

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

**IN THE MATTER OF THE PROTEST OF
GOLF NEW MEXICO/GOLF WEST,
TO ASSESSMENTS ISSUED UNDER
ID NOS. L0759326016 and L1796525376**

No. 14-43

DECISION AND ORDER

A formal hearing on the above-referenced protest was held October 23, 2014, before Dee Dee Hoxie, Hearing Officer. The Taxation and Revenue Department (Department) was represented by Ms. Elena Morgan, Staff Attorney. Ms. Jennifer Carlisle, Auditor, also appeared on behalf of the Department. Golf New Mexico/Golf West (Taxpayer) appeared for the hearing by and through its owner, Ms. Julia Olguin, and represented itself. 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 February 11, 2013, the Department assessed the Taxpayer for gross receipts tax, penalty, and interest for the tax period ending on December 31, 2008. The assessment was for \$43,758.72 tax, \$8,751.75 penalty, and \$7,039.27 interest.
2. On February 11, 2013, the Department assessed the Taxpayer for gross receipts tax, penalty, and interest for the tax period ending on December 31, 2009. The assessment was for \$21,425.06 tax, \$4,285.01 penalty, and \$2,466.45 interest.
3. The Department determined that the Taxpayer was a non-filer through a federal mismatch.
4. On March 8, 2013, the Taxpayer filed a formal protest letter to the assessments.

5. On February 10, 2014, the Department filed a Request for Hearing asking that the Taxpayer's protest be scheduled for a formal administrative hearing.
6. On February 11, 2014, the Hearings Bureau issued a notice of hearing. An amended notice was issued on July 24, 2014.
7. The Taxpayer was doing business in New Mexico in 2008 and 2009.
8. The Taxpayer provides a service to golfers by booking package deals at golf resorts in New Mexico.
9. The Taxpayer collects a fee for those services.
10. In 2008 and 2009, Ms. Olguin was experiencing personal problems and was dealing with depression issues.
11. Due to her depression, Ms. Olguin stopped filing gross receipts tax reports on behalf of the Taxpayer.
12. The Taxpayer explained that its gross receipts for 2008 and 2009 were less than the amounts assessed. The Taxpayer was mistakenly including in its federal returns money that was collected from its clients that was then paid to the golf resorts on their behalf. The Taxpayer was merely serving as an agent for its clients' convenience.
13. The Department adjusted the assessment.
14. The Department determined that the gross receipts tax due for 2008 was actually \$4,703.24, penalty of \$940.65, and interest to the date of the hearing was \$932.93.
15. The Department determined that the gross receipts tax due for 2009 was actually \$3,111.83, penalty of \$622.37, and interest to the date of the hearing was \$487.32.
16. The Taxpayer did not dispute the adjusted amounts of tax due. The Taxpayer was only concerned with penalty and interest.

DISCUSSION

The issues to be decided are whether the Taxpayer is liable for penalty and interest for the tax periods ending on December 31, 2008 and on December 31, 2009.

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 penalty should be abated because its failure to file and pay taxes was due to the depression of its owner during the 2008 and 2009 tax years. Penalty is applied when a taxpayer fails to pay a tax “due to negligence or disregard”. NMSA 1978, § 7-1-69. Negligence includes the failure to exercise ordinary business care, inaction, and indifference. *See* 3.1.11.19 NMAC (2001). A taxpayer might not be negligent when the taxpayer is disabled by an illness that renders the taxpayer incapable of taking care of its taxes or of hiring someone to do so for it. *See* 3.1.11.11 NMAC (2001). Although the Taxpayer’s owner was suffering from depression during the 2008 and 2009 tax years, there was not sufficient evidence that her illness rendered her incapable of taking care of the Taxpayer’s taxes, especially since the Taxpayer still managed to file its federal taxes. Therefore, the Taxpayer was negligent and in disregard of the tax law. Consequently, the penalty was properly assessed.

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.

The Taxpayer expressed its concern that interest would continue to accrue on top of the penalty and interest. Ms. Carlisle explained to the Taxpayer that interest does not accrue on penalty or interest. *See* NMSA 1978, § 7-1-67 (C) (2013).

CONCLUSIONS OF LAW

A. The Taxpayer filed a timely written protest to the Notices of Assessment issued under Letter ID numbers L0759326016 and L1796525376, and jurisdiction lies over the parties and the subject matter of this protest.

B. The Taxpayer conceded that it owed the gross receipts tax, as adjusted by the Department after the protest was filed, for the 2008 and 2009 tax years.

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

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

DATED: December 23, 2014.

Dee Dee Hoxie

DEE DEE HOXIE
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