

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

**IN THE MATTER OF THE PROTEST OF
B&M ENTERPRISES, INC.
ID NO. 85-0314973
ASSESSMENT NO. L0867565568**

No. 03-16

DECISION AND ORDER

A formal hearing on the above-referenced protest was held July 23, 2003, before Margaret B. Alcock, Hearing Officer. The Taxation and Revenue Department ("Department") was represented by Peter Breen, Special Assistant Attorney General. B& M Enterprises, Inc. ("Taxpayer") was represented by Bill Ware, its president. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. During 1994 and 1995, the Taxpayer was a corporation doing business in New Mexico under the name "New Mexico Flying Services."
2. The Taxpayer ceased doing business in February 2000 after two serious airplane crashes and other financial setbacks.
3. The Taxpayer was audited by the Internal Revenue Service, which determined that the Taxpayer had underpaid its corporate income taxes for fiscal years ending 9/30/94 and 9/30/95.
4. After the federal audit was completed, the Department received a Revenue Agent Report from the IRS notifying the Department of the adjustments that had been made to the Taxpayer's federal tax returns.

5. On December 13, 2002, the Department issued Assessment No. L0867565568 to the Taxpayer in the total amount of \$6,099.42, representing corporation income tax, penalty, and interest due for tax years ending 9/30/94 and 9/30/95.

6. On March 12, 2003, pursuant to an extension of time granted by the Department, the Taxpayer filed a protest to the Department's assessment.

DISCUSSION

The Taxpayer does not dispute its legal liability for the tax, penalty, and interest assessed by the Department. Instead the Taxpayer asks for a reduction in the amount of tax due based on the fact that the corporation has suffered an unfortunate series of financial reversals and is no longer in business. As was explained to the Taxpayer's president at the administrative hearing, these factors are not something the Department can consider. Department Regulation 3.1.6.14 NMAC specifically states that the Secretary "may not compromise a taxpayer's liability because of the taxpayer's inability to pay." Nor does the Hearing Officer have authority to relieve a taxpayer of its statutory liability for tax, penalty or interest. In *State ex rel. Taylor v. Johnson*, 1998-NMSC-015 ¶ 022, 961 P.2d 768, 774-775, the New Mexico Supreme Court made the following observations concerning the power of administrative agencies:

Generally, the Legislature, not the administrative agency, declares the policy and establishes primary standards to which the agency must conform. *See State ex rel. State Park & Recreation Comm'n v. New Mexico State Authority*, 76 N.M. 1, 13, 411 P.2d 984, 993 (1966). The administrative agency's discretion may not justify altering, modifying or extending the reach of a law created by the Legislature....

The Legislature has not granted the Department or its Hearing Officer the authority to abate or adjust tax assessments based on the financial or personal situations of individual taxpayers. The Hearing Officer's jurisdiction is limited to determining whether a taxpayer is legally liable for the tax, penalty, and interest at issue.

CONCLUSIONS OF LAW

1. The Taxpayer filed a timely, written protest to Assessment No. L0867565568, and jurisdiction lies over the parties and the subject matter of this protest.

2. The Taxpayer does not dispute its liability for the tax, penalty, and interest assessed by the Department.

3. The Hearing Officer does not have authority to override the provisions of New Mexico's tax laws to relieve the Taxpayer of its statutory obligation for payment of tax, penalty, and interest due to the state.

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