STATE OF NEW MEXICO
ADMINISTRATIVE HEARINGS OFFICE
TAX ADMINISTRATION ACT

IN THE MATTER OF THE PROTEST OF
APPLE ELECTRICAL CONTRACTORS INC.
TO ASSESSMENT ISSUED UNDER
LETTER ID NO. L0090651440

D&O No. 19-07
v. **AHO No. 18.08-209A**

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

DECISION AND ORDER

A hearing occurred in the above-captioned protest on January 28, 2019 at 2:00 p.m. before Chris Romero, Esq., Hearing Officer, in Santa Fe, New Mexico. Mr. Brian Mackay, Esq. (Atkins, Hollmann, Jones, Peacock, Lewis & Lyon, P.C.) appeared representing Apple Electrical Contractors, Inc. ("Taxpayer") and was accompanied by owner, Mr. Eddy Shelton, and Taxpayer's Chief Financial Officer, Mr. Dan Rankin, who both testified as witnesses. Mr. Shelton's spouse, Ms. Teresa Shelton, and daughter, Ms. Abby Venci, were also present to observe with Mr. Shelton's approval.

Staff Attorney, Mr. Peter Breen, Esq., appeared representing the Taxation and Revenue Department of the State of New Mexico ("Department") and was accompanied by protest auditor, Ms. Amanda Carlisle, who testified as the Department's only witness.

Taxpayer did not proffer any exhibits. Department Exhibit A, consisting of Taxpayer's Statement of Account (Letter ID No. L0940533936) was admitted without objection. Taxpayer did not dispute the propriety of the underlying tax principal, which Taxpayer paid in full, but sought relief from the assessment of associated penalty and interest. For the reasons that follow, Taxpayer failed to establish that it was entitled to an abatement of penalty or interest.

Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. On April 6, 2018, the Department assessed Taxpayer the amounts of $453,297.57 in gross receipts tax, $90,317.60 in gross receipts tax penalty, and $74,571.41 in gross receipts tax interest for a total assessment and amount due of $618,186.58 under Letter ID No. L0090651440 for the reporting periods from January 31, 2010 to August 31, 2017. [*See* Administrative File].

2. On or about July 2, 2018, Taxpayer executed and timely submitted a Formal Protest of the assessment which was received in the Department's Protest Office on July 5, 2018. [*See* Administrative File].

3. The Department acknowledged Taxpayer's Formal Protest on July 16, 2018 under Letter ID No. L1991958320. [*See* Administrative File].

4. On August 30, 2018, the Department filed a Hearing Request with the Administrative Hearings Office which requested a scheduling hearing. [*See* Administrative File].

5. The Administrative Hearings Office entered and served a Notice of Telephonic Scheduling Hearing on August 30, 2018 setting a scheduling hearing to occur on September 28, 2018. [*See* Administrative File].

6. A telephonic scheduling hearing occurred on September 28, 2018 in which neither party objected that the hearing would satisfy the 90-day hearing requirement established at NMSA 1978, Section 7-1B-8 (A). [*See* Administrative File; Record of Hearing 9/28/2018].

7. Since the parties agreed on September 28, 2018 that they might benefit from additional time to confer regarding their respective positions in the protest, a Notice of Second

Telephonic Scheduling Conference was entered on October 3, 2018 which set a second scheduling hearing to occur on October 23, 2018. [*See* Administrative File; Record of Hearing 9/28/2018].

8. A second telephonic scheduling hearing occurred on October 23, 2018 in which the parties agreed that the protest was ready for a definite setting. [*See* Record of Hearing 10/23/2018].

9. On October 23, 2018, the Administrative Hearings Office entered a Scheduling Order and Notice of Administrative Hearing which in addition to establishing various prehearing deadlines, set a hearing on the merits of Taxpayer's protest to occur on January 28, 2019. [*See* Administrative File; Record of Hearing 10/23/2018].

10. On January 24, 2019, the parties filed their individual prehearing statements. [*See* Administrative File (Department's Pre-Hearing Statement and correspondence from Taxpayer's counsel dated January 24, 2019 signed by Ms. Lori M. Ruiz[1]].

11. Taxpayer is a contractor engaged in the business of providing services for various entities involved in the extraction of natural resources in New Mexico and other states. [Direct Examination of Mr. Rankin and Mr. Shelton].

12. Taxpayer utilizes the services of a certified public accountant for some tax matters, but Mr. Rankin is primarily responsible for local taxation issues, including payment of "sales tax." [Cross Examination of Mr. Rankin].

13. Mr. Rankin has a degree in economics from Texas Tech University and has been employed by Taxpayer for more than twenty years. [Direct Examination of Mr. Rankin].

[1] The Hearing Officer noted that Ms. Ruiz is not licensed to practice law in New Mexico. Mr. Mackay is licensed in New Mexico according to his firm letterhead and the 2018-2019 Bench & Bar Directory of the State Bar of New Mexico.

14. One of Taxpayer's largest customers will be referred to as "Oil Company[2]." It operated solely in Texas where Taxpayer also provided most of its services. Oil Company had a "Direct Pay Certificate" in Texas. [Direct Examination of Mr. Rankin and Mr. Shelton].

15. Upon merging with a second entity, Oil Company expanded its business operations into New Mexico. [Direct Examination of Mr. Rankin and Mr. Shelton].

16. Taxpayer correspondingly expanded its business into New Mexico in order to continue providing services in the locations required by Oil Company. [Direct Examination of Mr. Rankin and Mr. Shelton].

17. Taxpayer acquired all appropriate licenses for performing services in New Mexico, and registered with the Department to engage in business. [Direct Examination of Mr. Rankin and Mr. Shelton].

18. Taxpayer initially intended to pass along all gross receipts taxes for services provided to Oil Company in New Mexico. However, Oil Company declined to pay amounts on Taxpayer's invoices that were attributed to gross receipts tax. [Direct Examination of Mr. Rankin and Mr. Shelton].

19. Oil Company routinely paid Taxpayer for amounts billed for services, but deducted its payment by those amounts attributable to taxes. [Direct Examination of Mr. Rankin and Mr. Shelton].

20. Mr. Rankin contacted Oil Company at its Texas office, which informed him that Oil Company had a "direct pay certificate" in New Mexico and that Oil Company accrued and paid all applicable taxes in New Mexico. [Direct Examination of Mr. Rankin and Mr. Shelton].

[2] The testimony on the record identifies the name of the company subject of discussion. However, it is unnecessary for the purpose of this Decision and Order to address it by its name.

21. Mr. Rankin requested a copy of Oil Company's "direct pay certificate" allegedly issued by, or on file with the State of New Mexico. Mr. Rankin was directed to Oil Company's office in Denver, Colorado. [Direct Examination of Mr. Rankin].

22. After several unsuccessful attempts to reach someone in Oil Company's Denver office, Mr. Rankin succeeded in communicating with an individual who assured him that Oil Company would provide a copy of its New Mexico "direct pay certificate," but Taxpayer never did receive it. [Direct Examination of Mr. Rankin].

23. Mr. Rankin's efforts to follow up were frustrated by personnel changes within Oil Company. He eventually communicated with another individual who once again stated that Oil Company would provide Taxpayer with a copy of its New Mexico "direct pay certificate," but Taxpayer still never received it. [Direct Examination of Mr. Rankin].

24. Mr. Rankin followed up again with Oil Company's representative in Texas, who once again explained that it would provide Taxpayer with a copy of its New Mexico "direct pay certificate." The individual to whom Mr. Rankin spoke also explained that Oil Company's standard procedure was to accrue all taxes and submit payment directly to the taxing authority. [Direct Testimony of Mr. Rankin].

25. Taxpayer ceased billing gross receipts tax to Oil Company based on Oil Company's explanations of its procedures for satisfying its New Mexico tax obligations. [Direct Examination of Mr. Rankin].

26. Since Oil Company's method of paying taxes in Texas never seemingly produced problems for Taxpayer, it believed that a comparable process would equally suffice in New Mexico. [Direct Examination of Mr. Rankin].

27. Mr. Rankin's understanding of Taxpayer's New Mexico gross receipts tax obligations depended principally on the representations of Oil Company, indicating that Taxpayer's tax obligations would be satisfied by, or through, whatever arrangement Oil Company had with the State of New Mexico. [Direct Examination of Mr. Rankin].

28. Mr. Rankin did not recall whether Taxpayer sought advice from its certified public accountant regarding its tax reporting or payment obligations in light of any understanding it had attained from communications with Oil Company. [Cross Examination of Mr. Rankin].

29. Upon receiving the assessment subject of the protest, Taxpayer attempted to make all records of its transactions with Oil Company available to the Department. However, records reflecting transactions in the years 2001, 2002, and 2003 were not available due to the passage of time[3]. [Direct Testimony of Mr. Rankin (00:15:00)].

30. Communications with an unspecified Department employee suggested that the Department had perceived similar issues arise for other similarly-situated taxpayers that had also engaged in business with Oil Company. [Direct Examination of Mr. Rankin].

31. Taxpayer paid the principal amount of assessed tax from cash reserves and with the proceeds of a loan. [Direct Examination of Mr. Rankin].

32. The payment of tax from its cash reserves, as well as the interest which it is required to pay for borrowed funds devoted to the payment of tax have been, and continue to be unfavorable to Taxpayer's profitability. [Direct Examination of Mr. Rankin].

[3] Although the Hearing Officer observes that Taxpayer's ability to provide records might diminish with the passage of time, the Department did not assess taxes for the years 2001, 2002, or 2003.

33. The interest rate at which Taxpayer borrowed a portion of the funds to pay the assessed gross receipts tax is estimated to be between 7 and 8 percent. [Cross Examination of Mr. Rankin].

34. Mr. Rankin has not had any communications with Oil Company in reference to issues subject of the protest. [Cross Examination of Mr. Rankin].

35. Oil Company has been non-responsive to any efforts to communicate with Taxpayer. [Direct Examination of Mr. Shelton].

36. Mr. Shelton established Taxpayer in 1994 with his spouse, Teresa. Oil Company was Taxpayer's a major customer and was integral to Taxpayer's efforts to become established. [Direct Examination of Mr. Shelton].

37. Mr. Shelton and Mr. Rankin understood that Oil Company paid all taxes due to the State of New Mexico arising from its transactions with Taxpayer, and believed that there were no issues of concern with its own tax obligations until Oil Company allegedly received a refund from the State of New Mexico. [Direct Examination of Mr. Rankin and Mr. Shelton].

38. Taxpayer's outstanding liability as of the date of hearing was $168,539.83 in penalty and interest. [Direct Testimony of Ms. Carlisle; *See* Department Exhibit A].

DISCUSSION

Taxpayer did not dispute the principal amount of gross receipts tax due under the assessment. By the time of the hearing, Taxpayer had paid that amount in full. Consequently, Taxpayer's effort in this protest is directed at obtaining relief from the penalty and interest that were assessed in association with the uncontested tax principal. For this reason, the remainder of this Decision and Order will concentrate solely on the imposition of penalty and interest.

Taxpayer's burden of proof and persuasion are well-established under New Mexico law. NMSA 1978, Section 7-1-17 (C) (2007), establishes a rebuttable presumption that an assessment of tax is correct. For that reason, Taxpayer shoulders the burden of coming forward with evidence to establish that the assessment is erroneous, thereby overcoming the presumption of correctness. *See Archuleta v. O'Cheskey*, 1972-NMCA-165, ¶11, 84 N.M. 428. Taxpayer does not dispute the correctness of the assessment as it concerns the principal amount of tax. However, the presumption of correctness also extends to the imposition of associated interest and penalty since those terms come within the statutory definition of "tax." *See* NMSA 1978, Section 7-1-3 (X) (2013). Regulation 3.1.6.13 NMAC correspondingly reaffirms that the presumption of correctness extends to the 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).

Taxpayer's counsel urged the Hearing Officer to exercise discretion to waive penalty and interest. However, the sort of discretion necessary to afford the requested relief is not within the powers of this Hearing Officer or the Administrative Hearings Office. "Absent a showing of incorrectness by taxpayers, the … assessment of taxes must stand." *See Taxation & Revenue Dep't v. Casias Trucking*, 2014-NMCA-099, ¶8, 336 P.3d 436 (*quoting Torridge Corp. v. Comm'r of Revenue*, 1972-NMCA-171, ¶15, 84 N.M. 610, 506 P.2d 354).

Therefore, the relief which Taxpayer seeks relies entirely on its ability to establish that the Department's assessment of penalty and interest was erroneous, or in the alternative, with respect to the assessment of civil penalty only, that it was not negligent in its failure to pay the correct amount of tax due within the period of time specified by law.

The evidence established that Taxpayer developed a belief that it could rely on Oil Company's "direct pay certificate" to satisfy its own New Mexico tax obligations. Taxpayer had previously billed Oil Company for services performed in New Mexico, plus applicable gross receipts tax. However, Oil Company declined to pay Taxpayer for gross receipts tax because it purportedly had a "direct pay certificate" on file with the State of New Mexico, which supposedly permitted it to accrue and pay all taxes directly to the state.

After several futile attempts to acquire a copy of the certificate from Oil Company, Taxpayer acceded to the accuracy of Oil Company's representations despite its failure to provide the "direct pay certificate," or some other document which might substantiate the information provided.

Regrettably, there was no evidence to indicate that Taxpayer ever sought independent advice from someone having knowledge of New Mexico tax law, which could have assisted Taxpayer with better understanding its New Mexico tax obligations. For example, consultation may have revealed that "direct pay certificates" are not used in New Mexico, despite their use in Texas[4]. That information might have led a better understanding of Taxpayer's New Mexico tax obligations, which may have permitted it to implement an informed process to assure its compliance.

Consultation may have also revealed that New Mexico imposes a gross receipts tax for the privilege of engaging in business in New Mexico, which is levied on the gross receipts of the person engaged in business. *See* NMSA 1978, Section 7-9-4 (2017). With respect for the entity ultimately obligated to pay the tax, Regulation 3.2.4.9 provides that "[t]he gross receipts tax is imposed on

[4] A Texas Direct Pay Exemption Certificate may authorize its holder to accrue and pay tax directly to the Texas Comptroller of Public Accounts. *See e.g.* https://comptroller.texas.gov/forms/01-919.pdf. If there are similarities concerning Direct Pay Exemption Certificates in Texas, and the use of Non-Taxable Transaction Certificates in New Mexico, Taxpayer neither discussed them, nor suggested whether Non-Taxable Transaction Certificates and their associated deductions might have been potentially relevant to the issues presented in its protest.

persons engaging in business in New Mexico. Such persons are solely liable for payment of the tax; they are not 'collectors' on behalf of the state." In other words, the obligation to pay gross receipts taxes rests squarely with the entity engaging in business in New Mexico. Although it may be common practice for a business to pass on the gross receipts tax to its customer, as Taxpayer initially attempted in its transactions with Oil Company, the obligation for making payment still rests with the business. Therefore, Taxpayer was always obligated to pay gross receipts tax, whether or not it was able to pass the cost of the tax on to its customer.

It is understandable that Mr. Shelton or Mr. Rankin might feel mislead by Oil Company. However, the Hearing Officer is unable to infer any deceit in Oil Company's communications with Taxpayer. If any inference can be extracted from the evidence, it is only that Taxpayer may have been ill-informed of its status or responsibilities under New Mexico law, and that it unreasonably relied on assurances from Oil Company that a certificate, which is not actually utilized in New Mexico, would satisfy its tax reporting and payment obligations. The also evidence suggests that Oil Company may have also been misinformed of its obligations, particularly if Taxpayer's evidence accurately relayed Oil Company's command of the law.

Nevertheless, Taxpayer takes issue with the possibility that Oil Company may have attained some financial windfall in the form of a tax refund[5], derived in part from taxes it paid on transactions with Taxpayer, which Taxpayer is now obligated to pay. Although Taxpayer's frustrations may be justified, the harm befalling Taxpayer derived entirely from its passivity and a lack of due diligence, not from reasonable reliance on Oil Company.

[5] Although Taxpayer's witnesses stated that Oil Company received a tax refund for taxes that Oil Company allegedly paid on its transactions with Taxpayer, these statements were unsupported by any foundation. Given the strict constraints on taxpayer confidentiality which prohibit the Department from disclosing another taxpayer's return information, the burden rests with Taxpayer to present evidence of any refund, if relevant, consistent with the law governing the confidentiality of taxpayer information. *See* NMSA 1978, Section 7-1-8; Section 7-1-8.4 F.

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. *See Tiffany Construction Co. v. Bureau of Revenue*, 1976-NMCA-127, ¶5, 90 N.M. 16.

Interest

Despite counsel's wish for discretion, the law governing the imposition of interest affords no discretion whatsoever. When a taxpayer fails to make timely or accurate 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." *See* NMSA 1978, Section 7-1-67 (2007) (italics for emphasis). Regardless of the underlying reason for non-payment of tax, the Department simply has no discretion in the imposition of interest, as the 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 the provision is mandatory absent clear indication to the contrary).

The language of the statute also makes it clear that interest begins to run from the original due date of the tax and continues until the tax principal is paid in full. Neither the Department nor the Hearing Officer enjoy the discretion to abate interest Section 7-1-67 under any circumstances.

To the extent Taxpayer claims that it should be entitled to relief from interest, because the State of New Mexico enjoyed the benefit of money paid by Oil Company before it was allegedly refunded, Taxpayer's position is unsupported by citation to any legal authority. *See ITT Educ. Servs., Inc. v. Taxation & Revenue Dep't*, 1998 NMCA 78, ¶10, 125 N.M. 244, 959 P.2d 969 (a court will not consider propositions that are unsupported by citation to authority). Even if there were legal support for the relief sought, the evidence failed establish the particulars of any purported refund, including the amount refunded or the underlying basis for a refund.

Consequently, Taxpayer has failed to establish entitlement to an abatement of mandatory interest.

Penalty

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).

As explained earlier, the use of the word "shall" makes the imposition of penalty mandatory in all instances where a taxpayer's actions, or inactions, meet the legal definition of "negligence" even if Taxpayer's actions or inactions were unintended.

Regulation 3.1.11.10 NMAC defines negligence as follows: (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 (A), (B) & (C) NMAC because it failed to properly investigate its obligations under the Tax Administration Act and the Gross Receipts and Compensating Tax Act, resulting in a failure to timely report and pay gross receipts taxes on its transactions with Oil Company.

Mr. Shelton and Mr. Rankin presented as individuals of the highest integrity. The Hearing Officer found them to be extremely credible, and in no way doubted their sincerity. They clearly

regretted the circumstances that brought them before the tribunal, and the Hearing Officer could empathize with any feelings of betrayal they may have harbored toward Oil Company. However, Taxpayer's conduct also clearly establishes negligence under the law which the Hearing Officer may not disregard.

Nevertheless, on occasions where a taxpayer might otherwise fall under the definition of civil negligence generally subject to penalty, as Taxpayer does in the present matter, 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."

The evidence revealed that Taxpayer's mistake of law in this case, even if made in good faith, was not based on reasonable grounds. Taxpayer seemingly relied entirely on Oil Company for its comprehension of the law, notwithstanding the fact that Oil Company never produced anything of a tangible nature that might conceivably corroborate the correctness of its assertions, including a "direct pay certificate," a non-taxable transaction certificate , or even a multistate jurisdiction sales and use tax certificate. Although it is uncertain how these sorts of documents could have influenced the outcome of this protest, their absence most certainly precluded any relief that they could have afforded under the appropriate circumstances.[6] *See e.g.* NMSA 1978, Section 7-9-43.

[6] As previously explained, Taxpayer did not contest the correctness of the tax, but only the assessment of corresponding penalty and interest. However, even in the context of penalty, any one of the documents referenced might be relevant to evaluating whether a mistake of law was based on reasonable grounds.

Nonetheless, Regulation 3.1.11.11 NMAC, which implements Section 7-1-69 (B) goes on to permit an abatement of penalty in specified circumstances bearing indications of non-negligence.

Upon direct inquiry from the Hearing Officer, Taxpayer's counsel admitted that the facts of this protest did not come within any of the indicators, perhaps with the exception of a scenario in which "taxpayer shows that physical damage to the taxpayer's records or place of business caused a delay in filing a return or making payment of tax." *See* Regulation 3.1.11.11 C NMAC. However, the evidence clearly established that any failure to report or pay taxes did not result from physical damage to Taxpayer's records or place of business, but resulted from what can best be characterized as unfamiliarity with the law. Counsel agreed that none of the other indicators of non-negligence would apply under the evidence on the record. *See* Record of Hearing at 00:37:45 – 00:40:30.

Nevertheless, the Hearing Officer considered whether Taxpayer's reliance on Oil Company might afford relief under Regulation 3.1.11.11 D NMAC which might apply if "the taxpayer proves that the failure to pay tax or to file a return 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; failure to make a timely filing of a tax return, however, is not excused by the taxpayer's reliance on an agent[.]" Black's Law Dictionary, 22 (9th ed. 2009), defines "accountant" as "a person authorized under applicable law to practice public accounting."

However, this indicator of non-negligence is also inapplicable. It was unreasonable for Taxpayer to rely on the advice of Oil Company because its interests were not necessarily aligned with Taxpayer and because Oil Company is not in the business of providing tax advice, meaning

that there is nothing in the record to establish that any reliance on Oil Company could be perceived as reasonable.

The Department did not allege that Taxpayer's inaction was with the intent to evade or defeat a tax and the Hearing Officer was persuaded that Taxpayer's conduct was not in bad faith or with bad intentions. Nevertheless, *El Centro Villa Nursing* established that the civil negligence penalty is appropriate in these circumstances and Regulation 3.1.11.11 NMAC does not provide grounds for abatement of penalty in this case.

Therefore, Taxpayer has not overcome the presumption of correctness and failed to establish that it is entitled to an abatement of penalty and interest in this matter. For the foregoing reasons, Taxpayer's protest is **DENIED**.

CONCLUSIONS OF LAW

A. Taxpayer filed a timely written protest to the assessments issued under Letter ID No. L0090651440 and jurisdiction lies over the parties and the subject matter of this protest.

B. A timely hearing was held within 90 days of Taxpayer's protest in accordance with NMSA 1978, Section 7-1B-8 (A) (2015).

C. Pursuant to NMSA 1978, Section 7-1-17 (C) (2007), the Department's assessment is presumed to be correct, and it is Taxpayer's burden to come forward with evidence and legal argument to establish that it is entitled to an abatement.

D. Under Section 7-1-67, Taxpayer is liable for interest under the assessment.

E. Taxpayer was negligent in failing to timely report and accurately pay gross receipts taxes when due for the tax periods covered by the assessment. Consequently, the assessment of penalty was proper under NMSA 1978, Section 7-1-69.

F. Taxpayer failed to establish non-negligence under 3.1.11.11 NMAC and *El Centro Villa Nursing Center v. Taxation and Revenue Department*, 1989-NMCA-070, ¶14, 108 N.M. 795; therefore, penalty was properly assessed.

For the foregoing reasons, Taxpayer's protest should be, and hereby is, **DENIED**.

IT IS ORDERED that Taxpayer be liable for the assessed penalty and interest which as of the date of hearing was $168,539.83.

DATED: February 19, 2019

Chris Romero
Hearing Officer
Administrative Hearings Office
Post Office Box 6400
Santa Fe, NM 87502

NOTICE OF RIGHT TO APPEAL

Pursuant to NMSA 1978, Section 7-1-25 (2015), 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. If an appeal is not timely filed with the Court of Appeals within 30 days, this Decision and Order will become final. Rule of Appellate Procedure 12-601 NMRA articulates the requirements of perfecting an appeal of an administrative decision with the Court of Appeals. 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. The parties will each be provided with a copy of the record proper at the time of the filing of the record proper with the Court of Appeals, which occurs within 14 days of the Administrative Hearings Office receipt of the docketing statement from the appealing party. *See* Rule 12-209 NMRA.

CERTIFICATE OF SERVICE

On February 19, 2019, a copy of the foregoing Decision and Order was mailed to the parties listed below in the following manner:

First Class Mail *Interagency Mail*

INTENTIONALLY BLANK

John D. Griego
Legal Assistant
Administrative Hearings Office
Post Office Box 6400
Santa Fe, NM 87502
PH: (505)827-0466
FX: (505)827-9732
john.griego1@state.nm.us