

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

**IN THE MATTER OF THE PROTEST OF
CHAPARRAL VAN LINES, INC.
MTD NO. 042349-1
WEIGHT DISTANCE & IFTA ASSESSMENTS
DATED DECEMBER 17, 2001**

No. 02-21

DECISION AND ORDER

A formal hearing on the above-referenced protest was held September 4, 2002, before Margaret B. Alcock, Hearing Officer. Chaparral Van Lines, Inc. ("Taxpayer") was represented by its president, John Skillin. The Taxation and Revenue Department ("Department") was represented by Javier Lopez, Special Assistant Attorney General. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. In December 1999, the Department began an audit of the Taxpayer's payment of IFTA and weight distance taxes for the period January 1997 through December 1999.
2. In March 2000, the Department's auditors met with John Skillin, president of the company, and Jackie Hudman, the office secretary, to obtain information concerning the Taxpayer's accounting system and discuss the records needed to complete the audit.
3. Mr. Skillin told the auditors that the two employees responsible for the Taxpayer's accounting system and for filing tax returns had resigned the previous week. Mr. Skillin said that neither he nor Ms. Hudman were familiar with the methods used to record, maintain and report mileage and fuel information.

4. When the auditors asked to see the Taxpayer's mileage and fuel records for the period January 1997 forward, Mr. Skillin told them that they only kept these records for six months. This was the retention period required by the federal Department of Transportation and the Taxpayer's employees assumed that the State of New Mexico had the same requirement.

5. The auditors used the records available to determine a sample error rate for the second, third and fourth quarters of 1999 and then applied that error rate to the rest of the audit period.

6. In December 2000, at the Department's request, Mr. Skillin signed a waiver of the statute of limitations for the 1997 tax year.

7. On December 17, 2001, the Department assessed the Taxpayer for \$4,057.47 of underreported IFTA taxes, plus \$10,045.23 of interest for reporting periods January 1997 through December 1999. No penalty was assessed.

8. On December 17, 2001, the Department assessed the Taxpayer for \$4,547.73 of underreported weight distance taxes, plus \$2,334.64 of interest and \$454.79 of penalty for reporting periods January 1997 through December 1999.

9. On January 15, 2002, the Taxpayer filed a written protest to the Department's assessments, stating its position that there were several errors in the method the auditors used to determine mileage driven by the Taxpayer's trucks during the audit period.

10. The Department reviewed the Taxpayer's position and subsequently made several adjustments to the audit, reducing the assessment of IFTA taxes to \$2,181.32, plus interest and reducing the assessment of weight distance taxes to \$3,939.21, plus interest, and abating the penalty.

11. As a result of these adjustments, the Taxpayer withdrew its protest to the assessment of tax principal, but decided to proceed with its protest of interest.

DISCUSSION

The issue to be decided is whether the Taxpayer is liable for the interest assessed on its underreporting of taxes during the period January 1997 through December 1999. The Taxpayer does not dispute that it underpaid both IFTA and weight distance taxes during the audit period and is liable for the amount of tax principal ultimately agreed upon by the parties. The Taxpayer argues, however, that it should not have to pay interest on the underpayment because the Department's delay in completing the audit caused an unnecessary amount of additional interest to accrue.

Section 7-1-17 NMSA 1978 provides that any assessment of tax by the Department is presumed to be correct. Section 7-1-3 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." *See also, El Centro Villa Nursing Center v. Taxation and Revenue Department*, 108 N.M. 795, 779 P.2d 982 (Ct. App. 1989). Accordingly, the Department's assessment of interest is presumed to be correct, and it is the Taxpayer's burden to present evidence showing it is entitled to an abatement.

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

A. If a tax imposed is not paid on or before the day on which it becomes due, **interest shall be paid** to the state on that 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. 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. *See*, Section 7-1-13(E) NMSA 1978.

In this case, the Taxpayer argues that it should be excused from the payment of interest because the Department took too long to complete its audit, causing additional interest to accrue. This argument is based on a misunderstanding of New Mexico's self-reporting tax system. It is the obligation of taxpayers, who have the most accurate and direct knowledge of their activities, to determine their tax liabilities and accurately report those liabilities to the state. *See*, Section 7-1-13(B) NMSA 1978; *Tiffany Construction Co. v. Bureau of Revenue*, 90 N.M. 16, 17, 558 P.2d 1155, 1156 (Ct. App. 1976), *cert. denied*, 90 N.M. 255, 561 P.2d 1348 (1977). A taxpayer may not sit back and wait for the Department to conduct an audit before paying taxes due to the state.

In *Vivigen, Inc. v. Minzner*, 117 N.M. 224, 228, 870 P.2d 1382, 1386 (Ct. App. 1994), the court of appeals specifically rejected the argument that the Department's delay in auditing a taxpayer provides a basis for excusing the taxpayer from payment of the tax, penalty or interest found to be due:

Vivigen complains about the delay of eighteen months from the time of the audit notice to the time of the field audit. It contends that "for an unreasonable period of time, Vivigen was deprived of any opportunity to review its tax situation or to effect any tax planning whatsoever." Vivigen

seems to be complaining that the Department did not definitively tell it that it needed to pay compensating taxes on out-of-state purchases so that it could have avoided taxes, interest, and penalties for compensating taxes accrued from and after February 1989. Any necessary notice, however, was provided by New Mexico statutes. In any event, the notice of audit in itself should have induced Vivigen to review applicable state tax laws.

Here, the interest assessed against the Taxpayer resulted from the Taxpayer's own errors in determining the amount of its tax liability. The Department's audit did not cause the Taxpayer's underreporting, nor did it prevent the Taxpayer from making an independent review of its tax payments and filing amended returns to correct its earlier errors. Had the Taxpayer done so, interest would have stopped running upon the Department's receipt of the amended returns and additional tax payments.

Section 7-1-67 NMSA 1978 requires interest to be paid for any period of time during which the state is denied the use of tax funds to which it is legally entitled. Because the Taxpayer—not the state—had the use of the tax funds at issue in this case, interest was properly assessed by the Department and there is no basis for abatement.

CONCLUSIONS OF LAW

1. The Taxpayer filed a timely, written protest to the Department's December 17, 2001 assessments of weight distance and IFTA taxes, and jurisdiction lies over the parties and the subject matter of this protest.

2. The Taxpayer did not make timely payment of taxes due to the state, and interest was properly assessed pursuant to Section 7-1-67 NMSA 1978.

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

DATED September 10, 2002.

