

**BEFORE THE HEARING OFFICER  
OF THE TAXATION AND REVENUE DEPARTMENT  
OF THE STATE OF NEW MEXICO**

**IN THE MATTER OF THE PROTEST OF  
SOCORRO CATTLEMANS CAFE  
ID # 02-07916400-0  
TO DENIAL OF CLAIM FOR REFUND**

**No. 00-12**

**DECISION AND ORDER**

A formal hearing on the above-referenced protest was held April 13, 2000, before Margaret B. Alcock, Hearing Officer. Socorro Cattlemans Cafe was represented by its owners, Ronald and Nima Cornwell (“Taxpayers”). The Taxation and Revenue Department (“Department”) was represented by Bridget A. Jacober, Special Assistant Attorney General. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

**FINDINGS OF FACT**

1. Prior to 1990, the Taxpayers owned and operated a cafe in Socorro, New Mexico.
2. The Taxpayers closed the cafe in May 1990.
3. At the time the cafe was closed, the Taxpayers were behind in payment of their gross receipts taxes.
4. The Taxpayers did not realize they had to file a written registration change form to notify the Department they had stopped doing business..
5. Because the Department had no written record showing the business was closed, the Department’s computer system continued to indicate the Taxpayers were delinquent in filing monthly gross receipts tax returns for periods after May 1990.

6. By mid-1992, the Department had issued assessments totaling approximately \$30,000 in gross receipts tax, penalty and interest against the Taxpayers. The assessments were based on estimates of tax due for all nonfiled periods shown on the Department's system.

7. The Taxpayers did not file a written protest to the assessments.

8. The Taxpayers did have a number of telephone conversations with Department employees. The Taxpayers acknowledged their liability for some unpaid gross receipts tax, but told the Department the business was now closed and the amount assessed was much too high.

9. It took several years to resolve the matter. In 1994, the Department made a final adjustment to reflect a total gross receipts tax liability for reporting periods April 1989 through May 1990 of \$692.15, plus penalty and interest.

10. Beginning in 1994, the Taxpayers suffered a series of severe illnesses and family tragedies resulting in large medical bills and an inability to pay their gross receipts tax obligation.

11. In 1997, the Taxpayers were finally able to pay the outstanding assessment of \$1,573.15, representing \$692.15 tax principal, \$92.04 penalty, and \$788.96 accrued interest.

12. On July 22, 1997, the Taxpayers filed a claim for refund of the penalty and interest, claiming undue delay on the part of the Department and financial hardship.

13. On August 20, 1997, the Department denied the Taxpayers' claim for refund.

14. On September 1, 1997, the Taxpayers filed a written protest to the Department's denial of their claim for refund of interest in the amount of \$788.96.

## **DISCUSSION**

At issue is whether the Taxpayers are liable for the full amount of interest accrued on their liability for unpaid gross receipt taxes for reporting periods April 1989 through May 1990. The Taxpayers maintain the Department took too long to determine the actual amount of their gross

receipts tax liability and they should be excused from the payment of interest during this period of delay. The Taxpayers also ask that the accrual of interest be suspended for the three-year period they were unable to make payment due to illness and other family misfortunes.

Section 7-1-17(C) NMSA 1978 provides that any assessment of taxes made by the Department is presumed to be correct. Section 7-1-3(U) NMSA 1978 defines tax to include not only the amount of tax principal imposed but also, unless the context otherwise requires, “the amount of any interest or civil penalty relating thereto.” Thus, the presumption of correctness of an assessment of taxes also applies to the assessment of interest. *See also, El Centro Villa Nursing Center v. Taxation and Revenue Department*, 108 N.M. 795, 779 P.2d 982 (Ct. App. 1989).

Section 7-1-67 NMSA 1978 governs the imposition of interest on late payments of tax and provides, in pertinent part:

A. If any tax imposed is not paid on or before the day on which it becomes due, ***interest shall be paid*** to the state on such amount from the first day following the day on which the tax becomes due, without regard to any extension of time or installment agreement, until it is paid... (emphasis added).

The legislature’s use of the word “shall” indicates that the assessment of interest is mandatory rather than discretionary. *State v. Lujan*, 90 N.M. 103, 560 P.2d 167 (1977). The legislature has directed the Department to assess interest whenever taxes are not timely paid and has provided no exceptions to the mandate of the statute. The assessment of interest is not designed to punish taxpayers, but to compensate the state for the time value of unpaid revenues. The reason for a late payment of tax is irrelevant to the imposition of interest. Even taxpayers who obtain a formal extension of time to pay tax are liable for interest from the original due date of the tax to the date payment is made. Section 7-1-13(E) NMSA 1978.

In this case, the Taxpayers fell behind in their payment of monthly gross receipts taxes. Although it is clear the Taxpayers are honest people and had no intent to cheat the state, it is also clear the taxes were due and owing. New Mexico has a self-reporting tax system. It was the obligation of the Taxpayers, not the Department, to determine the amount of gross receipts tax due to the state and make timely payment. *See*, Section 7-1-13(B) NMSA 1978; *Tiffany Construction Co. v. Bureau of Revenue*, 90 N.M. 16, 558 P.2d 1155 (Ct. App. 1976), *cert. denied*, 90 N.M. 255, 561 P.2d 1348 (1977). Had the Taxpayers kept accurate records of their business, they could have paid the amount of tax actually owed while continuing to work with the Department to clear up the confusion concerning the termination date of the business. The Taxpayers share responsibility for the delays in this case and cannot shift their duty to timely report and pay gross receipts tax to the Department.

The accrual of interest was partly attributable to the personal illnesses and other misfortunes suffered by the Taxpayers. Unfortunately, New Mexico law does not provide a mechanism for suspending the accrual of interest during periods of personal or financial hardship. As noted above, the assessment of interest is not designed to punish taxpayers, but to compensate the state for the time value of unpaid revenues. Here, the Taxpayers failed to pay over funds that belonged to the state, and they are required to pay interest for the period they had the use of this money. While it could be argued that the rate of interest is high in comparison with current market rates, that is a matter within the discretion of the legislature.<sup>1</sup> The Department does not have authority to substitute its own judgment for that of the legislature in setting the rate of interest to be imposed.

#### **CONCLUSIONS OF LAW**

1. The Taxpayers filed a timely, written protest to the Department's denial of their claim for refund, and jurisdiction lies over the parties and the subject matter of this protest.

2. Pursuant to Section 7-1-67(A) NMSA 1978, interest was properly assessed against the Taxpayers on their underreporting of gross receipts tax for the period April 1989 through May 1990.

3. Neither the delay in determining the Taxpayers' liability for gross receipts tax nor the personal and financial hardships suffered by the Taxpayers justify abatement of interest.

For the foregoing reasons, the Taxpayer's protest IS DENIED.

DATED April 17, 2000.

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<sup>1</sup> It should be noted that the 15 percent interest rate charged by the state is still less than the interest rate charged on many credit cards.