

**The Streamlined Sales and Use Tax Agreement  
and  
New Mexico's Gross Receipts and Compensating Taxes**

**APPENDIX A**

Agreement Provisions (by section)	Does New Mexico comply?
<b>301:</b> State level administration required (1) registration  (2) filing returns (3) tax payment  (4) distribution to local gov'ts (5) audits	Yes 7-1-12 & taxpayer may register thru participating local gov'ts Yes 7-1-13B Yes 7-1-13D & administrative provisions of local-option taxes Yes 7-1-6-series Yes 7-1-11 (altho nothing specifically says locals may not audit, administration & interpretation of local taxes is reserved to TRD in local tax acts)
<b>302:</b> Local tax base must equal state base, except where difference is required by federal law (e.g., treatment of satellite TV service)	<b>No</b> One systematic difference--cross-boundary transportation services.
<b>303:</b> Taxpayer registration:  (1) must participate in on-line system (2) must participate in common system (3) registration in one state is registration in all member states (4) no registration fee if not required to register (5) written signature not to be required (6) agent may register taxpayer (7) taxpayer may cancel under uniform provisions	<b>No</b> NM has no provisions for joint or common registration with outside jurisdictions       Signature is required administratively
<b>304:</b> Notice for state tax changes: (1) provide as much notice as practicable (2) limit changes to 1 <sup>st</sup> day of quarter (3) notify taxpayers of tax base changes  (4) notify taxpayers of regulation changes (5) failure of taxpayer to receive notification does not relieve liability	Yes Yes Yes; Annual legislative update in CRS package ?? No specific routine procedure Yes
<b>305:</b> Local rate and boundary changes: (1) Rate changes effective only	

<p>(a) on 1<sup>st</sup> day of quarter</p> <p>(b) after minimum of 60 days notice to non-catalogue taxpayers</p> <p>(c) after minimum of 120 days notice to catalogue taxpayers</p> <p>(2) Boundary changes effective for tax purposes only on 1<sup>st</sup> day of quarter</p> <p>(3) Provide &amp; maintain database--</p> <p>(a) local boundary changes</p> <p>(b) local rates</p> <p>(c) local gov't identification codes meet FIPS standards</p> <p>(d) 5 &amp; 9-digit ZIP codes matched to local jurisdictions with lowest applicable rate</p> <p>(4) Taxpayer permitted to use 5-digit ZIP if cannot find 9-digit ZIP after exercising due diligence</p> <p>(5) Participate with other states in address-based system for assigning taxing jurisdictions, meeting requirements of federal Mobile Telecommunications Sourcing Act</p>	<p>Yes</p> <p><b>No</b>; Notice rarely more than 30 days</p> <p><b>No</b></p> <p>Yes; See provisions in Municipal Code re boundary changes</p> <p><b>No</b></p> <p><b>No</b></p> <p><b>No</b></p> <p><b>No</b></p> <p><b>No</b></p> <p><b>No</b></p>
<b>306:</b> Relief from liability when taxpayer collects wrong tax due to reliance on erroneous data in state's tax database but no relief available if state provides an address-based system	<b>No</b>
<p><b>307:</b> Database</p> <p>(1) Electronic databases required must be made available in downloadable form</p> <p>(2) Database provisions do not apply to sales at seller's location</p> <p>(3) State not required to have databases to join Agreement but must by date set by governing Board.</p>	<p><b>No</b></p> <p>Yes</p> <p>Yes</p>
<p><b>308:</b> Permissible rates</p> <p>(1) No multiple state rates, except on food, food ingredients and drugs</p> <p>(2) No multiple local rates; local sales tax rate must equal local comp rate (if levied)</p> <p>(3) Above not applicable to taxes on electricity, piped natural gas or other heating fuels or to retail sale or transfer of motor vehicles, aircraft, watercraft, modular homes, manufactured home or mobile homes</p>	<p><b>No</b>; partial deductions are equivalent to multiple rates (7-9-62, -73.1, -77)</p> <p>Yes, because locals are not authorized to levy local compensating taxes.</p>
<b>309:</b> (pointer to other sections)	
<b>310:</b> General sourcing rules	<b>No</b> ; NM imposes tax on the seller, not the

<p>(1) <u>Retail sale of tangibles--</u>  (a) Seller's location if purchaser receives product there  (b) Purchaser's (or purchaser's donee's) location when product not received at seller's location  (c) Purchaser's address from seller's records, sale documents or shipping documents  (2) <u>Lease or rental of property</u>  (a) Requiring periodic payments--  (i) 1<sup>st</sup> payment same as sale of tangible  (ii) Subsequent payments sourced to primary property location  (b) Single payments, same as sale of tangible  (3) <u>Lease or rental of motor vehicles, aircraft, etc. not qualifying as transportation equipment</u>  (a) Requiring periodic payments, sourced to primary property location  (b) Not requiring periodic payments, sourced same as sale of tangible  (4) <u>Sale or lease of transportation equipment, same as sale of tangible. "Transportation equipment" includes</u>  (a) Locomotives &amp; railcars used in interstate commerce  (b) Trucks &amp; truck-tractors with GVWR over 10,000 pounds, trailers, semi-trailers &amp; passenger buses registered thru IRP or operated in interstate commerce  (c) Aircraft operated in interstate or foreign commerce  (d) Containers designed for use with or part of foregoing</p>	<p>buyer.</p> <p>Yes</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No</p> <p>No, except that property used outside NM is not taxed No, except that property used outside NM is not taxed</p> <p>Yes, deductible for GRT (7-9-70); exempt from Comp (7-9-30) Yes; exempt from both GRT (7-9-22) &amp; Comp (7-9-23)</p> <p>Yes, deductible for GRT (7-9-70); exempt from Comp (7-9-30) No</p>
<p><b>311:</b> Definition "receive" &amp; "receipt"</p>	
<p><b>312:</b> Multiple points of use:  (1) Purchaser, other than a direct pay permit holder, buying a digital good, software delivered electronically or service that will be used in more than one jurisdiction  (a) must immediately notify the seller using a specified exemption form  (b) pay the tax on a direct pay basis using any reasonable, consistent apportionment method  (2) Direct pay purchaser reports and pays in accordance with permit</p>	<p>No; in NM, seller is taxpayer (7-9-4)</p>

<p><b>313:</b> Direct mail sourcing:</p> <p>(1) Purchaser, other than a direct pay permit holder, buying “direct mail” must deliver either</p> <p>(a) Direct Mail Form to seller, in which case purchaser becomes liable for tax</p> <p>(b) information showing jurisdictions to which mail is to be sent, in which case seller collects tax based on purchaser’s info</p> <p>(2) If purchaser fails to do either, seller must collect tax passed on addresses of mailees</p> <p>(3) Direct pay purchaser reports and pays in accordance with permit</p>	<p><b>No</b> generally; in NM, seller is taxpayer. Further, this would usually be considered a service.</p> <p><b>No</b></p> <p>Partly yes; a seller would be liable for mailing service to in-state recipients</p> <p>Partly yes; a seller would be liable for mailing service to in-state recipients</p> <p><b>No</b></p> <p><b>No</b></p>
<p><b>314:</b> Telecommunications sourcing:</p> <p>(1) Except for telecommunications defined below, telecommunication service on a call-by-call basis shall be sourced to</p> <p>(a) jurisdiction in which call originates &amp; terminates; or</p> <p>(b) jurisdiction in which call originates or terminates &amp; in which service address is located</p> <p>(2) Except for telecommunications defined below, telecommunication service other than on a call-by-call basis shall be sourced to customer’s primary place of use</p> <p>(3) Defined telecommunications services</p> <p>(a) Mobile telecommunications other than air-to-ground and prepaid, In accordance with federal rules</p> <p>(b) Post-paid calling service sourced to origination point</p> <p>(c) Prepaid calling service is to be treated as sale of a tangible</p> <p>(d) Private communications service</p>	<p>Yes</p> <p>Yes, NMAC 3.2.1.18 &amp; 7-9C-2</p> <p>Yes, NMAC 3.2.4.13 B, H &amp; I</p> <p>Yes</p> <p>??</p> <p>Partly yes; treated as sale of a license, so POS sales will be taxed as seller’s location</p> <p>Not taxed; exempt under GRT per 7-9-38.1 &amp; deductible under 7-9C-6</p>
<p><b>315:</b> Telecommunications definitions</p>	
<p><b>316:</b> Enactment of exemptions (with “exemption” understood to include “deduction”, “exclusion”, etc.)</p> <p>(1) Product-based</p> <p>(a) If Agreement does not define a product or a term that includes the product, member may</p>	<p>Yes</p>

<p>enact product-based exemption</p> <p>(b) If Agreement defines a product or a term that includes the product, member must exempt either whole group or none</p> <p>(2) Entity-based</p> <p>(a) If Agreement does not define a product or a term that includes the product, member may enact entity-based exemption</p> <p>(b) If Agreement defines the product, member may enact entity-based exemption if it uses the definition</p> <p>(c) If Agreement defines a term that includes the product, member may enact entity-based exemption</p>	<p>Probably <b>no</b></p> <p>Yes</p> <p>Yes, probably</p> <p>Yes</p>
<p><b>317:</b> Administration of Exemptions</p> <p>(1) When exemption is claimed:</p> <p>(a) Seller must obtain identifying info from purchaser &amp; reason for claiming exemption</p> <p>(b) Purchaser not required to provide signature except when using a paper exemption certificate</p> <p>(c) Seller shall use standard form for claiming exemption electronically as adopted by Governing Board</p> <p>(d) Seller shall obtain same proof for claiming exemption regardless of medium of transaction</p> <p>(e) Exempt purchasers may be issued identification number for presentation to sellers</p> <p>(f) Seller shall retain adequate records and present them to member states on request</p> <p>(g) Exemptions shall be administered when practicable thru direct pay permit, exemption certificates or other means that do not burden sellers</p> <p>(h) Except for fraud on part of seller, seller shall be relieved of liability if purchaser improperly claimed an exemption but shall hold the purchaser liable instead.</p>	<p>Yes</p> <p>Yes</p> <p><b>No</b>--neither Governing Board nor such forms exist but very unlikely that NTTCs in current format would be acceptable</p> <p>Yes; see deduction requirements</p> <p>Partly yes; 501(c)(3)s and gov'ts are issued NTTCs</p> <p>Yes; 7-1-10 &amp; 7-1-11</p> <p>?? partly yes--NTTCs, 7-9-43</p> <p><b>No</b>; "good faith" standard--7-9-43 &amp; NMAC 3.2.201.14</p>
<p><b>318:</b> Uniform tax returns:</p> <p>(1) Only one return required per period for all jurisdictions within state</p> <p>(2) Returns to be due no earlier than 20<sup>th</sup> of month following month of transaction</p> <p>(3) Allow Model 1, Model 2 &amp; Model 3 [See</p>	<p>Yes; taxpayers for their own convenience may choose to submit more than one Yes (7-9-11)</p> <p><b>No</b>; no governing Board as yet</p>

<p><b>403]</b> taxpayers to submit simplified returns containing no more fields than authorized by Governing Board</p> <p>(4) Allow any seller registered under Agreement but who is not a Model 1, Model 2 or Model 3 seller or is not required to register in the member state to file annual returns, provided that returns may be required when taxpayer owes \$1,000 or more</p> <p>(5) Participate with other state in developing a more uniform return</p> <p>(6) May require Model 1, Model 2 &amp; Model 3 taxpayers to file electronically</p>	<p><b>No</b></p> <p><b>No</b></p> <p>Yes</p>
<p><b>319:</b> Uniform rules on remittances:</p> <p>(1) Require only one remittance per return</p> <p>(2) May require remittances from Model 1, Model 2 &amp; Model 3 sellers to be filed electronically</p> <p>(3) Allow for ACH credit &amp; debit payments</p> <p>(4) Provide alternative method for making same day payments if electronic funds transfer fails</p> <p>(5) If due day falls on legal banking holiday, taxes are due on next business day</p> <p>(6) Data accompanying remittance must conform to uniform tax type and payment type codes approved by Governing Board</p>	<p>Yes</p> <p>Yes (7-1-13.1)</p> <p>Yes (7-1-13.4)</p> <p>??</p> <p>Yes (7-1-77)</p> <p>Probably yes; Governing Board does not yet exist but TRD probably complies because it uses industry-standard codes now</p>
<p><b>320:</b> Uniform rules for recovery of bad debt:</p> <p>(1) Member must allow a deduction for bad debts</p> <p>(2) Member must use federal definition of “bad debt” at 26 USC 166 (as adjusted by Agreement)</p> <p>(3) Allow bad debt to be deducted in period in which it is written off taxpayer’s books</p> <p>(4) If written-off bad debt is recovered, it must be reported in period of recovery</p> <p>(5) If amount of bad debt exceeds taxable sales for period, refund may be claimed</p> <p>(6) When “certified service provider” files on behalf of taxpayer, CSP may claim bad debt allowance but must pass benefit on to taxpayer</p> <p>(7) Taxpayer receiving any payment on a written-off bad debt must apply payment first proportionally to taxable price and tax</p>	<p>Yes (7-9-67; cash basis taxpayers have none)</p> <p><b>No</b> but could be adopted by regulation</p> <p>Yes (7-9-67)</p> <p>Yes (7-9-67)</p> <p><b>No</b></p> <p><b>No</b></p> <p>Yes, probably: taxpayer would incur GRT liability out of its own pocket if it didn’t follow this procedure. If</p>

(8) Where books of taxpayer claiming bad debt allowance support allocation among member states, permit the allocation	needed, a regulation could be adopted ??
<p><b>321: Confidentiality</b></p> <p>(1) CSPs shall perform their functions without retaining personally identifiable info of customers</p> <p>(2) Governing Board may certify a certified service provider (CSP) only if CSP certifies:</p> <p>(a) Its system has been designed and tested to preserve anonymity</p> <p>(b) Personally identifiable info is retained only when necessary for Model 1 exempt purchasers</p> <p>(c) CSP provides clear notice to its customers of its privacy practices and policies</p> <p>(d) It collects, uses and retains only that personally identifiable info necessary to ensure validity of claims of exemption</p> <p>(e) It provides adequate safeguards to protect info from unauthorized disclosure</p> <p>(3) Member state provides public notice to customers of state's practices relating to collection, use and retention of personally identifiable info</p> <p>(4) Personally identifiable info will be destroyed when no longer needed</p> <p>(5) States shall provide individuals access, with right to correct, to their own personally identifiable information</p> <p>(6) If someone not granted access to an individual's personally identifiable info by law seeks access, state must notify individual of the request</p> <p>(7) State's privacy policy must be enforceable by AG or other state authority</p>	<p><b>No</b>; whatever reporting services there may be in NM operate solely under terms of agreements with their customers</p> <p>NA; no Governing board exists</p> <p>??; may be partially fulfilled in annual CRS package; could be done administratively</p> <p>Probably <b>no</b></p> <p>Yes (7-1-8E) to access</p> <p><b>No</b></p> <p>Yes (7-1-76)</p>
<p><b>322: Sales tax holidays</b></p> <p>(1) After 12/31/03, no items are to be exempted unless item is defined in the Agreement and notice is provide at least 60 days before the start of the quarter in which the holiday occurs</p> <p>(2) If price threshold utilized, then it may apply only to items priced below the threshold</p> <p>(3) Governing Board shall establish uniform administrative procedures</p>	<p>Yes; NM quite sensibly does not hold tax holidays</p> <p>Yes; NM does not use tax holidays</p> <p>Yes; NM does not use tax holidays</p>

<p><b>323: Caps and thresholds</b>  (1) No state may use caps or thresholds on application of sales and use rates or exemptions after 12/31/05 and until then may not use caps that impose administrative hardship on retailers  (2) States may not impose caps or thresholds on local tax rates</p>	<p><b>No</b>, NM has one cap at 7-9-74</p> <p>Yes; no separate local caps or thresholds</p>
<p><b>324: Rounding rule</b>  (1) After 12/31/05, states must use these rounding rules  (a) Tax computation must go to third decimal place  (b) Tax must be rounded up to whole cent whenever digit in third decimal is greater than four  (2) States shall allow taxpayers to compute tax on an item or invoice basis.  (3) No state shall require taxpayers to compute tax using a bracket system</p>	<p>?? could be required by regulation; some tax rates run to the 6<sup>th</sup> decimal place  <b>No</b>; law, regs &amp; instructions are silent, could be required by regulation</p> <p>Yes</p> <p>Yes</p>
<p><b>325: Customer refund procedures</b>  (1) Rules below apply when state allows customer to seek refund from seller but do not require states to adopt such a procedure  (2) Refund from seller is first remedy. Cause of action does not accrue until purchaser has given written notice to seller &amp; seller has had 60 days to respond  (3) Seller will be presumed to have reasonable business practices in collecting taxes if it uses either a provider or system certified by the state &amp; has remitted all collected taxes less appropriate credits and allowances</p>	<p><b>No</b></p> <p><b>No</b></p>
<p><b>326: Direct pay permits</b>--Each member state shall allow direct pay permits</p>	<p><b>No</b>; looked at another way, every NM GRT taxpayer is a “direct payer”</p>
<p><b>327: Library of definitions</b>  (1) If a term defined by Agreement’s “library of definitions” (Appendix C) appears in the member state’s own sales or use tax law, member state must adopt/enact library definition</p> <p>(2) Members may not use a library-defined term in a way contrary to the library definition</p>	<p><b>No</b>; although NM does not use most of the terms in the Library, there are some conflicts either in the GR&amp;CTA or regs: e.g., “lease or rental”; “sales price” vs. “gross receipts”; tangible personal property; prewritten computer software; “drug” and “prescription”; prosthetic device</p>



(3) Except as elsewhere provided, member states shall either tax or exempt all items within a library definition	?? “health-care” deductions must be examined
<b>328: Taxability matrix</b> (1) Each member must provide to the Governing Board a matrix showing for each defined category whether the state taxes or exempts the products in the category (2) Each member shall relieve taxpayers from liability for collecting incorrect amount of taxes if collection based on erroneous information supplied by member	<b>No</b>  Probably <b>no</b> ; NM would waive penalty only
<b>329: Effective date for rate changes</b> (1) Tax increases apply to first billing period on or after tax change effective date (2) Tax decreases apply to bills issued on or after tax change effective date	<b>No</b> for accrual taxpayers  <b>No</b> for accrual taxpayers
<b>401: Seller participation</b> (1) States shall provide on-line registration system (2) By registering, seller agrees to & remit sales and use taxes on taxable sales, including in member states joining after registration (3) In member states where seller has obligation to register prior to registering under the Agreement, seller may choose to add any required info to convert state registration to Agreement registration or to register directly under the Agreement (4) Member states and former member states may not use fact of Agreement registration as a factor in determining nexus with that state	<b>No</b>  <b>No</b>  <b>No</b>  <b>No</b>
<b>402: Amnesty for registration</b> (1) If the seller was not registered in the state in the 12-month period prior to the seller’s registration under the Agreement, member agrees to grant amnesty for uncollected or unpaid sales and use taxes prior to date of registration; amnesty precludes assessments for such items (2) Amnesty does not apply to sellers for any matters for which seller has received notice of commencement of audit or to taxes already paid or remitted. (3) Amnesty applies only to seller’s obligations as a seller.	<b>No</b> ; State constitution can be read to prohibit formal adoption of such a policy but TRD could assume a “don’t ask, don’t tell” attitude

<p><b>403:</b> Method of Remittance: Sellers may select to remit in one of the following ways or in any other way allowed by state--</p> <p>(1) Model 1: seller selects a Certified Service Provider as an agent to perform all the seller's tax functions, except seller's own obligation to remit tax on its own purchases</p> <p>(2) Model 2: seller uses Certified Automated System</p> <p>(3) Model 3: seller uses own proprietary system that has been certified by Board</p>	<p><b>No</b></p> <p><b>No</b></p> <p><b>No</b></p>
<p><b>404:</b> Registration by agent: Seller may be registered by an agent. Such an appointment shall be in writing</p>	<p>Yes</p>
<p><b>501:</b> Certification of service providers and automated systems by Governing Board</p>	<p>NA until Board is created and acts</p>
<p><b>601:</b>Monetary allowances under Model 1</p> <p>(1) Each member must grant a monetary allowance to CSPs in accordance with the contract between the CSP and the Governing Board</p> <p>(2) Monetary allowance to be based on base tax rate or, for sellers voluntarily registering, on a percentage of the tax revenue generated for states for which the seller had no obligation to register for up to 24 months following registration</p>	<p><b>No</b></p>
<p><b>602:</b> Monetary allowances under Model 2</p> <p>(1) For a period up to 24 months, all sellers receive a base rate on top of whatever discount is allowed by state</p> <p>(2) Monetary allowance for sellers voluntarily registering will be a percentage of the tax revenue generated for states for which the seller had no obligation to register for up to 24 months following registration and thereafter at whatever discount the state offers</p>	<p><b>No</b></p>
<p><b>603:</b> Monetary allowances under Model 3</p> <p>Monetary allowance for sellers voluntarily registering will be a percentage of the tax revenue generated for states for which the seller had no obligation to register for up to 24 months following registration and thereafter at whatever discount the state offers</p>	<p><b>No</b></p>

