

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

IN THE MATTER OF THE PROTEST OF
TIMOTHY AND SANDRA READ,
ID. NO. 02-331586-00 5,
PROTEST TO ASSESSMENT NO. 2121178

NO. 98-02

DECISION AND ORDER

THIS MATTER came on for formal hearing on January 12, 1998 before Gerald B. Richardson, Hearing Officer. Mr. and Mrs. Timothy Read, hereinafter, "Taxpayers", represented themselves at the hearing. The Taxation and Revenue Department, hereinafter, "Department", was represented by Bruce J. Fort, Esq. Based upon the evidence and the arguments submitted, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. In June of 1993, the Taxpayer's bought a "fixer-upper" home in Silver City, New Mexico and moved to New Mexico.
2. The home was purchased with proceeds from the estate of Mrs. Read's mother.
3. Prior to moving to New Mexico, Mr. Read worked as a "handyman."
4. After moving to New Mexico, Mr. Read worked for the remainder of 1993 and all of 1994 fixing up the home he and his wife had purchased.

5. When filing their 1993 and 1994 federal personal income tax returns, the Taxpayers filed federal Schedule Cs which are used to report business income and loss. Mr. Read reported on Schedule C that he was the proprietor of Timothy F. Read, that the nature of his business was “handy man”. For 1993, he reported that he had \$16,532 in gross receipts or sales. Mr. Read’s 1993 Schedule C also reflected the deduction of \$7,495 in expense for supplies, \$120 in expense for advertising, and \$95 for legal and professional services.

6. Mr. Read reported business income on his 1993 and 1994 Schedule C because he wished to create a record, should he need credit from a bank, of income for those years.

7. In fact, Mr. Read worked solely for himself and his wife while in New Mexico in 1993 and 1994, remodeling and repairing their home. The amount of gross receipts was an estimate. No money or other consideration changed hands to compensate Mr. Read for his work on his own home.

8. The Department has an information sharing agreement with the Internal Revenue Service whereby information reported by New Mexico taxpayers upon their federal returns is shared with the Department.

9. Pursuant to this information sharing agreement, the Department received information reflecting the amount of gross receipts the Taxpayers’ reported on their 1993 and 1994 federal Schedule C as Mr. Read’s receipts from performing handyman services.

10. Based upon this information, on March 19, 1997, the Department issued Assessment No. 2121178 to the Taxpayers, assessing \$1,985.96 gross receipts tax, \$198.60 in penalty and \$926.46 in interest for the 1993 and 1994 tax years.

11. On April 11, 1997 the Taxpayers filed a protest to the Assessment No. 2121178.

DISCUSSION

The sole issue to be determined herein is whether the Taxpayers had gross receipts during 1993 and 1994 upon which the Department's assessment of gross receipts tax, interest and penalty was based. "Gross receipts" is defined in pertinent part at Section 7-9-3(F) NMSA 1978 as:

the amount of money or the value of other consideration received from selling property in New Mexico, from leasing property employed in New Mexico,...or from performing services in New Mexico.

Because Mr. Read's remodeling and repair work can best be characterized as a service, the definition of "service" will be consulted. "Service" is defined in the Gross Receipts and Compensating Tax at Section 7-9-3(K) NMSA 1978. In pertinent part, it provides:

"service" means all activities engaged in *for other persons* for a consideration, which activities involve predominantly the performance of a service as distinguished from selling or leasing property....(emphasis added).

In this case, because the services the Taxpayers performed were for themselves and not for other persons, they did not have gross receipts from performing services. Having no gross receipts, the Department's assessment for gross receipts tax, penalty and interest is erroneous.

CONCLUSIONS OF LAW

1. The Taxpayer's filed a timely, written protest to Assessment No. 2121178 and jurisdiction lies over both the parties and the subject matter of this protest.

2. The Taxpayer's had no gross receipts from performing services in New Mexico in 1993 or 1994.

3. Assessment No. 2121178 is erroneous as a matter of law.

For the foregoing reasons, the Taxpayer's protest IS HEREBY GRANTED. THE DEPARTMENT IS HEREBY ORDERED TO ABATE ASSESSMENT NO. 2121178.

DONE, this 20th day of January, 1998.