STATE OF NEW MEXICO
ADMINISTRATIVE HEARINGS OFFICE
TAX ADMINISTRATION ACT

IN THE MATTER OF THE PROTEST OF
ADVANCED ENVIRONMENTAL SOLUTIONS INC.
TO ASSESSMENT ISSUED UNDER LETTER
ID NO. L0808261168

v. **D&O No. 18-42**

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

DECISION AND ORDER

A hearing in the above-referenced protest was held September 10, 2018, before Chris Romero, Hearing Officer, in Santa Fe, New Mexico. The Taxation and Revenue Department (Department) was represented by Ms. Cordelia Friedman, Esq., who was accompanied by Ms. Milagros Bernardo who testified on behalf of the Department. Mr. Robert Fiser, Esq. appeared on behalf of Advanced Environmental Solutions, Inc., (Taxpayer) and was accompanied by its owner, Mr. Robert Chavez, who also testified.

The primary issue in this protest was whether Taxpayer provides services within New Mexico, thereby incurring an obligation to pay gross receipts tax on receipts derived from providing services in New Mexico. If so, then the secondary issue is whether Taxpayer may be entitled to the benefit of an applicable exemption or deduction which might reduce its gross receipts and resulting gross receipts tax liability for periods of time subject of this protest.

Taxpayer Exhibits 1 and 2, and Department Exhibits A, E, and F, were admitted without objection and the Hearing Officer took notice of all documents in the administrative file. The Department was also permitted to submit as a late-filed exhibit, an update to Taxpayer's alleged liability. The Department filed its update on September 11, 2018 and the Hearing Officer

identified it as Department Exhibit F. Based on the evidence and arguments presented, the Hearing Officer finds that the protest should be DENIED.

IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

Procedural History

1. On June 14, 2016, the Department issued a Notice of Assessment of Taxes and Demand for Payment under Letter ID No. L0808261168 in the amount of $65,123.55 in gross receipts tax, $12,952.46 in gross receipts tax penalty, and $3,993.73 in gross receipts tax interest for a total gross receipts tax assessment of $82,069.74 for the periods from January 31, 2010 through September 30, 2015 (hereinafter the "Assessment"). [*See* Administrative File].

2. The Assessment also provided that Taxpayer was entitled to a credit from withholding tax in the amount of $250.91, but that it also owed a nominal amount of withholding tax penalty in the amount of $1.29 and interest in the amount of $0.93. The credit offset the total amount due under the Assessment by $248.69 for a total amount due of $81,821.05. [*See* Administrative File].

3. On September 7, 2016, Taxpayer filed a Formal Protest Against Tax Assessment, by and through its counsel of record, Mr. Fiser. It was received in the Department's Protest Office on September 19, 2016. [*See* Administrative File].

4. On September 29, 2016, the Department acknowledged the protest under Letter ID No. L0646348336. [*See* Administrative File].

5. On November 10, 2016, the Department filed a Hearing Request requesting that the Administrative Hearings Office set a hearing to address scheduling. [*See* Administrative File].

6. On November 14, 2016, the Administrative Hearings Office entered a Notice of Telephonic Scheduling Conference which set a hearing to occur on December 2, 2016. [*See* Administrative File].

7. On December 2, 2016, a telephonic scheduling occurred in which the parties agreed that the hearing would satisfy the 90-day hearing deadline provided by NMSA 1978, Section 7-1B-8 A. A hearing on the merits of Taxpayer's protest was set to occur on March 1, 2017. [*See* Administrative File; Record of Hearing, 12/2/16].

8. On February 6, 2017, Taxpayer filed an Unopposed Motion for Continuance of Formal Hearing Set for March 2, 2017 & Request for New Scheduling Conference. [*See* Administrative File].

9. On February 10, 2017, the Administrative Hearings Office entered a Continuance Order and Notice of Telephonic Scheduling Hearing which set a second scheduling hearing to occur on April 3, 2017. [*See* Administrative File].

10. On April 4, 2017, the Administrative Hearings Office entered a Second Scheduling Order and Notice of Administrative Hearing which set a hearing on the merits of the protest for July 19, 2017. [*See* Administrative File].

11. On July 10, 2017, Taxpayer filed a Motion for Continuance of Formal Hearing Set for July 19, 2017. The Department expressed no position on the relief requested. [*See* Administrative File].

12. On July 12, 2017, the Administrative Hearings Office entered a Continuance Order and Notice of Third Telephonic Scheduling Hearing which set a scheduling hearing to occur on July 19, 2017. [*See* Administrative File].

13. On July 20, 2017, the Administrative Hearings Office entered a Third Scheduling Order and Notice of Administrative Hearing which set a hearing on the merits of the protest for December 11, 2017. [*See* Administrative File].

14. On November 17, 2017, Taxpayer filed an Unopposed Motion for Continuance of Formal Hearing Set for December 11, 2017 & Request for New Scheduling Conference. The Department concurred with the relief requested. [*See* Administrative File].

15. On November 20, 2017, the Administrative Hearings Office entered a Continuance Order and Notice of Telephonic Scheduling Hearing which set a fourth scheduling hearing to occur on December 11, 2017. [*See* Administrative File].

16. On December 11, 2017, the Administrative Hearings Office entered a Fourth Scheduling Order and Notice of Administrative Hearing which set a hearing on the merits of the protest for March 8, 2018. [*See* Administrative File].

17. On February 22, 2018, Taxpayer filed a Stipulated Motion for Continuance of Formal Hearing Set for March 8, 2018. The Department concurred with the relief requested. [*See* Administrative File].

18. On February 28, 2018, the Administrative Hearings Office entered a Continuance Order and Notice of Telephonic Scheduling Hearing which set a fifth scheduling hearing to occur on March 20, 2018. [*See* Administrative File]

19. On March 21, 2018, the Administrative Hearings Office entered a fifth Scheduling Order and Notice of Administrative Hearing which set a hearing on the merits of the protest for September 10, 2018. [*See* Administrative File].

20. On September 7, 2018, the parties filed their Joint Prehearing Statement. [*See* Administrative File].

Merits of the Protest

21. Taxpayer is a corporation established in Albuquerque, New Mexico engaging in the business of providing hazardous removal services under contracts with the Drug Enforcement Administration (hereinafter "DEA"). [Testimony of Mr. Chavez].

22. In routine circumstances, Taxpayer is called to a location by a local DEA agent or authorized representative[1] where it assumes responsibility for identifying, packaging, labeling, and removing hazardous products from that location. Examples of such products would include chemicals or materials associated with clandestine labs. [Testimony of Mr. Chavez].

23. In order to procure its services for that purpose, a local DEA agent or authorized representative will acquire pre-approval from DEA headquarters in Springfield, Virginia and obtain a "DEA Call Control/Call Number" and "DEA Case Number". [*See* Taxpayer Exhibit 2-6 – 2-7; Testimony of Mr. Chavez].

24. Having obtained the necessary pre-approvals, "DEA Call Control/Call Number" and "DEA Case Number," the local DEA agent or authorized representative will contact Taxpayer and request its dispatch to a specific location. [Testimony of Mr. Chavez].

25. In response to a request for dispatch, Taxpayer assembles its response team and proceeds to the removal site with all necessary personnel and equipment required to safely handle and remove any hazardous materials from the site. [Testimony of Mr. Chavez].

26. Although Taxpayer occasionally responds to locations outside of New Mexico, the majority of the sites to which it responds are situated within New Mexico. [Testimony of Mr. Chavez].

[1] An authorized representative of the DEA may include a local law enforcement official. [Testimony of Mr. Chavez].

27. Upon arrival at a removal site, Taxpayer will meet the local DEA agent or other authorized representative who provides all necessary information, including the required "DEA Call Control Number" and "DEA Case Number." [*See* Taxpayer Exhibit 2-6 – 2-7; Testimony of Mr. Chavez].

28. In standard conditions, hazardous materials will have already been relocated to an exterior area and placed on a layer of protective sheeting to guard the ground from seepage or spills. From that area, Taxpayer's team proceeds with identification, packaging, labeling, and removal of the hazard materials. [Testimony of Mr. Chavez].

29. Within 5 days of removing the hazardous materials, Taxpayer prepares cost estimates, a manifest, lab-pack list, and receipt-of-service documents which are then submitted to DEA headquarters, which retains the documents for its records pending final billing which will occur after Taxpayer receives and tenders a Certificate of Disposal to DEA. [*See* Taxpayer Ex. 2-14; 2-16; Testimony of Mr. Chavez].

30. Within 10 days of removing the hazardous materials, Taxpayer delivers or ships the materials to a second, unrelated facility, for disposal. The disposal facility will thereafter store the materials until their disposal is complete, at which time it generates a Certificate of Disposal. [Testimony of Mr. Chavez].

31. Taxpayer does not engage in the direct disposal of hazardous materials. Ultimate disposal of hazardous materials occurs exclusively out-of-state, by third-parties, since there are no certified disposal facilities operating within New Mexico. [Testimony of Mr. Chavez].

32. At least one entity in New Mexico has issued Certificates of Destruction[2] which DEA has subsequently found acceptable, although that entity does not directly engage in the disposal of hazardous materials. [*See* Department Exs. E-023; E-034; E-046; E-072; E-098; E-124; Testimony of Mr. Chavez].

33. After receiving a Certificate of Disposal, the DEA generates a purchase order which is provided to Taxpayer, which thereafter authorizes its submission of a final invoice for payment, but only after Taxpayer tenders a Certificate of Disposal. [*See* Taxpayer Exhibit 2-14; 2-16; Testimony of Mr. Chavez].

34. Upon receipt of the Certificate of Disposal and purchase order, Taxpayer prepares a final invoice and submits it to DEA headquarters in Springfield, Virginia for payment. [*See* Taxpayer Exhibit 2-2 – 2-4; 2-8; Testimony of Mr. Chavez].

35. DEA will thereafter pay the invoice within 10 days. Taxpayer receives payments electronically with indication that the source of the funds was the Treasury Department of the United States. [*See* Taxpayer Ex. 2-5 (line item October 31, 2014); Testimony of Mr. Chavez].

36. Taxpayer Exhibit 1 represents the sum of Taxpayer's receipts paid under contract with the DEA from March 12, 2013 to June 9, 2015. The sum of receipts contained in Taxpayer Exhibit 1 is $204,463.20. [Testimony of Mr. Chavez; *See* Taxpayer Ex. 1].

37. The Department reviewed Taxpayer Exhibit 1 and determined that it included receipts derived from Taxpayer's response to a location in Ignacio, Colorado which it did not perceive as taxable. Therefore, the correct amount of taxable receipts should be the difference between the total as indicated on Taxpayer Exhibit 1 and the receipts derived from Taxpayer's

[2] Although perhaps analogous, the New Mexico entity entitles its document "Certificate of Destruction" while the out-of-state entities, whose documents also appear in the record, entitle their documents "Certificate of Disposal". Mr. Chavez did not ascribe any significance to the difference in titles.

response to an address in Ignacio, Colorado, in the amount of $6,492.65. [Testimony of Ms. Bernardo; *See* Department Exhibit A-020 (line item dated June 4, 2014)].

38. The parties agreed that the taxable gross receipts at issue were $197,970.55 calculated by subtracting $6,492.65 (Dept. Ex. A-020) from $204,463.20 (Taxpayer Ex. 1).

39. Taxpayer Exhibit 2 represents a sample standard transaction between Taxpayer and the DEA for hazardous material removal services. [*See* Taxpayer Ex. 2; Testimony of Mr. Chavez].

40. The standard DEA contract specifies that it is for "hazardous waste cleanup and disposal services" and requires Taxpayer to respond to a specific "Authorized Removal Site Address." [*See* Taxpayer Ex. 2-6].

41. The standard DEA contract requires that "[a]ll services shall comply with applicable Federal, state, and local laws and regulations." [*See* Taxpayer Ex. 2-6, Para. 3].

42. Amounts billed to the DEA do not include any sum designated for payment of tax. [*See* Taxpayer Ex, 2-2 – 2-3].

43. Taxpayer's updated liability was $64,872.66 in gross receipts tax, $13,026.01 in gross receipts tax penalty, and $10,095.93 in gross receipts tax interest for a total amount due of $87,994.60. [*See* Department Ex. F (updated liability filed on September 11, 2018)].

DISCUSSION

The primary issue in this protest is whether services Taxpayer provides under contract with the DEA are performed in New Mexico, thereby incurring an obligation to pay gross receipts tax. If so, then the secondary issue in this protest is whether Taxpayer might nevertheless qualify for an applicable exemption or deduction, particularly NMSA 1978, Section 7-9-57 which provides a deduction for certain services sold to out-of-state buyers.

Presumption of Correctness and Burden of Proof.

NMSA 1978, Section 7-1-17 (C) (2007) provides that the assessment from which this protest arose is presumed correct, and the burden is on Taxpayer to overcome the presumption. *See Archuleta v. O'Cheskey*, 1972-NMCA-165, ¶11, 84 N.M. 428, 504 P.2d 638. Unless otherwise specified, for the purposes of the Tax Administration Act, "tax" is defined to include interest and civil penalty. *See* NMSA 1978, Section 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, 134 P.3d 785, 791 (agency regulations interpreting a statute are presumed proper and are to be given substantial weight).

Accordingly, Taxpayer carries the burden of presenting countervailing evidence or legal argument to show that it is entitled to an abatement of the assessment. *See N.M. Taxation & Revenue Dep't v. Casias Trucking*, 2014-NMCA-099, ¶8, 336 P.3d 436. "Unsubstantiated statements that the assessment is incorrect cannot overcome the presumption of correctness." *See MPC Ltd. v. N.M. Taxation & Revenue Dep't*, 2003-NMCA-021, ¶13, 133 N.M. 217, 62 P.3d 308; *See also* Regulation 3.1.6.12 NMAC. If a taxpayer presents sufficient evidence to rebut the presumption, then the burden shifts to the Department to re-establish the correctness of the assessment. *See MPC*, 2003-NMCA-021, ¶13.

Gross Receipts Tax.

For the privilege of engaging in business in New Mexico, the Gross Receipts and Compensating Tax Act imposes a gross receipts tax on the receipts of any person engaged in business within its boundaries. *See* NMSA 1978, Section 7-9-4 (2017). The Gross Receipts and Compensating Tax Act establishes a presumption that *all* receipts of a person engaged in business

in New Mexico are taxable. *See* NMSA 1978, Section 7-9-5 (2002). The term "engaging in business" is defined as "carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit." *See* NMSA 1978, Section 7-9-3.3 (2003). The term "gross receipts" is defined at NMSA 1978, Section 7-9-3.5 (A) (1) (2007) 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*.
>
> (Emphasis Added)

The term "service" is defined to mean "all activities engaged in for other persons for a consideration, which activities involve predominantly the performance of a service as distinguished from selling or leasing property." *See* NMSA 1978, Section 7-9-3 (M).

Despite the presumption that all receipts of a person engaged in business are taxable, a taxpayer may avail itself of any number of applicable exemptions or deductions. If a taxpayer asserts entitlement to an exemption or deduction, then the burden rests with the taxpayer to prove its entitlement. *See Pub. Serv. Co. v. N.M. Taxation & Revenue Dep't*, 2007-NMCA-050, ¶32, 141 N.M. 520, 157 P.3d 85. *See also Till v. Jones*, 1972-NMCA-046, 83 N.M. 743, 497 P.2d 745. "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." *See Sec. Escrow Corp. v. State Taxation & Revenue Dep't*, 1988-NMCA-068, ¶8, 107 N.M. 540, 760 P.2d 1306. *See also Wing Pawn Shop v. Taxation & Revenue Dep't*, 1991-

NMCA-024, ¶16, 111 N.M. 735, 809 P.2d 649. *See also Chavez v. Comm'r of Revenue*, 1970-NMCA-116, ¶7, 82 N.M. 97, 476 P.2d 67.

Whether Taxpayers' Receipts are Excluded from Taxation.

The material facts at issue in this case are mostly undisputed. Taxpayer generally dispatches to sites at the request of the DEA where it is then responsible for identifying, packaging, transporting, and managing for the disposal of hazardous materials, such as those commonly associated with the illicit manufacture of controlled or banned substances.

Taxpayer proposes that the services it provides are not taxable in New Mexico because the most critical component of the service, the ultimate disposal of hazardous materials, occurs *out-of-state*, and because the DEA, as the entity procuring the services, is similarly situated *out-of-state*. The Hearing Officer is unpersuaded.

The first issue is whether Taxpayer performs services in New Mexico pursuant to Section 7-9-3.5 (A) (1). As a practical matter, the Hearing Officer observed that Taxpayer is never required to travel beyond the boundaries of this state in order to sell its services. It derives the entire benefit of engaging in business in this state, without ever leaving the state. It responds to sites within this state, collects and removes hazardous materials from those sites, and subsequently stores those materials locally for short durations of time until it is able to ship them out-of-state for final disposal by third-party disposal services. On other occasions, it might transport hazardous materials from its local facility to another local provider which then arranges for destruction of the materials. These circumstances weigh heavily in favor of taxability.

The Hearing Officer also found the underlying purpose of the Taxpayer-DEA contracts to be enlightening. They provide that Taxpayer's primary objective is the removal of hazardous materials from sites within New Mexico, in which Taxpayer is required to adhere to state and

local laws and regulations in the performance of the services. The inherent purpose of the contract, is promoting the health and safety of local law enforcement, the general public, and the protection of the environment, in New Mexico.

However, Taxpayer suggests that because the final act of disposal occurs out of state, its services should not be taxable in New Mexico. Although final disposal of hazardous materials may be in furtherance of Taxpayer's objective, that is not necessarily its predominant objective, but merely one of several components comprising the final product of the services it provides.

Although completion of a contract and subsequent payment for services cannot occur without a Certificate of Disposal, which originate predominantly from two out-of-state hazardous materials disposal services, that may be more of an inconvenience than compelling evidence of out-of-state services. Mr. Chavez testified that hazardous waste is shipped to Utah or Texas because there are not any hazardous waste disposal services available in New Mexico.

However, at least one entity in New Mexico has issued Certificates of Destruction which DEA has subsequently found acceptable. Although Mr. Chavez clarified that that entity was not engaged in the business of directly disposing hazardous materials, it was authorized to store and transport materials to their place of ultimate disposal, and the evidence suggested that it was also authorized to issue Certificates of Destruction in satisfaction of Taxpayer's contractual obligation to the DEA. This would signify that the DEA was not necessarily concerned with the location of where the disposal occurred, so long as it occurred, and Taxpayer was not required to ship its materials out-of-state in order to satisfy that contractual obligation to the DEA.

For these reasons, the Hearing Officer was persuaded that the services under the facts of this protest were performed in New Mexico, and are taxable under NMSA 1978, Section 7-9-3.5 (A) (1) (2007).

Deduction for Certain Services to an Out-of-State Buyer.

Having determined that Taxpayer's receipts are generated from services performed in New Mexico, the next inquiry is whether Taxpayer is entitled to any exemptions or deductions. It specifically claimed applicability of NMSA 1978, Section 7-9-57 (2000) which provides as follows, in relevant part:

> **7-9-57. Deduction; gross receipts tax; sale of certain services to an out-of-state buyer.**
>
> A. Receipts from performing a service may be deducted from gross receipts *if the sale of the service is made to an out-of-state buyer* who delivers to the seller either an appropriate nontaxable transaction certificate or other evidence acceptable to the secretary *unless the buyer of the service or any of the buyer's employees or agents makes initial use of the product of the service in New Mexico or takes delivery of the product of the service in New Mexico.*
>
> (Emphases Added)

The New Mexico Supreme Court has stated that Section 7-9-57 "provides New Mexico businesses with a deduction from the gross receipts tax for services provided to out-of-state buyers. *Businesses are not eligible for the deduction, however, if the out-of-state buyer either makes initial use or takes delivery of the 'product of the service' in New Mexico*." *See TPL, Inc. v. N.M. Taxation & Revenue Dep't*, 2003-NMSC-007, ¶1, 133 N.M. 447, 64 P.3d 474. (Emphasis Added).

The Hearing Officer agrees that the sale of the service was made to the DEA which both authorized the expenditure for services and subsequent payment from its headquarters in Virginia, albeit upon the request of a local agent or authorized representative. However, the dispositive issue in this protest turns on whether initial use, or delivery of the product of the service, was in New Mexico.

Therefore, the next inquiry concentrates on initial use of the product of Taxpayer's service, and the location where that product was delivered. If the initial use of the product occurs in New Mexico, or if delivery of the product of the service occurs in New Mexico, then Taxpayer is not entitled to the deduction regardless of where the buyer may be located. The New Mexico Supreme Court has recognized that "the 'product' [of a service] is the 'direct result' or 'consequence' flowing from the service." *See TPL, Inc.*, 2003-NMSC-007, ¶12 *citing TPL, Inc. v. N.M. Taxation & Revenue Dep't*, 2000-NMCA-083, ¶13, 129 N.M. 539, 10 P.3d 863. As in *TPL*, the Hearing Officer will ascertain the "product of the service" by identifying benefit the out-of-state buyer received for the consideration paid. *See TPL, Inc.* 2003-NMSC-007, ¶12 *citing ITT Educ. Servs., Inc. v. Taxation & Revenue Dep't*, 1998-NMCA-078, ¶11, 125 N.M. 244, 959 P.2d 969.

Although Taxpayer accurately states that ultimate disposal of hazardous materials was a necessary component of the services performed for the DEA, the Hearing Officer does not perceive disposal as the end product of the service. *See e.g. TPL, Inc.*, 2003-NMSC-007, ¶13. Instead, it was but one component of the product.

The Hearing Officer was persuaded that the product of the service relevant to this protest was the removal of hazardous materials from specific sites in New Mexico. If concentrating on the benefit received for the consideration paid, then the benefit of Taxpayer's service was not delivered out-of-state, but delivered on the ground in New Mexico where Taxpayer utilized its expertise and equipment to safely and responsibly collect and remove hazardous materials. The principal product of that service was that local law enforcement personnel, including the DEA's local agents, were permitted to safely proceed with their activities at that site without the risk of exposure to hazardous materials. A secondary product of that service also assured that the DEA

could minimize potential harm to the public resulting from exposure to hazardous materials. A third product of that service would also be to allow the DEA to minimize potential harm to the environment, such as contamination of air, water, or soil. These are the products of Taxpayer's services, all of which benefited people and real property in New Mexico, but perhaps most significant to this protest, also advanced the DEA's mission[3]. *See e.g. TPL, Inc.*, 2003-NMSC-007, ¶21-22 (recognizing significance of services performed on real property in contrast to services performed on mobile, tangible property).

In each instance described above, the product of the service, or the benefit, was initially used at the moment it was also delivered. In other words, initial use of the product was practically simultaneous with delivery. The safety of the site increased immediately, and perhaps dramatically, as Taxpayer packaged and removed each item of hazardous material. This permitted the DEA and its affiliated agencies to continue their work in a safe environment, as well as minimize potential harm to the public and the environment.

That is not to say that the DEA in Springfield, Virginia did not also enjoy some benefit from the product of the service. It most certainly did. However, the benefit to those in Virginia stemmed directly from the success of its mission *in New Mexico*.

The Hearing Officer concludes that although the buyer in this protest may have been out-of-state, the product of Taxpayer's services was nevertheless initially delivered and used in New Mexico. For that reason, Taxpayer has not established entitlement to a deduction under Section 7-9-57.

Based on the foregoing, Taxpayer's protest should be denied.

CONCLUSIONS OF LAW

[3] The Hearing Officer took Administrative Notice of the DEA's mission statement at https://www.dea.gov/mission.

1. Taxpayer filed a timely written protest to the assessment issued under Letter ID No. L0808261168, and jurisdiction lies over the parties and the subject matter of this protest.

2. A hearing was timely held in accordance with NMSA 1978, Sec. 7-1B-8 (A).

3. Taxpayer's receipts from performing services in New Mexico are presumed to be taxable. *See* NMSA 1978, Section 7-9-3.5 (A) (1); Section 7-9-5.

4. Taxpayer did not establish entitlement to an exemption or deduction from gross receipts tax. *See Pub. Serv. Co. v. N.M. Taxation & Revenue Dep't*, 2007-NMCA-050, ¶32, 141 N.M. 520, 157 P.3d 85. *See also Till v. Jones*, 1972-NMCA-046, 83 N.M. 743, 497 P.2d 745.

5. Taxpayer is not entitled to a deduction under NMSA 1978, Section 7-9-57.

6. Taxpayer is not entitled to abatement of penalty under NMSA 1978 Section 7-1-69 (2007).

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

DATED: December 3, 2018

Chris Romero
Hearing Officer
Administrative Hearings Office
P.O. Box 6400
Santa Fe, NM 87502

NOTICE OF RIGHT TO APPEAL

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

CERTIFICATE OF SERVICE

On December 4, 2018, a copy of the foregoing Decision and Order was submitted to the parties listed below in the following manner:

First Class Mail *Interagency Mail*

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_____

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