

## **Opinion No. 65-135**

July 20, 1965

**BY:** OPINION OF BOSTON E. WITT, Attorney General Tom Overstreet, Assistant Attorney General

**TO:** Mrs. Pepita O. Jeffus, Executive Director, Oil and Gas Accounting Commission, State Land Office Building, Santa Fe, New Mexico

### **QUESTION**

#### **FACTS**

The owners of interests in gas and oil properties frequently seek to enlarge the unit of operation to include other areas and owners. A necessary part of the plan is a participating agreement for all the owners in the enlarged area. Such agreement may be retroactive. The overall plan must be approved by the governmental agency or agencies involved, which may take from one to three years. If the plan is approved and the participating agreement is retroactive, a new basis for tax purposes is presented and the following question has been asked.

#### **QUESTION**

Does the one year limitation on tax refunds run from the effective date of a retroactive participating agreement, the date such agreement was actually approved, or the date the taxes were actually received by the Commission?

#### **CONCLUSION**

From the date the tax is received by the Commission.

### **OPINION**

#### **{\*225} ANALYSIS**

The taxes in question are levied {\*226} by Sections 72-19-4, 72-20-4, 72-21-4, 72-22-4 and 72-23-4, N.M.S.A., 1953 Compilation. There are two types of statutory provisions concerning a refund of these taxes. One provision appears in Sections 72-19-7, 72-20-7, 72-21-7, 72-22-7 and 72-23-7, N.M.S.A., 1953 Compilation, as follows:

When an increase in the value of any product is subject to the approval of any agency of the United States of America or the State of New Mexico, or any court, the increased value shall be subject to this tax. In the event the increase in value is disapproved, either in whole or in part, then the amount of tax which has been paid on the disapproved part of the value shall be considered excess tax. Within one (1) year

following the final determination of value, any person who has paid any such excess tax may apply for a refund, and the commission, upon proper finding, shall have the authority and duty to refund the amount of excess tax paid. Any refund may, at the discretion of the commission, be made in the form of credit against future tax payments."

This provision is not applicable here for the question does not involve a price increase but a new participating agreement.

The other refund provision appears in Sections 72-19-14, 72-20-15, 72-21-14, 72-22-16 and 72-23-11, N.M.S.A., 1953 Compilation and reads as follows:

"Any person paying tax erroneously may apply for a refund within one (1) year from the date of receipt of the tax by the commission, and the commission shall have the authority and duty to refund such tax if found to be erroneously paid. However, any refund may, at the discretion of the commission, be made in the form of credit against future tax payment.

It is under this section the question must be answered.

A tax refund is a matter of legislative grace and when such is given the statute must be strictly followed. The rule is stated in **84 C.J.S., Taxation**, Sec. 622 as follows:

"The legislature has the right to provide how taxes illegally exacted may be refunded and designate the tribunal which, in the first instance, shall pass on the proof and allow or disallow the claim, and statutory provisions as to the procedure to obtain a refund must be followed. Accordingly, the taxpayer must file, within the time specified, with the official, or the board or court, authorized to order the refund, and sufficient application, claims, or petition, and perform any other acts designated by as prerequisite to relief."

The refund statute here provides the application for refunds must be made within one year from the date the tax is received by the commission. If this is not done, the refund must be denied. The effective or approval date of the participating agreement would be immaterial.

Therefore, it is our opinion that a refund for taxes paid under sections 72-19-4, 72-20-4, 72-21-4, 72-22-4, 72-23-4, supra, must be applied for within one year of the date the taxes are received by the commission if the refund is to be granted. The sole exception is where the refund involves a price increase. In that case sections 72-19-7, 72-20-7, 72-21-7, 72-22-7, and 72-23-7, supra, would be controlling.

## **SYNOPSIS**

A refund for taxes paid under Sections 72-19-4, 72-20-4, 72-21-4, 72-22-4 and 72-23-4, N.M.S.A., 1953 Compilation, must be applied for within one year of the date {*\*227*} the taxes are received by the commission unless the refund involves a price increase, in

which case Sections 72-19-7, 72-20-7, 72-21-7, 72-22-7, and 72-23-7 N.M.S.A., 1953  
Compilation, would be controlling.