17 nearly a year past the three-year deadline for taxes paid in 2018. [Admin. file; Testimony of Ms.
18 Vickery; Testimony of Ms. Rivera]. The statute of limitations prevents stale claims and
19 effectively places the onus on the taxpayer to pursue their claim in a timely manner because the
20 taxpayer is the one who can more easily keep track of their claims for refund. *See Kilmer v.*
21 *Goodwin*, 2004-NMCA-122, ¶ 16, 136 N.M. 440. If the claim is not filed within the three-year
22 statute of limitations, the claim is barred by the statute. *See* NMSA 1978, § 7-1-26. *See also* -
23 *Kilmer*, 2004-NMCA-122. *See also Sisters of Charity v. County of Bernalillo*, 1979-NMSC-044,

¶ 24-28, 93 N.M. 42 (holding that an untimely filed claim for refund was barred by the statute of limitations).

CONCLUSIONS OF LAW

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

B. The hearing was timely set and held within 90 days of the request for hearing. *See id.* *See also* 22.600.3.8 NMAC (2020).

C. The Taxpayer's claim for refund on the tax due and paid in December 2018 was barred by the statute of limitations as it was not made within three years of the end of 2018. *See* NMSA 1978, § 7-1-26. *See also* *Kilmer*, 2004-NMCA-122. *See also* *Sisters of Charity*, 1979-NMSC-044.

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

DATED: October 19, 2023.

Dee Dee Hoxie

Dee Dee Hoxie
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 (2015), 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. If an appeal is not timely filed with the Court of Appeals within 30 days, this Decision and Order will become final. Rule of Appellate Procedure 12-601 NMRA articulates the requirements of perfecting an appeal of an administrative decision with the Court of Appeals.

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

7 **CERTIFICATE OF SERVICE**

8 On October 19, 2023, a copy of the foregoing Decision and Order was submitted to the
9 parties listed below in the following manner:

10 *First Class Mail and Email*

First Class Mail and Email

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