

**STATE OF NEW MEXICO
ADMINISTRATIVE HEARINGS OFFICE
TAX ADMINISTRATION ACT**

**IN THE MATTER OF THE PROTEST OF
YATES PETROLEUM CORPORATION,
TO ASSESSMENT ISSUED UNDER
LETTER ID NO. L92323**

No. 16-35

DECISION AND ORDER

A formal hearing on the above-referenced protest was held on June 16, 2016 before Hearing Officer Dee Dee Hoxie. The Taxation and Revenue Department (Department) was represented by Mr. Peter Breen, Staff Attorney. Mr. Tom Dillon, Auditor, also appeared on behalf of the Department. Mr. John Perini, CFO for Yates Petroleum Corporation (Taxpayer), appeared for the hearing. 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 March 17, 2016, the Department assessed the Taxpayer for oil and gas tax, penalty, and interest for the tax return filed on February 24, 2016. The assessment was for \$944,935.20 tax, \$18,898.85 penalty, and \$2,192.14 interest.
2. On April 8, 2016, the Taxpayer filed a formal protest letter.
3. On April 27, 2016, the Department filed a Request for Hearing asking that the Taxpayer's protest be scheduled for a formal administrative hearing.
4. On April 28, 2016, the Hearings Office issued a notice of hearing. The hearing date was set within ninety days of the protest.
5. On May 23, 2016, the Taxpayer filed a withdrawal of the protest.
6. On June 1, 2016, the Taxpayer filed a request to have a hearing on the protest, but limiting the issues to the application of penalty and interest.

7. On June 2, 2016, the Department filed its response and did not oppose the request to hold the hearing.
8. On June 2, 2016, the Hearings Office sent amended notices of hearing. The hearing was still set within 90 days of the protest.
9. The Taxpayer filed its tax return and submitted a payment electronically on February 24, 2016. However, the payment was inadvertently sent to the New Mexico Land Office rather than to the Department.
10. The Land Office initially applied the payment to the royalties account. The Land Office then realized the Taxpayer's mistake and forwarded the Taxpayer's payment to the Department. The Department received the Taxpayer's tax payment just a couple of days after the due date.
11. After the protest was filed, the Department learned that the Taxpayer's payment had been received only a few days late. The Department adjusted the amount of interest accordingly. Interest was reduced to \$604.54.

DISCUSSION

The issue to be decided is whether the Taxpayer is liable for penalty and interest.

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 it is entitled to an abatement of penalty and interest.

Assessment of Penalty.

The Taxpayer argued that it should not have to pay penalty. The Taxpayer argued that the state of New Mexico had the payment on the due date. The Taxpayer agreed that the payment should have been sent to the Department, but argued that its mistake was not prejudicial since the state of New Mexico had the payment on the due date. The Taxpayer argued that the payment was timely since it was in possession of the state, even though it was in the wrong office. The Department argued that the payment was required to be made to the Department, and that the Taxpayer's mistake was negligent and subject to penalty.

Payments are required to be made to the Department with filed returns, or may be made preceding filed returns. *See* NMSA 1978, § 7-1-13 (2013). Penalty “shall be added to the amount assessed” when a tax is not paid on time due to negligence. *See* NMSA 1978, § 7-1-69 (2007) (emphasis added). The word “shall” indicates that the assessment of penalty is mandatory, not discretionary. *See Marbob Energy Corp. v. N.M. Oil Conservation Comm’n.*, 2009-NMSC-013, ¶ 22, 146 N.M. 24. Assessments of penalty are presumed to be correct and it is a taxpayer’s burden to show that the assessment was not correct. *See* 3.1.11.8 NMAC (2001). *See* NMSA 1978, § 7-1-17. *See also El Centro*, 1989-NMCA-070. It is a taxpayer’s responsibility to make payments, whether they are done electronically or in another fashion. *See* NMSA 1978, § 7-1-13.1 (2005). If the payment fails to go through, and the tax is paid late, the payment is subject to penalty and interest. *See id.* *See also* NMSA 1978, § 7-1-13.4 (2000). Negligence includes inadvertence. *See* 3.1.11.10 (C) (2001). Under the statute and regulations, an honest mistake is tantamount to inadvertence, and is subject to penalty. *See id.*

The Taxpayer failed to make the payment to the Department on the due date. Making the payment to the wrong office does not excuse that failure. Therefore, penalty applies.

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). Again, 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 to the Department 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 oil and gas taxes issued under Letter ID number L92323, and jurisdiction lies over the parties and the subject matter of this protest.

B. The Taxpayer failed to make a payment to the Department when it filed its return on February 24, 2016. *See* NMSA 1978, § 7-1-13, *et. seq.*

C. Therefore, the Taxpayer was properly assessed for penalty and interest. *See* NMSA 1978, § 7-1-67 and § 7-1-69.

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

DATED: July 6, 2016.

Dee Dee Hoxie
DEE DEE HOXIE
Hearing Officer
Administrative Hearings Office
Post Office Box 6400
Santa Fe, NM 87502

NOTICE OF RIGHT TO APPEAL

Pursuant to NMSA 1978, § 7-1-25, the parties have the right to appeal this decision by filing a notice of appeal **with the New Mexico Court of Appeals** within 30 days of the date shown above. *See* Rule 12-601 NMRA. If an appeal is not filed within 30 days, this Decision and Order will become final. A copy of the Notice of Appeal should be mailed to John Griego, P. O. Box 6400, Santa Fe, New Mexico 87502. Mr. Griego may be contacted at 505-827-0466.