

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

**IN THE MATTER OF THE PROTEST OF
PAMELA CASTALDI
TO ASSESSMENT ISSUED UNDER
LETTER ID NO. L2082172720**

**AHO D&O 19-06
Case Number 18.12-323A**

v.

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

DECISION AND ORDER

An administrative hearing on the above-referenced protest was held on January 31, 2019 before Hearing Officer Ignacio V. Gallegos. Mr. Peter Breen Staff Attorney, and Ms. Milagros Bernardo, Auditor appeared on behalf of the Taxation and Revenue Department (Department). Pamela Castaldi (Taxpayer) appeared for the hearing representing herself.

Pamela Castaldi and Max Gangestad appeared as the witnesses for the Taxpayer. The Department presented no witnesses. Taxpayer presented one additional exhibit, marked Exhibit 1. The Department's Exhibits B and C-1 through C-7 were admitted. The Hearing Officer took administrative notice of all documents contained in the administrative file. All exhibits are more fully described in the Administrative Exhibit Log.

The sole issue presented before this tribunal in this protest is whether the Department properly assessed Taxpayer, after rejecting the Taxpayer's claim for "head of household" filing status. After making findings of fact in this matter and discussing the arguments and the pertinent legal authority in more detail, this tribunal ultimately concludes/rules that the Taxpayer prevails in this matter, as the Taxpayer was able to show that she met the requirements for the "head of household" filing status for the tax year.

Based on the evidence in the record, **IT IS DECIDED AND ORDERED AS FOLLOWS:**

FINDINGS OF FACT

1. On July 25, 2018, the Department issued an assessment to the Taxpayer for taxes due for personal income tax reporting period ending December 31, 2016. [L2082172720].
2. On October 6, 2018, the Taxpayer filed a timely protest. [Administrative file].
3. On November 7, 2018, the Department issued a letter acknowledging the Taxpayer's protest. [L1413230768].
4. On December 19, 2018, the Department filed a Request for Hearing asking that the Taxpayer's protest be scheduled for a scheduling hearing. [Administrative file].
5. On December 20, 2018, the Administrative Hearings Office sent notice of a telephonic scheduling hearing to the parties, setting the telephonic scheduling hearing for January 9, 2019. The hearing was set within 90 days of the receipt of the protest as required by statute, NMSA 1978 Section 7-1B-8 (A). [Administrative File].
6. On January 9, 2019, the undersigned hearing officer conducted a telephonic scheduling hearing. The Department appeared through its representative Attorney Peter Breen, however, the Taxpayer did not appear pro se or through an authorized representative.
7. On January 10, 2019 the Administrative Hearings Office sent notice of a merits hearing to the parties. The Taxpayer and the Department were notified that a hearing would be held on January 31, 2019 at 1:30 PM in Room 269 of the Wendell Chino Building, 1220 S. St. Francis Drive, Santa Fe, New Mexico.
8. The notice of hearing was mailed by first class mail to the Taxpayer at the address on file in her protest.
9. At the Merits hearing on January 31, 2019, the Taxpayer appeared in person, and Staff Attorney Peter Breen represented the Department, accompanied by Milagros Bernardo, Protest Auditor.
10. Taxpayer credibly testified that her adult son Max Gangestad was living with her more than half the calendar year of 2016. As part of the living arrangement, Ms.

Castaldi did not charge her son rent and she paid for food and other necessities. [Testimony of Ms. Castaldi, Hearing Record (H.R.) 13:45-14:00].

11. During 2016, Max Gangestad would have been under the age of 24 years old, and enrolled in college. [Testimony of Ms. Castaldi H.R. 15:30-16:10; Exhibit B].
12. Max Gangestad credibly testified, by telephone, that he lived with his mother Ms. Castaldi beginning June 24, 2016 through the end of the calendar year and beyond that time. [Testimony of M. Gangestad H.R. 28:00-29:35].
13. Max Gangestad averred, through an affidavit, the dates in 2016 that he was living with his mother. [Exhibit 1].
14. Ms. Castaldi and her child's father are divorced. Although there was some evidence from the divorce documentation, and from testimony that Max's father had primary custody at times, the divorce documentation is not conclusive as to what occurred in 2016. [Exhibit C1-C7].
15. The Department denied the Taxpayer's head of household filing status. [Testimony of Ms. Castaldi H.R. 38:45-39:20].

DISCUSSION

The sole issue in this protest is whether the Taxpayer is entitled to claim a "head of household" filing status on her 2016 Personal Income Tax return. Under NMSA 1978, Section 7-1-17 (C), the underlying assessments of tax issued in this case are presumed correct. Unless otherwise specified, for the purposes of the Tax Administration Act, "tax" is defined to include interest and civil penalty. *See* NMSA 1978, Section 7-1-3 (Y). Under Regulation 3.1.6.13 NMAC, the presumption of correctness under Section 7-1-17 (C) extends to the Department's assessment of penalty and interest. Therefore, the Taxpayer has the burden to overcome the assessment and show she was entitled to an abatement of tax. *See Archuleta v. O'Cheskey*, 1972-NMCA-165, ¶11, 84 N.M. 428, 504 P.2d 638. If Taxpayer can overcome the presumption of correctness in the assessment, the burden shifts to the Department to prove the assessment was justified. *See New Mexico Taxation & Revenue Dep't. v. Whitener*, 1993-NMCA-161, 117 N.M. 130, 869 P.2d 829; *MPC Ltd. v. New Mexico Taxation & Revenue Dep't.*, 2003-NMCA-021, 133 N.M. 217, 62 P.3d 308.

Head of Household.

State statute NMSA 1978, Section 7-2-2 (H) (2014) defines “head of household” to conform with federal law. Internal Revenue Code, 26 U.S.C. Section 2, is the federal statute which is the starting point to determine whether an individual qualifies as a head of household. Likewise, 26 C.F.R. 1.2-2 (b) is the federal regulation issued by the Department of the Treasury, Internal Revenue Service (IRS) that defines the term. The law requires three things: that the taxpayer is not married, the taxpayer paid more than half the cost of keeping up a home for the year, and that a qualifying person lived with the taxpayer for more than half the calendar year. *See* IRS Publication 501¹, page 8. In New Mexico, the instructions issued by the Secretary of the Taxation and Revenue Department are presumed to be an accurate implementation of the law. NMSA 1978, Section 9-11-6.2 (G) indicates: “[a]ny regulation, ruling, instruction or order issued by the secretary or delegate of the secretary is presumed to be a proper implementation of the provisions of the laws that are charged to the department, the secretary, any division of the department or any director of any division of the department.” Likewise, in federal jurisprudence, IRS regulations and interpretations are afforded significant deference. *See Mayo Found. For Med. Educ. & Research v. United States*, 562 U.S. 44, 53-57 (2011) (applying two-part test of *Chevron U.S.A. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) to IRS interpretation of statutes).

In order to be a “qualifying person” the federal law then considers a dependent child as a “qualifying child.” *See* 26 U.S.C. 152 and 26 C.F.R. 152-1 and 152-4. Under the federal law, there are five requirements for a dependent child: to have a certain familial relationship, to have the same principal place of abode, to be under 24 years of age (if a student), the child does not provide more than half his or her own support, and the child does not file a joint return. *See* IRS Publication 501, page 13.

Taxpayer presented credible evidence supporting each of the requirements under federal law. Ms. Castaldi is a single person who maintained a home in 2016 at her own expense, and provided a home and other necessities, including food, for her adult son. Her adult son was under the age of 24 years old and attending college at the time. In each of these requirements, the Department did not challenge the Taxpayer’s evidence, or present any evidence that may

¹ 2016 IRS Publication 501 is available online at <https://www.irs.gov/pub/irs-prior/p501--2016.pdf>

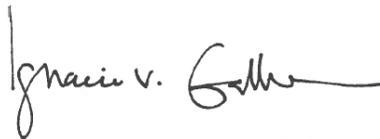
contradict the evidence presented. The evidence presented showed clearly that Taxpayer meets the federal requirements for “head of household” as defined by 26 U.S.C. Section 2 and 26 C.F.R. 1.2-2. By meeting these requirements, the Taxpayer also meets the statutory requirements of New Mexico law, Section 7-2-2 (H).

CONCLUSIONS OF LAW

- A. The Taxpayer filed a timely written protest to the Assessment issued under Letter ID number L2082172720, and jurisdiction lies over the parties and the subject matter of this protest.
- B. The Administrative Hearings Office held a hearing within the 90-day hearing requirement provided in NMSA 1978, Section, 7-1B-8 (A) and Regulation 22.600.3.8 (E).
- C. Pursuant to NMSA 1978, Section 7-1-17 (C) (2007), the Department’s assessment is presumed to be correct, and it is Taxpayer’s burden to come forward with evidence and legal argument to establish the assessment was made in error.
- D. The Taxpayer has satisfactorily met the burden of establishing she was entitled to the claimed “head of household” filing status at issue. *See* NMSA 1978, Section 7-2-2 (H) (2014). *See also* 26 U.S.C. Section 2. *See also* 26 C.F.R. 1.2-2 (b).

For the foregoing reasons, the Taxpayer’s protest IS GRANTED and the assessment of tax, penalty and interest should be ABATED in its entirety.

DATED: February 15, 2019.



Ignacio V. Gallegos
Hearing Officer
Administrative Hearings Office
Post Office Box 6400
Santa Fe, NM 87502

NOTICE OF RIGHT TO APPEAL

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

CERTIFICATE OF SERVICE

I hereby certify that I mailed the foregoing Decision and Order to the parties listed below this 15th day of February, 2019 in the following manner:

First Class Mail

Interoffice Mail

INTENTIONALLY BLANK

John D. Griego
Legal Assistant
Administrative Hearings Office
Post Office Box 6400
Santa Fe, NM 87502
PH: (505) 827-0466
FX: (505) 827-9732