

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

IN THE MATTER OF THE PROTEST OF
MAIZE ELFORD-WHITE
ID. NO. 02-315626-00 0, PROTEST TO
ASSESSMENT NO. 2046196

NO. 98-28

DECISION AND ORDER

This matter came on for formal hearing on April 16, 1998 before Gerald B. Richardson, Hearing Officer. Maize Elford-White, hereinafter, "Taxpayer", represented herself at the hearing. The Taxation and Revenue Department, hereinafter, "Department", was represented by Frank D. Katz, Chief Counsel. Based upon the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. The Taxpayer is an Alaska Native-American who makes and sells hand-made jewelry as a participant in the Native-American Vendors Program of the Museum of New Mexico.
2. The Native-American Vendors Program is a living exhibit of the Museum of New Mexico whereby only Native-Americans are allowed to sell authentic, hand-made jewelry, pottery and other Native-American crafts under the portal of the Palace of the Governors museum in Santa Fe, New Mexico.
3. The Taxpayer, resides in Santa Fe, New Mexico.

4. For tax year 1993, the Taxpayer filed a Schedule C with her federal personal income tax return, reporting as income from a business or profession her receipts from jewelry sales during 1993 made while participating in the Native-American Vendor's Program.

5. The Department has an information sharing agreement with the Internal Revenue Service ("IRS") whereby the IRS shares information from the federal income tax returns of New Mexico residents with the Department.

6. The Taxpayer was not registered with the Department during tax year 1993 to pay or report gross receipts taxes and paid no gross receipts taxes upon her gross receipts from the sale of jewelry at the Palace of the Governors.

7. The Taxpayer did not know or understand that she was subject to gross receipts taxes upon her gross receipts from the sale of jewelry at the Palace of the Governors.

8. As a result of the information the Department received from the IRS with respect to the receipts the Taxpayer reported on federal Schedule C, on July 3, 1996 the Department issued Assessment No. 2046196 to the Taxpayer, assessing \$825.10 in gross receipts tax, \$340.36 in interest and \$82.52 in penalty for the reporting periods of January, 1993 through December, 1993.

9. On July 16, 1996, the Taxpayer filed a timely, written protest to Assessment No. 2046196 with the Department.

10. Subsequent to the Department's assessment and upon becoming informed as to the applicability of the gross receipts tax to her jewelry sales receipts, the Taxpayer has reported and paid gross receipts tax upon her jewelry sales.

DISCUSSION

The sole issue presented for determination is whether the Department's assessment may be abated in return for the Taxpayer's agreement to report and pay taxes from July, 1996, forward. The Taxpayer's failure to report and pay gross receipts taxes was based upon her misunderstanding of how the tax laws of the State of New Mexico applied to her. It is beyond dispute, that absent express federal law to the contrary, Indians going beyond reservation boundaries are subject to nondiscriminatory state laws otherwise applicable to all citizens of the state, and that principle is as applicable to state tax laws as it is to other state laws, such as criminal laws. *Mescalero Apache Tribe v Jones*, 411 U.S. 145, 149-150 (1973). Thus, Ms. Elford-White does not dispute that she was subject to gross receipts tax upon her receipts from selling jewelry. She asks, however, for relief from the tax, penalty and interest assessed based upon the financial hardship it would cause her to have to pay these back taxes. After the Department's assessment and upon becoming aware of the law, she began reporting and paying tax on her jewelry sales receipts. As a single mother whose income can just support herself and her daughter, and who cannot go back and recover the tax from her customers from previous years, she requests relief from the amount of the assessment.

There is a presumption of correctness which attaches to any assessment of tax by the Department. Section 7-1-17(C) NMSA 1978. Because "tax" is defined to include the amount of any interest or civil penalty relating thereto, Section 7-1-2(U) NMSA 1978, the presumption of correctness also attaches to the assessment of penalty and interest. In this case, the Taxpayer did not present any evidence or legal argument which would establish

that the Department's assessment is incorrect, nor is this decision maker aware of any legal authority which would establish the same. Thus, the Department's assessment is presumptively correct.

The Department's authority to compromise an assessment of tax is quite limited. The legislature has granted that authority only in circumstances where a good faith doubt as to the liability exists. Section 7-1-20 NMSA 1978. As noted above, the law is clear that Ms. Elford-White's status as a Native-American does not provide a defense to the imposition of the tax at issue. Thus, there is no good faith doubt as to the liability. Additionally, this decision maker is not aware of any authority which allows taxes to be abated or compromised based upon the difficulty which payment would cause to a Taxpayer. Presumably, no such authority exists because of the importance to the state of collecting the tax revenues properly due it. It is simply beyond the power or the purview of this forum to grant the relief Ms. Elford-White requests, regardless of the severity of the hardship which payment would impose. For these reasons, the Taxpayer's protest must be denied.

CONCLUSIONS OF LAW

1. The Taxpayer filed a timely, written protest to Assessment No. 2046196 and jurisdiction lies over both the parties and the subject matter of this protest.
2. Because the Taxpayer's receipts from selling jewelry were not derived from within her native lands, they are not exempt from the imposition of New Mexico's gross receipts tax.

3. The Taxpayer failed to present evidence or legal argument to overcome the presumption of correctness which attaches to the Department's assessment of tax and thus, the assessment is presumptively correct.

4. This forum lacks the authority to compromise or abate taxes based upon the financial hardship which payment of such taxes would impose upon a taxpayer.

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

DONE, this 15th day of May, 1998.