

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

**IN THE MATTER OF THE PROTEST OF
THOMAS & LESLIE HAMMACK
TO ASSESSMENTS ISSUED UNDER LETTER
ID NOS. L12048697296, L1504781776, L0967910864,
L1576867280, & L1039996368**

No. 15-02

**DECISION AND ORDER
ON
CROSS MOTIONS FOR SUMMARY JUDGMENT**

A formal hearing on the above-referenced protest was held on December 10, 2014, before Monica Ontiveros, Hearing Officer. Thomas & Leslie Hammack (“Taxpayers”) were represented by Gary D. Eisenberg, Esq. of the Betzer, Roybal and Eisenberg, P.C. firm. Taxpayers did not appear at the hearing. The Taxation and Revenue Department (“Department”) was represented by Elena Morgan, attorney for the Department. Ms. Milagros Bernardo, protest auditor, appeared and testified as a witness for the Department.

In addition to the pleadings and filings referred to in the Findings, the record contains the following: Order of Consolidation and Notice of Telephonic Scheduling Conference, Scheduling Order and Notice of Administrative Hearing, New Mexico Taxation and Revenue Department’s Preliminary Witness and Preliminary Exhibit Lists, Unopposed Motion to Amend Scheduling Order, Department’s Stipulation of Facts, Order Extending Summary Judgment Deadlines, First Amendment to New Mexico Taxation and Revenue Department’s Preliminary Exhibit List, Department’s Motion for Summary Judgment; Protestant’s Motion for Summary Judgment, Notice of Reassignment of Hearing Officer for Administrative Hearing, and Joint Request for Conference with Hearing Examiner. A scheduling conference was held on June 25, 2014 and the recording, along with the recording from the December 10 hearing, are also part of the

administrative file.

Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. On January 3, 2014, the Department assessed Taxpayers in personal income tax in the amount of \$3,180.00 in principal and \$248.30 in interest for tax year 2010. Letter Id No. L1504781776. On the same date, the Department assessed Taxpayers in personal income tax in the amount of \$927.00 in principal and \$43.99 in interest for tax year 2011. Letter Id No. L0967910864.

2. On January 10, 2014, the Department assessed Taxpayers in personal income tax in the amount of \$3,592.00 in principal; \$718.40 in penalty and \$185.49 in interest for tax year 2011. Letter Id No. L1576867280. This assessment is in addition to the assessment issued on January 3, 2014. On the same date, the Department assessed Taxpayers in personal income tax in the amount of \$4,967.00 in principal; \$894.06 in penalty and \$108.59 in interest for tax year 2012. Letter Id No. L1039996368.

3. On May 7, 2014, the Department assessed Taxpayers in personal income tax in the amount of \$2,515.00 in principal; \$503.00 in penalty; and \$335.63 in interest for tax year 2009. Letter Id No. L2048697296.

4. On January 15, 2014, Taxpayers filed its first protest to the assessments issued in January. Taxpayers filed an amended protest on April 28, 2014 and filed a second protest to the remaining assessment or the May assessment on May 12, 2014. In the April 28 protest, Taxpayers amended their grounds for protest. Taxpayers again amended the grounds for their protest on June 5, 2014. (The grounds asserted in the multiple amendments to the protest are

essentially the same.)

5. On June 6, 2014, the Department requested a hearing in the protest of assessments Letter Id Nos. L12048697296, L1504781776, L0967910864, L1576867280, and L1039996368.

6. On June 27, 2014, the Hearings Bureau mailed a Scheduling Order and Notice of Administrative Hearing setting the hearing for December 10, 2014.

7. Taxpayers filed New Mexico personal income tax returns for tax years 2009, 2010, 2011 and 2012. Taxpayers filed married filing jointly for those tax years. [Department's Stipulation of Facts #11].

8. All five assessments were issued because Taxpayers failed to include Thomas Hammack's ("Hammack") wages on their joint return for the tax years at issue.

9. On their joint returns, Taxpayers claimed an exemption for Hammack's wages. [Department's Stipulation of Facts #12].

10. During the tax years at issue, Hammack was an active duty officer for the United States Public Health Services ("USPHS"). [Department's Stipulation of Facts #10.]

11. Hammack was not detailed with the Navy or Army.

12. For the tax years at issue, Taxpayers were residents of New Mexico. [Taxpayers' Protest filed April 28, 2014].

13. For the tax years at issue, Hammack worked in Chinle, Arizona in charge of buildings for the USPHS. [12-10-13 CD 17:20-17-26].

14. At the hearing, the Department withdrew Notice of Assessment Letter Id No. L1856086992 for tax year 2009. The Notice of Assessment was not part of the original Hearings Bureau file, but was referred to in Protestant's Motion for Summary Judgment and in the Department's Stipulation of Facts.

15. In 2011, the Department added language to the Instructions for 2011 PITY-ADJ, Schedule of Additions and Deductions/Exemptions, page 5A. The Instructions stated that “(p)ay, wages or salaries paid by the U.S. Public Health Service does not qualify for the exemption.”

DISCUSSION

The central issue in dispute is whether Hammack is entitled to an exemption for the wages he earned from the United States Public Health Services.¹ The other issue in dispute is whether Taxpayers owe penalty for tax years 2009, 2010, 2011 and 2012.

Burden of Proof and Standard of Review.

Section 7-1-17(C) provides that any assessment of taxes made by the Department is presumed to be correct. NMSA 1978, Section 7-1-17(C) (2007). *Holt v. Department of Taxation and Revenue*, 2002-NMSC-34, ¶4, 133 NM 11, 12, 59 P.3d 491, 492. Consequently, the burden is on the taxpayer to rebut the presumption. *N.M. Taxation and Revenue Department v. Casias*, 2014-NMCA-____ ; ¶8, (No. 32,595, July 17, 2014); *MPC Ltd. v. N.M. Taxation and Revenue Dep’t.*, 2003-NMCA-021, ¶ 13, 133 N.M. 217, 219-220, 62 P.3d 308, 310-311. Accordingly, it is Taxpayers’ burden to present evidence and legal argument to show that they are entitled to an abatement, in full or in part, of the assessments issued against them. *See Archuleta v. O’Cheskey*, 1972-NMCA-165, ¶7, 84 N.M. 428, 431, 504 P.2d 638, 641. The courts have held that “where an exemption or deduction from tax is claimed, the statute must be construed strictly in favor of the taxing authority, the right to the exemption or deduction must be clearly and unambiguously expressed in the statute, and the right must be clearly established by the taxpayer.”

¹ There are five previous Decisions and Orders addressing this same issue. *See*, Aileen & David Wong, No. 13-21; Brown & Deborah Yellowhorse, No. 14-13; Tracy Sanchez, No. 14-23; Rochelle B. Young, No. 14-30; Tulian; and Kathleen Franklin, No. 14-38. Franklin is currently being appealed.

Wing Pawn Shop v. Taxation and Revenue Department, 1991-NMCA-024, ¶16, 111 N.M. 735, 740, 809 P.2d 649, 654.

Summary Judgment is appropriate when there is no genuine dispute as to any material fact and the moving party is entitled to prevail as a matter of law. See *Romero v. Philip Morris, Inc.*, 2010-NMSC-035, ¶7, 148 NM 713, 719, 242 P.3d 280, 286. If the movant for summary judgment makes a prima facie showing that it is entitled to a judgment as a matter of law, the burden shifts to the opposing party to show evidentiary facts that would require a trial on the merits. See *Roth v. Thompson*, 1992- NMSC-011, ¶17, 113 N.M. 331. Both parties moved for summary judgment motion in this matter and as such both sides implicitly acknowledge that there are no genuine disputes of fact, making this matter ripe for a decision upon summary judgment to the party entitled to prevail as a matter of law.

Taxpayers make a number of arguments. They argue that the Legislature intended to include USPHS officers within the definition of “armed forces” and that the federal statutes include USPHS officers within other definitions related to the military. In addition, Taxpayers argue that the USPHS cannot or will not withhold state tax on federal pay.

Exemption.

Section 7-2-5.11 provides that, “(a) salary paid by the United States to a taxpayer for active duty service in the armed forces of the United States is exempt from state income taxation.” NMSA 1978, Section 7-2-5.11 (2007). The statute does not define “active duty service in the armed forces” and there are no regulations defining what “active duty service in the armed forces” means.

Again, under *Wing Pawn Shop*, ¶16, exemptions from taxation must be narrowly and strictly construed and a taxpayer must clearly establish the right to such exemption. Questions of

statutory construction begin with the plain meaning rule. *See, Wood v. State Educ. Ret. Bd.*, 2011-NMCA-20, ¶12. In *Wood*, ¶12 (internal quotations and citations omitted), the Court of Appeals stated that the guiding principle in statutory construction requires that we look to the wording of the statute and attempt to apply the plain meaning rule, recognizing that when a statute contains language which is clear and unambiguous, we must give effect to that language and refrain from further statutory interpretation. *Villa v. City of Las Cruces*, 2010-NMCA-99, ¶44, 148 N.M. 668, 678, 241 P.3d 1108, 1118. A statutory construction analysis begins by examining the words chosen by the Legislature and the plain meaning of those words. 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.

USPHS officers are authorized under federal law under the The Public Health Service Act (“Act”). The Act was enacted in 1944, 42 U.S.C. Sections 201-300(f)(f). (2006). In 1944 the purpose of the act was described as giving the federal agency “authority to make grants-in-aid to research institutions for study of any disease”, “expansion of the Federal-State cooperative public health programs.” The Act also “made for the strengthening of the commissioned corps of the United States Public Health Service and for the commissioning of specialists in scientific fields relating to public health—such as entomology, chemistry, and zoology... Other sections of the Act carry over previous legislation giving the commissioned personnel of the Public Health Service in wartime substantially the same benefits and privileges afford officers of the Army and Navy.” *Public Health Reports*, Vol. 59, July 14, 1944, No. 28.

The purpose of the Act was set out in Section 2 of the Act, in the July 3, 1946 amendment, which provided: “(t)he purpose of this Act (see Short Title of 1946 Amendment

note above) is the improvement of the mental health of the people of the United States through the conducting of researches, investigations, experiments, and demonstrations relating to the cause, diagnosis, and treatment of psychiatric disorders; assisting and fostering such research activities by public and private agencies, and promoting the coordination of all such researches and activities and the useful application of their results; training personnel in matters relating to mental health; and developing, and assisting States in the use of, the most effective methods of prevention, diagnosis, and treatment of psychiatric disorders.” July 3, 1946, ch. 538, Sec. 2, 60 Stat. 421.

While there is no definition of “armed forces” under Section 7-2-5.11, in reviewing Chapter 7, Taxation, there are three references to “armed forces,” specifically in NMSA 1978, Section 7-37-5(F) (2005), NMSA 1978, Section 7-17-9 (1985) and regulation 3.3.1.9(D)(5) NMAC (4/28/06). Neither statute provides a definition for “armed forces.” However, regulation 3.3.1.9(D)(5), which is found within the Income Tax Act, NMSA 1978, Sections 7-2-1 to 7-2-36 (1965, as amended through 2007), and relates to the rules to determine whether a taxpayer is a resident, there is a definition of “armed forces.” The regulation states that “armed forces” means “all members of the army of the United States navy, the marine corps, the air force, the coast guard, all officers of the public health service detailed by property authority for duty either with the army or the navy, reservists placed on active duty, and members the national guard called to active federal duty.” Applying this definition to Hammack’s wages, there is no evidence in the record that Hammack was detailed for duty with either the Army or Navy.

Finally, the personal income tax instructions² explaining the conditions for a taxpayer to exempt his/her wages if the wages are earned from active duty in the “armed forces” is instructive. All wages are included in the federal adjusted gross income, specifically line 7 of the 2010 PIT-1, New Mexico Personal Income Tax Return.³ The wages are then carried over to the 2010 PIT-ADJ New Mexico Schedule of Additions and Deductions/Exemptions form, line 16, “Military active duty pay.” The Instructions for line 16 of the 2010 PIT-ADJ, Schedule of Additions and Deductions/Exemptions, page 5A, state that the exemption may be taken if the following applies to a taxpayer: a taxpayer must be on “(a)ctive duty, as defined in 37 USC 101, means full-time duty in active service and includes full-time training duty, annual training duty, full-time National Guard duty, and attendance, while in the active service, at a school designated as a service school by law or by the Secretary concerned. Armed forces includes the Army, Navy, Air Force, Marine Corps and Coast Guard.” If the preceding applies, then the wages are carried back to to personal income tax return and subtracted from the federal adjusted gross income on line 13 of the 2010 PIT-1, New Mexico Personal Income Tax Return. Thus in applying this definition of “armed forces” found within the 2010 PIT-ADJ New Mexico Schedule of Additions and Deductions/Exemptions form to Hammack during the tax years at issue, because Hammack was not in the Army, Navy, Air Force, Marine Corps or Coast Guard, his wages are not exempt from New Mexico income tax.⁴ In 2011, the Department amended its Instructions to state that “(p)ay, wages or salaries paid by the U.S. Public Health Service does

²The instructions and forms are public documents and can be found on the Department’s website at www.tax.newmexico.gov/forms-publications.aspx.

³ The instructions state that “you are required to file a resident return and claim a deduction for military active duty pay included in federal adjusted gross income. Page 1 of 2010 PIT-1, New Mexico Personal Income Tax Return.

⁴ There is a slight inconsistency between the reference to “armed forces” in regulation 3.3.1.9(D)(5) and the instructions that specifically detail how a taxpayer should file. The Instructions make no mention of USPHS officers being included within the definition of “armed forces.”

not qualify for the exemption.” Instructions for 2011 PITY-ADJ, Schedule of Additions and Deductions/Exemptions, page 5A. Instructions are presumed to be correct. NMSA 1978, §9-11-6.2(G) (1995).

While not specifically within the Chapter 7, Taxation, a definition of “armed forces” is found within NMSA 1978, Section 21-1-4.5(H) (2005). This definition of “armed forces” only applies to resident tuition for veterans, but it is illustrative to show that had the Legislature intended to expand or contract the definition of “armed forces” it could have done so. In Section 21-1-4.5(H), the definition of “armed forces” means the United States “army, navy, air force, marine corps or coast guard.” Again, there is no mention of USPHS officers.

Legislative History.

Taxpayers argue that when House Bill (HB 436) and Senate Bill (SB 492) were passed that the Legislature intended to include the USPHS officers. Taxpayers cite to the Fiscal Impact Report dated 3/22/06 (sic), Department’s Exhibit G-25.⁵ In reviewing the exhibits attached to the Department’s Motion for Summary Judgment, Exhibit G-83 refers only to “U.S. active service members” and the “national guard and army reserve members” qualifying for the exemption found in Section 7-2-5.11. The fiscal impact report referred to as Exhibit G-83 and dated February 2, 2007 supports the position by the Department that Hammack is not considered an active duty member of the “armed forces,” and therefore his wages do not not qualify for the exemption.

Federal Law.

Taxpayers also argue that Hammack’s “subjugation” to two other Sections from 42 U.S.C. allow for the exemption of his wages from state income tax. Taxpayers cite to 42 U.S.C.

⁵ Department Exhibit G-25 is not part of the record. It is not attached to Protestant’s Motion for Summary Judgment. Only 43 pages were submitted and Exhibit G-25 is not among the exhibits submitted.

§215(a) (2006) which provides that USPHS officers or employees may be detailed to the Army, Air Force, Navy or Coast Guard. The “subjugation” argument is without merit. The statute that Taxpayers refer to permits USPHS officers and employees the possibility that they may be “detailed” to another agency. There is no case law to suggest that the mere possibility of detail converts the USPHS officers into “armed forces.” There is no evidence that Hammack was detailed to any of the branches of the military.

The other Section of Title 42 that Taxpayers refer to is 42 U.S.C. §217 (2006) which is also inapplicable because it requires an Executive Order declaring the commissioned corps of the USPHS to be in military service. Again there is no evidence to support this legal argument. Both of these Sections of 42 U.S.C. require specific federal action before a USPHS employee or officer can be considered part of the “armed forces.”

Taxpayers also cite to 37 U.S.C. §101 (2006) Pay and Allowances of the Uniformed Services to support the proposition that USPHS officers are classified as “armed forces.” This Section of Title 37 distinguishes between “uniformed services” and “armed forces.” 37 U.S.C. §101(3) and (4) (2006). The definition of “uniformed services” includes the commission corps of the USPHS while the definition of “armed forces” only includes the Army, Navy, Marine Corps, Air Force and Coast Guard. Similarly to Title 37, Title 10, Armed Forces, the distinction is made that there is a difference for federal purposes between “uniformed services” and “armed forces.” 10 U.S.C. §101(a)(4) and (a)(5). It seems clear that for federal purposes there is a distinction between the two definitions of “uniformed services” and “armed forces.” Since the exemption, Section 7-2-5.11, only applies to “armed forces” members, even under Titles 10 and 37, Hammack does not qualify for the exemption since neither of the federal definitions for “armed forces” includes USPHS officers.

Taxpayers argue that regulation 3.3.1.9 (NMAC 4/28/06) contradicts the amended Soldier and Sailors Civil Relief Act and the Servicemembers Civil Relief Act of 2003. As for whether there is a contradiction between regulation 3.3.1.9 and the amended Soldier and Sailors Civil Relief Act and the Servicemembers Civil Relief Act of 2003, first and foremost, any regulation issued by the Secretary is presumed to be a proper implementation of the provisions of the laws and therefore correct. NMSA 1978, §9-11-6.2(G) (1995). Secondly, the State of New Mexico has the authority to assess and collect taxes without federal supervision. *Holt*, 2002-NMSC-34, ¶6. In this case, the instructions are fairly specific in not including USPHS officers within the definition of “armed forces.”

Military Pay and Benefits.

Taxpayers argue that because Hammack is entitled to “military compensation, military privileges, military immunities, military rights, and military benefits” that he should qualify for the exemption. Unfortunately, because the Legislature did not specifically include USPHS officers within the exemption nor is the group of federal employees included within the definition of members of the armed forces within the regulation or instructions, Hammack is not entitled to the exemption.

While not directly on point is the case of *Barker v. State of Kansas*, 249 Kan. 186, 815 P.2d 46 (Kan. 1991), *rev'd on other grounds*, *Barker v. Kansas*, 503 U.S. 594, 112 S.Ct. 1619 (1992). The court looked at the issue of whether it was unconstitutional to treat the retirement pay of military retirees different from the public sector retirees in State of Kansas. Military retirement pay was taxed for state income tax purposes but the retirement pay of State retirees was not taxed. It is interesting to note that in this case, the Kansas court referred to USPHS retirees as “other federal retirees” and the USPHS retirees were not considered part of the group

known as “military retirees.” *Barker v. State of Kansas*, 249 Kan. 186, 815 P.2d 46, 58 (Kan. 1991), *rev’d on other grounds*, *Barker v. Kansas*, 503 U.S. 594, 112 S.Ct. 1619 (1992). For state income tax purposes in the State of Kansas, the USPHS officers were not considered part of the class of military retirees or armed forces. *Barker v. State of Kansas*, 249 Kan. 186, 815 P.2d 46, 48 (Kan. 1991), *rev’d on other grounds*, *Barker v. Kansas*, 503 U.S. 594, 112 S.Ct. 1619 (1992).⁶

State Withholding Tax.

Finally Taxpayers argue that the USPHS could not withhold New Mexico income tax from Hammack’s wages because there was no agreement made between the federal government and the state of New Mexico to withhold New Mexico income tax. There is no factual basis to support Taxpayers’ argument that there was no agreement between the federal government and the state of New Mexico.

In conclusion, there is ample evidence that Hammack’s wages are not earned from the “armed forces” and therefore the exemption found in Section 7-2-5.11 is inapplicable to his wages.

Civil Penalty.

Civil penalty is imposed when a taxpayer is “negligent” or disregards the Department’s rules and regulations in not filing a return or paying tax when it is due. Section 7-1-69(A) states that:

(e)xcept as provided in Subsection C of this section, in the case of failure due to **negligence** or disregard of department rules and regulations, but without intent to evade or defeat a tax, to pay when due the **amount of tax required to be paid**, to pay in accordance with the provisions of Section 7-1-13.1 NMSA 1978

⁶ The issue of whether the New Mexico State exemption is unconstitutional insofar as different members of the “uniformed services” or “armed forces” income is treated differently is not reached by this Hearing Officer.

when required to do so or **to file by the date required a return** regardless of whether a tax is due, there shall be added to the amount assessed a penalty in an amount equal to the greater of:

(1) two percent per month or any fraction of a month from the date the tax was due multiplied by the amount of tax due but not paid, not to exceed twenty percent of the tax due but not paid;

(Emphasis added). NMSA 1978, §7-1-69 (A) (1) (2007). The Department's regulation provides that "negligence" includes "failure to exercise ordinary business care and prudence which reasonable taxpayers would exercise under like circumstances; inaction where action is required; inadvertence, indifference, thoughtlessness, carelessness, erroneous belief or inattention" for either failing to file a return on time or failing to make a payment on time. Regulation 3.1.11.10 NMAC (1/15/01). Inadvertent error is defined as "negligence." *See El Centro Villa Nursing Ctr. v. Taxation & Revenue Dep't*, 1989-NMCA-070, ¶14, 108 N.M. 795, 799, 779 P.2d 982, 986. The regulations provide exceptions to the negligence definition. After reviewing the exceptions or indications of nonnegligence found in regulation 3.1.11.11 NMAC (1/15/01), none of the exceptions apply to Taxpayers.

However NMSA 1978, Section 7-1- 69 (B) (2007) provides that "(n)o penalty shall be assessed against a taxpayer if the failure to pay an amount of tax when due results from a mistake of law made in good faith and on reasonable grounds." A mistake of law is a "mistake about the legal effect of a known fact or situation," whereas a mistake of fact is a "mistake about a fact that is material to a transaction; any mistake other than a mistake about a fact that is material to a transaction." *Black's Law Dictionary* at 1023.

There is no question in reading the protests by Taxpayers that they believed Hammack's wages were legally exempt from New Mexico personal income tax. In the January 14, 2014 protest letter, Taxpayers state that they called and spoke with a Department employee prior to

filing a return asking how to treat Hammack's wages. Protest Letter dated January 14, 2014. The employee confirmed that Hammack's wages were exempt. The 2009 refund was delayed which caused Hammack to again call the Department employee. Taxpayers received a refund for 2009 which allowed for the exemption. The mistake of law was whether Taxpayers qualified for the exemption under the definition of "armed forces." Therefore the penalty is abated for tax year 2009.

The 2011 PITY-ADJ, Schedule of Additions and Deductions/Exemptions Instructions were clear and Taxpayers were on notice that the exemption did not apply to Hammack's wages for 2011. In 2011, the Department added language to the Instructions for 2011 PITY-ADJ, Schedule of Additions and Deductions/Exemptions, page 5A specifically stating that "(p)ay, wages or salaries paid by the U.S. Public Health Service does not qualify for the exemption." Therefore the penalty assessed for 2009 is not properly assessed, while the penalty assessed for 2011 and 2012 is properly assessed. There was no penalty assessed for tax year 2010.⁷

CONCLUSIONS OF LAW

A. Thomas and Leslie Hammack filed timely written protests to the Department's Assessments issued under Letter Id No. Letter Id No. L12048697296, L1504781776, L0967910864, L1576867280, and L1039996368 and jurisdiction lies over the parties and the subject matter of this protest.

B. The hearing was timely set as required by NMSA 1978, Section 7-1-24.1(A) (2013).

C. Pursuant to NMSA 1978, Section 7-1-17(C) (2007), the Department's assessment

⁷ This Decision is consistent with the Tracy Sanchez, No. 14-23 Decision and Order which also abated penalty for tax years prior to 2011.

is presumed to be correct, and it is Taxpayer's burden to come forward with evidence and legal argument to establish that it was entitled to an abatement.

D. Thomas Hammack's wages earned from USPHS for tax years 2009 through 2012 are not exempt pursuant to NMSA 1978, Section 7-2-5.11 (2007).

E. To qualify for the exemption, Hammack was required to be active duty in the "armed forces."

F. As a matter of law, Thomas Hammack was not in the "armed forces" for tax years 2009 through 2012 and Taxpayers did not meet their burden of establishing that Hammack was in the "armed forces."

G. Taxpayers owe personal income tax for tax year 2009, in the amount of \$2,515.00 in principal and \$335.63 in interest. Taxpayers owe the amount of \$3,180.00 in principal and \$248.30 in interest for tax year 2010. For tax year 2011, Taxpayers owe \$927.00 in principal and \$43.99 in interest. In addition for tax year 2011, Taxpayers owe \$3,592.00 in principal; \$718.40 in penalty and \$185.49. For tax year 2012, Taxpayers owe in personal income tax the amount of \$4,967.00 in principal; \$894.06 in penalty and \$108.59 in interest.

H. The penalty for 2009 is abated.

I. Interest continues to accrue until the principal is paid in full and should be applied to the principal amount of tax due in accordance with NMSA 1978, Section 7-1-67 (2007).

J. Because there is no genuine dispute as to any material fact and the Department is entitled to judgment as a matter of law, summary judgment is appropriate in this matter. See *Romero v. Philip Morris, Inc.*, 2010-NMSC-035, ¶7.

For the foregoing reasons, the Taxpayer' protest **IS GRANTED IN PART AND DENIED IN PART.**

DATED: January 12, 2015.

Monica Ontiveros
Hearing Officer
Taxation & Revenue Department
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