

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

**IN THE MATTER OF THE PROTEST OF
PATRICK J. YOUNGMAN
ASSESSMENT NO. 557686**

No. 01-26

DECISION AND ORDER

A formal hearing on the above-referenced protest was held October 17, 2001, before Margaret B. Alcock, Hearing Officer. Patrick J. Youngman ("Mr. Youngman") represented himself. 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. On October 20, 2000, the Department issued Assessment No. 557686 to Patrick J. Youngman, assessing \$1,439.00 of personal income tax, \$143.90 of penalty and \$125.91 of interest for tax year 1999.
2. The document sent to Mr. Youngman was titled "NOTICE OF ASSESSMENT OF TAXES" and stated that it was "Issued in the Name of the Secretary, John J. Chavez". The second page of the document read: "Pursuant to Section 7-1-17 NMSA 1978, demand is made for payment of taxes as reflected on the form...." Enclosed with the assessment was a summary of taxpayer remedies.
3. The assessment resulted from the Department's review of Mr. Youngman's 1999 New Mexico personal income tax return and its determination that additional tax was due.
4. Mr. Youngman filed a written request for extension of time to file a protest to the Department's assessment, which was granted.

5. On January 19, 2001, Mr. Youngman filed a written protest to the Department's assessment and requested "affirmative relief in the form of a refund of the Federal Reserve Notes erroneously withheld from my paycheck and paid into the Treasury of the STATE OF NEW MEXICO...."

6. On August 16, 2001, the Department's counsel filed a Request for Hearing on Mr. Youngman's protest. The request explained that Assessment 557686 was issued to Mr. Youngman based on the discrepancy between the \$60,502.47 of compensation shown on his 1999 withholding tax statements and the zero income reported on his personal income tax return.

7. On August 23, 2001, a notice of hearing was mailed to Mr. Youngman scheduling a hearing on his protest for October 17, 2001.

8. On September 12, 2001, Mr. Youngman sent a letter to the Hearing Officer stating that he was "declining to attend your meeting on the given day (October 17th, 2001)...." Mr. Youngman stated he would be willing to meet with the Hearing Officer at a later date and set out a list of 10 issues he would expect the Hearing Officer to address at that meeting.

9. Enclosed with Mr. Youngman's September 12, 2001 letter were copies of correspondence between Mr. Youngman and Monica M. Ontiveros, the Department's attorney. Also enclosed was a "Verification of Administrative Judgment" signed by Mr. Youngman and an "Administrative Judgment" signed by "Thomas-Lee - Administrative Hearing Officer". The seal placed on the document identifies Thomas-Lee as a "Judge" and "Private Administrative Hearing Officer" of the United States of America. The Administrative Judgment had been issued against former Cabinet Secretary John Chavez and filed on the county records of Bernalillo County.

10. On September 14, 2001, the Hearing Officer sent Mr. Youngman a letter explaining that the "meeting" scheduled for October 17, 2001 was actually a formal administrative hearing and

that if he failed to appear at the hearing, a decision would be entered in favor of the Department. The Hearing Officer advised Mr. Youngman that pursuant to Section 7-1-17 NMSA 1978, he had the burden of proving the Department's assessment was incorrect and further stated: "Although you may raise any relevant issues at the October 17, 2001 hearing, it will be your responsibility to establish the factual and legal basis for your protest—the Department has no obligation to present evidence unless it chooses to do so."

11. On September 24, 2001, Mr. Youngman again wrote to the Hearing Officer, stating that he was willing to discharge the amount of the assessment "until the issues are resolved" and that his offer "should negate the need for the meeting proposed on October 17th, 2001." Mr. Youngman further conditioned his offer on receiving "a private face to face meeting" with the Hearing Officer.

12. On October 5, 2001, the Hearing Officer wrote to Mr. Youngman, informing him that the administrative hearing on his protest remained scheduled for October 17, 2001.

13. On October 9, 2001, Mr. Youngman sent a "Notice of Fault" to the Hearing Officer stating: "you have failed in your burden" to provide discovery and further warning that "it may become necessary to inform the U.S. Attorney General or the FBI of your activities for their own investigation/prosecution should it become necessary."

14. The Hearing Officer did not respond to Mr. Youngman's Notice of Fault.

15. On October 17, 2001, the Hearing Officer convened the administrative hearing on Mr. Youngman's protest.

16. Mr. Youngman (who insisted on being addressed as "Patrick") appeared on his own behalf. The Department was represented by its attorney, Monica M. Ontiveros.

17. When given the opportunity to present his case, Mr. Youngman stated that he did not intend to give any testimony, but had come to the hearing to have the Department respond to his questions.

18. The Hearing Officer told Mr. Youngman that neither she nor the Department's attorney were there to answer his questions. She again explained that it was his burden to overcome the presumption of correctness that attached to the Department's assessment and that this was his opportunity to present his reasons for believing the assessment was incorrect.

19. Mr. Youngman eventually raised a number of legal issues concerning his tax liability, but provided no factual testimony or other evidence to support his arguments.

20. At the close of Mr. Youngman's case, the Department's attorney chose not to put on any evidence, asserting that Mr. Youngman had failed to overcome the presumption of correctness of the Department's assessment.

DISCUSSION

At issue is whether Mr. Youngman is liable for the personal income tax, penalty and interest assessed against him for tax year 1999. At the October 17, 2001 hearing, Mr. Youngman raised the following arguments in support of his protest: (1) the Department failed to provide him with evidence that he is either a resident of New Mexico or a taxpayer; (2) both federal law and Section 7-2-2(N)(4) NMSA 1978 prohibit the Department from taxing the federal reserve notes he received in compensation for personal services; (3) the Department "dishonored" the private administrative proceeding he initiated against Secretary John Chavez; (4) the Department "dishonored" his offer to discharge the amount of tax assessed by the Department; and (5) the Department failed to define the term "income", making it impossible for him to respond to the Department's assessment of personal income tax.

(1) **Evidence of Residency or Status as a “Taxpayer”.** Mr. Youngman argues that he does not owe the tax assessed because the Department failed to provide substantial evidence to show that he is either a resident of New Mexico or a taxpayer. Mr. Youngman’s argument is based on a misunderstanding of the law. Section 7-1-17(C) NMSA 1978 provides that any assessment of tax by the Department is presumed to be correct, and it is the burden of the taxpayer protesting an assessment to overcome this presumption. *Tipperary Corp. v. New Mexico Bureau of Revenue*, 93 N.M. 22, 24, 595 P.2d 1212, 1214 (Ct. App. 1979); *Archuleta v. O’Cheskey*, 84 N.M. 428, 431, 504 P.2d 638, 641 (Ct. App. 1972). One way for a taxpayer to meet this burden is to present evidence to show that the decision of the Department is not supported by substantial evidence. *Floyd & Berry Davis Co. v. Bureau of Revenue*, 88 N.M. 576, 577-578, 544 P.2d 291, 292-293 (Ct. App. 1975). This does not mean, as Mr. Youngman appears to believe, that a taxpayer can overcome the presumption of correctness merely by stating that there is no substantial evidence to support the assessment. The taxpayer must present some facts or legal authority to establish the basis for his position. This was made clear in *Hannahs v. Anderson*, 1998-NMCA-152 ¶31, 126 N.M. 1, 8, 966 P.2d 168, 175 where the court specifically rejected the taxpayer’s attempt to shift the burden of presenting evidence to the state:

Taxpayers presented no evidence that their appraisal method was generally acceptable. Taxpayers attempt to shift this burden by arguing that the Assessor did not present evidence that Taxpayers' technique was invalid. However, *it is not Assessor's responsibility to establish the invalidity of Taxpayers' appraisal technique*. If Taxpayers want the Board, or this Court, to accord substantial weight to their valuation method, it is their responsibility to present some testimony or evidence which sets forth that method as a generally accepted appraisal technique. (Emphasis added.)

In this case, it was not the Department’s responsibility to establish that Mr. Youngman was a New Mexico resident during tax year 1999. Rather, it was Mr. Youngman’s responsibility to present

evidence to show that he was not. This he failed to do. The record shows that Mr. Youngman has a New Mexico address; that he acknowledges being an “inhabitant” of New Mexico (*see*, “Verification of Administrative Judgment” sent to the Hearing Officer on September 12, 2001); that New Mexico personal income tax was withheld by his employer during 1999; and that he filed a New Mexico personal income tax return with a New Mexico address for tax year 1999. All of these facts support the conclusion that Mr. Youngman is a resident of New Mexico and was a resident during 1999. Mr. Youngman failed to provide any testimony or other evidence that would support a different conclusion.

It should be noted that the state’s right to tax Mr. Youngman’s income does not depend solely on his status as a New Mexico resident. Section 7-2-11 NMSA 1978 provides that residents of New Mexico are subject to New Mexico income tax on all compensation earned during the tax year and that nonresident taxpayers are subject to New Mexico income tax on all compensation “for activities, labor or personal services within this state....” In order to show that the Department’s assessment of tax is incorrect, Mr. Youngman would have to establish first, that he was not a resident of New Mexico in 1999 and second, that the income he earned during 1999, and from which his employer withheld New Mexico income tax, was not earned within the state of New Mexico. Mr. Youngman failed to present evidence bearing on either of these issues.

With regard to Mr. Youngman’s assertion that there is no evidence he is a “taxpayer”, Section 7-1-3(W) NMSA 1978 of the Tax Administration Act defines a “taxpayer” as follows:

W. “taxpayer” mean a person liable for payment of any tax, a person responsible for withholding and payment or for collection and payment of any tax or a person to whom an assessment has been made, if the assessment remains unabated or the amount thereof has not been paid.

Mr. Youngman comes within this definition since he is “a person to whom an assessment has been made” and the assessment remains both unabated and unpaid. Whether Mr. Youngman is also a taxpayer because he is “a person liable for payment of any tax” is something that will be determined in this Decision and Order.

(2) **Taxation of Federal Reserve Notes.** Mr. Youngman maintains that both federal and state law prohibit the Department from taxing the federal reserve notes he received in compensation for personal services. The federal law issue is disposed of by 31 U.S.C Section 5154, which gives states express permission to tax federal reserve notes:

§ 5154. State Taxation

A State or a territory or possession of the United States may tax United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) as money on hand or on deposit in the same way and at the same rate that the State, territory, or possession taxes other forms of money.

In *Smith v. Davis*, 323 U.S. 111, 65 S.Ct. 157, 159 n.4 (1944), the United States Supreme Court noted that while state taxation of legal tender notes was once prohibited, this was changed by Congress's 1894 enactment of what is now 31 U.S.C Section 5154. *See also, Hibernia Savings & Loan Society v. San Francisco*, 200 U.S. 310, 26 S.Ct. 265, 267 (1906).

Mr. Youngman’s state law argument is based on Section 7-2-2(N)(4) NMSA 1978, which excludes “income from obligations of the United States of America” from the definition of “net income”. While federal reserve notes themselves may be a form of federal obligation, they do not represent income “from” federal obligations. Any compensation Mr. Youngman received from his employer was income from the performance of personal services, which is clearly subject to tax. In the absence of any evidence that Mr. Youngman had income from federal obligations during 1999,

his argument concerning Section 7-2-2(N)(4) NMSA 1978 is simply irrelevant to the current proceeding.

(3) **“Dishonor” of Private Administrative Proceeding.** Mr. Youngman believes the Department forfeited its right to enforce its assessment against him when the Department “dishonored” the private administrative proceeding he initiated against Secretary John Chavez in January 2001.¹ This dishonor apparently resulted from Mr. Chavez’s failure to respond to or otherwise participate in Mr. Youngman’s private proceeding. When asked what law authorized such a proceeding, Mr. Youngman stated that all citizens have the right to file a petition for redress of grievances against public officials. He did not provide any legal authority for his position, other than a reference to “Title 5” and “administrative procedures”. If Mr. Youngman intended to argue that the federal Administrative Procedures Act, 5 U.S.C. Section 500, *et seq.*, supports his position on this issue, he is mistaken. There is nothing in the Administrative Procedures Act—or any other federal or state law—that gives citizens the right to institute private legal proceedings and engage private hearing officers to file judgments against public officials on the county records. Nor does any law require public officials to respond to such proceedings.

(4) **“Dishonor” of Mr. Youngman’s Offer to Pay Assessment.** Mr. Youngman also believes the Department “dishonored” his offer to discharge the amount of tax assessed against him. In making this argument, Mr. Youngman relies on Section 55-3-603 NMSA 1978 of the Uniform Commercial Code (*see*, Notice of Fault sent to the Hearing Officer on October 9, 2001). This statute applies to tenders of payment of negotiable instruments. An assessment of tax is not a negotiable instrument and is not subject to the provisions of the Uniform Commercial Code. The

¹ John Chavez resigned as Cabinet Secretary at the end of 2000. T. Glenn Ellington was Secretary of the Department at the time Mr. Youngman initiated his administrative proceeding and filed his “Administrative Judgment” against Mr. Chavez.

payment of tax assessments is governed by the Tax Administration Act, Section 7-1-1, *et seq.*, NMSA 1978. Section 7-1-23 NMSA 1978 states that a taxpayer must elect to dispute his liability for payment of taxes “either by protesting the assessment...without payment or by claiming a refund...after making payment.” The pursuit of one of these two remedies constitutes an unconditional waiver of the right to pursue the other. The only provision for payment of tax after a protest is filed—but before the protest is resolved—is found in Department Regulation 3.1.7.9 NMAC, which provides for payment solely to stop the running of additional interest.

In this case, Mr. Youngman’s offer to pay was not made in order to stop the running of interest, nor was it intended to resolve the merits of his protest. Mr. Youngman’s offer was made in an attempt to have the date of the formal hearing on his protest postponed. His September 19, 2001 letter stated that he would discharge the amount of the assessment “until the issues are resolved” and that “[t]his should negate the need for the meeting proposed on October 17th, 2001....” Mr. Youngman further conditioned his offer on receiving “a private face to face meeting” with the Hearing Officer. Taxpayers may not impose their own system of pleading or rules of procedure on the state. The fact that the Hearing Officer declined to accept Mr. Youngman’s conditional offer of payment has no effect on Mr. Youngman’s liability for payment of taxes due to the state.

(5) Definition of “Income”. Mr. Youngman asserts that the Department failed to provide him with a definition of the term “income”, making it impossible for him to prepare for the hearing on his protest. Besides improperly shifting the burden of proof to the Department, Mr. Youngman’s protestations of ignorance are contradicted by the record of this proceeding. During the October 17, 2001 hearing, Mr. Youngman declared that he was no more able to understand the meaning of income as used by the Department than he was to engage in a discussion on astrophysics. At the same time, he exhibited extensive knowledge of the statutory definition of “net income”,

which is the starting point for calculating New Mexico personal income tax. *See*, Sections 7-2-3 NMSA 1978 and 7-2-2(N) NMSA 1978. Not only did Mr. Youngman read the text of Section 7-2-2(N) NMSA 1978 into the record, he argued that the exclusion in Subsection (N)(4) prohibited the Department from taxing his 1999 income (discussed under Point (2), above). Mr. Youngman's own arguments rebut his claim that he was unable to find a definition of "income" as it relates to New Mexico's personal income tax.

Mr. Youngman's allegations that the Department never explained the meaning of income or provided him with information concerning the basis for its assessment are also contradicted by the record. On August 16, 2001, Monica M. Ontiveros, the Department's attorney, filed a Request for Hearing in this matter. Under the section heading, "Issues to be determined", Ms. Ontiveros clearly stated that the basis for the Department's assessment was the discrepancy between the zero income Mr. Youngman reported on his 1999 New Mexico income tax return and the \$60,502.47 of income shown on his withholding statements. Ms. Ontiveros explained that the starting point for calculating New Mexico personal income tax is federal adjusted gross income as defined in Section 62 of the Internal Revenue Code, and that the definition in Section 62 "includes compensation for services or wages." On August 22, 2001, Ms. Ontiveros sent a letter to Mr. Youngman, which Mr. Youngman forwarded to the Hearing Officer on September 12, 2001. The letter again set out the basis for the Department's assessment of personal income tax against Mr. Youngman. Ms. Ontiveros also enclosed copies of four Decisions and Orders previously issued by the Department's hearing officers which addressed many of the same issues raised by Mr. Youngman: No. 01-18 (James A. and Terri L. Holt); No. 99-23 (Nestor and Emmeline Padilla); No. 99-20 (Joseph and Toni Renee Salinas); and No. 97-27 (Anthony Cordova). These decisions, which are nonconfidential public records of the Department and can be found on the Department's web site, contain a thorough discussion of New

Mexico's personal income tax laws, as well as an explanation of how taxable income is determined. There is simply no merit to Mr. Youngman's claim that he did not have the information necessary to determine whether his income was subject to New Mexico personal income tax.

CONCLUSIONS OF LAW

1. Mr. Youngman filed a timely, written protest to Assessment No. 557686, and jurisdiction lies over the parties and the subject matter of this protest.
2. Mr. Youngman failed to meet his burden of presenting evidence and legal authority to establish that the Department's assessment of personal income tax against him was incorrect.

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

DATED October 24, 2001.