

1 **STATE OF NEW MEXICO**
2 **ADMINISTRATIVE HEARINGS OFFICE**
3 **TAX ADMINISTRATION ACT**

4 **IN THE MATTER OF THE PROTEST OF**
5 **MARY FELDBLUM**
6 **TO THE ASSESSMENT**
7 **ISSUED UNDER LETTER ID NO. L1805080688**

8 **v.**

AHO No. 23.05-016A, D&O No. 23-13

9 **NEW MEXICO TAXATION AND REVENUE DEPARTMENT**

10 **DECISION AND ORDER**

11 On June 29, 2023, Hearing Officer Dee Dee Hoxie, Esq. conducted a videoconference
12 hearing on the merits of the protest to the assessment. *See* NMSA 1978, § 7-1B-8 (H) (2019).
13 The Taxation and Revenue Department (Department) was represented by Peter Breen, Staff
14 Attorney, and Lizette Rivera, Auditor, who both appeared by videoconference. Mary Feldblum
15 (Taxpayer) was present by videoconference. The Taxpayer and Ms. Rivera testified. The
16 Hearing Officer took notice of all documents in the administrative file. On June 28, 2023, the
17 Department filed a notice of intent with attached exhibits A through I. The Department moved
18 for their admission at the hearing. There was no objection, and the Department's exhibits A
19 (protest letter); B (CRS-1 form tax return); C (TRD-41413 form tax return); D (letter from the
20 Taxpayer); E (check); F (envelope); G (notice letter); H (improper tax return letter January
21 2022); and I (improper tax return letter November 2022) were admitted.

22 The main issue to be decided is whether the Taxpayer is liable for the penalty. The
23 penalty was assessed for late filing of a return on a new form. The Hearing Officer considered
24 all of the evidence and arguments presented by both parties. Because the Taxpayer filed a timely
25 tax return on a form that complied with the Department's regulation, she was not negligent and

1 was not in disregard to the regulations. Consequently, the Hearing Officer finds in favor of the
2 Taxpayer. IT IS DECIDED AND ORDERED AS FOLLOWS:

3 **FINDINGS OF FACT**

4 **Procedural findings.**

5 1. On December 19, 2022, the Department issued a notice of assessment to the
6 Taxpayer for the tax period ending on October 31, 2022. The assessment was for penalty of
7 \$26.44 regarding a late-filed gross receipts tax return. [Testimony of the Taxpayer; Testimony
8 of Ms. Rivera; Admin. file L1805080688].

9 2. On December 27, 2022, the Taxpayer filed a timely written protest to the
10 assessment. [Exhibit A].

11 3. On February 28, 2023, the Department acknowledged its receipt of the protest.
12 [Admin. file L1247040624].

13 4. On May 16, 2023, the Department filed a request for hearing and an answer to the
14 protest with the Administrative Hearings Office. [Admin. file].

15 5. On June 29, 2023, the hearing was conducted, which was within 90 days of the
16 request as required by statute. [Admin. file].

17 **Substantive findings.**

18 6. The Taxpayer files monthly gross receipts tax (GRT) returns. [Testimony of the
19 Taxpayer; Testimony of Ms. Rivera].

20 7. The Taxpayer typically has gross receipts to report only a few months out of the
21 year. [Testimony of the Taxpayer; Exhibit D].

1 8. When the Taxpayer does not need to make a payment with her GRT return, she
2 files the GRT return online. [Testimony of the Taxpayer; Testimony of Ms. Rivera].

3 9. When the Taxpayer needs to make a payment with her GRT return, she files the
4 GRT return by mail and includes the payment. The Taxpayer chooses not to use the online
5 system for payments because it adds an additional credit card fee. [Testimony of the Taxpayer].

6 10. For many years, the Taxpayer used the same paper form to file her GRT return,
7 which was the CRS-1 Combined Report Form (CRS-1 form). [Testimony of the Taxpayer;
8 Exhibit B; Exhibit G].

9 11. The Department mailed a letter (the notice) to the Taxpayer to notify her of
10 changes to the business tax system. The notice indicated that as of July 2021, the CRS-1 form
11 would no longer be accepted. The notice advised that for most taxpayers, the GRT return would
12 now be on form TRD-41413. [Testimony of Ms. Rivera; Exhibit G].

13 12. The notice was mailed to the Taxpayer at a PO Box, which was the address on
14 file, and remains the same address that the Taxpayer currently uses¹. [Testimony of Ms. Rivera;
15 Exhibit G; Exhibit A; Exhibit C; Exhibit D; Exhibit E; Exhibit F].

16 13. The Taxpayer did not receive the notice. [Testimony of the Taxpayer; Exhibit D;
17 Exhibit A].

18 14. In January 2022, the Taxpayer filed a GRT return by mail, using the CRS-1 form,
19 and made a payment. [Testimony of the Taxpayer; Exhibit D].

20 15. On January 21, 2022, the Department mailed a letter to the Taxpayer to advise
21 that her GRT return for the tax period ending December 31, 2021 was not processed as it was on
22 the wrong form. [Testimony of Ms. Rivera; Exhibit H].

¹ All mailings from the Department used the same PO Box address.

1 16. The Taxpayer did not receive Exhibit H. [Testimony of the Taxpayer; Exhibit D;
2 Exhibit A].

3 17. Between January and November 2022, the Taxpayer filed her GRT returns using
4 the online system as she did not have payments to make during those months. [Testimony of the
5 Taxpayer; Testimony of Ms. Rivera].

6 18. The Taxpayer used the correct GRT return forms for those months. [Testimony
7 of Ms. Rivera].

8 19. The Taxpayer's use of the correct form for those months was due to the automatic
9 functioning of the online filing system, and the Taxpayer did not realize that there had been any
10 change to the form as she was required to put in the same information as she had always been
11 required to put into the GRT return form. [Testimony of the Taxpayer; Exhibit G].

12 20. On or about November 12, 2022, the Taxpayer filed a GRT return by mail, using
13 the CRS-1 form, and made a payment for the tax period ending October 31, 2022. [Testimony of
14 the Taxpayer; Testimony of Ms. Rivera; Exhibit I; Exhibit B; Exhibit E].

15 21. The Taxpayer's GRT return on the CRS-1 form was filed timely. [Testimony of
16 the Taxpayer; Exhibit B; Exhibit E; Exhibit I]. *See* NMSA 1978, § 7-9-11 (1969) (indicating
17 GRT is due the 25th of the month following the taxable event). *See also* NMSA 1978, § 7-1-13
18 (B) (2021) indicating returns are due the same date as the tax is due).

19 22. On November 29, 2022, the Department mailed a letter to the Taxpayer to advise
20 that her GRT return for the tax period ending October 31, 2022 was not processed as it was on
21 the wrong form. [Testimony of Ms. Rivera; Exhibit I].

22 23. The Taxpayer received Exhibit I. [Testimony of the Taxpayer; Exhibit D].

1 LLC, 2023-NMCA-___. See also *MPC Ltd. v. N.M. Taxation & Revenue Dep't*, 2003-NMCA-21,
2 ¶13, 133 N.M. 217.

3 **Penalty.**

4 When there is a “failure due to negligence or disregard of department rules and regulations,
5 but without intent to evade or defeat a tax, ... to file by the date required a return..., there shall be
6 added to the amount assessed a penalty”. NMSA 1978, § 7-1-69 (A) (2021). See also 3.1.4.10 (A)
7 NMAC (2021). “Every taxpayer shall, on or before the date on which payment of any tax is due,
8 complete and file a tax return in a *form prescribed and according to the regulations* issued by the
9 secretary.” NMSA 1978, § 7-1-13 (B) (emphasis added). For GRT, taxpayers “must file a *CRS-1*
10 *Combined Report Form* for each reporting period”. 3.2.2.15 NMAC (2001) (emphasis added).

11 The purpose of the Department’s regulations is “to interpret, exemplify, implement and
12 enforce the provisions of the Gross Receipts and Compensating Tax Act.” 3.2.1.6 NMAC
13 (2021). The Department has authority to enact regulations that interpret and exemplify the
14 statutes to which they relate. See NMSA 1978, § 9-11-6.2 (B) (1) (2015). The Department’s
15 regulations also carry a presumption that they are a “proper implementation of the provisions of
16 the laws”. NMSA 1978, § 9-11-6.2 (G). The Department’s authority to enact regulations
17 includes the power to amend or to repeal a regulation when it becomes necessary to do so “by
18 reason of any alteration of any such law.” *Id.*

19 The Taxpayer filed her October GRT return on or before the date that the payment of tax
20 was due. See NMSA 1978, § 7-9-11 and § 7-1-13. [Testimony of the Taxpayer; Exhibit B; Exhibit
21 E]. The Taxpayer filed her October GRT return using a CRS-1 form, which is the form that the
22 regulation specifies must be used. See 3.2.2.15 NMAC. [Testimony of Taxpayer; Exhibit B;
23 Exhibit E; Exhibit I]. As the Taxpayer complied with the Department’s regulation for filing a GRT

1 return on a CRS-1 form and her GRT return was filed on or before the due date, she was not
2 negligent or in disregard to the Department's rules and regulations. *See* NMSA 1978, § 7-1-69.
3 Therefore, penalty should be abated. *See id.*

4 Despite the Taxpayer's compliance with the Department's own regulations, the Department
5 argues that penalty is appropriate because the Taxpayer disregarded its notices regarding the change
6 to the GRT return form. Generally, notice is effective if it is mailed to the correct last known
7 address. *See* NMSA 1978, § 7-1-9. "A properly addressed letter that is mailed is presumed to be
8 received." *Garmond v. Kinney*, 1978-NMSC-043, ¶6, 91 N.M. 646. Generally, actual notice is
9 not required, and notice is presumed when it was given by means reasonably calculated to
10 apprise the parties. *See Maso v. State*, 2004-NMSC-028, ¶ 10, 136 N.M. 161. *See also Cordova*
11 *v. State*, 2005-NMCA-009, 136 N.M. 713. The Department mailed Exhibit G and Exhibit H to
12 the Taxpayer at the correct address, which remains her address. Therefore, the Department
13 presumed that the Taxpayer had notice of the change of form. *See* NMSA 1978, § 7-1-9. *See*
14 *also Garmond*, 1978-NMSC-043. *See also Cordova*, 2005-NMCA-009.

15 However, a party may rebut the presumption that notice sent in a properly addressed
16 letter was received. *See State Farm Fire & Casualty Co. v. Price*, 1984, NMCA-036, ¶ 24, 101
17 N.M. 438. Moreover, the adequacy of notice is not determined by the information available to
18 the sender at the time of the mailing and the specific facts of each case should be considered in
19 determining whether notice was given. *See Cordova*, 2005-NMCA-009 at ¶ 24. *See also*
20 *DeArmond v. Halliburton*, 2003-NMCA-148, ¶ 15, 134 N.M. 630 (holding that the specific facts
21 of the case refuted the presumption of notice by mailing).

22 The Taxpayer successfully rebutted the presumption that Exhibit G and Exhibit H, which
23 would have notified her of the change of form for GRT returns, was received. *See State Farm*

1 *Fire & Casualty Co.*, 1984-NMCA-036. *See Cordova*, 2005-NMCA-009. *See also DeArmond*,
2 2003-NMCA-148. The Taxpayer testified that she did not receive Exhibit G and Exhibit H and
3 that she keeps copies of all correspondence with the Department in a folder, which she had
4 available for inspection if it was requested. The Taxpayer's testimony is credible and supported
5 by her consistent statements throughout the course of the protest³ that she did not receive notice
6 of the change until she received Exhibit I. Her credibility is also supported by the fact that she
7 promptly took action to file the new form⁴ upon her receipt of Exhibit I. Therefore, the Taxpayer
8 was not negligent. *See NMSA 1978, § 7-1-69. See also 3.1.11.10 NMAC (2001). See also*
9 *3.1.11.11 NMAC (2001).*

10 The issue in this case is not about the Department's ability to change the form for filing
11 GRT returns from the CRS-1 form to the TRD-41413 form. The Department has the authority to
12 proscribe the form that must be used and to issue instructions as to the use of that new form. *See*
13 *NMSA 1978, § 7-1-13 (B). See also NMSA 1978, § 9-11-6.2.* The issue in this protest is
14 whether the Taxpayer was in disregard of the regulations or was negligent for purposes of
15 applying a penalty based on the facts of this protest. *See NMSA 1978, § 7-1-69.*

16 A failure to file due to disregarding the Department's rules and regulations or due to
17 negligence can result in penalty. *See id.* The statute requires compliance with the regulation for
18 filing a return. *See NMSA 1978, § 7-1-13 (B).* The regulation requires that a CRS-1 form be
19 filed. *See 3.2.2.15 NMAC.* The Department's regulation is presumed to be proper and has not
20 been repealed. *See NMSA 1978, § 9-11-6.2.* Therefore, the Taxpayer filed a CRS-1 form in
21 compliance, not in disregard, to the regulation. *See 3.2.2.15 NMAC. See NMSA 1978, § 7-1-*
22 *69. See also 3.1.11.10 NMAC (2001). See also 3.1.11.11 NMAC (2001).* The Taxpayer did not

³ In Exhibit A and Exhibit D.

⁴ Exhibit C.

1 receive notice of the Department's new rules; therefore, she was not negligent in her use of the
2 old form that complied with the regulation. *See* NMSA 1978, § 7-1-69. *See also* 3.1.11.10
3 NMAC (2001). *See also* 3.1.11.11 NMAC (2001).

4 CONCLUSIONS OF LAW

5 A. The Taxpayer filed a timely written protest of the Department's assessment and
6 jurisdiction lies over the parties and the subject matter of this protest. *See* NMSA 1978, § 7-1B-8
7 (2019).

8 B. The hearing was timely set and held within 90 days of the request for hearing. *See*
9 *id.*

10 C. The Taxpayer filed a timely GRT return on a CRS-1 form as required by the statutes
11 and regulations. *See* NMSA 1978, § 7-1-13. *See also* 3.2.2.15 NMAC.

12 D. The Taxpayer was not negligent and was not in disregard to the Department's
13 regulations. *See* NMSA 1978, § 7-1-69. *See also* 3.2.11.10 and 3.2.11.11 NMAC.

14 E. As the Taxpayer was not negligent and not in disregard to the Department's
15 regulations, penalty does not apply. *See* NMSA 1978, § 7-1-69.

16 For the foregoing reasons, the Taxpayer's protest **IS GRANTED. IT IS ORDERED** that
17 the \$26.44 of assessed penalty is **HEREBY ABATED**.

18 DATED: August 2, 2023.

19 *Dee Dee Hoxie*

20 _____
21 Dee Dee Hoxie
22 Hearing Officer
23 Administrative Hearings Office
24 P.O. Box 6400
Santa Fe, NM 87502

1 **NOTICE OF RIGHT TO APPEAL**

2 Pursuant to NMSA 1978, Section 7-1-25 (2015), the parties have the right to appeal this
3 decision by *filing a notice of appeal with the New Mexico Court of Appeals* within 30 days of the
4 date shown above. If an appeal is not timely filed with the Court of Appeals within 30 days, this
5 Decision and Order will become final. Rule of Appellate Procedure 12-601 NMRA articulates
6 the requirements of perfecting an appeal of an administrative decision with the Court of Appeals.
7 Either party filing an appeal shall file a courtesy copy of the appeal with the Administrative
8 Hearings Office contemporaneous with the Court of Appeals filing so that the Administrative
9 Hearings Office may begin preparing the record proper. The parties will each be provided with a
10 copy of the record proper at the time of the filing of the record proper with the Court of Appeals,
11 which occurs within 14 days of the Administrative Hearings Office receipt of the docketing
12 statement from the appealing party. *See* Rule 12-209 NMRA.

13 **CERTIFICATE OF SERVICE**

14 On August 2, 2023, a copy of the foregoing Decision and Order was submitted to the parties
15 listed below in the following manner:

16 *First Class Mail & Email*

First Class Mail & Email

17 *INTENTIONALLY BLANK*