

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

**IN THE MATTER OF THE PROTEST OF
ROGER & R. LOUISE BUMSTEAD
TO RETURN ADJUSTMENT NOTICE ISSUED UNDER LETTER
ID NO. L2057274320**

No. 14-32

DECISION AND ORDER

A protest hearing occurred on the above captioned matter on August 7, 2014, before Brian VanDenzen, Esq., Hearing Officer, in Santa Fe. Mr. Roger Bumstead appeared *pro se* for himself and Louise Bumstead (“Taxpayers”). Staff Attorney Elena Morgan appeared representing the State of New Mexico, Taxation and Revenue Department (“Department”). Protest Auditor Sonya Varela appeared as a witness for the Department. Taxpayer Exhibits 1-9 and Department Exhibit A-C were admitted into the record, as described more thoroughly in the Administrative Protest Hearing Exhibit Log. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. On April 4, 2014, under letter id. number L2057274320, the Department sent Taxpayers a Return Adjustment Notice.
2. On May 20, 2014, Taxpayers protested the Department’s April 4, 2014 Return Adjustment Notice.
3. On July 18, 2014, the Department requested a hearing in this matter with the Hearings Bureau.

4. On July 18, 2014, the Hearings Bureau sent Notice of Administrative Hearing, scheduling this matter for the hearing on August 7, 2014.

5. For the personal income tax year ending on December 31, 2012, Taxpayers owed \$810.00 in New Mexico personal income tax. [Department Ex. A].

6. On April 1, 2013, Taxpayers submitted their 2012 personal income tax return and electronic debit payment of \$810.00 for their outstanding 2012 personal income tax obligation. [Department Ex. A and Taxpayer Ex. #3].

7. Even though the payment was made on April 1, 2013, since the payment was to satisfy the amount of 2012 personal income tax due under that return, the Department credited the \$810.00 payment to Taxpayers' 2012 personal income tax.

8. For personal income tax year 2013, since Taxpayers are retired without any wage withholdings, Taxpayers made four estimated payments of income tax totaling \$800.00. [Department Ex. B].

- a. On April 29, 2013, Taxpayer made a \$200.00 estimated payment of tax, indicating on the check comments that it was for the "2013 April Quarter." [Department Ex. B-4 and Taxpayer Ex. #6 & #9].
- b. On June 11, 2013, Taxpayer made a \$200.00 estimated payment of tax indicating on the check comments that it was for the "N.M. 2013 ¼ Inc. Tax Fund." [Department Ex. B-5 and Taxpayer Ex. #7 & #9].
- c. On September 12, 2013, Taxpayer made a \$200.00 estimated payment of tax, indicating on the check comments Taxpayers social security numbers. [Department Ex. B-6 and Taxpayer Ex. #8 & #9].

- d. On January 14, 2014, Taxpayer made a \$200.00 estimated payment of tax, indicating on the check comments that it was for the “2013 Est. Tax Payment.” [Department Ex. C].
9. Taxpayers used the services of AARP at Bear Canyon Senior Center to assist in preparation of the 2013 personal income tax returns.
10. Taxpayers’ total 2013 personal income tax liability was \$282.00. [Department Ex. B-2].
11. While Taxpayers in fact only made \$800.00 in 2013 estimated personal income tax payments, Taxpayers listed \$1410.00 in estimated personal income tax payments on line 29 of their 2013 personal income tax return. [Department Ex. B-2].
12. In error, Taxpayers’s return included their \$810.00 payment of 2012 personal income tax as a 2013 estimated income tax payment. Although the \$810.00 payment occurred during calendar year 2013, it was the payment for the outstanding 2012 personal income tax liability, not an estimated payment towards their 2013 personal income taxes.
13. In error, Taxpayers only included three of their four quarterly estimated income tax payments totaling \$600.00 as estimated income tax payments on their 2013 personal income tax return when in fact Taxpayers made four quarterly payments towards 2013 income tax totaling \$800.00.
14. The correct amount of 2013 estimated income tax payments that should have been listed on line 29 was \$800.00. With that correct amount of 2013 estimated income tax payments listed on line 29, Taxpayers were due a refund of \$518.00.
15. Upon receipt of Taxpayers’ 2013 personal income tax returns, the Department reviewed the return and its record and found that Taxpayers had only made \$800.00 in estimated

personal income tax returns in 2013 rather than the reported \$1410.00. The Department then issued the Return Adjustment Notice identified under finding of fact #1.

16. Taxpayers in fact received a refund in the correct amount of \$518.00 in this matter. [Department Ex. B-3].

DISCUSSION

Taxpayers believed that because their \$810.00 payment of their 2012 personal income tax liability occurred during calendar year 2013, that amount should be included on line 29 of their 2013 personal income tax return as part of their 2013 estimated personal income tax returns. Further, Taxpayers did not include the quarterly \$200.00 2013 estimated personal income tax payment that they made in January of 2014 on line 29, apparently because they believed since it was made in a different calendar year, it did not count towards their 2013 personal income taxes. When the Department adjusted Taxpayers' 2013 personal income tax return to reflect the accurate \$800.00 total in 2013 estimated tax payments, reducing their refund to \$518.00, Taxpayers protested that they were still entitled to a larger refund based on the \$1410.00 amount they reported as 2013 estimated tax reports.

Payment of New Mexico personal income tax is governed by NMSA 1978, §§ 7-2-1 to 36. Unless otherwise exempted by law, a tax is imposed "upon the net income of every" New Mexico resident. NMSA 1978, § 7-2-3 (1981). NMSA 1978, Section 7-2-12 (2003) requires any resident or any person deriving income from New Mexico to file a state income tax return. Under Section 7-2-12, the required tax return and any amount of tax due under the return are due "on or before the fifteenth day of the fourth month following the end of the taxable year", which is April 15th of the next calendar year. The statute thus contemplates that a tax payment may not occur until the calendar year following the end of the taxable year at issue.

Like this protest, where a taxpayer does not have any withholdings, that taxpayer is required to make quarterly estimated payments of income tax under NMSA 1978, Section 7-2-12.2 (2011). Under Section 7-2-12.2 (D), those quarterly estimated payments are due on “April 15, June 15, and September 15 of the taxable year *and January 15 of the following taxable year.*” (emphasis added). In other words, again the statute contemplates that one estimated quarterly payment will not be made during the taxable year but in the calendar year following the taxable year in question.

Taxpayers’ April 1, 2013 \$810.00 payment of tax was payment of Taxpayers’ 2012 personal income tax, a timely payment of 2012 personal income tax under Section 7-2-12. That payment was credited towards Taxpayers’ 2012 personal income tax year obligations, not towards any potential 2013 personal income tax year liabilities. Just because the 2012 personal income tax year payment of \$810.00 occurred during calendar year 2013, Taxpayers were not entitled to include that \$810.00 as an estimated 2013 personal income tax payment. The April 1, 2013 \$810.00 payment was not an estimated payment towards Taxpayers’ 2013 personal income tax year liabilities, but a payment of Taxpayers’ tax year 2012 liabilities, and thus should not have been included on line 29 of Taxpayers’ 2013 personal income tax return.

For tax year 2013, Taxpayers made four estimated payments of tax totaling \$800.00. While the January 2014 estimated payment occurred in calendar year 2014 rather than 2013, it still applies as an estimated payment for tax year 2013 under the deadlines established by Section 7-2-12.2 (D). Consequently, Taxpayers should have included that additional \$200.00 estimated tax payment from January 2014 on line 29 of their 2013 personal income tax return.

The Department properly detected the error on estimated tax payments reported on line 29 of Taxpayers’ 2013 personal income tax returns. The Department correctly adjusted

Taxpayers' 2013 personal income tax return with the correct amount of estimated tax payments that Taxpayers in fact made towards the 2013 personal income tax year. The Department then issued Taxpayers the correct refund amount of \$518.00. Taxpayers' protest to the Department's Return Adjustment Notice is denied.

CONCLUSIONS OF LAW

A. Taxpayer filed a timely, written protest to the Return Adjustment Notice. The hearing timely was set within 90-days of protest. Jurisdiction lies over the parties and the subject matter of this protest.

B. Under Section 7-2-12, Taxpayers' April 1, 2013 \$810.00 payment included with their 2012 personal income tax return was a timely payment of their year 2012 personal income tax liability before the April 15, 2013 due date, not an estimated payment of year 2013 personal income taxes.

C. Taxpayers timely made four estimated income tax payments for tax year 2013 totaling \$800.00, including the estimated payment made in January 2014.

D. The Department properly adjusted Taxpayers return to reflect the accurate amount of tax year 2013 estimated payments actually made and provided Taxpayers with the correct refund of \$518.00.

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

DATED: August 15, 2014.

Brian VanDenzen, Esq.,
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