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1       **IN THE COURT OF APPEALS OF THE STATE OF NEW MEXICO**

2 **PETE'S TOP QUALITY LANDSCAPE**  
3 **LLC,**

4       Protestant-Appellant,

5 v.

**NO. A-1-CA-36821**

6 **NEW MEXICO TAXATION AND REVENUE**  
7 **DEPARTMENT,**

8       Respondent-Appellee,

9 **IN THE MATTER OF THE PROTEST OF**  
10 **PETE'S TOP QUALITY LANDSCAPE, LLC**  
11 **TO THE ASSESSMENT ISSUED UNDER**  
12 **LETTER ID NO. L0062305344.**

13 **APPEAL FROM THE ADMINISTRATIVE HEARINGS OFFICE**  
14 **Chris Romero, Hearing Officer**

15 Wayne G. Chew  
16 Albuquerque, NM

17 for Appellant

18 Hector H. Balderas, Attorney General  
19 David E. Mittle, Special Assistant Attorney General  
20 Santa Fe, NM

21 for Appellee

1 **MEMORANDUM OPINION**

2 **HANISEE Judge.**

3 {1} Protestant Pete’s Top Quality Landscape, LLC appeals from the administrative  
4 hearing officer’s decision and order denying his tax protest, entered and mailed on  
5 October 12, 2017. We issued a notice of proposed summary disposition in which we  
6 proposed to dismiss. Appellant filed a timely memorandum in opposition. After due  
7 consideration, we remain unpersuaded that this matter is properly before us. We  
8 therefore dismiss.

9 {2} In our calendar notice, we proposed to dismiss based on an untimely notice of  
10 appeal. [See generally CN] *See Govich v. N. Am. Sys., Inc.*, 1991-NMSC-061, ¶ 12,  
11 112 N.M. 226, 814 P.2d 94 (explaining that the time and place of filing a notice of  
12 appeal is a mandatory precondition to appellate jurisdiction); *Rice v. Gonzales*,  
13 1968-NMSC-125, ¶ 4, 79 N.M. 377, 444 P.2d 288 (stating that “an appellate court has  
14 the duty to determine whether it has jurisdiction of an appeal”). We stated that while  
15 we may exercise our discretion to consider an untimely appeal in the event of unusual  
16 circumstances beyond the control of a party, *see Trujillo v. Serrano*, 1994-NMSC-  
17 024, ¶ 15, 117 N.M. 273, 871 P.2d 369, no such circumstances appear to be present  
18 in this case. [CN 4] We explained that, to be timely, the notice of appeal should have

1 been filed with this Court on or before Monday, November 13, 2017<sup>1</sup>; however, the  
2 notice was untimely filed on November 16, 2017. [CN 2] *See* NMSA 1978, § 7-1-  
3 25(A) (2015) (stating that appeals from the hearing officer’s decision and order to this  
4 Court “shall be taken within thirty days of the date of mailing or delivery of the  
5 written decision and order of the hearing officer to the protestant, and, if not so taken,  
6 the decision and order are conclusive”); Rule 12-601(B) NMRA (requiring notice of  
7 appeal from orders of administrative agencies to be filed in this Court “within thirty  
8 (30) days from the date of the order, decision, or action appealed from”); *see also* Rule  
9 12-601(A) (“To the extent of any conflict, this rule supersedes any statute providing  
10 for the time or other procedure for filing or perfecting an appeal with an appellate  
11 court.”); Rule 12-308(A)(1)(c) NMRA (providing that when the applicable time  
12 deadline is eleven days or more, “include the last day of the period, but if the last day  
13 is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the  
14 next day that is not a Saturday, Sunday, or legal holiday”).

15 {3} In response, Appellant argues that, even though the order at issue was entered  
16 on October 12, 2017, a certificate of service was not included with the order so the  
17 actual date of mailing is unknown; the earliest that it was received was Monday,  
18 October 16, 2017; and therefore, the notice of appeal was timely filed on November

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19 <sup>1</sup> We note that the calendar notice stated Monday, November 11, 2017;  
20 however, it should have stated Monday, November 13, 2017.

1 16, 2017. [MIO 1] We are not persuaded. Contrary to Appellant’s assertion, a  
2 certificate of service was attached to the order stating that the order was mailed to the  
3 parties on October 12, 2017. [2 RP 107] Moreover, pursuant to Rule 12-601(B),  
4 Appellant was required to file a notice of appeal in this Court “within thirty (30) days  
5 from the date of the order . . . appealed from.” [See also 2 RP 106] The order was  
6 entered on October 12, 2017, so a timely notice of appeal was due on or before  
7 Monday, November 13, 2017.

8 {4} Accordingly, for the reasons stated above and in the notice of proposed  
9 summary disposition, we dismiss.

10 {5} **IT IS SO ORDERED.**

11 \_\_\_\_\_  
12 **J. MILES HANISEE, Judge**

13 **WE CONCUR:**

14 \_\_\_\_\_  
15 **STEPHEN G. FRENCH, Judge**

16 \_\_\_\_\_  
17 **JENNIFER L. ATTREP, Judge**