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**STATE OF NEW MEXICO
ADMINISTRATIVE HEARINGS OFFICE
TAX ADMINISTRATION ACT**

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**IN THE MATTER OF THE PROTEST OF
EDWARD & LINDA D. CDEBACA
TO RETURN ADJUSTMENT NOTICE ISSUED UNDER
LETTER ID NO. L0304602288**

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v.

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NEW MEXICO TAXATION AND REVENUE DEPARTMENT

AHO Case Number 20.03-038R

Decision and Order No. 20-14

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DECISION AND ORDER

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On July 27, 2020, Hearing Officer Ignacio V. Gallegos, Esq., conducted an administrative hearing on the merits of the matter of the tax protest of Edward and Linda CdeBaca (Taxpayers) pursuant to the Tax Administration Act and the Administrative Hearings Office Act. At the hearing, Taxpayers appeared representing themselves and as their sole witnesses. Staff Attorney Kenneth Fladager appeared, representing the opposing party in the protest, the Taxation and Revenue Department (Department). Department protest auditor Lizette Rivera appeared as witnesses for the Department. Taxpayer offered Exhibits 1 through 11 at the hearing to supplement the documentation they provided to the Department earlier, and submitted additional Exhibit 12 by email on August 3, 2020, after the close of the hearing, and within time granted to supplement the record. Taxpayers' exhibits were admitted without objection. Department Exhibits A through O were admitted into the record. Exhibits are more fully described in the Exhibit Log. The administrative file is considered part of the record. All hearing participants appeared by Zoom videoconferencing application due to precautions implemented as a result of the COVID-19 pandemic.

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In quick summary, this protest involves Taxpayers' claim for personal income tax credits in 2018 for taxes paid against an existing tax liability from a previous year (2016). The Department

1 denied the claim for a credit and assessed the Taxpayers for the balance of unpaid taxes in the year
2 Taxpayers claimed the credit (2018). Taxpayers protested the return adjustment, arguing that they
3 were entitled to receive a personal income deduction or credit for state taxes paid. Ultimately,
4 after making findings of fact and discussing the issue in more detail throughout this decision, the
5 Hearing Officer finds that Taxpayers' wish to receive a state tax deduction or credit against a 2018
6 tax liability for taxes paid late to satisfy a 2016 state income tax liability is not based in New
7 Mexico tax law and they have failed to prove entitlement to the deduction or credit at issue. The
8 protest is denied. IT IS DECIDED AND ORDERED AS FOLLOWS:

9 FINDINGS OF FACT

10 Procedural Findings.

11 1. On August 20, 2019, under Letter Id. No. L0304602288, the Department issued a
12 Return Adjustment Notice (Proposed Assessment) to Taxpayer, indicating that Taxpayer's "other
13 payments" [Line 31] category was reduced to zero, and there was tax due. Under the Letter,
14 Taxpayer owed tax of \$3,632.00, civil penalty of \$260.01, and interest of \$34.80, and received
15 credits totaling \$1,845.13, for a total proposed assessment balance due of \$2,081.68 for tax
16 reporting period from January 1, 2018 to December 31, 2018. [Administrative File; Department
17 Exhibit I].

18 2. On September 7, 2019, Taxpayer submitted a Formal Protest letter, a letter
19 providing grounds for the protest, as well as supporting documents, alleging that the Department
20 was incorrect in its proposed assessment of personal income taxes for the 2018 tax year, because
21 Taxpayer asserted entitlement to credits, including wage withholdings of \$718.13, an "other
22 payment" of \$1,875, and payment by check of \$1,127 that accompanied the filing of the 2018

1 return. The protest letter was stamped as received by the Department's Protest Office on
2 September 13, 2019. [Administrative File].

3 3. On September 25, 2019, under Letter Id. No. L0715227824 the Department
4 issued a letter informing the Taxpayer that the Department acknowledged receipt of Taxpayer's
5 protest for personal income tax year 2018. [Administrative File; Department Exhibit O].

6 4. On October 22, 2019, under Letter Id. No. L1992712880, the Department issued a
7 Notice of Assessment of Taxes and Demand for Payment to Taxpayers for Personal Income Tax
8 reporting period ending December 31, 2018. The letter assessed tax of \$1,786.87, penalty of
9 \$250.18, interest of \$48.59 and an Underpayment penalty of \$81.31, for a total assessment of
10 \$2,166.95. [Department Exhibit J].

11 5. On March 16, 2020, the Department submitted a Request for Hearing to the
12 Administrative Hearings Office, requesting a hearing on the merits of Taxpayer's protest. The
13 Request for Hearing stated that the total at issue was \$3,926.81. [Administrative File].

14 6. On March 16, 2020, the Department submitted its Answer to Protest to the
15 Administrative Hearings Office, claiming that the Taxpayer submitted incorrect information on
16 the PIT-1 New Mexico Personal Income Tax Return, resulting in an underpayment.
17 [Administrative File].

18 7. On March 16, 2020 the Administrative Hearings Office mailed a Notice of
19 Videoconference Administrative Hearing to the parties, setting the matter for a hearing on the
20 merits of Taxpayer's protest on April 14, 2020, providing a video conference URL link.
21 [Administrative File].

22 8. On March 30, 2020, the Taxpayers, filed with the Administrative Hearings Office
23 the Taxpayers' request to postpone the administrative hearing scheduled for April 14, 2020. The

1 request contained a waiver of the 90-day hearing requirement of Section 7-1B-8. The request
2 also contained a request for an in-person hearing in Albuquerque. [Administrative File].

3 9. On March 30, 2020, the Administrative Hearings Office received an email from
4 Department Attorney Kenneth Fladager indicating no objection to the Taxpayers' request to
5 postpone the hearing. [Administrative File].

6 10. On April 6, 2020, the undersigned Administrative Hearing Officer Ignacio V.
7 Gallegos issued an "Order Converting Merits Hearing to Telephonic Scheduling Hearing" giving
8 the parties notice that the April 14, 2020 date would be converted to a telephonic hearing for
9 scheduling purposes. [Administrative File].

10 11. On April 14, 2020, the undersigned Administrative Hearing Officer Ignacio V.
11 Gallegos conducted a telephonic scheduling hearing with the parties present by telephone
12 conference. Neither the Department nor the Taxpayer objected that conducting the hearing
13 satisfied the 90-day hearing requirements of Section 7-1B-8 (F) (2019). The hearing audio was
14 recorded. [Administrative File].

15 12. On April 14, 2020, the Administrative Hearings Office issued a Notice of Second
16 Telephonic Scheduling Hearing, providing parties with notice of a second scheduling hearing to
17 occur by telephone on May 28, 2020. [Administrative File].

18 13. On May 28, 2020, the undersigned Administrative Hearing Officer Ignacio V.
19 Gallegos conducted a second telephonic scheduling hearing with the parties present by telephone
20 conference. The hearing audio was recorded. [Administrative File].

21 14. On May 28, 2020, the Administrative Hearings Office issued a Scheduling Order
22 and Notice of Administrative Hearing, setting various deadlines and notifying the parties of the

1 merits hearing to take place on July 27, 2020 in-person at the Administrative Hearings Office's
2 Albuquerque location. [Administrative File].

3 15. On July 2, 2020, the Administrative Hearings Office, *sua sponte*, issued an
4 Amended Notice of Administrative Hearing Converting In-Person Hearing to Videoconference
5 Hearing, providing notice to the parties that the hearing on the merits of the matter would take
6 place on July 27, 2020 as planned, however, the hearing would take place as a videoconference
7 hearing, with special guidance to the parties on how to participate, exchange exhibits, and a URL
8 participation link to share with witnesses. [Administrative File].

9 16. The undersigned Administrative Hearing Officer Ignacio V. Gallegos conducted
10 the merits hearing on July 27, 2020 with the parties present via videoconferencing application.
11 The manner of holding the hearing by videoconference was necessary due to the ongoing
12 COVID-19 pandemic. The Hearing Officer preserved a recording of the hearing ("Hearing
13 Record" or "H.R."). [Administrative File].

14 **Substantive Findings.**

15 17. Taxpayers Edward and Linda CdeBaca are a married couple residing and
16 domiciled in New Mexico. [Administrative File].

17 18. Mr. Edward CdeBaca is a retired employee of the Internal Revenue Service (IRS).
18 Mr. CdeBaca is not a tax attorney, he is in the process of consulting with an attorney, he is not a
19 certified public accountant (CPA), and he has no specialized training in New Mexico personal
20 income tax law. [Direct examination of Linda CdeBaca, H.R. 29:30-29:45; Cross examination of
21 Edward CdeBaca, H.R. 46:00-46:45; Unsolicited statement of Edward CdeBaca, H.R. 1:08:55-
22 1:09:05].

1 19. Mrs. Linda CdeBaca is not a tax attorney, she did not consult with an attorney,
2 she is not a certified public accountant (CPA), and she has no specialized training in New
3 Mexico personal income tax law. [Cross examination of Linda CdeBaca, H.R. 46:00-47:55].

4 20. Lizette Rivera is a Tax Auditor Supervisor with the New Mexico Taxation and
5 Revenue Department. Ms. Rivera is not a certified public accountant (CPA), but has a master's
6 degree in accounting. [Direct examination of Lizette Rivera, H.R. 1:04:35-1:05:30; Cross
7 examination of Lizette Rivera, H.R. 1:24:55-1:25:25].

8 21. During the 2018 calendar year, Taxpayers had been paying on an installment
9 agreement with the State of New Mexico Taxation and Revenue Department for a personal
10 income tax assessment stemming from the 2016 tax year. [Department Exhibit A; Department
11 Exhibit B; Department Exhibit C; Department Exhibit H; Direct Examination of Edward
12 CdeBaca, H.R. about 29:15-30:40, Taxpayers' Exhibit 1; Taxpayers' Exhibit 5; AHO
13 examination of Linda CdeBaca, H.R. 50:00-56:15; AHO examination of Edward CdeBaca, H.R.
14 56:15-57:20; Direct examination of Lizette Rivera, H.R. 1:05:50-1:08:20, 1:11:40-1:12:10].

15 22. Payments made against the 2016 personal income tax liability during the 2018
16 calendar year included \$100 per month payments on an installment agreement and a one-time
17 payment of \$975.37 that followed the sale of Mrs. CdeBaca's deceased mother's house, against
18 which a tax lien had been placed. [Taxpayer exhibit 5; Department Exhibit H; Department
19 Exhibit C; Department Exhibit G; Direct examination of Linda CdeBaca, H.R. 26:30-30:40;
20 Direct examination of Edward CdeBaca, HR 33:30-35:20; AHO examination of Linda CdeBaca,
21 H.R. 50:00-56:15; AHO examination of Edward Cde Baca, H.R. 50:00-57:30 Direct examination
22 of Lizette Rivera, H.R. 1:11:25-1:11:40; 1:21:30-1:21:50].

1 23. Taxpayers used TurboTax software to assist them prepare their 2018 federal and
2 state tax returns. [Direct examination of Linda CdeBaca, H.R. 29:30-30:30; Direct examination
3 of Edward CdeBaca, H.R. 33:25-36:55].

4 24. Taxpayers' 2018 PIT-1 return claimed "other payments" of \$1,875 which they
5 explained was what they paid towards the 2016 tax liability. Taxpayer's self-reported 2018 tax
6 liability of \$3,632 [line 22] and self-reported penalty for underpayment of estimated tax of
7 \$88.00 [line 34] led to their total self-reported tax as \$3,720. Credits the Department permitted
8 against the tax included form W-2 wage withholdings of \$718 [line 27] and the payment of
9 \$1,127 [line 38], totaling \$1845 (after rounding). [Administrative File; Department exhibit G;
10 Department exhibit I; Direct examination of Linda CdeBaca, H.R. 24:15-30:50; Direct
11 examination of Lizette Rivera, H.R. 1:12:20-1:13:05].

12 25. Taxpayers' use of line 31 to report the payments for prior years was prompted by
13 TurboTax software. The software, under the deductions and credits tab, requested data entry for
14 "Payments for 2016 or a prior year state or local income taxes paid in 2018." It was here that the
15 Taxpayers entered the amount of \$1,875. The TurboTax software then placed the value on the
16 federal Schedule A Line 5 State and Local Tax Deduction Worksheet and onto line 31 of the
17 New Mexico PIT-1. [Direct examination of Linda CdeBaca, H.R. 29:00-30:55, 42:10-43:05;
18 Direct examination of Edward CdeBaca, H.R. 33:25-37:20, 43:05-44:35; Department Exhibit G;
19 Taxpayers' Exhibit 11; Taxpayers' Exhibit 12].

20 26. Taxpayers were convinced that the software, which they believed had been
21 developed by tax attorneys and CPAs, was correct, and justified their belief that they deserve the
22 benefit of the \$1,875 credit for both 2016 and 2018. [Administrative File; Direct examination of

1 Edward CdeBaca, H.R. 33:25-37:20; AHO Examination of Edward CdeBaca, H.R. 57:55-
2 1:00:50].

3 27. The most recent statement of account for Taxpayers' 2018 tax liability indicates
4 outstanding tax of \$1,786.87, penalty of \$438.71, interest of \$89.40 for a total balance due of
5 \$2,314.98 as of March 16, 2020. [Department exhibit M; Direct examination of Lizette Rivera,
6 H.R. 1:16:20-1:18:40].

7 **DISCUSSION**

8 In 2016, Taxpayers incurred debt for outstanding personal income taxes due for the year
9 ending December 31, 2016. Taxpayers paid off the debt for 2016 personal income taxes in the
10 calendar year of 2018, by making regular monthly installment agreement payments and through
11 proceeds from the sale of Linda CdeBaca's deceased mother's home. Taxpayers sought to apply
12 the payment of 2016 personal income taxes in the amount of \$1,875 as a payment credit against
13 their personal income taxes incurred in 2018, and due in 2018-2019. Taxpayers included the
14 payment for the 2016 liability as an "other payment" for 2018 using TurboTax software to
15 complete their federal and state personal income tax returns.

16 The Department detected what appeared to be an error, sent a return adjustment notice,
17 and assessed the balance of tax, penalty and interest on the unpaid 2018 personal income tax
18 liability. The Taxpayers disputed the imposition of tax and the denial of the claimed credit,
19 claiming that by using TurboTax, who employs certified public accountants and lawyers, the
20 2018 New Mexico personal income tax return was self-populated and accurate.

21 New Mexico personal income tax is governed by the Income Tax Act, NMSA 1978,
22 Sections 7-2-1 through 7-2-39. It is undisputed that Taxpayers were New Mexico residents during

1 the 2018 tax year, and the Income Tax Act applies to their income. *See* Section 7-2-2 (S) (2014).

2 The decision requires some analysis of the Internal Revenue Code, cited by Taxpayers, in addition
3 to the New Mexico Income Tax Act, its applicable regulations, and personal income tax return
4 preparation instructions.

5 **Presumption of correctness.**

6 Under NMSA 1978, Section 7-1-17 (C) (2007), the assessment issued in this case is
7 presumed correct. Consequently, Taxpayer has the burden to overcome the assessment. *See*
8 *Archuleta v. O'Cheskey*, 1972-NMCA-165, ¶11, 84 N.M. 428. Unless otherwise specified, for the
9 purposes of the Tax Administration Act, "tax" is defined to include interest and civil penalty. *See*
10 NMSA 1978, Section 7-1-3 (Z) (2019); *see also* Regulation 3.1.1.16 (12/29/2000). Under
11 Regulation 3.1.6.13 NMAC, the presumption of correctness under Section 7-1-17 (C) extends to
12 the Department's assessment of penalty and interest. *See Chevron U.S.A., Inc. v. State ex rel. Dep't*
13 *of Taxation & Revenue*, 2006-NMCA-50, ¶16, 139 N.M. 498, 503 (agency regulations interpreting
14 a statute are presumed proper and are to be given substantial weight). Accordingly, it is a
15 taxpayer's burden to present some countervailing evidence or legal argument to show that they
16 are entitled to an abatement, in full or in part, of the assessment issued in the protest. *See N.M.*
17 *Taxation & Revenue Dep't v. Casias Trucking*, 2014-NMCA-099, ¶8. When a taxpayer presents
18 sufficient evidence to rebut the presumption, the burden shifts to the Department to show that the
19 assessment is correct. *See MPC Ltd. v. N.M. Taxation & Revenue Dep't*, 2003-NMCA-21, ¶13, 133
20 N.M. 217.

21 The burden is also on taxpayers to prove that they are entitled to an exemption or
22 deduction, if one should potentially apply. *See Pub. Serv. Co. v. N.M. Taxation & Revenue Dep't*,
23 2007-NMCA-050, ¶141 N.M. 520, 157 P.3d 85; *See also Till v. Jones*, 1972-NMCA-046, 83

1 N.M. 743, 497 P.2d 745. “Where an exemption or deduction from tax is claimed, the statute must
2 be construed strictly in favor of the taxing authority, the right to the exemption or deduction must
3 be clearly and unambiguously expressed in the statute, and the right must be clearly established
4 by the taxpayer.” *See Sec. Escrow Corp. v. State Taxation & Revenue Dep’t*, 1988-NMCA-068,
5 ¶8, 107 N.M. 540, 760 P.2d 1306. *See also Wing Pawn Shop v. Taxation & Revenue Dep’t*, 1991-
6 NMCA-024, ¶16, 111 N.M. 735, 809 P.2d 649. *See also Chavez v. Comm’r of Revenue*, 1970-
7 NMCA-116, ¶7, 82 N.M. 97, 476 P.2d 67.

8 **Duplication of credit.**

9 The Taxpayers claim that they are entitled to receive credit for the payments made for their
10 delinquent 2016 tax liability. This is true, they are entitled to the credit for all payments for the
11 outstanding tax liability, and the Department correctly applied the payments to the Taxpayers’
12 delinquent 2016 tax liability.

13 Taxpayers further assert that since they paid the delinquent 2016 debt during the 2018
14 calendar year, they are also entitled to receive a duplicate credit for the entire amount against the tax
15 liability incurred during 2018. Taxpayers assert that if the protest goes against them, they would be
16 forced to pay the 2016 tax liability twice. On the contrary, Taxpayers are requesting that their
17 installment agreement payments of \$1,875 count twice, once for 2016, and again for 2018.

18 Taxpayer cites the internal revenue code, 26 USCS § 448, a section entitled “Limitation on use of
19 cash method of accounting.” Taxpayers have cited this section as grounds for the double credit
20 assertion. The section is not applicable for several reasons. And upon review of other provisions of
21 state and federal tax law, the Department’s denial of the “other payments” credit against Taxpayers’
22 2018 tax liability was proper.

1 Section 448 of the Internal Revenue Code does not mention in any manner any applicable
2 law that might be applied to the case at hand. The section applies to businesses, not individuals.
3 Taxpayers reported no business income in 2016 or 2018. The two largest income sources for the
4 Taxpayers – as shown on their 2018 PIT-1 return – are Mrs. CdeBaca’s employment income and
5 Mr. CdeBaca’s retirement income. Mrs. CdeBaca’s employer paid wage withholdings for state and
6 federal income taxes. Mr. CdeBaca’s retirement annuity shows that the federal income tax was
7 withheld, but *no state taxes were withheld* from his retirement income. So, “cash method” or not,
8 the state income tax is imposed on Mr. CdeBaca’s retirement income, as a New Mexico resident.
9 *See* NMSA 1978, Section 7-2-3 (1981); *see also* Regulation 3.3.11.13 (B) NMAC (12/14/00)
10 (retirement income of a resident is allocable to New Mexico); *see also* 4 USCS §114 (a state may
11 only impose an income tax on retirement income of its residents). Taxpayers received credits of
12 \$718.13 in wage withholdings and \$1,127 for a check submitted at the time of filing (not through
13 estimated tax payments) the return, totaling \$1,845.13.

14 Taxpayers’ main concern is that they were not given a deduction or credit for the state
15 income taxes paid in 2018 for a state income tax liability incurred in 2016. In a nutshell, the
16 Taxpayers’ understanding of tax law both conflates federal tax and state tax, and misconstrues
17 above the line deductions and below the line payment credits.

18 For tax paid to a state for prior year state and local taxes (also known as “SALT”),
19 Taxpayers are somewhat correct in the belief that there exists a deduction. The deduction for state
20 income taxes paid is a *federal* deduction from taxable income, as explained below. *See* 26 USCS §
21 164 (a) (3). Where Taxpayers err is first, in believing the federal deduction must apply as a *state*
22 deduction or credit, and second, in attempting to apply the deduction as a credit to taxes due (below
23 the line), rather than applying the deduction to income (above the line). In New Mexico, “tax is

1 imposed...upon the net income of every resident individual.” Section 7-2-3. The “net income” on
2 the New Mexico PIT-1 personal income tax return line 17 already takes into account most of the
3 same (above the line) deductions and exemptions applicable under federal tax law, but specifically
4 adds back state and local taxes paid. *See* NMSA 1978, Section 7-2-2 (N) (2019).

5 The IRS instructions for filing the 2018 Form 1040 and Schedule A are applicable here.
6 Taxpayers indicated on Line 10 and Line 12 of their 2018 PIT-1 New Mexico income tax return that
7 they itemized deductions rather than taking the standard deduction. When itemizing deductions, on
8 the federal forms, a Schedule A is required. *See* IRS Instructions for 2018 Form 1040 (“To figure
9 your itemized deductions fill in Schedule A”).¹ The 2018 Schedule A provides a line (5a) on
10 which to deduct “State and Local Income Taxes.”² It is within this federal schedule that income
11 taxes paid to a state are deducted from taxable income, and entered on Line 8 of the Form 1040.
12 This is a deduction from taxable income (above the line), not a credit applied as a payment of taxes
13 (below the line). This reflects 26 USCS § 164 (a) (3) which allows “a deduction for the taxable year
14 within which paid or accrued... State and local, and foreign, income, war profits, and excess profits
15 taxes.” The deduction allowed therein reduces income when calculating “taxable income” as
16 defined by 26 USCS § 63 (b). Either taking the standard deduction or itemized deductions serves to
17 reduce taxable income on Line 10 of the Form 1040, so that consequently taxable income does not
18 include taxes paid. As stated above, this is an above the line federal tax deduction, and Taxpayers
19 were entitled to it and presumably received it from the IRS, if federal forms were filled in properly.

¹ IRS prior year forms and instructions are available online. The IRS 2018 Instructions for Form 1040 are available at: <https://www.irs.gov/pub/irs-prior/i1040gi--2018.pdf> (last visited 7/27/20).

² The IRS 2018 Form Schedule A is available at: <https://www.irs.gov/pub/irs-prior/f1040sa--2018.pdf> (last visited 9/18/2020). The IRS 2018 Instructions for Form Schedule A are available at: <https://www.irs.gov/pub/irs-prior/i1040sca--2018.pdf> (last visited 9/18/2020).

1 However, the deduction for state income taxes paid is not a deduction allowed by New
2 Mexico. In fact, New Mexico specifically excludes a deduction for state and local income taxes
3 from itemized deductions claimed on the federal forms. *See* NMSA 1978 Section 7-2-2 (N)(2)
4 (2014) (“‘net income’ means...base income adjusted to exclude... an amount equal to the itemized
5 deductions defined in Section 63 of the Internal Revenue Code [26 USCS § 63]... less the amount
6 of state and local income and sales taxes included in the taxpayer’s itemized deductions”). To
7 reflect this, the New Mexico PIT-1 form requests on Line 10 the amount of state and local income
8 taxes claimed as itemized deductions, then on Line 12 requests the total itemized deductions.³ From
9 there, the arithmetic requires subtraction of the state and local income tax from the total itemized
10 deductions, in essence adding them back in to determine New Mexico taxable income. In this case
11 two negatives do make a positive.

12 The New Mexico PIT-1 instructions point to Bulletin 300.18 entitled “Guidance on PIT-1,
13 Line 10 Add-Back of State and Local Taxes (2018 Tax Year)”⁴ for an explanation. Bulletin 300.18
14 informs taxpayers who itemized their deductions instead of taking the standard deduction that they
15 are required “to add-back for state tax purposes the amount of state and local income taxes that they
16 were allowed to deduct on their federal return.” The guidance is clear, and clearly contradicts the
17 Taxpayers’ position that they were entitled to the deduction of \$1,875 in state income taxes paid for

³ New Mexico prior year forms are available on the Department’s website: <http://www.tax.newmexico.gov/forms-publications.aspx>. The 2018 PIT-1 Instructions are available at: <https://s3.amazonaws.com/realFile34821a95-73ca-43e7-b06d-fad20f5183fd/a0278373-9d7d-4ec7-ac7a-c4d879d6f796?response-content-disposition=filename%3D%222018pit-1-ins.pdf%22&response-content-type=application%2Fpdf&AWSAccessKeyId=AKIAJBI25DHBYGD7I7TA&Signature=dHdTRnawQfkqOBWF19%2BQ4Om7PEY%3D&Expires=1600453409> (last visited 9/18/2020).

⁴ State of New Mexico Bulletin 300 is available at: <https://s3.amazonaws.com/realFile34821a95-73ca-43e7-b06d-fad20f5183fd/f526a921-ff0f-4af6-8620-ba0c58814844?response-content-disposition=filename%3D%22B-300.18+Guidance+on+State+and+Local+Add-Back.pdf%22&response-content-type=application%2Fpdf&AWSAccessKeyId=AKIAJBI25DHBYGD7I7TA&Signature=DDfha1L6jZoEZCXImQEjhfHrEsg%3D&Expires=1600454145> (last visited 9/18/2020).

1 the 2016 year in 2018. New Mexico does not allow a deduction from taxable income for state taxes
2 paid.

3 Next, since Taxpayers have conflated the terms deduction and credit, we turn to the use of
4 the “Other Payments” line. It was on this “Other Payments” line that the Taxpayers’ New Mexico
5 PIT-1 return contained the claim for credit. The PIT-1 Instructions for the use of Line 31 “Other
6 Payments” are clear. The instructions advise taxpayers to “[e]nter the total payments you made
7 toward your 2018 personal income tax liability that are not included on line 30, including:
8 Extension payments you made with PIT-EXT payment vouchers; PIT-PV payment vouchers; PIT-
9 EXT or PIT-PV payments you made through the Department website” (emphasis added). The use
10 of Line 31 is not intended for the purposes the Taxpayers have attributed to it.

11 **Use of TurboTax software.**

12 Taxpayers used TurboTax software to complete their federal and New Mexico personal
13 income tax returns. The software requested input, populated the responses on the tax return forms
14 and placed the 2016 payment on the “other payments” line as if it were a payment toward 2018 tax
15 liabilities. This reflects a deficiency in the software. This tribunal agrees with the United States
16 Tax Court which, in *Morales v. Comm’r*, T.C. Memo 2012-341, 2012 Tax Ct. Memo LEXIS 342,
17 104 T.C.M. (CCH) 741, *affirmed*, 633 Fed. Appx. 884 (9th Cir. 2015) (non-precedential), held that
18 the use of tax preparation software is not a defense to negligence penalties. While the error was
19 certainly unintentional on the part of Taxpayers, the error does not amount to nonnegligence as
20 defined by Regulation 3.1.11.11 NMAC (1/15/01), hence a reduction in penalty under the
21 Department’s assessment is not justified. *See* NMSA 1978, Section 7-1-69 (B) (2007).

22 **Conclusion.**

1 *Tenn. v. State*, 2007-NMCA-148, ¶17 & ¶29, 142 N.M. 779. *See* NMSA 1978, Section 7-1-17 (C)
2 (2007).

3 D. Any assessment of tax made by the Department is presumed to be correct.
4 Therefore, it is the Taxpayers' burden to come forward with evidence and legal argument to
5 establish that the Department's assessment should be abated, in full or in part. *See* NMSA 1978,
6 Section 7-1-17 (C) (2007).

7 E. "Tax" is defined to include not only the tax program's principal, but also interest and
8 penalty. *See* NMSA 1978, Section 7-1-3 (Z) (2019); *see also* Regulation 3.1.1.16 NMAC
9 (12/29/00). Assessments of penalties and interest therefore also receive the benefit of a presumption
10 of correctness. *See* Regulation 3.1.6.13 NMAC (1/15/01).

11 F. New Mexico law requires Taxpayers who itemize federal deductions to add-back
12 the federal deduction for state income taxes when calculating state taxable income. *See* 26 USCS
13 § 164 (a) (3); *see also* NMSA 1978 Section 7-2-2 (N)(2) (2014).

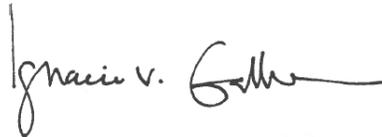
14 G. Taxpayers failed to meet their burden to show that they were entitled to receive
15 the requested credit for both the 2016 delinquent tax liability and the 2018 tax liability. *See*
16 NMSA 1978, Section 7-1-17 (C) (2007).

17 H. Unsubstantiated statements are insufficient to overcome the presumption of
18 correctness that attached to the assessment. *See MPC Ltd. v. N.M. Taxation & Revenue Dep't*,
19 2003-NMCA-021, ¶13, 133 N.M. 217, 62 P.3d 308; *see also* Regulation 3.1.6.12 (A) NMAC
20 (1/15/01).

21 For the foregoing reasons, the Taxpayer's protest **IS DENIED. IT IS ORDERED** that the
22 Department's issuance of the Return Adjustment Notice and the issuance of the Assessment of
23 Taxes were proper. Taxpayers are responsible for payment of the underlying 2018 personal income

1 tax, penalty, underpayment penalty, and interest for a total of \$2,314.98, as of the date of the
2 statement of account issued March 16, 2020. Penalties accrue until the 20% threshold is reached
3 and interest accrues until assessment is fully paid.

4 DATED: October 7, 2020.



5
6 Ignacio V. Gallegos
7 Hearing Officer
8 Administrative Hearings Office
9 P.O. Box 6400
10 Santa Fe, NM 87502

11 **NOTICE OF RIGHT TO APPEAL**

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

23 **CERTIFICATE OF SERVICE**

1 On October 7, 2020, a copy of the foregoing Decision and Order was submitted to the
2 parties listed below in the following manner:

3 *First Class Mail and Email*

Interdepartmental Mail and Email

4
5 INTENTIONALLY BLANK

6
7 _____
8 John Griego
9 Legal Assistant
10 Administrative Hearings Office
11 P.O. Box 6400
Santa Fe, NM 87502