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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  
CANDICE S. DUBOIS & GUILLERMO CASTRO-GARCIA  
TO THE RETURN ADJUSTMENT NOTICE  
ISSUED UNDER LETTER ID NO. L2044333744**

18

**v.**

**AHO No. 21.02-007R, D&O No. 21-11**

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**NEW MEXICO TAXATION AND REVENUE DEPARTMENT**

**DECISION AND ORDER**

On April 15, 2021, Hearing Officer Dee Dee Hoxie, Esq. conducted a videoconference hearing on the merits of the protest of Candice Dubois (Taxpayer<sup>1</sup>) to the return adjustment notice. The Taxation and Revenue Department (Department) was represented by Kenneth Fladager, Staff Attorney, who appeared by videoconference. Alma Tapia, Auditor, also appeared by videoconference on behalf of the Department. The Taxpayer appeared by telephone and represented herself. The Taxpayer and Ms. Tapia testified. The Hearing Officer took notice of all documents in the administrative file. No exhibits were submitted.

The main issue to be decided is whether the Taxpayer is entitled to claim her grandchildren as dependents. The Hearing Officer considered all of the evidence and arguments presented by both parties. Because the Taxpayer's grandchildren reside with her full-time and the Taxpayer is their sole means of support, the Hearing Officer finds in favor of the Taxpayer. **IT IS DECIDED AND ORDERED AS FOLLOWS:**

**FINDINGS OF FACT**

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<sup>1</sup> Throughout this decision, references to the Taxpayer include her husband, who was also named on the return adjustment notice and whose name appears in the caption of this case. The Taxpayer's husband was tragically killed in a motor vehicle accident in 2019.

1           1.       On August 4, 2020, under letter id. no. L2044333744, the Department issued a return  
2 adjustment notice to the Taxpayer. The Taxpayer's refund claim for the 2019 tax year was reduced  
3 to \$965.42 because the Department disallowed the Taxpayer's claim of her grandchildren as  
4 dependents. [Admin. file L2044333744].

5           2.       The difference between the Taxpayer's claimed refund and the return adjustment  
6 amount is \$588.00. [Testimony of Ms. Tapia].

7           3.       On August 12, 2020, the Taxpayer filed a timely written protest to the return  
8 adjustment notice. [Admin. file protest].

9           4.       On August 31, 2020, the Department acknowledged its receipt of the protest.  
10 [Admin. file L2091470512].

11          5.       On February 22, 2021, the Department filed a request for hearing with the  
12 Administrative Hearings Office. [Admin. file request].

13          6.       On March 12, 2021, a telephonic scheduling hearing was conducted, which was  
14 within 90 days of the request as required by statute. [Admin. file].

15          7.       The Taxpayer is a resident of New Mexico and is subject to the personal income tax  
16 (PIT). [Admin. file; Testimony of Taxpayer; Testimony of Ms. Tapia].

17          8.       The Taxpayer filed a PIT return for the 2019 tax year and claimed an exemption for  
18 her four grandchildren as dependents. [Admin. file; Testimony of Taxpayer; Testimony of Ms.  
19 Tapia].

20          9.       The Taxpayer is the grandparent of the children that she claimed as dependents on her  
21 PIT return. [Admin. file; Testimony of Taxpayer; Testimony of Ms. Tapia].

22          10.      The grandchildren are minors who attend a charter school in Santa Fe, New Mexico.  
23 [Testimony of Taxpayer; Admin file].

24          11.      The Department follows the federal statutes for determining whether someone is a  
25 dependent for income tax purposes. [Testimony of Ms. Tapia].

1           12.     The Taxpayer's daughter is the mother of the grandchildren. [Testimony of  
2 Taxpayer].

3           13.     In 2017, the Children, Youth, and Families Department (CYFD) became involved in  
4 the grandchildren's lives. Their involvement concluded when the grandchildren were placed into the  
5 Taxpayer's custody. [Testimony of Taxpayer].

6           14.     The Taxpayer provided the Department with a copy of the notarized letter from her  
7 daughter that gave the Taxpayer the power to make educational and medical decisions on behalf of  
8 the grandchildren. [Testimony of Taxpayer; Testimony of Ms. Tapia].

9           15.     The notarized letter did not mention financial decisions. [Testimony of Ms. Tapia].

10          16.     The Taxpayer also provided copies of the grandchildren's birth certificates and social  
11 security cards. [Testimony of Ms. Tapia].

12          17.     Since June 2017, the grandchildren have resided full-time with the Taxpayer.  
13 [Admin. file; Testimony of Taxpayer].

14          18.     Since they moved in with the Taxpayer, the Taxpayer has provided their full-time  
15 care, including taking them to school, meeting with teachers and counselors, taking them to the  
16 doctor, housing them, clothing them, and feeding them. [Admin. file; Testimony of Taxpayer].

17          19.     Since they moved in with the Taxpayer, the Taxpayer has provided their full  
18 financial support. [Testimony of Taxpayer].

19          20.     The Taxpayer has never received any financial assistance from her daughter or the  
20 grandchildren's father. [Testimony of Taxpayer].

21                                 **DISCUSSION**

22                   **Burden of proof.**

23                   The burden is on the Taxpayer to prove that she is entitled to an exemption or deduction. *See*  
24 *Public Services Co. v. N.M. Taxation and Revenue Dep't.*, 2007-NMCA-050, ¶ 32, 141 N.M. 520.

1 *See also Till v. Jones*, 1972-NMCA-046, 83 N.M. 743. “Where an exemption or deduction from tax  
2 is claimed, the statute must be construed strictly in favor of the taxing authority, the right to the  
3 exemption or deduction must be clearly and unambiguously expressed in the statute, and the right  
4 must be clearly established by the taxpayer.” *Sec. Escrow Corp. v. State Taxation and Revenue*  
5 *Dep’t.*, 1988-NMCA-068, ¶ 8, 107 N.M. 540. *See also Wing Pawn Shop v. Taxation and Revenue*  
6 *Dep’t.*, 1991-NMCA-024, ¶ 16, 111 N.M. 735. *See also Chavez v. Commissioner of Revenue*, 1970-  
7 NMCA-116, ¶ 7, 82 N.M. 97. *See also Pittsburgh and Midway Coal Mining Co. v. Revenue*  
8 *Division*, 1983-NMCA-019, 99 N.M. 545.

9 **Deduction for a dependent.**

10 Every resident is subject to a tax on her net income. *See* NMSA 1978, § 7-2-3 (1981). Net  
11 income excludes exemptions claimed under the Internal Revenue Code. *See* NMSA 1978, § 7-2-2  
12 (N) (2014). The Internal Revenue Code allows for exemptions from income on claimed dependents.  
13 *See* 26 USCA § 151. *See also* 26 USCA § 152 (2017) (defining dependent). *See also* NMSA 1978,  
14 § 7-2-39 (2019) (indicating that a dependent is defined by the Internal Revenue Code). A dependent  
15 may be the child or grandchild<sup>2</sup> of the person claiming the exemption. *See* 26 USCA § 152. In  
16 general, to claim a child as a dependent, five criteria must be met. *See id.* The dependent must be  
17 the taxpayer’s child or grandchild, the dependent must have “the same principal place of abode as the  
18 taxpayer for more than one-half of such taxable year”, the dependent must not be past a certain age,  
19 the dependent must not have provided more than one-half of his or her own support, and the  
20 dependent must not have filed a joint return with a spouse for that taxable year. *Id.*

21 The Department argues that the auditor really needs to see some court documents or the  
22 CYFD paperwork to prove that the grandchildren are in the Taxpayer’s custody. Ms. Tapia was  
23 concerned that the Taxpayer did not have a formal custody agreement with the grandchildren’s father

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<sup>2</sup> That is “a child of the taxpayer or a descendant of such a child”. 26 USCA § 152.

1 and did not have an affidavit from him or her daughter stating that they agreed to allow the Taxpayer  
2 to claim the grandchildren as her dependents on her taxes. Ms. Tapia felt that the Taxpayer should  
3 have provided more documents to show that she is financially supporting her grandchildren, such as  
4 insurance claims. Ms. Tapia also testified that the Taxpayer had not provided any documentation to  
5 show that the grandchildren lived with her more than six months out of the year and denied that the  
6 Taxpayer provided statements from people at the grandchildren's school. In an exemplary show of  
7 professionalism, Mr. Fladager immediately advised that the notarized statements were part of the  
8 protest and had been included in the documents when the request for hearing was filed. Ms. Tapia  
9 was then able to refresh her memory and explained that she had seen the statements, but she had not  
10 reviewed them.

11 The first criterion is that the dependent is the child or grandchild of the taxpayer. *See* 26  
12 USCA § 152. The Taxpayer testified that the dependents claimed are her grandchildren. There was  
13 no dispute that the claimed dependents are the Taxpayer's grandchildren. Therefore, the first  
14 criterion for claiming a dependent is satisfied. *See id.*

15 The second criterion is that the dependent has the same residence as the taxpayer for more  
16 than half of the year. *See id.* The Taxpayer testified that her grandchildren live with her full-time  
17 and have since 2017. The Taxpayer's testimony was credible on this issue, particularly as it was  
18 supported by four notarized statements from employees of the charter school where the grandchildren  
19 attend. The first was from a doctor at the charter school. [Admin. file]. The doctor attests that the  
20 Taxpayer is the sole guardian of the grandchildren and that they live with the Taxpayer full-time.  
21 [Admin. file]. The doctor has known the family for years, has visited their home several times, and  
22 is in touch with the Taxpayer on a regular basis. [Admin. file].

23 The second statement is from a school counselor at the charter school. [Admin. file]. The  
24 counselor attests that the Taxpayer lives at her address with her grandchildren full-time. [Admin.

1 file]. The counselor is familiar with the family and has witnessed the Taxpayer caring for her  
2 grandchildren in the wake of the tragic loss of her husband. [Admin. file].

3 The third statement is from a teacher at the charter school. [Admin. file]. The teacher is  
4 familiar with the grandchildren, and three of them have been students in her classes. [Admin. file].  
5 The teacher knows that the Taxpayer attends all of the parent-teacher conferences for her  
6 grandchildren, that the Taxpayer is the point of contact for anything related to her grandchildren, and  
7 that the grandchildren live with the Taxpayer full-time. [Admin. file]. The teacher is aware that the  
8 school has provided food services to the grandchildren at the Taxpayer's residence. [Admin. file].

9 The final statement is from an instructor and advisor at the charter school. [Admin. file].  
10 The instructor verifies that the Taxpayer's address is the address listed on the grandchildren's school  
11 records. [Admin. file]. The instructor also attests that she has been to the Taxpayer's residence to  
12 drop off or pick up materials for the grandchildren, that the grandchildren reside there, and that the  
13 Taxpayer is the only person who picks them up from school and attends school functions with them.  
14 [Admin. file].

15 In addition to the Taxpayer's testimony and the corroborating notarized statements, the  
16 Department acknowledged that the Taxpayer's daughter granted the Taxpayer the power to make  
17 educational and medical decisions for the grandchildren. [Testimony of Ms. Tapia]. Based on the  
18 totality of the evidence, there is sufficient proof that the grandchildren reside full-time with the  
19 Taxpayer and have since 2017. Therefore, the second criterion for claiming a dependent is satisfied.  
20 *See* 26 USCA § 152.

21 The third criterion is that the dependent must be under the age of 19 at the beginning of the  
22 taxable year or a student who is under the age of 24 at the end of the taxable year. *See id.* The  
23 teacher's notarized statement indicated that the oldest grandchild was in her 10<sup>th</sup> grade class. [Admin  
24 file]. The Taxpayer also provided copies of the grandchildren's birth certificates to the Department.  
25 [Testimony of Taxpayer; Testimony of Ms. Tapia]. Consequently, there was no dispute that the

1 grandchildren are still school-age children and attend the charter school. Therefore, the  
2 grandchildren are below the age threshold required, and the third criterion for claiming a dependent  
3 was satisfied. *See* 26 USCA § 152.

4 The fourth criterion is that the dependent did not provide more than half of his or her own  
5 support for the taxable year. *See id.* The Taxpayer testified that she provided the sole financial  
6 support for her grandchildren. The Taxpayer testified that her daughter and her grandchildren's  
7 father do not contribute financially. The Taxpayer testified that she takes care of all the educational,  
8 medical, and physical needs of her grandchildren and has done so since they moved in with her in  
9 2017. The Taxpayer is in possession of the grandchildren's birth certificates and social security  
10 cards. [Testimony of the Taxpayer; Testimony of Ms. Tapia]. Again, the notarized statements from  
11 the school employees corroborate the Taxpayer's claims. [Admin. file]. There was sufficient  
12 evidence to establish that the Taxpayer provides full and sole financial support of the grandchildren,  
13 which satisfies the fourth criterion for claiming a dependent. *See* 26 USCA § 152.

14 The final criterion is that the dependent did not file a joint return with a spouse for the taxable  
15 year. *See id.* There was no evidence that any of the grandchildren filed a joint return with a spouse.  
16 Consequently, the fifth and final criterion for claiming a dependent was satisfied. *See id.*

17 Since the Taxpayer provided sufficient evidence to satisfy all five criteria for claiming a  
18 dependent, the Taxpayer has met her burden and established that she is entitled to claim her  
19 grandchildren as her dependents on her PIT return. *See id.* Consequently, the Taxpayer's protest  
20 should be granted.

## 21 CONCLUSIONS OF LAW

22 A. The Taxpayer filed a timely, written protest of the Department's return adjustment  
23 notice, and jurisdiction lies over the parties and the subject matter of this protest. *See* NMSA 1978, § 7-  
24 1B-8 (2019).

1 B. The hearing was timely set and held within 90 days of the request for hearing. *See id.*

2 C. The Taxpayer provided sufficient evidence to prove that she is entitled to claim her  
3 grandchildren as dependents for an exemption on her net income. *See* 26 USCA §§ 151-152. *See*  
4 NMSA 1978, § 7-2-2. *See Public Services Co.*, 2007-NMCA-050, ¶ 32. *See also Till*, 1972-NMCA-  
5 046. *See also Sec. Escrow Corp.*, 1988-NMCA-068, ¶ 8. *See also Wing Pawn Shop*, 1991-NMCA-  
6 024, ¶ 16. *See also Chavez*, 1970-NMCA-116, ¶ 7. *See also Pittsburgh and Midway Coal Mining*  
7 *Co.*, 1983-NMCA-019.

8 For the foregoing reasons, the Taxpayer's protest **IS GRANTED. IT IS ORDERED** that the  
9 Department issue the additional \$588.00 refund to the Taxpayer.

10 DATED: May 5, 2021.

11 *Dee Dee Hoxie*

12 \_\_\_\_\_  
13 Dee Dee Hoxie  
14 Hearing Officer  
15 Administrative Hearings Office  
16 P.O. Box 6400  
Santa Fe, NM 87502

17 **NOTICE OF RIGHT TO APPEAL**

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



**CERTIFICATE OF SERVICE**

On May 5, 2021, a copy of the foregoing Decision and Order was submitted to the parties listed below in the following manner:

*Email and First Class Mail*

*Email*

INTENTIONALLY BLANK

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John Griego  
Legal Assistant  
Administrative Hearings Office  
P.O. Box 6400  
Santa Fe, NM 87502