

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

IN THE MATTER OF THE PROTEST OF
GREGORY AND SHIRLEY HALE,
ID NO. 02-405044-00-0, PROTEST TO
ASSESSMENT NO. 2511076

NO. 01-02

DECISION AND ORDER

This matter came on for formal hearing on February 20, 2001 before Gerald B. Richardson, Hearing Officer. Gregory and Shirley Hale were represented by Mr. Gregory Hale. The Taxation and Revenue Department, hereinafter, "Department", was represented by Bruce J. Fort, Special Assistant Attorney General. Based upon the evidence and the arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. In 1996, Mr. and Mrs. Hale moved to Carlsbad, New Mexico from California.
2. Mr. Hale is a master mechanic. He obtained work repairing used cars for Mr. Glen Moore, owner of Glen's Auto Sales in Carlsbad, New Mexico. Glen's Auto Sales sold the repaired cars to its customers.
3. Mr. Hale was not an employee of Glen's Auto Sales. Rather, he was asked to repair various vehicles. In doing so, he purchased the necessary parts and billed Glen's Auto Sales for the parts and the labor he performed in repairing the automobiles.
4. Mr. Hale was not familiar with the New Mexico gross receipts tax and how it might apply to his activities. When he purchased automobile parts which he used for his automobile repair activities, he did not use or tender a nontaxable transaction certificate to the seller in order to purchase the parts without the passed-on cost of the gross receipts tax payable by the seller on the sale.

5. Mr. Hale was also issued a non-taxable transaction certificate by Glen's Auto Sales. Mr. Moore explained to Mr. Hale that because of the certificate, Mr. Hale didn't need to pay tax on his receipts from Glen's Auto Sales.

6. Mr. Hale gave the non-taxable transaction certificate he had received from Glen's Auto Sales to a woman who prepared his year end income taxes. The tax preparer never informed Mr. Hale about gross receipts taxes or how they might apply to his car repair activities. Mr. Hale assumed that the tax preparer had done whatever was necessary with the certificate and he did nothing more with respect to his gross receipts taxes.

7. Mr. Hale never applied for or received a tax identification number for purposes of reporting his gross receipts and/or claiming any deductions for gross receipts tax purposes, nor did he report or pay gross receipts tax on his receipts from performing automobile repair services.

8. The Department has an information sharing agreement with the Internal Revenue Service ("IRS") whereby the IRS provides information to the Department from the Federal tax returns of New Mexico residents. Pursuant to the information sharing agreement, the Department compares information from the Federal Schedule C forms on which taxpayers report their income from a business or profession against the information reported by those taxpayers to the Department with respect to gross receipts tax. This Departmental program is called the C-Span program.

9. There is an approximate three year time lag between when a taxpayer files a return with the IRS and when the information from that return is made available to the Department for its C-Span program.

10. As a result of information the Department received from the IRS, on January 5, 2000, the Department wrote Mr. and Mrs. Hale informing them that it was conducting a limited scope

audit to address the discrepancy between the amount they had reported as income from a business or profession on their 1996 Federal Schedule C and the zero amount of gross receipts reported to the Department for the 1996 calendar year. The Department's letter further provided Mr. and Mrs. Hale notice, pursuant to Section 7-9-43 NMSA 1978 that they had 60 days to present non-taxable transaction certificates ("NTTC's") or other documentation to support any deductions from gross receipts tax which they claimed.

11. At the time the Department mailed the January 5, 2000 letter, Mr. and Mrs. Hale were in Texas due to Mrs. Hale's health. Mr. Hale returned to New Mexico in late February and found the Department's letter. On February 24, 2000, Mr. Hale contacted a Department employee named Carolina in response to the January 5, 2000 letter.

12. On April 7, 2000, the Department issued Assessment No. 2511076 to Mr. and Mrs. Hale, assessing \$1,237 in gross receipts tax, \$123.84 in penalty and \$688.52 in interest for the January, 1996 through December, 1996 reporting periods.

13. On April 11, 2000, Mr. and Mrs. Hale filed a written protest to Assessment No. 2511076.

14. On April 30, 2000, Mr. Hale received a Type 1 NTTC from Glen's Auto Sales in support of a deduction from Mr. Hale's gross receipts for the amounts he was paid by Glen's Auto Sales in 1996. Mr. Hale was unable to locate the earlier NTTC from Glen's Auto Sales or the tax preparer to whom he had given the NTTC.

15. The Department denied Mr. Hale's claim of deduction for his receipts from Glen's Auto Sales in 1996 due to Mr. Hale's failure to demonstrate that he possessed the NTTC within 60 days of the Department's letter of January 5, 2000.

DISCUSSION

Section 7-1-17(C) NMSA 1978 provides that there is a presumption of correctness which attaches to any assessment of tax by the Department. Thus, the burden of proof is on a taxpayer challenging an assessment to present evidence or legal argument to overcome the presumption that the assessment is correct. *Archuleta v. O'Cheskey*, 84 N.M. 428, 504 P.2d 638 (Ct. App. 1972). Mr. and Mrs. Hale have failed to meet the burden of proof in this case.

Mr. Hale first argues that he is a mechanic and that he should not be required to understand the minutia of the Gross Receipts and Compensating Tax Act. He further argues that because the parts suppliers paid gross receipts tax when he purchased parts to be used when performing his repair work and because Glen's Auto Sales paid tax¹ when it sold the repaired vehicles, he should not be required to pay tax as well. Unfortunately, the law does not support him in his arguments.

It is well settled in New Mexico that every person is charged with the reasonable duty to ascertain the possible tax consequences of his actions. *Tiffany Construction Co. v. Bureau of Revenue*, 90 N.M. 16, 559 P.2d 1155 (Ct. App. 1976), cert. denied, 90 N.M. 255, 561 P.2d 1348 (1977). Thus, although it may be difficult and burdensome for someone such as Mr. Hale to learn how the gross receipts tax applies to his business activities, he must do so, or hire a tax advisor to guide him through that process.² Additionally, the fact that the state may have collected taxes from the parts vendor or the automobile dealer does not relieve Mr. and Mrs. Hale of their liability for gross receipts taxes. This is because there are separate taxpayers and separate transactions involved. The Gross Receipts and Compensating Tax Act does provide for

¹ In this case, it would be the motor vehicle excise tax because there is an exemption provided at Section 7-9-22 NMSA 1978, for receipts from selling vehicles on which sales the motor vehicle excise tax is imposed.

² In this case, although Mr. Hale hired a tax return preparer, it was not at all clear whether the preparer was hired to prepare state and federal income tax returns only as Mr. Hale could not recall any discussions with the advisor in which gross receipts tax requirements were discussed or explained.

various deductions which avoid the pyramiding or stacking of taxes on various activities. Thus, when an item is purchased for resale, for instance, a deduction is available under Section 7-9-47 NMSA 1978, for the seller who accepts a NTTC from the purchaser stating that the item will be resold. In this case, Mr. Hale, if he had registered with the Department for gross receipts purposes, could have obtained a type 2 NTTC to deliver to the vendors from whom he purchased parts to purchase the parts without the seller passing on the cost of the gross receipts tax. Additionally, if Mr. Hale had been able to produce proper NTTC's from Glen's Auto Sales in a timely manner, he would have been entitled to claim a deduction against the receipts upon which the assessment was issued. Mr. Hale's failure, however, to produce the NTTC in a timely manner is fatal to his claim of deduction. This is because Section 7-9-43(A) NMSA 1978 provides:

If the seller or lessor is not in possession of the required nontaxable transaction certificates within sixty days from the date that the notice requiring possession of these nontaxable transaction certificates is given the seller or lessor by the department, *deductions claimed by the seller or lessor that require delivery of these nontaxable transaction certificates shall be disallowed.* (emphasis added.)

Finally, Mr. Hale asked for relief from the assessment on the basis of hardship. Due to his wife's chronic health problems, Mr. Hale must provide her with care around the clock and is unable to engage in gainful employment. While I am sympathetic with the hardships which Mr. and Mrs. Hale face, I am not allowed to take those matters into consideration when determining whether tax is owed. An assessment of tax may not be abated based upon a taxpayer's inability to pay. Regulation 3 NMAC 1.6.14. The Department may determine not to pursue collection of a tax obligation if it is convinced of a taxpayer's inability to pay, but that is a matter for the Department's collectors to determine. It is not a defense, however, to an assessment of tax. It should also be stated that nothing contained herein is intended in any way to put into question the

character of Mr. or Mrs. Hale with regard to the taxes which were not paid and which are owing. Mr. Hale is an honest working man who simply did not understand how New Mexico's taxes applied to him and failed to get sufficient advice about his taxes so that the situation could have been avoided. Nonetheless, Mr. Hale's arguments are insufficient to provide a basis for providing the relief from the assessment of taxes which he requests and for these reasons, his protest must be denied.

CONCLUSIONS OF LAW

1. Mr. and Mrs. Hale filed a timely, written protest, pursuant to Section 7-1-24 NMSA 1978, to Assessment No. 2511076 and jurisdiction lies over both the parties and the subject matter of this protest.
2. Mr. Hale's failure to understand how the gross receipts tax applied to his activities or the requirements for documenting his entitlement to a deduction from tax is not a defense to an assessment of tax.
3. Mr. and Mrs. Hale are not entitled to claim a deduction against their receipts from performing automobile repair services for Glen's Auto Sales because of their failure to produce a timely and proper NTTC to support a claim of deduction.
4. The Taxpayer's inability to pay an assessment of tax is not a basis for the abatement of tax.

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

DONE, this 7th day of March, 2001.