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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  
SARAH MAESTAS BARNES  
TO ASSESSMENT ISSUED UNDER  
LETTER ID NO. L1302456752**

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**v.**

Case Number 21.12-070A, D&O 22-14

**NEW MEXICO TAXATION AND REVENUE DEPARTMENT**

**DECISION AND ORDER**

On May 11, 2022, Hearing Officer Chris Romero, Esq., conducted a hearing on the merits in the matter of the protest of Sarah Maestas Barnes<sup>1</sup> (“Taxpayer”) pursuant to the Tax Administration Act and the Administrative Hearings Office Act. Mr. Frank Crociata, Esq. represented Taxpayer and was accompanied by Taxpayer and her spouse, Mr. Harry Barnes. Ms. Cordelia Friedman, Esq. appeared on behalf of the Taxation and Revenue Department (“Department”) accompanied by Ms. Angelica Rodriguez, protest auditor. Harry Barnes and Sarah Barnes testified for Taxpayer. Ms. Rodriguez testified for the Department.

The hearing occurred by videoconference pursuant to NMSA 1978, Section 7-1B-8 (H) under the circumstances of the ongoing public health emergency presented by COVID-19, as discussed in greater detail in Standing Order 21-02, which is made part of the record of the proceeding.

Department Exhibits A – D and Taxpayer Exhibits 2 – 6 and 13 – 16 were admitted without objection. Taxpayer Exhibits 7 – 12 were admitted over the Department’s objections. Because

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<sup>1</sup> Since Taxpayer testified that she has never filed her taxes under the name Sarah Maestas Barnes, the Hearing Officer, when necessary, will refer to her as Sarah Barnes or Ms. Barnes. Reference to Sarah Maestas Barnes in the caption and footer merely correspond with the name appearing on the Notice of Assessment and Demand for Payment from which the protest arose.

1 Taxpayer Exhibit 1 and Department Exhibit C were substantially similar, the parties concurred that  
2 Department Exhibit C should be admitted in lieu of Taxpayer Exhibit 1.

3 The central issue presented for consideration was whether Taxpayer derived taxable gross  
4 receipts from the Social Security Administration. Because the evidence established by a  
5 preponderance that the reported amounts of nonemployee compensation were not gross receipts  
6 under NMSA 1978, Section 7-9-3.5, Taxpayer's protest should be granted. IT IS DECIDED AND  
7 ORDERED AS FOLLOWS:

## 8 **FINDINGS OF FACT**

### 9 Background

10 1. Harry Barnes, Jr., and Sarah Barnes are married. In all relevant years, they filed  
11 married joint income tax returns. [Direct Examination of Mr. Barnes]

12 2. Neither Ms. Barnes nor her spouse have filed a tax return under the name Sarah  
13 Maestas Barnes. Her legal name is Sarah Lee Barnes even though the name Sarah Maestas  
14 Barnes has been used in a limited manner for other purposes not relevant to the protest. [Direct  
15 Examination of Ms. Barnes]

16 3. From October 11, 2012 through February 22, 2016, Ms. Barnes was a part-time  
17 employee of a law firm<sup>2</sup> ("Law Firm") in Albuquerque, New Mexico. Law Firm specialized in  
18 representing individuals in matters before the Social Security Administration ("SSA"). [Direct  
19 Examination of Mr. Barnes; Direct Examination of Ms. Barnes; Taxpayer Ex. 12]

20 4. In about 2012, an attorney acquaintance with Law Firm communicated to Ms.  
21 Barnes that it had an employment vacancy that it wished to fill. Ms. Barnes expressed her lack of  
22 experience with the SSA and was assured that Law Firm would provide supervision and training.

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<sup>2</sup> Although the name of the law firm is contained in the record, the Hearing Officer finds that referring to the law firm by name is not necessary to the discussion contained herein.

1 [Direct Examination of Ms. Barnes]

2 5. Because Ms. Barnes had no experience with the SSA, she relied wholly on Law  
3 Firm for direction, supervision, and instruction. [Direct Examination of Ms. Barnes]

4 6. Ms. Barnes was a parttime W-2 employee of Law Firm. Consequently, income  
5 derived from her employment was paid by Law Firm in the form of wages. In contrast, Ms.  
6 Barnes received no direct, nonemployee compensation from the Social Security Administration  
7 for work performed for Law Firm. [Direct Examination of Mr. Barnes; Taxpayer Exs. 7 (Para. 7,  
8 8, 9); 12]

9 7. Tax year 2015 is the only year relevant to the assessment in which Ms. Barnes  
10 derived actual income from her parttime employment with Law Firm. “Despite the overall tenure  
11 of her employment with [Law Firm], [Ms.] Barnes performed limited work for [Law Firm] in  
12 2015...[.] [Ms.] Barnes performed no work for [Law Firm] in 2016.” [Direct Examination of Ms.  
13 Barnes; Taxpayer Exs. 7 (Para. 6); 15; 16]

14 8. Ms. Barnes has not practiced as an attorney before the SSA since she concluded  
15 her employment with Law Firm in 2016. [Direct Examination of Ms. Barnes]

16 SSA Issuance of 1099-MISC Forms

17 9. In early 2018, long after Ms. Barnes concluded her employment with Law Firm,  
18 Mr. Barnes and Ms. Barnes received a 1099-MISC from SSA reflecting nonemployee  
19 compensation paid to Ms. Barnes by SSA in the 2017 tax year. [Direct Examination of Mr.  
20 Barnes; Taxpayer Ex. 13.1]

21 10. Ms. Barnes was neither employed by Law Firm nor otherwise deriving income  
22 from engaging in business before the SSA in 2017. [Direct Examination of Ms. Barnes]

23 11. The 2017 1099-MISC reported \$57,348.45 in Box 7 as nonemployee

1 compensation paid to Ms. Barnes. [Taxpayer Ex. 13.1]

2 12. Mr. and Ms. Barnes received the 2017 1099-MISC from Law Firm at which time  
3 Mr. Barnes observed that the form was addressed to Ms. Barnes at Law Firm's address. [Direct  
4 Examination of Mr. Barnes; Direct Examination of Ms. Barnes; Taxpayer Ex. 13.1]

5 13. Mr. Barnes and Ms. Barnes made further inquiry of Law Firm and were directed  
6 to Law Firm's certified public accountant. [Direct Examination of Mr. Barnes]

7 14. The general response from Law Firm and its accounting professionals was "very  
8 *nonchalant*" suggesting that this sort of thing "happens all the time" and should be  
9 straightforwardly resolved. [Direct Examination of Mr. Barnes]

10 15. The managing partner<sup>3</sup> of Law Firm personally disclosed to Ms. Barnes that the  
11 same thing also happened to her and that it was purportedly resolved without any formal  
12 assessment by the Department. [Direct Examination of Ms. Barnes; Taxpayer Ex. 7 (Paras. 12 –  
13 14)]

14 16. The managing partner of Law Firm also suggested that resolution of the issue  
15 would be assisted with a form letter she prepared which Ms. Barnes executed and submitted to  
16 the SSA on or about May 4, 2018. [Direct Examination of Ms. Barnes; Taxpayer Ex. 16]

17 17. The form letter clarified Ms. Barnes' dates of employment, her employer-  
18 employee relationship with Law Firm, and disclaimed any interest in fees paid by SSA.  
19 [Taxpayer ex. 16]

20 18. Law Firm's certified public accountant recommended acknowledging receipt of  
21 the 1099-MISC in Taxpayers' 2017 Schedule C and offset the purported income with a  
22 corresponding expense which would accurately reflect Ms. Barnes' net income from the SSA,

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<sup>3</sup> The name of the managing attorney is contained in the record. However, identifying the attorney by name is not necessary to the discussion of the issues presented.

1 which was zero dollars in 2017. [Direct Examination of Mr. Barnes]

2 19. Mr. and Ms. Barnes' research revealed the existence of additional 1099-MISC  
3 forms for tax years 2015 and 2016, in addition to the 2017 form which initially alerted Taxpayers  
4 to the problem. Taxpayers had never received 1099-MISC forms for tax years 2015 and 2016.

5 [Direct Examination of Mr. Barnes]

6 20. Tax year 2015 is the only year assessed in which Ms. Barnes also derived income  
7 through employment with Law Firm. [Direct Examination of Ms. Barnes; Taxpayer Exs. 7 (Para.  
8 6); 15]

9 21. For tax year 2015, Ms. Barnes received two 1099-MISC forms reporting  
10 nonemployee compensation purportedly paid to Ms. Barnes. The sum of Box 7 (Nonemployee  
11 compensation) from both forms was \$63,675.00 paid in 2015. [Direct Examination of Mr.  
12 Barnes; Department Exs. B.1 – B.2; D]

13 22. For tax year 2016, Ms. Barnes received one 1099-MISC form reporting non-  
14 employee compensation purportedly paid to Ms. Barnes. The sum of Box 7 (Nonemployee  
15 compensation) was \$64,850 paid in 2016. [Direct Examination of Mr. Barnes; Department Ex.  
16 B.3; D; Taxpayer Ex. 7 (Para. 6)]

17 23. For tax year 2018, Ms. Barnes received two 1099-MISC forms reporting  
18 nonemployee compensation purportedly paid to Ms. Barnes. The sum of Box 7 (Nonemployee  
19 compensation) from both forms was \$16,000 paid in 2018. [Direct Examination of Mr. Barnes;  
20 Taxpayer Ex. 13.2 – 13.3; Department Ex. B]

21 24. All 1099-MISC forms issued to Ms. Barnes have been addressed to Ms. Barnes at  
22 Law Firm's address. [Direct Examination of Ms. Barnes; Taxpayer Ex. 13; Department Ex. B]

23 25. The SSA has continued to report non-employee compensation to Ms. Barnes

1 despite the fact that she has not been employed by Law Firm or practiced law before the SSA  
2 since concluding her employment with Law Firm in 2016. [Direct Examination of Ms. Barnes;  
3 Direct Examination of Mr. Barnes; Taxpayer Ex. 13; Department Ex. B]

4 26. Although not relevant to the periods under the Assessment, SSA has issued a  
5 1099-MISC for 2019. It was unknown at the time of the hearing whether SSA issued a 1099-  
6 MISC form for 2020 and no information was provided for 2021. [Direct Examination of Mr.  
7 Barnes]

8 27. Despite the amounts identified as non-employee compensation in the relevant  
9 1099-MISC forms, admitted as Taxpayer Ex. 13 and Department Ex. B, Ms. Barnes did not  
10 receive any amounts of nonemployee compensation directly from the SSA. [Direct Examination  
11 of Ms. Barnes; Taxpayer Ex. 13]

12 28. “All client fees paid directly by the SSA, in the name of [Ms.] Barnes, during her  
13 employment with [Law Firm] and after her employment with [Law Firm] ended, were paid into  
14 [Law Firm’s] U.S. Bank business checking account. [Taxpayer Ex. 7 (Para. 9); Direct  
15 Examination of Ms. Barnes]

16 29. “At no time did [Ms.] Barnes have any right to, ownership of, or interest in any  
17 fees paid directly by the [SSA] on behalf of [Law Firm’s] clients.” [Taxpayer Ex. 7 (Para 8)]

18 30. SSA did not directly deposit money into any account in which Mr. or Ms. Barnes  
19 had an ownership interest. [Direct Examination of Ms. Barnes; Taxpayer Exs. 6.3 – 6.4; 14; 15]

20 31. Ms. Barnes’ bank statements for 2015 demonstrate that the sum of deposits  
21 deriving from employment with Law Firm substantially correspond with compensation reported  
22 on her 2015 W-2. [Direct Examination of Ms. Barnes; Taxpayer Ex. 15]

23 32. The standard Fee Agreement between Law Firm and its clients established that all

1 revenue from attorney fees was to be paid to Law Firm, not any individual attorney, and that any  
2 gross receipts taxes incurred would be passed on by Law Firm to the client. [Taxpayer Ex. 8.1]

### 3 The SSA Payment Process

4 33. SSA instructions explain that it does “not recognize entities as appointed  
5 representatives or make direct payments to entities, such as firms or organizations.” Instead, it  
6 pays “only individuals.” Individuals and their employer law firms can still be compensated  
7 utilizing the approved SSA procedure which when properly engaged will cause a 1099-MISC to  
8 be issued to the employing law firm which identifies taxable nonemployee compensation (Box  
9 7), while the individual representative receives a 1099-MISC identifying the sum of gross  
10 proceeds paid to an attorney (Box 14). [Taxpayer Ex. 3.8; 3-10; 4.1 – 4.2]

11 34. The SSA process during the relevant period provided:

12 a. “The one-time submission Form SSA-1699 is the first step of the two-step  
13 registration process representatives must complete to receive direct payments for specific  
14 claims.” [Taxpayer Ex. 4.1; 6]

15 b. “In the second step, representatives submit their Social Security numbers  
16 on Form SSA-1695 each time their appointed to represent a claimant or when a federal court  
17 approves the fee.” [Taxpayer Ex. 4.1; 8.2]

18 c. “With this form [Form SSA-1695 ] we set up a link between each claim  
19 for direct fee payment and the appointed representative database. This link ensures that Social  
20 Security captures all payments to representatives and properly reports these payments on Form  
21 1099-MISC.” [Taxpayer Ex. 4.1]

22 d. Forms SSA-1699 and SSA-1695 are employed to obtain information  
23 necessary to issue form 1099-MISC. [Taxpayer Ex. 4.1]

1 e. “Most individual representatives belong to an entity. Payments count as  
2 taxable income to the entities. If you give the business entity’s taxpayer information [Form SSA-  
3 1694] to us, we’ll issue two Forms 1099-MISC. One will go to the entity with total payments  
4 reflected as taxable income. We send another copy to the individual representative showing total  
5 payments as not taxable income.” [Taxpayer Ex. 4.1; 5]

6 f. Instructions for Form SSA-1694 provide, “We [the SSA] will use the  
7 information to identify appointed representatives associated with a business entity as employees  
8 or partners, and to facilitate issuance of appropriate return information for reporting purposes.”

9 g. “Social Security must report the fees as taxable income to each  
10 representative if we don’t have the entity’s information. Representatives must report the  
11 payments as income on their tax returns or given nominee Form 1099-MISC to the entity and  
12 Internal Revenue Service (IRS). This will avoid a notice of failure to report income from the IRS  
13 on their individual tax returns. Social Security strongly recommends that all business entities  
14 with affiliated individual representatives register as soon as possible.” [Taxpayer Ex. 4.1; 5]

15 35. The evidentiary record does not contain any evidence that Law Firm ever  
16 completed a “Request for Business Entity Taxpayer Information (Form SSA-1694). [Taxpayer  
17 Ex. 5 (blank Form SSA-1694)]]

18 36. When correctly employed, the SSA procedure should have caused Ms. Barnes to  
19 receive 1099-MISC forms only in those years in which Law Firm earned fees from SSA for her  
20 work, with the sum of those fees reported in Box 14 as “Gross proceeds paid to an attorney[.]”  
21 Ms. Barnes would have then had the opportunity to report what, if any, amount contained therein  
22 should have been taxable to her (“Amount in Box 10 are not reported as income to the IRS”).  
23 [Taxpayer Ex. 3.9; 4.1 – 4.2]





1 Form SSA-1699, or any other SSA forms before they were submitted by Law Firm to the SSA.  
2 [Direct Examination of Ms. Barnes; Cross Examination of Ms. Barnes; Taxpayer Ex. 6; 8.2  
3 (Executed with a signature stamp)]

4 44. Form SSA-1699 was provided to Taxpayers by Law Firm. It was unsigned and  
5 prepared without consultation of Ms. Barnes. [Direct Examination of Ms. Barnes; Taxpayer Ex.  
6 6.]

7 45. The Employer Identification Number provided in Section IV, Part 1, of the Form  
8 SSA-1699 is that of Law Firm. [Taxpayer Ex. 6.4]

9 46. Ms. Barnes' contact information is represented to be the same as Law Firm.  
10 [Direct Examination of Ms. Barnes; Taxpayer Exhibit 6. (Section IV, Subsection 6; VI,  
11 Subsections 2 – 3)]

12 47. Form SSA-1699, Section IV, incorrectly identified Ms. Barnes as a “co-owner” of  
13 the bank account provided for direct deposits from SSA (U.S. Bank Acct. No. ending 1882).  
14 [Taxpayer Ex. 6.3 (Section IV, Subsection 5)]

15 48. The instructions for Form-1699 (Section IV) provide that in order to receive direct  
16 deposit of payments, the representative must be an “owner or co-owner of [the] account.”  
17 Otherwise, payment should be made by check mailed to the address provided for notice, which  
18 in the case of Ms. Barnes, was Law Firm's address. However, the form, as prepared disregarded  
19 the instruction by identifying Ms. Barnes as a co-owner of the account. [Taxpayer Ex. 6.3 – 6.4  
20 (Section IV, Subsection 5; Section V, Subsection 5)]

21 49. The bank account identified in Form-1699 (Sections IV and V) is Law Firm's  
22 account. Ms. Barnes has never had any interest in the account identified therein. [Direct  
23 Examination of Ms. Barnes; Taxpayer Exs. 6.3; 9 (Statements corresponding with U.S. Bank

1 Acct. No. ending 1882 in name of Law Firm); 7 (Para. 8)]

2 50. The combination of Form SSA-1699 (Taxpayer Ex. 6) and the bank statements  
3 (Taxpayer Ex. 9) which bear the same account number as that provided in the Form SSA-1699  
4 establish that the SSA made direct deposits to U.S. Bank Acct. No. ending 1882 upon  
5 representation that Ms. Barnes was a “owner or co-owner of [the] account” when, in fact, she  
6 was not. [Direct Examination of Mr. Barnes; Direct Examination of Ms. Barnes; Taxpayer Exs.  
7 6; 7 (Para 8); 9]

8 51. For example, review of statements for U.S. Bank Acct. No. ending 1882 in name  
9 of Law Firm revealed that it received direct deposits from the SSA which correlated to specific  
10 matters Ms. Barnes worked on for Law Firm. Compare Taxpayer Ex. 9.124 (deposits dated “Aug  
11 23”) to Taxpayer Ex. 8 (Fee Agreement). [Direct Examination of Mr. Barnes; Taxpayer Exs.  
12 9.124; 8]

13 52. Ms. Barnes was not compensated directly by SSA for any work she performed for  
14 Law Firm. [Direct Examination of Mr. Barnes; Direct Examination of Ms. Barnes; Taxpayer Ex.  
15 7 (Para. 9)]

16 53. Form-1699, Section IV, Subsection 6, instructed the SSA to mail 1099-MISC  
17 forms to the address provided for notice, which in the case of Ms. Barnes, was Law Firm’s  
18 address. [Taxpayer Ex. 6.3 (Section IV, Subsection 6)]

19 54. The record fails to establish that Law Firm ever completed a “Request for  
20 Business Entity Taxpayer Information (Form SSA-1694). [Taxpayer Ex. 5 (blank Form SSA-  
21 1694)]

22 55. Records disclosed by Law Firm to Mr. and Ms. Barnes also reveal that Law Firm  
23 and the Department have executed an Installment Agreement for payment of an outstanding

1 gross receipts tax liability consisting of principal, interest, and penalty. The liability was incurred  
2 in specified periods between April 30, 2015 and December 31, 2019 which overlap the periods  
3 for which the Department asserts Taxpayer is similarly liable. [Direct Examination of Mr.  
4 Barnes; Taxpayer Ex. 10]

5 56. Comparison of the Installment Agreement to the statement for U.S. Bank Acct.  
6 No. ending 1882 illustrates those periods in which a withdrawal in favor of the Department are  
7 not included in the plan. For example, compare Taxpayer Ex. 9.35 (Withdrawal to Department  
8 dated July 1, 2015 in amount of \$6,909.61) to Taxpayer Ex. 10.2 (noting no outstanding liability  
9 for corresponding period) and Taxpayer Ex. 11.3 (CRS-1 Return for June 2015). [Direct  
10 Examination of Mr. Barnes; Taxpayer Ex. 9; 10; 11.3]

11 57. Law Firm acknowledged “[t]he SSA direct-paid fees referenced in [Taxpayer Ex.  
12 7.1 (Para. 9)] constitute gross receipts to [Law Firm] as a professional corporation.” [Taxpayer  
13 Ex. 7.1 (Para. 10)]

14 58. Law Firm acknowledged “[Law Firm] is solely responsible to pay the New  
15 Mexico Gross Receipts Tax on all client fees paid directly by the SSA on behalf of all the  
16 attorneys named on their forms 1099-MISC, including all fees paid in the name of [Ms.] Barnes  
17 and reflected on 1099-MISC forms issued to [Ms.] Barnes by the SSA.” [Taxpayer Ex. 7.2 (Para.  
18 11)]

19 59. The non-employee compensation contained in 1099-MISCs provides the bases for  
20 the Assessment. [Cross Examination of Ms. Rodriguez]

21 60. SSA does not correct 1099-NEC or 1099-MISC unless the correction pertained to  
22 a: name or address change; remittances of payment made the same calendar year but not properly  
23 posted; or non-receipt of fees posted to 1099-NEC. [Taxpayer Ex. 3.12]

1           61. Relying on the relevant 1099-MISC forms, the Department concluded that  
2 Taxpayer derived gross receipts from engaging in business before the SSA, and on April 20,  
3 2021, issued a Notice of Assessment of Taxes and Demand for Payment under Letter ID No.  
4 L1302456752 (“Assessment”) in the total amount of \$18,929.08. The total amount due was  
5 comprised of \$13,617.61 in gross receipts tax, \$2,723.52 in penalty, and \$2,723.52 in interest for  
6 the periods from January 1, 2015 to December 31, 2018. [Administrative File]

7                                   Procedural History Before  
8                                   Administrative Hearings Office

9           62. On May 20, 2021, Taxpayer submitted a protest of the Assessment to the  
10 Department’s protest office. [Administrative File]

11           63. On June 30, 2021, the Department acknowledged the receipt of Taxpayer’s  
12 protest under Letter ID No. L1083721136. [Administrative File]

13           64. On December 22, 2021, the Department filed a Request for Hearing with the  
14 Administrative Hearings Office which requested that a scheduling hearing be set. The Request  
15 for Hearing was accompanied by Department’s Answer to Protest. [Administrative File]

16           65. On December 28, 2021, the Administrative Hearings Office entered a Notice of  
17 Telephonic Scheduling Hearing which set an initial telephonic scheduling hearing for January  
18 28, 2022. [Administrative File]

19           66. An initial telephonic scheduling hearing occurred on January 28, 2022, a date  
20 within 90 calendar days of December 22, 2022, at which time neither Taxpayer nor the  
21 Department objected that the hearing satisfied the 90-day hearing deadline established by NMSA  
22 1978, Section 7-1B-8 (F) (2019). [Administrative File]

23           67. On January 31, 2022, the Administrative Hearings Office entered a Scheduling  
24 Order and Notice of Administrative Hearing which in addition to establishing various deadlines,

1 set a hearing on the merits of Taxpayer's protest to commence on May 11, 2022 and proceed as  
2 necessary through May 12, 2022. [Administrative File]

3 68. On April 20, 2022, Taxpayer filed Taxpayer's Pre-Hearing Statement and the  
4 Department filed Department's Prehearing Statement. [Administrative File]

5 69. On May 5, 2022, Taxpayer filed its Motion for Leave to Revise Pre-Hearing  
6 Statement. [Administrative File]

7 70. On May 10, 2022, the Department filed Department's Response to Protestant's  
8 Motion for Leave to Revise Pre-Hearing Statement and Department's Notice of Rebuttal  
9 Exhibits. [Administrative File]

10 71. On May 11, 2022, Taxpayer verbally withdrew Taxpayer's Motion for Leave to  
11 Revise Pre-Hearing Statement. [Record of Hearing (5/11/2022)]

## 12 **DISCUSSION**

13 Ms. Barnes presents several arguments in support of her protest: (1) Nonemployee  
14 compensation reported on 1099-MISC forms are not gross receipts; (2) Law Firm, not Ms. Barnes,  
15 is liable for gross receipts tax; (3) the Assessment results in impermissible double taxation; and (4)  
16 the Assessment violates the Equal Protection Clause.

17 Since the evidence established by a preponderance that the reported amounts of  
18 nonemployee compensation were not gross receipts under NMSA 1978, Section 7-9-3.5, because  
19 they were never received by Ms. Barnes, and this finding is dispositive, the Hearing Officer will not  
20 address Taxpayer's other arguments in detail.

## 21 **Presumption of Correctness**

22 Pursuant to NMSA 1978, Section 7-1-17 (C) (2007), the Assessment of tax issued in this  
23 case is presumed correct and unless otherwise specified, for the purposes of the Tax

1 Administration Act, “tax” includes interest and civil penalty. *See* NMSA 1978, Section 7-1-3 (X)  
2 (2013). Therefore, under Regulation 3.1.6.13 NMAC, the presumption of correctness under  
3 Section 7-1-17 (C) also extends to the Department’s assessment of penalty and interest. *See*  
4 *Chevron U.S.A., Inc. v. State ex rel. Dep’t of Taxation & Revenue*, 2006-NMCA-050, ¶16, 139  
5 N.M. 498, 134 P.3d 785 (agency regulations interpreting a statute are presumed proper and are to be  
6 given substantial weight).

7 As a result, the presumption of correctness in favor of the Department requires that a  
8 taxpayer carry the burden of presenting countervailing evidence or legal argument to show  
9 entitlement to an abatement of an assessment. *See N.M. Taxation & Revenue Dep’t v. Casias*  
10 *Trucking*, 2014-NMCA-099, ¶8, 336 P.3d 436. “Unsubstantiated statements that [an] assessment  
11 is incorrect cannot overcome the presumption of correctness.” *See MPC Ltd. v. N.M. Taxation &*  
12 *Revenue Dep’t*, 2003-NMCA-021, ¶13, 133 N.M. 217, 62 P.3d 308; *See also* Regulation 3.1.6.12  
13 NMAC. If a taxpayer presents sufficient evidence to rebut the presumption, then the burden  
14 shifts to the Department to re-establish the correctness of the assessment. *See MPC*, 2003-  
15 NMCA-021, ¶13.

### 16 **Taxable Gross Receipts**

17 The evidence in this protest was resounding and persuasive. Simply stated, the SSA  
18 erroneously reported significant amounts of taxable nonemployee compensation paid to Ms. Barnes  
19 between 2015 and 2018 coinciding with the tax years relevant to the Assessment. The evidence also  
20 established that this issue may be ongoing since the SSA has continued to report nonemployee  
21 compensation to Ms. Barnes in subsequent years even though she has not been employed by Law  
22 Firm or otherwise practiced before the SSA since 2016. Of course, nonemployee compensation  
23 reported outside the relevant periods does not factor into the analysis but illustrates the ongoing

1 predicament in which Mr. and Ms. Barnes find themselves, which is to be assertedly liable for  
2 payment of taxes on substantial amounts of income which they never received, but which was  
3 nevertheless reported from 2015 through 2018, and perhaps beyond.

4 In any event, the periods before the Hearing Officer are from January 1, 2015 to December  
5 31, 2018. In those years, the SSA reported more than \$200,000.00 in nonemployee compensation  
6 on which the Department asserted gross receipts tax to be due, plus interest and penalty.

7 The evidence clearly established that Mr. and Ms. Barnes never received the reported  
8 amounts of nonemployee compensation. Furthermore, to the extent any amounts should have been  
9 reported, those amounts should have been reported in the 1099-MISC as “Gross proceeds paid to an  
10 attorney[,]” not as nonemployee compensation. The consequence is that nonemployee  
11 compensation is taxable while a taxpayer receiving “gross proceeds paid to an attorney” is permitted  
12 to report the portion that is taxable to the attorney, which could range from nothing at all to the full  
13 amount reported, depending on the circumstances. In this case, based on the evidence presented,  
14 that amount would have been zero because the evidence established that Ms. Barnes received  
15 nothing from the SSA. Instead, she was compensated as an employee of Law Firm during her  
16 employment from October 11, 2012 until February 22, 2016, and she has not practiced with the  
17 SSA since 2015. “[R]eceipts of employees from wages, salaries, commissions or from any other  
18 form of remuneration for personal services” are exempt from gross receipts. *See* NMSA 1978,  
19 Section 7-9-17.

20 Meanwhile, Law Firm has accepted responsibility for payment of gross receipts tax by  
21 entering into an installment agreement (Taxpayer Ex. 10) and affirming:

22 [Law Firm] is solely responsible to pay the New Mexico Gross  
23 Receipts Tax on all client fees paid directly by the SSA on behalf of  
24 all the attorneys named on their forms 1099-MISC, including all fees



1           paid in the name of [Ms.] Barnes and reflected on 1099-MISC forms  
2           issued to [Ms.] Barnes by the SSA.

3           [Taxpayer Ex. 7.2 (Para. 11)]

4           Despite these facts, the Department nevertheless contends that Ms. Barnes still owes gross  
5 receipts tax because, for lack of better words, the 1099-MISC forms say so. However, the  
6 Department has failed or refused to recognize that those 1099-MISC forms, which form the basis  
7 for the Assessment, are clearly erroneous. For example, the SSA continues to report substantial  
8 amounts of nonemployee compensation to Ms. Barnes even after her employment with Law Firm  
9 ended in 2016, and she credibly testified that she had not practiced before the SSA since 2015. Yet,  
10 the SSA reports more than \$138,000.00 in nonemployee compensation in the remaining years under  
11 the Assessment; years in which Ms. Barnes credibly testified that she neither practiced nor derived  
12 nonemployee or any other compensation from SSA under any scenario whatsoever.

13           As Ms. Barnes precisely explains, gross receipts taxation requires “gross receipts.” For the  
14 privilege of engaging in business, New Mexico imposes a gross receipts tax on the receipts of any  
15 person engaged in business. *See* NMSA 1978, Section 7-9-4 (2002). Under NMSA 1978, Section  
16 7-9-3.5 (A) (1) (2007, Amended 2019), “gross receipts” is defined to mean:

17           *the total amount of money or the value of other consideration*  
18           *received* from selling property in New Mexico, from leasing or  
19           licensing property employed in New Mexico, from granting a right to  
20           use a franchise employed in New Mexico, from selling services  
21           performed outside New Mexico, the product of which is initially  
22           used in New Mexico, or from performing services in New Mexico.

23           (Emphasis Added)

24           The critical term in this case is “received” in that receipts must derive from a specified  
25 activity and actually be *received*. Conversely stated, “gross receipts” always excludes money that  
26 was never received.

1 In this protest, the evidence established that despite the SSA's issuance of 1099-MISC  
2 forms, Ms. Barnes never in fact received compensation from the SSA. With regard for 2015, Ms.  
3 Barnes was compensated as a W-2 employee of Law Firm and she had no interest whatsoever in  
4 Law Firm or its accounts. Any receipts Law Firm derived from her employment were received by  
5 Law Firm. Ms. Barnes received nothing from SSA.

6 Problems with the 1099-MISC forms are further emphasized by the fact that Ms. Barnes  
7 continued to receive them after 2016 when she derived no further income from employment with  
8 Law Firm, and in 2017 and 2018 when she was no longer engaging in any activity before the SSA  
9 which would generate any amount of nonemployee compensation, especially an amount exceeding  
10 six figures.

11 Nevertheless, Ms. Rodriguez testified that the 1099-MISC forms form the basis for the  
12 Assessment. Although the Hearing Officer agrees the 1099-MISC forms represent a reasonable  
13 starting point in evaluating whether there is a gross receipts tax liability, the evaluation cannot  
14 disregard other reliable, trustworthy, and credible evidence which substantially diminishes the  
15 reliability of the information contained in the 1099-MISC forms. To do so clearly exalts form over  
16 substance. *See Dugger v. City of Santa Fe*, 1992-NMCA-022, ¶13, 114 N.M. 47, 52, 834 P.2d 424,  
17 429, *writ quashed*, *Dugger v. City of Santa Fe*, 113 N.M. 744, 832 P.2d 1223 (1992).

18 The Hearing Officer finds that Ms. Barnes overcame the presumption of correctness by  
19 presenting compelling evidence that the 1099-MISC forms are erroneous. They wholly fail to  
20 accurately report income paid by SSA to, and received by, Ms. Barnes and cannot reliably form the  
21 basis for taxation under the New Mexico Gross Receipts and Compensating Tax Act because Ms.  
22 Barnes never received this money.

1 For the reasons stated, Taxpayer's protest is GRANTED. Taxpayer established by a  
2 preponderance of highly credible, trustworthy, and reliable evidence that she and her spouse are  
3 entitled to a full abatement of the Assessment.

#### 4 **Administrative Costs and Fees**

5 Taxpayer moved for fees and costs in her protest letter. Pursuant to Regulation  
6 22.600.3.28 (A) NMAC, either party may provide legal briefing, affidavits, or other relevant  
7 documents, limited to: (1) whether Taxpayer should be considered a prevailing party; (2)  
8 whether the Department's position in the proceeding was based upon a reasonable application of  
9 the law to the facts of the case; and (3) asserting or disputing the reasonableness of a potential  
10 award.

11 In order to evaluate, under NMSA 1978, Section 7-1-29.1, whether Taxpayer is a  
12 prevailing party entitled to an award of administrative fees and costs: (1) Taxpayer shall within  
13 ten calendar days from entry of this decision and order file an accounting of costs and fees along  
14 with any additional legal argument in support of an award; (2) the Department shall file a  
15 response within 10 calendar days of Taxpayer's submission.

#### 16 **CONCLUSIONS OF LAW**

17 A. Taxpayer filed a timely, written protest to the Assessment. Jurisdiction lies over the  
18 parties and the subject matter of this protest.

19 B. The Administrative Hearings Office conducted a hearing within 90 days of  
20 Taxpayer's protest under NMSA 1978, Section 7-1B-8 (2019).

21 C. If a taxpayer presents sufficient evidence to rebut the presumption, then the  
22 burden shifts to the Department to re-establish the correctness of the assessment. *See MPC Ltd.*,  
23 2003-NMCA-021, ¶13.

24 D. Nonemployee compensation reported on Ms. Barnes 2015 – 2018 Forms 1099-

1 MISC from the Social Security Administration is not gross receipts under NMSA 1978, Section 7-  
2 9-3.5 (A) (1) because the reported amounts were not *received* by Ms. Barnes.

3 E. The Department did not re-establish the correctness of the Assessment. *See MPC*  
4 *Ltd.*, 2003-NMCA-021, ¶13.

5 For the foregoing reasons, Taxpayer's protest should be, and hereby is, GRANTED. The  
6 Assessment shall be ABATED in full.

7 DATED: May 25, 2022

8 

9 Chris Romero  
10 Hearing Officer  
11 Administrative Hearings Office  
12 P.O. Box 6400  
13 Santa Fe, NM 87502

14 **NOTICE OF RIGHT TO APPEAL**

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

1 **CERTIFICATE OF SERVICE**

2 On May 25, 2022, a copy of the foregoing Decision and Order was submitted to the parties

3 listed below in the following manner:

4 *Email*

*Email*

5  
6 *INTEMTIONALLY BLANK*