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

IN THE MATTER OF THE PROTEST OF
MARK S. WELSH **No. 04-07**
ASSESSMENT OF PERSONAL INCOME TAXES
ISSUED UNDER LETTER ID L0857690112

DECISION AND ORDER

A formal hearing on the above-referenced protest was held on June 16, 2004, before Margaret B. Alcock, Hearing Officer. The Taxation and Revenue Department ("Department") was represented by Bruce J. Fort, Special Assistant Attorney General. Mark S. Welsh ("Taxpayer") represented himself. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. On January 1, 1999, the Taxpayer was in the United States Navy and was stationed in Hawaii. The Taxpayer's state of residence was Arizona.

2. In February 1999, the Taxpayer left the military service.

3. In June 1999, the Taxpayer and his wife moved from Hawaii to New Mexico.

4. In October or November 1999, the Taxpayer formed the intent to become a New Mexico resident. At that time, he obtained a New Mexico driver's license and registered to vote in New Mexico.

5. The Taxpayer and his wife filed timely federal and New Mexico personal income tax returns for calendar year 1999.

6. As a first-year resident of New Mexico in 1999, the Taxpayer and was not familiar with New Mexico's personal income tax laws.

7. The Taxpayer did not carefully read the Department's packet of instructions for completing New Mexico's personal income tax return (Form PIT-1) and did not see the instructions directing first-year residents to report all of their federal adjusted gross income on Form PIT-1 and then use Form PIT-B to allocate and apportion that income between in-state and out-of-state sources.

8. Based on his erroneous belief that he did not have to report the income he earned outside New Mexico on his New Mexico return, the Taxpayer concluded that the amount of state tax he calculated based on the line instructions on the Form PIT-1 was wrong. The Taxpayer then recalculated the tax based solely on the income his wife earned in New Mexico during 1999.

9. The Taxpayer did not consult with an accountant or other tax professional when completing his New Mexico income tax return, nor did he consult with anyone from the Department before changing the calculation of state tax on the PIT-1.

10. The Department has an information exchange agreement with the Internal Revenue Service (IRS) that allows the Department to obtain information concerning the amount of federal adjusted gross income New Mexico residents have reported on their federal income tax returns. This information is in the form of a tape which is matched to taxpayers' state returns to determine whether New Mexico residents have accurately reported personal income tax due to New Mexico.

11. An IRS employee told the Taxpayer that the IRS usually provides requested tape match information to the states by October or November of the year in which returns are filed. For example, information concerning 1999 personal income tax returns, which are due April 15, 2000, should be sent out by the end of calendar year 2000.

12. In this case, the Department did not receive the IRS tape match information for 1999 personal income tax returns until October of 2001.

13. Because of problems with its computer system, the Department did not complete its tape match for 1999 personal income tax returns until February 2003.

14. On July 10, 2003, the Department sent the Taxpayer an advisement letter notifying him that the income reported on his New Mexico return did not match the income reported on his federal return. The Department requested copies of the Taxpayer's federal and state tax returns, and the Taxpayer mailed copies of those returns to the Department on July 15, 2003.

15. On August 20, 2003, the Department assessed the Taxpayer for $478.00 of unpaid personal income tax for the 1999 tax year, plus $47.80 of penalty and $239.09 of interest.

16. The Taxpayer still did not understand the basis for the Department's assessment and consulted with a certified public accountant, who explained that while the Taxpayer was only taxed on income earned in New Mexico, the rate of tax applied to that income was determined based on the Taxpayer's federal adjusted gross income from all sources.

17. The Taxpayer's CPA also determined that the Taxpayer was entitled to an additional deduction not claimed on his original return. The Department subsequently agreed to allow the deduction, which reduced the outstanding tax principal to $417.00.

18. On September 16, 2003, the Taxpayer mailed the Department a check for the $417.00 of tax principal due for tax year 1999.

19. On September 17, 2003, the Taxpayer filed a written protest to the assessment of penalty and interest on his underpayment of taxes for the 1999 tax year.

20. At the administrative hearing, the Taxpayer acknowledged that he had been negligent in failing to read the Department's personal income tax instructions and withdrew his protest to the assessment of the 10 percent negligence penalty imposed under NMSA 1978, § 7-1-69.

21. The Taxpayer also stated that he was not disputing his liability for interest accrued during the first seven months following the filing of his erroneous 1999 tax return.

DISCUSSION

At issue is whether the Taxpayer is liable for the interest that accrued on his unpaid 1999 personal income taxes after October 2000. The Taxpayer concedes that he is liable for interest accrued during the seven months between April 2000 and October 2000, but argues that he should not be responsible for interest accrued after that date. The Taxpayer maintains that by October 2000, the Department should have received the 1999 tape match information from the IRS, discovered the error on the Taxpayer's personal income tax return, and sent him notice of that error. The Taxpayer contends that any interest that accrued after October 2000 is attributable to the negligence or incompetence of the IRS and the Department, for which he should not be held responsible.

NMSA 1978, § 7-1-67 sets out the general rule governing the imposition of interest on late payments of tax 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 that 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.... (emphasis added).

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, 105, 560 P.2d 167, 169 (1977). The assessment of interest is not designed to punish taxpayers, but to compensate the state for the time value of unpaid revenues.

The only limitations on the accrual of interest are set out in § 7-1-67(A)(1) through (7). The Taxpayer did not present any evidence or argument to show that he comes within one of these seven exceptions. Instead, the Taxpayer argues that § 7-1-67 should not apply to him because the

Department had the means to discover and notify him of his reporting error sooner than it did. 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 any underpayment of that tax. In this case, the Department had until December 31, 2003 to assess the Taxpayer for 1999 personal income taxes, payment of which was due on April 15, 1999. The assessment issued on August 3, 2003 was within this statutory time frame. Under the facts of this case, there is no legal authority to support the Taxpayer's argument that the Legislature intended to suspend the accrual of interest simply because the Department conceivably could have commenced its audit of the Taxpayer earlier in the three-year limitation period allowed by statute.

As the Taxpayer acknowledged at the administrative hearing, his underpayment of 1999 personal income taxes was due to his negligence in failing to read the Department's instructions and his erroneous belief that only New Mexico income should be reported on his New Mexico return. 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. NMSA 1978, § 7-1-13(B). *See also*, *Tiffany Construction Co. v. Bureau of Revenue*, 90 N.M. 16, 558 P.2d 1155 (Ct. App. 1976), *cert. denied*, 90 N.M. 255, 561 P.2d 1348 (1977). In this case, it was the Taxpayer's responsibility to obtain the information he needed to properly report and pay his New Mexico income taxes. He cannot avoid the consequences of his reporting error, including the accrual of interest on his unpaid taxes, by attempting to shift this responsibility to the Department.

CONCLUSIONS OF LAW

1. The Taxpayer filed a timely, written protest to the assessment of personal income taxes issued under Letter ID L0857690112, and jurisdiction lies over the parties and the subject matter of this protest.

2. Pursuant to NMSA 1978, § 7-1-67, interest was properly assessed against the Taxpayer on the late payment of his 1999 state income taxes.

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

DATED June 30, 2004.