

**STATE OF NEW MEXICO  
ADMINISTRATIVE HEARINGS OFFICE  
TAX ADMINISTRATION ACT**

**IN THE MATTER OF THE PROTEST OF  
ARCHAEOLOGICAL SUPPORT SRVCS  
TO ASSESSMENTS ISSUED UNDER LETTER  
ID NO.'s L2045399088 and L0099242032**

**No. 15-42**

**DECISION AND ORDER**

A protest hearing occurred on the above captioned matter on November 23, 2015 before Brian VanDenzen, Esq., Chief Hearing Officer, in Santa Fe. At the hearing, Dr. Eric Blinman appeared *pro se* for Archaeological Support Services (“Taxpayer”). Staff Attorney Gabrielle Dorian appeared representing the State of New Mexico Taxation and Revenue Department (“Department”). Protest Auditor Veronica Galewaler appeared as a witness for the Department. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

**FINDINGS OF FACT**

1. On August 3, 2015, through letter id. no. L2045399088, the Department assessed Taxpayer for \$5.00 in penalty for the CRS reporting period ending on September 30, 2014.
2. On August 3, 2015, through letter id. no. L0099242032, the Department assessed Taxpayer for \$5.00 in penalty for the CRS reporting period ending on December 31, 2014.
3. On August 8, 2015, Taxpayer protested the Department’s assessments.
4. On September 18, 2015, the Department’s protest office acknowledged receipt of a valid protest.
5. On October 9, 2015, the Department filed a request for hearing in this matter with the Administrative Hearings Office.

6. On October 13, 2015, the Administrative Hearings Office sent Notice of Administrative Hearing, scheduling this matter for a merits hearing on November 23, 2015.
7. On November 23, 2015, within 90-days of the Department's receipt and acknowledgement of a valid protest, the Administrative Hearings Office conducted a hearing in the above-captioned matter.
8. Dr. Blinman is the owner and operator of Taxpayer.
9. Taxpayer was not engaged in active business and thus had no gross receipts tax liability during the relevant periods.
10. Rather than close his business, Taxpayer maintained his CRS number.
11. Dr. Blinman's wife also operates a business subject to CRS reporting requirements.
12. Taxpayer prepared CRS-1 returns showing zero liability on a quarterly basis.
13. Taxpayer submits his CRS-1 returns in an envelope along with his wife's business' CRS-1 return, noting on the front of the envelope that two separate CRS-1 returns were included.
14. The Department did not process Taxpayer's CRS-1 returns for three reporting periods: for the CRS reporting period ending on September 30, 2014, December 31, 2014, and March 31, 2015 (a period not before the Administrative Hearings Office in this protest).
15. The Department timely received Dr. Blinman's wife's CRS-1 returns for the periods ending on September 30, 2014 and March 31, 2015, which were contained in the same envelope as Taxpayer's unprocessed returns in those periods.
16. Taxpayer acknowledged that he did not timely file the CRS-1 return for one period, the CRS reporting period ending on December 31, 2014.

17. In 2015, the year after the remaining relevant September 30, 2014 period, the Department's Revenue Processing Division did a series of batch testing to ensure that the mail extraction processing equipment was functioning appropriately. These tests did not detect any systematic errors that might explain why the Department did not process Taxpayer's CRS-1 returns contained in the same envelope as the processed returns of Taxpayer's wife.

### CONCLUSIONS OF LAW

A. Taxpayer filed a timely, written protest to the Department's assessments, and jurisdiction lies over the parties and the subject matter of this protest.

B. The hearing was timely set within 90-days of protest under NMSA 1978, Section 7-1B-8 (2015).

C. By acknowledging that the December 31, 2014 return was not timely filed, pursuant to NMSA 1978, 7-1-69 (A)(3) (2007) Taxpayer is liable for assessed penalty under that assessment, letter id. no. L0099242032.

D. Taxpayer's credible testimony established that Taxpayer timely mailed his CRS-1 return for the CRS reporting period ending on September 30, 2014 in the same envelope with his wife's return, which the Department received and processed. *See* NMSA 1978, Section 7-1-9 (1997) (returns timely if mailed before date due). *See also* Regulation 3.1.4.10 (C) (1 &2) NMAC (mailing timely when postmarked unless not received). Thus, penalty is not due for the assessment under letter id. L2045399088.

E. The assessment of the March 31, 2015 reporting period was not a protested assessment before the Administrative Hearings Office.

For the foregoing reasons, the Taxpayers' protest **IS PARTIALLY GRANTED AND PARTIALLY DENIED**. Taxpayer is liable for the \$5.00 penalty for the CRS reporting period

ending on December 31, 2014. The \$5.00 penalty for the CRS reporting period ending on September 30, 2014, is abated.

DATED: December 30, 2015.

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Brian VanDenzen  
Interim Chief Hearing Officer  
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