

1 1. On September 28, 2020, the Department assessed the Taxpayers for personal
2 income tax, penalty, and interest for the tax periods from January 1, 2014 through December 31,
3 2015. The assessment was for tax of \$3,449.00, penalty of \$689.80, and interest of \$751.26, for
4 a total liability of \$4,889.82. [Admin. file; Testimony of the Taxpayers; Testimony of Ms.
5 Tapia; Ex. A].

6 2. On October 6, 2020, the Taxpayer filed a timely written protest to the assessment.
7 [Admin. file protest; Testimony of the Taxpayers; Testimony of Ms. Tapia].

8 3. On November 19, 2020, the Department acknowledged its receipt of the protest.
9 [Admin. file].

10 4. On April 27, 2021, the Department filed a request for hearing with the
11 Administrative Hearings Office. [Admin. file request].

12 5. On May 21, 2021, a telephonic scheduling hearing was conducted, which was
13 within 90 days of the request as required by statute. [Admin. file].

14 6. The Department uses a taxpayer's federal adjusted gross income to determine
15 how much personal income tax a taxpayer will owe to New Mexico. [Testimony of Ms. Tapia].
16 *See also* NMSA 1978, § 7-2-2 (A) (2014). *See also* NMSA 1978, § 7-2-3 (1981).

17 7. The federal government notified the Department that it made corrections to the
18 Taxpayer's reported adjusted gross income for the tax years 2014 and 2015. [Testimony of Ms.
19 Tapia; Ex. B].

20 8. For 2014, the Taxpayer's adjusted gross income changed from \$44,425.00 to
21 \$72,482.00. For 2015, the Taxpayer's adjusted gross income changed from \$36,988.00 to
22 \$65,578.00. [Testimony of Ms. Tapia; Ex. B].

1 or civil penalty relating thereto". NMSA 1978, § 7-1-3 (Z) (2019). *See also El Centro Villa*
2 *Nursing Ctr. v. Taxation and Revenue Dep't*, 1989-NMCA-070, 108 N.M. 795. The
3 presumption of correctness also applies to the assessment of penalty and interest. *See* 3.1.6.13
4 NMAC (2001). Therefore, the Taxpayers have the burden to prove that they are entitled to an
5 abatement, in full or in part, of the assessment issued in the protest. *See N.M. Taxation &*
6 *Revenue Dep't v. Casias Trucking*, 2014-NMCA-099, ¶8.

7 **Personal income tax.**

8 New Mexico imposes a personal income tax upon the net income of every resident. *See*
9 NMSA 1978, § 7-2-3. New Mexico's adjusted gross income is based on the person's federal
10 adjusted gross income. *See* NMSA 1978, § 7-2-2. The Taxpayers admit that they owed New
11 Mexico personal income tax for the 2014 and 2015 tax years. The Taxpayers do not know why the
12 federal government corrected their reported federal adjusted gross income for those years because
13 they no longer have records of their income or earnings for those years. However, the Taxpayers do
14 not dispute that they owe additional personal income tax based on the corrected federal adjusted
15 gross income.

16 **Time limits on assessments.**

17 The Taxpayers argue that the Department's assessment was made more than three years
18 after the tax years. The Taxpayers argue that the assessment was not timely. Generally, an
19 assessment must be made within three years from the end of the calendar year in which payment
20 of the tax was due. *See* NMSA 1978, § 7-1-18 (A) (2013). The taxes for the 2014 and 2015 tax
21 years were due when the returns were required to be filed in 2015 and 2016, respectively. *See*
22 NMSA 1978, § 7-2-12 (2016).

1 Under the general deadline, the Department had until the end of 2018 and 2019 to assess.
2 However, the time in which to make an assessment is increased to six years from the end of the
3 calendar year in which the tax was due if a return is filed for that tax year that understates the tax
4 due by more than 25 percent. *See* NMSA 1978, § 7-1-18 (D).

5 In 2014, the Taxpayers reported New Mexico tax due as \$154.00. [Admin. file protest;
6 Ex. B]. The amount of New Mexico tax due based on the corrected federal adjusted gross
7 income was \$1,998.00. [Ex. B]. Therefore, the amount of tax due was understated on the return
8 by approximately 83 percent. In 2015, the Taxpayers reported New Mexico tax due as \$0.00.
9 [Admin. file protest; Ex. B]. The amount of New Mexico tax due based on the corrected federal
10 adjusted gross income was \$1,605.00. [Ex. B]. Therefore, the amount of tax due was
11 understated on the return by 100 percent. Both the 2014 and 2015 tax returns understated the tax
12 due by more than 25 percent. [Admin. file protest; Ex. B]. Consequently, the Department had
13 six years to assess, with deadlines in 2021 and 2022, respectively. *See* NMSA 1978, § 7-1-18.
14 The assessment was made on September 28, 2020. [Ex. A]. Therefore, the assessment was
15 timely.

16 **Assessment of penalty.**

17 Penalty “*shall* be added to the amount assessed” when a tax is not paid at the time that it
18 is due, even when the failure to pay is because of negligence rather than an intent to evade the
19 tax. NMSA 1978, § 7-1-69 (A) (2007) (emphasis added). The word “shall” indicates that the
20 assessment of penalty is mandatory, not discretionary. *See Marbob Energy Corp. v. N.M. Oil*
21 *Conservation Comm’n.*, 2009-NMSC-013, ¶ 22, 146 N.M. 24.

22 The Taxpayers argue that they were not negligent. The Taxpayers simply did not know
23 or understand what was going on with their taxes. If a taxpayer is not negligent, penalty may be

1 excused. *See* 3.1.11.11 NMAC (2001) (listing several factors, such as consulting an accountant,
2 that indicate non-negligence). Negligence includes “inadvertence, indifference, thoughtlessness,
3 carelessness, erroneous belief or inattention.” 3.1.11.10 NMCA (2001). A taxpayer’s lack of
4 knowledge or erroneous belief that the taxpayer did not owe the tax is considered to be
5 negligence for purposes of assessment of penalty. *See id.* *See also Tiffany Const. Co., Inc. v.*
6 *Bureau of Revenue*, 1976-NMCA-127, 90 N.M. 16.

7 The Taxpayers failed to prove that they were not negligent. Therefore, the penalty was
8 properly assessed.

9 **Assessment of interest.**

10 Interest “shall be paid” on taxes that were not paid on or before the date on which they
11 were due. NMSA 1978, § 7-1-67 (A) (2013). Again, the word “shall” indicates that the
12 assessment of interest is mandatory. *See Marbob Energy Corp.*, 2009-NMSC-013. The
13 assessment of interest is not designed to punish taxpayers, but to compensate the state for the
14 time value of unpaid revenue. Because the tax was not paid when it was due, interest was
15 properly assessed. Interest will continue to accrue until the tax principal is paid.

16 **CONCLUSIONS OF LAW**

17 A. The Taxpayers filed a timely written protest to the Notice of Assessment of personal
18 income tax issued under Letter ID Number L0182709936, and jurisdiction lies over the parties and
19 the subject matter of this protest.

20 B. The first hearing was timely set and held within 90 days of the request for hearing.
21 *See* NMSA 1978, § 7-1B-8 (2019).

1 C. The Taxpayers owed additional personal income tax to New Mexico when the
2 federal government corrected the amounts of their federal adjusted gross income. *See* NMSA 1978,
3 § 7-2-2 and § 7-2-3.

4 D. The assessment was made within the statutory deadlines. *See* NMSA 1978, § 7-1-
5 18.

6 E. The Taxpayers failed to overcome presumption that the assessment was correct. *See*
7 NMSA 1978, § 7-1-17.

8 F. Assessment of penalty and interest was required and appropriate under the statutes.
9 *See* NMSA 1978, § 7-1-67 and § 7-1-69.

10 For the foregoing reasons, the Taxpayer's protest **IS DENIED. IT IS ORDERED** that
11 Taxpayer is liable for tax principal of \$3,449.00, penalty of \$689.80, and interest of \$838.22 for a
12 total outstanding liability of \$4,977.02².

13 DATED: July 23, 2021.

14 *Dee Dee Hoxie*

15 Dee Dee Hoxie
16 Hearing Officer
17 Administrative Hearings Office
18 P.O. Box 6400
19 Santa Fe, NM 87502

20 **NOTICE OF RIGHT TO APPEAL**

21 Pursuant to NMSA 1978, Section 7-1-25 (2015), the parties have the right to appeal this
22 decision by *filing a notice of appeal with the New Mexico Court of Appeals* within 30 days of the
23 date shown above. If an appeal is not timely filed with the Court of Appeals within 30 days, this

² Ms. Tapia provided the current total, which reflects the continued accrual of interest. Ms. Tapia advised that this total is valid through July 29, 2021.

1 Decision and Order will become final. Rule of Appellate Procedure 12-601 NMRA articulates
2 the requirements of perfecting an appeal of an administrative decision with the Court of Appeals.
3 Either party filing an appeal shall file a courtesy copy of the appeal with the Administrative
4 Hearings Office contemporaneous with the Court of Appeals filing so that the Administrative
5 Hearings Office may begin preparing the record proper. The parties will each be provided with a
6 copy of the record proper at the time of the filing of the record proper with the Court of Appeals,
7 which occurs within 14 days of the Administrative Hearings Office receipt of the docketing
8 statement from the appealing party. *See* Rule 12-209 NMRA.

9 **CERTIFICATE OF SERVICE**

10 On July 23, 2021, a copy of the foregoing Decision and Order was submitted to the parties
11 listed below in the following manner:

12 *First Class Mail and Email*

Email

13 INTENTIONALLY BLANK
14

15 _____
16 John Griego
17 Legal Assistant
18 Administrative Hearings Office
19 P.O. Box 6400
Santa Fe, NM 87502