

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

**IN THE MATTER OF THE PROTEST OF
BRENDA K. MURRAY, a/k/a BRENDA K. AKIN
TO ASSESSMENT OF 1999 PERSONAL INCOME
TAX ISSUED UNDER LETTER ID L1632194560**

No. 07-15

DECISION AND ORDER

A formal hearing on the above-referenced protest was held on August 21, 2007, before Margaret B. Alcock, Hearing Officer. The Taxation and Revenue Department (“Department”) was represented by Jeffrey W. Loubet, Special Assistant Attorney General. Brenda K. Murray (“Taxpayer”), now known as Brenda K. Akin, represented herself. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. The Taxpayer and her former husband filed a joint federal income tax return for the 1999 tax year.
2. The couple also prepared a joint New Mexico income tax return, but were in the midst of a marital separation and never filed their state return.
3. By Stipulated Minute Order entered on November 6, 2001 by the Second Judicial District Court for the County of Bernalillo, New Mexico, the Taxpayer and her husband were divorced and the husband was ordered to pay the couple’s remaining 1999 taxes.
4. The State of New Mexico was not a party to the Taxpayer’s divorce action.
5. On July 22, 2003, the Department assessed the Taxpayer and her former husband for \$634.00 of personal income tax due for the 1999 tax year, plus interest and penalty.
6. On August 9, 2003, the Taxpayer filed a written protest to the assessment.

DISCUSSION

The issue to be decided is whether the Taxpayer is liable for the Department's assessment of New Mexico personal income tax, interest and penalty for the 1999 tax year. NMSA 1978, § 7-1-17(C) states that any assessment of tax made by the Department is presumed to be correct. *See also, Holt v. New Mexico Department of Taxation & Revenue*, 2002 NMSC 34, ¶ 4, 133 N.M. 11, 59 P.3d 491. Accordingly, it is the Taxpayer's burden to come forward with evidence and legal argument to establish that she is entitled to an abatement of the assessment, in full or in part.

The Taxpayer maintains that she is not liable for the Department's assessment because her former husband was ordered to pay the couple's remaining 1999 taxes in the couple's divorce proceeding. New Mexico law is clear, however, that the terms of a marital settlement or divorce decree is not binding on third parties who were not parties to the proceeding. In *Sunwest Bank of Albuquerque v. Roderiguez*, 108 N.M. 211, 216, 770 P.2d 533, 538 (1989), a husband and wife executed a promissory note in connection with the husband's business. The couple subsequently divorced, and the settlement agreement required the husband to assume the debts of the business. When the bank later sued the wife for payment of the note, she argued that the settlement agreement absolved her of liability. The New Mexico Supreme Court disagreed, stating:

Finally, there is no merit to the allegation that her nonparticipation in A R Roofing or that her marriage settlement agreement, which required Albert to assume the debts of the business, absolves Patsy from liability under the note. Although the agreement may affect the rights and liabilities of the husband and wife between themselves, it has no effect upon the rights of a predivorce creditor who is not a party to the agreement. *See New Mexico Educators Fed. Credit Union*, 102 N.M. at 18, 690 P.2d at 1012.

See also, Continental Inn v. New Mexico Taxation and Revenue Department, 113 N.M. 588, 591, 829 P.2d 946, 949 (Ct. App. 1992) (contracts between a taxpayer and a third party regarding the

payment of taxes cannot shift the taxpayer's legal incidence of the tax as between the state and the taxpayer).

In this case, the Taxpayer and her former husband filed a joint federal income tax return for the 1999 tax year and were required to file their state return on the same basis. *See*, Department Regulation 3.3.12.12 NMAC. As a result, each of them is individually liable for taxes due in connection with those returns. Any agreement concerning payment of marital debts reached in the context of the Taxpayer's divorce proceeding is not binding on the Department and does not affect The Taxpayer's liability for payment of delinquent taxes due to the state.

CONCLUSIONS OF LAW

A. The Taxpayer filed a timely, written protest to the assessment issued under Letter ID L1632194560, and jurisdiction lies over the parties and the subject matter of this protest.

B. The Taxpayer and her former husband are both individually liable for taxes due in connection with their 1999 income taxes.

C. The divorce decree entered on November 1, 2006 has no effect on the Taxpayer's liability for payment of delinquent 1999 income taxes due to the state.

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

DATED August 22, 2007.