**STATE OF NEW MEXICO**
**ADMINISTRATIVE HEARINGS OFFICE**
**TAX ADMINISTRATION ACT**

**WILLIAM GARDNER**

***v.*** **AHO No. 24.01-006A, D&O No. 24-10**

**TAXATION AND REVENUE DEPARTMENT**

## DECISION AND ORDER

On May 31, 2024, Hearing Officer Dee Dee Hoxie, Esq. conducted a videoconference hearing on the merits of the protest to the assessment of William Gardner (Taxpayer). The Taxation and Revenue Department (Department) was represented by David Mittle, Staff Attorney. The Taxpayer did not personally appear at the hearing, but the Taxpayer was represented by his attorney, Bradley Odegard. The Hearing Officer took notice of all documents in the administrative file. The Department's exhibits A (plea agreement), B (assessment), C (payments), and D (current balance) were admitted[1].

The main issue to be decided is whether the Department may assess the Taxpayer based on his plea agreement in a criminal case for tax fraud, which included a provision to pay restitution on unpaid taxes and interest. The Hearing Officer considered all of the evidence and arguments presented by both parties. Because the Taxpayer failed to overcome the presumption of correctness on the assessment and there is no prohibition on assessing when there is a plea agreement that requires restitution of unpaid taxes, the Hearing Officer finds in favor of the Department. IT IS DECIDED AND ORDERED AS FOLLOWS:

[1] At the hearing, the Taxpayer's counsel stipulated to the Department's exhibits and indicated that there were no disputes of material facts.

## FINDINGS OF FACT

***Procedural findings.***

1. On November 22, 2023, the Department issued a notice of assessment to the Taxpayer for the tax periods from July 31, 2016 to June 30, 2019. The assessment was for gross receipts tax of $162,534.06. The assessment reflects $0.00 for penalty and $0.00 for interest. [Exhibit B].

2. On November 22, 2023, the Taxpayer filed a timely written protest to the assessment and a request for an informal conference. [Admin. file protest].

3. On November 22, 2023, the Department acknowledged its receipt of the protest by email. [Admin. file].

4. On December 12, 2023, the Chief Hearing Officer issued a letter to the Taxpayer rejecting the Taxpayer's attempt to file a request for hearing as it was not timely[2]. [Admin. file].

5. On January 22, 2024, the Taxpayer filed a timely request for hearing with the Administrative Hearings Office. [Admin. file request].

6. On January 23, 2024[3], the Administrative Hearings Office issued a notice of telephonic scheduling hearing and notified the parties that the protest was assigned to Hearing Officer Hoxie. [Admin. file].

7. On January 23, 2024[4], the Taxpayer filed a motion to excuse the Department's attorney. [Admin. file].

8. On January 25, 2024, the Taxpayer filed a motion to excuse Hearing Officer Hoxie. [Admin. file].

[2] *See* NMSA 1978, § 7-1B-8 (B) (prohibiting requests for hearing from being filed less than sixty days from the date of the protest).
[3] At approximately 10:04 AM by the email time stamp.
[4] At approximately 11:32 AM by the email time stamp.

9. On February 2, 2024, the order[5] denying the motion to excuse Hearing Officer Hoxie was issued. The order denied the motion because the Taxpayer moved for a discretionary ruling when he filed the motion to excuse the Department's attorney, and a peremptory excusal may not be exercised after moving for a discretionary ruling. [Admin. file]. *See* NMSA 1978, § 7-1B-8 (F) (2019).

10. On February 2, 2024, the Department filed its answer to the protest and filed its response to the motion to excuse the Department's attorney. [Admin. file].

11. On February 5, 2024, the Taxpayer filed an objection to the order denying excusal of Hearing Officer Hoxie and another motion to excuse Hearing Officer Hoxie. [Admin. file].

12. On February 7, 2024, an order denying the motion was issued. [Admin. file].

13. On February 8, 2024, an order denying the motion to excuse the Department's attorney was issued. [Admin. file].

14. On February 9, 2024, the Taxpayer filed the tax information authorization for his attorney to represent him. [Admin. file].

15. On February 9, 2024, a telephonic scheduling hearing was conducted, which was within 90 days of the request for hearing, as required by statute. [Admin. file].

16. On February 13, 2024, the notice of administrative hearing by videoconference was issued. [Admin. file].

17. On April 1, 2024, the Department filed a motion for summary judgment (hereafter, Department's motion). [Admin. file].

[5] The order was signed by Hearing Officer Hoxie and the Chief Hearing Officer pursuant to Regulation 22.600.3.9 (G) NMAC (2018).

18. On April 24, 2024[6], the Taxpayer filed a response (hereafter, Taxpayer's response) to the Department's motion. [Admin. file].

19. On April 29, 2024, the Department filed a notice of completion of briefing. [Admin. file].

20. On May 3, 2024, the order denying the Department's motion was issued. The order found that there seemed to be disputed facts, and the Department's motion and the Taxpayer's response would still be considered as arguments after the hearing on the merits. [Admin. file].

21. On May 22, 2024, the Taxpayer filed a motion to stay the proceedings because the Taxpayer has filed a civil lawsuit. [Admin. file].

22. On May 23, 2024, the Department filed its response, opposing the Taxpayer's motion to stay. [Admin. file].

23. On May 24, 2024, the Department filed its proposed exhibits. [Admin. file].

24. On May 28, 2024, the order denying the Taxpayer's motion to stay was issued. [Admin. file].

***Substantive findings.***

25. On January 18, 2022, the Taxpayer signed a plea agreement, which was filed in the 2nd Judicial District Court in Bernalillo County, New Mexico on February 9, 2022. [Exhibit A].

26. The Taxpayer pleaded no contest to two counts of Tax Fraud. [Exhibit A-001].

27. The Taxpayer was originally charged with several counts. [Exhibit A; Taxpayer's response].

[6] Prior to the Taxpayer's response, the Department filed and withdrew a notice of completion of briefing. Part of the Department's withdrawal stipulated to allowing the Taxpayer to file the response to the Department's motion even though it was not within 15 days as required by the notice of administrative hearing by videoconference.

28. Although the Taxpayer pleaded to only two counts, the restitution was ordered based on all counts, including those that were dismissed pursuant to the plea agreement. [Taxpayer's response; Exhibit A].

29. The Taxpayer agreed to pay full restitution of $139,431.98 in unpaid taxes and $23,102.08 in interest, totaling $162,534.06. [Exhibit A-002].

30. The Department assessed the Taxpayer for the total amount of restitution in the plea agreement, but it was listed in the assessment solely under the tax column. [Exhibit B].

31. The Taxpayer has made six $100.00 payments to the Department toward the restitution ordered. [Exhibit C].

32. The Department applied the six payments to the amount assessed, and the current balance is $161,934.06. [Exhibit D].

## DISCUSSION

**Burden of proof.**

"The taxpayer shall have the burden of proof, except as otherwise provided by law." 22.600.3.24 (B) NMAC (2020). Assessments by the Department are presumed to be correct. *See* NMSA 1978, § 7-1-17 (2023). *See El Centro Villa Nursing Ctr. v. Taxation and Revenue Department*, 1989-NMCA-070, 108 N.M. 795. *See also Archuleta v. O'Cheskey*, 1972-NMCA-165, ¶11, 84 N.M. 428. *See also N.M. Taxation & Revenue Dep't v. Casias Trucking*, 2014-NMCA-099, ¶8. The presumption extends to the assessment of penalty and interest. *See* 3.1.6.13 NMAC (2001).

"The effect of the presumption of correctness is that the taxpayer has the burden of coming forward with some countervailing evidence tending to dispute the factual correctness of the assessment". 3.1.6.12 (A) NMAC (2001). *See Gemini Las Colinas, LLC v. N.M. Taxation & Revenue Dep't*, 2023-

NMCA-039. *See also* 22.600.1.18 and 22.600.3.24 NMAC. At the hearing, the Taxpayer stipulated to the facts and argued that the protest was based solely on legal issues[7].

**Motion to stay.**

The Taxpayer argued that he has filed a civil lawsuit for violations of his rights related to the criminal case. [Taxpayer's response]. The Taxpayer initially tried to file the request for hearing early, and then filed the request on the first day that a request was allowed, but the Taxpayer later filed a formal motion to stay the protest proceedings pending the outcome of his civil lawsuit. [Admin. file]. The details of the civil lawsuit are unclear, as the only information is that the Taxpayer "has contended that his civil rights and taxpayer rights were violated in connection with the original action that resulted from" the plea agreement[8]. [Taxpayer's response]. The Taxpayer also indicates that he has an action in federal court "regarding the Plea and Disposition Agreement." [Taxpayer's response]. This information lacks specificity as to the tenure and scope of the lawsuits. It is unclear if the lawsuits are seeking civil damages, or if they are seeking to collaterally attack the plea agreement, or both, or neither.

The motion was denied as the conclusion date of the lawsuit is indefinite, and the potential impact of the civil lawsuit's outcome on the protest proceedings is unclear. [Admin. file]. There was no evidence that the plea agreement in the criminal case has been overturned[9] or that it would be invalidated by a separate civil lawsuit that the Taxpayer filed. *See generally Bounds v. Hamlett*, 2011-NMCA-078,

[7] The arguments considered were only those made on the record at the hearing on the merits, made in the Department's motion, and made in the Taxpayer's response. Any other arguments contained in other documents submitted by the Taxpayer, such as the protest, are deemed abandoned as they were not addressed at the hearing on the merits and no evidence or arguments were presented at the hearing on those claims. Moreover, the contentions in the protest appear to be a collateral attack on the underlying plea agreement. *See Weiss v. N.M. Bd. Of Dentistry*, 1990-NMSC-077, ¶ 42, 110 N.M. 574 (holding that a plea agreement cannot be collaterally attacked in an administrative proceeding as the administrative tribunal has no authority to determine the validity of a conviction, nor to overturn or to vacate it).

[8] The Taxpayer's motion for stay of proceedings also indicates only that his lawsuit "has contended that his civil rights and taxpayer rights were violated in connection with the original action that resulted from the" plea agreement.

[9] The Department's attorney argued that the Taxpayer's plea agreement has been upheld by the court, but there was not evidence presented on this issue. *See State v. Jacobs*, 1985-NMCA-054, 102 N.M. 801 (noting that allegations of counsel are not evidence).

¶ 32, 150 N.M. 389 (noting that district court orders are, in general, presumptively correct and barred from collateral attack). *See also State v. Tran*, 2009-NMCA-010, 145 N.M. 487 (holding that a collateral attack on prior guilty and no contest pleas was not successful because the defendant failed to meet the burden). *See also State v. Pacheco*, 2008-NMCA-059, 144 N.M. 61 (holding that a collateral attack on prior plea agreements was not successful because the errors in accepting the pleas did not amount to fundamental errors). *See also State v. Nash*, 2007-NMCA-141, 142 N.M. 754 (holding that a collateral attack on a prior guilty plea was successful because the defendant presented sufficient evidence to prove fundamental error). As the assessment was based on the plea agreement, and there is no clear indication whether or not the civil lawsuit will impact the validity of the plea agreement, the Taxpayer failed to provide a compelling reason to stay these proceedings.

**Ability to assess.**

When the Department determines that a taxpayer is liable for unpaid taxes of more than $50, the Department "shall promptly assess the amount thereof to the taxpayer." NMSA 1978, § 7-1-17 (A). The Department determined[10] that the Taxpayer was liable for unpaid taxes of more than $50 based on the plea agreement. [Exhibit A; Department's motion]. The assessment must generally be within three years of the end of the calendar year of the tax's due date, but the time to assess may be extended for various reasons, such as fraud. *See* NMSA 1978, § 7-1-18 (2021).

The Taxpayer presented no evidence to establish that the Department's assessment was made beyond the statute of limitations. *See id.* Consequently, the Taxpayer failed to overcome the presumption that the assessment is correct. *See* NMSA 1978, § 7-1-17. *See also Gemini Las Colinas, LLC*, 2023-NMCA-039. *See also* 22.600.1.18 and 22.600.3.24 NMAC.

[10] The reasonableness of the Department's determination is addressed in another section in this decision.

**Effectiveness of an assessment.**

The Department initially argued that the plea agreement was effective as an assessment because it should be treated as a return. [Department's motion]. *See* NMSA 1978, § 7-1-17 (B) (1) (indicating that a taxpayer's self-assessment is effective when the taxpayer files a return with the Department showing a tax liability). The Taxpayer disputed that a plea agreement is a return. [Taxpayer's response]. At the hearing, the Department abandoned this argument and argued that a return is not necessary for an effective assessment.

Both parties are correct. As the Taxpayer argued, the plea agreement is not a return filed with the Department. *See* NMSA 1978, § 7-1-3 (T) (2019) (defining a return as a tax or information return, application or form, a declaration, or a claim that is filed with the Department). As the Department argued, a return is not required for an effective assessment. *See* NMSA 1978, § 7-1-17 (B).

Tax assessments are effective in three different instances. *See id.* One instance is when a taxpayer files a return showing a liability. *See* NMSA 1978, § 7-1-17 (B) (1). The second instance is when the Department issues "a document denominated 'notice of assessment of taxes',…to the taxpayer against whom the liability for tax is asserted," and the document states the nature and amount of tax, demands payment, and briefly informs of the remedies available. NMSA 1978, § 7-1-17 (B) (2). The third instance is when an effective jeopardy assessment is made. *See* NMSA 1978, § 7-1-17 (B) (3).

In this protest, the Department issued a notice of assessment and demand for payment. [Exhibit B]. *See* NMSA 1978, § 7-1-17 (B) (2). The Taxpayer presented no evidence and did not argue that the notice of assessment issued to the Taxpayer failed to meet these statutory requirements. *See* NMSA 1978, § 7-1-17 (B) (2). Consequently, the Taxpayer failed to overcome the presumption of correctness. *See* NMSA 1978, § 7-1-17 (C). *See also Gemini Las Colinas, LLC*, 2023-NMCA-039. *See also* 22.600.1.18 and 22.600.3.24 NMAC.

**Responsibility for the tax.**

The Taxpayer argued that the Department originally assessed his business and that using the plea agreement "is a back door attempt to collect tax that was not able to be collected from the business." [Taxpayer's response]. The Taxpayer argued that he is not the one responsible for the tax. [Taxpayer's response]. There is, again, a paucity of evidence on this issue. [Taxpayer's response]. *See also Jacobs*, 1985-NMCA-054. However, assuming arguendo that the tax liability was incurred by the Taxpayer's business rather than by the Taxpayer, it is still possible for the Taxpayer to be liable.

Generally, the taxpayer who incurred the tax is one who is responsible for paying the tax. *See Severns v. N.M. Taxation and Revenue Dep't*, No. 31, 817, mem. op. at ¶ 28, N.M. Ct. App., April 1, 2013 (non-precedential) (holding that the wife was not assessed and was not a party to the protest when the assessment for personal income tax named only the husband, even though they were filing joint returns). *See also Breen v. State Taxation and Revenue Dep't*, 2012-NMCA-101, ¶ 31 (holding that a husband was not the taxpayer with respect to his wife's business's gross receipts taxes).

However, a taxpayer may admit responsibility for a tax obligation, and a formal admission is binding on the taxpayer. *See Casias v. N.M. Taxation & Revenue Dep't*, No. A-1-CA-36316, mem. op. (NMCA, March 25, 2019) (non-precedential) (holding that the taxpayer signed an installment agreement that was conclusive as to his personal liability to pay the tax even though the taxes were incurred by his business). *See also State v. Montano*, 2004-NMCA-094, ¶ 7, 136 N.M. 144 (holding that a plea agreement is binding on both parties unless it is found to be constitutionally or statutorily invalid). By signing the plea agreement, the Taxpayer agreed to be personally liable for the tax owed, regardless of whether he or his business incurred the tax. *See Casias*, No. A-1-CA-36316. *See also Montano*, 2004-NMCA-094. The Taxpayer indicated that he has filed a civil lawsuit for the violation of his rights related to the criminal case, but filing a civil lawsuit is not sufficient evidence to establish that the plea agreement was constitutionally or statutorily invalid. Therefore, the Taxpayer

failed to overcome the presumption of correctness. *See* NMSA 1978, § 7-1-17 (C). *See also Gemini Las Colinas, LLC*, 2023-NMCA-039. *See also* 22.600.1.18 and 22.600.3.24 NMAC.

**Impact of restitution on assessment.**

The Taxpayer argued the Department should not be the collection agency for the court-ordered restitution. [Taxpayer's response]. The Taxpayer argued that allowing two government entities, the court and the Department, to enforce the restitution creates confusion and pointed to the Taxpayer's absence from the hearing due to his incarceration[11] for support of this proposition. The Taxpayer cited to no authority for the proposition that court-ordered restitution prohibits the Department from issuing an assessment. *In re Gelinas*, 2020-NMCA-038, ¶ 6 (noting that when a party cites no authority, one may presume that none exists).

There are limits on when the Department may assess. *See* NMSA 1978, § 7-1-18. However, none of the statutory limitations mention or involve instances when the court has ordered restitution in cases of tax fraud or evasion. *See id.* The Department argued that an assessment can arise from a criminal conviction under the *Whitener* case. *See N.M. Taxation & Revenue Dep't v. Whitener*, 1993-NMCA-161, 117 N.M. 130, *cert. dismissed* 121 N.M. 299. The *Whitener* case held that the tax assessment violated double jeopardy because it was a civil proceeding that was impermissibly punitive as it was based on the drug possession conviction. *See id.*

In general, a civil proceeding is permissible involving the same set of circumstances as a criminal case, even when the State is involved in both, as long as the civil proceeding is not punitive in nature. *See Marez v. State Taxation and Revenue Dep't*, 1995-NMCA-030, 119 NM 598 (holding that a civil revocation hearing and a criminal prosecution are independent of each other, and one does not necessarily affect the outcome of the other). *See also State v. Bishop*, 1992-NMCA-034, 113 NM 732

[11] The Taxpayer's counsel contends that the Taxpayer was incarcerated at the time of the hearing for failure to make restitution payments. The Department's counsel contends that the Taxpayer was incarcerated at the time of the hearing for the failure to comply with multiple terms of his probation, not just failure to make restitution payments. Neither party presented sufficient evidence on this issue. *See Jacobs*, 1985-NMCA-054.

(holding that a decision in a civil revocation proceeding is not binding on a subsequent criminal proceeding). *See also State v. Long*, 1996-NMCA-011, ¶ 6, 121 N.M. 333 (holding that a tax assessment was not required prior to a conviction for tax evasion). *See also Whitener*, 1993-NMCA-161 (discussing when a civil assessment proceeding is impermissibly punitive in nature). The Taxpayer did not argue that the tax assessment was issued in violation of his double jeopardy rights and presented no evidence on that issue. Therefore, the Taxpayer failed to overcome the presumption of correctness. *See* NMSA 1978, § 7-1-17 (C). *See also Gemini Las Colinas, LLC*, 2023-NMCA-039. *See also* 22.600.1.18 and 22.600.3.24 NMAC. *See also Whitener*, 1993-NMCA-161.

There are few New Mexico cases dealing with the interplay between restitution ordered in a criminal case for a tax crime and a civil assessment from the Department. *See In re Cox*, 1994-NMSC-054, ¶ 3, 117 N.M. 575 (recognizing that there was a plea agreement in which the defendant agreed to pay the Department a certain sum that constituted his unpaid taxes). *See also State v. Bowie*, 1990-NMCA-068, 110 N.M. 283 (holding that a sentence to incarcerate was valid when no restitution had been paid on a tax evasion plea). *See also Long*, 1996-NMCA-011.

Federal tax cases provide more guidance on the interplay between the restitution ordered in a criminal case and the civil assessment for tax liability. *See Morse v. Comm'r*, 419 F.3d 829, 833-835 (8th Circ.) (2005) (holding that the amount of court-ordered restitution on a criminal conviction for a tax crime could still be challenged in the civil assessment proceedings). Thus, a taxpayer may overcome the presumption that the assessment is correct, even when the amount assessed is based on the ordered restitution. *See id. See also Barrington v. Comm'r of Internal Revenue*, 124 T.C.M. (CCH) 1 (2022) (holding that the commissioner's civil assessment was valid when it was based on the amounts of restitution ordered in the tax evasion plea agreement because the taxpayer no longer had records and had presented insufficient evidence to overcome the presumption). Therefore, the Department's determination to assess was reasonable. *See Barrington*, 124 T.C.M. (CCH) 1. *See* NMSA 1978, 7-1-17.

The Taxpayer argued that "there is no support for the amount of the restitution." [Taxpayer's response]. However, the Taxpayer presented no evidence as a substantive challenge to the amount of the assessment. "Unsubstantiated statements that the assessment is incorrect cannot overcome the presumption of correctness." 3.1.6.12 (A) NMAC (2001). Therefore, the Taxpayer failed to overcome the presumption of correctness as to the amount of the assessment. *See* NMSA 1978, § 7-1-17 (C). *See also Gemini Las Colinas, LLC*, 2023-NMCA-039. *See also* 22.600.1.18 and 22.600.3.24 NMAC. *See also Whitener*, 1993-NMCA-161. *See also Barrington*, 124 T.C.M. (CCH) 1.

**Ensuring that the tax is paid once.**

Amounts can be ordered as restitution in a criminal case and in a civil assessment, but the amounts paid against the restitution order must be applied to and must reduce the amount of the civil assessment. *See Creel v. Comm'r of Internal Revenue*, 419 F.3d 1135 (11th Circ.) (2005) (holding that IRS could assess for tax, penalty, and interest after the defendant pleaded to two counts of tax crime and was ordered to pay restitution, but finding that, under the terms of the plea agreement, paperwork indicating that the restitution was paid in full was binding on the tax amount to be paid). *See U.S. v. Tucker*, 217 F.3d 960, 962 (8th Circ.) (2000) (noting that restitution paid for taxes owed will reduce the tax liability that the government can collect). *See also U.S. v. Helmsley*, 941 F.2d 71, 102 (2nd Circ.) (1991) (holding that amounts paid as restitution must be deducted from the civil judgment obtained to collect on the same tax deficiency), *cert. denied* 502 U.S. 1091.

The Department intends to credit the Taxpayer's assessment for any amounts paid against the restitution order and has already done so. [Exhibit C and Exhibit D]. The Department's approach is consistent with the federal principles on civil assessment concurrent to restitution ordered in a criminal case. *See Morse*, 419 F.3d 829. *See also Creel*, 419 F.3d 1135. *See also Tucker*, 217 F.3d 960. *See also Helmsley*, 941 F.2d 71.

## CONCLUSIONS OF LAW

A. The Taxpayer filed a timely written protest of the Department's assessment, and jurisdiction lies over the parties and the subject matter of this protest. *See* NMSA 1978, § 7-1B-8 (2019).

B. The first hearing was timely set and held within 90 days of the request for hearing. *See id. See also* 22.600.3.8 NMAC (2020).

C. The Department was required to issue an assessment when it determined that the Taxpayer was liable for more than $50.00 of unpaid taxes. *See* NMSA 1978, § 7-1-17 (A).

D. The statutory limitation on assessments does not prohibit assessment based on a criminal conviction and restitution order. *See* NMSA 1978, § 7-1-18.

E. By signing the plea agreement, the Taxpayer agreed to be personally liable for the tax owed, regardless of whether he or his business incurred the tax. *See Casias*, No. A-1-CA-36316. *See also Montano*, 2004-NMCA-094. *See also Barrington,* 124 T.C.M. (CCH) 1.

F. Generally, a civil assessment is permitted after a criminal conviction with a restitution order. *See Morse*, 419 F.3d 829. *See also Barrington*, 124 T.C.M. (CCH) 1.

G. A taxpayer may still challenge the civil assessment that is based on a criminal conviction with a restitution order. *See Morse*, 419 F.3d 829. *See also Barrington*, 124 T.C.M. (CCH) 1.

H. The burden is on the taxpayer challenging the assessment. *See Morse*, 419 F.3d 829. *See also Barrington*, 124 T.C.M. (CCH) 1. *See* 22.600.3.24 (B) NMAC. *See* NMSA 1978, § 7-1-17. *See El Centro Villa Nursing Ctr.*, 1989-NMCA-070. *See Archuleta*, 1972-NMCA-165. *See Casias Trucking*, 2014-NMCA-099. *See* 3.1.6.12 (A) NMAC. *See Gemini Las Colinas, LLC*, 2023-NMCA-039. *See* 22.600.1.18 NMAC.

I. The Taxpayer failed to overcome the presumption of correctness as to the assessment. *See* NMSA 1978, § 7-1-17 (C). *See also Gemini Las Colinas, LLC*, 2023-NMCA-039. *See also* 22.600.1.18 and 22.600.3.24 NMAC. *See also Whitener*, 1993-NMCA-161. *See also Barrington*, 124 T.C.M. (CCH) 1.

J. Amounts paid as restitution serve to reduce the civil assessment of liability. *See Morse*, 419 F.3d 829. *See also Creel*, 419 F.3d 1135. *See also Tucker*, 217 F.3d 960. *See also Helmsley*, 941 F.2d 71.

For the foregoing reasons, the Taxpayer's protest **IS DENIED**. **IT IS ORDERED** that Taxpayer is liable under the assessment and has a current[12] outstanding liability of $161,934.06.

DATED: July 12, 2024.

*Dee Dee Hoxie*

Dee Dee Hoxie
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 (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

[12] As of the date of the hearing.

begin 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 July 12, 2024, a copy of the foregoing Decision and Order was submitted to the parties listed below in the following manner:

***INTENTIONALLY BLANK***