STATE OF NEW MEXICO
ADMINISTRATIVE HEARINGS OFFICE
TAX ADMINISTRATION ACT

IN THE MATTER OF THE PROTEST OF
PEABODY COALSALES COMPANY, **No. 17-34**
TO THE DENIAL OF REFUND ISSUED UNDER
LETTER ID NO. L0001503792

DECISION AND ORDER

A formal hearing on the above-referenced protest was held on June 15 and 16, 2017 before Hearing Officer Dee Dee Hoxie. The Taxation and Revenue Department (Department) was represented by Ms. Lauren Keefe, Attorney, and by Mr. Marek Grabowski, Staff Attorney. Mr. Danny Pogan, Auditor, also appeared on behalf of the Department. Dr. Corey Leclerc appeared as a witness for the Department. Mr. Chris Holland and Ms. Suzanne Bruckner, attorneys for Peabody Coalsales Company (Taxpayer), appeared for the hearing. Mr. Josh Cohen and Mr. Josh Killian of Ryan LLC also appeared for the Taxpayer. Mr. David Jacobs, Mr. Mitch Knapton, and Dr. Richard Holder appeared as witnesses for the Taxpayer. Mr. Cohen, Mr. Jacobs, Mr. Knapton, Dr. Holder, Mr. Pogan, and Dr. Leclerc testified at the hearing.

The Taxpayer's exhibits #1, #2, #3, #4, #5, #8, #11, #12, #15, #16, #17, and #19 were admitted. The Department's exhibits "R", "U", "V", and "W" were admitted. A more detailed description of exhibits submitted at the hearing is included on the Administrative Exhibit Coversheet. Some exhibits referred to at the hearing and some parts of exhibits were not accepted because those documents were already contained in the administrative file as attachments to motions, to responses, to the protest, or to other documents. Such exclusions were noted on the record. The Hearings Office prepared a log of the pleadings filed in this case and provided the list to the parties. Neither party objected to the accuracy of the pleadings log.

The Hearing Officer took notice of all documents in the administrative file. The parties were given until July 14, 2017 to file their proposed findings of fact and conclusions of law. Both parties filed timely proposals. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

Procedural history.

1. On November 30, 2015, the Taxpayer filed an application for refund of gross receipts taxes paid from December 2011 through December 2012. The amount of refund claimed was $6,407,751.00.
2. On February 27, 2016, the Department denied the claim for refund.
3. On April 21, 2016, the Taxpayer filed a formal protest letter.
4. On April 28, 2016, the Department acknowledged receipt of the protest.
5. On June 10, 2016, the Department filed a Request for Hearing asking that the Taxpayer's protest be scheduled for a formal administrative hearing.
6. On June 10, 2016, the Hearings Office issued a notice of telephonic scheduling hearing.
7. On June 24, 2016, a telephonic scheduling hearing was conducted. The parties did not dispute that the scheduling hearing occurred within 90 days of the protest.
8. On July 26, 2016, an attorney entered appearance on behalf of the Taxpayer.
9. On July 26, 2016, the Taxpayer filed its preliminary witness and exhibit lists.
10. On July 27, 2016, the Department filed its preliminary witness and exhibit lists.
11. On September 14, 2016, the Taxpayer's attorney filed a motion to withdraw from representation.
12. On October 4, 2016, the Taxpayer's attorney filed a certificate of correct/current address for the Taxpayer.

13. On October 11, 2016, the order granting the motion to withdraw was filed.

14. On February 24, 2017, the Department's outside counsel filed an entry of appearance.

15. On March 3, 2017, the attorneys who represented the Taxpayer at the hearing on the merits filed their entry of appearance.

16. On March 29, 2017, the Department filed a request to extend deadlines, which the Taxpayer did not oppose.

17. On April 19, 2017, the order granting the extension was filed. The new deadline for discovery was May 15, 2017, the new deadline for motions was May 22, 2017, the new deadline for responses was June 5, 2017, and the new deadline for the prehearing statement was June 5, 2017. Other deadlines remained the same, including the general deadline to respond to motions within 15 days of filing.

18. On April 27, 2017, the Taxpayer filed a motion for protective order. The motion included attachments. Part or all of the attachments to this motion are included in the documents that were not admitted separately as exhibits during the hearing since they were already included in the administrative record as attachments[1].

19. On May 1, 2017, the Department requested a hearing on the motion for protective order.

20. On May 2, 2017, the Department filed a response to the motion for protective order. The response included attachments.

21. On May 2, 2017, the Taxpayer filed a motion to compel discovery. The motion included attachments.

[1] This is also true of the attachments mentioned in subsequent findings of fact, including but not limited to #20, #21, #24, #26, #27, #28, #30, and #31.

22. On May 3, 2017, the parties filed a joint request, via email, requesting no ruling on the motion for protective order.

23. On May 3, 2017, an order reserving ruling on the protective order was filed.

24. On May 17, 2017, the Department filed a response to the motion to compel. The response included attachments. The response was filed within 15 days of the motion, although the deadline for discovery had already lapsed.

25. On May 19, 2017, the Hearings Office issued amended notices of hearing, which changed the commencement time of the hearing.

26. On May 22, 2017, the Department filed a motion for partial summary judgment. The motion included attachments.

27. On May 22, 2017, the Taxpayer filed two separate motions for partial summary judgment. Both motions included attachments.

28. On May 22, 2017, the Taxpayer filed a motion to prohibit evidence and argument on legislative intent. The motion included attachments.

29. On June 2, 2017, the order partially granting and partially denying the motion to compel was filed.

30. On June 5, 2017, the Department filed its response to the motion to prohibit. The motion included attachments.

31. On June 5, 2017, the Department filed its responses on each of the motions for partial summary judgment. Both responses included attachments.

32. On June 5, 2017, the joint prehearing statement was filed. The statement indicated that the Department's motion for partial summary judgment was moot as the Taxpayer withdrew the protest as to that issue.

33. On June 6, 2017, the Department's outside counsel filed another entry of appearance.

34. On June 7, 2017, the Taxpayer filed a motion to exclude certain witnesses and exhibits.

35. On June 9, 2017, the order on the motions filed May 22, 2017 was filed. The order reserved ruling on the Taxpayer's motions for partial summary judgment and indicated that the arguments of the motions and responses would be considered as part of the parties' closing arguments. The order also made preliminary findings of fact based on the information in the motions and responses. The parties did not object to any of the preliminary findings of fact.

36. On June 14, 2017, the Department filed its response to the motion to exclude.

37. At the hearing, the Taxpayer's motion to exclude undisclosed witnesses was granted. The witnesses' testimony was expected to deal largely with the documents already attached to motions or responses that had been filed.

38. The Taxpayer's motion to exclude undisclosed exhibits was denied. Almost all of the exhibits at issue had already been entered into the administrative record as attachments to motions or to responses. Moreover, all of the exhibits at issue were public documents.

Legislative History.

39. In 1964, the Legislature established an exemption from the Compensating Tax Act for "chemicals and reagents sold in lots in excess of 18 tons." NMSA 1953, § 72-17-4 (1964).

40. In 1965, the Legislature enacted an exemption from the Emergency School Tax Act for "[t]he gross receipts derived from…retail sales of chemicals and reagents sold in lots in excess of 18 tons." NMSA 1953, § 72-16-15(14) (1965).

41. In 1966, the Legislature repealed the Emergency School Tax Act and the Compensating Tax Act and enacted the Gross Receipts and Compensating Tax Act (GRCTA). Included in the newly created GRCTA were deductions for "receipts from selling chemicals or reagents in lots in excess of eighteen tons" and for "[r]eceipts from selling coal in carload lots". *See* NMSA 1953, § 72-16A-14.21(1966) and § 72-16A-14.20 (1966), respectively.

42. The current statute allowing for deductions for sales of chemicals in lots in excess of 18 tons is worded identically to the statute enacted in 1966. *See* NMSA 1978, § 7-9-65 (1969). *See also* NMSA 1953, § 72-16A-14.21 (1966).

43. In 1973, the deduction for coal sold in carload lots was repealed. *See* NMSA 1953, § 72-16A-14.20 (1973).

44. In 1984, the Department amended the regulation to include a definition of chemical, which is substantially similar to the current definition in the regulation and "means a substance used for producing a chemical reaction." 3.2.223.7 NMAC (2001).

45. Since the deduction for coal sold in carload lots was repealed, the Department has collected gross receipts taxes on sales of coal, whether or not sold in lots in excess of 18 tons. *See Pittsburgh and Midway Coal Mining Co. v. Revenue Division*, 1983-NMCA-019, 99 N.M. 545.

46. In 2001, the Legislature enacted a tax credit for tax paid to the Navajo Nation against gross receipts tax from selling coal severed from Navajo Nation land. *See* NMSA 1978, § 7-9-88.2 (2001). There is no lot requirement or limitation. *See id.*

The Taxpayer's claim for refund.

47. The Taxpayer has consistently paid gross receipts taxes on its sales of coal to its customers.

48. Ryan, LLC is a tax-consulting firm. Ryan, LLC was contacted by one of the Taxpayer's customers to consult about how to lower that customer's costs.

49. Ryan, LLC determined that buying coal was one of the customer's greatest expenses and focused on trying to reduce the customer's coal expense.

50. Ryan, LLC determined that the customer was buying coal from the Taxpayer, and the Taxpayer was charging the customer for the Taxpayer's gross receipts taxes on those sales.

51. Ryan, LLC approached the Taxpayer about requesting a refund of its gross receipts taxes on those sales of coal to its customer, with the understanding that the refunded amount would be returned to the customer.

52. Ryan, LLC proposed that the Taxpayer request a refund under Section 7-9-65 since its sales of coal were in excess of 18 tons.

53. The Taxpayer agreed to the proposition and filed the request for refund.

54. The Taxpayer operates at least two coalmines in McKinley County, New Mexico.

55. The Taxpayer extracts the coal from the earth, breaks the coal into pieces that are three inches or less in diameter (the pieces), and then sells the coal to its customers.

56. The quality of the coal is measured by moisture content, BTU content, sulfur content, and ash content. The price of the coal is adjusted accordingly.

57. The Taxpayer's refund claim is in reference solely to sales made to a single customer, which is a power plant in Arizona (the power plant).

58. The coal was sold to the power plant by the trainload between December 1, 2011 and December 31, 2012.

59. At rail spurs near its coalmines, the Taxpayer loads the pieces onto train cars that are then shipped to the power plant. The title to the coal transfers to the power plant when it is loaded onto the train in New Mexico.

60. Each train car carries approximately 25 tons of coal (carload). Each sale of coal to the power plant includes a full train, which is typically dozens of carloads.

61. This manner of sales and transport has been the norm in the coal industry for at least the last 40 years.

62. The Taxpayer sold coal to the power plant in lots in excess of 18 tons.

63. The power plant offloads the coal from the train and stores it in large piles.

64. When the power plant needs more fuel, it takes the pieces of coal from the bottom of the storage pile and sends them to a silo where the pieces are crushed into bits the size of one and one-quarter inches or smaller (the bits).

65. The bits of coal are then sent to another silo where the bits are pulverized into a fine powder (coal dust).

66. The coal dust is then blown into a boiler with a stabilizing fuel, such as diesel. The coal dust and the stabilizing fuel are burned in the boiler.

67. The stabilizing fuel and other measures are necessary to ensure that the coal dust does not blow back and cause an explosion or burn at the wrong temperature.

68. The boiler is not designed to burn coal unless it is crushed into coal dust, and would not function properly if larger pieces of coal were used.

69. The burning of the coal generates heat, which is used to heat water in the boiler pipes, which creates steam. The steam is used to turn steam turbines, which rotate through a magnetic field, and electricity is produced.

70. The power plant's purpose in burning the coal is to produce electricity through this process.

71. The power plant is required to take measures to minimize environmental impacts of burning coal, which include scrubbing sulfur deposits that occur after the burning.

72. One way to define a chemical is as an assembly of atoms held together by molecular bonds. Under this technical construction, virtually all substances on earth are chemicals.

73. A chemical reaction occurs when the molecular bonds of a chemical are broken down and new bonds are formed or reformed to create different chemicals or substances.

74. Burning anything will cause a chemical reaction.

75. In practice, many industries and academics distinguish between fuels and chemicals.

76. Coal does not have a discrete and uniform chemical formula that could be used to identify it. Examples of things with a discrete and uniform chemical formula that could be used to identify them are water, H_20, carbon dioxide, $C0_2$, and hydrochloric acid, HCl.

77. Burning coal causes a chemical reaction as the coal is broken down and forms new substances. Burning transforms coal from a complex amalgamation into water, carbon dioxide, sulfur, and other substances.

78. In the right conditions, pieces of coal can spontaneously combust, or begin to burn. The smaller the pieces, the greater the risk.

79. Many types of fine dust, including flour dust, grain dust, and tire dust can explode under the right conditions.

80. A violent combustion that produces a damaging pressure wave would be considered an explosion.

81. Coal dust is an explosion hazard, but is not listed as a regulated explosive by the federal government.

DISCUSSION AND ANALYSIS

The issue to be decided is whether the Taxpayer is entitled to deduct sales of coal from its gross receipts when those sales were made in lots in excess of 18 tons to a power plant that used the coal to produce electricity.

Burden of Proof.

The burden is on the Taxpayer to prove that it is entitled to an exemption or deduction. *See Public Services Co. v. N.M. Taxation and Revenue Dep't.*, 2007-NMCA-050, ¶ 32, 141 N.M. 520. *See also Till v. Jones*, 1972-NMCA-046, 83 N.M. 743. "Where 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." *Sec. Escrow Corp. v. State Taxation and Revenue Dep't.*, 1988-NMCA-068, ¶ 8, 107 N.M. 540. *See also Wing Pawn Shop v. Taxation and Revenue Dep't.*, 1991-NMCA-024, ¶ 16, 111 N.M. 735. *See also Chavez v. Commissioner of Revenue*, 1970-NMCA-116, ¶ 7, 82 N.M. 97. *See also Pittsburgh and Midway Coal Mining Co. v. Revenue Division*, 1983-NMCA-019, 99 N.M. 545.

Gross receipts tax.

Anyone engaging in business in New Mexico is subject to the gross receipts tax. *See* NMSA 1978, § 7-9-4. Gross receipts tax applies to the total amount of money received from selling property or services. *See* NMSA 1978, § 7-9-3.5. It was not disputed that the Taxpayer is subject to the gross receipts tax, and the Taxpayer paid the gross receipts taxes. The Taxpayer

is now claiming a refund of the gross receipts taxes that it paid and arguing that it was entitled to deduct its sales of coal to the power plant from its gross receipts.

The deduction.

"Receipts from selling chemicals or reagents to any mining, milling or oil company for use in processing ores or oil in a mill, smelter or refinery or in acidizing oil well, and receipts from selling chemicals or reagents in lots in excess of eighteen tons may be deducted from gross receipts. Receipts from selling explosives, blasting powder or dynamite may not be deducted from gross receipts." NMSA 1978, § 7-9-65. The regulation defines chemical as "a substance used for producing a chemical reaction." 3.2.223.7 (B) NMAC (2001).

The Taxpayer argues that a plain reading of the statute and regulation leads to the conclusion that coal is a chemical and should be deductible under the statute. The Taxpayer argues that the coal is used for producing a chemical reaction when it is burned at the power plant, which satisfies the regulatory definition of a "chemical". The Taxpayer also argues that the regulatory definition of chemical altered the traditional meaning of the term in the statute, and that the repealed deduction for coal sales is irrelevant given the altered meaning. The Department argues that a plain reading would lead to a ridiculous result because anything sold in lots in excess of 18 tons and burned would be subject to the deduction. The Department argues that this result would contradict the well-established principle that deductions should be construed narrowly. The Department also argues that the regulation should not be read to expand the statute, but to narrow and interpret it.

Based on the premise that everything on earth is technically a chemical, it therefore follows that coal is a chemical. It would be contrary to well-established principles of tax law to conclude that the Legislature intended for a deduction to be so broad as to encompass everything

on earth, even with the limitation that the sales be in lots in excess of 18 tons. *See Sec. Escrow Corp.*, 1988-NMCA-068, ¶ 8. *See also Wing Pawn Shop*, 1991-NMCA-024, ¶ 16. *See also Chavez*, 1970-NMCA-116, ¶ 7. Reading the statute in such a way would lead to an absurd result. Statutes are to be interpreted in accordance with legislative intent and in a manner that does not lead to an absurd, unreasonable, or unjust result. *See Amoco Production Co. v. N.M. Taxation and Revenue Dep't.*, 1994-NMCA-086, ¶ 8, 118 N.M. 72. *See also Hess Corp. v. N.M. Taxation and Revenue Dep't.*, 2011-NMCA-043, 149 N.M. 527. Therefore, the issue becomes what the Legislature intended to allow as a deduction under this statute.

The legislative intent of the gross receipts tax "is to provide revenue for public purposes by levying a tax on the privilege of engaging in certain activities within New Mexico[.]" NMSA 1978, § 7-9-2. Not only must the deduction be clear and unambiguous in statute, but also "the intention of the legislature to grant the immunity must be clear beyond a reasonable doubt." *Pittsburgh and Midway Coal*, 1983-NMCA-019, at ¶ 35. Any doubts must be resolved in favor of the state. *See id.*

The first step in statutory interpretation is to look at the plain language of the statute and to refrain from further interpretation if the plain language is not ambiguous. *See Marbob Energy Corp. v. N.M. Oil Conservation Comm'n.*, 2009-NMSC-013, 146 N.M. 24. Statutes are to be applied as written unless a literal use of the words would lead to an absurd result. *See New Mexico Real Estate Comm'n. v. Barger*, 2012-NMCA-081, ¶ 7. If a statute is ambiguous or would lead to an absurd result, then it should be construed in accordance with the legislative intent or spirit and reason for the statute, even though it may require a substitution or addition of words. *See id. See also State ex rel. Helman v. Gallegos*, 1994-NMSC-023, 117 N.M. 346. *See also Kewanee Indus., Inc. v. Reese*, 1993-NMSC-006, 114 N.M. 784. When a statute is

ambiguous or would lead to an absurd result, it should be construed according to its obvious purpose. *See T-N-T Taxi Co. v. N.M. Pub. Regulation Comm'n*, 2006-NMSC-016, ¶ 5, 139 N.M. 550. When statutes and regulations are inconsistent, the statute prevails. *See Picket Ranch, LLC v. Curry*, 2006-NMCA-082, ¶ 10, 140 N.M. 49. A regulation cannot overrule a statute. *See Jones v. Employment Servs. Div.*, 1980-NMSC-120, 95 N.M. 97.

The purpose of the statute seems to be related to the processing of ores or oil. *See* NMSA 1978, § 7-9-65. Most of the regulations interpreting the statute also have to do with oil wells or processing oil or ores. *See* 3.2.223.9 through 3.2.223.11 NMAC (2001). Burning coal to produce electricity is not an activity related to the processing of ores or oil. The Taxpayer is seeking to read one phrase in the statute, "receipts from selling chemicals or reagents in lots in excess of eighteen tons may be deducted", in isolation from the rest of the statute. NMSA 1978, § 7-9-65.

However, each statute should be read in its entirety and each part should be given effect so that they constitute a harmonious whole. *See Amoco*, 1994-NMCA-086, ¶ 8. Moreover, one should "construe the provisions of the Act together to produce a harmonious whole." *Cordova v. Cline*, 2017-NMSC-020, ¶ 13. Although a statute may seem "clear and certain to the point of mathematical precision, lurking in another part of the enactment,…, or in the history and background of the legislation,…, there may be one or more provisions giving rise to genuine uncertainty as to what the legislature was trying to accomplish." *Helman*, 1994-NMSC-023, ¶ 23.

A statute providing a deduction for sales of coal by the carload was enacted at the same time as the statutory deduction at issue in this case. *See* NMSA 1953, § 72-16A-14.21(1966) and § 72-16A-14.20 (1966). This is a strong indication that the deduction at issue was not meant to

create a deduction for coal sales in lots in excess of 18 tons. The coal credit later created would also be unnecessary if this deduction were designed to apply to sales of coal. *See* NMSA 1978, § 7-9-88.2 (2001). *See also Pueblo of Picuris v. N.M. Energy, Minerals, and Natural Res. Dep't,* 2001-NMCA-084, ¶ 15-17, 131 N.M. 166 (finding that two statutes created at the same time were presumed to have different purposes). *See also Cordova,* 2017-NMSC-020. *See also Helman,* 1994-NMSC-023.

The Taxpayer argues that the carload of coal deduction and the coal credit might have been necessary for sales of coal in lots less than 18 tons. The argument is not persuasive given the testimony, as well as the facts contained in the caselaw, about the industry practice regarding coal sales and transportation for at least the last 40 years. *See Pittsburgh and Midway Coal*, 1983-NMCA-019 (describing how coal is loaded onto train cars when sold). *See also State v. Davis*, 2000-NMCA-105, ¶ 7, 129 N.M. 773 (indicating that statutes enacted at the same time were obviously designed to protect different interests). It does not appear that the statute's purpose was to create a deduction for coal sold to produce electricity even when sold in lots in excess of 18 tons. *See* NMSA 1978, § 7-9-65.

Chemical reactions.

The regulation makes it clear that a chemical is something "used for producing a chemical reaction." 3.2.223.7 NMAC. The Taxpayer argues that the coal should be treated as a chemical under the regulation because it is used for producing a chemical reaction when it is burned by the power plant. Again, burning anything will cause a chemical reaction. Again, it would be contrary to well-established principles of tax law to conclude that the Legislature intended for a deduction to be so broad as to encompass everything on earth so long as it is sold in lots in excess of 18 tons and burned. *See Sec. Escrow Corp.*, 1988-NMCA-068, ¶ 8. *See also*

Wing Pawn Shop, 1991-NMCA-024, ¶ 16. *See also Chavez*, 1970-NMCA-116, ¶ 7. Reading the regulation in such a way would lead to an absurd result. Regulations are also to be interpreted in accordance with legislative intent and in a manner that does not lead to an absurd, unreasonable, or unjust result. *See Amoco*, 1994-NMCA-086. *See also Hess Corp.*, 2011-NMCA-043. *See also Johnson v. NM Oil Conservation Com'n*, 1999-NMSC-021, 127 NM 120 (holding that canons of construction that apply to statutes also apply to rules and regulations). The Department argues that the coal should not be treated as a chemical under the regulation because it is not used for producing a chemical reaction. The Department argues that the coal is sold in pieces, but the coal that is burned is transformed into coal dust. The Taxpayer argues that coal is coal in either form. The form of the coal is not what decides whether it is used for producing a chemical reaction. What the coal is used for is what is dispositive.

Dr. Leclerc gave two very illustrative examples of when a chemical was used for producing a chemical reaction, both of which occurred at a paper mill. In the first, sodium sulfate and sodium carbonate were combined with wood chips. This caused the wood chips to break down their molecular bonds into separate substances, cellulose and lignin. The lignin would then bond with the sodium compounds and form black liquor. The cellulose was taken out and further processed into paper, the ultimate product of the paper mill. The black liquor was then burned in a boiler, similar to how the coal in this case is burned. The boiler was also used for producing electricity or for supporting other functions at the mill. Although burning the black liquor produced heat that was used for other purposes, that is not why it was burned. Rather, the black liquor was burned in order to break down the molecular bonds between the lignin and the sodium compounds. When those bonds were broken, the sodium compounds could be reclaimed and used in the process again. The black liquor was burned in order to

produce a chemical reaction so that the sodium compounds could be recycled and reused. In both of these examples, the chemicals were used for producing a chemical reaction.

In this case, the coal is not used for producing a chemical reaction, that is to break down and reform molecular bonds. Rather, the chemical reaction is an unavoidable consequence of the burning. In fact, the chemical reaction caused by burning the coal is an undesirable consequence as it forms different substances, such as carbon dioxide and sulfur, that the power plant must take corrective measures to scrub and minimize. The coal is used for producing heat, a type of energy, which is then used in the process to make electricity. Therefore, the coal is not a chemical under the statute or regulation because it is not used for producing a chemical reaction.

Moot issues.

The parties presented arguments about whether coal dust is an explosive within the meaning of the statute. The parties presented arguments on legislative intent and how the chemical deduction should be interpreted relating to past Attorney General opinions, proposed bills, statutes enacted on other types of fuel, and the amendments to the manufacturing deduction. *See* NMSA 1978, §§ 7-9-26, 7-9-26.1, 7-9-46, 7-9-83, 7-9-84, 7-9-90, 7-9-98, and 7-9-113. Given the foregoing conclusions, these issues are moot.

CONCLUSIONS OF LAW

A. The Taxpayer filed a timely written protest to the denial of refund issued under Letter ID number L0001503792, and jurisdiction lies over the parties and the subject matter of this protest.

B. The deduction for sales of chemicals in lots in excess of 18 tons was not intended to apply to sales of coal. *See* NMSA 1978, § 7-9-65. *See* NMSA 1953, § 72-16A-14.20 (1966). *See*

3.2.223.8 through 3.2.223.11 NMAC. *See T-N-T Taxi Co.*, 2006-NMSC-016. *See also Amoco Production Co.*, 1994-NMCA-086. *See also Hess Corp.*, 2011-NMCA-043.

C. The coal sold by the Taxpayer was not a chemical for purposes of the statute or regulation because it was not used for producing a chemical reaction. *See* NMSA 1978, § 7-9-65. *See* 3.2.223.7 NMAC.

D. The Taxpayer failed to establish that it was entitled to the deduction as the right was not clearly and unambiguously expressed in the statute, and the statute must be construed strictly in favor of the state. *See* NMSA 1978, § 7-9-65. *See also Sec. Escrow Corp.*, 1988-NMCA-068. *See also Wing Pawn Shop*, 1991-NMCA-024. *See also Chavez*, 1970-NMCA-116. *See also Pittsburgh and Midway Coal Mining Co.*, 1983-NMCA-019.

For the foregoing reasons, the Taxpayer's protest **is DENIED**.

DATED: July 31, 2017.

Dee Dee Hoxie

DEE DEE HOXIE
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 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 with the Court of Appeals, which occurs within 14 days of the Administrative Hearings Office's receipt of the docketing statement from the appealing party. *See* Rule 12-209 NMRA.

CERTIFICATE OF SERVICE (REMOVED IN PUBLIC VERSION)