

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

IN THE MATTER OF THE PROTEST OF
TAFOYA'S STORE, ID. NO. 01-001230-00 3
PROTEST TO ASSESSMENT NO. 2091234

NO. 97- 43

DECISION AND ORDER

THIS MATTER came on for formal hearing on November 5, 1997 before Gerald B. Richardson, Hearing Officer. Tafoya's Store, hereinafter, "Taxpayer" was represented by Mrs. Ercilia Tafoya, who owned the store together with her deceased husband, Mr. Ruben Tafoya. The Taxation and Revenue Department, hereinafter, "Department" was represented by Bridget A. Jacober, Special Assistant Attorney General. Based upon the evidence and the arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. For many years, Mr. and Mrs. Ruben Tafoya operated a general store in Truchas, New Mexico. Mr. Tafoya was responsible for running the store and handling its business affairs. Mrs. Tafoya was not involved in or knowledgeable about the business affairs of the store.

2. In 1993, Mr. Tafoya was diagnosed with cancer and became too sick to manage the store. Mr. and Mrs. Tafoya's son helped run the store after his father's illness. Mr. Tafoya died on June 2, 1994.

3. For calendar year 1993 the Taxpayer reported to the Department that it had gross receipts of \$81,048.36 and gross receipts tax was paid to the Department on that amount.

4. For calendar year 1993, the Taxpayer reported to the Internal Revenue Service (“IRS”) on Federal Schedule C that it had gross receipts from the operation of the store in the amount of \$168,835.00.

5. The Department has an information sharing agreement with the IRS whereby the Department and the IRS share information concerning taxpayers who reside in New Mexico. Pursuant to that information sharing agreement the IRS provided the Department information concerning the Taxpayer’s gross receipts as reported on Schedule C for the 1993 tax year.

6. Based upon the discrepancy in the amount of gross receipts reported to the IRS and to the Department, on December 27, 1996 the Department issued Assessment No. 2091234, assessing \$4,477.82 in gross receipts tax, \$447.84 in penalty and \$2,266.90 in interest for the period of January through December, 1993.

7. On February 3, 1997, the Taxpayer filed a written protest to Assessment No. 2091234 and requested a retroactive extension of time to file the protest.

8. The Department granted the Taxpayer’s request for an extension of time to file its protest.

9. The Department has abated the penalty assessed.

10. Because Mr. Tafoya handled all of the business affairs of the store, including the filing of taxes and the keeping of business records, Mrs. Tafoya had no

knowledge of how the figures were arrived at for the Taxpayers filings with the IRS or with the Department for tax year 1993.

11. The records of the store were not retained after Mr. Tafoya's death.

12. After receiving the Department's assessment, Mrs. Tafoya went to H&R Block to discuss the discrepancy in the receipts reported, since H&R Block prepared the Schedule C. for Mr. and Mrs. Tafoya's 1993 federal return.

13. H&R Block told Mrs. Tafoya that they would take care of the problem. They prepared an amended 1993 federal return and amended the Schedule C. gross receipts to match that which was reported to the Department.

14. The amended return was not based on Taxpayer records or other information provided to H&R Block with respect to the actual amount of the Taxpayer's gross receipts during 1993.

DISCUSSION

The sole issue to be determined herein is the propriety of the Department's assessment for additional gross receipts tax and interest based upon the discrepancy in the Taxpayer's gross receipts as reported to the IRS and to the Department.

Section 7-1-17(C) NMSA 1978 provides that there is a presumption of correctness which attaches to any assessment by the Department. This places the burden upon a taxpayer contesting an assessment to present evidence to dispute the factual correctness of the assessment. *Champion International Corp. v. Bureau of Revenue*, 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975).

Unfortunately, Mrs. Tafoya was unable to present evidence to rebut the presumption of correctness of the assessment. Mr. Tafoya ran the store and handled its books and taxes. Mrs. Tafoya had no personal knowledge of how the tax returns were prepared and she had no records to dispute that the amount of gross receipts as reported on the Taxpayer's 1993 Federal Schedule C were incorrect. The amended return prepared by H&R Block was not prepared from the Taxpayer's records or other information provided by Mrs. Tafoya. Thus, the burden of proof was not met by the Taxpayer in this case.

This is an unfortunate situation. Mr. Tafoya took care of the affairs of the small store he owned with his wife and Mrs. Tafoya was left without information or records to explain the discrepancy in reported gross receipts after Mr. Tafoya's death. Mrs. Tafoya is an honest person who would not attempt to deceive the taxing authorities. She admitted that she did not have records or other information with which to dispute the correctness of the assessment. She also admitted that she did not provide any records upon which H&R Block could have based its amended 1993 tax return. She only asked for consideration of her unfortunate situation.

In order to assure himself that the Department's assessment was not based upon erroneous information or a mistake by the IRS, this hearing officer investigated the correctness of the information obtained from the IRS about the Taxpayer's 1993 Schedule C. His investigation revealed that the Taxpayer's had also attached the 1993 Federal Schedule C to their 1993 New Mexico Personal Income Tax return. A review of the Schedule C., which was signed by Mrs. Tafoya, confirmed the correctness of the

information provided by the IRS to the effect that the Taxpayer's reported gross receipts were \$165,835.00

In light of the fact that the Taxpayer was unable to present any evidence to dispute the factual correctness of the assessment, the Taxpayer's protest must be denied.

CONCLUSIONS OF LAW

1. The Taxpayer filed a timely, written protest to Assessment No. 2091234 and jurisdiction lies over both the parties and the subject matter of this protest.

2. The Taxpayer has failed to carry its burden of proving that the Department's assessment is incorrect.

For the foregoing reasons, the Taxpayer's protest IS HEREBY DENIED.

DONE, this 16th day of November, 1997.