

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

**IN THE MATTER OF THE PROTEST OF
JOEL W. & JACQUELINE R. DRAHMAN
TO RETURN ADJUSTMENT NOTICE
ISSUED UNDER LETTER
ID NO. L1442682160**

D&O # 18-01

DECISION AND ORDER

A formal hearing on the above-referenced protest was held on December 5, 2017 before Hearing Officer Chris Romero, Esq., in Santa Fe, New Mexico. The Taxation and Revenue Department (hereinafter “Department”) was represented by Mr. Peter Breen, Staff Attorney. Ms. Veronica Galewaler, Auditor, also appeared and testified as a witness on behalf of the Department. Mr. Joel W. Drahman appeared for the hearing *pro se* on behalf of himself and his spouse, Mrs. Jacqueline R. Drahman (hereinafter “Taxpayers”). The Hearing Officer took notice of all documents in the administrative file. Taxpayer Exhibits 1 – 4 and Department Exhibits A – E were admitted into the evidentiary record of the hearing without objection. A more detailed description of exhibits submitted at the hearing is included on the Administrative Exhibit Coversheet. Based on the evidence and arguments presented, **IT IS DECIDED AND ORDERED AS FOLLOWS:**

FINDINGS OF FACT

1. On June 6, 2017, the Department issued a Return Adjustment Notice under Letter ID No. L1442682160 (hereinafter “Notice”) in reference to an adjustment made to Taxpayers’ 2016 Personal Income Tax return. *See* Notice.
2. The adjustment stated that “NM wages were modified based on W2’s provided with the return or information on the return.” *See* Notice, Pg. 2.

3. On August 23, 2017, Taxpayers executed a Formal Protest that was received by the Department's Protest Office on September 6, 2017. Taxpayers requested a refund in the amount of \$11,775.00 in affirmative relief.

4. On September 26, 2017, the Department acknowledged receipt of Taxpayers' Formal Protest under Letter ID No. L1119698224.

5. On November 1, 2017, the Department filed a Hearing Request with the Administrative Hearings Office.

6. On November 1, 2017, the Administrative Hearings Office entered a Notice of Administrative Hearing setting a hearing on the merits of Taxpayers' protest for December 5, 2017.

7. Mr. Drahman and Mrs. Jacqueline R. Drahman are presently married and have been married during all times relevant to the above-captioned protest. [Testimony of Mr. Drahman].

8. Taxpayers resided in New Mexico for more than 13 years prior to the period relevant to their protest. [Testimony of Mr. Drahman].

9. Taxpayers filed their 2016 tax returns as married, filing jointly. [Testimony of Ms. Galewaler; Dept. Ex. E].

10. For more than 13 years, Mr. Drahman was employed by ENMR Plateau (hereinafter "Plateau") in Clovis, New Mexico. His employment with Plateau concluded on December 31, 2015. [Testimony of Mr. Drahman; Taxpayer Ex. 1].

11. Mr. Drahman's final paycheck from Plateau was issued early in 2016. Mr. Drahman estimated that the check was issued on the first Friday of 2016 and Plateau withheld

taxes in a manner consistent with previous payments made during Mr. Drahman's employment. [Testimony of Mr. Drahman].

12. Mr. Drahman was not thereafter employed in 2016. [Testimony of Mr. Drahman].

13. Mr. Drahman reported to move immediately to Nevada after his employment terminated. Mr. Drahman rented a room at 1720 Olympia Drive, in Las Vegas, Nevada. He rented the room from December 31, 2015 through March 15, 2016. [Testimony of Mr. Drahman; Taxpayer Ex. 2].

14. On or about March 10, 2016, Mr. Drahman purchased a residential property at 3235 Via Seranova, Henderson, NV 89044 (hereinafter "Nevada Property"). [Testimony of Mr. Drahman; Taxpayer Ex. 3].

15. Mr. Drahman procured utilities at the Nevada Property in his name. Utility service commenced on March 10, 2016 and was continuous through the remainder of 2016. [Testimony of Mr. Drahman; Taxpayer Ex. 4].

16. Utility bills for the Nevada Property illustrate a consumption of electricity equivalent to the following number of kWh per month from March through May of 2016: March - 218 kWh (March 10 - April 5) [Taxpayer Ex. 4.1]; April - 178 kWh (April 5 - May 4) [Taxpayer Ex. 4.2]; and May - 236 kWh (May 4 - June 3) [Taxpayer Ex. 4.3].

17. Utility bills for the Nevada Property illustrate that consumption of electricity significantly increased beginning in June of 2016. In comparison to the preceding months, consumption of electricity from June through December of 2016 was: June - 1,733 kWh (June 3 - July 6) [Taxpayer Ex. 4.4]; July - 1,816 kWh (July 6 - August 4) [Taxpayer Ex. 4.5]; August - 1,580 kWh (August 4 - September 6) [Taxpayer Ex. 4.6]; September - 915 kWh (September 6 - October 5) [Taxpayer Ex. 4.7]; October - 569 kWh (October 5 - November 2) [Taxpayer Ex.

4.8]; November – 691 kWh (November 2 – December 5) [Taxpayer Ex. 4.9]; and December – 899 kWh (December 5 – January 5) [Taxpayer Ex. 4.10].

18. Mr. Drahman explained that the use of electricity was consistent with the amount of time he or his family were present at the Nevada Property. With respect for months where the consumption of electricity was notably low, particularly March, April, and May of 2016, Mr. Drahman explained that was because he did not use much electricity and he was rarely present at the Nevada Property. [Testimony of Mr. Drahman].

19. Mrs. Drahman continued to be employed by the Clovis Municipal School District (hereinafter “the District”). She was employed by the District until the conclusion of the 2015 – 2016 school year. [Testimony of Mr. Drahman].

20. Taxpayers’ minor child resided with Mrs. Drahman and attended school in the State of New Mexico until the conclusion of the 2015 – 2016 school year. [Testimony of Mr. Drahman].

21. Shortly after conclusion of the 2015 – 2016 school year, Mrs. Drahman and Taxpayers’ minor child relocated to the State of Nevada. [Testimony of Mr. Drahman].

22. Mr. Drahman said that he assisted with moving Mrs. Drahman, Taxpayers’ minor child, and their personal belongings sometime between May 23 and May 30, 2016. [Testimony of Mr. Drahman].

23. Although Mrs. Drahman was employed during the 2015 – 2016 school year, and the termination of her employment coincided with the conclusion of the school year, the District compensated her on an annual basis. Accordingly, the District reported compensation in its reports to the department of workforce solutions on July 21, 2016 and October 18, 2016,

although the total wages reported in October 2016 were nominal. [Testimony of Mr. Drahman; Dept. Ex. A].

24. Records indicate that Taxpayers owned at least three automobiles during the relevant period of time. Two vehicles continued to be registered in the State of New Mexico through the months of May and April, 2017. [Dept. Ex. B; Dept. Ex. D].

25. A third vehicle, bearing Vehicle Identification Number WBAPH77599NL84133 is presently registered in New Mexico, with the registration scheduled to expire on July 31, 2018. [Testimony of Mr. Drahman; Dept. Ex. C].

26. This vehicle is presently located at the Nevada Property and continues to bear a New Mexico license plate. [Testimony of Mr. Drahman].

27. As of December 5, 2017, the physical address provided for the vehicle is 217 Dominion Way, Clovis, NM 88101. Mr. Drahman is identified as the primary owner of the vehicle. [Dept. Ex. C (see date in header)].

28. Mr. Drahman has never been registered to vote in New Mexico or Nevada, and has no intention to register. [Testimony of Mr. Drahman].

29. Taxpayers have not provided further documentation to establish an entitlement to a refund to the amount in dispute. [Testimony of Ms. Galewaler].

30. Taxpayers did not introduce their 2016 Personal Income Tax return or any other supporting documents which could reasonably be relied upon for computing their tax obligation for 2016.

DISCUSSION

The issue to be decided is whether Taxpayers are entitled to a refund equivalent to the portion of taxes that Plateau withheld and paid to the State of New Mexico deriving from Mr.

Drahman's employment, which terminated on December 31, 2015. Mr. Drahman asserted that this payment was his only income in 2016 and that it was paid after he moved to Nevada. Mr. Drahman on Taxpayers' behalf does not contest payment of taxes on income earned by Mrs. Drahman who continued to work and reside in New Mexico until the conclusion of the 2015 – 2016 school year.

Mr. Drahman argued that he intended to establish Nevada as his home by moving there immediately after concluding his employment with Plateau, although he also testified that he moved to Nevada on December 30, 2015, which was slightly before concluding his employment. Nonetheless, Mrs. Drahman and Taxpayers' minor child remained in New Mexico where Mrs. Drahman maintained employment with the District, and Taxpayers' minor child attended school. Mrs. Drahman and Taxpayers' minor child relocated to Nevada at the conclusion of the 2015 – 2016 school year, on or about May 23 or 24, 2016. The Department argued that there was insufficient evidence to establish that Mr. Drahman, changed domicile to Nevada as early as he asserted.

Timeliness of Protest

Although the Department does not raise timeliness of the protest as an issue, the Hearing Officer shall note for the record that the date appearing on the Notice is June 6, 2017. Taxpayers' protest, although apparently executed on August 23, 2017, was not received at the Department's Protest Office until September 6, 2017. The duration of time between the date appearing on the Notice and the date that the protest was received represented 92 days. To the extent an issue could have been raised as to the timeliness of Taxpayers' protest, under NMSA 1978, Sec. 7-1-24, the Department did not do so. Consequently, the Hearing Officer presumed in the absence of

argument to the contrary that the protest was timely, and any potential objections as to the timeliness of Taxpayers' protest were waived.

Presumption of Correctness and Burden of Proof

Taxpayers have the burden of establishing they are entitled to the claimed refund at issue. See Regulation 3.1.8.10 (A) NMAC. Taxpayers' claim for refund is premised on an overpayment of tax. "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." *Wing Pawn Shop v. Taxation and Revenue Department*, 1991-NMCA-024, ¶16, 111 N.M. 735 (internal citation omitted); See also *TPL, Inc. v. N.M. Taxation & Revenue Dep't*, 2003-NMSC-7, ¶9, 133 N.M. 447; See also *Corr. Corp. of Am. of Tenn. v. State*, 2007-NMCA-148, ¶17 & ¶29, 142 N.M. 779 (Court of Appeals reviewed a refund denial through "lens of presumption of correctness" and applied the principle that deductions underlying the claim for refund are to be construed narrowly). Consequently, Taxpayers must show that they are entitled to their claim for refund.

Filing Status and Residency

Ms. Galewaler testified that Mr. and Mrs. Drahman filed their 2016 New Mexico Personal Income Tax return as married, filing jointly. Although Mr. Drahman explained his intention to file separately in 2016, Ms. Galewaler confirmed that was not the case in this protest. Mr. Drahman was provided with the opportunity to supplement the record with a copy of Taxpayers' 2016 PIT return, but declined. Consequently, this analysis of the evidence and law will not speculate with regard to the outcome of Taxpayers' protest had Taxpayers indeed filed separately, rather than jointly.

Personal income tax is imposed “upon the net income of every resident individual” in New Mexico. *See* NMSA 1978, Section 7-2-3 (1981). A person is a resident if the person “is domiciled in this state during any part of the taxable year” or is present in the state for 185 days or more during the taxable year. *See* NMSA 1978, Section 7-2-2 (S) (2010). However, a person who changes their place of abode to a location outside of New Mexico during the taxable year “with the bona fide intention” of abiding there permanently is not a resident for the period of time after that change of abode. *Id.* A person is domiciled where that person intends to return after an absence and “has voluntarily fixed habitation of self and family with the intention of making a permanent home.” *See* Regulation 3.3.1.9 (C) (1) NMAC (2010). Everyone is deemed to be domiciled somewhere, and a person has only one domicile at a time. *See id.* Once domicile is established, it does not change until the person moves “with the bona fide intention” of making the new location his permanent home. *See* Regulation 3.3.1.9 (C) (2) NMAC (2010). There is not a change of domicile if a person’s “intent is to stay away only for a limited time, no matter how long”. *See* Regulation 3.3.1.9 (C) (3) NMAC (2010).

Residence is synonymous with domicile, and domicile does not require a person’s continued physical presence. *See Hagan v. Hardwick*, 1981-NMSC-002, ¶ 10, 95 N.M. 517. Domicile requires a physical presence at some time in the past with the intent to make a home there. *See id.* Once domicile is established, it is presumed to continue until it is shown to have changed. *See Id.*, ¶ 11. Several factors should be considered in determining residency. *See* Regulation 3.3.1.9 (C) (4) NMAC (2010). A person’s declarations are not sufficient to establish domicile. *See Texas v. Florida*, 306 U.S. 398, at 417 (1939). In determining a person’s domicile, the Supreme Court of the United States identified several factors to be considered. *Id.*, at 414.

These factors include time spent in a particular place, activities conducted there, what persons and things of importance are there, intent, and evidence on other domiciles. *See id.*

The Department and its regulations employ similar criteria for the purpose of assessing a person's domicile. *See* Regulation 3.3.1.9 (C) (4) NMAC. The first factor used to determine domicile is "homes or places of abode owned or rented (for the individual's use) by the individual, their location, size and value; and how they are used by the individual". *See* Regulation 3.3.1.9 (C) (4) (a) NMAC.

Although Mr. Drahman demonstrated that he rented a room in January, February, and a portion of March in 2016, and then purchased the Nevada Property, those facts alone fail to establish a change in domicile. The fact that Mrs. Drahman and Taxpayers' minor child remained in New Mexico weigh heavily in finding that Taxpayers continued to be domiciled in New Mexico at least until the time Mrs. Drahman and Taxpayers' minor child relocated to Nevada, at or around the time that the 2015 – 2016 school year concluded. Before that time, Mrs. Drahman continued to earn income in New Mexico, and both Mrs. Drahman and Taxpayers' minor child presumably maintained their personal belongings in New Mexico. In fact, Mr. Drahman made reference to utilizing a U-Haul truck or trailer to move their personal belongings from New Mexico to Nevada after conclusion of the 2015 – 2016 school year.

With respect to Mr. Drahman's presence in Nevada, there was insufficient information to establish how much time Mr. Drahman actually spent there prior to conclusion of the 2015 – 2016 school year. Mr. Drahman admitted that he was not employed after December 31, 2015 when he concluded his employment with Plateau. This is significant because Mr. Drahman would not have been subject to employment obligations that may have restricted his ability to

travel to and from New Mexico where his spouse and minor child continued to reside, or otherwise obligate him to remain in Nevada for continuous periods of time.

The Department also directed the Hearing Officer's attention to Taxpayer Exhibit 4 which detailed the consumption of electricity at the Nevada Property from the time the property was acquired through the end of 2016. The Hearing Officer observed that the consumption of electricity in the months preceding the date that Mrs. Drahman and Taxpayers' minor child purportedly relocated there was significantly lower than the months after the relocation. The Nevada Property consumed an average of 211 kWh per month in March, April, and May of 2016. Usage dramatically increased in June of 2016, to 1,733 kWh and never fell below 569 kWh per month for the remainder of the year.

Mr. Drahman asserted these observations were consistent with his use of electricity during those periods of time. Mr. Drahman also explained that energy use rises dramatically in the summer months as the demand for air conditioning increases. In this case, energy use increased dramatically in June of 2016 which may coincide with the increased demands for energy in the summer. However, the increase may also coincide with the testimony that Mrs. Drahman and Taxpayers' minor child relocated to the Nevada Property at the end of May.

However, Mr. Drahman also testified with respect for the months of March, April and May, "When I lived out there by myself, yea, the electric bills were pretty low. I mean, I didn't use much electric. I was gone from the house almost all the time." [See 42:39]. Mr. Drahman's testimony on this point was important because he admitted that he was rarely present at the Nevada Property.

Considering that Mr. Drahman's spouse and minor child continued to reside in New Mexico, that Mr. Drahman was not employed in Nevada, that Mr. Drahman admitted that he was

frequently absent from the Nevada Property, and energy bills consistent with such admission, the Hearing Officer is unpersuaded that Mr. Drahrman utilized the Nevada Property as his fulltime permanent residence at least until the summer months of 2016 when his family may have also moved to Nevada. Therefore, this factor supports the Department's finding that Taxpayers were residents of New Mexico at least until the conclusion of the 2015 – 2016 school year.

The second factor is

where the individual spends time during the tax year and how that time is spent; e.g., whether the individual is retired or is actively involved in a business, and whether the individual travels and the reasons for traveling, and where the individual spends time when not required to be at a location for employment or business reasons, and the overall pattern of residence of the individual[.]
3.3.1.9 (C) (4) (b) NMAC.

It was undisputed that from January 1, 2016 through the end of the 2015 – 2016 school year, Mrs. Drahrman and Taxpayers' minor child continued to reside in New Mexico, working and attending school. Although Mr. Drahrman asserted that he had relocated to Nevada, the record of where he spent his time between January 1, 2016 and the conclusion of the 2015 – 2016 school year remains vague. Mr. Drahrman admitted that he was not working during this period of time and that he was rarely at the Nevada Property. On the other hand, it was undisputed that his family remained in New Mexico.

It is well-established that a change of domicile requires intent and physical presence in the new location. *See Estate of Peck v. Chambers*, 1969-NMSC-054, 80 N.M. 290. A person cannot “elect to make his home in one place...for general purposes of life, and in another, where he in fact had no residence, for the purpose of taxation.” *Texas v. Florida*, 306 U.S. at 426. Moreover, a lack of physical presence in the location can undermine a person's expressed

intention to change domicile. *See Severns v. New Mexico Taxation and Revenue Dep't*, No. 31,817, mem. op. at ¶ 12 (NMCA April 1, 2013) (non-precedential).

Mr. Drahman expressed his intention to relocate himself and his family to Nevada. Taxpayers purchased a home and procured utility services. However, the evidence of physical presence prior to the end of the 2015 – 2016 school year was negligible and unpersuasive. In contrast, Mr. Drahman's spouse and minor child remained in New Mexico where they worked and attended school until the end of the 2015 – 2016 school year. This factor supports the Department's finding that Taxpayers were residents of New Mexico at least until the conclusion of the 2015 – 2016 school year.

The third factor is the individual's employment and its location. *See* Regulation 3.3.1.9 (C) (4) (c) NMAC. It was undisputed that Mr. Drahman's employment in New Mexico concluded on December 15, 2015, and that he was not thereafter employed in New Mexico or Nevada. However, Mrs. Drahman continued to be employed in New Mexico through the end of the 2015 – 2016 school year. This factor supports the Department's finding that Taxpayers were residents of New Mexico at least until the conclusion of the 2015 – 2016 school year.

The fourth factor is "home of place of abode of the individual's spouse, children, and dependent parents, and where minor children attend school". *See* Regulation 3.3.1.9 (C) (4) (d) NMAC. Although Mr. Drahman alleged that he moved to Nevada at the beginning of 2016, it was undisputed that Mrs. Drahman resided in New Mexico until she concluded her employment with the District at the conclusion of the 2015 – 2016 school year. Mr. Drahman's minor child resided with Mrs. Drahman while she also concluded her schooling for the same school year. At the conclusion of the school year, Mr. Drahman packed their belongings and relocated Mrs. Drahman and Taxpayers' minor child to Nevada. This factor supports the Department's finding

that Taxpayers were residents of New Mexico at least through the conclusion of the 2015 – 2016 school year.

The fifth factor is the location of residence in prior years. *See* Regulation 3.3.1.9 (C) (4) (e) NMAC. It was undisputed that Taxpayers were residents of New Mexico for more than 13 years prior to 2016. During this time, Taxpayers registered their automobiles in New Mexico, maintained employment in New Mexico, and enrolled their children in school in New Mexico. This factor supports the Department’s finding that Taxpayers were residents of New Mexico at least until the conclusion of the 2015 – 2016 school year.

The sixth factor is “ownership of real property other than residences”. *See* Regulation 3.3.1.9 (C) (4) (f) NMAC. There was no evidence that the Taxpayer owned any real property other than the residences in New Mexico or Nevada. This factor is neutral because it does not weigh in favor of domicile in New Mexico or Nevada.

The seventh factor is the “location of transactions with financial institutions, including the individual’s most active checking account and rental of safety deposit boxes”. *See* Regulation 3.3.1.9 (C) (4) (g) NMAC. There was no direct evidence presented on this issue. However, it is reasonable to infer that Mrs. Drahman continued to conduct various transactions in New Mexico while she continued to work and reside here. This factor supports the Department’s finding that Taxpayers were residents of New Mexico at least until the conclusion of the 2015 – 2016 school year.

The eighth factor is the location of club memberships and community affiliations. *See* Regulation 3.3.1.9 (C) (4) (h) NMAC. There was no evidence presented relevant to this factor which weighs neutrally between the parties.

The ninth factor is the address used to file federal tax returns. *See* Regulation 3.3.1.9 (C) (4) (i) NMAC. Mr. Drahrman did not seek to introduce Taxpayers' tax returns despite the express offer from counsel for the Department to permit Taxpayers to supplement the record. Mr. Drahrman politely declined. The Hearing Officer will note that the Return Adjustment Notice was mailed to Taxpayers' Nevada Property address. However, there is insufficient foundation upon which to also infer that the Nevada Property address was utilized in filing federal or state income tax returns. Because there is insufficient evidence relevant to this factor, it shall be weighed neutrally between the parties.

The tenth factor is where one is registered to vote. *See* Regulation 3.3.1.9 (C) (4) (j) NMAC. There was no evidence that the Taxpayer was registered to vote in New Mexico or in Nevada. In fact, the evidence established that Mr. Drahrman was not registered to vote in either state, and had no intention of doing so. Therefore, this factor does not support a finding of residence in New Mexico or Nevada.

The eleventh factor is where one has a driver's license or professional license. *See* Regulation 3.3.1.9 (C) (4) (k) NMAC. Mr. Drahrman did not introduce evidence to establish if or where he was licensed to drive in 2016, but Mr. Drahrman admitted that he continues, even at the present time, to own a vehicle which is registered in New Mexico and bears a New Mexico license plate. This factor supports the Department's finding that Taxpayers were residents of New Mexico at least until the conclusion of the 2015 – 2016 school year.

The twelfth factor is residence for purposes of tuition, hunting licenses, and other official purposes. *See* Regulation 3.3.1.9 (C) (4) (l) NMAC. There was no evidence presented on this factor. Therefore, this factor does not support a finding of residence in New Mexico or Nevada.

The final factor is where items of personal, sentimental value are located. *See* Regulation 3.3.1.9 (C) (4) (m) NMAC. It was undisputed that at least through the conclusion of the 2015 – 2016 school year, that Mrs. Drahman and Taxpayers’ minor daughter maintained their personal property in New Mexico. This factor supports the Department finding that Taxpayers were residents of New Mexico.

Eight factors weigh in favor of the Department, five factors weigh neutrally, and zero factors weigh in favor of the Taxpayer. A person’s declarations of intent are given weight, but are not conclusive. *See* Regulation 3.3.1.9 (C) (4) NMAC. No one factor is conclusive, and driver’s licenses, voter registrations and home addresses may be given less weight given the ease with which they can be changed for tax purposes. *See id.* The most significant factors seem to be the ones that deal with where and how a person spends the majority of their leisure time. *See id.*

Taxpayers demonstrated the intention to reside in Nevada at some period in the future. However, the evidence failed to establish that Taxpayers changed their domicile until the conclusion of the 2015 – 2016 school year, at the earliest. In the meantime, the amount of time that Mr. Drahman spent in Nevada from January through May of 2016 was vague.

Mr. Drahman admitted he was rarely at the Nevada Property and he had no employment obligations in Nevada. However, his spouse and minor child were continuously in New Mexico, at least until conclusion of the school year. Taxpayers did not challenge the imposition of any income tax attributable to Mrs. Drahman’s employment in New Mexico in 2016. Thus, the only income subject of this protest was the compensation paid to Mr. Drahman in the first days of 2016, to which the evidence failed to establish that Mr. Drahman was not domiciled in New Mexico.

Based upon the totality of the evidence, Taxpayers failed to establish an entitlement to the refund subject of their protest. Taxpayers' protest should be denied.

CONCLUSIONS OF LAW

A. Taxpayers filed a timely written protest to the Return Adjustment Notice issued under Letter ID No. L1442682160, and jurisdiction lies over the parties and the subject matter of this protest.

B. The hearing was timely held within 90-days of protest under NMSA 1978, Section 7-1B-8 (A) (2015).

C. Taxpayers were legal residents of New Mexico for several years prior to 2016 and remained legal residents of New Mexico at least through the conclusion of the 2015 – 2016 school year, because they failed to establish a change of residence prior to that time. *See Hagan v. Hardwick*, 1981-NMSC-002, ¶ 11. *See* 3.3.1.9 (C) (4) NMAC. *See Texas v. Florida*, 306 U.S. 398.

D. Taxpayers did not meet their burden in this protest under Regulation 3.1.8.10 NMAC (8/30/2001) or establish entitlement to the claimed refund.

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

DATED: January 9, 2018



Chris Romero
Hearing Officer
Administrative Hearings Office
P.O. 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

On January 9, 2018, a copy of the foregoing Decision and Order was mailed to the parties listed below in the following manner: