

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

**IN THE MATTER OF THE PROTEST OF
DONNA C. MARCHAK TO THE ASSESSMENT
OF PENALTY AND INTEREST ISSUED
UNDER LETTER ID NO. L0113782784**

05-05

DECISION AND ORDER

On March 30, 2005, a formal administrative hearing on the above-referenced protest was held in Santa Fe, Santa Fe County, New Mexico, before Margaret B. Alcock, Hearing Officer. The Taxation and Revenue Department ("Department") was represented by Jeffrey W. Loubet, Special Assistant Attorney General, who appeared in person. Donna C. Marchak ("Taxpayer") represented herself. By prior arrangement, Ms. Marchak entered her appearance by telephone from Japan. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. In 2000, the Taxpayer filed a timely New Mexico personal income tax return for the 1999 tax year, showing a refund due.
2. In completing her return, the Taxpayer inadvertently claimed two personal exemptions instead of the one exemption to which she was entitled.
3. As a result of the error in claiming an extra exemption, the Taxpayer underreported her New Mexico income tax by \$170.00.
4. The Department processed the Taxpayer's return as filed and sent her the refund she requested on March 6, 2000.

5. In May 2003, after receiving information from the Internal Revenue Service, the Department discovered the error on the Taxpayer's return and notified her that she had underreported her 1999 income tax by \$170.00.

6. In August 2003, the Department assessed the Taxpayer for \$170.00 of tax principal, \$17.00 of penalty, and \$85.10 of interest.

7. The Taxpayer paid the \$170.00 of tax principal and filed a timely protest to the assessment of penalty and interest.

8. At the administrative hearing, the Taxpayer clarified that she was not protesting the \$17.00 of penalty assessed, nor was she protesting the interest that accrued between May 2003 (when she received notice of her liability for additional tax) and August 2003 (when the additional tax was paid).

DISCUSSION

The issue to be decided is whether the Taxpayer is liable for the interest that accrued on her underpayment of 1999 personal income tax between April 2000, the original due date of the tax, and May 2003, the date the Taxpayer received the Department's notice of her liability. The Taxpayer acknowledges that she made a mistake when she completed her 1999 personal income tax return and inadvertently claimed two exemptions instead of one. The Taxpayer contends, however, that interest should not begin to accrue on her underpayment of tax until the date she received notice of her error in May 2003.¹

¹ The Taxpayer also objects to paying additional interest because she does not believe the State of New Mexico spends its tax revenues wisely. Whatever its merits, this argument presents an issue that is beyond the hearing officer's jurisdiction to consider.

NMSA 1978, § 7-1-17 provides that any assessment of taxes made 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 presumption of correctness applies to the assessment of interest in this case, and it is the Taxpayer’s burden to present evidence and legal arguments to justify an abatement.

At the hearing on her protest, the Taxpayer was unable to provide any legal authority to support her argument concerning the accrual of interest, stating that her position is based on common sense. 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 original due date of the tax, and continued until August 2003, the date the tax was paid. Section 7-1-67(A) 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 use of the word "shall" indicates that the provisions of the statute are mandatory rather than discretionary. *State v. Lujan*, 90 N.M. 103, 105, 560 P.2d 167, 169 (1977). With limited exceptions that do not apply here, the New Mexico Legislature has directed the Department to assess interest whenever taxes are not timely paid. 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*, NMSA 1978, § 7-1-13(E).

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 Taxpayer made a mistake in completing her 1999 income tax return. As a result of this error, the Taxpayer—rather than the state—had the use of \$170.00 of underreported tax for the period between April 2000 and August 2003. When a taxpayer fails to make timely payment of taxes due to the state, NMSA 1978, § 7-1-67(A) imposes interest “*from the first day following the day on which the tax becomes due...until it is paid.*” The language of the statute makes it clear that interest on an underpayment of tax begins to run from the original due date of the tax—not the date the Department notifies the taxpayer of the underpayment.

New Mexico has a self-reporting tax system. There are insufficient government resources available for the Department to continually audit every taxpayer to determine whether he or she has fully complied with the state’s tax laws. For this reason, the law places the duty on taxpayers to accurately determine and pay their taxes by the statutory due date. NMSA 1978, § 7-1-13; *See also, 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). In this case, the Department relied on the Taxpayer’s own representations when it processed her 1999 personal income tax return and issued her a refund. Upon receiving additional information from the Internal Revenue Service in 2003, the Department reevaluated the return and discovered the Taxpayer’s error.

While individual taxpayers are required to file one personal income tax return each year, the Department is charged with the administration of more than 40 different tax programs and receives thousands of tax filings each month. For this reason, NMSA 1978, § 7-1-18(A) gives the Department three years from the end of the calendar year in which a tax is originally due to

determine whether the tax has been paid and issue an assessment. In this case, the Department had until December 31, 2003 to notify the Taxpayer of her liability for 1999 income tax, plus any related penalty and interest. The Taxpayer received actual notice of her liability in May 2003, which was well within this statutory time frame. There is nothing in New Mexico tax law that authorizes an abatement of interest when a taxpayer receives notice of her failure to properly report and pay tax near the end—rather than at the beginning—of the three-year limitations period set out in § 7-1-18.

CONCLUSIONS OF LAW

A. The Taxpayer filed a timely, written protest to the Department's assessment of interest on her underpayment of 1999 personal income tax, and jurisdiction lies over the parties and the subject matter of this protest.

B. Pursuant to NMSA 1978, § 7-1-67(A), the Taxpayer is liable for the interest that accrued from the first day following the day on which her 1999 personal income tax became due in April 2000 until the date the underreported tax was paid in August 2003.

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

DATED April 4, 2005.