STATE OF NEW MEXICO
ADMINISTRATIVE HEARINGS OFFICE
TAX ADMINISTRATION ACT

IN THE MATTER OF THE PROTEST OF
HELMERICH & PAYNE INTNL DRLG, **No. 17-24**
TO ASSESSMENT ISSUED UNDER
LETTER ID NO. L0972449840

DECISION AND ORDER

A formal hearing on the above-referenced protest was held on March 17, 2017 before Hearing Officer Dee Dee Hoxie. The Taxation and Revenue Department (Department) was represented by Mr. Peter Breen, Staff Attorney. Mr. Tom Dillon, Auditor, also appeared on behalf of the Department. Mr. Timothy Van Valen, attorney for Helmerich & Payne Intnl Drlg (Taxpayer), appeared for the hearing. The Department's exhibit "A" and the Taxpayer's exhibit #1 were admitted. A more detailed description of exhibits submitted at the hearing is included on the Administrative Exhibit Coversheet. The Hearing Officer took notice of all documents in the administrative file. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. On October 6, 2015, the Department assessed the Taxpayer for corporate income tax, penalty, and interest for the tax period ending September 30, 2013. The assessment was for $391,178.00 tax, $78,235.60 penalty, and $21,220.07 interest.
2. On December 16, 2015, the Taxpayer filed a formal protest letter. The protest included a request for an award of costs and fees.
3. On February 4, 2016, which was fifty days after the protest was filed, the Department filed a Request for Hearing with the Administrative Hearings Office (AHO) asking that the Taxpayer's protest be scheduled for a formal administrative hearing.

4. On February 5, 2016, the AHO issued a notice of telephonic scheduling hearing.

5. On March 4, 2016, the telephonic scheduling hearing was conducted. The hearing was held within ninety days of the protest.

6. On March 7, 2016, the scheduling order and notice of hearing was issued.

7. On August 5, 2016, the Taxpayer filed a motion for summary judgment and renewed its request for costs and fees.

8. The parties agreed to extend the Department's time to respond to the motion for summary judgment until September 8, 2016.

9. Despite the agreed upon extended deadline to respond, the Department did not file a response to the Taxpayer's motion for summary judgment.

10. On October 11, 2016, the Department issued the written abatement of the entire assessment.

11. The Department did not notify the AHO of the abatement and did not explain why the abatement was made even though there was an active protest proceeding underway and a pending summary judgment motion.

12. On December 12, 2016, the Taxpayer filed another request for costs and fees and provided a copy of the abatement. The Taxpayer's motion was the first instance that the AHO learned of the Department's abatement of the assessment. The Taxpayer's motion reiterated its stance that the Department's assessment was improper and contrary to established caselaw.

13. On December 27, 2016, the Department filed its response, but did not address whether the Department's position at the time of the assessment was a reasonable application of the law.

14. On January 4, 2017, the Taxpayer filed its reply.

15. On January 24, 2017, the Hearing Officer issued the order regarding jurisdiction and set deadlines for final written arguments on whether the Taxpayer should be treated as the prevailing party or whether the Department's position was reasonable. The order also

allowed the parties to request a hearing on the merits on the sole issue of awarding costs and fees.

16. On February 17, 2017, the Taxpayer filed a timely written argument.

17. On February 17, 2017, the Department filed a timely additional brief and requested that the matter be set for hearing, but again failed to address the issue of whether its position on the original assessment was a reasonable application of the law.

18. On March 17, 2017, a hearing was conducted. The hearing was limited to whether the Taxpayer should be treated as the prevailing party for purposes of awarding costs and fees or whether the Taxpayer should not be treated as the prevailing party because the Department's position was a reasonable application of the law to the facts at the time of the assessment.

19. The Department had many opportunities to address and then to rebut the Taxpayer's status as the prevailing party.

20. The Department's first opportunity was in response to the Taxpayer's motion for summary judgment and request for costs.

21. The Department's second opportunity was in response to the Taxpayer's renewed request for costs after the abatement was done.

22. The Department's third opportunity was to file a written argument on this issue.

23. The Department's fourth and final opportunity was to present testimony, evidence, and argument at the hearing conducted on March 17, 2017.

24. The Department asked its witness a few questions at the hearing and submitted Exhibit "A". Despite the numerous opportunities to do so, the Department never argued or asserted that its original assessment and position were based upon a reasonable application of the law to the facts. The Department also never explained why the assessment was abated after the motion for summary judgment was filed.

DISCUSSION

The issue to be decided is whether the Taxpayer is the prevailing party for purposes of Section 7-1-29.1 when the Department abated the assessment while the protest was pending.

Section 7-1-29.1.

> In any administrative or court proceeding that is brought by or against a taxpayer on or after July 1, 2003 in connection with the determination, collection or refund of any tax, interest or penalty for a tax governed by the provisions of the Tax Administration Act, the taxpayer *shall be awarded* a judgment or a settlement for reasonable administrative costs incurred in connection with an administrative proceeding *with the department or the administrative hearings office* or reasonable litigation costs incurred in connection with a court proceeding, if the taxpayer is the prevailing party. NMSA 1978, § 7-1-29.1 (A) (2015) (emphasis added).

The word "shall" indicates that the provision is mandatory, not discretionary. *See Marbob Energy Corp. v. N.M. Oil Conservation Comm'n.*, 2009-NMSC-013, ¶ 22, 146 N.M. 24. The primary goal in interpreting a statute is to give it the effect that the Legislature intended. *See State v. Davis*, 2003-NMSC-022, 134 N.M. 172. Statutory construction begins by looking at the plain meaning of the language. *See id. See also Wood v. State Educ. Ret. Bd.*, 2011-NMCA-020, ¶ 12, 149 N.M. 455. *See also State v. Maestas*, 2007-NMSC-001, 149 P.3d 933. *See also Johnson v. NM Oil Conservation Com'n*, 1999-NMSC-021, 127 NM 120.

There is very little guidance on the issue of awarding costs and fees under the statute. A single unpublished case briefly affirms the denial of fees when the taxpayer did not succeed and was not the prevailing party. *See Severns v. N.M. Taxation and Revenue Dep't*, No. 31,817, mem. op. at ¶ 21 (NMCA April 1, 2013) (non-precedential). In another case, an administrative hearing on the merits was conducted, the taxpayer was the prevailing party, and fees were awarded. *See In Re Corrosive Services Corp.*, Decision and Order 07-16. In another case, an administrative hearing was conducted on the sole issue of awarding costs and fees, evidence was presented on the reasonableness of the Department's position, and fees were awarded. *See In Re Abelardo Ortiz*, Decision and Order 12-11.

Jurisdiction for awarding costs.

The Department argued that the Hearing Officer may not order an award of administrative costs without first rendering a decision on the merits of the protest. The Department also argued that issuing an award for costs would infringe on the separation of powers doctrine since the AHO is administratively attached to the Department of Finance and Administration (DFA). The Department argued that issuing an award of costs is an impermissible formulation of tax policy.

The AHO is administratively attached to the DFA. *See* NMSA 1978, § 7-1B-2 (2015). Administrative attachment means that the AHO submits its budgetary requests and reports through DFA. *See* NMSA 1978, § 9-1-7. All state agencies must meet certain accounting requirements that are processed by and through DFA. However, the AHO exercises its functions independently and is not subject to any control or approval from DFA. *See id.* The AHO has been granted the statutory authority to hear all protests taken under the Tax Administration Act, which includes the possibility of awarding costs and fees to the prevailing party. *See* NMSA 1978, § 7-1B-6 and § 7-1-29.1. Moreover, the statute on awarding costs and fees was amended specifically to allow hearing officers to make the decision on costs and fees when the statute creating the AHO and administratively attaching it to DFA was enacted. *See id.* It is highly improbable that the Legislature would amend the statute expressly to allow hearing officers to decide the issue of costs and fees while simultaneously administratively attaching the AHO to the DFA if the Legislature did not intend for the AHO to have authority to determine the issue of costs and fees. The exercise of that statutorily granted authority does not violate the separation of powers simply because there is an administrative attachment to another agency. *See id. See also* NMSA 1978, § 9-1-7.

The statute does not require that a decision on the merits be issued by the hearing officer before a taxpayer is considered to be a prevailing party. *See* NMSA 1978, § 7-1-29.1. While a protest is pending, the hearing officer may issue a written ruling on any contested question of

evidence or on any contested question of procedure in any matter where a taxpayer has filed a written protest. *See* NMSA 1978, § 7-1B-6 (D) (2015). The hearing officer is required to allow fair and ample presentation of the case, dispose of motions, and render a decision in accordance with the law and evidence presented. *See id.*

Hearing officers are prohibited from enforcing or formulating tax policy "*other than* to conduct hearings." NMSA 1978, § 7-1B-7 (A) (2015) (emphasis added). "The administrative hearings office shall: (1) hear *all* tax protests pursuant to the provisions of the Tax Administration Act". NMSA 1978, § 7-1B-6 (C) (2015) (emphasis added). Again, the word "shall" indicates that the provision is mandatory, not discretionary. *See Marbob Energy Corp*, 2009-NMSC-013, ¶ 22. Moreover, taxpayers may protest "the application of *any provision* of the Tax Administrative Act except the issuance of a subpoena or summons". NMSA 1978, § 7-1-24 (2015) (emphasis added). The award of costs and fees is governed by Tax Administration Act. *See* NMSA 1978, § 7-1-29.1 (2015). The statute also allows for the award or denial of administrative costs by "decision *or* order" of the hearing officer and allows the award to be reviewed in the same manner on appeal as a decision by the hearing officer. *See* NMSA 1978, § 7-1-29.1 (D) (emphasis added). Therefore, the AHO has the jurisdiction to decide issues under Section 7-1-29.1.

Administrative proceeding.

The Department argued that its decision to abate the assessment does not mean that the Taxpayer substantially prevailed since there was not a decision on the merits of the protest. The Department argued that allowing a request for attorney's fees is a second level evaluation of the Department's internal processes that is not appropriate under the statute.

Taxpayers are entitled to administrative costs only "in connection with an administrative proceeding with the department or the administrative hearings office". NMSA 1978, § 7-1-29.1 (A). The determination of whether a taxpayer is a prevailing party can be made by agreement of the

parties. NMSA 1978, § 7-1-29.1 (C) (4). If the parties do not agree, then the hearing officer shall make the determination "in the case where the final determination with respect to the tax, interest or penalty is made in an administrative proceeding". *Id.* Administrative proceedings include "any procedure or other action before the department or the administrative hearings office". NMSA 1978, § 7-1-29.1 (B).

The Taxpayer filed a timely protest that included a request for costs and fees. The Department requested a hearing on the protest. A scheduling hearing was conducted on the protest, a scheduling order was issued that included deadlines for discovery and motions, and the matter was set for a hearing on the merits. The Taxpayer's protest was indisputably brought before the AHO and met the plain language of Section 7-1-29.1. *See* NMSA 1978, § 7-1B-8 and § 7-1-29.1. At the time of the abatement, the protest was still pending and there was an outstanding motion for summary judgment, which was filed with the AHO, and to which the Department did not respond. Furthermore, the abatement itself was an administrative procedure or action before the Department while the protest was pending. Since an administrative proceeding was underway under both definitions of the statute, the statute is applicable to this proceeding. *See* NMSA 1978, § 7-1-.29.1.

Moreover, the statute itself contemplates the award of administrative costs when the Department settles with a taxpayer since the award is capped at "the lesser of twenty percent of the amount *of the settlement* or judgment or fifty thousand dollars". NMSA 1978, § 7-1-29.1 (E) (emphasis added). The Taxpayer also submitted exhibit #1, the fiscal impact report (FIR), to show that the legislature intended for the award of administrative costs when the Department settled a case. Exhibit #1 is a FIR that analyzed the newly created Taxpayer Bill of Rights, which included the statute for recovery of costs and fees. The FIR was generated on February 28, 2003. The statutes were enacted later that same year. *See e.g.* NMSA 1978, § 7-1-29.1. The Department was credited as the source of the information contained in Exhibit #1. The FIR noted that the purpose of the bill

was "to remedy perceived unfair treatment of certain taxpayers by the Taxation and Revenue Department". Exhibit #1. The FIR noted that the bill allowed for taxpayers to recover litigation costs if they prevail against the Department and that no costs are required "[i]f the Department establishes that its position in the proceeding was based upon a reasonable application of the law to the facts". *Id.* The FIR noted that allowing recovery of costs and fees "causes some concern" and "would have an uncertain impact." *Id.* The FIR further noted that "[i]n a case where the Department concedes even a portion of its initial case, the protestor could apply for attorney's fees, which will be, in turn, subject to a separate protest hearing." *Id.* Since the possibility of a separate hearing on the issue of awarding costs and fees is mentioned in the FIR that was generated when the statute was created, the Legislature was aware at the time of its enactment that the statute could apply when the Department conceded or settled on a case. Consequently, based upon the plain language of the statute and the specific facts of this protest, the issue is properly before the AHO.

The abatement occurred in connection with an administrative proceeding. When the Department abated the assessment in its entirety, the Taxpayer became the prevailing party since the Taxpayer prevailed with respect to the entire amount in controversy.

Prevailing party.

A taxpayer who has substantially prevailed with respect to the amount or issues may still be denied an award of administrative costs if "the hearing officer finds that the position of the department in the proceeding was based upon a reasonable application of the law to the facts". NMSA 1978, § 7-1-29.1. The Taxpayer's argument from the originally filed protest to the final argument at the hearing was that the Department's position was not reasonable and was contrary to established caselaw.

The Department argued that the Taxpayer cannot substantiate its claims on the facts and law without a hearing on the merits and a decision by the hearing officer. Ergo, the Department could

thwart a taxpayer's right to recover administrative costs by abating an assessment even when its position was not reasonable as long as it did so prior to the issuance of a decision and order by the hearing officer. Interpretations of statutes that lead to absurd results are not favored. *See Intel Corp. v. Taxation and Revenue Dep't*, 1997-NMCA-005, ¶ 5, 122 N.M. 760. *See also Claridge v. N.M. State Racing Comm'n*, 1988-NMCA-056, ¶ 23, 107 N.M. 632.

The Department objected to the adoption of the Taxpayer's facts as set out in its protest, motion for summary judgment, request for fees, and final argument. The Department argued that the Taxpayer had the burden of proof as the moving party and that its pleadings were insufficient to establish the facts. The Department argued that the Taxpayer must prove that the Department's position was unreasonable.

Failure of a party to respond to motion for summary judgment is good cause to deem the allegations of fact in the motion to be found. *See Valenzuela v. Snyder*, 2014-NMCA-061, ¶ 11. Under the hearing regulations, a party who fails to answer a motion "*shall* be deemed to have consented to the granting of the relief asked for in the motion." 3.1.8.16 NMAC (2001) (emphasis added). When a motion for summary judgment makes a prima facie showing of the facts, the burden shifts to the non-moving party. *See Branch v. Chamisa Dev. Corp.*, 2009-NMCA-131, ¶ 19, 147 N.M. 397. *See Schneider Nat'l, Inc. v. Taxation and Revenue Dep't*, 2006-NMCA-128, ¶ 16, 140 N.M. 561. Moreover, when a taxpayer overcomes the presumption of correctness, the burden shifts to the Department. *See N.M. Taxation and Revenue Dep't v. Casias Trucking*, 2014-NMCA-099, ¶ 8.

The statute does not require that a taxpayer prove that the Department's position was unreasonable. *See* NMSA 1978, § 7-1-29.1. Rather, the statute provides that "the taxpayer *is the prevailing party* if the taxpayer has: (a) substantially prevailed with respect to the amount in controversy; or (b) substantially prevailed with respect to most of the issues involved in the case or

the most significant issue or set of issues involved in the case". NMSA 1978, § 7-1-29.1 (C) (1) (emphasis added). The Taxpayer in this case necessarily overcame the presumption of correctness on the assessment since the Department abated the assessment in full. When the assessment was abated in its entirety, the Taxpayer substantially prevailed with respect to the amount in controversy. Consequently, the Taxpayer is the prevailing party as defined by the statute. *See id.*

Reasonableness of the Department's position.

It is possible that a hearing on the merits would have elicited sufficient facts to make a finding on the reasonableness of the Department's position without a need for further proceedings. It is also possible that additional facts and arguments on the reasonableness of the Department's position would be necessary even after a hearing on the merits. However, the Department has the opportunity to avoid the imposition of administrative costs and fees because "the taxpayer *shall not be treated* as the prevailing party if…the department establishes or…the hearing officer finds that the position of the department in the proceeding was based upon a reasonable application of law to the facts of the case." NMSA 1978, § 7-1-29.1 (C) (2) (emphasis added).

The Department's position would be presumed to be unreasonable if the assessment was "not supported by substantial evidence determined at the time of the issuance of the assessment". NMSA 1978, § 7-1-29.1 (C) (2) (b). Conversely, the Department's position could also be deemed reasonable if the assessment was supported by substantial evidence at the time that the assessment was made. The Department argues that estoppel does not apply to the reasonableness of its position simply because it capitulated.

Abating an assessment does not create a presumption that the Department's position at the time the assessment was made was unreasonable; in fact, taxpayers have the right to an abatement when an assessment is determined to be incorrect or illegal. *See* NMSA 1978, § 7-1-4.2. (I) (2015). Clearly, additional evidence could be exchanged in the discovery process of a protest that could lead

the Department to abate an assessment that was reasonably issued or a newly decided case could reverse what was a previously reasonable position. However, the Department never alleged that its abatement was the result of newly produced evidence or caselaw. The Department never explained why the assessment was abated and never alleged that its original position was reasonable.

The Department was given ample opportunity to provide evidence and make arguments to establish that its position was reasonable. The Department was put on notice that the Taxpayer was requesting costs and fees when the Taxpayer filed its protest. Since protests are filed directly with the Department, the Department was aware that the issue had been raised before the protest was even referred to the AHO.

The Department had the opportunity to respond to the Taxpayer's motion for summary judgment. The motion for summary judgment restated the facts and arguments made in the original protest and again included the request for costs and fees. The Department could have sought alternative relief, such as filing a motion to place the protest in abeyance while the parties entered into a closing agreement. *See* NMSA 1978, § 7-1-20 (1995) (allowing for conclusive agreements that may address costs and fees). Rather than doing any of those things and with the full knowledge that the failure to respond could be deemed as consent to the motion under the regulations, the Department stood silent and abated the assessment in its entirety. *See* 3.1.8.16 NMAC. The Department did not notify the AHO that the abatement had been made, and the protest was still set for a hearing on the merits under the outstanding scheduling order.

In response to the Taxpayer's motion for administrative costs and fees, the Department had another opportunity to articulate why its position was reasonable. The Department filed a response, but did not allege that its position on the assessment was reasonable. Rather, the Department's response challenged the AHO's jurisdiction to decide the issue when the Department abated the assessment in the middle of the administrative proceeding that was pending before the AHO.

After an order finding that the AHO had jurisdiction and allowing for further briefing on the ultimate issue, the Department again had the opportunity to provide evidence and argument in writing as to the reasonableness of its position. The Department filed an additional brief, but did not allege that its position was reasonable. The Department's additional brief argued that it could abate an assessment and still have a reasonable justification for the assessment. This is a correct assertion, but the Department never provided any evidence or argument that its position in this case had a reasonable justification.

The Department had the opportunity to provide evidence and argument to show that its position was reasonable at the hearing. The Department provided perfunctory testimony and Exhibit "A", which was a copy of the audit narrative. The Department did not explain or argue how this nominal evidence showed that its position was reasonable. The Department did not explain why the assessment was abated.

Again, the Taxpayer's position from the outset was that the Department's position in the audit and subsequent assessment was unreasonable and contrary to caselaw. The Taxpayer clearly invested a great deal of time in preparing a detailed protest that included a request for costs and fees, in preparing a summary judgment motion that included a request for costs and fees, and in preparing a motion for costs and fees after the abatement was done. Given the Department's refusal to address the reasonableness of its position despite numerous opportunities to do so, there is insufficient evidence in the record to find that the Department's position was a reasonable application of the law to the facts at the time of the assessment. *See Bernalillo County Health Care Corp. v. N.M. Pub. Regulation Comm'n*, 2014-NMSC-008, ¶ 9 (noting that findings must be supported by substantial evidence in the record). *See also Rauscher, Pierce, Refsnes, Inc. v. Taxation and Revenue Dep't*, 2002-NMSC-013, ¶ 26, 132 N.M. 226. Therefore, the Taxpayer should continue to be treated as the prevailing party. *See* NMSA 1978, § 7-1-29.1 (C) (2).

Timing of request.

The Department argued that allowing for administrative costs and fees after an action by the Department in an administrative proceeding will create an untenable flood of such requests since the Department regularly negotiates with taxpayers and the statute lacks a clear limitation on when such a request can be made. The Department argued that requiring a closing agreement in every case is an unreasonable use of its time since closing agreements are not regularly utilized as they have to be signed by the Secretary as well as the Attorney General. The Department argued that it will have to file requests for hearing in cases that are not in controversy due to the open-ended and potentially years-long tail of liability that awarding costs and fees in this case would create.

The statute does not contain a temporal limitation on making a claim for administrative costs and fees. *See* NMSA 1978, § 7-1-29.1. However, the statute should be read in conjunction with the Administrative Hearings Office Act and Section 7-1-24. *See also State ex rel. Quintana v. Schnedar*, 1993-NMSC-033, ¶ 4, 115 NM 573 (noting that provisions of a statute must be read together with other statutes in material parts). The statute allows for an award by decision or order of a hearing officer. *See* NMSA 1978, § 7-1-29.1 (D). Hearing officers may only issue orders and decisions in matters where a timely written protest has been made. *See* NMSA 1978, § 7-1B-6 and § 7-1B-8. To be timely, a protest must be filed in writing within 90 days of the triggering action by the Department. *See* NMSA 1978, § 7-1-24. In the case of administrative costs and fees, it would be within 90 days of "the date of the application to the taxpayer of the applicable provision of the Tax Administration Act". *Id.* The date that the statute on administrative costs and fees would be applicable to a taxpayer would be the date that the taxpayer became the prevailing party. *See* NMSA 1978, § 7-1-29.1. Therefore, a taxpayer would have to file a protest within 90 days of that date. *See* NMSA 1978, § 7-1-24.

Even if the Department's argument on this issue is germane, it is still not persuasive. Firstly, a review of past protests before the AHO (and its predecessor the Hearings Bureau) shows awards of costs and fees in only two prior cases. This number suggests that the Department is often able to establish that its position was a reasonable application of the law to the facts. However, the Department did not even try to establish that its position was reasonable in this case. Secondly, the Department has the ability to enter into closing agreements when it abates an assessment. *See* NMSA 1978, § 7-1-20. There is nothing to prohibit closing agreements from addressing costs and fees. *See id.* Once a closing agreement is made, no court or agent of the state has authority to consider the matter further. *See id.* Although a closing agreement may require additional effort from the Department, it does not seem unduly burdensome in this case, where a protest had been filed, a request for costs and fees had been made in the protest, and the amount abated required approval from the Attorney General anyway. *See id. See* NMSA 1978, § 7-1-28. Finally, even without a formal closing agreement, the parties could agree that the protestant would file a withdrawal of protest upon the abatement. A written withdrawal of a protest filed with the AHO closes the administrative proceeding, and the AHO takes no further action on withdrawn protests.

Moreover, the Department's arguments are beyond the scope of this hearing. In this case, the Taxpayer filed a timely protest, the protest included a request for costs and fees, the protest was referred to the AHO for hearing, a scheduling hearing was conducted, a scheduling order was issued, a hearing on the merits was set, and a motion was filed. The Department acknowledged that this issue is moot in this case given its procedural history and the Taxpayer's immediate, simultaneous request for administrative costs and fees in its protest. The decision in this case should be read in conjunction with its unique procedural history and should not be construed to discourage parties from resolving protests, particularly in light of taxpayers' right to abatement when the assessment is incorrect or illegal. *See* NMSA 1978, § 7-1-4.2.

Amount of fees.

The Taxpayer's request for fees included an affidavit that indicated that the attorney's fees incurred in this case were in excess of $50,000.00. The Department did not dispute the Taxpayer's claim as to the amount of attorney's fees. The total assessment was for $490,633.67. As the entire amount was abated, the amount of the award is capped at 20% of $490,633.67 or $50,000.00, whichever is less. *See* NMSA 1978, § 7-1-29.1. Twenty percent of the total is $98,126.73. Therefore, the $50,000.00 cap will be applied.

CONCLUSIONS OF LAW

A. The Taxpayer filed a timely written protest to the Notice of Assessment issued under Letter ID number L0972449840 and contemporaneously filed a timely request for administrative costs and fees. Therefore, jurisdiction lies over the parties and the subject matter of this protest.

B. The Taxpayer prevailed as to the entire amount in controversy when the assessment was abated. Consequently, the Taxpayer was the prevailing party. *See* NMSA 1978, § 7-1-29.1.

C. There was no evidence or argument presented to establish that the Taxpayer should not be treated as the prevailing party. *See id.*

D. The award is capped at $50,000.00. *See id.*

For the foregoing reasons, the Taxpayer's request for administrative costs and fees is HEREBY GRANTED IN THE AMOUNT OF $50,000.00. IT IS SO ORDERED.

DATED: May 19, 2017.

Dee Dee Hoxie

DEE DEE HOXIE
Hearing Officer
Administrative Hearings Office
Post Office Box 6400
Santa Fe, NM 87502

NOTICE OF RIGHT TO APPEAL

Pursuant to NMSA 1978, Section 7-1-25 (2015), the parties have the right to appeal this decision **by filing a notice of appeal with the New Mexico Court of Appeals** within 30 days of the date shown above. If an appeal is not filed **with the Court of Appeals** within 30 days, this Decision and Order will become final. Rule of Appellate Procedure 12-601 NMRA articulates the requirements of perfecting an appeal of an administrative decision with the Court of Appeals. Either party filing an appeal shall file a courtesy copy of the appeal with the Administrative Hearings Office contemporaneous with the Court of Appeals filing so that the Administrative Hearings Office may begin preparing the record proper. The parties will each be provided with a copy of the record proper at the time of the filing of the record with the Court of Appeals, which occurs within 14 days of the Administrative Hearings Office's receipt of the docketing statement from the appealing party. *See* Rule 12-209 NMRA.