

1
2
3
4
5
6
7

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

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

**IN THE MATTER OF THE PROTEST OF
DARLENE H. KRUEGER
TO THE DENIAL OF REFUND
ISSUED UNDER LETTER ID NO. L1919510704**

v.

AHO No. 19.06-116R, D&O No. 23-08

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

DECISION AND ORDER

On January 20, 2023, Hearing Officer Dee Dee Hoxie, Esq. conducted a hearing on the merits of the protest to the denial of refund. The Taxation and Revenue Department (Department) was represented by Timothy Williams, Staff Attorney. Angelica Rodriguez, Auditor, also appeared on behalf of the Department. Darlene H. Krueger (Taxpayer) was present with her attorney, Tracy Sprouls. The Taxpayer and Ms. Rodriguez testified. The Hearing Officer took notice of all documents in the administrative file. The Taxpayer's Exhibits #1¹ thru #20 and #22 thru #27, and the Department's Exhibits A thru D and G thru J² were admitted. A more detailed description of exhibits submitted at the hearing is included on the Administrative Exhibit Coversheet. Final pleadings were due on March 3, 2023.

The main issue to be decided is whether the Taxpayer is entitled to a refund of the amounts seized by a warrant of levy. The Hearing Officer considered all of the evidence and arguments presented by both parties. Because the Taxpayer failed to prove that she was entitled

¹ Exhibit 1 includes the page marked as Exhibit 1a.

² Exhibits H, I, and J were submitted after the hearing by the deadline given at the hearing. Exhibit J was originally marked by the Department as Exhibit G. However, Exhibit G had already been admitted during the hearing; therefore, the second Exhibit G was changed to J by the Hearing Officer.

1 to a refund, the Hearing Officer finds in favor of the Department. IT IS DECIDED AND
2 ORDERED AS FOLLOWS:

3 **FINDINGS OF FACT**

4 **Procedural Findings**

5 1. On January 8, 2019, the Department issued a denial of refund to the Taxpayer.
6 The Taxpayer's refund claim was denied for \$82,072.68 for the warrant of levy on outstanding
7 tax periods from January 1, 2007 through December 31, 2010. [Exhibit B].

8 2. On April 3, 2019, the Taxpayer filed a timely written protest to the denial of
9 refund. [Exhibit C].

10 3. On April 10, 2019, the Department acknowledged its receipt of the protest.
11 [Admin. file L0555431088].

12 4. On June 19, 2019, the Administrative Hearings Office first learned of the
13 Taxpayer's protest when the Department filed a request for hearing. The hearing request was
14 filed 70 days after the Department acknowledged its receipt of the protest. [Exhibit A].

15 5. On July 3, 2019, a telephonic scheduling hearing was conducted, which was
16 within 90 days of the date that the protest was acknowledged. *See* NMSA 1978, §7-1B-8
17 (2015)³. *See also* 22.600.3.8 NMAC (2018)⁴. [Admin. file].

18 6. Several scheduling hearings were conducted before the hearing on the merits⁵.
19 [Admin. file].

³ The statute in effect at the time that the Taxpayer's protest was filed. The statute was amended in 2019 to require a hearing within 90 days of the request, rather than the protest.

⁴ The regulation in effect at the time that the Taxpayer's protest was filed. The regulation was amended in 2020.

⁵ A comprehensive history of the protest may be acquired by referring to the administrative file.

1 7. At the hearing on the merits, the Hearing Officer requested additional exhibits
2 related to the underlying assessment and levy with a deadline for submission by January 27,
3 2023. The Taxpayer had the opportunity to respond to any filed exhibits by February 3, 2023.
4 The Hearing Officer also requested that the parties brief the issue of the scope of the protest for a
5 claim for refund on a warrant of levy as it related to the Taxpayer's status as a delinquent
6 taxpayer with a deadline of February 24, 2023. [Admin. file].

7 8. The Department filed Exhibits H, I, and J on January 27, 2023. The Taxpayer did
8 not respond to those exhibits by February 3, 2023. [Admin. file].

9 9. On February 7, 2023, the parties filed a motion for a telephonic hearing to clarify
10 the briefing issue, and a telephonic hearing was conducted on February 10, 2023. The Hearing
11 Officer requested that the parties brief the issue of the scope of the protest and whether or not the
12 assessment should be considered final when the Taxpayer did not file a protest to the assessment
13 and did not pay the assessment. The deadline for briefing was extended to March 3, 2023.
14 [Admin. file].

15 10. The Taxpayer filed a brief on March 3, 2023. The Department filed its brief on
16 March 6, 2023. [Admin. file].

17 **Substantive Findings**

18 11. On November 12, 2013, the Department issued four assessments to the Taxpayer
19 for gross receipts tax, penalty, and interest for tax periods from January 1, 2007 through
20 December 31, 2010. The total liability for the four assessments at that time was \$79,786.93.
21 [Exhibit J].

1 12. The Taxpayer did not file a protest the assessment, did not provide security for
2 payment of the assessment, and did not pay the assessment within 90 days of November 12,
3 2013. [Admin. file; Testimony of Taxpayer; Testimony of Ms. Rodriguez; Exhibit H; Exhibit I].

4 13. Ninety days after the assessments on November 12, 2013 was February 10, 2014.
5 On that date, the Taxpayer became a delinquent taxpayer. *See* NMSA 1978, § 7-1-16 (2019)⁶.

6 14. On March 9, 2015, more than a year after the assessments and more than a year
7 after the Taxpayer became a delinquent taxpayer, the Department served a warrant of levy on the
8 Taxpayer's bank account for \$82,072.68⁷. [Exhibit I].

9 15. On March 31, 2015, the bank surrendered \$82,072.68 from the Taxpayer's
10 account to the Department pursuant to the warrant of levy. [Exhibit H].

11 16. On December 27, 2018, the Taxpayer filed a claim for refund of \$82,072.68 that
12 was seized by virtue of the warrant of levy. [Testimony of Taxpayer; Exhibit D].

13 17. The Taxpayer claimed her refund based on her assertion that much of her income
14 from 2007 through 2010⁸ was derived from services performed outside of New Mexico for out-
15 of-state buyers and was exempt from the gross receipts tax. [Testimony of Taxpayer; Exhibit D].

16 18. The Taxpayer contracted with the New Mexico VA Health Care Center on San
17 Pedro Drive in Albuquerque, New Mexico to provide services on good clinical practice and
18 quality assurance for the VA Cooperative Studies Program. [Testimony of Taxpayer; Exhibit
19 1.1⁹].

⁶ Generally, citations will be to the current version of the statute unless there is a material difference between the current version and the version in effect at the time of the Taxpayer's assessment.

⁷ The difference from the originally assessed amount stems from the additional interest that accrued.

⁸ Further references to Taxpayer's work and services are in reference to this time frame.

⁹ The contract was executed in 2009, but the Taxpayer acknowledged that it was a continuation and formalization of the work she began doing in 2007.

1 19. Invoices and payments for the Taxpayer's services were handled by the
2 Department of Veterans Affairs in Austin, TX. [Testimony of Taxpayer; Exhibit 1.1-1.2].

3 20. The contract provided for two categories of service, one that occurred solely in
4 New Mexico at the Taxpayer's place of business or at the VA office in Albuquerque, and one
5 that required travel to other sites. [Exhibit 1.4].

6 21. The contract specified that the Taxpayer was providing services to the New
7 Mexico VA Health Care System Cooperative Studies Program. [Exhibit 1.4].

8 22. The Taxpayer's services were to be delivered to the VA Cooperative Studies
9 Program on Centre Avenue in Albuquerque, New Mexico. [Testimony of Taxpayer; Exhibit
10 1.1].

11 23. The contract estimated that the services performed in New Mexico would be 2040
12 hours, and that the services requiring travel would be 36 trips per year. [Exhibit 1.4-1.6].

13 24. The contract indicated that the Taxpayer was responsible for all applicable taxes
14 and that questions regarding New Mexico's tax requirements should be directed to the
15 Department. [Exhibit 1.6].

16 25. The purpose of the contract was for the Taxpayer to provide services to the VA
17 Cooperative Studies Program through the Site Monitoring, Auditing and Resource Team
18 (SMART) located in Albuquerque, New Mexico. [Exhibit 1.13].

19 26. The contract indicated that the work shall be performed at various sites
20 throughout the country, the Taxpayer's place of business, and the SMART office in
21 Albuquerque, New Mexico. [Exhibit 1.15].

22 27. The contract required the Taxpayer to maintain liability and proper damage
23 insurance with limits as required by the laws of the State of New Mexico. [Exhibit 1.28].

1 28. The Taxpayer contracted to perform services only with the New Mexico VA
2 Health Care Center in Albuquerque, New Mexico. [Testimony of Taxpayer; Exhibit 1].

3 29. The Taxpayer had no other source of income than her contract with the New
4 Mexico VA Health Care Center in Albuquerque, New Mexico. [Testimony of Taxpayer].

5 30. The Taxpayer had the option to subcontract in order to fulfill her “obligations to
6 NMVAHCS”. [Exhibit 1.13].

7 31. The Taxpayer traveled frequently to perform her services for the New Mexico VA
8 Health Care Center to various locations throughout the country. [Testimony of Taxpayer;
9 Exhibit 17-20].

10 32. The Taxpayer occasionally traveled on short notice when a for-cause audit was
11 directed to be done by the central VA office in Washington, DC. [Testimony of Taxpayer;
12 Exhibit 27].

13 33. After visiting sites outside of New Mexico, the Taxpayer returned to New Mexico
14 and prepared reports which were delivered to the VA office in Albuquerque, unless they were a
15 for-cause audit. Reports on for-cause audits are highly confidential and were submitted to the
16 office in Washington, DC. [Testimony of Taxpayer; Exhibit 1].

17 34. The Taxpayer estimated that she traveled outside of New Mexico for the VA
18 office 20 to 30 times per year. [Testimony of Taxpayer; Exhibit 2-5].

19 35. The Taxpayer estimated that the number of for-cause audits she traveled for in
20 2008 was four, in 2009 was three, and in 2010 was one. [Testimony of Taxpayer].

21 DISCUSSION

22 **Burden of proof.**

23 The Taxpayer’s claim for refund stems from a warrant of levy that was served on the
24 Taxpayer’s bank account for the unpaid assessments. Assessments by the Department are

1 presumed to be correct. *See* NMSA 1978, § 7-1-17 (2007). Therefore, the assessments issued to
2 the Taxpayer are presumed to be correct. *See id.* *See El Centro Villa Nursing Ctr. v. Taxation*
3 *and Revenue Department*, 1989-NMCA-070, 108 N.M. 795. *See also Archuleta v. O'Cheskey*,
4 1972-NMCA-165, ¶11, 84 N.M. 428. *See also N.M. Taxation & Revenue Dep't v. Casias*
5 *Trucking*, 2014-NMCA-099, ¶8. The presumption extends to the assessment of penalty and
6 interest. *See* 3.1.6.13 NMAC (2001). The Taxpayer “bears both the burden to produce evidence (in
7 order to overcome the presumption of correctness) and the burden to ultimately prove [her] case by
8 a preponderance of evidence.” *Gemini Las Colinas, LLC v. N.M. Taxation & Revenue Dep't*, ___-
9 NMCA-___, ¶ 27, No. A-1-CA-38672 (March 13, 2023)¹⁰. *See also* 22.600.1.18 (A) NMAC (2018)
10 and 22.600.3.24 (B) NMAC (2020).

11 **Protesting an assessment.**

12 Generally, a person may file a written protest to an assessment within 90 days of the
13 assessment. *See* NMSA 1978, § 7-1-24 (2019). Failure to file a timely protest means that the
14 “tax assessed and not protested becomes final”. *See* NMSA 1978, § 7-1-24 (F) (1) (2019)¹¹.
15 Failure to file a timely protest also means that “the taxpayer is deemed to have waived the right
16 to protest the assessment, unless the taxpayer pays the tax and claims a refund”. NMSA 1978, §
17 7-1-24 (F) (2) (2019)¹². A taxpayer who fails to pay, to provide security for payment, or to
18 protest an assessment within 90 days “becomes a delinquent taxpayer”. NMSA 1978, § 7-1-16
19 (A) (2019)¹³. Failure to file a timely protest also means that the Department may proceed to

¹⁰ Because this is a recent opinion from the Court of Appeals, it is unknown at the time of this decision and order whether certiorari will be sought, let alone whether it might be granted or denied.

¹¹ This provision was added in the 2017 version of the statute. *See* NMSA 1978, § 7-1-24 (2017).

¹² A similar provision appears in the 2015 version of the statute. The 2013 version does not contain such a provision.

¹³ This was also true of the previous version of the statute. *See* NMSA 1978, § 7-1-16 (2013).

1 enforce collection on a delinquent taxpayer. *See* NMSA 1978, § 7-1-24 (F) (3) (2019)¹⁴. All
2 parts of a statute are to be read together, in conjunction with other statutes, to achieve a
3 harmonious whole. *See Team Specialty Prods. v. N.M. Taxation & Revenue Dep't*, 2005-
4 NMCA-020, ¶ 9, 137 N.M. 50. *See also Key v. Chrysler Motors Corp.*, 1996-NMSC-038, ¶ 14,
5 121 N.M. 764. *See also State ex rel. Quintana v. Schnedar*, 1993-NMSC-033, ¶ 4, 115 NM 573.

6 The statutes, read together, indicate that a taxpayer who does not within 90 days pay an
7 assessment, provide security for payment of the assessment, or protest the assessment generally
8 will be deemed to have waived the right to protest the assessment and the assessment becomes
9 final. *See* NMSA 1978, § 7-1-24. However, a taxpayer may revitalize their right to protest the
10 assessment by paying the assessment and claiming a refund within the statute of limitations. *See*
11 *id.* *See also* NMSA 1978, § 7-1-26. This revitalization requires that “the taxpayer pays the tax”.
12 NMSA 1978, § 7-1-24 (F) (2). In this case, the Department seized the funds by warrant of levy
13 from the Taxpayer’s account.

14 The Department can enforce collection on a delinquent taxpayer, and nothing in the
15 statutes indicates that such collection action by the Department revitalizes a taxpayer’s right to
16 protest an assessment. *See* NMSA 1978, § 7-1-24. However, nothing in the statute explicitly
17 requires a taxpayer’s payment to be voluntary either. *See id.* The first step in statutory
18 interpretation is to look at the plain language of the statute and to refrain from further
19 interpretation if the plain language is not ambiguous. *See Marbob Energy Corp. v. N.M. Oil*
20 *Conservation Comm’n.*, 2009-NMSC-013, 146 N.M. 24. Statutes are to be applied as written
21 unless a literal use of the words would lead to an absurd result. *See N.M. Real Estate Comm’n. v.*
22 *Barger*, 2012-NMCA-081, ¶ 7.

¹⁴ Similar provisions were previously found in Subsection C of the statute. *See* NMSA 1978, § 7-1-24 (2013) and (2015).

1 If a statute is ambiguous or would lead to an absurd result, then it should be construed in
2 accordance with the legislative intent or spirit and reason for the statute, even though it may
3 require a substitution or addition of words. *See id.* *See also State ex rel. Helman v. Gallegos*,
4 1994-NMSC-023, 117 N.M. 346. When a statute is ambiguous or would lead to an absurd result,
5 it should be construed according to its obvious purpose. *See T-N-T Taxi Co. v. N.M. Pub.*
6 *Regulation Comm’n*, 2006-NMSC-016, ¶ 5, 139 N.M. 550. The purpose of the statute is
7 twofold, to allow taxpayers to protest and to set deadlines for those protests. *See NMSA 1978, §*
8 *7-1-24*. The purpose of enforcing deadlines is to “avoid stale claims, which protect the
9 Department’s ability to stabilize and predict, with some degree of certainty, the funds it collects
10 or manages.” *In re Kilmer*, 2004-NMCA-122, ¶ 16, 136 N.M. 440 (a case dealing with the
11 statute of limitations for protesting an inaction by the Department). Allowing a protest to the
12 assessment after the Department has enforced collection against a delinquent taxpayer would
13 create confusion and uncertainty in the state’s ability and authority to accurately project and
14 collect revenue. As the deadline for protest is ambiguous as to whether a taxpayer’s payment
15 must be voluntary or can be involuntary, the underlying arguments on the assessment will be
16 considered. *See NMSA 1978, § 7-1-26*.

17 **Refund claims on warrants of levy.**

18 A person “who claims a prior right to property in possession of the department pursuant
19 to a levy” may claim a refund within three years of the end of the calendar year in which the
20 property was levied. *NMSA 1978, § 7-1-26 (2021)*. “Prior right” is not defined in the statute.
21 *See id.* Logically, a secured creditor would have a prior right to the Department. *See Hi-Country*
22 *Buick GMC v. Taxation & Revenue Dep’t*, 2016-NMCA-027, ¶ 22 (noting that the state would

1 likely be in line behind secured creditors with little funds left to satisfy the accrued taxes). There
2 was no evidence that the Taxpayer was a secured creditor of her own funds.

3 However, a taxpayer may claim a prior to their own property if that property was seized
4 improperly. *See* NMSA 1978, § 7-1-26. Warrants of levy must meet certain criteria. *See*
5 NMSA 1978, § 7-1-32 through § 7-1-36. There was no evidence or argument that the levy used
6 against the Taxpayer's account was deficient.

7 Likewise, if the funds seized by levy were the property of a person who was not a
8 delinquent taxpayer, that person would have a prior right to their funds. *See* NMSA 1978, § 7-1-
9 24 (allowing enforcement collection against delinquent taxpayers). *See also* NMSA 1978, § 7-1-
10 31 (allowing the Department to proceed with collection on delinquent taxpayers by seizure by
11 levy).

12 The assessments against the Taxpayer were made on November 12, 2013. [Exhibit J].
13 Ninety days after the assessments was February 10, 2014. By function of statute, the Taxpayer
14 became a delinquent taxpayer on February 10, 2014 because she had not paid the tax, had not
15 provided security for payment, and had not protested the assessment by that date. *See* NMSA
16 1978, § 7-1-16. As of February 10, 2014, the Department was authorized to enforce collection
17 against the Taxpayer. *See* NMSA 1978, 7-1-24 and § 7-1-31. As the Taxpayer was a delinquent
18 taxpayer, the Taxpayer did not establish that she had a prior right to the property seized by the
19 Department pursuant to the levy. *See* NMSA 1978, § 7-1-26. The claim for refund was properly
20 denied. *See id.*

21 **Gross receipts tax.**

22 The majority of the arguments and evidence at the hearing centered on the correctness of
23 the assessment. Given the ambiguity in the statute as to whether an involuntary payment is

1 sufficient to revitalize a taxpayer’s right to protest an assessment, the substance of the arguments
2 and evidence was considered. *See* NMSA 1978, § 7-1-26. Based on the evidence presented, the
3 Taxpayer did not persuasively establish that she was entitled to a refund.

4 Anyone engaging in business in New Mexico is subject to the gross receipts tax. *See*
5 NMSA 1978, § 7-9-4 (2010). To engage in business in New Mexico means “carrying on or causing
6 to be carried on any activity with the purpose of direct or indirect benefit.” NMSA 1978, § 7-9-3.3
7 (2019). Gross receipts include the total amount received “from performing services in New
8 Mexico.” NMSA 1978, § 7-9-3.5 (A) (1) (2019). There is a statutory presumption that “all receipts
9 of a person engaging in business are subject to the gross receipts tax.” NMSA 1978, § 7-9-5 (A)
10 (2019). The Taxpayer provided New Mexico VA Health Care Center on San Pedro Drive in
11 Albuquerque, New Mexico with services on good clinical practice and quality assurance for the
12 VA Cooperative Studies Program. [Exhibit 1]. Presumptively, the Taxpayer’s receipts for
13 providing those services are subject to the gross receipts tax. *See* NMSA 1978, § 7-9-4, §7-9-5.

14 The Taxpayer argues that she is entitled to take the deduction under Section 7-9-57 for
15 the sale of her services to out-of-state buyers and because most of her services were performed
16 outside of New Mexico. The burden is on the Taxpayer to prove that she is entitled to an
17 exemption or deduction. *See Public Services Co. v. N.M. Taxation and Revenue Dep’t.*, 2007-
18 NMCA-050, ¶ 32, 141 N.M. 520. *See also Till v. Jones*, 1972-NMCA-046, 83 N.M. 743.
19 “Where an exemption or deduction from tax is claimed, the statute must be construed strictly in
20 favor of the taxing authority, the right to the exemption or deduction must be clearly and
21 unambiguously expressed in the statute, and the right must be clearly established by the
22 taxpayer.” *Sec. Escrow Corp. v. State Taxation and Revenue Dep’t.*, 1988-NMCA-068, ¶ 8, 107
23 N.M. 540. *See also Wing Pawn Shop v. Taxation and Revenue Dep’t.*, 1991-NMCA-024, ¶ 16,

1 111 N.M. 735. *See also Chavez v. Commissioner of Revenue*, 1970-NMCA-116, ¶ 7, 82 N.M.
2 97. *See also Pittsburgh and Midway Coal Mining Co. v. Revenue Division*, 1983-NMCA-019,
3 99 N.M. 545.

4 The Taxpayer tried to recreate a list of invoices and expenses to demonstrate her in-state
5 and out-of-state work. [Exhibit 2 through Exhibit 10; Exhibit 21 through Exhibit 25]. However,
6 she admitted that it was very difficult for her to recreate this list of invoices and expenses, as she
7 did not keep adequate records regarding expenses and fees. [Exhibit 17 through Exhibit 25].

8 The Taxpayer claims that her total gross receipts for the tax years from 2007 to 2010 were
9 \$901,686.17, and that only \$31,120.00 was taxable in New Mexico. [Exhibit 6]. The Taxpayer
10 admitted that elements of her out-of-state assignments were performed in New Mexico. [Exhibit
11 2 through Exhibit 5]. In fact, the Taxpayer argues that most of the gross receipts that she admits
12 are subject to New Mexico tax are from creating and filing reports in New Mexico on out-of-
13 state assignments. [Exhibit 2 through Exhibit 5]. The Taxpayer argues that most of her gross
14 receipts, including for work that was conducted solely within the state, are deductible. [Exhibit 2
15 through Exhibit 5].

16 The Taxpayer submitted her 1099 forms for three of the four years in dispute. The
17 Hearing Officer finds that these federal tax forms are the best evidence of the amount of
18 compensation that the Taxpayer received, especially in light of the Taxpayer's acknowledged
19 challenges in recreating her list of invoices and expenses. [Exhibit 11 through Exhibit 13]. The
20 Taxpayer's calculations for two of the three provided years do not match the compensation
21 reflected on the 1099 forms those years. [Exhibit 6; Exhibit 11; Exhibit 12]. The Taxpayer's
22 calculations also do not match the total provided by the invoice lists. [Exhibit 6; Exhibit 8;
23 Exhibit 9]. In 2008, the Taxpayer reports total gross receipts of \$241,640.21, while the 1099

1 form reports nonemployee compensation of \$268,555.21. [Exhibit 6; Exhibit 11]. In 2009, the
2 Taxpayer reports total gross receipts of \$222,103.35, while the 1099 form reports nonemployee
3 compensation of \$215,045.82. [Exhibit 6; Exhibit 12]. In 2010, the Taxpayer’s report and the
4 1099 form both reflect a total of \$225,410.77. [Exhibit 6; Exhibit 13]. The Taxpayer provides
5 one expense example per year, one year has no receipts to prove the expenses, and some receipts
6 are illegible. [Exhibit 17 through Exhibit 20]. Although it appears that the Taxpayer made a
7 good faith effort to recreate her tax records, the evidence provided is not persuasive because of
8 the inconsistencies between the 1099s and the Taxpayer’s recreated lists, which were based on
9 incomplete and inadequate records. Therefore, the Taxpayer failed to prove her case by the
10 preponderance of the evidence and failed to prove that she is entitled to a deduction. *See Gemini*
11 *Las Colinas, LLC v. N.M. Taxation & Revenue Dep’t*, ___-NMCA-___, ¶ 27, No. A-1-CA-38672
12 (March 13, 2023). *See also Public Services Co.*, 2007-NMCA-050, ¶ 32. *See also Till*, 1972-
13 NMCA-046. *See also Sec. Escrow Corp.*, 1988-NMCA-068, ¶ 8. *See also Wing Pawn Shop*,
14 1991-NMCA-024, ¶ 16. *See also Chavez*, 1970-NMCA-116, ¶ 7. *See also Pittsburgh and*
15 *Midway Coal Mining Co.*, 1983-NMCA-019.

16 The first element of the deduction is that “the sale of the service is made to an out-of-
17 state buyer”. NMSA 1978, § 7-9-57. The evidence established that the Taxpayer performed
18 services, both in New Mexico and out of state, for only one buyer, the New Mexico VA Health
19 Care Center. [Exhibit 1]. The New Mexico VA Health Care Center is administered by the VA
20 Office in Washington, DC. [Exhibit 27]. However, the New Mexico VA Health Care Center
21 was the agency that contracted with the Taxpayer and described her duties both within and
22 outside of the state. [Exhibit 1; Exhibit 14 through Exhibit 16]. The New Mexico VA Health
23 Care Center is located within the state of New Mexico at the address on San Pedro in

1 Albuquerque. [Exhibit 1; Exhibit 27]. The Taxpayer argues that the practical realities of
2 contracting with a federal agency with multiple levels of management are sufficient to prove an
3 out-of-state buyer and argues that the written contract with the in-state buyer should be
4 disregarded. The Hearing Officer finds that the contract is the best evidence of the Taxpayer's
5 responsibilities and for whom she was working. [Exhibit 1]. Under that contract, the Taxpayer's
6 only buyer was located in New Mexico. [Exhibit 1]. The fact that the in-state buyer was also an
7 instrumentality of the federal government does not prohibit the imposition of gross receipts tax
8 on the Taxpayer. *See U.S. v. N.M.*, 455 US 720, 102 S. Ct. 1373 (1982) (holding that New
9 Mexico could impose its gross receipts tax on independent contractors even when their contracts
10 were with the federal government). Consequently, the Taxpayer was not entitled to a deduction
11 for sales to an out-of-state buyer. *See NMSA 1978, § 7-9-57.*

12 CONCLUSIONS OF LAW

13 A. The Taxpayer filed a timely written protest to the denial of refund, and jurisdiction
14 lies over the parties and the subject matter of this protest. *See NMSA 1978, § 7-1B-8 (2019).*

15 B. The hearing was timely set and held within 90 days of the date that the protest was
16 acknowledged. *See NMSA 1978, §7-1B-8 (2015).* *See also 22.600.3.8 NMAC (2018).*

17 C. The Taxpayer she did not protest the assessments within 90 days. *See NMSA*
18 *1978, § 7-1-24.*

19 D. The Taxpayer was a delinquent taxpayer at the time that the Department issued
20 the warrant of levy. *See NMSA 1978, § 7-1-16 and § 7-1-31.*

21 E. The Department was authorized to enforce collection against the Taxpayer as a
22 delinquent taxpayer. *See NMSA 1978, § 7-1-24 and § 7-1-31.*

1 F. Because the Taxpayer was a delinquent taxpayer, she failed to establish a prior
2 right to the property seized by the levy. *See* NMSA 1978, § 7-1-26.

3 G. The Taxpayer failed to prove her case by the preponderance of the evidence and
4 failed to carry her burden of persuasion that she was entitled to a deduction for performing
5 services for an out-of-state buyer as the Taxpayer's only buyer was located within New Mexico.
6 *See* NMSA 1978, § 7-9-57. *See also Gemini Las Colinas, LLC v. N.M. Taxation & Revenue*
7 *Dep't*, ___-NMCA-___, ¶ 27, No. A-1-CA-38672 (March 13, 2023). *See also Public Services Co.*,
8 2007-NMCA-050, ¶ 32. *See also Till*, 1972-NMCA-046. *See also Sec. Escrow Corp.*, 1988-
9 NMCA-068, ¶ 8. *See also Wing Pawn Shop*, 1991-NMCA-024, ¶ 16. *See also Chavez*, 1970-
10 NMCA-116, ¶ 7. *See also Pittsburgh and Midway Coal Mining Co.*, 1983-NMCA-019.

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

12 DATED: April 7, 2023.

13 *Dee Dee Hoxie*

14 _____
15 Dee Dee Hoxie
16 Hearing Officer
17 Administrative Hearings Office
18 P.O. Box 6400
Santa Fe, NM 87502

19 **NOTICE OF RIGHT TO APPEAL**

20 Pursuant to NMSA 1978, Section 7-1-25 (2015), the parties have the right to appeal this
21 decision by *filing a notice of appeal with the New Mexico Court of Appeals* within 30 days of the
22 date shown above. If an appeal is not timely filed with the Court of Appeals within 30 days, this
23 Decision and Order will become final. Rule of Appellate Procedure 12-601 NMRA articulates
24 the requirements of perfecting an appeal of an administrative decision with the Court of Appeals.
25 Either party filing an appeal shall file a courtesy copy of the appeal with the Administrative

1 Hearings Office contemporaneous with the Court of Appeals filing so that the Administrative
2 Hearings Office may begin preparing the record proper. The parties will each be provided with a
3 copy of the record proper at the time of the filing of the record proper with the Court of Appeals,
4 which occurs within 14 days of the Administrative Hearings Office receipt of the docketing
5 statement from the appealing party. *See* Rule 12-209 NMRA.

6 **CERTIFICATE OF SERVICE**

7 On April 7, 2023, a copy of the foregoing Decision and Order was submitted to the parties
8 listed below in the following manner:

9 *INTENTIONALLY BLANK*