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

IN THE MATTER OF THE PROTEST OF
JOHN AND BONNIE YEARLEY **No. 11-29**
TO ASSESSMENT ISSUED UNDER LETTER
ID NOs. L0242017536, L1555588352, L1081402624,
L0702604544, L0112911616, L1945068800

DECISION AND ORDER

A hearing was held on the above captioned matter on October 7, 2011 before Brian VanDenzen Esq., Hearing Officer, in Santa Fe. Mr. John and Bonnie Yearley ("Taxpayers") appeared, represented by attorney R. Tracy Sprouls. The Taxation and Revenue Department of the State of New Mexico ("Department") was represented by Department Staff Attorney Peter Breen. Protest Auditor Thomas Dillon appeared as a witness for the Department. In addition to the documents contained in the Administrative File articulated during the beginning of the hearing, Department C and G are admitted into the record. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. Taxpayers were (and remain) married during the relevant period of time at issue in this protest, tax years 1999 through 2004.

2. Bonnie Yearley is an enrolled tribal member of the Navajo Nation.

3. Mrs. Yearley is a member of the Teesto Chapter in Arizona.

4. Teesto Chapter is about 45-minutes away from Winslow, Arizona.

5. Mrs. Yearley earned her income in tax years 1999 through 2002 while working at the Pittsburgh and Midway Coal Mine near Window Rock, on the Navajo Nation.

6. Mrs. Yearley retired from Pittsburgh and Midway Coal Mine on December 31, 2002.

7. In tax years 2003 and 2004, Mrs. Yearley received retirement income from Chevron from her previous work at Pittsburgh and Midway Coal Mine.

8. Before tax year 1999, and after tax year 2004, Taxpayers lived together in a residential home at 408 Zecca Drive, Gallup, New Mexico.

9. Beginning in 1999 and continuing through 2004, Mrs. Yearley lived on the Navajo Nation so that she could care for her ailing father, who was wheelchair bound as a result of polio.

10. Mrs. Yearley's father home was a two-bedroom home in a rural isolated area of Teesto. Her father lived in one room while the other room was her father's silversmith station.

11. Between tax years 1999-2004, Mrs. Yearley lived in her father's living room on a twin bed.

12. While living at her father's home, Mrs. Yearley took care of her father by preparing meals for her father, staying the night, and commuting back and forth to work from her father's house.

13. Mrs. Yearley had no intention to remain in Teesto, which had significant alcohol, drug, and delinquency problems. Mrs. Yearley always intended to return to Gallup and her family after caring for her ailing father.

14. During tax years 1999 through 2004, Mr. James Yearley remained living at the Taxpayers' residential home located at 408 Zecca Drive, Gallup, New Mexico.

15. Moving to Teesto with his wife was not a plausible option for Mr. Yearley because his employment as Chief of Investigations with the McKinley County Sheriff's Department required him to live within 50-miles of Gallup.

16. On weekends, Mr. Yearley would go to Teesto to see his wife and bring her supplies like water, coal, and wood.

17. Because Mrs. Yearley's workplace at the mine in Winslow, Arizona was closer to Gallup than Teesto, Mr. Yearley made a point of meeting Mrs. Yearley for lunch at least a couple of times a week to see each other and exchange mail.

18. When Mrs. Yearley first moved to Teesto to assist her ailing, wheelchair-bound father in 1999, Mr. Yearley believed that Mrs. Yearley's father might succumb within a year. However, Mrs. Yearley's father lived until 2006.

19. During tax years 1999 through 2004, Mrs. Yearley continued to receive her mail at her Gallup address. Mr. Yearley would bring her mail when he would visit her on the Navajo Nation or when they would meet for lunch near her workplace. It was easier for Mrs. Yearley to receive her mail in such a manner than in Teesto because mail service at her father's address required her to drive to Winslow, Arizona, a greater distance than to her workplace where she could meet Mr. Yearley for lunch to receive her mail or to Taxpayers' Gallup residential home.

20. During tax years 1999 through 2004, Mrs. Yearley maintained her New Mexico driver's license with her Gallup address rather than switching to an Arizona driver's license with her Navajo Nation address.

21. During tax years 1999 through 2004, Mrs. Yearley left her vehicles registered in New Mexico using her Gallup address.

22. During tax years 1999 through 2004, Mrs. Yearley maintained her checking account at a bank in Gallup with her Gallup address. Mrs. Yearley did not switch her bank accounts because Mr. Yearley was responsible for paying the bills from their home in Gallup, where Taxpayers received their bills.

23. During tax years 2002 through 2004, Mrs. Yearley received retirement income statements from Chevron at her Gallup residential address. Mrs. Yearley actually received her income through direct deposit into her account at either Merchant's Bank in Gallup or Bank of America.

24. During tax years 1999 through 2004, Mrs. Yearley maintained her voter's registration in Gallup, New Mexico. Mrs. Yearley voted in the 2000 presidential primary and general elections in Gallup, New Mexico. In 2002, Mrs. Yearley voted in person for the general election in Gallup. In 2004, Mrs. Yearley voted in person for the presidential general election in Gallup.

25. Sometime in 2004, Mrs. Yearley's brother was released from prison and returned to Teesto to assist in care for Mrs. Yearley's father.

26. In October 2004, Mrs. Yearley left her father in her brother's care in Teesto and returned to her home in Gallup. Mrs. Yearley has remained a full-time resident of Gallup ever since.

27. On September 18, 2006, the Department assessed John R. Yearley for Mrs. Yearley's unpaid tax personal income tax, penalty, and interest for tax years 1999 through 2004. Mr. Yearley did pay New Mexico income taxes on all of his income.

28. Although the dates listed on the assessments are July 11, 2006, the assessments were not actually mailed out to Taxpayers until September 18, 2006.

29. On October 9, 2006, Taxpayers filed a written protest to the assessments.

30. The Department initially did not acknowledge the protest because the Department did not believe that the protest letter was timely. However, on December 9, 2009, the Department reviewed a copy of the post-marked envelope that contained the assessments, which indicated that the assessments were not mailed until September 18, 2006. Additionally, a review of the Gentax computer database revealed that the assessments were actually printed on September 5, 2006 not on the July 11, 2006 printed date on the assessments.

31. On December 2, 2009, the Department acknowledged receipt of Taxpayers' protest.

32. On November 16, 2010, the Department requested a hearing.

33. On November 24, 2010, the Hearing Bureau sent notice of administrative hearing, scheduling the hearing for April 21, 2011.

34. On April 19, 2011, Taxpayers' counsel Mr. Sprouls entered his appearance and moved for a continuance.

35. On April 20, 2011, the Hearing Bureau granted the request for continuance and vacated the scheduled hearing.

36. On June 1, 2011, the Hearing Bureau sent new notice of administrative hearing, scheduling the hearing for October 7, 2011.

37. As of the date of hearing, the Department indicated that under the assessments, Taxpayers owed $27,380.13 in principal personal income tax, $24,578.84 in interest, and $5,867.80 in penalty. The Department calculated penalty to a maximum limit of 20%.

DISCUSSION

The question in this case is whether Mrs. Bonnie Yearley's personal income for tax years 1999-2004 was exempt from New Mexico Personal Income tax pursuant to NMSA 1978, §7-2-5.5 (1995). Taxpayers and the Department are in agreement that Mrs. Yearley was an enrolled member of the Navajo Nation during the relevant period of time, and earned all of her personal income either from working on the Navajo Nation at the mine in Window Rock or from retirement income stemming from that employment on the Navajo Nation. The major dispute between Taxpayers and the Department is whether under NMSA 1978, §7-2-5.5 (1995), Mrs. Yearley "lived within the boundaries" of the Navajo Nation in tax years 1999-2004. Taxpayers also argue in the alternative that if Mrs. Yearley's income is not subject to exemption, the assessment of penalty must be capped at 10% rather than the 20% penalty the Department assessed in this case.

Presumption of Correctness and Burden of Proof.

Under NMSA 1978, Section 7-1-17(C) (2007), the assessments issued in this case are presumed to be correct. Consequently, Taxpayers have the burden to overcome the assessments and establish that they are not required to pay the assessments. *See Archuleta v. O'Cheskey*, 84 N.M. 428, 431, 504 P.2d 638, 641 (NM Ct. App. 1972).

However, once a taxpayer rebuts the presumption of correctness, the burden shifts to the Department to show the correctness of the assessed tax. *See MPC Ltd. v. N.M. Taxation & Revenue Dep't*, 133 N.M. 217, 220, 2003 NMCA 21, ¶13, 62 P.3d 308, 311 (N.M. Ct. App. 2002).

Personal Income Tax and the Exemption.

Payment of New Mexico personal income tax is governed by NMSA 1978, §§ 7-2-1, *et seq*. Unless otherwise exempted by law, a tax is imposed "upon the net income of every" New Mexico resident. NMSA 1978, §7-2-3 (1981).

Under NMSA 1978, §7-2-5.5 (1995), "Exemption; earnings by Indians, their Indian spouses and Indian dependants on Indian lands,"

> Income earned by a member of a New Mexico federally recognized Indian nation, tribe, band or pueblo, his spouse or dependent, who is a member of a New Mexico federally recognized Indian nation, tribe, band or pueblo, is exempt from state income tax if the income is earned from work performed within and the member, spouse or dependent lives within the boundaries of the Indian member's or the spouse's reservation or pueblo grant or within the boundaries of lands held in trust by the United States for the benefit of the member or spouse or his nation, tribe, band or pueblo, subject to restriction against alienation imposed by the United States.

If Taxpayers can demonstrate that Mrs. Yearley was entitled to the exemption under NMSA 1978, §7-2-5.5 (1995) during the relevant time, then the portion of Taxpayers income attributable to Mrs. Yearley's earnings in tax years 1999-2004 would not be subject to New Mexico personal income tax.

Federal Origins of the Exemption.

Before breaking down the exemption under NMSA 1978, §7-2-5.5 (1995) further, it is necessary to discuss the clear federal underpinnings necessitating that State exemption. The seminal federal case on the prohibition of state personal income taxes imposed on tribal members living on tribal lands from income derived from within tribal territory is the United States Supreme Court case, *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164 (1972). In

McClanahan, the State of Arizona attempted to impose an income tax on an enrolled member of the Navajo Nation living on the portion of that reservation within the State of Arizona. *See id*. at 165-166. The taxpayer at issue in *McClanahan* conceded that for purposes of Arizona law, she was a resident of Arizona. *See id*. at 166, footnote 3. However, the fact that the *McClanahan* taxpayer legally qualified as a resident of Arizona played no role in the Supreme Court's analysis of the issue or in the Supreme Court's ultimate holding.

Three other factors were of greater importance to the Supreme Court in *McClanahan.* First, the Supreme Court determined that Indian Sovereignty Doctrine—that is that Native peoples have the power to self-regulate their own affairs on native lands—provided a relevant policy background against which the treaties and relevant statutes must be read. *See id*. at 172. Second, the Supreme Court considered the express terms of the United States and Navajo Nation treaty (which is the same treaty involved in this protest) and found that the treaty precluded the extension of state tax law to "Indians on the Navajo Reservation." *id*. at 175. Finally, the Supreme Court considered the Arizona Enabling Act (which the Supreme Court noted in footnote 14 matched New Mexico's enabling act) and found that under the Enabling Act, Arizona was both precluded from asserting claims to lands within the Navajo Nation and prohibited from taxing any lands within the Navajo Nation. *See id*. at 175-176. Against this backdrop, even if the tribal member was also a resident of Arizona like conceded in the case, the Supreme Court ultimately held that Arizona could not impose a state personal income tax on a tribal member living on tribal land whose income "derived wholly from reservation resources." *id*. at 179.

Subsequent United States Supreme Court cases have affirmed and expanded on the rationale of the *McClanahan* holding. In the case *Oklahoma Tax Comm'n v. Sac & Fox Nation*,

508 U.S. 114 (U.S. 1993), the United States Supreme Court emphasized that the *McClanahan* holding "relied heavily on the doctrine of tribal sovereignty." *id*. at 123. Because of this concept of tribal sovereignty expressed in *McClanahan*, the Supreme Court in *Oklahoma Tax Comm'n v. Sac & Fox Nation* found that there is a presumption against taxability for Native American "living and working" on tribal lands. *id*. at 124.

Although the term "residence" was mentioned at least twice in *Oklahoma Tax Comm'n v. Sac & Fox Nation*, given the tribal Sovereignty Doctrine underlying its analysis, the Supreme Court's focus was much more on the physical location of the tribal member vis-à-vis tribal lands than any analysis of domicile or that tribal member's intent. In fact, the Supreme Court stated in *Oklahoma Tax Comm'n v. Sac & Fox Nation* that to be exempt from State income tax, it is enough that the tribal "member live in 'Indian Country'." *id*. at 123. Further, the Supreme Court explained that "Indian sovereignty serves as a 'backdrop' only for those tribal members who **live on** the reservation, and all others fall outside of *McClanahan's* presumption against taxation." id. at 124 (bold added for emphasis). It is not a surprise then, based on this final point noted in *Oklahoma Tax Comm'n v. Sac & Fox Nation*, that the Supreme Court allowed State taxation of tribal members not living within tribal lands. *See Okla. Tax Comm'n v. Chickasaw Nation*, 515 U.S. 450, 462-463 (U.S. 1995).

More recently, in *Wagnon v. Prairie Band Potawatomi Nation*, 546 U.S. 95, 112 (U.S. 2005), the United States Supreme Court again affirmed the *McClanahan* presumption against taxation for tribal members living on tribal lands. Importantly in *Wagnon*, the Supreme Court stated that in its "unique Indian tax immunity jurisprudence", the concept of tribal sovereignty "has a significant geographical component." *id*. This significant geographical component of tribal sovereignty provides the "backdrop" in which the relevant treaties and statutes must be

analyzed in order to assess a State's attempt at taxation of tribal members. *id*. In the discussion in *Wagnon*, the geographical component appears to be the decisive operational distinction for the Supreme Court: while Native Americans living within a reservation are generally protected by the *McClanahan* presumption against taxation, Native Americans "going beyond reservation boundaries" are generally subject to State tax. *id*. at 112-113.

The Statutory Exemption.

Against this historical background, New Mexico codified the exemption for income tax under NMSA 1978, §7-2-5.5 (1995) cited above. The statute cannot be interpreted to conflict with federal constitutional law, as discussed in the above-cited cases. That exemption under NMSA 1978, §7-2-5.5 (1995) can be broken down further into three elements. First, there must be earned income by a member of a New Mexico federally recognized Indian nation. *See id*. In this case, the evidence clearly established—and the Department does not dispute—that the Taxpayer is a member of a federally recognized Indian Nation, the Navajo Nation.

The second element under NMSA 1978, §7-2-5.5 (1995) is that the earned income derived from work performed within the boundaries of the Indian member's or spouses' land. *See id*. By regulation, the Department requires that the income derive "from… activities on the tribal territories". *See* 3.3.4.12(C) NMAC (5/15/2001). The Department conceded that Mrs. Yearley earned all of her income in tax years 1999-2004 from work performed within the boundaries of the Navajo Nation.[1]

The third element under NMSA 1978, §7-2-5.5 (1995) presents the main controversy in this matter: the "member, spouse or dependent" claiming the exemption "lives within the boundaries" of the applicable tribal land. Neither the statute nor the regulation interpreting the

statute provide a definition, standard, or test to determine what is meant to "live within the boundaries" of tribal land.

Taxpayers argue that this third element does not depend on a residency or domicile analysis because the legislature did not specify those terms in the plain language of the statute. Taxpayers argue that the legislature was presumed to know of the legal significance of the words "residency" and "domicile", yet choose not to use those words under the statute because the legislature intended a different standard under the exemption statute. Instead, Taxpayers argue that under the plain language of NMSA 1978, §7-2-5.5 (1995), even if Mrs. Yearley remained domiciled in Gallup from tax years 1999-2004, she still qualified for the exemption because she was physically "living within the boundaries" of the Navajo Nation during that time period.

The Department counters that although the legislature did not use the words "residency" or "domicile" in the statute because it was simply the terms of art under the *McClanahan* holding, the statute nevertheless requires a determination of "residency" and/or "domicile." In other words, the Department argues that since Mrs. Yearley remained a New Mexico resident domiciled in Gallup during the relevant tax periods, even if she was physically present and residing in Teesto, Arizona on the Navajo Nation, she did not qualify for the exemption. The Department argued that to find that either "residency" or "domicile" was not the necessary analysis under the exemption would do harm to both election law and tax law. The Department did not expand on this final point.

Statutory Construction of the Exemption.

Any question of statutory construction must begin with a plain meaning reading of the statute. *See Wood v. State Educ. Ret. Bd.*, 2011-NMCA-20, ¶12, 250 P.3d 881, 884 (N.M. Ct.

[1] This included her retirement income in 2003-2004, as required under Regulation 3.3.4.12(A) NMAC (5/15/2001).

App. 2010), *cert denied* Sup. Ct. No. 32,792. Extra words should not be read into a statute if the statute is plain on its face, especially if it makes sense as written. *See Johnson v. N.M. Oil Conservation Comm'n*, 1999 NMSC 21, ¶ 27, 127 N.M. 120, 126, 978 P.2d 327, 333 (NM 1999). Only if the plain language interpretation would lead to an absurd result not in accord with the legislative intent and purpose is it necessary to look beyond the plain meaning of the statute. *See Bishop v. Evangelical Good Samaritan Soc'y*, 146 N.M. 473, 477, 212 P.3d 361, 365 (N.M. 2009).

Although the entire exemption is cited above, the portion of NMSA 1978, §7-2-5.5 (1995) subject to interpretative dispute is worth restating here: whether the tribal member "…lives within the boundaries of the Indian member's or the spouse's reservation or pueblo grant or within the boundaries of lands held in trust by the United States…"

Considering this plain meaning requirement, a close reading of the exemption does not support the Department's contention that a domicile analysis is the appropriate method of analysis to determine whether a taxpayer "lived within the boundaries." The words "residency" and/or "domicile" are not used in the exemption statute. Despite the fact that the legislature was aware of the meaning of "residency" and "domicile" given it gave those words legal significance under a separate statute, NMSA 1978, § 7-2-2 (S) (2003), the legislature choose to use the distinct phrase "lives within the boundaries" under the exemption, NMSA 1978, §7-2-5.5 (1995). Moreover, the exemption statue NMSA 1978, § 7-2-5.5 (1995) does not cross reference the New Mexico statutes and regulations on "residency" and "domicile," NMSA 1978, § 7-2-2 (S) (2003) and Regulation 3.3.1.7 NMAC (4/29/2005). The Department's own accompanying regulation under the exemption statute, Regulation 3.3.4.12 NMAC (5/15/01), neither defines "lives within

the boundaries" as equivalent to "residency" and/or "domicile," nor references the words "residency" or "domicile" in any manner.

Unlike "domicile", which deals a great deal with a person's intent, the term "lives within the boundaries" used in the exemption is much more literal phrase related to a person's geographical location. "Lives within the boundaries" suggests a continuing physical presence inside a defined geographical space. This more literal reading of "lives within the boundaries" under the exemption statute is consistent with the legislative purpose in codifying the federal case law addressed by *McClanahan* and its progeny, which placed a strong emphasis on the geographical component of tribal sovereignty and the Indian income tax exemption. In light of this geographical component in the federal case law, it is logical that the legislature would give greater priority to the geographical location of a person within Native American land rather than that person's intent and the other factors that are part of a classic domicile analysis.

There is also a very basic point that further supports this plain language meaning interpretation: any claimed exemption to New Mexico personal income tax presumes first that the person claiming the exemption is a resident of New Mexico. In other words, to even have to claim an exemption to New Mexico income tax, one must first be a resident of New Mexico subject to income tax. If, as the Department claims, that the exemption at issue cannot apply when the person claiming the exemption is a resident of New Mexico, than the exemption would never apply because one must first be a New Mexico resident to even have a need to claim an exemption from paying New Mexico income tax. In other words, if New Mexico residency was fatal to the claim of exemption under NMSA 1978, § 7-2-5.5 (1995), the exemption itself would become superfluous because no resident of New Mexico could ever claim it. Like in *McClanahan*, where the taxpayer was granted an exemption from income tax despite otherwise

being a resident of the state, the fact that a taxpayer claiming the exemption in New Mexico is also a New Mexico resident does not fundamentally alter the analysis and application of the exemption.

In light of the plain language reading of the exemption and the federal case law addressing the issue of taxability of native peoples on native lands, domicile does not appear to be a relevant consideration under the exemption at issue in this protest.

Application of Exemption to the Facts at Protest.

In this case, Mrs. Yearley was particularly credible in her testimony that she lived with her father on the Navajo Nation in order to care for him once he became wheelchair bound between tax years 1999 and 2004. It is not uncommon for an adult child to move in and assist an ailing parent at the parent's home, increasing the plausibility of Mrs. Yearley's testimony. Mrs. Yearley's testimony about caring for her ailing father was genuine. Mr. Yearley's testimony also bolstered Mrs. Yearley's claimed presence at her father's home during the relevant period of time. Raising a subject that touches on a deeply personal concern not often broached openly in public, Mr. Yearley acknowledged that Mrs. Yearley's moving to the Navajo Nation to assist her father made for a difficult time in their relationship. Rather than some wrought testimony designed to check off legal boxes, the expression of this human sentiment gave Mr. Yearley's testimony depth that lends it credibility. Additionally, while not dispositive of a credibility determination, given Mr. Yearley's profession, he is undoubtedly aware of the potential career and criminal consequences of participating in fraud, which claiming that Mrs. Yearley lived in Teesto if in fact she still lived in Gallup between tax years 1999 and 2004 would constitute.

Common sense suggests that a person leaving to care for an elder rarely permanently abandons their home and established community. In fact, one would suspect that more often than

not, that person retains most of their possessions, their formal legal connections like licenses, registrations, insurance, and bank accounts, and their more personal connections in their home community. And Mr. Yearley's point that members of the Navajo Nation in general place a different weight on the importance/formalities of the Arizona-New Mexico border is well taken in explaining why Mrs. Yearley did not make much of an effort to change the formal indicators of her domicile from New Mexico to Arizona. Indeed, Mrs. Yearley herself acknowledged that she had no intent or desire to make Teesto her permanent home and that she planned to return to Gallup as soon as she was done caring for her father.

Consequently, it is of little surprise that the Department presented a great deal of evidence showing that Mrs. Yearley remained connected to Gallup throughout tax years 1999 through 2004, especially because Mr. Yearley in fact remained in Gallup throughout that period of time. Indeed, the Department clearly and overwhelmingly demonstrated that under a domicile analysis pursuant to regulation 3.3.1.7 NMAC (4/29/2005), Mrs. Yearley remained domiciled in Gallup even if she was physically present in Teesto on the Navajo Nation during the relevant period of time. As a domiciliary of New Mexico, Mrs. Yearley is statutorily defined as a legal resident of New Mexico even if she was not physically present and residing in this State for more than 185-days. *See* NMSA 1978, § 7-2-2 (S) (2003).

If domicile and residency were the controlling standard under NMSA 1978, §7-2-5.5 (1995), the assessment in this protest would be appropriate. But like in *McClanahan*—where the evidence established that the tribal member was also a resident of Arizona but was nevertheless exempt from paying state income taxes from income earned while living on tribal lands—Mrs. Yearley even as a domiciliary of New Mexico was nevertheless exempt from state income taxes

because she earned her income on the Navajo Nation and lived within the boundaries of the Navajo Nation with her father during the relevant tax periods.

One final thing to discuss is an issue that neither party raised either through presentation of evidence or in argument. Although no clear finding can be made, it appears that Taxpayers filed their personal income taxes with Mr. Yearley as head of household based on the fact that the assessments list Mr. Yearley by name. The unresolved issue is—in a community property state like New Mexico—whether the fact that Mr. Yearley is a non-native and resided outside of the Navajo Nation during the relevant time period somehow invalidated Mrs. Yearley's claim to the exemption. This issue appears to be addressed in *Dillard v. New Mexico State Tax Comm'n*, 53 N.M. 12, 18 (N.M. 1948), where the New Mexico Supreme Court found that the assessor of taxes had a duty when an exemption applied to one spouse's interest in the community to segregate out the other spouse's undivided interest.

In sum, because Mrs. Yearley "lived within the boundaries" of the Navajo Nation during the relevant tax periods, the portion of Taxpayers' income attributable to her during tax years 1999-2004 is exempt from New Mexico personal income tax under NMSA 1978, §7-2-5.5 (1995) and *McClanahan*. The protest is granted, and the assessment should be abated accordingly. Though Taxpayers' argument about penalty would likely be compelling in light of the numerous Decisions and Orders issued by the Hearing Bureau over the past year, since the assessment must be abated, penalty is no longer an issue that needs to be addressed in this protest.

CONCLUSIONS OF LAW

1. Taxpayers filed a timely, written protest of the Notices of Assessments for tax years 1999 through 2004 personal income taxes, penalty, and interest, and jurisdiction lies over the parties and the subject matter of this protest.

2. Taxpayers demonstrated by the preponderance of the evidence that income attributable to Mrs. Yearley during tax years 1999-2004 was exempted from income tax under NMSA 1978, §7-2-5.5 (1995) because she was an enrolled member of the federally recognized Navajo Nation, earned income from tribal resources while working on the Navajo Nation during the relevant period of time, and she lived within the boundaries of the Navajo Nation during the relevant period of time.

For the foregoing reasons, the Taxpayer's protest **IS GRANTED.** The Department is ordered to abate the assessment as it relates to income attributable to Mrs. Yearley in tax years 1999-2004.

DATED: December 2, 2011.

BRIAN VANDENZEN
Hearing Officer
Taxation & Revenue Department
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NOTICE OF RIGHT TO APPEAL

Pursuant to NMSA 1978, §7-1-25, the Department has 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. *See* NMRA, 12-601 of the Rules of Appellate Procedure. If an appeal is not filed within 30 days, this Decision and Order will become final.