STATE OF NEW MEXICO
ADMINISTRATIVE HEARINGS OFFICE
TAX ADMINISTRATION ACT

IN THE MATTER OF THE PROTEST OF
JERRY RITCHIE **No 17-01**
TO THE ASSESSMENT ISSUED UNDER
LETTER ID NO. L0093442608

DECISION AND ORDER

A protest hearing on the above captioned matter occurred on December 14, 2016 before Chris Romero, Esq., Hearing Officer, in Santa Fe, New Mexico. At the hearing, David Metler, C.P.A., appeared on behalf of Jerry Ritchie ("Taxpayer") and testified as the only witness on behalf of Taxpayer. Staff Attorney, Cordelia Friedman, appeared representing the Taxation and Revenue Department of the State of New Mexico ("Department"). Protest Auditor, Milagros Bernardo, appeared as a witness for the Department. Taxpayer Exhibit #1 was admitted into the record. Department Exhibits A - E were admitted into the record. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. On February 17, 2016, under Letter ID No. L0093442608, the Department assessed Taxpayer for $3,472.64 in gross receipts tax, $694.54 in penalty, and $434.19 in interest for a total of $4,601.37. After a credit/offset in the amount of $91.69, the total amount assessed was $4,509.68 for the CRS reporting periods between January 1, 2011 and December 31, 2012.

2. The Department received Taxpayer's protest of the assessment on April 22, 2016. The protest was timely submitted by the Taxpayer, by and through Mr. Metler.

3. On May 3, 2016, the Department acknowledged receipt of the protest.

4. On June 10, 2016, the Department filed a request for hearing in this matter with the Administrative Hearings Office, an agency independent of the Department under the Administrative Hearings Office Act.

5. On June 13, 2016, the Administrative Hearings Office sent a Notice of Telephonic Scheduling Conference, setting a hearing on July 15, 2016 at 2:00 p.m.

6. On July 15, 2016, a scheduling conference occurred in which the parties agreed that the hearing would satisfy the 90-day hearing requirement established in NMSA 1978, Sec. 7-1B-8(A) of the Administrative Hearings Office Act. The scheduling hearing occurred within 90 days from the date of the Taxpayer's protest being received by the Department.

7. On July 27, 2016, the Administrative Hearings Office sent a Notice of Second Telephonic Scheduling Conference, scheduling the matter for a second scheduling conference on September 9, 2016 at 1:30 p.m.

8. On August 22, 2016, the Administrative Hearings Office sent an Amended Notice of Second Telephonic Scheduling Hearing, which rescheduled the time of the hearing from 1:30 p.m. to 9:30 a.m. on September 9, 2016.

9. On September 16, 2016, the Administrative Hearings Office sent a Scheduling Order and Notice of Hearing on the Merits setting a hearing on the merits to occur in this matter on December 14, 2016 at 1:00 p.m.

10. On November 21, 2016, the Administrative Hearings Office sent a Notice of Reassignment of Hearing Officer for Administrative Hearing that reassigned the matter to the undersigned Hearing Officer.

11. Taxpayer is a licensed pharmacist with knowledge and experience in the operation of pharmacies in New Mexico. **[Testimony of Mr. Metler]**.

12. Taxpayer, with a partner, each made an investment of $100,000.00 in an entity operated by Shore Capital Partners. A portion of the investment was paid in cash. **[Testimony of Mr. Metler]**. The total investment was $200,000.00. **[Dept. Ex. A; Dept. Ex. B; Taxpayer Ex. 1]**.

13. Shore Capital Partners is a holding company based in Chicago, Illinois that invests in, starts, and operates businesses serving the medical field. **[Testimony of Mr. Metler]**.

14. Correspondence dated December 14, 2015 and January 14, 2016 from Ryan Kelley, partner for Shore Capital Partners, explained that in 2010, Shore Capital Partners formed an entity called Shore Capital Partners Fund I, L.P. with approximately $10 million of capital commitments from various limited partners. **[Dept. Ex. A; Dept. Ex. B; Taxpayer Ex. 1]**.

15. The purpose of the fund was to invest in a company called SCP Specialty Infusion, LLC which would buy and build a home infusion therapy service organization. **[Dept. Ex. A; Dept. Ex. B; Taxpayer Ex. 1]**.

16. Taxpayer was a limited partner of the fund with a capital commitment of $200,000.00. **[Dept. Ex. A; Dept. Ex. B; Taxpayer Ex. 1]**.

17. In 2011, the fund utilized 43 percent of Taxpayer's commitment to finance acquisitions and develop home infusion pharmacies in Arizona, California, Oregon, Colorado, and New Mexico. **[Dept. Ex. A]**.

18. Pursuant to what was referred to as a "side agreement," SCP Specialty Infusion, LLC agreed to forgive or offset half of Taxpayer's capital commitment in exchange for Taxpayer's expertise and relationships in guiding the overall strategy of the company. **[Dept. Ex. A]**.

19. Consequently, in 2011, Taxpayer's debt to the fund was $86,000 which represented 43 percent of the $200,000 capital commitment. Taxpayer contributed $43,000 in cash. SCP Specialty Infusion, LLC matched, or forgave the remaining debt in the amount of $43,000. **[Dept. Ex. A]**.

20. SCP Specialty Infusion, LLC issued a Form 1099 to Taxpayer indicating $43,000 as income in tax year 2011. **[Dept. Ex. A]**.

21. Shore Capital Partners expressed that it was unable to state whether the $43,000 reported as income on Form 1099 was related to services rendered in New Mexico. **[Dept. Ex. A]**.

22. Shore Capital Partners said that the $43,000 reported as non-employee income was related to forgiveness of a capital contribution to the Shore Capital Partners Fund I, L.P. **[Dept. Ex. A]**.

23. The second piece of correspondence dated December 14, 2015 from Ryan Kelley, partner for Shore Capital Partners, explained that in 2012, the fund utilized 9 percent of Taxpayer's commitment to finance acquisitions and develop home infusion pharmacies in Arizona, California, Oregon, Colorado, and New Mexico. **[Dept. Ex. B]**.

24. Again making reference to a "side agreement," SCP Specialty Infusion, LLC agreed to forgive or offset half of Taxpayer's capital commitment in exchange for Taxpayer's expertise and relationships in guiding the overall strategy of the company. **[Dept. Ex. B]**.

25. Consequently, in 2012, Taxpayer's debt to the fund was $18,000 which represented 9 percent of the $200,000.00 capital commitment. Taxpayer contributed $9,000 in cash. SCP Specialty Infusion, LLC matched, or forgave the remaining debt in the amount of $9,000. **[Dept. Ex. B]**.

26. SCP Specialty Infusion, LLC issued a Form 1099 to Taxpayer indicating $9,000 as income in tax year 2012. **[Dept. Ex. B]**.

27. Shore Capital Partners expressed that it was unable to state whether the $9,000 reported as income on Form 1099 was related to services rendered in New Mexico. **[Dept. Ex. B]**.

28. Shore Capital Partners explained that the $9,000 was reported as income arising from the forgiveness of a capital contribution to the Shore Capital Partners Fund I, L.P. **[Dept. Ex. B]**.

29. A third piece of correspondence, dated one month later on January 14, 2016, addressed 2011 only, and appeared to be substantially similar to the previous letters, but omitted: 1) any reference to the acquisition and development of pharmacies in Arizona, California, Oregon, Colorado, and New Mexico; 2) any reference to whether or not the amount included on the Form 1099 could be related to services rendered in New Mexico; and 3) the statement that the $43,000 was intended to reflect income related to forgiveness of a capital contribution to the Shore Capital Partners Fund I, L.P. **[Taxpayer Ex. 1]**.

30. Added into the correspondence of January 14, 2016 was a statement that SCP Specialty Infusion, LLC utilized Box 7 on Form 1099 to report the amount of capital forgiveness. **[Taxpayer Ex. 1]**.

31. In contrast to the correspondence of December 14, 2015 and January 14, 2016, Mr. Metler testified that after Taxpayer made his initial cash investment, Shore Capital Partners sold the entity to which Taxpayers investment was directed and elected to totally forgive the remaining unpaid balance of the Taxpayer's original investment. **[Testimony of Mr. Metler]**.

32. Mr. Metler asserted that notwithstanding the correspondence of December 14, 2015 and January 14, 2016 from Shore Capital Partners, Taxpayer did not provide any services, either within or without New Mexico, in consideration for forgiving the outstanding debt on Taxpayer's investment. **[Testimony of Mr. Metler]**.

33. Mr. Metler confirmed that Shore Capital Partners issued Forms 1099-Misc indicating that Taxpayer received non-employee compensation in 2011 and 2012. For this reason, the amount indicated as non-employee compensation was reported on Taxpayer's federal Schedule C. **[Testimony of Mr. Metler]**.

34. Through its Schedule C mismatch program with the IRS, the Department detected that Taxpayer reported business income on his federal Schedule C income tax return that was not reported to the state as gross receipts. **[Testimony of Ms. Bernardo]**.

35. Despite Taxpayer's efforts, Taxpayer has been unable to obtain verification from Shore Capital Partners that affirmatively states that no services were provided by Taxpayer in consideration for forgiving the outstanding debt on his initial investment. **[Testimony of Mr. Metler]**.

36. According to a Shore Capital Partners publication, entitled SCP Specialty Infusion Case Study, Shore Capital Partners or SCP Specialty Infusion, LLC reviewed more than 20 investment opportunities before it acquired Sirona Infusion in Arizona in July of 2010. A subsequent branch of Sirona Infusion was opened in Albuquerque, New Mexico in February of 2011 and continued operations in 2012. **[Dept. Ex. C-2]**.

37. Taxpayer was also employed as the manager of Sirona Infusion in Albuquerque during the periods at issue in this protest. Taxpayer's earnings as an employee of Sirona Infusion

were reported on Form W-2. **[Testimony of Mr. Metler]**. Income reported on Forms W-2 from employment with Sirona Infusion are not subject of this protest.

38. According to the same Shore Capital Partners publication, the strategy for the Albuquerque branch of Sirona Infusion, along with other out-of-state branches, was to expand service areas, secure new payor contracts, and strengthen industry relationships. **[Dept. Ex. C]**.

39. Taxpayer, based on his background and experience, was situated and qualified to provide expertise and access to professional relationships that could inure to the benefit of Sirona Infusion, SCP Specialty Infusion, LLC, and Shore Capital Partners, by advancing the strategy expressed in Department Exhibit C.

40. The periods in which Shore Capital Partners or SCP Specialty Infusion, LLC established and operated a branch of Sirona Infusion in Albuquerque, New Mexico, and established other branches in other states, correspond with the dates in which Department Exhibits A and B convey that debt was forgiven under the "side arrangement" between Taxpayer and SCP Specialty Infusion, LLC.

41. As of the date of hearing, for the CRS reporting periods between January 1, 2011 and December 31, 2012, Taxpayer owed $3,380.95 in gross receipts tax, $694.54 in penalty, and $537.75 in interest for a total outstanding liability of $4,613.24. **[Dept. Ex. D]**. However, the Department indicated that penalty should be abated. Accordingly, the amount in dispute was reduced to reflect the sum of the outstanding tax principal and interest only.

42. Mr. Metler is a Certified Public Accountant and has assisted Taxpayer in preparing his federal and state income tax returns for approximately 6 or 7 years prior to the date of the hearing. **[Testimony of Mr. Metler]**.

DISCUSSION

Under NMSA 1978, Section 7-1-17 (C) (2007), the assessment issued in this case is presumed correct. Consequently, Taxpayer has the burden to overcome the assessment. *See Archuleta v. O'Cheskey*, 1972-NMCA-165, ¶11, 84 N.M. 428. Accordingly, it is Taxpayer's burden to present some countervailing evidence or legal argument to show that he is entitled to an abatement, in full or in part, of the assessments issued against him. *See N.M. Taxation & Revenue Dep't v. Casias Trucking*, 2014-NMCA-099, ¶8. "Unsubstantiated statements that the assessment is incorrect cannot overcome the presumption of correctness." *See MPC Ltd. v. N.M. Taxation & Revenue Dep't*, 2003-NMCA-21, ¶13, 133 N.M. 217; *See also* Regulation 3.1.6.12 NMAC.

Unless otherwise specified, for the purposes of the Tax Administration Act, "tax" is defined to include interest and civil penalty. *See* NMSA 1978, §7-1-3 (X) (2013). Under Regulation 3.1.6.13 NMAC, the presumption of correctness under Section 7-1-17 (C) extends to the Department's assessment of penalty and interest. *See Chevron U.S.A., Inc. v. State ex rel. Dep't of Taxation & Revenue*, 2006-NMCA-50, ¶16, 139 N.M. 498, 503 (agency regulations interpreting a statute are presumed proper and are to be given substantial weight). When a taxpayer presents sufficient evidence to rebut the presumption, the burden shifts to the Department to show that the assessment is correct. *See MPC Ltd.*, 2003 NMCA 21, ¶13.

The issue in this protest was whether the debt forgiven in 2011 and 2012 constituted value received by the Taxpayer in consideration for selling services in New Mexico, therefore subjecting it to taxation under the Gross Receipts and Compensating Tax Act.

For the privilege of engaging in business, New Mexico imposes a gross receipts tax on the receipts of any person engaged in business. *See* NMSA 1978, § 7-9-4 (2002). Under NMSA 1978, Section 7-9-3.5 (A) (1) (2007), the term "gross receipts" is broadly defined to mean

> the total amount of money or the value of other consideration received from selling property in New Mexico, from leasing or licensing property employed in New Mexico, from granting a right to use a franchise employed in New Mexico, from selling services performed outside New Mexico, the product of which is initially used in New Mexico, or from performing services in New Mexico.

"Engaging in business" is defined as "carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit." NMSA 1978, § 7-9-3.3 (2003). Gross receipts applies to the performance of a service in New Mexico. *See* NMSA 1978, § 7-9-3.5 (2007). Under the Gross Receipts and Compensating Tax Act, there is a statutory presumption that all receipts of a person engaged in business are taxable. *See* NMSA 1978, § 7-9-5 (2002).

Receipts, in addition to money, include the value of other consideration. *See* NMSA 1978, § 7-9-3.5 (2007). "Consideration" is defined to include "any benefit, interest, gain or advantage to one party, usually the seller, or any detriment, loss of responsibility, act or service given, suffered, or undertaken by the other party, usually the buyer." *See* Regulation 3.2.1.7 (B) NMAC.

In this case, Taxpayer's representative denied that the Taxpayer provided expertise, services, or anything of value to Shore Capital Partners or SCP Specialty Infusion, LLC in exchange for the benefit of having a total of $52,000.00 in debt forgiven in 2011 and 2012.

Taxpayer's representative explained that after his investment was made, Shore Capital Partners sold the entity to which Taxpayer's investment was directed and decided to forgive the remaining balance of the original unpaid investment. Mr. Metler said that Shore Capital Partners

considered this arrangement to be a forgiveness of debt, but that it adopted the expression of "providing expertise" and issued Forms 1099 for 2011 and 2012 for non-employee compensation.

Mr. Metler explained that because the forgiveness of debt was reported on Forms 1099, they were reported in Taxpayer's Schedule C for those years. Mr. Metler denied that Taxpayer provided any expertise in consideration for the forgiveness of debt. On the contrary, he said Shore Capital Partners forgave the debt as part of rolling up the entity to which Taxpayer's investment was directed. However, Mr. Metler explained that Shore Capital Partners has been reluctant to affirmatively state that Taxpayer did not provide expertise in consideration for the forgiveness of the debt.

Mr. Metler directed the Hearing Officer's attention to Taxpayer Exhibit 1 and the sentence reading "The Company used Box 7 to report the amount of capital forgiveness." Mr. Metler asserted that when the forgiveness of debt is not earned, then it should not be subject to gross receipts. Mr. Metler also directed the Hearing Officer to the portion of Taxpayer Exhibit 1 which states "SCP Specialty Infusion had a side agreement with [Taxpayer] to forgive (or offset) half of [Taxpayer's] capital commitment in exchange for his expertise and relationships in guiding the overall strategy of the Company." Mr. Metler asserted that there was no evidence to establish that Taxpayer actually provided any expertise or access to relationships for the purpose of guiding the company. Neither the Taxpayer nor anyone on behalf of Shore Capital Partners or SCP Specialty Infusion, LLC testified in reference to the circumstances giving rise to the forgiveness of debt or whether or not Taxpayer provided services in exchange for the benefit of having his debt forgiven.

The Hearing Officer was not persuaded based on the evidence presented that the Taxpayer overcame the presumption of correctness under NMSA 1978, Section 7-1-17 (C) (2007). *See*

Archuleta v. O'Cheskey, 1972-NMCA-165, ¶11, 84 N.M. 428. Contrary to Taxpayer's position, correspondence from Shore Capital Partners indicated that SCP Specialty Infusion, LLC had a "side arrangement" with the Taxpayer to forgive or offset a portion of his debt in exchange for his expertise and relationships in guiding the overall strategy of SCP Specialty Infusion, LLC. **[Dept. Ex. A; Dept. Ex. B]**. In 2011, SCP Specialty Infusion, LLC apparently forgave debt in the amount of $43,000.00 pursuant to this arrangement. **[Dept. Ex. A]**. In 2012, SCP Specialty Infusion, LLC forgave $9,000.00 under the same arrangement. **[Dept. Ex. B]**. In both instances, Shore Capital Partners and SCP Specialty Infusion, LLC were unwilling or unable to confirm that the forgiveness of debt was not in consideration for services rendered in New Mexico.

Department Exhibit C established that Shore Capital Partners was active in New Mexico in 2011 and 2012. Shore Capital Partners, directly or indirectly through SCP Specialty Infusion, LLC, acquired Arizona-based Sirona Infusion in July of 2010, and in February of 2011, expanded by opening a branch in Albuquerque, New Mexico. Department Exhibit C indicates that the Albuquerque branch of Sirona Infusion continued to operate in 2012. **[Dept. Ex. C]**.

Shore Capital Partners or SCP Specialty Infusion, LLC also had an active strategy to develop and grow the Albuquerque branch of Sirona Infusion together with branches in other states, including Colorado and California. **[Dept. Ex. C]**. The Hearing Officer was persuaded that SCP Specially Infusion, LLC recognized the value of Taxpayer's knowledge and experience in this regard and availed itself of the side arrangement with the Taxpayer in which he agreed to provide experience and access to his professional network, in the form of services, in consideration for the forgiveness of debt.

In this case, the only evidence presented that the Taxpayer did not provide services in exchange for the forgiveness of debt was the hearsay testimony of Mr. Metler. Although hearsay is admissible in administrative proceedings, the legal residuum rule requires that an agency's administrative decision be "supported by some evidence that would be admissible under the rules" of evidence. *Chavez v. City of Albuquerque*, 124 N.M. 239, 241, 1997 NMCA 111, 947 P.2d 1059, 1061 (N.M. Ct. App. 1997). As the New Mexico Court of Appeals explained in *Anaya v. New Mexico State Personnel Board*, 107 N.M. 622, 626, 762 P.2d 909, 913 (N.M. Ct. App 1988),

> [t]he legal residuum rule does not require that all evidence considered by the administrative agency be legally admissible evidence, but only "that an administrative action be supported by *some* evidence that would be admissible in a jury trial" *Duke City Lumbar Co. v. New Env'tl Improvement Bd., 101 N.M. at 295, 681 P.2d at 721*.

Although admissible in this proceeding, Mr. Metler's testimony that Taxpayer did not provide services either relies on hearsay, or itself constitutes hearsay, not otherwise admissible under any of the established exceptions to the rule against hearsay. Taxpayer's reliance on Taxpayer Exhibit 1 is also misplaced. Taxpayer Exhibit 1 eludes addressing with any degree of certainty whether or not Taxpayer provided services in exchange for the forgiveness of debt. Accordingly, Taxpayer Exhibit 1 has minimal evidentiary value in reference to establishing whether or not the forgiveness of debt was in exchange for services provided in New Mexico.

The Hearing Officer consequently views Mr. Metler's testimony as the type of unsubstantiated statement the Court of Appeals has determined to be insufficient for the purpose of overcoming the statutory presumption of correctness." *See MPC Ltd. v. N.M. Taxation & Revenue Dep't*, 2003-NMCA-21, ¶13, 133 N.M. 217; *See also* Regulation 3.1.6.12 NMAC.

On the other hand, the fact that SCP Specialty Infusion, LLC forgave debt suggests that the Taxpayer provided services under the side agreement. Without more, the Hearing Officer is unable to find that the forgiveness of debt was an act of mere clemency.

Therefore, Taxpayer did not overcome the presumption of correctness. The Hearing Officer was persuaded that the Taxpayer was engaging in business in that he carried on with the purpose of achieving a direct or indirect benefit, which in this case was the value of consideration received in the form of debt forgiveness from selling services performed in New Mexico. The value of the consideration received was subject to gross receipts tax.

Although neither party made reference to NMSA 1978, Sec. 7-9-28 which establishes an exemption from gross receipts taxes for the occasional sale of services, the Hearing Officer considered whether the evidence in the record might nevertheless suggest that this statute should apply. The Hearing Officer determined that there was no evidence in the record to establish that the exemption provided in NMSA 1978, Sec. 7-9-28 applied because the Taxpayer denied providing any services, including isolated or occasional services. For that reason, the Taxpayer did not present evidence relevant to the criteria to be examined for determining whether the sale of services was isolated or occasional under Regulation 3.2.116.8 NMAC.

Since Taxpayer challenged all of the assessments, interest and penalty will briefly be addressed even though interest was not expressly argued at hearing and the Department agreed to abate penalty.

When a taxpayer fails to make timely payment of taxes due to the state, "interest *shall* be paid to the state on that amount from the first day following the day on which the tax becomes due...until it is paid." NMSA 1978, Sec. 7-1-67 (2007) (italics for emphasis). Under the statute, regardless of the reason for non-payment of the tax, the Department has no discretion in the

imposition of interest, as the statutory use of the word "shall" makes the imposition of interest mandatory. *See Marbob Energy Corp. v. N.M. Oil Conservation Comm'n*, 2009-NMSC-013, ¶22, 146 N.M. 24. The language of Section 7-1-67 also makes it clear that interest begins to run from the original due date of the tax until the tax principal is paid in full. In this case, the Department has no discretion under Section 7-1-67 and must assess interest against Taxpayer from when the tax was originally due until Taxpayer pays the gross receipts tax principal in this matter.

When a taxpayer fails to pay taxes due to the State because of negligence or disregard of rules and regulations, but without intent to evade or defeat a tax, NMSA 1978 Section 7-1-69 (2007) requires that

> there *shall* be added to the amount assessed a penalty in an amount equal to the greater of: (1) two percent per month or any fraction of a month from the date the tax was due multiplied by the amount of tax due but not paid, not to exceed twenty percent of the tax due but not paid.

(*italics* added for emphasis).

The statute's use of the word "shall" makes the imposition of penalty mandatory in all instances where a taxpayer's actions or inactions meets the legal definition of "negligence." *See Marbob Energy Corp* , ¶22 (use of the word "shall" in a statute indicates that a provision is mandatory absent clear indication to the contrary).

Regulation 3.1.11.10 NMAC defines negligence in three separate ways: (A) "failure to exercise that degree of ordinary business care and prudence which reasonable taxpayers would exercise under like circumstances;" (B) "inaction by taxpayer where action is required"; or (C) "inadvertence, indifference, thoughtlessness, carelessness, erroneous belief or inattention."

In instances where a taxpayer might otherwise fall under the definition of civil negligence generally subject to penalty, Section 7-1-69 (B) provides a limited exception: "[n]o penalty shall be assessed against a taxpayer if the failure to pay an amount of tax when due results from a

mistake of law made in good faith and on reasonable grounds." Further, in relevant part to this protest, Regulation 3.1.11.11 (D) NMAC (emphasis added) allows for abatement of penalty when a "taxpayer *proves* that the failure to pay a tax… was caused by *reasonable reliance* on the advice of *competent* tax counsel or *accountant* as to the taxpayer's liability after full disclosure of all relevant facts." Black's Law Dictionary, 22 (9th ed. 2009), defines "accountant" as "a person authorized under applicable law to practice public accounting." In this case, the Department determined at the hearing that it was appropriate to abate penalty because it was convinced that the Taxpayer reasonably relied on the advice of competent tax counsel or accountant as to the Taxpayer's liability after full disclosure of all relevant facts.

Therefore, based on the foregoing, the protest should be denied with respect to the relief requested for gross receipts tax principal and interest. The protest shall be granted with respect to the abatement of penalty which the Department agreed should be abated.

CONCLUSIONS OF LAW

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

B. Taxpayer was a person engaged in business for the purposes of NMSA 1978, § 7-9-3.3 (2003), and as such all of Taxpayer's receipts were presumed subject to gross receipts tax under NMSA 1978, Section 7-9-5 (2002).

C. Taxpayer did not overcome the presumption of correctness that attached to the assessments under NMSA 1978, Section 7-1-17 (C) (2007) and *Archuleta v. O'Cheskey*, 1972-NMCA-165, ¶11, 84 N.M. 428.

D. Under NMSA 1978, Section 7-1-67 (2007), Taxpayer is liable for accrued interest under the assessment. Interest continues to accrue until the tax principal is satisfied.

E. Under NMSA 1978, Section 7-1-69 (2007) and consistent with the stipulation of the Department, Taxpayer is not liable for civil negligence penalty under the negligence definition found under Regulation 3.1.11.10 NMAC.

For the foregoing reasons, the Taxpayer's protest **IS DENIED IN PART AND GRANTED IN PART**. Taxpayer is liable for gross receipts tax principal and interest. As of the date of hearing, for the CRS reporting periods between January 1, 2011 and December 31, 2012, Taxpayer owed $3,380.95 in gross receipts tax, and $537.75 in interest for a total outstanding liability of $3,918.70. Interest under the assessment shall continue to accrue until the underlying tax principal is satisfied. Penalty shall be abated pursuant to the Department's determination of non-negligence.

DATED: December 30, 2016.

Chris Romero
Hearing Officer
Administrative Hearings Office
Post Office Box 6400
Santa Fe, NM 87502

NOTICE OF RIGHT TO APPEAL

Pursuant to NMSA 1978, Section 7-1-25 (1989), the parties have the right to appeal this decision by *filing a notice of appeal with the New Mexico Court of Appeals* within 30 days of the date shown above. *See* Rule 12-601 NMRA. If an appeal is not filed within 30 days, this Decision and Order will become final. Either party filing an appeal shall file a courtesy copy of the appeal with the Administrative Hearings Office contemporaneous with the Court of Appeals filing so that the Administrative Hearings Office may being preparing the record proper.