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

IN THE MATTER OF THE PROTEST OF
ECONOMICS OF DIGNITY, LLC
TO DEPARTMENT'S INACTION TO REFUND CLAIM **No. 11-14**

DECISION AND ORDER

A formal hearing on the above-referenced protest was held on April 19, 2011, before Sally Galanter, Hearing Officer. Economics of Dignity, LLC was represented by Tim Wiford, its single member ("Taxpayer"). The Taxation and Revenue Department ("Department") was represented by Ida Lujan, Special Assistant Attorney General. Tom Dillon, C.P.A. and protest auditor for the Department appeared as a witness on behalf of the Department. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. Taxpayer is a limited liability corporation organized in New Mexico and exists for the purpose of starting new companies. Tim Wiford is the sole member of Taxpayer.

2. Taxpayer created a second limited liability company called World Wide Art Sellers, LLC (WWAS) on August 1, 2002. The Operating Agreement, which sets out the purpose and ownership interest of WWAS, was signed by Mr. Tim Wiford on behalf of Taxpayer along with WWAS's other member, Carol Kazwick.

3. Taxpayer had an initial owner's interest of 17% in WWAS with Taxpayer having 100% of the voting stock; although the Operating Agreement provided no information as to Taxpayer's initial contribution.

4. As of the signing of the Operating Agreement, partner, Carol Kazwick, had an initial

owner's interest of 83% having contributed $100,000.00 cash as her initial contribution although having no voting rights as to the management and operation of WWAS.

5. WWAS, d/b/a, Wiford Gallery created a 1099 Summary and Detail allocating monies paid to Taxpayer as non-employee compensation for the tax years in question explaining the payments as "consulting".

6. Mr. Wiford filed a 1040 with a Schedule C, noting that he was a sole proprietor. The income received by Taxpayer from WWAS was reported on the Schedule C as income. WWAS provided Taxpayer with a 1099 form for the consulting services.

7. WWAS did not provide schedule K or K-1 partnership return information to Taxpayer for any of the tax years in question.

8. Taxpayer filed and paid gross receipts tax on the "non employee compensation" income it received from WWAS for the tax years 2005 through 2008.

9. On December 26, 2008 Taxpayer, completed an application for refund of the gross receipts taxes paid. The Department received the request on December 30, 2008. [Department Exhibit A] The gross receipts taxes paid were for tax years 2005 through 2008.

10. Taxpayer utilized the services of both a Certified Public Accounting firm and a bookkeeper in maintaining the records for both its corporation and for its interest in WWAS.

11. Mr. Wiford testified that it was the intention of WWAS that the Operating Agreement control the operation of WWAS.

12. Mr. Wiford managed the art gallery (WWAS) as the gallery director running the daily operations of the gallery completing all tasks that a boss does including hiring and firing of employees of the gallery, making sure bills were paid, overseeing the bookkeeping, overseeing the finances of the gallery, overseeing the banking for the gallery, working directly with

collectors of art, selling art, bringing artists to show their work, releasing artists, and dealing with vendors.

13. On April 6, 2009, Mr. Wiford on behalf of WWAS, mailed to the Department WWAS's Operating Agreement and attached letter explaining that the relationship between Taxpayer and WWAS has been the same since the Operating Agreement for WWAS was finalized. [Department Exhibit B]

14. On July 28, 2009 Taxpayer's accountant mailed the formal protest, protesting the denial of the refund due to inaction on Taxpayer's application for refund, requesting that the application for refund be granted. The Department's protest office received the formal protest on July 29, 2009. [Department Exhibit D]

15. On August 25, 2009, the Department acknowledged receipt of the formal protest due to inaction and assigned the protest to Protest Auditor Tom Dillon. [Department Exhibit E]

16. On August 26, 2009, based on the information provided, the Department determined the income to be gross receipts based on the payment scheme as indicated in WWAS' Operating Agreement which provided that Taxpayer was the member manager of WWAS and was to receive a guaranteed payment of $25,000.00 plus 5% of the gross receipts for providing a service. [Department Exhibit F]

17. On September 23, 2009 Mr. Wiford acknowledged that services were being provided by Taxpayer to WWAS but argued that since he is the single member of Taxpayer and since Taxpayer owns an interest in WWAS that he is being taxed gross receipts taxes for providing a service to him. Taxpayer claimed that having to pay the gross receipts was the result of poor legal advice and bad choices of his accountant. [Department Exhibit H]

18. On August 2, 2010, the Hearing Bureau received the Department's July 30, 2010 request for hearing. [Department Exhibit I]

19. On September 16, 2010 that Hearing Bureau mailed the Notice of Administrative Hearing to Mr. Wiford and to the Department's counsel with the notice including, "If either party would like to introduce documents at the hearing, please bring three copies of the documents to the hearing. For additional information please refer to the blue sheet addressing frequently asked questions concerning administrative tax hearings. Also, the regulation that applies to the hearing process may be found at 3.1.8.8 NMAC. A copy of the regulation is enclosed."

20. Just prior to the hearing commencing on April 19, 2011 Mr. Wiford provided Department's counsel copies of all purported amendments to the Operating Agreement of WWAS. [Taxpayer Exhibit 1]

21. One of the amendments to the Operating Agreement, dated January 1, 2003, titled "Memorandum of Change" from Tim Wiford, Member-Manager references "Suspension of Article VII, Section 5- Compensation of Member-Manager". Mr. Wiford indicated that Article VII, Section 5 was not being followed since January 2003. [Taxpayer Exhibit 1]

22. The suspension of Article VII, Section 5, suspending payments, was signed to formalize WWAS' members' agreement to negate any guaranteed payment to the member-manager understanding that income may not be sufficient to make the guaranteed payment. Article VII, Section 5 was never reinstated.

23. As of December 7, 2007 Taxpayer's interest in WWAS amounted to 76.19% with the other member, Carol Kazwick's interest's having been diminished to 23.81%.

24. Taxpayer paid gross receipts taxes on its non-employee compensation income detailed

"consulting" received from WWAS for tax years 2005 through 2008 in the amount of $29,337.01.

25. Taxpayer is requesting a refund in the amount of $29, 337.01 plus interest.

ANALYSIS AND DISCUSSION

In determining if Taxpayer is entitled to a refund of gross receipts taxes paid**,** there are four issues to be decided. First, whether Taxpayer's exhibits should be admitted into the record based on Taxpayer not providing the exhibits until the morning of the hearing. The Department claimed unfairness and undue surprise. Second, whether Taxpayer is entitled to a refund of gross receipts taxes it paid based on its claim that monies received were capital distributions and not gross receipts. Third, whether inaccurate information claimed to have been received by Taxpayer's representatives from the Department relieves Taxpayer of the tax liability and lastly whether the Department receiving both personal income taxes and gross receipts taxes for the income received by Taxpayer amounted to double taxation.

Taxpayer Exhibits

Taxpayer did not provide copies of its exhibits to the Department prior to the hearing. While it is in the best interest of each party to exchange exhibits prior to the hearing, there was no Order in place directing the parties to exchange exhibits. The Department's Motion to Exclude Taxpayer Exhibits #1 and #2 is overruled. The documents are admitted and the exhibits given their due weight.

In *Matter of Miller,* 88 N.M. 492, 496, 542 P.2d 1182 (Ct. App. 1975), the court in considering the issue of discovery explained that the "right to discovery in administrative proceedings is based on the rule that wide latitude in admission of evidence shall govern these

proceedings." The court further explained at Page 498, "The rules governing admissibility of evidence are frequently relaxed. When the administrative board has reached a decision and promulgated an order without considering all the evidence presented at the hearing, the 'decision and order' is arbitrary and should be reversed." While Taxpayer should have provided the documentation to the Department prior to the hearing and while Taxpayer certainly had knowledge of a specific contact person in the Department, in consideration of the wide latitude in admission of evidence in administrative proceedings, the Department's objections to admission of Taxpayer's documents are overruled and Taxpayer exhibits #1 and #2 are admitted.

As to the Department's argument that Taxpayer failed to file the amendments with the appropriate state agency, this objection is overruled as there is no requirement that an Operating Agreement or its amendments be filed with the Public Regulation Commission, the state agency charged with overseeing Limited Liability Company's organization. The Department also argued that some of the amendments of the Operating Agreement are not relevant to the issues presented during the hearing. The argument is well taken and while the amendments are admitted as a packet, the documents that pertain to the issues relevant to this proceeding include the amendment dated January 1, 2003 and the amendment dated December 7, 2007. Therefore, while the amendments to the Operating Agreement are part of the record, the amendments dated January 1, 2003 and December 7, 2007 are given their due weight.

Claim to Refund

A taxpayer's request for refund, for an alleged overpayment of gross receipts taxes, falls within NMSA 1978, § 7-1-26 (2007). §7-1-26 A allows a Taxpayer to file for a refund if Taxpayer feels the tax paid was in excess of taxes owed. §7-1-26 B (2) explains that if the Department has neither granted nor denied the claim within 120 days the claim was mailed the

Taxpayer may re-file or pursue one of the remedies set out in sub-section C, which includes the remedy chosen by Taxpayer to request a hearing. The evidence established that Taxpayer was timely in his request. The burden of proof, pursuant to the request for refund, requires that Taxpayer prove why it is entitled to the refund.

Services

NMSA 1978, §7-9-4 (2007) imposes an excise tax on the gross receipts of any person engaging in business in New Mexico. Engaging in business is defined in pertinent part at NMSA 1978, §7-9-3.3(E) as "carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit." "Gross receipts" are defined to include the total amount of money received from performing services in New Mexico." §7-9-3 (F) (2007). There is a statutory presumption that all receipts of a persons/entities engaging in business in New Mexico are subject to the gross receipts tax. NMSA 1978, §7-9-5 (2002). The Taxpayer has the burden of overcoming the presumption. In *Wing Pawn Shop v. Taxation and Revenue Department,* 111 NM 735, 740, 809 P.2d 649, 654 (Ct. App. 1991) ¶29 -32, the court explained,

> Where an exemption or deduction from tax is claimed, the statute must be construed strictly in favor of the taxing authority, the right to the exemption or deduction must be clearly and unambiguously expressed in the statute, and the right must be clearly established by the taxpayer…taxation is the rule and the claimant for an exemption must show that his demand is within the letter as well as the spirit of the law.

See also *Security Escrow Corp., v. Taxation and Revenue Department,* 107 NM 540, 543, 760 P.2d 1306, 130 (Ct. App. 1988) §18-20.

New Mexico's self-reporting tax system places the responsibility on Taxpayer to accurately determine and pay taxes due to the state. NMSA 1978, Section 7-1-13 (2007). This is exactly what Taxpayer initially did when paying the gross receipts taxes. Taxpayer reported the gross receipts and paid gross receipts tax. Taxpayer now requests a refund.

Gross Receipts received by Taxpayer from WWAS

The issue to be decided in this matter is whether Economics of Dignity LLC, Taxpayer, performed a service in New Mexico and therefore whether those services were taxable under the Gross Receipts Tax Act. According to NMSA 1978, § 7-9-3 (M) (2007), " 'service' means all activities engaged in for other persons for a consideration, which activities involve predominantly the performance of a services as distinguished from selling or leasing property. 'Service' includes activities performed by a person for its members or shareholders." Pursuant to NMSA 1978 §7-9-3 (I) (1) the definition of "person" includes a limited liability company. The fact that the statute includes activities performed by a limited liability company for its members indicates the legislature's intent to include activities performed on behalf of Limited Liability Companies when requiring payment of gross receipts tax for services. In addition to the documentary evidence submitted, Mr. Wiford's testimony also established that services were performed. In detailing exactly what services were performed, Mr. Wiford's testimony established that he, as the single member of Taxpayer, makes all the day to day decisions of WWAS including hiring of employees, firing of employees, day to day management, overseeing the bookkeeping and finances of WWAS, soliciting buyers for the art product, paying producers of the art product. Taxpayer was then paid for those services being provided a 1099 summary non-employee compensation for the management of the art gallery. Taxpayer was paid by WWAS and the amount each year was greater than $600. Therefore all the elements have been established as to Taxpayer having received non employee compensation for services provided to WWAS.

Because the management of an art gallery is included in the broad classification of "any activity," these management activities meets the statutory definition of engaging in business such

that Taxpayer is liable for gross receipts tax on the income received from providing the services. In this case, the evidence is undisputed that Taxpayer was engaged in a business and performed a service for World Wide Art Sellers, LLC (WWAS). Taxpayer owed gross receipts taxes for the services of managing the art gallery performed by its single member in New Mexico. Mr. Wiford in fact acknowledges that Taxpayer provided a service. However, he argues that instead of Taxpayer receiving compensation that Taxpayer received a capital distribution. The presumption of correctness requires Taxpayer to prove that WWAS issued a capital distribution to Taxpayer. The evidence presented by Taxpayer failed to overcome the presumption.

Taxpayer, through Mr. Wiford, claimed that when it suspended Article VII, Section 5 of the Operating Agreement, and that this had the practical effect of suspending Article IX, Section 2 since there were two references to Article IX in Article VII, Section 5. Taxpayer further argued the voiding of one Article and Section automatically voided the other Article and Section because both dealt with the guaranteed payment. Mr. Wiford argued that therefore, the payments made to Taxpayer were capital distributions rather than gross receipts and the payments were based on profitability not services. Mr. Wiford argued, as a result of Article VII, Section 5 being suspended, that the services provided were services to himself as he is both the single member of Taxpayer and an owner of WWAS. As such, Taxpayer claimed that the spirit of the law would not hold him liable for gross receipts when in effect he is working for himself. Taxpayer also argues that since the guaranteed payment provisions were never followed, the funds received by Taxpayer were capital distributions and not services. Taxpayer Exhibit 2 reveals that during the years in question that Taxpayer received a greater amount of income from WWAS than the guaranteed payment provisions would have otherwise provided. The evidence established that Taxpayer received the income from WWAS and that it was categorized as “non-employee

compensation" for "consulting."

To prove its claim that a capital distribution was made and to substantiate its claim for refund of the $29,337.01, Taxpayer provided WWAS' operating agreement and the January 1, 2003 amendment suspending Article VII, Section 5 which nullified the guaranteed payment to Taxpayer as the member manager of WWAS. The WWAS Operating Agreement does not prove that the payment made was a capital distribution. Article IX details how distributions are to be made. Article IX discusses "Reserves, Allocations and Distributions". Section 2, Page 15 discusses "Guaranteed payments to Member-Manager" including:

> After payment of all ordinary, necessary and extraordinary operating expenses,… the Member-Manager shall be paid the following guaranteed payments: 2.1 The sum of $25,000.00; and 2.2 A sum equal to 5% of the gross receipts of the Company (after payment of any amounts due to artists for consigned goods) provided, however, that such sum shall be payable after payment of the amounts setforth in paragraph 3.1 of this Article, below, and **only to the extent of available cash.** [emphasis added].

Article VII details how compensation should be made. A capital distribution was to be paid only after expenses were paid. Article VII, Section 5, Page 12, Compensation of Member-Manager" stating, "Each Member-Manager… shall be entitled to compensation, in an amount to be determined from time to time by the affirmative vote of a Majority of the Members. It is agreed by the Members that for its services as Member- Manager, Economics of Dignity, LLC shall be paid a guaranteed payment of $25,000.00 in accordance with Article IX. The Member-Manager shall also be compensated for services rendered in managing the Company a guaranteed payment equal to 5% of the gross receipts earned by the Company (after payment of amounts due to artists for consigned goods) payable in accordance with Article IX.

Since WWAS was unable to meet all of its expenses, no capital distributions were paid by WWAS. The evidence does not support that the amounts paid to Mr. Wiford were capital

distributions since WWAS was not making sufficient income to meet its operating expenses.

Section 3, of the same Article VII allows for interim distributions if there is sufficient cash. The distributions are to be prioritized including first a pro-rata to all members equal to their interest in the LLC equivalent to simple interest at 10%, second to the Member-Manager as indicated in Section 2.2, then to the members in accordance with their interest and lastly to the members based on their capital contributions.

In addition, the amendment, titled "Memorandum of Change" dated, January 1, 2003, addressed to All Shareholders of Worldwide Art Sellers, LLC, from Mr. Tim Wiford, Member-Manager referencing "Suspension of Article VII, Section 5 – Compensation of Member-Manager" states:

> This memorandum is meant to confirm the suspension of Article VII, Section 5…It is acknowledged by both shareholders that this portion of the agreement has not been followed since the inception of the company due to a lack of revenue. It is acknowledged by all shareholders including the Member-Manager Tim Wiford and Carol Kazwick that it is therefore unrealistic to follow this former agreement to the letter. Tim Wiford, current member manager, wishes to continue in his capacity as Member -Manager of Worldwide Art Sellers, and continues to believe the company can move forward and grow. Carol Kazwich agrees that the only way to move forward is to suspend Section 5 of Article VII indefinitely. The above-mentioned article cannot be reinstated unless agreed to by both parties in writing.

While the evidence confirms that the guarantee of payment was suspended to remove the guarantee of a set payment to the member-manager, it did not suspend or void the acknowledgement in Article VII, Section 5 that Taxpayer is performing a service in managing WWAS. Further, there was no acknowledgement in any documentation that the payments made to Taxpayer were other than compensation for managing the art gallery. The 1099 Documentation was provided by Taxpayer to the Department as evidence of the allocation of the

income received by Taxpayer. The income received by Taxpayer was indicated on 1099 income on Mr. Wiford's Federal Income Tax returns. The income was earmarked as "non employee compensation" by WWAS.

Even though the 1099 summary indicates that each year's payments were for consulting and were non-employee compensation to WWAS, Taxpayer claims that all monies paid to it were in the form of capital distributions from WWAS to Taxpayer and therefore that the monies should be refunded based on error that the income was inaccurately filed as gross receipts based on Taxpayer exhibits #1 and #2. 12 USCS §4502 (5)(A) defines capital distribution as

> (i)Any dividend or other distribution in cash or in kind made with respect to any shares of, or other owners interest in, an enterprise, except a dividend consisting only of shares of the enterprise; (ii) any payment made by an enterprise to repurchase, redeem, retire, or otherwise acquire any of its shares, including any extension of credit made to finance an acquisition by the enterprise of such shares; and (iii) any transaction that the Director determines by regulation to be, in substance, the distribution of capital.

IRS Publication 542, Page 20, titled "Reporting Dividends and other Distributions" explains:

> A corporate distribution to a shareholder is generally treated as a distribution of earnings and profits. Any part of a distribution from, either current or accumulated earnings and profits, is reported to the shareholder as a dividend. Any part of a distribution that is not from earnings and profits is applied against and reduces the adjusted basis of the stock in the hands of the shareholder.

Taxpayer argues that the income was capital distributions but does not provide the documentation to substantiate the claim. *See State v. Jacobs* 102 N.M. 801, 701 P.2d 400 (Ct. App. 1985). Evidence must be presented to overcome the presumption of taxability. The amendment suspending the guaranteed payment does not establish that the income received was capital distributions. Providing evidence that income was received by Taxpayer greater than what would have been paid pursuant to the original guarantee also does not establish that the

income received was capital distributions.

In sum, services were provided by Taxpayer for each of the tax years and non employee compensation was received for those services by Taxpayer for seven reasons: (1) by the law in regard to the tax treatment of two member LLC's; (2) the 1099 summaries provided by Taxpayer indicating "non-employee compensation" paid to Taxpayer; (3) the notations on the 1099 detail documentation that the payments to Taxpayer were made for "consulting"; (4) consideration that consulting is a service; (5) the lack of schedule K and K-1 completed tax forms; (6) the income received by Taxpayer was reported as 1099 income on Federal Tax returns; and (7) the acknowledgement in testimony at the hearing, in the operating agreement itself and the emails exchanged between Mr. Wiford and Mr. Dillon that services were rendered in the management of the art gallery known as WWAS. All evidence points to Taxpayer being paid for a service it rendered in managing the art gallery known as WWAS LLC of which it is one member of a two member LLC, treated as a partnership for tax purposes.

Taxpayer claims that the determination to file the 1099 summaries was based on information from a Department employee. While claiming reliance on others to include the corporate C.P.A. firm, the bookkeeper, and the information from a Department employee, in actuality it is Taxpayer's responsibility, as managing-member in overseeing the financial and bookkeeping of WWAS, to file accurate and proper documentation evidencing how the income was earned. It was Taxpayer's responsibility as the member-manager, based on WWAS's Operating Agreement, to ensure that both LLC's tax documentation was in compliance with New Mexico statutory tax obligations that K-1 forms were filed and distributed to both members of WWAS, and that proper documentation was submitted to establish that a capital distribution was actually contemplated and made. The evidence was insufficient to establish that capital distributions

were contemplated and made.

Equitable Estoppel

Taxpayer claims that the refund should be allowed, based on the claim, that both its bookkeeper and C.P.A. were provided inaccurate information from the Department's employees on several different occasions. However, despite this argument, the Taxpayer provided no information as to who provided the faulty information or any documentary evidence as to such miss-information.

Previously our courts have determined that estoppel will not be applied against a state governmental entity "unless there is a shocking degree of aggravated and overreaching conduct or where right and justice demand it." *Wisznia v. State, Human Servs. Dep't,* 1998-NMSC-11, P17, 125 N.M. 140, 958 P.2d 98. In determining whether estoppel is appropriate, the conduct of both parties must be considered *Gonzales v. Public Employees Retirement Board,* 114 NM 420, 427, 839 P.2d. 630, 637, *cert denied,* 114 N.M. 227, 836 P.2d 1248 (1992).

In examining the conduct of both parties, the courts have been willing to grant estoppel when a party has relied on written representations but unwilling to grant estoppel when a party has relied solely on oral representations. *See Bien Mur Indian Ctr.,* 108 NM 228, 231, 770 P.2d 873, 876 (refusing to apply estoppel when only oral representations were made and relied on). Taxpayer had both a C.P.A. firm and a bookkeeper to assist in determining the propriety of filing 1099's rather than Schedule K and K-1's. Taxpayer did not comply with the law as Taxpayer failed to submit the proper documentation to establish a capital distribution and was unable to provide details as to who in the Department provided the inaccurate information and when the inaccurate advice was provided, let alone that this alleged inaccurate Department communication was deduced to writing . Therefore the principle of equitable estoppel does not apply to the facts

in this case. Even had estoppel been proven, New Mexico law does not allow such relief in an administrative proceeding. *See AA Oilfield Service v. New Mexico State Corporation Commission*, 118 N.M. 273, 279, 881 P.2d 18, 24 (1994).

Double Taxation

Taxpayer argues that it has paid the taxes twice on the same income and that it is inherently wrong for the Department to collect taxes twice for the same income. In this case Taxpayer is paying taxes on the income on his personal income tax return and as gross receipts taxes based on the consulting work for WWAS and the non-employee compensation.

New Mexico courts have held that there is no prohibition against double taxation. *See New Mexico State Board of Public Accountancy v, Grant,* 61 NM 287, 299 P.2d 464 (1956); *Amarillo-Pecos Valley Truck Line, Inc. V. Gallegos,* 44 NM 120, 99 P.2d 447 (1940) and *State ex rel. Attorney General v. Tittmann,* 42 NM 76, 75 P.2d 702 (1938). *See also Ft. Smith Lumber Co. v. Arkansas,* 251 U.S. 532 (1920). Further, in *New Mexico Sheriffs v. Police Association v. Bureau of Revenue,* 85 NM 565, 514 P.2d 616 (Ct. App. 1973), the court determined that "if there were double taxation, such would not necessarily be arbitrary and capricious". New Mexico law requires that its citizens pay tax on their personal income and requires that LLC's pay gross receipts tax on monies it receives for services it provides. In New Mexico, there are different rates and different rules for payment of personal income tax and for gross receipts tax on services with the payment of each tax premised on different purposes and different reasoning. Here, Taxpayer is the entity liable for gross receipts on the services provided to WWAS. By not establishing that the monies received were capital distributions and not having availed itself of the means for avoiding the tax in question, Taxpayer is left with the presumption of taxability.

Taxpayer's claim is actually that if Taxpayers are expected to follow the law that the tax

laws must be clear, consistent and straightforward and that the laws are not clear and are capricious as is evidenced by the fact that the Department's employees responded to Taxpayer's bookkeeper and C.P.A. inconsistently providing different answers to the same question. Taxpayer's claim that the tax structure is unfair is properly addressed to the New Mexico legislature rather than the Hearing Officer or the Department. The Department is charged with enforcing the tax laws as written and passed by the legislature. Neither the Department nor this Hearing Officer has the authority to ignore or change those laws. *See, State ex rel. Taylor v. Johnson,* 1998-NMSC-015, P.22, 125 N.M. 343, 961 P.2d 768 (the legislature, not the administrative agency, declares the policy and establishes primary standards to which the agency must conform).

CONCLUSIONS OF LAW

A. Taxpayer filed a timely, written protest to the inaction of the Department in response to its request for a refund of the gross receipts taxes paid for the tax years 2005 through 2008. Jurisdiction lies over the parties and the subject matter of this protest.

B. The payment received by Taxpayer from WWAS for the non employee compensation for "consulting" was a service provided. The receipts from engaging in business and were subject to gross receipts tax.

C. Taxpayer failed to prove that it was entitled to a refund in the amount of $29,337.01.

D. The imposition of gross receipts tax on Taxpayer's income received for its single member managing an art gallery does not constitute illegal double taxation.

For the foregoing reasons, the protest of Economics of Dignity, LLC is DENIED.

Dated: July 7, 2011.