

**BEFORE THE HEARING OFFICER
OF THE TAXATION AND REVENUE DEPARTMENT
OF THE STATE OF NEW MEXICO**

**IN THE MATTER OF THE PROTEST OF
BENNY NEVAREZ
ID NO.
ASSESSMENT NO. 732944**

No. 03-19

DECISION AND ORDER

A formal hearing on the above-referenced protest was held September 29, 2003, before Margaret B. Alcock, Hearing Officer.¹ The Taxation and Revenue Department ("Department") was represented by Bridget A. Jacober, Special Assistant Attorney General. Benny Nevarez ("Taxpayer") represented himself. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. The Taxpayer is a New Mexico resident who works in Las Cruces, New Mexico.
2. At the beginning of each calendar year, the Taxpayer's employer provides him with a Form W-2 reporting the amount of tax withheld from his wages during the previous year.
3. Over time, the Taxpayer's salary has increased, and his state income tax liability has sometimes exceeded the amount of his withholding.
4. The Taxpayer went to the Department's Las Cruces office to ask what he could do to avoid having to pay additional tax at the end of the year.
5. The Department employee with whom he spoke advised him to reduce the exemptions he was claiming on his W-4, and he made this adjustment.

¹ Although the hearing was scheduled for September 30, 2003, Mr. Nevarez mistakenly appeared for the hearing on September 29th. Fortunately, the Department's attorney and hearing officer were able to rearrange their schedules to allow the taxpayer to present his case a day early.

6. When the Taxpayer prepared his 1997 and 1998 state income tax returns, the amount of withholding exceeded the amount of his tax liability and he received a refund.

7. When the Taxpayer prepared his 2000 New Mexico income tax return, he found that his tax liability exceeded the amount of taxes withheld from his wages by \$282.

8. The Taxpayer filed his 2000 New Mexico income tax return showing the \$282 as “Tax Due” on Line 20 of the return, but did not include payment of the additional tax.

9. On August 27, 2002, the Department issued Assessment No. 732944 to the Taxpayer, assessing him for the \$282 of additional income tax due for 2000, plus penalty and interest.

10. On September 4, 2002, the Taxpayer filed a written protest to the assessment.

DISCUSSION

The issue to be decided is whether the Taxpayer should be required to pay the additional tax due on his 2000 wage income. The Taxpayer concedes that the amount of tax shown on his New Mexico income tax return (and on the Department’s assessment) accurately reflects his 2000 income tax liability as set out in New Mexico’s tax statutes. The only basis for the Taxpayer’s protest is his belief that the tax imposed is too high and that he should not be liable for amounts in excess of the tax withheld by his employer.

New Mexico personal income tax is imposed “upon the net income of every resident individual....” NMSA 1978, § 7-2-3. The obligation for reporting this income is on the individual taxpayer. NMSA 1978, § 7-2-12. Although New Mexico’s Withholding Tax Act, NMSA 1978, §§ 7-3-1, *et seq.*, requires employers to withhold income tax from their employees’ wages, this does not shift the ultimate liability for tax from the employee to the employer. NMSA 1978, § 7-3-9 provides that amounts withheld “shall be credited against any state income tax liability for that taxable year.” Nothing in the Withholding Tax Act or the Income Tax Act provides that the employer’s act of

withholding discharges the employee from liability for taxes due in excess of the amount withheld. To the contrary, NMSA 1978, § 7-2-12.2 makes it clear that even taxpayers subject to withholding may be required to make additional estimated tax payments if the amount of the withholding is not sufficient to cover the Taxpayer's projected tax liability for the year.

The crux of the Taxpayer's protest is that he failed to pay the additional tax due on his 2002 income because he believes New Mexico's tax rates are too high and impose an unfair burden on working people such as himself. This is an issue he must take up with his state legislator. The only matter at issue in this administrative protest is whether the Department's assessment of additional personal income tax, penalty, and interest for the 2000 tax year is supported by New Mexico law. Based on the Taxpayer's own tax return and the statutes cited above, the Department's assessment is correct and there is no basis for abatement.

CONCLUSIONS OF LAW

1. The Taxpayer filed a timely, written protest to Assessment No. 732944, and jurisdiction lies over the parties and the subject matter of this protest.
2. The Taxpayer is liable for the \$282 of personal income tax, plus penalty and interest, assessed against him for tax year 2000.

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

DATED September 30, 2003.