

**STATE OF NEW MEXICO  
ADMINISTRATIVE HEARINGS OFFICE  
TAX ADMINISTRATION ACT**

**IN THE MATTER OF THE PROTEST OF  
ELIZABETH BROWER,  
TO THE ASSESSMENT ISSUED UNDER  
LETTER ID NO. L1299218384  
AND TO THE DENIAL OF REFUND ISSUED UNDER  
LETTER ID NO. L1355493328**

**No. 15-31**

**DECISION AND ORDER**

A formal hearing on the above-referenced protest was held on August 31, 2015, before Hearing Officer Dee Dee Hoxie. The Taxation and Revenue Department (Department) was represented by Ms. Elena Morgan, Staff Attorney. Ms. Milagros Bernardo, Auditor, also appeared on behalf of the Department. Ms. Elizabeth Brower (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 March 10, 2015, the Department denied the Taxpayer's request for refund of an amount that was offset from the refund of her 2013 tax year. The offset was done to satisfy a penalty for underpayment of estimated tax on her 2011 and 2012 tax years.  
[L1355493328]
2. On March 23, 2015, the Taxpayer filed a formal protest letter.
3. On May 21, 2015, the Department filed a Request for Hearing asking that the Taxpayer's protest be scheduled for a formal administrative hearing.

4. On May 26, 2015, the Administrative Hearings Office issued a notice of hearing for a telephonic scheduling hearing on June 10, 2015. The hearing was set within 90 days of the protest.
5. At some point, the Department refunded the amount taken for the 2012 tax year because a formal assessment of that year had not been done.
6. On May 22, 2015, the Department formally assessed the Taxpayer for the penalty for underpayment of estimated tax for the 2012 tax year. [L1299218384]
7. On June 4, 2015, the Taxpayer filed a formal protest letter.
8. On June 18, 2015, the Department filed a Request for Hearing asking that the Taxpayer's protest be scheduled for a formal administrative hearing.
9. Based upon the discussions at the scheduling hearing on June 10, 2015, the second protest was consolidated with the first protest. An order and notice was issued on June 23, 2015, which set the hearing for August 31, 2015. The hearing was set within 90 days of the second protest.
10. In 2011 and 2012, the Taxpayer was required to make estimated payments of her personal income tax.
11. For 2011 estimated tax payments, the Taxpayer paid \$700.00 in April, \$500.00 in June, \$1,700.00 in September, and \$2,500.00 in January of 2012.
12. For 2012 estimated tax payments, the Taxpayer paid \$3,500.00 in April, \$500.00 in June, \$700.00 in September, and \$2,500.00 in January of 2013.
13. The Taxpayer receives the bulk of her retirement distributions in December of each year.
14. The Taxpayer owed \$5,468.00 in personal income taxes for the 2010 tax year, \$37,155.00 for the 2011 tax year, and \$32,319.00 for the 2012 tax year.

15. The Taxpayer should have paid equal installments of estimated tax for 2011 in the amounts of \$1,367.00, which would be 100% of her tax liability for the previous year.
16. The Taxpayer should have paid equal installments of estimated tax for 2012 in the amounts of \$7,272.00, which would be 90% of her tax liability for that year.
17. After the protest was filed, the Department adjusted the amounts of penalty assessed and abated amounts in excess of the adjustment. The current penalty for 2011 is \$31.00, and for 2012 is \$430.00.

### **DISCUSSION**

The issue to be decided is whether the Taxpayer is liable for penalty for the underpayment of estimated tax for the 2011 and 2012 tax years.

#### **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.

#### **Estimated Tax.**

Taxpayers are required to make “the required annual payment in installments through either withholding or estimated tax payments.” NMSA 1978, § 7-2-12.2 (A) (2011). The required annual payment is either 90% of the current taxable year or 100% of the prior tax year, whichever is less. *See* NMSA 1978, § 7-2-12.2 (B). Estimated payments are to be made by the

15<sup>th</sup> days of April, June, and September of the taxable year, and by the 15<sup>th</sup> day of January of the following year. *See* NMSA 1978, § 7-2-12.2 (D). Each installment should be equal to 25%, or more as required in some situations, of the required annual payment, so that 100% of the required annual payment has been paid by January 15<sup>th</sup> of the following year. *See* NMSA 1978, § 7-2-12.2 (C). When a taxpayer makes underpayments of the estimated tax, a penalty applies to the amounts of underpayment for the period of underpayment. *See* NMSA 1978, § 7-2-12.2 (G).

The Taxpayer essentially argued that the statute was unfair. The Taxpayer argued that requiring equal payments was unreasonable since the payment due dates do not divide the calendar into even quarters. The Taxpayer made her estimated tax payments based upon the actual distributions she had received by the due dates. The Taxpayer argued that it was an impossible task to determine what 90% of a current taxable year would be since distribution amounts can vary dramatically based on payment dates, market rates, and interest rates. The Taxpayer argued that by requiring equal estimated payments without regard to when funds are actually distributed to the Taxpayer, the Department is essentially taxing income that has not been earned yet. For all of those reasons, the Taxpayer felt that the statute was unfair, unreasonable, and should not apply to her.

The Department argued that the statute was fair as it treats all similarly situated taxpayers in the same manner. The Department argued that a taxpayer who is uncomfortable estimating 90% of the taxable year's income can simply pay 100% of the prior year's tax. The Department argued that the statute should be followed.

The primary goal in interpreting a statute is to give it the effect that the Legislature intended. *See State v. Davis*, 2003-NMSC-022, 134 N.M. 172. Statutory construction begins by looking at the plain meaning of the language. *See id.* *See also Wood v. State Educ. Ret. Bd.*, 2011-

NMCA-020, ¶ 12, 149 N.M. 455. *See also State v. Maestas*, 2007-NMSC-001, 149 P.3d 933. *See also Johnson v. NM Oil Conservation Com'n*, 1999-NMSC-021, 127 NM 120. The statute requires that equal payments of estimated tax be made by their respective due dates or that 100% of the required annual payment be made by January 15<sup>th</sup> of the following year. *See NMSA 1978, § 7-2-12.2*. The law is clear, and the Hearing Officer is bound to apply the law as it is written, despite the Taxpayer's arguments to the contrary. Therefore, the Taxpayer was required to make equal payments of estimated tax or to pay the required annual payment in full by January 15<sup>th</sup> of the following tax year.

**Assessment of Penalty.**

The Taxpayer argued that she should not have to pay penalty. The Taxpayer argued that penalty should be excused since the Department initially took part of her return as an offset against the 2012 penalty when she had not been formally assessed for 2012. The Department is not required to make a formal assessment before collecting penalty and interest. *See NMSA 1978, § 7-1-30 (1965)*. The fact that the Department refunded the amount seized and then issued a formal assessment does not negate the Taxpayer's failure to make full estimated tax payments.

Penalty applies when any installment of estimated tax is underpaid. *See NMSA 1978, § 7-2-12.2 (G)*. Penalty is not applied some situations even when there is an underpayment of estimated tax. *See NMSA 1978, § 7-2-12.2 (H)*. If the underpayment is "not due to fraud, negligence, or disregard of rules and regulations", then penalty is not imposed. *Id.* The Taxpayer felt that her payments were made as required and that she was not negligent or in disregard of the rules. A taxpayer's lack of knowledge or erroneous belief 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. No penalty will be imposed when a taxpayer pays the

required annual payment in full by January 15<sup>th</sup> of the following year. *See* NMSA 1978, § 7-2-12.2 (H). The Taxpayer failed to pay the full amounts of estimated tax that were due when they were due. The Taxpayer failed to pay 100% of the required annual payment by January 15<sup>th</sup> of the following tax year. Therefore, penalty was properly assessed.

### CONCLUSIONS OF LAW

A. The Taxpayer filed a timely written protest to the Assessment issued under Letter ID number L1299218384 and to the Denial of Refund issued under Letter ID number L1355493328, and jurisdiction lies over the parties and the subject matter of this protest.

B. The Taxpayer was required to pay estimated tax for 2011 and 2012 in equal installments or so that the required annual payment was paid in full no later than January 15, 2012 and January 15, 2013, respectively. *See* NMSA 1978, § 7-2-12.2. The Taxpayer failed to do so.

C. Therefore, the Taxpayer was properly assessed penalty on the underpayments of estimated tax for 2011 and 2012. *See id.*

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

DATED: September 29, 2015.

*Dee Dee Hoxie*

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DEE DEE HOXIE  
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