**STATE OF NEW MEXICO**
**ADMINISTRATIVE HEARINGS OFFICE**
**TAX ADMINISTRATION ACT**

**MARYELIZABETH BONNEY**

***v.*** **AHO No. 23.11-063A, D&O No. 24-06**

**NEW MEXICO TAXATION AND REVENUE DEPARTMENT**

# DECISION AND ORDER

On February 15, 2024, Chief Hearing Officer Brian VanDenzen, Esq., of the Administrative Hearings Office conducted a merits administrative hearing in the matter of the tax protest of MaryElizabeth Bonney, (Taxpayer). The hearing was conducted pursuant to the Tax Administration Act and the Administrative Hearings Office Act. Taxpayer appeared, representing herself. Witness Jeff Gardner testified on behalf of Taxpayer. Staff Attorney Christopher Orton appeared, representing the opposing party in the protest, the Taxation and Revenue Department (Department). Department attorney Richard Pener also appeared as an observer, along with Department Protest Auditor Lizzette Rivera. During the hearing, Taxpayer Exhibits #1 through #46, #53, #54, #56-58, #60-61, #66, #69, #71-72, #74-75, #77, #80, #87, #90-103, and #105 were admitted into the record without objection, and as described in the Exhibit List contained in the administrative file. At the hearing, the Department presented no exhibits other than documents already contained in the administrative record or in Taxpayer's exhibits.

In quick summary, at its core this protest involves Taxpayer's assertion that she has not consented to New Mexico governance or imposition of state income taxes, and in any event, Taxpayer's federal challenges to the taxability of income listed on the W-2s and 1099s resulted in zero federal taxable income in each assessed year. This, Taxpayer avers, alleviated her of any

obligation to report or pay New Mexico personal income tax in the assessed years and requires abatement of the assessment in its entirety, including penalty and interest. Ultimately, after making findings of fact and discussing the issue in more detail throughout this decision, the Hearing Officer finds that Taxpayer was a New Mexico resident subject to New Mexico governance and with income subject to New Mexico's personal income tax. As such, the Department's assessment is valid. IT IS DECIDED AND ORDERED AS FOLLOWS:

## FINDINGS OF FACT

1. On January 12, 2023, under letter id. no. L1842083952, the Department issued a Notice of Assessment of Taxes and Demand for Payment addressed to Mary E[lizabeth]. Bonney. The assessment was for the personal income tax reporting periods from January 1, 2016, through December 31, 2019, for $13,363.00 in personal income tax, $2,672.60 in civil negligence penalty, and $2,289.41 in interest, for a total assessment of $18,325.01. [Administrative Record, Hearing Request Packet, Assessment; Taxpayer Ex. #2].

2. On March 13, 2023, Taxpayer filed a formal protest of the Department's assessment, along with nine attachments (each attachment accompanying a multitude of exhibits) and a Tax Information Authorization for Mr. Jeff Gardner. [Administrative Record, Hearing Request Packet, Protest].

3. On May 31, 2023, the Department acknowledged receipt of Taxpayer's protest. [Administrative Record, Hearing Request Packet, Acknowledgement Letter].

4. On November 28, 2023, the Department filed a request for hearing on the protest with the Administrative Hearings Office, along with its formal answer to Taxpayer's protest. [Administrative Record, Hearing Request Packet, Request for Hearing].

5. The Administrative Hearings Office issued a Notice of Administrative Hearing, scheduling this hearing in Albuquerque before another assigned hearing officer.

6. On the date of the hearing, the initially assigned hearing officer was unable to conduct the hearing because of a genuine, unforeseen emergency circumstance. In order to ensure the hearing was conducted timely, with people already traveling to the Albuquerque hearing location from outside the area, the Chief Hearing Officer conducted the administrative hearing on February 15, 2024, pursuant to NMSA 1978, Section 7-1B-8 (F) (2019).

7. MaryElizabeth Bonney and her partner Jeff Gardner are residents of Las Cruces, NM.

8. Mr. Gardner has prepared Taxpayer's taxes since at least 2015. [Direct Testimony of Jeff Gardner].

9. Mr. Gardner acknowledged he is not a tax accountant, tax attorney, or tax expert, but nevertheless served as Taxpayer's tax preparer because as a diplomatic historian for the Navy, he taught courses on American history, which included the evolution of political philosophy and English common law, as well as taxation. [Direct Testimony of Jeff Gardner].

10. During the relevant time, Mary Elizabeth Bonney was a domiciled resident of Dona Ana County, New Mexico, residing at a specific address in Las Cruces, NM. [Testimony of Jeff Gardner; Taxpayer Ex. #3 (1, 3, 16, 30); Taxpayer Ex. #4 (1, 5, 15, 22, 33, 52); Taxpayer Ex. #5 (1, 13, 19, 29, 43, 64); Taxpayer Ex. #6 (1, 5, 15, 26, 37, 64)].

11. In 2016, 2017, 2018, and 2019, Mary Elizabeth Bonney was a salaried employee of El Paso County, Texas, serving as a court reporter. [Direct and Cross-Examination Testimony of Jeff Gardner; Taxpayer Ex. #3.3; Taxpayer Ex. #4.5; Taxpayer Ex. #5.13; Taxpayer Ex. #6.5].

12. Taxpayer submitted a W-4 form to El Paso County, her employer, listing her address of residency and tax withholding requirements. [Cross-examination of Jeff Gardner].

13. Taxpayer updated her W-4 statement for her employer, El Paso County, before tax year 2019 to remove federal income tax withholdings but not adjusting her address of residency. [Cross-examination of Jeff Gardner; Taxpayer Ex. #6.5].

14. In each respective year in dispute, El Paso County issued Taxpayer a W-2 statement, listing Taxpayer's wages, federal income tax withheld, social security tax withheld, and Medicare tax withheld. [Taxpayer Ex. #3.3; Taxpayer Ex. #4.5; Taxpayer Ex. #5.5; Taxpayer Ex. #6.5].

15. In 2017, 2018, and 2019, El Paso County, Texas issued Taxpayer a 1099-MISC, listing non-employee compensation along with federal income tax withholding information. [Taxpayer Ex. #4.15; Taxpayer Ex. #5.13; Taxpayer Ex. #6.15].

16. In each respective year in dispute, the Social Security Administration issued Taxpayer a Form SSA-1099, listing Taxpayer's benefits paid in each relevant year along with any federal income tax withholding. [Taxpayer Ex. #3.16; Taxpayer Ex. #4.22; Taxpayer Ex. #5.19; Taxpayer Ex. #6.37].

17. In each respective year in dispute, the New Mexico Public Employees Retirement Association (PERA) issued Taxpayer a 1099-R Distribution Form, listing Taxpayer's annual gross distribution, along with federal and state income tax withholding information. [Taxpayer Ex. #3.30; Taxpayer Ex. #4.33; Taxpayer Ex. #5.29; Taxpayer Ex. #6.26].

18. In 2018, the Texas Attorney General's Office issued Taxpayer a 1099-MISC, listing non-employee compensation along with federal and state income tax withholding information. [Taxpayer Ex. #4.15].

19. Mr. Gardner had no doubt as to the accuracy of the information provided on the face of the illustrative El Paso County W-2 statements issued to Taxpayer. Similarly, neither

Taxpayer nor Mr. Gardner identified any alleged facial information errors on any of the provided 1099s provided during the relevant period. [Taxpayer Testimony; Testimony of Mr. Gardner].

20. Despite not having any concerns about the accuracy of the information provided on the face of the documents, in each relevant year Taxpayer sent the respective payor entities (El Paso County, Social Security Administration, PERA, and the Texas Attorney General's Office) documents titled in pertinent part "Verified challenge…" [Taxpayer Ex. #3.4-7; Taxpayer Ex. #4; Taxpayer Ex. #5; Taxpayer Ex. #6].

21. The ostensible purpose of the Verified Challenges, according to Mr. Gardner who prepared them, was to verify predicate constitutional and political philosophy questions about consent to govern and the taxability of Taxpayer's wage income before Taxpayer signed her tax returns under penalty of perjury. [Taxpayer Testimony; Testimony of Mr. Gardner; Cross-examination of Mr. Gardner].

22. The Verified Challenges made a series of demands for information and evidence related to the respective W-2s or 1099s, requested a response by a certain deadline, and noted that incomplete information, unresponsive information, or a failure to respond would be treated as an admission. [Taxpayer Ex. #3; Taxpayer Ex. #4; Taxpayer Ex. #5; Taxpayer Ex. #6].

23. After submitting the Verified Challenges to each respective payor entity during the relevant period, Taxpayer then sent each payor entity documents titled in pertinent part " "Verified Affidavit…", proposing that the payor rebut certain statements intended to undermine the taxability of income reported on the various W-2s and 1099's issued by those entities by the deadline specified. [Taxpayer Ex. #3; Taxpayer Ex. #4; Taxpayer Ex. #5; Taxpayer Ex. #6].

24. After submitting the Verified Affidavits to each respective payor entity during the relevant period, Taxpayer then sent each payor entity documents titled in pertinent part "Verified Affidavit of Default", purporting to bind the payor to certain assertions (or omissions) made by

Taxpayer statements made in the Verified Affidavit. Such affidavit admissions were intended to establish that the various W-2s and 1099's issued by those entities were invalid, incorrect, fraudulent, or otherwise failed to establish that Taxpayer's income was subject to imposition of taxation. [Taxpayer Ex. #3; Taxpayer Ex. #4; Taxpayer Ex. #5; Taxpayer Ex. #6; Taxpayer Ex. #7.1-3].

25. Taxpayer submitted informational referrals to the IRS on Form 3949-A claiming that the various entities that issued Taxpayer W-2s and 1099s in the relevant period had "fraudulently reported [Taxpayer] liability for non-taxable receipts as income." [Taxpayer Ex. #7.1-3].

26. In each respective year, after submitting the "Verified Affidavit of Default" to the various entities that provided the W-2s and 1099's, Taxpayer submitted a document entitled "6201 Request for Determination and Return of Tax" to the IRS. The ostensible purpose of that document was to inform the IRS that the entities issued inaccurate or unreliable W-2s and 1099s not supported by evidence, that none of the entities had corrected the alleged inaccurate information, requesting an IRS determination as to the taxability of the asserted inaccurate information on those statements, and to serve as a tax return in lieu of a 1040. Taxpayer also included the Verified Affidavit of Default, the Verified Affidavit, the Verified Challenges, and other listed documents in its submission to the IRS. [Taxpayer Ex. #3.1-2; Taxpayer Ex. #4.1-2; Taxpayer Ex. #5.1-2; Taxpayer Ex. #6.1-2].

27. Each of "6201 Request for Determination and Return of Tax" filed with the IRS in the respective years asked the IRS to consider that document "my return of tax," or as Mr. Gardner characterized them, "letter returns" or "Beard returns." Mr. Gardner believed in his opinion that these purported return letters contained the core information constituting a valid

federal return. [Direct Testimony of Jeff Gardner; Taxpayer Ex. #3.1-2; Taxpayer Ex. #4.1-2; Taxpayer Ex. #5.1-2; Taxpayer Ex. #6.1-2; Taxpayer Ex. #74-1].

28. In each of "6201 Request for Determination and Return of Tax" filed with the IRS, Taxpayer listed an address of 5001 Alamo Mine Trl, Las Cruces, NM 88011 and an express admission of being "domiciled in Las Cruces, Dona Ana County, New Mexico." [Taxpayer Ex. #'s 3, 4, 5, 6].

29. Other than the "6201 Request for Determination and Return of Tax," Taxpayer did not file a Federal 1040 return, did not self-report any federal income to the IRS, and did not list any income subject to federal income tax in any of the relevant years. [Taxpayer Testimony; Testimony of Mr. Gardner].

30. The IRS sent Taxpayer three notices that she had failed to file federal 1040 returns in years where it appeared she had taxable income. [Direct Testimony of Mr. Gardner].

31. Because of Taxpayer's decision to contest every W-2 and 1099s from the relevant entities based on Taxpayer's affidavit and default tactic, other procedural maneuvers with the IRS premised on that same tactic, and Taxpayer's decision to not report any taxable income, Taxpayer was able to present transcripts showing no federal taxable income in the relevant years. [Taxpayer Testimony; Testimony of Mr. Gardner; Taxpayer Ex.'s # 9-12].

32. Despite admitting being a domiciled New Mexico resident with employee wage income, Taxpayer filed no state personal income tax return and made no payment in any of the relevant years ostensibly because Taxpayer apparently determined or believed based on its affidavit and default tactic it had no "adjusted gross income" under Section 62 of the I.R.C. [Taxpayer Testimony; Testimony of Mr. Gardner].

33. Taxpayer employed the same or similar affidavit, admission, and default tactic to challenge the State of New Mexico's authority to govern Taxpayer, the State's jurisdiction to

impose tax upon Taxpayer, and the Department's authority to assess state personal income taxes against Taxpayer in letters mailed to various employees and officials with the New Mexico Taxation and Revenue Department, Secretary of State's Office, New Mexico Attorney General's Office, New Mexico Governor's Office, and the New Mexico Department of Finance and Administration. [Taxpayer Ex.'s # 13-39, 46].

34. Taxpayer provided various statutory and regulatory provisions, excerpts of partial cases, selective definitions from Black's Law Dictionary, and various reference and guidance materials from the IRS as exhibits, none of which tend to dispute the Department's assessment.

## DISCUSSION

In this protest, Taxpayer seeks full abatement of all assessed state personal income tax, penalty, and interest in the reporting periods between January 1, 2016, and December 31, 2019. As part of her protest, Taxpayer argues that she has not consented to governance by the State of New Mexico and has not consented to state taxation, and thus essentially challenges New Mexico's jurisdiction to impose a tax on her. Taxpayer further contends that even on the merits of the protest, since she reported zero adjusted federal gross income and did not file a 1040 return despite her receipt of numerous W-2 and 1099s reporting taxable income in each relevant year, she was not required to file state personal income tax returns or pay state personal income tax. The hearing officer gave Taxpayer a full opportunity to present her evidence and complete her record in this matter, even accepting Taxpayer's written motions at hearing despite not complying with the deadline for filing such a motion in the case[1].

[1] The Department interposed many technically correct objections to the scope, relevancy, expertise, and potential legal conclusions of Mr. Gardner's testimony. Nevertheless, in the relaxed setting of an administrative hearing where the formal rules of evidence do not strictly apply, the hearing officer allowed Taxpayer (and Mr. Gardner) some extra leeway to develop her record and make her arguments.

At core of Taxpayer's actions in this case is an affidavit, admission, and default tactic which Taxpayer ostensibly employed because of her concern about filing tax returns under penalty of perjury without first verifying information and asking questions about predicate constitutional, governance consent, political philosophy, and the taxability of her income. Her predicate concerns about signing items under penalty of perjury apparently did not extend to her filings of W-4 wage withholding statements[2] to her employer El Paso County in each relevant year. Setting aside that contradiction, while Taxpayer claims she genuinely believed she was merely asking questions before signing tax returns under penalty of perjury, there is no legal support to the tactic she and her partner Jeff Gardner used in this case. In that legally unsupported tactic, Taxpayer would send letters demanding specific responses to questions about the authority, taxability, and nature of the reported income and withholdings from any entity reporting Taxpayer income in the relevant tax years (as well as various government agencies asserting any form of jurisdiction). In this legally unsupported tactic, Taxpayer would take the failure to satisfactorily and timely respond as a binding admission in Taxpayer's favor. Based on those so-called binding admissions, and despite acknowledging that there was nothing incorrect with the information listed on the face of the W2 and 1099s statements issued to her, Taxpayer nevertheless challenged the validity of those statements with the IRS, claiming that they were fraudulent. As will be addressed throughout this decision, Taxpayer's predicate concerns as to government jurisdiction, authority to tax income, and the affidavit and default tactic are without legal support, without merit and are frivolous. As such, the foundational evidence and arguments supporting Taxpayer's protest collapses.

[2] W-4 statements include a signature block where a person affirms they attest to the information contained therein under penalty of perjury. As an example of a form from the 2016 tax year, see https://www.irs.gov/pub/irs-prior/fw4--2016.pdf (as visited on March 12, 2024).

***Taxpayer's Jurisdictional Challenges are Without Merit*.**

Taxpayer acknowledged being a domiciled resident of New Mexico in each pertinent year on the very face of Taxpayer's filings with the IRS. Mr. Gardner further testified that Taxpayer was a resident of New Mexico in the years in question. Yet, Taxpayer in voluminous documents and in prehearing pleadings argues that she has not given consent to New Mexico to govern or tax her, and therefore the state lacks jurisdiction in this matter to tax her and similarly this agency lacks jurisdiction to even hear or decide this matter. With selective citations to history, common law, political theory, and natural law philosophy, Taxpayer's jurisdictional argument is premised on a contention that the state must first show that Taxpayer granted the state natural law authority/consent to be governed, and that Taxpayer received some reciprocal benefit in protection from the state, before the state can exercise authority or jurisdiction over her.

Despite the Taxpayer's lengthy pleadings relying on a patchwork of selective historical, political, philosophical, common law, and case law references, the hearing officer is unaware of any current legal support in New Mexico that a domiciled resident of New Mexico can refuse or withdraw consent to the state's jurisdiction to govern her, to tax her, or to hear and decide the protest. While natural law concepts played a role in the development and evolution of the common law tradition and the adoption of the United States Constitution, those concepts do not allow individual citizens to simply opt out of jurisdiction from the state in which they reside by refusing to give or withdrawing consent to be governed. Taxpayer's consent and jurisdictional claims are without merit. *See State ex rel. Human Services Dept. v. Green*, 2013 WL 6146119, at *2 (N.M. Ct. App. Oct. 24, 2013; Non-precedential Memorandum opinion) (when faced with an analogous sovereign citizen claim of lack of jurisdiction, the court found the claim without merit); *see also Bey v. State*, 847 F.3d 559, 559–60 (7th Cir. 2017) (Judge Posner noting that the

courts have repeatedly and consistently rejected claims that a person cannot be lawfully taxed in absence of a contract—which requires mutual benefit and consent—with the state); *see also United States v. Schneider*, 910 F.2d 1569, 1570 (7th Cir. 1990) (argument that there is no court jurisdiction over a free and sovereign citizen has "no conceivable validity in American law"); *see also United States v. Palmer*, 699 Fed. Appx. 836, 838 (10th Cir. 2017; unpublished opinion) (10th circuit finds reasonable jurists could dismiss analogous sovereign citizen jurisdictional challenge as plainly frivolous); *see also United States v. Nissen*, 555 F. Supp. 3d 1174, 1204 (D.N.M. 2021)(regardless of their form, Judge Browning noting that similar jurisdictional challenges like this "lack sound basis in applicable law"); s*ee also United States v. Hilgeford*, 7 F.3d 1340, 1342 (7th Cir. 1993) (court rejecting "shop worn" jurisdictional argument of the "tax protester movement."); *see also United States v. Jagim*, 978 F.2d 1032, 1036 (8th Cir. 1992) (court rejected a slew of consent and jurisdiction arguments as patently frivolous, without merit, and not worthy of expending judicial resources to address further); *see also United States v. Benabe*, 654 F.3d 753, 767 (7th Cir. 2011) (analogous sovereign citizen arguments that a person is beyond the jurisdiction of a courts are to be "rejected summarily, however they are presented.").

Based on the same legal citations in the previous paragraph, Taxpayer's reciprocal benefit/protection jurisdictional argument is equally without merit. Even if there was any merit to that claim, there is no dispute that Taxpayer is a domiciled resident of New Mexico, meaning that she has access to myriad state government services, including police protection, fire protection, use of public roadways, all items that provide the reciprocal benefit protection she asserts is required for the State to have jurisdiction. *See Lawrence v. State Tax Commission of Mississippi*, 286 U.S. 276, 279 (1932) (domicile within a state forms a basis for state taxation to compensate the state for the many benefits and privileges provided). Ironically, one of the

sources of income in dispute in this matter comes from PERA, an agency that uses a combination of employee contributions and contributions from State of New Mexico public funds (sourced in part from tax payments) to provide retirement payments to retired state employees. The state providing Taxpayer with financial protection in her retirement years certainly would meet that reciprocal benefit/protection standard Taxpayer incorrectly asserts is a condition precedent for jurisdiction in this matter.

Both Taxpayer's consent argument and reciprocal benefit challenges to jurisdiction are without merit. As a domiciled resident of New Mexico in 2016, 2017, 2018, and 2019, Taxpayer was subject to the laws and jurisdiction of the state, including potential personal income tax, the Department's assessment, and a hearing before this administrative tribunal. Taxpayer's jurisdictional motion and challenge is denied.

***Presumption of Correctness, the Burden of Production, and the Burden of Persuasion.***

Under NMSA 1978, Section 7-1-17 (C) (2007), the assessment issued in this case is presumed correct. Consequently, Taxpayer has the burden to overcome the assessment. *See Archuleta v. O'Cheskey*, 1972-NMCA-165, ¶11, 84 N.M. 428. Unless otherwise specified, for the purposes of the Tax Administration Act, "tax" is defined to include interest and civil penalty. *See* NMSA 1978, §7-1-3 (X) (2013). Under Regulation 3.1.6.13 NMAC, the presumption of correctness under Section 7-1-17 (C) extends to the Department's assessment of penalty and interest. *See Chevron U.S.A., Inc. v. State ex rel. Dep't of Taxation & Revenue*, 2006-NMCA-50, ¶16, 139 N.M. 498, 503 (agency regulations interpreting a statute are presumed proper and are to be given substantial weight).

Accordingly, it is Taxpayer's burden to present some countervailing evidence tending to dispute the factual correctness of the assessment. *See* Regulation 3.1.6.12 (A) NMAC; *see also N.M. Taxation & Revenue Dep't v. Casias Trucking*, 2014-NMCA-099, ¶8, 336 P.3d 436; *see also*

*Gemini Las Colinas, LLC v. N.M. Taxation & Revenue Dep't*, 2023-NMCA-039, ¶ 27. When a taxpayer meets this burden of production by producing some evidence tending to dispute the assessment, the burden shifts to the Department to show that the assessment is correct. *See MPC Ltd. v. N.M. Taxation & Revenue Dep't*, 2003-NMCA-21, ¶13, 133 N.M. 217; *see also Gemini*, ¶26, ¶29.

Taxpayer in this case filed a written motion at hearing and in closing argument asserting that the Department's presumption of correctness should be removed in this case. However, as case law cited and discussed throughout the remainder of this decision indicates, Taxpayer's arguments are without merit and consequently the hearing officer does not find that Taxpayer presented evidence "tending *to dispute* the factual correctness of the assessment." Regardless of the volume of evidence produced by the parties—Taxpayer introduced nearly a hundred exhibits while the Department produced none[3] other than documents already in the administrative record or in Taxpayer's exhibits—evidence used to support meritless and frivolous legal arguments does not tend to dispute the correctness of the assessment. *See Archuleta*, 1972-NMCA-165, ¶11, 84 N.M. 428 ("Since none of [taxpayer]'s contentions have merit, the presumption has not been overcome.").

However, even if in arguendo that Taxpayer did meet that initial threshold to overcome the presumption of correctness through its presentation of exhibits, the Department also met its shifting burden in the form of evidence gleaned through cross-examination, references to Taxpayer's admitted exhibits (particularly the affidavits of default, the W2s, the 1099s, and discussion of W-4s) showing the correctness of its assessment, and other evidentiary documents in the administrative record. As the Department's questions revealed, the evidence presented by Taxpayer affirmed that

[3] The Department called Protest Auditor Lizzette Rivera as rebuttal witness in this matter. Taxpayer objected to the Protest Auditor Rivera testifying because she was not listed as witness on a witness list by the deadline set in the notice of hearing. Although the hearing officer was inclined to permit limited rebuttal testimony, the Department withdrew Ms. Rivera as a witness before the hearing officer made a final ruling on the objection.

she was a domiciled state resident with taxable income in each relevant year, establishing the correctness of the assessment of New Mexico personal income tax despite Taxpayer's beliefs to the contrary. Thus, even if the burden of production shifted, the Department met its shifted burden while Taxpayer failed to carry her ultimate burden of persuasion. Taxpayer's written motion and argument on this point is therefore denied.

***Taxpayer's New Mexico Personal Income Taxes Filing and Payment Obligations***

In addition to the jurisdiction to tax argument, Taxpayer in this case argues that she had no requirement to file a New Mexico personal income tax return, or pay such taxes, during the relevant period because she had zero federal adjusted gross income to report. The reason she had no federal adjusted gross income to report is because after creating her own affidavit and default tactic against El Paso County, the Social Security Administration, PERA, and the Texas Attorney General's Office, she lodged challenges with the IRS against the correctness of the respective W-2s and 1099s issued to her by those entities, asking the IRS to make a determination as to the taxability of the income listed on those challenged documents. Taxpayer claims that she did not file a federal 1040 return and the IRS did not create a return for her in each relevant year, obviating her from the New Mexico return requirement. However, in each relevant year Taxpayer filed a "6201 Request for Determination and Return of Tax" letter, challenging the W-2s and 1099s, listing zero federal adjusted gross income, and asking that the letter be treated as tax return for purposes of claiming a refund on withholdings related to the challenged W-2s and 1099s. Even if the purpose of the "6201 Request for Determination and Return of Tax" letter was primarily to contest the reported income on W-2s and 1099s, Taxpayer nevertheless asked that it be treated as its federal return in each relevant year.

Because of Taxpayer's federal procedural machinations, Taxpayer produced IRS transcripts showing zero reported federal adjusted gross income despite the W-2s and 1099s clearly showing

significant taxable income in each respective year. Taxpayer also raised numerous other IRS and federal process and return timing questions, as well as publications, regulations, and process manuals, all for the purported reason of showing that the IRS had either accepted or not *yet* made any adjustments to Taxpayer's reported federal adjusted gross income. Consequently, Taxpayer claimed that she was not required to report or pay any New Mexico Personal Income Tax in the relevant years because New Mexico only requires a resident to file a return when they file a federal return reporting adjusted federal income. Taxpayer's argument is without merit both in law and in fact.

Payment of New Mexico personal income tax is governed by NMSA 1978, §§ 7-2-1 to 36. Unless otherwise exempted by law, a tax is imposed "upon the net income of every" New Mexico resident. NMSA 1978, § 7-2-3 (1981). As mentioned repeatedly, there is no genuine dispute in this case that Taxpayer is a domiciled, resident of New Mexico, meeting the residency definition in Section 7-2-2 (S) (2014). NMSA 1978, Section 7-2-12 (2003) (emphasis added) requires any resident or any person deriving income from New Mexico and "*required*" to file a federal return to file a state income tax return. This statutory scheme makes reporting of tax and payment of income tax by New Mexico residents mandatory. Despite Taxpayer's argument about jurisdictional and consent-based challenge to New Mexico's personal income taxation of her, in *Lonsdale v. United States*, 919 F.2d 1440, 1448 (10th Cir. 1990), the Federal Court of Appeals for the 10th Circuit found meritless and frivolous a taxpayer's claim that payment of income tax is voluntary. *See also*, *United States v. Schiff*, 876 F.2d 272, 275 (2d Cir. 1989) (payment of income taxes is not optional; the average citizen knows that payment of income taxes is legally required); *McLaughlin v. United States*, 832 F.2d 986, 987 (7th Cir. 1987) (the notion that the federal income tax is contractual or otherwise consensual in nature has been repeatedly rejected by the courts). As discussed above, as a domiciled resident of New Mexico, Taxpayer's income was

subject to personal income tax regardless of her own beliefs about the state's jurisdiction to tax or whether she had given the state consent to tax her. *See Lawrence*, 286 U.S. 276, 279.

Like many states, the calculation of New Mexico's personal income tax liability begins with a taxpayer's adjusted gross income as reported to the IRS. *See* NMSA 1978, § 7-2-2 (A) (2010); *See also Holt v. N.M. Dep't of Taxation & Revenue*, 2002- NMSC-34, ¶23, 133 N.M. 11 ("calculation of the taxpayers' state income tax is based upon their adjusted gross income…on their federal return."). However, New Mexico is not bound purely to information reported to the IRS, a taxpayer's incorrect reporting of income to the IRS, or determinations made by the IRS, as New Mexico varies in its treatment of personal income tax from the IRS and has its own independent, sovereign authority to impose taxes on its residents. *See Holt*, ¶6 (state has the authority to assess and collect tax independent of IRS).

Indeed, the *Holt* case is on point and dispositive of Taxpayer's core substantive arguments in this protest. In *Holt*, the taxpayers reported zero federal adjusted gross income on their returns, and thus reported no New Mexico taxable income. *See Holt*, 2002- NMSC-34, ¶2. During the relevant time, the Holts had wage income reported on W-2 forms by their relevant employers, and based on this W-2 information, the Department assessed the Holts personal income tax. *See id*. Both the hearing officer and the Court of Appeals affirmed the Department's assessment. *See id*., ¶3. The New Mexico Supreme Court, indicating that the issues in that case were manifestly without merit, nevertheless granted certiorari and affirmed the decision of the hearing officer and the Court of Appeals in order to limit unnecessary expenditure of public resources[4] in the event that similar issues were to arise again. *See id*.

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[4] Nearly the entire *Holt* decision, including its voluminous internal citations, are applicable to this case and could be fully restated or quoted in this decision and order. But the purpose of the Supreme Court's opinion in that case was to simplify the analysis in similar future cases and thus while fully incorporating all citations and discussions of Holt fully into this decision, limits the discussion to only a important principles from *Holt*.

1 As predicted by our Supreme Court, those issues indeed arise again in this present protest,
2 and like in *Holt*, those issues again are manifestly without merit. Similar to Taxpayer's claim in this
3 case that her IRS tax transcripts showed zero taxable income and thus she was not required to file
4 state returns or pay any state income tax, the Holts claimed that because they reported zero federal
5 adjusted gross income, their report of zero taxable income on their state reports were correct. *See*
6 *id*., ¶5. However, the New Mexico Supreme Court rejected the Holt's argument, finding that the
7 state had broad authority to independently assess and collect taxes. *See id*., ¶6. Further, the New
8 Mexico Supreme Court found that the Department was not bound by the Holt's incorrect calculation
9 of federal adjusted gross income, especially when that calculation was at odds with the documentary
10 evidence of income contained on the W-2 form. *See id*., ¶23-24. Similarly, the Department in this
11 case is not bound to Taxpayer's incorrect calculation of zero federal adjusted gross income,
12 especially in the face of the W-2s and 1099s clearly showing evidence of Taxpayer income.
13 Taxpayer argues that under Section 7-2-12, she was not required to file state tax returns
14 because she did not file federal 1040 tax returns in any of the years in dispute. This argument is not
15 supported by the language of Section 7-2-12 or the record evidence. Section 7-2-12 reads in
16 pertinent part that "[e]very resident of this state… deriving income from any business transaction,
17 property or employment… who *is required* by the laws of the United States to file a federal income
18 tax return shall file a complete [state] tax return…" The legal question under Section 7-2-12 is not
19 whether the person in fact filed their 1040 federal return, but whether they were required to file a
20 federal return regardless of whether or not they complied with that requirement. The IRS sent
21 Taxpayer three notices of the requirement to file a federal 1040 return, which supports that
22 Taxpayer was required to file a 1040 return. Factually, the evidence shows that Taxpayer did file
23 federal returns, even if they were not on federal form 1040. Taxpayer filed "6201 Request for
24 Determination and Return of Tax" letters, which Taxpayer requested be treated as federal returns

in 2016, 2017, 2018, and 2019 for purposes of claiming a refund. Mr. Gardner characterized the "6201 Request for Determination and Return of Tax" as "letter returns" or "Beard returns," and claimed they met the criteria to constitute valid federal returns. As *Holt* makes clear, New Mexico has its own sovereign power to impose tax obligations on its residents independent of taxpayer's federal calculations and determinations. As such, the Department can certainly look to these "6201 Request for Determination and Return of Tax" letters as evidence that Taxpayer was *required* to file a federal return, if not direct evidence that Taxpayer in fact filed incorrect federal returns, triggering the New Mexico return requirement under Section 7-2-12.

Even beyond whether Taxpayer was required to file a federal 1040 return, Taxpayer still claims to have zero federal adjusted gross income in the relevant years as shown on her federal transcripts, and thus asserts she had no starting point for the calculation of state tax obligations. However, that number comes from her own reporting to the IRS and stems from her creation of an affidavit and default tactic against El Paso County, the Social Security Administration, PERA, and the Texas Attorney General's Office. Taxpayer's affidavit and default tactic has *no support* in New Mexico statute, rule, or rule of procedure. Nor can the hearing officer find any support for such a tactic in other jurisdictions. *See e.g. Lawrence v. Holt*, 2019 WL 1999783, at *2 (N.D. Ala. Apr. 12, 2019), report and recommendation adopted, *Lawrence v. Holt*, 2019 WL 1989607 (N.D. Ala. May 6, 2019) (rejecting a plaintiff's claim that the defendant's defaulted through silence and acquiescence); *See also e.g. United States v. Sankey*, 2016 WL 4253985, at *3 (E.D. Tenn. July 13, 2016), report and recommendation adopted, *United States v. Sankey*, 2016 WL 4250317 (E.D. Tenn. Aug. 10, 2016) (a person's affidavit and notice of default were procedurally deficient and substantively meritless); *see also Gayles-El v. Cooper*, 2023 WL 9126281, at *5 (E.D.N.C. Oct. 18, 2023), report and recommendation adopted, *Gayles El v. Cooper*, 2024 WL 84701 (E.D.N.C. Jan. 8,

2024) (court finds that such unsupported notices and demands have no legal authority to compel a response).

Without legal authority, El Paso County, the Social Security Administration, PERA, and the Texas Attorney General's Office were not compelled or required to respond to Taxpayer's created affidavit and default tactic. Without supporting legal authority, Taxpayer in this context cannot unilaterally find those entities in default through failure to satisfactorily respond through binding admission of facts favorable to Taxpayer [5]. Without legal authority, there is nothing about Taxpayer's unsupported affidavit and default tactic that genuinely calls into question the accuracy of the information provided on the W-2s and 1099s during the relevant year. Without Taxpayer's invented affidavit and default tactic, the entire foundation of Taxpayer's federal reporting and related federal process arguments (including the "6201 Request for Determination and Return of Tax" letters, the IRS transcripts showing zero income, claims about the IRS investigation of the Taxpayer contested W-2s and 1099s, and Mr. Gardner's timing[6] concerns between the IRS determination on the validity of those documents and the state tax return deadlines) collapses upon itself.

While Taxpayer submitted much evidence and made numerous arguments about federal processes, regulations, published guidance and manuals, not every argument premised on federal treatment and processes need be addressed in this state tax matter, as *Holt* makes clear that New Mexico as a sovereign state has independent authority to determine the tax liability of its residents

[5] This is equally true of the subsequent state government agencies that Taxpayer has directed its affidavit and default tactic at after the assessment.

[6] As to timeliness concerns about the IRS determination on the manufactured issue of the correctness of the W-2s and 1099s, there is no evidence that Taxpayer sought a state filing extension in this case. As a state with its own sovereign power to impose tax on its residents per *Holt*, the Department is not required to wait endlessly on IRS action before issuing its own assessment of state income tax. If the IRS makes a determination and related subsequent federal adjustment after a state filing, state statute provides taxpayers with an opportunity to claim a corresponding adjustment to state tax liabilities. *See generally* NMSA 7-1-26 (F)(1)(d) (2019).

without relying on federal processes or determinations. *See Holt*, ¶6; *see also United States v. Rivera*, 2015 WL 4042197, at *19 (D.N.M. June 30, 2015) (Federal courts in the 10th Circuit are skeptical to entertain or over-engage in arguments bearing the hallmarks of a traditional, meritless tax-protestor defense and are encouraged to make short work of such arguments); *see also United States v. Gutierrez*, 2018 WL 2107785, at *7-12 (D.N.M. May 5, 2018) (when presented with meritless tax-protestor defense, federal courts are not encouraged or required to refute such arguments with copious citation to precedent). It is enough to say that since there was no legal support for Taxpayer's affidavit and default tactic, the so-called admissions were invalid and Taxpayer's subsequent challenges to the W-2s and 1099s and Taxpayer's reporting to the IRS of zero federal adjusted gross income were incorrect. The Department is not bound to Taxpayer's incorrect reporting of federal adjusted gross income premised on Taxpayer's unsupported and invented affidavit and default tactic over the information contained in the W-2s and 1099s during the relevant years. *See Holt*, ¶23-24.

Taxpayer did not expressly argue during the protest that the employment wages at issue were not taxable, instead simply claiming it had questions about the taxability of the income that none of the reporting entities, the IRS, or the Department would answer in response to Taxpayer's created affidavit and default tactic. However, the contents of the affidavit questions shows that those ostensible questions were little more than cloaked challenges to the taxability of her income in the relevant years on those broad consent, jurisdictional, and constitutional authority grounds. As cited above, challenges to the taxability of income based on concepts of citizen consent or benefit have long been rejected in other jurisdictions. *See Lonsdale,* 919 F.2d 1440, 1448; *see also*, *Schiff*, 876 F.2d 272, 275; *see also*, *McLaughlin*, 832 F.2d 986, 987; *see also Bey*, 847 F.3d 559, 559–60. As a domiciled resident of the state, the state had authority to impose a tax on Taxpayer. *See Lawrence* 286 U.S. 276, 279. In *Holt*, the New Mexico Supreme Court made clear that employment wages of

a New Mexico resident are subject to New Mexico personal income taxes. *See id*., ¶9-15. The New Mexico Supreme Court gave the term "income" a broad meaning in the context of taxes, to include employment wages and a whole host of other sources identified by Section 61 of the IRC. *See id*. Section 61[7] of the IRC defines "gross income" as "all income from whatever source derived including (but not limited to)… compensation for services… pensions…" The term "compensation" is defined in New Mexico's Income Tax Act as "wages, salaries, commissions and any other form of remuneration paid to employees for personal services." NMSA 1978, § 7-2-2(C).

In light of these definitions and *Holt's* broad construction of the term "income" subject to New Mexico personal income tax, in addition to Taxpayer's employee wage income listed on the W-2s, her income associated with her Social Security payments, her PERA retirement income, and her 1099 payments during the relevant time all amounted to income subject to state taxation. While the El Paso County and Texas Attorney General income originated from work in Texas, since Taxpayer is a domiciled resident of New Mexico physically present in the state, that income is still subject to New Mexico personal income tax. *See Lawrence*, 286 U.S. 276. At the time[8], a New Mexico resident's retirement income from PERA and the Social Security Administration was also subject to New Mexico personal income tax. *See* 4 U.S.C. § 11; *see also* Department Regulation 3.3.11.13(B) NMAC. Given the W-2s and 1099s provided on the record of this case, the absence of a genuine question as to the accuracy of those documents, and Taxpayer's undisputed residency, the Department's assessment of New Mexico personal income tax was legally and factually correct regardless of Taxpayer's beliefs about jurisdiction, taxability of the income, the

[7] Section 62 of the IRC reaches the adjusted federal adjusted income after permitted deductions and adjustments to "gross income" as defined in Section 61 of the IRC.
[8] In subsequent years, the Legislature has made significant changes to the taxation of social security income, however those changes occurred after the period in dispute in this protest.

unsupported and invented affidavit and default tactic, or Taxpayer's reports to the IRS to the contrary. *See Holt*.

***Statute of Limitations***

During the hearing, Taxpayer filed a written motion to dismiss the assessment in this case, arguing the Department had exceeded the statute of limitations in issuing the January 12, 2023, assessment for tax years 2016, 2017, 2018, and 2019. Taxpayer's motion to dismiss is premised on her argument that since she reported zero federal adjusted gross income, she was not required to file state tax returns. However, without reiterating the previous discussion as addressed above, Taxpayer as a New Mexico resident in fact had income subject to New Mexico personal income tax in each relevant year, was required to file or did file federal returns, and as such was required to file a New Mexico personal income tax return. By failing to file such a return, the Department has seven years to issue an assessment from the end of the calendar year in which the tax was due. *See* NMSA 1978, Section 7-1-18 (C) (2013).

Taking the oldest tax period at issue—2016—those personal income tax returns were due in April of 2017, making the relevant end of the calendar year date December 31, 2017. The Department's January 12, 2023, assessment occurred within seven-years of December 31, 2017, complying with the statute of limitations for non-filers under Section 7-1-18 (C). Logically, if the assessment of 2016 personal income taxes was timely, the assessment of more recent tax years of 2017, 2018, and 2019 was also timely under Section 7-1-18 (C). Consequently, Taxpayer's motion to dismiss on statute of limitations grounds is without merit and is denied.

***Penalty and Interest***

Turning to Taxpayer's challenge to the imposition of interest and penalty, when a taxpayer fails to make timely payment of taxes due to the state, "interest *shall* be paid to the state on that amount from the first day following the day on which the tax becomes due...until it is paid." NMSA

1978, § 7-1-67 (2007) (italics for emphasis). Under the statute, regardless of the reason for non-payment of the tax, the Department has no discretion in the imposition of interest, as the statutory use of the word "shall" makes the imposition of interest mandatory. *See Marbob Energy Corp. v. N.M. Oil Conservation Comm'n*, 2009-NMSC-013, ¶22, 146 N.M. 24. The language of Section 7-1-67 also makes it clear that interest begins to run from the original due date of the tax until the tax principal is paid in full. In this case, the Department has no discretion under Section 7-1-67 and must assess interest against Taxpayer, which continue to accrue until the tax principal has been paid.

As to penalty, the Department only assessed Taxpayer 20% civil negligence penalty under Section 7-1-69 (A) rather than pursue the higher 50% penalty amount permitted in instances of willful intent to evade or defeat a tax under subsection (D) of that statute. When a taxpayer fails to pay taxes due to the State because of negligence or disregard of rules and regulations, but without intent to evade or defeat a tax, NMSA 1978 Section 7-1-69 (2007) requires that

> there *shall* be added to the amount assessed a penalty in an amount equal to the greater of: (1) two percent per month or any fraction of a month from the date the tax was due multiplied by the amount of tax due but not paid, not to exceed twenty percent of the tax due but not paid.

(*italics* added for emphasis).

The statute's use of the word "shall" makes the imposition of penalty mandatory in all instances where a taxpayer's actions or inactions meets the legal definition of "negligence." *See Marbob Energy Corp,* ¶22 (use of the word "shall" in a statute indicates provision is mandatory absent clear indication to the contrary). For civil negligence penalty, Regulation 3.1.11.10 NMAC defines negligence in three separate ways: (A) "failure to exercise that degree of ordinary business care and prudence which reasonable taxpayers would exercise under like circumstances;" (B) "inaction by

taxpayer where action is required"; or (C) "inadvertence, indifference, thoughtlessness, carelessness, erroneous belief or inattention."

In this case, for the reasons discussed throughout this decision, Taxpayer was negligent under all three definitions. Generally reasonable taxpayers accept the W-2s and 1099s provided to them when they have no dispute about the facial correctness of the information provided (not to mention their own personal knowledge of receiving the reported income from the reporting sources). Reasonable taxpayers do not create an artificial affidavit and default tactic to challenge those otherwise-facially correct statements based on erroneous beliefs related to jurisdiction/consent to tax and the constitutionality of income tax. Reasonable taxpayers rely on facially correct W-2 and 1099 information (consistent with their own personal knowledge about receiving the reported income from the reporting sources) to timely file tax returns and timely make required tax payments on their wage income. In New Mexico, inaction motivated by inadvertent error, and/or erroneous belief constitutes the civil negligence subject to penalty under Section 7-1-69. *See El Centro Villa Nursing Center v. Taxation and Revenue Department*, 1989-NMCA-070, 108 N.M. 795 (inadvertent error constitutes civil negligence).

Nevertheless, Taxpayer asserts she is entitled to the good-faith, mistake of law protection of Section 7-1-69 (B) because Mr. Gardner exercised "extreme care" in his copious affidavit and default tactic, filings with the IRS, and inquiries with the Department, as well as the alleged fact that the IRS and the Department made separate determinations as to Taxpayer's taxable income[9]. This argument again is premised in part on Taxpayer's unsupported affidavit and default tactic, as well as Taxpayer's apparent beliefs. Section 7-1-69 (B) section provides a limited exception to

[9] The evidence is not clear that the IRS has made any active determination yet at all in this case. For the most part the federal documentation evidence provided by Taxpayer simply summarizes the information she reported to the IRS, her procedural machinations, and lack of IRS affirmative review or action yet on her account.

civil negligence penalty: "[n]o penalty shall be assessed against a taxpayer if the failure to pay an amount of tax when due results from a mistake of law made in good faith and on reasonable grounds." Related to the mistake of law provision, the Department has provided guidance under Regulation 3.1.11.11 NMAC on what circumstances where a taxpayer may be entitled to relief from penalty under Section 7-1-69. Neither the good faith, mistake of law provision nor any of the regulatory relief factors in this case are applicable to this record. No matter her beliefs or motives, as case law cited and discussed throughout this decision makes clear, Taxpayer's mistaken beliefs about her tax obligations in this case were not a good-faith, mistake of law excusable by Section 7-1-69 (B).

Throughout this case, Taxpayer asserted she had sincere questions about the taxability of the income, wanted questions answered from the entities that provided the W-2s and 1099s, and was reluctant to file her taxes under penalty of perjury without those answers. As discussed above, framing these merely as "questions" is inaccurate, as the content of the questions clearly illustrate her belief that her income is not taxable by the government unless or until the entities or the government can satisfy so-called first principles of consent to govern, prove jurisdiction over her, and prove the constitutionality of a tax on her income. All these cloaked arguments that have been soundly rejected as meritless in the case law cited throughout this decision. No matter her or Mr. Gardner's sincerity of claimed beliefs, both the law and contradictory evidence on this record establish that those beliefs are incorrect. *See Holt; see also Clark v. Dep't of Revenue*, 332 Or. 236, 237, 26 P.3d 821, 822 (2001) (Oregon Supreme Court stating that a taxpayers "views concerning the voluntary nature of the income tax system and the nontaxability of wages…, however honestly held, are so incorrect as to render legal arguments based on them frivolous").

On an evidentiary level, regardless of Taxpayer's personal beliefs or motivations, the evidence in this case does not support a finding of good-faith mistake of law. Mr. Gardner

acknowledged that Taxpayer had no facial questions about the accuracy of the basic information (Taxpayer's wages paid, withholdings, and address information) listed on the various W-2s and 1099s issued to her, it was only the predicate constitutional and legal implications of that information for which she had concerns. The issuing entities were simply complying with their federal obligation to report income information to Taxpayer and the IRS, and to the extent there may have been any dispute about the legal implications of that report information, those entities were not empowered with authority to make such determinations. Despite having no facial concerns about the accuracy of the information on the face of the W-2s and 1099s, Taxpayer still alleged that those W-2s and 1099s were inaccurate and fraudulent to the IRS. Taxpayer could have verified that amount and sources of her income from her own personal knowledge of work performed and her own records of payments, but instead relied on the created affidavit and default tactic to attempt to manufacture challenges to the W-2s and 1099s. This was not a genuine, good-faith dispute, but a manufactured challenge using Taxpayer's unsupported affidavit and default tactic against documents acknowledged to be facially correct. Creating subjective disputes with the issuing entities who have no authority to determine the legal implications of the required information report (particularly without any basis to dispute the facial information listed on the documents) through an unsupported affidavit and default tactic while not contesting the basic factual information contained on the W-2s and 1099s does not amount to a good-faith mistake of law protected by Section 7-1-69 (B). *See e.g. CCA of Tennessee, LLC v. New Mexico Taxation & Revenue Dep't*, 2024 WL 162273, at *6 (N.M. Jan. 16, 2024) (good faith in the tax context requires an objective analysis of facts and circumstances).

The extent of Taxpayer's penalty of perjury concern or philosophical consent to be governed arguments seems to be limited by her self-interest and potential financial benefit or detriment. As to her concerns about signing tax returns under penalty of perjury, that concern

apparently did not stop her from originally submitting her W-4 wage withholding statements under penalty of perjury to El Paso County and then subsequently resubmitting those W-4s under penalty of perjury to eliminate tax withholdings. She similarly signed the "6201 Request for Determination and Return of Tax" letters under penalty of perjury, her return claiming that she had zero taxable income despite the W-2s and 1099s. In other words, when filing something that was to her own personal self-interest or financial benefit, the requirement that the filing be made under penalty of perjury was not an obstacle or concern for Taxpayer; it only became a concern when it negatively impacted her financial self-interest.

Moreover, despite her concerns about government not acting without her consent or without demonstrating reciprocal benefit, ironically all sources of Taxpayer income at dispute in this protest came from government agencies. All these governmental entities relied at least in part on expenditure of public funds (i.e. collected taxes) to provide payment to Taxpayer. Taxpayer apparently had no genuine concern about accepting payment or benefit of public expenditures funded in part by taxpayers from these entities. While Taxpayer used her created affidavit and default tactic to question the basis of these governmental entities W-2s and 1099s, Taxpayer presented no evidence that her doubts about these income streams caused her to return or refund the alleged income to those entities or to cease performing work for those entities until her concerns predicate questions were addressed. Despite her political/philosophical consent and jurisdictional challenges to New Mexico state governance and taxation, when it was in furtherance of her own self-interest, she accepted the governmental agency income payment—ironically sourced in part from other taxpayers complying with their requirements to report and pay outstanding taxes—until it came time for her to report and pay her own tax obligations on that income.

In conclusion, a particularly fitting passage from well-respected jurist, Circuit Judge Easterbook of the 7th Circuit, is persuasive:

> [s]ome people believe with great fervor preposterous things that just happen to coincide with their self-interest. "Tax protesters" have convinced themselves that wages are not income, that only gold is money, that the Sixteenth Amendment is unconstitutional, and so on. These beliefs all lead—so tax protesters think—to the elimination of their obligation to pay taxes. The government may not prohibit the holding of these beliefs, *but it may penalize people who act on them.*

*Coleman v. Commissioner of Internal Revenue*, 791 F.2d 68, 69 (7th Cir. 1986) (emphasis added). And so it is here. Taxpayer may believe in things that align with her own self-interest—like not being subject to governance absent consent or being required to file or pay New Mexico personal income taxes for myriad reasons discussed above—but she was required to file and pay state personal income taxes and the Department may penalize her failure to do so. The Department's entire assessment is correct and Taxpayer's protest must be denied.

## CONCLUSIONS OF LAW

A. Taxpayer filed a timely, written protest to the Department's assessment, and jurisdiction lies over the parties and the subject matter of this protest.

B. The hearing was timely set and held within 90 days of the filing of the hearing request and accompanying Department answer under NMSA 1978, Section 7-1B-8 (2019).

C. The matter was reassigned to the undersigned hearing officer the morning of the hearing because of genuine, unforeseen family and personal emergency circumstance with the originally assigned hearing officer pursuant to NMSA 1978, Section 7-1B-8 (F) (2019). *See also* Regulation 22.600.3.9 (D) NMAC (reassignment of hearing officer due to unforeseen circumstances); *see also* Regulation 22.600.2.10 NMAC (doctrine of necessity). Neither party raised an objection to this reassignment.

D. Taxpayer is a domiciled New Mexico resident generating taxable personal income in each of the taxable years at issue, subjecting her to New Mexico's taxing authority. New Mexico has authority to tax Taxpayer's income in each of the taxable years independent of Taxpayer's incorrect reporting to the IRS or Taxpayer's predicate concerns about constitutionality of taxation of wages or jurisdictional concerns about the state's authority to impose the tax. *See Holt v. N.M. Dep't of Taxation & Revenue*, 2002-NMSC-34, 133 N.M. 11; *see also Lawrence v. State Tax Commission of Mississippi*, 286 U.S. 276, 279 (1932); *see also State ex rel. Human Services Dept. v. Green*, 2013 WL 6146119, at *2 (N.M. Ct. App. Oct. 24, 2013; Non-precedential Memorandum opinion); s*ee also United States v. Hilgeford*, 7 F.3d 1340, 1342 (7th Cir. 1993); *see also United States v. Palmer*, 699 Fed. Appx. 836, 838 (10th Cir. 2017; unpublished opinion); *see also United States v. Nissen*, 555 F. Supp. 3d 1174, 1204 (D.N.M. 2021); *see also Bey v. State*, 847 F.3d 559, 559–60 (7th Cir. 2017).

E. The Department timely assessed Taxpayer within seven-years of the end of the calendar in which Taxpayer failed to file a tax return pursuant to Section 7-1-18 (C).

F. Under NMSA 1978, Section 7-1-67 (2007), Taxpayer is liable for accrued interest under the assessment. Interest continues to accrue until the tax principal is satisfied.

G. Under NMSA 1978, Section 7-1-69 (2007), Taxpayer is liable for civil negligence penalty under the negligence definition found under Regulation 3.1.11.10 (B) NMAC and Taxpayer was unable to establish good-faith, mistake of law or other regulatory basis to abate penalty.

For the foregoing reasons, the Taxpayer protest (including all motions filed before and during the hearing) **IS DENIED**. Pursuant to Section 7-1-67, interest continues to accrue until tax principal is satisfied.

DATED: March 15, 2024.

/s/Brian VanDenzen

Brian VanDenzen
Chief Hearing Officer
Administrative Hearings Office
Post Office Box 6400
Santa Fe, NM 87502

**NOTICE OF RIGHT TO APPEAL**

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

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I mailed the foregoing Decision and Order to the parties listed below this

3 15th day of March 2024 in the following manner:

4 INTENTIONALLY BLANK