

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

IN THE MATTER OF THE PROTEST
OF *PETER GRIVAS*,
ASSESSMENT NO. 632022.

No. 95-10

DECISION AND ORDER

This matter was heard on November 1, 1995 by Julia Belles, Hearing Officer. Mr. Grivas (Taxpayer) represented himself and Frank D. Katz, Special Assistant Attorney General, represented the Taxation and Revenue Department (Department). Based upon the evidence and arguments presented, it is decided and ordered as follows:

FINDINGS OF FACT

1. The Taxpayer is a New Mexico resident who pays personal income tax.
2. On July 18, 1995, the Department mailed the Taxpayer a Notice of Assessment No. 632022. The Taxpayer was assessed \$2,158.27 in personal income tax, \$1,133.07 in interest and \$214.82 penalty for the 1991 tax year.
3. The assessment was sent because the Department's records showed that the Taxpayer had not filed a return or paid personal income tax for the 1991 tax year.
4. On August 22, 1995, the Taxpayer filed a written protest against the assessment.
5. The Department noticed that the protest was not timely filed and gave the Taxpayer information on how to request a retroactive extension of sixty days to file the protest.
6. On August 31, 1995, the Taxpayer requested the retroactive extension of time to file his protest and filed his original protest letter.
7. The Department granted the Taxpayer's request for an extension of time to file his protest.

8. Although the Taxpayer testified that he mailed his 1991 personal income tax return together with a cashier's check for his 1991 personal income tax liability, the Department has no record of receiving either the return or payment of tax.

9. The Department agreed to abate the penalty assessed.

DISCUSSION

The Taxpayer disputes his liability for the 1991 personal income tax, penalty and interest. At the outset, it should be noted that Section 7-1-17(C) NMSA 1978 (Repl. 1995) provides a presumption of correctness which attaches to any assessment of tax by the Department. This means that the taxpayer carries the burden of proving that the assessment is incorrect.

The assessment was issued because the Department could not find any records to indicate that the Taxpayer had reported or paid personal income tax (PIT) for 1991. The Department based the amount of its assessment upon information it received from the Internal Revenue Service pursuant to the information sharing agreement between the Department and the IRS. The Taxpayer does not dispute the amount assessed as his 1991 personal income tax liability, but contends that the tax has already been paid.

The Taxpayer testified that he recalled getting a cashier's check for his 1991 taxes and he recalled sending the check and PIT forms to the Department. The Taxpayer threw out his receipt for the cashier's check and, when he contacted his bank, was told that the records for 1991 had been deleted. The Taxpayer did not produce a copy of his payment, a copy of his original 1991 return or any evidence to show that the Department received his 1991 personal income tax form and tax payment. The Taxpayer argued that he provided sufficient evidence to show he had paid the tax and the assessment should be abated. The Taxpayer also argued that the Department was at fault for waiting so long to issue the assessment.

The Taxpayer did not meet his burden. The Taxpayer only provided testimony that he sent the return and payment. This testimony was not corroborated with any evidence, such as a

cancelled check, or bank records showing a withdrawal to correspond to the Taxpayer's liability. He did not provide any evidence to rebut the evidence presented by the Department that it never received payment of his 1991 PIT. The Taxpayer is responsible for adequately maintaining records of his tax payments. Section 7-1-10 NMSA 1978 (Repl. 1995). Further, Section 7-1-18(A) NMSA 1978 (Repl. 1995) allows the Department to assess taxes no later than three years from the end of the year that the tax was due. Since the 1991 personal income tax was due on April 15, 1991, the assessment was issued within the statute of limitations and is therefore timely.

CONCLUSIONS OF LAW

1. The Taxpayer timely filed a written protest over the Department's assessment of his 1991 PIT and jurisdiction lies over the parties and the subject matter of this protest.
2. Assessment No. 632022 was issued within the statutory time limit of Section 7-1-18(A) NMSA 1978 (Repl. 1995).
3. The Taxpayer failed to maintain adequate records to show that he paid his 1991 PIT and therefore the Taxpayer has failed to meet his burden of proving the assessment to be incorrect.
4. The penalty assessed by Assessment No. 632022 should be abated.

For these reasons, the Taxpayer's protest is hereby denied.

Done this 22nd day of November, 1995.