

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

**IN THE MATTER OF THE PROTEST OF
CHRISTOPHER TAYLOR
ID NO. 02-240583-00-6
NOTICE OF TAX LIEN NO. 754491-01**

No. 02-02

DECISION AND ORDER

A formal hearing on the above-referenced protest was held December 28, 2001, before Margaret B. Alcock, Hearing Officer. Christopher Taylor ("Taxpayer") represented himself. The Taxation and Revenue Department ("Department") was represented by Javier Lopez, Special Assistant Attorney General. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. From 1992 to 1995, the Taxpayer worked as an independent contractor performing services for an architectural firm in New Mexico.
2. The Taxpayer did not realize the New Mexico gross receipts tax applied to his receipts from performing services for resale, nor did he understand that he would be entitled to claim a deduction from gross receipts if he obtained the correct form of nontaxable transaction certificate ("NTTC") from the buyer of his services.
3. Due to his lack of knowledge of New Mexico law, the Taxpayer did not obtain an NTTC from the architectural firm for which he worked and did not report or pay gross receipts tax on his receipts from performing services for the firm.
4. In January 1994, the Taxpayer registered with the Department and began to pay gross receipts tax on what he termed as "side jobs", which were separate from the work he performed for the architectural firm.

5. The mailing address the Taxpayer listed on his application for registration was House 193, Madrid, NM 87010.

6. In 1995, the Taxpayer left New Mexico and became a resident of Texas. The Taxpayer later moved to Arizona, returning to Texas in 2001.

7. The Taxpayer never retired his gross receipts tax registration or provided the Department with a change of address.

8. In 1996, the Department obtained information from the Internal Revenue Service concerning business income reported on Schedule C of the Taxpayer's 1993 federal income tax return. The Department compared the amount of business income reported on the federal Schedule C with the amount of business income reported to New Mexico for gross receipts tax purposes and discovered a discrepancy of \$26,628.00.

9. After discovering the discrepancy, the Department mailed the Taxpayer a notice of limited scope audit asking him to explain why the 1993 business income reported to the IRS had not been reported to the Department for gross receipts tax purposes.

10. The notice, which was mailed to the Madrid, New Mexico, address shown on the Taxpayer's registration application, was returned to the Department as undeliverable.

11. The Department checked its personal income tax and motor vehicle records to determine whether it had any other addresses for the Taxpayer. The Department found the following additional addresses in its records: 13 Firehouse Lane, Madrid, New Mexico, and Rt. 2, Box 504, Santa Fe, New Mexico. The Department sent copies of the notice of audit to each of these addresses. Both were returned as undeliverable.

12. The Department then ordered a credit report from TransUnion, which listed the Taxpayer's current address as P. O. Box 5285, Fargo, North Dakota. The Department sent the notice of audit to this address, but it was also returned as undeliverable.

13. On February 19, 1997, the Department issued Assessment No. 2109433 to the Taxpayer in the total amount of \$3,085.97, representing gross receipts tax, penalty and interest for the period January through December 1993.

14. The Department mailed the assessment to the Taxpayer at the Madrid, New Mexico, address listed on the Taxpayer's gross receipts tax registration with the Department.

15. Because the Taxpayer had moved from New Mexico to Texas in 1995, he did not receive the Department's assessment and did not file a protest to the assessment.

16. On June 20, 2000, the Department filed Notice of Tax Lien No. 754491-01 on the Santa Fe County records to secure payment of Assessment No. 2109433. The Department mailed a copy of the notice to the Taxpayer at the Madrid, New Mexico, address shown on his gross receipts tax registration, which still had not been retired or updated by the Taxpayer.

17. At the time the notice of tax lien was filed, the Taxpayer was living in Arizona, but returned to New Mexico to visit friends during the month of July 2000.

18. The Taxpayer arranged to have mail forwarded from Arizona to Cerrillos, New Mexico. Because the Cerrillos Post Office is quite small, the Postmaster recognized the Taxpayer's name on the envelope containing the Department's notice of tax lien and included that envelope with the mail forwarded to the Taxpayer from Arizona.

19. As soon as the Taxpayer received the notice of tax lien, he contacted the Department and discovered the existence of the outstanding assessment against him.

20. On July 12, 2000, the Taxpayer filed a written protest to the Department's notice of tax lien.

DISCUSSION

The Taxpayer's protest raises the following issues: (1) whether the notice of tax lien and underlying assessment were mailed to the proper address; and (2) whether the Taxpayer should be allowed to deduct his receipts from selling services for resale, even though the Taxpayer did not have an NTTC from his buyer.

Mailing of the Assessment and Notice of Lien. Section 7-1-17(B)(2) NMSA 1978 provides that a notice of assessment is effective when "mailed or delivered in person to the taxpayer against whom the liability for tax is asserted...." Section 7-1-9(A) NMSA 1978, states that "any notice required or authorized by the Tax Administration Act to be given by mail is effective if mailed...to the taxpayer or person at the last address shown on his registration certificate or other record of the department." In this case, the Department mailed Assessment No. 2109433 to the Taxpayer on February 19, 1997 and mailed Notice of Claim of Tax Lien No. 754491-01 to the Taxpayer on June 20, 2000. Each of these documents was sent to "# 193, Madrid, NM 87010," the mailing address shown on the Taxpayer's registration application.

The Taxpayer argues that the assessment and tax lien were ineffective because he had not lived at the Madrid, New Mexico, address since 1995 when he moved to Texas. The Taxpayer believes that once the Department's notices were returned as undeliverable, the Department was required to conduct a search to find him, including ordering successive credit reports to try and locate the Taxpayer's current address. The Taxpayer's argument is based on a misunderstanding of New Mexico's self-reporting tax system. It is the obligation of taxpayers, who have the most accurate and direct knowledge of their activities, to determine their liability for tax and pay that liability to the

state. *See*, Section 7-1-13(B) NMSA 1978; *Tiffany Construction Co. v. Bureau of Revenue*, 90 N.M. 16, 558 P.2d 1155 (Ct. App. 1976), *cert. denied*, 90 N.M. 255, 561 P.2d 1348 (1977) (the law charges every individual with the reasonable duty to ascertain the possible tax consequences of his actions or inaction). To this end, taxpayers are required to keep their tax registration information current. In this case, the Taxpayer failed to retire his registration number at the time he left New Mexico in 1995 and failed to provide the Department with a forwarding address in the event questions arose concerning prior tax years.

To put the matter in perspective, it should be noted that the Taxpayer is required to keep track of only one business, while the Department is charged with the administration of more than 40 different tax acts and receives thousands of tax filings each month. The Department is not omniscient, and cannot be expected to know when a particular individual starts a business, ceases that business, changes his address or leaves the state to take up residence elsewhere. It is not reasonable for the Taxpayer to expect the Department to constantly monitor his activities or to expend time and expense trying to determine where in this or some other state he might have chosen to relocate. Section 7-1-9(A) NMSA 1978 specifically provides that assessments and other notices are effective “if mailed...to the taxpayer or person at the last address shown on his registration certificate or other record of the department.” The Department went far beyond this statutory requirement when it ordered a credit report from TransUnion and sent a notice of audit to the “current address” listed on that report. When this attempt to locate the Taxpayer was unsuccessful, the Department mailed its notice of assessment and the later notice of tax lien to the Taxpayer at the address shown on his registration with the Department. These mailings fully complied with the provisions of Section 7-1-9(A) NMSA 1978 and were effective to establish the Taxpayer’s liability for the tax assessed.

Sales for Resale. The Department’s assessment was based on the Taxpayer’s receipts from selling services for resale. The Taxpayer argues that he should be allowed to deduct these receipts even though he did not obtain the NTTC required by statute. Because the Taxpayer failed to file a timely protest to the assessment itself, this issue is not technically before the hearing officer. *See*, Section 7-1-24 NMSA 1978(B), which states that any protest “shall be filed within thirty days of the date of the mailing to the taxpayer by the department of the notice of assessment....” Nonetheless, in order to insure that the Taxpayer understands the basis of his tax liability to the state, a brief discussion of the issue is set out below.

Section 7-9-4 NMSA 1978 imposes an excise tax on the gross receipts of any person engaging in business in New Mexico. “Engaging in business” is defined in Section 7-9-3(E) NMSA 1978 to mean carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit. The term “gross receipts” is defined in Section 7-9-3(F) NMSA 1978 to include the total amount of money or the value of other consideration received from performing services in New Mexico. The statute makes no distinction between persons selling services for resale and persons selling services to the final consumer. Each separate transaction is subject to gross receipts tax.

In an effort to alleviate the tax burden that results from taxing successive transactions, the New Mexico Legislature has provided several deductions from gross receipts. At issue in this case is the deduction provided in Section 7-9-48 NMSA 1978, which states, in pertinent part:

Receipts from selling a service for resale may be deducted from gross receipts or from governmental gross receipts *if the sale is made to a person who delivers a nontaxable transaction certificate to the seller....* (emphasis added)

The fact that a particular transaction is a sale of service for resale is not sufficient to support a deduction under Section 7-9-48. The requirements of the statute are very specific. The seller of the service must obtain an NTTC from the buyer before the seller is entitled to claim a deduction. The law holds that

when an exemption or deduction from tax is claimed, the statute must be construed strictly in favor of the taxing authority, the right to the exemption or deduction must be clearly and unambiguously expressed in the statute, and the right must be clearly established by the taxpayer. *Wing Pawn Shop v. Taxation and Revenue Department*, 111 N.M. 735, 740, 809 P.2d 649, 654 (Ct. App. 1991). *See also, Proficient Food v. New Mexico Taxation & Revenue Department*, 107 N.M. 392, 397, 758 P.2d 806, 811 (Ct. App.), *cert. denied*, 107 N.M. 308, 756 P.2d 1203 (1988) (the party claiming a tax exemption or deduction must follow the method prescribed by statute or regulation or he waives his right thereto). Because the Taxpayer in this case did not have the required NTTC from his buyer, he is foreclosed from claiming a deduction under Section 7-9-48.

The Taxpayer maintains that he followed the advice he received from the architectural firm to which he sold his services and should not be penalized for the firm's failure to provide the Taxpayer with the required NTTC. The Taxpayer's attempt to shift responsibility to his buyer is inconsistent with New Mexico's gross receipts tax system. New Mexico does not have a sales tax that is charged to and collected from the buyer. New Mexico has a gross receipts tax that is imposed directly on the seller of goods and services. In effect, the gross receipts tax is part of the seller's cost of doing business. In this case, the Taxpayer was legally liable for payment of tax on receipts from performing services in New Mexico, and it was his responsibility to determine whether he had the NTTC needed to qualify for a deduction under the Gross Receipts and Compensating Tax Act.

CONCLUSIONS OF LAW

1. The Taxpayer filed a timely, written protest to the filing of Department Lien No. 754491-01, and jurisdiction lies over the parties and the subject matter of this protest.
2. The Department's mailing of the Assessment No. 2109433 and Notice of Tax Lien No. 754491-01 to the Taxpayer at the address shown on his registration application complied with the

provisions of Section 7-1-9(A) NMSA 1978 and those notices were effective to establish the Taxpayer's liability for the gross receipts tax assessed.

3. The Taxpayer's failure to obtain an NTTC from the architectural firm for which he performed services precludes the Taxpayer from deducting his receipts from selling services for resale.

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

DATED January 7, 2002.