

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

**IN THE MATTER OF THE PROTEST OF
GAIL STEFL,
TO THE ASSESSMENT ISSUED UNDER
ID NO. L1970895824**

No. 15-15

DECISION AND ORDER

A formal hearing on the above-referenced protest was held April 24, 2015, before Dee Dee Hoxie, Hearing Officer. The Taxation and Revenue Department (Department) was represented by Ms. Melinda Wolinsky, Staff Attorney. Ms. Veronica Galewaler, Auditor, also appeared on behalf of the Department. Ms. Gail Stefl (Taxpayer) appeared for the hearing and represented herself. The Hearing Officer took notice of all documents in the administrative file. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. On October 29, 2014, the Department assessed the Taxpayer for gross receipts tax, penalty, and interest for the tax period ending on December 31, 2013. The assessment was for \$2,944.88 tax, \$552.81 penalty, and \$65.10 interest.
2. On January 21, 2015, the Taxpayer filed a formal protest letter.
3. At some point, the amount of tax owed was amended and determined to be \$3,087.17. Penalty and interest were also adjusted.
4. On February 27, 2015, the Department filed a Request for Hearing asking that the Taxpayer's protest be scheduled for a formal administrative hearing.

5. On March 5, 2015, the Hearings Bureau issued a notice of hearing for March 19, 2015. The hearing date was set within ninety days of the protest.
6. On March 19, 2015, the Taxpayer requested a continuance of the hearing due to illness.
7. On March 19, 2015, the request for continuance was granted, and the delay of the hearing was attributable to the Taxpayer.
8. On March 19, 2015, the Hearings Bureau sent amended notices of hearing.
9. While the protest was pending, the Taxpayer paid the tax principal. At the time of the hearing, the Taxpayer's outstanding balance on the assessment was for \$617.40 in penalty and \$105.53 in interest.
10. The Taxpayer conceded that the tax was due and limited her protest to penalty and interest.
11. The Taxpayer was working on contract as a consultant with a company in 2013.
12. The Taxpayer knew she should be paying gross receipts tax at that time.
13. The Taxpayer failed to pay her gross receipts tax in 2013.
14. The Taxpayer has lingering health and mental problems from an injury sustained in 2005. The Taxpayer has trouble focusing on more than one thing at a time and does not deal well with changes in routine.
15. In 2013, the tax office where the Taxpayer usually went to pay her gross receipts tax was closed for a period of time to allow for renovation.
16. The Taxpayer's work involved a very large and complex legislative transition, and the Taxpayer was focused solely on her work for a substantial period of time.
17. The Taxpayer argued that she was not trying to avoid paying her taxes and that her failure to pay them on time was due to stress and her medical conditions.

DISCUSSION

The issue to be decided is whether the Taxpayer is liable for penalty and interest for the tax period ending on December 31, 2013.

Burden of Proof.

Assessments by the Department are presumed to be correct. *See* NMSA 1978, § 7-1-17. Tax includes, by definition, the amount of tax principal imposed and, unless the context otherwise requires, “the amount of any interest or civil penalty relating thereto.” NMSA 1978, § 7-1-3. *See also El Centro Villa Nursing Ctr. v. Taxation and Revenue Department*, 1989-NMCA-070, 108 N.M. 795. Therefore, the assessment issued to the Taxpayer is presumed to be correct, and it is the Taxpayer’s burden to present evidence and legal argument to show that she is entitled to an abatement of penalty and interest.

Assessment of Penalty.

The Taxpayer argued that she should not have to pay penalty. The Taxpayer argued that she did not intentionally neglect her taxes. The Taxpayer argued that the stress of her work, a temporary closure of a tax office, and her medical condition caused her to fail to pay her taxes on time. The Department argued that the Taxpayer had a history of paying her gross receipts tax late, even before her injury, and that the Taxpayer was negligent. Penalty is due when tax is not paid on time, even when the failure is due to negligence and not an intentional avoidance of taxation. *See* NMSA 1978, § 7-1-69. Negligence includes a failure to use ordinary business care, inaction when action is required, inadvertence, thoughtlessness, carelessness, and inattention. *See* 3.1.11.10 NMAC (2001). A taxpayer might not be negligent when the failure to pay her taxes is due to an injury or prolonged illness, but only if the situation renders the

taxpayer unable to pay the taxes and unable to procure the services of another person to do so on her behalf. *See* 3.1.11.11 NMAC (2001).

The Taxpayer was not incapacitated. The Taxpayer was working, was paying her living expenses, and was contributing funds to other family members in 2013. Although her medical problems may have contributed to her failure to pay her taxes, those issues did not rise to a level that rendered the Taxpayer unable to pay her taxes or unable to procure the services of another. The Taxpayer was negligent. Therefore, penalty was properly assessed to the Taxpayer.

Assessment of Interest.

Interest “shall be paid” on taxes that are not paid on or before the date on which the tax is due. NMSA 1978, § 7-1-67 (A). The word “shall” indicates that the assessment of interest is mandatory, not discretionary. *See Marbob Energy Corp. v. N.M. Oil Conservation Comm’n.*, 2009-NMSC-013, ¶ 22, 146 N.M. 24. The assessment of interest is not designed to punish taxpayers, but to compensate the state for the time value of unpaid revenues. Because the tax was not paid when it was due, interest was properly assessed.

CONCLUSIONS OF LAW

A. The Taxpayer filed a timely written protest to the Notice of Assessment of gross receipts tax issued under Letter ID number L1970895824, and jurisdiction lies over the parties and the subject matter of this protest.

B. The Taxpayer conceded that she owed the tax.

C. The Taxpayer was negligent in failing to pay her taxes on time, and was properly assessed for penalty and interest.

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

DATED: May 5, 2015.

Dee Dee Hoxie

DEE DEE HOXIE
Hearing Officer
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