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

**6588 EAST MAIN STREET FARMINGTON PROFESSIONAL, LLC &
3501 NORTH BUTLER AVENUE FARMINGTON PROFESSIONAL, LLC**

v.

AHO No. 24.09-030A & 24.09-031A

TAXATION AND REVENUE DEPARTMENT

D&O No. 24-17

DECISION AND ORDER

On November 4, 2024, Hearing Officer Dee Dee Hoxie, Esq. conducted a videoconference hearing on the merits of the protests to the assessments. The Taxation and Revenue Department (Department) was represented by Cordelia Friedman, Staff Attorney, who appeared by telephone. Lizette Rivera, Auditor, also appeared by telephone on behalf of the Department. 6588 East Main Street Farmington Professional, LLC (EMFP) and 3501 North Butler Avenue Farmington Professional, LLC (NBFP) (collectively, Taxpayers) were represented by their CFO, Yatin Gandhi, who appeared by videoconference. Dimple Parekh, Finance Manager, was also present by videoconference for the Taxpayers. Mr. Gandhi, Ms. Parekh, and Ms. Rivera testified. The Hearing Officer took notice of all documents in the administrative file. No exhibits were submitted.

The parties stipulated that the total liability for penalty and interest was \$16,100.39 for EMFP¹ and \$16,334.20 for NBFP². The Taxpayers withdrew any protest to the tax³. The only remaining issue is whether the Taxpayers are liable for the penalty and interest. The Hearing Officer considered all of the evidence and arguments presented by both parties. Because the Taxpayers failed to file timely returns and did not prove that they were not negligent, the

¹ Penalty is \$15,944.46 and interest is \$155.93.

² Penalty is \$16,229.62 and interest is \$104.58.

³ Most of the assessments show a zero tax liability or a tax liability of less than \$1. A few assessments show a more substantial amount of tax liability.

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

3 **FINDINGS OF FACT**

4 1. In December 2023, the Department issued a series of assessments to EMFP⁴. The
5 bulk of the assessments were for penalty for failure to file timely gross receipts tax returns in
6 2020 and 2021. [Testimony; Admin. file].

7 2. On October 24, 2023, the Department issued a series of assessments to NBFP.
8 The bulk of the assessments were for penalty for failure to file timely gross receipts tax returns in
9 2020 and 2021. [Testimony; Admin. file].

10 3. The Taxpayers filed timely written protests to the assessments. [Admin. file
11 protests].

12 4. The Department acknowledged its receipts of the protests. [Admin. file].

13 5. On September 9, 2024, the Department filed requests for hearing with answers to
14 the protests with the Administrative Hearings Office. [Admin. file requests].

15 6. On October 2, 2024, a telephonic scheduling hearing was conducted on each
16 protest, which was within 90 days of the requests as required by statute. [Admin. file].

17 7. On October 17, 2024, the parties filed stipulated motions in each protest to
18 consolidate the protests, which were granted on October 21, 2024. [Admin. file].

19 8. On October 22, 2024, the parties filed stipulated facts. [Admin. file].

20 9. The Taxpayers were acquired by the same parent company in February 2020.
21 [Testimony of Mr. Gandhi].

⁴ One assessment was also issued in July 2023; however, that assessment is not at issue according to the stipulated facts.

1 10. After the acquisition, the Taxpayers looked into how to register their businesses in
2 New Mexico. [Testimony of Mr. Gandhi].

3 11. The Taxpayers filed their business registrations in New Mexico around the time
4 that the pandemic hit, and businesses were required to be closed. [Testimony of Mr. Gandhi].

5 12. The Taxpayers provide dental health services. [Testimony of Mr. Gandhi].

6 13. The Taxpayers had to significantly and quickly change their usual business
7 practices due to the mandatory government-ordered closures during the pandemic. [Testimony
8 of Mr. Gandhi].

9 14. The Taxpayers faced significant challenges in transitioning to remote-working
10 models, especially with respect to receipt of mail. [Testimony of Mr. Gandhi].

11 15. The Taxpayers are required to display their business registration at their business
12 locations before engaging in business. [Testimony of Ms. Rivera].

13 16. The Department mailed the business registrations to the Taxpayers with a packet
14 of filing instructions for gross receipts taxes. [Testimony of Ms. Rivera].

15 17. The Taxpayers provided limited services as dental practices at their business
16 locations during the pandemic. [Testimony of Mr. Gandhi].

17 18. The Taxpayers did not receive the filing instructions. [Testimony of Mr. Gandhi].

18 19. As the Taxpayers were doing business, they presumably did receive their business
19 registrations. [Testimony of Mr. Gandhi, Testimony of Ms. Rivera].

20 20. The Taxpayers learned of the gross receipts tax obligation and began researching
21 how to take care of it. [Testimony of Mr. Gandhi].

22 21. An employee of the Taxpayers tried calling the Department to inquire about the
23 procedures and processes respecting the gross receipts tax. [Testimony of Mr. Gandhi].

1 22. The employee tried to call several times, but he did not receive any assistance
2 until late in 2021. [Testimony of Mr. Gandhi].

3 23. The Department has no record that the Taxpayers called during that time.
4 [Testimony of Ms. Rivera].

5 24. The Taxpayers have no record of their calls to the Department during that time
6 because of the breakdown in their procedures and record-keeping that were caused by the
7 remote-working transition. The employee who made the calls was not available to testify.
8 [Testimony of Mr. Gandhi].

9 25. The Taxpayers were making gross receipts tax payments during that time, but
10 they were not filing their returns. [Testimony of Mr. Gandhi; Testimony of Ms. Rivera].

11 26. After receiving assistance in late 2021, the Taxpayers began filing their gross
12 receipts tax returns and filed the returns late for the tax periods in 2020 and early 2021.
13 [Testimony of Mr. Gandhi].

14 27. The Taxpayers withdrew any protest as to the gross receipts tax. The Taxpayers
15 are asking for relief from the penalty and interest that were assessed. [Testimony of Mr. Gandhi;
16 Admin. file].

17 DISCUSSION

18 “The taxpayer shall have the burden of proof, except as otherwise provided by law.”
19 22.600.3.24 (B) NMAC (2020). Assessments by the Department are presumed to be correct. *See*
20 *NMSA 1978, § 7-1-17 (2007)*. *See El Centro Villa Nursing Ctr. v. Taxation and Revenue*
21 *Department*, 1989-NMCA-070, 108 N.M. 795. *See also Archuleta v. O'Cheskey*, 1972-NMCA-
22 165, ¶11, 84 N.M. 428. *See also N.M. Taxation & Revenue Dep't v. Casias Trucking*, 2014-
23 NMCA-099, ¶8. The presumption extends to the assessment of penalty and interest. *See* 3.1.6.13

1 NMAC (2001). “The effect of the presumption of correctness is that the taxpayer has the burden of
2 coming forward with some countervailing evidence tending to dispute the factual correctness of the
3 assessment”. 3.1.6.12 (A) NMAC (2001). *See Gemini Las Colinas, LLC v. N.M. Taxation &*
4 *Revenue Dep’t*, 2023-NMCA-039. *See also* 22.600.1.18 and 22.600.3.24 NMAC.

5 **Assessment of penalty.**

6 When a return is not filed by the due date, “there *shall* be added to the amount assessed a
7 penalty”. NMSA 1978, § 7-1-69 (A) (2021) (emphasis added). The penalty equals two percent per
8 month, not to exceed 20 percent, of the tax liability established in the late-filed return. *See id.* The
9 word “shall” indicates that the assessment of penalty is mandatory, not discretionary. *See Marbob*
10 *Energy Corp. v. N.M. Oil Conservation Comm’n.*, 2009-NMSC-013, ¶ 22, 146 N.M. 24. If a
11 taxpayer is not negligent, a penalty may be excused. *See* 3.1.11.11 NMAC (2001) (listing several
12 factors that indicate non-negligence). The Taxpayers presented no evidence of factors that indicate
13 non-negligence. *See id.*

14 Negligence includes “inadvertence, indifference, thoughtlessness, carelessness, erroneous
15 belief or inattention.” 3.1.11.10 NMAC (2001). It also includes failure to act where action is
16 required and the failure to exercise the degree of ordinary business care and prudence that
17 reasonable taxpayers would exercise in similar circumstances. *See id.* “Under the statutory
18 definition of negligence, it is inappropriate to impose a penalty where the taxpayer acted reasonably
19 in failing to report income or to pay taxes.” *El Centro Villa Nursing Ctr.*, 1989-NMCA-070, ¶ 6.

20 The Taxpayers admit that they failed to file the returns involved in the assessments on time.
21 [Testimony of Mr. Gandhi]. Therefore, the Taxpayers were negligent under the regulation as they
22 failed to act where action was required. *See* 3.1.11.10 NMAC.

1 The Taxpayers argued that they tried to get information from the Department by calling in
2 2020 and 2021. [Testimony of Mr. Gandhi]. The Taxpayers argued that they began filing and filed
3 their late returns after they received information from the Department in late 2021. [Testimony of
4 Mr. Gandhi]. The only evidence that the Taxpayers tried to call the Department in 2020 and in
5 2021 is hearsay. The employee who made the inquiries did not testify, the extent of his efforts is
6 not clear, the content of his conversations is unknown, and the Taxpayers do not have any business
7 records, such as call logs, to bolster the hearsay. Therefore, the Taxpayers' evidence is inadequate.
8 The Department's records do not show any calls were received from the Taxpayers during 2020 and
9 early 2021. [Testimony of Ms. Rivera]. Moreover, the Taxpayers are not alleging that the
10 Department misled them, merely that they were uninformed and did not understand how to file
11 before August or September in 2021. *See* 3.1.11.11 (A) NMAC (indicating that a taxpayer is not
12 negligent if misled by a department employee). A taxpayer's lack of knowledge is not sufficient to
13 demonstrate that they acted reasonably for purposes of excusing penalty. *See Grogan v. N.M.*
14 *Taxation & Revenue Dep't*, 2003-NMCA-033, ¶ 32-35, 133 N.M. 354.

15 The Department mailed filing instructions to the Taxpayers with their business registrations.
16 [Testimony of Ms. Rivera]. The Taxpayers do not deny receiving their business registrations, but
17 they deny receiving the filing instructions. [Testimony of Mr. Gandhi]. Evidence that a taxpayer
18 received a filing kit but failed to comply with its instructions was sufficient evidence that a taxpayer
19 was negligent. *See Arco Materials, Inc. v. State of N.M. Taxation & Revenue Dep't*, 1994-NMCA-
20 062, ¶ 15, 118 N.M. 12, *overruled in part on other grounds by Blaze Constr. Co. v. Taxation &*
21 *Revenue Dep't*, 1994-NMSC-110, 118 N.M. 647.

22 The Taxpayers failed to file their returns because they lacked information and failed to take
23 action where action was required. [Testimony of Mr. Gandhi]. *See* 3.1.11.10 NMAC. Although

1 the Taxpayers inquired about filing returns, they failed to take any further action, such as using the
2 Department’s website or consulting a tax professional, when their inquiries went unanswered.
3 [Testimony of Mr. Gandhi]. The Taxpayers failed to prove that they acted reasonably when they
4 failed to file their returns. *See Arco Materials, Inc.*, 1994-NMCA-062. *See Grogan*, 2003-NMCA-
5 033. *See El Centro Villa Nursing Ctr.*, 1989-NMCA-070.

6 **Assessment of interest.**

7 The Taxpayers requested relief from interest. Interest “shall be paid” on taxes that were
8 not paid on or before the date on which they were due. NMSA 1978, § 7-1-67 (A) (2013).
9 Again, the word “shall” indicates that the assessment of interest is mandatory. *See Marbob*
10 *Energy Corp.*, 2009-NMSC-013. The assessment of interest is not designed to punish taxpayers,
11 but to compensate the state for the time value of unpaid revenue. *See also* 3.1.10.18 NMAC
12 (2001) (indicating the interest rate per year and how daily interest is calculated). In a few
13 instances, the Taxpayers failed to pay the total tax when it was due, and interest was properly
14 assessed on those portions of tax that were not paid when they were due.

15 **CONCLUSIONS OF LAW**

16 A. The Taxpayers filed timely written protests of the Department’s assessments, and
17 jurisdiction lies over the parties and the subject matter of this protest. *See* NMSA 1978, § 7-1B-8
18 (2019).

19 B. The first hearing on each protest was timely set and held within 90 days of the
20 request for hearing. *See id.* *See also* 22.600.3.8 NMAC (2020).

21 C. The Taxpayers admitted that they failed to file their returns when they were due.
22 *See* NMSA 1978, § 7-1-17 and § 7-1-69.

1 D. The Taxpayers failed to prove that they were not negligent when they failed to file
2 their returns when they were due; therefore, penalty was properly assessed. *See* NMSA 1978, § 7-
3 1-69. *See* 3.1.11.10 and 3.1.11.11 NMAC.

4 E. Small portions of the tax were not paid when they were due; therefore, interest was
5 properly assessed. *See* NMSA 1978, § 7-1-67.

6 For the foregoing reasons, the Taxpayer's protest **IS DENIED. IT IS ORDERED** that
7 Taxpayers are liable for \$16,100.39 in penalty and interest for EMFP and \$16,334.20 in penalty
8 and interest for NBFP.

9 DATED: December 6, 2024.

10 *Dee Dee Hoxie*

11 _____
12 Dee Dee Hoxie
13 Hearing Officer
14 Administrative Hearings Office
15 P.O. Box 6400
Santa Fe, NM 87502

16 **NOTICE OF RIGHT TO APPEAL**

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

1 copy of the record proper at the time of the filing of the record proper with the Court of Appeals,
2 which occurs within 14 days of the Administrative Hearings Office receipt of the docketing
3 statement from the appealing party. *See* Rule 12-209 NMRA.

4 **CERTIFICATE OF SERVICE**

5 On December 6, 2024, a copy of the foregoing Decision and Order was submitted to the
6 parties listed below in the following manner:

7 *First Class Mail & Email*

First Class Mail & Email

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9
10 *INTENTIONALLY BLANK*