

1 **STATE OF NEW MEXICO**  
2 **ADMINISTRATIVE HEARINGS OFFICE**  
3 **TAX ADMINISTRATION ACT**

4 **INN OF THE LAUGHING LLAMA**

5 v.

**AHO No. 24.07-021R, D&O No. 24-15**

6 **NEW MEXICO TAXATION AND REVENUE DEPARTMENT**

7 **DECISION AND ORDER**

8 On September 10, 2024, Chief Hearing Officer Brian VanDenzen, Esq., of the  
9 Administrative Hearings Office conducted a merits administrative hearing in the matter of the  
10 tax protest of Inn of the Laughing Llama, (Taxpayer). The hearing was conducted pursuant to the  
11 Tax Administration Act and the Administrative Hearings Office Act. Taxpayer co-owners Alana  
12 Bader and Bridget Lindquist appeared, self-representing Taxpayer at the hearing. Staff Attorney  
13 Timothy Williams appeared, representing the opposing party in the protest, the Taxation and  
14 Revenue Department (Department). Department Protest Auditor Cheryl Tafoya appeared as a  
15 Department witness. During the hearing, the parties relied primarily on the contents of the  
16 administrative file as the record in this case. Additionally, Department Exhibits A (Application  
17 for Refund), Department Ex. B (Amended CRS-1 Return for reporting period ending on April  
18 30, 2019), Department Ex. C (Amended CRS-1 Return for reporting period ending on Sep. 30,  
19 2019), Department Ex. D (Amended CRS-1 Return for reporting periods July 1, 2017 through  
20 December 31, 2017), and Department Ex. E (Amended CRS-1 Return for reporting periods July  
21 1, 2018 through December 31, 2018) were tendered and admitted into the record.

22 In quick summary, the question in this protest is whether the Department has any authority  
23 to grant Taxpayer's otherwise substantively valid but untimely filed refund claims for tax periods  
24 ending between December 31, 2017 and September 30, 2019; because the refund claims were made

1 beyond the applicable statute of limitations on claims for refunds, the Department had no  
2 jurisdiction to grant the untimely claims. IT IS DECIDED AND ORDERED AS FOLLOWS:

3 **FINDINGS OF FACT**

4 1. On May 3, 2023, under letter id. no. L0425630832, the Department issued a full  
5 refund denial for Taxpayer's claims of refund totaling \$8,560.47 for the reporting periods from  
6 December 31, 2017, through November 30, 2019. [Administrative Record, Hearing Request  
7 Packet, Refund Denial].

8 2. On June 9, 2023, Taxpayer filed a formal protest of the Department's refund  
9 denial and a Tax Information Authorization. [Administrative Record, Hearing Request Packet].

10 3. On September 30, 2023, the Department acknowledged receipt of Taxpayer's  
11 protest. [Administrative Record, Hearing Request Packet, Acknowledgement Letter].

12 4. On July 19, 2024, the Department filed a request for hearing on the protest with  
13 the Administrative Hearings Office, along with its formal answer to Taxpayer's protest. Before  
14 that July 19, 2024 filing, the Administrative Hearings Office<sup>1</sup> had no knowledge about the  
15 protest and no statutory role to play in the matter. [Administrative Record, Hearing Request  
16 Packet, Request for Hearing and Department Answer].

17 5. On July 22, 2024, the Administrative Hearings Office promptly issued a Notice of  
18 Administrative Hearing, scheduling the merits hearing that occurred on September 10, 2024,  
19 which was within 90-days of the hearing request. [Administrative Record].

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<sup>1</sup> Pursuant to the Administrative Hearings Office Act, the Administrative Hearings Office (AHO) is an independent agency separate from the Taxation and Revenue Department, tasked with conducting fair and impartial administrative hearings. *See* NMSA 1978, §7-1B-1 through 10 (2019). *See also* Regulation 22.600.1 NMAC (2018). AHO has no statutory role in a case until the Taxation and Revenue Department or a taxpayer file a hearing request with AHO. *See* §7-1B-8 (B) (2019).

1           6.       Bridgit Lindquist and Alana Bader own a short-term rental property called Inn of  
2 the Laughing Llama in Santa Fe, NM, which they rent out through third-party market providers.  
3 [Testimony of Ms. Bader; Testimony of Ms. Lindquist].

4           7.       While Taxpayer started as a semi-annual filer for gross receipts tax purposes in  
5 2017 and 2018, on December 26, 2018, the Department notified that beginning in 2019 and  
6 encompassing the period relevant to this protest, Taxpayer was required to report and pay gross  
7 receipts taxes on a monthly basis. [Testimony of Ms. Bader; Testimony of Ms. Tafoya;  
8 Department Ex.'s B, C, D, and E].

9           8.       Taxpayer reported and paid gross receipts taxes on its receipts from the short-term  
10 property rentals from its inception through October 31, 2021. [Testimony of Ms. Bader;  
11 Testimony of Ms. Lindquist].

12           9.       At some point in 2021, Taxpayer became aware that under its contract with the  
13 third-party market providers, those providers were required to remit applicable gross receipts  
14 taxes for the rentals of Inn of the Laughing Llama booked through those services<sup>2</sup>. [Testimony of  
15 Ms. Bader; Testimony of Ms. Lindquist].

16           10.      After learning that the third-party market providers were required to remit the tax  
17 and after the October 31, 2021 reporting period, Taxpayer ceased paying gross receipts tax  
18 related to the short-term rental receipts.

19           11.      Again after learning that the third-party market providers were required to remit  
20 the tax, Taxpayer also ceased filing gross receipts tax in November of 2021. Nearly a year later,

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<sup>2</sup> For limited purposes of proceeding with the hearing and without confirming any confidential third-party information, the Department did not dispute at hearing that the gross receipts tax associated with the receipts of the short-term rental of Inn of the Laughing Llama may have been remitted by the third-party market providers.

1 Taxpayer discovered it had \$5.00 non-reporting penalties in each subsequent reporting period for  
2 failure to file a monthly return. [Testimony of Ms. Bader; Testimony of Ms. Lindquist].

3 12. On December 7, 2022, Ms. Bader initially contacted the Department for answers  
4 about how to proceed with a refund claim related to the third-party payments an apparently  
5 incorrect refund claim she had submitted. The Department employee explained how to proceed  
6 with a correct, completed refund claim. [Testimony of Ms. Bader; Testimony of Ms. Tafoya].

7 13. Taxpayer again contacted the Department on or about February 17, 2023, to  
8 discuss the refund claims. [Testimony of Ms. Bader; Testimony of Ms. Tafoya].

9 14. On May 2, 2023, Taxpayer filed an application for refund with the Department,  
10 claiming a refund of \$8,560.47 for the reporting periods of December 31, 2017, June 30, 2018,  
11 December 31, 2018, March 31, 2019, April 30, 2019, and September 30, 2019. [Department Ex.  
12 A; Testimony of Ms. Tafoya].

13 15. On May 3, 2023, the Department denied the claim for refund regarding reporting  
14 periods ending respectively on December 31, 2017, June 30, 2018, December 31, 2018, March  
15 31, 2019, April 30, 2019, and September 30, 2019, as periods beyond the statute of limitations.  
16 [Testimony of Ms. Tafoya; Administrative Record, “Full Refund Denial”].

17 16. The Department granted a partial refund in the amount of \$2,342.36 for the  
18 periods between December 31, 2019, and October 31, 2021, periods still within the statute of  
19 limitations for a claim for refund. [Testimony of Ms. Bader; Testimony of Ms. Tafoya;  
20 Department A].

## 21 **DISCUSSION**

22 In this protest, Taxpayer seeks a refund of \$8,560.47 for the reporting periods ending on  
23 December 31, 2017, June 30, 2018, December 31, 2018, March 31, 2019, April 30, 2019, and

1 September 30, 2019, because third-party market providers had already paid the gross receipts tax  
2 associated with Taxpayer’s short-term rentals during that time. Taxpayer expressed frustration  
3 that they were not informed of the double-payment of gross receipts tax and frustration that they  
4 were unable to recover the double-payment through its refund claims because of the  
5 Department’s denial of the claim under the statute of limitations. The Department argues that  
6 since these periods were beyond the statute of limitations periods for refund claims, its denial of  
7 the refund claim was appropriate. Ultimately, as this discussion addresses, the Department  
8 lacked jurisdiction to grant the untimely refund claim and the protest must be denied.

9 Generally, on claims for refund, it is Taxpayer that carries the burden of establishing  
10 entitlement to its claims. *See Corr. Corp. of Am. of Tenn. v. State*, 2007-NMCA-148, ¶17, 142  
11 N.M. 779 (Court of Appeals reviewed refund denial “through the lens of a presumption that the  
12 Department's assessment is correct.”); *citing TPL, Inc. v. New Mexico Taxation & Revenue*  
13 *Dept.*, 2003-NMSC-007, ¶ 10, 133 N.M. 447, 451, 64 P.3d 474, 478. At the hearing, the  
14 Department acknowledged that it did not dispute the underlying validity of Taxpayer’s refund  
15 claims, as demonstrated by the fact that the Department in fact granted Taxpayer refund claims  
16 in other reporting periods still within the statute of limitations, and instead only denied claims it  
17 deemed barred by the statute of limitations period. Thus, the issue in this case was not whether  
18 Taxpayer was substantively entitled to its underlying claims for refund, but whether its claims  
19 were timely made.

20 The general statute of limitation period for a refund claim is found under NMSA 1978,  
21 Section 7-1-26 (2021<sup>3</sup>). Section 7-1-26 (F) (1) (2021) prohibits a refund claim unless made within  
22 three-years of the end of the calendar year in which the tax was due. In the tax realm, an untimely

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<sup>3</sup> The statute was amended effective July 1, 2023, but that amendment makes no material difference to the 2021 statutory version in place at the time of Taxpayer’s May 2, 2023, refund claim.

1 refund claim made beyond the statute of limitations periods is prohibited. *See Sisters of Charity of*  
2 *Cincinnati, Ohio v. Bernalillo Cnty.*, 1979-NMSC-044, ¶ 28, 93 N.M. 42, 46–47, (untimely  
3 property tax refund claim barred from recovery). Specifically, under Section 7-1-26, a taxpayer’s  
4 inability to comply with the deadlines of that section deprives the Department jurisdiction to grant  
5 the refund claim regardless of the merits of the underlying claim. *See Unisys Corp. v. N.M.*  
6 *Taxation & Revenue Dep’t*, 1994-NMCA-059, 117 NM 609 (a taxpayer is required to act in accord  
7 with timelines under Section 7-1-26 to challenge a Department’s inaction on a claim for refund).  
8 *See also Kilmer v. Goodwin*, 2004-NMCA-122, 136 N.M. 440. The New Mexico Court of Appeals  
9 noted in *Kilmer* that the Legislative purpose of the deadlines under Section 7-1-26 is “to avoid stale  
10 claims, which protects the Department's ability to stabilize and predict, with some degree of  
11 certainty, the funds it collects and manages.” *id.* ¶16, 446. The *Kilmer* court further found that the  
12 Legislature placed the responsibility on a taxpayer to maintain an active claim and to timely  
13 confront the Department’s inactions on a claim. *See id.* The *Kilmer* court ultimately held that the  
14 Department lacked either express statutory authority under Section 7-1-26 or implied authority as an  
15 administrative agency to grant that taxpayer’s stale claim for refund beyond the deadlines of that  
16 section. *See id.* ¶19-24, 445-446. Under the operative statute<sup>4</sup> and case law, Taxpayer had three  
17 years from the end of the calendar year in which the tax was originally due to file their refund claim  
18 and the Department lacked authority to grant a refund claim filed beyond that timeframe.

19       Turning to Taxpayer’s denied refund claims, the most recent in time of the denied claims is  
20 for the gross receipts reporting period ending on September 30, 2019. Gross receipts tax for the  
21 September 30, 2019, reporting period was due on or before October 25, 2019. *See* NMSA 1978, §  
22 7-9-11 (gross receipts tax due on or before the 25<sup>th</sup> day of the month following the taxable sale).

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<sup>4</sup> There are certain statutory exceptions under Section 7-1-26, but those exceptions are not at issue in this protest.

1 Therefore, the end of the calendar year for the September 30, 2019, gross receipts reporting period  
2 was December 31, 2019. Adding three years to that December 31, 2019, date gave Taxpayer until  
3 December 31, 2022, to claim a refund for the September 30, 2019, reporting period<sup>5</sup>. That same  
4 December 31, 2022, deadline applied to the reporting periods ending on December 31, 2018 (with a  
5 reporting requirement of January 25, 2019), March 31, 2019, and April 30, 2019. For the reporting  
6 periods ending on December 31, 2017, and June 30, 2018, both periods where Taxpayer was still a  
7 semi-annual filer, the statute of limitation deadline was December 31, 2021 (both reports from a  
8 semi-annual filer were due in 2018, adding three years to the end of that calendar year). Taxpayer  
9 did not in fact file its claim for refund until May 2, 2023, five-months after the latest statute of  
10 limitations period had lapsed. Consequently, the statute of limitations period had expired before  
11 Taxpayer filed its refund claim and the Department was without jurisdiction to grant Taxpayer's  
12 claims for those periods.

13 However, the Department was able to grant separate refund claims where the statute of  
14 limitations had not yet run, including the reporting period ending on December 31, 2019 (the  
15 payment of tax was not due until January 25, 2020, making the end of the calendar year three year  
16 deadline of December 31, 2023). Those refund periods are not in dispute. The Department granted a  
17 refund for those periods based on Taxpayer's timely refund claims for those periods.

18 Taxpayer nevertheless expressed their frustration that there was not a better way to promptly  
19 notify Taxpayer that two entities (Taxpayer and the third-party market provider) were remitting  
20 gross receipts tax on the same underlying transaction. Taxpayer further argued that when it failed to  
21 file a report by the deadline beginning with the November 2021 reporting period, even when no tax

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<sup>5</sup> If Taxpayer was a semi-annual reporter under Regulation 3.2.2.13 NMAC, the due date for the September period would have been January 25, 2020, rather than October 25, 2019, potentially allowing for one more refund in that period. However, after asking a series of questions at hearing, the evidence clearly established that Taxpayer was a monthly filer for the September 30, 2019, reporting period.

1 was due, it promptly received a penalty notification from the Department, which exacerbated their  
2 frustration with lack of notification about the double-payment and left them with a sense of  
3 unfairness in the system. At one level, Taxpayer's frustrations are understandable given that the  
4 concept of third-party market providers remitting taxes on behalf of others is still relatively novel in  
5 New Mexico. To the extent that Taxpayer wanted to be notified of third-party market provider tax  
6 payments, there are barriers in place (notably confidentiality protections amongst other challenges)  
7 that limit the Department's ability to share specific information. At least with the record presented  
8 here (the Department's representative indicated that there may be more explanatory information  
9 provided than he was aware of at the time of the hearing), it is also unclear how the Department is  
10 able to share information related to attributing/cross-referencing/correlating payments from the  
11 third-party provider to a specific taxpayer's transaction unless the third-party market provider and  
12 the taxpayer are sharing that data directly. As to the fairness argument, the general three-year from  
13 the end of the calendar year statute of limitation period for a refund claim matches the default,  
14 general three-year from the end of the calendar year deadline for the Department to issue an  
15 assessment, placing both the Department and taxpayers in similar positions regarding underpayment  
16 and overpayment of taxes<sup>6</sup>.

17 Despite Taxpayer's frustrations, under New Mexico's self-reporting tax system, every  
18 person is charged with the reasonable duty to ascertain the possible tax consequences of his or her  
19 actions. *See Tiffany Construction Co. v. Bureau of Revenue*, 1976-NMCA-127, ¶5, 90 N.M. 16. In  
20 this particular case, the evidence presented showed that Taxpayer has some awareness in 2021 and  
21 2022 of the double-payment of the taxation by itself and the market-place providers, a time period  
22 before the statute of limitations on Taxpayer's refund claimed had lapsed. Indeed, Taxpayer stopped

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<sup>6</sup> However, there are certainly more exceptions to allow for an assessment of tax beyond that three-year from the end of the calendar year statute of limitations period than there are exceptions for the refund statutes of limitations period.



1 paying and filing gross receipts returns after the reporting period ending on October 31, 2021,  
2 meaning that Taxpayer had knowledge of the double payment at that time and could have filed a  
3 timely refund claim for all periods before the first expiring deadline of December 31, 2021.

4 Moreover, Taxpayer in fact made contact with a customer service representative of the  
5 Department on December 7, 2022, and the Department employee explained what steps needed to be  
6 done to correct a refund claim. That December 7, 2022, conversation occurred some three weeks  
7 before expiration of the statute of limitations for most<sup>7</sup> of Taxpayer's refund claim. Taxpayer at that  
8 point still had time to file a refund claim before the December 31, 2022, deadline, or consult with a  
9 tax professional like an accountant or attorney about next steps to seek the refund. However, by  
10 waiting until after that deadline had passed to file the claim, the law discussed does not permit the  
11 granting of an untimely claim for refund. *See* § 7-1-26 (F). *See also Sisters of Charity of Cincinnati,*  
12 *Ohio, 1979-NMSC-044, ¶ 28, 93 N.M. 42, 46–47. See also Kilmer, 2004-NMCA-122, 136 N.M.*  
13 *440.* For that reason, the Department lacked jurisdiction to grant the untimely refund claim and  
14 Taxpayer's protest must be denied.

## 15 CONCLUSIONS OF LAW

16 A. Taxpayer filed a timely, written protest to the Department's full denial of its claim  
17 for refund, and jurisdiction lies over the parties and the subject matter of this protest.

18 B. The hearing was timely set and held within 90 days of the filing of the hearing  
19 request and accompanying Department answer under NMSA 1978, Section 7-1B-8 (2019).

20 C. Under NMSA 1978, Section 7-1-26 (F) (2021), absent specific exceptions not  
21 implicated in this protest, a taxpayer has three years from the end of the calendar year from when  
22 the taxable event occurred to claim a refund.

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<sup>7</sup> At that point, the claims for periods ending on December 31, 2017, and June 30, 2018, would have been untimely, but the other periods constituting a majority of Taxpayer's refund claim would still have been timely.

1 D. Taxpayer's May 2, 2023, claim for refund was beyond the December 31, 2022,  
2 statute of limitation period for the latest claimed period and the December 31, 2021 statute of  
3 limitations for the earlier periods. Failure to comply with the specific deadlines for refund claims  
4 under Section 7-1-26 bars the Department the authority to grant an untimely refund claim, and thus  
5 the Department was required to deny the claim. *See also Sisters of Charity of Cincinnati, Ohio,*  
6 *1979-NMSC-044, ¶ 28, 93 N.M. 42, 46-47. See also Kilmer, 2004-NMCA-122, 136 N.M. 440.*

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

8 DATED: October 9, 2024.

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10 Brian VanDenzon  
11 Chief Hearing Officer

12 **NOTICE OF RIGHT TO APPEAL**

13 Pursuant to NMSA 1978, Section 7-1-25 (2015), the parties have the right to appeal this  
14 decision by *filing a notice of appeal with the New Mexico Court of Appeals* within 30 days of the  
15 date shown above. If an appeal is not timely filed with the Court of Appeals within 30 days, this  
16 Decision and Order will become final. Rule of Appellate Procedure 12-601 NMRA articulates  
17 the requirements of perfecting an appeal of an administrative decision with the Court of Appeals.  
18 Either party filing an appeal shall file a courtesy copy of the appeal with the Administrative  
19 Hearings Office contemporaneous with the Court of Appeals filing so that the Administrative  
20 Hearings Office may begin preparing the record proper. The parties will each be provided with a  
21 copy of the record proper at the time of the filing of the record proper with the Court of Appeals,  
22 which occurs within 14 days of the Administrative Hearings Office receipt of the docketing  
23 statement from the appealing party. *See Rule 12-209 NMRA.*

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**CERTIFICATE OF SERVICE**

I hereby certify that I mailed the foregoing Decision and Order to the parties listed below this  
9<sup>th</sup> day of October 2024 in the following manner:

*First Class Mail and Email*

*First Class Mail and Email*

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