

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

IN THE MATTER OF THE PROTEST OF  
RIOJA, INC.  
I.D. NO. 02-246821-00-8  
ASSESSMENT NO. 2507781

No. 00-22

**DECISION AND ORDER**

A formal hearing on the above-referenced protest was held July 18, 2000, before Margaret B. Alcock, Hearing Officer. Rioja, Inc. ("Taxpayer") was represented by Orville C. McCallister, who is both president of the company and an attorney. The Taxation and Revenue Department ("Department") was represented by Monica M. Ontiveros, Special Assistant Attorney General. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

**FINDINGS OF FACT**

1. The Taxpayer is a corporation engaged in business in New Mexico.
2. The Taxpayer is registered with the Department for payment of gross receipts tax.
3. The Taxpayer's gross receipts tax for reporting period January 2000 was due on or before February 25, 2000.
4. The Taxpayer paid the gross receipts tax due February 25, 2000 on March 8, 2000, eleven days late.
5. On March 28, 2000, the Department issued Assessment No. 2507781 to the Taxpayer for penalty and interest on the Taxpayer's late payment of gross receipts tax.
6. The Taxpayer paid the penalty.
7. The Taxpayer protested the assessment of interest, asserting that the Department incorrectly assessed interest for an entire month when it should have assessed interest for only the

11-day period the payment was late. The Taxpayer's protest letter was received by the Department on April 4, 2000.

8. The Department has consistently interpreted Section 7-1-67 NMSA 1978 to impose a month's interest for any fraction of a month that a payment is late.

### **DISCUSSION**

The sole issue to be decided is whether the Department correctly calculated interest on the Taxpayer's late payment of tax. Section 7-1-67 NMSA 1978 (1996) governs the imposition of interest during the period at issue and states, 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....

B. Interest due to the state under Subsection A or D of this section shall be at the rate of fifteen percent a year, computed at the rate of one and one-fourth percent per month or any fraction thereof....

The quoted language has remained virtually unchanged since the Tax Administration Act was first enacted in 1965. *See*, 1965 N.M. Laws, ch. 248, § 68. The Department has consistently interpreted this language to impose a month's interest for any fraction of a month that a payment is late. The Taxpayer argues that the Department's interpretation renders Subsection A of Section 7-1-67 meaningless. The Taxpayer asserts that because Subsection A imposes interest only "until it is paid", interest must be calculated on a daily basis. The Taxpayer also relies on Department Regulation 3 NMAC 1.10.18.2, which states that interest "shall begin to accrue" on the day following the due date and shall continue to accrue "until the tax indebtedness is paid."

There is nothing in Subsection A or the Department's regulation that mandates the calculation of interest on a daily basis. Subsection A simply determines the period for which interest

is due. Subsection B determines the method of calculating the interest. The statute provides that interest is to be calculated on a monthly, not a daily basis. This conclusion is consistent with the language of the statute and is also consistent with the Department's long-standing interpretation of Section 7-1-67. Although not binding, an agency's reasonable interpretation of a statute the agency is charged with administering is persuasive and will be given deference by the courts. *Gonzales v. Allstate Ins. Co.*, 1996-NMSC-41, 122 N.M. 137, 142, 921 P.2d 944, 949 (1996); *New Mexico Pharmaceutical Ass'n v. State*, 106 N.M. 73, 75, 738 P.2d 1318, 1320 (1987). When an administrative construction is of long standing, as is the case here, it is given even greater weight. *In re Application of Sleeper*, 107 N.M. 494, 498, 760 P.2d 787, 791 (Ct. App.), *cert. quashed*, 107 N.M. 413, 759 P.2d 200 (1988).

Also of significance is the fact that the 2000 Legislature amended Section 7-1-67, effective January 1, 2001, by deleting the language requiring interest to be computed "at the rate of one and one-fourth percent per month or any fraction thereof" and replacing it with a directive that interest be computed "on a daily basis." See 2000 N.M. Laws, ch. 28, § 11. The 2000 amendment substantially rewrote the provisions of Section 7-1-67(B).<sup>1</sup> As stated by the New Mexico Court of Appeals in *In re Estate of Greig*, 107 N.M. 227, 229, 755 P.2d 71, 73 (Ct. App. 1988): "When the legislature enacts a new law or amends an existing one, it does so for the express purpose of changing the law as it previously existed." The 2000 amendment confirms that the legislative intent in enacting the original version of Section 7-1-67 was to calculate interest on a monthly basis.

### CONCLUSIONS OF LAW

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<sup>1</sup> It is worth noting that the legislature did not change similar language in Section 7-1-69 NMSA 1978, which still imposes a late-payment penalty of "two percent per month or any fraction of a month from the date the tax was due multiplied by the amount of tax due but not paid...." The Taxpayer in this case has not challenged the Department's interpretation of Section 7-1-69 to require imposition of a full month's penalty on the Taxpayer's payment of tax eleven days late.

1. The Taxpayer filed a timely, written protest to Assessment No. 2507781 pursuant to Section 7-1-24 NMSA 1978, and jurisdiction lies over the parties and the subject matter of this protest.

2. The Department correctly assessed one month's interest on the Taxpayer's late payment of gross receipts tax eleven days after the due date.

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

DATED July 21, 2000.