STATE OF NEW MEXICO
ADMINISTRATIVE HEARINGS OFFICE
TAX ADMINISTRATION ACT

IN THE MATTER OF THE PROTEST OF
SMPC, P.A. **No. 16-45**
TO ASSESSMENT ISSUED UNDER LETTER
ID NO. L1466178512

DECISION AND ORDER

A protest hearing occurred on the above captioned matter on June 17, 2016 before Brian VanDenzen, Esq., Chief Hearing Officer, in Santa Fe. At the hearing, Glen Fellows and David Cook of SMPC, P.A. ("Taxpayer") appeared, along with representatives Daniel Farley, C.P.A, and James Ortiz of REDW, LLC. Staff Attorney Elena Morgan appeared representing the State of New Mexico Taxation and Revenue Department ("Department"). Protest Auditor Danny Pogan and Auditor Angela Hernandez appeared as witnesses for the Department. Taxpayer Exhibit #1 and Department Exhibits A-E were admitted into the record. All exhibits are more thoroughly described in the Administrative Exhibit Coversheet. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. On December 1, 2014, through letter id. no. L1466178512, the Department assessed Taxpayer for $109,066.22 in gross receipts tax, $21,814.83 in penalty, and $11,813.16 in interest for a total assessment of $142,694.21 for the CRS reporting periods from January 31, 2008 through December 31, 2013.

2. On December 15, 2014, Taxpayer protested the Department's assessment.

3. The Department received the protest on December 19, 2014.

4. On January 5, 2015, the Department's protest office acknowledged receipt of a valid protest in this matter.

5. On February 27, 2015, the Department filed a request for hearing in this matter with the Hearings Bureau[1].

6. On February 27, 2015, the Hearings Bureau sent Notice of Telephonic Scheduling Hearing, scheduling this matter for a scheduling hearing on March 13, 2015.

7. On March 13, 2015, within 90-days of the Department's receipt and acknowledgement of a valid protest, the Hearings Bureau conducted a scheduling hearing in the above-captioned matter. Neither party objected that conducting the scheduling hearing satisfied the 90-day hearing requirement under the statute while also allowing for a full discovery process and fair hearing as also required under NMSA 1978, Section 7-1-24.1.

8. On March 13, 2015, the Hearings Bureau issued a Scheduling Order and Notice of Administrative Hearing, setting discovery and motions deadlines as well as a merits hearing date on December 8, 2015.

9. On December 1, 2015, Taxpayer moved to continue the scheduled December 8, 2015 hearing date because it was still gathering evidence for the hearing. The Department did not object to the continuance request.

10. On December 4, 2015, the Administrative Hearings Office issued a Continuance Order, Amended Scheduling Order, and Notice of Administrative Hearing, resetting the hearing date from December 8, 2015 to May 31, 2016.

[1] On July 1, 2015, pursuant to enacted Senate Bill 356, the Hearings Bureau became the Administrative Hearings Office ("AHO"). The Hearings Bureau will be used for events that occurred before July 1, 2015, even though the hearing occurred before the new Administrative Hearings Office, an agency now independent of the Taxation and Revenue Department.

11. On May 31, 2016, the hearing in this matter went on the record, with Glen Fellows and David Cook of Taxpayer present, along with representative James Ortiz. However, the matter was continued so that Taxpayer could secure an authorized representative under the statute.

12. On May 31, 2016, the Administrative Hearings Office issued a Continuance Order and Amended Notice of Administrative Hearing, resetting the matter for a hearing on June 17, 2016.

13. A full hearing on the merits occurred in this matter on June 17, 2016.

14. Taxpayer provides architectural services as part of design-build construction contracts.

15. Taxpayer's architectural services were resold by the general contractor under the design-build construction contract to the other party under the design-build contract.

16. The general contractor paid the gross receipts tax associated with the design-build contract.

17. Taxpayer requested nontaxable transaction certificates ("NTTC or NTTCs") from the general contractors under the projects.

18. Taxpayer timely possessed properly executed Type 6 NTTCs in good faith from the various construction contractors it provided the architectural design services to as part of the design-build construction contracts.

19. In 2014, the Department selected Taxpayer for an audit of gross receipts tax, compensating tax, and withholding tax for the reporting periods from January 1, 2008 through December 31, 2013.

20. Upon audit, the Department disallowed the deductions where Taxpayer possessed Type 6 NTTCs because the Department determined that since Taxpayer was not a licensed construction contractor and was providing indirect construction services, Taxpayer could only accept a Type 5 NTTC, supporting the sale of a service for resale deduction.

21. If Taxpayer would have possessed Type 5 NTTCs, then the Department would have allowed the claimed deductions in this matter under the a sale of a service for resale deduction.

22. Because of a statutory change in 2012, architectural services now fall under the construction service for resale covered by a Type 6 NTTC.

DISCUSSION

The only issue in this is whether Taxpayer's timely receipt of properly executed Type 6 NTTCs provides Taxpayer with safe-harbor from the assessed tax. Taxpayer argues that under controlling case law, it is entitled to the claimed deduction because it timely accepted the Type 6 NTTCs in good faith. However, the Department argues that Taxpayer did not demonstrate that it accepted the Type 6 NTTC in good faith because it should have known that a Type 5 NTTC was required rather than a Type 6 NTTC and that blind acceptance of a NTTC is insufficient to establish good faith.

Presumption of Correctness.

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).

Moreover, "[w]here an exemption or deduction from tax is claimed, the statute must be construed strictly in favor of the taxing authority, the right to the exemption or deduction must be clearly and unambiguously expressed in the statute, and the right must be clearly established by the taxpayer." *Wing Pawn Shop v. Taxation and Revenue Department*, 1991-NMCA-024, ¶16, 111 N.M. 735 (internal citation omitted); *See also TPL, Inc. v. N.M. Taxation & Revenue Dep't*, 2003-NMSC-7, ¶9, 133 N.M. 447. Because Taxpayer is claiming a deduction from gross receipts tax, Taxpayer must establish its right to claim the deduction.

Gross Receipts Tax, the Exemptions, and NTTCs

For the privilege of engaging in business, New Mexico imposes a gross receipts tax on the receipts of any person engaged in business. *See* NMSA 1978, § 7-9-4 (2002). Under NMSA 1978, Section 7-9-3.5 (A) (1) (2007), the term "gross receipts" is broadly defined to mean

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

"Engaging in business" is defined as "carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit." NMSA 1978, § 7-9-3.3 (2003). Gross receipts applies to the performance of a service in New Mexico. *See* NMSA 1978, § 7-9-3.5 (2007). Under the Gross Receipts and Compensating Tax Act, there is a statutory presumption that all receipts of a person engaged in business are taxable. *See* NMSA 1978, § 7-9-5 (2002).

The New Mexico Gross Receipts and Compensating Tax Act provides numerous deductions of gross receipts tax. Two possible deductions are potentially applicable to the transaction in question. First, under the sale of a service for resale deduction, NMSA 1978, Section 7-9-48 (2000) states that:

> Receipts from selling a service for resale may be deducted from gross receipts or governmental gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must resell the service in the ordinary course of business and the resale must be subject to the gross receipts tax....

The deduction is premised on the sale of a service for resale when the resale occurs in the regular course of business and the resale is subject to New Mexico gross receipts tax. Here, the evidence established that the general contractor was reselling Taxpayer's architectural services and paying the gross receipts tax under the contract. Thus, so long as Taxpayer met the NTTC requirements, the transaction in question falls under the sale of a service for resale deduction described under under Section 7-9-48, a point that the Department acknowledged at hearing. This deduction is covered by a Type 5 NTTC. Although the transactions at issue themselves may have qualified for this deduction, because Taxpayer did not possess Type 5 NTTCs, Taxpayer did not satisfy the NTTC requirement of this deduction and the Department disallowed the claimed deductions on this basis.

The other deduction potentially at issue in this protest is found under NMSA 1978, Section 7-9-52 (A) (2000, before 2012 amendment), which states:

> Receipts from selling a construction service may be deducted from gross receipts if the sale is made to a person engaged in the construction business who delivers a nontaxable transaction certificate to the person performing the construction service.

The deduction is covered by a Type 6 NTTC. In the 2012 amendment to Section 7-9-52, architecture was listed as a "construction-related service" for the purpose of that section. Before that

amendment, by Regulation 3.2.1.11 (A) (2) NMAC, architecture services were not considered construction services. Thus, during most of the audit period, Taxpayer's selling of architectural design services did not meet the "construction service" requirement of the Section 7-9-52 deduction even though Taxpayer possessed the Type 6 NTTC. For this reason, the Department did not accept the Type 6 NTTCs to substantiate the claimed deductions.

Does the NTTC, good-faith, safe harbor provision apply?

Nevertheless, despite not possessing the correct type of NTTC to support the deduction, Taxpayer argues that because it timely accepted the Type 6 NTTC in good faith, the good-faith, safe harbor protection under NMSA 1978, Section 7-9-43 (A) (2011) from the assessed tax.

Section 7-9-43 (A) grants taxpayers a good-faith acceptance, safe harbor from taxation protection in some circumstances:

> [w]hen the seller or lessor accepts a nontaxable transaction certificate within the required time and in good faith that the buyer or lessee will employ the property or service transferred in a nontaxable manner, the properly executed nontaxable transaction certificate shall be conclusive evidence, and the only material evidence, that the proceeds from the transaction are deductible from the seller's or lessor's gross receipts.

In other words, the statute grants the seller of the service safe harbor from taxation when the seller timely accepts a properly executed NTTC in good faith from the buyer. Regulation 3.2.201.15 NMAC (05/31/01) discusses good faith acceptance of a NTTC:

> Acceptance of [NTTCs] in good faith that the property or service sold thereunder will be employed by the purchaser in a nontaxable manner is determined at the time of each transaction. The taxpayer claiming the protection of a certificate continues to be responsible that the goods delivered or services performed thereafter are of the type covered by the certificate.

The Administrative Hearings Office, and its predecessor the Hearings Bureau, have employed a broader view of the good-faith, safe harbor protection since the 2013 issuance of the

decision and order *In the Matter of the Protest of Case Manager*, No. 13-12 (non-precedential) and *In the Matter of the Protest of Rio Grande Electric Co., Inc,* No. 13-16 (non-precedential). In an unpublished decision, the New Mexico Court of Appeals affirmed the ruling in the *Case Manager* decision and order narrowly under a right for any reason standard. *See New Mexico Taxation and Revenue Dep't. v. Case Manager*, No. 32,940 (N.M. Ct. App. April 29, 2015) (non-precedential). On July 25, 2016, the Court of Appeals looked favorably upon the good-faith, safe harbor provision as previously applied by the Administrative Hearings Office/Hearings Bureau *In the Matter of the Protest of Case Manager*, No. 13-12 (non-precedential). *See Southwest Mobile Service and Richard Cameron v. New Mexico Taxation and Revenue Department*, No. 34,551 (N.M. Ct. App. July 25, 2016) (non-precedential) (although the Court of Appeals overturned the hearing officer on whether the good faith analysis applies on a MTC rather than a NTTC, it relied extensively on the *Case Manager* analysis in reaching its conclusion).

NTTCs and the safe harbor provision have been addressed in numerous Court of Appeal decisions over the years. In *Leaco Rural Tel. Coop. v. Bureau of Revenue*, 1974-NMCA-076, ¶15, 86 N.M. 629, the New Mexico Court of Appeals considered what requirements must be met "before an NTTC becomes conclusive evidence that proceeds of a transaction are deductible." While the *Leaco* Court of Appeals was considering NMSA 1978, §7-9-43(A) (2011)'s predecessor statue, NMSA 1953, Section 72-16A-13(A), the good faith, safe harbor provision of both statutes is substantially the same. In *Leaco*, a buyer had executed a NTTC to a seller for a transaction held to be subject to tax. The *Leaco* court found that a seller-taxpayer must satisfy three statutory requirements before the good faith, safe harbor protection attaches to the transaction. *See id*. As the *Leaco* Court of Appeals expounded, those three "requirements are timeliness of acceptance of the NTTC, good faith acceptance of the NTTC and a properly executed NTTC." *id*. By "properly

executed" the *Leaco* Court of Appeals—relying on the Black's Law Dictionary—meant only that the NTTC forms were filled out and signed. *See id*. If these three conditions are met, then the *Leaco* Court of Appeals found that the NTTC becomes the only material and conclusive evidence establishing that the seller-taxpayer is entitled to the claimed deduction even when the buyer improperly issued the NTTC to the seller. *See id; See also Rainbo Baking Co. v. Commissioner of Revenue*, 84 N.M. 303, 305 502 P.2d 406, 408 (N.M. Ct. App. 1972) (absent a claim of bad faith, some other issue of good faith, or a claim of improper execution of the NTTC, a taxpayer's presentation of the NTTC established that taxpayer's claim with conclusive evidence). The *Leaco* Court of Appeals found no relevance to the fact that the buyer had improperly issued a NTTC to the seller by stating that was an issue between the Department and the buyer. *See Leaco* at 632, 429.

While *Leaco* found no relevance to whether the buyer improperly issued a NTTC to the seller, the Court of Appeals modified that stance somewhat when it found in *McKinley Ambulance Serv. v. Bureau of Revenu*e, 92 N.M. 599, 601, 592 P.2d 515, 517 (N.M. Ct. App. 1979) that the good-faith, conclusive evidence provision did not protect a seller from taxation "unless the certificate covered the receipts in question." That is, since there was "no certificate applicable" for the type of services that taxpayer provided, the *McKinley Ambulance Serv.* Court of Appeals upheld the Department's denial of the deduction. *id*. at 602, 58. Similarly (although perhaps in dicta), the Court of Appeals in *Gas Co. v. O'Cheskey*, 94 N.M. 630, 632, 614 P.2d 547, 549 (N.M. Ct. App. 1980) stated that "[t]he issuance of a 'Nontaxable Transaction Certificate' does not operate to transform an otherwise taxable transaction into a nontaxable transaction." However, the *Gas Co.* Court of Appeals expressly noted that *Leaco* remained an exception. *See Gas Co.* at 632, 549. Since *Gas Co*. was decided after *McKinley Ambulance Serv., Gas Co.*'s subsequent reaffirmation of *Leaco* meant that *Leaco* remained good law even after *McKinley Ambulance Serv.* In *Arco Materials v.*

Taxation & Revenue Dep't, 118 N.M. 12, 15-16, 878 P.2d 330, 333-334 (N.M. Ct. App. 1994), rev'd on other grounds, 118 N.M. 647, 884 P.2d 803 (1994), the Court of Appeals cited Regulation 3.2.201.15 NMAC (05/31/01) favorably in finding that a taxpayer was not protected by its acceptance of an executed NTTC when a change in law rendered the executed NTTC invalid for the transaction in question. *See also Proficient Food Co. v. New Mexico Taxation & Revenue Dep't*, 107 N.M. 392, 397, 758 P.2d 806, 811 (N.M. Ct. App. 1988) (taxpayer not entitled to a deduction when the nontaxable transaction form presented was not in the NTTC form proscribed by the Department).

Leaco and not *McKinley Ambulance Serv.*, *Arco*, *Proficient Food Co.*, or *Gas Co*. control the outcome of this protest both because those other cases are distinguishable from transaction at issue in this protest and because NMSA 1978, §7-9-43(A) (2011) must be read to give full effect to that statute's good-faith, safe harbor provision. The transaction at issue between Taxpayer and the general contractors qualified for a deduction under NMSA 1978, § 7-9-48 (2000) because Taxpayer sold the general contractors architectural services, which the general contractors resold under the design-build contracts, the resale of which was subject to gross receipts tax that was in fact paid. *McKinley Ambulance Serv*. is distinguishable from the facts of this protest. Unlike here, the Court of Appeals in *McKinley Ambulance Serv*. found that transaction at issue in that case was taxable and not covered by the claimed deduction. *See McKinley Ambulance Serv*. at 601, 517. The fact that no certificate could have covered the transaction (because Taxpayer's services did not qualify for a deduction) was an important part of the Court of Appeals finding in *McKinley Ambulance Serv*. *See id*. at 602, 518. This protest is not the *McKinley Ambulance Serv.* or *Gas Co.* scenario where Taxpayer is attempting to convert a taxable transaction not covered by any recognized deduction into a nontaxable transaction by virtue of NMSA 1978, §7-9-43(A) (2011)'s good faith, conclusive

evidence safe harbor provision. Nor is this the *Arco* case, where a statutory change rendered the executed NTTC invalid for the underlying transaction. Moreover, this is also not the *Proficient Food Company* case because all the NTTCs executed in this matter were on a form proscribed by the Department. In this case, Taxpayer merely seeks to substantiate a deduction for a transaction that but for the procedural NTTC issue would, as the Department indicated at hearing, qualify as a recognized and proper deduction under NMSA 1978, § 7-9-48 (2000).

The other reason *McKinley Ambulance Serv., Arco,* and Regulation 3.2.201.15 NMAC (05/31/01) do not control the outcome of this protest has to do with giving full effect to NMSA 1978, §7-9-43 (A) (2011)'s good faith, conclusive evidence safe harbor provision. Statutes are to be interpreted in a manner to give the entire statute effect and not render portions of the statute superfluous. *See Regents of the Univ. of New Mexico v. New Mexico Fed'n of Teachers,* 1998-NMSC-20, ¶28, 125 N.M. 401, 411, 962 P.2d 1236, 1246 (N.M. 1998). If the answer to the remaining issue in this protest is that Taxpayer is not entitled to the statute's good-faith safe harbor protection merely because the general contractors timely and properly executed an incorrect type of NTTC to Taxpayer, then the safe-harbor protection of NMSA 1978, §7-9-43 (A) (2011) would be superfluous. That is so because if the good faith safe harbor only applied to instances where the buyer timely executed a proper type of NTTC to a seller-taxpayer for a legitimately deductible transaction, a seller-taxpayer would have already qualified for the deduction under the first portion of NMSA 1978, §7-9-43 (A) (2011) without ever having to consider that statute's safe harbor provision. In other words, there would be no purpose in creating a good faith, safe harbor exception to the statute's NTTC requirements if the only way a taxpayer could ever qualify for the exception is by otherwise satisfying the statute's primary NTTC requirements. In simplest form, there is no meaningful exception to the rule if the exception itself requires full compliance with the rule.

Therefore, in order to give full effect to NMSA 1978, §7-9-43 (A) (2011), the good-faith safe harbor provision protects Taxpayer when the transaction itself is covered by a recognized deduction and when Taxpayer timely accepted a properly completed NTTC even though the Type 6 NTTC was the incorrect type of NTTC.

Under the three-part *Leaco* good-faith, conclusive evidence test, Taxpayer presented conclusive evidence that it is entitled to the claimed deduction. The first prong is the timeliness of acceptance of a NTTC. *See Leaco* at 632, 429. There is no dispute that Taxpayer timely received/possessed the Type 6 NTTCs at issue. The second *Leaco* factor is whether there was a properly executed NTTC. *See Leaco* at 632, 429. Again, by "proper execution", the *Leaco* court meant that the NTTC was filled out, signed, and completed. *See id.* In this case, there is no dispute that the Type 6 NTTCs at issue were properly filled out, signed, and completed. The fact that the general contractors improperly executed a Type 6 NTTC to Taxpayer rather than a Type 5 NTTC that covered the transaction is an issue between the Department and the general contractors. *See Leaco* at 632, 429.

The final requirement under *Leaco* is good faith acceptance. *See id*. Section 7-9-43, Regulation 3.2.201.15 NMAC, and *Leaco* do not expressly define what is meant by good faith acceptance of a NTTC. However, another recent Court of Appeal cases provided some guidance on what is meant by good faith acceptance of a NTTC. In *Cont'l Inn v. N.M. Taxation & Revenue Dep't*, 113 N.M. 588, 591-592, 829 P.2d 946, 949-950 (N.M. Ct. App. 1992), the Court of Appeals rejected a claim of no good faith because "the timely delivery of a NTTC from the buyer to the seller convey[ed] a message to the seller that the use of the NTTCs is such that the seller is entitled to deductions…" *id*. at 592, 950. In other words, the message conveyed by a buyer to a seller by the

issuance of a NTTC is enough for the seller to have good faith (or at least not bad faith) that it is entitled to a deduction for the transaction at issue.

Further, in other contexts, the New Mexico Court of Appeals has turned to Black's Law Dictionary to define good faith. In the case *Erica, Inc. v. N.M. Regulation & Licensing Dep't*, 2008 NMCA 65, ¶18, 144 N.M. 132, 140, 184 P.3d 444, 452 (N.M. Ct. App. 2008), the Court of Appeals stated that

> [g]ood faith is a broad term: "The phrase 'good faith' is used in a variety of contexts, and its meaning varies somewhat with the context." Black's Law Dictionary 701 (7th ed. 1999) (internal quotation marks and citation omitted) (defining good faith as "A state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage").

Considering these conceptions of good faith in applying the final *Leaco* safe harbor requirement, Taxpayer in good faith believed that the Type 6 NTTCs issued by the general construction contractors, whom assured Taxpayer that they paid the gross receipts tax under the design-build contracts, allowed Taxpayer to deduct the gross receipts. Like discussed in *Cont'l Inn* at 592, 950, Taxpayer's belief and acceptance of the executed Type 6 NTTC was not unreasonable or in bad faith given the message that the general contractors issuance of that NTTC sent to Taxpayer. There is no evidence on this record that Taxpayer acted with dishonesty, deceit, with intent to defraud, or in any other malevolent manner in accepting the Type 6 NTTCs. Indeed, a basic reading of the language of just Section 7-9-52 would suggest that Taxpayer was entitled to accept a Type 6 NTTCs for these transactions (only a regulation indicated at that time that architectural services were not construction services). And after the Legislature passed the 2012 amendment, Taxpayer would be eligible to use the Type 6 NTTC for the same type of transactions at issue in this protest. To say that acceptance of a Type 6 NTTC in good faith, a type of NTTC

expressly allowed for the exact same transaction at issue in this protest, was insufficient for Taxpayer to substantiate a deduction it was otherwise qualified for, would be to put form over substance.

By presenting a timely executed, completed Type 6 NTTC, accepted in good-faith, Taxpayer met its initial burden and shifted the burden to the Department to establish that Taxpayer was not entitled to the good-faith, safe harbor provision. *See Siemens Energy & Automation, Inc. v. New Mexico Taxation and Revenue Department*, 119 N.M. 316, 318, 889 P.2d 1238, 1240 (Ct. App. 1994) (presentation of a multistate nontaxable transaction certificate satisfied presumption of correctness and shifted burden to Department to show certificate was invalid); *See also MPC Ltd.* at ¶13, 220, 311. The Department did not allege or prove that Taxpayer did not act in good faith in accepting the Type 6 NTTC. The facts of this case fall under the *Cont'l Inn* conception of good faith and meet the Black's Law Dictionary definition of good faith cited favorably by the Court of Appeals in *Erica, Inc.* at ¶18, 140.

In summary, all three *Leaco* requirements for the good faith, conclusive evidence protection under the statute are met in this case. Consequently, *Leaco* dictates in this circumstance that the timely executed Type 6 NTTC Taxpayer accepted in good faith is conclusive evidence under NMSA 1978, §7-9-43(A) (2011) that Taxpayer is entitled to the deduction under NMSA 1978, § 7-9-48. Taxpayer's protest to the assessment is granted.

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 protest under NMSA 1978, Section 7-1B-8 (2015).

C. Taxpayer sold architectural services under a design-build contract that the construction general contractor resold in its regular course of business and paid gross receipts tax on the resale, making the transaction eligible for a deduction under NMSA 1978, § 7-9-48 (2000).

D. Taxpayer's possession of a timely executed and properly completed Type 6 NTTC accepted in good faith is conclusive evidence under NMSA 1978, §7-9-43(A) (2011) that Taxpayer was entitled to the claimed deductions. *See Leaco Rural Tel. Coop. v. Bureau of Revenue*, 86 N.M. 629, 632, 526 P.2d 426, 429 (N.M. Ct. App. 1974).

E. Taxpayer overcame the presumption of correctness that attached to the assessment under NMSA 1978, Section 7-1-17 (C) (2007) and *Archuleta v. O'Cheskey*, 1972-NMCA-165, ¶11, 84 N.M. 428 by establishing that the transactions at issue were the subject of a recognized deduction and that Taxpayer timely accepted a properly completed NTTC in good faith.

For the foregoing reasons, the Taxpayer's protest **IS GRANTED. IT IS ORDERED** that the assessment is abated in its entirety.

DATED: September 15, 2016.

Brian VanDenzen
Chief Hearing Officer
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