

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

**IN THE MATTER OF THE PROTEST OF
DESERT ROSE LANDSCAPE MAINTENANCE
ID NO. 02-379211-00-6
ASSESSMENT NO. 4077713**

No. 03-15

DECISION AND ORDER

A formal hearing on the above-referenced protest was held July 22, 2003, before Margaret B. Alcock, Hearing Officer. The Taxation and Revenue Department ("Department") was represented by Peter Breen, Special Assistant Attorney General. Desert Rose Landscape Maintenance, a sole proprietorship, was represented by Phillip and Elizabeth Madrid, its owners ("Taxpayers"). Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. In 1998, the Taxpayers began a landscaping business under the name of Desert Rose Landscaping Maintenance.
2. The Taxpayers registered their business with the Department for payment of gross receipts, compensating, and withholding taxes, which the Taxpayers were required to pay quarterly under the Department's combined reporting system ("CRS").
3. The Taxpayers created a printed schedule that they used to track payment due dates for taxes, loans, and other bills. They also placed these due dates on a large wall calendar in their office.
4. For periods prior to April 25, 2003, the Taxpayers' credit report and tax reporting history show that all of their tax and loan payments were made on time.

5. Prior to April 25, 2003, the Taxpayers always hand-delivered their quarterly CRS return and payment to the Department's offices at the Lujan Building in Santa Fe, New Mexico, where the return was stamped with the date received.

6. When Elizabeth Madrid filed the Taxpayers' CRS taxes for the last quarter of 2002, the Department employee who took the payment told Ms. Madrid that it was not necessary for her to come inside the Lujan Building, advising her that she could simply drop her CRS return and payment into the white deposit box located a few yards in front of the Lujan Building.

7. The contents of the deposit box are collected by a Department employee once a day and carried into the Lujan Building, where each item is stamped with that day's date.

8. On April 25, 2003, Ms. Madrid went to the Department to make the Taxpayers' payment of CRS taxes due for the first quarter of 2003. Instead of carrying the return and payment into the Lujan Building to be stamped with the receipt date, Ms. Madrid followed the advice she had been given by the Department's employee and dropped the envelope into the white deposit box located in front of the building.

9. The Department's records indicate that the Taxpayers' CRS return and payment for the first quarter of 2003 were received by the Department on May 21, 2003.

10. On June 5, 2003, the Department issued Assessment No. 4077713 to the Taxpayers in the total amount of \$64.98, representing penalty and interest assessed on the late payment of their CRS taxes for the period January-March 2003.

11. On June 9, 2003, the Taxpayers filed a written protest to Assessment No. 4077713.

DISCUSSION

The issue to be decided is whether the Taxpayers are liable for the penalty and interest assessed on their payment of CRS taxes due for reporting period January-March 2003. The

Taxpayers dispute the Department's assessment and maintain that their payment was delivered to the Department on April 25, 2003, the statutory due date. The Department responds that its records show a received date of May 21, 2003, which is 26 days past the due date.

NMSA 1978, § 7-1-13(B) states that “[e]very taxpayer shall, on or before the date on which payment of any tax is due, complete and file a tax return in a form prescribed and according to the regulations issued by the secretary.” Section 7-1-13(D) requires payment of the taxes shown on the return to “precede or accompany the return.” In this case, Elizabeth Madrid testified that she delivered the Taxpayer's CRS tax return and payment for the January-March 2003 reporting period to the Department on April 25, 2003, the statutory due date. In accordance with advice she received from a Department employee, Ms. Madrid put the return and payment into the white deposit box located outside the Lujan Building in Santa Fe, New Mexico. Because the Department placed the box there for the express purpose of encouraging taxpayers to use the box to deposit tax returns and payments, timely delivery to the box would constitute timely filing.

The Department disputes that the Taxpayer's payment was made on April 25, 2003. At the administrative hearing, the Department introduced microfilmed copies of the Taxpayers' return showing a stamped received date of May 21, 2003. This evidence leads to one of two conclusions: (1) Ms. Madrid is mistaken or lying about the date on which she delivered the Taxpayers' payment to the Department; or (2) the Taxpayers' April 25, 2003 payment was misplaced in the process of removing it from the deposit box and transferring it to the Lujan Building and was only discovered and date stamped on May 21, 2003. Of these two alternatives, I find it more likely that the Department misplaced the Taxpayers' payment than that Ms. Madrid is mistaken or lying.

I found Ms. Madrid to be a credible witness and accept her testimony that she delivered the Taxpayer's CRS tax return and payment to the Department on April 25, 2003. It is not surprising that

Ms. Madrid has a clear memory of making the April tax payment since it was a change from her usual practice of hand-delivering the payment to the Department's front desk. There is also evidence that the Taxpayers take their financial obligations seriously. At the administrative hearing, they introduced a copy of their tax reporting history and credit report. Both documents establish that the Taxpayers have consistently made all of their tax, loan, and other payments in a timely manner. The Taxpayers also introduced the printed schedule they use to insure that all payments are made when due and displayed the large wall calendar that serves as a backup to their printed payment schedule.

Taken as a whole, the evidence presented is sufficient to overcome the presumption of correctness that attaches to the Department's assessment pursuant to NMSA 1978 § 7-1-17 and to establish that the Taxpayers delivered their CRS tax payment to the Department by the statutory due date.

CONCLUSIONS OF LAW

1. The Taxpayers filed a timely, written protest to Assessment No. 4077713, and jurisdiction lies over the parties and the subject matter of this protest.
2. The Taxpayers delivered their return and payment of CRS taxes due for reporting period January through March 2003 to the Department on the statutory due date and no interest or penalty is due.

For the foregoing reasons, the Taxpayers' protest IS GRANTED.

DATED July 24, 2003.

MARGARET B. ALCOCK
Hearing Officer
Taxation & Revenue Department
Post Office Box 630
Santa Fe, NM 87504-0630

On July 24, 2003, a copy of the foregoing Decision and Order was mailed to Phillip and Elizabeth Madrid, Desert Rose Landscape Maintenance, 1336 Acequia Borrada, Santa Fe, NM 87507, and hand-delivered to Peter Breen, Special Assistant Attorney General, Taxation and Revenue Department, Santa Fe, New Mexico.

MARGARET B. ALCOCK