

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

IN THE MATTER OF THE PROTEST OF
RAYMOND GABALDON, DBA MOVIE LAND VIDEO
ID NO. 02-018373-00 0
PROTEST TO LIEN NO. 747369-01

No. 97-19

DECISION AND ORDER

This matter came on for hearing on April 21, 1997, before Ellen Pinnes, Hearing Officer. Raymond Gabaldon ("the Taxpayer") appeared on his own behalf. The Taxation and Revenue Department ("the Department") was represented by Gail MacQuesten, Special Assistant Attorney General.

Based upon the evidence and arguments presented, IT IS HEREBY DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. The Taxpayer was the owner of a business known as Movie Land Video, located in Albuquerque.
2. The Taxpayer, who has been a member of the New Mexico National Guard since 1975, was called to active duty in 1987. He was initially stationed at Fort Bliss, Texas, for approximately six months, and was then transferred to Rio Rancho, New Mexico.
3. Because the Taxpayer could not handle the day-to-day operation of Movie Land Video while he was on active duty and stationed at some distance from Albuquerque, he hired a manager to run the business during his absence.
4. The manager hired by the Taxpayer did not file CRS returns or pay taxes due to the Department.

5. On June 15, 1992, the Department issued assessments for unpaid taxes for the period from September 1987 to August 1989.

6. The Taxpayer did not file a formal protest of the assessments. Instead, he paid the amount of tax owed. Subsequently, the Taxpayer on August 11, 1994, entered into a installment agreement with the Department to pay off the penalties and interest owed under the assessments. By the terms of that agreement, the Taxpayer agreed to pay \$100 per month from August 1994 through July 1997. (Copies of the agreement are included in the record as Enclosure 4 to the Taxpayer's undated letter to Thomas J. Dillon of the Department's Protest Office and as an enclosure to Ms. MacQuesten's June 5, 1996, letter to the Taxpayer.)

7. The agreement recited, in paragraph 2, that if the Taxpayer did not furnish security for payment, a lien against his property would be filed as provided in §7-1-38 NMSA, 1978. The Department's representative told the Taxpayer that security was required.

8. The Taxpayer did not provide security for payment of the amount covered by the payment plan. The Taxpayer testified that he sent the Department the title to a tractor he owned, to serve as security. However, the title was not received by the Department.

9. The Taxpayer made monthly payments of \$100 in August, September and October of 1994, as required by the payment plan. In November 1994, he paid \$200. No payment was made in December 1994, but the Department treated the extra \$100 paid in November as having been paid for December, and did not consider the Taxpayer to have missed the December payment.

10. The Taxpayer made \$100 monthly payments in January, March and April of 1995. However, he made no payments in February or May of that year. He also made no payment in June, but made two payments in July, one of which was applied by the Department as the payment for June, which accordingly was not treated by the Department as a missed payment. (See Department's Exhibit 2.)

11. Because the Taxpayer had twice failed to make payments as required by the payment plan and had not furnished security under the agreement, a tax lien was requested. The

Department's records show that the lien was requested on September 28, 1995, and was issued by the Department on October 4, 1995. (See Department's Exhibit 1.) The lien was filed in Doña Ana County. Notice of the lien was sent to the Taxpayer. (The notice, along with records relating to filing of the lien in Doña Ana County, are included in the record as attachments to the Taxpayer's undated letter requesting a retroactive extension of time to protest the lien.)

12. Upon receiving notice of the lien, the Taxpayer contacted the Department and was told that the lien was filed because no security had been furnished under the payment plan. The Taxpayer did not attempt to resubmit the tractor title or any other security to the Department in order to have the lien released.

13. The Taxpayer continued to make payments as required by the payment plan.

14. On November 28, 1995, the Taxpayer wrote to the Department's Protest Office, requesting a retroactive extension of time to protest the tax lien.

15. By letter dated December 22, 1995, Rebecca Salazar of the Protest Office responded to the Taxpayer's November 28 request, granting a retroactive extension to protest the 1992 assessments.

16. Counsel for the Department subsequently notified the Taxpayer that the November 1995 protest was untimely as to the 1992 assessments, and that the protest would be considered as one of the lien only.

DISCUSSION

Jurisdiction

At the hearing, the Taxpayer attempted to challenge not only imposition of the tax lien, but also the validity of the assessments issued by the Department in 1992. The hearing officer does not have jurisdiction as to those assessments.¹

The assessments were issued on June 15, 1992. The New Mexico Tax Administration Act provides that protests must be filed within thirty days of the date that notice of the assessment is mailed to or served on a taxpayer. §7-1-24(B) NMSA, 1978. An extension of up to sixty days to file the protest may be granted. *Id.* Thus, the latest date that a protest may be submitted is ninety days after issuance of the assessment. The Taxpayer's November 1995 letter here missed that deadline by more than three years. Because the protest was untimely as to the 1992 assessments, the hearing officer lacks jurisdiction to consider the validity of those assessments. TRD Regulation TA 24:2.

¹ The Taxpayer was given considerable latitude to argue and present evidence concerning history both antedating and concerning the original assessments, which he contended was relevant to his challenge to the lien itself. However, the hearing officer advised the Taxpayer at the commencement of the hearing that the hearing would concern only the protest of the lien and that the validity of the underlying assessments was not at issue.

The Department's Protest Office, in the December 22, 1995, letter from Ms. Salazar, informed the Taxpayer that he was being given a retroactive extension of time to protest the 1992 assessments. However, that action was not authorized by the Tax Administration Act. The only subject of the protest that could properly be accepted by the Department was the tax lien issued in October 1995. Thus, only that issue will be considered here.

Propriety of the Tax Lien

The Taxpayer in 1994 entered into an installment agreement providing for monthly payments to pay off the balance he owed pursuant to the 1992 assessments. The Tax Administration Act expressly authorizes such agreements. §7-1-21 NMSA, 1978. In such an agreement, a taxpayer admits liability for the amount of tax due and agrees to make monthly payments, for up to thirty-six months, to pay off that liability. *Id.* The statute requires that the Department must either obtain security for payment from the taxpayer or file a lien against the taxpayer's property. §7-1-21(C) NMSA, 1978.

Here, the Taxpayer apparently attempted to furnish security for payment under the installment agreement, but the documentation was not received by the Department. Accordingly, the Department filed a notice of lien as required by the Tax Administration Act. This was not done until the Taxpayer had missed two of the monthly payments required by the agreement. Upon learning that the Department had not received his security and had filed a lien as provided in the installment agreement, the Taxpayer did not resubmit the security as a means of having the lien released.

The lien issued by the Department was not only proper, but was expressly required by applicable law.

CONCLUSIONS OF LAW

1. The Taxpayer filed a timely protest of Lien No. 747369-01. Jurisdiction thus lies over the parties and the subject matter of the protest insofar as it relates to the validity of the lien.

2. The Taxpayer did not file a timely protest to the assessments underlying the lien. The hearing officer therefore lacks jurisdiction over the protest insofar as it purports to relate to the validity of those assessments.

3. The lien issued by the Department, as provided in §7-1-21 NMSA, 1978, was proper.

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

DONE, this 19th day of May, 1997.