STATE OF NEW MEXICO
ADMINISTRATIVE HEARINGS OFFICE
TAX ADMINISTRATION ACT

IN THE MATTER OF THE PROTEST OF
HUBBARD LOVELL & CO. **No. 16-12**
TO ASSESSMENTS ISSUED UNDER LETTER
ID NO.'s L1823850544 and L0750108720

DECISION AND ORDER

A protest hearing occurred on the above captioned matter on December 9, 2015 before Brian VanDenzen, Esq., Chief Hearing Officer, in Santa Fe. At the hearing, Lovell Hubbard and Reggie Hubbard appeared *pro se* for Hubbard Lovell & Co. ("Taxpayer"), along with Taxpayer witness Randy Price. Staff Attorney Gabrielle Dorian appeared representing the State of New Mexico Taxation and Revenue Department ("Department"). Protest Auditor Nicholas Pacheco appeared as a witness for the Department. Department Exhibits A-F were admitted into the record. All exhibits are more thoroughly described in the Administrative Exhibit Coversheet. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. On June 29, 2015, through letter id. no. L1823850544, the Department assessed Taxpayer for $1,897.92 in gross receipts tax, $379.58 in penalty, and $210.15 in interest for a total assessment of $2,487.65 for the CRS reporting periods from June 1, 2011 through December 31, 2011.

2. On June 29, 2015, through letter id. no. L0750108720, the Department assessed Taxpayer for $1,571.80 in gross receipts tax, $314.36 in penalty, and $125.42 in interest for a

total assessment of $2,011.58 for the CRS reporting periods from June 1, 2012 through December 31, 2012.

3. On September 22, 2015, Taxpayer protested the Department's assessments.

4. On September 24, 2015, the Department's protest office acknowledged receipt of the protest.

5. On November 2, 2015, the Department filed a request for hearing in this matter with the Administrative Hearings Office, an agency independent of the Department under the Administrative Hearings Office Act.

6. On November 3, 2015, the Administrative Hearings Office sent Notice of Administrative Hearing, scheduling this matter for a merits hearing on December 9, 2015.

7. On December 9, 2015, within 90-days of the Department's receipt and acknowledgement of a valid protest, the Administrative Hearings Office conducted a hearing in the above-captioned matter.

8. Mr. Lovell Hubbard is the owner and operator of Taxpayer.

9. Taxpayer provides auto restoration and detailing services in New Mexico, primarily to car dealerships in preparation for sale of vehicles. Restoration and detailing work encompasses far more than car-washing services; it includes repairing upholstery, repairing a vehicle's body, replacing parts visible in the engine block, etc.

10. Car dealerships would bring Taxpayer a used vehicle needing restoration before they could resell the vehicle.

11. The car dealerships would provide Taxpayer with a nontaxable transaction certificate ("NTTC" or "NTTCs") and would not pay Taxpayer gross receipts tax.

12. In particular, three car dealerships all listed in the Motor Vehicle Division's registered motor vehicle dealer list executed NTTCs to Taxpayer for Taxpayer's services:

a. Taxpayer received a Type 2 NTTC executed on February 2, 2007 from one car dealership. [Dept. Ex. B & F].

b. Taxpayer received a Type 13 NTTC executed on November 20, 1996, and a Type 1 NTTC executed November 20, 1996 from another car dealership. [Dept. Ex. C, D, & F].

c. Taxpayer received a Type 13 NTTC executed on November 4, 1997 from the third car dealership. [Dept. Ex. E & F].

13. Taxpayer did not collect gross receipts taxes on the services it performed for car dealerships that provided it with a NTTC.

14. Without doing any further inquiry with the car dealerships, the Department, or a tax professional, Taxpayer believed that the NTTCs provided to it by the car dealerships exempted it from gross receipts tax. Along those lines, Mr. Hubbell stated his focus was on running his own business, not on running the car dealership's business, so once he received the NTTCs from the car dealerships he believed Taxpayer did not need to pay gross receipts tax on those transactions.

15. The Department did make a series of pre-hearing abatements in Taxpayer's favor that reduced the assessed amounts.

16. As of the date of hearing, for the CRS reporting period ending on December 31, 2011, Taxpayer owed $883.84 in gross receipts tax, $87.33 in interest, and $176.76 in penalty for a total outstanding liability of $1,147.93. As of the date of hearing, for the CRS reporting period

ending on December 31, 2012, Taxpayer owed $544.57 in gross receipts tax, $33.24 in interest, and $108.91 in penalty for a total outstanding liability of $686.72. [Dept. Ex. A].

DISCUSSION

There are two main issues in this protest. The first issue is whether any deduction from gross receipts tax applies to the services performed by Taxpayer for the car dealerships. The second issue is whether Taxpayer's timely receipt of properly executed NTTCs provides Taxpayer with safe-harbor from the assessed tax.

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. *See Chevron U.S.A., Inc. v. State ex rel. Dep't of Taxation & Revenue*, 2006-NMCA-50, ¶16, 139 N.M. 498, 503 (agency regulations interpreting a statute are presumed proper and are to be given substantial weight).

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 its right to claim the deduction.

Gross Receipts Tax and the Motor Vehicle Excise Tax

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). Under NMSA 1978, Section 7-9-3.5 (A) (1) (2007), the term "gross receipts" is broadly defined to mean

> the total amount of money or the value of other consideration received from selling property in New Mexico, from leasing or licensing property employed in New Mexico, from granting a right to use a franchise employed in New Mexico, from selling services performed outside New Mexico, the product of which is initially used in New Mexico, or from performing services in New Mexico.

"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, there is no doubt that Taxpayer was an entity engaged in the business of performing high-quality auto detailing and vehicle restoration services. Thus, under Section 7-9-5, all of Taxpayer's receipts are statutorily presumed subject to gross receipts tax.

The New Mexico Gross Receipts and Compensating Tax Act provides numerous deductions of gross receipts tax. Taxpayer did not assert any specific deduction that it was claiming in this case. However, a deduction potentially pertinent to this case is the sale of a service for resale deductible

under NMSA 1978, Section 7-9-48 (2000). Section 7-9-48 (emphasis added) 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 course of business and the resale must be subject to the gross receipts tax....*

The deduction is premised on the sale of a service for resale when the resale occurs in the regular course of business and the resale is subject to New Mexico gross receipts tax. If the resale is not subject to gross receipts tax, the transaction is not covered by the deduction under Section 7-9-48, and thus is taxable to the original seller of the service. This deduction must be supported by a Type 5 NTTC, which Taxpayer did not possess in this matter.

Under NMSA 1978, Section 7-9-22 (2004), the sale of motor vehicles subject to the Motor Vehicle Excise Tax is exempt from New Mexico gross receipts tax. Since the resold vehicles were subject to the Motor Vehicle Excise Tax, the resale of the vehicles was exempt from New Mexico gross receipts tax. Consequently, the deduction under Section 7-9-48 does not apply to the transactions at issue in this protest and Taxpayer should have been paying the gross receipts tax on these transactions.

Taxpayer referenced that it was unfair to hold it liable to a change in the law in 2008 when it had conducted business this way since 1977. It is unclear what specific change of law Taxpayer believes occurred in 2008. The clear language of the deduction under Section 7-9-48, established well before 2008, premises the deduction on an end sale subject to gross receipts tax. Moreover, in 1997, the Administrative Hearings Office predecessor agency, the Hearings Bureau, issued a decision and order *In the Matter of the Protest of Done-Rite Detail*, No. 97-36 (non-precedential but nevertheless persuasive). That publicly available decision and order found that the deduction under Section 7-9-48 does not apply to auto-detailing services performed for car dealerships because the

end sale of the vehicle was not subject to gross receipts tax. Further, publicly available Department Ruling 401-00-1, issued on January 18, 2000, makes clear that because "car dealers are not subject to gross receipts tax on the sale of automobiles to their customers… the deduction provided in Section 7-9-48 NMSA 1978" is not applicable to a car washing and detailing service selling their services to the car dealership. While Taxpayer tried to distinguish the nature of its business as a high-end auto-detailer from the car washer discussed in Ruling 401-00-1, that is not a material difference in the analysis as both a car wash and Taxpayer were separate businesses providing a service to an auto dealership in preparation for resale of the vehicle[1].

Further, the fact that Taxpayer did not collect gross receipts tax on these transactions, as Taxpayer argued at hearing, is no defense to the Department's assessments. The legal incidence of New Mexico gross receipts tax falls on the person engaged in business, which in this case is Taxpayer. *See* NMSA 1978, § 7-9-4 (2010) (New Mexico gross receipts tax imposed upon a person engaging in business); *see also* Regulation 3.2.4.8 NMAC (4/30/01) (a person engaged in business is solely liable for gross receipts tax and are not collectors on behalf of state); *See also Tiffany Construction Company v. Bureau of Revenue*, 96 N.M. 296, 300, 629 P.2d 1225, 1229 (1981). Taxpayer was an entity engaged in business, with all its receipts presumed subject to gross receipts tax. Absent Taxpayer establishing an applicable exemption or deduction shielding the receipts from gross receipts tax, the burden is on Taxpayer to pay gross receipts on that tax regardless of whether Taxpayer passed on the cost of that tax to its customers.

Taxpayer did not articulate any other specific statutory deduction it was claiming. Again, as discussed and cited above, it is Taxpayer who carries the burden to overcome the presumption of

[1] There was some discussion at hearing from Taxpayer's witness that just like the car dealership's auto-mechanic services in preparing the car for resale are not subject to gross receipts tax, Taxpayer's detailing services should equally not be subject to tax. While that issue is not before the Administrative Hearings Office, unlike a dealership's own in-house auto-mechanic staff, Taxpayer is a distinct business with its own receipts from the transaction presumed subject to gross receipts tax.

correctness on the assessment and to establish entitlement to a claimed to deduction. Even in the absence of an assertion of a specific deduction, a quick review of the statutes under the Gross Receipts and Compensating Tax Act does not show any other particular deduction that might be relevant to this case. The sale of a service for resale actually requires a Type 5 NTTC rather than the Type 2 that Taxpayer possessed. The Type 1 and Type 13 NTTCs (series 1993) that Taxpayer possessed in this case relate to manufacturers deductions, none of which appear applicable to the facts of this case.

Finally, because Mr. Hubbard did not collect the tax at the time of the transactions and has subsequently retired, Taxpayer argued that it was no longer in a position to pay the assessed tax liability. However, inability to pay is not grounds to abate an assessment. The Department is required to assess a taxpayer for any tax liability exceeding $25.00. *See* § 7-1-17 (A). NMSA 1978, Section 7-1-20 (1995) only allows the Department to compromise on a tax assessment when it has a "good faith doubt" to the liability. That section does not contain any financial hardship exception. Further, Regulation 3.1.6.14 NMAC (01/15/01) does not allow the Department to abate otherwise legally required assessments based on Taxpayer's ability to pay.

Does the NTTC, good-faith, safe harbor provision apply?

While the transactions at issue were not deductible under Section 7-9-48, and Taxpayer did not assert any other potential statutory basis for a deduction, Taxpayer did nevertheless argue that by receiving and relying on NTTCs, no gross receipts tax is owed. This raises a potential question about whether the good-faith, safe harbor protection under NMSA 1978, Section 7-9-43 (A) (2011) might still give Taxpayer relief from paying the assessed tax.

Section 7-9-43 (A) grants taxpayers a good-faith acceptance, conclusive evidence safe harbor from taxation in some circumstances:

> [w]hen the seller or lessor accepts a nontaxable transaction certificate within the required time and in good faith that the buyer or lessee will employ the property or service transferred in a nontaxable manner, the properly executed nontaxable transaction certificate shall be conclusive evidence, and the only material evidence, that the proceeds from the transaction are deductible from the seller's or lessor's gross receipts.

In other words, the statute grants the seller of the service safe harbor from taxation when the seller timely accepts a properly executed NTTC in good faith from the buyer. Regulation 3.2.201.15 NMAC (05/31/01) discusses good faith acceptance of a NTTC:

> Acceptance of [NTTCs] in good faith that the property or service sold thereunder will be employed by the purchaser in a nontaxable manner is determined at the time of each transaction. The taxpayer claiming the protection of a certificate continues to be responsible that the goods delivered or services performed thereafter are of the type covered by the certificate.

The Administrative Hearings Office, and its predecessor the Hearings Bureau, have employed a broader view of the good-faith, safe harbor protection since the 2013 issuance of the decision and order *In the Matter of the Protest of Case Manager*, No. 13-12 (non-precedential) and *In the Matter of the Protest of Rio Grande Electric Co., Inc*, No. 13-16 (non-precedential). In an unpublished decision, the New Mexico Court of Appeals affirmed the ruling in the Case Manager decision and order narrowly under a right for any reason standard. *See New Mexico Taxation and Revenue Dep't. v. Case Manager*, No. 32,940 (N.M. Ct. App. April 29, 2015) (non-precedential).

However, even under the broader reading of the safe harbor protection employed since the issuance of the *In the Matter of the Protest of Case Manager* and *In the Matter of the Protest of Rio Grande Electric Co., Inc*, decisions, the good-faith, safe-harbor provision is limited to cases where the underlying transaction itself is otherwise covered by a recognized statutory deduction. *See In the*

Matter of the Protest of Adecco USA, Inc., Decision and Order No. 14-16 (non-precedential); *See also In the Matter of the Protest of The GEO Group, Inc.*, Decision and Order No. 14-36 (non-precedential). That is, the safe harbor provision cannot serve to make a taxable transaction not covered by any recognized statutory deduction into a nontaxable transaction merely by possession of a NTTC.

In *McKinley Ambulance Serv. v. Bureau of Revenu*e, 1979-NMCA-026, ¶10, 92 N.M. 599, the Court of Appeals held that the good faith safe harbor provision did not protect a seller from taxation "unless the certificate covered the receipts in question." The court went on to say that since there was "no certificate applicable" for the type of services that taxpayer provided, the Department's denial of the deduction was proper. *See McKinley*, ¶13. Although perhaps in dicta, consistent with *McKinley*, the Court of Appeals stated in *Gas Co. v. O'Cheskey*, 1980-NMCA-085, ¶12, 94 N.M. 630 that "[t]he issuance of a 'Nontaxable Transaction Certificate' does not operate to transform an otherwise taxable transaction into a nontaxable transaction." Further, in *Arco Materials, Inc. v. Taxation & Revenue Dep't*, 1994-NMCA-062, 18 N.M. 12 (overturned on other grounds), the New Mexico Court of Appeals relied on a taxpayer's continuing obligation to ensure that the NTTC covers the type of goods sold in finding that a taxpayer was not entitled to a deduction when the transaction was no longer subject to a deduction. While there is some language in *Leaco Rural Tel. Coop. v. Bureau of Revenue*, 1974-NMCA-076, ¶15, 86 N.M. 629 and *Continental Inn v. N.M. Taxation and Revenue Dep't.*, 1992-NMCA-030, 113 N.M. 588 suggestive that timely, good faith acceptance of a properly executed NTTC is enough for a taxpayer to claim a deduction even if the transaction itself did not fall under any recognized deduction[2], that

[2] This issue was thoroughly discussed by the undersigned *In the Matter of the Protest of Case Manager* decision and order and will not be fully repeated here in the interest of brevity.

language must be read in the context of the subsequent case law addressed above, *McKinley* , *Gas Co*., and *Arco Materials.*

The problem with applying the good-faith, safe harbor provision in this case, and what makes this case distinguishable from *Continental Tire*, is that under no circumstance could these transactions qualify for the deduction because the car dealerships would pay the Motor Vehicle Excise Tax rather than the gross receipts tax. Because the transactions at issue in this protest could never be the covered by the recognized deduction under Section 7-9-48, there was no NTTC certificate applicable to Taxpayer's services and Taxpayer's acceptance of a NTTC in this instance does not convert what was clearly a taxable transaction into nontaxable one. *See McKinley*, ¶13; *See also Gas Co*. ¶12.

As mentioned, the *Continental Inn* case is distinguishable from the facts of the present protest because in that case the transactions were potentially deductible under a recognized deduction if the buyer in that case had followed through the usual requirements of the Gross Receipts and Compensating Tax Act. In *Continental Inn*, a general contractor constructing an inn issued NTTCs to subcontractors. *See id*. at ¶1-3. The Court of Appeals noted that transactions themselves were potentially deductible under two recognized deductions if the general contractor ultimately paid gross receipts tax on the sale of the constructed inn. *See id*. at ¶7. However, for uncertain if not inexplicable reasons, the general contractor choose not to pay gross receipts tax on the constructed inn. *See id*. The Department pursued the general contractor with a compensating tax assessment[3], which the Court of Appeals ultimately upheld. In addressing one of that taxpayer's arguments, the Court of Appeals in *Continental Inn* reviewed the good-faith,

[3] Because Taxpayer did not present the Type 5 NTTC required for the sale of a service for resale, Regulation 3.2.206.8 NMAC, which allows the Department to impose a compensating tax against the buyer when the buyer incorrectly issues an appropriate NTTC, is not applicable to this case.

safe harbor provision under Section 7-9-43 and found that the general contractor's issuance of the NTTCs to the subcontractors "represented to the subcontractors that the use of the NTTCs was such that the subcontractors were entitled to the deduction from gross receipts." *id*. ¶13. This statement is arguably dicta, since the case involved Taxpayer's liability for compensating tax rather than the subcontractors' ability to claim a deduction. But even if applicable, *Continental Inn* is still distinguishable from this in that the transactions with the subcontractors in *Continental Inn* would have qualified for a recognized deduction but for the buyer's failure to otherwise proceed as expected in the transaction; in this protest, there is no circumstance where the transaction could have qualified for any recognized deduction because the buyer of the services—the car dealerships—subsequent resale of the vehicles would never be subject to gross receipts tax. There simply exits no deduction from payment of gross receipts tax based on the later collection of the motor vehicle excise tax. Nor would such a deduction be consistent with the idea behind gross receipts tax deductions of reducing tax pyramid within the broad-based gross receipts tax across multiple transactions and multiple businesses.

Moreover, it cannot be said in this case that Taxpayer's acceptance of the NTTCs was made in good-faith. At one point, Taxpayer said its only obligation was to run its own business and not worry about the car dealership's business; when they presented the NTTCs as part of their business, that was enough for him to proceed without paying a gross receipts tax. But when claiming a deduction premised on the good faith acceptance of a NTTC, the language of Section 7-9-48 and the requirements of Regulation 3.2.201.15 NMAC establish that the accepting seller has some obligation at the time of the transaction to check whether the services will be used in a nontaxable manner—i.e. will be resold in the regular course of business in a sale subject to gross receipts tax—and a continuing obligation thereafter to ensure that the services provided are of the type covered

by the certificate. It does not appear that Taxpayer took any actions (even minimally) to ensure that his services sold in the transaction would be of the type covered by the certificate, as specified by Regulation 3.2.201.15 NMAC. If Taxpayer would have taken such minimal steps, either directly or through consultation with a tax professional, Taxpayer would have quickly learned that the transaction was not deductible under clear language of Section 7-9-48 requiring that the subsequent resale be subject to gross receipts tax, the 1997 published decision and order *In the Matter of the Protest of Done-Rite Detail*, No. 97-36, and the published 2000 Department ruling 401-00-1. Because of Taxpayer's inaction despite the requirements of Regulation 3.2.201.15 NMAC, Taxpayer did not establish the good-faith acceptance contemplated and required under Section 7-9-43 (A) before the good-faith, safe harbor provision could apply.

Interest and Penalty.

Since Taxpayer challenged all of the assessments, interest and penalty will briefly be addressed even though they were not expressly argued at hearing. 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. v. N.M. Oil Conservation Comm'n*, 2009-NMSC-013, ¶22, 146 N.M. 24. 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. In this case, the Department has no discretion under Section 7-1-67 and must assess interest against Taxpayer from when the tax was originally due until Taxpayer pays the gross receipts tax principal in this matter.

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, NMSA 1978 Section 7-1-69 (2007) requires that

> there *shall* be added to the amount assessed a penalty in an amount equal to the greater of: (1) two percent per month or any fraction of a month from the date the tax was due multiplied by the amount of tax due but not paid, not to exceed twenty percent of the tax due but not paid.

(*italics* added for emphasis).

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." *See Marbob Energy Corp* , ¶22 (use of the word "shall" in a statute indicates provision is mandatory absent clear indication to the contrary).

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." In this case, Taxpayer was negligent under Regulation 3.1.11.10 (B) & (C) NMAC because Taxpayer failed to report and pay gross receipts tax when due. While Taxpayer credited this problem to the car dealerships' presentation of the NTTCs, 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, which as discussed above Taxpayer did not do in this instance. *Tiffany Construction Co. v. Bureau of Revenue*, 1976-NMCA-127, ¶5, 90 N.M. 16. In New Mexico a lack of knowledge of the requirements of taxation, inadvertent error, and/or erroneous belief constitutes the civil negligence subject to penalty under Section 7-1-69. *See El Centro Villa Nursing Center v. Taxation and Revenue Department*, 1989-NMCA-070, 108 N.M. 795 (inadvertent error constitutes

civil negligence). Although there was some minimal evidence presented that at one point, Taxpayer had an accountant, that accountant was not in place during the period in question and thus there were no grounds to find nonnegligence in this case. The Department's assessment of penalty and interest in this matter was appropriate and Taxpayer's protest is denied.

CONCLUSIONS OF LAW

A. Taxpayer filed a timely, written protest to the Department's denial of the claim for refund, and jurisdiction lies over the parties and the subject matter of this protest.

B. The hearing was timely set and held within 90-days of protest under NMSA 1978, Section 7-1B-8 (2015).

C. 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 and did not establishment entitlement to any specific statutory deduction.

D. The sale of a motor vehicle subject to the excise tax is exempt from gross receipts tax under NMSA 1978, Section 7-9-22 (2004).

E. The transactions at dispute in this protest were not eligible for the sale of a service for resale deduction under NMSA 1978, Section 7-9-48 (2000) because the subsequent resale of the restored cars by the auto dealerships were exempt pursuant to NMSA 1978, Section 7-9-22 (2004) from gross receipts tax.

F. Because the no deduction or certificate covered the transaction at issue, Taxpayer did not establish good-faith acceptance of the NTTCs and thus was not entitled to NMSA 1978, Section 7-9-43 (A)'s safe harbor protection. *See McKinley Ambulance Serv. v. Bureau of Revenue*, 1979-NMCA-026, ¶10, 92 N.M. 599.

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), Taxpayers are liable for civil negligence penalty under the negligence definition found under Regulation 3.1.11.10 (C) NMAC.

For the foregoing reasons, the Taxpayers' protest **IS DENIED**. As of the date of hearing, for the CRS reporting period ending on December 31, 2011, Taxpayer owed $883.84 in gross receipts tax, $87.33 in interest, and $176.76 in penalty for a total outstanding liability of $1,147.93. As of the date of hearing, for the CRS reporting period ending on December 31, 2012, Taxpayer owed $544.57 in gross receipts tax, $33.24 in interest, and $108.91 in penalty for a total outstanding liability of $686.72. Interest under both assessments continues to accrue until the underlying tax principal is satisfied.

DATED: April 26, 2016.

Brian VanDenzen
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