

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

IN THE MATTER OF THE PROTEST OF
JAMES STADLER
ID. NO. 02-315889-00 1, PROTEST TO
ASSESSMENT NO. 2053562

NO. 01-21

DECISION AND ORDER

This matter came on for formal hearing on August 21, 2001 before Gerald B. Richardson, Hearing Officer. James Stadler, hereinafter, "Taxpayer", represented himself at the hearing. The Taxation and Revenue Department, hereinafter, "Department", was represented by Bridget A. Jacober, Esq. Based upon the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. The Taxpayer is a musician who had gross receipts from performing in a band in nightclubs and other venues in New Mexico.
2. The Taxpayer was not aware of the requirements to report and pay gross receipts tax upon his receipts from providing services as a musician and consequently failed to report and pay gross receipts taxes on those receipts.
3. The Taxpayer reported his income as a musician on Schedule C of his Federal income tax returns.
4. As the result of a comparison by the Department of the Taxpayer's receipts as reported on Federal Schedule C and the Department's records, on July 26, 1996, the Department

issued Assessment No. 2053562 to the Taxpayer assessing \$4,532.28 in gross receipts tax, \$453.22 in penalty and \$1163.70 in interest

5. On August 22, 2001, the Taxpayer filed a written protest to Assessment No. 2053562.

6. Since the Department issued Assessment No. 2053562 the Taxpayer has reported and paid gross receipts tax on his receipts from providing services as a musician

7. The Taxpayer is financially unable to pay Assessment No. 2053562.

DISCUSSION

The Taxpayer's sole basis for contesting the assessment at issue is his inability to pay the assessment. Since learning of his obligation to pay gross receipts tax on his receipts from providing services as a musician, the Taxpayer has stayed current with his obligations to report and pay gross receipts taxes. The small amounts the Taxpayer earns as a musician, and medical expenses he has incurred and for which he has no insurance coverage, have prevented the Taxpayer from being able to pay the assessment at issue. The Taxpayer has essentially asked that the assessment be forgiven based upon his inability to pay.

The fact that a taxpayer does not have the financial ability to pay an assessment does not provide the Department with a basis for abating the assessment. Section 7-1-20 NMSA 1978 is the provision of the Tax Administration Act which sets out the Department's authority to compromise assessments of tax. It provides that the Secretary of the Department may compromise an assessed tax when he has a good faith doubt as to the taxpayer's liability for payment of the tax. The Secretary may not abate an assessment based on the taxpayer's inability to pay the tax. Regulation NMAC 3.1.6.14.

In this case, there is no basis to find that there is a good faith doubt as to the Taxpayer's liability for the tax. The Taxpayer has admitted that there is a legal basis to assess the gross

receipts tax, and has not challenged the amount assessed as being incorrect. Accordingly, the Department has no legal authority under Section 7-1-20 to compromise the assessment. Additionally, Article IV, § 32 of the New Mexico Constitution prohibits the release of any debt owing to the state except by the payment of the debt or by a proper proceeding in court. Thus, while I am empathetic with the Taxpayer's financial circumstances and I appreciate his forthrightness in presenting his protest, there is simply no basis to compromise or release the assessment regardless of whether the Taxpayer is ever able to pay the assessment.¹

CONCLUSIONS OF LAW

1. The Taxpayer filed a timely, written protest to Assessment No. 2053562 pursuant to § 7-1-24 NMSA 1978 and jurisdiction lies over both the parties and the subject matter of this protest.

2. A taxpayer's inability to pay an assessment of tax is not a defense to the assessment of tax.

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

DONE, this 31st day of August, 2001.

¹ Although the Constitution prohibits the forgiveness of any debts owing the state, the Legislature has limited the Department's authority to take actions to enforce and collect tax debts. Section 7-1-19 NMSA 1978 prohibits the Department from taking any action to collect taxes due under an assessment after ten years from the date of the assessment.