



1 both individually subject to New Mexico's Gross Receipts and Compensating Tax reporting and  
2 payment. Ultimately, after making findings of fact and discussing the issue in more detail  
3 throughout this decision, the hearing officer finds that Taxpayer's claim is not supported by facts in  
4 the record, yet the balance is reduced because the Department seized Taxpayer's federal tax refund,  
5 providing credit against state taxes owed, therefore the balance of the protest is denied. IT IS  
6 DECIDED AND ORDERED AS FOLLOWS:

## 7 **FINDINGS OF FACT**

### 8 **Procedural Findings**

9 1. On June 30, 2021, under Letter Id. No. L1081918896, the Department issued a  
10 Notice of Assessment of Taxes and Demand for Payment to Taxpayer. Under the Assessment  
11 letter, Taxpayer owed Project Gross Receipts Tax of \$313.42, penalty of \$62.68, and interest of  
12 \$37.08 for a total assessment of tax due of \$413.18 for tax reporting periods from January 1,  
13 2018, to December 31, 2018. [Administrative File; Ex. C-1, Ex. F-1].

14 2. On July 6, 2021, Taxpayer mailed a protest letter, which he dated July 5, 2021,  
15 alleging that the Department was incorrect in its assessment of tax because the income was from  
16 consignment sales of artwork, where the gallery was responsible for collection, reporting, and  
17 payment of the tax. The protest letter was stamped as received by the Department ACD Office  
18 on July 16, 2021. [Administrative File; Ex. B].

19 3. On December 17, 2021, David C. Zlotnik, Certified Public Accountant, submitted  
20 a letter on Taxpayer's behalf explaining the items contained in the Taxpayer's 2018 Schedule C,  
21 and the reason for the missing 1099 from the Long Coat Fine Art gallery. [Administrative File;  
22 Ex. E1, E2].

1           4.       On January 25, 2022, the Department issued an Acknowledgment of protest letter,  
2 under Letter Id. No. L1961118640, acknowledging receipt of the Taxpayer's protest.

3 [Administrative File; Ex. A].

4           5.       On August 24, 2022, the Department submitted a Request for Hearing to the  
5 Administrative Hearings Office, requesting a scheduling hearing to address Taxpayer's protest.  
6 The Request for Hearing stated that the total at issue was \$413.18. [Administrative File].

7           6.       On August 24, 2022, the Department submitted its Answer to Protest to the  
8 Administrative Hearings Office, claiming that the Taxpayer reported income on a federal form  
9 Schedule C without reporting the income as gross receipts, or paying the gross receipts tax. The  
10 Answer further states that the Taxpayer failed to provide an NTTC or sufficient alternative  
11 evidence of reporting or payment by another for the gross receipts tax at issue. [Administrative  
12 File].

13           7.       On August 31, 2022, the Administrative Hearings Office mailed a Notice of  
14 Administrative Hearing to the parties, by first class mail and email, setting the matter for an  
15 administrative hearing on the merits of the protest on September 28, 2022. [Administrative File].

16           8.       On September 16, 2022, the Department submitted the Department's Witness and  
17 Exhibit list. The Department sent the submission to Taxpayer's representative, Richard  
18 Sandoval, CPA, via email. [Administrative File].

19           9.       On September 16, 2022, Richard Sandoval, CPA, submitted an email indicating  
20 that the Taxpayer declined his representation. [Administrative File].

21           10.      On September 19, 2022, because the Taxpayer representative was no longer  
22 involved, the Administrative Hearings Office provided email notice to Taxpayer. [Administrative  
23 File].

1           11.     The undersigned Administrative Hearing Officer Ignacio V. Gallegos conducted  
2 the merits hearing on September 28, 2022, with the parties and witnesses present in-person in  
3 Santa Fe, at the Administrative Hearings Office in the Wendell Chino Building. The  
4 Administrative Hearing Officer preserved a recording of the hearing (“Hearing Record” or  
5 “H.R.”). [Administrative File].

6           12.     At the hearing, the parties did not object that conducting the merits hearing  
7 satisfied the 90-day hearing requirements of Section 7-1B-8 (F) (2019). [Administrative File].

8           13.     Mr. Dennis Champlin (Taxpayer) appeared on his own behalf, accompanied by  
9 his wife, Karla Champlin. Mr. Champlin testified as his sole witness. The Department was  
10 represented by Attorney Tim Williams. Protest manager, Lizette Rivera was the Department’s  
11 sole witness. [Administrative File; Hearing Record].

## 12 **Substantive Findings**

13           14.     Taxpayer Dennis Champlin is a painter residing in Santa Fe, New Mexico.  
14 [Administrative File; Examination of D. Champlin, H.R. 27:15-30:05].

15           15.     Taxpayer consigned certain artworks (paintings) to the Long Coat Fine Art  
16 Gallery, an art gallery in Ruidoso, New Mexico, without a written contract with the gallery. The  
17 gallery sold the painting(s) in 2018 and sent the previously agreed-upon fifty percent (50%) of  
18 the proceeds from the sale to the Taxpayer. [Administrative File; Examination of D. Champlin,  
19 H.R. 27:30-32:20, 37:00-39:30].

20           16.     Taxpayer claimed the income from the sales of artwork on his Federal Form 1040,  
21 Schedule C, as business income. [Administrative File; Examination of D. Champlin, H.R. 28:20-  
22 29:00].

1           17. Taxpayer did not file New Mexico form CRS-1 returns to report and pay gross  
2 receipts tax during the timeframe at issue. [Administrative File; Examination of L. Rivera, H.R.  
3 1:05:05-1:07:05, 1:11:10-1:11:50].

4           18. The Department detected a discrepancy or mismatch between the Taxpayer's  
5 federal Schedule C federal tax filings and the Taxpayer's gross receipts tax filings on CRS-1  
6 returns between January 1, 2018, and December 31, 2018, because the Taxpayer reported  
7 business income on a Schedule C, but did not report or pay gross receipts tax, leading to the  
8 assessment of gross receipts tax. Based on the discrepancy detected, the Department issued a  
9 Notice of Assessment to Taxpayer, including tax, penalty and interest. [Administrative File;  
10 Examination of L. Rivera, H.R. 44:30-52:15; Ex. F1, C1, E1 and E2].

11           19. Taxpayer provided no documentation of the sale of artwork, an invoice, a bill of  
12 sale, contracts with the gallery, a non-taxable transaction certificate (NTTC), or other  
13 documentary proof of an agreement that the gallery collect, report and pay gross receipts taxes  
14 on Taxpayer's behalf. [Administrative File; Examination of D. Champlin, H.R. 30:00-32:00;  
15 37:40-40:15].

16           20. Taxpayer has been selling his artwork over three years, although sales are rare, by  
17 his estimation. Taxpayer spoke with his CPA about his tax liabilities, and his CPA did not inform  
18 him of a need to file CRS-1 returns to report and pay gross receipts taxes. He considered the sale  
19 of his artwork as an occasional supplement to his retirement income, rather than a business.  
20 [Administrative File; Examination of D. Champlin, H.R. 32:30-35:10, 35:50-36:30, 37:00-  
21 37:45].

22           21. Taxpayer has in the past been subject to similar inquiries by the Department for  
23 mismatched Schedule Cs. Taxpayer has had consignment arrangements, and only one contract he

1 could recall, with other art galleries, not only in New Mexico. [Administrative File; Examination  
2 of D. Champlin, H.R. 37:00-37:45; Examination of L. Rivera, H.R. 1:05:05-1:07:05].

3 22. During the pendency of the protest, the Department seized Taxpayer's federal  
4 income tax refund and applied it to the Taxpayer's outstanding balance. [Administrative File;  
5 Examination of D. Champlin, H.R. 37:00-37:45; Examination of L. Rivera, H.R. 1:04:20-  
6 1:05:05].

7 23. The Department provided an itemization of Taxpayer's outstanding balances,  
8 showing tax principal in the amount of \$313.42, penalty of \$72.68, interest of \$47.74, credits of  
9 (\$146.00), for a total balance of \$287.84. [Administrative File; Exhibit G].

## 10 DISCUSSION

11 For tax year 2018, Dennis Champlin 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 believed he was not required to file  
15 gross receipts, first, because the gallery was required to collect taxes at the point of sale, report  
16 those taxes and pay them and, second, because it was an occasional sale, and finally, because his  
17 CPA had not advised him to do so.

### 18 **Presumption of correctness**

19 Under NMSA 1978, Section 7-1-17 (C) (2007), the assessment issued in this case is  
20 presumed correct. Consequently, Taxpayer has the burden to overcome the assessment. *See*  
21 *Archuleta v. O'Cheskey*, 1972-NMCA-165, ¶11, 84 N.M. 428. Unless otherwise specified, for the  
22 purposes of the Tax Administration Act, "tax" is defined to include interest and civil penalty. *See*  
23 NMSA 1978, Section 7-1-3 (Z) (2019); *see also* Regulation 3.1.1.16 (12/29/2000). Under

1 Regulation 3.1.6.13 NMAC, the presumption of correctness under Section 7-1-17 (C) extends to  
2 the Department's assessment of penalty and interest. *See Chevron U.S.A., Inc. v. State ex rel. Dep't*  
3 *of Taxation & Revenue*, 2006-NMCA-50, ¶16, 139 N.M. 498, 503 (agency regulations interpreting  
4 a statute are presumed proper and are to be given substantial weight). Accordingly, it is a  
5 taxpayer's burden to present some countervailing evidence or legal argument to show that they  
6 are entitled to an abatement, in full or in part, of the assessment issued in the protest. *See N.M.*  
7 *Taxation & Revenue Dep't v. Casias Trucking*, 2014-NMCA-099, ¶8. When a taxpayer presents  
8 sufficient evidence to rebut the presumption, the burden shifts to the Department to show that the  
9 assessment is correct. *See MPC Ltd. v. N.M. Taxation & Revenue Dep't*, 2003-NMCA-21, ¶13, 133  
10 N.M. 217.

11 The burden is also on taxpayers to prove that they are entitled to an exemption or  
12 deduction, if one should potentially apply. *See Pub. Serv. Co. v. N.M. Taxation & Revenue Dep't*,  
13 2007-NMCA-050, ¶141 N.M. 520, 157 P.3d 85; *See also Till v. Jones*, 1972-NMCA-046, 83  
14 N.M. 743, 497 P.2d 745. "Where an exemption or deduction from tax is claimed, the statute must  
15 be construed strictly in favor of the taxing authority, the right to the exemption or deduction must  
16 be clearly and unambiguously expressed in the statute, and the right must be clearly established  
17 by the taxpayer." *See Sec. Escrow Corp. v. State Taxation & Revenue Dep't*, 1988-NMCA-068,  
18 ¶8, 107 N.M. 540, 760 P.2d 1306. *See also Wing Pawn Shop v. Taxation & Revenue Dep't*, 1991-  
19 NMCA-024, ¶16, 111 N.M. 735, 809 P.2d 649. *See also Chavez v. Comm'r of Revenue*, 1970-  
20 NMCA-116, ¶7, 82 N.M. 97, 476 P.2d 67.

### 21 **Receipts under the Gross Receipts and Compensating Tax Act.**

22 The assessment in this protest arises from an application of the Gross Receipts and  
23 Compensating Tax Act, NMSA 1978, Sections 7-9-1 through 7-9-117, which imposes a tax for the

1 privilege of engaging in business, on the receipts of any person engaged in business in New Mexico.  
2 *See* NMSA 1978, Section 7-9-4 (2010). There is a statutory presumption that all receipts of a  
3 person engaged in business activities are taxable. *See* NMSA 1978, Section 7-9-5(A) (2019). The  
4 activity of providing artwork for sale was engaging in business which triggers the statutory  
5 presumption that *all receipts* of a person engaging in business are taxable. *See* Section 7-9-3(P)  
6 (2019), Section 7-9-3.3 (2019), and Section 7-9-5(A) (2019). Yet, despite the general presumption  
7 of taxability, a taxpayer may qualify for the benefits of various deductions and exemptions.

8         There is no dispute that Taxpayer’s Schedule C income was derived from the sale of  
9 artwork he produced and consigned to a gallery in New Mexico. The statutory definition of “gross  
10 receipts” under Section 7-9-3.5 (2019) states, in pertinent part: “‘gross receipts’ means the total  
11 amount of money or the value of other consideration received from selling property in New  
12 Mexico.” It is undisputed that a physical piece of artwork is tangible personal property. *See* NMSA  
13 1978, Section 7-9-3 (P) (2). Since the Department is entitled to the presumption that all receipts of a  
14 person engaging in business are taxable, it is Taxpayer’s burden to present some evidence or legal  
15 argument to show that the Taxpayer is entitled to an abatement, in full or in part, of the  
16 assessment issued in the protest. *See* Section 7-9-3.3(2019) and Section 7-9-5(A) (2019); *see also*  
17 *N.M. Taxation & Revenue Dep’t v. Casias Trucking*, 2014-NMCA-099, ¶8. Taxpayer’s evidence  
18 suggested two theories to excuse his non-filing and non-payment of gross receipts tax returns, first,  
19 that the gallery was responsible for collection and payment of the tax, and second, that the sales  
20 were occasional sales, not part of a business enterprise.

21         *Point of sale tax collection.*

22         Mr. Champlin’s artwork was sold by an art gallery. Taxpayer believed that the gallery was  
23 responsible to collect, report and pay the tax on the sale, by passing on the tax to the buyer. This



1 understanding takes into consideration the everyday experience people have as buyers of goods,  
2 where the seller collects both the sales price and a tax, which the buyer pays. However, the gross  
3 receipts tax is conceptualized as a tax on the seller, not the buyer. *See* NMSA 1978, Section 7-9-4  
4 (A) (“For the privilege of engaging in business, an excise tax... is imposed on any person engaging  
5 in business in New Mexico.”). Therefore, the seller is responsible for reporting and payment of the  
6 gross receipts tax, not simply remission of taxes paid by buyers. The seller is under no obligation to  
7 pass the tax on to the buyer, but the seller is under the obligation to report gross receipts and pay the  
8 proper tax. If no tax is collected from the buyer at the point of sale, there is a method of backing out  
9 the tax from the sale price. *See* Regulation 3.2.6.8 NMAC.

10 The gallery accepted Mr. Champlin’s artwork for sale on consignment. In this case, the  
11 consignor was Mr. Champlin. *See* NMSA 1978, Section 55-9-102 (a)(21) (“consignor means a  
12 person that delivers goods to a consignee in a consignment”). The consignee was the gallery. *See*  
13 Section 55-8-102 (a)(19) (“consignee means a merchant to which goods are delivered in a  
14 consignment.”). The parties to the consignment agreed upon the sale price for the artwork but did  
15 not enter into a written contract.

16 Upon sale of the artwork, the gallery sent Mr. Champlin payment for his previously agreed-  
17 upon share of the sale proceeds. It is unclear if the gallery collected, reported or paid any tax on the  
18 sale. However, as a seller on consignment agreement, both the consignor and the consignee are  
19 responsible for payment of their portion of the proceeds of the sale. *See* Regulation 3.2.1.15 (B)  
20 NMAC (10/13/2021)<sup>1</sup> (“Receipts of both a consignor and a consignee from the sale of tangible  
21 personal property handled on consignment are subject to the gross receipts tax.”). Gross receipts  
22 includes “any receipts from sales of tangible personal property handled on consignment.” NMSA

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<sup>1</sup> The newest version of the regulation does not change the language of the previously enacted Section B, effective 10/31/2000, and applicable to the case at hand.

1 1978, Section 7-9-3.5 (A) (2) (a). It is undisputed that the consignor and the consignee are both  
2 sellers in this scenario. It is upon sellers that the gross receipts tax is levied. *See Ranchers-Tufco*  
3 *Limestone Project Joint Venture v. New Mexico Taxation and Revenue Department*, 1983-NMCA-  
4 126, ¶83, 674 P.2d 522 (“[T]he incidence of the gross receipts tax is on the seller”). There was no  
5 evidence that the consignment contract provided any other method of tax collection, reporting, or  
6 payment. Therefore, the gross receipts tax levied on the seller-consignor is appropriate.

### 7 *Occasional sales*

8 Mr. Champlin’s assertion that the sporadic sale of his paintings was not really a business is  
9 cognizable as a claim under the occasional sales exemption to the gross receipts tax. The Gross  
10 Receipts and Compensating Tax Act provides an exemption for occasional sales or leases of  
11 property. *See* NMSA 1978, Section 7-9-28. The exemption “contemplates two requirements: 1) that  
12 the transaction be isolated or occasional, and 2) that the seller-lessor is not engaged or holding  
13 himself out as engaged in the business of selling or leasing the same or similar property.” *Kewanee*  
14 *Industries, Inc. v. Reese, Taxation and Revenue Department*, 1993-NMSC-006, ¶ 31, 845 P.2d  
15 1238.

16 The Department’s regulations also itemize the criteria it uses to determine whether a  
17 particular taxpayer or sale qualifies for the exemption. *See* Regulation 3.2.116.8 and 3.2.116.9  
18 NMAC. Mr. Champlin suggested that the artwork sold sporadically. The Department presented  
19 testimony that it had worked with the Taxpayer’s accountant on other Schedule C mismatches over  
20 the years. Also, Mr. Champlin testified that he has art in galleries in other states. Here, it was clear  
21 that this sale of artwork in 2018 was not an isolated incident, and the Taxpayer was holding himself  
22 out to the public as an artist who sells his art. “Receipts from an isolated or occasional sale are  
23 exempt... only when the seller of the property is not engaged in the business of selling or leasing

1 the same or similar property.” Regulation 3.2.116.11 (A) (5/15/2001). Because the Taxpayer was  
2 also selling similar property in the form of works of art, Taxpayer does not qualify for the  
3 exemption as an occasional seller.

#### 4 **Penalty**

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

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’s statement of reliance on his accountant for proper advice is cognizable as a  
22 claim of nonnegligence. Regulation 3.1.11.11 NMAC (1/15/01) defines “nonnegligence” by  
23 describing several situations which may indicate an absence of negligence, allowing the Department

1 to issue an abatement. The list provided in regulation includes: “D. the taxpayer proves that the  
2 failure to pay tax or to file a return was caused by reasonable reliance on the advice of competent  
3 tax counsel or accountant as to the taxpayer's liability after full disclosure of all relevant facts;  
4 failure to make a timely filing of a tax return, however, is not excused by the taxpayer's reliance on  
5 an agent.” Regulation 3.1.11.11 NMAC.

6 Taxpayer’s testimony was credible that he relied on his accountant when filing personal  
7 income taxes, which included the Schedule C for business income. There was no evidence of  
8 whether the subject of gross receipts was broached between accountant and Taxpayer. Yet, even if it  
9 had been, under the plain language of the regulation, the reliance on the CPA does not excuse the  
10 failure to timely file a gross receipts tax return for the business income reported on the Schedule C.  
11 *See El Centro Villa Nursing Center v. Taxation and Revenue Department*, 1989-NMCA-070, ¶10,  
12 108 N.M. 795 (inadvertent error meets the definition of civil negligence). No abatement of penalty  
13 under Regulation 3.1.11.11 NMAC (01/15/01) is allowed.

14 **Conclusion.**

15 Mr. Champlin provided no evidence to support his beliefs that the gallery collected, reported  
16 or paid the gross receipts tax on the consignment sales of his artwork. Taxpayer was engaged in  
17 business, holding himself out in various galleries and collecting payments from the sale of his art.  
18 The seller-consignor is liable for the tax on the proceeds received from the sales of his paintings.  
19 Taxpayer’s reliance on a CPA to inform him to pay gross receipts taxes was misplaced. A reduction  
20 of penalty for the reliance on competent advice is not proper in this case as no gross receipts tax  
21 returns were filed. *See* Regulation 3.1.11.11 (D) NMAC.

22 The protest is denied.

1 **CONCLUSIONS OF LAW**

2 A. The Taxpayer filed a timely written protest to the Notice of Assessment of Tax and  
3 Demand for Payment issued under Letter ID number L1081918896, and jurisdiction lies over the  
4 parties and the subject matter of this protest. *See* NMSA 1978, Section 7-1-24 (D) (2017).

5 B. A merits hearing was timely set and held within 90-days of the Department’s request  
6 for hearing on the protest. Parties did not object that the hearing satisfied the 90-day hearing  
7 requirement of Section 7-1B-8. *See* NMSA 1978, Section 7-1B-8 (F) (2019).

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

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

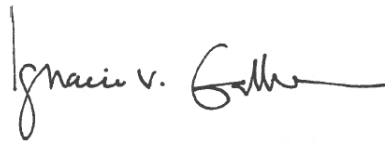
16 E. Taxpayer failed to meet his burden to show that he was not required to pay gross  
17 receipts tax for artwork sold on consignment by a gallery. *See* NMSA 1978, Section 7-9-3.5 (A)  
18 (2) (a); *see also* Regulation 3.2.1.15 (B) NMAC; *see also* NMSA 1978, Section 7-9-4 (A).

19 F. Taxpayer failed to meet his burden of establishing that he was entitled to receive  
20 the benefit of any deductions or exemptions to taxable business income. *See* NMSA 1978,  
21 Section 7-1-17 (C) (2007); *see also* NMSA 1978, Section 7-9-28; *see also* Regulation 3.2.116.8 and  
22 3.2.116.9 NMAC.

1 G. Taxpayer failed to establish nonnegligence in purported reliance on advice from a  
2 CPA, as the reliance does not excuse failing to report and pay gross receipts tax. *See* Regulation  
3 3.1.11.11 NMAC (01/15/01); *see also* Regulation 3.1.11.10 NMAC (1/15/01).

4 For the foregoing reasons, the Taxpayer's protest **IS DENIED. IT IS ORDERED** that the  
5 Taxpayer pay gross receipts tax, penalty and interest as itemized in the recalculated balance sheet,  
6 reduced by credit for payments made, for a total balance of \$287.84. Interest accrues until fully  
7 paid.

8 DATED: November 28, 2022.

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Ignacio V. Gallegos  
Hearing Officer  
Administrative Hearings Office  
P.O. Box 6400  
Santa Fe, NM 87502

16 **NOTICE OF RIGHT TO APPEAL**

17 Pursuant to NMSA 1978, Section 7-1-25 (2015), the parties have the right to appeal this  
18 decision by *filing a notice of appeal with the New Mexico Court of Appeals* within 30 days of the  
19 date shown above. If an appeal is not timely filed with the Court of Appeals within 30 days, this  
20 Decision and Order will become final. Rule of Appellate Procedure 12-601 NMRA articulates  
21 the requirements of perfecting an appeal of an administrative decision with the Court of Appeals.  
22 Either party filing an appeal shall file a courtesy copy of the appeal with the Administrative  
23 Hearings Office contemporaneous with the Court of Appeals filing so that the Administrative

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

5 **CERTIFICATE OF SERVICE**

6 On November 28, 2022, a copy of the foregoing Decision and Order was submitted to the  
7 parties listed below in the following manner:

8 *First Class Mail and Email*

*First Class Mail and Email*

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10 *INTENTIONALLY BLANK*