

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

**IN THE MATTER OF THE PROTEST OF
SOUTHERN OASIS, Inc.
TO ASSESSMENT ISSUED UNDER LETTER
ID NO. L #1060795968**

No. 13-06

DECISION AND ORDER

A formal hearing on the above-referenced protest was held on September 4, 2012, before Monica Ontiveros, Hearing Officer. The Taxation and Revenue Department (“Department”) was represented by Peter Breen, Esq., attorney for the Department. Ms. Lizzy Vedamanikan, manager of the protest office, appeared as a witness for the Department. Southern Oasis, Inc. (“Taxpayer”) appeared at the appointed time and was represented by R. Tracy Sprouls, Esq. The President of Southern Oasis, Joseph Lewandowski, appeared as a witness for Taxpayer. Taxpayer introduced into the record as stipulated exhibits: Exhibit #1 – Management Services Agreement dated August 19, 2004 (7 pages); Exhibit #2 – Organizational Chart; Exhibit #3 – Total System Evaluation (7 pages); Exhibit #4 – Revenue Breakdown Spreadsheet; Exhibit #5 – Management Services Agreement dated August 11, 2004 (18 pages); Exhibit #6 – Management Services Agreement dated July 29, 2004 (17 pages); Addendum #1 – dated July 19, 2007; and Addendum #2– dated July 15, 2007. The Department introduced into the record as a stipulated exhibit: Exhibit #A – the Audit Narrative (multiple pages).

Based on the aforementioned pleadings, the testimony and evidence introduced at the hearing, and the arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. On September 15, 2011, the Department assessed Taxpayer in the principal amount of gross receipts tax of \$56,191.13, \$11,238.26 in penalty and \$15,985.13 in interest for tax period of January 1, 2005 through September 30, 2010. Letter Id No. #1060795968. (The Department conceded that the Notice of Assessment states an incorrect start date.)

2. Taxpayer requested an extension of time to file a protest on October 11, 2011.

3. On October 18, 2011, the Department granted Taxpayer an extension of time to file a protest. Letter Id No. #0281785920.

4. Taxpayer filed a protest in this matter on December 14, 2011.

5. On December 29, 2011, the Department acknowledged the protest filed by Taxpayer.

6. The Department requested a hearing in this matter on April 30, 2012.

7. On May 4, 2012, the Hearings Bureau mailed a Notice of Administrative Hearing setting the hearing for September 4, 2012.

8. Taxpayer is in the business of providing consulting and management services for the solid waste industry. Exhibit #A, page NMTRD #4.

9. Taxpayer is an "S" corporation and has been doing business since February 5, 1985. Taxpayer also does business as Operational Consultants. Operational Consultants and Taxpayer share the same taxpayer identification number. Audio File, Part I, 8:30-9:05. Operational Consultants is also known as Taxpayer in the Decision and Order.

10. Taxpayer is listed as a corporation on the Public Regulation Commission website. Taxpayer's President and Vice President is listed as Joseph R. Lewandowski. The Director is

listed as Debra K. Lewandowski. *See*, PRC Corporation website, relevant page is incorporated into the record. Debra and Joseph Lewandowski are the sole shareholders of Taxpayer.

11. Mr. Lewandowski has been in the business of providing solid waste disposal services in New Mexico since 1980. Mr. Lewandowski is extremely knowledgeable in the operation of solid waste management disposal.

12. For the tax period at issue, Taxpayer provided a unique start-up service for the North Central Solid Waste Authority - to provide solid waste disposal services.

13. Taxpayer provides services primarily to governmental entities. Taxpayer has provided some level of solid waste management disposal services to approximately 80 governmental entities in New Mexico. Audio File, Part I, 5:15-7:24.

13. The Department conducted an audit of Taxpayer beginning on October 27, 2010 and concluding on April 8, 2011. Exhibit #A, page NMTRD #4.

14. The audit period was from January 1, 2005 through September 2010. Exhibit #A, page NMTRD #5.

15. On October 27, 2010, Taxpayer was issued a 60-day letter notifying Taxpayer that it had 60 days or until December 26, 2010 to produce any nontaxable certificates (“NTTCs”). Exhibit #A, page NMTRD #5.

16. Taxpayer provided two timely Type 5 NTTCs to the Department. Exhibit #A, page NMTRD #28. The NTTCs were executed by North Central Solid Waste Authority (“Authority”) and Souder, Miller and Associates (“Souder”).

17. Taxpayer accepted in good faith the Type 5 NTTCs from the Authority and Souder for services provided. Exhibit #A, page NMTRD #5.

18. Souder is not a governmental entity, but a private contractor. Souder is an engineering, environmental and surveying firm.

19. Taxpayer accepted the Type 5 NTTC in good faith from the Authority.

20. The Authority is a governmental entity and entered into contracts with Taxpayer on August 19, 2004 through August 18, 2009. Exhibits #1, #7 and #8. The Authority was created by NMSA 1978, Section 74-10-5 (1993) and had powers enumerated in NMSA 1978, Section 74-10027 (1993). The Authority served the communities of Rio Arriba County, the City of Espanola, Santa Clara Pueblo and Ohkay Owingeh Pueblo. The purpose of the Authority was to consolidate and save resources for solid waste management disposal services (“garbage collection”). Audio File, Part I, 10:36-10:45 and Exhibit #6. Each of these governmental entities consolidated and relinquished control of all of its employees and equipment to the Authority. Audio File, Part I, 11:45-12:14.

21. Prior to entering into the contracts with the Authority, Taxpayer contracted with the Authority for consulting services. Audio File, Part I, 17:24-17:40. Taxpayer paid gross receipts tax on these services.

22. The Authority did not have any employees prior to October 2004. Audio File, part I, 1:00 – 1:01. Rio Arriba County and the City of Espanola transferred its employees to the Authority.

23. Mr. Lewandowski testified that there are three components to garbage collection: managing the day-to-day operation; collecting the trash; and operating the landfill. Audio File, Part I, 17:58 – 18:08.

24. The Authority contracted with a private contractor for the operation of the landfill. Audio File, Part I, 18:20 - 18:24 and Exhibit #3.

25. Without the services of Taxpayer, the Authority would not have been able to operate because there was a lack of knowledge on how to operate a garbage collection service.

26. On April 8, 2011, the audit concluded that Taxpayer had underreported its gross receipts in the amount of \$825,933.85 or \$769,742.72 net of gross receipts tax. Exhibit #A, pages NMTRD #9 and #11. (The amount of underreported gross receipts amount listed on page #5 of the audit, top right hand corner is \$778,158.54. Since the other audit pages list the underreported amount as being \$769,742.72 in gross receipts, the \$769,742.72 must be the correct number.)

27. Taxpayer filed gross receipts returns for the audit period but deducted the receipts of \$769,742.72. Exhibit #A, pages NMTRD #9 and #11.

28. The amount of gross receipts received from Souder is \$3,650.00. The Department allowed these receipts as a service for resale. Exhibit #A, page NMTRD #19 and Audio File, Part I, 1:12 – 1:13.

29. The amount of underreported gross receipts received from Premier Pellets, Inc. is \$9,050.00. The Department listed these receipts as improperly deducted gross receipts. Exhibit #A, page NMTRD #19. Taxpayer conceded that it owed gross receipts tax on this amount. Audio File, Part I, 1:11 – 1:12.

30. The amount of underreported gross receipts net of tax that is in dispute is \$760,692.72. These remaining receipts are for services performed for the Authority.

31. Mr. Lewandowski contracted with the Authority to provide operational services which included, general administration of technical operations of the garbage collection; day-to-day operations of the garbage collection; implementation of all policies and directives related to garbage collection; general consulting services toward the development and continuation of

current technology and trends of solid waste systems and recycle centers; and submission of an annual management plan. Taxpayer was required to use reasonable judgment in fulfilling its duties to Authority. Audio File 22:46 – 23:12, Exhibit #1, page 1 and Exhibit #3.

32. Mr. Lewandowski was required to manage and direct the employees of the Authority, including hiring, managing and discharging employees. Exhibits #1, page 1 and #3, pages 1 and 6.

33. Taxpayer was required to adhere to the budget that was approved by the Authority. Taxpayer was also required to submit a budget for approval to the Authority. The budget was required to include all capital expenditures needed to make sure that the solid waste system was operating in accordance with all the environmental federal, state and local laws. Exhibits #1, page 2 and #3, pages 2-3.

34. All accounting, billing and collection functions were performed by Taxpayer. Exhibits #1, page 2 and #3, pages 2-3. Taxpayer interfaced with the Department of Finance and Authority and any other state agency related to revenues or expenditures of the Authority. Audio File, Part I, 27:40 – 27-52. Taxpayer made recommendations and purchased any equipment needed by the Authority. Exhibit #3, page 4 and Audio File, Part I, 28:06. Mr. Lewandowski signed all checks of the Authority. Audio File, Part I, 28:52 – 29:00.

35. The Authority mailed its bills to its customers and the revenue was received directly by the Authority, except for the City of Espanola. The Authority had its own bank accounts. Audio File, Part I, 1:08 – 1:10.

36. The employees of Taxpayer, Will Lewandowski and Stacey Tidwell, who performed the function of billing and accounting, performed their services predominately in Alamogordo. Audio File, Part I, 1:06 – 1:08.

37. The other employees of Taxpayer, Debra Lewandowski, Ray Tapia, Cathy Tysen Foster and Joseph Ellis, performed their services predominately in the City of Espanola. Audio File, Part I, 1:06 – 1:08.

38. Taxpayer was responsible for making sure that the Authority was in full compliance with environmental laws and regulations. Exhibit #3, page 4.

39. Taxpayer had authority to file liens on behalf of the Authority if any bills were unpaid by customers of the Authority. Audio File, Part I, 28:32-35.

40. The organizational chart of the Authority indicates that Mr. Lewandowski reported to the Board of Directors of the Authority. There were approximately 41 employees of the Authority, and seven of which were employed by Taxpayer. Exhibit #2. All employees of both Taxpayer and the Authority reported to Mr. Lewandowski. Audio File, Part I, 23:20 – 24:36 and Exhibit #2.

41. Mr. Lewandowski acted and had the authority of a general manager. He had business cards printed that indicated that he was the manager of the Authority. Audio File, Part I, 35:50 – 35:59. Mr. Lewandowski routinely sent memorandum out to the employees of the Authority indicating that he was the manager of the Authority. Audio File, Part I, 35:50 – 37:00.

42. During the audit period, Mr. Lewandowski had an office in the City of Espanola. Audio File, Part I, 59:06 – 59:40.

43. Taxpayer had full authority to control and manage the day-to-day operations of the Authority. Exhibit #1. These functions were operational in nature.

44. During the tax period at issue, the Authority received, on average, 79.46% of its revenue from garbage collection. Exhibit #4. The remaining percentage, on average, of 20.54% revenue was received from non taxed restricted funds. Exhibit #4.

45. During the tax period at issue, on average, 80% of the Authority's revenue was subject to the governmental gross receipts tax.

46. The Authority imposed a governmental gross receipts tax on the services that it performed for its customers.

47. There is no evidence to dispute that the Authority imposed a governmental gross receipts tax on the services that it provided to its customers.

DISCUSSION

The issue to be determined is whether Taxpayer underreported its gross receipts in the amount of \$760,692.72. The issue in dispute is predominately a factual dispute. Both parties agree that Taxpayer presently a timely NTTC. Taxpayer argued that its services were for resale in the ordinary course of business and the resale was subject to the governmental gross receipts tax and therefore deductible pursuant to NMSA 1978, Section 7-9-48 (2000). The Department did not dispute that on the second transaction, the services were resold and subject to the governmental gross receipts tax.

The Department contends that Taxpayer confuses the corporate income tax with the gross receipts tax and what is considered a necessary expense. The Department contends that the services provided by Taxpayer in the ordinary course of business were services that were not resold in the ordinary course of business because the services provided were "management and administrative" services and not garbage collection services. The Department argues that on the second transaction, the services for resale must be identical to the services sold on the first transaction. The Department, then, argues that Taxpayer does not qualify for the deduction because the Authority does not resell management or administrative services but instead is in the business of selling garbage collection services.

Burden of Proof and Standard of Review.

NMSA 1978, Section 7-1-17 (2007) provides that any assessment of taxes made by the Department is presumed to be correct. Accordingly, it is Taxpayer's burden to present evidence and legal argument to show that it is entitled to an abatement, in full or in part, of the assessment issued against it. NMSA 1978, Section 7-1-17(C) (2007) provides that any assessment of taxes made by the Department is presumed to be correct. *See, TPL, Inc. v. Taxation and Revenue Dep't*, 2000-NMCA-083, ¶8, 129 N.M. 539, 542, 10 P.2d 3d 863, 866, *cert. granted*, 129 N.M. 519, 10 P.3d 843, *rev'd on other grounds*, 2003-NMSC-7, 133 N.M. 447, 64 P.3d, 474. 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. v. N.M. Taxation and Revenue Dep't*, 2003-NMCA-021, ¶ 13, 133 N.M. 217, 219-220, 62 P.3d 308, 310-311; *Grogan v. New Mexico Taxation and Revenue Dep't*, 133 N.M. 354, 357-58, 62 P.3d 1236, 1239-40 (2002). 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. *Wing Pawn Shop v. Taxation and Revenue Department*, 111 N.M. 735, 740, 809 P.2d 649, 654 (Ct. App. 1991).

Service for Resale.

There is no issue that the services provided were gross receipts. The only inquiry is whether the receipts are deductible. The applicable deduction at issue, Section 7-9-48 provides that:

(r)ecipients from selling a service for resale may be deducted from gross receipts or from governmental gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must resell the service in the ordinary course of business and the resale must be subject to the gross receipts tax or governmental gross receipts tax.

NMSA 1978, Section 7-9-48 (2000). There is no requirement under this statute that the services sold on the second transaction be identical to the services sold on the first transaction.

The Department's own regulations provide several examples of transactions where the second service sold is distinct and not identical to the service in the first transaction or sale. The regulations emphasize that the deduction applies if the seller in the second transaction imposes a gross receipts tax on the second buyer of the services, and if the second seller provides a timely NTTC to the first seller of services. There is no requirement in the regulation that provides that the service must be identical. Both regulations allow the deduction of the first seller's receipts, so long as the subsequent seller imposes a tax on the second transaction.

In regulation 3.2.206.8(B) NMAC (2000), a repair service provider did not provide a type of service that was needed to complete the repair work. The repair service provider contracted with a welder to provide the necessary services. The repair service provider provided a properly executed Type 5 NTTC to the welder. The welder's services were, then, resold to the second buyer who paid gross receipts tax on the transaction. Regulation 3.2.206.8(B) NMAC (2000).

In the Department's second regulation, regulation 3.2.206.10(B) provides an example of a company that manufactured computers but did not employ the proper personnel to install the computers. It hired an independent contractor to install the computers. The manufacturer provided a timely NTTC to the installer of the computer. The manufacturer imposed a gross receipt tax for both the service and the sale of the computer to the ultimate customer. The installer was able to deduct those receipts under this regulation. Under both of these examples, there is no requirement that the type of service must be identical or the same. In fact, the regulations contemplate the type of service sold between the buyers was different.

The only distinction between the Department's regulations and Taxpayer's situation is that Taxpayer provided somewhat exclusive services to only one buyer, the Authority. This distinction was not discussed at the hearing and it is unclear what impact it has on the analysis of this case.

Taxpayer meets the requirements under Section 7-9-48 for a deduction of its receipts from the Authority. Taxpayer provided a unique service to the Authority - to assist the Authority for five years to become an operational solid waste disposal service. Taxpayer proved by a preponderance of the evidence that there are three components to garbage collection: managing the day-to-day operation; collecting the trash; and operating the landfill. Audio File, Part I, 17:58 – 18:08. Exhibits #1, #7 and #8. It is undisputed that without Taxpayer's services, the Authority would not have been able to collect garbage since Taxpayer's services were integral to the operations of the Authority and those services cannot be separated from the Authority's garbage collection services. Finally, it was Taxpayer's services that were resold by the Authority and a governmental gross receipts tax was imposed on the second transaction.

There are a myriad of facts to support the contention that Taxpayer's services were resold to the customers of the Authority. The contract between the Authority and Taxpayer illustrate this. Pursuant to the terms of the contract, Taxpayer was required to provide operational services which included, general administration of technical operations of the garbage collection; day-to-day operations of the garbage collection; implementation of all policies and directives related to garbage collection; general consulting services toward the development and continuation of current technology and trends of solid waste systems and recycle centers; and submission of an annual management plan. Taxpayer was required to use reasonable judgment in fulfilling its duties to Authority. Audio File 22:46 – 23:12, Exhibit #1, page 1 and Exhibit #3.

In addition, Taxpayer had full control of the employees of the Authority. Prior to October 2004, the Authority did not have employees. In October 2004, the Authority merged the employees from the Rio Arriba County, City of Espanola, Santa Clara Pueblo and Ohkay Owingeh Pueblo. Audio File, part I, 1:00 – 1:01.

Taxpayer was required to manage and direct the employees of the Authority, including hiring, managing and discharging employees. Exhibits #1, page 1 and #3, pages 1 and 6. The organizational chart of the Authority indicates that Mr. Lewandowski reported to the Board of Directors of the Authority. There were approximately 41 employees of the Authority and seven employees who were employed by Taxpayer. Exhibit #2. All employees of both Taxpayer and the Authority reported to Mr. Lewandowski. Audio File, Part I, 23:20 – 24:36 and Exhibit #2.

The billing, budgeting and accounting of money are also indicators. Taxpayer was required to adhere to the budget that the Authority approved. Taxpayer was also required to submit a budget for approval to the Authority. The budget was required to include all capital expenditures needed to make sure that the solid waste system was operating in accordance with all the environmental federal, state and local laws. Exhibits #1, page 2 and #3, pages 2-3.

All accounting, billing and collection functions were performed by Taxpayer. Exhibits #1, page 2 and #3, pages 2-3. Taxpayer interfaced with the Department of Finance and Authority and any other state agency regarding revenues or expenditures of the Authority. Audio File, Part I, 27:40 – 27:52. Taxpayer made recommendations and purchased any equipment needed by the Authority. Exhibit #3, page 4 and Audio File, Part I, 28:06. Mr. Lewandowski signed all checks of the Authority. Audio File, Part I, 28:52 – 29:00. Taxpayer also was required to mail the Authority's bills to its customers and the revenue was received directly by the Authority, except for the City of Espanola. Audio File, Part I, 43:20 – 43:50. All

checks were paid by the Authority and not by Taxpayer's funds. The Authority had its own bank accounts. Audio File, Part I, 1:08 – 1:10.

Taxpayer was physically located at the site. At least three of Taxpayer's employees had permanent offices in the City of Espanola. Audio File, Part I, 59:06 – 59:40. Will Lewandowski and Stacey Tidwell, who performed the function of billing and accounting, performed their services predominately in Alamogordo. Audio File, Part I, 1:06 – 1:08. The other employees of Taxpayer, Debra Lewandowski, Ray Tapia, Cathy Tysen Foster and Joseph Ellis, performed their services predominately in the City of Espanola. Audio File, Part I, 1:06 – 1:08.

In addition, Taxpayer was responsible for making sure that the Authority was in full compliance with environmental laws and regulations. Exhibit #3, page 4. Taxpayer had authority to file liens on behalf of the Authority if any bills were unpaid by customers of the Authority. Audio File, Part I, 28:32-35.

Mr. Lewandowski had business cards printed that indicated that he was the manager of the Authority. Audio File, Part I, 35:50 – 35:59. Mr. Lewandowski routinely sent memorandum out to the employees of the Authority indicating that he was the manager of the Authority. Audio File, Part I, 35:50 – 37:00.

Taxpayer provided these services which were, then, resold by the Authority to its customers in Rio Arriba County, City of Espanola, Santa Clara Pueblo and Ohkay Owingeh Pueblo. Audio File, Part I, 10:36-10:45 and Exhibit #6. The Authority did not resell only collection services. It sold garbage collection services which encompasses the components discussed above. The resale of the services to the Authority's customers was a taxable event.

The Department's own witness testified that this case is slightly unusual insofar as most independent contractors do not provide services to just one buyer. Audio File, Part I, 1:17 –

1:26. It is exactly this uniqueness that allows Taxpayer's receipts to be deductible. The services were so integral to the garbage collection services provided by the Authority that the garbage collection services had to include Taxpayer's services otherwise; there would have been no garbage collection. Compare and contrast Taxpayer's services provided to the Authority from October 2004-August 2009 with the consulting services that it provided to the Authority prior to October 2004. Audio File, Part I, 17:24-17:40. Taxpayer imposed and paid gross receipts tax on the gross receipts of the pre-October 2004 consulting services, mostly in part, because its services were never resold to a second buyer.

In light of all of these facts and because there is no requirement that the services need to be identical to the services sold on the second transaction, Taxpayer's services to the Authority are deductible and Taxpayer met its burden.

Second Transaction Subject to the Governmental Gross Receipts Tax.

Taxpayer presented un rebutted testimony that the majority of the revenues that the Authority received was subject to the governmental gross receipts tax on its customers. Taxpayer argued, in the alternative, that because some of the revenue that the Authority received was not subject to the governmental gross receipts tax or 15% or so of the total revenue, that this percentage could be applied to its receipts. Audio File, Part II, 9:39 – 10:59 and Exhibit #4. Taxpayer argued that 15% or so of its receipts may be taxed since not all of the receipts of the Authority were taxed on the second transaction. Again, the Department presented no evidence or testimony disputing this calculation. Since there at five years at issue, the Hearing Officer averaged the five years and determined that during the tax period at issue, on average, 80% of the Authority's revenue was subject to the governmental gross receipts tax. Therefore 20% of

the Authority's revenue was not subject to the governmental gross receipts tax. The Hearing Officer does not adopt this argument.

Mr. Lewandowski argued during the entire course of the hearing that he understood that from the start of the contract with the Authority, that the receipts from the Authority would not be taxable. For all the reasons set forth above, Taxpayer's acceptance of the Type 5 NTTC from the Authority was done in good faith. In addition there was no evidence or testimony presented rebutting Taxpayer's argument that it received the Type 5 NTTC in good faith.

Section 7-9-43(B) provides that "(w)hen the seller accepts these documents within the required time and in good faith that the buyer will employ the property or service transferred in a nontaxable manner, the properly executed documents shall be conclusive evidence, and the only material evidence, that the proceeds from the transaction are deductible from the seller's gross receipts." NMSA 1978, Section 7-9-43(B) (2011). If a taxpayer accepts a NTTC in good faith and the NTTC is both timely and the right type, then the receipts are deductible. *Leaco Rural Tel. Co-op., Inc. v. Bureau of Revenue*, 86 N.M. 629, 526 P.2d 426 (Ct. App. 1974). Since there is no evidence to dispute that Taxpayer received and accepted the NTTC in good faith, all of the receipts from the Authority are deductible.

CONCLUSIONS OF LAW

A. Southern Oasis, Inc. filed a timely written protest to the Department's Assessment issued under Letter Id No. #1060795968. The amount of assessed gross receipts tax is \$56,191.13 in principal, \$11,238.26 in penalty and \$15,985.13 in interest for tax period of January 1, 2005 through September 30, 2010.

B. Jurisdiction lies over the parties and the subject matter of this protest.

C. The services provided to the Authority by Southern Oasis, Inc., were an integral component of the garbage collection services sold by the Authority.

D. The Authority would not have been able to function or to collect garbage if Southern Oasis, Inc. had not provided services to the Authority.

E. For the receipts to be deductible pursuant to NMSA 1978, Section 7-9-48 (2000) on the first transaction, the services resold on the second transaction do not need to be “identical” to the services sold on the first transaction.

F. The services sold by Southern Oasis, Inc. to the Authority were sold in the ordinary course of business.

G. The Authority imposed a governmental gross receipts tax on the services that it sold to its customers.

H. Southern Oasis, Inc. proved by a preponderance of the evidence that it accepted the Type 5 NTTC from the Authority in good faith.

I. Southern Oasis, Inc. proved by a preponderance of the evidence that it received a timely Type 5 NTTC from the Authority.

J. Southern Oasis, Inc. does not owe gross receipts tax on the services it sold to the Authority because they are deductible pursuant to NMSA 1978, Section 7-9-48 (2000).

K. Southern Oasis, Inc. conceded that it owed gross receipts tax on the underreported amount of gross receipts received from Premier Pellets, Inc. of \$9,050.00.

L. Southern Oasis, Inc. was able to rebut the presumption of correctness.

M. Penalty applies to the amounts due and owing on the gross receipts of \$9,050.00 pursuant to NMSA 1978, Section 7-1-69 (2007).

N. Interest should be applied to the principal amount of tax due in accordance with NMSA 1978, Section 7-1-67 (2007).

For the foregoing reasons, the Taxpayer' protest **IS GRANTED IN PART AND DENIED IN PART.**

DATED: March 6, 2013

Monica Ontiveros
Hearing Officer
Taxation & Revenue Department
Post Office Box 630
Santa Fe, NM 87504-0630

NOTICE OF RIGHT TO APPEAL

Pursuant to NMSA 1978, §7-1-25 (1989), the Taxpayer 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* NMRA, 12-601 of the Rules of Appellate Procedure. If an appeal is not filed within 30 days, this Decision and Order will become final. A party filing an appeal shall file a courtesy copy of the appeal with the Hearings Bureau contemporaneously with the filing of the Notice with the Court of Appeals so that the Hearings Bureau may prepare the record proper.

CERTIFICATE OF SERVICE

On March 6, 2013, a copy of the foregoing Decision and Order was mailed via certified mail #7008 0500 0001 4688 4980 to R. Tracy Sprouls, Esq. located at P.O. Box 1888, Albuquerque, NM 87103-1888, and delivered through interoffice mail to Peter Breen, Esq. Taxation and Revenue Department, Santa Fe, New Mexico.

John Griego