

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

IN THE MATTER OF THE PROTEST OF
PAUL A. AND NANCY E. JACOBS
PROTEST TO DENIAL OF REFUND
OF 1998 PERSONAL INCOME TAX

No. 01-04

DECISION AND ORDER

A formal hearing on the above-referenced protest was held March 28, 2001, before Margaret B. Alcock, Hearing Officer. Paul A. Jacobs and Nancy E. Jacobs (“Taxpayers”) were represented by John N. Lieuwen, an attorney with Laflin, Lieuwen, Tucker, Pick, Heer & Neerken, P.A. The Taxation and Revenue Department (“Department”) was represented by Bruce J. Fort, Special Assistant Attorney General. At the close of the hearing it was agreed that the record would be left open to allow for the submission of an additional joint exhibit. The exhibit was filed on April 12, 2001, at which time the case was submitted for decision. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. In July 2000, the Taxpayers filed an amended 1998 New Mexico personal income tax return seeking a refund of \$244,870 of income tax withheld from compensation paid to Paul A. Jacobs by Syntroleum Corporation during tax year 1998.
2. The basis for the refund was the Taxpayers’ assertion that they changed their residence and domicile from New Mexico to Texas in mid-1998. Based on this assertion, they filed their 1998 New Mexico return as nonresidents and allocated all of their 1998 income to Texas.

3. By letter dated August 15, 2000, the Department denied the Taxpayers' claim for refund of 1998 personal income tax.

4. On October 31, 2000, the Taxpayers filed a written protest to the Department's denial of their refund claim.

5. In 1994, the Taxpayers sold their house in Johnson City, Kansas, where they had lived for many years, and purchased a condominium in Kansas City. Mr. Jacobs was then working for SLH Corporation, which was headquartered in Overland Park, Kansas.

6. Also in 1994, the Taxpayers purchased a 3,000-square-foot condominium at Quail Run in Santa Fe, New Mexico. At that time, Quail Run was owned by Scout Development, a subsidiary of SLH Corporation.

7. From 1994 to 1997, the Taxpayers divided their time between New Mexico and Kansas.

8. In 1997, the Taxpayers sold their Kansas condominium and thereafter resided full time at the Quail Run condominium in Santa Fe.

9. The Taxpayers listed themselves as New Mexico residents on their 1994, 1995, 1996 and 1997 personal income tax returns.

10. During 1998, Mr. Jacobs was chairman of SLH Corporation, which was in the process of merging with Syntroleum Corporation. The merger was completed in August 1998.

11. Mr. Jacobs was involved in every aspect of the merger and attended regular meetings, all of which were held outside New Mexico. While in Santa Fe, Mr. Jacobs generally spent a few hours each day reviewing documents and other matters connected with the merger.

12. In late 1996 or early 1997, the Taxpayers began to discuss their plans for retirement after the merger was completed. Although Mrs. Jacobs wanted to maintain a presence in Santa Fe, the Taxpayers did not plan to live in Santa Fe full time.

13. Mr. Jacobs' Kansas attorney advised him it would be wise to establish residence in a state with a more favorable tax climate than New Mexico, and this was one of the factors the Taxpayers considered when looking for a retirement location.

14. Based on their research, the Taxpayers decided that Austin, Texas, might be the best place to move. Having never been there, they decided to visit Austin and some other areas of Texas before making a final decision.

15. In February 1998, Mr. Jacobs' New Mexico driver's license expired; in June 1998, Mrs. Jacobs' driver's license expired. Because the Taxpayers planned to change their state of residence in the near future, they decided not to renew their New Mexico drivers' licenses, even though they did not hold current licenses from any other state.

16. In June 1998, the Taxpayers made their first trip to Austin and met with a realtor who showed them different housing developments in the area.

17. The Taxpayers were favorably impressed with the Marina Club Condos in Austin and discussed building plans with the architect and builder for the development. They contracted to purchase a lot in the development for \$85,000 and put down a deposit.

18. The Taxpayers spent two or three days in Austin during this first trip. In addition to entering into a contract to buy the lot at Marina Club Condos, they obtained a mail box at Mail Boxes, Etc. and opened a bank account with a \$1,000 deposit.

19. In late July 1998, the Taxpayers made their second trip to Austin and again stayed for just a few days.

20. Prior to the trip, Mr. Jacobs conducted telephone negotiations with an Austin automobile dealer for the purchase of a Toyota SUV. The dealer met the Taxpayers at the airport when they arrived in Austin and drove them back to the dealership to complete the paperwork on the purchase of the vehicle, which was then registered in Texas.

21. During this second trip, the Taxpayers obtained Texas drivers' licenses and registered to vote. The physical address they used to obtain their drivers' licenses and voter registration was the address of the unimproved lot they had contracted to purchase at Marina Club Condos.

22. At the conclusion of the July 1998 trip, the Taxpayers returned to Santa Fe in the Toyota SUV. They subsequently purchased another vehicle from the Austin dealer and had it registered in Texas. This vehicle was then delivered to the Taxpayers in Santa Fe.

23. In September 1998, the Taxpayers closed on the purchase of the condominium lot in Austin. They did not attend the closing, which was handled by their Texas attorney.

24. On November 16, 1998, Mr. Jacobs made a third trip to Austin, where he stayed for two or three days.

25. Mr. Jacobs met with the architect and builder for Marina Club Condos and entered into a \$420,000 contract for construction of a 3,300-square-foot house on the lot he had previously purchased. Mr. Jacobs expected the construction to take seven to nine months.

26. On November 18, 2001, Mr. Jacobs signed a six-month lease on a one-bedroom, 500-square-foot unfurnished apartment in Austin. The lease term ran from December 1, 1998 to May 31, 1999 at a rent of \$570 per month.

27. Mr. Jacobs returned to Santa Fe prior to the beginning of the lease term on the apartment. The Taxpayers did not return to Austin until January 1999, spending Thanksgiving, Christmas and New Year's of 1998 with their family at Quail Run in Santa Fe.

28. Sometime during December 1998, the Taxpayers entered into a contract with a Santa Fe realtor to sell the Quail Run condominium at a price of between \$925,000 to \$950,000. The property was "pocket listed", which meant it could be shown by only a few designated agents and was not advertised or included in general real estate listings.

29. In January 1999, the Taxpayers visited the Austin apartment for the first time. They brought bedding, a television and stereo, kitchen utensils and clothing from Santa Fe and purchased cleaning supplies and other necessary items in Austin. The Taxpayers did not bring furniture from their Santa Fe condominium, and the apartment was never fully furnished.

30. The Taxpayers stayed at the Austin apartment for two or three days, meeting with their Texas architect and builder before returning to Santa Fe.

31. In May 1999, Mr. Jacobs renewed the lease on the Austin apartment for another six-month term.

32. Sometime during 1999, Mr. Jacobs learned that a problem with the site permit for Marina Club Condos had put construction of the Austin condominium on hold. In July 1999, the Taxpayers were told that they could go ahead with their building plans, but that construction of the condominium had to be completed by 2002.

33. In August 1999, seven months after his last visit in January 1999, Mr. Jacobs went to Austin for a few days to meet with the builder. Mr. Jacobs was concerned about the increase in building costs since the contract was signed. When the builder told Mr. Jacobs construction could not begin until early 2000, Mr. Jacobs had additional concerns about whether the condominium could be completed by the 2002 deadline.

34. On October 29, 1999, Mr. Jacobs renewed the lease on the Austin apartment for another six-month term. The lease was subsequently renewed for two more terms, through May 2001.

35. In November 1999, the Taxpayers received a letter notifying them that a lawsuit had been filed against the homeowners association of Marina Club Condos. At that point, Mr. Jacobs became discouraged about his building plans and decided not to go forward with construction of the Austin house until pending legal matters were resolved.

36. Sometime in 2000, the Taxpayers put the lot at Marina Club Condos in Austin up for sale at a list price of \$150,000. Mr. Jacobs looked at a few other condominiums, but decided not to buy anything else in Austin until he could get his money out of the lot.

37. In June 2000, the Taxpayers sold their Quail Run condominium in Santa Fe for \$850,000. That same month, they purchased a 5,600-square-foot house on Summit Drive in Santa Fe for \$1.9 million dollars.

38. Most of the funds used to purchase the Santa Fe house came from the liquidation of a portion of Mr. Jacobs' stock portfolio. Mr. Jacobs was concerned about the stock market and believed the house would be a good investment as well as a place to live.

39. The Taxpayers spent a substantial amount of time and money remodeling, landscaping and decorating the new Santa Fe house.

40. During each of calendar years 1999 and 2000, the Taxpayers spent less than one week in Austin. During those same years, they spent 265 to 290 days in Santa Fe.

41. Between January 1, 2001 and March 28, 2001, the date of the hearing on the Taxpayers' protest, the Taxpayers did not make a single trip to Austin, but continued to live in their house on North Summit Drive in Santa Fe.

42. In late 1998 or early 1999, Mr. Jacobs had arranged for telephone service at the Austin apartment. In 2000, Mr. Jacobs obtained a portable telephone with an Austin telephone number. Mr. Jacobs carried the portable telephone with him and discontinued service to the telephone physically located in the apartment.

43. From mid-1998 through March 2001, the two vehicles the Taxpayers purchased in Austin were garaged and driven in Santa Fe, although the Taxpayers maintained the Texas registration on both vehicles.

44. From mid-1998 through March 2001, the Taxpayers used the address of the private post office box at Mail Boxes, Etc., in Austin for tax filing purposes and other business correspondence. Once a month, Mail Boxes, Etc. packaged up the mail received at the Austin address and forwarded it to Mr. Jacobs in Santa Fe.

45. From mid-1998 through March 2001, the Taxpayers made no attempt to involve themselves in the business or social community of Austin. During this period, the activities of the Taxpayers' daily life continued to be centered in Santa Fe, including doctor visits, car repairs, haircuts, grocery shopping, dining out, theater going, and garden club meetings.

DISCUSSION

The issues to be considered are: (1) whether the Taxpayers were residents of New Mexico or residents of Texas on December 31, 1998; and (2) if the Taxpayers were residents of Texas, whether any part of the compensation Mr. Jacobs earned during 1998 was earned for services performed in New Mexico.

Effect of Residency on Liability for New Mexico Income Tax. Payment of New Mexico personal income tax is governed by the Income Tax Act, Sections 7-2-1, *et seq.*, NMSA 1978. New Mexico is among the majority of states that "piggy-back" or use the federal income tax system as the basis for calculating state income taxes. As reflected on the Department's 1998 form PIT-1, New Mexico taxable income is calculated by starting with the taxpayer's federal adjusted gross income, deducting the taxpayer's federal personal exemption and itemized deductions, and making certain adjustments reflected on Schedule A. The amount of tax is then drawn from the tax rate table or tax schedule.

When a taxpayer has income that is taxable both within and without New Mexico, Section 7-2-11 NMSA 1978 allows the taxpayer to file Form PIT-B to allocate and apportion certain categories of income between New Mexico and non-New Mexico sources. The percentage of total income allocated or apportioned to New Mexico is then applied to the tax previously calculated to determine the tax due. There are some categories of income that must be allocated 100 percent to New Mexico on Form PIT-B, regardless of the source of the income. Subsection A(3) of Section 7-2-11 NMSA 1978 requires all compensation earned by New Mexico residents to be allocated to New Mexico. *See also*, Regulation 3 NMAC 3.11.11.1. For purposes of the

income tax act, a resident is someone who is domiciled in New Mexico on the last day of the taxable year. Section 7-2-2(S) NMSA 1978.

In this case, the major portion—if not all—of the compensation Mr. Jacobs received from Syntroleum Corporation during 1998 was earned outside New Mexico. This is the reason the issue of residency is important. If the Taxpayers were residents of New Mexico on the last day of 1998, all of Mr. Jacobs' compensation from Syntroleum would be subject to New Mexico income tax, including the portion earned outside New Mexico. Conversely, if the Taxpayers changed their residence to Texas prior to December 31, 1998, then only that portion of income earned in New Mexico would be subject to New Mexico income tax.

Determination of Residency Based on Domicile. Section 7-2-2(S) NMSA 1978 of the Income Tax Act defines the term “resident” as follows:

“resident” means an 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.

As defined for income tax purposes, residency is synonymous with domicile. *See also, Murphy v. Taxation and Revenue Department*, 94 N.M. 54, 55, 607 P.2d 592, 593 (1980) (a New Mexico "resident" is an individual domiciled in New Mexico at any time during the taxable year who does not intentionally change his domicile by the end of the year). Regulation 3.3.1.9 NMAC defines “domicile” as “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.” A change of domicile requires both physical presence in the new locality and an intention to abandon the old domicile and to make a

home in the new dwelling place. *Estate of Peck v. Chambers*, 80 N.M. 290, 292, 454 P.2d 772, 774 (1969). In *Hagan v. Hardwick*, 95 N.M. 517, 519, 624 P.2d 26, 28 (1981), the New Mexico Supreme Court set out the following standard for determining a change in domicile, quoting from *Shilkret v. Helvering*, 138 F.2d 925, 927 (D.C. Cir.1943):

[T]o effect a change from an old and established domicile to a new one, there must be...a fixed purpose to remain in the new location permanently or indefinitely. For domicile once acquired is presumed to continue until it is shown to have changed, and to show the change two things are indispensable,--"First, residence in the new locality; and, second, the intention to remain there...."

Texas uses the same basic criteria as New Mexico in determining a person's domicile. In Texas, the essential elements of domicile are an actual residence and the intent to make it one's permanent home. *Snyder v. Pitts*, 241 S.W.2d 136, 139 (Tex. 1951). "Home" is defined to mean a person's "true, fixed and permanent home and principal establishment, and to which, whenever he is absent, he has the intention of returning." *Id.* See also, *Texas v. Florida*, 306 U.S. 398, 424 (1939) (residence in fact, coupled with the purpose to make the place of residence one's home, are the essential elements of domicile). In *Pecos v. N.T. Ry. Co. v. Thompson*, 167 S.W. 801, 803 (Tex. 1914), the Texas Supreme Court defined domicile in the following terms:

"Residence" means living in a particular locality, but "domicile" means living in that locality with the intent to make it a fixed and permanent home. Residence simply requires bodily presence as an inhabitant in a given place, while domicile requires bodily presence in that place, and also an intention to make it one's domicile.

As the cases makes clear, domicile is not determined by intention alone. The intent to make a place one's home must be concurrent with "bodily presence as an inhabitant." See also, *Owens Corning v. Carter*, 997 S.W.2d 560, 571 (Tex 1999) (a permanent residence in Texas requires a home and fixed place of habitation to which a person intends to return when away). An intent

subject to a future contingency does not establish domicile. *Prince v. Inman*, 280 S.W.2d 779, 782 (Tex. 1955); *Tovar v. Board of Trustees of Somerset Independent School District*, 994 S.W.2d 756, 762 (Tex. App.—Corpus Christi 1999).

Application of the Law of Domicile to the Facts. Based on the law of both New Mexico and Texas, there is a presumption that the Taxpayers' domicile in New Mexico continued throughout 1998. In order to overcome this presumption, the Taxpayers must show that, prior to December 31, 1998, they had an actual residence in Texas coupled with the concurrent intent to abandon their domicile in New Mexico and make the Texas residence their permanent home. Given these requirements, if the Taxpayers' domicile did change during 1998, the change must have occurred during one of their three visits to Austin in June, July and November of that year.

June 1998 Trip. The Taxpayers made their first visit to Austin in June 1998. Over a period of two or three days, they met with a realtor who showed them different housing developments in the area. The Taxpayers were favorably impressed with the Marina Club Condos and discussed building plans with an architect and builder. After these discussions, they contracted to purchase a lot in the development for \$85,000 and put down a deposit. The Taxpayers also obtained a mail box at Mail Boxes, Etc. and opened a bank account with a \$1,000 deposit. These facts indicate the Taxpayers had formed the intention of making Austin their home *at some point in the future*. They clearly did not intend to make Austin their fixed and permanent home in June 1998 because they had no residence in the city, nor did they take any steps to establish one at that time. Instead, they left Austin after a brief stay of two or three days and returned to their existing home in Santa Fe.

July 1998. In late July 1998, the Taxpayers made their second trip to Austin and again stayed for just a few days. Prior to the trip, Mr. Jacobs conducted telephone negotiations with an Austin automobile dealer for the purchase of a Toyota SUV. The dealer met the Taxpayers at the airport when they arrived in Austin and drove them back to the dealership to complete the paperwork on the purchase of the vehicle, which was then registered in Texas. During this second trip, the Taxpayers obtained Texas drivers' licenses and registered to vote.

Registering to vote in a state is usually a strong indication of domicile, as is obtaining a driver's license. *See, e.g.*, Department Regulation 3.3.1.9(C) NMAC. In this case, however, it does not appear that the Taxpayers' actions were in accordance with Texas law. In order to be qualified to vote in Texas, a person must be a resident of the state. *See*, Texas Constitution, Article 6 § 2; Texas Election Code § 11.002. Section 1.015(a) of the Election Code defines "residence" as follows: "In this code, 'residence' means domicile, that is, one's home and fixed place of habitation to which one intends to return after any temporary absence." In completing their voter registration forms, the Taxpayers used the physical address of the unimproved lot they had contracted to purchase at the Marina Club Condos. This lot did not qualify as the Taxpayers' "home and fixed place of habitation" as required by the Texas Election Code. The Taxpayers would not even close on the purchase of the lot until September 1998, more than a month in the future.

In July 1998, the Taxpayers had no residence or fixed place of habitation in Austin, nor did they have any present intention of making Austin their home. What they intended was to make Austin their home upon construction of a house on the lot in Marina Club Condos. In the meantime, they planned to return to and live in their existing home in Santa Fe, New Mexico.

This conclusion is bolstered by the fact that after staying two or three days in Austin, the Taxpayers drove the new Toyota SUV they had purchased and registered in Texas back to Santa Fe, where it still remains almost three years later. The Taxpayers subsequently purchased a second vehicle from the Austin dealer. It, too, was registered in Texas before being delivered to the Taxpayers in New Mexico. Since its purchase, this second vehicle has been garaged and driven in Santa Fe.¹

November 1998 Trip. On November 16, 1998, Mr. Jacobs made a third trip to Austin. He met with the architect and builder for Marina Club Condos and entered into a contract for construction of a 3,300-square-foot house on the lot he had previously purchased. The construction was expected to take seven to nine months. On November 18, 1998, Mr. Jacobs signed a six-month lease on a one-bedroom, 500-square-foot unfurnished apartment in Austin. The lease term ran from December 1, 1998 to May 31, 1999 at a rent of \$570 per month. Mr. Jacobs left Austin prior to the beginning of the lease term and returned to Santa Fe, where he and Mrs. Jacobs spent Thanksgiving, Christmas and New Year's Eve of 1998 with their family.

Although the Austin apartment provided the Taxpayers with a place where they could have established residence in Texas, they did not occupy the apartment during 1998. After signing the lease on November 18th, Mr. Jacobs returned immediately to his home in Santa Fe. Throughout December 1998, the Austin apartment remained empty and unfurnished. The Taxpayers' first visit to the apartment did not occur until January 1999. At that time, they brought bedding, a television and stereo, kitchen utensils and clothing from Santa Fe and

¹ As Department counsel pointed out at the hearing, even if the Taxpayers were found to be residents of Texas, they are in violation of New Mexico law by failing to register their vehicles in New Mexico. Section 66-3-301(A) NMSA 1978 provides that a nonresident owner of a vehicle registered outside the state may use that vehicle in New Mexico for a period of only 180 days. Once that limit has been reached, the vehicle must be registered in New Mexico.

purchased cleaning supplies and other necessary items in Austin. The Taxpayers did not bring any furniture from their Santa Fe condominium. Mr. Jacobs testified that the Taxpayers intended to furnish the house to be built at Marina Club Condos with furniture they had stored from their former residence in Kansas City. There is no evidence, however, that the Taxpayers moved any of this furniture into the Austin apartment, which Mr. Jacobs acknowledged was never fully furnished. The Taxpayers stayed at the apartment for only two or three days before returning, once more, to Santa Fe.

As discussed above, the evidence shows that sometime during 1998 the Taxpayers formed the intention of moving to Austin after completion of the house at Marina Club Condos. The decision to move was based on a number of factors, including the desire to obtain a more favorable tax climate than that provided by New Mexico. As more and more problems arose with the construction project, however, the intent to relocate to Austin waned and all that remained was a determination to create a Texas residence for purposes of avoiding payment of New Mexico taxes. It is perfectly legitimate for a person to change his domicile in order to avoid payment of taxes that would otherwise be due to his current state of residence. In order to effect the change, however, intent must be coupled with concurrent action. As the United States Supreme Court stated in *Texas v. Florida*, 306 U.S. 398, 425-426 (1939):

While one's statements may supply evidence of the intention requisite to establish domicile at a given place of residence, they cannot supply the fact of residence there; [citations omitted] and they are of slight weight when they conflict with the fact. [citations omitted] This is the more so where, as here, decedent's declarations are shown to have been inspired by the desire to establish a nominal residence for tax purposes, different from his actual residence in fact....

...

Whatever floating intention Green may have had after 1911 to return to Texas and to make his home there, it is plain that it receded into the background after his mother's death and had completely vanished when he began to build up his extensive estate at Round Hills in Massachusetts.... He could not elect to make his home in one place in point of interest and attachment and for the general purposes of life, and in another, where he in fact had no residence, for the purpose of taxation.

In this case, the Taxpayers' desire to obtain a more favorable tax climate by moving to Texas was never coupled with the actions necessary to abandon their domicile in New Mexico and establish a new domicile in Texas. This conclusion is supported by the following facts:

Since at least 1997, when they sold their Kansas condominium, the Taxpayers have lived (*i.e.*, have had a continuous physical presence) in Santa Fe, New Mexico, and this is the place to which they have returned after any temporary absences.

Until June 2000, the Taxpayers lived in a 3,000-square-foot condominium at Quail Run in Santa Fe. In June 2000, they sold their Quail Run condominium for \$850,000 and purchased a 5,600-square-foot house on North Summit Drive in Santa Fe for \$1.9 million dollars. The Taxpayers subsequently spent a substantial amount of time and money remodeling, landscaping and decorating the new Santa Fe house.

Although Mr. Jacobs refers to his Santa Fe homes as vacation homes, and asserts that the 500-square-foot, partially-furnished, \$570-a-month rented apartment in Austin has been his primary residence since December 1998, the Taxpayers never occupied the Austin apartment in 1998. They spent less than a week in Austin during calendar years 1999 and 2000 and no time there during the first three months of 2001. During this same time period, the Taxpayers spent between 265 and 290 days a year in Santa Fe.

From mid-1998 through March 2001, the two vehicles the Taxpayers purchased in Austin were garaged and driven in Santa Fe. The Taxpayers maintained a Texas registration on both vehicles, even though New Mexico law requires vehicles that are used within this state for more than 180 days to be registered in New Mexico. *See* Section 66-3-301 NMSA 1978.

From mid-1998 through March 2001, the Taxpayers used the address of the private post office box at Mail Boxes, Etc., in Austin for tax filing purposes and other business correspondence. Once a month, Mail Boxes, Etc. packaged up the mail received at the Austin address and forwarded it to Mr. Jacobs in Santa Fe.

From mid-1998 through March 2001, the Taxpayers made no attempt to involve themselves in the business or social community of Austin, and the activities of their daily life continued to be centered in Santa Fe. When the Department's counsel asked Mr. Jacobs why he and his wife had not made business contacts, joined clubs or become involved in the Austin community, he responded: "Because we weren't there."

All of these facts establish that the Taxpayers' outward manifestations of a change of domicile to Texas, *i.e.*, registering to vote, obtaining driver's licenses, registering their vehicles, renting an apartment and changing their business address, were a matter of form over substance. While the Taxpayers undoubtedly intended to move to Austin at one time, this intention never came to fruition and has since been largely abandoned. An intent to move to another state at some point in the future is not sufficient to effect a change of domicile. Nor is intent sufficient without the required "bodily presence as an inhabitant". *Pecos v. N.T. Ry. Co. v. Thompson*, 167 S.W. 801, 803 (Tex. 1914). This is particularly true when a person continues to live and conduct his daily life in the state where his domicile was previously fixed.

On December 31, 1998, the Taxpayers were still domiciled in and residents of New Mexico. Accordingly, they were required to allocate all of Mr. Jacobs' compensation from Syntroleum Corporation to this state on their 1998 PIT-1 return. Based on this conclusion, there is no need to address the issue of how much, if any, of Mr. Jacobs' 1998 income was earned outside New Mexico.

CONCLUSIONS OF LAW

1. The Taxpayers filed a timely, written protest to the Department's denial of their claim for refund of 1998 personal income taxes, and jurisdiction lies over the parties and the subject matter of this protest.
2. The Taxpayers were domiciled in and residents of New Mexico on December 31, 1998.
3. The Taxpayers were required to allocate all of Mr. Jacobs' compensation from Syntroleum Corporation to New Mexico on their 1998 PIT-1 return.

For the foregoing reasons, the Taxpayers' protest is DENIED.

DATED April 23, 2001.