

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

IN THE MATTER OF THE PROTEST OF
FRANK E. RUYBALID,
PROTEST TO ASSESSMENT NO. 645185.

NO. 96-10

DECISION AND ORDER

This matter was scheduled for hearing before Julia Belles, Hearing Officer, on February 12, 1996. The hearing was reconvened on March 18, 1996. On both occasions Bridget A. Jacober, Special Assistant Attorney General, represented the Taxation and Revenue Department (Department) and Mr. Frank E. Ruybalid (Taxpayer) represented himself.

Based upon the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. The Taxpayer earned income in New Mexico and was subject to the New Mexico personal income tax (PIT).
2. Around March 25, 1991, the Taxpayer received a lump sum disbursement from a retirement account. The disbursement indicated that federal taxes were withheld but did not indicate that any state taxes were withheld. The document stated that it should be retained for tax purposes and that a separate form, also to be used for tax purposes, would be sent out before January 31, 1992.
3. The Taxpayer moved between the time he received the disbursement and the time he filed his 1991 and never received any other information concerning the disbursement.
4. The Taxpayer computed and timely filed his 1991 PIT without including the amount received from the disbursement and, consequently, the state taxes on the disbursement were not paid by the Taxpayer.
5. During the latter part of 1993 and the first part of 1994, the Taxpayer had various

contacts with the Department's representative, Agent Dalton, concerning tax problems unrelated to his 1991 PIT.

7. The Taxpayer finished resolving those problems in October 1994. Agent Dalton told the Taxpayer that his tax problems were settled.

8. On October 27, 1995, the Department issued Notice of Assessment No. 645185 assessing \$190.24 in personal income tax, \$102.25 in interest and \$19.02 in penalty for the 1991 tax year.

9. The Assessment was based upon information the Department received from the Internal Revenue Service pursuant to an information sharing agreement. That information revealed that the Taxpayer received the disbursement and that it should have been reported as income when he filed his 1991 PIT.

10. The Taxpayer timely paid the tax portion of Assessment No. 645185 and on November 24, 1995 timely filed a protest against the interest and penalty portions of the assessment.

DISCUSSION

The Taxpayer disputes the interest and penalty that was calculated on the assessment for the time period April 16, 1992 through October 27, 1995. 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, and the Taxpayer has the burden of proving that the assessment of interest is incorrect.

The Taxpayer timely filed his 1991 PIT but did not include income from a lump sum disbursement which he received in 1991. The Taxpayer received the disbursement in March of 1991. The information included with the disbursement showed that federal taxes were deducted

from the disbursement, that state taxes were not deducted and told the Taxpayer that he should keep the document for tax purposes. The Taxpayer was informed that another report, also for tax purposes, would be mailed to him before January 31, 1992. The Taxpayer moved and did not receive that report. The Taxpayer forgot about the disbursement and did not give his tax preparer the document he received in March of 1991. The Taxpayer's 1991 PIT was filed without including the disbursement as income. This case arises because the disbursement was not included as income on the Taxpayer's 1991 PIT and, consequently, taxes were not paid on the disbursement. The Taxpayer knew the state taxes weren't paid when he received the disbursement but the Department did not inform the Taxpayer of the error until it issued Notice of Assessment, No. 645185, in October of 1995.

The Taxpayer argued that he should be not charged interest and penalty because he had been dealing with the Department on unrelated tax issues and was told his tax problems were resolved. The Taxpayer started dealing with the Department, through its representative Agent Dalton, concerning the unrelated tax issues during the latter months of 1993. His contact with Agent Dalton on those issue continued through the early part of 1994. In October of 1994, the Taxpayer was informed that those issues were resolved and he no longer had any tax liabilities. The Taxpayer argued that he should not be charged interest and penalty because he was resolving his tax problems and should have been informed of the problem with the 1991 disbursement at that time. Instead, the Department took three and a half years to find that the disbursement was not reported as income in 1991 and notify the Taxpayer of his liability.

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. 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, 1992, the assessment was issued within the

statute of limitations and is therefore timely.

Taxpayer did not meet his burden to show that the Department's imposition of interest and penalty was incorrect. The Taxpayer's argument misapprehends the nature of our self-reporting tax system. The responsibility to ensure the proper and timely reporting and payment of taxes lies with the taxpayer. This responsibility does not shift to the Department merely because it was assisting the Taxpayer in resolving unrelated tax liability. The Taxpayer received the disbursement in March of 1991 and was aware that no state taxes were deducted and that it needed to be reported as income. If the Taxpayer had properly determined and reported his taxes in the first place, there would be no interest at issue. The interest on Assessment No. 645185 was properly assessed because the taxes on the disbursement were due on April 15, 1992 but were not paid until November 24, 1995. Section 7-1-67 NMSA 1978 (1995 Repl.).

In addition to the tax and interest, the Taxpayer was assessed a penalty. Penalty is assessed when the failure to pay a tax is due to a taxpayer's negligence. Section 7-1-69 NMSA 1978 (1995 Repl.) Taxpayer "negligence" is defined in Regulation TA 69:3 to mean:

- 1) failure to exercise that degree of ordinary business care and prudence which reasonable taxpayers would exercise under like circumstances;
- 2) inaction by taxpayers where action is required;
- 3) inadvertence, indifference, thoughtlessness, careless, erroneous belief or inattention.

The Taxpayer was negligent. The Taxpayer was aware that state taxes were not deducted from the disbursement. The paperwork that Taxpayer received with the disbursement indicated that it needed to be saved for tax purposes. The Taxpayer was careless in not giving all the paperwork on that disbursement to his tax preparer. It appears that in October of 1994, when Agent Dalton told the Taxpayer his tax problems were resolved, the Department was unaware of the problem with the Taxpayer's 1991 PIT. Agent Dalton was not misleading the Taxpayer

when he told the Taxpayer that his tax problems were resolved. The penalty on Assessment No. 645185 was correctly imposed because the Taxpayer showed negligence. Section 7-1-69 NMSA 1978 (1995 Repl.).

CONCLUSIONS OF LAW

1. The Taxpayer timely filed a written protest, pursuant to Section 7-1-24 NMSA 1978 (1995 Repl.), to the interest and penalty portions of Assessment No. 645185 and, therefore, jurisdiction lies over the parties and the subject matter of this protest.
2. The Department timely issued Assessment No. 645185.
3. The interest on Assessment No. 645185 was properly assessed because the taxes on the disbursement were not timely paid.
4. The penalty on Assessment No. 645185 was properly assessed because the Taxpayer was aware that state taxes on the disbursement needed to be paid but did not include the disbursement as income in his 1991 PIT.

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

Done this 28th day of March, 1996.