

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

IN THE MATTER OF THE PROTEST OF
GILMAN CONSTRUCTION,
ID NO. 02-220042-00-8, PROTEST TO THE
DEPARTMENT'S DETERMINATION OF AN
UNTIMELY PROTEST TO ASSESSMENT
NOS. 2218834 AND 2008796

NO. 02-12

DECISION AND ORDER

This matter came on for formal hearing on May 3, 2002 before Gerald B. Richardson, Hearing Officer. Gilman Construction, hereinafter, "Taxpayer", failed to attend the hearing, either through its owner, Michael J. Gilman, or through a representative. The Taxation and Revenue Department, hereinafter, "Department", was represented by Javier López, Special Assistant Attorney General. Based upon the evidence and the arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. On January 15, 1998, the Taxpayer filed a CRS-1 return with the Department reporting \$6,554.45 in gross receipts during the reporting period of July 1, 1997 through December 31, 1998. The return further reported \$417.84 in gross receipts tax due on those receipts. The Taxpayer failed to enclose payment of the gross receipts tax due with the return it submitted to the Department.

2. As a result of the Taxpayer's failure to pay the gross receipts tax due for the reporting period of July, 1997 through December, 1997, on April 14, 1998, the Department issued Assessment No. 2218834, assessing \$417.84 in gross receipts tax, \$36.04 in penalty, \$169.76 in interest and applying a payment of \$71.76, resulting in an assessment of \$551.88.

3. The Department has no documents or other records to show that Assessment No. 2218834 was protested by the Taxpayer pursuant to Section 7-1-24 NMSA 1978.

4. On February 28, 1996, the Department issued Assessment No. 2008796 to the Taxpayer.

5. On March 29, 2001 the Department sent the Taxpayer a letter with respect to certain liabilities and non-filed tax reports.

6. As a result of that letter, on April 4, 2001 the Taxpayer wrote a letter to the Department disputing the allegations of the Department's letter and attempting to dispute Assessment Nos. 2008796 and 2218834. The Department has since lost its copy of the Taxpayer's April 4, 2001 letter.

7. In response to the Taxpayer's April 4, 2001 letter, on April 11, 2001 the Department sent a letter to the Taxpayer informing it that its April 4, 2001 letter could not be considered a protest to Assessment Nos. 2008796 and 2218834 because it was not timely under the requirement of Section 7-1-24 that protests to assessments be filed within thirty days of the date of an assessment.

8. On April 20, 2001, the Taxpayer wrote back to the Department protesting the reply he received to his letter of April 4, 2001. The Department treated this as a timely protest of its determination that the Taxpayer had failed to file a timely protest to Assessment Nos. 2008796 and 2218834.

9. On March 21, 2002, the Hearing Officer mailed a certified letter to the Taxpayer informing it that a formal hearing on its protest to the Department's determination of an untimely protest would be held on May 3, 2002 at 1:00 PM in the Department's offices in Santa Fe.

10. The return receipt for the Department's March 21, 2002 letter informing the Taxpayer of the formal hearing date was signed for as received by Diane Gilman on March 23, 2002.

11. No person or representative for the Taxpayer appeared at the formal hearing on May 3, 2002.

12. Assessment No. 2008796 has been abated by the Department as a result of the Taxpayer's bankruptcy.

DISCUSSION

The sole issue to be determined herein was whether the Taxpayer had filed timely protests to the Department's assessments. With respect to Assessment No. 2008796, the Department has abated it and all issues concerning that assessment are now rendered moot. With respect to Assessment No. 2218834, the Taxpayer failed to present any evidence that a timely protest was filed with the Department in accordance to the requirements of Section 7-1-24 NMSA 1978. The Department presented testimony that it had no record of a timely protest to said assessment. Thus, the Department's determination that the Taxpayer had failed to file a timely protest to Assessment No. 2218834 was a proper one and the Taxpayer's protest must be denied.

CONCLUSIONS OF LAW

1. The Taxpayer filed a timely written protest to the Department's determination of an untimely protest to Assessment Nos. 2008796 and 2218834 and jurisdiction lies over the parties and the subject matter of this protest.

2. All issues related to Assessment No. 2008796 are now moot.

3. The Taxpayer failed to file a timely protest to Assessment No. 2218834 pursuant to Section 7-1-24 NMSA 1978.

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

DONE this 6th day of May, 2002.