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

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**BATTERY SYSTEMS, INC.**

**v.**

**AHO No. 24.07-020R**

**TAXATION AND REVENUE DEPARTMENT**

**D&O No. 24-14**

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**DECISION AND ORDER**

On September 19, 2024, 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. Cheryl Tafoya, Auditor, also appeared by videoconference on behalf of the Department. Battery Systems, Inc. (Taxpayer) was represented by its accounting manager, Chris Fernandez, who appeared by internet and telephone with another representative, Manny Almeida, by videoconference. Mr. Almeida and Ms. Tafoya testified. The Hearing Officer took notice of all documents in the administrative file. The Department's exhibits A (the refund application) and C (the protest) were admitted.

The main issue to be decided is whether the Taxpayer is entitled to a refund for tax periods from April 30, 2019 through November 30, 2019. 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**

***Procedural findings.***

1. On October 11, 2023, the Department issued a denial of refund to the Taxpayer. The Taxpayer's refund claim was denied for \$6,104.48 for the tax periods from April 30, 2019 through November 30, 2019. [Admin. file L1005955696; Testimony of Ms. Tafoya].

1           2.       On October 11, 2023, the Taxpayer filed a timely written protest to the denial of  
2 refund. [Exhibit C].

3           3.       On January 31, 2024, the Department acknowledged its receipt of the protest.  
4 [Admin. file L1587320432].

5           4.       On July 16, 2024, the Department filed a request for hearing with the  
6 Administrative Hearings Office. [Admin. file request].

7           5.       The hearing on the merits was conducted on September 19, 2024, which was  
8 within 90 days of the request as required by statute. [Admin. file].

9 ***Substantive findings.***

10          6.       The Taxpayer files and pays its gross receipts tax monthly. [Testimony of Ms.  
11 Tafoya].

12          7.       The Taxpayer's gross receipts tax and return are due on the 25<sup>th</sup> of the month  
13 following when the taxable transaction took place. [Testimony of Ms. Tafoya]. *See also* NMSA  
14 1978, § 7-9-11 (1969) (indicating that gross receipts tax is due on the 25<sup>th</sup> of the month following  
15 the taxable event). *See also* NMSA 1978, § 7-1-13 (B) (2021) (indicating that returns are due the  
16 same date as the tax is due).

17          8.       The tax periods from April 30, 2019 through November 30, 2019<sup>1</sup> all have tax  
18 dues dates in 2019. [Testimony of Ms. Tafoya].

19          9.       Three years from the end of 2019 was December 31, 2022. [Testimony of Ms.  
20 Tafoya].

21          10.       The Taxpayer timely filed and paid its gross receipts tax for the tax periods.  
22 [Testimony of Ms. Tafoya].

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<sup>1</sup> Throughout the decision, references to “the tax periods” mean from April 30, 2019 through November 30, 2019.

1 11. Later, the Taxpayer learned that it had been overreporting its gross receipts tax  
2 liability as some of its sales were exempt. [Testimony of Mr. Almeida].

3 12. The Taxpayer filed a claim for refund based on its conclusion that some of its  
4 sales were exempt. [Testimony of Mr. Almeida].

5 13. Part of the Taxpayer's claim for refund, for tax periods after November 30, 2019,  
6 was granted. [Testimony of Ms. Tafoya].

7 14. The Taxpayer's claim for refund on the tax periods was made for the first time in  
8 2023. [Testimony of Ms. Tafoya; Exhibit A].

9 15. The Department denied the claim for refund on the tax periods because it was  
10 made after the statute of limitations had run out. [Testimony of Ms. Tafoya].

## 11 DISCUSSION

### 12 **Burden of proof.**

13 "The taxpayer shall have the burden of proof, except as otherwise provided by law."  
14 22.600.3.24 (B) NMAC (2020).

### 15 **Statute of limitations for claiming a refund.**

16 Generally, a claim for refund must be made within three years of the end of the year in  
17 which the tax was originally due. *See* NMSA 1978, § 7-1-26 (F). The Taxpayer did not dispute that  
18 the tax was due and paid monthly in 2019. Three years from the end of 2019 was December 31,  
19 2022. The Taxpayer's claim for refund was made in 2023, which was past the three-year deadline  
20 for taxes paid in 2019. [Testimony of Ms. Tafoya]. The statute of limitations prevents stale  
21 claims and effectively places the onus on the taxpayer to pursue their claim in a timely manner  
22 because the taxpayer is the one who can more easily keep track of their claims for refund. *See*  
23 *Kilmer v. Goodwin*, 2004-NMCA-122, ¶ 16, 136 N.M. 440. If the claim is not filed within the

1 three-year statute of limitations, the claim is barred by the statute. *See* NMSA 1978, § 7-1-26.  
2 *See also Kilmer, 2004-NMCA-122. See also Sisters of Charity v. County of Bernalillo, 1979-*  
3 *NMSC-044, ¶ 24-28, 93 N.M. 42 (holding that an untimely filed claim for refund was barred by*  
4 *the statute of limitations).*

5 As the Taxpayer’s claim for the 2019 tax periods was made in 2023, it was made beyond the  
6 statute of limitations. *See* NMSA 1978, § 7-1-26. Therefore, the Taxpayer’s claim was stale and  
7 was barred by the statute. *See id. See also Kilmer, 2004-NMCA-122.*

8 **CONCLUSIONS OF LAW**

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

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

13 C. The Taxpayer’s claim for refund on the tax due and paid monthly in 2019 was  
14 barred by the statute of limitations as it was not made within three years of the end of 2019. *See*  
15 *NMSA 1978, § 7-1-26. See also Kilmer, 2004-NMCA-122. See also Sisters of Charity, 1979-*  
16 *NMSC-044.*

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

18 DATED: October 3, 2024.

19 *Dee Dee Hoxie*

20 \_\_\_\_\_  
21 Dee Dee Hoxie  
22 Hearing Officer  
23 Administrative Hearings Office  
24 P.O. Box 6400  
Santa Fe, NM 87502

1 **NOTICE OF RIGHT TO APPEAL**

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

13 **CERTIFICATE OF SERVICE**

14 On October 3, 2024, a copy of the foregoing Decision and Order was submitted to the  
15 parties listed below in the following manner:

16 *First Class Mail & Email*

*First Class Mail & Email*

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