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

IN THE MATTER OF THE PROTEST OF
**HILLIARD GRIFFIN** **NO. 01-06**
ID. NO. 02-431419-00 6, PROTEST TO
ASSESSMENT NO. 2524971

## DECISION AND ORDER

This matter came on for formal hearing on May 1, 2001 before Gerald B. Richardson, Hearing Officer. Mr. Hilliard Griffin, hereinafter, "Taxpayer", was represented by Guy Tann, Esq. The Taxation and Revenue Department, hereinafter, "Department", was represented by Lewis J. Terr, Special Assistant Attorney General. Based upon the evidence and the arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

## FINDINGS OF FACT

1. On April 30, 2000, the Department issued Assessment No. 2524971 to the Taxpayer, assessing $1,510.80 in gross receipts tax, $151.08 in penalty and $859.27 in interest for the reporting periods of January, 1996 through December, 1996.

2. The Department's assessment was based upon information provided to the Department by the Internal Revenue Service ("IRS") pursuant to an information sharing agreement between the Department and the IRS. The Taxpayer had reported business income in the amount of $28,670.31 on his Federal Schedule C for the 1996 tax year which had not been reported to the Department for gross receipts tax purposes.

3. On May 25, 2000, the Taxpayer filed a written protest to Assessment No. 2524971.

4. During the 1996 tax year the Taxpayer was a resident of New Mexico.

5. In December, 1995, the Taxpayer accepted an offer to work for a business joint venture to set up and manage a satellite telecommunications link which would provide telephone service to the British Army and its soldiers who were part of the United Nations peacekeeping force stationed in Bosnia, enabling them to telephone British authorities and the families of the British soldiers in the United Kingdom.

6. The business joint venture under contract with the British Army was composed of North American Intelset ("NAI"), a wholly owned subsidiary of Diamond Shamrock Corporation, and Terralink Communications, Ltd.

7. In February, 1996, the Taxpayer was sent to Bosnia to begin his work to implement and manage the telecommunications system. He remained there until mid-April, 1996, working under contract for the joint venture.

8. The $28,670.31 in income that the Taxpayer reported on his 1996 Federal Schedule C was composed of $20,003.81 which was paid to him by Diamond Shamrock Corporation and $8,666.50 which was paid to him by Terralink Communications, Ltd. Both corporations reported this income to the IRS and the Taxpayer on a Federal From 1099 for the 1996 tax year.

9. None of the work for which the Taxpayer was compensated by Diamond Shamrock Corporation or Terralink Communications, Ltd. during the 1996 tax year was performed in New Mexico.

## DISCUSSION

The sole issue to be determined in this protest was whether the compensation received by the Taxpayer from Diamond Shamrock Corporation and Terralink Communications, Ltd. was subject to gross receipts tax. "Gross receipts" is defined at § 7-9-3(F) NMSA 1978 to mean:

> …the total amount of money or the value of other consideration received from selling property in New Mexico, from leasing

> property employed in New Mexico from selling services performed outside New Mexico the product of which is initially used in New Mexico or from performing services in New Mexico.

The Taxpayer offered undisputed testimony that all of the compensation he received from Diamond Shamrock Corporation and Terralink Communications, Ltd. was performed outside of New Mexico.[1] Thus, the Taxpayer had no gross receipts which were subject to gross receipts tax.

It concerns me that the Department felt it necessary to take this case to hearing. The Taxpayer had informed the Department that all of his work had been performed out-of-state and the Department had no evidence to the contrary. Yet, the Taxpayer was required to attend a formal hearing and incurred the expense of retaining counsel simply to establish this fact through sworn testimony before the Department's Hearing Officer. In the course of the hearing it was revealed that the Taxpayer had been able to provide confirmation from Terralink Communications, Ltd., that his work had been performed out-of-state and that the Department had been willing to adjust the assessment to remove the Taxpayer's receipts from Terralink Communications, Ltd. from the assessment. The Department was also aware that there was a business relationship between Terralink and Diamond Shamrock. The Taxpayer had been unable to provide similar confirmation from Diamond Shamrock Corporation, however, because he had been required to sue Diamond Shamrock Corporation to obtain payment for their portion of his compensation and Diamond Shamrock had not been cooperative in providing the documentation the Department required.

Although the Hearing Officer is ultimately responsible for determining the facts of matters taken to hearing, the Department's hearing officers should not be the only Department

[1] With the exception of a meeting with Terralink officials in Fort Worth and meeting with British Army officials in Great Britain, all of the Taxpayer's work was performed in Bosnia.

employees capable of making determinations of credibility for purposes of resolving protests. The Department's Protest Office and its Legal Services Bureau should also be capable of making such determinations as part of the protest resolution process. Apparently, the Department was concerned in this matter because Diamond Shamrock also has operations in New Mexico and it was possible that the Taxpayer's compensation could have been related to work performed in New Mexico. While it is true that ultimately, a taxpayer bears the burden of proof in establishing that an assessment is incorrect, ***Champion International Corp. v. Bureau of Revenue,*** 88 N.M. 411, 540 P.2d 1300 (Ct. App. 1975), when a taxpayer has provided some evidence to corroborate his defense to an assessment, thereby providing some proof of his credibility, and when the Department has no information or evidence to dispute the factual basis for a taxpayer's legally complete defense, the matter should be able to be resolved without expending the resources involved in conducting a full blown evidentiary hearing. Surely, the Department can use its limited resources in a more productive manner and just as surely, taxpayers who have demonstrated the general reliability of the facts upon which their defense to an assessment rests should not be put to the burden of retaining counsel and attending a formal hearing simply because the Department has the statutory authority to require them to prove their case.

## CONCLUSIONS OF LAW

1. The Taxpayer filed a timely, written protest to Assessment No. 2524971 and jurisdiction lies over both the parties and the subject matter of this protest.

2. The Taxpayer had no gross receipts subject to gross receipts tax during calendar year 1996.

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

IT IS FURTHER ORDERED that the Department abate Assessment No. 2524971.

DONE, this 7th day of May, 2001.