

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

**IN THE MATTER OF THE PROTEST OF
ZELMA KINGSLEY
PERSONAL INCOME TAX ASSESSMENT FOR
2002, ISSUED UNDER LETTER ID L0640933888**

No. 03-21

DECISION AND ORDER

A formal hearing on the above-referenced protest was held October 28, 2003, before Margaret B. Alcock, Hearing Officer. The Taxation and Revenue Department ("Department") was represented by Bridget A. Jacober, Special Assistant Attorney General. Zelma Kingsley ("Taxpayer") represented herself. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. The Taxpayer was a New Mexico resident during the 2002 tax year and filed her New Mexico personal income tax return on February 17, 2003.
2. The Taxpayer was surprised to find that she owed \$281.00 of tax for the 2002 tax year since she had always received tax refunds in the past.
3. The Taxpayer was unable to pay the tax she owed by the April 15, 2003 due date.
4. On April 10, 2003, the Taxpayer called the Department and asked for an extension of time to pay her taxes.
5. The Department employee with whom the Taxpayer spoke granted her an extension of time until August 15, 2003 to pay the tax due. The employee did not tell the Taxpayer that New Mexico law requires interest to be paid on any amount of unpaid tax, even when the Taxpayer has obtained an extension of time to file or pay that tax.

7. The Department's instructions to New Mexico Personal Income Tax Form PIT-1 advises taxpayers that "An extension of time to file your return does NOT extend the time to pay. If tax is expected to be due, interest will continue to accrue."

8. The Taxpayer filed on-line and did not receive a copy of the Department's PIT-1 instructions in the mail.

9. On June 4, 2003, the Department assessed the Taxpayer for the \$281.00 of income tax reported on her 2002 PIT-1, together with \$11.24 of penalty and \$5.77 of interest.

10. On June 8, 2003, the Taxpayer filed a written protest to the assessment based on the fact that she had been granted an extension of time to pay until August 15, 2003. The Taxpayer also objected to the Department's addition of penalty and interest, arguing that she was never told that there would be a penalty to extend the tax due date.

11. The Department subsequently abated the penalty assessed against the Taxpayer.

DISCUSSION

The issue to be decided is whether a taxpayer who has been granted an extension of time to pay tax due to the state is excused from the payment of interest on that tax. The answer is found in NMSA 1978, § 7-1-13(E), which states that:

The secretary or the secretary's delegate may, for good cause, extend in favor of a taxpayer ... the date on which payment of any tax is required or on which any return required by provision of the Tax Administration Act shall be filed, *but no extension shall prevent the accrual of interest as otherwise provided by law....* (emphasis added)

and in NMSA 1978, § 7-1-67(A), which states as follows:

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)

These statutes make it clear that interest accrues on all taxes due to the state, even when the taxpayer has obtained an extension of time to pay the tax. The effect of the extension is to relieve the taxpayer from payment of penalty, not interest.

In this case, Ms. Kingsley objected to the imposition of interest because the Department employee with whom she spoke did not explain that interest would accrue on her delayed tax payment. The Department's failure to specifically inform Ms. Kingsley of her liability for interest was unfortunate, but cannot override the clear language of New Mexico's tax statutes. In addition, while the Department's instructions could be worded more clearly, the language concerning the accrual of interest is sufficient to have alerted the Taxpayer to the possibility that interest would be charged on tax paid after the statutory due date. Although Ms. Kingsley said she never received the Department's instructions in the mail, she could have obtained the instructions from the Department's web site or from any district office.

The assessment of interest is not designed to punish taxpayers, but to compensate the state for the time value of unpaid revenues. Here, the state should have received Ms. Kingsley's income taxes on April 15, 2003. By failing to pay her taxes by that date—however good her reasons may have been—Ms. Kingsley deprived the state of money to which it was legally entitled. Accordingly, interest is due on Ms. Kingsley's 2002 income tax liability from April 15, 2003, the original due date of the tax, until the date it is paid.

CONCLUSIONS OF LAW

1. The Taxpayer filed a timely, written protest to the Department's assessment of interest on her 2002 personal income tax, and jurisdiction lies over the parties and the subject matter of this protest.

2. Pursuant to NMSA 1978, §§ 7-1-13 and 7-1-67, the Department's granting of an extension of time for the Taxpayer to pay her 2002 personal income tax does not excuse the Taxpayer from the payment of interest on that tax.

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

DATED October 29, 2003.