

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

**IN THE MATTER OF THE PROTEST OF  
JOHN B. RODRIGUEZ  
TO THE ASSESSMENT OF PENALTY AND  
INTEREST ISSUED UNDER LETTER  
ID NOS. L0082847744 AND L0533663744**

**No. 04-06**

**DECISION AND ORDER**

A formal hearing on the above-referenced protest was held on May 5, 2004, before Margaret B. Alcock, Hearing Officer. The Taxation and Revenue Department ("Department") was represented by Bridget A. Jacober, Special Assistant Attorney General. John B. Rodriguez ("Taxpayer") represented himself. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

**FINDINGS OF FACT**

1. The Taxpayer filed his 1999 federal and state personal income tax returns based on the filing status "head of household."
2. The Internal Revenue Service subsequently determined that the Taxpayer did not qualify as a head of household and changed his filing status to "single."
3. After receiving notice of the change in his filing status, the Taxpayer went to the Department's office in Santa Fe and spoke to Anthony Montoya.
4. Mr. Montoya called the IRS and attempted to have the Taxpayer's filing status changed back to head of household, but the IRS refused and held by its determination that the Taxpayer was required to file his income tax returns as a single person.

5. Once the IRS determined that the Taxpayer had made a mistake when he filed as head of household and changed his filing status to single, the Taxpayer had ninety days to amend his New Mexico income tax returns to report his state income tax on the same basis. *See*, NMSA 1978, § 7-1-13(C).

6. The Taxpayer failed to correct his New Mexico income tax return within the 90 days required by statute and on October 22, 2003, the Department issued an assessment to the Taxpayer under Letter ID No. L0082847744 for an additional \$346.00 of 1999 income tax due as a result of the change in his filing status, plus \$34.60 of penalty and \$182.29 of interest.

7. On October 28, 2003, the Taxpayer paid the \$346.00 of tax principal due and filed a written protest to the assessment of penalty and interest.

8. At the administrative hearing, the Department stipulated that it would abate the \$34.60 of penalty assessed, and the only matter remaining in dispute is the \$182.29 of interest.

9. Based on evidence presented at the hearing, the Department also stipulated that it would abate all of the penalty and interest assessed to the Taxpayer under Letter ID No. L0533663744, which was issued to the Taxpayer on June 19, 2003 and protested on July 15, 2003.

## **DISCUSSION**

The Taxpayer objects to the \$182.29 of interest assessed against him under Letter ID No. L0082847744, arguing that interest should be limited to the four-day period between October 22, 2003, the date the Department issued its assessment, and October 28, 2003, the date he paid the principal of the assessment. The Taxpayer maintains that charging him interest back to the original due date of his return is illegal, but has not provided any legal authority to support his position. The Department relies on NMSA 1978, § 7-1-67, to support its position that the Taxpayer's liability for

interest began to accrue on April 15, 2000, the day on which payment of the additional \$346.00 of tax was due to the state. Section 7-1-67(A) states as follows:

A. If any tax imposed is not paid on or before the day on which it becomes due, interest shall be paid to the state on such amount from the first day following the day on which the tax becomes due, without regard to any extension of time or installment agreement, until it is paid....

The legislature's use of the word "shall" indicates that the assessment of interest is mandatory rather than discretionary. *State v. Lujan*, 90 N.M. 103, 560 P.2d 167 (1977). The legislature has directed the Department to assess interest whenever taxes are not timely paid and has provided no exceptions to the mandate of the statute.

The assessment of interest is not designed to punish taxpayers, but to compensate the state for the time value of unpaid revenues. In this case, the Internal Revenue Service determined that the Taxpayer made a mistake when he filed as head of household instead of as single. Although the Taxpayer acted in good faith and had no intent to defraud the federal government or the State of New Mexico, the fact remains that the state would have received an additional \$346.00 tax payment on April 15, 2000 if the Taxpayer had completed his return correctly. As a result of the Taxpayer's mistake, the state was deprived of the use of this money for the period April 15, 2000, the original due date of the Taxpayer's return, through October 28, 2003, the date payment of the additional tax was made. For this reason, interest was properly assessed pursuant to NMSA 1978, § 7-1-67.

The Taxpayer questions why the Department took so long to notify him of his personal income tax liability for the 1999 tax year. By the time he received the Department's assessment in October 2003, the penalty had reached its statutory maximum of 10 percent and substantial

interest had accrued. The Taxpayer testified that he would have paid the additional tax if he had been alerted sooner, and believes the Department is at fault for the accrual of additional interest. This argument is based on a misunderstanding of New Mexico's self-reporting tax system. It is the obligation of taxpayers, who have the most accurate and direct knowledge of their activities, to determine their tax liabilities and accurately report those liabilities to the state. *See*, NMSA 1978, § 7-1-13(B); *Tiffany Construction Co. v. Bureau of Revenue*, 90 N.M. 16, 17, 558 P.2d 1155, 1156 (Ct. App. 1976), *cert. denied*, 90 N.M. 255, 561 P.2d 1348 (1977). Taxpayers are not entitled to sit back and wait for the government to notify them of their errors before penalty and interest begin to accrue.

There are insufficient resources available for the Department to continually audit every citizen to determine whether he or she has fully complied with state tax laws. Although the Department performs periodic "tape matches" to compare information reported to the IRS with information reported to New Mexico, there is some delay before the federal information is made available to the Department. NMSA 1978, § 7-1-18(A) gives the Department three years from the end of the calendar year in which a tax is due to assess taxpayers for any deficiency. This means that the Department had until December 31, 2003 to notify the Taxpayer of his liability for additional 1999 income tax, which was due in April 2000. The October 2003 assessment issued to the Taxpayer was within the legal time limits provided by the New Mexico Legislature.

### **CONCLUSIONS OF LAW**

1. The Taxpayer filed timely, written protests to the assessments of penalty and interest issued under Letter ID Nos. L0082847744 and L0533663744, and jurisdiction lies over the parties and the subject matter of these protests.

2. The Taxpayer's mistake in claiming the filing status "head of household" rather than "single" resulted in a late payment of \$346.00 of his 1999 personal income to the state, and interest was properly assessed on this amount back to the original due date of April 15, 2000.

For the foregoing reasons, the Taxpayer's protest IS DENIED IN PART AND GRANTED IN PART:

A. The Taxpayer is ordered to pay the \$182.29 of interest assessed against him on October 22, 2003 under Letter ID L0082847744.

B. In accordance with the stipulations the Department made at the administrative hearing, the Department is ordered to abate the penalty and interest assessed against the Taxpayer under Letter ID No. L0533663744, and the penalty assessed against the Taxpayer under Letter ID No. L0082847744.

DATED May 11, 2004.