

1 Ultimately, after making findings of fact and discussing the issue in more detail throughout this
2 decision, the hearing officer finds that the Taxpayer's protest must be denied. The denial of credits
3 was proper because the evidence presented does not support the claim under the statute. IT IS
4 DECIDED AND ORDERED AS FOLLOWS:

5 **FINDINGS OF FACT**

6 **Procedural Findings**

7 1. On March 3, 2020, under Letter Id. No. L0868309680, the Department, issued a
8 Return Adjustment Notice (Proposed Assessment) letter to Taxpayer, indicating that Taxpayer's
9 claimed credit of \$902.00 for tax paid to another state (PIT-1, line 20) for the 2019 tax period
10 was denied, and after the adjustment, and credits for payments, taxes were due in the amount of
11 \$717.00. [Administrative File].

12 2. On March 6, 2020, Taxpayer submitted a protest letter, challenging the denials of
13 his claimed credit alleging that the income had been taxed when earned over the years 1990
14 through 2006, while Taxpayer was living and working in Pennsylvania. The protest was stamped
15 as received by the Department Protest Office on March 9, 2020. [Administrative File].

16 3. On April 30, 2020, under Letter Id. No. L0578397872 the Department issued a
17 letter acknowledging receipt of Taxpayer's protest. [Administrative File].

18 4. On October 27, 2020, the Department, through Attorney Richard Peneer, submitted
19 a Request for Hearing to the Administrative Hearings Office, alleging the amount at issue was
20 \$902.00, and requesting a scheduling hearing on Taxpayer's protest. [Administrative File].

1 5. On October 27, 2020, the Department, through Attorney Richard Pener, timely
2 submitted the Department’s Answer to Protest to the Administrative Hearings Office.

3 [Administrative File].

4 6. On October 27, 2020, the Administrative Hearings Office sent a Notice of
5 Telephonic Scheduling Hearing to the parties, informing them of the scheduling hearing to take
6 place on November 20, 2020, by telephone. [Administrative File].

7 7. Hearing Officer Ignacio V. Gallegos conducted the scheduling hearing on
8 November 20, 2020 with the parties present. Mr. Beavers represented himself. Attorney
9 Richard Pener represented the Department. The parties did not object that the scheduling hearing
10 satisfied the 90-day hearing requirement of Section 7-1B-8 (F) 2019. The Hearing Officer
11 preserved an audio recording of the hearing. [Administrative File].

12 8. On November 20, 2020, the Administrative Hearings Office sent a Scheduling
13 Order and Notice of Administrative Hearing to the parties, informing them of various deadlines
14 and providing notice that a hearing on the merits of the case would be held on February 22, 2021,
15 using the Zoom videoconference application, using an unique URL provided. The hearing was
16 scheduled pursuant to NMSA 1978 Section 7-1B-8 (2019) and Regulation § 22.600.3.10 NMAC.
17 [Administrative File].

18 9. The undersigned Administrative Hearing Officer Ignacio V. Gallegos conducted
19 the merits hearing on February 22, 2021, with the parties and witnesses present by
20 videoconference. Mr. Beavers represented himself. Attorney Richard Pener represented the
21 Department. The Hearing Officer preserved an audio recording of the hearing (“Hearing
22 Record” or “H.R.”). [Administrative File].

1 **Substantive Findings**

2 10. Taxpayer Harvie Beavers is an individual domiciled in New Mexico.
3 [Administrative File; Direct examination of H. Beavers, H.R. 29:40-30:00; Exhibits # F, I, J, K,
4 U, V, W, X, Y, Z, AA, BB, CC, DD].

5 11. Mr. Beavers lived in Pennsylvania from 1984 until 2015, when he moved back to
6 New Mexico. [Administrative File; Examination of H. Beavers; Exhibit # J, K].

7 12. Mr. Beavers retired from military service in the U.S. Navy in 1987 but then began
8 work in the private sector until he retired again and moved back to New Mexico. The Navy
9 retirement benefits are not at issue here. [Administrative File; Examination of H. Beavers, H.R.
10 26:30-29:45; Exhibits # J, K].

11 13. During the years 1987 through 1992, Mr. Beavers was employed by Trico
12 Industries. He contributed to a retirement plan administered by that company. [Administrative
13 File; Cross examination of H. Beavers, H.R. 39:40-45:10, 46:40-48:00; Exhibits #J, K].

14 14. From 1992 through his second retirement in 2015, Mr. Beavers was employed by
15 Tampella Services, which, during his time there, was purchased by American Consumer
16 Industries. The money he contributed to the Trico Industries retirement plan was transferred to
17 Tampella's retirement plan, which was later administered by Fidelity. He contributed to the plan
18 when he was able. [Administrative File; Cross examination of H. Beavers, H.R. 39:40-45:10,
19 46:40-52:45; Exhibits #J, K].

20 15. For the years 1996 through 2005, Mr. Beavers was unable to prove any specific
21 amount of contributions he made to his retirement plans. [Administrative File; Cross
22 examination of H. Beavers, H.R. 52:00-52:45].

1 16. During the years 2006 to 2009, Mr. Beavers believed he contributed
2 approximately \$23,000 to his retirement account, but, apart from rollovers, the amount was not
3 confirmed by available federal or state income tax reporting forms provided as evidence. The
4 rollover contributions are not at issue. [Cross examination of H. Beavers, H.R. 51:50-53:20;
5 1:06:30-1:17:10; Department Exhibit #J, K, C-32, C-37, C-78].

6 17. Since 2015, Mr. Beavers has filed New Mexico Personal Income Tax (PIT-1)
7 returns jointly with his wife, Mary C. Beavers. [Administrative File; Exhibits # F, G, H, I, J, K,
8 U, V, W, X, Y, Z, AA, BB, CC, DD].

9 18. Mr. Beavers took lump sum distributions from his Individual Retirement Account
10 (IRA), in the years 2015, 2016, 2017, and 2019 while a resident of New Mexico. [Administrative
11 File; Cross examination of H. Beavers H.R. 1:00:40-1:37:10; Exhibits # J, K (Note), U-02 (line
12 15) (2015), F-02 (line 11) (2016), G-02 (line 11) (2017), and CC-02 (line 4) (2019)].

13 19. From the amount of the distributions taken while a New Mexico resident, Mr.
14 Beavers could not identify how much was the original amount he had paid into the account
15 (“basis”), what the increase of principal value amounted to (“gain”), or the discrepancy between
16 the return and the worksheet. [Cross examination of H. Beavers, H.R. 54:20-57:40; 1:01:00-
17 1:02:20; 1:20:15-1:39:15; Exhibits # R-3, Exhibit # CC-2 (line 4b) and #CC -14 (worksheet)].

18 20. Mr. Beavers paid no tax to Pennsylvania in 2019, while a resident of New
19 Mexico. [Administrative File; Cross examination of H. Beavers, H.R. 1:37:30-1:39:10; Exhibit #
20 CC-2 (line 4b) and #CC-14 (worksheet)].

21 21. Mr. Beaver’s IRA was a traditional IRA, not a Roth-IRA, and in 2019 he was
22 over the age of 59 ½ but under the age of 70 ½ years old. [Administrative File, AHO
23 Examination of H. Beavers, H.R. 35:45-36:15; Exhibit # J, K, CC].

1 the income and imposed a tax on the resulting sum, Taxpayer claimed the state had taxed his
2 retirement income when earned as wages. When the Taxpayer then withdrew funds from the
3 retirement account, while a resident of the State of New Mexico, Taxpayer claims the state taxed the
4 income a second time, both principal and the gain. Taxpayer provided Federal and state personal
5 income tax returns from 2006 through 2019 (with the exception of 2008 and 2009), but provided no
6 IRA account statements, no bank statements, no rollover statements, or other proof of the amounts
7 he placed into the account (basis) or the gains (increase in value) accumulated by the account's
8 investments.

9 New Mexico's personal income tax is governed by the Income Tax Act, NMSA 1978,
10 Sections 7-2-1 through 7-2-39. Facts concerning the amount of the claim were disputed. Record
11 keeping and reporting requirements play a role in the decision, as follows, and interpretation of the
12 statute granting a credit for taxes paid to another state and application of federal jurisprudence are
13 addressed herein.

14 **Presumption of correctness and burden of proof.**

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

22 Tax credits are legislative grants of grace to a taxpayer that must be narrowly interpreted
23 and construed against a taxpayer. *See Team Specialty Prods. v. N.M. Taxation & Revenue Dep't*,

1 2005-NMCA-020, ¶9, 137 N.M. 50, 107 P.3d 4. Under the rationale of *Team Specialty Prods*,
2 Taxpayer carries the burden of proving that he is entitled to the claimed credit. Although a credit
3 must be narrowly interpreted and construed against a taxpayer, it still should be construed in a
4 reasonable manner consistent with legislative language. *See Sec. Escrow Corp. v. State Taxation*
5 *& Revenue Dep't*, 1988-NMCA-068, ¶9, 107 N.M. 540.

6 **Credit for tax paid to another state under Section 7-2-13.**

7 Taxpayers claimed a credit for taxes paid to another state under the theory that because
8 the income which funded the retirement account had been taxed when earned over the course of
9 more than twenty years, it had already been taxed when earned. The statute, NMSA 1978,
10 Section 7-2-13 (2013), which grants the credit reads:

11 When a resident individual is liable to another state for tax upon income derived
12 from sources outside this state but also included in net income under the Income
13 Tax Act as income allocated or apportioned to New Mexico pursuant to Section
14 7-2-11 NMSA 1978, the individual, upon filing with the secretary satisfactory
15 evidence of the payment of the tax to the other state, shall receive a credit against
16 the tax due this state in the amount of the tax paid the other state with respect to
17 income that is required to be either allocated or apportioned to New Mexico.
18 However, in no case shall the credit exceed the amount of the taxpayer's New
19 Mexico income tax liability on that portion of income that is required to be either
20 allocated or apportioned to New Mexico on which the tax payable to the other
21 state was determined. The credit provided by this section does not apply to or
22 include income taxes paid to any municipality, county or other political
23 subdivision of a state.

24 Mr. Beavers took the withdrawal from the IRA in 2019, while a resident domiciled in New
25 Mexico. There is no dispute that Mr. Beavers did not pay taxes to Pennsylvania in 2019, when
26 the New Mexico income tax credit was claimed. There was no Pennsylvania income tax return
27 showing payment of \$902.00, which was the amount of the New Mexico income tax credit
28 claimed on line 20 of the Taxpayers' New Mexico PIT-1. Taxpayer did file a PIT-B, but within
29 that form, 100% of his income was allocated to New Mexico. The worksheet (Worksheet for

1 Computation of Allowable Credit for Taxes Paid to Other States by New Mexico Residents) that
2 accompanied the claim for credit for taxes paid to another state, contains numbers completely
3 unsupported by any documentation. Mr. Beavers could not explain how he arrived at the
4 numbers contained on the worksheet. The numbers contained thereon appear arbitrary or
5 reached using some vague calculation of the averages of years of taxes paid in Pennsylvania.

6 **Record Keeping and Reporting.**

7 New Mexico law requires that taxpayers retain records used for the taxpayers' tax reporting
8 so that those records may be used to accurately compute state taxes. NMSA 1978, Section 7-1-10
9 (A) (2007). New Mexico tax law does not set a specific amount of time for records to be
10 maintained by taxpayers, but the law disallows assessments greater than ten years from the date a
11 tax was required to be paid. *See* Regulation § 3.1.5.8 (A) (12/29/2000); *see also* NMSA 1978,
12 Section 7-1-18 (2013).

13 Taxpayers' income tax returns provide some corroboration to his statements under oath.
14 However, the records leave much un-corroborated and subject to speculation. No federal form W-
15 2s or 1099s were presented to the Hearing Officer. Likewise, no bank statements or retirement
16 account statements were presented to the Hearing Officer. And on the tax returns provided, Mr.
17 Beavers claims no Federal retirement savings contributions deductions from his taxable income and
18 does not attach a Form 8880. (2019, IRS Schedule 3, Part I, Line 4; 2018, Form 1040, Line 51;
19 2017, Form 1040, Line 17 and Line 34; 2016, Form 1040, Line 17 and Line 34; 2015, Form 1040,
20 Line 32; 2014, Form 1040, Line 32; 2013, Form 1040, Line 32; 2012, Form 1040, Line 32; 2011,
21 Form 1040, Line 32; 2007, Form 1040, Line 32; 2006, Form 1040, Line 32.).¹

¹ See IRS website <https://www.irs.gov/taxtopics/tc610> for tax Topic No. 610 and Instructions for Form 8880.

1 Mr. Beavers argued that the cost basis (cost of investment) was paid from his wage earnings
2 in Pennsylvania. Pennsylvania taxed his wages, therefore, he expressed, the cost basis of the
3 investment in his IRA should be excluded from the taxable amount. This argument is one which one
4 could apply to some capital gains taxes, but not in the context of taxation of disbursements from a
5 traditional IRA. *See* 26 U.S.C. §408 (a) and (d); *see also* 26 U.S.C. §219 (a).

6 In a simple capital gain scenario, a person invests money (cost basis) that person has already
7 earned (wages, for example) in a capital asset (stock, for example) and the asset gains or loses value
8 over time. If the share's cost basis is higher than the final value when exchanged for money, it
9 qualifies as a loss. If the share's cost basis is lower than the final value when the share is exchanged
10 for money, the gain is a capital gain. In such a scenario, the gain gets taxed, not the return of the
11 initial cost basis of the investment.² Even if this were the inquiry, the amount Taxpayer wishes to be
12 excluded (basis) must be proven and the amount of the gain (or loss) must be proven for the
13 argument to have any foundation. The evidence provided does not provide the starting point of a
14 cost basis or the ending point of final distribution price per share to determine a gain (if any) on
15 investment.

16 Mr. Beavers also argued that because the wages he used to put into the retirement account
17 were taxed when initially earned he should not be taxed at all upon withdrawal. Had this been a
18 Roth-IRA account, the statement would be true. The money placed into a Roth-IRA is taxed when
19 earned, as no deduction is granted for the investment from taxable income. *See Taxpayer Relief Act*
20 *of 1997*, PL 105-34, 111Stat. 788, Sec. 302 (August 5, 1997) (“No deduction shall be allowed under
21 Section 219 for a contribution to a Roth IRA”). Once the Roth-IRA investor reaches a specific age,

² See IRS website <https://www.irs.gov/pub/irs-prior/i8949--2019.pdf> for instructions for Form 8949 (Sales and other dispositions of capital assets). Page 9, instructions for Column (h) describes the manner of calculating and reporting capital gains and losses upon sale of a capital asset.

1 or upon other specific events, the investor may withdraw from the account tax-free. *Id.* (“Any
2 qualified distribution from a Roth IRA shall not be includible in gross income.”). But, without
3 records of it being anything other than a traditional IRA, and upon belief and affirmation of the
4 principal witness that it was a traditional IRA, this was not a Roth IRA, so it is treated as traditional
5 IRAs are treated for Federal tax purposes.³

6 Because Taxpayer records concerning the retirement account itself were not provided, the
7 Hearing Officer must rely on the statements of Mr. Beavers affirmed to be true in this
8 determination. Ordinarily, unsubstantiated statements are insufficient to overcome the presumption
9 of correctness that attaches to an assessment issued by the Department. *See MPC Ltd. v. N.M.*
10 *Taxation & Revenue Dep’t*, 2003-NMCA-021, ¶13, 133 N.M. 217, 62 P.3d 308; *see also* Regulation
11 § 3.1.6.12 (A) NMAC (1/15/01). However, because no presumption was created in the return
12 adjustment and no documentation of the IRA account at issue was provided, the determination here
13 relies on credible testimony. It should be noted that the records, though voluminous, were not
14 sufficient to prove the case presented by the Taxpayer in this respect.

15 The records provided do not provide enough information to validate Taxpayers’
16 computation of state income taxes as reported on their 2019 form PIT-1. *See* Section 7-1-10 (A); *see*
17 *also* Regulation § 3.1.5.8 (A).

18 **Retirement income.**

19 States have the right to tax the income of their residents, including income attributable to
20 work in other states. *See Shaffer v. Carter*, 252 U.S. 37 (1919) (“In our system of government,
21 the states have general dominion, and, saving as restricted by particular provisions of the federal

³ See IRS website <https://www.irs.gov/pub/irs-pdf/p590a.pdf> and <https://www.irs.gov/pub/irs-pdf/p590b.pdf> for information concerning the tax treatment of contributions to and distributions from both traditional and Roth IRAs. In addition, it should be noted that the Taxpayer also referred to his retirement account (before the various accounts were consolidated) as a 401(k), which can be traditional or Roth.

1 Constitution, complete dominion over all persons, property, and business transaction[s] within
2 their borders; they assume and perform the duty of preserving and protecting all such persons,
3 property, and business, and, in consequence, have the power normally pertaining to governments
4 to resort to all reasonable forms of taxation in order to defray the governmental expense.”). *See*
5 *also Lawrence v. State Tax Commission of Mississippi*, 286 U.S. 276 (1932). “A tax is imposed
6 ... on the net income of every resident individual.” NMSA 1978, Section 7-2-3 (1981). Net
7 income includes income whose source is a retirement account. *See* NMSA 1978, Section 7-2-2
8 (N) (2014); Section 7-2-2 (B)(2); Section 7-2-2 (A); 26 U.S.C. § 62; 26 C.F.R. § 1.62-1; 26
9 C.F.R. § 1.62-1T. Contributions to traditional individual retirement accounts are allowed
10 deductions from adjusted gross income (AGI). 26 U.S.C. § 62; 26 C.F.R. § 1.62-1; 26 C.F.R. §
11 1.62-1T. However, with few exceptions not applicable here, distributions from traditional IRA
12 accounts are included in Federal gross income and are taxable in the year the owner receives
13 them. *See* 26 U.S.C. § 408 (d) (“any amount paid or distributed out of an individual retirement
14 plan shall be included in gross income by the payee or distributee”).⁴

15 New Mexico imposes a personal income tax “upon the net income of every resident
16 individual.” NMSA 1978, Section 7-2-3. The net income that is taxed in New Mexico begins
17 with Federal AGI (“Net income” includes “base income”, less federal exemptions and standard
18 deductions. Section 7-2-2 (N). “Base income” begins with Federal AGI, as defined by 26 U.S.C.
19 § 62. Section 7-2-2 (B).). Federal AGI is Federal gross income, less deductions which are not
20 applicable here. *See* 26 U.S.C. § 62. Income for a New Mexico resident who does not earn
21 income in the tax year from out of state sources is allocated to New Mexico. *See* NMSA 1978,

⁴ *See also* FN3, IRS Publication 590-B, Chapter 1, Page 12, for information concerning the tax treatment of distributions from both traditional and Roth IRAs (“In general, distributions from a traditional IRA are taxable in the year you receive them.”).

1 Section 7-2-11 (A). Specifically, retirement income, even derived from income earned out-of-
2 state is allocated to New Mexico. *See* Regulation § 3.3.11.11 (A) NMAC (12/14/00) (“All
3 compensation received while a resident of New Mexico shall be allocated to this state whether or
4 not such compensation is earned from employment in this state.”); *see also* Regulation §
5 3.3.11.13 (B) (NMAC) (12/14/00) (“Retirement income of a resident is allocable to New
6 Mexico, regardless of the source of the retirement income...”); *see also The protest of Joy*
7 *Odom*, Decision and Order # 11-04 (Taxation and Revenue Department Hearings Bureau,
8 February 10, 2011, non-precedential).

9 Taxpayer’s documents do not show that he ever reported the deductible amount of his
10 retirement account contributions, excluding rollovers, and therefore was taxed on his entire
11 reported income. It was not through fault of the Commonwealth of Pennsylvania, nor the fault of
12 the State of New Mexico that he received no deductions for the account contributions made over
13 the years. Mr. Beavers was able to deduct retirement contributions from his AGI over the years,
14 but he apparently did not (according to the documents contained in the record). Because the
15 claim was for taxes paid in a different year, and records do not provide a foundation for the
16 amount of the claim, and New Mexico law specifically addresses retirement income received
17 while a resident of New Mexico yet earned from employment out of state, any taxes paid on the
18 earnings when earned do not provide a rationale for application of the credit against New Mexico
19 resident’s income taxes.

20 **Dormant Commerce Clause.**

21 Taxpayer argued that the case of *Comptroller of Treasury of Maryland v. Wynne*, 575 U.S.
22 543, 135 S.Ct. 1787 (2015) controlled the outcome of this case, as he first paid an income tax when
23 working in the Commonwealth of Pennsylvania, and New Mexico taxed the retirement withdrawal,

1 which included initial capital inputs (basis) and gains (or losses). The facts here do not justify
2 finding this to have occurred as a result of New Mexico's taxation scheme.

3 The Commerce Clause of the United States Constitution is separated between the positive
4 grant of the power of Congress to regulate interstate commerce, and its implicit negative command,
5 known as the Dormant Commerce Clause, prohibiting States from taxation schemes which place
6 higher tax burdens on out-of-state taxpayers. *See* U.S.C.A. Const. Art. 1 Section 8, cl. 3 ("The
7 Congress shall have Power... To regulate Commerce with foreign Nations, and among the several
8 States, and with the Indian Tribes"); *see also Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 514
9 U.S. 175, 179-180, 115 S.Ct. 1331 (1995). The dormant commerce clause disallows any State's tax
10 scheme "which discriminates against interstate commerce either by providing a direct commercial
11 advantage to local business, or by subjecting interstate commerce to the burden of multiple
12 taxation." *Wynne*, at 549-550 (internal quotation marks and citations omitted). The *Wynne* case
13 addressed a tax scheme that discriminated against out-of-state taxpayers with income from activity
14 within the state.

15 Here, Taxpayer showed that he had accumulated several retirement savings plans, which
16 ultimately were consolidated into the traditional IRA from which he took a distribution in 2019. He
17 provided Pennsylvania personal income tax returns for several years in which he was working and
18 contributing to his retirement.

19 Taxpayers relocated to New Mexico in 2015. In 2019, it was the purchase of property and
20 improvements thereon, using retirement funds extracted for that purpose, that increased Taxpayers'
21 reported income. The Federal 2019 form 1040-SR shows line 4b as reporting a taxable IRA
22 distribution of \$22,534. On Schedule 3, Part I, Line 4, Mr. Beavers claims no retirement savings
23 contributions credits and does not attach a Form 8880.

1 The New Mexico 2019 PIT-1, line 20 shows Taxpayer’s claim for \$902.00 in taxes paid to
2 another state. There was no evidence presented either when filing the New Mexico PIT-1 return,
3 nor provided thereafter, showing where this claim originated or documentation to show its accuracy
4 as to the dollar amount. After a thorough perusal, nothing in the years of tax returns provided any
5 support for the claim that Taxpayer paid \$902.00 in taxes on the retirement income to a different
6 state.

7 Granting the credit claimed for taxes paid to another state depends on evidence of each
8 element, including that element of payment of a tax to a different state presented to the Department,
9 or this tribunal. *See* NMSA1978, Section 7-2-13 (2013). The credit is limited to other state’s taxes
10 which may be corroborated (“upon filing with the secretary satisfactory evidence of the payment of
11 the tax to the other state”). *Id.* The credit for taxes paid other states by resident individuals which
12 Taxpayers claimed, in light of the evidence submitted, none of which corroborates the amount
13 claimed, does not apply. Had Mr. Beavers lived and worked in New Mexico during his second
14 career, and if he had reported his income the same way to New Mexico as he did to Pennsylvania,
15 he would be in the same position. A deduction must be reported to be allowed. And applying for the
16 credit in later years does not allow a backdoor to receiving a deduction not allowed over many
17 years. Disallowing the credit does not offend the Dormant Commerce Clause, nor does it violate
18 the prohibition of 4 U.S.C. 114, as it does not impose a higher burden on persons engaged in
19 interstate commerce and Mr. Beavers was a resident of New Mexico when he received his
20 retirement account distribution.

21 **Conclusion.**

22 The evidence presented did not provide justification for the application of a credit against
23 New Mexico income tax for taxes paid to another state. All the Taxpayer’s retirement income was

1 allocated to New Mexico. Federal law preventing states from taxing retirement income of retirees
2 residing in other states does not apply here.

3 CONCLUSIONS OF LAW

4 A. Taxpayers filed a timely, written protest of the Department's Return Adjustment
5 Notice (Proposed Assessment) letter L0868309680 and jurisdiction lies over the parties and the
6 subject matter of this protest. *See* NMSA 1978, Section 7-1-24 (A) & (B) (2019); *see also* NMSA
7 1978, Section 7-1-26 (A) (2019).

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

10 C. Taxpayers bear the burden of establishing entitlement to the claimed credit at
11 issue. The Taxpayers have not satisfactorily met the burden of establishing the entitlement to the
12 claimed credit at issue. The Department's denial of credit is viewed under a lens of a presumption of
13 correctness, therefore it is the Taxpayers' burden to establish that they were entitled to their claim
14 for credit. *See* Regulation §3.1.8.10 NMAC (08/30/2001); *see also* *Corr. Corp. of Am. of Tenn. v.*
15 *State*, 2007-NMCA-148, ¶17 & ¶29, 142 N.M. 779. *See* NMSA 1978, Section 7-1-17 (C) (2007).

16 D. Taxpayers' request for application of a credit for taxes paid to another state by
17 resident individuals for tax year 2019 was unsupported by facts to support a payment of taxes to
18 another state in accordance with NMSA 1978, Section 7-2-13 (2013).

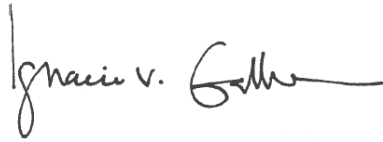
19 E. Retirement income of a New Mexico resident, even derived from income earned
20 out-of-state, is allocated to New Mexico. *See* Regulation § 3.3.11.11 (A) NMAC (12/14/00); *see*
21 *also* Regulation § 3.3.11.13 (B) (NMAC) (12/14/00).

22 F. Federal law prohibiting states from imposing an income tax on the retirement
23 income of out-of-state residents does not apply to the properly taxed income of New Mexico

1 resident retirement income when another state was alleged to tax the basis when earned. *See* 4
2 U.S.C. 114; *Comptroller of Treasury of Maryland v. Wynne*, 575 U.S. 543, 135 S.Ct. 1787 (2015).

3 For the foregoing reasons, the Taxpayer's protest is **DENIED. IT IS ORDERED** that the
4 Department's denial of credit for tax year 2019 was correct.

5 DATED: December 22, 2021.



8 Ignacio V. Gallegos
9 Hearing Officer
10 Administrative Hearings Office
11 P.O. Box 6400
12 Santa Fe, NM 87502

13 **NOTICE OF RIGHT TO APPEAL**

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

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CERTIFICATE OF SERVICE

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