

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

**IN THE MATTER OF THE PROTEST OF  
RICHARD CASIAS & CHERI L. OLIVAS  
TO NOTICE OF CLAIM OF TAX LIENS  
ISSUED UNDER LETTER ID  
NOS. L1679076912 AND L0336899632**

**No. 17-12**

**DECISION AND ORDER**

A formal hearing in the above-referenced protest was held January 23, 2017, before Chris Romero, Hearing Officer, in Santa Fe, New Mexico. The Taxation and Revenue Department (Department) was represented by Mr. Richard Peneer, Staff Attorney. Ms. Veronica Galewaler, Auditor, appeared and testified on behalf of the Department. Taxpayer Richard Casias (Taxpayer) appeared in person and was represented by Mr. Wayne G. Chew (counsel). The Hearing Officer took notice of all documents in the administrative file. Taxpayer Exhibits 1 – 12 and Department Exhibits A – N were admitted. The Department and the Taxpayer filed written closing arguments and the record closed on February 9, 2017. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

**FINDINGS OF FACT**

1. In 1996, Taxpayer purchased a 1987 Model 359 Peterbilt truck and began conducting business in New Mexico as a sole proprietor. The primary objective of the business was the intrastate transportation of construction aggregates (hereinafter “R. Casias Trucking”).

[Testimony of R. Casias].

2. At approximately the same time in 1996, Taxpayer also began another business in New Mexico as a sole proprietor. The primary objective of the business was paving (hereinafter “Stars & Stripes Paving”). [Testimony of R. Casias].

3. Taxpayer registered with the Department to do business as R. Casias Trucking on March 5, 1996. The Department assigned CRS Number 02-304475-00-6. The business was registered as a sole proprietorship of Taxpayer and associated with Taxpayer's social security number. [Testimony of V. Galewaler].

4. Taxpayer registered with the Department to do business as Stars & Stripes Paving on May 1, 2002. The Department assigned CRS Number 02-492303-00-6. The business was registered as a sole proprietorship of Taxpayer and associated with Taxpayer's social security number. [Testimony of V. Galewaler].

5. At all relevant times, the Department had a system for assigning new CRS numbers when a taxpayer converted a business from one form of business entity to another. The process required that the Taxpayer submit a business tax registration update form. The system then required that the business close its existing account and open a new account as the converted entity. At that time the business received a new CRS number. [Testimony of V. Galewaler].

6. CRS numbers do not change unless the Department recognizes a change to the business entity. At no time relevant to the protest had the CRS numbers for R. Casias Trucking and Stars & Stripes Paving changed to reflect any business entity conversion. [Testimony of V. Galewaler].

7. Beginning in approximately 1999, Taxpayer retained the services of a certified public accountant (CPA) to assist him with reporting and paying gross receipts taxes, weight distance taxes, federal income taxes, and state income taxes. [Testimony of R. Casias].

8. Upon the advice of his CPA, Taxpayer determined that it would be in his interests to convert R. Casias Trucking and Stars & Stripes Paving from sole proprietorships to limited

liability companies. The benefit Taxpayer sought through such conversion would be to maximize protection of his personal assets from potential third-party claims against his businesses.

[Testimony of R. Casias].

9. Taxpayer's CPA prepared the documents to establish limited liability companies for R. Casias Trucking and Stars & Stripes Paving. [Testimony of R. Casias].

10. Taxpayer stated that he formed R. Casias Trucking, LLC on April 23, 2003. [Testimony of R. Casias; Taxpayer Ex. 11]. Taxpayer stated that he formed Stars & Stripes Paving, LLC at approximately the same time. [Testimony of R. Casias].

11. Taxpayer, with guidance from his CPA, notified his financial institutions that both R. Casias Trucking and Stars & Stripes Paving had converted from sole proprietorships to limited liability companies. [Testimony of R. Casias].

12. Taxpayer held his businesses out to the general public, customers, and employees, as limited liability companies. Taxpayer utilized an LLC designation on checks, business cards, W-2 forms, and invoices. [Testimony of R. Casias].

13. Although Taxpayer indicated that he notified all financial institutions, contractors, and employees, of the business conversions, Taxpayer did not recall, nor did he have records to indicate whether he or his CPA formally updated his taxpayer registrations for R. Casias Trucking and Stars & Stripes Paving. Taxpayer relied on his CPA and did not make any independent inquiries regarding the Department's registration procedures. [Testimony of R. Casias].

14. Department records do not include any application to the Department to update the registrations for either R. Casias Trucking or Stars & Stripes Paving at any time. [Testimony of V. Galewaler].

15. Despite the lack of a proper update to Taxpayer's business registrations, Taxpayer identified his businesses as limited liability companies on returns prepared by his CPA for submission to the Department. [Testimony of R. Casias; Taxpayer Ex. 1; Taxpayer Ex. 2; Taxpayer Ex. 3; Taxpayer Ex. 4; Taxpayer Ex. 5; Taxpayer Ex. 6; Taxpayer Ex. 7; Taxpayer Ex. 8; Taxpayer Ex. 9]. Taxpayer Exhibit 7 refers to "Stars & Stripes Paving, LLC." Taxpayer Exhibits 1, 2, 3, 4, 5, 6 and 8 refer to "R. Casias Trucking, LLC."

16. Taxpayer reviewed his business records for the relevant periods and represented that all prepared returns were consistent with Taxpayer Exhibits 1 – 9 in that they utilized the LLC designation to indicate that Taxpayer's businesses were limited liability companies. [Testimony of R. Casias].

17. Until the time the Department conducted its audits of R. Casias Trucking and Stars & Stripes Paving, the Department never communicated to Taxpayer or his CPA that the names provided for Taxpayer's businesses on his returns were incorrect. [Testimony of R. Casias].

18. For federal income tax purposes, Taxpayer's Schedule C for Profit or Loss From Business for tax years 2006 through 2010 did not identify R. Casias Trucking as a limited liability company. Rather, Taxpayer was identified as proprietor. [Taxpayer Ex. 10].

19. The Department initiated audits of Taxpayer's businesses. The audits examined gross receipts taxes for the periods from January 1, 2006 through September 30, 2011 for R. Casias Trucking and Stars & Stripes Paving. [Testimony of R. Casias].

20. The audits for R. Casias Trucking and Stars & Stripes Paving commenced on November 2, 2011. The audit of R. Casias Trucking concluded on February 25, 2013. The audit

of Stars & Stripes Paving concluded on March 12, 2013. [Testimony of V. Galewaler; Dept. Ex. A; Dept. Ex. B].

21. The audits did not identify the businesses as limited liability companies. [Testimony of V. Galewaler; Dept. Ex. A; Dept. Ex. B].

22. On June 18, 2013, the Department issued a Notice of Assessment and Demand for Payment to R. Casias Trucking under Letter ID No. L0202781136 for \$152,266.32 in tax, \$30,453.26 in penalty, and \$23,572.44 in interest for a total amount due of \$206,292.02. The Notice of Assessment and Demand for Payment does not identify the Taxpayer's business as a limited liability company. [Testimony of R. Casias; Dept. Ex. G].

23. On June 18, 2013, the Department issued a Notice of Assessment and Demand for Payment to Stars & Stripes Paving under Letter ID No. L0264180176 for \$41,616.99 in tax, \$8,323.37 in penalty, and \$7,238.02 in interest for a total amount due of \$57,178.38. The Notice of Assessment and Demand for Payment does not identify the Taxpayer's business as a limited liability company. [Testimony of R. Casias; Dept. Ex. H].

24. Taxpayer protested the audit results for R. Casias Trucking and Stars & Stripes Paving by and through his counsel on July 13, 2013. The protests were received in the Protest Office on July 19, 2013. [Testimony of R. Casias; Testimony of V. Galewaler; Dept. Ex. C; Dept. Ex. D].

25. The protests do not identify R. Casias Trucking and Stars & Stripes Paving as limited liability companies. [Testimony of R. Casias; Testimony of V. Galewaler; Dept. Ex. C; Dept. Ex. D]. The CRS numbers associated with the businesses are the same numbers assigned to the businesses at the time of their initial registrations as sole proprietorships.

26. The protests were withdrawn by counsel with Taxpayer's authorization. [Testimony of R. Casias; Testimony of V. Galewaler; Dept. Ex. E; Dept. Ex. F]. The withdrawals were executed in approximately June of 2014. The withdrawals do not refer to Taxpayer's businesses as limited liability companies. [Testimony of V. Galewaler].

27. On or about September 18, 2014, Taxpayer executed an Installment Agreement that provided for payment of both the assessments issued under a Letter ID Nos. L0202781136 [Dept. Ex. G] and L0264180176 [Dept. Ex. H]. [Testimony of R. Casias; Testimony of V. Galewaler; Dept. Ex. I]. The Installment Agreement makes no reference to any limited liability company, referring instead to Taxpayer by his name, address, and social security number. [Dept. Ex. I].

28. The Installment Agreement explicitly stated as a condition that Taxpayer admitted conclusive liability for the entire amount of taxes due consistent with NMSA 1978, Sec. 7-1-21 [Dept. Ex. I].

29. Counsel for the Taxpayer contacted a revenue agent for the Department in September of 2014, after the Taxpayer executed the Installment Agreement. Thereafter, the revenue agent changed the name of the Taxpayer in GenTax to add the designation "LLC" to R. Casias Trucking. The Department did not receive an application to update the registration nor did the Department issue a new CRS number. [Testimony of V. Galewaler].

30. Any purported update to the Taxpayer's registration did not comply with the Department's procedures. [Testimony of V. Galewaler].

31. Taxpayer made one or two payments under the Installment Agreement. Taxpayer agreed that the vast majority of the total due under the Installment Agreement remained unpaid. [Testimony of R. Casias].

32. Taxpayer received a Notice of Claim of Tax Lien under Letter ID No. L0336899632. The total amount due under the lien indicated a total amount due of \$188,488.73. The lien was addressed to Taxpayer and his spouse. [Testimony of R. Casias; Dept. Ex. J].

33. Taxpayer received a Notice of Claim of Tax Lien under Letter ID No. L1679076912. The total amount due under the lien indicated a total amount due of \$58,988.79. The lien was addressed to Taxpayer and his spouse. [Testimony of R. Casias; Dept. Ex. K].

34. Notice of Claim of Tax Lien under Letter ID No. L0336899632 and Notice of Claim of Tax Lien under Letter ID No. L1679076912 are addressed to Taxpayers Richard Casias & Cheri L. Olivas and provide the last four digits of Mr. Casias' social security number. The notices provide the dates upon which the taxes became due and state that the State of New Mexico claims a lien for the entire amount asserted to be due, including applicable interest and penalties.

35. Taxpayer submitted correspondence purporting to protest the assessment and audit results underlying the Installment Agreement and the liens. The protest was received by the Department's Protest Office on September 22, 2016. The formal protest also disputed that the Taxpayer was liable for the amounts due in his personal capacity.

36. The Department acknowledged the receipt of Taxpayer's protest on September 29, 2016.

37. On November 7, 2016, the Department filed a Hearing Request with the Administrative Hearings Office.

38. On November 7, 2016, the Administrative Hearings Office set the protest for a hearing on the merits scheduled to occur on November 30, 2016.

39. On November 10, 2016, Taxpayer moved for a continuance.

40. On November 15, 2016, the Taxpayer waived the 90-day deadline to facilitate his request for a continuance.

41. On November 16, 2016, the Administrative Hearings Office granted Taxpayer's request for a continuance and set a hearing on the merits for January 23, 2017.

42. On January 23, 2017, the Department filed a Motion to Dismiss Protest.

43. On January 23, 2017, all parties and counsel appeared for the scheduled hearing.

44. With permission of the hearing officer, the Department was permitted to amend or supplement its Motion to Dismiss Protest. On January 27, 2017, the Department filed its Motion to Dismiss Protest and Closing Argument.

45. The Taxpayer filed its Response to Motion to Dismiss Protest and Closing Argument on February 9, 2017. The record in the above-referenced protest closed upon its receipt.

46. As of January 23, 2017, in reference to R. Casias Trucking, Taxpayer owed \$212,270.53 in tax, \$42,556.39 in penalty, and \$45,608.55 in interest for a total outstanding liability of \$300,435.47. [Dept. Ex. M].

47. As of January 23, 2017, in reference to Stars & Stripes Paving, Taxpayer owed \$41,371.99 in tax, \$8,346.89 in penalty, and \$12,021.69 in interest for a total outstanding liability of \$61,740.57. [Dept. Ex. N].

### **DISCUSSION**

Taxpayer's protest is interpreted as seeking relief on two bases. First, Taxpayer seeks to protest the assessments and audit results for R. Casias Trucking and Stars & Stripes Paving which were subject of Taxpayer's previous protests as illustrated in Dept. Ex. C and Dept. Ex. D. Those protests were withdrawn more than two years ago. [Dept. Ex. E; Dept. Ex. F].

Since those protests were withdrawn, Taxpayer executed an Installment Agreement [Dept. Ex. I] and admitted that he made one or two payments toward the outstanding balance since September of 2014. Consequently, the Department sought to collect unpaid amounts due through the liens under Letter ID No. L1679076912 and Letter ID No. L0336899632.

The Department argued that the Taxpayer is precluded from attempting to litigate the issues that would have been properly addressed in his previous protests. The Department relies on the withdrawals admitted as Dept. Ex. E and Dept. Ex. F and specifically the provisions contained therein which provide that the “withdrawal is conclusive as to the liability for the taxes. Since this withdrawal is conclusive as to tax liability, I/we understand that I/we cannot file another protest on the years covered[sic] by the assessments[.]” Taxpayer also entered into an Installment Agreement in which Taxpayer was required as a matter of law to admit conclusive liability for the entire amount of taxes due. *See* NMSA 1978, Sec. 7-1-21. 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).

In response, Taxpayer’s counsel claimed “[t]he withdrawals of protests occurred after the Department agreed that the Taxpayers were both limited liability companies and not Richard Casias, individually.” Accordingly, counsel argued that the withdrawals were conditioned upon the Department collecting payment from Taxpayer’s limited liability companies rather than the Taxpayer in his individual capacity.

Despite counsel’s claim that there was an agreement between the Department and the Taxpayer with respect to the foregoing, there is no evidence of an agreement consistent with counsel’s description, and counsel’s arguments are not evidence. The protest withdrawals speak

for themselves, and even their most liberal construction fails to establish that they were subject to any conditions.

Even if there were a verbal or unwritten agreement, which the evidence does not suggest, an agreement not reduced to writing is nevertheless unenforceable. *See* NMSA 1978, Sec. 37-1-23 (A) (“governmental entities are granted immunity from actions based on contract, *except actions based on a valid written contract.*”).

The record established that Taxpayer’s protest withdrawals were unconditional. Taxpayer is precluded from protesting the issues underlying the previous audits and assessments which now establish the grounds for the liens issued when the Taxpayer failed or refused to perform under the Installment Agreement.

The second basis for Taxpayer’s protest is whether the Taxpayer is personally liable for the amounts due on the liens, or whether liability rests solely with the limited liability companies Taxpayer said he formed to protect his personal assets from potential claims.

Although there may be various benefits to operating a business under a limited liability company, the primary benefit Taxpayer addressed in the present matter derives from NMSA 1978, Sec. 53-19-13 which provides:

Except as otherwise provided in the Limited Liability Company Act, the debts, obligations and liabilities of a limited liability company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the limited liability company. No member or manager of a limited liability company and no other person with authority pursuant to the Limited Liability Company Act to wind up the business or affairs of the limited liability company following its dissolution, shall be obligated personally for any debt, obligation or liability of the limited liability company solely by reason of being a member or manager of the limited liability company or having authority pursuant to the Limited Liability Company Act to wind up the company's business and affairs following its dissolution. A person

may be liable for any act or omission performed in his capacity as a manager of a limited liability company if there is a basis for liability. Nothing in this section shall be construed to immunize any person from liability for the consequences of his own acts or omissions for which he otherwise may be liable.

It would then logically follow that a litigant asserting a right to the benefits of a limited liability company must present evidence to establish the formation and existence of the limited liability company.

The New Mexico Limited Liability Act establishes the manner by which limited liability companies are formed and operated. *See* NMSA 1978, Sec. 53-19-1, *et. seq.* Formation of a limited liability company is a straight forward and relatively simple task. NMSA 1978, Sec. 53-19-10 (A) provides that a limited liability company is formed when the articles of organization are filed with the secretary of state, or at any later date or time specified in the articles of organization, if there has been substantial compliance with the requirements of the Limited Liability Company Act. The New Mexico Limited Liability Act then provides that a copy of the articles of organization stamped as filed and marked with the filing date is conclusive evidence that there has been substantial compliance with all conditions required to be performed by the organizers and that the limited liability company has been legally organized and formed pursuant to the Limited Liability Company Act. *See* NMSA 1978, Sec. 53-19-10 (B).

The Taxpayer testified that he converted R. Casias Trucking and Stars & Stripes Paving from sole proprietorships to limited liability companies. With respect to R. Casias Trucking, Taxpayer presented Taxpayer Ex. 11 as evidence of the formation and existence of a limited liability company. However, the Hearing Officer is unable to give Taxpayer Ex. 11 any significant weight because, although the document purports to identify R Casias Trucking, LLC as a limited liability company organized on April 23, 2003, the document is not dated and there

is nothing on the face of the exhibit to establish the source of the information contained therein. Taxpayer's testimony in reference to Taxpayer Ex. 11 was limited solely to the contents of the document which speaks for itself. Taxpayer did not claim to know the source of the document. The Department objected to its admission at which time counsel for the Taxpayer asserted the source of the document was the New Mexico Secretary of State's Office, but counsel's statements and arguments are not evidence.

Even if the source of Taxpayer Ex. 11 was clear and undisputed, the Hearing Officer still finds the information contained therein to be insufficient. The reliability of Taxpayer Ex. 11 depends on the date it was generated, which is absent.

Consider that the New Mexico Limited Liability Act provides that a copy of the articles of organization, stamped as filed and marked with the filing date, is conclusive evidence that there has been substantial compliance with all conditions required to be performed by the organizers and that the limited liability company has been legally organized and formed pursuant to the Limited Liability Company Act. Although the Taxpayer's efforts at the hearing were focused on the existence of limited liability companies, the Taxpayer did not present filed or dated copies of articles of organization for either purported limited liability company, choosing to rely instead on his own testimony to establish their formation and existence. The Hearing Officer did not find this evidence sufficient. In other words, Taxpayer seeks a decision from the Hearing Officer that would effectively shift a significant tax liability from Taxpayer to two limited liability companies. However, Taxpayer presented insufficient evidence to establish that the limited liability companies exist to accept or receive the liability.

Even if the Taxpayer had established the existence of the business entities he asserted should be liable for the amounts claimed under the liens, there are additional concerns with

Taxpayer's claims. Regulation 3.1.1.15 (A) (1) NMAC requires that the secretary of the Department develop and maintain systems "for the registration and identification of taxpayers who are subject to taxes and tax acts listed in Section 7-1-2 NMSA 1978 and taxpayers shall comply therewith." Along similar lines as the rules of interpretation applicable to statutes, the use of the word "shall" indicates a provision is mandatory. *See Marbob Energy Corp. v. N.M. Oil Conservation Comm'n*, 2009-NMSC-013, ¶22, 146 N.M. 24, 32 (use of the word "shall" in a statute indicates provision is mandatory absent clear indication to the contrary).

In this protest, the Taxpayer did not utilize the compulsory method to update its registration to reflect that his businesses converted from sole proprietorships to limited liability companies. [Testimony of R. Casias; Testimony of V. Galewaler]. The evidence on this issue is uncontested. Rather, Taxpayer asserted that he provided notice to the Department of the conversion when he began utilizing an "LLC" designation in his tax return filings. [Testimony of R. Casias; Taxpayer Exs. 1 – 9]. However, this method was not the correct method. At all relevant times, the Department has had a system for assigning new CRS numbers when a taxpayer converted a business from one form of business entity to another. The system required that the business close its existing account and open a new account as the converted entity at which time the business would receive a new CRS number. [Testimony of V. Galewaler].

Although Taxpayer Exhibits 1 – 9 utilize the LLC designation throughout and also identify the Taxpayer as "member", the Hearing Officer noted that none of the exhibits are signed, dated, or indicate that they were actually submitted to the Department. The absence of a signature is the most notable observation as each exhibit, except Taxpayer Ex. 3, contains a statement that the return is signed under penalty of perjury and that the person signing the return has examined it and affirms that it is correct and complete to the best of the signor's knowledge.

Taxpayer nevertheless asserts that the Department acknowledged that the Taxpayer was doing business as a limited liability company when, at least with respect for R. Casias Trucking, a Department employee made a revision to the Taxpayer's account in GenTax to reflect the name of the business as R Casias Trucking, *LLC*. However, evidence established that the change to the account was not in accordance with Department procedure. Ms. Galewaler testified that the change to the account occurred after a telephone call from Taxpayer's counsel, well after the audits, assessments, protests, protest withdrawals, and execution of the installment agreement. Despite the fact that GenTax reflects that the Taxpayer is doing business as R Casias Trucking, LLC, the Hearing Officer was not persuaded that Taxpayer's counsel's telephone call essentially shifted the Taxpayer's liability from Taxpayer in his individual capacity to a limited liability company because the Taxpayer did not follow the mandatory procedure established by the secretary.

Moreover, it appears that the effort to update Taxpayer's registration in the method described may have been an afterthought. Ms. Galewaler testified that counsel's telephone call, which was followed by a change to Taxpayer's account, at least with respect for R. Casias Trucking, was initiated after the Taxpayer executed his Installment Agreement. The Installment Agreement, in which Taxpayer admitted conclusive tax liability consistent with NMSA 1978, Sec. 7-1-21, clearly identifies the Taxpayer in his individual capacity, listing his name, social security number, and address. Despite there being a designated area on the agreement for the name of a taxpayer other than an individual, the area in this case was left blank.

Taxpayer correctly points out the language in NMSA 1978, Sec. 53-19-13 which provides that "the debts, obligations and liabilities of the limited liability company...shall be solely the debts, obligations and liabilities of the limited liability company" and that "[n]o

member of the limited liability company...shall be obligated personally for any debt, obligation or liability of the limited liability company[.]”

However, the immunity from personal liability for members of a limited liability company extends only to the liability incurred by the limited liability company. In this case, if the limited liability companies were formed and existing during the relevant time, the Hearing Officer was still not persuaded that the limited liability companies incurred the Taxpayer’s liability. NMSA 1978, Sec. 53-19-13 expressly provides that “[n]othing in this section shall be construed to immunize any person from liability for the consequences of his own acts or omissions for which he otherwise may be liable.”

In this case, Taxpayer sought immunity from his own liability for the consequences of his own acts or omissions, not the acts or omissions of any limited liability company. Taxpayer assumed personal liability to the State of New Mexico and the Department when he registered as a sole proprietor to do business as R. Casias Trucking and Stars & Stripes Paving. He would remain personally liable until that liability would be formally transferred from himself to one or both limited liability companies utilizing the mandatory process employed by the secretary of the Department. At that time, the liability would then be *incurred* by one or both limited liability companies. That never happened. Instead, the Taxpayer executed an Installment Agreement in which he admitted conclusive tax liability in his personal capacity, and then attempted to transfer the liability to a limited liability company utilizing an incorrect method. Accordingly, as of the time the hearing in this protest concluded, there was no evidence to establish that the Taxpayer’s liability had been incurred by any limited liability companies and the actual existence of those limited liability companies remained in doubt.

NMSA 1978, Sec. 7-1-21 (A) provides that “[w]henever justified by the circumstances, the secretary or the secretary’s delegate may enter into a written agreement with a taxpayer in which the taxpayer admits conclusive liability for the entire amount of taxes due and agrees to make monthly installment payments according to the terms of the agreement[.]” In consideration, a taxpayer is given the opportunity to pay a tax liability in installments. So long as a taxpayer complies with the agreement, the secretary is prohibited from further attempts to enforce payment of the tax by levy or injunction. *See* Sec. 7-1-21 (E). However, if installment payments are not made on or before the times specified in the agreement, if any other condition contained in the agreement is not met, or if the taxpayer does not make payment of all other taxes for which he becomes liable as they are due, the secretary may proceed to enforce collection of the tax as if the agreement had not been made or proceed as otherwise permitted by law. *Id.*

In this case, Taxpayer executed an Installment Agreement in his personal capacity. Since that time, he has made one or two payments. The Department provided approximately two years for the Taxpayer to comply with the terms of the Installment Agreement and then sought to collect the tax owed pursuant to its authority under the Tax Administration Act. Taxpayer’s protest should be denied.

### **CONCLUSIONS OF LAW**

1. The Taxpayer filed a timely written protest to Notice of Claim of Tax Liens issued under Letter ID Nos. L1679076912 and L0336899632, and jurisdiction lies over the parties and the subject matter of this protest.

2. The Taxpayer did not satisfy the terms of his installment agreement and the Department was authorized to enforce collection. *See* NMSA 1978, Sec. 7-1-21; NMSA 1978 Sec. 7-1-38.

3. The Notices of Lien satisfied the statutory requirements of NMSA 1978, Sec. 7-1-38.

4. The Taxpayer is precluded from protesting the underlying audits or assessments, by virtue of entering into an installment agreement for payment of the same as provided by NMSA 1978, Sec. 7-1-21, in which he admitted conclusive tax liability.

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

DATED: March 13, 2017



---

Chris Romero  
Hearing Officer  
Administrative Hearings Office  
P.O. Box 6400  
Santa Fe, NM 87502

### **NOTICE OF RIGHT TO APPEAL**

Pursuant to NMSA 1978, Section 7-1-25 (2015), 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. If an appeal is not timely filed with the Court of Appeals within 30 days, this Decision and Order will become final. Rule of Appellate Procedure 12-601 NMRA articulates the requirements of perfecting an appeal of an administrative decision with the Court of Appeals.

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 begin preparing the record proper. The parties will each be provided with a copy of the record proper at the time of the filing of the record proper with the Court of Appeals, which occurs within 14 days of the Administrative Hearings Office receipt of the docketing statement from the appealing party. *See* Rule 12-209 NMRA.