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

IN THE MATTER OF THE PROTEST OF
AMIGOS MEXICAN FOODS, INC. NO. 97-24
ID. NO. 02-015615-00 4
PROTEST TO ASSESSMENT NO. 2012557

DECISION AND ORDER

This matter came on for formal hearing on June 11, 1997 before Gerald B. Richardson, Hearing Officer. Amigos Mexican Foods, Inc., hereinafter, "Taxpayer", was represented by Gary D. Eisenberg, Esq. The Taxation & Revenue Department, hereinafter, "Department", was represented by Margaret B. Alcock, Special Assistant Attorney General. Based upon the evidence and the arguments presented, IT IS DECIDED AND ORDERED as follows:

FINDINGS OF FACT

1. The Taxpayer is a mexican food processing company, incorporated in 1984, which makes tortillas, tamales and other mexican food products and is located in Deming, New Mexico. It has a retail store in Deming and it sells its products at wholesale throughout New Mexico, and also in Colorado, Arizona and Texas.

2. In late 1995, the Taxpayer was audited by the Department.

3. As a result of the Department's audit, on March 15, 1996 the Department issued Assessment No. 2012557, assessing the Taxpayer $9,425.27 in gross receipts tax, $1,637.33 in compensating tax, $1,106.29 in penalty and $4,231.96 in interest.

4. On March 29, 1996 the Taxpayer filed a timely, written protest to Assessment No. 2012557.

5. The basis for the Department's assessment of gross receipts taxes was the Taxpayer's failure to possess a proper form of nontaxable transaction certificate ("NTTC") to support deductions it had claimed from gross receipts tax.

6. Because much of the Taxpayer's business is the wholesale sale of its mexican food

products to restaurants and other businesses who resell the food, much of the Taxpayer's gross receipts may be deducted pursuant to NMSA 1978, §7-9-47 when the Taxpayer has a NTTC issued to it by its customers who resell the food to support its claim for deduction.

7. The 1991 legislature amended §7-9-43 governing NTTCs. It enacted a new provision, subsection D, which had the effect of invalidating all NTTCs issued under the prior law with respect to transactions occurring after December 31, 1991. For such transactions, taxpayers issuing NTTCs must apply for the new "1992 series" NTTCs and pay a $100 fee with the application for the new certificates. The law was also amended to tighten the requirements for when a taxpayer must be able to demonstrate to the Department's auditors that they possess a valid NTTC to substantiate a deduction. The old law had allowed taxpayers 60 days from notice from the Department to come up with NTTCs and those NTTCs were honored as long as they were issued before the expiration of the 60 days. The new law required that taxpayers demonstrate that they had a valid NTTC at the time that they claimed the deduction, although they were still given 60 days to come up with the pre-existing NTTCs.

8. The Department attempted to widely notify taxpayers of the new requirements for NTTCs and that the old NTTCs would not be valid for transactions occurring after December 31, 1991. The Department did this by putting a bold-faced notice of the new requirements on the front page of the CRS-1 filers kits it mailed to all taxpayers who are registered with the Department to report gross receipts tax, compensating tax and withholding tax. The filers kits are mailed every six months and contain the taxpayer's monthly tax return forms. These kits were mailed for the July through December, 1991 period, the January through June, 1992 period and the July through December 1992 period.

9. The Taxpayer received these filers kits. The Taxpayer was aware of the requirement to obtain the new 1992 series NTTCs because it applied for and got such certificates for itself. The Taxpayer did not read the more detailed information about how the new requirements for NTTCs were to operate because it turned over the filing kits to its accountant who

prepares its monthly tax returns to be filed with the Department.

10. The Taxpayer had many customers who resented the new $100 fee to obtain the 1992 series NTTCs from the Department and who refused to apply for new NTTCs because of the fee.

11. The Taxpayer continued to honor the old NTTCs it had from its customers and continued to claim deduction for receipts from such customers for transactions occurring after December 31, 1991.

12. The Taxpayer had NTTCs in its possession from most of its wholesale customers in support of the deductions it claimed from gross receipts. The majority of the Department's audit exceptions upon which the gross receipts tax assessment was based were due to the fact that the Taxpayer did not have the new 1992 series NTTC from some of those customers.

13. The compensating tax was assessed upon the value (at Taxpayer cost) of certain equipment purchased by the Taxpayer for use in its food manufacturing operation. Most of the equipment was purchased at auctions of restaurant equipment which occurred in Texas or from manufacturers of restaurant equipment in Texas. In one case, the Taxpayer was assessed compensating tax on a large steamer kettle which it purchased from a Las Cruces restaurant, La Sienda, which was a customer of the Taxpayer's. The restaurant was not using the kettle and Mr. Arnulfo Orquez, the President of the Taxpayer, saw that it was not being used and asked the owner of the restaurant if he was interested in selling it. In all cases where compensating tax was assessed, the Taxpayer was unable to demonstrate with business records, such as invoices, that a tax was paid on the purchase of the equipment at the time of its purchase or that compensating tax had been paid by the Taxpayer on the purchase.

14. Mr. Orquez believes that sales tax was charged and paid on the purchase price of all of the equipment purchased in Texas.

15. One of the pieces of equipment upon which compensating tax was assessed was a machine called an M/D divider. It is used to make rounds of tortilla dough which can then be

rolled out into tortillas in a tortilla press. The Taxpayer purchased it for $15,184 in San Antonio, Texas. It was brought back to the Taxpayer's business, but it was put into storage and has never been used by the Taxpayer.

DISCUSSION

The Taxpayer contests the assessment of gross receipts tax, compensating tax and penalty. Each of these issues will be addressed separately.

The assessment of gross receipts tax arose from the Department's denial of deductions claimed by the Taxpayer for the sale of its products to restaurants and other customers who resell the products. Receipts from such sales are deductible, pursuant to NMSA 1978 §7-9-47, when the purchaser provides a proper form of NTTC to the seller to support a deduction from tax. The problem in this case arose because in 1991 the legislature amended §7-9-43 to provide that after December 31, 1991, the old form of NTTCs would no longer be valid for transactions occurring after that date. A new "1992 series" NTTC was provided for and a $100 fee was enacted for the privilege of executing the new type NTTCs. *See,* NMSA 1978, §7-9-43 (1991 Supp.) Although the Taxpayer was aware of the requirement to obtain the new 1992 series NTTCs, and it did so itself for issuance to the vendors it purchased from, many of the Taxpayer's customers strenuously objected to the requirement that they pay a $100 fee to obtain the new certificates and they refused to do so. The Taxpayer did not require that its customers provide it the new NTTCs and it continued to sell its products to those customers, honoring the old NTTCs, not charging gross receipts tax to those customers, and claiming a deduction from tax based upon the old NTTCs it had from those customers. The Department, upon audit, disallowed those deductions for transactions after July 1, 1992 where the Taxpayer was unable to demonstrate possession of the new 1992 series NTTC.

The Taxpayer argues that since these transactions were clearly sales for resale which were supported by the previously valid NTTCs, that it has substantially complied with the requirements for deduction and the deductions should be allowed. The Taxpayer also asks for consideration of

the difficulty of its circumstances because its customers were adamant about not paying the fee to obtain the new NTTCs but were also adamant about purchasing the Taxpayer's products without the cost of the gross receipts tax passed on to them.

While I am sympathetic to the business realities the Taxpayer faced in dealing with its customers and I am aware that the legislature, in response to a large outcry from businesses, saw the folly of the $100 fee and later repealed the requirement, the law does not allow an exception for "substantial compliance" with the tax laws. NMSA 1978, §7-9-43(A) (1991 Supp.) provides in pertinent part as follows:

> The provisions of the subsection apply to transactions occurring on or after July 1, 1992. *All nontaxable transaction certificates of the appropriate series* executed by buyers or lessees shall be in the possession of the seller or lessor for nontaxable transactions at the time the return is due for receipts from the transactions. If the seller or lessor 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.* (emphasis added).

Should there be any doubt that the legislature intended strict enforcement of its requirement that sellers possess the proper form of NTTC in order to claim a deduction, the legislature's choice of the word "shall" removes any doubt. This is because it is a well settled rule of statutory construction that the use of the word "shall" in a statute indicates that the provisions are intended to be mandatory rather than discretionary, unless a contrary legislative intent is clearly demonstrated. ***State v. Lujan***, 90 N.M. 103, 560 P.2d 167 (1977). Thus, there is simply no allowance for substantial compliance with the requirement to possess the correct form of NTTC to support a claim of deduction. A failure to meet the statutory requirements results in the denial of the deductions claimed.

The Taxpayer also disputes the compensating tax assessed. The vast majority of the

compensating tax assessed was assessed on the value of equipment which the Taxpayer purchased out-of-state. Mr. Orquez testified that in general, much of the restaurant equipment he purchased for his business was bought at auction in Texas. Other equipment was purchased from manufacturers in Texas because it was not available in New Mexico. Mr. Orquez testified that he believes that Texas sales tax was paid on those transactions, but upon audit, the Taxpayer had been unable to produce invoices or other business documents to establish that sales tax was paid and the amount of such tax. Mr. Orquez testified specifically with regard to two pieces of equipment. One was something called an M/D divider, which makes rounds of dough to be rolled out flat into tortillas. It was purchased in San Antonio, Texas and brought back to the Taxpayer's place of business, where it was put in storage and has never been used by the Taxpayer in its business. The second piece of equipment is a steamer kettle which the Taxpayer purchased from one of its customers who operates a restaurant in Las Cruces. These transactions will be discussed separately.

In general, the compensating tax is intended to complement the gross receipts tax by imposing a tax on the use of property which was purchased in circumstances, (such as an out-of-state transaction) where no gross receipts tax was imposed. The compensating tax equalizes the tax burden so that there is no tax advantage to make purchases out of state or in a manner which avoids the imposition of gross receipts tax.

Compensating tax on the use of tangible personal property is imposed by NMSA 1978, §7-9-7(A), which provides:

> For the privilege of using tangible property in New Mexico, there is imposed on the person using the property an excise tax equal to five percent of the value of tangible property that was:
>
> (1) manufactured by the person using the property in the state;
>
> (2) acquired outside this state as the result of a transaction that would have been subject to the gross receipts tax had it occurred within this state; or
>
> (3) acquired as the result of a transaction which was not initially subject to the compensating tax imposed by Paragraph (2) of this subsection or the gross receipts tax but which transaction, because of the buyer's subsequent use of the property, should have been subject to the compensating tax imposed by Paragraph (2) of the subsection or the gross receipts tax.

There is also a credit against compensating tax imposed on property purchased out-of-state provided by NMSA 1978, §7-9-79(A), which provides as follows:

> If on property bought outside this state, a gross receipts, sales, compensating or similar tax has been levied by another state or political subdivision thereof on the transaction by which the person using the property in New Mexico acquired the property or a compensating, use or similar tax has been levied by another state on the use of the property subsequent to its acquisition by the person using the property in New Mexico and such tax has been paid, the amount of such tax paid may be credited against any compensating tax due this state on the same property.

The Taxpayer argues that by Mr. Orquez' testimony that with respect to the equipment purchased in Texas he believes that Texas sales tax was imposed, that the Taxpayer has met its burden of overcoming the presumption of correctness which attached to the assessment of compensating tax. NMSA 1978, §7-1-17(C) provides for such a presumption.

While I find Mr. Orquez to be an honest and credible witness, I find his testimony to be a little too vague or general to effectively rebut the presumption of correctness. He provided little testimony as to specific items which were picked up for compensating tax by the Department's auditors. The only items he specifically testified to were the M/D divider, the steamer kettle and a sink and exhaust fan. With respect to the sink and exhaust fan, he testified that he thought it was bought in Texas at auction, but his testimony was not certain. He further testified that at auctions in Texas, there was a sign posted that all purchases were subject to tax. There was no proof of the amount of tax, however. No proof was presented as to the rest of the items upon which compensating tax was assessed, other than Mr. Orquez's general statement that he believed most items were purchased in Texas at auction and that sales taxes were imposed on those purchases.

> NMSA 1978, §7-1-10 provides as follows:
> Every person required by the provisions of any statute administered by the department to keep records and documents *and every taxpayer shall maintain books of account or other records in a manner that will permit the accurate computation of state taxes* or provide information required by the statute under which he is required to keep records.

The purpose of this provision is stated in its text, to permit the accurate computation of state taxes. In this case, the documents which would establish that sales taxes were imposed by Texas and the amount of taxes paid would be the receipts or purchase invoices for the equipment at issue. While I found Mr. Orquez to be both honest and credible, his recollection of these sales was too vague or general to rely upon to allow the offsetting credit provided at §7-9-79. For instance, Mr. Orquez assumed that he was charged sales tax on the purchase of the M/D divider because Texas businesses must pay taxes to the aggressive Texas taxing authorities. This assumes that businesses will pay taxes because of the tax consequences to them if they don't do so. Yet, Mr. Orquez, by his own testimony, admitted that he sold his mexican food products through his retail operation to businesses that brought in migrant farm workers during harvest season and that he did not charge them gross receipts tax and claimed a deduction for such sales even though the purchasers did not provide him with the NTTC to support such a claim of deduction. Mr. Orquez testified that he was afraid he would lose the business to his competitors if he insisted on collecting tax. This testimony reflects that sometimes a business may make a business decision not to charge and pay taxes. Thus, the fact that a state imposes a sales or other tax on purchases does not provide much in the way of proof that such taxes were, in fact, charged to the customer. Given the statutory requirement that records be maintained to be able to accurately compute taxes and given the general nature of Mr. Orquez' testimony, I do not find that the taxpayer has overcome the presumption of correctness of the compensating tax assessment.

With respect to the M/D divider, the Taxpayer also argues that since the compensating tax is imposed upon the privilege of using property in New Mexico and since the equipment was never used in the business, but was merely stored, that compensating tax should not be assessed on the value of that equipment. Unfortunately for the Taxpayer, "use" is defined broadly to encompass storage. Specifically, NMSA 1978, §7-9-3(L) defines use to include, "use, consumption or storage other than storage for subsequent sale in the ordinary course of business..." Thus, no relief can be granted with respect to the tax assessed on this item.

I do find, however, that the Department incorrectly assessed compensating tax on the value of the steamer kettle which the Taxpayer purchased from a Las Cruces restaurant. Nothing in §7-9-7 imposes compensating tax on such a transaction. The circumstances in which compensating tax is assessed on an in-state transaction is where the property was acquired as a result of a transaction which was not initially subject to gross receipts tax, but because of the purchaser's subsequent use of the property, it should have been subject to the gross receipts tax. §7-9-7(A)(3). This covers situations such as where a purchaser delivers an NTTC stating that he will resell something, but the purchaser uses the item for its own personal use, instead. In this case, the sale by the restaurant in Las Cruces would not have been initially subject to the gross receipts tax because the restaurant could have claimed the exemption for isolated and occasional sales found at NMSA 1978, §7-9-28, which provides as follows:

> Exempted from the gross receipts tax are the receipts from the isolated or occasional sale of or leasing of property or a service by a person who is neither regularly engaged nor holding himself out as engaged in the business of selling or leasing the same or similar property or service.

The testimony indicates that the restaurant from which the Taxpayer purchased the steamer kettle is not regularly engaged in the business of selling restaurant equipment since the steamer was only sold to Mr. Orquez because he noticed it wasn't being used and asked if he might buy it. Thus, the transaction would have been exempt from gross receipts tax under §7-9-28. There is nothing about the Taxpayer's subsequent use of the steamer kettle which would invoke the imposition of gross receipts tax on that transaction. The compensating tax assessment should be adjusted accordingly.

The final issue to be determined is the propriety of the assessment of penalty. The imposition of penalty is governed by the provisions of NMSA 1978, Section 7-1-69(A) NMSA 1978, which imposes a penalty of two percent per month, up to a maximum of ten percent:

In the case of failure, due to negligence or disregard of rules and regulations, but without intent to defraud, to pay when due any amount of tax required to be paid or to file by the date required a return regardless of whether any tax is due,....

This statute imposes penalty based upon negligence (as opposed to fraud) for failure to timely pay tax. Thus, there is no contention that the failure to report and pay taxes was based upon any conscious attempt by the Taxpayer to underreport taxes. What remains to be determined is whether the Taxpayer was negligent in failing to report its taxes properly. Taxpayer "negligence" for purposes of assessing penalty is defined in Regulation 3 NMAC 1.11.10[1] as:

1) failure to exercise that degree of ordinary business care and prudence which reasonable taxpayers would exercise under like circumstances;
2) inaction by taxpayers where action is required;
3) inadvertence, indifference, thoughtlessness, carelessness, erroneous belief or inattention.

In arguing that penalty should not be imposed, the Taxpayer argues that with respect to the gross receipts tax, that the Taxpayer did the best it could under the circumstances. It had NTTCs from virtually all of its customers, although some were of the pre-1992 series so that they were no longer effective. The Taxpayer also points out that the legislature has since amended §7-9-43 to do away with the $100 fee for NTTCs as well as reinstating the 60 day grace period in which to obtain NTTCs necessary to support claims of deduction upon audit, although those amendments did not go into effect in time to provide any relief to the Taxpayer for the period under audit. Nonetheless, the Taxpayer argues that the legislative amendments reflect that the legislature reconsidered the harshness of its previous changes to the law regarding NTTCs. With respect to the penalty for failure to report and pay compensating tax, the Taxpayer argues that it was not aware of the requirements to pay compensating tax and it was never informed of the need to pay such tax by its accountant who prepared its taxes. Finally, the Taxpayer argues for the adoption of the federal standard of negligence, as found at 26 U.S.C. §6662(b)(1) which imposes a penalty for the underpayment of tax due to negligence or disregard of rules and regulations. In making this argument, the Taxpayer argues that the Court of Appeals, in ***El Centro Villa Nursing Center v.***

[1] formerly cited as Regulation TA 69:3

Taxation and Revenue Department 108 N.M. 795, 779 P.2d 982 (Ct. App. 1989) erroneously cited to 26 U.S.C §6651(a), which imposes a penalty for late payment of tax or the failure to pay reported tax except when the late or absent payment is due to "reasonable cause and not due to willful neglect", and therefore erroneously concluded that the federal penalty provision and the state penalty provision were not comparable because of the different standards for imposition of penalty. While I do find merit to the Taxpayer's argument that §6662(b)(1) contains language which far more closely tracks the language of §7-9-69(A) than that of §6651(a), nonetheless, New Mexico's courts have never adopted any federal standard of negligence when determining whether penalty is applicable under §7-1-69. The only case of which I am aware of which used the federal standard was ***Gathings v. Bureau of Revenue***, 87 N.M. 334, 533 P.2d 107 (Ct. App. 1975). In that case, the federal statutory standard used was that of §6651(a) of the Internal Revenue Code, and it was used by agreement of the Department and the taxpayer. As noted by Judge Alarid in ***El Centro Villa***:

> Contrary to the Taxpayer's reliance on ***Gathings v. Bureau of Revenue***, (citation omitted) this court did not hold that "negligence in Section 7-1-69(A) is to be equated with `lack of reasonable cause,' for which a penalty is assessed under federal law, 26 U.S.C. §6651(a) (Supp. Pamp. 1988), in all cases. In ***Gathings***, taxpayers asserted reasonable cause for failure to pay taxes and this court weighed that cause against evidence of the taxpayer's negligence *on agreement of the parties*. (emphasis added).

Judge Alarid went on to reject using the caselaw developed under §6651(a) of the Internal Revenue Code and applied the definition of "negligence" found in the Department's Regulation 69:3, which is set forth above as 3 NMAC 1.11.10. Even though there is much more identity between the language of I.R.C. §6662(b)(1) and §7-1-69, I see no reason to adopt the federal caselaw under §6662 when there is a well established body of law interpreting taxpayer negligence under §7-1-69(A) to guide me in determining whether penalty was properly imposed under that section.

With respect to the imposition of penalty for failure to report and pay compensating tax, the imposition of penalty is proper. In this case the Taxpayer's failure to report and pay compensating

taxes was based upon Mr. and Mrs. Orquez' lack of knowledge about New Mexico's compensating taxes. New Mexico has a self-reporting tax system which requires that taxpayers voluntarily report and pay their tax liabilities to the state. Because of this, the case law is well settled that every person is charged with the reasonable duty to ascertain the possible tax consequences of his actions, and the failure to do so has been held to amount to negligence for purposes of the imposition of penalty pursuant to Section 7-1-69 NMSA 1978. ***Tiffany Construction Co. v. Bureau of Revenue***, 90 N.M. 16, 558 P.2d 1155 (Ct. App. 1976), *cert. denied*, 90 N.M. 255, 561 P.2d 1348 (1977). Nor does the fact that the Taxpayer turned over the responsibility for reporting its taxes to an accountant excuse the Taxpayer for failure to report and pay compensating taxes. The ***El Centro Villa*** case determined that a taxpayer cannot escape its responsibility for ascertaining the possible tax consequences of its actions merely by appointing an accountant as its agent in tax matters. The only exception to this rule is when a taxpayer has relied upon the advice of his accountant as to the taxpayer's liability after full disclosure of all relevant facts. Regulation 3 NMAC 1.11.11 (4). In this case, there was no allegation that Mr. or Mrs. Orquez revealed to their accountant that they made purchases of equipment out-of-state and sought advice as to whether there were any tax consequences to such actions from their accountant.

The imposition of penalty for underpaying gross receipts taxes by erroneously claiming deductions for sales which were not supported by proper NTTCs is also proper. The Taxpayer understood that it needed to obtain the new form certificates when it made purchases which were subject to deduction by its vendors, and the Taxpayer applied for and obtained the 1992 series certificates for its own use. It also received the new NTTC forms from many of its customers. At the very least, then, the Taxpayer should have had some inkling that things had changed with regard to deductions supported by NTTCs and the Taxpayer's failure to inquire of its accountant or the Department about the consequences of failing to obtain new certificates from some of its customers constitutes negligence insofar as such actions may be characterized as erroneous belief, inattention or carelessness. A taxpayer's mere belief that a transaction is not taxable, without more, is

tantamount to negligence. ***C & D Trailer Sales v. Taxation & Revenue Department***, 93 N.M. 697, 604 P.2d 835 (Ct. App. 1979).

Although the imposition of penalty may seem to the Taxpayer to be unduly harsh in this case, there are sound policy reasons behind the imposition of penalty. A self-reporting tax system relies upon taxpayers accurately reporting their tax liabilities to the government. There are insufficient government resources to audit every taxpayer periodically to otherwise assure tax compliance. The imposition of penalty provides taxpayers with an incentive to understand the tax consequences of their actions and to accurately report their taxes. Otherwise, if the only consequence of an audit and determination of underpayment of tax was the payment of the tax which was owed, it would always advantage a taxpayer to remain ignorant of the tax requirements and if they should happen to be audited and assessed, to pay the taxes.

CONCLUSIONS OF LAW

1. The Taxpayer filed a timely, written protest to Assessment No. 2012557, pursuant to NMSA 1978 §7-1-24 and jurisdiction lies over both the parties and the subject matter of this protest.

2. The Department properly denied the deductions claimed by the Taxpayer for which the Taxpayer either lacked a NTTC or it lacked the 1992 series NTTC to support its claim for deduction.

3. The Taxpayer failed to present sufficient evidence to rebut the presumption of correctness which attached to the assessment of compensating tax on purchases of equipment purchased from out-of-state vendors.

4. The Taxpayer failed to present sufficient evidence to establish its right to a credit, pursuant to NMSA 1978, §7-9-79 for taxes paid to other taxing jurisdictions on its purchases of equipment from out-of-state vendors.

5. The Taxpayer was erroneously assessed compensating tax on the value of a steamer kettle purchased from La Sienda restaurant in Las Cruces, New Mexico.

6. The Taxpayer was negligent in failing to report and pay compensating tax on its purchases from out-of-state vendors and penalty was properly imposed for failure to report and pay compensating tax.

7. The Taxpayer was negligent in failing to understand or take action to learn the tax consequences of not obtaining 1992 series NTTCs from some of its wholesale customers and penalty was properly imposed for failure to report and pay all gross receipts taxes due.

For the foregoing reasons, THE TAXPAYER'S PROTEST IS GRANTED WITH RESPECT TO THE ASSESSMENT OF COMPENSATING TAX UPON ITS IN-STATE PURCHASE OF A STEAMER KETTLE AND IS OTHERWISE DENIED. THE DEPARTMENT IS ORDERED TO ADJUST THE COMPENSATING TAX ASSESSED IN CONFORMITY WITH THIS DECISION.

DONE, this 1st day of July, 1997.