

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

**IN THE MATTER OF THE PROTEST OF
ELIZABETH O. BROWER,
TO THE ASSESSMENT ISSUED UNDER
LETTER ID NO. L 14751533968**

No. 16- 09

DECISION AND ORDER

A formal hearing on the above-referenced protest was held on January 29, 2016, before Hearing Officer Ignacio V. Gallegos. The Taxation and Revenue Department (Department) was represented by Ms. Elena Morgan, Staff Attorney. Ms. Veronica Galewaler, Auditor, also appeared on behalf of the Department. Ms. Elizabeth O. Brower (Taxpayer) appeared for the hearing and represented herself. The Hearing Officer took notice of all documents in the administrative file. Department Exhibits A1-A8 (Taxpayer's 2014 PIT-1, 2014 PIT-ADJ, 2014 PIT-RC, 2014 Calculation of Estimated Person Income Tax Underpayment Penalty, 2014 1099-R, and 2014 1099-R), Exhibit B (April 2014 estimated tax payment), Exhibit C (June 2014 estimated tax payment), Exhibit D (September 2014 estimated tax payment), Exhibit E (January 2015 estimated tax payment), Exhibit F (March 2015 payment), Exhibit H (Payment summary worksheet), Exhibit G (Balance due) are admitted into the record. Taxpayer's Exhibits 1A and 1B (Letter response from Department, dated November 12, 2015), Exhibit 2A and 2B (Letter from Taxpayer to Ms. Galewater, dated November 23, 2015), Exhibit 3A and 3B (Federal IRS form 2210) are admitted into the record. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. On July 31, 2015, the Department formally assessed the Taxpayer for the \$22.35 penalty for underpayment of estimated tax for the 2014 tax year. [L1475153968]
2. On October 7, 2015, the Taxpayer filed a formal protest letter.
3. On December 4, 2015, the Department filed a Request for Hearing asking that the Taxpayer's protest be scheduled for a formal administrative hearing.
4. A notice was issued on December 7, 2015, which set the hearing for January 29, 2016. The hearing was set within 90 days of the protest.
5. In 2014, the Taxpayer was required to make estimated payments of her personal income tax before March 31, 2014.
6. For 2014 estimated tax payments, the Taxpayer paid \$800.00 in April of 2014, \$400.00 in June of 2014, \$700.00 in September of 2014, and \$2,200.00 in January of 2015.
7. Taxpayer filed her return and paid \$131.00, the balance of the 2014 tax due, in March of 2015.
8. The Taxpayer receives the bulk of her retirement distributions in December of each year.
9. The Taxpayer's retirement income has had the tendency to decline from year to year.
10. The Taxpayer does not have taxes withheld from her income distributions.
11. The Taxpayer owed \$4,423.00 in personal income taxes for the 2013 tax year.
12. If Taxpayer had elected to pay 100% of the 2013 tax liability as estimated payments of the 2014 tax liability, equal installments of estimated tax in the amounts of \$1,105.75, would have covered 100% of her tax liability for the previous year by the due date of January 15, 2015.

13. Taxpayer did not know what her income would be in 2014, or if she would receive distributions in a manner similar to her 2013 tax year.
14. Taxpayer paid a total of \$4,100.00 in 2014 estimated tax payments, of her total 2014 liability of \$4,231.00.
15. The total estimated 2014 tax paid by January 15, 2015 was more than 90% of the total tax due for tax year 2014.
16. The total estimated 2014 tax paid by January 15, 2014 was less than 100% of the total tax due for tax year 2013.
17. The installments of estimated tax payments were not paid in equal sums.
18. The installments of estimated tax payments were paid timely.
19. Taxpayer is not a farmer or a rancher.
20. Taxpayer provided Internal Revenue Service (IRS) form 2210, to show how she estimated her federal 2014 tax due, which she relied upon in estimating her New Mexico tax liability.
21. The estimated annualized income from the first three installment periods would have resulted in significantly reduced tax liability for 2014.
22. Payments of installment amounts were rationally related to Taxpayer's actual income received in the respective time periods.
23. Payments of unequal installment amounts were not intended to evade or defeat a tax.
24. The time periods themselves are not equal in duration. The first installment is due April 15 – a period of three months from the previous due date. The second installment is due June 15 – a period of two months from the previous due date. The third installment is due September 15 – a period of three months from the previous due date. The fourth

installment is due January 15 of the next year – a period of four months from the previous due date.

25. Taxpayer did not pay installments of estimated tax payments of equal sums in tax year 2013.
26. The Department did not assess penalty in 2013.
27. The Department's rationale for not assessing penalties in 2013 was because the first installment was greater than 25% of the total yearly tax due; the second installment, although smaller, and the first installment added up to more than 50% of the yearly tax due; the third installment, in addition to the second and first installments added up to more than 75% of the yearly tax due; and the four combined installments added up to either 100% of 2012 tax due or 90% of 2013 tax due.
28. The Department did assess a penalty in 2014.
29. The Department's rationale for assessing penalties in 2014 was because the first installment of \$800.00 added up to less than 25% of the total estimated 2014 tax due, based on the 2013 tax year; the second installment of \$400.00 added to the first installment, accounted for less than 50% of the total estimated 2014 tax due; the third installment of \$700.00 added to the previous installments added up to less than 75% of the total estimated 2014 tax due.
30. The assessment of penalty was for underpayment of estimated 2014 tax payment installments due between April 15, 2014, the date the first installment of estimated tax was due, and January 13, 2015, the date when the tax liability was caught up to greater than 90% of 2014 actual tax due.

31. The penalty was charged for underpayment amounts from the time of the first underpayment April 2014, through the time of payment of the final estimated payment on January 13, 2014.
32. No tax was due at the time of the hearing, as the entire amount of 2014 tax due was paid on or before April 15, 2015.
33. No interest was assessed or due.
34. The current penalty assessed by the Department for 2014 is \$22.35.

DISCUSSION

The issue to be decided is whether the Taxpayer is liable for penalty for the underpayment of estimated tax due for the 2014 tax year, due to unequal payments that do not add up to pre-payments of 25%, 50%, 75% of the total required annual payment for the first three installment deadlines. The issue may be divided into two sub-issues in this protest: first, whether equal installments are required when “required annual payment” is based on 90% of the current tax year tax liability, and second, if so, whether the underpayment penalty under NMSA 1978, Section 7-2-12.2 (G) or the civil negligence penalty under NMSA 1978, Section 7-1-69 (2007) must be abated because of full payment of the required annual payment by January 15 of the year following the tax year, Taxpayer’s rational basis for payment of unequal installments based on actual income received, annualized, and other alleged grounds establishing non-negligence under Regulation 3.1.11.11 (A) NMAC.

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 the penalty was improperly imposed or 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 payment installments are to be made by the 15th days of April, June, and September of the taxable year, and by the 15th day of January of the following year. *See* NMSA 1978, § 7-2-12.2 (D).

It is the position of the Department that the estimated tax payments should be made in equal dollar amounts, based on the statute NMSA 1978 Section 7-2-12.2 (C) that requires:

There shall be four required installments for each taxable year. If a taxpayer is not liable for estimated tax payments on March 31 but becomes liable for estimated tax at some point after March 31, the taxpayer must make estimated tax payments as follows:

- (1) if the taxpayer becomes required to pay estimated tax after March 31 and before June 1 fifty percent of the required annual payment must be paid on or before June 15, twenty-five percent on or before September 15 and twenty-five percent on or before January 15 of the following taxable year;
- (2) if the taxpayer becomes required to pay estimated tax after May 31, but before September 1, the taxpayer must pay seventy-five percent of the required

annual payment on or before September 15 and twenty-five percent on or before January 15 of the following taxable year; and

- (3) if the taxpayer becomes required to pay estimated tax after August 31, the taxpayer must pay one hundred percent of the required annual payment on or before January 15 of the following taxable year.

The Department asserts that each installment based on the prior year's tax liability 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 15th of the following year. *See* NMSA 1978, § 7-2-12.2 (C).

Taxpayer contends that because the word "equal" is not used in the statute, NMSA 1978 Section 7-2-12.2, there is no statutory requirement of "equal" installments. Taxpayer contends that her retirement income from investments has shown a tendency to go down. Taxpayer contends that the uncertainty of her income, coupled with the unequal time periods, under the Department's interpretation of the statute, would require her to pay an unreasonable percentage of her actual income. Taxpayer further contends that she used a formula for determining the amounts of her estimated tax payments, provided by Federal Internal Revenue Service (IRS) form 2210.

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. "However, where the language of an ordinance is ambiguous, courts must look beyond the plain language. In the

face of ambiguity in a code, we ordinarily defer to how the city council, as its author, interprets that code. When multiple sections of an ordinance come into play, we consider the relevant sections together so that all parts are given effect. If the strict wording of the law suggests an absurd result, we may interpret the statute to avoid such a result.” *City of Rio Rancho vs. Logan*, 2008-NMCA-011, ¶ 8 (internal citations and quotation marks omitted).

Under the Department’s interpretation of the statute, there is no flexibility. Each equal estimated payment must be due at the prescribed time, to satisfy the aggregate amount of 25%, 50%, 75% and 100%. Under the Taxpayer’s interpretation of the statute, there must be some flexibility in estimated taxes installments due, because the final amount of tax is unknown, based on the actual income received in the taxable year, and based on the fact that the time periods between due dates are not equal. The Taxpayer’s interpretation seems to be based on the statute NMSA 1978 Section 7-2-12.2 (B) which defines the “required annual payment” as “the lesser of: (a) ninety percent of the tax shown on the return of the taxable year or, if no return is filed, ninety percent of the tax for the taxable year; or (b) one hundred percent of the tax shown on the return for the preceding taxable year if the preceding taxable year was a taxable year of twelve months and the taxpayer filed a New Mexico tax return for that preceding taxable year...” And the further interpretation of flexibility seems to be based on the statute creating time periods of differing length (two months, three months, four months) between due dates. *See* NMSA 1978 Section 7-2-12.2 (C).

The question of whether the statute is rigid or flexible is one of interpretation. Whether the application could lead to absurd results is a necessary inquiry. Certainly, each person who is required to pay estimated tax payments in equal installments suffers the same hardship in paying a greater percentage of actual income in times when the equal installments are due only two

months apart. Likewise, each person who is required to pay estimated tax payments in equal installments benefits from the same reduced percentage of actual income in times when the equal installments are due four months apart. The hearing officer believes the legislature intended the statute to remain inflexible in so far as it intended the amounts to be paid in installments of 25%, 50%, 75% and 100% of the required annual payment based on the prior taxable year. This is seen in the percentage described in Section 7-2-12.2 (C)(1-3). This section must be read in a manner to give each provision effect. *See Regents of the Univ. of New Mexico v. New Mexico Fed'n. of Teachers*, 1998-NMSC-20, ¶28, 125 N.M. 401(Statutes are also to be interpreted in a manner to give the entire statute effect and not render portions of the statute superfluous).

The statute also allows a Taxpayer to base the estimated tax payments on the current tax year. Because the required annual payment is “the lesser of” the full tax liability of the prior tax year or 90% of the tax liability for the current tax year, the hearing officer believes that the legislature could not have intended the statute to remain inflexible in so far as it requires that a person pay installments solely based on the prior year. However, the statute and the Department’s interpretations of the statutes still require installments should still amount to 25% in April, 50% in June, 75% in September, and 90% of the required annual payment for that tax year. There are exceptions built into the statute for farmers, but the Taxpayer is not a farmer. It is also clear that Taxpayer, by January 15 of the following year, had paid more than 90% of the 2014 tax liability, satisfying the statutory requirement that the required annual payment is paid in full by that time.

The Taxpayer should have followed form RPD-41272 to calculate the penalty associated with the underpayments. Instead, the Taxpayer asks the Department to rely on her completion of the IRS form 2210 to justify the underpayments. New Mexico has independent authority to

impose an income tax. *See Holt v. N.M. Dep't of Taxation & Revenue*, 2002-NMSC-34, ¶6, 133 N.M. 11 (state has the authority to assess and collect tax independent of IRS). The IRS form is not referenced by New Mexico statute and is not a substitute for the requirements of Section 7-2-12.2. The Taxpayer has not overcome the presumption of correctness in the Department's application of the requirement of estimated payment percentages, and the Department has shown that the Taxpayer submitted underpayment of estimated taxes, since the aggregate payments do not amount to 25%, 50%, and 75% of the required annual payment as payments were made.

Penalty.

When a taxpayer underpays the required annual payment, in addition to amount of the required annual payment underpaid the Department shall add to the underpaid tax a penalty, following the formula specified in Section 7-1-67 (B) for the period of underpayment. *See* NMSA 1978, § 7-2-12.2 (G). The Taxpayer did not challenge the methodology of assessment, but the correctness in application of the assessment to her situation, addressed above. Taxpayer argued that the penalty should be abated, because she applied a methodology approved by federal authorities, and her underpayment was not due to an attempt to defraud, avoid a tax, or other mischief.

In this case, Taxpayer and Department agreed that the total 2014 "required annual payment" was paid by January 15, 2015. Because the estimated payment amounts were underestimated by the Taxpayer, when the first three installments were paid, and the required annual payment was made by January 15, 2015, the penalty provisions of NMSA (1978) Section 7-2-12.2 (G) take effect for the period from April 15, 2014 when the first estimated tax installment became delinquent by underpayment through January 15, 2015, when Taxpayer came into compliance.

Taxpayer argues that the penalty of \$22.35 should be abated because she paid the required annual payment, and the underpayment was not due to fraud, negligence or disregard of rules and regulations. The law as codified in NMSA 1978 Section 7-2-12.2 (H)(3) states: “No penalty shall be imposed under Subsection G of this section for any taxable year if: ... (3) “through either withholding or estimated tax payments, the taxpayer paid the required annual payment as defined in Subsection B of this section; or (4) the secretary determines that the underpayment was not due to fraud, negligence or disregard of rules and regulations.”

The Department argued that the statute should be followed, insofar as it penalizes those who pay less than the installment percentages due, when the installments are due.

The Taxpayer felt that her payments were made as required and that she was not negligent or in disregard of the rules. Taxpayer stated that she determined the amounts of her estimated payments by following the same percentages 25%, 50% and 75% of estimated 2014 income based on income received to date, annualized, as required under federal tax law, as exemplified by her IRS form 2210.

No penalty will be imposed when a taxpayer pays the required annual payment in full by January 15th 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, which triggered the penalty. Taxpayer did pay the full amount of the required annual payment by January 15th of the following tax year. Therefore, penalty assessment ends at the point the taxes were paid.

The Hearing Officer believes that the methodology employed by the Taxpayer was not intended to avoid a tax, not due to fraud, or disregard of the rules and regulations. Nevertheless, concerning negligence, the Taxpayer has not overcome the presumption of correctness. 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 (“Every person is charged with the reasonable duty to ascertain the possible tax consequences of his action. This can be done by consultation with one's legal advisor. Depending on the facts, failure to do so may constitute negligence.”). Taxpayer failed to overcome the presumption of correctness, and the Department’s assessment was proper.

CONCLUSIONS OF LAW

A. The Taxpayer filed a timely written protest to the Assessment of penalty issued under Letter ID number L1475153968 and jurisdiction lies over the parties and the subject matter of this protest. The hearing was timely set and held within 90-days of protest under NMSA 1978, Section 7-1B-8 (2015).

B. The Taxpayer paid estimated tax for 2014 in unequal installments beginning April 15, 2014 to trigger the penalty provisions of NMSA 1978, § 7-2-12.2 (G).

C. Taxpayer payed the required annual payment in full by estimated tax payments no later than January 15, 2015. *See* NMSA 1978, § 7-2-12.2 (B).

D. Department properly assessed penalty against Taxpayer for the limited time frame of April 15, 2014 through January 13, 2015, when the estimated payment delinquencies were fully paid. *See* NMSA 1978, § 7-2-12.2 (H) (3).

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

DATED: March 18, 2016.

Ignacio V. Gallegos
Hearing Officer
Administrative Hearings Office
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NOTICE OF RIGHT TO APPEAL

Pursuant to NMSA 1978, § 7-1-25, the parties have the right to appeal this decision by filing a notice of appeal **with the New Mexico Court of Appeals** within 30 days of the date shown above. *See* Rule 12-601 NMRA. If an appeal is not filed within 30 days, this Decision and Order will become final. A copy of the Notice of Appeal should be mailed to John Griego, P. O. Box 6400, Santa Fe, New Mexico 87502. Mr. Griego may be contacted at 505-827-0466.