

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

**IN THE MATTER OF THE PROTEST OF
VICTOR H. AND BERTHA M. CHACON
TO THE INTEREST
ASSESSED UNDER LETTER ID L0970880000**

No. 04-08

DECISION AND ORDER

A formal hearing on the above-referenced protest was held on July 28, 2004, before Margaret B. Alcock, Hearing Officer. The Taxation and Revenue Department ("Department") was represented by Lewis J. Terr, Special Assistant Attorney General. Victor and Bertha Chacon ("Taxpayers") were represented by Victor Chacon. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. In 2001, the Taxpayers filed their federal and state personal income tax returns for the 2000 tax year.
2. In July 2002, the Internal Revenue Service ("IRS") notified the Taxpayers that they had underreported their capital gain income on the 2000 return.
3. When Mr. Chacon went to the IRS office in Albuquerque to pay the additional federal tax due, he asked about his liability for additional state tax. He was told that the IRS regularly provides tax information to New Mexico and that "they'll probably contact you."
4. The Taxpayers did not consult with a tax professional or call the Department to determine whether they were liable for additional state tax as a result of the IRS adjustment, but decided to wait until they were contacted by the Department.

5. In April 2004, the Department assessed the Taxpayers for \$1,328.00 of additional income tax due as a result of the error on their 2000 federal return, plus interest of \$598.93.
6. On April 16, 2004, the Taxpayers paid the \$1,328.00 of tax principal.
7. On April 22, 2004, the Taxpayers filed a written protest to the assessment of interest.

DISCUSSION

The issue to be decided is whether the Taxpayers are liable for the \$598.93 of interest assessed on their late payment of 2000 personal income tax. The Taxpayers believe they should be excused from the payment of interest because their underreporting of tax for the 2000 tax year was due to inadvertent error and was not the result of any intent to commit fraud. Alternatively, the Taxpayers argue that the Department took too long to notify them of the additional tax due. They ask the Department to reduce their liability to \$250.00, which is the amount of interest that had accrued as of July 22, 2002, the date the IRS notified the Taxpayers of their underpayment of federal income tax.

NMSA 1978, § 7-1-17(C) provides that any assessment of tax by the Department is presumed to be correct. NMSA 1978, § 7-1-3 defines tax to include not only the amount of tax principal imposed but also, unless the context otherwise requires, "the amount of any interest or civil penalty relating thereto." *See also, El Centro Villa Nursing Center v. Taxation and Revenue Department*, 108 N.M. 795, 779 P.2d 982 (Ct. App. 1989). Accordingly, the assessment issued to the Taxpayers is presumed to be correct, and it is the Taxpayers' burden to present evidence and legal argument to show that they are entitled to an abatement.

NMSA 1978, § 7-1-67 governs the imposition of interest on late payments of tax and provides, in pertinent part:

A. If a 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 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. Even taxpayers who obtain a formal extension of time to pay tax are liable for interest from the original due date of the tax to the date payment is made. *See*, Section 7-1-13(E) NMSA 1978.

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 IRS determined that the Taxpayers made a mistake when they reported their 2000 capital gain income. Although the Taxpayers acted in good faith and without any intent to defraud the government, the fact remains that the State of New Mexico would have received an additional \$1,328.00 tax payment if the Taxpayers had completed their return correctly. As a result of the Taxpayers' mistake, the state was deprived of the use of this money for the three-year period between April 15, 2001, the original due date of the Taxpayer's return, and April 16, 2004, the date payment of the additional tax was made. For this reason, interest was properly assessed pursuant to NMSA 1978, § 7-1-67(A).

The Taxpayers question why the Department took so long to notify them of their personal income tax liability for the 2000 tax year. Mr. Chacon 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). When adjustments are made to a taxpayer's federal tax return, NMSA 1978, § 7-1-13(C) imposes an affirmative duty on the taxpayer to file an amended New Mexico return within ninety days from the date of the adjustment.

There are insufficient government 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" that compare information reported to the IRS with information reported to New Mexico, there is some delay before the federal tape match 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 issue an assessment. The April 2004 assessment issued to the Taxpayers was well within the time limits provided by the New Mexico Legislature.

CONCLUSIONS OF LAW

1. The Taxpayers filed a timely, written protest to the assessment of interest issued under Letter ID L0970880000, and jurisdiction lies over the parties and the subject matter of these protests.

2. The Taxpayers' mistake in reporting their capital gain income resulted in the late payment of \$1,328.00 of their 2000 personal income to New Mexico, and interest was properly assessed on this amount back to the original due date of April 15, 2001.

3. The Department's assessment was issued within the statutory time period allowed by NMSA 1978, § 7-1-18(A) and is a valid assessment.

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

DATED July 30, 2004.