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

IN THE MATTER OF THE PROTEST OF
THU HONG NGUYEN **No. 14-20**
TO ASSESSMENTS ISSUED UNDER LETTER
ID NO.'s L1860748096 and L1617460544

DECISION AND ORDER

A protest hearing occurred on the above captioned matter on May 5, 2014 before Brian VanDenzen, Esq., Hearing Officer, in Santa Fe. Thu Hong Nguyen ("Taxpayer") appeared *pro se*. Mr. Nhan Dang appeared to assist Taxpayer with interpretation from Vietnamese to English and English to Vietnamese and was administered the interpreter's oath. Staff Attorney Peter Breen appeared representing the State of New Mexico, Taxation and Revenue Department ("Department"). Protest Auditor Mary Griego appeared as a witness for the Department. Taxpayer Exhibits #1-4 and Department Exhibits A-C were admitted into the record, as described more thoroughly in the Administrative Protest Hearing Exhibit Log. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. On February 1, 2013, the Department assessed Taxpayer for $1,224.76 in gross receipts tax, $244.95 in penalty, and $196.22 in interest for a total assessment of $1,665.90 for the combined reporting period ending on December 31, 2008. **[Letter id. no. L1860748096]**.

2. On February 1, 2013, the Department assessed Taxpayer for $1,331.40 in gross receipts tax, $266.28 in penalty, and $152.39 in interest for a total assessment of $1,750.07 for the combined reporting period ending on December 31, 2009. **[Letter id. no. L1617460544]**.

3. On March 1, 2013, Taxpayer protested the Department's assessments, asking for abatement of tax because of Taxpayer's possession of a nontaxable transaction certificate ("NTTC") and because the "gross receipts tax [had] already paid for by the owner of the nails salon" where Taxpayer worked.

4. On March 11, 2013, the Department acknowledged receipt of Taxpayer's protest.

5. On August 8, 2013, the Department requested a hearing in this matter with the Hearings Bureau.

6. On November 4, 2013, the Department again requested a hearing in this matter with the Hearings Bureau.

7. On November 4, 2013, the Hearings Bureau sent Notice of Administrative Hearing, scheduling this matter for a hearing on May 5, 2014.

8. Taxpayer worked as an independent contractor and not an employee for Envy Spa and Nails in 2008 providing manicure services for resale.

9. Taxpayer worked as an independent contractor and not an employee for Envy Spa and Nails in 2009 providing manicure services for resale.

10. Taxpayer also worked as an independent contractor and not an employee for Tammy's Nail & Spa on a limited basis in 2009 providing manicure services for resale.

11. Taxpayer received a commission percentage for each manicure she provided to Envy Spa and Nails and Tammy's Nail & Spa.

12. Envy Spa and Nails and Tammy's Nail & Spa did not withhold any taxes from Taxpayer's checks, did not pay unemployment insurance contributions for Taxpayer, and did not provide any worker's compensation insurance coverage to Taxpayer.

13. In 2008, Envy Spa and Nails did not consider Taxpayer an employee. Instead, Envy Spa and Nails issued Taxpayer a 1099-Misc listing $19,203.48 in nonemployee compensation in 2008. [**Taxpayer Ex. #3**].

14. In 2009, Envy Spa and Nails did not consider Taxpayer an employee. Instead, Envy Spa and Nails issued Taxpayer a 1099-Misc listing $17,792.05 in nonemployee compensation in 2009. [**Taxpayer Ex. #4**].

15. In 2009, Tammy Nails & Spa did not consider Taxpayer an employee. Instead, Tammy Nails & Spa issued Taxpayer a 1099-Misc listing $2,232.00 in nonemployee compensation in 2009. [**Taxpayer Ex. #4**].

16. The Department detected that Taxpayer had reported Schedule C business income to the IRS in 2008 and 2009 but did not file or pay any gross receipts tax in those years.

17. On June 25, 2012, as a result of the Schedule C income and gross receipts discrepancy, the Department issued Taxpayer a Notice of Limited Scope Audit Commencement informing Taxpayer that she had 60-days, until August 24, 2012, to produce any NTTCs supporting a claimed deduction. [**Department Ex. A**].

18. On July 17, 2012, Taxpayer called the Department about the Notice of Limited Scope Audit. The Department employee noted that during the conversation he or she asked Taxpayer for a NTTC. Taxpayer asked Department employee to speak with her son because her son spoke better English. [**Department Ex. B**].

19. On July 30, 2012, Taxpayer called the Department and asked the Department employee to speak with another individual with her during the call. The Department employee told Taxpayer that she needed to request a NTTC. [**Department Ex. B**].

20. Taxpayer did not produce any NTTCs executed by August 24, 2012.

21. On September 14, 2012, Taxpayer provided the Department copies of her 2008 and 2009 1099-Misc, but did not provide any NTTCs.

22. In the absence of NTTCs, the Department issued its assessments to Taxpayer on February 1, 2013.

23. On February 26, 2013, after the August 24, 2012 deadline and after the Department issued its assessments to Taxpayer, Tammy's Nail & Spa and Envy Spa & Nails executed Type 5 NTTCs to Taxpayer. [**Taxpayer Ex. #'s 1-2**].

24. The Type 5 NTTCs that Taxpayer produced were not timely.

25. Based on the statements of Envy Spa & Nails' owner to her, Taxpayer believed that Envy Spa & Nails paid the gross receipts tax on the manicure jobs Taxpayer performed. However, the owner of Envy Spa & Nails did not appear to testify and Taxpayer did not present any other evidence that the gross receipts tax were paid.

26. As of the date of hearing, for 2008, Taxpayer owed $1,224.76.85 in gross receipts tax, $244.95 in penalty, and $242.73 in interest for a total 2008 liability of $1,712.44. In 2009, Taxpayer owed $1,331.40 in gross receipts tax, $266.28 in penalty, and $202.94 in interest for a total 2009 liability of $1,800.62. As of the date of hearing, Taxpayer had a total outstanding liability of $3,513.06, with interest accruing at $0.21 per day. **[Department Ex. C]**.

DISCUSSION

In light of the protest letter, the evidence presented at hearing, and the arguments made at hearing, there are three main issues in this protest. The first issue is whether Taxpayer worked as an independent contractor or as an employee for Envy Spa & Nails in 2008 and 2009 and Tammy's Nail & Spa in 2009. The second issue is whether Taxpayer was entitled to deduction from gross receipts tax for her sale of manicure services to Envy Spa & Nails and Tammy's Nail

& Spa for resale. Although the Department argued that it was not at issue in the protest, Taxpayer's protest letter established that the third issue at hearing is whether Taxpayer was entitled to abatement of tax on equitable recoupment grounds. As will be analyzed below, because Taxpayer was an independent contractor not an employee, because Taxpayer did not timely possess the requisite NTTC to support her claimed deduction, and because Taxpayer did not meet her burden to establish equitable recoupment, Taxpayer's protest is denied.

Presumption of Correctness.

Under NMSA 1978, Section 7-1-17 (C) (2007), the assessments issued in this case are presumed correct. Consequently, Taxpayer has the burden to overcome the assessments. *See Archuleta v. O'Cheskey*, 1972-NMCA-165, ¶11, 84 N.M. 428. However, once a taxpayer rebuts the presumption of correctness, the burden shifts to the Department to show the correctness of the assessed tax. *See MPC Ltd. v. N.M. Taxation & Revenue Dep't*, 2003 NMCA 21, ¶13, 133 N.M. 217.

Moreover, "[w]here 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*, 1991-NMCA-024, ¶16, 111 N.M. 735 (internal citation omitted); *See also TPL, Inc. v. N.M. Taxation & Revenue Dep't*, 2003-NMSC-7, ¶9, 133 N.M. 447. Because Taxpayer is claiming a deduction from gross receipts tax, Taxpayer must establish her right to claim the deduction.

Gross Receipts Tax, the Deduction, and the Requirement for a Timely NTTC

For the privilege of engaging in business, New Mexico imposes a gross receipts tax on the receipts of any person engaged in business. *See* NMSA 1978, § 7-9-4 (2002). "Engaging in

business" is defined as "carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit." NMSA 1978, § 7-9-3.3 (2003). Under the Gross Receipts and Compensating Tax Act, there is a statutory presumption that all receipts of a person engaged in business are taxable. *See* NMSA 1978, § 7-9-5 (2002).

In this case, Taxpayer referenced a couple of times in her testimony that she worked for Envy Spa & Nails and Tammy's Spa & Nails. It was unclear whether Taxpayer was arguing, based on her testimony that she worked for the salons, that she was an employee rather than an independent contractor with those businesses. Nevertheless, the issue will be briefly addressed out of an abundance of caution.

Exempted from gross receipts taxes are the wages of employees. *See* NMSA 1978, § 7-9-17. Regulation 3.2.105.7 (A) NMAC lists seven criteria for the Department to use in determining whether a person is an employee for the purposes of the exemption under Section 7-9-17. Applying those criteria to the facts of this case, Taxpayer was an independent contractor and not an employee. Taxpayer received commission checks from Envy Spa & Nails and Tammy's Spa & Nails rather than wages or a salary. *See* Regulation 3.2.105.7 (A) (1) NMAC. Envy Spa & Nails and Tammy's Spa & Nails did not withhold any taxes from Taxpayer's checks, did not pay worker's compensation insurance, and did not make unemployment insurance payments on behalf of Taxpayer. *See* Regulation 3.2.105.7 (A) (2-5) NMAC. As evidenced by the issuance of 1099's to Taxpayer listing nonemployee compensation, Envy Spa & Nails and Tammy's Spa & Nails did not consider Taxpayer an employee. *See* Regulation 3.2.105.7 (A) (6) NMAC. At least with respect to Tammy's Spa & Nails, Taxpayer determined her schedule. *See* Regulation 3.2.105.7 (A) (7) NMAC. Every indicia under Regulation 3.2.105.7 NMAC for which there was evidence presented during the hearing established by the preponderance that Taxpayer was an independent contractor

rather than an employee of Envy Spa & Nails and Tammy's Spa & Nails. Since Taxpayer was an independent contractor in 2008 and 2009 for the salons rather than an employee, Taxpayer was a person engaged in business and all her receipts are presumed subject to gross receipts tax. *See* § 7-9-3.3 and § 7-9-5.

The New Mexico Gross Receipts and Compensating Tax Act provides numerous deductions of gross receipts tax. One particular deduction is at issue in this protest: the sale of a service for resale deductable under NMSA 1978, Section 7-9-48 (2000). Section 7-9-48 states that:

> Receipts from selling a service for resale may be deducted from gross receipts or 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 court of business and the resale must be subject to the gross receipts tax....

Simply performing a service for resale, as the Taxpayer did in this instance, is not enough to satisfy the requirements of the deduction under Section 7-9-48. The statute clearly and unambiguously conditions the deduction on a sale made to a person/entity who delivers a NTTC.

NMSA 1978, Section 7-9-43 (2011) articulates the requirements for obtaining NTTCs:

> All nontaxable transaction certificates...should be in the possession of the seller or lessor for nontaxable transactions at the time the return is due for receipts from the transactions. If the seller or lessor is not in possession of the required nontaxable transaction certificates within sixty days from the date that the notice requiring possession of these nontaxable transaction certificates is given the seller or lessor by the department, deductions claimed by the seller or lessor that require delivery of these nontaxable transaction certificates shall be disallowed.

Under Section 7-9-43, Taxpayer had a statutory obligation to possess a NTTC at the time when the gross receipts tax was initially due for her 2008 and 2009 performance of manicure services for the salons. There is no evidence that Taxpayer possessed a NTTC at that time.

While taxpayers "should" have possession of required NTTCs at the time the return is due from the receipts at issue, Section 7-9-43 gives taxpayers audited by the Department a second chance to obtain these NTTCs: within 60-days of when the Department gives notice, taxpayers must possess a NTTC in order to claim a deduction. Taxpayers who rely on this second chance provision run the risk of having their deductions disallowed if they are unable to meet the 60-day deadline set by the Legislature. The reason why a taxpayer cannot obtain a NTTC is irrelevant. The language of Section 7-9-43 is mandatory: if a seller is not in possession of required NTTCs within 60 days from the date of the Department's notice, "deductions claimed by the seller ... that require delivery of these nontaxable transaction certificates *shall be disallowed."* (emphasis added). *See Marbob Energy Corp. v. N.M. Oil Conservation Comm'n*, 2009-NMSC-013, ¶22, 146 N.M. 24 (use of the word "shall" in a statute indicates provision is mandatory absent clear indication to the contrary).

Consistent with the statutory language, under Regulation 3.2.201.12 (C), a taxpayer "is not entitled to the deduction" when the NTTC is untimely. *See Chevron U.S.A., Inc. v. State ex rel. Dep't of Taxation & Revenue*, 2006-NMCA-50, ¶16, 139 N.M. 498 (agency regulations interpreting a statute are presumed proper and are to be given substantial weight). The New Mexico Court of Appeals has held that despite its general reluctance to place "form over substance," the failure to timely and properly present a requisite NTTC is a "valid basis" for the Department to deny a claimed deduction. *Proficient Food Co. v. New Mexico Taxation & Revenue Dep't*, 1988-NMCA-042, ¶22, 107 N.M. 392.

In this case, the Department issued a Notice of Limited Scope Audit on June 25, 2012, directing Taxpayer to produce a supporting NTTC by the statute's second chance 60-day deadline, August 24, 2012. Additionally, the Department twice directed Taxpayer to obtain a NTTC in phone conversations that occurred in July 2012, before the August 24, 2012 60-day deadline. Taxpayer did

not meet the August 24, 2012 60-day deadline. The NTTCs that Taxpayer eventually presented were more than five-months after Section 7-9-43's strict 60-day second chance provision. While the language barriers in this matter and Taxpayer's reliance on a friend to assist her may help explain Taxpayer's delay in obtaining the NTTC, the reasons for Taxpayer's non-compliance with the 60-days statutory deadline are not material to the analysis under Section 7-9-43. Under Section 7-9-43 and Regulation 3.2.201.12 (C), the Department has no authority to allow a deduction after the expiration of the second chance, 60-day deadline, even if a taxpayer has a reasonable explanation for the delay.

By not presenting the NTTCs in a timely manner, as required by Section 7-9-43 and Regulation 3.2.201.12 (C), Taxpayer waived her right to the claimed deduction. *See Proficient Food Co.*, ¶22 (internal citations omitted) ("Where a party claiming a right to an exemption or deduction fails to follow the method prescribed by statute or regulation, he waives his right thereto."). Therefore, Taxpayer was not entitled to the sale of a service for resale deduction under Section 7-9-48 and the Department's assessment of gross receipts tax in 2008 and 2009 was proper.

Equitable Recoupment.

The Department argued that equitable recoupment under NMSA 1978, Section 7-1-28 (F) (2013) was not an issue at protest because Taxpayer did not preserve and/or raise that issue. However, in the third paragraph of Taxpayer's protest letter, Taxpayer asked for a waiver of her gross receipts tax liability in 2008 and 2009 "[b]ecause technically her gross receipts tax has already [been] paid by the owner of the Nails salon." While Taxpayer did not expressly use the phrase "equitable recoupment" or cite Section 7-1-28 (F), a reasonable reading of that paragraph places the parties on notice that Taxpayer believed she should not be liable for taxes already paid by the salon owners on her services, a sentiment that fairly encompasses the legal concept of equitable

recoupment. The Court of Appeals generally does "not favor a rule which exhaults form over substance." *Proficient Food Co.*, ¶22. And the Department cites no authority that the protest letter must be read strictly to require a *pro se* taxpayer to use specific legal phrases in their protest letter in order to comply with the requirements of NMSA 1978, Section 7-1-24 (2013) even if the substance of the letter reasonably raised the issue. Taxpayer's letter was sufficient to place the Department on notice of the issue and equitable recoupment was a proper subject of the hearing.

Under Section 7-1-28 (F), an assessment can be abated by the "amount of tax previously paid by another person on behalf of the taxpayer on the same transaction; provided that the requirements of equitable recoupment are met." Equitable recoupment in tax matters is a doctrine developed largely by federal courts and is given a limited application in tax litigation. *See Vivigen, Inc. v. Minzner*, 1994-NMCA-027, ¶20, 117 N.M. 224. New Mexico has adopted equitable recoupment with the same limitations set forth by federal courts. *See Vivigen, Inc.*, ¶23. The elements of equitable recoupment are: "1) a single taxable event, 2) taxes assessed on that event on inconsistent theories, and 3) a strict identity of interest." *Teco Invs. v. Taxation & Revenue Dep't*, 1998-NMCA-55, ¶8, 125 N.M. 103. However, under the presumption of correctness that attached to Department's assessments pursuant to Section 7-1-17 (C), Taxpayer has the burden of establishing that she is entitled to an abatement of assessed taxes under Section 7-1-28 (F)'s equitable recoupment basis.

In this case, the only evidence related to equitable recoupment is Taxpayer's hearsay testimony that the owner of Envy Spa & Nails told Taxpayer that she had nothing to worry about because the owner had already paid the sales tax. The Envy Spa & Nails owner did not appear to testify at the hearing. Taxpayer had no other evidence that the Envy Spa & Nails owner had paid gross receipts tax, like a statement from the owner or the owner's tax return. The Department's

protest auditor Mary Griego was unaware of whether the Envy Spa & Nails owner had paid gross receipts tax. While hearsay evidence is admissible evidence in an administrative proceeding, without more in this case it is of insufficient weight to find that the Envy Spa & Nails owner had paid gross receipts tax on the same taxable transaction for which the Department assessed Taxpayer. Moreover, Taxpayer did not establish that the taxes were assessed on inconsistent theories or that Taxpayer shared a strict identity of interest with the salon owners. Because Taxpayer did not present sufficient evidence to establish the elements of equitable recoupment in this matter, Section 7-1-28 (F) does not provide grounds for the abatement of assessed taxes.

Penalty and Interest.

Taxpayer did not specifically address interest and penalty, but because Taxpayer asked for abatement of all taxes, interest and penalty will be briefly addressed. When a taxpayer fails to make timely payment of taxes due to the state, "interest *shall* be paid to the state on that amount from the first day following the day on which the tax becomes due...until it is paid." NMSA 1978, § 7-1-67 (2007) (italics for emphasis). Under the statute, regardless of the reason for non-payment of the tax, the Department has no discretion in the imposition of interest, as the statutory use of the word "shall" makes the imposition of interest mandatory. *See Marbob Energy Corp.*, ¶22. The language of Section 7-1-67 also makes it clear that interest begins to run from the original due date of the tax until the tax principal is paid in full. The Department has no discretion under Section 7-1-67 and must assess interest against Taxpayer from the time the 2008 and 2009 gross receipts tax was due but not paid until Taxpayer satisfies the gross receipts tax principal.

Further, the Department has no basis to abate civil negligence penalty under NMSA 1978, Section 7-1-69 (2007) in this case. When a taxpayer fails to pay taxes due to the State because of negligence or disregard of rules and regulations, but without intent to evade or defeat a tax, by its

use of the word "shall", Section 7-1-69 requires that civil penalty be added to the assessment. As discussed above, the statute's use of the word "shall" makes the imposition of penalty mandatory in all instances where a taxpayer's actions or inactions meets the legal definition of "negligence."

Regulation 3.1.11.10 NMAC defines negligence in three separate ways: (A) "failure to exercise that degree of ordinary business care and prudence which reasonable taxpayers would exercise under like circumstances;" (B) "inaction by taxpayer where action is required"; or (C) "inadvertence, indifference, thoughtlessness, carelessness, erroneous belief or inattention." Erroneous belief and inadvertent error meets the legal definition of "negligence" under the penalty statute. *See El Centro Villa Nursing Center v. Taxation and Revenue Department*, 1989-NMCA-070, ¶10, 108 N.M. 795. Here, Taxpayer's failure to timely obtain a supporting NTTC at the time when the 2008 and 2009 gross receipts taxes were due, or upon 60-days of the Department's notice of audit, constituted negligence under Regulation 3.1.11.10 NMAC because of Taxpayer's inaction and inattention

In instances where a taxpayer might otherwise fall under the definition of civil negligence generally subject to penalty, Section 7-1-69 (B) provides a limited exception: "[n]o penalty shall be assessed against a taxpayer if the failure to pay an amount of tax when due results from a mistake of law made in good faith and on reasonable grounds." Further, in relevant part to this protest, Regulation 3.1.11.11 (D) NMAC (emphasis added) allows for abatement of penalty when a "taxpayer *proves* that the failure to pay a tax… was caused by *reasonable reliance* on the advice of *competent* tax counsel or *accountant* as to the taxpayer's liability after full disclosure of all relevant facts." Black's Law Dictionary, 22 (9th ed. 2009), defines "accountant" as "a person authorized under applicable law to practice public accounting."

Neither of these exceptions apply to the facts of this case. Upon receipt of the Department's Notice of Limited Scope Audit, Taxpayer had a salon owner named Tommy assist her with working with the Department. There is no evidence that Tommy was a competent tax accountant or attorney. Taxpayer is unable to avoid penalty because her friend Tommy failed to follow through in assisting her. *See El Centro Villa Nursing Center v. Taxation and Revenue Department*, 1989-NMCA-070, ¶14, 108 N.M. 795 (A taxpayer cannot "abdicate" their tax responsibilities " merely by appointing an accountant as its agent in tax matters."). Ultimately, Taxpayer had the responsibility to support her claimed deduction by providing a timely executed NTTC. *See Tiffany Construction Co. v. Bureau of Revenue*, 1976-NMCA-127, ¶5, 90 N.M. 16 (under New Mexico's self-reporting tax system, "every person is charged with the reasonable duty to ascertain the possible tax consequences" of his or her actions). By failing to do that, Taxpayer was liable for the tax and penalty was properly assessed under Section 7-1-69. Taxpayer's protest is denied.

CONCLUSIONS OF LAW

A. Taxpayer filed a timely, written protest to the assessments. Jurisdiction lies over the parties and the subject matter of this protest.

B. In 2008 and 2009, six of the seven criteria under Regulation 3.2.105.7 (A) NMAC established that Taxpayer was an independent contractor and not an employee.

C. Since Taxpayer, as an independent contractor, was a person engaged in business under NMSA 1978, Section 7-9-4 (2002), all of Taxpayer's receipts in 2008 and 2009 are presumed subject to gross receipts tax under NMSA 1978, Section 7-9-5 (2002).

D. Taxpayer did not possess the requisite NTTCs to support the claimed deduction for the sale of a service for resale under NMSA 1978, Section 7-9-48 (2000) at the time the 2008 and

2009 CRS returns were due and did not possess the requisite NTTCs within 60-days of the Department's Notice of Audit. Under NMSA 1978, Section 7-9-43 (2011) and Regulation 3.2.201.12 (C), without possession of a timely executed NTTC at either the time of the filing of returns or within 60-days of notice of audit, the Department is not allowed to grant and Taxpayer is not entitled to the claimed deduction under Section 7-9-48. *See Marbob Energy Corp. v. N.M. Oil Conservation Comm'n,* 2009-NMSC-013, ¶22, 146 N.M. 24 (use of the word "shall" in a statute indicates provision is mandatory absent clear indication to the contrary). *See also Proficient Food Co. v. New Mexico Taxation & Revenue Dep't*, 1988-NMCA-042, ¶22, 107 N.M. 392 (Court found it valid for the Department to deny a claimed deduction when taxpayer did not timely present a requisite NTTC).

E. Taxpayer did not establish the elements of equitable recoupment and therefore was not entitled to an abatement of tax under NMSA 1978, Section 7-1-28 (F).

F. Under NMSA 1978, Section 7-1-67 (2007), Taxpayer is liable for accrued interest under the assessment. Interest continues to accrue until the tax principal is satisfied.

G. Under NMSA 1978, Section 7-1-69 (2007), Taxpayer is liable for civil negligence penalty because Taxpayer's inaction and inattention met the definition of civil negligence under Regulation 3.1.11.10 NMAC.

For the foregoing reasons, Taxpayer' protest **IS DENIED**. As of the date of hearing, for 2008, Taxpayer owed $1,224.76.85 in gross receipts tax, $244.95 in penalty, and $242.73 in interest for a total 2008 liability of $1,712.44. In 2009, Taxpayer owed $1,331.40 in gross receipts tax, $266.28 in penalty, and $202.94 in interest for a total 2009 liability of $1,800.62. Interest continues to accrue at $0.21 per day until the tax principal is satisfied.

DATED: June 3, 2014.

Brian VanDenzen, Esq.,
Hearing Officer
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NOTICE OF RIGHT TO APPEAL

Pursuant to NMSA 1978, Section 7-1-25 (1989), 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. *See* Rule 12-601 NMRA. If an appeal is not filed within 30 days, this Decision and Order will become final. Either party filing an appeal shall file a courtesy copy of the appeal with the Hearing Bureau contemporaneous with the Court of Appeals filing so that the Hearing Bureau can begin to prepare the record proper.