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

IN THE MATTER OF THE PROTEST OF
KEVIN H. PHAM d/b/a PRO NAILS **No. 14-42**
TO ASSESSMENT ISSUED UNDER LETTER
ID NO. L0486794192, L1560536016, L1023665104 and L2097406928

DECISION AND ORDER

A protest hearing occurred on the above captioned matter on November 17, 2014 before Chief Hearing Officer Brian VanDenzen, Esq., in Santa Fe. Kevin Pham ("Taxpayer") appeared *pro se*. Staff Attorney Elena Morgan appeared representing the State of New Mexico, Taxation and Revenue Department ("Department"). Protest Auditor Sonya Varela appeared as a witness for the Department. Taxpayer Exhibits #1-2 and and Department Exhibits A-B were admitted into the record, as described more thoroughly in the Administrative Protest Hearing Exhibit Log. At direction of the undersigned hearing officer, on November 18, 2014 and after the conclusion of the hearing, the Department submitted a spreadsheet of liabilities as of the date of hearing to the Hearings Bureau and Taxpayer. Taxpayer did not object to the admission of this document, which is admitted into the record as Department Exhibit C. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. On June 6, 2014, the Department assessed Taxpayer for $778.11 in gross receipts tax, $155.62 in penalty, and $155.99 in interest for a total assessment of $1,084.60 for the combined reporting period ending on December 31, 2008. [Letter id. no. L0486794192].

2. On June 6, 2014, the Department assessed Taxpayer for $829.14 in gross receipts tax, $165.83 in penalty, and $128.30 in interest for a total assessment of $1,123.27 for the combined reporting period ending on December 31, 2009. [Letter id. no. L1560536016].

3. On June 6, 2014, the Department assessed Taxpayer for $1,194.29 in gross receipts tax, $238.86 in penalty, and $137.30 in interest for a total assessment of $1,570.45 for the combined reporting period ending on December 31, 2010. [Letter id. no. L1023665104].

4. On June 6, 2014, the Department assessed Taxpayer for $1,386.46 in gross receipts tax, $277.30 in penalty, and $109.53 in interest for a total assessment of $1,773.29 for the combined reporting period ending on December 31, 2011. [Letter id. no. L2097406928].

5. On or about July 29, 2014 (Taxpayer did not date the protest letter), Taxpayer protested the Department's assessments, asking for a third extension of time in which to obtain a nontaxable transaction certificate ("NTTC").

6. On August 19, 2014, the Department acknowledged receipt of Taxpayer's protest.

7. The Hearings Bureau first learned of this matter when the Department requested a hearing on October 2, 2014.

8. On October 6, 2014, within 90-days of the protest, the Hearings Bureau set this matter for a hearing on November 17, 2014 and sent Notice of Administrative Hearing accordingly.

9. During the relevant period, Taxpayer was a sole proprietorship doing business as Pro Nails.

10. Taxpayer is a nail tech providing manicure services.

11. In 2008 through 2011, Taxpayer performed manicure services for Professional Nails (which is a distinct entity from Taxpayer's Pro Nails) and Fantacy Nails Salon for resale.

12. Taxpayer was paid commissions by both companies in the form of weekly checks.

13. Professional Nails and Fantacy Nails Salon did not withhold any taxes from Taxpayer's commission checks.

14. Taxpayer set his own hours with Professional Nails and Fantacy Nails.

15. Taxpayer was not covered by worker's compensation insurance for the services he provided to Professional Nails and Fantacy Nails.

16. Professional Nails and Fantacy Nails did not make contributions on Taxpayer's behalf to unemployment insurance.

17. Professional Nails and Fantacy Nails provided Taxpayer with Form 1099 for the income he received from performing services during the relevant years.

18. The Department detected that Taxpayer had reported Schedule C income on his federal returns but had not reported or paid corresponding gross receipts tax.

19. On February 2, 2014, because of the Schedule C income and gross receipts discrepancy, the Department sent Taxpayer Notice of Limited Scope Audit Commencement to Taxpayer. [Department Ex. A-1].

20. On February 21, 2014, the Department sent Taxpayer Notice of Limited Scope Audit Commencement. The Notice of Limited Scope Audit Commencement advised Taxpayer that he had 60-days, until April 22, 2014, to produce any nontaxable transaction certificate ("NTTC or NTTCs") necessary to support a claimed deduction. [Department Ex. B-1].

21. Taxpayer did not provide the Department with any NTTCs executed by the 60-day deadline, April 22, 2014.

22. On May 10, 2014, Professional Nails executed a Type 5 NTTC to Taxpayer, 18-days after the April 22, 2014 60-day NTTC deadline. [Taxpayer Ex. #1].

23. In the absence of supporting NTTCs or other documentation, the Department issued its assessments referenced in findings #1-4 to Taxpayer on June 6, 2014.

24. On October 28, 2014, Fantacy Nail Salon executed a Type 5 NTTC to Taxpayer, well after the April 22, 2014 60-day NTTC deadline and after the Department's assessments. [Taxpayer Ex. #1].

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

26. Taxpayer indicated that the owners of both Professional Nails and Fantacy Nails informed him that they paid gross receipts taxes on the transactions for which Taxpayer provided his services.

27. Taxpayer used a Bella Candelaria to prepare his personal income taxes. Taxpayer believed that Ms. Candelaria was a CPA. However, a review of the New Mexico Regulation and Licensing Department license records is inconclusive.[1]

28. Taxpayer did not discuss gross receipts tax with Ms. Candelaria.

29. Taxpayer prepared his own CRS returns without consulting Ms. Candelaria or any other tax professional.

30. As of the date of hearing, for 2008 Taxpayer owed $772.99 in gross receipts tax, $155.62 in penalty, and $162.03 in interest for a total 2008 liability of $1,090.64. In 2009, Taxpayer owed $829.14 in gross receipts tax, $165.83 in penalty, and $134.77 in interest for a total 2009 liability of $1,129.74. In 2010, Taxpayer owed $1,194.29 in gross receipts tax, $238.86 in penalty, and $146.63 in interest for a total 2010 liability of $1,579.78. In 2011, Taxpayer owed $1,386.46 in gross receipts tax, $277.30 in penalty, and $120.36 in interest for a

[1] Neither party objected at hearing to the Hearing Officer taking administrative notice of the information provided on the New Mexico Regulation and Licensing Division website. As of December 22, 2014, using the last name "Candelaria, "the RLD license look up website shows that an Annette Candelaria is a licensed CPA. However, there is no listing for a Bella Candelaria or that Annette Candelaria goes by the name "Bella." *See* http://verification.rld.state.nm.us/SearchResults.aspx (Dec. 22, 2014 and printed in hearing file).

total 2011 liability of $1,784.12. As of the date of hearing, Taxpayer had a total outstanding liability of $5,584.28. [Department Ex. C].

DISCUSSION

Considering the protest letter and Taxpayer's argument at hearing, there are four issues in this protest. The first issue is whether Taxpayer worked as an employee for Professional Nails and Fantacy Nails and therefore was exempt from gross receipt tax in 2009, 2009, 2010, and 2011. The second issue is whether Taxpayer was entitled to deduction from gross receipts tax for his sale of manicure services to Professional Nails and Fantacy Nails for resale when he did not present timely executed NTTCs. The third issue at hearing is whether Taxpayer was entitled to abatement of tax on equitable recoupment grounds. The final issue is whether Taxpayer's consultation with Ms. Candelaria serves as a basis to abate penalty.

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. Unless otherwise specified, for the purposes of the Tax Administration Act, "tax" is defined to include interest and civil penalty. *See* NMSA 1978, §7-1-3 (X) (2013). Under Regulation 3.1.6.13 NMAC, the presumption of correctness under Section 7-1-17 (C) extends to the Department's assessment of penalty and interest.

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 his right to claim the deduction.

Gross Receipts Tax and the Employee Wages Exemption

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). Gross receipts applies to the performance of a service in New Mexico. *See* NMSA 1978, § 7-9-3.5 (2007). 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 testified that he was an employee of Professional Nails and Fantacy Nails or worked for those entities. Exempted from gross receipts taxes are the wages of employees. *See* NMSA 1978, § 7-9-17. A person who is an employee is not required to register, file, or pay gross receipts tax. *See* § 7-9-5 (A) and Regulation 3.2.100.8 NMAC. However, as referenced, Taxpayer carries the burden of establishing he was entitled to the claimed exemption. *See Wing Pawn Shop*, ¶16.

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:

> A. In determining whether a person is an employee, the department will consider the following indicia:
> (1) is the person paid a wage or salary;
> (2) is the "employer" required to withhold income tax from the person's wage or salary;
> (3) is F.I.C.A. tax required to be paid by the "employer";

(4) is the person covered by workmen's compensation insurance;
(5) is the "employer" required to make unemployment insurance contributions on behalf of the person;
(6) does the person's "employer" consider the person to be an employee;
(7) does the person's "employer" have a right to exercise control over the means of accomplishing a result or only over the result (control does not mean "mere suggestion").

Under Regulation 3.2.105.7 (B) NMAC, "[i]f all of the indicia mentioned Subsection A of Section 3.2.105.7 NMAC are present, the department will presume that the person is an employee. However, a person may be an employee even if one or more of the indicia are not present."

Applying the criteria under Regulation 3.2.105.7 (B) NMAC to the facts of this case, Taxpayer did not establish that he was an employee of Professional Nails and/or Fantacy Nails during the relevant period. Taxpayer received commission checks from Professional Nails and Fantacy Nails rather than wages or a salary. Professional Nails and Fantacy 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. Taxpayer set his own hours for work at Professional Nails and Fantacy Nails. There is no evidence that Professional Nails and/or Fantacy Nails considered Taxpayer to be an employee. Since none of the criteria support Taxpayer's claim, Taxpayer did not meet his burden of establishing he was entitled to the exemption from gross receipts tax on wages of an employee under Section 7-9-17. *See Wing Pawn Shop*, ¶16. Taxpayer was a person engaged in business and all of his receipts in 2008 through 2011 are presumed subject to gross receipts tax. *See* § 7-9-3.3 and § 7-9-5.

Sale for Resale Deduction and the Requirement of a Timely Executed NTTC

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 his 2008, 2009, 2010, and 2011 performance of manicure services for Professional Nails and Fantacy Nails. 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). There is no statutory or regulatory provision that would allow the Department to extend the 60-day deadline for a "third time," as Taxpayer asked for in his protest letter.

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 two Notices of Limited Scope Audits: one on February 2, 2014 and another February 21, 2014. The Department had not explanation as to why it sent out two Notices of Limited Scope Audit. However, giving Taxpayer every benefit[2], the Department calculated the 60-day deadline from the latter date. The February 21, 2014 Notice of Limited Scope Audit provided Taxpayer with notice that he had 60-days, until April 22, 2014, to produce any requisite NTTCs to support a claimed deduction.

[2] This was the proper determination in light of the intent of the statutory estoppel provisions of NMSA 1978, Section 7-1-60 (1993).

Taxpayer was unable to produce any NTTCs executed by the April 22, 2014, 60-day deadline. Both NTTCs that Taxpayer eventually presented were untimely executed after Section 7-9-43's strict 60-day second chance provision. The reasons for Taxpayer's non-compliance with the 60-day 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 his 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 assessments of gross receipts tax in 2008, 2009, 2010, and 2011 were proper.

Equitable Recoupment.

Taxpayer's protest letter indicated that the gross receipts tax "have been paid for by the employer." While Taxpayer did not expressly use the phrase "equitable recoupment" or cite NMSA 1978, Section 7-1-28 (F) (2013), a reasonable reading of that paragraph places the parties on notice that Taxpayer believed he should not be liable for taxes already paid by the salon owners on his services, a sentiment that fairly encompasses the legal concept of equitable recoupment. At the hearing, Taxpayer testified that both owners of Professional Nails and Fantacy Nails told Taxpayer that they had already paid the gross receipts tax on Taxpayer's services.

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 he 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 owners of Professional Nails and Fantacy Nails paid the gross receipts tax on the services. The Professional Nails and Fantacy Nails owners did not appear to testify at the hearing. Taxpayer had no other evidence that the Professional Nails and Fantacy Nails owners had paid gross receipts tax, like a statement from the owners or the owners' tax returns. While hearsay evidence is admissible evidence in an administrative proceeding, without more in this case it is of insufficient weight to find that the Professional Nails and Fantacy Nails owners 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 are relevant in this decision. 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, 2009, 2010, and 2011 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, 2009, 2010, and 2011 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 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 for two reasons. First, the evidence is unclear whether Bella Candelaria was an accountant. Secondly, Taxpayer testified that Ms. Candelaria only prepared his personal income taxes and played no role in Taxpayer's CRS returns. Since Ms. Candelaria only focused on personal income taxes while Taxpayer prepared his own gross receipts tax on the CRS returns, Taxpayer could not have relied on her for gross receipts tax advice. 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.

Tiffany Construction Co. v. Bureau of Revenue, 1976-NMCA-127, ¶5, 90 N.M. 16. By failing to ascertain the requirements of timely obtaining NTTCs either at the time of the transaction or within 60-days of the Department's notice, Taxpayer was negligent and liable for civil penalty 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. Taxpayer did not overcome the presumption of correctness that attached to the assessments under NMSA 1978, Section 7-1-17 (C) (2007) and *Archuleta v. O'Cheskey*, 1972-NMCA-165, ¶11, 84 N.M. 428.

C. Taxpayer did not carry his burden to establish he was an employee subject to the exemption under NMSA 1978, Section 7-9-17 because all of the seven criteria under Regulation 3.2.105.7 (A) NMAC were against Taxpayer

D. Because Taxpayer was a person engaged in business under NMSA 1978, Section 7-9-4 (2002), all of Taxpayer's receipts in 2008, 2009, 2010, and 2011 are presumed subject to gross receipts tax under NMSA 1978, Section 7-9-5 (2002).

E. Taxpayer did not present timely executed NTTCs to support the claimed deduction for the sale of a service for resale under NMSA 1978, Section 7-9-48 (2000). Under NMSA 1978, Section 7-9-43 (2011) and Regulation 3.2.201.12 (C), without 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).

F. 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).

G. 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.

H. 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 $772.99 in gross receipts tax, $155.62 in penalty, and $162.03 in interest for a total 2008 liability of $1,090.64. In 2009, Taxpayer owed $829.14 in gross receipts tax, $165.83 in penalty, and $134.77 in interest for a total 2009 liability of $1,129.74. In 2010, Taxpayer owed $1,194.29 in gross receipts tax, $238.86 in penalty, and $146.63 in interest for a total 2010 liability of $1,579.78. In 2011, Taxpayer owed $1,386.46 in gross receipts tax, $277.30 in penalty, and $120.36 in interest for a total 2011 liability of $1,784.12. As of the date of hearing, Taxpayer had a total outstanding liability of $5,584.28.

DATED: December 23, 2014.

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