STATE OF NEW MEXICO
ADMINISTRATIVE HEARINGS OFFICE
TAX ADMINISTRATION ACT

IN THE MATTER OF THE PROTEST OF
STAR PAVING CO.
TO DENIAL OF REFUND ISSUED UNDER
LETTER ID NO. L083345937

Case Number 19.09-165R

v. **Decision and Order No. 20-01**

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

DECISION AND ORDER

On December 5, 2019, Hearing Officer Ignacio V. Gallegos, Esq., conducted a merits administrative hearing in the matter of the tax protest of Star Paving Co. (Taxpayer) pursuant to the Tax Administration Act and the Administrative Hearings Office Act. At the hearing, Attorney Christopher Jaramillo appeared representing Taxpayer. Mr. Michael Zamora, Controller, appeared in person as the Taxpayer's sole witness. Staff Attorney Kenneth Fladager appeared, representing the opposing party in the protest, the Taxation and Revenue Department (Department). Department protest auditor Angelica Rodriguez and Weight Distance Tax auditor supervisor Mayra Cabrera appeared as witnesses for the Department. Department observer Alma Lucero was also present. Taxpayer offered no exhibits, Department Exhibits A and B were admitted into the record over the Taxpayer's objection, since equal leeway was granted Taxpayer and the Department as to their failure to file witness and exhibit lists.

In quick summary, this protest involves Taxpayer's Weight Distance Tax (WDT) returns and the adequacy of records supplied upon audit to support a one-way hauler reduced mill rate. Following the audit assessment, Taxpayer paid the assessment to arrest the accumulation of penalty and interest and timely submitted a request for refund. The Department denied the refund request. Taxpayer protested the denial of refund, arguing that although the records requested by the

Department in the audit were not considered sufficient, statutory construction favors the Taxpayer's position that the records it provided should satisfy the Department's record-keeping regulations and the Department was under an obligation to use an alternative method of computing the tax. Ultimately, after making findings of fact and discussing the issue in more detail throughout this decision, the hearing officer finds that Taxpayer's protest must be denied. IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

Procedural Findings

1. On July 27, 2018, under Letter Id. No. L0499195696, the Department issued a Notice of Assessment of Taxes and Demand for Payment to Taxpayer, indicating that Taxpayer owed tax of $17,382.09, penalty of $3,578.41, and interest of $2,194.77, for a total assessment of $23,155.27 for tax reporting periods from March 31, 2012 to June 30, 2017. [Administrative File].

2. On December 14, 2018, Taxpayer, through controller Michael Zamora, submitted an Application for Refund, alleging that the Taxpayer had paid the audit assessment, which assessment it challenged. [Administrative File].

3. On May 16, 2019, under Letter Id. No. L083345937[1] the Department issued a letter informing the Taxpayer that their refund application had been denied. [Administrative File].

[1] Ordinarily, letters issued by the Department contain an identifying number beginning with the letter L and followed by a ten-digit number. In this instance, although the parties were aware that several documents had been cut off in the process of a party's copying, neither the Department nor the Taxpayer supplemented the record with a complete copy. In the absence of a correction, for consistency, the Hearing Officer continues to use the truncated identifying number(s).

4. On June 26, 2019, Taxpayer, through Attorney Christopher Jaramillo, submitted a Formal Protest letter, a letter relating facts concerning the protest, and a Tax Information Authorization. [Administrative File].

5. On July 5, 2019, under Letter Id. No. L0227445936, the Department acknowledged receipt of Taxpayer's protest. [Administrative File].

6. On September 10, 2019, the Taxpayer, through Attorney Christopher Jaramillo, submitted a Request for Hearing to the Administrative Hearings Office, requesting a hearing on the merits of Taxpayer's protest. [Administrative File].

7. On September 11, 2019, the Administrative Hearings Office mailed a Notice of Administrative Hearing to the parties, setting the matter for a hearing on the merits of Taxpayer's protest on December 5, 2019 in Albuquerque, New Mexico. [Administrative File].

8. On September 25, 2019, the Department, through Attorney Kenneth E. Fladager, timely submitted the Department's Answer to Protest to the Administrative Hearings Office. [Administrative File].

9. The undersigned Administrative Hearing Officer Ignacio V. Gallegos conducted the merits hearing on December 5, 2019 with the parties present at the Administrative Hearings Office in the Compass Bank Building in Albuquerque, New Mexico. Neither the Department nor the Taxpayer objected that conducting the hearing satisfied the 90-day hearing requirements of Section 7-1B-8 (F) (2019). The Administrative Hearings Officer preserved a recording of the hearing. [Administrative File].

Substantive Findings

10. Taxpayer Star Paving Co. is a company specializing in hauling materials, paving roads and parking lots, earthwork, and demolition. As part of this business, they own and operate heavy trucks with a gross vehicle weight of more than 26,000 pounds. It is a business which customarily hauls materials only one-way. [AHO examination of Michael Zamora, CD 31:00-32:20; Department Exhibit B-5].

11. Michael Zamora is the Controller for Star Paving. He has been employed with Taxpayer since December of 2004. Initially he was not in accounting, but in 2009 he became a Controller-in-training and was tangentially involved in the WDT audit conducted in 2010. [Direct examination of Michael Zamora, CD 21:50-23:30].

12. Mr. Zamora played a more significant role in the WDT audit that took place in 2018. He supplied auditors with fuel logs and driver time cards, which contain vehicle identifiers, driver name, specific odometer readings for start and end, and a summary of the work the driver did that day, including a supplier name and job site. The records supplied by Taxpayer did not specifically state the number of miles the vehicle traveled empty separated from the number of miles the vehicle traveled loaded. [Direct examination of Michael Zamora, CD 25:40-27:30; Cross examination of Michael Zamora, CD 30:00-30:20; AHO examination of Michael Zamora, CD 32:20-33:10].

13. Taxpayer's business model has empty trucks travelling from their vehicle storage lot to a materials supplier where they are loaded, then they proceed to the jobsite where the load is delivered, and then the vehicles return empty either to the materials supplier where they are reloaded, or back to the storage lot. [Direct examination of Michael Zamora, CD 28:30-29:05; AHO examination of Michael Zamora, CD 30:50-32:15].

14. Taxpayer recalled being advised to place "all loads one-way" on driver time-cards to qualify for the one-way haul reduced rate. Mr. Zamora was unsure of who exactly advised him of this, but recalled it was a Department employee present at the audit review. [Direct examination of Michael Zamora, CD 27:30-28:30; AHO examination of Michael Zamora, CD 35:00-35:40].

15. Taxpayer did not attempt either during the audit or thereafter to reconstruct an accounting of only empty and only loaded miles, by using map distances from location to location along the various routes. [AHO examination of Michael Zamora, CD 33:00-35:00].

16. Taxpayer was subject to an audit of weight distance tax reporting in 2010, at which point the Department issued an assessment for improper WDT reporting. [Department Exhibit B].

17. Taxpayer was subject to an audit of weight distance tax reporting in 2018, and the Department issued an assessment for improper WDT records keeping, rejecting the one-way hauler designation for a reduced mill-rate, because records of hauls did not include a separate and distinct listing of empty miles and loaded miles. [Department Exhibit A].

18. Mayra Cabrera is the weight distance tax auditor supervisor who supervised the 2018 WDT audit and was the auditor for the 2010 WDT audit. [Direct examination of Mayra Cabrera, CD 38:40-40:10, 50:35-50:55; Department Exhibits A and B].

19. The Department auditor determined that the documents (spreadsheets of odometer readings) Taxpayer initially provided when audited were incomplete and did not correspond to source documents, so the Department requested additional information. Taxpayer then supplied fueling logs from its bulk fuel storage tank, which contained odometer readings when the various vehicles refueled. The fuel logs also were not helpful in determining which miles were empty

and which were loaded. The Department again requested more information, to which the Taxpayer supplied driver logs and driver timesheets, which also did not reflect which miles were loaded or empty. [Direct examination of Mayra Cabrera, CD 40:10-47:55].

20. The audit report from 2010, and the auditor herself, explained to Taxpayer that in order to qualify for the one-way haul tax rate, they would need to keep records of empty and loaded miles. She offered advice on how to adjust their log forms by adding columns for odometer readings along the route where the trucks are filled and emptied. [Direct examination of Mayra Cabrera, CD 54:35-57:20].

21. The auditor did not use an alternative method of determining mileage in the 2018 audit but attempted to use alternative methods of determining eligibility for one-way hauler status. [Direct examination of Mayra Cabrera, CD 42:00-47:55; 49:20-49:35; Cross examination of Mayra Cabrera, CD 1:00:50-1:01:10; 1:03:30-1:04:15].

DISCUSSION

During the timeframe at issue in the audit, Star Paving Co. did not maintain records which separated its vehicles' mileage driven from their vehicle storage yard, to the materials supplier, to the job site, and back to either the supplier or to the vehicle storage yard. Taxpayer's records contained total mileage for its trucks, which could be both those miles empty of all load and fully or partially loaded. Taxpayer asserts that a statutory construction of the applicable regulation does not specify that loaded miles are to be separately tabulated from empty miles. Taxpayer further argues that the Department was required to use an alternative method. An interpretation of the regulations upon which the Taxpayer rests his case would lead to an absurd result, therefore, the Hearing Officer declines such opportunity.

Under NMSA 1978, Section 7-1-17 (C) (2007), the assessment issued in this case is presumed correct. Consequently, Taxpayers have the burden to overcome the assessment. *See Archuleta v. O'Cheskey*, 1972-NMCA-165, ¶11, 84 N.M. 428, 504 P.2d 638. Unless otherwise specified, for the purposes of the Tax Administration Act, "tax" is defined to include interest and civil penalty. *See* NMSA 1978, § 7-1-3 (Y) (2017). 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. *See Chevron U.S.A., Inc. v. State ex rel. Dep't of Taxation & Revenue*, 2006-NMCA-050, ¶16, 139 N.M. 498, 134 P.3d 785 (agency regulations interpreting a statute are presumed proper and are to be given substantial weight). Accordingly, it is Taxpayers' burden to present some countervailing evidence or legal argument to show that they are entitled to an abatement, in full or in part, of the assessment issued in the protest. *See N.M. Taxation & Revenue Dep't v. Casias Trucking*, 2014-NMCA-099, ¶8, 336 P.3d 436. When a taxpayer presents sufficient evidence to rebut the presumption, the burden shifts to the Department to show that the assessment is correct. *See MPC Ltd. v. N.M. Taxation & Revenue Dep't*, 2003-NMCA-021, ¶13, 133 N.M. 217, 62 P.3d 308.

The Weight Distance Tax Act imposes a tax on all registered vehicles with a declared weight in excess of 26,000 pounds that travel on state highways. *See* NMSA 1978, § 7-15A-3 (1988). It is undisputed that the trucks used in the Taxpayer's business operations are WDT registered vehicles and that they meet the threshold requirements.

One-way hauler records requirements.

NMSA 1978, Section 7-15A-6 (2004) sets the tax rates under the Weight Distance Tax Act for all motor vehicles other than some types of buses. Subsection A establishes the base tax rates for all registered vehicles based on the vehicles' declared gross weight and on the mileage

traveled on state highways. *See* § 7-15A-6 (A). Under Section 7-15A-6 (A), the tax rate increases as a vehicle's weight classification increases. However, Section 7-15A-6 (B) establishes a reduced one-way haul tax rate:

> All motor vehicles for which the tax is computed under Subsection A of this section shall pay a tax that is two-thirds of the tax computed under Subsection A of this section if:
> (1) the motor vehicle is customarily used for one-way haul;
> (2) forty-five percent or more of the mileage traveled by the motor vehicle for a registration year is mileage that is traveled empty of all load; and
> (3) the registrant, owner or operator of the vehicle attempting to qualify under this subsection has made a sworn application to the department to be classified under this subsection for a registration year and has given whatever information is required by the department to determine the eligibility of the vehicle to be classified under this subsection and the vehicle has been so classified.

If the registrant, owner or operator of the vehicle can satisfy the three one-way haul rate criteria identified under Section 7-15A-6 (B), the Weight Distance Tax (WDT) is calculated at two-thirds of the base tax rate established under Subsection A (or 33% less than the full tax rate per vehicle weight class).

The issue in dispute here is whether audited records showed "forty-five percent or more of the mileage traveled…is mileage that is traveled empty of all load." The Department acknowledged in the 2010 Audit report that this Taxpayer's vehicles are customarily used for one-way haul and have been classified as such in the past. The Department's audit determined that records maintained by the Taxpayer were insufficient to establish that forty-five percent or more of the mileage traveled was empty. The Department therefore assessed the Taxpayer at the normal undiscounted tax rate.

Numerous Department regulations address one-way haulers for the purposes of Section 7-15A-6 (B). Regulation 3.12.6.7 NMAC (11/15/01) provides definitions for empty miles, loaded miles, and one-way haulers. Under Regulation 3.12.6.7 (A) NMAC, "empty miles" means

the "number of miles traveled on New Mexico roads when the vehicle or vehicle combination is transporting no load whatsoever."

Regulation 3.12.6.8 NMAC (11/15/01) and Regulation 3.12.6.9 NMAC (11/15/01) respectively establish how a registrant can be qualified or disqualified as a one-way hauler. Regulation 3.12.6.11 (11/15/01) provides a list of records required to be kept by a Taxpayer wishing to establish or maintain a one-way hauler status.

> One-way haulers shall maintain the following records on a reporting period basis. All records shall be referenced by vehicle unit number:
>
> A. Vehicle trip mileage records for each vehicle operated in New Mexico. The mileage records shall reflect the total empty miles and the total loaded miles traveled on New Mexico roads. Accurate trip mileage records indicating empty and loaded miles may include:
>
> (1) accurate map mileage for each trip;
>
> (2) hubometer or odometer readings; or
>
> (3) vehicle-specific log books.
>
> B. Vehicle itineraries including the origin and destination point of each trip, and the routes taken.

The Taxpayer established that he provided vehicle-specific log books in the form of driver time cards which contained vehicle identification and starting and ending odometer readings, a materials supplier name, and a job work site name (without addresses). The log books contained no odometer readings for the stops along the way, only beginning and ending readings. Taxpayer did not attempt to reconstruct miles traveled loaded or unloaded from the data at his disposal.

Under the Taxpayer's interpretation of the regulation, the Taxpayer only needs to maintain records of total mileage traveled. The proposed interpretation takes its hold from the language "mileage records shall reflect the total empty miles and the total loaded miles." In the view of the Taxpayer, when one combines "the total empty miles" with "the total loaded miles" as the word "and" between the two phrases would suggest, the sum is *total mileage*, which Taxpayer provided. The claim is not frivolous. The merit of the claim, however, deserves further analysis.

"Tax statutes, like any other statutes, are to be interpreted in accordance with the legislative intent and in a manner that will not render the statutes' application absurd, unreasonable, or unjust." *City of Eunice v. State Taxation & Revenue Dep't*, 2014-NMCA-085, ¶8, 331 P.3d 986 (internal citations and quotation marks omitted). 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, 962 P.2d 1236. 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, 212 P.3d 361. When applying the plain meaning rule, the statutes should be read in harmony with the provisions of the remaining statute or statutes dealing with the same subject matter. *See State v. Trujillo*, 2009-NMSC-012, ¶22, 146 N.M. 14, 206 P.3d 125; *Hayes v. Hagemeier*, 1963-NMSC-095, ¶9, 75 N.M. 70, 400 P.2d 945 ("All legislation is to be construed in connection with the general body of law."). Likewise, "[t]he canons of statutory construction guide our interpretation of administrative regulations." *Albuquerque Bernalillo County Water Util. Auth. v. N.M. Pub. Regulation Comm'n*, 2010-NMSC-013, ¶51, 148 N.M. 21, 229 P.3d 494.

"[T]he 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." *Wood v. State Educ. Ret. Bd.*, 2011-NMCA-020, ¶12, 149 N.M. 455, 250 P.3d 881. A statutory construction analysis begins by examining the words chosen by the legislature and the plain meaning of those words. *See State v. Hubble*, 2009-NMSC-014, ¶13, 146

N.M. 70, 206 P.3d 579. 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-021, ¶ 27, 127 N.M. 120, 978 P.2d 327.

Looking back at the plain language of the regulation, the Taxpayer's "mileage records shall reflect the total empty miles and the total loaded miles." The operative word Taxpayer's focus rests upon is "and." The word "and" is a coordinating conjunction.[2] Coordinating conjunctions (and, but, or, nor) are words that join two elements of equal grammatical rank. Coordinating conjunctions can join verbs, nouns, pronouns, adjectives, phrases, or clauses. As used in the sentence, the conjunction "and" links the modified noun "total empty miles" with the modified noun "total loaded miles." Under Taxpayer's reasoning, the "and" serves to require combining "total empty miles" with "total loaded miles" which would result in simply "total miles," the same way that "two and two" can be summed up as "four."

In the same way, for example, the sentence "there are four jars of red chile and four jars of green chile in the bag" could be rewritten as "there are eight jars of chile in the bag." But why would someone use the adjectives "green" and "red" if it is all simply chile? The structure of the sentence gives equal value to each modified noun. While it is certain that there are eight jars, in New Mexico it is important to know which jars of chile contain red and which contain green, both in terms of preference and perhaps price.[3] The two co-equal parts of the sentence do not have the same meaning as their sum, i.e., Christmas.

[2] *See generally* L. SUE BAUGH, ESSENTIALS OF ENGLISH GRAMMAR 39 (3rd ed. 2005).
[3] *See* H.J.M. 3, 42nd Leg., 1st Spec. Sess. (N.M. 1996), available at https://nmlegis.gov/Sessions/96%20Special/memorials/house/HJM003.pdf ("all New Mexicans recognize the importance of chile to our culture and rich heritage and understand that all New Mexicans prefer either Red or Green").

By the same token, a plain language reading of the regulation requires giving equal grammatical value to both "total empty miles" and "total loaded miles." In context, the records must give equal value to "total empty miles" along with "total loaded miles" and each must be distinguished within the records. Both are required, individually. Under the Taxpayer's interpretation of the regulation, requiring only the sum "total" miles, without distinguishing between which are empty and which are loaded, would require adding words to the regulation (i.e., "records shall reflect *the sum of* the total empty miles and the total loaded miles") and would defeat the purpose of the regulation, which is to ensure that a taxpayer's records prove the claim that the vehicles drove at least 45% of the time empty of all load as required by the statute. *See* Section 7-15A-6 (B)(2). Under the Taxpayer's interpretation, maintaining only records of "total mileage" as a substitute for records of loaded miles and empty miles would "render the statutes' application absurd, unreasonable, or unjust" and therefore cannot be upheld by this administrative forum. *See City of Eunice v. State Taxation & Revenue Dep't*, 2014-NMCA-085, ¶8.

Furthermore, there is existing New Mexico case law which reiterates the requirement. "If claiming the one-way haul rate, taxpayers must keep records of loaded miles versus empty miles designated by truck number." *N.M. Taxation & Revenue Dep't v. Casias Trucking*, 2014-NMCA-099, ¶ 6, 336 P.3d 436. Because the records supplied upon audit did not have separate entries for empty miles and loaded miles, the Department properly disqualified the Taxpayer as a one-way hauler pursuant to Regulation 3.12.6.9 NMAC.

Alternative methods of tax calculation.

Taxpayer argues that the Department was required, on its own, to determine the empty and loaded miles. As support for this claim, the Taxpayer points to Regulation 3.1.5.8 NMAC (12/29/00), entitled "sufficiency of records." The regulation states "[f]ailure of a taxpayer to keep

adequate books of account or other records will cause the department to use alternative methods to determine or estimate taxes due." Regulation 3.1.5.8 (B) NMAC. The Department asserts that because the one-way haul rate is more akin to a deduction or exemption from a tax, not a tax itself, the burden falls squarely on the Taxpayer to prove its entitlement to the decreased tax rate.

The regulation at issue follows NMSA 1978, Section 7-1-10, entitled "Records required by statute; taxpayer's records; accounting methods; reporting methods; information returns." In pertinent part, the statute says: "[e]very person required by the provisions of any statute administered by the department to keep records and documents and every taxpayer shall maintain books of account or other records in a manner that will permit the accurate computation of state taxes or provide information required by the statute under which the person is required to keep records." Part A of Regulation 3.1.5.8 NMAC places the burden on taxpayers: "[b]ooks of account, documents and other records shall be kept and maintained by a taxpayer in a manner that will permit the accurate computation of state taxes and provide information required by the statutes under which the taxpayer is required to keep records." Clearly the legislature intended to impose the duty on taxpayers to maintain and provide records from which the Department can accurately compute tax.

In this instance, the Department concluded that the Taxpayer's records were insufficient in one key respect: they did not provide evidence of which miles were loaded miles and which miles empty miles. The testimony indicated that the Department attempted to use an alternative method to determine the values at issue, when the information initially provided by Taxpayer was insufficient to justify the one-way haul rate. To that end the Department requested more information from Taxpayer. The Taxpayer provided fueling logs and provided driver timesheets. Neither provided the information needed to justify the one-way haul. The record keeping

requirements under the weight distance tax act, indicates that "[a]ll registrants, owners or operators required to pay the weight distance tax shall preserve the records upon which the periodic payments… are based for four years following the period for which a payment is made." NMSA 1978, Section 7-15A-9 (D) (1999). The statute further requires production of the records "[u]pon request of the department… for audit as to accuracy of computations and payments." *Id*.

Nothwithstanding the above, to address the Taxpayer's contention, the reduced tax rate for one-way haulers is akin to a 33% deduction or exemption from the loaded vehicle tax rate since the weight distance tax itself is determined by the total mileage traveled on New Mexico roads. *See* NMSA 1978, Section7-15A-8 (A) (1988). The burden is on a taxpayer to prove that it is entitled to an exemption or deduction, if one should potentially apply. *See Pub. Serv. Co. v. N.M. Taxation & Revenue Dep't*, 2007-NMCA-050, ¶141 N.M. 520, 157 P.3d 85; *See also Till v. Jones*, 1972-NMCA-046, 83 N.M. 743, 497 P.2d 745. "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." *Sec. Escrow Corp. v. State Taxation & Revenue Dep't*, 1988-NMCA-068, ¶8, 107 N.M. 540, 760 P.2d 1306; *Wing Pawn Shop v. Taxation & Revenue Dep't*, 1991-NMCA-024, ¶16, 111 N.M. 735, 809 P.2d 649; *see also Chavez v. Comm'r of Revenue*, 1970-NMCA-116, ¶7, 82 N.M. 97, 476 P.2d 67. Even if the regulation imposed a responsibility on the Department to use alternative methods to justify the one-way hauler rate, the Department met that responsibility by seeking additional information from Taxpayer which may justify the reduced rate.

The Taxpayer's records at audit did not suffice to the auditor. The assessment is entitled to a presumption of correctness. Taxpayer did not provide any additional information to the

Hearing Officer at the merits hearing to overcome the presumption of correctness, by either the same documents it provided to the auditor, summaries, or subsequent calculations of loaded miles. A tax protestant can rebut the presumption of correctness by showing that the decision of the Department is not supported by substantial evidence or the Department failed to follow relevant statutory provisions. *See Floyd & Berry Davis Co. v. Bureau of Revenue*, 1975-NMCA-143, ¶8, 88 N.M. 576, 544 P.2d 291; *see also McConnell v. State ex rel. Bureau of Revenue*, 1071-NMCA-181, ¶7, 83 N.M. 386, 492 P.2d 1003. In this case, Taxpayer was unable to prove that the balance of substantial evidence supported its claim to entitlement of the one-way haul reduced tax rate and was unable to show the Department's assessment and subsequent denial of refund was made in error.

CONCLUSIONS OF LAW

A. Taxpayer filed a timely, written protest of the Department's denial of refund letter and jurisdiction lies over the parties and the subject matter of this protest.

B. The hearing was timely set and held within 90-days of Taxpayer's request for hearing pursuant to NMSA 1978, Section 7-1B-8 (2019).

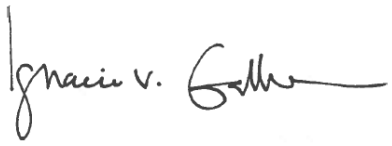
C. Any assessment made by the Department is presumed to be correct, therefore it is the taxpayer's burden to come forward with evidence and legal argument to establish that the Department's assessment should be abated, in full or in part. *See* NMSA 1978, Section 7-1-17 (C) (2007).

D. "Tax" is defined to include not only the tax program's principal, but also interest and penalty. *See* NMSA 1978, Section 7-1-3 (Y) (2017). Assessments of penalties and interest therefore also receive the benefit of a presumption of correctness. *See* Regulation 3.1.6.13 NMAC (1/15/01).

E. Taxpayer failed to present evidence to overcome the presumption of correctness in the Department's denial of the one-way hauler tax rate, either in the Department's application of statutes or in Taxpayer's factual entitlement to the reduced one-way hauler tax rate under the Weight Distance Tax Act. *See* NMSA 1978, Section 7-15A-6 (B) (2004); *see also* Regulation 3.12.6.9 NMAC (11/15/01) and Regulation 3.12.6.11 (11/15/01).

For the foregoing reasons, the Taxpayer's protest **IS DENIED**. **IT IS ORDERED** that the Department's denial of Taxpayer's request for refund was proper and no refund is due.

DATED: January 28, 2020.



Ignacio V. Gallegos
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 28, 2020, a copy of the foregoing Decision and Order was submitted to the parties listed below in the following manner:

First Class Mail *Interdepartmental Mail*

INTENTIONALLY BLANK

John Griego
Legal Assistant
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