

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

IN THE MATTER OF THE PROTEST OF
HIGHWAY SUPPLY, INC.,
ID NO. 02-024770-00-2
PROTEST TO ASSESSMENT NO. 1980073

No. 97-17

DECISION AND ORDER

This matter came on for hearing on February 25, 1997, before Gerald B. Richardson, Hearing Officer. Highway Supply Company, Inc., hereinafter, "Taxpayer", was represented by Mary E. McDonald, Esq. The Taxation & Revenue Department, hereinafter, "Department", was represented by Frank D. Katz, Chief Counsel. A Decision and Order was issued on April 2, 1997, but was withdrawn by Order of the Hearing Officer after the Taxpayer brought to the Hearing Officer's attention that the Decision and Order failed to address two smaller issues which had been raised by the Taxpayer. The Taxpayer also waived its right to be informed of the decision within 30 days of the close of the evidence in order to allow the Hearing Officer to re-issue his decision to address the additional issues. Based upon the evidence and the arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. The Taxpayer is engaged in the business of selling traffic control devices, such as sign faces, sign posts, paint and tape for highway striping, orange barrels, reflective tape, cones, temporary sign supports, barricade boards, flashing lights, batteries for flashing lights, reflectors and various types of hardware used to put these things together.

2. The Taxpayer sells traffic control devices to governmental agencies, such as the New Mexico Highway and Transportation Department, hereinafter, the "Highway Department", and to construction contractors.

3. As a result of an audit by the Department, on November 23, 1995, the Department mailed Assessment No. 1980073 to the Taxpayer, assessing \$86,188.46 in gross receipts tax, \$8,618.87 in penalty and \$59,789.59 in interest for the reporting periods of October, 1989, through October, 1993.

4. On December 22, 1995, the Taxpayer filed a timely, written protest to Assessment No. 1980073.

5. Included in the assessment was \$44,749.41 in gross receipts tax assessed on the receipts of the Taxpayer from selling paint, ceramic pavement markers and delineator buttons to the Highway Department. On January 25, 1994, the Taxpayer paid \$44,749.41 to the Department for the gross receipts tax on these sales and the Taxpayer does not protest that portion of the assessment.

6. Most of the remaining gross receipts tax assessed was assessed based upon the Department's denial of deductions claimed by the Taxpayer on sales of temporary traffic control signs and other devices which were sold by the taxpayer to road construction contractors who had delivered Type 6 non-taxable transaction certificates to the Taxpayers.

7. The Highway Department publishes a manual called "Standard Specifications for Highway and Bridge Construction", commonly referred to as the "yellow book", which specifies in detail the materials which must be used for Highway Department contracts. This manual includes detailed specifications for signs and traffic control devices to be used during road construction.

8. The federal government publishes a manual called the "Manual on Uniform Traffic Control Devices" or "MUTCD". The Highway Department has adopted the MUTCD by statute and has incorporated its requirements and specifications into its contracts with road construction contractors.

9. The MUTCD regulates the size, dimension, color, color of lettering, size of lettering, spacing of lettering, etc. for highway construction signs and other traffic control devices. It also specifies the requirements for use and placement of signs and traffic control devices used for road construction projects.

10. Every sign made by the Taxpayer conforms to the Highway Department's manual of standard specifications and to the MUTCD.

11. The Taxpayer's invoices certify that the materials it is selling meet the Highway Department specifications for a particular highway construction project.

12. Each Highway Department job contract has a section in it called the standard plans and specifications for traffic control devices. Essentially, this is a copy of the pertinent portions of the yellow book for the work specified in the contract. These show the contractor the exact dimension and type of traffic control devices and it also shows the contractor exactly how and where these devices must be set during the work under the contract. This provision specifies both the temporary traffic control devices called for in the job as well as the permanent signage and traffic control devices.

13. Each Highway Department job contract has a section of "pay items" which lists the various traffic control devices required for the job and specifies the number of such devices the job requires or the square footage of signage needed for the job. This is a part of the sample contract provided with the requests for proposals so that contractors bidding the job know exactly what is required so that they can bid the job properly.

14. Each Highway Department job contract also has a section which shows the construction traffic control for the project and if it is a large project, it will specify phases for the

traffic control as the project progresses. The specifications can be quite specific, requiring specialized language on some of the signs which are specific to the project.

15. The Taxpayer maintains sets of Highway Department plans for various road construction jobs at its place of business so that when Highway Department contractors come in to purchase traffic control devices needed for a job, the purchaser can indicate on the plans what they need and the Taxpayer can sell them what they need.

16. A contractor wishing to change the traffic control plan in a contract in any way would need to get approval from the Highway Department project manager assigned to the particular job.

17. In general, the requirements for placing traffic control signs during construction require that the signs be located twelve feet off of the shoulder for horizontal distance from the roadway and the bottom of the sign must be a minimum of seven feet from the ground.

18. Contractors retain ownership of the traffic control devices used in road construction projects unless the contract specifies otherwise. This means that usually, the contractor retains ownership of the temporary traffic control signs and devices and they may be re-used in the same or other road construction projects.

19. The temporary traffic control devices sold by the Taxpayer to highway construction contractors do not become permanent fixtures in the completed road construction project and are not ingredient or component parts of the construction project.

20. The Department's audit picked up as audit exceptions sales of certain traffic control devices and signs to highway construction contractors which are permanently installed in the highway construction project. The Department has agreed that signs or traffic control devices sold to highway construction contractors who delivered a type 6 NTTC to the Taxpayer which are permanently incorporated into a construction project should be deductible and it has agreed to make adjustments to the assessment to allow such deductions.

21. The Department's audit picked up as audit exceptions the Taxpayer's receipts from the sale of permanent street signs, such as "loading zone" signs and street name signs to governmental entities. The Taxpayer had claimed a deduction for these receipts pursuant to § 7-9-54 as the sale of tangible personal property to governmental entities.

DISCUSSION

The primary issue to be determined herein is the proper treatment for gross receipts tax purposes of sales of temporary road construction signs and other temporary traffic control devices to contractors who were under contract with the Highway Department or other governmental agencies to construct roads and who delivered a type 6 nontaxable transaction certificate ("NTTC") to the Taxpayer when they purchased those materials. The Taxpayer had claimed a deduction from its receipts, based upon the type 6 NTTC, pursuant to NMSA 1978, § 7-9-51. Section 7-9-51 provides as follows:

A. Receipts from selling tangible personal property may be deducted from gross receipts if the sale is made to a person engaged in the construction business who delivers a nontaxable transaction certificate to the seller.

B. The buyer delivering the nontaxable transaction certificate must incorporate the tangible personal property as:

(1) an ingredient or component part of a construction project which is subject to the gross receipts tax upon its completion or upon the completion of the overall construction project of which it is a part; or

(2) an ingredient or component part of a construction project which is subject to the gross receipts tax upon the sale in the ordinary course of business of the real property upon which it was constructed.

Upon audit, the Department disallowed those deductions on the basis that the temporary traffic control devices did not qualify for the deduction because they would not become an ingredient or component part of a construction project as required by § 7-9-51.

The Taxpayer has made several alternative arguments in support of its claim that it should not be taxable on its sales of temporary traffic control devices. Its primary argument is that there should be no distinction in the tax treatment of the sale of signs, whether they are permanent signs which are left standing at the end of the construction project or whether they were the temporary signs and other traffic control devices used during the construction project. They are all specified in the same detail by the Highway Department contracts and by the yellow book and the MUTCD, and they should have the same tax treatment. In essence, the Taxpayer argues that "construction project" should be construed broadly to include all of the activities involved in the construction and the temporary traffic control devices should be considered not only part of the construction project, but they should be considered ingredient or component parts of the construction project, since they are specified and regulated in the same manner as the permanent traffic control devices.

"Construction project" is not defined in the Gross Receipts and Compensating Tax Act, nor is it defined in the Department's regulations. "Construction" is defined, however, at NMSA 1978, §7-9-3(C) (1988 Repl. Pamp.). The part of the definition which would apply to the construction activities at issue herein is as follows:

"construction" means building, altering, repairing or demolishing in the ordinary course of business any:

(1) road, highway, bridge, parking area or related project;....

The definitions in the Gross Receipts and Compensating Tax Act also define construction to be a "service" and contains language addressing the tangible personal property involved in construction. Because it is in the same tax act and refers to the same concepts, it should also be read *in pari materia* with the definition of construction and the deduction for construction materials found at § 7-9-51. In pertinent part, NMSA 1978, § 7-9-3(K) provides as follows:

"Service" includes construction activities and all tangible personal property that will become an ingredient or component part of a construction project. Such tangible personal property retains its character as tangible personal property until it is installed as an ingredient or component part of a construction project in New Mexico. However, sales of tangible personal property that will become an ingredient or component part of a construction project to persons in the construction business are sales of tangible personal property.

Although the Department has no regulation which specifically defines a construction project, it does have a long-standing regulation which defines an ingredient or component part for purposes of § 7-9-51(B) which sheds some light on how it views a construction project. Regulation GR 51:1, recently recodified as 3 NMAC 2.52.7 provides as follows:

To be an "ingredient or component part" as used in Section 7-9-51(B) the tangible property must be an intended part of the finished project. The finished project is the end product of construction.

Thus, in the Department's view, the construction project is the finished project or the end product of construction and to be an ingredient or component part of the construction project, the property must be actually intended to be included in the finished project. The Department, since 1989, has also had a published ruling which addresses the Taxpayer's situation. Ruling 450-89-7 provides in pertinent part as follows:

A ruling has been requested concerning the applicability of certain provisions of the Gross Receipts and Compensating Tax Act to the following factual situation:

X rents and sells traffic control devices including barricades, barrels and signs for use in rerouting and controlling traffic during a construction project in New Mexico. X's customers include persons in the construction business.

X asks if X can accept either a "Type 6" or a "Type 7" nontaxable transaction certificate from a construction contractor. And, if so, are the receipts from the sale or rental of traffic control devices to persons engaged in the construction business deductible from X's gross receipts pursuant to the provisions of Sections 7-9-51 and 7-9-52 NMSA 1978.

The deduction provided by Section 7-9-51 NMSA 1978, requires that the person issuing the "Type 6" nontaxable transaction certificate incorporate the tangible property acquired as an ingredient or component part of a construction project. TRD Regulation GR 51:1 further states that the tangible must be intended to become an ingredient or component part of the construction project. Any traffic control device which is intended to be temporarily used at the site of the project to reroute traffic during the period of the construction activity is not an ingredient or component part of the project. Therefore, the receipts from the sale of the device are not deductible under the provisions of Section 7-9-51 NMSA 1978, and X shall not accept, in good faith, a "Type 6" nontaxable transaction certificate. If X sells a traffic control device which is designed to be come a permanent part of the construction project and to control or route traffic after completion of the project, X may deduct the receipts from the sale of that tangible to the construction contractor.

* * *

NMSA 1978, § 7-1-5(G)(1988 Repl. Pamp.) provides that:

"Any regulation, ruling, instruction or order issued by the secretary is presumed to be a proper implementation of the provisions of the revenue laws administered under the provisions of the Tax Administration Act.

The Gross Receipts and Compensating Tax Act is one of the laws administered under the Tax Administration Act. *See*, NMSA 1978, § 7-1-2(A)(3). Thus, both the regulation and the ruling are presumptively proper. Additionally, both appear to be reasonable interpretations of the language of § 7-9-51 which requires that the tangible personal property sold become an ingredient and component part of a construction project. In arriving at this conclusion, I am also persuaded by the use of the words used in both § 7-9-3(K) and §7-9-51 with respect to ingredient or component parts. The definition of service refers to ingredient or component parts which are "installed" in construction projects, and the deduction for tangible personal property sold to construction contractors refers to ingredient or component parts which are "incorporated" into a construction project. Both of these terms imply more than a temporary use of these materials while the project is being built. If the legislature had intended the deduction to be available for the sale of tangible personal property merely used in a construction project, it could have used this more generic or broad terminology. It did not do so, however.

This interpretation is also supported by the plain and ordinary meanings of the terms "ingredient" and "component". Webster's Third New International Dictionary defines a component as, "a constituent part: ingredient". It defines an ingredient as "something that enters into a compound or is a component part of any combination or mixture: constituent" All of these terms, "ingredient"," component", "incorporated" and "installed" all imply that something becomes an actual part of something, rather than something used as part of the activity of creating something. I am also persuaded that the Department's interpretation is correct by the fact that the Department has maintained this distinction between property used in a construction project and property which actually is incorporated into a construction project for a very long time and on a very consistent basis. There are fifteen different regulations under §7-9-51 which draw this distinction for all types of construction projects, from well drilling to building

buildings, most of which have been on the books for as long as this decision maker has been working in this field, over 18 years. With such longstanding and consistent application, it can only be assumed that the legislature is aware of the Department's interpretation and if it disagreed, it would have changed the statutory language to broaden its effect. For these reasons, it is concluded that the temporary traffic control devices sold by the Taxpayer do not qualify for deduction as ingredient or component parts of a construction project.

In the alternative, the Taxpayer argues that because the definition of "construction" found at NMSA 1978, §7-9-3(C) makes no reference to signs or traffic control devices whatsoever, that the sale of such things does not qualify to be considered construction or construction services. Accordingly, the Taxpayer argues that it should be regarded simply as a sale of tangible personal property for which it may claim deduction under either § 7-9-47 or §7-9-49.

The Taxpayer is correct in its assertion that the sale of the temporary traffic control devices does not qualify as construction, based on the analysis above that these temporary traffic control devices never become an ingredient or component part of a construction project as required by §7-9-3(K). It remains to be determined, however, whether such sales qualify for deduction under either of the two statutory provisions cited above.

NMSA 1978, §7-9-47 provides that:

Receipts from selling tangible personal property may be deducted from gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate *must resell the tangible personal property either by itself or in combination with other tangible personal property in the ordinary course of business.* (emphasis added).

In this case, the Taxpayer did not have the type 2 NTTCs necessary to support this type of deduction, but the parties have stipulated that since it is the Department's policy not to issue type 2 NTTCs to construction contractors, the Department will allow the Taxpayer to claim this deduction if it is determined that the Taxpayer would otherwise qualify to claim the deduction. I do not so find, however, because I do not believe that the contractors resell the traffic control devices in the ordinary course of business. The evidence established that the contractors retain ownership of these devices and may reuse them in other projects. They are used by the contractors in their performance of construction services. They are not resold.

NMSA 1978, § 7-9-49 provides a deduction for the sale of tangible personal property for leasing. In pertinent part it provides:

Receipts from selling tangible personal property...may be deducted from gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate *must be engaged in a business which derives a substantial portion of its receipts from leasing or selling tangible personal property of the type leased. The buyer may not utilize the tangible personal property in any manner other than holding it for lease or sale, or leasing or selling it either by itself or in combination with other tangible personal property in the ordinary course of business.* (emphasis added).

In this case, the Taxpayer relies upon the rather broad definition of "leasing" to argue that the highway contractors are leasing the temporary traffic control devices to the Highway Department, and that they are thus entitled to issue a type 4 NTTC to the Taxpayer, enabling the Taxpayer to claim the deduction at § 7-9-49. As with the type 2 NTTCs, the Department has a policy that it

will not issue type 4 NTTCs to construction contractors. The Department has stipulated that should it be determined that the Taxpayer would be entitled to accept type 4 NTTCs from the highway contractors, the Department will honor the deduction as if the Taxpayer had the requisite NTTCs.

The definition of "leasing" may be found at NMSA 1978, § 7-9-3(J), which provides as follows:

"leasing" means any arrangement whereby, for a consideration, property is employed for or by any person other than the owner of the property.

The Taxpayer argues that under this definition, the highway contractors are leasing the temporary traffic control devices to the Highway Department or other governmental agency for whom they are building road because the property is being employed for the Highway Department or other governmental agency. The Taxpayer has cited to a number of statutory provisions in Part 2 of Article 7 of Chapter 66, NMSA 1978, in support of its argument. Specifically, the Taxpayer cites to NMSA 1978, §66-7-101, which requires the state highway commission to adopt a manual and specifications for a uniform system of traffic control devices, §66-7-102 which requires the state highway commission to place and maintain such traffic control devices in conformity with its manual as necessary to regulate, warn or guide traffic, and §66-7-103 which requires local authorities to place and maintain such traffic control devices upon highways in their jurisdiction as necessary to regulate, warn or guide traffic. The Taxpayer argues that the temporary traffic control devices it sells to highway contractors are being used by the Highway Department or local governmental entity to fulfill the government's obligation to provide a safe driving environment.

While, no doubt, the governmental entities are obligated to provide a safe driving environment during road construction, the contractual documents which are part of every Department construction project also put that obligation upon the highway contractor. These standard contract provisions are set out in the Highway Department yellow book. Specifically,

under Section 107, entitled "Legal Relations and Responsibility to Public", Subsection 107.9 provides as follows:

PUBLIC CONVENIENCE AND SAFETY. The safety and convenience of the general public and the residents along the highway and the protection of persons and property shall be provided for *by the Contractor* as specified under Subsection 104.5 Maintenance of Traffic. (emphasis added).

Section 104.5 provides in pertinent part as follows:

MAINTENANCE OF TRAFFIC. *The Contractor shall furnish, erect and maintain barricades, warning signs, flagmen and pilot cars in accordance with the MUTCD, the Traffic Control Plan, and the requirements of DIVISION 700--TRAFFIC CONTROL DEVICES.* (emphasis added).

Section 701 says this with regard to traffic signs and sign structures:

701.11 This work shall consist of furnishing and installing traffic signs and sign structures in compliance with the specifications, Manual On Uniform Traffic Control Devices "MUTCD), and as shown in the contract.

Subsection 702.31 provides as follows:

General. Traffic control devices shall be furnished by the Contractor, shall be installed at the locations shown in the contract and as designated by MUTCD. Unless otherwise shown in the contract the construction traffic control devices shall remain the property of the Contractor. (emphasis added).

Given that these provisions clearly place responsibility for maintenance of the traffic control devices and maintenance of safe traffic control during highway construction upon the highway contractors themselves, I am not persuaded that the contractors are leasing the temporary traffic control devices to the Highway Department or other governmental entity for whom the construction is being done. The Taxpayer's argument muddies the distinction between the government doing the job of traffic safety control itself, or doing it through a contractor. Just as the highway contractor is not leasing to the Highway Department the earthmoving equipment it uses when building a highway, but is using the equipment to fulfill its own contractual obligation

to build the road, the highway contractors are not leasing the temporary traffic control devices to the Highway Department. Rather, they are using these devices to fulfill their own contractual obligations to the Highway Department. For these reasons, the Taxpayer would not be entitled to accept a type 4 NTTC from highway contractors when it sells temporary traffic control devices to them.

The deductibility of the Taxpayer's receipts from selling temporary traffic control devices to highway department contractors represented the vast majority of the amount of tax in protest, but the Taxpayer also challenges the Department's denial of deduction for some of its receipts for sales of permanent signs and traffic control devices. The Department's auditor denied the deduction claimed for the sale of some traffic control devices to highway department contractors which the Taxpayer has demonstrated were permanent rather than temporary traffic control devices. The Department has agreed that since these permanent traffic control devices would become an ingredient or component part of a construction project which would be subject to gross receipts tax upon its completion, that these deductions should be allowed provided that the Taxpayer had a type 6 NTTC from the purchaser of the devices. Accordingly, the Department has agreed to adjust the assessment to allow for the deduction of these receipts and to correspondingly adjust the percentage of error upon which the assessment was based.

The Department's audit had also disallowed a deduction for the Taxpayer's receipts from the sale of some permanent signs which were sold directly to governmental entities. Specifically, the Taxpayer sold five "loading zone" signs to the City of Santa Fe and a large number of street name signs to Doña Ana County. The Taxpayer claims that these receipts should be deductible pursuant to NMSA 1978 § 7-9-54, which provides in pertinent part:

A. Except as provided otherwise in Subsection C of this section, receipts from selling tangible personal property to the United States of New Mexico or any governmental unit or subdivision, agency, department or instrumentality thereof may be deducted from gross receipts or from governmental gross receipts.

* * *

C. Unless contrary to federal law, the deduction provided by this section does not apply to:

* * *

(3) receipts from selling tangible personal property that will become an ingredient or component part of a construction project.

The Taxpayer claims that these signs are tangible personal property, the receipts from the sale of which are deductible under this section. The Department's position is that these signs, although tangible personal property, when permanently installed will be an ingredient or component part of a construction project. As such, the Taxpayer's receipts would be excluded from the deduction.

Resolution of this issue turns upon how broadly a "construction project" is construed. The Taxpayer argues that for purposes of these sales, the signs should not be considered to be part of a construction project because the signs are not part of a road or highway, but rather, they are installed off of the road. In making this argument, the Taxpayer relies upon *Cardinal Fence Co., Inc. v. Commissioner of the Bureau of Revenue*, 84 N.M. 314, 502 P.2d 1004 (Ct. App. 1972). In that case, the Court of Appeals ruled that the erection of a fence was not "construction" because fences were not on the list of structures under the definition of construction found at § 7-

9-3(C). The Taxpayer argues that under *Cardinal Fence*, since signs are not specifically listed in the definition of construction, the erection of signs would also not be considered to be construction, and thus, they could not be part of a construction project.

The Department's position is that "construction project" should be construed broadly to include not only the construction of the road or street itself, but also the appurtenant or related fixtures, such as the traffic control devices. In this regard, the Taxpayer presented no evidence as to how the governmental entities used the street and loading zone signs at issue herein. Thus, we do not know whether they were installed as part of the construction of new streets and roadways, or whether they were added to existing streets and roadways or were replacements for existing signage. It really doesn't matter, however, for the definition of construction is written broadly. As noted earlier, the pertinent part of the definition of construction found at § 7-9-3(C)(1) defines construction to mean, "building, *altering, repairing* or demolishing in the ordinary course of business...any road, highway, bridge parking area *or related project...*" (emphasis added). Thus, whether the signs were purchased for a new road and street project or were purchased as part of the alteration or repair of an existing street or road, they may be considered construction if the installation of permanent signs is considered to be "construction".

I am persuaded that the erection of signs appurtenant to streets, highways and roads falls within the definition of construction. Although signs are not specifically listed in the definition of construction, their erection falls within the broad term, "related project". As was established by the evidence with regard to the highway construction projects, the signage for those roads and highways, regardless of whether it was temporary or permanent, was part of the construction project itself and was specified in detail in the construction project documents. The deduction for the temporary signs was denied not because the signs were not part of a construction project, but because they did not become a permanent "ingredient or component part" of the construction project. It hardly stretches the imagination to conclude that the installation of street name signs,

stop signs, loading zone signs or other permanent traffic control and directional signage is related to the building, altering or repair of the streets and roadways themselves.

This construction is also wholly consistent with the long established legislative scheme regarding the taxation of construction for governmental entities. When the government contracts to build a road or a street with an independent construction contractor, that contractor may purchase the materials to be incorporated permanently into the project free of tax by issuing a type 6 NTTC to his supplier. The materials are ultimately subject to tax, however, upon the completion of the project because the materials incorporated into the project become part of the service performed by the contractor, which are subject to gross receipts tax in their entirety. *See*, definition of service at § 7-9-3(K) and deduction at § 7-9-51. This is because there is no deduction in the Gross Receipts and Compensating Tax Act for sale of services to governmental entities. The only applicable deduction for sales to governmental entities is the one found at § 7-9-54 for sales of tangible personal property, and this deduction specifically excludes deduction for sales of tangible personal property which becomes an ingredient or component part of a construction project. The legislative scheme is clear and well established. Governmental entities either pay gross receipts tax upon construction materials indirectly when their contractors recover their liability gross receipts tax upon the entire value of the construction project they contract for or they pay gross receipts tax to the vendor of construction materials when they are purchased directly from a supplier. They cannot skirt the gross receipts tax by buying the materials for the project and then supplying them to the contractor, or installing them itself after the road construction has been completed.

CONCLUSIONS OF LAW

1. The Taxpayer filed a timely, written protest to Assessment No. 1980073 and jurisdiction lies over both the parties and the subject matter of this protest.

2. To qualify as an ingredient or component part of a construction project pursuant to NMSA 1978, § 7-9-51(B), tangible personal property must be actually incorporated into the final or completed construction project.

3. Because the highway construction contractors retain ownership of the temporary traffic control devices sold by the Taxpayer, those devices are not resold by the contractors to the owners of the road construction project and Taxpayer's sales do not qualify for deduction under NMSA 1978, § 7-9-47.

4. Because the highway construction contractors themselves are contractually obligated to provide for the safety of the motoring public during road construction projects and must do so by properly placing and maintaining temporary traffic control devices, the contractors are not leasing temporary traffic control devices to the governmental owners of

the road construction project and the Taxpayer's sales of such devices to construction contractors do not qualify for deduction under NMSA 1978, §7-9-49.

5. The Taxpayer is not entitled to claim the deduction at § 7-9-54 for its receipts from the sale of permanent traffic control signs to governmental entities because the signs become an ingredient or component part of a construction project.

For the foregoing reasons, the Taxpayer's protest IS HEREBY DENIED.

DONE, this 5th day of June, 1997.