

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

IN THE MATTER OF THE PROTEST OF
LOCKHEED MISSILES & SPACE COMPANY
ID NO. 02-011388-00 9, PROTEST
TO ASSESSMENT NO. 1992593

No. 97-07

DECISION AND ORDER

This matter came on for hearing on February 19, 1997, before Gerald B. Richardson, Hearing Officer. Lockheed Missiles & Space Company, hereinafter, "LMSC", was represented by Fred W. Schwendimann, Esq., The Taxation and Revenue Department, hereinafter, "Department", was represented by Frank D. Katz, Chief Counsel. Based upon the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. At all relevant times with respect to this matter, LMSC was a wholly-owned subsidiary of the Lockheed Corporation doing business in New Mexico under taxpayer identification number 02-011388-00 9.

2. The Department audited LMSC's gross receipts tax returns (Forms CRS-1) for taxable periods beginning on January 1, 1989 and ending on December 31, 1992.

3. On January 25, 1996, the Department issued gross receipts tax assessment no. 1992593 against LMSC in the principal tax amount of \$1,273,680.00, plus statutory additions.

4. On April 23, 1996, LMSC filed a timely protest of a portion of the foregoing assessment in the amount of \$1,044,276.00, plus statutory additions.

5. LMSC's protest of assessment no. 1992593 pertained to tax base exceptions taken by the Department's auditors under the provisions of Section 7-9-13.1 NMSA 1978; however, LMSC did not protest the assessment to the extent of \$229,404.00, plus statutory additions,

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representing gross receipts tax attributable to services performed in New Mexico by LMSC during the audit period, under the provisions of Section 7-9-4 NMSA.

6. The protested portion of assessment no. 1992593 was attributable to four military contracts, under the terms of which LMSC had agreed to perform research and development services outside of the State of New Mexico.

7. In 1988, LMSC had entered into Contract No. DASG60-88-C-0015, denominated as the Ground Based Free Electron Laser Technology Integration Experiment Beam Control Subsystem Basic Program (the "GBFEL" contract), to perform research and development services for the U.S. Army Strategic Defense Command, Huntsville, Alabama, in an effort to demonstrate the feasibility of a fully integrated and operational ground based laser system, as a component of the United States' ballistic missile defense.

8. At inception, the GBFEL contract contemplated that its basic program would be completed and a baseline technical description document would be approved by April 29, 1992; however, effective as of December 21, 1989, the GBFEL contract was substantially terminated for the convenience of the Army, and LMSC was directed to continue working only on the development of a directed energy antisatellite system.

9. As of February 18, 1991, the GBFEL contract was completely terminated for the convenience of the Army, and LMSC was subsequently directed to complete and deliver a final report.

10. On August 23, 1991, LMSC delivered its final report to the Army's GBFEL project office on White Sands Missile Range, Alamogordo, New Mexico, as well as to Huntsville, Alabama, and other specified locations.

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11. From December 21, 1989 through August 23, 1991, LMSC accrued gross receipts totalling \$2,087,512.00 from research and development services performed outside of New Mexico, but initially used in New Mexico under the GBFEL contract.

12. In 1989, LMSC had entered into Contract No. F29601-89-C-0015, denominated as the Space Integrated Controls Experiment (the "SPICE contract"), to provide technical, administrative and facility support to the Force Weapons Laboratory ("AFWL"), Kirtland Air Force Base ("KAFB"), Albuquerque, New Mexico, in connection with the United States' ballistic missile defense.

13. The SPICE contract's period of performance was initially intended to terminate on or about September 23, 1993; subsequently, that date was extended until March 31, 1995.

14. LMSC's services involving program management and facility support were generally performed in Albuquerque, New Mexico or on KAFB.

15. LMSC's services in connection with the planning of experiments, the collection and analysis of data therefrom and the reporting of data and test results were supported at LMSC facilities in Sunnyvale and Palo Alto, California, Honeywell facilities in Phoenix, Arizona and CTA Engineering facilities in Palo Alto, California.

16. The SPICE contract required LMSC to prepare and deliver a final report documenting its technical studies and experiments.

17. LMSC's final report under the SPICE contract was delivered to and received by AFWL at KAFB on April 3, 1995.

18. From July 1, 1989 through December 31, 1992, LMSC accrued gross receipts totalling \$3,208,949.00 from research and development services performed outside of New Mexico

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but initially used in New Mexico under the SPICE contract.

19. In 1985, LMSC entered into Contract No. F29601-85-C-0130, denominated as Phase III of the Large Optics Demonstration Experiment (the "LODE contract"), to perform research and development services, together with certain administrative services, for AFWL, KAFB, Albuquerque, New Mexico, in connection with the United States' ballistic missile defense.

20. The LODE contract originally contemplated that its work would be completed by April 29, 1988; subsequently, as of February 17, 1988, the LODE contract was substantially modified to add three follow-on brassboard beam control demonstration experiments, to be substantially performed at LMSC facilities in Sunnyvale and Palo Alto, California.

21. As modified, the LODE contract required LMSC to prepare and deliver a draft final report within 30 days after the completion of technical performance, and a final report within 30 days after receiving back an edited draft.

22. LMSC's final report documenting work on the three follow-on experiments was delivered to AFWL on or before July 1, 1990.

23. From July 1, 1989 through July 31, 1991, LMSC accrued gross receipts totalling \$787,343.00 from research and development services performed outside of New Mexico but initially used in New Mexico under the LODE contract.

24. In 1986, LMSC entered into Contract No. F29601-86-C-0236, denominated as the Bifocal Integrated Brassboard Experiment (the "BIFOCAL contract"), to perform research and development services, together with certain administrative services, for AFWL, KAFB, Albuquerque, New Mexico, in connection with the United States' ballistic missile defense.

25. The BIFOCAL contract contemplated that its work would be substantially

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performed at LMSC facilities in Sunnyvale and Palo Alto, California, but required LMSC to prepare and deliver to AFWL a final report documenting the results of its work.

26. From July 1, 1989 through March 31, 1992, LMSC accrued gross receipts totalling \$87,867.00 from research and development services performed outside of New Mexico but initially used in New Mexico under the BIFOCAL contract.

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CONCLUSIONS OF LAW

1. Lockheed Missiles and Space Company has complied with the provisions of the New Mexico Tax Administration Act (Chapter 7, Article 1, NMSA 1978) in its protest of Assessment No. 1992593.

2. Under each of the GBFEL, SPICE, LODE and BIFOCAL contracts, LMSC was required to prepare and deliver to Army or Air Force installations in New Mexico the products of its services including a final report of those research and development services that LMSC had performed outside of New Mexico on or after July 1, 1989 and on or before December 31, 1992.

3. The delivery in New Mexico of the products of LMSC's services, including a final report, under each of the GBFEL, SPICE, LODE and BIFOCAL contracts constituted initial use, as defined in Section 7-9-3(O) NMSA 1978, of products of LMSC's research and development services performed outside of New Mexico on or after July 1, 1989 and on or before December 31, 1992.

4. Taking account of the findings of fact set forth above, and pursuant to the provisions of Section 9-7-13.1 NMSA 1978, LMSC has realized taxable gross receipts from its sales of research and development services that were performed outside of New Mexico between July 1, 1989 and December 31, 1992, and has incurred gross receipts tax liabilities on out of state services as follow:

- A. With respect to the GBFEL contract, \$110,000.00 in gross receipts taxes;
- B. With respect to the SPICE contract, \$175,372.00 in gross receipts taxes;
- C. With respect to the LODE contract, \$41,298.00 in gross receipts taxes;

and

- D. With respect to the BIFOCAL contract, \$4,633.00 in gross receipts taxes.

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5. LMSC's protest of Assessment No. 1992593 is sustained to the extent of \$712,973.00 (*i.e.*, the difference between the original assessment under Section 7-9-13.1 NMSA 1978 and the amount held to be due herein) but LMSC's protest is denied to the extent of \$331,303.00, plus statutory interest of \$303,372.00 through February 25, 1997.

6. Additionally, LMSC is liable for the unpaid portion of its unprotested gross receipts tax in the amount of \$ 7,845.00, together with accrued and unpaid interest in the amount of \$204,999.00, and penalty in the amount of \$26,690.00.

DONE, this 6th day of March, 1997.