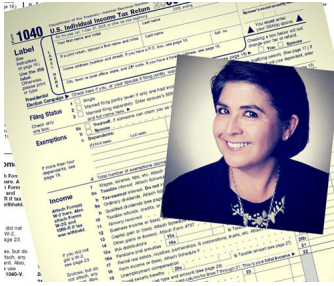


Sec. Padilla tried to help former client with tax audit

Written by By Joey Peters NM Political Report
Friday, 27 November 2015 07:10



On Oct. 15, 2014, Kevin Sourisseau sent a message to his boss with the subject line “Harold’s Trucking Audit.”

As second and first in command of the state Taxation and Revenue Department’s audits, Sourisseau and his then-director Lizzy Vedamanikam were in charge of making sure individuals and businesses paid their share of taxes in New Mexico.

Their boss, TRD Secretary Demesia Padilla, wanted to help Harold’s Grading & Trucking save money after the Bernalillo-based company faced an audit from their department. Before Gov. Susana Martinez named her head of the state agency in 2011, Padilla had done accounting work for the trucking company.

In his email to Vedamanikam, Sourisseau wrote that the situation was a “difficult and uncomfortable issue.” Still, it didn’t seem like he had a reason for concern.

“This audit has not received any special consideration from the audit staff,” Sourisseau wrote, in an email later released to the media by TRD.

Just four days after this exchange, however, Padilla inserted herself into the audit.

Letter from TRD secretary

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In an Oct. 19, 2014 letter addressed simply to the state Taxation and Revenue Department, Padilla asked that the department abate—or in other words reduce or eliminate—negligence penalties assessed to a former client.

In the letter, Padilla explains that any tax penalty imposed on her former client should be reduced because of the way her accounting firm handled that client's tax documents in the past.

"All the books, records and source documents (including NTTCs) were maintained and stored by Padilla & Garcia," Padilla writes in her letter to her own department. Padilla & Garcia refers to the accounting firm Padilla ran before becoming TRD secretary.

NTTCs are Nontaxable Transaction Certificates, which businesses must collect and provide to TRD to prove they qualify for certain tax deductions on items they sold. In TRD emails released to *NM Political Report* last month, Padilla noted that NTTCs for her former client were destroyed.

In the Oct. 19 letter, she writes that "some documents" weren't transferred to her former client "and are no longer recoverable."

"Given the circumstances noted above, the negligence penalty should be abated," Padilla writes. "Thank you for your time and consideration to this matter."

TRD spokesman Ben Cloutier characterized Padilla's effort as "simply a short letter, attesting to the facts." Cloutier noted that taxpayers have a right to submit messages from their accountants during tax audits.

Cloutier downplayed the fact that Padilla wrote the letter.

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“It’s not written on state letterhead, or from the secretary in her official capacity, but as the taxpayer’s former CPA,” he said in a statement. “In fact, had the taxpayer not been afforded the opportunity to have his CPA attest to this information, he would have been discriminated against and denied a basic right given to all other taxpayers in New Mexico under the Tax Administration Act.”

Last month, TRD denied handing over the document when *NM Political Report* asked for it in a records request, saying that it contains confidential taxpayer information. When asked if she could redact the confidential information and send the document, TRD records custodian Mary Baily wrote in an email that she couldn’t because “it is the entire document that is confidential because it was part of an audit.”

NM Political Report later filed a request with Keller’s office for all correspondence with state Attorney General Hector Balderas’ office following Keller’s preliminary investigation. Padilla’s letter came as part of that request.

Balderas’ office is currently investigating Padilla for allegedly giving preferential treatment to a former client for whom she use to do accounting work. TRD has repeatedly denied any wrongdoing by Padilla.

While Keller’s office redacted the name of the taxpayer—releasing confidential taxpayer information publicly without the taxpayer’s consent is against state law—*NM Political Report* has confirmed that Padilla’s letter in fact refers to Harold’s Trucking.

A conflict of interest

To Keller’s office, the fact that Padilla inserted herself in the audit is problematic.

“The letter speaks for itself in terms of the allegations of abuse of power by the Secretary and raises serious concerns about the fair administration of our tax laws,” State Auditor spokeswoman Justine Freeman said in a statement to *NM Political Report*.

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A spokesman for the governor's office didn't a phone call and email seeking comment Monday morning.

Last February, Keller's office received an anonymous tip on its fraud hotline that Padilla gave preferential treatment to a New Mexico taxpayer. He then contracted with McHard Accounting Consulting, an Albuquerque forensic auditing firm, to conduct a preliminary investigation into the matter.

In July, Keller publicly announced the preliminary investigation found that Padilla may have acted wrongly and retaliated against TRD employees who voiced concerns about her actions. Citing the investigation, he added that her actions may have cost the state revenue.

Keller referred the matter to Balderas on July 9. At the time, a spokesman for TRD criticized Keller and called him "the most political State Auditor in New Mexico history."

The following month, Keller's office notified Balderas' office that it had since received Padilla's Oct. 19, 2014 letter, which was attached to the message.

"The letter was received anonymously," State Auditor Special Investigations Supervisor Hamish Thomson wrote to the Attorney General's Office.

Attorney General spokesman James Hallinan wouldn't comment specifically on the matter other than saying that his office reviews complaints it receives and investigates "when appropriate."

"It is the policy of this office to neither confirm nor deny an existence of an investigation, in order to preserve the integrity of our investigations and protect those individuals not charged with a crime," Hallinan said.

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Whether Padilla's letter succeeded in relieving Harold's Trucking from certain tax penalties is not publicly known. Harold's Trucking received an assessment from the Tax Department on Oct. 30, nearly two weeks after Padilla wrote her letter. Harold's Trucking protested the assessment the following January and lost the protest because it was filed too late according to online records.

Harold Dominguez, the owner of Harold's Trucking, told *NM Political Report* that he didn't remember Padilla's letter. He added that his company had to end up borrowing \$69,000 for the TRD assessment earlier this year.

"And we paid it," he said.

Cloutier emphasized that "as the taxpayer has already publicly stated, his dispute with the department did not result in his favor." He also cited Sourisseau's email stating that the Harold's Trucking audit "has not received any special treatment from staff," despite the fact that it came four days before Padilla's letter.

Cloutier did not answer whether Padilla's letter influenced TRD's assessment of Harold's Trucking.

As *NM Political Report* previously reported, emails between TRD officials show that Padilla wanted to write an affidavit for her department's audit of Harold's Trucking stating that she "was in possession of the NTTCs in question and that they were destroyed."

Citing state statute, Sourriseau wrote in an Oct. 2 email that Padilla's planned affidavit wouldn't be sufficient enough to support Harold's Trucking's tax deductions. Padilla wrote her letter supporting Harold's Trucking's tax deductions less than three weeks later.

Sourriseau now works in the State Auditor's office as director of the office's special investigation division. Vedamanikam is now director of a division at the state Department of Finance and Administration. Neither would comment for this story.

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Carl Harper, a tax accountant with Albuquerque-based Pulakos CPA, said that an accountant admitting they lost items for a taxpayer is an example of “falling on your sword for your client.”

State statute allows TRD to excuse a taxpayer’s failure to pay taxes “caused by reasonable reliance on the advice of competent tax counsel or accountant” when considering penalties

At the same time, Harper said he “wouldn’t be surprised” if an argument like the one Padilla made—that her client shouldn’t be penalized because she, and not her client, lost key tax documents—didn’t fly with TRD.

“That’s not a standard they do,” Harper said. “And, beyond that, it shows mismanagement of the audit.”

Andy Lyman contributed to this report.

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