

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

**IN THE MATTER OF THE PROTEST OF
BROKEN HILL PROPRIETARY INC.
TO THE PARTIAL DENIAL OF RURAL JOB TAX CREDIT
ISSUED UNDER LETTER ID NO. L0201443376**

No. 17-07

DECISION AND ORDER

A hearing in the above-captioned protest occurred on January 5, 2017 before Chris Romero, Hearing Officer, in Santa Fe, New Mexico. Attorney Joe Lennihan, Esq., appeared representing Broken Hill Proprietary, Inc. (“Taxpayer”). Steven Bartlett of Axiom Certified Public Accountants and Business Advisors, LLC appeared in person as a witness for the Taxpayer. Edison Bicenti, an employee of Taxpayer, appeared by telephone as a witness for the Taxpayer. Attorney Marek Grabowski, Esq., appeared representing the State of New Mexico Taxation and Revenue Department (“Department”). Protest Auditor Tom Dillon appeared as a witness for the Department. Taxpayer Exhibits 1 – 6 and Department Exhibits A – B were admitted into the record. All exhibits are more thoroughly described in the Administrative Exhibit Log. Based on the evidence and arguments presented, **IT IS DECIDED AND ORDERED AS FOLLOWS:**

FINDINGS OF FACT

1. On December 29, 2014, Taxpayer submitted an Application for Rural Job Tax Credit (hereinafter “Application”). The Department received the Application on December 30, 2014. The Application sought a Rural Job Tax Credit for \$2,195,229.00 and claimed 665 eligible jobs. [**Taxpayer Ex. No. 1.1**].

2. On September 29, 2015, through Letter ID No. L0201443376, the Department partially approved Taxpayer's Application for Rural Jobs Tax Credit for \$2,115,372.20 and denied the remaining portion of the claim for that credit. [**Taxpayer Ex. 1.2**].

3. On October 28, 2015, Taxpayer submitted a protest of the Department's partial denial of the Application for Rural Jobs Tax Credit, asserting it was legally entitled to an additional credit of \$79,856.80. The Department's Protest Office received the protest on October 29, 2015.

4. On November 2, 2015, the Department's Protest Office acknowledged receipt of the protest.

5. Taxpayer timely filed its protest.

6. On December 4, 2015, the Department filed a request for hearing in this matter with the Administrative Hearings Office¹.

7. On December 7, 2015, the Administrative Hearings Office sent Notice of Telephonic Scheduling Conference, scheduling this matter for a scheduling hearing on January 8, 2016.

8. On January 5, 2016, Staff Attorney Julia Belles substituted as counsel and entered her appearance for the Department.

9. On January 8, 2016, a Scheduling Conference Hearing occurred in which the parties addressed the issues at protest, the necessity of discovery or motions, and selection of a date to conduct a hearing on the merits. The parties did not object that the scheduling hearing satisfied the 90-day hearing deadline.

¹ The Hearing Request included a typographical error that caused the Taxpayer to be identified as "Broken Hill Propriety, Inc." rather than "Broken Hill *Proprietary*, Inc." The caption in this protest is corrected to reflect Taxpayer's correct name as provided on its Application for Rural Job Tax Credit, Letter ID No. L0201443376, and the Formal Protest.

10. On January 11, 2016, the Administrative Hearings Office issued a Scheduling Order and Notice of Administrative Hearing that in addition to setting various prehearing deadlines, also set a hearing on the merits for November 29, 2016.

11. On February 1, 2016, Staff Attorney Marek Grabowski substituted as counsel and entered his appearance for the Department.

12. On November 10, 2016, Attorney Joe Lennihan, Esq., entered his appearance on behalf of Taxpayer. A Tax Information Authorization that authorized him to represent Taxpayer on the subject of this protest for any tax year accompanied counsel's Entry of Appearance.

13. On November 14, 2016, the parties prepared and submitted a Joint Prehearing Statement.

14. On November 18, 2016, the parties filed a Joint Motion to Continue the hearing set for November 29, 2016.

15. On November 18, 2016, the Department filed a Motion for Leave to Introduce Witness and Evidence Not Listed on Joint Prehearing Statement (hereinafter "Motion for Leave").

16. On November 21, 2016, the Administrative Hearings Office entered an Amended Scheduling Order and Notice of Administrative Hearing that in addition to setting various prehearing deadlines also set a hearing on the merits for June 1, 2017.

17. On November 22, 2016, the Taxpayer filed Taxpayer's Response in Opposition to Motion for Leave to Introduce Witnesses and Evidence Not Listed on Joint Prehearing Statement (hereinafter "Response to Motion for Leave").

18. On November 22, 2016, the Department filed a Motion for Permission to File a Reply in Support of Motion for Leave to Introduce Witness and Evidence Not Listed on Joint Prehearing Statement (hereinafter “Motion for Permission and Proposed Reply”).

19. Since the Amended Scheduling Order and Notice of Administrative Hearing, entered on November 21, 2016, established new deadlines for disclosing witnesses and exhibits, the matters addressed in the Department’s Motion for Leave, Taxpayer’s Response to Motion for Leave, and the Department’s Motion for Permission and Proposed Reply became moot.

20. On December 1, 2016, Taxpayer filed a Motion for Withdrawal of Amended Scheduling Order and for Order Setting Formal Hearing on Taxpayer’s Protest.

21. On December 9, 2016, the Administrative Hearings Office entered an Amended Notice of Administrative Hearing vacating the hearing set for June 1, 2017. A hearing on the merits was set for January 5, 2017.

22. On December 19, 2016, Taxpayer filed a Motion for Leave to Testify Telephonically. The Motion requested permission for Mr. Edward [sic] Becenti to testify by telephone.

23. On December 29, 2016, the Department filed a Response to Taxpayer’s Motion for Leave to Testify Telephonically that opposed the Taxpayer’s request.

24. Without permission of the Hearing Officer, on January 2, 2017, the Taxpayer filed a Reply to Response to Motion for Leave to Testify Telephonically.

25. On January 4, 2017, the Administrative Hearings Office entered an Order Allowing Telephonic Testimony.

26. On January 4, 2017, the Administrative Hearings Office entered a Notice of Reassignment of Hearing Officer for Administrative Hearing that reassigned this protest to the undersigned Hearing Officer.

27. Taxpayer engages in employee leasing and staffing services. It deploys workers to its affiliated mines in the communities of La Plata, Waterflow, and Fruitland, New Mexico, all situated in western San Juan County. **[Joint Prehearing Statement, Stip. No. 1].**

28. The communities of La Plata, Fruitland, and Waterflow are “Tier 1” areas as defined in NMSA 1978, Section 7-2E-1.1 (N) (8). **[Joint Prehearing Statement, Stip. No. 2].**

29. Taxpayer is an eligible employer as defined by NMSA 1978, Section 7-2E-1.1 (N) (2). **[Joint Prehearing Statement, Stip. No. 2].**

30. As previously stated, Letter ID No. L0201443376 partially approved Taxpayer’s Application for Rural Jobs Tax Credit for \$2,115,372.20 and denied the remaining portion of the claim for that credit. The Department denied credit for 80 qualifying periods because the auditor determined that the employees did not occupy their jobs for at least 48 weeks during the qualifying period. **[Joint Prehearing Statement, Stip. No. 4].**

31. The method the auditor utilized was to eliminate pay periods from an employee’s qualifying period for any pay period in which the available records reflected missed paychecks. When deducting such pay periods reduced an employee’s qualifying period below 48 weeks, the auditor denied the credit. **[Joint Prehearing Statement, Stip. No. 5].**

32. Although the Taxpayer’s records might reflect that some disallowed employees did not receive paychecks for a minimum of 48 weeks in a qualifying period, Taxpayer retained the disallowed employees on Taxpayer’s payroll register for the entire qualifying period. **[Joint Prehearing Statement, Stip. No. 7].**

33. Most disallowed employees were paid by hourly wage every week. Wages and working conditions were subject of Collective Bargaining Agreements with the International Union of Operating Engineers. **[Joint Prehearing Statement, Stip. No. 8]**.

34. Disallowed employees were not free to work for other employers during their respective 12-month qualifying periods. **[Joint Prehearing Statement, Stip. No. 9]**.

35. Disallowed employees accrued seniority and employment benefits, including leave, throughout their qualifying period whether or not they received a paycheck. **[Joint Prehearing Statement, Stip. No. 10]**.

36. Disallowed employees received job training through their employment with Taxpayer. **[Joint Prehearing Statement, Stip. No. 11]**.

37. Disallowed employees were covered by health and accident insurance during their employment with Taxpayer. **[Joint Prehearing Statement, Stip. No. 12]**.

38. The total disallowed credit amount was \$79,856.80. **[Joint Prehearing Statement, Stip. No. 6]**. The disallowed amount reflected the Department's determination that 80 employees had failed to occupy their qualifying job for 48 weeks during a 12-month qualifying period. **[Taxpayer Ex. No. 3]**.

39. Taxpayer Exhibit No. 3 indicated that the Department "auditor verified the occupancy of the jobs claimed by reviewing the payroll records and the [Department of Workforce Solutions] database." **[Taxpayer Ex. No. 3]**. Where the auditor determined that the employee had not occupied their position for a minimum of 48 weeks, the credit as to that job was denied.

40. The Department sought additional documentation to verify the occupancy of the disallowed jobs claimed but the Taxpayer did not produce documents satisfactory to the Department. **[Testimony of Mr. Dillon]**.

41. Taxpayer Exhibit No. 3.1, Lines 1, 2, and 3 refer to the same employee (SB) over the course of three consecutive qualifying 12-month periods from March 12, 2007 to March 11, 2010.

- a. With concern for the period from 2007 to 2008, Taxpayer Exhibit No. 6.8 to 6.9 indicated that SB did not receive paychecks from January 5, 2008 to February 15, 2008 because SB was receiving workers' compensation benefits. **[Taxpayer Ex. No. 6.1; 6.8 – 6.10]**. The employee occupied the position during the 2007 – 2008 period for 46 weeks. **[Taxpayer Ex. 3.1 – Line 1]**.
- b. With concern for the period from 2008 to 2009, Taxpayer Exhibit No. 6.146 to 6.155 indicated that employee SB did not receive paychecks from March 12, 2008 to May 29, 2008, May 31, 2008 to July 3, 2008, July 5, 2008 to August 7, 2008, August 9, 2008 to September 4, 2008, September 6, 2008 to November 27, 2008, December 6, 2008 to December 24, 2008, and January 3, 2009 to January 22, 2009 because SB was receiving workers' compensation benefits. **[Taxpayer Ex. No. 6.2; 6.146 – 6.155]**. The employee occupied the position during the 2008 – 2009 period for 15 weeks. **[Taxpayer Ex. 3.1 – Line 2]**.
- c. With concern for the period from 2009 to 2010, Taxpayer Exhibit No. 6.156 to 6.165 indicated that employee SB did not receive paychecks from May 9, 2009 to May 28, 2009, May 30, 2009 to July 2, 2009, and July 18, 2008 to September 4, 2009, because the employee was receiving workers' compensation benefits.

[**Taxpayer Ex. No. 6.2; 6.156 – 6.165**]. The employee occupied the position during the 2009 – 2010 period for 40 weeks. [**Taxpayer Ex. 3.1 – Line 3**].

42. Taxpayer Exhibit No. 3.1, Line 4 refer to employee WB during the qualifying 12-month period from April 20, 2011 to April 19, 2012. Taxpayer Exhibit No. 6.87 to 6.88 indicated that the employee did not receive a payment from July 16, 2011 to August 31, 2011, and September 16, 2011 to October 14, 2011 because the employee was absent without pay. [**Taxpayer Ex. No. 6.1; 6.87 – 6.88**]. The employee occupied the position during the 2011 – 2012 period for 42 weeks. [**Taxpayer Ex. 3.1 – Line 4**].

43. Taxpayer Exhibit No. 3.1, Lines 5 refers to employee LE during the qualifying 12-month period from January 7, 2010 to January 6, 2011. Taxpayer Exhibit No. 6.130 to 6.132 indicated that employee LE did not receive paychecks from May 22, 2010 to June 3, 2010, June 5, 2010 to July 8, 2010, and July 10, 2010 to September 3, 2010 because the employee received a weekly indemnity benefit or was on leave without pay. [**Taxpayer Ex. No. 6.1a; 6.130 – 6.132**]. The employee occupied the position during the 2010 – 2011 period for 41 weeks. [**Taxpayer Ex. 3.1 – Line 5**].

44. Taxpayer Exhibit No. 3.1, Lines 6 and 7 refer to the same employee (GF) over the course of two consecutive qualifying 12-month periods from May 30, 2008 to May 29, 2010.

- a. With concern for the period from 2008 to 2009, Taxpayer Exhibit No. 6.91 to 6.95 indicated that employee GF did not receive a paycheck from July 27, 2008 to August 8, 2008, August 10, 2008 to August 19, 2008, January 4, 2009 to April 10, 2009, and April 12, 2009 to May 29, 2009 because the employee received a weekly indemnity benefit or was on leave without pay. [**Taxpayer Ex. No. 6.1a;**

6.91 – 6.95]. The employee occupied the position during the 2008 – 2009 period for 32 weeks. [**Taxpayer Ex. 3.1 – Line 6].**

- b. With concern for the period from 2009 to 2010, Taxpayer Exhibit No. 6.109 to 6.113 indicated that the employee did not receive a paycheck from May 31, 2009 to July 31, 2009, January 17, 2010 to April 2, 2010, and April 4, 2010 to May 28, 2010 because the employee received a weekly indemnity benefit or was on leave without pay. [**Taxpayer Ex. No. 6.1a; 6.109 – 6.113].** The employee occupied the position during the 2009 – 2010 period for 31 weeks. [**Taxpayer Ex. 3.1 – Line 7].**

45. Taxpayer Exhibit No. 3.1, Line 8 refers to employee LG during the qualifying 12-month period from January 1, 2006 to December 31, 2006. Taxpayer Exhibit No. 6.178 to 6.180 indicated that employee LG did not receive paychecks from October 7, 2006 to November 23, 2006, November 25, 2006 to December 7, 2006, and December 9, 2006² to December 29, 2006 because the employee was on unpaid leave. [**Taxpayer Ex. No. 6.2; 6.178 – 6.180].** The employee occupied the position during the 2006 period for 43 weeks. [**Taxpayer Ex. 3.1 – Line 8].**

46. Taxpayer Exhibit No. 3.1, Line 9 refers to employee DH during the qualifying 12-month period from August 14, 2007 to August 13, 2008. Taxpayer Exhibit No. 6.114 to 6.116 indicated that employee DH did not receive paychecks from May 10, 2008 to May 29, 2008, June 7, 2008 to July 3, 2008, and July 5, 2008 to July 24, 2008 because the employee received a weekly indemnity benefit or was on leave without pay. [**Taxpayer Ex. No. 6.1a; 6.114 – 6.116].**

² Taxpayer Exhibit Nos. 6.2 and 6.178 identify the date as December 9, 2009. However, the records that follow at No. 6.179 and 6.180 address 2006 only indicating that the reference to “2009” was typographical error.

The employee occupied the position during the 2007 – 2008 period for 45 weeks. **[Taxpayer Ex. 3.1 – Line 9]**.

47. Taxpayer Exhibit No. 3.1, Line 10 refers to employee JJ during the qualifying 12-month period from March 5, 2008 to March 4, 2009. Taxpayer Exhibit No. 6.218 to 6.219 indicated that employee JJ did not receive paychecks from March 15, 2008 to May 8, 2008 because the employee received a weekly indemnity benefit or was on leave without pay. **[Taxpayer Ex. No. 6.3; 6.218 – 6.219]**. The employee occupied the position during the 2008 – 2009 period for 45 weeks. **[Taxpayer Ex. 3.1 – Line 10]**.

48. Taxpayer Exhibit No. 3.1, Lines 11 and 12 refer to the same employee (GK) over the course of two consecutive qualifying 12-month periods from April 21, 2008 to April 20, 2010.

- a. With concern for the period from 2008 to 2009, Taxpayer Exhibit No. 6.117 to 6.120 indicated that employee GK did not receive a paycheck from December 13, 2008 to December 24, 2008, January 3, 2009 to January 22, 2009, and March 28, 2009 to April 16, 2009 because the employee received a weekly indemnity benefit or was on leave without pay. **[Taxpayer Ex. No. 6.1a; 6.117 – 6.120]**. The employee occupied the position during the 2008 – 2009 period for 47 weeks. **[Taxpayer Ex. 3.1 – Line 11]**.
- b. With concern for the period from 2009 to 2010, Taxpayer Exhibit No. 6.121 to 6.124 indicated that employee GK did not receive a paycheck from April 22, 2009 to May 7, 2009, May 16, 2009 to May 28, 2009, May 30, 2009 to June 25, 2009, and February 20, 2010 to March 4, 2010 because the employee received a weekly indemnity benefit or was on leave without pay. **[Taxpayer Ex. No. 6.1a; 6.121 –**

6.124]. The employee occupied the position during the 2009 – 2010 period for 45 weeks. **[Taxpayer Ex. 3.1 – Line 12].**

49. Taxpayer Exhibit No. 3.1, Line 13 refers to employee RL during the qualifying 12-month period from March 12, 2009 to March 11, 2010. Taxpayer Exhibit No. 6.125 to 6.127 indicated that the employee did not receive paychecks from November 7, 2009 to November 26, 2009, November 28, 2009 to December 10, 2009, December 12, 2009 to December 24, 2009, January 2, 2010 to February 18, 2010, and February 20, 2010 to March 11, 2010 because the employee received a weekly indemnity benefit or was on leave without pay. **[Taxpayer Ex. No. 6.1a; 6.125 – 6.127].** The employee occupied the position during the 2009 – 2010 period for 40 weeks. **[Taxpayer Ex. 3.1 – Line 13].**

50. Taxpayer Exhibit No. 3.1, Line 14 refers to employee WM during the qualifying 12-month period from November 21, 2003 to November 20, 2004. Taxpayer Exhibit No. 6.175 to 6.177 indicated that the employee did not receive paychecks from November 21, 2003 to January 1, 2004, January 3, 2004 to February 19, 2004, and February 21, 2004 to March 4, 2004 because the employee received a weekly indemnity benefit or was on leave with and without pay. **[Taxpayer Ex. No. 6.2; 6.175 – 6.177].** The employee occupied the position during the 2003 – 2004 period for 40 weeks. **[Taxpayer Ex. 3.1 – Line 14].**

51. Taxpayer Exhibit No. 3.1, Line 15 refers to employee TM during the qualifying 12-month period from February 15, 2011 to February 14, 2012. Taxpayer Exhibit No. 6.261 to 6.262 indicated that employee TM did not receive paychecks from September 16, 2011 to October 30, 2011 due to the employee switching from an hourly wage to a salary. **[Taxpayer Ex. No. 6.3; 6.261 – 6.262].** The employee occupied the position during the 2011 – 2012 period for 47 weeks. **[Taxpayer Ex. 3.1 – Line 15].**

52. Taxpayer Exhibit No. 3.1, Line 16 refers to employee MP during the qualifying 12-month period from June 3, 2004 to June 2, 2005. Taxpayer Exhibit No. 6.282 indicated that employee MP did not receive paychecks from August 29, 2004 to September 14, 2004, December 1, 2004 to December 15, 2004, January 16, 2005 to March 14, 2005, and April 1, 2005 to May 30, 2005 because the employee was a “Flex employee”. **[Taxpayer Ex. No. 6.4; 6.282]**. The employee occupied the position during the 2004 – 2005 period for 34 weeks. **[Taxpayer Ex. 3.1 – Line 16]**.

53. Taxpayer Exhibit No. 3.1, Line 17 refers to employee KT during the qualifying 12-month period from September 28, 2007 to September 27, 2008. Taxpayer Exhibit No. 6.276 to 6.277 indicated that the employee did not receive paychecks from February 2, 2008 to February 15, 2008, March 1, 2008 to March 27, 2008, March 29, 2008 to May 29, 2008, May 31, 2008 to July 3, 2008, July 5, 2008 to September 4, 2008, and September 6, 2008 to September 27, 2008 because of as a change in the employee’s hours. **[Taxpayer Ex. No. 6.4; 6.276 – 6.277]**. The employee occupied the position during the 2007 – 2008 period for 26 weeks. **[Taxpayer Ex. 3.1 – Line 17]**.

54. Taxpayer Exhibit No. 3.1, Line 18 refers to employee AY during the qualifying 12-month period from December 4, 2008 to December 3, 2009. Taxpayer Exhibit No. 6.234 to 6.236 indicated that employee AY did not receive paychecks from February 21, 2009 to March 5, 2009, August 15, 2009 to September 10, 2009, and September 12, 2009 to October 1, 2009 because the employee received a weekly indemnity benefit or was on leave without pay. **[Taxpayer Ex. No. 6.3; 6.234 – 6.236]**. The employee occupied the position during the 2008 – 2009 period for 46 weeks. **[Taxpayer Ex. 3.1 – Line 18]**.

55. Taxpayer Exhibit No. 3.1, Line 19 refers to employee JA during the qualifying 12-month period from December 15, 2006 to December 14, 2007. Taxpayer Exhibit No. 6.258 to 6.259 indicated that employee JA did not receive paychecks from May 13, 2007 to June 1, 2007, June 3, 2007 to July 6, 2007, and July 8, 2007 to August 24, 2007 because the employee received a worker's compensation benefit. [**Taxpayer Ex. No. 6.3; 6.258 – 6.259**]. The employee occupied the position during the 2006 – 2007 period for 40 weeks. [**Taxpayer Ex. 3.1 – Line 19**].

56. Taxpayer Exhibit No. 3.1, Line 20 refers to employee BA during the qualifying 12-month period from April 9, 2010 to April 8, 2011. Taxpayer Exhibit No. 6.128 to 6.129 indicated that the employee did not receive paychecks from October 17, 2010 to November 26, 2010, and November 28, 2010 to December 24, 2010 because the employee received a weekly indemnity benefit or was on leave without pay. [**Taxpayer Ex. No. 6.1a; 6.128 – 6.129**]. The employee occupied the position during the 2010 – 2011 period for 40 weeks. [**Taxpayer Ex. 3.1 – Line 20**].

57. Taxpayer Exhibit No. 3.1, Lines 21 and 22 refer to the same employee (DA) over the course of two consecutive qualifying 12-month periods from November 10, 2005 to November 9, 2007.

- a. With concern for the period from 2005 to 2006, Taxpayer Exhibit No. 6.11 to 6.15 indicated that employee DA did not receive a paycheck from March 5, 2006 to April 28, 2006 because the employee was on leave without pay. [**Taxpayer Ex. No. 6.1; 6.11 – 6.15**]. The employee occupied the position during the 2005 – 2006 period for 45 weeks. [**Taxpayer Ex. 3.1 – Line 21**].

- b. Taxpayer's exhibits do not address the period from 2006 to 2007 for employee DA. Although Taxpayer Exhibit Nos. 6.5 – 6.7 do address an employee by the same name, the qualifying period subject or those exhibits does not match the qualifying period subject of Taxpayer Exhibit No. 3.1, Line 22.

58. Taxpayer Exhibit No. 3.1, Line 23 refers to employee AA during the qualifying 12-month period from August 18, 2010 to August 17, 2011. Taxpayer Exhibit No. 6.283 indicated that the employee did not receive paychecks from June 25, 2011 to August 17, 2017 because the employee was a “Flex employee.” [**Taxpayer Ex. No. 6.4; 6.283**]. The employee occupied the position during the 2010 – 2011 period for 46 weeks. [**Taxpayer Ex. 3.1 – Line 23**].

59. Taxpayer Exhibit No. 3.1, Line 24 refers to employee CB during the qualifying 12-month period from December 4, 2003 to December 3, 2004. Taxpayer Exhibit No. 6.213 to 6.214 indicated that the employee did not receive paychecks from December 4, 2003 to January 2, 2004, and February 1, 2004 to February 13, 2004 because the employee was on unpaid leave. [**Taxpayer Ex. No. 6.3; 6.213 – 6.214**]. The employee occupied the position during the 2003 – 2004 period for 47 weeks. [**Taxpayer Ex. 3.1 – Line 24**].

60. Taxpayer Exhibit No. 3.1, Line 25 refers to employee JB during the qualifying 12-month period from December 27, 2004 to December 26, 2005. Taxpayer Exhibit No. 6.48 to 6.49 indicated that the employee did not receive paychecks from September 17, 2005 to October 13, 2005, and October 15, 2005 to November 16, 2005 because the employee was on unpaid sick leave. [**Taxpayer Ex. No. 6.1; 6.48 – 6.49**]. The employee occupied the position during the 2004 – 2005 period for 45 weeks. [**Taxpayer Ex. 3.1 – Line 25**].

61. Taxpayer Exhibit No. 3.1, Line 26 refers to employee JB during the qualifying 12-month period from August 24, 2008 to August 23, 2009. Taxpayer Exhibit No. 6.274 indicated that the employee did not receive paychecks from April 11, 2009 to June 25, 2009, and June 27, 2009 to August 23, 2009 because the employee was on unpaid leave. [**Taxpayer Ex. No. 6.3; 6.274**]. The employee occupied the position during the 2008 – 2009 period for 34 weeks. [**Taxpayer Ex. 3.1 – Line 26**].

62. Taxpayer Exhibit No. 3.1, Line 27 refers to employee JB during the qualifying 12-month period from October 23, 2009 to October 22, 2010. Taxpayer Exhibit No. 6.244 to 6.245 indicated that the employee did not receive paychecks from October 23, 2009 to November 27, 2009, and November 29, 2009 to December 24, 2009 because the employee was receiving a weekly indemnity benefit or the employee was on unpaid leave. [**Taxpayer Ex. No. 6.3; 6.244 – 6.245**]. The employee occupied the position during the 2009 – 2010 period for 44 weeks. [**Taxpayer Ex. 3.1 – Line 27**].

63. Taxpayer Exhibit No. 3.1, Line 28 refers to employee WB during the qualifying 12-month period from January 26, 2006 to January 25, 2007. Taxpayer Exhibit No. 6.181 to 6.183 indicated that the employee did not receive paychecks from August 6, 2006 to September 8, 2006, September 10, 2006 to November 24, 2006, November 26, 2006 to December 22, 2006, and January 7, 2007 to January 25, 2007 because the employee was on unpaid leave. [**Taxpayer Ex. No. 6.3; 6.181 – 6.183**]. The employee occupied the position during the 2006 – 2007 period for 34 weeks. [**Taxpayer Ex. 3.1 – Line 28**].

64. Taxpayer Exhibit No. 3.1, Line 29 refers to employee SC during the qualifying 12-month period from October 7, 2009 to October 6, 2010. Taxpayer Exhibit No. 6.246 to 6.247 indicated that the employee did not receive paychecks from November 29, 2009 to December 24,

2009, and January 3, 2010 to January 22, 2010 because the employee was receiving a weekly indemnity benefit or the employee was on unpaid leave. [**Taxpayer Ex. No. 6.3; 6.246 – 6.247**]. The employee occupied the position during the 2009 – 2010 period for 47 weeks. [**Taxpayer Ex. 3.1 – Line 29**].

65. Taxpayer Exhibit No. 3.1, Line 30 refers to employee BC during the qualifying 12-month period from August 5, 2007 to August 4, 2008. Taxpayer Exhibit No. 6.194 to 6.196 indicated that the employee did not receive paychecks from September 30, 2007 to November 23, 2007, November 25, 2007 to December 28, 2007, January 6, 2008 to January 18, 2008, and March 9, 2008 to March 21, 2008, because the employee was on unpaid leave. [**Taxpayer Ex. No. 6.2; 6.194 – 6.196**]. The employee occupied the position during the 2007 – 2008 period for 41 weeks. [**Taxpayer Ex. 3.1 – Line 30**].

66. Taxpayer Exhibit No. 3.1, Lines 31 and 32 refer to the same employee (TC) over the course of two consecutive qualifying 12-month periods from December 10, 2007 to December 9, 2009.

- a. With concern for the period from 2007 to 2008, Taxpayer Exhibit No. 6.237 to 6.243 indicated that the employee did not receive a paycheck from March 22, 2008 to May 1, 2008, and September 20, 2008 to November 27, 2008 because the employee was receiving a weekly indemnity benefit or was on unpaid leave. [**Taxpayer Ex. No. 6.3; 6.237 – 6.243**]. The employee occupied the position during the 2007 – 2008 period for 38 weeks. [**Taxpayer Ex. 3.1 – Line 31**].
- b. With concern for the period from 2008 to 2009, Taxpayer Exhibit No. 6.133 to 6.139 indicated that the employee did not receive a paycheck from December 10, 2008 to December 24, 2008, January 3, 2009 to February 19, 2009, February 21,

2009 to May 28, 2009, May 30, 2009 to June 25, 2009, and July 4, 2009 to September 4, 2009 because the employee was receiving a weekly indemnity benefit or was on unpaid leave. **[Taxpayer Ex. No. 6.1a; 6.133 – 6.139]**. The employee occupied the position during the 2008 – 2009 period for 20 weeks. **[Taxpayer Ex. 3.1 – Line 32]**.

67. Taxpayer Exhibit No. 3.1, Line 33 refers to employee JC during the qualifying 12-month period from March 17, 2008 to March 16, 2008 [sic]. Taxpayer Exhibit No. 6.2 indicates that the period at issue is March 17, 2008 to March 16, 2009 despite the error in Taxpayer Exhibit 3, Line 33. Taxpayer Exhibit 6.140 to 6.145 indicated that the employee did not receive paychecks from August 16, 2008 to August 29, 2008, January 17, 2009 to February 5, 2009, and February 7, 2009 to February 19, 2009 because the employee was receiving a weekly indemnity benefit or was on unpaid leave. **[Taxpayer Ex. No. 6.2; 6.140 – 6.145]**. The employee occupied the position during the 2008 – 2009 period for 45 weeks. **[Taxpayer Ex. 3.1 – Line 33]**.

68. Taxpayer Exhibit No. 3.1, Line 34 refers to employee JC during the qualifying 12-month period from March 17, 2011 to March 17 [sic], 2012. Taxpayer Exhibit 6.248 to 6.253 indicated that the employee did not receive paychecks from March 17, 2011 to June 2, 2011, June 4, 2011 to July 1, 2011, and July 9, 2011 to August 11, 2011 because the employee was receiving a weekly indemnity benefit or was on unpaid leave. **[Taxpayer Ex. No. 6.3; 6.248 – 6.253]**. The employee occupied the position during the 2011 – 2012 period for 35 weeks. **[Taxpayer Ex. 3.1 – Line 34]**.

69. Taxpayer Exhibit No. 3.1, Line 35 refers to employee CC during the qualifying 12-month period from May 7, 2009 to May 6, 2010. Taxpayer Exhibit 6.96 to 6.98 indicated that

the employee did not receive paychecks from May 7, 2009 to May 29, 2009, May 31, 2009 to July 3, 2009, July 5, 2009 to September 11, 2009, and September 13, 2009 to November 6, 2009 because the employee was receiving a weekly indemnity benefit. **[Taxpayer Ex. No. 6.1a; 6.96 – 6.98]**. The employee occupied the position during the 2009 – 2010 period for 29 weeks. **[Taxpayer Ex. 3.1 – Line 35]**.

70. Taxpayer Exhibit No. 3.1, Line 36 refers to employee DC during the qualifying 12-month period from August 9, 2009 to August 8, 2010. Taxpayer Exhibit 6.216 to 6.217 indicated that the employee did not receive paychecks from January 3, 2010 to March 5, 2010, because the employee was receiving a weekly indemnity benefit or was on unpaid leave. **[Taxpayer Ex. No. 6.3; 6.216 – 6.217]**. The employee occupied the position during the 2009 – 2010 period for 44 weeks. **[Taxpayer Ex. 3.1 – Line 36]**.

71. Taxpayer Exhibit No. 3.1, Lines 37 and 38 refer to the same employee (BC) over the course of two consecutive qualifying 12-month periods from November 15, 2006 to November 14, 2008.

- a. With concern for the period from 2006 to 2007, Taxpayer Exhibit No. 6.184 to 6.188 indicated that the employee did not receive a paycheck from May 13, 2007 to May 25, 2007, June 3, 2007 to July 6, 2007, July 8, 2007 to August 24, 2007, August 26, 2007 to September 7, 2007, and September 16, 2007 to November 14, 2007 because the employee was on unpaid leave. **[Taxpayer Ex. No. 6.2; 6.184 – 6.188]**. The employee occupied the position during the 2006 – 2007 period for 32 weeks. **[Taxpayer Ex. 3.1 – Line 37]**.
- b. With concern for the period from 2007 to 2008, Taxpayer Exhibit No. 6.189 to 6.193 indicated that the employee did not receive a paycheck from November 25,

2007 to December 28, 2007, January 6, 2008 to March 21, 2008, April 27, 2008 to May 30, 2008, and June 1, 2008 to July 4, 2008 because the employee was on unpaid leave. [**Taxpayer Ex. No. 6.2; 6.189 – 6.193**]. The employee occupied the position during the 2007 – 2008 period for 29 weeks. [**Taxpayer Ex. 3.1 – Line 38**].

72. Taxpayer Exhibit No. 3.1, Line 39 refers to employee LD during the qualifying 12-month period from October 8, 2005 to October 7, 2006. Taxpayer Exhibit 6.36 to 6.37 indicated that the employee did not receive paychecks from July 8, 2006 to September 7, 2006, and September 16, 2006 to October 5, 2006, because the employee was on unpaid leave. [**Taxpayer Ex. No. 6.1; 6.36 – 6.37**]. The employee occupied the position during the 2005 – 2006 period for 43 weeks. [**Taxpayer Ex. 3.1 – Line 39**].

73. Taxpayer Exhibit No. 3.1, Line 40 refers to employee DD during the qualifying 12-month period from May 28, 2007 to May 27, 2008. Taxpayer Exhibit 6.38 to 6.40 indicated that the employee did not receive paychecks from March 23, 2008 to May 9, 2008 because the employee was on unpaid leave. [**Taxpayer Ex. No. 6.1; 6.38 – 6.40**]. The employee occupied the position during the 2007 – 2008 period for 46 weeks. [**Taxpayer Ex. 3.1 – Line 40**].

74. Taxpayer Exhibit No. 3.1, Line 41 refers to employee JD during the qualifying 12-month period from October 2, 2008 to October 1, 2009. Taxpayer Exhibit 6.89 to 6.90 indicated that the employee did not receive paychecks from November 9, 2008 to November 19, 2008, December 7, 2008 to December 26, 2008, January 4, 2009 to February 6, 2009, and February 8, 2009 to February 20, 2009, because the employee was receiving a weekly indemnity benefit or was on unpaid leave. [**Taxpayer Ex. No. 6.1a; 6.89 – 6.90**]. The employee occupied the position during the 2008 – 2009 period for 44 weeks. [**Taxpayer Ex. 3.1 – Line 41**].

75. Taxpayer Exhibit No. 3.1, Line 42 refers to employee MD during the qualifying 12-month period from February 2, 2007 to February 1, 2008. Taxpayer Exhibit 6.41 to 6.42 indicated that the employee did not receive paychecks from May 13, 2007 to May 25, 2007, June 3, 2007 to June 29, 2007, and July 8, 2007 to August 10, 2007 because the employee was on unpaid leave. **[Taxpayer Ex. No. 6.1; 6.41 – 6.42]**. The employee occupied the position during the 2007 – 2008 period for 44 weeks. **[Taxpayer Ex. 3.1 – Line 42]**.

76. Taxpayer Exhibit No. 3.1, Line 43 refers to employee FF during the qualifying 12-month period from August 9, 2008 to August 8, 2009. Taxpayer Exhibit 6.105 to 6.108 indicated that the employee did not receive paychecks from January 4, 2009 to February 6, 2009, February 8, 2009 to April 10, 2009, April 12, 2009 to May 29, 2009, May 31, 2009 to June 26, 2009, and July 5, 2009 to July 24, 2009 because the employee was receiving a weekly indemnity benefit or was on unpaid leave. **[Taxpayer Ex. No. 6.1a; 6.105 – 6.108]**. The employee occupied the position during the 2008 – 2009 period for 29 weeks. **[Taxpayer Ex. 3.1 – Line 43]**.

77. Taxpayer Exhibit No. 3.1, Line 44 refers to employee JG during the qualifying 12-month period from December 27, 2006 to December 26, 2007. Taxpayer Exhibit 6.16 to 6.17 indicated that the employee did not receive paychecks from September 30, 2007 to November 23, 2007 because the employee was on unpaid leave. **[Taxpayer Ex. No. 6.1; 6.16 – 6.17]**. The employee occupied the position during the 2006 – 2007 period for 45 weeks. **[Taxpayer Ex. 3.1 – Line 44]**.

78. Taxpayer Exhibit No. 3.1, Line 45 refers to employee VH during the qualifying 12-month period from January 5, 2012 to January 4, 2013. Taxpayer Exhibit 6.275 indicated that the employee did not receive paychecks from October 14, 2012 to October 26, 2012, October 28,

2012 to November 23, 2012, November 25, 2012 to December 14, 2012, and December 23, 2012 to January 4, 2013, because the employee was receiving workers' compensation benefits.

[Taxpayer Ex. No. 6.4; 6.275]. The employee occupied the position during the 2012 – 2013 period for 46 weeks. **[Taxpayer Ex. 3.1 – Line 45]**.

79. Taxpayer Exhibit No. 3.1, Line 46 refers to employee TI during the qualifying 12-month period from July 16, 2007 to July 15, 2008. Taxpayer Exhibit 6.197 to 6.199 indicated that the employee did not receive paychecks from August 26, 2007 to September 7, 2007, September 23, 2007 to November 2, 2007, and March 30, 2008 to April 25, 2008, because the employee was on unpaid leave. **[Taxpayer Ex. No. 6.2; 6.197 – 6.199]**. The employee occupied the position during the 2007 – 2008 period for 43 weeks. **[Taxpayer Ex. 3.1 – Line 46]**.

80. Taxpayer Exhibit No. 3.2, Lines 47 and 48 refer to the same employee (RI) over the course of two consecutive qualifying 12-month periods from December 1, 2009 to November 30, 2011.

- a. With concern for the period from 2009 to 2010, Taxpayer Exhibit 6.220 to 6.222 indicated that the employee did not receive paychecks from August 1, 2010 to September 10, 2010, September 12, 2010 to October 29, 2010, and October 31 2010 to November 26, 2010 because the employee was receiving a weekly indemnity benefit or was on unpaid leave. **[Taxpayer Ex. No. 6.3; 6.220 – 6.222]**. The employee occupied the position during the 2009 – 2010 period for 38 weeks. **[Taxpayer Ex. 3.2 – Line 47]**.
- b. With concern for the period from 2010 to 2011, Taxpayer Exhibit 6.223 to 6.225 indicated that the employee did not receive paychecks from December 2, 2010 to December 24, 2010, and January 2, 2011 to March 4, 2011 because the employee

was receiving a weekly indemnity benefit or was on unpaid leave. [**Taxpayer Ex. No. 6.3; 6.223 – 6.225**]. The employee occupied the position during the 2010 – 2011 period for 41 weeks. [**Taxpayer Ex. 3.2 – Line 48**].

81. Taxpayer Exhibit No. 3.2, Lines 49 and 50 refer to the same employee (SJ) over the course of two consecutive qualifying 12-month periods from December 17, 2006 to December 16, 2008.

- a. With concern for the period from 2006 to 2007, Taxpayer Exhibit No. 6.18 to 6.20 indicated that the employee did not receive a paycheck from July 8, 2007 to August 31, 2007 because the employee was on unpaid leave. [**Taxpayer Ex. No. 6.1; 6.18 – 6.20**]. The employee occupied the position during the 2006 – 2007 period for 45 weeks. [**Taxpayer Ex. 3.2 – Line 49**].
- b. With concern for the period from 2007 to 2008, Taxpayer Exhibit No. 6.210 to 6.212 indicated that the employee did not receive a paycheck from April 20, 2008 to May 23, 2008, and September 28, 2008 to October 17, 2008 because the employee was receiving a weekly indemnity benefit or was on unpaid leave. [**Taxpayer Ex. No. 6.3; 6.210 – 6.212**]. The employee occupied the position during the 2007 – 2008 period for 47 weeks. [**Taxpayer Ex. 3.2 – Line 50**].

82. Taxpayer Exhibit No. 3.2, Line 51 refers to employee EJ during the qualifying 12-month period from July 30, 2006 to July 29, 2007. Taxpayer Exhibit 6.21 to 6.22 indicated that the employee did not receive paychecks from January 14, 2007 to April 6, 2007 because the employee was on unpaid leave. [**Taxpayer Ex. No. 6.1; 6.21 – 6.22**]. The employee occupied the position during the 2006 – 2007 period for 41 weeks. [**Taxpayer Ex. 3.2 – Line 51**].

83. Taxpayer Exhibit No. 3.2, Line 52 refers to employee MJ during the qualifying 12-month period from December 27, 2004 to December 26, 2005. Taxpayer Exhibit 6.23 to 6.25 indicated that the employee did not receive paychecks from September 11, 2005 to November 11, 2005, because the employee was on unpaid leave. [**Taxpayer Ex. No. 6.1; 6.23 – 6.25**]. The employee occupied the position during the 2004 – 2005 period for 44 weeks. [**Taxpayer Ex. 3.2 – Line 52**].

84. Taxpayer Exhibit No. 3.2, Line 53 refers to employee MJ during the qualifying 12-month period from December 27, 2006 to December 26, 2007. Taxpayer Exhibit 6.26 to 6.28 indicated that the employee did not receive paychecks from July 8, 2007 to August 24, 2007, because the employee was on unpaid leave. [**Taxpayer Ex. No. 6.1; 6.26 – 6.28**]. The employee occupied the position during the 2006 – 2007 period for 46 weeks. [**Taxpayer Ex. 3.2 – Line 53**].

85. Taxpayer Exhibit No. 3.2, Line 54 refers to employee TK during the qualifying 12-month period from May 12, 2008 to May 11, 2009. Taxpayer Exhibit 6.166 to 6.167 indicated that the employee did not receive paychecks from March 15, 2009 to April 3, 2009, and April 12, 2009 to May 11, 2009 because the employee was absent without pay. [**Taxpayer Ex. No. 6.2; 6.166 – 6.167**]. The employee occupied the position during the 2008 – 2009 period for 46 weeks. [**Taxpayer Ex. 3.2 – Line 54**].

86. Taxpayer Exhibit No. 3.2, Line 55 refers to employee VK during the qualifying 12-month period from January 28, 2007 to January 27, 2008. Taxpayer Exhibit 6.29 to 6.30 indicated that the employee did not receive paychecks from February 11, 2007 to March 23, 2007 because the employee was on unpaid leave. [**Taxpayer Ex. No. 6.1; 6.29 – 6.30**]. The

employee occupied the position during the 2007 – 2008 period for 47 weeks. [**Taxpayer Ex. 3.2 – Line 55**].

87. Taxpayer Exhibit No. 3.2, Line 56 refers to employee WL during the qualifying 12-month period from January 3, 2005 to January 2, 2006. Taxpayer Exhibit 6.170 to 6.171 indicated that the employee did not receive paychecks from July 10, 2005 to September 9, 2005 because the employee was on unpaid leave or absent without pay. [**Taxpayer Ex. No. 6.2; 6.170 – 6.171**]. The employee occupied the position during the 2005 – 2006 period for 44 weeks. [**Taxpayer Ex. 3.2 – Line 56**].

88. Taxpayer Exhibit No. 3.2, Line 57 refers to employee CL during the qualifying 12-month period from January 3, 2004 to January 2, 2005. Taxpayer Exhibit 6.168 to 6.169 indicated that employee CL did not receive paychecks from October 31, 2004 to November 26, 2004, and November 28, 2004 to December 24, 2004 because the employee was absent without pay. [**Taxpayer Ex. No. 6.2; 6.168 - 169**]. The employee occupied the position during the 2004 – 2005 period for 47 weeks. [**Taxpayer Ex. 3.2 – Line 57**].

89. Taxpayer Exhibit No. 3.2, Line 58 refers to employee RL during the qualifying 12-month period from October 8, 2008 to October 7, 2009. Taxpayer Exhibit 6.34 to 6.35 indicated that the employee did not receive paychecks from August 9, 2009 to September 11, 2009, and September 13, 2009 to October 7, 2009 because the employee was receiving workers' compensation benefits. [**Taxpayer Ex. No. 6.1; 6.34 – 6.35**]. The employee occupied the position during the 2008 – 2009 period for 45 weeks. [**Taxpayer Ex. 3.2 – Line 58**].

90. Taxpayer Exhibit No. 3.2, Lines 59 and 60 refer to the same employee (TM) over the course of two consecutive qualifying 12-month periods from September 8, 2007 to September 7, 2009.

- a. With concern for the period from 2007 to 2008, Taxpayer Exhibit 6.50 to 6.55 indicated that the employee did not receive paychecks from February 17, 2008 to March 21, 2008, March 23, 2008 to May 30, 2008, June 1, 2008 to July 4, 2008, and July 6, 2008 to September 5, 2008 because the employee was on unpaid leave. **[Taxpayer Ex. No. 6.1; 6.50 – 6.55]**. The employee occupied the position during the 2007 – 2008 period for 28 weeks. **[Taxpayer Ex. 3.2 – Line 59]**.
- b. With concern for the period from 2008 to 2009, Taxpayer Exhibit 6.204 to 6.209 indicated that the employee did not receive paychecks from September 8, 2008 to November 28, 2008, November 30, 2008 to December 26, 2008, January 4, 2009 to April 10, 2009, April 12, 2009 to May 29, 2009, May 31, 2009 to July 3, 2009, July 5, 2009 to August 21, 2009, and August 23, 2009 to September 7, 2009 because the employee received a weekly indemnity benefit or was on unpaid leave. **[Taxpayer Ex. No. 6.3; 6.204 – 6.209]**. The employee occupied the position during the 2008 – 2009 period for 7 weeks. **[Taxpayer Ex. 3.2 – Line 60]**.

91. Taxpayer Exhibit No. 3.2, Line 61 refers to employee EM during the qualifying 12-month period from November 12, 2010 to November 11, 2011. Taxpayer Exhibit 6.260 indicated that the employee did not receive paychecks from November 28, 2010 to December 24, 2010, and January 2, 2011 to February 11, 2011 because the employee was receiving a weekly indemnity benefit or was on unpaid leave. **[Taxpayer Ex. No. 6.3; 6.260]**. The employee occupied the position during the 2010 – 2011 period for 44 weeks. **[Taxpayer Ex. 3.2 – Line 61]**.

92. Taxpayer Exhibit No. 3.2, Line 62 refers to employee BM during the qualifying 12-month period from May 14, 2007 to May 13, 2008. Taxpayer Exhibit 6.56 to 6.58 indicated that the employee did not receive paychecks from August 26, 2007 to September 7, 2007, December 9, 2007 to December 28, 2007, and January 6, 2008 to February 8, 2008 because the employee was on unpaid leave. **[Taxpayer Ex. No. 6.1; 6.56 – 6.58]**. The employee occupied the position during the 2007 – 2008 period for 45 weeks. **[Taxpayer Ex. 3.2 – Line 62]**.

93. Taxpayer Exhibit No. 3.2, Line 63 refers to employee BM during the qualifying 12-month period from February 23, 2007 to February 22, 2008. Taxpayer Exhibit 6.59 to 6.60 indicated that the employee did not receive paychecks from October 14, 2007 to October 26, 2007, October 28, 2007 to November 23, 2007, and November 25, 2007 to December 21, 2007 because the employee was on unpaid leave. **[Taxpayer Ex. No. 6.1; 6.59 – 6.60]**. The employee occupied the position during the 2007 – 2008 period for 45 weeks. **[Taxpayer Ex. 3.2 – Line 63]**.

94. Taxpayer Exhibit No. 3.2, Lines 64 and 65 refer to the same employee (BM) over the course of two consecutive qualifying 12-month periods from February 26, 2005 to February 25, 2007.

- a. With concern for the period from 2005 to 2006, Taxpayer Exhibit 6.172 to 6.174 indicated that the employee did not receive paychecks from March 6, 2005 to April 29, 2006 because the employee was on unpaid leave. **[Taxpayer Ex. No. 6.2; 6.172 – 6.174]**. The employee occupied the position during the 2005 – 2006 period for 46 weeks. **[Taxpayer Ex. 3.2 – Line 64]**.
- b. With concern for the period from 2006 to 2007, Taxpayer Exhibit 6.31 to 6.33 indicated that the employee did not receive paychecks from July 16, 2006 to

September 8, 2006 because the employee was on unpaid leave. [**Taxpayer Ex. No. 6.1; 6.31 – 6.33**]. The employee occupied the position during the 2006 – 2007 period for 46 weeks. [**Taxpayer Ex. 3.2 – Line 65**].

95. Taxpayer Exhibit No. 3.2, Lines 66 and 67 refer to the same employee (ZR) over the course of two consecutive qualifying 12-month periods from January 17, 2007 to January 16, 2009.

a. With concern for the period from 2007 to 2008, Taxpayer Exhibit 6.200 to 6.203 indicated that the employee did not receive paychecks from April 1, 2007 to April 13, 2007, July 8, 2007 to August 10, 2007, August 12, 2007 to August 24, 2007, November 11, 2007 to November 23, 2007, November 25, 2007 to December 28, 2007, and January 6, 2007 [sic] to January 16, 2008 because the employee was receiving workers' compensation benefits or on unpaid leave. [**Taxpayer Ex. No. 6.2; 6.200 – 6.203**]. The employee occupied the position during the 2007 – 2008 period for 40 weeks. [**Taxpayer Ex. 3.2 – Line 66**].

b. With concern for the period from 2008 to 2009, Taxpayer Exhibit 6.101 to 6.104 indicated that the employee did not receive paychecks from January 17, 2008 to March 21, 2008, and March 23, 2008 to May 2, 2008 because the employee was on unpaid leave. [**Taxpayer Ex. No. 6.1a; 6.101 – 6.104**]. The employee occupied the position during the 2008 – 2009 period for 38 weeks. [**Taxpayer Ex. 3.2 – Line 67**].

96. Taxpayer Exhibit No. 3.2, Line 68 refers to employee TS during the qualifying 12-month period from November 22, 2003 to November 21, 2004. Taxpayer Exhibit 6.76 to 6.86 indicated that the employee did not receive paychecks from November 22, 2003 to January 2,

2004, January 4, 2004 to February 20, 2004, February 22, 2004 to March 5, 2004, March 14, 2004 to April 16, 2004, May 2, 2004 to June 4, 2004, June 6, 2004 to July 2, 2004, July 4, 2004 to September 10, 2004, and September 12, 2004 to October 8, 2004 because the employee was on unpaid leave. [**Taxpayer Ex. No. 6.1; 6.76 – 6.86**]. The employee occupied the position during the 2003 – 2004 period for 17 weeks. [**Taxpayer Ex. 3.2 – Line 68**].

97. Taxpayer Exhibit No. 3.2, Lines 69 and 70 refer to the same employee (TS) over the course of two consecutive qualifying 12-month periods from November 22, 2005 to November 21, 2007.

a. With concern for the period from 2005 to 2006, Taxpayer Exhibit 6.263 to 6.273 indicated that the employee did not receive paychecks from November 27, 2005 to December 23, 2005, January 1, 2006 to February 24, 2006, February 26, 2006 to May 1, 2006, and May 3, 2006 to May 26, 2006 because the employee was on unpaid leave. [**Taxpayer Ex. No. 6.3; 6.263 – 6.273**]. The employee occupied the position during the 2005 – 2006 period for 31 weeks. [**Taxpayer Ex. 3.2 – Line 69**].

b. With concern for the period from 2006 to 2007, Taxpayer Exhibit 6.61 to 6.70 indicated that the employee did not receive paychecks from August 12, 2007 to August 24, 2007, August 26, 2007 to September 7, 2007, and September 30, 2007 to November 21, 2007 because the employee was on unpaid leave. [**Taxpayer Ex. No. 6.1; 6.61 – 6.70**]. The employee occupied the position during the 2006 – 2007 period for 44 weeks. [**Taxpayer Ex. 3.2 – Line 70**].

98. Taxpayer Exhibit No. 3.2, Line 71 refers to employee NS during the qualifying 12-month period from July 12, 2011 to July 11, 2012. Taxpayer Exhibit 6.215 indicated that the

employee did not receive paychecks from February 26, 2012 to May 4, 2012 because the employee was on unpaid leave. [**Taxpayer Ex. No. 6.3; 6.215**]. The employee occupied the position during the 2011 – 2012 period for 44 weeks. [**Taxpayer Ex. 3.2 – Line 71**].

99. Taxpayer Exhibit No. 3.2, Line 72 refers to employee TT during the qualifying 12-month period from January 3, 2007 to January 2, 2008. Taxpayer Exhibit 6.43 to 6.45 indicated that the employee did not receive paychecks from August 26, 2007 to September 7, 2007, September 23, 2007 to November 23, 2007, and November 25, 2007 to December 28, 2007 because the employee was on unpaid leave. [**Taxpayer Ex. No. 6.1; 6.43 – 6.45**]. The employee occupied the position during the 2007 – 2008 period for 39 weeks. [**Taxpayer Ex. 3.2 – Line 72**].

100. Taxpayer Exhibit No. 3.2, Line 73 refers to employee KT during the qualifying 12-month period from December 27, 2006 to December 26 [sic], 2007. Taxpayer Exhibit 6.99 to 6.100 indicated that the employee did not receive paychecks from March 25, 2007 to April 6, 2007, April 8, 2007 to June 1, 2007, and October 28, 2007 to November 9, 2007 because the employee was on unpaid leave. [**Taxpayer Ex. No. 6.1a; 6.89 – 6.100**]. The employee occupied the position during the 2006 – 2007 period for 43 weeks. [**Taxpayer Ex. 3.2 – Line 73**].

101. Taxpayer Exhibit No. 3.2, Line 74 refers to employee TT during the qualifying 12-month period from March 17, 2008 to March 16, 2009. Taxpayer Exhibit 6.278 to 6.281 indicated that the employee did not receive paychecks from September 6, 2008 to November 6, 2008, November 8, 2008 to November 27, 2008, and December 13, 2008 to December 24, 2008 as a result in a change to the employee's hours. [**Taxpayer Ex. No. 6.4; 6.278 – 6.281**]. The employee occupied the position during the 2008 – 2009 period for 41 weeks. [**Taxpayer Ex. 3.2 – Line 74**].

102. Taxpayer Exhibit No. 3.2, Line 75 refers to employee TT during the qualifying 12-month period from March 17, 2011 to March 16, 2012. Taxpayer Exhibit 6.254 to 6.257 indicated that the employee did not receive paychecks from September 10, 2011 to October 14, 2011, December 11, 2011 to December 30, 2011, and January 8, 2012 to January 20, 2012 because the employee was receiving a weekly indemnity benefit or was on unpaid leave. **[Taxpayer Ex. No. 6.3; 6.254 – 6.257]**. The employee occupied the position during the 2011 – 2012 period for 45 weeks. **[Taxpayer Ex. 3.2 – Line 75]**.

103. Taxpayer Exhibit No. 3.2, Line 76 refers to employee VV during the qualifying 12-month period from December 27, 2006 to December 26, 2007. Taxpayer Exhibit 6.46 to 6.47 indicated that the employee did not receive paychecks from August 12, 2007 to August 24, 2007, August 26, 2007 to September 7, 2007, September 23, 2007 to October 12, 2007, and October 14, 2007 to November 9, 2007 because the employee was on unpaid leave. **[Taxpayer Ex. No. 6.1; 6.46 – 6.47]**. The employee occupied the position during the 2006 – 2007 period for 45 weeks. **[Taxpayer Ex. 3.2 – Line 76]**.

104. Taxpayer Exhibit No. 3.2, Lines 77 and 78 refer to the same employee (PW) over the course of two consecutive qualifying 12-month periods from May 7, 2008 to May 6, 2010.

- a. With concern for the period from 2008 to 2009, Taxpayer Exhibit 6.226 to 6.229 indicated that the employee did not receive paychecks from January 4, 2009 to April 10, 2009, and April 12, 2009 to May 6, 2009 because the employee was receiving a weekly indemnity benefit or was on unpaid leave. **[Taxpayer Ex. No. 6.3; 6.226 – 6.229]**. The employee occupied the position during the 2008 – 2009 period for 36 weeks. **[Taxpayer Ex. 3.2 – Line 77]**.

b. With concern for the period from 2009 to 2010, Taxpayer Exhibit 6.230 to 6.233 indicated that the employee did not receive paychecks from May 7, 2009 to May 29, 2009, May 31, 2009 to July 3, 2009, and July 5, 2009 to August 28, 2009 because the employee was receiving a weekly indemnity benefit or was on unpaid leave. **[Taxpayer Ex. No. 6.3; 6.230 – 6.233]**. The employee occupied the position during the 2009 – 2010 period for 38 weeks. **[Taxpayer Ex. 3.2 – Line 78]**.

105. Taxpayer Exhibit No. 3.2, Line 79 refers to employee MW during the qualifying 12-month period from January 3, 2006 to January 2, 2007. Taxpayer Exhibit 6.71 to 6.73 indicated that the employee did not receive paychecks from June 25, 2006 to July 7, 2006, July 9, 2006 to August 11, 2006, and August 13, 2006 to August 25, 2006 because the employee was on unpaid leave. **[Taxpayer Ex. No. 6.1; 6.71 – 6.73]**. The employee occupied the position during the 2006 – 2007 period for 47 weeks. **[Taxpayer Ex. 3.2 – Line 79]**.

106. Taxpayer Exhibit No. 3.2, Line 80 refers to employee JW during the qualifying 12-month period from December 11, 2007 to December 10, 2008. Taxpayer Exhibit 6.74 to 6.75 indicated that the employee did not receive paychecks from June 8, 2008 to July 4, 2008, and July 6, 2008 to August 15, 2008 because the employee was on unpaid leave. **[Taxpayer Ex. No. 6.1; 6.74 – 6.75]**. The employee occupied the position during the 2007 – 2008 period for 44 weeks. **[Taxpayer Ex. 3.2 – Line 80]**.

107. All credit applications are reviewed in a similar fashion. The Department reviews records to determine whether an eligible employee was employed in a qualifying position for the minimum period of time. An essential inquiry is whether the records demonstrate payment of

wages for the minimum duration of time required in a qualifying period. **[Testimony of Mr. Dillon].**

108. The type of records relied upon typically demonstrate wages earned, withholdings, and deductions, consistent with a “payroll dump” or “payroll register.”

[Testimony of Mr. Dillon].

109. The Department also cross-references records provided by an employer with records maintained by the Department of Workforce Solutions. **[Testimony of Mr. Dillon].**

110. Even after the Department requested additional supporting documents to establish entitlement to the credit subject of the protest, Taxpayer did not provide the types of supporting documents necessary for the Department to allow the credit for the 80 employees at issue, including those documents admitted as Taxpayer Ex. 6.1 – 6.283. **[Testimony of Mr. Dillon].**

DISCUSSION

Taxpayer submitted an Application for Rural Jobs Tax Credit in which it claimed 665 eligible jobs and a total credit of \$2,195,229.00 **[Taxpayer Ex. 1.1]**. The Department approved all but 80 jobs claimed and allowed a credit in the amount of \$2,115,372.20. **[Taxpayer Ex. 1.1; 2.1 – 2.72; 3.1 – 3.2]**. The issue in this case is whether the Taxpayer provided sufficient documentation establishing it was entitled to the claimed credit with respect the 80 jobs for which the credit was disallowed.

Burden of Proof.

Although the Department did not issue Taxpayer an assessment in this matter, Taxpayer still has the burden of establishing it was entitled to the claimed credit at issue. The New Mexico Court of Appeals has found that tax credits are legislative grants of grace to a taxpayer that must be narrowly interpreted and construed against a taxpayer. *See Team Specialty Prods. v. N.M.*

Taxation & Revenue Dep't, 2005-NMCA-020, ¶9, 137 N.M. 50 (internal citations omitted).

Under the rationale of *Team Specialty*, Taxpayer carries the burden of proving that it is entitled to the claimed credit. Nevertheless, although a credit must be narrowly interpreted and construed against a taxpayer, it still should be construed in a reasonable manner consistent with legislative language. *See Sec. Escrow Corp. v. State Taxation & Revenue Dep't*, 1988-NMCA-068, ¶9, 107 N.M. 540 (although construed narrowly against a taxpayer, deductions and exemptions—similar to credits—are still to be construed in a reasonable manner).

Rural Job Tax Credit

The Rural Job Tax Credit subject of this protest is established in NMSA 1978, Section 7-2E-1.1. That statute allows for an eligible employer to apply for a tax credit for each qualifying job the employer creates. *See* NMSA 1978, Section 7-2E-1.1 (A). The amount of the credit is twenty-five percent of the first \$16,000 in wages paid for the qualifying job if the job is performed or based at a qualifying location. *See* NMSA 1978, Section 7-2E-1.1 (C) (1).

With respect to the application process, NMSA 1978, Section 7-2E-1.1 (F) provides in relevant part that:

To receive a rural job tax credit with respect to any qualifying period, an eligible employer must apply to the taxation and revenue department on forms and in the manner the department may prescribe. The application shall include a certification made pursuant to Subsection D of this section. If all the requirements of this section have been complied with, the taxation and revenue department may issue to the applicant a document granting a tax credit for the appropriate qualifying period.

Subsection D, referenced by Section 7-2E-1.1 (F), states that an employer seeking the rural job tax credit “shall certify the amount of wages paid to each eligible employee during each qualifying period, the number of weeks during the qualifying period the position was occupied and

whether the qualifying job was in a tier one or tier two area.” *See* NMSA 1978, Section 7-2E-1.1 (D).

“Wages” is defined to mean “all compensation paid by an eligible employer to an eligible employee through the employer’s payroll system, including those wages the employee elects to defer or redirect, such as the employee’s contribution to 401(k) or cafeteria plan programs, but not including benefits or the employer’s share of payroll taxes.” *See* NMSA 1978, Section 7-2E-1.1 (N) (10). “Qualifying job” is defined to mean “a job established by the employer that is occupied by an eligible employee for at least forty-eight weeks of a qualifying period.” *See* NMSA 1978, Section 7-2E-1.1 (N) (5). “Qualifying period” means “the period of twelve months beginning on the day an eligible employee begins working in a qualifying job or the period of twelve months beginning on the anniversary of the day an eligible employee began working in a qualifying job.” *See* NMSA 1978, Section 7-2E-1.1 (N) (6).

From the Taxpayer’s perspective, therein lies the central issue in dispute in the protest. A critical element in the Department’s review of the Taxpayer’s application was to determine whether there were payroll records sufficient to substantiate that the Taxpayer paid wages to an employee for the minimum period of 48 weeks. The Department deems payment of wages to be evidence of occupancy and reviews all credit applications in the same manner. **[Testimony of Mr. Dillon]**.

Accordingly, with respect to each of the 80 employees for whom the credit was disallowed, the Department attempted to verify that each employee occupied the claimed job by comparing records of wages paid, provided by the employer, with the records of wages paid, through the Department of Workforce Solutions. When the Department concluded that payroll records of wages paid were insufficient to establish an employee’s wages for 48 weeks in a period, it also determined that the records were similarly insufficient to demonstrate that the employee also occupied the job

for the minimum duration in the qualifying period. [**Taxpayer Ex. 3.1 – 3.2**]. The Department's next step was to seek additional documentation from the Taxpayer. When the Taxpayer's response to the request for additional information remained inadequate for the purpose of verifying wages paid and occupancy, the Department disallowed the credit for the 80 employees.

Taxpayer argued that the Department deviated from the relevant inquiry when it began reviewing payroll records. The Taxpayer claimed the relevant inquiry was whether the employee occupied the job for 48 weeks, not whether the Taxpayer's records demonstrated that it paid wages over the entire duration of that period.

The facts with respect to each of the 80 disallowed employees are largely uncontested. [**Taxpayer Ex. No. 6.1 – 6.283**]. Taxpayer's records demonstrated that 80 employees did not receive wages from the Taxpayer for the full duration of 48 weeks during the relevant 12-month period. Nearly half of those employees incurred significant periods of unpaid leave, including unpaid sick leave and leave without pay. With respect to the other half, Taxpayer's records illustrated that those employees, some of whom also incurred significant periods of unpaid leave, also received compensation from a third party, described in Taxpayer's records as "weekly indemnity" or "worker's compensation" benefits. Taxpayer's records also indicated that there were no documents to demonstrate wages paid to a handful of employees who were classified as "flex employees" or who switched from hourly employees to salaried employees. Nevertheless, Taxpayer asserts the jobs continued to be occupied during those periods of time despite lapses in its records to demonstrate wages paid. Taxpayer's payroll records, admitted as Taxpayer Exhibit No. 6.1 – 6.283 consist of screen shots of its personnel database and provide minimal details.

Therein lies the central issue of dispute for the Department. It argued that although the lack of paid wages for 48 weeks in a period was a significant factor to consider, the final disallowance

resulted from a lack of sufficient documentation to establish that the 80 employees met the occupancy requirement. **[Testimony of Mr. Dillon]**. The type of documentation that the Department sought resembled what Mr. Dillon called a “payroll dump,” or payroll register. Although the types of documents a taxpayer may submit might vary from employer to employer, the Department required documents that were more detailed regarding an employee’s pay periods, pay dates, pay rates, hours worked per pay period, deductions, or withholdings. **[Testimony of Mr. Dillon; Dept. Ex. A and B (admitted for demonstrative purposes only)]**.

The documents admitted as Taxpayer Exhibit No. 6 were not provided to the Department during the initial review of the application or in response to any follow up inquiries. **[Testimony of Mr. Dillon]**. Even if those documents were provided upon the Departments’ request for additional information, the documents lack the detailed information that Mr. Dillon described as being essential for the Department’s consideration. The Hearing Officer agreed that the documents relied upon by the Taxpayer lacked the type of detailed information required to establish the Taxpayer’s entitlement to the claimed credit.

It is a canon of statutory construction in New Mexico to adhere to the plain wording of a statute except if there is ambiguity, error, an absurdity, or a conflict among statutory provisions. *See Regents of the Univ. of New Mexico v. New Mexico Fed’n of Teachers*, 1998-NMSC-20, ¶28, 125 N.M. 401. In *Wood v. State Educ. Ret. Bd.*, 2011-NMCA-20, ¶12 (internal quotations and citations omitted), the New Mexico 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.

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; *see also Amoco Prod. Co. v. N.M. Taxation & Revenue Dep't*, 1994-NMCA-086, ¶8 & ¶14, 118 N.M. 72. 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*, 2009-NMSC-036, ¶11, 146 N.M. 473. Because this case also involves a tax credit, which has been found to be an act of legislative grace, the language of the credit statute must be narrowly constructed. *See Team Specialty Prods*, 2005-NMCA-020, ¶9.

Applying these principles to the disputed credit, an eligible employer must apply to the taxation and revenue department on forms and in the manner the department may prescribe. *See* NMSA 1978, Section 7-2E-1.1 (F). The application must include a certification of the amount of wages paid to each eligible employee during each qualifying period, the number of weeks during the qualifying period the position was occupied and whether the qualifying job was in a tier one or tier two area. *See* NMSA 1978, Section 7-2E-1.1 (D). Only after all of the application requirements have been satisfied, the taxation and revenue department may issue to the applicant a document granting a tax credit for the appropriate qualifying period. *See* NMSA 1978, Section 7-2E-1.1 (F). In other words, the Department is not required to allow the tax credit until it is satisfied that a taxpayer has established an entitlement to the credit.

In this case, the Department approved all but 80 jobs claimed and granted a credit in the amount of \$2,115,372.20. Although it determined that the records provided by the Taxpayer with respect for the approved jobs claimed were sufficient, it was not satisfied that the records established a right to the credit for the remaining 80 disallowed jobs. With respect to disallowed

portion of the application, it was reasonable, and well within the Department's authority to request additional information. When the Taxpayer was unable to provide documentation that the Department found satisfactory to establish an entitlement to the remaining portion of the requested credit, it was well within its authority to disallow the credit for the remaining 80 jobs.

Although the Taxpayer challenges the method by which the Department ultimately disallowed the credit as to the 80 jobs, courts not only confer a greater weight to an agency's interpretation of a statute, but give a heightened degree of deference to an agency's interpretation if the statute implicates special agency expertise or reference to an agency's policies. *See Morningstar Water Users Ass'n v. New Mexico Pub. Util. Comm'n*, 120 N.M. 579, 583, 904 P.2d 28, 32 (1995).

In this case, the Department determined that verifying payment of wages and a more thorough review of payroll records was necessary in establishing whether a job had been occupied for the minimum period required by the statute. Taxpayer Ex. 3.2 cites "wages" which is defined to mean "all compensation paid by an eligible employer to an eligible employee through the employer's payroll system, including those wages the employee elects to defer or redirect, such as the employee's contribution to 401(k) or cafeteria plan programs, but not including benefits or the employer's share of payroll taxes." *See* NMSA 1978, Section 7-2E-1.1 (N) (10). A payroll register, a payroll dump, or an equivalent production of detailed payroll records would have allowed the Department to assess this information in regards to the 80 employees whose payroll records the Department found insufficient. **[Testimony of Mr. Dillon]**.

The Department's desire to verify such information was reasonable and consistent with its grant of authority provided in the statute in which an employer must apply to the taxation and revenue department on forms and in the manner the department may prescribe. An interpretation

that limits the Department's ability to verify the contents of an application, or conduct appropriate follow up, is inconsistent with the plain meaning of the statute which provides that the credit may not be granted until the Department is satisfied that the applicant has fulfilled the requirements of the statute. Such an interpretation would also require that the statute be construed in favor of the Taxpayer contrary to the directive in *Team Specialty*.

A brief sampling of Taxpayer's exhibits illustrates the reasonableness of the Department's actions and the necessity for more detailed information. Taxpayer Exhibit Nos. 3.2 – Line 68, and 6.76 – 6.86 established that the subject employee was paid wages for 17 weeks between November 22, 2003 and November 21, 2004. The remainder of the qualifying period was spent on unpaid leave that commenced on the same date as the qualifying period and extended for significant durations of time until October of 2004. Despite the employee being identified in Taxpayer's records as occupying the job, the employee was on unpaid leave. The definition of "wages" does not include unpaid leave.

Taxpayer Exhibit Nos. 3.1 – Line 2, and 6.146 – 6.155 illustrated that the subject employee was paid wages for 15 weeks and received worker's compensation benefits for the remainder of the qualifying period. Worker's compensation benefits, because they are paid by a third party to the employee, are also omitted from the definition of "wages" under NMSA 1978, Section 7-2E-1.1 (N) (10) because the benefit is not "paid by an eligible employer to an eligible employee *through the employer's payroll system*["]

The same is true for the employee subject of the next example. Taxpayer Exhibit Nos. 3.1 – Line 32, and 6.133 – 6.139 illustrated that the employee was paid wages for 20 weeks. The employee received a weekly indemnity benefit or was on unpaid leave for the remainder of the period. With regard for the weekly indemnity period, those benefits are paid by a third party, and

once again, similar to the scenario involving worker's compensation, not paid through the employer's payroll system.

Although worker's compensation benefits and weekly indemnity benefits may be viewed as wages or income for taxation purposes from the perspective of the employee, the relevant inquiry in this case occurs from the perspective of the employer. The Hearing Officer could not locate any legal authority, either under the Worker's Compensation Act or otherwise, to support any claim that these types of benefits, paid by a third party to an employee, should be credited to the employer as wages for the purpose of allowing the it to receive the benefit of the rural jobs tax credit.

Taxpayer Exhibit Nos. 3.1 – Line 16, and 6.282 indicated that the subject employee was paid wages for 34 weeks because the employee was a “flex employee,” but the Taxpayer's documents provided no supporting documentation. A final example derives from Taxpayer Exhibit Nos. 3.1 – Line 17, and 6.276 – 6.277 that illustrated that the subject employee was paid for 26 weeks, but Taxpayer's records suggest that the employee's pay records are incomplete because of a change to the employee's hours. However, the records indicate that the employee was absent without pay and no records are submitted to establish that the employee was paid wages for the minimum duration of time.

Although the Department sought additional documentation to determine whether the Taxpayer paid wages to the employee allegedly occupying a job, the Taxpayer did not respond with adequate documentation and the Department disallowed the credits.

Taxpayer briefly argued that even if an employee was not receiving a paycheck because they were absent with an illness or injury, that employee remained on the payroll register and continued to incur benefits. The records do not indicate what specific benefits each individual

employee may have incurred during an absence. In any event, the definition of “wages” expressly excludes benefits or the employer’s share of payroll taxes.

The evidence established that even though an employee may have been occupying a position on paper, or in a computer database, for a minimum period of 48 weeks, there was insufficient evidence to prove that the 80 employees were paid wages, as the term is defined by the statute, for the minimum duration of time necessary to qualify for the credit. The Department views the payment of wages to be a critical element of qualifying for the credit, and considers payment of wages to be evidence that a job is being occupied for the minimum period of time claimed. This interpretation of the statute is reasonable and consistent with legislative language.

The purpose of the rural job tax credit is to encourage businesses to develop and expand in rural areas of the State, with the obvious purpose of increasing employment and other economic opportunities for those who populate those areas. *See* NMSA 1978, Section 7-2E-1.1 (B). It is also apparent that the legislature intended the Department to give careful consideration to the form compensation an employee would receive from an employer seeking the credit. The legislature required that compensation be paid to the employee through the employer’s payroll system. The consequence is that an employer is prohibited from seeking the benefit of a tax credit in circumstances where it is unable to demonstrate that it has actually incurred and sustained the financial liability associated with providing employment.

In contrast, Taxpayer urges that the statute be interpreted to minimize, or even disregard, the absence of evidence to establish Taxpayer’s payment of wages over the mandatory minimum period. Rather, it urges that more significant weight be afforded to the evidence demonstrating that employees technically occupied the positions claimed, even if they were not collecting

wages. This interpretation of the statute is inconsistent with the legislative language and requires that the statute be construed against the Department contrary to the *Team Specialty*.

For these reasons, and because the Taxpayer has not carried the burden of proving that it was entitled to the claimed credit, the protest should be denied.

CONCLUSIONS OF LAW

A. Taxpayer filed a timely, written protest to the Department's partial denial of the claim for credit, and jurisdiction lies over the parties and the subject matter of this protest.

B. The Scheduling Hearing occurring on January 8, 2016 satisfied the 90-day hearing requirement of NMSA 1978, Section 7-1B-8 (A).

C. Taxpayer did not establish an entitlement to the Rural Jobs Tax Credit as to 80 disallowed jobs. *See Team Specialty Prods. v. N.M. Taxation & Revenue Dep't*, 2005-NMCA-020, ¶9, 137 N.M. 50 (Tax credits are legislative grants of grace to a taxpayer that must be narrowly interpreted and construed against a taxpayer).

For the foregoing reasons, the Taxpayers' protest **IS DENIED**.

DATED: February 6, 2017



Chris Romero
Hearing Officer
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