

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

4 **IN THE MATTER OF THE PROTEST OF**
5 **ARTHUR & ELAINE TRUJILLO**
6 **TO THE ASSESSMENT**
7 **ISSUED UNDER LETTER ID NO. L1306649008**

8 **v.** **AHO No. 21.05-037A, D&O No. 21-20**

9 **NEW MEXICO TAXATION AND REVENUE DEPARTMENT**

10 **DECISION AND ORDER**

11 On August 3, 2021, Hearing Officer Dee Dee Hoxie, Esq. conducted a videoconference
12 hearing on the merits of the protest to the assessment. The Taxation and Revenue Department
13 (Department) was represented by Kenneth Fladager, Staff Attorney, who appeared by
14 videoconference. Alma Tapia, Auditor, also appeared by videoconference on behalf of the
15 Department. Arthur Trujillo (Taxpayer) appeared by telephone and represented himself. The
16 Taxpayer and Ms. Tapia testified. The Hearing Officer took notice of all documents in the
17 administrative file. The Department’s exhibits “A” (press release); “B” (tax record); “C”
18 (return); “D” (tax record); and “E” (updated liability) were admitted¹.

19 The main issue to be decided is whether the Taxpayer is liable for the penalty and
20 interest. The Hearing Officer considered all of the evidence and arguments presented by both
21 parties. Because the Taxpayer failed to overcome the presumption of correctness and essentially
22 conceded on all issues, the Hearing Officer finds in favor of the Department. **IT IS DECIDED**
23 **AND ORDERED AS FOLLOWS:**

24 **FINDINGS OF FACT**

¹ Citations to exhibits will be “Ex.” followed by their respective letter.

1 1. On February 8, 2021, the Department issued an assessment to the Taxpayer for
2 the tax period ending December 31, 2019. The assessment was for personal income tax of
3 \$1,781.00, penalty of \$249.34, underpayment penalty of \$42.90, and interest of \$29.52, for a
4 total liability of \$2,102.76. [Admin. file L1306649008].

5 2. On March 8, 2021, the Taxpayer filed a timely written protest. [Admin. file
6 protest].

7 3. On March 23, 2021, the Department acknowledged its receipt of the protest.
8 [Admin. file].

9 4. On May 25, 2021, the Department filed a request for hearing with the
10 Administrative Hearings Office. [Admin. file request].

11 5. The hearing was conducted on August 3, 2021, which was within 90 days of the
12 request as required by statute. [Admin. file].

13 6. The Taxpayer filed his 2019 personal income tax return on January 13, 2021.
14 [Testimony of Taxpayer; Testimony of Ms. Tapia; Ex. C; Ex. D].

15 7. The Taxpayer paid the \$1,781.00 tax due when he filed his return. [Admin. file;
16 Testimony of Taxpayer; Ex. E].

17 8. Returns for the 2019 tax year were due on July 15, 2020, but taxes were still due
18 on April 15, 2020. [Testimony of Ms. Tapia; Ex. A].

19 9. Therefore, the Taxpayer's taxes were paid late, and the Taxpayer's return was
20 filed late. [Testimony of Taxpayer; Testimony of Ms. Tapia; Ex. A; Ex. C; Ex. D; Admin. file].

21 10. The Taxpayer prepared a check for the taxes to be paid on June 8, 2020.
22 [Testimony of Taxpayer; Admin. file].

1 11. The Taxpayer expected his accountant to pay and file the taxes on his behalf.
2 [Testimony of Taxpayer].

3 12. The Taxpayer could not prove that the accountant filed the return or paid the taxes
4 when they were due in 2020. [Testimony of Taxpayer].

5 13. The Taxpayer became aware that the check to the Department prepared in June
6 2020 had not been cashed. [Testimony of Taxpayer].

7 14. The Taxpayer then signed and filed the return with the tax payment in January
8 2021. [Testimony of Taxpayer; Ex. C].

9 DISCUSSION

10 **Burden of proof.**

11 Assessments by the Department are presumed to be correct. *See* NMSA 1978, § 7-1-17
12 (2007). By definition, tax includes the amount of tax principal and “the amount of any interest
13 or civil penalty relating thereto”. NMSA 1978, § 7-1-3 (Z) (2019). *See also El Centro Villa*
14 *Nursing Ctr. v. Taxation and Revenue Dep’t*, 1989-NMCA-070, 108 N.M. 795. The
15 presumption of correctness also applies to the assessment of penalty and interest. *See* 3.1.6.13
16 NMAC (2001). Therefore, the Taxpayer has the burden to prove that he is entitled to an
17 abatement, in full or in part, of the assessment issued in the protest. *See N.M. Taxation &*
18 *Revenue Dep’t v. Casias Trucking*, 2014-NMCA-099, ¶8.

19 **Personal income tax.**

20 New Mexico imposes a personal income tax upon the net income of every resident. *See*
21 NMSA 1978, § 7-2-3. New Mexico’s adjusted gross income is based on the person’s federal
22 adjusted gross income. *See* NMSA 1978, § 7-2-2. The Taxpayer admits that he owed New Mexico

1 personal income tax for the 2019 tax year and that he filed his return and payment late. The
2 Taxpayer admits that he has no proof to the contrary.

3 **Assessment of penalty.**

4 When a tax is not paid by the due date or a return is not filed by its due date, “there *shall*
5 be added to the amount assessed a penalty”. NMSA 1978, § 7-1-69 (A) (2007) (emphasis
6 added). In addition to the standard penalty, underpayments of income tax are also assessed an
7 underpayment penalty. *See* NMSA 1978, § 7-2-12.2 (2011). The word “shall” indicates that the
8 assessment of penalties is mandatory, not discretionary. *See Marbob Energy Corp. v. N.M. Oil*
9 *Conservation Comm’n.*, 2009-NMSC-013, ¶ 22, 146 N.M. 24. If a taxpayer is not negligent,
10 penalties may be excused. *See* 3.1.11.11 NMAC (2001) (listing several factors, such as
11 consulting an accountant, that indicate non-negligence). A failure to file a return “is not excused
12 by the taxpayer’s reliance on an agent”. *Id.*

13 The Taxpayer concedes that he owes the penalties and intends to pay it. Therefore, the
14 penalties were properly assessed.

15 **Assessment of interest.**

16 The Taxpayer concedes that he owes the interest and intends to pay it. Interest “shall be
17 paid” on taxes that were not paid on or before the date on which they were due. NMSA 1978, §
18 7-1-67 (A) (2013). Again, the word “shall” indicates that the assessment of interest is
19 mandatory. *See Marbob Energy Corp.*, 2009-NMSC-013.

20 **CONCLUSIONS OF LAW**

21 A. The Taxpayer filed a timely written protest to the Notice of Assessment issued under
22 Letter ID Number 1306649008, and jurisdiction lies over the parties and subject matter of this
23 protest.

1 B. The hearing was conducted within 90 days of the request for hearing. *See* NMSA
2 1978, § 7-1B-8 (2019).

3 C. The Taxpayer filed and paid his 2019 tax return in January 2021, several months
4 late. *See* Ex. A. *See also* NMSA 1978, § 7-2-12.

5 D. The Taxpayer failed to overcome the presumption that the assessment was correct.
6 *See* NMSA 1978, § 7-1-17. *See also* 3.1.11.11 NMAC.

7 For the foregoing reasons, the Taxpayer's protest **IS DENIED. IT IS ORDERED** that
8 Taxpayer is liable for a total outstanding liability of \$321.76².

9 DATED: August 20, 2021.

10 *Dee Dee Hoxie*

11 Dee Dee Hoxie
12 Hearing Officer
13 Administrative Hearings Office
14 P.O. Box 6400
15 Santa Fe, NM 87502

16 **NOTICE OF RIGHT TO APPEAL**

17 Pursuant to NMSA 1978, Section 7-1-25 (2015), the parties have the right to appeal this
18 decision by *filing a notice of appeal with the New Mexico Court of Appeals* within 30 days of the
19 date shown above. If an appeal is not timely filed with the Court of Appeals within 30 days, this
20 Decision and Order will become final. Rule of Appellate Procedure 12-601 NMRA articulates
21 the requirements of perfecting an appeal of an administrative decision with the Court of Appeals.
22 Either party filing an appeal shall file a courtesy copy of the appeal with the Administrative
23 Hearings Office contemporaneous with the Court of Appeals filing so that the Administrative

² The tax principal was already paid, and only the penalties and interest remain outstanding. *See* Ex. E.

1 Hearings Office may begin preparing the record proper. The parties will each be provided with a
2 copy of the record proper at the time of the filing of the record proper with the Court of Appeals,
3 which occurs within 14 days of the Administrative Hearings Office receipt of the docketing
4 statement from the appealing party. *See* Rule 12-209 NMRA.

5 **CERTIFICATE OF SERVICE**

6 On August 20, 2021, a copy of the foregoing Decision and Order was submitted to the
7 parties listed below in the following manner:

8 *Email*

Interdepartmental Mail

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10
11 _____
12 John Griego
13 Legal Assistant
14 Administrative Hearings Office
15 P.O. Box 6400
Santa Fe, NM 87502