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

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**IN THE MATTER OF THE PROTEST OF
LISA CHAVEZ
TO RETURN ADJUSTMENT NOTICES ISSUED UNDER
LETTERS ID NOs. L0964062384, L1780821168 and L0528833712**

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**v.
NEW MEXICO TAXATION AND REVENUE DEPARTMENT
AHO Case No. 20.01-016R
Decision and Order No. 20-12**

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DECISION AND ORDER

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On February 27, 2020, Hearing Officer Ignacio V. Gallegos, Esq., conducted an administrative hearing on the merits of the matter of the tax protest of Lisa Chavez (Taxpayer) pursuant to the Tax Administration Act and the Administrative Hearings Office Act. At the hearing, Taxpayer appeared representing herself and as her sole witness. Staff Attorney Peter Breen appeared, representing the opposing party in the protest, the Taxation and Revenue Department (Department). Department protest auditor Angelica Rodriguez appeared as a witness for the Department. Taxpayer offered Exhibits 1, 2, 3, and 4 at the hearing to supplement the documentation she provided to the Department earlier, and submitted additional Exhibits 5, 6, 7, and 8 by email on March 4, 2020, after the close of the hearing, but within time granted to supplement the record. Taxpayer exhibits were admitted without objection. Department Exhibit A was admitted into the record. Exhibits are more fully described in the Exhibit Log. The administrative file is considered part of the record.

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In quick summary, this protest involves Taxpayer's claim for personal income tax exemptions and credits which hinge on whether she could claim certain grandchildren as dependents and the adequacy of records to support the qualification of dependents when another taxpayer allegedly claimed the same children and sought the same tax credits. The Department

1 partially denied the credit claims for three years by issuing Return Adjustment Notices, with refund
2 due. Taxpayer protested the denials of refund, arguing that the children of her child had been
3 living with her during the timeframes at issue, but she was unable to obtain court orders granting
4 custody due to threats against her. Taxpayer met the relationship, age, residency, and joint return
5 tests for claiming the dependents at issue as qualifying children, so the question turned on
6 whether the Taxpayer met the support test. Ultimately, after making findings of fact and
7 discussing the issue in more detail throughout this decision, the hearing officer finds that Taxpayer's
8 protest will be granted as to 2016 and denied as to 2017 and 2018 tax years. IT IS DECIDED AND
9 ORDERED AS FOLLOWS:

10 **FINDINGS OF FACT**

11 **Procedural Findings**

12 1. On August 2, 2019, under Letter Id. No. L0528833712, the Department issued a
13 Return Adjustment Notice (Refund Due) to Taxpayer, indicating that Taxpayer's requested
14 refund was reduced. Under the Letter, Taxpayer owed no additional tax or civil penalty, and
15 interest of -\$2.39, and a credit of \$217.61 was granted, for a total refund due of \$220.00 for tax
16 reporting period from January 1, 2016 to December 31, 2016. [Administrative File].

17 2. On July 12, 2019, under Letter Id. No. L1780821168, the Department issued a
18 Return Adjustment Notice (Refund Due) to Taxpayer, indicating that Taxpayer's requested
19 refund was reduced. Under the Letter, Taxpayer owed additional tax of \$302.00, no civil penalty,
20 no interest, and received a credit of \$333.00, for a total refund due of \$31.00 for tax reporting
21 period from January 1, 2017 to December 31, 2017. [Administrative File].

1 3. On July 12, 2019, under Letter Id. No. L0964062384, the Department issued a
2 Return Adjustment Notice (Refund Due) to Taxpayer, indicating that Taxpayer's requested
3 refund was reduced. Under the Letter, Taxpayer owed additional tax of \$564.00, no civil penalty,
4 no interest, and received a credit of \$675.00, for a total refund due of \$111.00 for tax reporting
5 period from January 1, 2018 to December 31, 2018. [Administrative File].

6 4. On August 2, 2019, Taxpayer submitted a Formal Protest letter, alleging that the
7 Department was incorrect in its denial of her full refunds for 2016, 2017, and 2018 tax years
8 because she was entitled to dependent exemptions and deductions for the child and grandchildren
9 who lived with her. [Administrative File].

10 5. On August 7, 2019, under Letter Id. No. L1666981040 the Department issued a
11 letter informing the Taxpayer that the Department acknowledged receipt of Taxpayer's protest
12 for personal income tax years 2016 (\$15.00), 2017 (\$284.00), and 2018 (\$137.00).
13 [Administrative File].

14 6. On January 29, 2020, the Department submitted a Request for Hearing to the
15 Administrative Hearings Office, requesting a hearing on the merits of Taxpayer's protest. The
16 Request for Hearing stated that the total at issue was \$436.00. [Administrative File].

17 7. On January 29, 2020, the Department submitted its Answer to Protest to the
18 Administrative Hearings Office, claiming that the Taxpayer is not entitled to claim the children
19 as dependents. [Administrative File].

20 8. On January 29, 2020, the Administrative Hearings Office mailed a Notice of
21 Administrative Hearing to the parties, setting the matter for a hearing on the merits of Taxpayer's
22 protest on February 27, 2020 in Santa Fe, New Mexico. [Administrative File].

1 9. On January 30, 2020, the Department, through Attorney Peter Breen, filed with
2 the Administrative Hearings Office the Department’s “Motion for Summary Disposition of
3 Protest Pursuant to Rule 22.600.3.13 [sic] NMAC in the Nature of a Rule 1-012 (C) NMRA
4 Motion for Judgment on the Pleadings.” [Administrative File].

5 10. On February 21, 2020, the Department, through Attorney Peter Breen, filed with
6 the Administrative Hearings Office the Department’s “Motion to Vacate Hearing and Issue
7 Order on Motion for Judgment on the Pleadings.” [Administrative File].

8 11. On February 26, 2020, the undersigned Administrative Hearing Officer Ignacio
9 V. Gallegos issued an “Order Denying Department’s Motions for Judgment on the Pleadings.”
10 [Administrative File].

11 12. The undersigned Administrative Hearing Officer Ignacio V. Gallegos conducted
12 the merits hearing on February 27, 2020 with the parties present at the Administrative Hearings
13 Office in the Willie Ortiz Building in Santa Fe, New Mexico. Neither the Department nor the
14 Taxpayer objected that conducting the hearing satisfied the 90-day hearing requirements of
15 Section 7-1B-8 (F) (2019). The Administrative Hearings Officer preserved a recording of the
16 hearing (“Hearing Record” or “H.R.”). [Administrative File].

17 13. Taxpayer provided additional exhibits by email following the hearing on March 4,
18 2020, which were admitted without objection. [Administrative File].

19 **Substantive Findings**

20 14. Taxpayer Lisa Chavez is an individual residing in Santa Fe, New Mexico. At all
21 times pertinent to this protest, she was a New Mexico resident. Taxpayer filed New Mexico

1 Personal Income Tax returns for tax years 2016, 2017, 2018, and an amended return for 2016,
2 which are at issue here. [Administrative File; Taxpayer's Exhibit 6-8 through 6-11].

3 15. The amended 2016 PIT-X changed the Taxpayer's exemption claim from 2 to 3
4 (Line 13a), for herself, her minor son J.G. and adding minor grandchild C.C. The amended 2016
5 PIT-X raises the Taxpayer's claim for the working families tax credit (Line 25) from \$337 to
6 \$557, and the PIT-RC increases the Taxpayer's claims to 3 exemptions (Line 1). [Administrative
7 File; Taxpayer's Exhibit 6-8 through 6-11].

8 16. During the tax years in question, Taxpayer did not obtain a signed form 8332 or
9 similar statement from Taxpayer's Adult Daughter¹, explicitly allowing Taxpayer to claim
10 Taxpayer's Adult Daughter's children as dependents. [Cross examination of Lisa Chavez, H.R.
11 1:01:30-1:02:00].

12 17. During the tax years in question, Taxpayer attempted to obtain but did not secure
13 a court order giving her custody or guardianship of Taxpayer's Adult Daughter's children, due to
14 alleged ongoing harassment against her by the children's parents. [Administrative File (Formal
15 Protest letter, Affidavits, Court documents); Direct examination of Lisa Chavez, H.R. 20:30-
16 22:30; Cross examination of Lisa Chavez, H.R. 45:00-48:30; Taxpayer exhibits 1, 5, 6, 7].

17 18. Taxpayer provided a home for her children, including her minor son J.G. and
18 Taxpayer's Adult Daughter. Taxpayer's Adult Daughter lived with Taxpayer periodically
19 throughout the timeframe at issue. [Administrative File (landlord letters, documents with
20 Taxpayer's Adult Daughter's address); Direct examination of Lisa Chavez, H.R. 22:00-22:40,
21 26:00-26:20, 27:30-30:20, 32:00-33:50; Taxpayer exhibits 1, 7].

¹ Taxpayer's Adult Daughter is used throughout this Decision and Order as an alias, since her identity is not critical to the case, and the facts pertinent to the case do not cast a favorable light. Taxpayer's Adult Daughter's name is mentioned throughout the record, the administrative file and the exhibits.

1 19. The Department accepted that Taxpayer was entitled to head of household status
2 and dependent deductions and exemptions for her own son J.G., i.e., “Dependent 1” and “Child
3 1” on the IRS tax transcripts. [Administrative File; AHO examination of Angelica Rodriguez,
4 H.R. 1:05:00-1:13:00; Taxpayer Exhibits 2, 3, 4].

5 20. In February of 2016, Taxpayer’s Adult Daughter and her child C.C. (year of birth,
6 2013) came to live with Taxpayer in Santa Fe. Taxpayer’s Adult Daughter’s second child, J.V
7 was born in September of 2016 and also resided in the Taxpayer’s residence. Despite a brief stay
8 elsewhere in November of 2016, they lived together for the remainder of 2016. The total time
9 Taxpayer’s Adult Daughter, C.C. and J.V. lived at the Taxpayer’s residence was greater than half
10 the 2016 year. [Administrative File (Affidavit of Sandra Montoya, landlord); Direct examination
11 of Lisa Chavez, H.R. 26:00-26:20, 27:30-29:15, 32:00-33:45; Taxpayer’s Exhibit 6].

12 21. In 2017, Taxpayer’s Adult Daughter and her two children C.C. and J.V. lived with
13 Taxpayer in Santa Fe. In July of 2017, the entire group moved to Rio Rancho, New Mexico, in
14 an attempt by Taxpayer to remove Taxpayer’s Adult Daughter from bad influences in Santa Fe.
15 In August of 2017, Taxpayer’s Adult Daughter gave birth to a third child, E.V. Taxpayer’s
16 Adult Daughter and her children moved out of Taxpayer’s residence at the end of September
17 2017. The total time Taxpayer’s Adult Daughter, C.C. and J.V. lived at the Taxpayer’s residence
18 was greater than half the 2017 year. The newborn E.V. did not live with Taxpayer more than half
19 the remainder of the calendar year after birth. [Administrative File (Affidavit of Sandra
20 Montoya, landlord) (Affidavit of Eduardo Larios, landlord); Direct examination of Lisa Chavez,
21 H.R. 26:00-26:20, 27:30-29:15, 32:00-33:45; Taxpayer Exhibit 1].

22 22. In 2018, Taxpayer’s Adult Daughter and her three children returned to the
23 Taxpayer’s home in May due to domestic conflict involving the Taxpayer’s Adult Daughter’s

1 boyfriend A.V. Taxpayer's Adult Daughter stayed until Mid-June. She returned July 1 and
2 stayed the remainder of the year. The total time Taxpayer's Adult Daughter, C.C., J.V., and E.V.
3 lived at the Taxpayer's residence was greater than half the 2018 year. [Administrative File
4 (Affidavit of Sandra Montoya, landlord; Affidavit of Eduardo Larios, landlord); Direct
5 examination of Lisa Chavez, H.R. 32:00-33:45; Taxpayer Exhibit 1, 7].

6 23. Neither Taxpayer nor the Department provided evidence that there exists a written
7 separation agreement between Taxpayer's Adult Daughter and A.G., the non-custodial parent of
8 C.C. Likewise, neither Taxpayer nor the Department provided evidence that there exists a written
9 separation agreement between Taxpayer's Adult Daughter and A.V., the non-custodial parent of
10 J.V and E.V. [Administrative File; Direct examination of Lisa Chavez 22:00-24:50, 26:20-
11 27:30].

12 24. At all times the children and grandchildren were living with Taxpayer, Taxpayer
13 provided and paid for food, clothing, transportation, lodging and utilities to benefit the children
14 and grandchildren. [Administrative File; Re-Direct examination of Lisa Chavez 1:17:00-
15 1:18:15].

16 25. While it was undisputed that the Taxpayer's expenditures on behalf of the
17 children and grandchildren were substantial, Taxpayer provided no receipts or physical
18 documentation of expenditures made for the household or on grandchildren's behalf. The
19 Department implied, and Taxpayer did not dispute, that the children's mother, Taxpayer's Adult
20 Daughter, was also receiving support from the State of New Mexico on behalf of herself and the
21 children. The support was in the form of cash assistance and food stamps. The state assistance
22 was available while Taxpayer's Adult Daughter was away from the Taxpayer's home. Neither
23 the Taxpayer nor the Department provided evidence which would provide comparison to the

1 support expenditures Taxpayer provided against any sums that the children's parents provided, if
2 any. Taxpayer testified that assistance Taxpayer's Adult Daughter received did not go to the
3 children, and instead went to support of Taxpayer's Adult Daughter's and her boyfriend's drug
4 and alcohol habit. [Administrative File; Cross examination of Lisa Chavez, H.R. 48:20-52:10;
5 Cross examination of Angelica Rodriguez 1:14:00-1:18:15; Taxpayer exhibit 1].

6 26. Taxpayer claimed federal tax reductions related to dependents during the tax
7 years at issue. In 2016, Taxpayer's original federal return claimed only that her son was her
8 dependent. The 2016 return was amended in 2018 to claim her son as well as grandchild C.C.
9 Taxpayer's Amended PIT-1 reflected the same claim of dependents as the federal return.
10 [Administrative File; AHO examination of Angelica Rodriguez 1:05:40-1:13:00; Taxpayer
11 exhibits 2, 6, 8.]

12 27. In 2017, Taxpayer's federal return claimed that her son and grandchildren C.C.
13 and E.V. were dependents. There is no information in the record about the Taxpayer's 2017
14 PIT-1 return claims. [Administrative File; AHO examination of Angelica Rodriguez, H.R.
15 1:05:40-1:12:25; Taxpayer exhibit 3].

16 28. In 2018, Taxpayer's federal return claimed that her son and grandchildren C.C.
17 and E.V. were dependents. There is no information in the record about the Taxpayer's 2018 PIT-
18 1 return claims. [Administrative File; AHO examination of Angelica Rodriguez, H.R. 1:05:40-
19 1:09:10; Taxpayer exhibit 4].

20 29. Taxpayer's New Mexico Personal Income Tax returns were singled out by a
21 computer program, which determined that Taxpayer was not entitled to claim dependent
22 exemptions and deductions, rejecting the Taxpayers claims for such, because another person
23 claimed the Taxpayer's grandchildren as dependents on New Mexico personal income tax

1 returns during the years at issue. The Department provided neither testimony nor documentary
2 evidence that the other person's claim was valid. [Administrative File; Cross examination of
3 Angelica Rodriguez, H.R. 1:15:45-1:18:15; AHO examination of Angelica Rodriguez, H.R.
4 1:18:15-1:23:30].

5 30. Tax auditor Angelica Rodriguez acknowledged that a computer program initiated
6 this assessment, and the program singles out dependents claimed on more than one tax return.
7 After reviewing the documents provided by Taxpayer, the protest auditor was unable to
8 determine who provided the children greater support during the years in question.
9 [Administrative File; Cross examination of Angelica Rodriguez, H.R. 1:13:30-1:18:10].

10 31. Taxpayer's Adult Daughter, the custodial parent of children C.C. and J.V., on IRS
11 form 1040-EZ and New Mexico form PIT-1 in 2016, claimed herself as single and did not claim
12 children as dependents. No information concerning Taxpayer's Adult Daughter's tax filings for
13 2017 and 2018 were provided as exhibits. [Administrative file].

14 32. The IRS allowed the Taxpayer's claimed dependent exemptions and deductions
15 for all years at issue. [Administrative File; Direct examination of Lisa Chavez, H.R. 40:30-
16 42:20].

17 **DISCUSSION**

18 During the timeframe at issue, Taxpayer Lisa Chavez provided a home, food, clothing,
19 and other necessities to her minor son, her adult daughter, and the minor children of her adult
20 daughter. Taxpayer's Adult Daughter did not maintain consistent employment and would leave
21 the grandchildren with Taxpayer when nursing a drug and alcohol addiction. The two fathers of
22 the grandchildren did not live with them and did not support Taxpayer's grandchildren. The
23 state provided some aid, but that amount was not known, since it was funneled through their

1 mother, Taxpayer's Adult Daughter, and was only provided when Taxpayer's Adult Daughter
2 was out of the Taxpayer's home (i.e., less than half the year). Taxpayer claimed two
3 grandchildren as dependents on her federal and state personal income tax returns. Parties did not
4 specify which deductions, exemptions or credits were at issue, but agreed that the granting of the
5 full refund hinges on whether these grandchildren are "dependents" as defined by the Internal
6 Revenue Code, 26 U.S.C. Section 152.

7 New Mexico personal income tax is governed by the Income Tax Act, NMSA 1978,
8 Sections 7-2-1 through 7-2-39. It is undisputed that Taxpayer was a New Mexico resident during the
9 2016, 2017, and 2018 tax years, and the Income Tax Act applies to her income. *See* Section 7-2-2
10 (S) (2014). The answer to the question presented requires analysis of the Internal Revenue Code
11 definition of dependent, 26 U.S.C. § 152 and Publication 501, which offers official interpretation of
12 the code.

13 **Presumption of correctness**

14 The presumption of correctness under NMSA 1978, Section 7-1-17 (C) (2007) does not
15 strictly attach in this matter because the protest does not stem from the issuance of an assessment
16 under Section 7-1-17. Taxpayer nevertheless has the burden to establish that she was entitled to
17 the claim for credits pursuant to Regulation §3.1.8.10 NMAC (08/30/2001) and must establish
18 entitlement to the claimed refund. The denial of Taxpayers' claim for refund is viewed under the
19 lens of a presumption of correctness. *See Corr. Corp. of Am. of Tenn. v. State*, 2007-NMCA-148,
20 ¶17 & ¶29, 142 N.M. 779.

21 Tax credits are legislative grants of grace to a taxpayer that must be narrowly interpreted
22 and construed against a taxpayer. *See Team Specialty Prods. v. N.M. Taxation & Revenue Dep't*,
23 2005-NMCA-020, ¶9, 137 N.M. 50, 107 P.3d 4. Under the rationale of *Team Specialty Prods*,

1 Taxpayer carries the burden of proving that she is entitled to the claimed credit. Although a
2 credit must be narrowly interpreted and construed against a taxpayer, it still should be construed
3 in a reasonable manner consistent with legislative language. *See Sec. Escrow Corp. v. State*
4 *Taxation & Revenue Dep't*, 1988-NMCA-068, ¶9, 107 N.M. 540. Consequently, Taxpayer must
5 show that she is entitled to the credits that are the basis of her claims for refund, and that the
6 Department acted in error in issuing the return adjustment and denying the refunds at issue.

7 **Determination of Dependents**

8 The Taxpayer claims that not only her minor son was living with her, but also her minor
9 grandchildren of her adult daughter were living with her during the years in question. The
10 testimonial and documentary evidence supports the assertion. The Department implied that the
11 grandchildren had been claimed by another person, perhaps a parent, though the Department refused
12 to provide further information, citing confidentiality concerns. While neither the Department nor the
13 Taxpayer were clear as to which specific exemptions, deductions, or credits were in dispute, the
14 parties agreed that the outcome of this dispute hinged on a determination of whether the
15 grandchildren were “dependents” as defined by the IRS. Nevertheless, the Hearing Officer
16 considers this a two-part inquiry. I analyze, first, the Taxpayer’s entitlement to a claim for her
17 grandchildren as dependents, in general, for the purpose of exemption, and, second, whether the
18 specific credits claimed on New Mexico personal income tax forms are adequately proven. With
19 analysis set forth below, Taxpayer is entitled to claim that the grandchildren were her dependents in
20 2016, for both exemptions and state credits claimed. For the years 2017 and 2018, while there was
21 adequate evidence of continuing status as dependents, there is no evidence of whether the custodial
22 parent made state claims to the children, and evidence was insufficient to prove entitlement to state
23 tax credits.

1 For personal income tax credits, deductions and exemptions, whether a person is a
2 “dependent” in New Mexico rests on the same definition of “dependent” applicable under federal
3 tax law. *See* NMSA 1978, Section 7-2-2(N)(3)(2014); *see also* Regulation 3.3.1.11 NMAC
4 (12/14/00); *see also* NMSA 1978, Section 7-2-18.1 (A)(3) (2015); *see also* Regulation 3.3.13.9 (A)
5 NMAC (12/14/00); *see also* NMSA 1978, Section 7-2-18.13 (D)(1) (2005); *see also* NMSA 1978,
6 Section 7-2-36 (C)(1) (2005); *see also* NMSA 1978, Section 7-2-37 (C)(1) (2015); *see also* NMSA
7 1978, Section 7-2-14 (G) (1998); *see also* PIT-1 Instructions, page 22 (2016), page 21 (2017), page
8 20 (2018) (“Line 5 Exemptions... New Mexico uses the same definitions and qualifications as the
9 IRS to determine if someone is your dependent”). The proper manner of determining whether a
10 child or descendant is a taxpayer’s dependent is the manner outlined in the Internal Revenue Code
11 (IRC). The term “dependent” is defined by 26 U.S.C. §152. The IRC provides “the term
12 “dependent” means (1) a qualifying child, or (2) a qualifying relative.” 26 U.S.C. §152 (a). Since
13 the exceptions provided in Section 152 (b) are inapplicable, we proceed to Section 152 (c) to
14 determine whether a grandchild is a qualifying child or a qualifying relative. For a “qualifying
15 child,” there are five separate tests used in conjunction to determine whether someone is a
16 qualifying child: relationship, residence, age, support, and joint return tests.

17 *Relationship.* To meet the first test, the relationship test, a “qualifying child” is an individual
18 “who bears a relationship to the taxpayer described in paragraph (2).” §152 (c)(1)(A). The
19 relationship requirement is that the individual is “a child of the taxpayer or a descendant of such a
20 child.” §152 (c)(2)(A). A child of a taxpayer meets the relationship test, as do grandchildren of a
21 taxpayer from one of taxpayer’s children, as they are descendants of the taxpayer’s child. Under
22 this test, the Taxpayer’s grandchildren would meet the test requirements. The evidence presented at
23 the hearing satisfied the Hearing Officer that the Taxpayer satisfied the first “relationship test.”

1 *Residence.* To meet the second test, the residence test, a “qualifying child” is an individual
2 “who has the same principal place of abode as the taxpayer for more than one-half of such taxable
3 year.” 26 U.S.C. §152 (c)(1)(B). Evidence was undisputed that Taxpayer provided a home for her
4 own son, her adult daughter, and the children of her adult daughter. A complication rests in the fact
5 that two of the children were born in latter half of the tax years. The IRS official interpretation,
6 Publication 501, page 14 (2016), page 13-14 (2017), page 13-14 (2018), provides the following:

7 **Death or birth of child.** A child who was born or died during the year is treated as
8 having lived with you more than half the year if your home was the child's home
9 more than half the time he or she was alive during the year. The same is true if the
10 child lived with you more than half the year except for any required hospital stay
11 following birth.

12 So, in this instance, even though one child, “J.V.”, was born in September 2016, and one child,
13 “E.V.”, was born in August 2017, the children are considered to have lived with the Taxpayer for
14 more than half the year of their respective birth years. However, since the evidence is unclear as to
15 whether “E.V.” stayed at the Taxpayer’s residence following the child’s birth or went with the
16 mother when she returned to stay with boyfriend A.V. following the birth, a negative determination
17 must be made as to E.V. In short, evidence presented satisfied the Hearing Officer that Taxpayer
18 meets the residence test as to her own minor son, J.G., and as to her grandchildren C.C. (and, though
19 not claimed, J.V.) for all years at issue. The Taxpayer fails the residence test as to E.V. as evidence
20 is inconclusive for the year of the child’s birth, 2017, but because the infant child moved back in
21 and spent more than half the year of 2018 in Taxpayer’s home, the Taxpayer has met the residence
22 test for E.V. in 2018, the year Taxpayer claimed the child.

23 *Age.* To meet the third test, the age test, a “qualifying child” must be an individual “who
24 meets the age requirements of paragraph (3).” 26 U.S.C. §152 (c)(1)(C). Each of the children at
25 issue were under the age of 19 years-old, as required under §152 (c)(3)(A)(i). C.C. was born in

1 2013, J.V. was born in 2016, and E.V. was born in 2017. Evidence presented satisfied the Hearing
2 Officer that each child meets the age test.

3 *Joint Return.* To meet the fifth test (taken out of order here for ease of reading), the joint
4 return test, the “qualifying child” is an individual “who has not filed a joint return (other than only
5 for a claim of refund) with the individual’s spouse under section 6013 for the taxable year beginning
6 in the calendar year in which the taxable year of the taxpayer begins.” 26 U.S.C. §152 (c)(1)(E).
7 There is no evidence that the purported dependents filed their own state or federal tax returns, or
8 that as infants and toddlers they had spouses. The evidence satisfied the Hearing Officer that the
9 Taxpayer satisfied the joint return test.

10 *Support.* Finally, to meet the fourth test (taken out of order here because it is the test at
11 issue), the support test, the “qualifying child” must be an individual, “who has not provided over
12 one-half of such individual’s own support for the calendar year in which the taxable year of the
13 taxpayer begins.” 26 U.S.C. §152 (c)(1)(D). No evidence exists that the purported qualifying
14 children provided any support of their own. The support provided by the State through Temporary
15 Assistance for Needy Families (TANF) program or other public assistance programs is not
16 considered income of the child(ren), especially considering that the receiving party did not use the
17 income for the sake of the child(ren). *See* IRS Publication 501, pages 15, 16, 20 (2016), pages. 15,
18 16, 20 (2017), pages 14, 15, 19 (2018). In this instance, the testimony was that the Taxpayer did not
19 receive the public assistance on behalf of the children, but the children’s mother did receive
20 assistance, but used it for other ends. In each case, the children did not provide more than half their
21 own support.

22 Support was provided by Taxpayer in the form of food, clothing, transportation, lodging
23 and utilities – these have significant value, and lodging is accepted to have a fair market or fair

1 rental value, regardless of what was actually paid. *See* IRS Publication 501, page 21 (2016), page
2 21 (2017), page 20 (2018). To support a household of five (in 2016) to seven (in 2018) in Rio
3 Rancho and Santa Fe, this is a sum greater than zero. While the Taxpayer’s grandchildren’s
4 parents may have also provided some support, none is in evidence. And while the State of New
5 Mexico may have provided Taxpayer’s Adult Daughter with cash assistance and food benefits,
6 the evidence presented was that such public assistance was used to further the substance
7 addictions of the recipient, not to benefit the children. Evidence presented satisfied the Hearing
8 Officer that the Taxpayer met the support test for a “qualifying child.”

9 IRS publication 501, to which the Department cites, provides a quick reference “Table 5”
10 which provides a concise comparison of two different support tests, one that pertains to a
11 “qualifying child” and one that pertains to a “qualifying relative.” “Table 5” indicates that to be a
12 “qualified child” the child should meet the same five criteria analyzed here. Under the fourth test
13 for a qualifying child, “[t]he child must not have provided more than half of his or her own support
14 for the year.” By contrast, to be a “qualifying relative” the support test is that the taxpayer “must
15 provide more than half of the person’s total support for the year.” *See* IRS Publication 501, page 12
16 (2016), page 12 (2017), page 11 (2018). The application of the “qualifying child” support test
17 makes it possible that more than one person *may be eligible to* claim the child as a qualifying child,
18 which is the situation at hand.

19 IRS publication 501, also provides “Worksheet 2,” a worksheet for determining support.
20 The Department cited the absence of this worksheet as a factor in its decision to uphold the refund
21 denial. The worksheet, lines 1-5, asks for funds belonging to the child. These lines are not
22 applicable to the children at hand because they are helpless newborns, infants and toddlers with no
23 other source of funds. Lines 6-12 of the worksheet requests the taxpayer to list household expenses,

1 which, as stated above is known to be greater than zero using the fair rental value of a home. Lines
2 13-19 of the worksheet requests an itemization of expenses for the children individually. No
3 receipts were provided as part of evidence. Ultimately, the determination of support² rests on
4 whether the child provided more than half his or her own support. Line 22 states “[i]s line 21
5 (support child provided of his own funds) more than line 20 (half of total cost of the person’s
6 support)? If No, “you meet the support test for this person to be your qualifying child. If this person
7 also meets the other tests to be a qualifying child, stop here; don’t complete lines 23-26. Otherwise
8 go to line 23 and fill out the rest of the worksheet to determine if this person is your qualifying
9 relative.” Because Taxpayer provided more than half of the children’s support (as opposed to the
10 portion the child provided on his or her own), she did not have to complete lines 23-26, which
11 provides the comparison of “the amount others provided for the person’s support...[including]
12 amounts provided by state, local, and other welfare societies or agencies.”

13 The Taxpayer has met the requirements of showing the grandchildren were her
14 “qualifying children” and as such, they are her dependents under 26 U.S.C. §152 (a). Even so,
15 there are special rules for when more than one person claims the same qualifying child as a
16 dependent (see discussion below), because no more than one person at a time can have a claim to
17 the dependent exemptions, deductions and credits.

18 Under the facts presented, Taxpayer has met the five tests to claim her grandchildren as
19 “qualifying children.” Hence, Taxpayer has shown that the grandchildren are her “qualifying
20 children.” IRS Publication 501 lays out an example pertinent to this case:

² The Department took issue that the Taxpayer did not provide a worksheet comparing the amount of support she provided against the amounts of support others may have provided. This contention misconstrues the support test under 26 U.S.C. §152 (c)(1)(D), as the question is whether the child provided more than half of the child’s own support, not an analysis of support from all sources. The Department’s assertion is based in the definition and regulations concerning “qualified relative” (not at issue here) under 26 U.S.C. 152 (d)(1)(C), which provides the different support test: the person may be a qualified relative if “the taxpayer provides over one-half of the individual’s support for the calendar year in which such taxable year begins.”

1 Example 1 – child lived with parent and grandparent. You and your 3-year-
2 old daughter Jane lived with your mother all year. You are 25 years old, unmarried,
3 and your AGI is \$9,000. Your mother’s AGI is \$15,000. Jane’s father didn’t live
4 with you or your daughter. You haven’t signed Form 8832 [sic] (or similar
5 statement) to release the child’s exemption to the noncustodial parent.

6 Jane is a qualifying child of both you and your mother because she meets the
7 relationship, age, residency, support, and joint return tests for both you and your
8 mother. However, only one of you can claim her. Jane isn’t a qualifying child of
9 anyone else, including her father. You agree to let your mother claim Jane. This
10 means your mother can claim Jane as a qualifying child for all of the six tax benefits
11 listed earlier, if she qualifies for each of those benefits (and you don’t claim Jane as
12 a qualifying child for any of those tax benefits). Publication 501, page 17 (2016),
13 page 17 (2017), page 16 (2018).

14 This is the example most applicable to the situation at hand, and its conclusion that “Jane” is a
15 qualifying child of grandparent and custodial parent is the same conclusion the Department wishes
16 to be made here, despite the fact that Taxpayer’s Adult Daughter received state assistance but did
17 not use it for the children, was in and out of the Taxpayer’s home for brief stays away (sometimes
18 without her children and sometimes with them), and had no means of providing support for the
19 children. What is clear is that the Taxpayer has shown she met the five-part test for claiming the
20 grandchildren as “qualifying children.” But the application of these five tests do not answer the
21 ultimate question of whether the Taxpayer can claim these “qualifying children” as “dependents.”

22 **When two people can claim the same dependent.**

23 Since we have little in the record concerning Taxpayer’s Adult Daughter (mother), A.G.
24 (father of C.C.), or A.V. (father of J.V. and E.V.) we must analyze the evidence under the same
25 scope to determine if either of the parents may claim any child as dependent. The Department
26 argues that although Taxpayer may have met the dependency tests, that someone else has a stronger

1 claim to the children by virtue of being a parent. The IRC Section 152 (c) provides guidance for
2 individuals in situations in which more than one person can claim a child as dependent:

3 **(4) Special rule relating to 2 or more who can claim the same qualifying**
4 **child.**

5 (A) In general. Except as provided in subparagraphs (B) and (C), if
6 (but for this paragraph) an individual may be claimed as a qualifying child by 2 or
7 more taxpayers for a taxable year beginning in the same calendar year, such
8 individual shall be treated as the qualifying child of the taxpayer who is—

9 (i) a parent of the individual, or

10 (ii) if clause (i) does not apply, the taxpayer with the highest
11 adjusted gross income for such taxable year.

12 (B) More than 1 parent claiming qualifying child. If the parents
13 claiming any qualifying child do not file a joint return together, such child shall be
14 treated as the qualifying child of—

15 (i) the parent with whom the child resided for the longest period of
16 time during the taxable year, or

17 (ii) if the child resides with both parents for the same amount of time
18 during such taxable year, the parent with the highest adjusted gross income.

19 (C) No parent claiming qualifying child. If the parents of an
20 individual may claim such individual as a qualifying child but no parent so claims
21 the individual, such individual may be claimed as the qualifying child of another
22 taxpayer but only if the adjusted gross income of such taxpayer is higher than the
23 highest adjusted gross income of any parent of the individual.

24 It is upon this section that the Department relies for the Department’s argument that if any parent
25 claims the children as dependents, the grandmother’s claim is foreclosed.

26 The plain language of the federal statute clearly allows only one person to claim a
27 dependent, and the statute clearly provides “a parent” the priority in claiming a child as a dependent,
28 when that parent and another person (grandparent, for example) both “may” claim the same child as

1 a dependent. Section 152 (c)(4)(A). However, the word “may” presupposes that both the parent and
2 the other person are qualified as having met the other tests for dependency, including the residence
3 and support tests, at issue here. There is no evidence on record of what amount of support
4 Taxpayer’s Adult Daughter provided her children or the amount of income provided by public
5 assistance programs. There is a leap of faith needed to presuppose that Taxpayer’s Adult Daughter,
6 as the custodial parent also “may” claim the children, despite not having the income to do so.

7 Evidence that a parent otherwise entitled to the claim in fact claimed the children is not part
8 of the record. In fact, the opposite is true. The Taxpayer had access to only her own and some 2016
9 records for her daughter; the Department has access to taxpayer records, yet provided none, citing
10 confidentiality provisions of tax records. *See* NMSA 1978, Section 7-1-8 (2017). The records
11 provided as to Taxpayer’s Adult Daughter’ 2016 returns are deemed “public” as they were shared
12 with Taxpayer, who then shared them with the Department, who then shared them with the
13 Administrative Hearings Office. *See* NMSA 1978, Section 7-1-8 (D) (2017). Here, since the burden
14 rests squarely on the Taxpayer to show entitlement to the refund at issue for the tax years at issue,
15 comparison of the Taxpayer’s 2016 personal income tax return with the 2016 tax return filed by
16 Taxpayer’s Adult Daughter, the custodial parent, is essential to the ultimate determination. “Where
17 an exemption or deduction from tax is claimed, the statute must be construed strictly in favor of the
18 taxing authority, the right to the exemption or deduction must be clearly and unambiguously
19 expressed in the statute, and the right must be clearly established by the taxpayer.” *Sec. Escrow*
20 *Corp. v. Taxation & Revenue Dep’t*, 1988-NMCA-068, ¶8, 107 N.M. 540, 760 P.2d 1306.

21 The Department also argued that the custodial parent who may claim the children might
22 give that right to claim the children to the other parent (the children’s fathers) by using IRS form
23 8332. The IRS form 8332 and its instructions (which had minor changes over the years at issue) do

1 not allow such transfer, in what appears to be an effort to reduce fraudulent claims by unsupportive
2 parents. They are examined year by year.

3 2016. The IRS form 8332 and instructions (rev. 12/2000) was not applicable to parents who
4 were never married. Child C.C.'s non-custodial parent (father) could not claim the child under
5 these circumstances, even if a signed form 8332 had been delivered to him. Likewise, the non-
6 custodial parent of child J.V. could not claim the child, even if a signed form 8332 had been
7 delivered to him. Apart from Taxpayer, Taxpayer's Adult Daughter is the only person who would
8 be close to meeting the five tests for qualifying children, as custodial parent living with the children
9 at her mother's house for more than half the year, if she provided an amount greater than zero to
10 support the children. Since Taxpayer's Adult Daughter is a parent, she would have priority in
11 claiming the children. *See* 26 U.S.C. § 152 (c)(4)(A)(i). According to documents provided by
12 Taxpayer, the Taxpayer's Adult Daughter filed her IRS form 1040-EZ and PIT-1, claiming (1)
13 single status, and (2) no dependent exemptions. Hence, the custodial parent did not claim the
14 children C.C. and J.V. as dependents on either federal or state returns, and the only other person
15 who "may" do so was Taxpayer. Taxpayer could have claimed both C.C. and J.V. as dependents,
16 but for the lack of a social security number (J.V.'s), which had been withheld from Taxpayer by the
17 child's parents. Taxpayer's amended 2016 PIT-X return properly claimed C.C. as a dependent.

18 2017. The IRS form 8332 and instructions (rev. 12/2000) was not applicable to parents who
19 were never married. Child C.C.'s non-custodial parent (father) could not claim the child under
20 these circumstances, even if a signed form 8332 had been delivered to him. Likewise, the non-
21 custodial parent of child J.V. could not claim the child, even if a signed form 8332 had been
22 delivered to him. While Taxpayer demonstrated she could have claimed the grandchildren as
23 dependents (as noted above), there is no indication of whether the custodial parent Taxpayer's Adult

1 Daughter did or did not. Even with a minor amount of support, Taxpayer's Adult Daughter could
2 have met the support test by providing an amount of money greater than zero. No information was
3 provided concerning whether Taxpayer's Adult Daughter claimed the children C.C., J.V. and E.V.
4 on New Mexico personal income tax returns in 2017. No information was provided concerning
5 whether Taxpayer claimed the children C.C., J.V. or E.V. on New Mexico personal income tax
6 returns, or the exemptions, deductions or credits Taxpayer claimed on state forms. Based on the
7 absent evidence, it is unclear whether Taxpayer or Taxpayer's Adult Daughter could have claimed
8 C.C., J.V., and E.V. on New Mexico PIT returns as dependents in 2017, and the evidence is
9 insufficient to show Taxpayer did.

10 2018. The IRS form 8332 and instructions (rev. 10/2018) points to Pub. 501 for guidance as
11 to who can use the form. Since the record is clear that the Taxpayer met the five-part test for
12 qualified children as dependents as noted above, the question is whether Taxpayer's Adult Daughter
13 could have also met the tests in order to be able to transfer the right to the non-custodial parent
14 fathers using this form. The form instructions, following the statute 26 U.S.C. § 152 (e), state
15 “[g]enerally, a child of divorced or separated parents will be a qualifying child of the custodial
16 parent.” However, there is a special rule which can change this generalization.

17 A child is treated as a qualifying child or a qualifying relative of the noncustodial
18 parent if all of the following apply:

- 19 1. The child received over half of his or her support for the year from one or
20 both of the parents (see *Exception* below). If you received payments under the
21 Temporary Assistance for Needy Families (TANF) program or other public
22 assistance program and you used the money to support the child, see Pub. 501.
- 23 2. The child was in the custody of one or both of the parents for more than half
24 of the year.
- 25 3. Either of the following applies.

1 a. The custodial parent agrees not to claim an exemption for the child by
2 signing this form [8332] or a similar statement. ...

3 For this rule to apply, the parents must be one of the following. Divorced or legally
4 separated under a decree of divorce or separate maintenance. Separated under a
5 written separation agreement. Living apart at all times during the last 6 months of
6 the year.

7 If this rule applies, and the other dependency tests in the instructions for your tax
8 return are also met, the noncustodial parent can claim an exemption for the child.

9 As custodial parent, who may have provided more than no support to the children, Taxpayer's Adult
10 Daughter is in the first position to claim the children under the general rule. Since both fathers A.G.
11 and A.V. did not provide support to assist the children neither of them could meet the requirement
12 that "child received over half of his or her support for the year from one or both of the parents." *See*
13 26 U.S.C. § 152 (e)(1)(A). Turning then to Taxpayer's Adult Daughter, and the support she
14 provided, it is here that a comparison of support is warranted. Taxpayer's Adult Daughter relied on
15 the good will of her mother, occasional part-time work, and state assistance while using the money
16 gained from these sources to nurse her own and her boyfriend's drug and alcohol habits during the
17 time frames at issue here. Assuming that the food assistance and cash assistance Taxpayer's Adult
18 Daughter received was taken under the Temporary Assistance for Needy Families (TANF)
19 program, the record is clear that the money was not used for the children. The children provided no
20 support of their own. Here, only one person can be said to have supported the children and meets
21 all the dependency tests: Taxpayer Lisa Chavez. The conclusion must be that Taxpayer's Adult
22 Daughter could not have provided an effective form 8332 to the non-custodial fathers.

23 Nevertheless, regardless of whether Taxpayer's Adult Daughter is able to provide an
24 effective form 8332 to the unsupportive non-custodial fathers, she may still be able to meet the
25 qualifying children support test, if she provided greater than zero support to the children, and retains

1 the primary right to do so as the custodial parent. No information was provided concerning whether
2 Taxpayer's Adult Daughter claimed the children C.C., J.V. and E.V. on New Mexico personal
3 income tax returns in 2017. No information was provided concerning whether Taxpayer claimed
4 the children C.C., J.V. or E.V. on New Mexico personal income tax returns, or the exemptions,
5 deductions or credits Taxpayer claimed on state forms. Based on the absent evidence concerning
6 Taxpayer's Adult Daughter's 2017 returns, Taxpayer cannot establish she had the right to claim
7 C.C., J.V., and E.V. on New Mexico PIT returns as dependents in 2017.

8 If the question is whether the children are dependents, the answer is yes, by virtue of
9 meeting the requirements of qualified children; if the question is whether Taxpayer met her burden
10 of proving entitlement to the exemptions and credits at issue, the answer is no, since Taxpayer did
11 not prove that Taxpayer's Adult Daughter did not claim the children. For a grandparent to prove the
12 case would be near impossible (absent a custody order from a district court) since it requires
13 comparison of Taxpayer's tax information against the confidential tax information of another (one
14 or more parents), which is not routinely shared.

15 Only for the year 2016, the record reflects that the custodial parent did not claim the children
16 as dependents. The record is not developed sufficiently as to tax years 2017 and 2018 on this
17 subject, therefore the Taxpayer has not met her burden. Because under the rationale of *Team*
18 *Specialty Prods*, Taxpayer carries the burden of proving that she is entitled to the claimed
19 exemptions and credits, without being able to show her daughter did not claim exemptions and
20 credits available, Taxpayer has not met this burden. See *Team Specialty Prods.*, 2005-NMCA-
21 020, ¶9.

22 **Conclusion**

1 In tax year ending December 31, 2016, Taxpayer claimed only her minor son as a dependent
2 on her original federal tax forms. In 2018, Taxpayer amended her 2016 returns and claimed both
3 her son and her grandchild C.C. It is the conclusion of this tribunal that the Taxpayer's claim of the
4 grandchild was legitimate as to the 2016 tax year, as C.C. meets the criteria listed under 26 U.S.C.
5 §152. It is the further conclusion of this tribunal that the Taxpayer could have also claimed J.V. as a
6 dependent in 2016, as J.V. was born in that year and resided with Taxpayer the majority of the time
7 remaining in the year after J.V.'s birth. The evidence presented showed that Taxpayer claimed the
8 dependents when her adult daughter, Taxpayer's Adult Daughter, the mother of the children did not.
9 The issues at protest related to 2016 are granted. The Taxpayer's only state tax returns in evidence
10 are the amended Personal Income Tax return (PIT-X) and PIT-RC for the 2016 tax year. In that
11 amended return, Taxpayer's claim for three household member exemptions (line 24) and the
12 Working Families Tax Credit (line 25) are supported by the evidence presented at the hearing.
13 Taxpayer has established a substantial case for these exemptions and credits. See NMSA 1978,
14 Section 7-2-18.15 (2008) ("Working Families Tax Credit").

15 In tax year ending December 31, 2017, Taxpayer claimed her minor son as well as minor
16 grandchild C.C. and minor grandchild E.V. on federal forms. Since E.V. was born in the latter half
17 of the year and testimony was inconclusive as to where E.V. stayed after his birth, since E.V.'s
18 mother left to live with boyfriend shortly after E.V.'s birth, inclusion of E.V. as Taxpayer's
19 dependent is not justified. However, since there were no documents in evidence showing 2017 New
20 Mexico returns for either Taxpayer or Taxpayer's Adult Daughter, what was claimed and by whom
21 is inconclusive. Without the evidence, the protest as to 2017 must be denied.

22 In tax year ending December 31, 2018, Taxpayer claimed her minor son as well as minor
23 grandchild C.C. and minor grandchild E.V. on federal forms. Again, there were no documents in

1 evidence showing 2017 New Mexico returns for either Taxpayer or Taxpayer's Adult Daughter, so
2 what was claimed and by whom is inconclusive. Without the evidence, the protest as to 2018 must
3 be denied.

4 **CONCLUSIONS OF LAW**

5 A. Taxpayer filed a timely, written protest of the Department's denial of refund letter
6 ID Numbers L0964062384 (2018), L1780821168 (2017) and L0528833712 (2016) and jurisdiction
7 lies over the parties and the subject matter of this protest. *See* NMSA 1978, § 7-1-24 (2017); *see*
8 *also* NMSA 1978, § 7-1-26 (2017).

9 B. The Administrative Hearings Office held a hearing within 90-days of Department's
10 request for hearing pursuant to NMSA 1978, § 7-1B-8 (2019) and Regulation § 22.600.3.8 (E)
11 NMAC (02/01/2018).

12 C. The Department's Return Adjustment Notice is viewed under a lens of a
13 presumption of correctness, therefore it is Taxpayer's burden to establish that she was entitled to her
14 claims for exemptions and credits. *See* Regulation §3.1.8.10 NMAC (08/30/2001); *see also Corr.*
15 *Corp. of Am. of Tenn. v. State*, 2007-NMCA-148, ¶17 & ¶29, 142 N.M. 779; *see also* NMSA 1978,
16 § 7-1-17 (C) (2007).

17 D. Taxpayer presented evidence that showed her minor child and the minor children of
18 her adult daughter met the IRS tests for qualified children, therefore they were Taxpayer's
19 dependents. *See* 26 U.S.C. § 151; *see also* 26 U.S.C. § 152; *cf.* 26 C.F.R. 152-1.

20 E. Taxpayer met the burden of showing entitlement to dependent exemptions and the
21 Working Families Tax Credit for tax year 2016. *See* 26 U.S.C. § 151; *see also* 26 U.S.C. § 152;
22 *See* NMSA 1978, Section 7-2-18.15 (2008) ("Working Families Tax Credit").

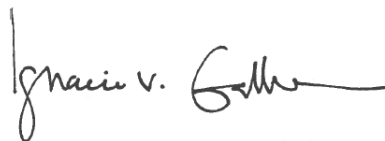
1 F. Taxpayer failed to prove entitlement to dependent exemptions or other credits
2 claimed for tax year 2017 as she did not prove that her daughter had made a claim for the same
3 exemptions and credits. *See* 26 U.S.C. § 152 (c)(4)(A)(i).

4 G. Taxpayer failed to prove entitlement to dependent exemptions and or other credits
5 claimed for tax year 2018 as she did not prove that her daughter had made a claim for the same
6 exemptions and credits. *See* 26 U.S.C. § 152 (c)(4)(A)(i).

7 H. The non-custodial fathers of Taxpayer's Adult Daughter's children were not entitled
8 to dependent exemptions and credits for these children, since Taxpayer's Adult Daughter was
9 unable to relinquish her priority to the exemptions and credits by signing an effective form 8332,
10 since one or both parents did not provide more than half the support for the children and were not
11 living apart the last six months of the year. *See* 26 U.S.C. § 152 (e)(1)(A).

12 For the foregoing reasons, the Taxpayer's protest **IS GRANTED as to 2016 (Letter ID No.**
13 **L0528833712)** and the Taxpayer's protests **ARE DENIED as to 2017 (Letter ID No.**
14 **L1780821168) and 2018 (Letter ID No. L0964062384). IT IS ORDERED** that the Department
15 issue an additional refund in the amount of \$15.00 for 2016. The 2017 and 2018 Return Adjustment
16 Notices and denial of Taxpayer's requests for refund were not proven improper and must be upheld,
17 hence and no additional refund or payment is due. **IT IS FURTHER ORDERED that the**
18 **Department reanalyze the refund denials for 2017and 2018 and take appropriate action not**
19 **inconsistent with this decision and order.**

20 DATED: August 26, 2020.

21 

22 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 August 26, 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
Administrative Hearings Office
P.O. Box 6400
Santa Fe, NM 87502