

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

**IN THE MATTER OF THE PROTEST OF
MICHAEL TRUJILLO,
TO THE ASSESSMENT ISSUED UNDER
LETTER ID NO. L0818020304**

No. 17-33

DECISION AND ORDER

A formal hearing on the above-referenced protest was held on July 20, 2017 before Hearing Officer Dee Dee Hoxie. The Taxation and Revenue Department (Department) was represented by Mr. Peter Breen, Staff Attorney. Mr. Tom Dillon, Auditor, also appeared on behalf of the Department. Mr. Michael Trujillo (Taxpayer), appeared for the hearing with his attorney, Mr. Dan Pick. The Department's exhibit "B", a copy of the audit, was admitted. Other exhibits referred to at the hearing were not admitted as they were already included in the administrative file. The Hearing Officer took notice of all documents in the administrative file. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. On April 30, 2015, the Department assessed the Taxpayer for personal income tax, penalty, and interest for the tax years from December 31, 2007 through December 31, 2013. The assessment was for \$113,654.14 tax, \$63,906.69 penalty, and \$13,049.33 interest. The penalty was a fraud penalty.
2. On July 29, 2015, the Taxpayer filed a formal protest letter.
3. On September 9, 2015, the Department filed a Request for Hearing asking that the Taxpayer's protest be scheduled for a formal administrative hearing.
4. On September 11, 2015, the Hearings Office issued a notice of hearing.

5. On October 9, 2015, a telephonic scheduling hearing was conducted. The scheduling hearing occurred within 90 days of the protest.
6. This protest was consolidated with two related protests at the scheduling hearing.
7. The hearing on the merits was originally set for July 2016.
8. The Taxpayer requested that the protest be held in abeyance as the parties were working on a settlement. The request was granted, and the hearing was reset for July 20, 2017.
9. Two of the protests were withdrawn pending the hearing. The only protest still outstanding at the time of the hearing was to the assessment issued under L0818020304.
10. On July 11, 2017, the parties requested a continuance. The request was denied.
11. On July 19, 2017, the parties filed a joint stipulation.
12. During the tax years in question, the Taxpayer was earning income from his business in New Mexico, which provided valet and parking services for events.
13. The Taxpayer was not keeping good records during those years and had some trouble accurately filing and reporting his taxes.
14. In 2014, the Department began an audit of the Taxpayer and his businesses. The Department then issued the assessment.
15. Due to the Taxpayer's poor bookkeeping, the Department used an extrapolation and averages method to determine the tax owed. The auditor determined that the Taxpayer's failure to provide documentation was willful and assessed a fraud penalty.
16. During the protest, the Taxpayer's new CPA was able to provide some better documentation. The parties mutually determined that a bank deposits method would be a more accurate representation of the earnings.

17. The Department recalculated the Taxpayer's earnings and taxes based on the bank deposits method.
18. The Department determined that the Taxpayer's failure to report and pay accurately was due to negligence, rather than fraud.
19. The Department determined that the assessment should be abated by \$90,413.48. The Taxpayer concurred with the new figures.
20. The Taxpayer is liable for personal income tax of \$77,668.28, penalty of \$15,533.66, and interest as of July 18, 2017 of \$15,916.09.
21. Interest continues to accrue until the tax principal is paid.

DISCUSSION

Based on the evidence presented and the stipulations of the parties, the amount of the assessment should be adjusted. The Department's assessment was reasonable at the time it was made based on the information provided by the Taxpayer. The Taxpayer provided more information during the protest, and the Department's recalculated liability is reasonable.

CONCLUSIONS OF LAW

- A. The Taxpayer filed a timely written protest to the Notice of Assessment issued under Letter ID numbers L0818020304, and jurisdiction lies over the parties and the subject matter of this protest.
- B. The Taxpayer conceded that he owed tax, penalty, and interest. The Department recalculated the tax appropriately after the Taxpayer provided more information.
- C. Therefore, the assessment IS ABATED AS FOLLOWS: \$35,985.86 in tax, \$48,372.03 in penalty, and \$6,055.59 in interest.

D. The Taxpayer remains LIABLE FOR TAXES AS FOLLOWS: \$77,668.28 in tax, \$15,533.66 in penalty, and \$15,916.09 in interest as of July 18, 2017. Interest continues to accrue until tax principal is paid.

For the foregoing reasons, the Taxpayer's protest is **DENIED IN PART AND GRANTED IN PART.**

DATED: July 31, 2017.

Dee Dee Hoxie

DEE DEE HOXIE
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 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 with the Court of Appeals, which occurs within 14 days of the Administrative Hearings Office's receipt of the docketing statement from the appealing party. *See* Rule 12-209 NMRA.

CERTIFICATE OF SERVICE