

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

4 **MOHAMMED ABDUL MUQEET ADNAN**

5 **v.**

AHO Case Number 23.12-064A, D&O #25-01

6 **NEW MEXICO TAXATION AND REVENUE DEPARTMENT**

7 **DECISION AND ORDER**

8 On May 3, 2024, Hearing Officer Ignacio V. Gallegos, Esq., conducted an administrative
9 hearing on the merits in the matter of the tax protest of Mohammed Abdul Muqeeet Adnan
10 (Taxpayer) pursuant to the Tax Administration Act and the Administrative Hearings Office Act.
11 At the hearing conducted by video conference, Dr. Mohammed Abdul Muqeeet Adnan appeared
12 on his own behalf. Staff Attorney Timothy Williams appeared, representing the opposing party
13 in the protest, the Taxation and Revenue Department (Department). Department protest auditor
14 Danny Pogan appeared as a witness for the Department. Both Taxpayer and Department exhibits
15 were presented and admitted as detailed in the Exhibit Log, by stipulation.

16 Based on the evidence in the record, and after making findings of fact, the hearing officer
17 finds that Taxpayer has failed to overcome the presumption of correctness that attached to the
18 Department's assessment. Taxpayer, a doctor, contended that as an independent contractor he
19 worked for two companies located out-of-state, although the service was delivered to patients in
20 New Mexico. The Department showed that the service was delivered in New Mexico at New
21 Mexico hospitals. Without sufficient evidence in support of Taxpayer's contention, the Taxpayer's
22 protest is therefore DENIED as to the tax and penalty. However, for reasons of tardiness in bringing
23 the matter to hearing, the accrual of interest is halted as of September 11, 2023.

24 **IT IS DECIDED AND ORDERED AS FOLLOWS:**

1 **FINDINGS OF FACT**

2 **Procedural findings**

3 1. On January 3, 2023, the Department issued a Notice of Assessment of Taxes and
4 Demand for Payment for the gross receipts tax reporting periods beginning January 1, 2016, and
5 ending December 31, 2017. The assessment was for audit gross receipts tax of \$13,037.16,
6 penalty of \$2,607.37, and interest of \$3,182.24, for a total assessment due of \$18,826.77.
7 [Administrative file; Letter ID# L1224570992].

8 2. On February 22, 2023, Taxpayer sent a letter of protest as well as Form ACD-
9 31094 to the Department’s protest office, alleging that Taxpayer performed services outside New
10 Mexico, and receipts generated were not taxable as gross receipts. Taxpayer provided 1099s and
11 the Department’s own publication, FYI-105 in his protest submission. [Administrative file].

12 3. On May 31, 2023, the Department issued a letter acknowledging a timely protest
13 of the Notice of Assessment. [Administrative file; Letter ID# L1702083696].

14 4. On December 1, 2023, the Department filed a Request for Hearing asking that the
15 Taxpayer’s protest be scheduled for a scheduling hearing, alleging the amount at protest was
16 \$18,826.77. The Department, as part of the Request for Hearing packet, filed an Answer to
17 Protest asserting that the Taxpayer must report and pay gross receipts taxes on business income
18 for Taxpayer’s work as an independent contractor providing healthcare services in New Mexico.
19 The failure to file and pay gross receipts taxes was discovered because Taxpayer reported
20 Schedule C income without filing corresponding gross receipts and compensating tax returns.
21 Later the same day, the Department submitted the Taxpayer’s protest letter to include with the
22 protest packet. [Administrative file].

1 5. On December 6, 2023, the Administrative Hearings Office sent a Notice of
2 Telephonic Scheduling Hearing, giving the parties notice that a scheduling hearing would take
3 place by telephone on December 20, 2023. The Notice of Telephonic Scheduling Hearing was
4 sent to the parties' addresses and email addresses. [Administrative file].

5 6. On December 20, 2023, the undersigned Hearing Officer conducted a telephonic
6 scheduling hearing. Taxpayer appeared at the scheduling hearing. The Department was
7 represented by Staff Attorney Timothy Williams. The parties did not object that the hearing
8 satisfied the 90-day hearing requirement of Section 7-1B-8 (F) (2019). [Administrative file;
9 Hearing Record of December 20, 2023].

10 7. On December 27, 2023, the Administrative Hearings Office issued a Scheduling
11 Order and Notice of Administrative Hearing, setting various deadlines and providing notice of a
12 merits hearing to take place May 3, 2024. [Administrative file].

13 8. Prior to the hearing, the Department and Taxpayer submitted their respective
14 proposed exhibits. [Administrative file].

15 9. The undersigned Hearing Officer conducted a merits hearing by video conference
16 on May 3, 2024. Taxpayer appeared at the merits hearing by video conference. The Department
17 was represented by Staff Attorney Timothy Williams, accompanied by protest auditor Danny
18 Pogan. The Hearing Officer preserved an audio recording of the hearing. [Administrative file;
19 Hearing Record of May 3, 2024].

20 **Substantive findings**

21 10. Dr. Mohammed Abdul Muqet Adnan was, at times pertinent to the protest, a
22 resident of New Mexico. [Administrative file; Examination of Dr. Adnan].

1 11. Dr. Adnan is a physician. Taxpayer was, at the times pertinent to this protest,
2 completing a medical fellowship program in New Mexico, occasionally taking on other work
3 (referred to as “moonlighting”) as his schedule allowed. [Administrative file; Examination of
4 Dr. Adnan].

5 12. As part of his “moonlighting,” Dr. Adnan performed services as a physician in
6 New Mexico at two New Mexico health care facilities: Christus St. Vincent Regional Medical
7 Center in Santa Fe, and Lovelace Medical Center in Albuquerque. He was compensated as an
8 independent contractor. The medical staffing companies who hired Taxpayer are located outside
9 of New Mexico, and they contracted with the New Mexico health care facilities at which Dr.
10 Adnan took patients. [Administrative file; Examination of Dr. Adnan; Taxpayer Exhibit 2, 3, 4,
11 5, 6, 7].

12 13. Taxpayer received a Form-1099-Misc from CHG Companies, Inc, located in Salt
13 Lake City, Utah for work performed in tax year 2016. The contract with CHG Companies, Inc.
14 indicated to Taxpayer that the laws of Utah apply. [Examination of Dr. Adnan; Taxpayer
15 presentation; Taxpayer Exhibit 3, 9].

16 14. Taxpayer received a Form-1099-Misc from CHG Companies, Inc, located in
17 Midvale, Utah for work performed in tax year 2017 [Examination of Dr. Adnan; Taxpayer
18 Exhibit 5].

19 15. CHG Companies, Inc., through Continental Casualty Company, provided general
20 liability insurance for Taxpayer, as an independent contractor, for work at Christus St. Vincent
21 Regional Medical Center in Santa Fe, New Mexico. [Examination of Dr. Adnan; Taxpayer
22 Exhibit 7].

1 16. Taxpayer received a Form-1099-Misc from Moonlighting Solutions LLC, located
2 in Greensboro, North Carolina for work performed in tax year 2016. The contract with
3 Moonlighting Solutions, LLC indicated to Taxpayer that the laws of North Carolina apply.
4 [Examination of Dr. Adnan; Taxpayer presentation; Taxpayer Exhibit 2, 9].

5 17. Taxpayer received a Form-1099-Misc from Moonlighting Solutions LLC, located
6 in Greensboro, North Carolina for work performed in tax year 2017. [Taxpayer Exhibit 4].

7 18. Moonlighting Solutions, LLC, through Columbia Casualty Company, provided
8 general liability insurance for Taxpayer, as an independent contractor, for work at Lovelace
9 Medical Center in Albuquerque, New Mexico. [Examination of Dr. Adnan; Taxpayer Exhibit 6].

10 19. Dr. Adnan did not consult a certified public accountant before filing his federal
11 and state returns for the years at issue. [Examination of Dr. Adnan].

12 20. Danny Pogan is a retired protest auditor for the New Mexico Taxation and
13 Revenue Department, now working on contract with the Department. [Administrative file;
14 Examination of D. Pogan].

15 21. The assessment arose from a Schedule C mismatch audit. The Taxpayer did not
16 file gross receipts tax returns or pay gross receipts tax during the timeframes at issue.
17 [Administrative file; Examination of D. Pogan].

18 22. The protest auditor reviewed the Taxpayer's returns to determine if there were
19 any applicable deductions. [Administrative file; Examination of D. Pogan].

20 23. Interest has accrued since the issuance of the initial assessment. [Administrative
21 file; Examination of D. Pogan].

1 Taxpayer has produced the evidence in support of Taxpayer's position, the Department may present
2 its evidence in support of the assessment, then it is the responsibility of the Hearing Officer to weigh
3 the evidence and determine the outcome of the protest. *Id.*, ¶ 17.

4 The burden is also on taxpayers to prove that they are entitled to an exemption or
5 deduction, if one should potentially apply. *See Pub. Serv. Co. v. N.M. Taxation & Revenue Dep't*,
6 2007-NMCA-050, ¶141 N.M. 520, 157 P.3d 85; *See also Till v. Jones*, 1972-NMCA-046, 83
7 N.M. 743, 497 P.2d 745. "Where an exemption or deduction from tax is claimed, the statute must
8 be construed strictly in favor of the taxing authority, the right to the exemption or deduction must
9 be clearly and unambiguously expressed in the statute, and the right must be clearly established
10 by the taxpayer." *See Sec. Escrow Corp. v. State Taxation & Revenue Dep't*, 1988-NMCA-068,
11 ¶8, 107 N.M. 540, 760 P.2d 1306; *see also Wing Pawn Shop v. Taxation & Revenue Dep't*, 1991-
12 NMCA-024, ¶16, 111 N.M. 735, 809 P.2d 649; *see also Chavez v. Comm'r of Revenue*, 1970-
13 NMCA-116, ¶7, 82 N.M. 97, 476 P.2d 67.

14 **Receipts under the Gross Receipts and Compensating Tax Act.**

15 The assessment in this protest arises from an application of the Gross Receipts and
16 Compensating Tax Act, NMSA 1978, Sections 7-9-1 through 7-9-117, which imposes a tax for the
17 privilege of engaging in business, on the receipts of any person engaged in business in New Mexico.
18 *See* NMSA 1978, Section 7-9-4 (2010). The Department issued its assessment following a
19 comparison between the Taxpayer's income reported on his federal Schedule Cs for tax years 2016
20 and 2017 and the Taxpayer's gross receipts tax CRS-1 returns for the same time frame. The
21 comparison revealed Taxpayer had not filed CRS-1 returns to report gross receipts, nor did
22 Taxpayer pay gross receipts taxes for the years at issue.

1 The statutory definition of “gross receipts” under NMSA 1978, Section 7-9-3.5 (A)(1)
2 (effective June 15, 2007, to June 30, 2019) states, in pertinent part: “‘gross receipts’ means the total
3 amount of money or the value of other consideration received from selling property in New Mexico,
4 ... or from performing services in New Mexico.” There is a statutory presumption that all receipts
5 of a person engaged in business activities are taxable. *See* NMSA 1978, Section 7-9-5(A) (2019).
6 The activity of providing independent contractor services as a physician was engaging in business
7 which triggers the statutory presumption that *all receipts* of a person engaging in business are
8 taxable. *See* NMSA 1978, Section 7-9-3(P) (2019), Section 7-9-3.3 (2019), and Section 7-9-5(A)
9 (2019). Yet, despite the general presumption of taxability, a taxpayer may qualify for the benefits of
10 various deductions and exemptions.

11 Here, facts are not in dispute. Taxpayer performed medical services while living and
12 working in New Mexico, at New Mexico hospitals, for New Mexican patients. Payment by
13 Taxpayer’s employer for his services, however, did not come from the patients nor from the
14 hospitals at which he worked, but through two distinct third-party medical staffing companies, with
15 offices located outside of New Mexico. Taxpayer claims that this arrangement resulted in an
16 exemption under NMSA 1978, Section 7-9-13.1 (effective 1989 to June 30, 2021)¹, which provides
17 an exemption for “receipts from selling services performed outside New Mexico the product of
18 which is initially used in New Mexico.”

19 Territoriality is essential in a determination of taxability. States have broad jurisdiction over
20 the economic activity *within* the territory of the state. Receipts for services performed in New
21 Mexico are taxable as gross receipts. *See* Section 7-9-3.5 (2019); *see also* Regulation 3.2.1.14
22 (A)(4) NMAC (9/25/2018). Receipts for services performed outside the state are generally not

¹ This exemption has been limited significantly after the enactment of revisions in 2021.

1 taxable in New Mexico as gross receipts. *See Talbridge Corporation v. New Mexico Taxation &*
2 *Revenue Department*, 2024-NMCA-044, ¶ 11, 550 P.3d 901; *see also* Regulation 3.2.1.18 (E)
3 (effective 2012-2021). The location of the performance of the service is the starting point.

4 Taxpayer argued that since the payment for his services came from outside of New Mexico,
5 his service was performed for the customer, the payor, therefore the service transaction was
6 performed outside of New Mexico. Regulation 3.2.1.18 (E) and (H) (effective 2012-2021) provide
7 negative examples which are analogous to the Taxpayer’s claim.

8 Regulation 3.2.1.18 (E)(4) provides this example:

9 L, an Albuquerque attorney, is retained by a Colorado firm to negotiate and draw
10 up oil and gas leases for lands in southern Colorado. To accomplish this objective,
11 L goes to Pueblo, Colorado, and there negotiates and draws the leases. Receipts
12 from the fee are not includable in L’s gross receipts because the service was
13 performed entirely outside the state of New Mexico.

14 In the context of gross receipts taxation, the practice of medicine and the practice of law are
15 analogous as personal services. The physical locations of the people providing the service and those
16 receiving the service are important. Similarly, Regulation 3.2.1.18 (H) provides that “[r]egardless of
17 the source of payment... the fees of attorneys are subject to the gross receipt tax to the extent that
18 their services are performed in this state.” These regulations appear to preclude Taxpayer’s
19 argument that the source of payment from outside of New Mexico justifies an exemption from gross
20 receipt tax for the services he personally provided in Santa Fe and Albuquerque, New Mexico.

21 Nevertheless, for the sake of argument, presume the Taxpayer’s theory of the case is correct
22 and his service was provided to the company paying for it at the company’s headquarters outside of
23 New Mexico. In such an instance, the service, under Taxpayer’s theory of the protest, would not be
24 taxable under the definition of gross receipts which requires that the service be provided “in New
25 Mexico.” NMSA 1978, Section 7-9-3.5 (A)(1) (effective June 15, 2007, to June 30, 2019). This

1 presumption which Taxpayer encourages contradicts longstanding jurisprudence. *See ITT*
2 *Educational Services, Inc. v. Taxation & Revenue Department*, 1998-NMCA-078, 959 P.2d 969 (a
3 brick-and-mortar school in New Mexico, operated by a corporation outside of New Mexico,
4 providing educational services in New Mexico was subject to GRT); *cf. Advance Schools,*
5 *Incorporated v. Bureau of Revenue*, 1976-NMSC-007; 547 P.2d 562 (correspondence school
6 outside of New Mexico did not incur gross receipts for the educational service provided from
7 outside New Mexico). In both *ITT* and *Advance Schools*, the courts focused on where the service
8 contracted for was performed. Applying the same rationale to the facts of the case before the
9 hearing officer, the service contracted for (i.e., medical services) was conducted in New Mexico,
10 and would therefore be subject to gross receipts tax reporting and payment.

11 Next, considering the exemption of Section 7-9-13.1, there are two aspects to the statute:
12 first, the performance of the service must be outside the state, and second, the product of the service
13 must be delivered in New Mexico. In the case of *TPL, Inc. v. New Mexico Taxation & Revenue*
14 *Department*, 2003-NMSC-007, 64 P.3d 474, the New Mexico Supreme Court attempted to identify
15 or define what the service was, and what the product of the service was, before applying the
16 exemption. In *TPL*, the court found that the “product of the service” is generally “the direct result or
17 consequence flowing from the service.” *Id.* at ¶ 12. The court went on to say, that the “product of
18 the service” depends on “what benefit the buyer received – what the buyer paid for.” The court also
19 acknowledged that some benefits are intangible, using the example of the service resulting from a
20 patient of a psychologist. *Id.*

21 Had this been a standard arrangement that may have existed in the mid-20th century, where a
22 doctor sees a patient, and the patient pays for the visit, this would be a different discussion. But here,
23 the direct buyer is not the patient. The direct buyer here is the medical staffing company, who

1 supplies the doctor to the hospital and the doctor then sees patients who do not pay the doctor, but
2 the patients and their insurers pay the hospital for services rendered. The hospital then pays the
3 staffing service an hourly rate for the doctor's time. So, from the perspective of the staffing
4 company buyer, the benefit received is not a medical service, but the revenue generated from
5 providing a medical professional to satisfy a staffing need in a medical facility in New Mexico.
6 With that in mind, the ultimate benefit the staffing company receives is the benefit of entering
7 contracts with hospitals which generate revenue from placements, i.e., the "product of the service."
8 Where would the product of such a service be initially used? At the hospital, located in New
9 Mexico. By this train of logic, one may be able to rationalize the utility of the statutory exemption
10 provided by NMSA 1978, Section 7-9-13.1. But, to do so, disregards the status of the doctor as an
11 "independent contractor."

12 In the practice of the healing arts, a practitioner must use their own skill, knowledge, and
13 experience with a patient to provide independent and individualized assessments and advice. In the
14 realm of taxation, there are two main classifications for individuals who receive compensation in
15 exchange for services: employees receiving form W-2; and independent contractors receiving
16 1099s. IRS Publication 15-A states "People such as doctors, veterinarians, and auctioneers who
17 work in an independent trade, business, or profession in which they offer their services to the public
18 are generally not employees ... The general rule is that an individual is an independent contractor if
19 you, the person for whom the services are performed, have the right to control or direct only the
20 result of the work and not the means and methods of accomplishing the result." Likewise, in New
21 Mexico, "[a]n independent contractor is defined as 'a person who contracts with another to do
22 something for him but who is not controlled by the other nor subject to the other's right to control
23 with respect to his physical conduct in the performance of the undertaking.'" *Talbott v. Roswell*

1 *Hospital Corp.*, 2005-NMCA-109, ¶ 10, 118 P.3d 194. Because of the skill and knowledge
2 necessary to assess and treat patients, doctors using individualized skill must be free to make
3 choices in the care of patients without substantial oversight from an employer, and as such, can be
4 independent contractors. The Taxpayer’s service agreements and insurance coverage with CHG
5 Companies and Moonlighting Solutions both identified the Taxpayer as an independent contractor.
6 In the realm of taxation, for W-2 employees, the employer withholds state and federal taxes (among
7 other payments) from the employee’s total earnings and remits those payments to the government.
8 For independent contractors, however, the responsibility to save and pay state and federal taxes is
9 that of the independent contractor, rather than the employer, and the employer provides a Form
10 1099 to the independent contractor instead of a W-2. *See* IRS Publication 15-A. In addition to
11 income taxes, independent contractors bear the responsibility for reporting and paying gross receipts
12 taxes for the privilege of engaging in business in New Mexico. That is what should have occurred in
13 this case.

14 The exemption for “receipts from selling services performed outside New Mexico the
15 product of which is initially used in New Mexico.” NMSA 1978, Section 7-9-13.1 (effective 1989
16 to June 30, 2021) is not applicable here, because the service of providing medical treatment was
17 performed in New Mexico, not outside of New Mexico.

18 Finally, there was a hint that Taxpayer’s services may be deductible as a sale of a service for
19 resale, under NMSA 1978, Section 7-9-48 and Regulation 3.2.206 NMAC. However, Taxpayer did
20 not argue the applicability, nor did Taxpayer provide non-taxable transaction certificates or other
21 evidence that another taxpayer would be paying the gross receipts tax.

22 **Penalty.**

1 Dr. Adnan did not know he was required to file and pay gross receipts tax returns but had no
2 obvious intention to evade a tax. Under NMSA 1978, Section 7-1-69 (2007), when a taxpayer fails
3 to pay taxes due to the State because of negligence or disregard of rules and regulations, but without
4 intent to evade or defeat a tax, the Department must impose a civil negligence penalty on that
5 taxpayer. “There shall be added to the amount assessed a penalty” under the statute. *Id.*

6 The use of the word “shall” makes the imposition of penalty mandatory in all instances
7 where a taxpayer’s actions or inactions meets the legal definition of “negligence.” *See Marbob*
8 *Energy Corp. v. N.M. Oil Conservation Comm’n*, 2009-NMSC-013, ¶22, 146 N.M. 24 (use of the
9 word “shall” in a statute indicates provision is mandatory absent clear indication to the contrary).

10 Negligence can be found in several ways. Regulation 3.1.11.10 NMAC (1/15/01) defines
11 “negligence” as “failure to exercise that degree of ordinary business care and prudence which
12 reasonable taxpayers would exercise under like circumstances; inaction by taxpayers where action is
13 required; inadvertence, indifference, thoughtlessness, carelessness, erroneous belief or inattention.”
14 Not filing gross receipts tax returns or paying the taxes on time is certainly negligence by inaction
15 where action is required under this definition. Imposition of penalty was proper.

16 **Interest.**

17 NMSA 1978, Section 7-1-67 (2013) provides that interest accrues on deficient tax principal.
18 Interest “shall be paid” on taxes that are not paid on or before the date on which the tax is due.
19 NMSA 1978, Section 7-1-67 (A). By the use of the word “shall” the legislature intended that the
20 assessment of interest is mandatory. *See Marbob Energy Corp. v. N.M. Oil Conservation Comm’n.*,
21 2009-NMSC-013, ¶ 22, 146 N.M. 24; *see also* NMSA 1978, Section 12-2A-4 (A) (1997). Likewise,
22 under Regulation 3.1.6.13 NMAC, the presumption of correctness under Section 7-1-17 (C)
23 extends to the Department’s assessment of penalty and interest. *See* Regulation 3.1.6.13 NMAC

1 1/15/01); *see also Chevron U.S.A., Inc. v. State ex rel. Dep't of Taxation & Revenue*, 2006-NMCA-
2 50, ¶16, 139 N.M. 498, 503 (agency regulations interpreting a statute are presumed proper and are
3 to be given substantial weight). Taxpayer's evidence was insufficient to overcome the presumption
4 of correctness that attached to the assessment of interest imposed against delinquent tax. *See*
5 Regulation 3.1.6.12(A) NMAC; *see also Gemini Las Colinas, LLC v. New Mexico Taxation &*
6 *Revenue Department*, 2023-NMCA-039, ¶ 16.

7 Nevertheless, the legislature also enacted time deadlines to ensure timely disposition of tax
8 protests. *See* NMSA 1978, Section 7-1B-8 (2019). The Department's failure to adhere to statutory
9 time deadlines can result in the stay of accrual of interest. *See* NMSA 1978, Section 7-1B-8 (E).
10 Regulations allow the hearing officer, upon request of the taxpayer or on their own initiative, to
11 review whether the Department satisfied applicable statutory requirements, and if finding the
12 Department did not, to stay the accrual of interest. *See* Regulation 22.600.3.18 (E) (8/25/2020). In
13 this instance, the Taxpayer asked for review and the Department argued for finding the Department
14 in compliance with the time deadlines.

15 Beginning with the date of the Taxpayer's protest, submitted to the Department on February
16 22, 2023. Thereafter, on May 31, 2023, the Department issued a letter acknowledging a timely
17 protest of the Notice of Assessment – a delay of 98 days. Then, on December 1, 2023, the
18 Department filed a Request for Hearing – an additional delay of 185 days. The total delay
19 between the Taxpayer's submission of the protest and the Department's request for hearing was
20 283 days. The Hearing Officer, in a separate Decision and Order, expressed dismay at a delay of
21 309 days and *sua sponte* halted the accrual of further interest, following NMSA 1978, Section 7-1B-
22 8 (E) (2019) and Regulation 22.600.3.18 (E) NMAC (8/25/2020). *See In the Matter of the Protest of*
23 *Jimmy Lopez*, D & O #24-03 (non-precedential).

1 A review is warranted here. There are two deadlines of note under the 2019 statute, “[i]f the
2 hearing officer finds that the taxation and revenue department failed to comply with the deadlines
3 set forth in Subsections A and B of this section, the hearing officer may order that no further interest
4 may accrue on the protested liability.” NMSA 1978, Section 7-1B-8 (E) (2019); *see also* Regulation
5 22.600.3.18 (E) (8/25/2020).

6 Beginning with Section A of the statute, the Department is required to promptly issue an
7 acknowledgement of the protest. Here, the Taxpayer’s protest form was dated February 22, 2023,
8 however, there is no received stamp showing the date the Department received the form. The
9 Department issued an acknowledgement of protest on May 31, 2023. A simple calculation indicates
10 that the acknowledgment of protest was dated 98 days after the protest was sent to the Department.
11 A determination of “promptness” is certainly a subjective standard, and the hearing officer may take
12 into account a variety of factors that might contribute to a delay. Regulation 22.600.3.18 (E)
13 (8/25/2020). The statute provides “[i]f the department determines that the protest has not been filed
14 in accordance with that section [7-1-24 NMSA 1978], the department shall, within twenty-one days
15 of the receipt of the protest, inform the taxpayer of the deficiency and provide the taxpayer within
16 twenty-one days of the taxpayer being informed, one opportunity to correct it.” There is no evidence
17 on record that the Department found fault with the initial submission of the protest for the tax years
18 in question, therefore, a prompt acknowledgment should have occurred within this 21-day grace-
19 period. The record is void as to whether there was any behind-the-scenes activity that might have
20 justified a delay of longer than 21-days such as, for example, holding an informal conference or
21 making amendments to the protest. Because of the relatively uncomplicated nature of the case and
22 no evidence of behind-the-scenes activity, a delay of 98 days cannot be found to be prompt, as it
23 should have occurred within 21-days of the receipt of the protest.

1 Turning then to Section B, the Department has one hundred eighty (180) days from the date
2 of the protest, within which to request a hearing. Regulations identify the date, on which the 180
3 days begin, to be the date of the prompt acknowledgment of protest. *See* Regulation 22.600.3.8
4 NMAC. In this case, the Taxpayer’s initial protest was stamped as sent to the Department on
5 February 22, 2023. The Department issued an acknowledgment of protest outside the 21-day
6 boundary of promptness articulated by the Legislature, on May 31, 2023, then submitted its request
7 for hearing on December 1, 2023. A simple calculation indicates that the request for hearing was
8 filed 185 days after the actual acknowledgement of protest, and a total of 283 days from the initial
9 protest. By filing the request for hearing after the expiration of the 180-day deadline, the
10 Department did not comply with the statutory deadline expressed under 7-1B-8 (B). Therefore, the
11 Hearing Officer finds that the Department failed to comply with deadline set forth in Subsection B
12 of Section 7-1B-8.

13 New Mexico law imposes time limits to expedite the adjudication of protests. The law
14 allows “[i]f the hearing officer finds that the taxation and revenue department failed to comply with
15 the deadlines set forth in Subsections A and B of this section, the hearing officer may order that no
16 further interest may accrue on the protested liability.” NMSA 1978, Section 7-1B-8 (E) (2019).
17 Here, the Department’s acknowledgment of the protest was not prompt, a violation of Section A.
18 Likewise, the Department’s filing of the request for hearing, was greater than 180 days from its
19 actual issuance of the acknowledgement of protest letter, so it also violated Section B. Therefore,
20 the Department failed to comply with the deadlines as set forth by the legislature, and the imposition
21 of a stay of accrual of interest is justified.

22 The date at which the halting or suspension of accrual of interest shall be effective, is,
23 according to the regulation, “the day after the date on which TRD should have, but did not act, or

1 from another date considering the unique circumstances at issue in the protest.” Regulation
2 22.600.3.18 (E).

3 Generally, there is a 21-day grace period from the receipt of a tax protest. *See* Section 7-
4 1B-8 (A). During this time, a protest may be evaluated by the Department for adherence to
5 Section 7-1-24 requirements. If there is no issue with the protest, the prompt acknowledgement
6 should be before the expiration of the 21-day grace period. The request for hearing should be
7 submitted to the Administrative Hearings Office within 180-days thereafter. Since there have
8 been no reasons articulated or provided in the record for additional delay, the Department should
9 have acted to request a hearing within 201 days after receipt of the Taxpayer’s protest. The
10 receipt of the protest was February 22, 2023. Adding 201 days to that date, the Department’s
11 request for hearing should have occurred on or before September 11, 2023. The date on which the
12 stay shall cease to accrue is the date “on which TRD should have, but did not act.” Regulation
13 22.600.3.18 (E). The accrual of interest shall be halted as of September 11, 2023, the date on which
14 the Department should have but did not act.

15 **Conclusion**

16 The Taxpayer provided medical services in New Mexico. Under the broad umbrella of the
17 gross receipts tax, payment received as payment for a medical service is expressly taxable, as “fees
18 derived from ... the business of... selling ... any... service.” Section 7-9-3.5 (A)(2)(b). The
19 Taxpayer’s work as an independent contractor was compensated and reported to the IRS using
20 Form 1099-Misc, and Taxpayer was responsible for reporting and paying gross receipts on his
21 business income, as reported on his federal Schedule C. Taxpayer did not qualify for the benefits of
22 the exemption under Section 7-9-13.1.

1 However, because the Department delayed 283 days between the protest and the request for
 2 hearing, with no activity to show it acted promptly, the accrual of interest is halted, as of September
 3 11, 2023. The protest is denied in part and granted in part.

4 **CONCLUSIONS OF LAW**

5 A. The Taxpayer filed a timely written protest to the Notice of Assessment of Tax and
 6 Demand for Payment issued under Letter ID number L1224570992, and jurisdiction lies over the
 7 parties and the subject matter of this protest. *See* NMSA 1978, Section 7-1-24 (D) (2019); *see also*
 8 NMSA 1978, Section 7-9-1, *et seq.* (“Gross Receipts and Compensating Tax Act”).

9 B. The hearing was timely set and held within 90-days of the Department’s request for
 10 hearing under NMSA 1978, Section 7-1B-8 (F) (2019). Parties did not object that the scheduling
 11 hearing satisfied the 90-day hearing requirement of Section 7-1B-8 (F). *See also* Regulation
 12 22.600.3.8 (J) NMAC (8/25/20).

13 C. Any assessment of tax made by the Department is presumed to be correct.
 14 Therefore, it is the taxpayer’s burden to come forward with evidence and legal argument to establish
 15 that the Department’s assessment should be abated, in full or in part. *See* NMSA 1978, Section 7-1-
 16 17 (C) (2007).

17 D. “Tax” is defined to include not only the tax program’s principal, but also interest and
 18 penalty. *See* NMSA 1978, Section 7-1-3 (Z) (2019). Assessments of penalties and interest therefore
 19 also receive the benefit of a presumption of correctness. *See* Regulation 3.1.6.13 NMAC (1/15/01).

20 E. Taxpayer bears the burden of overcoming the presumption of correctness that
 21 attached to the Department’s Assessment. Taxpayer presented no evidence that his independent
 22 contractor services as a physician were performed outside of New Mexico, and was unable to
 23 overcome the presumption of correctness. *See* NMSA 1978, Section 7-1-17 (C) (2007); *see also*

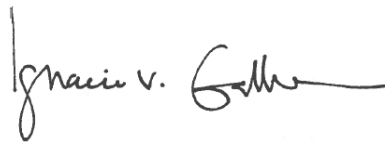
1 Regulation 3.1.8.10 NMAC (08/30/2001); *see also Gemini Las Colinas, LLC v. New Mexico*
2 *Taxation & Revenue Department, 2023-NMCA-039, ¶ 16, 531 P.3d 622; see also Regulation*
3 *3.1.6.12 NMAC; see also MPC Ltd. v. N.M. Taxation & Revenue Dep't, 2003-NMCA-021, ¶13,*
4 *133 N.M. 217, 62 P.3d 308; see also Regulation 3.1.6.12 (A) NMAC (1/15/01).*

5 F. The Taxpayer's evidence and legal argument, weighed against the Department's
6 evidence and legal argument was insufficient to find by a preponderance of evidence that
7 Taxpayer was entitled to a deduction under Section 7-9-13.1 (effective 1989 to June 30, 2021).
8 *See NMSA 1978, Section 7-1-18 (C) (2021); see also Gemini Las Colinas, LLC v. New Mexico*
9 *Taxation & Revenue Department, 2023-NMCA-039, ¶ 29, 531 P.3d 622.*

10 G. The Department failed to issue a prompt acknowledgement of protest and a timely
11 request for hearing on the protest without good cause shown. *See NMSA 1978, Section 7-1B-8*
12 *(A) and (B); see also Regulation 22.600.3.18 (E).* The accrual of additional interest is halted as
13 of the date on which the Department should have but did not act. *See Regulation 22.600.3.18 (E).*

14 For the foregoing reasons, the Taxpayer's protest **IS DENIED IN PART AND**
15 **GRANTED IN PART.**

16 DATED: January 8, 2025



17 Ignacio V. Gallegos
18 Hearing Officer
19 Administrative Hearings Office
20 Post Office Box 6400
21 Santa Fe, NM 87502
22

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 January 8, 2025, a copy of the foregoing Decision and Order was submitted to the
15 parties listed below in the following manner:

16 *First Class Mail and E-Mail*

First Class Mail E-Mail

17
18
19 ***INTENTIONALLY BLANK***