

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

**IN THE MATTER OF THE PROTEST OF
SARA MILLS,
TO ASSESSMENT ISSUED UNDER
ID NO. L0717900240**

No. 14-26

DECISION AND ORDER

A formal hearing on the above-referenced protest was held May 22, 2014, before Dee Dee Hoxie, Hearing Officer. The Taxation and Revenue Department (Department) was represented by Mr. Peter Breen, Staff Attorney. Ms. Mary Griego, Auditor, also appeared on behalf of the Department. Ms. Sara Mills (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 September 20, 2013, the Department assessed the Taxpayer for personal income tax, penalty, and interest for the tax period ending on December 31, 2007. The assessment was for \$716.00 tax, \$143.20 penalty, and \$149.53 interest.
2. On September 30, 2013, the Taxpayer filed a formal protest letter.
3. On October 23, 2013, the Department filed a Request for Hearing asking that the Taxpayer's protest be scheduled for a formal administrative hearing.
4. On October 24, 2013, the Hearings Bureau issued a notice of hearing. The hearing date was set within ninety days of the protest.
5. On November 22, 2013, the Taxpayer requested a continuance of the hearing due to travel for work.

6. On December 5, 2013, the request for continuance was granted, and the delay of the hearing was attributable to the Taxpayer.
7. On December 10, 2013, the Hearings Bureau sent amended notices of hearing. On December 18, 2013, the Hearings Bureau sent second amended notices of hearing.
8. The Taxpayer filed a timely PIT return for the 2007 tax year.
9. In 2010, the Taxpayer was audited by the Internal Revenue Service (IRS). Her federal return was adjusted pursuant to the audit, and the Taxpayer had an additional tax liability. The Taxpayer paid the IRS the additional tax on June 22, 2010.
10. The Taxpayer did not file an adjusted PIT return. The Taxpayer did not realize that she was required to report her federal adjustment to the state.
11. The Taxpayer paid the PIT after she received the assessment and does not dispute that she owed additional tax.
12. The Taxpayer argued that penalty and interest were inappropriate because the Department did not assess her until 2013.

DISCUSSION

The issue to be decided is whether the Taxpayer is liable for penalty and interest for the tax period ending on December 31, 2007.

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.

Timeliness of the Assessment.

The Taxpayer argued that the assessment was not timely since it occurred six years after the 2007 tax year. The Taxpayer argued that the Department should have taken action earlier and should have notified her in 2010 that she needed to file an adjusted return after her federal audit. The Department argued that the federal paperwork generally includes language that notifies taxpayers of their obligations to report changes to their states. The Taxpayer denied receiving any such paperwork from the IRS during her audit. The Department also argued that it was the Taxpayer's responsibility to file the adjusted return and that the assessment was timely.

Generally, assessments must be made within three years of the end of the calendar year in which the tax was due. *See* NMSA 1978, § 7-1-18 (2013). The tax was due in April 2008 for the 2007 tax year. If the Taxpayer had not been federally audited, the Department would have had until December 31, 2011 to assess. However, when a taxpayer is audited and an adjustment is made federally, the Department has three years to assess from the end of the calendar year in which the amended return should have been filed. *See id.*

Filing tax returns is a taxpayer's responsibility, and the Department is not required to notify a taxpayer of that responsibility. *See* NMSA 1978, § 7-1-13 (2013). When a taxpayer's tax is adjusted by a federal audit, it is the taxpayer's responsibility to file an amended return with the state. *See id.* Current provisions require that the amended return be filed within 180 days of the final federal adjustment. *See id.* The statute in effect in 2010 required that the amended return be filed within 90 days of the final adjustment. *See* NMSA 1978, § 7-1-13 (2007). The Taxpayer paid the final federal adjustment on June 22, 2010. Assuming that the date of payment was also the date of the final adjustment, the Taxpayer had until September 20, 2010 to file an amended return with the state. The

Taxpayer failed to do so. Nevertheless, the Department had until December 31, 2013 to assess. *See* NMSA 1978, § 7-1-18 (2013). Consequently, the assessment was timely as it was made on September 20, 2013.

Assessment of Penalty.

The Taxpayer argued that she should not have to pay penalty. The Taxpayer felt that her mistake was due to ignorance and that the Department should have notified her in 2010 of her additional liability. A taxpayer's lack of knowledge or erroneous belief that the taxpayer did not owe tax is considered to be negligence for purposes of assessment of penalty. *See Tiffany Const. Co., Inc. v. Bureau of Revenue*, 1976-NMCA-127, 90 N.M. 16. Penalty can be abated when a taxpayer receives a federal adjustment of tax liability. *See* 3.1.11.11 (F) (2001). However, when a taxpayer fails to file a timely amended return after a federal adjustment, penalty is to be assessed. *See id.* Therefore, penalty was properly assessed to the Taxpayer as she failed to file a timely amended return as required.

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

1. The Taxpayer filed a timely written protest to the Notice of Assessment of 2007 personal income taxes issued under Letter ID number L0717900240, and jurisdiction lies over the parties and the subject matter of this protest.

2. The Taxpayer conceded that she owed the tax for the 2007 tax year.
3. The Taxpayer was properly assessed for penalty and interest for the 2007 tax year.

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

DATED: June 25, 2014.

Dee Dee Hoate

DEE DEE HOXIE
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