STATE OF NEW MEXICO
ADMINISTRATIVE HEARINGS OFFICE
TAX ADMINISTRATION ACT

IN THE MATTER OF THE PROTEST OF
MATTHEW MARSHALL **No. 17-05**
RJ HANDYMAN
TO ASSESSMENT ISSUED UNDER LETTER
ID NO. L1839669296

DECISION AND ORDER

A protest hearing occurred on the above captioned matter on November 9, 2016 before Brian VanDenzen, Esq., Chief Hearing Officer of the Administrative Hearings Office, in Santa Fe, with Hearing Officer Chris Romero observing. At the hearing, Matthew Marshall and Kayla Marshall appeared *pro se* for RJ Handyman ("Taxpayer"). Staff Attorney Elena Morgan appeared representing the State of New Mexico Taxation and Revenue Department ("Department"). Protest Auditor Veronica Galewaler appeared as a witness for the Department. Taxpayer Exhibits #1-13 and Department Exhibits A1 and A2 were admitted into the record. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. On July 30, 2015, under letter id. no. L1839669296, the Department assessed Taxpayer for $1,519.68 in gross receipts tax, $309.94 in penalty, and $125.25 in interest for the CRS reporting periods between June 1, 2012 through December 31, 2012.

2. On September 30, 2015, Taxpayer prepared a letter of protest of the Department's assessment.

3. The Department received Taxpayer's protest on October 5, 2015.

4. On October 9, 2015, the Department's protest office acknowledged receipt of a valid protest.

5. On December 4, 2015, the Department filed a request for hearing in this matter with the Administrative Hearings Office.

6. On December 7, 2015, the Administrative Hearings Office sent Notice of Administrative Hearing, scheduling this matter for a merits hearing on January 5, 2016.

7. On December 21, 2015, Taxpayer, through letter of Matthew Marshall, filed a request to continue the January 5, 2016 merits hearing as Mr. Marshall awaited the IRS to process an amended return related to the time period at issue in the assessment. The Department did not object to the continuance request.

8. On December 31, 2015, the Administrative Hearings Office issued a Continuance Order and Amended Notice of Administrative Hearing. That order found that the Administrative Hearings Office complied with the 90-day hearing requirement under NMSA 1978, Section 7-1B-8 (B) (2015) in setting the matter for the January 5, 2016 hearing date, continued the January 5, 2016 hearing date at Taxpayer's request, and reset the matter for a hearing on May 17, 2016.

9. On May 11, 2016, Taxpayer, through letter of Matthew Marshall, again filed a request to continue the May 17, 2016 merits hearing as Mr. Marshall awaited the IRS to process an amended return related to the time period at issue in the assessment. The Department did not file an objection to the second continuance request.

10. On May 16, 2016, the Administrative Hearings Office issued a Second Continuance Order and Amended Notice of Administrative Hearing. That order found that the Administrative Hearings Office complied with the 90-day hearing requirement and that the

continuing delay was attributable to Taxpayer's continuance requests, continued the May 17, 2016 hearing date, and reset the matter for a hearing on November 9, 2016.

11. At the hearing, without objection from either party, the record was left open for further submission of records related to Taxpayer's invoices and written response to the records.

a. On November 14, 2016, Taxpayer submitted 57-pages of invoices, which are admitted into the record as Taxpayer Exhibit #13.

b. On November 17, 2016, the Department submitted a letter addressing the invoices Taxpayer submitted, which is incorporated as argument in the record.

c. On November 18, 2016, Taxpayer submitted its own written argument addressing the invoices, which is also incorporated into the record as argument.

12. Taxpayer RJ Handyman is a handyman construction and maintenance service business, owned and operated as a sole proprietorship of Matthew Marshall.

13. Matthew Marshall's wife Kayla (nee Chambers) Marshall assists Taxpayer with maintaining the records of the business and filing of taxes.

14. In 2012, in order to simplify its business practices, Taxpayer stopped relying on NTTCs when he purchased materials necessary to complete the handyman work at places like Home Depot and Lowe's. Instead, Taxpayer moved to a model where he separately stated and billed the material costs, including the gross receipts tax paid to the vendor, to his end customer.

15. Taxpayer maintained receipts for all materials purchased while performing a job for his customers. [Taxpayer Ex. #1].

16. Taxpayer separately stated and billed his clients for the cost of materials, and did not include a tax on this amount. [Taxpayer Ex. #13].

17. Taxpayer billed his clients for the cost of his labor plus the gross receipts tax on that amount. [Taxpayer Ex. #13].

18. Taxpayer maintained a detailed spreadsheet showing the costs of reimbursed materials per customer, the amount of Taxpayer's total receipts less the reimbursed materials per customer, and tax amount on those net receipts. [Taxpayer Ex. #2].

19. Taxpayer is registered with the Department with a CRS number.

20. In addition to assisting Taxpayer, Kayla Marshall also engaged in her own business service endeavors during the relevant period but was not then registered with the Department as a business and did not have her own CRS number.

21. In 2012, Kayla Marshall contracted with JMA Services ("JMA"), an out-of-state company, as an independent service provider to perform door knocking and document delivery services at residential property locations in New Mexico for JMA's clients, which were often banks holding mortgages or auto loans. [Taxpayer Ex. #4 and #5].

22. Ms. Marshall then prepared and delivered a report of the door knocking and document delivery, which included information about the contact, document delivery, and the general description of the relevant property to JMA over the internet.

23. Ms. Marshall was paid a single fee per report submitted regardless of how many door knocks and site visits she did at a location.

24. In 2012, Kayla Marshall received $8,035.00 from JMA for performing services identified under her contract with JMA. JMA issued Ms. Marshall a Form-1099 listing that amount.

25. In 2012, Kayla Marshall sold $3,080.00 in goods online through Amazon.com and eBay.com to out-of-state buyers. [Taxpayer Ex. #'s 10 & 11].

26. The Department abated the assessed gross receipts tax associated with the online, out-of-state, sales totaling $3,080.00.

27. In 2012, Kayla Marshall also performed mystery shopping services in New Mexico for various out-of-state companies. [Taxpayer Ex. 6].

28. Only one company issued Ms. Marshall a 1099 for the secret shopping services she performed, HS Brands International, showing compensation totaling $602.00. [Taxpayer Ex. #9].

29. In total, including the HS Brands 1099, Kayla Marshall had $5,417.04 in secret shopping receipts in 2012, of which $3,292.99 was for expenses. [Taxpayer Ex. #12].

30. Taxpayer prepared and filed CRS tax returns during the relevant period, reporting and paying gross receipts tax only for Taxpayer's labor costs and excluding the cost of materials billed to his customers.

31. Taxpayer did not include Kayla Marshall's receipts from her various business endeavors on his CRS returns.

32. Taxpayer's CRS report only listed business receipts totaling $28,610.72 in 2012. [Dept. Ex. A].

33. Matthew and Kayla Marshall filed their federal income tax returns as married, filing jointly.

34. Matthew and Kayla Marshall reported $54,920.00 in Schedule C business income in 2012, which included $38,389.00 for Taxpayer and $16,531.00 for Kayla Marshall's various endeavors (noted as "Courier Schedule C"). [Dept. Ex. A1].

35. Through its Schedule C mismatch program with the IRS, the Department detected that Matthew and Kayla Marshall reported business income on their federal Schedule C as part

of their joint federal income tax return that did not match the reported total gross receipts on Taxpayer's filed CRS returns during the relevant period.

36. Based on the Schedule C mismatch information, the Department issued the Notice of Assessment described in Finding of Fact #1.

37. Before and during the hearing, the Department determined that all of the $5,417.04 in secret shopping receipts were not subject to gross receipts tax, resulting in a total abatement of $492.14 in gross receipts tax and penalty. [Dept. Ex. A1; Department Letter of Nov. 17, 2016; Testimony of Veronica Galewaler, 1:30:00 through 1:34:00].

38. The Department did not provide an updated spreadsheet of liability after all abatements were made in this matter.

DISCUSSION

This case involves a question about whether certain receipts of Taxpayer and his wife Kayla Marshall were subject to gross receipts tax for the various business activities performed in 2012. Specifically, Taxpayer argues that gross receipts tax is not due on his reimbursed expenditures for the materials purchased on behalf of his clients while performing handyman services. Secondly, Taxpayer argues that Kayla Marshall's receipts from JMA for performing door-knocking and document delivery services were not subject to gross receipts tax, as they represented out-of-state sales. Taxpayer further argued that the penalty and interest be waived in this matter in light of its good intentions to pay whatever is owed.

Presumption of Correctness.

Under NMSA 1978, Section 7-1-17 (C) (2007), the assessment issued in this case is presumed correct. Consequently, Taxpayer has the burden to overcome the assessment. *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). Accordingly, it is Taxpayer's burden to present some countervailing evidence or legal argument to show that he is entitled to an abatement, in full or in part, of the assessments issued against him. *See N.M. Taxation & Revenue Dep't v. Casias Trucking*, 2014-NMCA-099, ¶8. "Unsubstantiated statements that the assessment is incorrect cannot overcome the presumption of correctness." *See MPC Ltd. v. N.M. Taxation & Revenue Dep't*, 2003 NMCA 21, ¶13, 133 N.M. 217; *See also* Regulation 3.1.6.12 NMAC. 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.*, 2003 NMCA 21, ¶13.

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.

Gross Receipts Tax, Reimbursed Expenditures, and Performance of a Service in New Mexico.

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 tax 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 little doubt that Taxpayer was engaged in the business of providing handyman services in New Mexico. Similarly, with respect to JMA, Ms. Marshall was also performing a service in New Mexico. Therefore, there is a presumption that all of Taxpayer's receipts from performing services in New Mexico were subject to gross receipts tax unless Taxpayer can establish an applicable deduction or exemption.

Taxpayer asserts that the separately stated material costs that Taxpayer received from his handyman clients were reimbursed expenditures not subject to gross receipts tax. The Department asserts that such receipts were subject to tax because there is insufficient evidence to find that Taxpayer was a disclosed agent of his clients when purchasing the materials.

Under NMSA 1978, Section 7-9-3.5(A) (3) (f), excluded from gross receipts are "amounts received solely on behalf of another in a disclosed agency capacity." Under Regulation 3.2.1.19(C) (1) NMAC,

> The receipts of any person received as a reimbursement of expenditures incurred in connection with the performance of a service or the sale or lease of property are gross receipts as defined by Section 7-9-3.5 NMSA 1978, unless that person incurs such expense as agent on behalf of a

> principal while acting in a disclosed agency capacity. An agency relationship exists if a person has the power to bind a principal in a contract with a third party so that the third party can enforce the contractual obligation against the principal.

Regulation 3.2.1.19(C)(2) NMAC further requires that the reimbursed expenditure be separately stated on the bill and listed separately on the taxpayer's books. In applying the reimbursed expenditures to the gross receipts tax, the Court of Appeals in *MPC Ltd. v. N.M. Taxation & Revenue Dep't*, 2003 NMCA 21, ¶36, 133 N.M. 217, construed Regulation 3.2.1.19(C)(1) NMAC to mean that:

> (1) the agent [taxpayer] has the authority to bind the principal… to an obligation… created by the agent [taxpayer], and (2) the beneficiary of that obligation… is informed by contract that he or she has a right to proceed against the principal… to enforce the obligation.

Additionally, the New Mexico Court of Appeals in *MPC LTD* noted that Regulation 3.2.1.19 (C) NMAC imposed additional bookkeeping requirements that must be met in order to exclude receipts received as part of a disclosed agency capacity from gross receipts. *See id*.

In this case, the invoices that Taxpayer submitted met the bookkeeping requirements of Regulation 3.2.1.19 (C) NMAC, as they clearly separately stated the charges for the cost of materials. However, Taxpayer did not present sufficient or compelling evidence that he was a disclosed agent for the principal with the power to bind the principal to an obligation with a third party or that the third party was informed by contract or other means that they had a right to proceed against the principal. Taxpayer did not have any contracts he signed with either his clients or the various retailers he did business with showing that Taxpayer was able to bind any party to an agreement.

While an instance of disfavored tax pyramiding, the fact that both Taxpayer and the retailer were paying a gross receipts tax on the materials is not necessarily double taxation and

not necessarily prohibited. New Mexico imposes a gross receipts tax on all the receipts of a person or entity engaged in business. In this instance, Taxpayer is a distinct and separate business from the retailers in question, each with their own obligations to pay the gross receipts tax. Taxpayer was obtaining the materials necessary to complete his handyman service jobs. The reimbursement of materials cost as part of the performance of a service are gross receipts under Regulation 3.2.1.19(C) (1) NMAC absent a showing of a disclosed agency relationship. The disclosed agency language of the statute sets a high bar for a formalized, disclosed agency relationship before a business' receipts are not considered gross receipts tax. Under the controlling authority of Section 7-9-3.5(A) (3) (f), 3.2.1.19(C) (1) NMAC, and *MPC Ltd.*, Taxpayer did not establish that his receipts attributable to materials were made as a disclosed agent. Consequently, Taxpayer's receipts were subject to gross receipts tax. Since that standard was not met here, and Taxpayer did not establish any other applicable deduction, Taxpayer receipts remain subject to gross receipts tax.

Taxpayer did not attempt to establish any other deduction that might apply to these receipts and did not present any evidence of a nontaxable transaction certificate ("NTTCs") that might be required under various construction related deductions contained under the Gross Receipts and Compensating Tax Act. While Taxpayer moved to the business model he did in order to avoid the extra hassle of dealing with NTTCs, the potential deductions that might apply to the transaction in question require NTTCs in order to shield the receipts in question for gross receipts tax. Without any NTTCs or identification of a specific claimed deduction related to the materials costs is unnecessary in this matter. *See Wing Pawn Shop*, 1991-NMCA-024, ¶16.

Taxpayer next argued that Kayla Marshall's receipts from performing services for JMA were not subject to tax because she was selling a product out of state. However, Taxpayer

misunderstands what gross receipts applies to in New Mexico. Taxpayer argued that the report was sold to an out-of-state company. However, Taxpayer was clearly performing a service in New Mexico. Under the clear contractual language, Kayla Marshall was tasked to perform services in this state as a door-knocker. Ms. Marshall went to the physical address, knocked on the door to contact specific people, advise them to contact their loan provider, and deliver a letter to that affect. Sometimes, but not always, Ms. Marshall left a notice at the address. Ms. Marshall also observed the condition of the relevant property. At the end of this process, Ms. Marshall submitted a report documenting her contact and the condition of the property. The report was merely a small byproduct of the service activity she performed in New Mexico. Performance of a service in New Mexico is subject to gross receipts tax.

Taxpayer further argued that the JMS receipts were akin to delivery services provided by UPS/FedEx and thus should be deductible under NMSA 1978, Section 7-9-55 or 7-9-56. Although Taxpayer asked that the matter be researched further, it is Taxpayer who has the burden to establish entitlement to a claimed deduction. *See Wing Pawn Shop v*, 1991-NMCA-024, ¶16. Deductions related to interstate commerce, interstate shipping/ mailing are not applicable in this matter. Kayla Marshall is not engaged in the business of shipping documents/packages in interstate commerce, but performing a service in New Mexico by conducting door knocking, delivering notices, and compiling reports based on the contact and condition of the property at issue. The facts of this transaction are simply not analogous to the deductions under Section 7-9-55 or 7-9-56 and there does not appear to be any other potentially applicable deduction that would apply.

The Department did make numerous pre-hearing and during the hearing abatements, all of which are accepted without further analysis in light of the Department's determination.

However, there are still uncertainties in this matter about what Taxpayer's remaining outstanding balance is in this matter, partially because the Department never provided a final spreadsheet indicating the liability as of the hearing date. The initial detected discrepancy in this matter between the gross receipts reported on the Schedule C ($54,920.00) and Taxpayer's CRS return ($28,610.72) was $26,309.28. The initial assessment in this matter derived from applying the applicable tax rate to this $26,309.28 amount, and then calculating relevant penalty and interest. However, after the assessment, the Department agreed that the online, out-of-state sales totaling $3,079.85 were not subject to gross receipts tax. Therefore, the initial $26,309.28 discrepancy amount is reduced by the $3,079.85 online sales receipts that the Department determined was not taxable, leading to a new discrepancy amount of $23,229.43 from which the Department derived its first prehearing abatement. Ms. Galewaler determined before and during the hearing that Kayla Marshall's secret shopping service receipts totaling $5,417.04 were not subject to New Mexico gross receipts tax, reducing the remaining discrepancy by that amount from $23,229.43 to $17,812.39. The applicable gross receipts tax, penalty, and interest should be recalculated based on this amount using the applicable tax rate, with interest updated to the date of the calculation. Ms. Galewaler should also provide information, or refer Taxpayer to the appropriate person with the information, about payment plans for the remaining outstanding balance.

Penalty and Interest.

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, 32 (use of the word "shall" in a statute indicates provision is mandatory absent clear indication to the contrary). 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 until Taxpayer satisfies the gross receipts tax principal.

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.

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." Although certainly Taxpayer's underreporting and underpaying of the CRS taxes was not intentional in this case, Taxpayer was nevertheless civilly negligent under Regulation 3.1.11.10 (B) & (C) NMAC because Taxpayer failed to take action to report and pay the appropriate amount of CRS taxes when required through erroneous belief that tax was not due on the material costs or for

Ms. Marshall's door-knocking services. This inaction and erroneous belief constitutes negligence subject to penalty under Section 7-1-69. *See El Centro Villa Nursing Center v. Taxation and Revenue Department*, 1989-NMCA-070, ¶9-11, 108 N.M. 795.

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." Here, there is no evidence that Taxpayer engaged in any formal consultation or study of the issue before reporting or paying CRS taxes. *See C & D Trailer Sales v. Taxation and Revenue Dep't*, 1979-NMCA-151, ¶8-9, 93 N.M. 697 (penalty upheld where there was no evidence that the taxpayer "relied on any informed consultation" in deciding not to pay tax). Consequently, this mistake of law provision of Section 7-1-69 (B) does not mandate abatement of penalty in this case. Additionally, there was no evidence that might arguably support abatement of penalty under Regulation 3.1.11.11 NMAC. Consequently, Taxpayer is liable for both penalty and interest.

CONCLUSIONS OF LAW

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

B. The hearing was timely set within 90-days of protest under NMSA 1978, Section 7-1B-8 (2015), and continued only upon Taxpayer's unopposed requests to do so as it awaited determinations from the IRS.

C. The Department's prehearing and in-hearing abatements as authorized under NMSA 1978, Section 7-1-28 (2013) are adopted in this matter without further analysis or conclusion of law.

D. Taxpayer was a person engaged in business for the purposes of NMSA 1978, § 7-9-3.3 (2003), and as such all of Taxpayer's receipts were presumed subject to gross receipts tax under NMSA 1978, Section 7-9-5 (2002).

E. Taxpayer did not establish he was a disclosed agent and thus did not meet the requirements under NMSA 1978, Section 7-9-3.5(A) (3) (f) or Regulation 3.2.1.19(C) NMAC to exclude the material cost amounts from gross receipts tax. *See MPC Ltd. v. N.M. Taxation & Revenue Dep't*, 2003 NMCA 21, ¶36, 133 N.M. 217.

F. Ms. Marshall performed a service for JMA door-knocking and delivering documents in New Mexico, subject to gross receipts tax. *See* NMSA 1978, Section 7-9-3.5 (A)(1) (2007).

G. Taxpayer did not overcome the presumption of correctness, including the assessed penalty, 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.

H. Under NMSA 1978, Section 7-1-69 (2007), Taxpayer is liable for civil negligence penalty because Taxpayer's inaction in failing to include gross receipts tax on his CRS returns during the relevant period met the definition of civil negligence under Regulation 3.1.11.10 NMAC. Taxpayer did not establish a good faith, mistake of law made on reasonable grounds that would allow for abatement of penalty under Section 7-1-69 (2007).

I. None of the indicators of nonnegligence found under Regulation 3.1.11.11 NMAC allow for abatement of penalty in this protest.

For the foregoing reasons, the Taxpayer's protest **IS DENIED**. The Department is ordered to carefully recalculate the outstanding tax, penalty, and interest in light of the abatements it made in

this matter, and provide that information to Taxpayer. Taxpayer is ordered to pay that outstanding liability.

DATED: January 19, 2017.

Brian VanDenzen
Chief Hearing Officer
Administrative Hearings Office
P.O. Box 6400
Santa Fe, NM 87502

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 Administrative Hearings Office contemporaneous with the Court of Appeals filing so that the Administrative Hearings Office may being preparing the record proper.