

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

IN THE MATTER OF THE PROTEST OF
McDONNELL DOUGLAS AEROSPACE SERVICES,
CO., I.D. NO. 02-091172-00 6, PROTEST
TO ASSESSMENT NO. 1867743.

No. 96-21

PARTIAL DECISION AND ORDER
ON MOTION FOR SUMMARY JUDGMENT

This matter comes on for determination by Gerald B. Richardson, Hearing Officer, upon the Motion for Summary Judgment and Statement of Material Facts filed herein by McDonnell Douglas Aerospace Services Company ("McDonnell Douglas"). McDonnell Douglas is represented by Mary E. McDonald, Esq. of Sutin, Thayer & Browne, P.C. The Taxation and Revenue Department ("Department") was represented by Frank D. Katz, Chief Counsel. The Department filed a response accepting McDonnell Douglas' Statement of Material Facts, but opposing summary judgment in favor of McDonnell Douglas. Excellent briefs in support of each party's position were submitted and oral argument was held on November 16, 1995. Only the matter briefed and argued in the Motion for Summary Judgment is addressed herein, leaving the other matters under protest to be addressed at a later date.

Based upon the undisputed material facts, the briefs and the arguments of the parties, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. In April of 1994, the Department audited McDonnell Douglas for the audit period of February 1, 1988 through March 31, 1994.
2. As part of its audit procedures, on April 20, 1994 the Department gave written notice to McDonnell Douglas, requiring McDonnell Douglas to obtain possession within 60 days following the notice, of all nontaxable transaction certificates "NTTCs" supporting deductions for

the audit period. The 60 day notice period expired June 20, 1994.

3. During the audit period, McDonnell Douglas performed services in New Mexico for Martin Marietta Corporation ("Martin Marietta"), which services were resold by Martin Marietta to an agency of the United States.

4. During the audit period, McDonnell Douglas claimed a deduction from gross receipts tax for its receipts from performing services for Martin Marietta on the basis that those services were being resold by Martin Marietta.

5. Martin Marietta issued a type 5 NTTC to McDonnell Douglas dated October 26, 1994 and McDonnell Douglas delivered a copy of that NTTC to the Department.

6. As a result of the Department's audit, on November 9, 1994 the Department mailed Assessment No. 1867743 ("the Assessment") to McDonnell Douglas. The Assessment was for gross receipts taxes in the amount of \$347,571.11, interest in the amount of \$152,076.10 and penalty in the amount of \$34,757.04 for the reporting period from February 1, 1988 through March 31, 1994. The Assessment assessed interest through November 25, 1994.

7. By letter dated December 5, 1994, McDonnell Douglas timely protested \$199,623.24 of the gross receipts tax assessed by the Assessment, as well as the interest associated with the protested portion of gross receipts tax, which at the time of the Assessment was \$64,187.81. McDonnell Douglas also protested the entire amount of penalty assessed by the Assessment.

8. McDonnell Douglas paid the amounts of the Assessment which were not protested.

9. The \$199,623.24 of gross receipts tax protested by McDonnell Douglas represents the tax which was assessed upon the receipts of McDonnell Douglas from performing services for Martin Marietta for resale. The Department's auditors had disallowed the deductions claimed by McDonnell Douglas for its receipts from Martin Marietta because of McDonnell Douglas' failure

to demonstrate possession of an NTTC from Martin Marietta within the time frame of the Department's 60 day notice. \$93,238.96 of the gross receipts tax assessed represents the tax on McDonnell Douglas' receipts from Martin Marietta prior to July 1, 1992 and \$106,384.28 represents the tax on McDonnell Douglas' receipts from Martin Marietta after July 1, 1992.

10. By Laws 1992, Ch. 39, §3 the Legislature amended Section 7-9-43(A), effective July 1, 1992, to make more stringent the previous requirements for possession of NTTCs within sixty days of notice from the Department to require that in addition to producing such NTTCs within the 60 day time frame, that taxpayers must also demonstrate that they had the NTTCs in their possession at the time that their tax returns were due in which they claimed a deduction from gross receipts tax required to be supported by such NTTCs. This amounts to a substantial reenactment of the provisions of prior law requiring taxpayers to demonstrate possession of NTTCs within sixty days from receiving notice from the Department to produce such NTTCs.

DISCUSSION

By Laws 1992, Chapter 39, Section 3, the 1992 legislature amended Section 7-9-43(A) of the Gross Receipts and Compensating Tax Act with respect to when nontaxable transaction certificates ("NTTCs") must be in the possession of taxpayers to support a claim of deduction from tax. For many years, prior versions of this statute had provided that taxpayers "should" have the NTTC in their possession at the time of the transaction generating the receipts for which deduction was claimed, but allowed taxpayers sixty days from the date that notice requiring possession of the NTTCs was given (commonly known as a 60-day letter) to demonstrate possession of the NTTC. The 60-day letter could only be given taxpayers in the context of an audit, and if, after receiving notice and the expiration of sixty days, the taxpayer could not demonstrate possession of the NTTC, the deduction claimed by the taxpayer which required the NTTC was disallowed.

The 1992 amendment substantially tightened the requirements with respect to NTTCs.

The language providing that a taxpayer "should" have the NTTC at the time of the nontaxable transaction was changed to require that the taxpayer "shall" have the NTTC at the time that their return is due for their receipts from the transaction for which deduction is claimed. The taxpayer is given the option of demonstrating possession of all necessary NTTCs at the commencement of an audit or of demonstrating, in response to a 60-day letter from the Department, that they were in possession of the NTTC at the time that their receipts from the transaction were required to be reported. Otherwise, the deductions claimed are required to be disallowed. Additionally, language was added at the beginning of the subsection which stated that the provisions of the subsection would only apply to transactions occurring after July 1, 1992, the effective date of the act.

The 1992 amendments were accomplished by a rewriting of Subsection A of Section 7-9-43. There was no language adopted which acted as a savings clause with respect to transactions occurring prior to July 1, 1992, under prior law nor was there a reiteration of the previous provision with reference to transactions occurring prior to July 1, 1992. There was simply no provision as to how transactions occurring prior to July 1, 1992 should be treated after the effective date of the amendment. This leads us to the question presented herein. What law, if any, applies to McDonnell Douglas' claim of deduction for its receipts from Martin Marietta for transactions occurring prior to July 1, 1992 where McDonnell Douglas was unable to produce the NTTC to support its claim of deduction until well after the expiration of the 60-day letter given it by the Department's auditors?

It is the contention of McDonnell Douglas that when the Department delivered the 60-day letter at the commencement of its audit, in April of 1994, that the Department no longer had the statutory authority to issue such a notice or to deny claimed deductions for failure to timely produce NTTCs for transactions occurring prior to July 1, 1992. McDonnell Douglas bases this contention upon its argument that the 1992 legislature, by amending the existing provisions of

Section 7-9-43(A) to make them applicable only to transactions occurring after July 1, 1992 and by failing to provide for pre-July 1, 1992 transactions, acted to repeal the law which had been in effect prior to July 1, 1992.

Apparently, the Department became aware of the problem created with respect to pre-July 1, 1992 transactions at some point and it amended regulation GR 43:1 on September 20, 1993 to address the issue. The portion of the amended regulation pertinent to this issue reads as follows:

GR 43:1 - POSSESSION AND DELIVERY OF NONTAXABLE TRANSACTION CERTIFICATES - TYPES OF CERTIFICATES

- A. With respect to receipts and transactions occurring prior to July 1, 1992:
- 1) The taxpayer should be in possession of all nontaxable transaction certificates (NTTCs) at the time the deductible transaction occurs.
 - 2) The taxpayer must be in possession of and have available for inspection all NTTCs for the period of an audit within 60 days of notice by the department requiring such possession. This notice may be sent out or delivered no earlier than the commencement of an audit of the taxpayer claiming the deduction.
 - 3) An NTTC acquired by the taxpayer after the 60 days following notice have expired will not be honored by the department for the period covered by the audit.

With respect to this regulation, McDonnell Douglas relies upon the well established authority that an administrative agency, by regulation, may neither enlarge or diminish the law established by statute. Since, at the time GR 43:1 was amended there was no longer any statutory authority in effect with respect to transactions occurring prior to July 1, 1992, McDonnell Douglas contends that GR 43:1(A) is void and of no effect, citing to *Rainbo Baking Co. v. Commissioner of Revenue*, 84 N.M. 303, 306, 502 P.2d 406 (Ct. App. 1972).

The underpinning of McDonnell Douglas' argument is the well established general rule of statutory construction that when the legislature rewrites and amends an existing statutory provision, all matter that is omitted in the act or section which the amendment purports to set out as amended, is considered repealed. *Sutherland Statutory Construction*, 5th ed., §23.12. *See*

also, *City of Raton v. Sproule*, 78 N.M. 138, 150, 429 P.2d 336 (1967). As to the effect of such

a repeal, *Sutherland Statutory Construction*, 5th ed., § 23.33 states:

The effect of the repeal of a statute having neither a saving clause nor a general savings statute to prescribe the governing rule for the effect of the repeal, is to destroy the effectiveness of the repealed act *in futuro* and to divest the right to proceed under the statute. Except as to proceedings past and closed, the statute is considered as if it had never existed.

Because the Department's 1994 audit of McDonnell Douglas for pre-1992 transactions was within the limitation period for the assessment of taxes pursuant to Section 7-1-18 NMSA 1978, the matter cannot be considered "past and closed." Thus, McDonnell Douglas argues that the effect of the 1992 amendment to Section 7-9-43(A) was to repeal the previous provision requiring taxpayers to demonstrate possession of NTTCs within 60 days of notice from the Department or suffer denial of their claimed deductions. In effect, McDonnell Douglas' argument is that the repeal would operate to completely eliminate the prior requirement of timely possession of NTTCs for transactions occurring prior to July 1, 1992.

While the Department does not disagree that the application of the general rule results in the repeal of the provisions concerning timely possession of NTTCs for pre-July 1, 1992 transactions, it relies upon an exception to the general rule of repeal which recognizes that the repealed provision remains applicable to transactions that occurred prior to the repeal where there is an indication of such a legislative intention. In circumstances where the substance of the provision repealed is reenacted, or another provision imposing the same or similar burdens is enacted, this is recognized to indicate a legislative intention to continue the operation of the former law with respect to transactions that occurred when that law was in effect. This exception has been recognized and applied by the courts in New Mexico. See, *Rodgers v. City of Loving*, 91 N.M. 306, 309, 573 P.2d 240 (Ct. App. 1977), and more recently, *Romero v. New Mexico Health and Environment Department*, 107 N.M. 516, 518-519, 760 P.2d 1282 (1988). Thus, the controlling issue in determining this matter is to determine the legislative intent with respect to

the requirement of timely possession of NTTCs for transactions occurring prior to July 1, 1992 where the Department has requested the production of NTTCs after the 1992 amendments to Section 7-9-43(A) became effective.

McDonnell Douglas argues that the legislative intent to repeal the requirements for the timely possession of NTTCs is obvious from the face of the legislation itself, and has submitted as an exhibit a certified copy of House Bill 48, which was enacted as Laws 1992, Chapter 39, §3, the amendments at issue. That portion of §3 pertinent to this matter as it appeared in House Bill 48 is as follows:

"7-9-43. NONTAXABLE TRANSACTION CERTIFICATES AND OTHER EVIDENCE REQUIRED TO ENTITLE PERSONS TO DEDUCTIONS--FEE--RENEWAL.--

- A. ~~[Subject to the provisions of Subsection D of this section]~~The provisions of this subsection apply to transactions occurring on or after July 1, 1992. All nontaxable transaction certificates of the appropriate series executed by buyers or lessees~~[should]~~ shall be in the possession of the seller or the lessee for nontaxable transactions at the time ~~[the nontaxable transactions occur]~~ the return is due for receipts from the transactions. If the seller or lessor ~~[is not in possession of these nontaxable transaction certificates]~~ does not demonstrate possession of any required nontaxable transaction certificates to the department at the commencement of an audit or demonstrate within sixty days from the date that the notice requiring possession of these nontaxable transaction certificates is given the seller or lessor by the department that the seller or lessor was in possession of such certificates at the time receipts from the transactions were required to be reported, deductions claimed by the seller or lessor that require delivery of these nontaxable transaction certificates shall be disallowed. The nontaxable transaction certificates shall contain the information and be in a form prescribed by the department. Only buyers or lessees who have a registration number or have applied for a registration number and have not been refused one under Subsection C of Section 7-1-12 NMSA 1978 shall execute nontaxable transaction certificates. If the seller or lessor has been given an identification number for tax purposes by the department, the seller or lessor shall disclose that identification number to the buyer or lessee prior to or upon acceptance of a nontaxable transaction certificate. When 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 making its argument that it is obvious from the face of the legislation that the legislature was aware that it was repealing the requirements for timely possession of NTTCs, McDonnell Douglas relies upon the fact that it is obvious from the first sentence of the legislation, that the amended law would only apply to transactions occurring after July 1, 1992. Additionally, it relies upon the rule of statutory construction that the legislature is presumed to be aware of the provisions of existing law, including the statutes of limitation on the assessment of taxes by the Department. Thus, the legislature must have been aware that by not including a savings clause to address audits of periods within the statute of limitations but prior to July 1, 1992, and only providing for prospective application of the amended law, that it was eliminating the requirement for timely possession of NTTCs for pre-July 1, 1992 periods still subject to audit and assessment.

McDonnell Douglas also provides an explanation as to why the Legislature might have wanted to eliminate the requirement for timely possession of NTTCs for prior years. The 1991 legislature had amended Section 7-9-43¹ by adding a new subsection D and added language to Subsection A making the provisions of Subsection A concerning timely possession of proper NTTCs subject to the provisions of Subsection D. Subsection D provided that after January 1, 1992, any NTTCs issued prior to that date would be void. It also imposed a \$100 fee to apply for new NTTCs and provided a four year expiration on the new certificates issued, renewable for an additional four years. The effect of this amendment was to make all existing NTTCs only effective until January of 1992, when they would no longer support either past deductions or future claims of deduction. This placed taxpayers in the position of self-auditing to determine from whom they had accepted NTTCs so that they could contact their customers and request that their customers obtain new NTTCs from the Department to support the deductions claimed for past years for transactions with their customers as well as to support future nontaxable sales.

¹ Laws 1991, Ch. 9, §29

Although the amendment became effective in June of 1991, since it voided any NTTCs issued prior to January of 1992, it also meant that even though the Department could accept applications for and issue the new 1992 series NTTCs once the law went into effect, if those NTTCs were issued prior to January of 1992, they would also become void as of that date. In early 1992, the Department was flooded with more requests for the new NTTCs than it could process in a timely manner. In the meantime, the Department's audit program continued and 60-day letters continued to be issued. Taxpayers could not comply by turning over pre January 1, 1992 NTTCs because they were void, yet their customers could not obtain new NTTCs quickly enough to comply with the 60 day deadline. It was a fiasco. These problems were ongoing at the time of the 1992 legislative session in which the amendment at issue was passed. Thus, it is possible that the legislature might have intended to do away with the requirement for timely possession of NTTCs for periods prior to July 1, 1992 in response to these problems.

Although the problems created by the 1991 amendments to Section 7-9-43 could certainly provide a basis for the 1992 Legislature to decide to repeal the requirements for timely possession of NTTCs for prior year's transactions, an examination of all of the changes enacted by the 1992 Legislature to Section 7-9-43 indicates that in addition to amending subsection A of Section 7-9-43, the legislature also took action to amend Subsection D in a way which addressed the problems which had been created by the prior year's legislation. All of the language which had been enacted the prior year as Subsection D was stricken and new language was adopted. It provided as follows:

On January 1, 1992, any nontaxable transaction certificate, *except for nontaxable transaction certificates of the series applicable to the six-year period beginning January 1, 1992 and issued by the department prior to that date* is void with respect to transactions *after December 31, 1991*. The department shall issue separate series of nontaxable transaction certificates for the six year period beginning January 1, 1992 and for each six-year period beginning on the January 1 of every sixth year succeeding calendar year 1992. A series of nontaxable transaction certificates issued by the department for any six-year period may be executed by buyers of lessees for transactions occurring within that six year period

but are not valid for transactions occurring before or after that six-year period, *except that certificates issued by the department with respect to the six year period beginning January 1, 1992 are also valid for transactions prior to January 1, 1992.* For administrative convenience, the department may accept and approve qualifying applications for the privilege of executing nontaxable transaction certificates and pre-issue certificates of any series within the six-month period immediately preceding the beginning of the six-year period to which the series of nontaxable transaction certificates applies. (emphasis added)

Laws 1992, Ch. 39 §3. By this amendment, the Legislature repealed the problematic provision and adopted new language which specifically recognizes that the pre-1992 series NTTCs would still be valid for transactions occurring before January 1, 1992. It further adopted language recognizing that any of the 1992 series certificates which it issued prior to January 1, 1992 would also be valid with respect to transactions occurring prior to January 1, 1992. Finally, the Legislature added language specifically authorizing the Department to pre-issue new NTTCs for up to six months prior to the beginning of the new six-year period for which the certificates are being issued, thus, providing ample time to process applications for and to issue new NTTCs. These amendments effectively addressed all of the problems created by the prior year's amendments and obviated the need for the Legislature to repeal the requirements for timely possession of NTTCs for periods prior to July 1, 1992. Thus, there would be no need for further legislative action to completely repeal the long existing requirements to be able to timely produce NTTCs in order to provide taxpayers relief from the problems it had created by the previous years amendments to Section 7-9-43.

It is the Department's contention that when the 1992 Legislature amended Subsection A of Section 7-9-43 to make more stringent the requirements governing when taxpayers are required to demonstrate possession of NTTCs to support claimed deductions, it never intended to completely eliminate the requirement of timely possession of NTTCs for prior periods. Rather, it was simply a legislative oversight to fail to address how the amendment would affect the tax treatment of transactions which had already transpired but were still within years subject to audit.

As noted above, ultimately, the determination of the issue presented turns upon determining the legislative intent with respect to the timely possession of NTTCs for transactions occurring under prior law. In reviewing the longstanding legislative history of the requirement to possess NTTCs and in carefully examining the 1992 legislative amendments to Section 7-9-43, I am convinced that the legislature did not intend to repeal the requirements for timely possession of NTTCs for prior year's transactions when it amended Section 7-9-43(A).

Perhaps the most persuasive evidence of legislative intent to retain the requirement for timely possession of NTTCs is the longstanding history of the statutory requirement to do so, coupled with the fact that the 1992 amendments made the NTTC requirements more stringent for future transactions. Since its enactment, there has been a requirement in the Gross Receipts and Compensating Tax Act for buyers or lessors to be able to demonstrate possession of NTTCs. *See*, Laws 1966, Ch. 47, §13, which specified that NTTCs "shall be in the possession of the seller or lessor for a nontaxable transaction when regulations so require." In response to this provision, the Bureau of Revenue promulgated G.R. Regulation 13-2 which required that a "Taxpayer must be in possession of all nontaxable transaction certificates for the period of an audit prior to the time the audit begins." Although this regulation was inexplicably struck down as being without legislative authorization by the Court of Appeals in the *Rainbo Baking* case, *supra.*, whose decision ignored the language in the law referring to Department regulations, the Legislature acted quickly to reinstate a requirement for possession of NTTCs within a limited time frame by enacting Laws 1973, Ch. 219 §1, which put into effect the requirement that remained essentially unchanged until the 1992 amendments at issue herein, which required possession of the NTTCs within 60 days of notice from the Department or suffer the consequence of losing the deduction supported by the NTTC. When the 1992 Legislature acted to amend this provision, they made the requirement even more stringent by requiring that taxpayers responding to a 60-day letter from the Department be able to demonstrate that they had possession of the required NTTC at the time

their return was due for the reporting period in which the deduction is claimed, rather than just producing a copy of the NTTC before the expiration of the 60 days. Concurrent with this change, the Legislature also added the provision making this new requirement effective on July 1, 1992, the effective date of the new provision. It is this language which makes the amendment effective prospectively which also causes the problem addressed herein, the effect of this amendment on transactions occurring under prior law. Given that the requirements for timely possession of NTTCs were made more stringent, however, it would make sense for the Legislature to act to carefully limit this new requirement to future transactions, after taxpayers could be given notice of the operation of the new requirement. Obviously, it would be unfair to deny taxpayers a deduction upon audit in the future on the basis of their failure to comply with a requirement for past transactions which only came into effect long after those transactions had occurred. It is in this context that we must interpret whether by including the language giving prospective effect to the more stringent NTTC requirements that the Legislature also intended to dispense entirely with the requirement for timely possession of NTTCs for transactions under prior law.

When placed in this context, McDonnell Douglas' argument that it would have been obvious to the Legislature that by making the new requirement operate prospectively from July 1, 1992, that they were eliminating the requirement for timely possession of NTTCs for transactions occurring prior to that date fails to be persuasive. Such a result is obvious only if one is looking at the statute with a mind to the precise issue presented herein, the effect of this language on transactions occurring prior to July 1, 1992. But that is not likely to be what the Legislature was focusing upon when it enacted the 1992 amendment. It seems much more likely that the focus of the Legislature in enacting the 1992 amendment was the primary effect of this amendment, the tightening of the requirements with respect to timely possession of NTTCs and the Legislature's desire to limit the effect of this more stringent requirement to future transactions rather than any secondary effect upon transactions occurring under the prior version of the law. Under these

circumstances, it is far more likely that the Legislature simply overlooked the effect of this amendment on the NTTC requirement with respect to transactions occurring under prior law than it is that they intended to repeal the requirement of nearly twenty years standing giving a sixty day time frame after notice to produce the requisite NTTCs.

The fiasco created by the 1991 Legislature which invalidated old series NTTCs and made it difficult to obtain the new series NTTCs in a timely manner is also instructive. It is a good example of the law of unintended consequences. While intending to eliminate problems due to the lack of accountability under the old series of NTTCS and substituting a new series which could be more closely monitored by the Department, the Legislature created as many problems as it sought to correct. It serves as a good example of how difficult it sometimes is to get everything done right in the time-pressured atmosphere of our legislative sessions. McDonnell Douglas' argument relies upon the standard presumption that the Legislature was aware of how the old law operated, so surely it was aware of the fact that it was changing how the old law applied to transactions occurring prior to the effective date of the new law when it enacted the subject amendments without the benefit of a savings clause. This presumption of Legislative regularity loses much of its glow in the light of what we know about how time-pressured the legislative session is and when we are confronted with examples of how truly difficult it sometimes is to anticipate every consequence of a change in law in such an atmosphere. In this reality, it once again appears far more likely that the 1992 Legislature simply overlooked the effect of its amendment on transactions occurring prior to the effective date of the amendment than that it intended to eliminate the longstanding requirement of timely possession of NTTCs.

Should there be any question about whether the principle of statutory construction that a substantial legislative reenactment of the provisions of former law indicates a legislative intent to retain in effect the provisions of former law with respect to transactions occurring when the former law was in effect applies to statutes imposing taxes, the Department has cited to a decision

of the California Supreme Court in a closely analogous situation. In *Los Angeles West Side Transportation Co. v. Superior Court in and for Sacramento County*, 211 Cal. 411, 295 P.837 (1931), the court held that California could enforce a tax that had been repealed, without a savings clause, on transactions that occurred before the repeal, in spite of the general rule against such enforcement, when it was clear from contemporaneous enactments that the Legislature did not intend to abandon this taxation program.

There can be no question as to the existence of the general rule relied upon by the petitioner, but its operation in the last analysis depends on the intention of the legislative branch in dealing with the subject.

[I]f from contemporaneous enactments it is disclosed that the Legislature did not intend to abandon the revenue from this particular source, but did intend to continue it in the same or a similar form of revenue exactions, then the general rule would not apply, and those subject to payment under the act repealed would be holden for payment under the continued revenue plan.

295 P. at 840. In this case, the Legislature, in reenacting Section 7-9-43(A), not only retained the requirement for production of NTTCs within a sixty day time frame, but also substantially tightened this requirement by requiring that even for those NTTCs produced within this time frame that the taxpayer must be able to demonstrate that it had the NTTCs in its possession when its returns were due reporting the deductions claimed under the NTTCs. Far from indicating a legislative intent to repeal the requirements concerning timely possession of NTTCs for transactions under prior law, this amounts to ample evidence of a legislative intent to retain the less demanding requirements under prior law for transactions occurring when the prior law was in effect. Because the provisions of former law remain in effect for transactions occurring during the time the prior law was in effect, the Department's regulation GR 43:1 is not invalid as a regulation unauthorized by law.

For these reasons, the deductions claimed by McDonnell Douglas which were not supported by the production of a proper NTTC within sixty days of notice from the Department

were properly denied.

CONCLUSIONS OF LAW

1. The Taxpayer filed a timely, written protest to Assessment No. 1867743 pursuant to Section 7-1-24 NMSA 1978 and jurisdiction lies over both the parties and the subject matter of this protest.

2. By amending Section 7-9-43(A) to retain and make even more stringent the requirements for timely possession of NTTCs, the 1992 Legislature intended to maintain in effect the provisions of the former version of that statute with respect to transactions occurring prior to the effective date of the amendment even though the Legislature, by making its amendment effective commencing July 1, 1992, and by failing to enact a savings clause as to transactions occurring under prior law, effectively repealed the provisions of the former law.

3. Because McDonnell Douglas failed to present evidence that it possessed a NTTC from Martin-Marietta within 60 days after receiving notice from the Department to present this NTTC in order to support its deductions claimed for its gross receipts from Martin-Marietta, the Department properly denied the deductions claimed by McDonnell Douglas for its gross receipts from Martin Marietta.

For the foregoing reasons, McDonnell Douglas' protest to that portion of Assessment No. 18867743 which assessed gross receipts tax based upon the Department's denial of deductions claimed by McDonnell Douglas for transactions occurring prior to July 1, 1992 IS HEREBY DENIED.

DONE, this 16th day of August, 1996.