

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

**IN THE MATTER OF THE PROTEST OF  
GOOD KARMA ART & DESIGN,  
TO THE ASSESSMENT ISSUED UNDER  
LETTER ID NO. L1705141808**

**No. 16-53**

**DECISION AND ORDER**

A formal hearing on the above-referenced protest was held on September 22, 2016 before Hearing Officer Dee Dee Hoxie. The Taxation and Revenue Department (Department) was represented by Mr. Peter Breen, Staff Attorney. Mr. Tom Dillon, Auditor, also appeared on behalf of the Department. Ms. Mary Luttrell, owner of Good Karma Art & Design (Taxpayer), appeared for the hearing. Mr. Stan Pettingill also appeared with the Taxpayer and was present at Ms. Luttrell's request. The Taxpayer indicated that it was still trying to obtain documents to prove that part of the work was done out of state. The Department agreed to allow the Taxpayer additional time to obtain the documents. The Taxpayer was given a deadline of one month from the hearing date. The Department was given one week after that to respond to any additional documentation submitted by the Taxpayer. The Taxpayer submitted documents timely, and the Department timely responded. 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 June 15, 2016, the Department assessed the Taxpayer for gross receipts tax, penalty, and interest for the tax periods from January 1, 2011 through December 31, 2013. The assessment was for \$2,318.64 tax, \$463.72 penalty, and \$264.91 interest.

2. On June 28, 2016, the Taxpayer filed a formal protest letter.
3. On August 12, 2016, the Department filed a Request for Hearing asking that the Taxpayer's protest be scheduled for a formal administrative hearing.
4. On August 16, 2016, the Hearings Office issued a notice of hearing.
5. On September 2, 2016, a telephonic scheduling hearing was held. The parties agreed that the telephonic hearing satisfied the 90-day requirement of the statute.
6. On September 9, 2016, a scheduling order and notice was issued.
7. The Taxpayer was providing services during the tax periods.
8. The Taxpayer was issued 1099s for its work during the tax periods.
9. The Taxpayer conceded that it owed tax, penalty, and interest, but disputed the amount owed. The Taxpayer argued that some of the assessment was beyond the statute of limitations and that the Taxpayer provided some of its services outside of New Mexico.
10. The Taxpayer provided additional documentation to show that its services for two companies that issued 1099s during the tax periods were for work that was done outside of New Mexico.
11. The Department conceded that part of the assessment was beyond the statute of limitations and conceded that the documents proved that the work for those two companies was done outside of New Mexico. The Department abated the assessment accordingly.
12. The Department advised that the amount of the assessment that remains outstanding is \$536.88 tax, \$110.05 penalty, and as of October 17, 2016, \$61.62 interest. Interest continues to accrue until the tax principal is paid.

## **DISCUSSION**

The issue to be decided is whether the Taxpayer is liable for the assessment.

### **Burden of Proof.**

Assessments by the Department are presumed to be correct. *See* NMSA 1978, § 7-1-17. Tax includes, by definition, the amount of tax principal imposed and, unless the context otherwise requires, “the amount of any interest or civil penalty relating thereto.” NMSA 1978, § 7-1-3. *See also El Centro Villa Nursing Ctr. v. Taxation and Revenue Department*, 1989-NMCA-070, 108 N.M. 795. Therefore, the assessment issued to the Taxpayer is presumed to be correct, and it is the Taxpayer’s burden to present evidence and legal argument to show that it is entitled to an abatement.

### **Gross receipts tax.**

Anyone engaging in business in New Mexico is subject to the gross receipts tax. *See* NMSA 1978, § 7-9-4. Gross receipts tax applies to the total amount of money received from selling property or services. *See* NMSA 1978, § 7-9-3.5. It was undisputed that the Taxpayer was providing services. Therefore, the Taxpayer was subject to the gross receipts tax. The Taxpayer also conceded that it owed tax, but sought to have assessment limited to work done within the state of New Mexico and to tax periods that were not beyond the statute of limitations.

When the additional documentation was provided, the Department removed the gross receipts tax from the 1099s that were for work done outside of New Mexico. The Department also conceded that part of the assessment was beyond the statute of limitations and abated accordingly.

### **Assessment of Penalty.**

The Taxpayer apologized for its failure to pay its gross receipts taxes. The Taxpayer explained that it simply forgot to file during that time. The Taxpayer explained that it was not trying to evade its taxes; it just made a mistake and did not realize it.

Penalty “*shall* be added to the amount assessed” when a tax is not paid on time due to negligence. *See* NMSA 1978, § 7-1-69 (2007) (emphasis added). The word “shall” indicates that the assessment of penalty is mandatory, not discretionary. *See Marbob Energy Corp. v. N.M. Oil Conservation Comm’n.*, 2009-NMSC-013, ¶ 22, 146 N.M. 24. Assessments of penalty are presumed to be correct and it is a taxpayer’s burden to show that the assessment was not correct. *See* 3.1.11.8 NMAC (2001). *See* NMSA 1978, § 7-1-17. *See also El Centro*, 1989-NMCA-070. It is a taxpayer’s responsibility to make payments, whether they are done electronically or in another fashion. *See* NMSA 1978, § 7-1-13.1 (2005). Negligence includes inadvertence. *See* 3.1.11.10 (C) (2001). Under the statute and regulations, an honest mistake is tantamount to inadvertence, and is subject to penalty. *See id.* Therefore, penalty was properly assessed.

#### **Assessment of Interest.**

Interest “shall be paid” on taxes that are not paid on or before the date on which the tax is due. NMSA 1978, § 7-1-67 (A). Again, the word “shall” indicates that the assessment of interest is mandatory, not discretionary. *See Marbob Energy Corp. v. N.M. Oil Conservation Comm’n.*, 2009-NMSC-013, ¶ 22, 146 N.M. 24. The assessment of interest is not designed to punish taxpayers, but to compensate the state for the time value of unpaid revenues. Because the tax was not paid when it was due, interest was properly assessed.

### **CONCLUSIONS OF LAW**

A. The Taxpayer filed a timely written protest to the assessment issued under Letter ID number L1705141808, and jurisdiction lies over the parties and the subject matter of this protest.

B. A hearing was held within 90 days of the protest. *See* NMSA 1978, § 7-1B-8 (A) (2015).

C. The Taxpayer conceded that it owed gross receipts tax. *See* NMSA 1978, § 7-9-4.

D. The Department abated the taxes that were beyond the statute of limitations and that were for services performed out of state. *See id.* *See also* NMSA 1978, § 7-1-28.

E. The Taxpayer was properly assessed for penalty and interest. *See* NMSA 1978, § 7-1-67 and § 7-1-69.

F. The assessment is still outstanding as to \$536.88 tax, \$110.05 penalty, and as of October 17, 2016, \$61.62 interest. Interest continues to accrue until the tax principal is paid.

For the foregoing reasons, the Taxpayer's protest is **GRANTED IN PART AND DENIED IN PART.**

DATED: November 18, 2016.

*Dee Dee Hoxie*  
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DEE DEE HOXIE  
Hearing Officer  
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