

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

**IN THE MATTER OF THE PROTEST OF
GERARD G. DESJARDINS
ASSESSMENT NO. 436081**

No. 04-01

DECISION AND ORDER

A formal hearing on the above-referenced protest was held January 7, 2004, before Margaret B. Alcock, Hearing Officer. The Taxation and Revenue Department ("Department") was represented by Bruce J. Fort, Special Assistant Attorney General. Gerard G. Desjardins ("Taxpayer") represented himself. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. On October 15, 1999, the Taxpayer filed a New Mexico personal income tax return (Form PIT-1) for the 1998 tax year.
2. The Taxpayer's 1998 PIT-1 showed a tax liability of \$1,018.00, but no payment was included with the return.
3. On March 19, 2002, the Department issued Assessment No. 436081 to the Taxpayer in the amount of \$1,018.00, plus \$101.80 penalty and \$445.93 interest.
4. On April 5, 2002, the Taxpayer filed a written protest to the Department's assessment of penalty and interest. The Taxpayer acknowledged his liability for the \$1,018.00 of tax principal and has paid this amount.

DISCUSSION

The issue presented is whether the Taxpayer is liable for the penalty and interest assessed on his late payment of 1998 personal income tax. The Taxpayer acknowledges that payment of his 1998 taxes was not made by the statutory due date, but protests the assessment of penalty and interest. The Taxpayer maintains that the 29-month delay between the date he filed his 1998 return and the date the Department issued its assessment was unreasonable and deprived him of the opportunity to claim amnesty under the tax amnesty program authorized by the New Mexico Legislature.

The Taxpayer's argument ignores the plain language of NMSA 1978, § 7-1-18(A), which gives the Department three years from the end of the calendar year in which a tax is due to issue an assessment for any underpayment of that tax. This means that the Department had until December 31, 2002 to assess the Taxpayer for 1998 personal income tax, payment of which was due on April 15, 1999. The assessment issued on March 3, 2002 was well within the statutory time period allowed by the New Mexico Legislature.

The Taxpayer's amnesty argument is also without merit. New Mexico has a self-reporting tax system, and it was the Taxpayer's responsibility to insure that his 1998 taxes were paid in a timely manner. *See*, NMSA 1978, § 7-1-13(B). The Taxpayer's negligence in failing to include his tax payment with his 1998 return cannot be attributed to the Department, and the Department had no obligation to notify the Taxpayer of his oversight in time for him to claim amnesty.

The tax amnesty program was authorized by Laws 1999, Ch. 10, and allowed the secretary of the Taxation and Revenue Department, with the concurrence of the governor, "to declare an amnesty period of no more than ninety days, provided that any amnesty period occur within fiscal year 2000." Fiscal year 2000 began on July 1, 1999 and ended on June 30, 2000. As set out in the "1999 Tax

Amnesty Fact Sheet”, which is a public record of the Department, the amnesty period designated by the secretary began on August 16, 1999 and ended on November 12, 1999. During this period, penalty and interest on unpaid tax liabilities would be waived if the underlying tax principal was paid prior to the end of the amnesty period. The Taxpayer’s 1998 PIT return was filed, without payment, on October 15, 1999, just 28 days before the amnesty program ended. The Taxpayer’s assertion that the Department had an obligation to immediately notify him of his negligent failure to pay his taxes, thereby allowing him to take advantage of the amnesty program, is unsupported by either law or equity.

CONCLUSIONS OF LAW

1. The Taxpayer filed a timely, written protest to Assessment No. 436081, and jurisdiction lies over the parties and the subject matter of this protest.
2. Assessment No. 436081 was issued within the statutory time period authorized by NMSA 1978, § 7-1-18(A), and there is no legal basis for the Taxpayer’s argument of undue delay.
3. The Taxpayer failed to meet his burden of proving that the Department’s assessment of penalty and interest was incorrect.

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

DATED January 8, 2004.