

1 **STATE OF NEW MEXICO**  
2 **ADMINISTRATIVE HEARINGS OFFICE**  
3 **TAX ADMINISTRATION ACT**

4 **IN THE MATTER OF THE PROTEST OF**  
5 **DENNETTE L. KAUZLARIC**  
6 **TO ASSESSMENT ISSUED UNDER**  
7 **LETTER ID NO. L0930443952**

8 **v.**

**Case Number 20.09-114A, Decision and Order No. 21-04**

9 **NEW MEXICO TAXATION AND REVENUE DEPARTMENT**

10 **DECISION AND ORDER**

11 On December 1, 2020, Hearing Officer Ignacio V. Gallegos, Esq., conducted an  
12 administrative hearing on the merits of the matter of the tax protest of Dennette L. Kauzlaric  
13 (Taxpayer) pursuant to the Tax Administration Act and the Administrative Hearings Office Act.  
14 At the hearing, Dennette L. Kauzlaric appeared representing herself and as Taxpayer's only  
15 witnesses. Staff Attorney Richard Pender appeared, representing the opposing party in the protest,  
16 the Taxation and Revenue Department (Department). Department protest auditor Alma Tapia  
17 appeared as a witness for the Department. Taxpayer offered exhibits at the hearing that she had  
18 previously shared with the Department. The Taxpayer's exhibits offered at the hearing were  
19 Bates-stamped by the Hearing Officer as Taxpayer exhibits 000001 through 0000037 after the  
20 hearing. Over Department's objection, the Hearing Officer admitted Taxpayer's exhibits for a  
21 limited purpose more fully described in the Exhibit Log and in the discussion. Taxpayer  
22 submitted illegible exhibits after the hearing. When Administrative Hearings Office staff  
23 reminded Taxpayer to submit numbered, legible, printable exhibits, Taxpayer submitted  
24 documents that were not numbered, had been adjusted from what was presented at the hearings,  
25 and a statement not presented at the hearing, hence, sua sponte, the late-filed statement was not  
26 admitted, but the late filed documents were admitted without objection. Because the late-filed

1 exhibits are duplicates of the exhibits presented at the hearing, the Bates stamped exhibits are  
2 used for reference. The Department offered no exhibits at the hearing. The administrative file is  
3 considered part of the record. The hearing occurred by videoconference.

4 In quick summary, this protest involves Taxpayer's claim that penalty should be abated as  
5 the Taxpayer was unable to report and file her personal income taxes due to ongoing and life-  
6 threatening domestic abuse. The Department contended that the Taxpayer could not prove non-  
7 negligence under the facts at issue. Ultimately, after making findings of fact and discussing the  
8 issue in more detail throughout this decision, the Hearing Officer finds that Taxpayer's claim is  
9 sufficient to establish nonnegligence. The protest is granted in part and denied in part. IT IS

10 DECIDED AND ORDERED AS FOLLOWS:

## 11 FINDINGS OF FACT

### 12 Procedural Findings

13 1. On December 10, 2019, under Letter Id. No. L0930443952, the Department  
14 issued a Notice of Assessment of Taxes and Demand for Payment to Taxpayer, assessing  
15 Taxpayer Personal Income Tax Penalty of \$1,740.62 and Interest of \$385.25 for a total  
16 assessment of tax due of \$2,125.87 for tax reporting period ending December 31, 2018.

17 [Administrative File].

18 2. On February 28, 2020, Taxpayer submitted a Protest letter, alleging that the  
19 Department was incorrect in its assessment of penalty. The letter was stamped as received by the  
20 Department Protest Office on March 4, 2020 and March 9, 2020. The envelope was stamped as  
21 received by the Department Protest Office on March 10, 2020 [Administrative File].

1           3.       On March 11, 2020, Executive Order 2020-004 was issued by the State of New  
2 Mexico’s Governor Michelle Lujan Grisham, declaring a public health emergency within the  
3 State of New Mexico due to the novel coronavirus disease (COVID-19). [Administrative File].

4           4.       On March 12, 2020, the first Public Health Emergency Order was issued in  
5 response to the COVID-19 pandemic by the New Mexico Department of Health, Kathyleen M.  
6 Kunkel, Cabinet Secretary [Administrative File].

7           5.       On March 13, 2020, Brian VanDenzen, Chief Hearing Officer of the  
8 Administrative Hearings Office, issued Standing Order No. 20-02, entitled “Emergency Order  
9 Requiring Remote Hearings Under Tax Administration Act and Property Tax Code During  
10 Public Health Emergency.” The Standing Order required hearings to occur by video or audio  
11 conference, unless an in-person hearing was requested in a manner outlined in the order.  
12 [Administrative File].

13           6.       On March 17, 2020, under Letter Id. No. L0640989872 the Department issued a  
14 letter informing the Taxpayer that the Department acknowledged receipt of Taxpayer’s protest  
15 for tax period ending December 31, 2018. [Administrative File].

16           7.       On September 11, 2020, the Department submitted a Request for Hearing to the  
17 Administrative Hearings Office, requesting a scheduling hearing on the Taxpayer’s protest. The  
18 Request for Hearing stated that the total at issue was \$2,125.87. [Administrative File].

19           8.       On September 11, 2020, the Department submitted its Answer to Protest to the  
20 Administrative Hearings Office claiming that the assessment of penalties and interest was proper  
21 as Taxpayer paid tax liabilities and filed her 2018 Personal Income Tax (PIT-1) return late.  
22 [Administrative File].

1           9.       On September 16, 2020, the Administrative Hearings Office mailed a Notice of  
2 Telephonic Scheduling Hearing to the parties, setting the matter for a telephonic scheduling  
3 hearing on October 23, 2020. [Administrative File].

4           10.      At the telephonic scheduling hearing of October 23, 2020, the parties appeared.  
5 Ms. Dennette L. Kauzlaric appeared on her own behalf. Attorney Richard Pender appeared on  
6 behalf of the Department. The parties did not object that conducting the scheduling hearing  
7 satisfied the 90-day hearing requirements of Section 7-1B-8 (F) (2019) while still allowing  
8 meaningful time for completion of the other statutory requirements under Section 7-1B-6 (D)  
9 (2015). *See also* Regulation § 22.600.3.8 (E) NMAC. The Hearing Officer preserved an audio  
10 recording of the hearing. [Administrative File].

11          11.      On October 28, 2020, the Administrative Hearings Office mailed a Scheduling  
12 Order and Notice of Hearing to the parties, setting various deadlines and setting the matter for a  
13 videoconference merits hearing on December 1, 2020. [Administrative File].

14          12.      The undersigned Administrative Hearing Officer Ignacio V. Gallegos conducted  
15 the merits hearing on December 1, 2020 with the parties and witnesses present by  
16 videoconference. Ms. Kauzlaric appeared by telephone. The Administrative Hearings Officer  
17 preserved an audio recording of the hearing (“Hearing Record” or “H.R.”). [Administrative File].

18          13.      On December 4, 2020 Taxpayer submitted, without objection, the documents she  
19 intended as exhibits. These documents were visible to the Administrative Hearings Office staff  
20 who opened them but could not be printed or saved. [Administrative File].

21          14.      On January 15, 2021, the Administrative Hearings Office contacted Taxpayer and  
22 the Department, indicating that the documents of December 4, 2020 were not accessible,  
23 requesting that Taxpayer resend the documents in a conventional format. [Administrative File].

1           15.     On January 21, 2021, Taxpayer submitted the additional documents to the  
2 Administrative Hearings Office by email, copied to the protest auditor, with highlights and  
3 comments. The Department raised no objection. [Administrative File].

#### 4 **Substantive Findings**

5           16.     Taxpayer Dennette L. Kauzlaric is a resident of New Mexico subject to the  
6 provisions of the New Mexico Income Tax Act. [Administrative File; Taxpayer's exhibit Bates  
7 stamp #000014].

8           17.     Alma Tapia is a protest tax auditor in her second year of employment in that role  
9 with the Department and is familiar with the tax protest at hand. [Administrative File; Direct  
10 examination of A. Tapia, H.R. 1:22:00-1:22:45].

11          18.     New Mexico personal income tax returns and tax payments were due for the  
12 reporting period ending December 31, 2018 on April 15, 2019. [Administrative File; Direct  
13 examination of A. Tapia, H.R. 1:22:50-1:23:20].

14          19.     Taxpayer did not request an extension of time to file the 2018 return or pay the  
15 tax liability. [Administrative File; AHO examination of A. Tapia, H.R. 1:28:40-1:29:00].

16          20.     Taxpayer paid her 2018 tax liability in the amount of \$12,433 on November 12,  
17 2019, prior to the filing of the return, but after the deadline to pay. [Administrative File; Direct  
18 examination of A. Tapia, H.R. 1:23:30-1:24:30].

19          21.     Taxpayer filed her 2018 PIT return on November 22, 2019, after the deadline for  
20 reporting had passed. [Administrative File; Cross examination of D. Kauzlaric, H.R. 1:05:00-  
21 1:05:45; Direct examination of A. Tapia, H.R. 1:23:15-1:23:45].

1           22.     Beginning in 2016, Taxpayer was in the process of divorce, after being the victim  
2 of domestic abuse. Restraining orders were issued by the District Court. The abusive behavior  
3 continued unpredictably during the divorce process 2016-2019. Abusive behavior often  
4 coincided with court settings, including threats and actions harmful to Taxpayer's well-being and  
5 the well-being of her children.<sup>1</sup> [Administrative File; Direct examination of D. Kauzlaric, H.R.  
6 43:10-45:35, 49:45-51:25; Stipulation of Department Attorney, H.R. 45:35-48:50; Taxpayer's  
7 exhibit Bates stamp #000002-000030; Cross examination of D. Kauzlaric, H.R. 1:11:00-1:11:45;  
8 1:14:30-1:15:35].

9           23.     Taxpayer's 2018 income source was primarily a lump sum divorce settlement of  
10 community property (retirement) funds which she received in the summer of 2018. Taxpayer  
11 and the children had been homeless and Taxpayer decided to use the funds to purchase a home.  
12 [Administrative File; AHO examination of D. Kauzlaric, H.R. 1:17:30-1:18:50].

13           24.     Taxpayer was unschooled in financial matters at the time she incurred the tax  
14 liability. Taxpayer's former partner prepared and filed their joint taxes during the marriage, and  
15 the 2018 tax returns were the first returns Taxpayer was responsible for on her own. [Direct  
16 examination of D. Kauzlaric, H.R. 58:30-59:10; Cross examination of D. Kauzlaric, H.R.  
17 1:11:45-1:12:55; AHO examination of D. Kauzlaric, H.R. 1:18:30-1:19:30].

18           25.     Between January 1, 2019 and April 15, 2019, Taxpayer was not hospitalized for  
19 illness or injury, was able to attend college classes, was no longer homeless, and was aware that

---

<sup>1</sup> Taxpayer Exhibits validated the credible uncontroverted testimony of abuse and its toll on Taxpayer. Names are not used because the decision is public and the private hearing provided no opportunity to rebut the testimony. Exhibits remain a confidential part of the Administrative File. *See* NMSA 1978, Section 7-1-8.3; *see also* Regulation § 22.600.3.13 (A) and (B) NMAC (8/25/2020). The details of behavior are also excluded here first, because the details are not germane to the decision, and second, because of confidentiality concerns. *See generally* Health Insurance Portability and Accountability Act of 1996 (HIPAA), Pub. L. 104-191, 110 Stat. 1936; *see also* Children's Code, NMSA 1978, Section 32A-1-1 through 32A-26-12; *see also* NMSA 1978, Section 40-13-12.

1 taxes are paid yearly. [Cross examination of D. Kauzlaric, H.R. 1:06:45-1:07:30; 1:11:45-  
2 1:14:30].

3 26. Between January 1, 2019 and April 15, 2019, Taxpayer was scheduled to attend  
4 hearings January 4, 2019 and March 8, 2019 in a matter pending in the District Court. [Exhibit  
5 Bates #000004; Bates #000015; Bates #000018].

6 27. Taxpayer tried unsuccessfully to file taxes online, then sought help and filed her  
7 2018 PIT return using the assistance of a tax preparer, Sergio Sotelo. [Administrative File; Direct  
8 examination of D. Kauzlaric, H.R. 58:30-59:45; Cross examination of D. Kauzlaric, H.R.  
9 1:07:30-1:10:00; 1:15:35-1:16:10; AHO examination of D. Kauzlaric, H.R. 1:16:45-1:17:15;  
10 AHO examination of A. Tapia, H.R. 1:30:30- 1:34:00].

## 11 DISCUSSION

12 Taxpayer is a divorced woman and mother who went through an abusive relationship and  
13 filed her first tax return on her own late. Taxpayer's claim that penalties and interest should be  
14 abated because she was unschooled in personal finance, was undergoing continued abusive  
15 behavior, and dealing with intense family matters amounts to a claim that non-negligence  
16 justifies abatement. Taxpayer was credible and under the facts as presented, the law allows the  
17 abatement of penalties but not interest.

### 18 **Presumption of correctness**

19 Under NMSA 1978, Section 7-1-17 (C) (2007), the assessment issued in this case is  
20 presumed correct. Consequently, Taxpayer has the burden to overcome the assessment. *See*  
21 *Archuleta v. O'Cheskey*, 1972-NMCA-165, ¶11, 84 N.M. 428, 504 P.2d 638. Unless otherwise  
22 specified, for the purposes of the Tax Administration Act, "tax" is defined to include interest and  
23 civil penalty. *See* NMSA 1978, Section 7-1-3 (Z) (2019); *see also* Regulation § 3.1.1.16

1 (12/29/2000). Under Regulation § 3.1.6.13 NMAC, the presumption of correctness under Section  
2 7-1-17 (C) extends to the Department’s assessment of penalty and interest. *See Chevron U.S.A.,*  
3 *Inc. v. State ex rel. Dep’t of Taxation & Revenue*, 2006-NMCA-050, ¶16, 139 N.M. 498, 134 P.3d  
4 785 (agency regulations interpreting a statute are presumed proper and are to be given substantial  
5 weight). Accordingly, it is a taxpayer’s burden to present some countervailing evidence or legal  
6 argument to show that they are entitled to an abatement, in full or in part, of the assessment  
7 issued in the protest. *See N.M. Taxation & Revenue Dep’t v. Casias Trucking*, 2014-NMCA-099,  
8 ¶8, 336 P.3d 436. When a taxpayer presents sufficient evidence to rebut the presumption, the  
9 burden shifts to the Department to show that the assessment is correct. *See MPC Ltd. v. N.M.*  
10 *Taxation & Revenue Dep’t*, 2003-NMCA-21, ¶13, 133 N.M. 217, 62 P.3d 308.

### 11 **Personal Income Tax Act.**

12 The assessment in this protest arises from an application of the Income Tax Act, NMSA  
13 1978, Sections 7-2-1 through 7-2-39. In New Mexico, “tax is imposed...upon the net income of  
14 every resident individual.” Section 7-2-3. Taxpayer did not protest the imposition of tax on the  
15 income of 2018, which was primarily proceeds from a lump-sum payment as a result of division of  
16 an asset acquired during the marriage, pursuant to the divorce.

### 17 **Penalty**

18 Under NMSA 1978, Section 7-1-69 (A) (2007), when a taxpayer fails to pay taxes due to  
19 the State because of negligence or disregard of rules and regulations, but without intent to evade  
20 or defeat a tax, the Department must impose a civil negligence penalty on that taxpayer. “There  
21 shall be added to the amount assessed a penalty” under Section 7-1-69 (A). The statute also  
22 provides a safety valve, stating “[n]o penalty shall be assessed against a taxpayer if the failure to



1 pay an amount of tax when due results from a mistake of law made in good faith and on  
2 reasonable grounds.” Section 7-1-69 (B).

3 The use of the word “shall” makes the imposition of penalty mandatory in all instances  
4 where a taxpayer’s actions or inactions meet the legal definition of “negligence.” *See Marbob*  
5 *Energy Corp. v. N.M. Oil Conservation Comm'n*, 2009-NMSC-013, ¶22, 146 N.M. 24, 206 P.3d  
6 135 (use of the word “shall” in a statute indicates provision is mandatory absent clear indication to  
7 the contrary).

8 Negligence can be found in several ways. Regulation § 3.1.11.10 NMAC (1/15/01) defines  
9 “negligence” as “failure to exercise that degree of ordinary business care and prudence which  
10 reasonable taxpayers would exercise under like circumstances; inaction by taxpayers where action is  
11 required; inadvertence, indifference, thoughtlessness, carelessness, erroneous belief or inattention.”  
12 Late filing of personal income tax returns or paying the taxes is certainly negligence under the  
13 circumstances at issue applied to this definition. *See El Centro Villa Nursing Center v. Taxation &*  
14 *Revenue Department*, 1989-NMCA-070, ¶ 10, 108 N.M. 795, 779 P.2d 982 (Section 7-1-69 (A) is  
15 designed specifically to penalize unintentional failure to pay tax.).

16 Taxpayer claims nonnegligence. Regulation § 3.1.11.11 NMAC (1/15/01) defines  
17 “nonnegligence” by describing a list of eight situations which “may indicate” an absence of  
18 negligence, allowing the Department to issue or the Hearing Officer to order an abatement. At issue  
19 are two provisions which could apply, first under subsection (B), “taxpayer, disabled because of  
20 injury or prolonged illness, demonstrates the inability to prepare a return and make payment and  
21 was unable to procure the services of another person to prepare a return because of the injury or  
22 illness,” and second under subsection (D) “taxpayer proves that the failure to pay tax or to file a  
23 return was caused by reasonable reliance on the advice of competent tax counsel or accountant as to

1 the taxpayer's liability after full disclosure of all relevant facts; failure to make a timely filing of a  
2 tax return, however, is not excused by the taxpayer's reliance on an agent." Regulation § 3.1.11.11  
3 (B) and (D). Because the regulation uses the phrase "may indicate" the permissive language  
4 permits some discretion with the hearing officer to determine that nonnegligence exists in situations  
5 which may not strictly fall within the eight enumerated examples. *See DeMichele v. Taxation &*  
6 *Revenue Department Motor Vehicle Div.*, 2015-NMCA-095, ¶ 11, 356 P.3d 523 (the word "may"  
7 used in a statute indicates discretion); *see also Albuquerque Bernalillo Co. Water Utility Authority*  
8 *v. NMPRC*, 2010-NMSC-013, ¶ 51, 148 N.M. 21, 229 P.3d 494 ("canons of statutory construction  
9 guide our interpretation of administrative regulations").

10 First, in regards to subsection (D), the evidence presented that Taxpayer used the services of  
11 a tax preparer to help her file her taxes is of little weight. On this subject, Taxpayer presented  
12 evidence supported by the Department that the person who helped her with taxes is a tax preparer. It  
13 would be speculative to presume that both the Taxpayer provided full disclosure to the tax preparer,  
14 and the tax preparer gave advice that no penalty would be due, as no evidence was presented on  
15 these subjects. The tax preparation by a tax preparer in and of itself does not justify a finding of  
16 nonnegligence, as "failure to make a timely filing of a tax return, however, is not excused by the  
17 taxpayer's reliance on an agent." Regulation § 3.1.11.11 (D); *see also C & D Trailer Sales v.*  
18 *Taxation and Revenue Dep't*, 1979-NMCA-151, ¶ 8-9, 93 N.M. 697, 604 P.2d 835 (penalty upheld  
19 where there was no evidence that the taxpayer relied on "informed consultation and advice" in  
20 deciding not to pay tax); *see also El Centro Villa Nursing Center v. Taxation & Revenue Dep't*,  
21 1989-NMCA-070, ¶ 14 (a taxpayer cannot abdicate the responsibility to learn of tax obligations  
22 merely by appointing an accountant as its agent in tax matters).

1           Concerning the second contention, that disabling “injury or prolonged illness” caused the  
2 inability to file timely, the regulation is a two-pronged inquiry: first, whether the Taxpayer suffered  
3 disabling injury or prolonged illness, and second, whether this injury or illness prevented her from  
4 obtaining services of another to file taxes. Taxpayer’s contention amounts to this: as a young wife  
5 and mother she did not learn to be self-sufficient because her controlling and abusive partner kept  
6 control over the family finances. When she obtained a restraining order in 2016, following a  
7 particularly vicious beating, and began the process of divorce, she had not learned some of the  
8 basics of a responsible adult life, including the ability to file taxes. When she received a settlement  
9 in the divorce in 2018, she and her children were homeless, and her first concern was purchasing a  
10 house for their stability. This was the first time she had had to file taxes on her own. The  
11 Department contended that the evidence presented of a contentious divorce does not support a  
12 finding that the mental and emotional toll the years of abuse took on Taxpayer amounted to a  
13 disability due to “injury or prolonged illness.” Regulation § 3.1.11.11 (B) NMAC.

14           It is the role of the Hearing Officer, as the trier of fact, “to weigh the testimony, determine  
15 the credibility of the witnesses, reconcile inconsistencies, and determine where the truth lies.” *N.M.*  
16 *Taxation & Revenue Dep’t v. Casias Trucking*, 2014-NMCA-099, ¶ 23. Had the testimony been  
17 unsubstantiated, Taxpayer’s testimony alone would not be sufficient to overcome the presumption  
18 of correctness that attached to the assessment. *See MPC Ltd. v. N.M. Taxation & Revenue Dep’t*,  
19 2003-NMCA-021, ¶13; *see also* Regulation § 3.1.6.12 (A) NMAC (1/15/2001). But because  
20 Taxpayer provided court documentation, testimony of her homelessness, detailed descriptions of the  
21 abuse and the resulting harm to herself and family, the testimony is both credible and substantial, it  
22 is the role of the Hearing Officer to determine the weight the testimony bears to support the  
23 Taxpayer’s contention that a finding of nonnegligence is proper.

1           While the Hearing Officer did not receive any medical documentation of Taxpayer’s own  
2 medical issues, what Taxpayer described was an ongoing, debilitating experience of physical and  
3 psychological trauma, akin to “battered person’s syndrome.”<sup>2</sup> No medical expert or psychologist  
4 testified on Taxpayer’s behalf. Taxpayer described her experience in the relationship and the two  
5 and a half-year process of divorcing her abuser as rife with its own challenges for herself and  
6 children, culminating in 2019. There were scheduled court hearings during the first half of the 2019  
7 year, which caused the Taxpayer and her children stress, fear, and even self-harm. Taxpayer  
8 deteriorated physically, did not pay bills, and was in legitimate fear for her life and then the lives of  
9 her children. In support of the Department’s position, Taxpayer was able to maintain good grades  
10 in college courses, was no longer homeless, and was the primary support for her children. While  
11 physical injuries can be observed, treated and heal, there are some invisible wounds are less able to  
12 be perceived, less treatable, yet equally debilitating until healed. On this subject Taxpayer was  
13 entirely credible, and this is an area where discretion is justified. It was clear to the Hearing Officer  
14 a disability existed during the months prior to the deadline to file taxes.

15           Yet, disability alone is not enough under Regulation § 3.1.11.11 (B) NMAC. For the second  
16 prong of the regulation, the Taxpayer’s evidence was more emotional than factual. Taxpayer  
17 testified that the court hearings triggered her stresses and fears, the house she purchased had holes in  
18 the roof, she was concerned for her children’s well-being, and she would have hired someone if she  
19 could have. Again, in support of the Department’s position, Taxpayer generally knew that people  
20 pay taxes, she was able to maintain good grades in college courses, she was no longer homeless,

---

<sup>2</sup> “Battered person’s syndrome,” also known as “battered women’s syndrome,” is recognized as a state-of-mind claim similar to self-defense. *See State v. Swavola*, 1992-NMCA-089, ¶5, 114 N.M. 472, 840 P.2d 1238; *see also State v. Hess*, 207 N.J. 123 (2011) (“Battered Women’s Syndrome is recognized as a collection of common behavioral and psychological characteristics exhibited in women who repeatedly are physically and emotionally abused over a prolonged length of time by the dominant male figure in their lives”) (quotation marks and citations omitted) (non-precedential).

1 there were only two court settings (first in January and the second in March of 2019), and she was  
2 able to provide support for her children. Under the Department’s position, there is a fair inference  
3 to conclude that the “disability” did not prevent Taxpayer from procuring “the services of another  
4 person to prepare a return because of the injury or illness.” However, while there is that competing  
5 inference, the hearing officer is ultimately persuaded that the “disability” was overwhelming and  
6 did prevent the Taxpayer from finding someone to help prepare a return. *Cf. The protest of Joseph  
7 D. & Rebecca A. Chwirka*, Decision and Order #16-54 (N.M. Admin. Hearings Office, November  
8 29, 2016, non-precedential) (surviving spouse of a spouse who took care of financial matters, after a  
9 rapid deterioration and death of that spouse, met the requirements of nonnegligence).

10 There is no battered person’s defense to late filed taxes written into law explicitly.  
11 Tangentially, the IRS allows “Innocent Spouse Relief”<sup>3</sup> and “Injured Spouse Allocation”<sup>4</sup> but  
12 neither of these are applicable here. New Mexico allows some equitable relief to spouses or former  
13 spouses for tax debts of a taxpayer, with some discretion on the part of the Secretary, under NMSA  
14 1978, Section 7-1-17.1 (A). *See also* Regulation § 3.1.12.13 NMAC (10/31/07). Ms. Kauzlaric’s  
15 testimony, while somewhat disjointed and not entirely focused on the time-frames at issue, was  
16 heartfelt and convincing. The Taxpayer’s resilience, perseverance and recovery is laudable. Again,  
17 while the hearing officer acknowledges that some of the inferences from the evidence are  
18 potentially supportive of the Department’s position, ultimately the Taxpayer provided a  
19 preponderance of substantial evidence that convinced the hearing officer that she was both suffering  
20 “disability” due to an “injury or prolonged illness” and that this “injury or illness” caused her

---

<sup>3</sup> See Publication 971 “Innocent Spouse Relief.” Prior year publications are available on the IRS website at: <https://www.irs.gov/pub/irs-prior/p971--2014.pdf> (last visited 2/3/2021); *see also* 26 U.S.C. 6015.

<sup>4</sup> See Form 8379 “Injured Spouse Allocation.” Prior year publications are available on the IRS website at: <https://www.irs.gov/pub/irs-pdf/f8379.pdf> (last visited 2/3/2021).

1 inability to complete her taxes timely or hire someone to do so on her behalf. Taxpayer was  
2 nonnegligent under the requirements of Regulation § 3.1.11.11 NMAC.

### 3 **Interest**

4 When a taxpayer fails to make timely payment of taxes due to the state, “interest *shall* be  
5 paid to the state on that amount from the first day following the day on which the tax becomes  
6 due...until it is paid.” NMSA 1978, § 7-1-67 (2007) (italics for emphasis). Under the statute,  
7 regardless of the reason for non-payment of the tax, the Department has no discretion in the  
8 imposition of interest, as the statutory use of the word “shall” makes the imposition of interest  
9 mandatory. *See Marbob Energy Corp. v. N.M. Oil Conservation Comm'n*, 2009-NMSC-013, ¶22,  
10 (use of the word “shall” in a statute indicates provision is mandatory absent clear indication to the  
11 contrary). The language of the statute also makes it clear that interest begins to run from the original  
12 due date of the tax and continues until the tax principal is paid in full.

13 Because of the mandatory statutory interest governing the assessment of interest, both the  
14 Department and the hearing officer lack discretion in the imposition of interest regardless of  
15 Taxpayer’s underlying circumstances. The payment of the principal tax liability stopped accruing  
16 interest upon payment in November of 2019. However, the amount of interest accumulated up to  
17 that time was properly assessed and Taxpayer owes that amount of assessed interest.

### 18 **Conclusion.**

19 It is the Taxpayer’s duty to prove with substantial evidence that the assessment of penalty  
20 and interest was in error. “Substantial evidence is relevant evidence that a reasonable mind might  
21 accept as adequate to support a conclusion.” *State v. Largo*, 2012-NMSC-015, ¶ 30, 278 P.3d 532  
22 (internal quotation marks and citation omitted). Taxpayer presented credible evidence on each issue  
23 that is part of the relevant inquiry into nonnegligence. “It is the sole responsibility of the trier of fact

1 to weigh the testimony, determine the credibility of the witnesses, reconcile inconsistencies, and  
2 determine where the truth lies.” *N.M. Taxation & Revenue Dep’t v. Casias Trucking*, 2014-NMCA-  
3 099, ¶ 23. Ms. Kauzlaric was able to overcome the presumption of correctness in the assessment of  
4 penalty, but unable to overcome the presumption of correctness in the assessment of interest. The  
5 assessment will be abated as to penalty, and the assessment will be upheld as to interest.

## 6 CONCLUSIONS OF LAW

7 A. The Taxpayer filed a timely written protest to the Notice of Assessment of Tax and  
8 Demand for Payment issued under Letter ID number L0930443952, and jurisdiction lies over the  
9 parties and the subject matter of this protest. *See* NMSA 1978, Section 7-1-24 (D) (2017).

10 B. A scheduling hearing was timely set and held within 90-days of the Department’s  
11 request for hearing under NMSA 1978, Section 7-1B-8 (2019). Parties did not object that the  
12 scheduling hearing satisfied the 90-day hearing requirement of Section 7-1B-8. *See also*  
13 Regulation § 22.600.3.8 (E) NMAC (02/01/2018).

14 C. Any assessment of tax made by the Department is presumed to be correct.  
15 Therefore, it is the taxpayer’s burden to come forward with evidence and legal argument to establish  
16 that the Department’s assessment should be abated, in full or in part. *See* NMSA 1978, Section 7-1-  
17 17 (C) (2007).

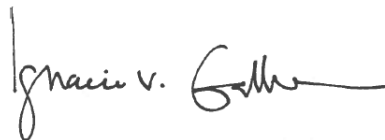
18 D. “Tax” is defined to include not only the tax program’s principal, but also interest and  
19 penalty. *See* NMSA 1978, Section 7-1-3 (Z) (2019); *see also* Regulation § 3.1.1.16 (12/29/2000).  
20 Assessments of penalties and interest therefore also receive the benefit of a presumption of  
21 correctness. *See* Regulation § 3.1.6.13 NMAC (1/15/01).

1 E. Taxpayer met her burden to show that she was entitled to receive an abatement of  
2 penalty due to nonnegligence. *See* NMSA 1978, Section 7-1-69 (A) (2007); *see also* Regulation §  
3 3.1.11.11 (B) NMAC (1/15/01).

4 F. Taxpayer failed to meet her burden to show that she was entitled to receive an  
5 abatement of interest. *See* NMSA 1978, Section 7-1-67 (2007); *see also* *Marbob Energy Corp. v.*  
6 *N.M. Oil Conservation Comm'n*, 2009-NMSC-013, ¶22, 146 N.M. 24, 206 P.3d 135 (use of the  
7 word “shall” in a statute indicates provision is mandatory absent clear indication to the contrary).

8 For the foregoing reasons, the Taxpayer’s protest is **GRANTED IN PART AND DENIED**  
9 **IN PART. IT IS ORDERED** that the Department’s Assessment of penalty in the amount of  
10 \$1,740.62 is hereby ABATED, and the Assessment of interest in the amount of \$385.25 was proper,  
11 and Taxpayer is responsible for payment of the interest for a total of \$385.25.

12 DATED: February 19, 2021.

13  
14  
15  
16  
17  
18  
19  


Ignacio V. Gallegos  
Hearing Officer  
Administrative Hearings Office  
P.O. Box 6400  
Santa Fe, NM 87502



1 **NOTICE OF RIGHT TO APPEAL**

2 Pursuant to NMSA 1978, Section 7-1-25 (2015), the parties have the right to appeal this  
3 decision by *filing a notice of appeal with the New Mexico Court of Appeals* within 30 days of the  
4 date shown above. If an appeal is not timely filed with the Court of Appeals within 30 days, this  
5 Decision and Order will become final. Rule of Appellate Procedure 12-601 NMRA articulates  
6 the requirements of perfecting an appeal of an administrative decision with the Court of Appeals.  
7 Either party filing an appeal shall file a courtesy copy of the appeal with the Administrative  
8 Hearings Office contemporaneous with the Court of Appeals filing so that the Administrative  
9 Hearings Office may begin preparing the record proper. The parties will each be provided with a  
10 copy of the record proper at the time of the filing of the record proper with the Court of Appeals,  
11 which occurs within 14 days of the Administrative Hearings Office receipt of the docketing  
12 statement from the appealing party. *See* Rule 12-209 NMRA.

13 **CERTIFICATE OF SERVICE**

14 On February 19, 2021, a copy of the foregoing Decision and Order was submitted to the  
15 parties listed below in the following manner:

16 *Email*  
17 *INTENTIONALLY BLANK*

*Email*

18 \_\_\_\_\_  
19 John Griego  
20 Legal Assistant  
21 Administrative Hearings Office  
22 P.O. Box 6400  
23 Santa Fe, NM 87502