STATE OF NEW MEXICO
ADMINISTRATIVE HEARINGS OFFICE
TAX ADMINISTRATION ACT

IN THE MATTER OF THE PROTEST OF
PAR FIVE ENERGY SERVICES, LLC, **D&O No. 18-10**
TO THE DENIAL OF HIGH WAGE JOB TAX CREDIT
LETTER ID NO. L0944891440

v.

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

DECISION AND ORDER

A formal hearing on the above-referenced protest was held on January 18 and 19, 2018 before Hearing Officer Dee Dee Hoxie. The Taxation and Revenue Department (Department) was represented by Ms. Tonya Noonan Herring, Acting Chief Legal Counsel. Mr. Danny Pogan, Auditor, also appeared on behalf of the Department. Ms. Elizabeth Florence, Audit Supervisor, and Mr. Steven Valenzuela, Auditor, also appeared as witnesses for the Department. Par Five Energy Services, LLC (Taxpayer) appeared for the hearing through its representatives, Mr. Keith Mier, Attorney, Mr. Robert Johnston, Attorney, and Mr. Wade Jackson, Attorney. Ms. Melanie Hall, CPA, also appeared on behalf of the Taxpayer. Mr. Everett Trujillo, Mr. Ron Saavedra, and Mr. Steven Bartlett also appeared as potential witnesses for the Taxpayer.

Mr. Bartlett, Mr. Valenzuela, and Ms. Florence testified at the hearing. The Hearing Officer took notice of all documents in the administrative file. The Taxpayer's exhibits #5, #6, #7, #8, and #9 were admitted. The Department's exhibit "A" was admitted. A more detailed description of exhibits submitted at the hearing is included on the Administrative Exhibit Coversheet. The Taxpayer's Exhibit 7 was admitted for purposes of the record over objection,

but was not reviewed. The Taxpayer understood that Exhibit 7 would not be reviewed due to the volume of pages. The Taxpayer was given the opportunity to point out any relevant sections of Exhibit 7 and to argue for its review, but did not do so. The Taxpayer explained that Exhibit 7 was proffered to illustrate the unreasonableness of the Department's demand for records.

The Taxpayer requested the opportunity to submit final arguments in writing. The Department objected. The parties were given the opportunity to file proposed findings of fact and conclusions of law no later than February 19, 2018, but were not required to do so. Both parties submitted timely proposals. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. On June 3, 2016, the Department denied the Taxpayer's application for $135,792.11 of the high wage jobs tax credit (HWJTC). The Taxpayer's application was granted for $1,889,803.73 of the HWJTC.
2. On June 20, 2016, the Taxpayer filed a formal protest letter to the denial of $135,792.11 of the HWJTC.
3. Included with the protest was a Tax Information Authorization (TIA) that authorized an accounting firm to act on the Taxpayer's behalf through the course of the protest.
4. On June 24, 2016, the Department acknowledged the protest by letter.
5. On August 8, 2016, the Department filed a Request for Hearing asking that the Taxpayer's protest be scheduled for a formal administrative hearing.
6. On August 9, 2016, the Administrative Hearings Office issued a notice of telephonic scheduling hearing.

7. The telephonic scheduling hearing was conducted on September 16, 2016. The hearing was held within ninety days of the protest.

8. On September 22, 2016, the notice for a second telephonic scheduling hearing was issued.

9. On December 19, 2016, the amended notice for the second telephonic scheduling hearing was issued.

10. On January 30, 2017, the second telephonic scheduling hearing was conducted.

11. On February 1, 2017, the scheduling order and notice of hearing was issued.

12. On January 3, 2018, the Taxpayer's attorneys entered their appearance.

13. On January 3, 2018, the parties filed their joint prehearing statement.

14. The Taxpayer filed an application for the HWJTC on December 7, 2015.

15. The application covered periods from January 10, 2011 through July 8, 2015.

16. The application was for $2,025,595.84 of HWJTC, and the credit was claimed for 213 qualifying periods.

17. The Department requested more documentation, which the Taxpayer provided.

18. The Department granted $1,889,803.73 of HWJTC, and denied $135,792.11 of HWJTC.

19. The Department denied the HWJTC for six employees over seven qualifying periods. For those six employees, it determined that the jobs were not new and had previously been filled by other employees (the replacements). The total denied credit for the replacements was $68,699.68.

20. The Department denied the HWJTC for one employee over two qualifying periods. For that employee, it determined that the employee was promoted in-house and the Taxpayer

did not advertise publicly for that position to be filled competitively (the promotion). The total denied credit for the promotion was $24,000.00.

21. The Department denied the HWJTC for three employees because it determined that they were not New Mexico residents (the residents). The total denied credit for these employees was $43,092.43.

22. The Taxpayer withdrew the protest on $33,756.78 as to two of the residents. The remaining resident at issue is for a total denied credit of $9,335.65.

23. The Department reviewed its database. Using confidential information that it cannot disclose, it determined that the resident was not a New Mexico resident.

24. The Taxpayer offered to provide additional proof of the resident's domicile. The Department refused to accept or to consider any other evidence after its database review.

25. In support of the claim on the resident, the Taxpayer provided copies of a W-4 from 2011, a W-2 from 2012, an earnings statement from 2013, and a W-4 from 2014 to show that the resident had the same address in New Mexico.

26. The Taxpayer is an employer eligible to claim the HWJTC.

27. The jobs at issue were created on or after July 1, 2004.

28. The jobs at issue satisfy the wage requirements.

29. The jobs at issue satisfy the 48-week requirement.

30. The qualifying periods at issue satisfy the headcount requirement.

31. The employees at issue satisfy the employee eligibility requirements.

DISCUSSION

There are three distinct substantive issues within this protest. The first is whether the Taxpayer is entitled to the HWJTC as to the replacements. The second is whether the Taxpayer

is entitled to the HWJTC as to the promotion. The third is whether the Taxpayer is entitled to the HWJTC as to the resident. The parties agreed that the controlling statute is the 2013 version of Section 7-9G-1. *See* NMSA 1978, § 7-9G-1 (2013). References to the statute throughout the decision are made to the 2013 version. The Department also raises issues as to the protest itself.

Validity of protest.

The Department argues that the Taxpayer's protest is invalid because the accounting firm filed the protest, not the Taxpayer. The Department argues that the accounting firm is not an authorized representative and cannot act on behalf of the Taxpayer. The Department may only reveal taxpayer information "to the taxpayer or to the taxpayer's authorized representative". *See* NMSA 1978, § 7-1-8.1 (2009). Nowhere in the statute is "authorized representative" defined. *See id. See also* NMSA 1978, § 7-1-3. However, taxpayer information may be disclosed "to a person *specifically authorized*…and the employees, directors, officers, and agents of such person". NMSA 1978, § 7-1-8 (B) (emphasis added). A "person" is defined to include various business entities. *See* NMSA 1978, § 7-1-3. Therefore, any person who is authorized by a taxpayer may receive information from the Department, including an accounting firm and its employees and agents.

Historically, the Department has disclosed information to any person who was authorized by a taxpayer via the Department's form entitled "Tax Information Authorization" (TIA). The Department now argues that an authorized person may only be an employee, an attorney, or a CPA. Nowhere is such a restriction made in the statute. *See* NMSA 1978, § 7-1-8. At a hearing, a taxpayer may appear on his/her own behalf or "be represented by a bona fide employee, an attorney, a certified public accountant, or … an enrolled agent". NMSA 1978, § 7-1B-8. Nowhere in the statute does it convey an intent to restrict all interactions with the

Department to only those persons. *See id.* The Department's own TIA form indicates that the taxpayer "[h]ereby authorizes [the accounting firm] to represent me and/or my business pertaining to taxes administered by the New Mexico Taxation and Revenue Department." *See* TIA attached to protest. The TIA form also allows a taxpayer to limit the scope of authorization to particular information or tax types "to be handled by the *authorized person*." *See id.* (emphasis added). The Department's regulations require written authorization for any person "to be a representative of a taxpayer" other than an attorney, CPA, or enrolled agent. 3.1.3.13 NMAC (2000). It appears from the statutes, the regulations, and the Department's own forms, that any person who is authorized by a taxpayer may act on the taxpayer's behalf in dealing directly with the Department. The accounting firm had a TIA from the Taxpayer. Therefore, the accounting firm was authorized to act on behalf of the Taxpayer.

Protests must be filed with the Department. *See* NMSA 1978, § 7-1-24. The Department must initially determine if the protest was filed appropriately. *See id.* If a protest is filed appropriately, the Department then refers the protest to the Administrative Hearings Office for hearing. *See id. See* 3.1.7.10 NMAC (2001). *See also* NMSA 1978, § 7-1B-8. Any protest that was filed and determined to be invalid will not be accepted. *See* 3.1.7.10 NMAC. Only protests filed appropriately under the statute will be referred for hearing. *See* NMSA 1978, § 7-1B-8. Therefore, the Department's referral of this protest for hearing is evidence that it determined that the protest was filed appropriately by the Taxpayer's properly authorized representative. *See id. See also* NMSA 1978, § 7-1-24. The Department's after-the-fact argument on the validity of the filed protest is not persuasive.

Procedural issues.

The Department made various objections to the Taxpayer's presentation of evidence and representation at the hearing. The Taxpayer complained of the Department's requests for information throughout the course of the application and protest.

The Department moved to invoke the rule of exclusion. *See* Rule 11-615 NMRA (2012). The request was denied as rules of evidence do not apply to the hearing. *See* NMSA 1978, § 7-1B-6 (2015). Moreover, the Taxpayer had only one witness. *See State v. Ortiz*, 1975-NMCA-112, 88 N.M. 370 (indicating that the purpose of the rule is to prevent the possibility of a witness tailoring his/her testimony to match that given by another witness).

The Department also moved to exclude everyone from the hearing room that was not a bona fide employee or authorized representative of the Taxpayer. The Taxpayer affirmatively expressed its desire to have all parties remain in the hearing. The Department's motion was denied. *See* NMSA 1978, § 7-1B-8 (2015) (allowing a taxpayer to request that the hearing be made open to members of the public).

The Department moved to exclude the Taxpayer's sole witness on the basis that he is not an employee or authorized representative of the Taxpayer. The motion was denied. The Department cited no authority, and the Hearing Officer is aware of none, that prohibits a party from calling a witness on the basis that the witness is not an employee or representative of the calling party.

The Department moved to exclude the Taxpayer's witness because his name was not disclosed prior to the hearing. The Taxpayer's witness, Mr. Bartlett, was a member of the accounting firm hired by the Taxpayer to deal with its HWJTC application and subsequent protest. Another member of the accounting firm's name was disclosed as a witness, and the nature of the testimony from the disclosed witness would be the same as that of Mr. Bartlett.

There was no prejudice demonstrated in allowing Mr. Bartlett to testify in place of the other disclosed member of the accounting firm. The Department's motion was denied.

The Department argued that the witness has financial incentive because the accounting firm sometimes makes agreements with its customers to work on a contingency fee basis. There was no evidence that the Taxpayer and the accounting firm had entered into a contingency fee agreement in this case. However, even if they had, contingency fee agreements compensate the agent for services rendered and generally are not treated as an impermissible intermeddling of their affairs. *See Quality Chiropractic, PC v. Farmers Ins. Co.*, 2002-NMCA-080, ¶ 27, 132 N.M. 518. Therefore, the Department's argument is not persuasive of bias.

The Taxpayer complained that the Department requested an inordinate amount of information to prove its claim for the credit. *See* Exhibit 7. The Taxpayer argues that the Department's conduct is unreasonable, especially in light of its lack of regulations or instructions on this credit provision. The Department correctly pointed out that the Taxpayer has the burden of proving that it is entitled to the credit. The Department also noted that the Taxpayer chose to file an application that covered multiple employees and 213 qualifying periods. The Department is authorized to investigate claims and to inspect taxpayers' records. *See* NMSA 1978, § 7-1-4 (2005). Every qualifying period requires a headcount at its conclusion and the day before its inception, requires eligible employees, requires wage minimums, and requires that each new job be filled for at least 48 weeks. *See* NMSA 1978, § 7-9G-1. The Taxpayer helped to create the burden of which it now complains by applying for the credit over a broad amount of time and personnel. Given the vast amount of qualifying periods and personnel involved in the claim, the Department's request to see payroll and employment records was understandable and reasonable.

Burden of Proof.

Credits are similar to deductions and are considered legislative graces that should be construed narrowly. *See Team Specialty Prods. v. N.M. Taxation and Revenue Dep't*, 2005-NMCA-020, 137 N.M. 50. *See also Murphy v. Taxation and Revenue Dep't*, 1979-NMCA-065, 94 N.M. 90. Therefore, the burden is on the Taxpayer to show that it was entitled to claim the credit. When a taxpayer presents sufficient evidence, the burden shifts to the Department. *See MPC Ltd. v. N.M. Taxation and Revenue Dep't.*, 2003-NMCA-021, ¶ 13, 133 N.M. 217 (filed October 2, 2002). Most of the facts were largely undisputed, including the Taxpayer's eligibility as an employer, the headcount satisfaction, and the reasons for the denial on each of the employees.

Statutory interpretation.

The Taxpayer argues that the Department's analyses on the replacements and on the promotion are inappropriate, as there are no written rules or regulations detailing them. The Department argues that its analyses are an appropriate interpretation of the statute and that published rules or regulations are not required.

It is the duty of the Department to administer and enforce the tax statutes. *See* NMSA 1978, § 9-11-1, *et seq.* The Department has the authority to promulgate regulations, rules, and instructions to implement and enforce the tax statutes. *See* NMSA 1978, § 9-11-6.2. The Department may interpret a tax statute without adopting a rule or regulation related to that statute. *See id.* When an agency is charged with the application of a statute, its construction is given some deference, but its construction will be disregarded if its interpretation of the statute is found to be unreasonable or unlawful. *See N.M. AG v. N.M. Pub. Regulation Comm'n*, 2013-NMSC-042, ¶ 12. Even if an agency's interpretation of a statute should have been codified under the State Rules Act, its interpretation is not void if it is a correct interpretation of the law.

See Dir., Labor & Indus. Div., N.M. DOL v. Echostar Communs. Corp., 2006-NMCA-047, ¶ 13-14, 139 N.M. 493.

The Taxpayer's argument that the Department's interpretation is invalid without published rules and regulations is not persuasive. The Department must interpret the tax statutes, and while rules and regulations would be beneficial, their absence does not invalidate a correct interpretation of the law. *See id.* Moreover, the protest process gives taxpayers the opportunity to challenge the Department's interpretation.

High wage jobs tax credit.

"The purpose of the high-wage jobs tax credit is to provide an incentive for urban and rural businesses *to create* and fill *new* high-wage jobs in New Mexico." NMSA 1978, § 7-9G-1 (B) (emphasis added). A taxpayer who satisfies all of the statutory criteria may apply for "a tax credit for each *new* high-wage economic-based job." NMSA 1978, § 7-9G-1 (A) (emphasis added). There was no dispute that the Taxpayer satisfied most of the criteria of the statute. In fact, the Taxpayer was afforded $1,889,803.73 of the HWJTC. For seven of the eight employees in dispute, the crux of the issue is what meaning to afford the term "new" in the statute. *See id.* The final employee in dispute hinges on whether she is an "eligible employee", specifically whether she "is a resident of New Mexico". NMSA 1978, § 7-9G-1 (M) (2).

The first step in statutory interpretation is to look at the plain language of the statute and to refrain from further interpretation if the plain language is not ambiguous. *See Marbob Energy Corp. v. N.M. Oil Conservation Comm'n.*, 2009-NMSC-013, 146 N.M. 24. Statutes are to be applied as written unless a literal use of the words would lead to an absurd result. *See New Mexico Real Estate Comm'n. v. Barger*, 2012-NMCA-081, ¶ 7. If a statute is ambiguous or would lead to an absurd result, then it should be construed in accordance with the legislative

intent or spirit and reason for the statute, even though it may require a substitution or addition of words. *See id. See also State ex rel. Helman v. Gallegos,* 1994-NMSC-023, 117 N.M. 346. *See also Kewanee Indus., Inc. v. Reese,* 1993-NMSC-006, 114 N.M. 784. When a statute is ambiguous or would lead to an absurd result, it should be construed according to its obvious purpose. *See T-N-T Taxi Co. v. N.M. Pub. Regulation Comm'n,* 2006-NMSC-016, ¶ 5, 139 N.M. 550.

The replacements.

The Taxpayer argues that the Department places a time limitation on when an employer must hire an employee into a new high-wage economic-based job (new job). The Taxpayer argues that the Department restricts the definition of "new job" to the title of a position even though the statute does not mention position titles. The Taxpayer argues that a "new job" is determined by the headcount. The Taxpayer argues that the Department may only use a replacement analysis when there is a merger.

The Department argues that hiring to fill a vacant job that already existed during the qualifying period is not the creation of a new job. The Department argues that the headcount does not automatically signify that a new job was created.

A "new high-wage economic-based job" is defined in the statute as "a *new job created* in New Mexico by an eligible employer on or after July 1, 2004 and prior to July 1, 2020 that is occupied for at least forty-eight weeks of a qualifying period by an eligible employee who is paid wages" that meet the statutory criteria. *See* NMSA 1978, § 7-9G-1 (M) (5) (emphasis added). "New" means "recently come into being". Black's Law Dictionary, p. 1141 (9th ed. 2009). To "create" means "to bring into existence". *See Merriam-Webster, n.d. Web.* (2018) at http://www.merriam-webster.com/dictionary/create. "Preexisting" means "existing at an earlier

time". *See Merriam-Webster, n.d. Web.* (2018) at http://www.merriam-webster.com/dictionary/preexisting. Therefore, a new job is one that recently came into being and did not exist at an earlier time. The headcount is satisfied if "the eligible employer's *total number* of employees with high-wage economic-based jobs on the last day of the qualifying period…is at least one more than the number on the day prior to the date the *new* high-wage economic-based job *was created*." NMSA 1978, § 7-9G-1 (E) (emphasis added).

The Department determined, based on the Taxpayer's records, that the replacements were hired to fill jobs that already existed during the qualifying period. The Department based its determinations on the job titles, job totals, and the 48-week requirement. The Department allowed for two employees in the same job to fulfill the 48-week requirement as long as the job was filled for at least 48 weeks during the qualifying period. Mr. Valenzuela would have considered other evidence from the Taxpayer in determining whether a particular job was actually a new job, even though there was a preexisting job with the same title that had been recently vacated. No such evidence was provided. Rather, the Taxpayer's position is that there is no such thing as a vacant or preexisting job. Mr. Bartlett explained that a job ceases to exist once it is vacant, and that hiring a new employee to do the exact same job that another employee was previously doing should be treated as a new job. The Taxpayer argues that there must be a new job if the headcount requirement is met. The Taxpayer argues that the Department can only look at preexisting jobs and their replacements in the context of a merger.

The Taxpayer's argument conflates the definition of a new job with two statutory limitations on the credit. Even when a taxpayer creates new jobs, it will not be eligible for the credit unless it satisfies the headcount. *See* NMSA 1978, § 7-9G-1 (E). This subsection is not providing the criterion for determining if something is a new job, but is placing a limitation on

the credit even when there are new jobs. *See id.* Even when a taxpayer technically creates new jobs, it will not be afforded the credit if the new jobs are the result of a merger and the new jobs are actually the functional equivalent of the jobs that existed prior to the merger. *See* NMSA 1978, § 7-9G-1 (F). However, even in a merger, if the new job is actually a new job that was created within the qualifying period surrounding the merger, the credit may be afforded. *See* NMSA 1978, § 7-9G-1 (G). These subsections make clear that the credit is for the creation of new jobs, not for preexisting jobs with new employers or new employees. *See id.*

The Taxpayer objects to the Department using the Taxpayer's own job titles to determine if a job was preexisting, but provides no alternative criteria. The Taxpayer provides no evidence on the actual function and responsibilities of the jobs. The Taxpayer's position that jobs automatically cease to exist when they are vacated is not reasonable. The Taxpayer's interpretation would render the word "new" in the statute meaningless because every job would be "new" when it was filled. *See id. See also State ex rel. Helman v. Gallegos*, 1994-NMSC-023, ¶ 32 (noting that each word in a statute is presumed to have meaning and should not be construed to be surplus). The Department's method of determining whether the replacements were new jobs was reasonable. Based upon the totality of the evidence presented, the replacements were new employees hired into jobs that already existed. Therefore, the replacements did not satisfy the statutory requirement that a new job be created. *See* NMSA 1978, § 7-9G-1.

The promotion.

The Taxpayer argues that the Department impermissibly restricts how an employer may hire to fill a new job. The Taxpayer argues that the statute does not require a new job to be posted publicly or to be offered to competing candidates. The Department argues that an in-

house promotion cannot be a new job unless someone is hired to replace the lower position. The Department argues that an in-house promotion cannot be a new job unless the employer publicly advertises and allows for competitive candidates to interview.

There was no dispute that the promotion was actually a new job. The Department admitted that it denied the credit as to the promotion solely because the position was not publicly advertised and made available to competing candidates. Again, the criterion is whether the job is new. *See* NMSA 1978, § 7-9G-1. There is no requirement that a job must be advertised publicly or offered to competing candidates in order to be considered a new job. *See id.* There is no requirement that a job previously filled by one employee must be filled by a new employee before the first employee's movement to a new job will qualify. *See id.* Therefore, the Department's denial of the credit on the promotion is not reasonable. The promotion was a new job, and is eligible for the credit.

The resident.

The Taxpayer argues that there is sufficient evidence to establish that the resident was a resident of New Mexico. The Department argues that its undisclosed information from its database should be trusted to show that the resident was not domiciled in New Mexico.

The Taxpayer provided tax documents from before and during the qualifying period that showed the resident's address was in New Mexico. Mr. Bartlett had also spoken to the resident and verbally confirmed with her that she was a resident of New Mexico during the qualifying period. The Taxpayer also provided an earnings statement that showed the resident's address in New Mexico during the qualifying period. The documents all show the same address for the resident in New Mexico before and during the qualifying period.

The Department refused to accept or to consider any of the Taxpayer's evidence because it located contrary information in its database. The Department could not disclose the information it found in its database on the resident. *See* NMSA 1978, § 7-1-8 (prohibiting disclosure of confidential taxpayer information). The Department offered to present its evidence for in camera review, which was denied. The purpose of in camera review is not to prove the substance of one's case, but to determine if the evidence is material and should be disclosed. *See State v. Garcia*, 2013-NMCA-064. *See also Santa Fe Pac. Gold Corp. v. United Nuclear Corp.*, 2007-NMCA-133, 143 N.M. 215. Even if the evidence was material, the Hearing Officer could not order its disclosure. *See* NMSA 1978, § 7-1-8 and § 7-1B-6 (C) (7). The Department was aware that it could not reveal the resident's confidential information to rebut the Taxpayer's evidence. *See* NMSA 1978, § 7-1-8. Nevertheless, the Department took no action to present evidence that would not violate its statutory obligation, such as subpoenaing and eliciting testimony on residency from the resident herself.

The Department typically accepts the type of evidence presented by the Taxpayer on the resident. *See* 18.19.5.16 NMAC (indicating that the Department will accept a pay stub with a person's name and address as one proof of residency for purposes of issuing a driver's license). *See also* 3.3.1.9 NMAC (indicating several factors of residency, including the location of one's home and the address used for federal tax purposes). Moreover, the Department conceded that the resident was domiciled in New Mexico before the qualifying period at issue. Residence is synonymous with domicile. *See Hagan v. Hardwick*, 1981-NMSC-002, ¶ 10, 95 N.M. 517. Once domicile is established, it is presumed to continue until it is shown to have changed. *See id.* at ¶ 11. The evidence presented by the Taxpayer was sufficient to establish by preponderance that the resident was domiciled in New Mexico. The Department had the opportunity to rebut

the Taxpayer's evidence, but failed to do so. Therefore, the Taxpayer was entitled to the credit as to the resident.

Costs and fees.

The Taxpayer moves for an award of administrative costs and fees. A taxpayer who has substantially prevailed with respect to the amount or issues may be entitled to an award of administrative costs. *See* NMSA 1978, § 7-1-29.1 (2015). The Taxpayer originally protested $135,792.11 on 10 employees. The Taxpayer withdrew at the hearing on two of the employees. The Taxpayer has not prevailed as to six employees. Consequently, the total amount of credit appropriately denied was $102,456.46. The Taxpayer has prevailed as to two employees. Consequently, the total amount of credit improperly denied was $33,335.65. The Taxpayer prevailed with respect to approximately 24.5% of the credit in dispute, and as to 20% of the employees in dispute. Therefore, the Taxpayer did not substantially prevail on either the amount or the issues. Accordingly, the Taxpayer's request for administrative costs and fees is denied.

CONCLUSIONS OF LAW

A. The Taxpayer filed a timely written protest to the denial of credit issued under Letter ID number L0944891440, and jurisdiction lies over the parties and the subject matter of this protest.

B. The Taxpayer is not entitled to the HWJTC as to the replacements because they were hired to fill preexisting jobs, not new jobs. *See* NMSA 1978, § 7-9G-1.

C. The Taxpayer is entitled to the HWJTC as to the promotion because the employee was hired into a new job, and there is no statutory requirement that a job must be publicly advertised and offered to competing candidates in order to be considered "new". *See id.*

D. The Taxpayer is entitled to the HWJTC as to the resident because there was sufficient evidence to prove that the resident was domiciled in New Mexico during the qualifying

period. *See id. See also* 18.19.5.16 and 3.3.1.9 NMAC. *See also Hagan v. Hardwick*, 1981-NMSC-002.

E. The Taxpayer has prevailed as to $33,335.65, and the credit is granted in that amount. The Taxpayer has not prevailed as to $102,456.46, and the credit is denied in that amount.

F. The Taxpayer has not substantially prevailed; therefore, the Taxpayer is not entitled to an award of administrative costs and fees. *See* NMSA 1978, § 7-1-29.1.

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

DATED: March 23, 2018.

Dee Dee Hoxie

DEE DEE HOXIE
Hearing Officer
Administrative Hearings Office
Post Office Box 6400
Santa Fe, NM 87502

NOTICE OF RIGHT TO APPEAL

Pursuant to NMSA 1978, § 7-1-25, 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. *See* Rule 12-601 NMRA. If an appeal is not filed within 30 days, this Decision and Order will become final. A copy of the Notice of Appeal should be mailed to John Griego, P. O. Box 6400, Santa Fe, New Mexico 87502. Mr. Griego may be contacted at 505-827-0466.

CERTIFICATE OF SERVICE

I hereby certify that I mailed the foregoing Decision and Order to the parties listed below this 23rd day of March, 2018 in the following manner: