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

IN THE MATTER OF THE PROTEST OF
ROBERT N. HARRIS **No. 02-24**
ASSESSMENT NO. 413220

DECISION AND ORDER

A formal hearing on the above-referenced protest was held September 30, 2002, before Margaret B. Alcock, Hearing Officer. Robert N. Harris ("Taxpayer") represented himself. The Taxation and Revenue Department ("Department") was represented by Peter Breen, 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 resident of Farmington, New Mexico.

2. In April 1999, the Taxpayer completed and filed a 1998 New Mexico Personal Income Tax return ("PIT-1") with the Department.

3. The instruction packet for the PIT-1, which the Department mails to taxpayers each year, contains the return itself and line-by-line instructions for completing the return. The third page of the instruction packet sets out the Table of Contents and states, at the top of the page:

> PLEASE READ THE INSTRUCTIONS COMPLETELY. There have been several changes in the New Mexico income tax forms for 1998 to accommodate statutory and processing changes.

4. Line 17 of the 1998 PIT-1 reads as follows: "Credit for prescription drugs (New Mexico residents only)." The instructions for claiming the credit for prescription drugs are set out on page 10 of the instruction packet and advise taxpayers that:

> A tax credit equal to 3% of New Mexico resident consumers' out-of-pocket unreimbursed cost of prescription drugs purchased in New Mexico is available. The maximum credit allowable is $300.

5. The Taxpayer filled out his 1998 PIT-1 without reading the instructions. He believed that he was not required to consult the instructions unless the PIT-1 form specifically directed him to do so. Line 17 of the 1998 PIT-1 did not specifically direct taxpayers to "see instructions."

6. Because the Taxpayer did not read the instructions and did not know there was a $300.00 limitation on the credit for prescription drug, the Taxpayer claimed a credit of $1,331.00 on Line 17 of his 1998 PIT-1. With the credit, the Taxpayer's return showed a tax due of $88.00.

7. The Department received the Taxpayer's return on April 9, 1999 and processed the return on June 25, 1999.

8. On January 7, 2002, the Department issued Assessment No. 413220 to the Taxpayer, assessing him $1,031.00 of additional tax as a result of his claiming a prescriptoin drug credit that exceeded the $300.00 allowed by New Mexico law. In addition to the tax principal, the Department assessed the Taxpayer $103.10 of penalty and $422.05 of interest.

9. On January 18, 2002, the Taxpayer filed a written protest to a portion of the penalty and interest assessed against him, asserting that the Department should have notified him of the additional tax due as soon as it processed his return. The Taxpayer requested that:

> Penalties and interest should be recalculated from 4/15/99 thru 6/25/99. The 1/7/2002 assessment is unjust because Tax & Rev did not proceed in a timely manner regarding subject assessment. Enclosed payment is based on recalculation of tax due ($1031), penalty ($61.86), and interest ($38.67).

A check for $1,131.53 was enclosed with the Taxpayer's protest.

10. On September 14, 2002, the Taxpayer faxed and mailed a "revised formal protest" to the Hearing Officer, stating that he now wished to protest the entire amount of the Department's assessment, including the tax, penalty and interest he had already paid.

11. On September 16, 2002, the Hearing Officer sent a letter to the parties explaining that she did not have jurisdiction to consider Mr. Harris's revised protest because it was not filed within the time period provided in Section 7-1-24 NMSA 1978. For this reason, the administrative hearing scheduled for September 30, 2002 would only address the Taxpayer's liability for the penalty and interest originally protested.

DISCUSSION

The issue to be decided is whether the Taxpayer is liable for payment of the penalty and interest that accrued on the Taxpayer's underpayment of 1998 personal income tax after June 25, 1999, the date the Department processed the Taxpayer's return. The Taxpayer raises two arguments in support of his protest: (1) penalty and interest are not due because the taxpayer properly completed his return according to the information contained in the Department's PIT-1 form; and (2) the Department was required to notify the Taxpayer of the error on his return as soon as the return was processed on June 25, 1999, and no interest or penalty should accrue after that date.

Section 7-1-17 NMSA 1978 provides that any assessment of taxes made 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." The Taxpayer argues that the statutory presumption of correctness is contrary to the established rule that a person is presumed innocent until proven guilty. This rule applies only in the context of criminal prosecutions and has no application to civil tax proceedings. Accordingly, the assessment of penalty and interest at issue in this case is presumed to be correct,

and it is the Taxpayer's burden to present evidence and legal arguments to justify an abatement. *El Centro Villa Nursing Center v. Taxation and Revenue Department*, 108 N.M. 795, 779 P.2d 982 (Ct. App. 1989).

The Taxpayer maintains that he filled out his 1998 PIT-1 correctly and was entitled to the full amount he claimed as a credit for prescription drugs. The Taxpayer does not dispute that the Department's instructions clearly state that the credit is limited to a maximum of $300.00. It is his position, however, that he was not required to consult the instructions unless the PIT-1 form specifically directed him to do so. The Taxpayer points out that the PIT-1 for the 2001 tax year includes the words "see instructions" on the line for claiming a deduction of medical care expenses. He argues that the Department was negligent in failing to include "see instructions" on Line 17 of the 1998 PIT-1 and that this negligence relieves him of any liability resulting from the excess credit he claimed on his return. Since no tax is due, the Taxpayer reasons, the assessment of penalty and interest is also incorrect.

The Taxpayer's 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 liability for tax and pay that liability 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, 1556 (Ct. App. 1976), *cert. denied*, 90 N.M. 255, 561 P.2d 1348 (1977) (the law charges every individual with the reasonable duty to ascertain the possible tax consequences of his action); *Arco Materials, Inc. v. Taxation & Revenue Department*, 118 N.M. 12, 15, 878 P.2d 330, 333 (Ct. App. 1994) *rev'd on other grounds* by *Blaze Construction Co. v. Taxation & Revenue Department*, 118 N.M. 647, 884 P.2d 803 (1994) (a taxpayer has an affirmative duty to keep informed about changes in the tax law that might affect its liability). In this case, the Taxpayer had an obligation to insure that his reporting of

personal income tax was in accordance with New Mexico law. At a minimum, the Taxpayer was required to read the instructions provided by the Department, which advise taxpayers (in capital letters) to: "PLEASE READ THE INSTRUCTIONS COMPLETELY." There is simply no legal authority to support for the Taxpayer's position that he was not required to consult the instructions unless specifically directed to do so on each individual line of the PIT-1 form.

Because the Taxpayer was liable for the underpayment of income tax resulting from the erroneous credit claimed on his 1998 PIT-1, penalty and interest were properly assessed. 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. In this case, the Taxpayer's underpayment of personal income tax denied the State the use of funds to which it was legally entitled. Pursuant to Section 7-1-67 NMSA 1978, interest was properly assessed for the period between the statutory due date of that tax and the date payment was received.

Section 7-1-69 NMSA 1978 governs the imposition of penalty. Subsection A imposes a penalty of two percent per month or any fraction of a month, up to a maximum of ten percent, that a taxpayer fails "due to negligence or disregard of rules and regulations" to pay taxes or file required

tax reports in a timely manner. Taxpayer negligence for purposes of assessing penalty is defined in Regulation 3.1.11.10 NMAC as:

> A. failure to exercise that degree of ordinary business care and prudence which reasonable taxpayers would exercise under like circumstances;
>
> B. inaction by taxpayers where action is required;
>
> C. inadvertence, indifference, thoughtlessness, carelessness, erroneous belief or inattention.

In this case, the Taxpayer's underreporting of his 1998 income tax resulted from his inattention to the Department's PIT-1 instructions and his erroneous belief that he was entitled to a larger credit for prescription drugs than New Mexico law allows. This qualifies as negligence for purposes of Section 7-1-69(A) NMSA 1978, and penalty was properly imposed.

The Taxpayer's final argument is that the accrual of penalty and interest is unjust because the Department waited an unreasonable period of time to notify the Taxpayer of the error on his 1998 PIT-1. In fact, there was no undue delay. Section 7-1-18(A) NMSA 1978 gives the Department three years from the end of the calendar year in which a tax is due to issue an assessment. The Department's assessment was issued to the Taxpayer within the time allowed by law.

CONCLUSIONS OF LAW

1. The Taxpayer filed a timely, written protest to a portion of the penalty and interest assessed against him in Assessment No. 413220, and jurisdiction lies over the parties and the subject matter of this protest.

2. The Taxpayer was liable for the underpayment of 1998 personal income tax that resulted from his erroneous belief that he was entitled to a larger credit for prescription drugs than New Mexico law allows.

3. The Taxpayer is liable for payment of the penalty and interest assessed on his late payment of 1998 personal income tax.

4. The Department's January 2002 assessment was issued within the statutory time limits set by the New Mexico Legislature.

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

DATED October 3, 2002.