

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

**IN THE MATTER OF THE PROTEST OF
RICHARD LOPEZ,
TO THE WARRANT OF LEVY ISSUED UNDER
ID NO. L0784244176**

No. 14-34

DECISION AND ORDER

A formal hearing on the above-referenced protest was held August 22, 2014, before Dee Dee Hoxie, Hearing Officer. The Taxation and Revenue Department (Department) was represented by Ms. Elena Morgan, Staff Attorney. Ms. Sonya Varela, Auditor, also appeared on behalf of the Department. Ms. Elaine Lopez appeared on behalf of the Taxpayer and represented herself. The Hearing Officer took notice of all documents in the administrative file. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. On March 17, 2014, the Department served a warrant of levy to a bank that had accounts with the Taxpayer's name on them.
2. On April 23, 2014, Ms. Lopez filed a formal protest letter.
3. On June 6, 2014, the Department filed a Request for Hearing asking that the Taxpayer's protest be scheduled for a formal administrative hearing.
4. On June 6, 2014, the Hearings Bureau issued a notice of hearing. The hearing date was set within ninety days of the protest.
5. On June 18, 2014, Ms. Lopez requested a continuance of the hearing in order to secure all of the documentation that she needed.

6. On June 20, 2014, the request for continuance was granted, and the delay of the hearing was attributable to the Taxpayer.
7. On June 20, 2014, the Hearings Bureau sent amended notices of hearing.
8. The Taxpayer died on September 7, 2013. Ms. Lopez is the Taxpayer's sister and a joint owner of the accounts that were levied.
9. Ms. Lopez misplaced the Taxpayer's death certificates and did not promptly inform the bank of his death for that reason.
10. The bank accounts were opened by Ms. Lopez, and she was the only person who ever deposited into the accounts.
11. A few years prior to his death, Ms. Lopez placed the Taxpayer's name on her accounts and granted him authorization to withdraw funds from her accounts. Ms. Lopez was making a gift of funds to help the Taxpayer and their father.
12. The Taxpayer was using Ms. Lopez's address as a mailing address for some amount of time before his death. Ms. Lopez has continued to receive mail for the Taxpayer and his estate since his death.
13. Ms. Lopez discovered that her funds had been levied in March 2014. Ms. Lopez was unaware of the outstanding tax liability that the Taxpayer had to the state of New Mexico.
14. The Department was unaware of the Taxpayer's death until Ms. Lopez contacted them about the levy.

DISCUSSION

The issue to be decided is whether the Taxpayer's accounts were legally levied.

Warrants of levy.

Warrants of levy must contain certain information to be valid. *See* NMSA 1978, § 7-1-32 (1993). Ms. Lopez conceded that the warrant of levy was properly prepared and served. Ms. Lopez disputes the Department's right to the funds in the account as they were her sole property and did not belong to the Taxpayer.

The Department may collect tax from a delinquent taxpayer "by levy upon all property or *rights to property* of such person". NMSA 1978, § 7-1-31 (A) (1993) (emphasis added). Ms. Lopez admitted that she granted the Taxpayer the right to withdraw her money from the accounts levied. Ms. Lopez thought that right terminated upon the Taxpayer's death, but admitted that she did not advise the bank of his death or take his name off the account after his death. The bank was required to surrender all funds to which the Taxpayer had a right when it was served with a proper warrant of levy. *See* NMSA 1978, § 7-1-34 (1993). *See also* 3.1.10.9 NMAC (2001). Unfortunately for Ms. Lopez, the warrant of levy legally seized all of the funds to which the Taxpayer had even a basic right, regardless of the actual ownership of the funds.

Nothing in this decision shall be construed to prevent or prohibit Ms. Lopez from filing a claim for refund pursuant to NMSA 1978, § 7-1-26.

CONCLUSIONS OF LAW

1. Ms. Lopez filed a timely written protest on behalf of the Taxpayer to the warrant of levy issued under Letter ID number L0784244176, and jurisdiction lies over the parties and the subject matter of this protest.
2. Ms. Lopez granted the Taxpayer a right to the funds in her bank accounts, and the Taxpayer's name was added to the accounts.
3. The Department legally served a warrant of levy on those accounts.

For the foregoing reasons, the Taxpayer's protest is **DENIED**.

DATED: October 8, 2014.

Dee Dee Hoxie

DEE DEE HOXIE
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