

**BEFORE THE HEARING OFFICER
OF THE TAXATION AND REVENUE DEPARTMENT
OF THE STATE OF NEW MEXICO**

IN THE MATTER OF THE PROTEST OF
AARON AND GAYE GAROUTTE,
ID. NO. 02-375357-00 9, PROTEST TO
ASSESSMENT NO. 2239705

NO. 00-06

DECISION AND ORDER

This matter came on for formal hearing on January 19, 2000 before Gerald B. Richardson, Hearing Officer. Aaron and Gaye Garoutte, hereinafter, "Taxpayers", represented themselves at the hearing. The Taxation and Revenue Department, hereinafter, "Department", was represented by Mónica M. Ontiveros, Special Assistant Attorney General. Based upon the evidence and the arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. During the 1994 tax year, Mr. Garoutte managed the business owned by his mother-in-law, which was a gasoline filling station, grocery store and bar, located in Thoreau, New Mexico.
2. Mr. Garoutte was not paid an hourly wage or a salary. Instead, he took a draw from the business, on an irregular basis, taking out only as much as he needed to support himself and his family, in an effort to try to keep his mother-in-law's business open.
3. During the 1994 tax year, Mr. Garoutte drew \$18,365 from the business.
4. The Taxpayers had their 1994 New Mexico personal income taxes prepared by their accountant. The accountant treated the \$18,365 which Mr. Garoutte had drawn from his mother-in-law's business as income from a business or profession and reported that income on a Federal Schedule C for both state and federal income tax purposes.

5. When acting as manager of his mother-in-law's business, Mr. Garoutte's work was not supervised or directed by anyone else.

6. Mr. Garoutte did not consider himself an employee of the family business. Rather, he felt that he was working for himself.

7. Mr. Garoutte was not informed by his accountant that New Mexico gross receipts taxes should be reported and paid on his income from managing his mother-in-law's business.

8. The Department has an information sharing agreement with the Internal Revenue Service whereby the Department is provided information from the federal tax returns of New Mexico residents.

9. The Department received information from the Internal Revenue Service that Mr. Garoutte filed a Federal Schedule C for the 1994 tax year reporting \$18,365 in gross receipts from a business or profession.

10. The Department determined that the Taxpayers were not registered with the Department for gross receipts tax purposes during tax year 1994.

11. On April 4, 1998 the Department issued Assessment No. 2239705 to the Taxpayers assessing \$978.00 in gross receipts tax, \$97.80 in penalty and \$544.02 in interest for the reporting period of January, 1994 through December, 1994.

12. On April 14, 1998, the Taxpayers filed a written protest to Assessment No 2239705.

13. The Department has agreed to abate the penalty portion of the assessment.

DISCUSSION

The sole issue to be determined herein is whether the Taxpayers are liable for gross receipts tax upon the \$18,365 drawn during calendar year 1994 for managing the family business. Section 7-9-4 NMSA 1978 imposes a "gross receipts tax" for the privilege of engaging

in business upon any person engaging in business in New Mexico. “Engaging in business” is defined in pertinent part at § 7-9-3(E) NMSA 1978 as “carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit.” “Gross receipts” are defined to include the total amount of money or other compensation received from performing services in New Mexico. Section 7-9-3(F) NMSA 1978. Finally, § 7-9-5 NMSA 1978 provides that, “[T]o prevent evasion of the gross receipts tax and to aid in its administration, it is presumed that all receipts of a person engaging in business are subject to the gross receipts tax.”

Applying these definitions to Mr. Garoutte’s activities, he had gross receipts subject to the gross receipts tax. He had gross receipts from performing services in New Mexico. He was engaging in business in New Mexico because he received a benefit, in the form of the draws of money he paid himself from the family business.

The only possible basis on which he would not have been subject to gross receipts tax was if he could be considered an employee of the business. The receipts of employees from wages, salaries, commissions or from any other form of remuneration for personal services are exempt from gross receipts tax under § 7-9-17 NMSA 1978. Mr. Garoutte, however, did not consider himself to be an employee of the business and he was not under the sort of direction or supervision which would indicate an employer-employee relationship.

There being no other applicable exemptions or deductions in the Gross Receipts and Compensating Tax Act , Chapter 7, Article 9 NMSA 1978, Mr. Garoutte was subject to the gross receipts tax on his receipts from managing the family business in 1994.

CONCLUSIONS OF LAW

1. The Taxpayers filed a timely, written protest, pursuant to § 7-1-24 NMSA 1978, to Assessment No. 2239705 and jurisdiction lies over both the parties and the subject matter of this protest.

2. Mr. Garoutte's compensation for managing the family business in 1994 were gross receipts from engaging in business in New Mexico and were subject to gross receipts tax.

For the foregoing reasons, the Taxpayers' protest IS HEREBY DENIED.

DONE, this 22nd day of February, 2000.