

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

**IN THE MATTER OF THE PROTEST OF
MARTIN D. MOORE
EUNICE SPORTS BROADCASTING
TO WARRANT OF LEVY
ISSUED UNDER LETTER
ID NO. L1460562224**

No. 17-32

DECISION AND ORDER

A formal hearing on the above-referenced protest was held on June 23, 2017 before Hearing Officer Chris Romero in Santa Fe, New Mexico. The Taxation and Revenue Department (Department) was represented by Mr. Marek Grabowski, Staff Attorney. Ms. Veronica Galewaler, Auditor, also appeared on behalf of the Department. Mr. Martin D. Moore (Taxpayer) appeared in person and represented himself. The Hearing Officer took notice of all documents in the administrative file. Department Exhibit A and Taxpayer Exhibits 1 – 5 were admitted. A more detailed description of exhibits submitted at the hearing is included on the Administrative Exhibit Coversheet. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. As a result of a Schedule C mismatch, the Department assessed the Taxpayer for gross receipts taxes, penalty, and interest on February 17, 2016. [Testimony of Ms. Galewaler].
2. Although he received the assessment, the Taxpayer did not file a protest of the assessment. [Testimony of Mr. Moore].
3. As of March 2, 2017, the Taxpayer had not paid the assessment and the Department issued a Warrant of Levy under Letter ID No. L1460562224 for a total amount due of \$10,946.22.

4. On March 14, 2017, the Taxpayer filed a formal protest to the Warrant of Levy. The protest was received by the Department's Protest Office on March 27, 2017.
5. Taxpayer's protest did not assert that the Warrant of Levy had been improperly issued. Rather, the Taxpayer asserted claims and defenses against the underlying assessment.
6. On March 29, 2017, the Department acknowledged the Taxpayer's protest.
7. On May 8, 2017, the Department filed a Hearing Request seeking a hearing on the merits of Taxpayer's protest.
8. On May 9, 2017, the Administrative Hearings Office entered a Notice of Administrative Hearing which set a hearing on the merits of Taxpayer's protest for June 6, 2017.
9. On May 16, 2017, the Department filed an Unopposed Motion to Continue Formal Merits Hearing.
10. On May 30, 2017, the Taxpayer waived the 90-day hearing requirement in order to accommodate the Department's request for a continuance.
11. On May 31, 2017, the Administrative Hearings Office entered a Continuance Order and Amended Notice of Administrative Hearing scheduling a hearing on the merits of Taxpayer's protest for June 23, 2017.

DISCUSSION

Although the Taxpayer was permitted to discuss his defenses to the underlying assessment, the issue properly before the Hearing Officer is limited to whether the Warrant of Levy arising from that assessment was in accordance with the law.

The Taxpayer candidly acknowledged that he received the assessment but did not file a protest. Although, the Taxpayer claimed to be unaware of his right to protest the assessment, the

Hearing Officer takes administrative notice that taxpayers receiving assessments are also provided with a copy of the Department's publication, *FYI-406: Your Rights Under the Tax Laws*, which addresses in detail the manner by which taxpayers may file a protest in order to dispute a Notice of Assessment and Demand for Payment.

Where a taxpayer fails to file a protest within the required period of time, the secretary may proceed to enforce collection of tax if the taxpayer is delinquent within the meaning of NMSA 1978, Section 7-1-16. *See* NMSA 1978, Sec. 7-1-24 (C). Because there is no authority under the law to dispute an assessment after the time to protest has elapsed, the Hearing Officer is without jurisdiction to consider the claims and defenses that the Taxpayer presented to the underlying assessment. *See Associated Petroleum Transp. v. Shepard*, 1949-NMSC-002, ¶6 & ¶11, 53 N.M. 52 (taxpayer's inability to timely follow the then-existing protest procedure deprived the State Tax Commission of jurisdiction over the protest); *Chan v. Montoya*, 2011-NMCA-72, 150 N.M. 44 (sustaining dismissal of a property taxpayer's complaints for refund when such complaints were not timely filed in compliance with the Legislature's statutorily imposed deadlines); *Lopez v. New Mexico Dep't of Taxation & Revenue*, 1997-NMCA-115, 124 N.M. 270 (a protest must be filed within the time required by law).

In this case, when the Taxpayer's liability had not been satisfied or protested by March 2, 2017, a date more than one year after the assessment, the Department proceeded with its collection activities.

Levies.

The Department may collect taxes owed by a delinquent taxpayer by levy on all property of the taxpayer. *See* NMSA 1978, Sec. 7-1-31 (1993). A taxpayer is delinquent if an assessment

against a taxpayer is not paid in full within 90 days of the assessment, protested, or security for payment has not been furnished. *See* NMSA 1978, Sec. 7-1-16. The Taxpayer admitted to receiving the assessment of February 17, 2016. The Taxpayer further admitted that he did not file a protest. When 90 days elapsed and the Taxpayer had neither paid the assessment, filed a formal protest, nor furnished security for payment, the Taxpayer became delinquent. *See* NMSA 1978, Sec. 7-1-16 (A).

The Department was then allowed to proceed with collection by levy upon all property or rights to property of the delinquent Taxpayer. *See* NMSA 1978, Sec. 7-1-31. In this matter, the Department issued a Warrant of Levy. Levies are required to meet certain criteria in order to be valid. *See* NMSA 1978, Sec. 7-1-32 (1993). The Warrant of Levy in this case, including its attached schedule, satisfied the statutory criteria. *See id.* Consequently, the Warrant of Levy was properly executed and Taxpayer presented no claims that the Warrant of Levy did not comply with the law.

For reasons provided, the Warrant of Levy from which the protest arose satisfied the statutory requirements of NMSA 1978, Sec. 7-1-31 and Taxpayer's protest should be denied.

CONCLUSIONS OF LAW

1. The Taxpayer filed a timely written protest to the Warrant of Levy issued under Letter ID No. L1460562224, and jurisdiction lies over the parties and the subject matter of this protest.

2. The Taxpayer was a delinquent taxpayer as of March 2, 2017, and the Department was able to enforce collection by levy. *See* NMSA 1978, Sec. 7-1-31.

3. The Warrant of Levy satisfied the statutory requirements and was properly served.
See NMSA 1978, Sec. 7-1-32.

4. Claims and defenses to the underlying assessment were never protested and not properly before the Hearing Officer. *See* NMSA 1978, Sec. 7-1-24.

For the foregoing reasons, the Taxpayer's protest **is DENIED**.

DATED: June 30, 2017



Chris Romero
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 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.

