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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
DAVID J. BALDRIDGE
TO ASSESSMENT ISSUED UNDER
LETTER ID NO. L0922947248**

v. AHO Case Number 21.06-040A, Decision and Order No. 22-02

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

DECISION AND ORDER

On August 17, 2021, Hearing Officer Ignacio V. Gallegos, Esq., conducted an administrative hearing on the merits of the matter of the tax protest of David J. Baldrige (Taxpayer) pursuant to the Tax Administration Act and the Administrative Hearings Office Act.

At the video conference hearing, Ms. Amber Gray-Fenner, Enrolled Agent, appeared representing David J. Baldrige, who also appeared and testified as Taxpayer's sole witness. Staff Attorney Kenneth Fladager appeared, representing the opposing party in the protest, the Taxation and Revenue Department (Department). Department protest auditor Alma Tapia appeared as a witness for the Department. Taxpayer offered Exhibit 1 at the hearing. Without objection, Taxpayer's exhibit was admitted. Department offered no exhibits. Exhibits are more fully described in the Exhibit Log. The administrative file is considered part of the record.

In quick summary, this protest involves Taxpayer's claim that income reported on a Schedule C was received for services performed out of state, and thus not subject to New Mexico's Gross Receipts and Compensating Tax reporting and not taxable as gross receipts income. The Department was not satisfied by the Taxpayer's records in support of the claim. Ultimately, after making findings of fact and discussing the issue in more detail throughout this decision, the hearing

1 officer finds that Taxpayer's claim is supported in some respects, but not others, therefore the
2 protest is granted in part and denied in part. IT IS DECIDED AND ORDERED AS FOLLOWS:

3 **FINDINGS OF FACT**

4 **Procedural Findings**

5 1. On August 5, 2020, under Letter Id. No. L0922947248, the Department issued a
6 Notice of Assessment of Taxes and Demand for Payment to Taxpayer. Under the Assessment
7 letter, Taxpayer owed Project Gross Receipts Tax of \$1,086.04, penalty of \$217.20, and interest
8 of \$150.82 for a total assessment of tax due of \$1,454.06 for tax reporting periods from January
9 1, 2017 to December 31, 2017. [Administrative File].

10 2. On November 3, 2020, Taxpayer submitted a Formal Protest letter, alleging that
11 the Department was incorrect in its assessment of tax because the income was from services
12 performed outside New Mexico not subject to gross receipts. [Administrative File].

13 3. On November 3, 2020, Taxpayer submitted a Tax Information Authorization
14 form, granting Amber Gray-Fenner, Enrolled Agent, access to Taxpayer's tax records.
15 [Administrative File].

16 4. On December 28, 2020, under Letter Id. No. L0859537840 the Department issued
17 a letter informing the Taxpayer that the Department acknowledged receipt of Taxpayer's protest
18 of Combined Reporting System (CRS) taxes for tax periods beginning January 1, 2017 through
19 December 31, 2017. [Administrative File].

20 5. On June 16, 2021, the Department submitted a Request for Hearing to the
21 Administrative Hearings Office, requesting a scheduling hearing to address Taxpayer's protest.
22 The Request for Hearing stated that the total at issue was \$1,454.06. [Administrative File].

1 6. On June 16, 2021, the Department submitted its Answer to Protest to the
2 Administrative Hearings Office, claiming that the Taxpayer reported income on a federal form
3 Schedule C without reporting the income as gross receipts, or paying the gross receipts tax. The
4 Answer further states that the Taxpayer failed to provide evidence of an exemption from tax.
5 [Administrative File].

6 7. Between the filing of the protest letter and the Department's Request for Hearing,
7 the parties' representatives shared information and corresponded by email. [Administrative File].

8 8. On June 17, 2021, the Administrative Hearings Office mailed a Notice of
9 Telephonic Scheduling Hearing to the parties, by email, setting the matter for a telephonic
10 scheduling hearing on July 9, 2021. [Administrative File].

11 9. At the telephonic scheduling hearing of July 9, 2021, the parties appeared. Amber
12 Gray-Fenner, Enrolled Agent, appeared on behalf of Taxpayer David J. Baldrige. Attorney
13 Kenneth Fladager appeared on behalf of the Department, accompanied by Protest Auditor Alma
14 Tapia. The parties did not object that conducting the scheduling hearing satisfied the 90-day
15 hearing requirements of Section 7-1B-8 (F) (2019) while still allowing meaningful time for
16 completion of the other statutory requirements under Section 7-1B-6 (D) (2015). *See also*
17 Regulation 22.600.3.8 (E) NMAC. The Hearing Officer preserved a recording of the hearing.
18 [Administrative File].

19 10. On July 9, 2021, the Administrative Hearings Office mailed a Scheduling Order
20 and Notice of Administrative Hearing to the parties, setting various deadlines, and scheduling the
21 matter for a hearing on the merits of Taxpayer's protest on August 17, 2021, by video
22 conference, upon request of the parties. [Administrative File].

1 11. The undersigned Administrative Hearing Officer Ignacio V. Gallegos conducted
2 the merits hearing on August 17, 2021, with the parties and witnesses present by video
3 conference. The Administrative Hearings Officer preserved a recording of the hearing (“Hearing
4 Record” or “H.R.”). The recording contains echo and feedback interferences, among other issues
5 related to the videoconference format of communication. Despite the poor quality of the
6 connection, parties did not request rehearing. [Administrative File].

7 **Substantive Findings**

8 12. Taxpayer David J. Baldrige is an individual residing in Albuquerque, New
9 Mexico. [Administrative File; Direct examination of D. Baldrige, H.R. 19:50-20:45].

10 13. Taxpayer is co-founder and, during 2017, Executive Director of International
11 Association for Indigenous Aging (IAIA or IA²), a small non-profit organization based in Silver
12 Spring, Maryland. [Administrative File; Exhibit #1-10; Direct examination of D. Baldrige, H.R.
13 19:50-20:45, 23:25-23:35].

14 14. Taxpayer and IAIA did not enter a formal employment contract. In 2017
15 Taxpayer worked for IAIA informally as an independent contractor. He did not receive a Form
16 1099 nor a W-2 for this work in 2017. IAIA paid Taxpayer a total of \$13,050 in 2017.
17 [Administrative File; Direct examination of D. Baldrige, H.R. 21:35-23:25; Explanation of
18 exhibits by A. Gray-Fenner, accord by D. Baldrige H.R. 25:10-43:15; Taxpayer Exhibit #1-4,
19 #1-10.].

20 15. As Executive Director of IAIA, Taxpayer was paid periodically as the
21 organization’s finances permitted. He used his home office and travelled outside of New Mexico
22 to perform this work. The organization reported that he worked an average of 40 hours per week.

1 [Administrative File (Schedule C, Line 30; Form 8829); Taxpayer Exhibit #1-10 (line 6); Direct
2 examination of D. Baldrige, H.R. 22:50-23:40, explanation of A. Gray-Fenner, accord by D.
3 Baldrige H.R. 25:10-43:15].

4 16. In the same vein as his work with IAIA, but paid separately, Taxpayer provided
5 services outside of New Mexico in the form of speaking engagements. The total for the speaking
6 engagements as reflected by two Forms 1099-MISC was \$2,700. [Administrative File; Direct
7 examination of D. Baldrige, explanation of A. Gray-Fenner, accord by D. Baldrige H.R.
8 25:10-43:15].

9 17. The Department detected a discrepancy or mismatch between the Taxpayer's
10 federal Schedule C federal tax filings and the Taxpayer's gross receipts tax filings on CRS-1
11 returns between January 1, 2017 and December 31, 2017, because the Taxpayer reported
12 business income on a Schedule C, but did not report or pay gross receipts tax, leading to the
13 assessment of gross receipts tax. [Administrative File; Direct Examination of A. Tapia, H.R.
14 44:45-47:40; Cross examination of A. Tapia, H.R. 53:00-54:30].

15 18. Mr. Baldrige did not file New Mexico form CRS-1 returns to report and pay
16 gross receipts tax. [Administrative File; Direct examination of D. Baldrige, H.R. 20:40-21:35].

17 19. Department auditors requested documentary support of the Taxpayer's claims, but
18 Taxpayer provided sparse documentation. Mr. Baldrige provided no documentation of the
19 percentage or hours of work for IAIA was provided outside New Mexico, and what percentage
20 or hours was performed in New Mexico. [Administrative File; Direct examination of Alma
21 Tapia, H.R. 46:00-46:35; 47:40-52:40; AHO examination of A. Tapia, H.R. 1:05:55-1:08:10].

22 20. Department auditors composed workpapers for Taxpayer's 2017 gross receipts
23 tax liability with possible deductions, including deductions for work out-of-state and deductions

1 for expense reimbursement payments. The possible deductions did not result in an abatement.
2 [Administrative File; Direct examination of D. Baldrige, explanation of A. Gray-Fenner, accord
3 by D. Baldrige H.R. 25:10-43:15; AHO examination of Alma Tapia, H.R. 55:45-59:35;
4 1:06:10-1:08:15; Redirect examination of A. Tapia, H.R.1:08:15-1:09:15].

5 21. The workpapers showed that the assessment was based on a gross taxable income
6 of \$15,750. [Administrative File (workpapers); AHO examination of A. Tapia H.R. 55:45-
7 56:35].

8 22. The workpapers summarized travel reimbursements in the amount of \$810.23.
9 This was excluded from Taxpayer's reported income, and not a part of the income on which the
10 assessment was based. [Administrative File (workpapers); AHO examination of A. Tapia H.R.
11 55:45-59:35].

12 23. The workpapers also summarized expense reimbursements from IAIA to
13 Taxpayer of \$832.77. Rounding up to \$833, this number is corroborated by the IAIA tax return
14 Form 990. This was not included as part of the purported gross receipts that was the starting
15 point for the assessment. [Administrative File (Workpapers, Form 1040); AHO examination of
16 A. Tapia H.R. 55:45-59:35; 1:05:55-; Taxpayer exhibit #1-13].

17 24. The workpapers summarized the two 2017 Form 1099-Misc income reports and
18 other documents totaling \$4,075, from entities outside of New Mexico. Mr. Baldrige testified
19 that these identified separate speaking engagements outside of New Mexico. Two of them were
20 corroborated by a 1099-Misc issued to Mr. Baldrige, totaling \$2,700. [Administrative File;
21 AHO examination of A. Tapia H.R., 55:45-58:30; AHO examination of Alma Tapia, H.R. 55:45-
22 59:35; 1:06:10-1:08:15; Redirect examination of A. Tapia, H.R.1:08:15-1:09:15

1 25. Taxpayer reported self-employment income on his IRS Form 1040, Schedule C,
2 including earnings from all sources, in the amount of \$15,750. Of this \$13,050 was from IAIA,
3 leaving a balance of \$2,700 from other sources. [Administrative File; Taxpayer exhibit #1-10].

4 26. The \$2,700 from other sources can be tied back to the two Forms 1099-Misc, one
5 for \$1,000 from the Regents of the University of Minnesota, and the other for \$1,700 from the
6 DHHS Indian Health Service. [Administrative File; AHO examination of A. Tapia H.R., 55:45-
7 58:30].

8 27. Taxpayer claimed he suffers from a neurological disease that limits his ability to
9 report. [Administrative File; Direct examination of D. Baldrige, H.R. 21:00-21:10].

10 DISCUSSION

11 For tax year 2017, David J. Baldrige filed Schedule C forms as part of his federal
12 personal income tax returns. The Schedule C reported business income. The Taxpayer did not
13 file gross receipts tax returns on the combined reporting system (CRS-1) forms to the State of
14 New Mexico during the same year. Taxpayer claimed he was not required to file gross receipts
15 tax returns because the business income was for work performed out of state and not taxable by
16 New Mexico as gross receipts. However, in New Mexico it is Taxpayer's responsibility to prove
17 that the income is not taxable, not the Department's responsibility to prove it is taxable, as there
18 is a presumption of taxability.

19 Mr. Baldrige is a co-founder and executive director of the International Association for
20 Indigenous Aging (IAIA or IA²), a non-profit organization based in Silver Spring, Maryland.
21 Part of his responsibility in 2017 was to attend and give conference presentations at locations
22 around the United States. His main contention was that he provided services to the Oklahoma
23 University Health Sciences Center, the University of Minnesota, Washington State University,

1 and the National Adult Protective Service Association (NAPSA) in Washington, D.C. While
2 some receipts show work completed outside the boundaries of the state, Taxpayer also claimed a
3 space in his home as dedicated for work. It is clear some of the work, a service, took place in
4 New Mexico.

5 **Presumption of correctness**

6 Under NMSA 1978, Section 7-1-17 (C) (2007), the assessment issued in this case is
7 presumed correct. Consequently, Taxpayer has the burden to overcome the assessment. *See*
8 *Archuleta v. O'Cheskey*, 1972-NMCA-165, ¶11, 84 N.M. 428. Unless otherwise specified, for the
9 purposes of the Tax Administration Act, "tax" is defined to include interest and civil penalty. *See*
10 NMSA 1978, Section 7-1-3 (Z) (2019); *see also* Regulation 3.1.1.16 (12/29/2000). Under
11 Regulation 3.1.6.13 NMAC, the presumption of correctness under Section 7-1-17 (C) extends to
12 the Department's assessment of penalty and interest. *See Chevron U.S.A., Inc. v. State ex rel. Dep't*
13 *of Taxation & Revenue*, 2006-NMCA-50, ¶16, 139 N.M. 498, 503 (agency regulations interpreting
14 a statute are presumed proper and are to be given substantial weight). Accordingly, it is a
15 taxpayer's burden to present some countervailing evidence or legal argument to show that they
16 are entitled to an abatement, in full or in part, of the assessment issued in the protest. *See N.M.*
17 *Taxation & Revenue Dep't v. Casias Trucking*, 2014-NMCA-099, ¶8. When a taxpayer presents
18 sufficient evidence to rebut the presumption, the burden shifts to the Department to show that the
19 assessment is correct. *See MPC Ltd. v. N.M. Taxation & Revenue Dep't*, 2003-NMCA-21, ¶13, 133
20 N.M. 217.

21 The burden is also on taxpayers to prove that they are entitled to an exemption or
22 deduction, if one should potentially apply. *See Pub. Serv. Co. v. N.M. Taxation & Revenue Dep't*,
23 2007-NMCA-050, ¶141 N.M. 520, 157 P.3d 85; *See also Till v. Jones*, 1972-NMCA-046, 83

1 N.M. 743, 497 P.2d 745. “Where an exemption or deduction from tax is claimed, the statute must
2 be construed strictly in favor of the taxing authority, the right to the exemption or deduction must
3 be clearly and unambiguously expressed in the statute, and the right must be clearly established
4 by the taxpayer.” *See Sec. Escrow Corp. v. State Taxation & Revenue Dep't*, 1988-NMCA-068,
5 ¶8, 107 N.M. 540, 760 P.2d 1306. *See also Wing Pawn Shop v. Taxation & Revenue Dep't*, 1991-
6 NMCA-024, ¶16, 111 N.M. 735, 809 P.2d 649. *See also Chavez v. Comm'r of Revenue*, 1970-
7 NMCA-116, ¶7, 82 N.M. 97, 476 P.2d 67.

8 **Receipts under the Gross Receipts and Compensating Tax Act.**

9 The assessment in this protest arises from an application of the Gross Receipts and
10 Compensating Tax Act, NMSA 1978, Sections 7-9-1 through 7-9-117, which imposes a tax for the
11 privilege of engaging in business, on the receipts of any person engaged in business in New Mexico.
12 *See* NMSA 1978, Section 7-9-4 (2010). There is a statutory presumption that all receipts of a
13 person engaged in business activities are taxable. *See* NMSA 1978, Section 7-9-5(A) (2019). The
14 activity of providing independent contractor services as a consultant was engaging in business
15 which triggers the statutory presumption that *all receipts* of a person engaging in business are
16 taxable. *See* Section 7-9-3(P) (2019), Section 7-9-3.3 (2019), and Section 7-9-5(A) (2019). Yet,
17 despite the general presumption of taxability, a taxpayer may qualify for the benefits of various
18 deductions and exemptions.

19 Taxpayer claims the income was not derived from the sale of goods or services in New
20 Mexico, since the non-profit entity was based in Maryland, using the definition of “gross receipts.”
21 The statutory definition of “gross receipts” under Section 7-9-3.5 (2019) states, in pertinent part:
22 “‘gross receipts’ means the total amount of money or the value of other consideration received from
23 selling property in New Mexico, from leasing or licensing property employed in New Mexico, from

1 granting a right to use a franchise employed in New Mexico, from selling services performed
2 outside New Mexico, the product of which is initially used in New Mexico, or from *performing*
3 *services in New Mexico*” (emphasis added).¹ Since the Department is entitled to the presumption
4 that all receipts of a person engaging in business are taxable, it is Taxpayer’s burden to present
5 some evidence or legal argument to show that the Taxpayer is entitled to an abatement, in full or
6 in part, of the assessment issued in the protest. *See* Section 7-9-3.3(2019) and Section 7-9-5(A)
7 (2019); *see also* *N.M. Taxation & Revenue Dep’t v. Casias Trucking*, 2014-NMCA-099, ¶8.

8 *Employment as independent contractor for IAIA.*

9 Mr. Baldrige earned \$13,050 in 2017 for work as Executive Director of IAIA, as an
10 independent contractor. If this work had been done in Maryland, where the non-profit is based, it
11 would not be taxable as gross receipts in New Mexico. However, when a service is performed in
12 New Mexico, even for an out-of-state organization, the earnings from that service are taxable as
13 gross receipts. Evidence showed that Mr. Baldrige used his home for business purposes, showing
14 that at least part of the service was performed in New Mexico. Services performed in New Mexico
15 are taxable as gross receipts. *See* Section 7-9-3.5 (2019); *see also* Regulation 3.2.1.14 (A)(4)
16 NMAC (9/25/2018).

17 Mr. Baldrige attempted to disconnect the specific projects – University of Oklahoma and
18 Washington State University – from his work as Executive Director of IAIA. The evidence
19 presented showed that he did travel for these engagements and was refunded travel expenses.
20 However, the fact that four payments were made to him on each project over time showed that the
21 work he did was done over the course of time and did not show a nexus with the actual conference
22 out of state. Therefore, evidence presented was insufficient to show that the work was separate from

¹ The 2021 statutory change to destination sourcing under NMSA 1978, Section 7-1-14 is not at issue here, as the services performed predate the statutory change.

1 the ordinary work of the Executive Director, or that particular payments were for the work outside
2 New Mexico.

3 *Presentations outside of New Mexico.*

4 Mr. Baldrige accepted two honoraria for speaking engagements outside of New Mexico, in
5 the amount of \$2,700. The first honorarium was from the Regents of the University of Minnesota,
6 in the amount of \$1,000, for a speaking engagement in Minnesota. The second honorarium was
7 from the DHHS Indian Health Service, in the amount of \$1,700, which Mr. Baldrige explained,
8 and his later expense invoice reflects, was for a speaking engagement in Milwaukee, Wisconsin.
9 The \$1,000 and \$1,700 honoraria were reported on Forms 1099- Misc and submitted with his Form
10 1040. It was clear from the evidence that these would not be taxable by New Mexico as gross
11 receipts since they were services performed out of state, the product of which (if any) was also used
12 outside New Mexico. *See* Section 7-9-3.5 (2019); *see also* Regulation 3.2.1.14 (A)(3) and (A)(4)
13 NMAC (9/25/2018). The Department's assessment of these honoraria was in error.

14 **Record Keeping and Reporting.**

15 New Mexico law requires that taxpayers retain records used for the taxpayers' tax reporting
16 so that those records may be used to accurately compute state taxes. NMSA 1978, Section 7-1-10
17 (A) (2007). New Mexico tax law does not set a specific amount of time for records to be
18 maintained by taxpayers. *See* Regulation § 3.1.5.15 (I) NMAC (12/29/2000), Regulation § 3.1.5.8
19 (A) (12/29/2000).

20 Taxpayer kept no original records to validate his claims of out-of-state travel. He provided
21 some expense itemizations, a Form 990 from his employer, and several 1099s from the entities that
22 paid him to make presentations. In addition, Taxpayer's Federal income tax return Form 1040 and
23 Schedule C provide some corroboration to his statements under oath. The absence of original

1 records is not fatal to these claims, as there was substantial evidence of travel and reimbursement
2 for the expenses incurred in the travel. The summary documents provided, even if not original, are
3 viewed in light of a taxpayer's credibility on a case-by-case basis. Mr. Baldrige was credible, and
4 his statements under oath are corroborated by the documents he provided.

5 **Penalty**

6 Under NMSA 1978, Section 7-1-69 (2007), when a taxpayer fails to pay taxes due to the
7 State because of negligence or disregard of rules and regulations, but without intent to evade or
8 defeat a tax, the Department must impose a civil negligence penalty on that taxpayer. "There shall
9 be added to the amount assessed a penalty" under the statute. Mr. Baldrige did not believe he was
10 required to file and pay gross receipts tax returns, but had no intention to evade a tax.

11 The use of the word "shall" makes the imposition of penalty mandatory in all instances
12 where a taxpayer's actions or inactions meets the legal definition of "negligence." *See Marbob*
13 *Energy Corp. v. N.M. Oil Conservation Comm'n*, 2009-NMSC-013, ¶22, 146 N.M. 24 (use of the
14 word "shall" in a statute indicates provision is mandatory absent clear indication to the contrary).

15 Negligence can be found in several ways. Regulation § 3.1.11.10 NMAC (1/15/01) defines
16 "negligence" as "failure to exercise that degree of ordinary business care and prudence which
17 reasonable taxpayers would exercise under like circumstances; inaction by taxpayers where action is
18 required; inadvertence, indifference, thoughtlessness, carelessness, erroneous belief or inattention."
19 Not filing gross receipts tax returns or paying the taxes on time is certainly negligence under this
20 definition.

21 Taxpayer claims nonnegligence because of his stated infirmity. Regulation § 3.1.11.11
22 NMAC (1/15/01) defines "nonnegligence" by describing several situations which may indicate an
23 absence of negligence, allowing the Department to issue an abatement. The list provided in

1 regulation includes “B. the taxpayer, disabled because of injury or prolonged illness, demonstrates
2 the inability to prepare a return and make payment and was unable to procure the services of another
3 person to prepare a return because of the injury or illness.” Regulation § 3.1.11.11 NMAC.

4 Taxpayer’s only evidence provided was that he suffered an unnamed ailment that made it
5 difficult to review retained records, hence he was unable to provide records to his representative or
6 to the Department at the time of the protest. The infirmity certainly made it so that his ability to
7 overcome the assessment was impaired, but one may not assume that the infirmity was a factor in
8 procuring the services of another person to prepare a return in 2017. *See El Centro Villa Nursing*
9 *Center v. Taxation and Revenue Department*, 1989-NMCA-070, ¶10, 108 N.M. 795 (inadvertent
10 error meets the definition of civil negligence). Taxpayer did not show that his infirmity factored into
11 his belief that he did not have to file gross receipts returns, or that it impaired his ability to procure
12 the services of another to do so on his behalf. No abatement of penalty under Regulation 3.1.11.11
13 NMAC (01/15/01) is allowed.

14 **Conclusion.**

15 Mr. Baldrige provided evidence to support some of his contentions, and the assessment
16 will be reduced to reflect the reduction in the amount of gross receipts obtained from honoraria from
17 speaking engagements outside of New Mexico. Yet, for his IAIA income, he did not provide clear
18 evidence of the location of the work performed. This, coupled with the fact that he claimed a space
19 in his home in Albuquerque as devoted to work, provides substantial evidence that Taxpayer
20 performed the work, a service, in New Mexico. *See* Section 7-9-3.5 (“performing services in New
21 Mexico”). Mr. Baldrige also offered a medical excuse, unsupported by documentation, to suggest
22 that a medical infirmity made it so he could not review or retain records. A reduction of the penalty
23 due to Taxpayer’s medical excuse is not proper. *See* Regulation § 3.1.11.11 (B) NMAC.

1 The protest is granted in part and denied in part.

2 CONCLUSIONS OF LAW

3 A. The Taxpayer filed a timely written protest to the Notice of Assessment of Tax and
4 Demand for Payment issued under Letter ID number L0922947248, and jurisdiction lies over the
5 parties and the subject matter of this protest. *See* NMSA 1978, Section 7-1-24 (D) (2017).

6 B. A scheduling hearing was timely set and held within 90-days of protest under
7 NMSA 1978, Section 7-1B-8 (F)(2019). Parties did not object that the scheduling hearing
8 satisfied the 90-day hearing requirement of Section 7-1B-8. *See also* Regulation 22.600.3.8 (E)
9 NMAC (02/01/2018).

10 C. Any assessment of tax made by the Department is presumed to be correct.
11 Therefore, it is the taxpayer's burden to come forward with evidence and legal argument to establish
12 that the Department's assessment should be abated, in full or in part. *See* NMSA 1978, Section 7-1-
13 17 (C) (2007).

14 D. "Tax" is defined to include not only the tax program's principal, but also interest and
15 penalty. *See* NMSA 1978, Section 7-1-3 (Z) (2019); *see also* Regulation 3.1.1.16 (12/29/2000).
16 Assessments of penalties and interest therefore also receive the benefit of a presumption of
17 correctness. *See* Regulation 3.1.6.13 NMAC (1/15/01).

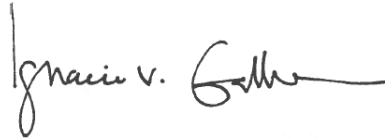
18 E. Taxpayer overcame the presumption of correctness in the assessment, based on
19 evidence that two payments as honoraria were not taxable in New Mexico as they were services
20 performed outside the state. *See* NMSA 1978, Section 7-9-3 (P) (2019) Section 7-9-3.3 (2019)
21 and Section 7-9-5(A) (2019).

22 F. Taxpayer failed to meet his burden to show that the consulting work he performed
23 at his home office in Albuquerque, New Mexico as Executive Director for a small non-profit

1 organization based outside of New Mexico was entitled to receive the benefit of any deductions
2 or exemptions to taxable business income. *See* NMSA 1978, Section 7-1-17 (C) (2007); *see also*
3 Section 7-9-3.5 (2019); *see also* Regulation 3.2.1.14 (A)(4) NMAC (9/25/2018).

4 For the foregoing reasons, the Taxpayer's protest **IS DENIED in part and GRANTED in**
5 **part. IT IS ORDERED** that the Department recalculate the tax, penalty, and interest due to reflect
6 the gross receipts of \$13,050. The tax, penalty and interest against the \$2,700 of out-of-state receipts
7 is abated. Taxpayer is responsible for payment of the recalculated tax, penalty, and interest. Interest
8 accrues until fully paid.

9 DATED: February 10, 2022.

10


11 Ignacio V. Gallegos
12 Hearing Officer
13 Administrative Hearings Office
14 P.O. Box 6400
15 Santa Fe, NM 87502
16

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
22 the requirements of perfecting an appeal of an administrative decision with the Court of Appeals.
23 Either party filing an appeal shall file a courtesy copy of the appeal with the Administrative

1 Hearings Office contemporaneous with the Court of Appeals filing so that the Administrative
2 Hearings Office may begin preparing the record proper. The parties will each be provided with a
3 copy of the record proper at the time of the filing of the record proper with the Court of Appeals,
4 which occurs within 14 days of the Administrative Hearings Office receipt of the docketing
5 statement from the appealing party. *See* Rule 12-209 NMRA.

6 **CERTIFICATE OF SERVICE**

7 On February 10, 2022, a copy of the foregoing Decision and Order was submitted to the
8 parties listed below in the following manner:

9 *First Class Mail and Email*

Mail and Email

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