STATE OF NEW MEXICO
ADMINISTRATIVE HEARINGS OFFICE
TAX ADMINISTRATION ACT

IN THE MATTER OF THE PROTEST OF
STATE CONSTRUCTION **No. 17-38**
TO ASSESSMENT ISSUED UNDER LETTER
ID NO. L0962300208

DECISION AND ORDER

A protest hearing occurred on the above captioned matter on July 26, 2017 before Chris Romero, Esq., Hearing Officer, in Santa Fe, New Mexico. At the hearing, Mr. Paul Rieger appeared *pro se* for State Construction ("Taxpayer"). Staff Attorney, Mr. Marek Grabowski, appeared representing the State of New Mexico Taxation and Revenue Department ("Department"). Protest Auditor Amanda Carlisle appeared as a witness for the Department. Taxpayer Exhibits #1 – #13 and Department Exhibit A were admitted into the record. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. On January 5, 2017, under Letter ID No. L0962300208, the Department assessed Taxpayer for $6,455.32 in gross receipts tax, $1,291.08 in penalty, and $868.32 in interest for the CRS reporting periods between January 1, 2010 and December 31, 2014.

2. On February 3, 2017, Taxpayer prepared a letter of protest of the Department's assessment. The Department received Taxpayer's protest on February 10, 2017.

3. On February 21, 2017, the Department's protest office acknowledged receipt of a valid protest.

4. On April 4, 2017, the Department filed a request for hearing in this matter with the Administrative Hearings Office.

5. On April 5, 2017, the Administrative Hearings Office sent Notice of Telephonic Scheduling Conference, scheduling this matter for a scheduling conference on April 21, 2017.

6. A telephonic scheduling conference occurred on April 21, 2017 at which time the parties did not object that the scheduling hearing satisfied the 90-day hearing requirement under NMSA 1978, Sec. 7-1B-8 (B) (2015).

7. On April 24, 2017, the Administrative Hearings Office filed and mailed a Scheduling Order and Notice of Administrative Hearing which in addition to establishing various deadlines, set a hearing on the merits of the Taxpayer's protest for July 26, 2017.

8. The issues in dispute arose from Taxpayer's work as a handyman and personal assistant. Over the period subject of the protest, the overwhelming majority of receipts at issue arose from the work Taxpayer preformed for one client, Ms. Sallie Bingham (hereinafter "S.B."). [Testimony of Mr. Rieger; Taxpayer Ex. 1.1].

9. For approximately 15 years, Taxpayer has provided various services for S.B., ranging from errands to home repairs and maintenance. [Testimony of Mr. Rieger].

10. Although services performed for S.B. represented the majority of receipts subject of the protest, Taxpayer performed similar services for other clients including, Mr. Alex Traube (hereinafter "A.T."). [Testimony of Mr. Rieger].

11. At the conclusion of every month in protest, Taxpayer prepared an invoice containing a description of the services performed, an hourly charge for those services, and a list of all costs or expenses for which he sought reimbursement. [Testimony of Mr. Rieger; Taxpayer Exs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13.].

12. Invoices included gross receipts tax on services provided and separately stated the actual out-of-pocket expenditures incurred in providing those services. Taxpayer did not charge

any additional gross receipts tax on expenditures for which he sought reimbursement. [Testimony of Mr. Rieger; Taxpayer Exs. 2; 3; 4; 5; 6; 7; 8; 9; 10; 11; 12; 13.].

13. In preparing his CRS returns and making payments, Taxpayer reported gross receipts and paid gross receipts tax only on the services for which he was compensated. Taxpayer excluded reimbursed expenses from his gross receipts reports because he considered himself to be the disclosed agent of his clients, including S.B. [Testimony of Mr. Rieger; Taxpayer Ex. 1].

14. For federal tax reporting and filing purposes, receipts which represented reimbursements for expenditures were included on Taxpayer's Schedule C, which resulted in a mismatch between Taxpayer's Schedule C and his reported gross receipts. [Testimony of Mr. Rieger; Testimony of Ms. Carlisle].

15. The nature of the services Taxpayer provided varied widely from minor home maintenance and repairs to personal errands such as purchasing pet food, picking up prescriptions, dropping off and picking up automobiles for service or repairs, picking up and dropping off apparels for cleaning, purchasing home goods, supplies, or grocery products, purchasing office supplies, or picking up and dropping off jewelry for repairs.

16. In some circumstances, it should have been obvious to certain venders that Taxpayer may be acting on behalf of a third party. Vendors providing services for S.B.'s automobiles, for example, had actual or constructive knowledge that Taxpayer was not the registered owner of the vehicles. [Testimony of Ms. Rieger].

17. Other transactions were less obvious, such as purchases of small items such as lightbulbs or batteries. [Testimony of Mr. Rieger].

18. Taxpayer presented six unsworn statements signed by various venders, each of which purport to establish knowledge that Taxpayer purchased good or services in a disclosed agency capacity for his client. [Taxpayer Exs. 1.2 – 1.8].

19. Taxpayer prepared the statements and presented them to various vendors with whom he frequently purchased goods or services. [Testimony of Mr. Rieger].

20. The statements do not necessarily correspond with any actual expenditures for which reimbursement was sought as contained in Taxpayer Exhibits 2 – 13 and are silent as to the periods of time to which they apply. [Testimony of Ms. Carlisle].

21. The Taxpayer limited the introduction of invoices to 2014 upon his understanding that it would not be necessary for him to present invoices for other years in dispute because of his perception that the central issue was whether or not Taxpayer acted in a disclosed agency capacity. [Testimony of Mr. Rieger].

22. Taxpayer prepared his federal and state tax returns for all relevant periods of time and did not rely on the advice of any tax professional. [Testimony of Mr. Rieger]

23. As of the date of the hearing, the Taxpayer's liability was $6,455.32 in gross receipts tax, $1,291.08, in penalty, $868.32 in interest, with an additional amount of accrued interest of $142.90 for a total of $8,757.72. [Testimony of Ms. Carlisle; Department Ex. A].

DISCUSSION

This case involves the question of whether certain reimbursed expenses are subject to gross receipts tax. The expenses subject of this protest arose from the services that Taxpayer provided as a handyman and personal assistant. He incurred expenses on behalf of his customers for which obtained reimbursement. Taxpayer included those reimbursements as income in his

federal Schedule C resulting in a mismatch with his CRS reports for the years subject of the protest.

Taxpayer claimed that gross receipts tax should not be due on reimbursed expenditures because he incurred the expenses as an agent on behalf of a principal while acting in a disclosed agency capacity.

Presumption of Correctness.

Under NMSA 1978, Sec. 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, Sec. 7-1-3 (X) (2013). Under Regulation 3.1.6.13 NMAC, the presumption of correctness under Sec. 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, Sec. 7-9-4 (2002). Under NMSA 1978, Sec. 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, Sec. 7-9-3.3 (2003). Gross receipts tax applies to the performance of a service in New Mexico. *See* NMSA 1978, Sec. 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, Sec. 7-9-5 (2002).

In this case, there is little doubt that Taxpayer was engaged in the business of providing services 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, including receipts from reimbursements for expenditures made while performing services, unless Taxpayer can establish an applicable deduction or exemption.

Taxpayer asserted that the reimbursements that he received from his clients, particularly, S.B., were reimbursed expenditures not subject to gross receipts tax, and were exempt from taxation. The Department asserted that such receipts were subject to tax because there is insufficient evidence to find that Taxpayer was a disclosed agent of his clients when making the expenditures.

Under NMSA 1978, Sec. 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, because they clearly separately stated the charges incurred while providing services.

However, Taxpayer's evidence failed to establish the existence of a disclosed agency relationship in which the Taxpayer had the power to bind the principal in a contract with a third party so that the third party could enforce the contractual obligation against the principal.

Reviewing the evidence upon which the Taxpayer relied, he presented a brief unsworn statement from S.B., which stated that Taxpayer was "an agent and assistant" having the duty to purchase goods and services at her request. [Taxpayer Ex. 1.1]. The statement was submitted to establish a disclosed agency relationship between Taxpayer and S.B., but was inadequate for that purpose. There is no suggestion that Taxpayer had the actual authority to bind S.B. to an obligation that Taxpayer created, consistent with the first prong in *MPC Ltd.*

S.B.'s statement also fails to establish, at least from her perspective, that the beneficiaries of any contractual obligations incurred by the Taxpayer had the actual right to proceed against her in order to enforce the contractual obligations incurred by Taxpayer consistent with the second prong in *MPC Ltd.*.

Taxpayer also provided statements from seven venders with whom Taxpayer purportedly did business during the years subject of the protest. [Taxpayer Exs. 1.2 – 1.8]. However, the Hearing Officer did not find the statements reliable. All statements were unsworn and lacked particulars to establish that the assertions made therein were based on the personal knowledge of the individuals signing them. The statements were also unsatisfactory to establish how the purported agency was disclosed, to whom it was disclosed, or when it was disclosed.

With respect for their overall reliability, Taxpayer readily admitted that he authored the statements, distributed them for signature, and retrieved them once they had been signed. In some instances, the Taxpayer did not know the person who actually signed a statement and it was similarly uncertain whether the person signing the statements actually knew the Taxpayer.

For example, Taxpayer Ex. 1.8, a statement purporting to be from S.B.'s pharmacist, was signed by an individual who identified himself as the "Pharmacist in charge" and purported to "confirm" that he "sold goods and services to [Taxpayer], working as an agent for his client, [S.B.] and that his agency relationship was disclosed to [the pharmacist.]" However, Taxpayer readily admitted that he never met the individual who signed the statement, and further admitted that the only representative of the vendor with whom he ever interacted was the cashier at checkout. Therefore, genuine doubt arose with respect for whether the pharmacist who signed the statement actually knew Taxpayer or S.B., or had legitimate and actual knowledge at time of various transactions that Taxpayer was acting on behalf of S.B. in his alleged capacity as a disclosed agent with the authority to bind S.B. in contract.

The Hearing Officer made similar observations with regard for other statements which were substantially the same as that discussed above. Taxpayer Ex. 1.2 was signed by an individual identifying him or herself as an "estimator" for Custom Craft Auto Collision Inc., but the person's name was otherwise illegible. Given the opportunity, Taxpayer was unable to identify the individual who signed the statement. Taxpayer Ex. 1.7 was signed on behalf of Smith Veterinary Hospital by a person named Cynthia having the title of CSR. The signer's last name was also illegible. Given the opportunity to further elaborate regarding the identity of the individual signing the statement, Taxpayer was unable to do so.

It was evident that the Taxpayer did not know some of the signers and doubt arose as to whether the signers actually knew the Taxpayer.

Even with respect to the statements from those more familiar to the Taxpayer, the statements remain unreliable. None of the statements specifically address the periods at issue in this matter, and as stated above, they are unsworn and fail to specify when any agency was disclosed, by whom it was disclosed, how it was disclosed, or what was disclosed.

Although the facts in this protest may illustrate an example of disfavored tax pyramiding, the fact that both Taxpayer and a vendor might pay a gross receipts tax on the goods is not necessarily double taxation and not 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 vendors with whom he acquired goods while providing services, each with their own obligations to pay the gross receipts tax. The reimbursement of expenses 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 Sec. 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 expenses incurred in providing services were incurred as a disclosed agent.

The Hearing Officer also considered whether the nature of some particular expenditures could give rise to a constructive disclosure that Taxpayer was acting as a disclosed agent on behalf of a principal, as Taxpayer suggested. The Taxpayer claimed that in such transactions, it would be, or should be obvious, that he was acting in a disclosed agency capacity. Such transaction, according to the Taxpayer, would include repairs to automobiles where it was

apparent that he was not the registered owner of the automobile, or purchases of medications where it was obvious that he was not the patient for whom the medications were prescribed, or veterinary services or goods where it was evident from the records of the veterinarian that the Taxpayer was not the owner of the animal for whom the products or services were purchased. Despite Taxpayer's position, the problem is that he presented no evidence to establish what information any vendor actually had at the time of any given transaction or what, if any significance, such information actually had on a vendor. In the absence of such evidence, the Hearing Officer is prohibited from speculating as to what information any vendor may have had at the time of any given transaction, or assess the significance that the information had, or should have had, on the vendor.

Deduction for prescription drugs.

Taxpayer said that he provided a variety of services to S.B. during the years in protest, one of which was retrieving medications from a pharmacy. Taxpayer argued that reimbursed expenses, originally incurred for prescription medications, should not be taxed because the underlying expenditure was not taxable. The Hearing Officer presumed that the Taxpayer was referring to NMSA 1978, Sec. 7-9-73.2 (2007) which provides a deduction from gross receipts tax and governmental gross receipts tax for prescription drugs:

> **7-9-73.2. Deduction; gross receipts tax and governmental gross receipts tax; prescription drugs; oxygen.**
>
> A. Receipts from the sale of prescription drugs and oxygen and oxygen services provided by a licensed medicare durable medical equipment provider may be deducted from gross receipts and governmental gross receipts.
>
> B. For the purposes of this section, "prescription drugs" means insulin and substances that are:

> (1) dispensed by or under the supervision of a licensed pharmacist or by a physician or other person authorized under state law to do so;
>
> (2) prescribed for a specified person by a person authorized under state law to prescribe the substance; and
>
> (3) subject to the restrictions on sale contained in Subparagraph 1 of Subsection (b) of 21 USCA 353.

Without expressing any opinion as to whether Taxpayer has standing to claim a deduction under this section, Taxpayer's claim fails because he did not attempt to introduce any evidence to establish that any medications, for which he was reimbursed, were "prescription drugs" as defined by the deduction.

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, Sec. 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 a provision is mandatory absent clear indication to the contrary). The language of Sec. 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 Sec. 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 Sec. 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 an erroneous belief that tax was not due on his reimbursed expenditures. This inaction and erroneous belief constitutes negligence subject to penalty under Sec. 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, Sec. 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 Sec. 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. A hearing was timely set within 90-days of protest under NMSA 1978, Sec. 7-1B-8 (2015).

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

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

E. Taxpayer did not overcome the presumption of correctness, including the assessed penalty, that attached to the assessments under NMSA 1978, Sec. 7-1-17 (C) (2007) and *Archuleta v. O'Cheskey*, 1972-NMCA-165, ¶11, 84 N.M. 428.

F. Under NMSA 1978, Sec. 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 Sec. 7-1-69 (2007).

G. 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**. Taxpayer's outstanding liability as of the date of the hearing was $6,455.32 in gross receipts tax, $1,291.08, in penalty, $868.32 in interest, with an additional amount of accrued interest of $142.90 for a total of $8,757.72.

DATED: September 13th, 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 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