BEFORE THE HEARING OFFICER
OF THE TAXATION AND REVENUE DEPARTMENT
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE PROTEST OF
JOSEPH AND TONI RENE SALINAS No. 99-20
DENIAL OF CLAIM FOR
REFUND of 1997 PERSONAL INCOME TAX

DECISION AND ORDER

A formal hearing on the above-referenced protest was held April 12, 1999, before Margaret B. Alcock, Hearing Officer. Toni Rene Salinas appeared on behalf of herself and her husband, Joseph Salinas, who was also present at the hearing. The Taxation and Revenue Department ("Department") was represented by Bruce J. Fort, Special Assistant Attorney General. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. Joseph and Toni Salinas own a house in Gallup, New Mexico, where they have lived since 1989.

2. Mr. and Mrs. Salinas own an automobile registered with the State of New Mexico.

3. Toni Salinas holds a commercial driver's license issued to her by the State of New Mexico.

4. During 1997, Toni Salinas worked for the Gallup McKinley County Schools driving a school bus in New Mexico.

5. During 1997, Joseph Salinas worked as a service technician for El Paso Natural Gas Company performing maintenance services in New Mexico.

6. Based on their belief that they are not liable for payment of federal or state income tax, the Salinases requested their respective employers to stop withholding federal and state income tax from the Salinases' compensation. Neither employer complied with this request.

7. For tax year 1997, the Gallup McKinley County Schools withheld $13.62 of state income tax from the compensation it paid to Toni Salinas.

8. For tax year 1997, El Paso Natural Gas Company withheld $2,239.98 of state income tax from the compensation it paid to Joseph Salinas.

9. On May 20, 1998, Mr. and Mrs. Salinas filed 1997 New Mexico personal income tax forms PIT-1 and PIT-B with the New Mexico Taxation and Revenue Department.

10. The return filed by the Salinases reported zero federal adjusted gross income, zero federal exemptions and deductions, zero New Mexico taxable income, and zero tax due.

11. The only lines of the Salinases' 1997 return that showed a figure other than zero, was Line 16 of the PIT-1, which reported an overpayment of tax in the amount of $2,254.00, and Lines 18 and 19, which requested a refund in the amount of $2,254.00.

12. The Salinases enclosed the W-2 Forms issued by their employers, which showed combined state income tax withholding of $2,253.60.

13. Upon receiving the Salinases' 1997 income tax return, the Department recomputed their New Mexico taxable income by subtracting the standard federal exemption and deduction amounts from the $55,916.00 of wages reported on their W-2 Forms.

14. As a result of the recomputation, the Salinases' state income tax refund for 1997 was reduced from $2,254.00 to $260.00.

15. On July 30, 1998, the Department mailed the Salinases notice of the adjustments that had been made and enclosed a warrant refunding $260.00 in tax, plus $13.00 interest.

16. On August 10, 1998, the Salinases filed a protest to the Department's adjustment and denial of $1,980.60 of the refund claimed on their 1997 personal income tax return.

DISCUSSION

The issue to be determined is whether the Department properly denied the Salinases' claim for refund of 1997 state income tax withheld by their employers in the amount of $1,980.60. The underlying legal issue is whether they are liable for New Mexico income tax on their compensation from performing services in New Mexico during 1997. The Salinases have raised a number of legal arguments as to why their wages are not subject to tax. Before addressing these arguments, a brief overview of New Mexico's personal income tax statutes and their operation will be useful.

New Mexico imposes its income tax upon the net income of "every resident individual". New Mexico is among the majority of states which "piggy-back" or use the federal income tax system as the basis for calculating state income taxes. The calculation of personal income taxes in New Mexico begins with a determination of "base income" which is the taxpayer's "adjusted gross income" as defined in § 62 of the Internal Revenue Code, plus certain net operating loss deductions which can be deducted for federal purposes in arriving at federal adjusted gross income but which New Mexico does not allow to be deducted in the same manner. *See,* NMSA 1978, § 7-2-2(B). New Mexico then allows certain deductions, such as the federal standard or itemized deductions and deductions for income from federal obligations, to arrive at "net income" upon which income tax is imposed. *See, NMSA 1978*, §§ 7-2-2(N) and 7-2-3. Given the structure of the New Mexico income tax, most of the Salinases' arguments—and this decision—are based on an examination of the taxing authority granted to Congress by the federal Constitution and the provisions of the Internal Revenue Code which provide the basis for calculating New Mexico's income tax.

I. Congress' jurisdiction is limited to the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa and other territories or enclaves of the United States, and Congress can impose federal income tax only within these areas.

The Salinases maintain they are not subject to federal income tax because they do not reside within a federal territory and are not within the jurisdiction of the United States (Exhibit A, page 2 of Affidavit of Citizenship and Domicile). This argument is based on their reading of Article I, § 8 of the United States Constitution, which sets out the powers of Congress. Although the first paragraph expressly includes the power to "lay and collect Taxes", the Salinases focus solely on the 17th clause of Article I, § 8, which gives Congress the power:

> To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;

The Salinases interpret this language as a limitation on the powers given to Congress in the other 16 clauses of § 8, including the power to tax. Such an interpretation is clearly erroneous and has been rejected by the courts on numerous occasions. *See*, *United States v. Collins*, 920 F.2d 619, 629 (10th Cir. 1990), *cert. denied*, 500 U.S. 920 (1991); *United States v. Sloan*, 939 F.2d 499, 501 (7th Cir 1991), *cert. denied*, 502 U.S. 1060 (1992); *United States v. Mundt*, 29 F.3d 233, 237 (6th Cir. 1994). In *United States v. Sato*, 704 F.Supp. 816, 818 (N.D.Ill. 1989) the federal district court responded to the same argument as follows:

> Defendants argue that Clause 17 limits the legislative power of Congress such that only the geographical areas over which Congress may legislate, or may exercise its power of taxation, are those areas described in Clause 17. This position is contrary to both the natural reading of the Constitution and the case law. Clause 17 limits not the power of Congress, but the power of the states. "[T]he word 'exclusive' was employed to eliminate any possibility that the legislative power of Congress over the District [of Columbia] was to be concurrent with that of the ceding states." *District of Columbia v. John R. Thompson Co.*, 346 U.S. 100, 109, 73 S.Ct. 1007, 1012, 97 L.Ed. 1480 (1953).

The Salinases find further support for their position in Article IV, § 3 of the Constitution, which states that "Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States." The Salinases apparently read this to mean that Congress' authority to issue rules and regulations is limited to federal territories. No canon of construction supports reading this constitutional grant of congressional authority as a limitation on that authority. The fact that Congress has jurisdiction to regulate federal territories in no way limits Congress' jurisdiction over the United States as a whole As stated by the court in *United States v. Collins*, 920 F.2d 619, 629 (10th Cir. 1990), *cert. denied*, 500 U.S. 920 (1991): "For seventy-five years, the Supreme Court has recognized that the sixteenth amendment authorizes a direct, nonapportioned tax upon United States citizens throughout the nation, not just in federal enclaves."

II. The federal income tax (and, therefore, the New Mexico income tax) is limited to income from a source listed in 26 CFR §§ 1.861-8(f)(1), income connected with the conduct of a trade or business, and income of government officials and corporate officers.

As noted above, New Mexico uses federal adjusted gross income as its starting point for calculating New Mexico personal income taxes. The Internal Revenue Code, 26 U.S.C. § 1, *et seq*. (1997), defines adjusted gross income as gross income, less certain deductions listed in § 62 of the Code. Gross income is defined in § 61 as follows:

> Except as otherwise provided in this subtitle, gross income means all income from whatever source derived, including (but not limited to) the following items:
>
> (1) Compensation for services, including fees, commissions, fringe benefits and similar items;
> (2) Gross income derived from business;
> (3) Gains derived from dealings in property;
> (4) Interest;
> (5) Rents;
> (6) Royalties;
> (7) Dividends;
> (8) Alimony and separate maintenance payments;
> (9) Annuities;
> (10) Income from life insurance and endowments contracts;

(11) Pensions;
(12) Income from discharge of indebtedness;
(13) Distributive share of partnership gross income;
(14) Income in respect of a decedent; and,
(15) Income from an interest in an estate or trust.

This definition is quite broad, and certainly appears to include under the first listed category of "compensation for services" the compensation received by Mr. and Mrs. Salinas from their employment in New Mexico. The Salinases nonetheless dispute the applicability of § 61 to the compensation they received from their employers.

They focus first on the language in § 61 which refers to "items" of income. The Salinases maintain that an item of income is not the same as a source of income: in order for an item of income to be taxable, it must come from a taxable source. In arguing that their income is not derived from a taxable source, they cite to 26 CFR §§ 1.861-8(f)(1) (*see* Exhibit E), a regulation promulgated to implement § 861 in Part I, Subchapter N of the Code, titled "Source Rules and Other General Rules Relating to Foreign Income." The Salinases argue that since their 1997 income wasn't from a source listed in the regulation at 26 CFR 1.861-8(f), their income is not taxable. They also rely on § 871(b)(2) and the following excerpt from 26 CFR §1.861-8(a)(1) to support their contention that the federal income tax is limited to income connected with the conduct of a trade or business:

> The rules contained in this section apply in determining taxable income of the taxpayer from specific sources and activities under other sections of the Code, referred to in this section as operative sections. See paragraph (f)(1) of this section for a list and description of operative sections. The operative sections include, among others, sections 871(b) and 882 (relating to taxable income of a nonresident alien individual or a foreign corporation which is effectively connected with the conduct of a trade or business in the United States)....

Finally, the Salinases cite to 26 U.S.C. § 3401 and various other provisions of federal law to argue that only government officials and employees and corporate officers qualify as "employees" subject to federal income tax (see Exhibit A, page 7 of Affidavit of Citizenship and Domicile). All of these arguments are wholly without merit.

Statutes are to be interpreted in accordance with legislative intent and in a manner that will not render the statute's application absurd, unreasonable or unjust. *City of Las Cruces v. Garcia*, 102 N.M. 25, 26-27, 690 P.2d 1019, 1020-21 (1984). Statutes must be read in their entirety and each part must be construed in connection with every other part to produce a harmonious whole. *State ex rel. Klineline v. Blackhurst*, 106 N.M. 732, 735, 749 P.2d 1111, 1114 (1988). *See also, United States v. Morton*, 467 U.S. 822, 828 (1984) ("we do not construe statutory phrases in isolation; we read statutes as a whole"); *Quivira Mining Co. v. EPA*, 728 F.2d 477, 481 (10th Cir. 1984) (statutes must be read together to realize the purposes of the legislative scheme). In this case, the Salinases attempt to support their legal position concerning application of the federal income tax by taking pieces of federal law out-of-context and without regard to the overall statutory scheme of which they are a part. As a result, the authorities cited do not in any way support the legal positions for which they are proffered.

Section 61 of the Code defines "gross income" as "all income from whatever source derived." The same language is found in the Sixteenth Amendment of the federal Constitution which gives Congress the "power to lay and collect taxes on income, from whatever source derived...." Sections 861 through 865 in Part I of Subchapter N of the Code address "Source Rules and Other General Rules Relating to Foreign Income." There is no indication the Salinases have foreign income or that Subchapter N has any application to them. I note, nonetheless, that § 861(a)(3) and accompanying regulation § 1.861-4 provide that compensation for labor or personal services performed in the United States is treated as income from sources within the United States. There is no rationale for the Salinases' argument that the compensation they earned for personal services performed in New Mexico during 1997 was not income because it did not come from a "source" listed in regulation § 1.861-8(f)(1). That regulation simply sets out other sections of the Code to which the principles of Section 861 apply. This listing of Code sections has no bearing on whether the Salinases' wages are subject to tax. The Salinases' income was earned wholly within the state of New Mexico, which is within the

geographic boundaries of the United States. As such, it qualified as federal gross income under either § 61 or § 861 of the Code and was subject to both federal and New Mexico income tax.

The Salinases' reference to § 871(b) of the Code is also taken out of context. Subsection (b)(1) provides that a nonresident alien individual is taxable on income connected with the conduct of a trade or business within the United States. Subsection (b)(2) states that *for purposes of the Subsection (b)(1),* "gross income includes only gross income which is effectively connected with the conduct of a trade or business within the United States." The Salinases focus on this one subsection of the Code and conclude that the only income subject to federal income tax is the income of nonresident aliens conducting a trade or business in this country. Such a conclusion is clearly wrong. The fact that the Code imposes tax on one group of individuals or type of activity does not mean that this is the only group or activity subject to tax. *See*, *United States v. Stillhammer*, 706 F.2d 1072, 1077 (10th Cir. 1983), rejecting the argument that Congress intended to limit the income tax to the income of business enterprises.

The Salinases' argument that only government officials and corporate officers are "employees" subject to federal income tax is also based on a misreading of federal law. 26 U.S.C. § 3401(c), which relates to withholding of income tax from wages, defines the term "employee" as follows:

> For purposes of this chapter, the term "employee" includes an officer, employee, or elected official of the United States, a State, or any political subdivision thereof, or the District of Columbia, or any agency or instrumentality of any one or more of the foregoing. The term "employee" also includes an officer of a corporation.

The Salinases interpret the word "includes" as a word of limitation. They assert that because they are not government officials or corporate officers, they are not "employees" subject to federal income tax. This reading is clearly wrong and has been soundly rejected by the federal courts. As the court stated in *United States v. Latham*, 754 F.2d 747, 750 (7th Cir. 1985):

> Latham's instruction which indicated that under 26 U.S.C. § 3401(c) the category of "employee" does not include privately employed wage earners is a preposterous reading of the statute. It is obvious...the word "includes" is a term of enlargement not of limitation, and the reference to certain entities or categories is not intended to exclude all others.

See also, Sullivan v. United States, 788 F.2d 813, 815 (1st Cir. 1986): "Section 3401(c)...indicates that the definition of 'employee' *includes* government officers and employees, elected officials, and corporate officers. The statute does not purport to limit withholding to the persons listed therein." (emphasis in the original).

III. The United States Constitution does not authorize Congress to tax an American Citizen's private compensation.

The Salinases raise several arguments challenging the federal government's authority to impose tax on the earnings of individual citizens (see Exhibit A, pages 7-11 of Affidavit of Citizenship and Domicile). Their first argument is that the Constitution prohibits Congress from imposing a nonapportioned direct tax and focuses on the limitations contained in Article 1, § 2, Cl. 3 and Article 1, § 9, Cl. 4 of the Constitution. Article 1, § 2, Cl. 3 states:

> Representatives *and direct taxes* shall be apportioned among the several States which may be included in this Union.... (emphasis added)

Article 1, § 9, Cl. 4 provides:

> *No Capitation or other direct, Tax* shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken. (emphasis added)

These clauses became the basis of the Supreme Court's decision in *Pollock v. Farmers Loan and Trust Co.*, 157 U.S. 429 (1895), holding that the Income Tax Act of 1894 was unconstitutional. The Court found that a tax on income from real estate was the equivalent of a direct tax on the real estate itself. Because the tax was not apportioned, it violated the Constitution. The ruling in this case effectively thwarted the imposition of an income tax in this country for some years thereafter. In 1909, Congress passed a law imposing an excise tax on corporations of 1% of net income. This tax was challenged on

the same grounds as the 1894 income tax. In *Flint, v. Stone Tracy Company*, 220 U.S. 107 (1911), however, the Supreme Court upheld that tax, ruling that the tax was an "excise tax" and therefore not a direct tax which would be unconstitutional because it was not apportioned. Thus, the determination of whether a tax was an "excise tax" or a "direct tax" became crucial to the constitutionality of a tax. This concern was eliminated, however, by the passage of the Sixteenth Amendment to the Constitution, which provides as follows:

> The Congress shall have power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.

The first case to challenge the constitutionality of the income tax following ratification of the Sixteenth Amendment was *Brushaber v. Union Pacific Railroad Co.*, 240 U.S. 1 (1916). In that case, a stockholder of the Union Pacific brought suit to restrain the company from paying income tax, arguing that the income tax provisions of the Tariff Act of 1913 were unconstitutional. The Supreme Court upheld the validity of the tax. In doing so, the Court reiterated the inherent power of Congress to impose an income tax under Article 1, § 8 of the Constitution, noting that the Sixteenth Amend-ment simply removed the requirement that such taxes be apportioned among the states.

The Salinases' argument that the Constitution does not authorize Congress to impose a direct, nonapportioned tax on income is erroneous because it fails to recognize the effect of the Sixteenth Amendment. *See, In re Becraft*, 885 F.2d 547, 548 (9th Cir. 1989) ("the Supreme Court and the lower federal courts have both implicitly and explicitly recognized the Sixteenth Amendment's authorization of a non-apportioned direct income tax....").

Also without merit are their arguments that: (1) the term "income" includes gain or profit from capital, but does not include compensation for labor; (2) the right to labor is a fundamental or natural right that cannot be taxed by the government; and (3) the income tax applies only to people exercising "privileges" or engaged in "revenue taxable activities." All of these arguments have been considered—

and rejected—by the federal courts. *See, e.g., United States v. Lawson*, 670 F.2d 923, 925 (10th Cir. 1982):

> Notwithstanding Lawson's belief that his wages are not gains or profits but merely what he has received in an equal exchange for his services, the Internal Revenue Code clearly includes compensation of this nature within reportable gross income.

Olson v. United States, 760 F.2d 1003, 1005 (9th Cir. 1985):

> This court has repeatedly rejected the argument that wages are not income as frivolous [citations omitted] and has also rejected the idea that a person is liable for tax only if he benefits from a governmental privilege.

United States v. Sloan, 939 F.2d 499, 501 (7th Cir. 1991), *cert. denied*, 502 U.S. 1060 (1992):

> "All individuals, natural or unnatural, must pay federal income tax on their wages," regardless of whether they have requested, obtained or exercised any privilege from the federal government. *Lovell*, 755 F.2d at 519.

In *Charles C. Stewart Machine Co. v. Davis*, 301 U.S. 548 (1937) the United States Supreme Court addressed the constitutionality of taxing a "natural right" when a challenge was filed to the tax imposed by the Social Security Act. The Court upheld the tax, rejecting the argument that employment for lawful gain cannot be taxed because it is a "natural" or "inherent" or "inalienable" right, rather than a privilege. As stated by the Court: "natural rights, so called, are as much subject to taxation as rights of lesser importance." 301 U.S. at 898. As this case, and the other cases cited in this decision establish, the Salinases' compensation for personal services performed in New Mexico is subject to tax by the federal government—and by New Mexico.

IV. The federal income tax system is voluntary.

At the hearing on the Salinases' protest, Mrs. Salinas asserted that payment of income tax is voluntary, stating that she and her husband do not wish to volunteer. She also questioned her obligation to file a federal income tax return in the absence of a notice from the district director requiring her to file such a return.

It is true that the federal tax system is predicated on the voluntary compliance of citizens. This means the government does not audit and assess each taxpayer individually, but relies on its citizens to determine their own tax liabilities and accurately report those liabilities to the government. A tax system based on voluntary compliance is *not* the same as a system where the payment of tax is optional. *See*, *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"). *See also, 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 is not only utterly without foundation but, despite McLaughlin's protestations to the contrary, has been repeatedly rejected by the courts.").

Taxpayers are required to report and pay tax according to the laws set out in the Internal Revenue Code, without waiting for the IRS to send them personal notice of liability. As stated in *United States v. Bowers*, 920 F.2d 220, 222 (4th Cir. 1990):

> The statutes themselves require the payment of the tax and the filing of a return. 26 U.S.C. § 6012...[T]he duty to pay those taxes is manifest on the face of the statutes, without any resort to IRS rules, forms or regulations.

The long history of federal case law pertaining to prosecutions for tax evasion establishes that taxpayers who fail to voluntarily comply with the tax laws are subject to both civil and criminal penalties. *See, e.g., United States v. Collins*, 920 F.2d 619, 629 (10th Cir. 1990), *cert. denied*, 500 U.S. 920 (1991); *United States v. Sloan*, 939 F.2d 499, 501 (7th Cir 1991), *cert. denied*, 502 U.S. 1060 (1992); *United States v. Mundt*, 29 F.3d 233, 237 (6th Cir. 1994). In *Coleman v. Commissioner of Internal Revenue*, 791 F.2d 68, 69 (7th Cir. 1986), the court made the following observation:

> Some 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.* (emphasis added).

In this case, there is no question that the Salinases' compensation from their employment in New Mexico is income for federal and state tax purposes, and the Salinases have an affirmative duty to report and pay tax on this income to both the federal government and the state of New Mexico.

V The Salinases are not residents of New Mexico.

The Salinases maintain they are not subject to New Mexico personal income tax because they are not residents of New Mexico. In the various documents filed with the Department, the Salinases state they are "citizens" of New Mexico and have been "domiciled" in McKinley County for ten years (Exhibit A, page 2, para. 4 of Affidavit of Citizenship and Domicile and Exhibit B, Affidavit of Citizenship and Domicile dated March 22, 1999). At the hearing, Mrs. Salinas would only admit that she and her husband "inhabit" New Mexico.

The definition of resident for purposes of the Income Tax Act adopts the common law approach to residency, which is based on the concept to domicile. A “resident” is defined for income tax purposes at § 7-1-2 (S) NMSA 1978 as follows:

> S. "resident" means any individual who is domiciled in this state during any part of the taxable year; but any individual who, on or before the last day of the taxable year, changed his place of abode to a place without this state with the bona fide intention of continuing actually to abide permanently without this state is not a resident for the purposes of the Income Tax Act.

Regulation 3 NMAC 3.1.9.2 defines a domicile as follows:

> 9.2 A domicile is a place of a true, fixed home and a permanent establishment to which one intends to return when absent and where a person has voluntarily fixed habitation of self and family with the intention of making a permanent home.

Essentially, a resident of New Mexico is a person who has made New Mexico a permanent home. Residency is broad enough to encompass individuals who are not necessarily citizens. For example, there may be foreign nationals who are neither citizens of the United States or New Mexico, but who

are residents of New Mexico because they have made it their permanent home. In spite of the fact that they are not citizens, they are subject to income taxation in New Mexico upon their income earned in New Mexico.

It is clear from the evidence in this case that the Salinases are residents. They have made New Mexico their permanent place of abode since 1989 and affirmatively stated in documents filed with the Department that they are "domiciled" in McKinley County, New Mexico. The Salinases own a house in Gallup, New Mexico. (Although Mrs. Salinas maintains the mortgage company owns the house, she acknowledged that she and her husband granted the mortgage on the house.) The Salinases have an automobile registered with the state of New Mexico. Mrs. Salinas has a New Mexico commercial driver's license that allows her to pursue employment driving a school bus for the Gallup McKinley County Schools in New Mexico. Because the Salinases are residents, and because the personal income tax is imposed upon residents with income earned in in New Mexico, the Salinases are subject to income taxation by the state of New Mexico.

VI. The Department is in default for failing to respond to the Salinases' demands for information and is therefore estopped from denying their refund.

The Salinases maintain the Department is in default for failing to respond to the various documents they sent to the Department both before and after the filing of their protest. Most of these documents took the form of affidavits asserting the Salinases' various legal positions, accompanied by a cover sheet entitled "Constructive Notice", which stated:

> If this affidavit is not properly rebutted with a counter-affidavit within fourteen (14) days of its mailing, all paragraphs not denied shall be confessed affirmed, by such default, and shall be accepted as dispositive, conclusive facts by the Department of the Treasury-Internal Revenue Service and/or state tax agency wherein the district director and/or the chief executive officer or other properly delegated authority, had the opportunity and "failed to plead."

The Department has no obligation to respond to such documents. Taxpayers may not impose their own system of pleading and rules of procedure on the state. Nor do the Salinases' many references to

federal administrative procedures have any application to this proceeding. The New Mexico Taxation and Revenue Department is an agency of the government of the state of New Mexico, not the federal government. Hearings of protests to assessments of tax and other actions of the Department are governed by § 7-1-24 NMSA 1978, which is a provision of the Tax Administration Act, §§ 7-1-1 *et seq.* NMSA 1978. Nothing in the Tax Administration Act required the Department to file a "counter-affidavit" or otherwise answer the Salinases' numerous affidavits asserting their exemption from state income tax, their preservation of all unalienable rights, their revocation of signatures on prior tax forms, etc. Nor was the Department required to file a response to the Salinases' demand for a "Bill of Particulars".

As shown in the record, the Department did respond to a request for information filed by the Salinases on April 4, 1999. Mrs. Salinas' assertions that the Department failed to provide her with any information concerning its authority to impose income tax is refuted by Mr. Fort's April 6, 1999 letter setting out the constitutional and statutory basis for the Department's actions. Mrs. Salinas' assertions that she was unable to determine her tax liability because she was never provided with income tax rate tables or an address to file her return are patently absurd and call the sincerity of her arguments into question. The rate tables are set out in the statutes and in the instructions to Form PIT-1. The fact that the Salinases filed a Form PIT-1 in May 1998 reporting zero taxable income for 1997 and seeking a refund of the tax withheld by their employers establishes that they were well aware of how and where to file their state income tax return.

CONCLUSIONS OF LAW

1. The Salinases filed a timely, written protest to the Department's denial of their claim for refund of income tax withheld by the employers for the 1997 tax year and jurisdiction lies over both the parties and the subject matter of this protest.

2. The Salinases' compensation from their employment in New Mexico is included in both "gross income" and "adjusted gross income" as those terms are defined in the Internal Revenue Code.

3. The Salinases' compensation is included in both "base income" and "net income" as those terms are defined in the Income Tax Act, Chapter 7, Article 2, NMSA 1978.

4. The Salinases are not entitled to a refund of income taxes withheld by their employers during 1997 because the Salinases' earnings were properly subject to the imposition of New Mexico's income tax.

For the foregoing reasons, the protest of Joseph and Toni Rene Salinas IS DENIED.

Dated May 10, 1999.