

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

**IN THE MATTER OF THE PROTEST OF
EASTERN SUNBELT REAL ESTATE,
TO THE ASSESSMENTS ISSUED UNDER
LETTER ID NOS. L0341307952 and L1570605616**

No. 17-36

DECISION AND ORDER

A formal hearing on the above-referenced protest was held on August 18, 2017 before Hearing Officer Dee Dee Hoxie. The Taxation and Revenue Department (Department) was represented by Mr. David Mittle, Staff Attorney. Ms. Milagros Bernardo, Auditor, also appeared on behalf of the Department. Mr. Roy Rackler, owner of Eastern Sunbelt Real Estate (Taxpayer), appeared for the hearing with his wife, Mrs. Genelda Rackler. No exhibits were submitted. 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 February 23, 2016, the Department assessed the Taxpayer for gross receipts tax, penalty, and interest for the tax period from January 1, 2011 through December 31, 2011. The assessment was for \$7,632.42 tax, \$1,526.48 penalty, and \$998.12 interest.
2. On February 23, 2016, the Department assessed the Taxpayer for gross receipts tax, penalty, and interest for the tax period from January 1, 2012 through December 31, 2012. The assessment was for \$29,656.14 tax, \$5,931.22 penalty, and \$2,960.72 interest.
3. On April 21, 2016, the Taxpayer filed a formal protest letter.
4. On June 10, 2016, the Department filed a Request for Hearing asking that the Taxpayer's protest be scheduled for a formal administrative hearing.

5. On June 10, 2016, the Hearings Office issued a notice of hearing.
6. On June 24, 2016, a telephonic scheduling hearing was conducted. The hearing was held within ninety days of the protest.
7. At the mutual requests of the parties, the hearing was reset several times, and telephonic scheduling hearings were also conducted on January 30, 2017, on March 10, 2017, and on May 15, 2017.
8. The parties explained that they needed additional time to obtain copies of federal return information and other paperwork. The Taxpayer and Mr. Rackler were hindered in getting copies of some paperwork because the accountant who handled their taxes in 2011 and 2012 had passed away.
9. On August 18, 2017, the Department filed a motion to continue the hearing as it was still reviewing paperwork and believed that the assessment needed to be reevaluated. The motion was denied.
10. Mr. Rackler owns a number of businesses. Some have a separate corporate identity, but the Taxpayer is owned wholly by him. Therefore, the Taxpayer's CRS number is tied to Mr. Rackler's name in the Department's database.
11. The Department determined that Mr. Rackler had filed a Schedule C with his 2011 and 2012 income tax returns, but had not paid gross receipts taxes on the transactions.
12. Because Mr. Rackler's name was tied to the Taxpayer's CRS number in the database, the Department mistakenly assessed the Taxpayer for the gross receipts taxes.
13. The transactions at issue were not conducted by the Taxpayer. They were conducted by Mr. Rackler in his individual capacity.

14. Moreover, the transactions at issue were mistakenly reported by Mr. Rackler on a Schedule C for business income. They should have been reported on a Schedule D for capital gains income.
15. At the hearing, the Department acknowledged that the Taxpayer had provided sufficient proof over the course of the protest, and agreed that the facts were not in dispute.
16. Therefore, the Taxpayer was not involved in the transactions and did not owe any tax.
17. Furthermore, the tax involved in the transactions is not the gross receipts tax.

CONCLUSIONS OF LAW

A. The Taxpayer filed a timely written protest to the Notices of Assessment issued under Letter ID numbers L0341307952 and L1570605616, and jurisdiction lies over the parties and the subject matter of this protest.

B. The Taxpayer was not the entity involved in the transactions, and the transactions were not subject to gross receipts tax. *See NMSA 1978, § 7-9-1 et seq.*

C. Nothing in this decision should be construed to prohibit the Department from assessing the appropriate taxpayer under the appropriate tax provision. *See NMSA 1978, § 7-1-17 and § 7-1-18.*

For the foregoing reasons, the Taxpayer's protest **is GRANTED**. The assessments are **HEREBY ABATED IN FULL**.

DATED: August 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

I hereby certify that I mailed the foregoing Order to the parties listed below this ____ day of _____, 20__ in the following manner: