

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

IN THE MATTER OF THE PROTEST
OF *DAVIS AND ASSOCIATES, INC.*
I.D. NO. 01-795991-00 8, ASSESSMENT
NOS. 1926219 AND 1958196.

No. 96-01

DECISION AND ORDER

This matter was heard on December 6, 1995 by Julia Belles, Hearing Officer. Davis and Associates, Inc. (Taxpayer) was represented by Charles Watson and the Taxation and Revenue Department (Department) was represented by Bridget A. Jacober, Special Assistant Attorney General. Based upon the evidence and arguments presented, **it is decided and ordered as follows:**

FINDINGS OF FACT

1. The Taxpayer is a corporation which engages in commercial construction in New Mexico.
2. Due to the large dollar volume of the Taxpayer's monthly gross receipts, the Taxpayer is required to make payment of its monthly gross receipts, compensating and withholding taxes which are reported under New Mexico Combined Reporting System (CRS) according to the special payment procedures set forth in Section 7-1-13.1 NMSA 1978 (1995 Repl.).
3. The Taxpayer's common method of payment is to hand deliver a check, drawn on and payable at a New Mexico financial institution, to the Department's Santa Fe office.
4. The Taxpayer's CRS taxes for the March 1995 reporting period were due April 24, 1995, however, the Taxpayer hand delivered a check to the Department's Santa Fe

office on April 25, 1995.

5. On April 29, 1995, the Department mailed the Taxpayer a Notice of Assessment No. 1926210. The Taxpayer was assessed \$1,555.43 in interest and \$2,488.68 penalty for failing to pay its taxes for the March 1995 reporting period on time.

6. The Taxpayer filed a written protest to Assessment No. 1926210 on May 18, 1995.

7. On June 8, 1995, the Department abated the penalty on Assessment No. 1926210.

8. The Taxpayer's CRS taxes for the July 1995 reporting period were due August 24, 1995, however, the Taxpayer hand delivered a check to the Department's Santa Fe office on August 25, 1995.

9. On August 31, 1995, the Department mailed the Taxpayer a Notice of Assessment No. 1958196. The Taxpayer was assessed \$821.59 in interest and \$1,314.54 penalty for failing to pay its taxes for the July 1995 reporting period on time.

10. The Taxpayer filed a written protest to Assessment No. 1958196 on September 6, 1995. The Taxpayer also requested that the penalty be abated on Assessment No. 1958196.

11. On October 16, 1995, the Department responded that it would not abate the penalty on Assessment No. 1958196. The Department also stated that it would consolidate both protests for one hearing.

DISCUSSION

The Taxpayer disputes the interest that was calculated for its late payment of taxes. Section 7-1-17(C) NMSA 1978 (1995 Repl.) provides that there is a presumption of correctness which attaches to any assessment of taxes by the Department. "Tax" is defined to include the amount of interest related to any taxes. Section 7-1-3(U) NMSA

1978 (1995 Repl.). Therefore, the presumption of correctness attaches to the assessment of interest as well. Thus, the Taxpayer has the burden of proving that the assessment of interest is incorrect.

The Taxpayer falls under the provisions of Section 7-1-13.1 NMSA 1978 (1995 Repl.). This statute provides special methods of payment. One way for a taxpayer to pay its tax liability is to submit a check drawn on and payable at a New Mexico financial institution. This method of payment requires that the Department receive the check one banking day prior to the normal due date. The Taxpayer's common practice is to pay by check by hand delivering the check to the Department's Santa Fe office. Because the Taxpayer has chosen this method, the CRS taxes are due on the 24th of each month. Twice the Taxpayer paid one day late and was charged one month of interest as required under Section 7-1-67 NMSA 1978 (1995 Repl.). The Taxpayer protested the assessment of one month of interest when it only paid one day late and the Taxpayer also protested the assessment of penalty. On Assessment 1926210, the Department agreed to abate the penalty as the Taxpayer showed it was not negligent under the provisions of Section 7-1-69 NMSA 1978 (1995 Repl.).

The Taxpayer has not met its burden to show that the assessment of interest on Assessment No. 1926210 and the assessment of interest and penalty on Assessment No. 1958196 were incorrect. The Taxpayer admitted it did not timely pay its taxes. Section 7-1-67 NMSA 1978 (1995 Repl.) imposes interest for a month regardless to how late the tax is paid. This is made clear by the language of Section 7-1-67(B) NMSA 1978 (1995 Repl.) which provides that the "[i]nterest due to the state...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* (emphasis added)." The law does not provide for the abatement of interest. Further, the Taxpayer was warned with Assessment No. 1926210 of when it must pay its

taxes. In spite of this, the Taxpayer was late a second time in identical circumstances. The Taxpayer presented evidence that there had been a change in the controller and the new controller was unaware of its CRS taxes due date. That evidence is insufficient to prove that the Taxpayer was not negligent. While the controller may have been unaware of the CRS taxes due date, the evidence clearly demonstrated that the Taxpayer was aware of when its tax liability is due and had routinely complied with its obligation and timely paid its CRS taxes. The penalty on Assessment No. 1958196 was correctly imposed because the Taxpayer showed negligence in not delivering its check to the Department on August 24, 1995 as required by the rules and regulations. Section 7-1-69 NMSA 1978 (1995 Repl.). The interest on Assessment 1926210 and the interest and penalty on Assessment No. 1958196 were correctly imposed by the Department.

CONCLUSIONS OF LAW

1. The Taxpayer timely filed written protests, pursuant to Section 7-1-24 NMSA 1978 (1995 Repl.), to the interest of Assessment No. 1926210 and to the interest and penalty of Assessment 1958196 and, therefore, jurisdiction lies over the parties and the subject matter of this protest.
2. The Taxpayer did not timely pay its CRS taxes as required under the provisions of Section 7-1-13.1 NMSA 1978 (1995 Repl.).
3. Interest was correctly imposed under Section 7-1-67 NMSA (1995 Repl.)
4. The penalty on Assessment No. 1958196 was correctly imposed as the Taxpayer was aware of when and how payment of its taxes was required to be made and the Taxpayer was negligent in failing to meet those requirements with respect to the payment of taxes.

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

Done this 4th day of January, 1996.