

Overview of New Mexico Gross Receipts and Compensating Tax Act
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Overview

- Gross Receipts and Compensating Tax Act imposes an excise tax on persons engaged in business in (or into) New Mexico for the privilege of engaging in business in (or into) New Mexico
 - Gross receipts and compensating taxes are like other states sales and use taxes
 - The gross receipts tax is imposed on the seller (not the buyer)
 - The gross receipts tax is very broad and applies to several categories of transactions
- The compensating tax is like a use tax and is imposed on the buyer of certain property or services
- Similar tax programs may apply to persons engaged in business in New Mexico, including:
 - Governmental gross receipts tax
 - Interstate telecommunications gross receipts tax
 - Leased vehicle gross receipts tax

Gross Receipts Tax

- Gross receipts tax applies to gross receipts of persons engaged in business in New Mexico
- A person is engaged in business if he has physical presence in New Mexico or taxable gross receipts in excess of \$100,000 for the prior year
- Gross receipts tax applies to a transaction if the receipts are within the definition of gross receipts under the act and no exemption or deduction applies
- Tax is determined by applying applicable rate to taxable gross receipts

- Definition of gross receipts
 - Receipts from selling property in New Mexico
 - Receipts from leasing or licensing property employed in New Mexico
 - Receipts from granting the right to use a franchise in New Mexico
 - Receipts from selling services performed outside of New Mexico, the product of which is initially used within New Mexico
 - Receipts from selling services in New Mexico

- Inclusions in definition
 - Receipts from sales of tangible personal property handled on consignment
 - Commissions and fees from buyers, sellers for promoting sale of property
 - Certain receipts from members of a cooperative
 - Receipts of New Mexico florist for sales filled and delivered outside of New Mexico
 - Receipts from transmitting messages or conversations by telephone/telegraph
 - Receipts of a market place provider from sales, leases and licenses of personal property, sales of licenses, sales of services or of licenses to use real property sourced in New Mexico

- Exclusions from definition
 - Cash discounts taken
 - Any gross receipts tax
 - Certain tribal taxes
 - Time-price differential - e.g. interest or prompt payment discount
 - Agency reimbursements-with strict requirements

- Preemption
 - Federal law preempts application of gross receipts tax to certain transactions
 - Sale of tangible personal property or services to Indian Nations, Tribes or Pueblos, or their members on the tribes' territory
 - Job Corp contractors
 - Federally chartered credit unions
 - Internet access

- Tax Rate
 - Gross receipts tax rate consists of a state rate, plus applicable local (county and municipal) options
 - State rate
 - Pre July 1, 2022, 5.125%
 - Post July 1, 2022, 5.0%
 - Post July 1, 2023, 4.875% (if state revenue meets minimum threshold)
 - Rate Determination (sourcing sales)

- Prior to July 1, 2021, applicable tax rate based on seller's business location
- Exceptions
 - Construction services taxed at the rate for the site of the project
 - Leasing property taxed at state rate for out of state lessors or at business location for instate lessors
 - Services taxed where the services are performed
- After July 1, 2021, destination sourcing rules apply (with exceptions)

Compensating Tax

- Compensating tax applies to:
 - Taxable use of property manufactured by the taxpayer and then converted to use or acquired in a transaction in which the seller's receipts were not subject to the gross receipts tax
 - Taxable use of a license or franchise in New Mexico acquired in a transaction in which the seller's receipts were not subject to the gross receipts tax
 - Taxable use of services in New Mexico acquired in a transaction in which the seller's receipts were not subject to the gross receipts tax

Exemptions from gross receipts tax

- Generally
 - Certain receipts are exempt from gross receipts tax
 - Exempt receipts are not reported on tax returns
- Specific Exemptions
 - Receipts of Federal, state, and tribal governmental agencies
 - Receipts of New Mexico, county or city gas or electric utility or city cable system are not exempt
 - Note – New Mexico cities and counties may be subject to governmental gross receipts tax on certain receipts
 - Receipts from out of state services
 - Prior to July 1, 2021--Sale of out-of-state services exempt except for research and development services if nexus and product of service delivered to and initially used for intended purpose in New Mexico
 - After July 1, 2021--Sale of out-of-state services subject to tax if product of service delivered and initially used for its intended purpose in New Mexico
 - Not applicable to receipts from certain R&D services sold to affiliates

- Receipts from sales of textbooks from certain bookstores to students
- Receipts of non-profit entities operating retirement homes
- Wages of employees
- Sale of livestock and unprocessed agricultural products
 - Not applicable to sales of dairy products at retail
- Receipt of Food Stamps
- Receipts from sale of livestock feeding, pasturing, penning, training and handling
- Receipts from membership fees and dues of §528(c)(1) homeowners associations used to cover certain costs
- Receipts from sale of vehicles subject to motor vehicle excise tax
- Receipts from sale of boats subject to excise tax
- Receipts from premiums and bonds paid to insurance companies and agents--Note insurance code provides premium taxes in lieu of all taxes
- Receipts from dividends and interest
- Receipts from sale of fuel on which excise tax has been paid
- Receipts from sale of fuel, oxidizers or other substances for space vehicles
- Receipts from the isolated and occasional sale or lease of property or services by persons not engaged in that business
- Receipts of §501(c)(3)s and §501(c)(6)s
 - Except receipts from unrelated trade or business
 - Except receipts of non-profit hospitals
- Receipts of non-profit hospitals for local option taxes
- Receipts from re-sales by instrumentalities of the armed forces
- Receipts from sale or lease of oil, natural gas or mineral interests
- Receipts from sale of products subject to oil and gas severance tax if those products are for resale, export or as an ingredient or component part in a manufactured product
- Receipts from storage of crude oil, natural gas or liquid hydrocarbons or use of such products to fuel a production unit
- Receipts from sale of natural gas subject to the processors tax if that gas is for resale, export or as an ingredient or component part in a manufactured product
- Receipts from storage and use of natural gas by a processor or refiner
- Receipts from non-retail sales of natural resources the severance or processing of which is subject to the resources excise tax
- Receipts from sale of oil, natural gas or liquid hydrocarbons for use in pipeline transportation of those products
- Receipts from sale of interstate telecommunications subject to the interstate telecommunications gross receipts tax

- Receipts of a home service provider from mobile telecommunications services to person whose place of primary use is out of state of New Mexico
- Receipts from dues and registration fees charged by nonprofit social, fraternal, political, trade, labor or professional organizations and business leagues
- Receipts from purse winnings of horsemen, jockeys and trainers and commissions retained by racetracks
- Receipts from amounts paid to ministers or 501(c)(3) religious organizations
- Receipts of university from athletic facility surcharges
- Receipts from sale of goods by disabled street vendors
- Receipts from refereeing, umpiring scoring or other officiating at New Mexico activities association sanctioned school events

Deductions from Gross Receipts

- Deductible receipts are subtracted from "gross receipts"
- Most common deductions require that the seller obtain a non-taxable transaction certificate ("NTTC") from the buyer to support that deduction or prove entitlement to the deduction through alternative evidence
- An NTTC accepted in "good faith" constitutes conclusive evidence of the availability of the applicable deduction
- Some deductions apply to both gross receipts tax and governmental gross receipts tax
- Anti-Pyramiding/Special Situations
 - Non-taxable transaction certificate ("NTTC") or other evidence generally required
 - Receipts from sales of tangible personal property to manufacturers
 - Buyer must incorporate as an ingredient or component part of a manufactured product
 - Receipts from sales of tangibles, personal property or licenses for resale
 - Buyer must resell in the ordinary course of business
 - Receipts from sales of services for resale
 - Buyer must resell in the ordinary course of business and next sale must be taxable
 - Receipts from sale of tangibles, personal property and licenses for leasing
 - Buyer must lease the tangibles or licenses in the ordinary course of business and may not use the property in any other way

- Does not apply to furnishings/appliances for rental properties, coin-operated machines or manufactured homes
- Receipts from lease of tangibles, personal property and licenses for subsequent leasing
 - Buyer must lease the tangibles or licenses in the ordinary course of business and may not use the property in any other way
 - Does not apply to furnishings/appliances for rental properties, coin-operated machines or manufactured homes
- Receipts from sale of construction material to persons engaged in construction business
 - Buyer must incorporate the material as an ingredient or component part of a construction project that will be subject to the gross receipt tax on completion or sale or on a project located on Indian land
- Receipts from sale of construction services to persons engaged in the construction business
 - Service must be directly contracted for or billed to a construction project subject to gross receipts tax on completion or sale or located on Tribal land
- Receipts from sale of construction related services to persons engaged in the construction business
 - Service must be directly contracted for or billed to a construction project subject to gross receipts tax on completion or sale or located on Tribal land
- Receipts from lease of construction equipment to persons engaged in the construction business
 - Construction equipment must be used at a construction project subject to gross receipts tax on completion or sale or located on Tribal land
- Receipts from sale or lease of real property and lease of manufactured homes
 - Does not apply to receipts from sale attributable to improvements constructed by seller
 - Lease of mobile homes must be for a period of at least one month
 - Lease of space for mobile homes included but does not otherwise include receipts of hotels, motels, rooming houses, campgrounds, guest ranches, trailer parks, etc.
 - Lease of real property includes furnishings/appliances in the leased property or mobile home
- Receipts from sales of manufacturing services to a manufacturer
 - Must be performed directly upon the product or the ingredient or component parts
- Receipts from sales of tangibles to governmental agencies-- including federal, New Mexico and Tribal agencies

- Type 9 NTTC may generally be obtained -otherwise, other documentation showing a sale to the government will suffice
- Does not include
 - Metalliferous mineral ore
 - Tangibles that will be included in a metropolitan redevelopment project
 - Construction materials, except for certain qualifying tangible personal property
 - Tangibles consumed in the performance of a service
- Receipts from performing or selling aerospace services for resale to certain 501(c)(3)s or the United States
 - Buyer must separately state the value of the service on buyer's charge for the service
 - Subsequent sale must be in the ordinary course of selling aerospace services to certain 501(c)(3)s or the United States
- Receipts from transactions in interstate commerce
 - Does not include sales to residents who request delivery outside the state
 - Does not include sales to nonresidents where delivery takes place in New Mexico
- Receipts from intrastate transportation of persons or property when such persons or property are transported in interstate commerce under a single contract
- Receipts from launching, operating or recovering space vehicles or payloads, preparing a payload, operating a spaceport or providing R&D services, testing and evaluation services for the US operationally responsive space program
- Receipts from sales of services to an out-of-state buyer
 - Type 8 NTTC may be obtained; other documentation showing a sale for delivery out of state will suffice
 - Sale of service qualifies so long as delivery and initial use (for intended purpose) does not take place in New Mexico
- Receipts from sales of feed and fertilizers for agricultural use --Farmer & Rancher Statement Required)
- Receipts from sales of warehousing, threshing, harvesting, growing, cultivating and processing agricultural products --Farmer & Rancher Statement Required)
- Receipts from sales of tangibles to 501(c)(3)s
 - Does not apply to tangibles used in unrelated trade or business
 - Does not apply to construction materials, except for receipts for sales of certain qualifying tangible personal property
- Receipts from sale of prescriptions and prosthetic devices to persons licensed to certain licensed healthcare professionals
 - Buyer must deliver the device as part of the service

- Buyer must include the value in his charge for services
 - Receipts from the sale or lease of property to qualified film production company
 - Receipts from selling or leasing tangible personal property or services that are eligible generation plant costs to a person that holds an interest in a qualified generating facility may be deducted from gross receipts
 - Receipts of a marketplace seller for sales, leases and licenses of tangible personal property, sales of licenses and sales of services or licenses for use of real property that are facilitated by a marketplace provider from gross receipts and governmental gross receipts (documentation requirements)
 - Receipts from selling certain professional services may be deducted from gross receipts if the sale is made to a person engaged in the business of manufacturing

- Other Miscellaneous Deductions
 - No NTTC required—does require other evidence that transaction meets statutory requirements
 - Receipts from selling wind or solar generation equipment may be deducted from gross receipts
 - Receipts from selling trade support (customs brokerage or freight forwarding) services (if certain requirements are met)
 - Receipts from selling software development services in a qualified area
 - Receipts from originating, making, assuming or handling loans
 - Receipts from sales of tangible personal property to state-chartered credit unions
 - Fifty percent of the receipts from sales of agricultural implements (broadly defined)--Farmer & Rancher Statement Required
 - Receipts from various sales of certain property or services by aircraft manufacturer or suppliers of parts or services
 - Receipts from sales from publishing newspapers and magazines (except advertising space)
 - Receipts from retail from sales of newspapers (except advertising space)
 - Receipts from sales of chemicals or reagents to mining, milling or oil companies for use in processing ores or acidizing wells and from sales in lots greater than 18 tons for other mining purposes
 - Receipts from commissions from selling tangibles, tangible personal property that are not subject to gross receipts tax

- Receipts from real estate commissions related to taxable improvements on real property sold
- Receipts from refunds of sales price and bad debts for taxpayers reporting on the accrual basis
- Receipts of a dealer from furnishing goods or services to fulfil warranty obligations
- Receipts from intercompany administrative, managerial, accounting and customer services performed on cost or nonprofit basis
- Receipts from renting or leasing vehicles for use in the transportations of persons or property in interstate commerce
- Receipts from trade in allowances for tangibles of the same type being sold-except manufactured homes
- Sixty percent of the receipts of hospitals licensed by the Department of Health
- Receipts from the sale of prescription drugs or oxygen or certain cannabis products
- Receipts from sale or rental of durable medical equipment and certain medical supplies
- Receipts from sale of property to jewelry manufacturers
- Receipts of travel agents from certain commissions
- Receipts from the resale of manufactured homes if subject to certain taxes on initial sale or use in New Mexico
- Receipts from leasing or licensing theatrical and televisions film and tapes to persons who provide public or commercial entertain from which gross receipts are derived
- Receipts of healthcare practitioners or an association of healthcare practitioners, hospice, home health agency, clinical laboratory, or dialysis facility from payments Medicare (or other government payors) for healthcare services
- Forty percent of the receipts from selling jet fuel
- Receipts of 501(c) (not (3)) organizations from two fundraising events per year
- Receipts of a lottery game retailer from selling lottery tickets
- Receipts from selling uranium hexafluoride and uranium enrichment services
- Receipts from selling or leasing property or performing services for an accredited foreign mission or member (if forbearance required by treaty and certain conditions met)
- Receipts from selling food (for home consumption) at retail
- Receipts of healthcare practitioners or an association of healthcare practitioners for Medicare Part C or commercial contract services

- Receipts from transformational acquisition programs performing R&D and test and evaluation services in New Mexico
- Receipts from selling tangible personal property during certain time periods (back to school tax holiday)
- Receipts from certain purchases of property or services by or on behalf of the state from funds forfeited pursuant to the New Mexico Mining Act
- Receipts from the sale of engineering, architectural and construction services for the construction of certain healthcare facilities
- Receipts from the sale of construction equipment or materials used in the construction of a qualifying hospital
- Receipts from the sale of equipment to renewable energy transmission authority installed as part of an electric transmission facility or interconnected storage facility
- Receipts from providing services to renewable energy transmission authority for planning, installation, repair maintenance or operation of an electric transmission facility or interconnected storage facility
- Receipts from transmission of electricity (and ancillary services) where voltage source conversion technology is employed
- Receipts from the operation of a market or exchange for the sale or trading of electricity, rights to electricity, derivative products and ancillary services
- Receipts from admission to a certain non-athletic special event on the campus of a post-secondary educational institution (subject to certain other specific requirements)
- Receipts from construction services to implement a fighter aircraft pilot training mission project at a New Mexico military installation pursuant to contracts entered into with the United States department of defense (expires July 1, 2022)
- Receipts from producing or staging a professional boxing, wrestling or martial arts contest that occurs in New Mexico, including receipts from ticket sales and broadcasting, may be deducted from gross receipts
- Receipts from fees received for performing management or investment advisory services for a mutual fund, hedge fund or real estate investment trust may be deducted from gross receipts
- Receipts from sales of veterinary medical services, medicine or medical supplies used in the medical treatment of cattle may be deducted from gross receipts if the sale is made to a

person who states in writing that the person is regularly engaged in the business of ranching or farming

- Receipts from the sale of fuel to a common carrier to be loaded or used in a locomotive engine may be deducted from gross receipts
- Receipts from the sale of vision aids or hearing aids or related services may be deducted from gross receipts
- Receipts from the sale and installation of solar energy systems may be deducted from gross receipts
- Receipts from the sale by a qualified contractor of qualified research and development services and qualified directed energy and satellite-related inputs may be deducted from gross receipts when sold pursuant to a contract with the United States department of defense (includes sunset date)
- Receipts from the sale at retail of the following types of tangible personal property may be deducted if the sales price of the property is less than five hundred dollars (\$500) (includes sunset date)
- Receipts of a food or beverage establishment from the sale of prepared food or non-packaged beverages (expired)
- Receipts of certain liquor license holders
- Receipts from the sale of feminine hygiene products may be deducted from gross receipts

Credits

- Various credits against tax available to qualifying taxpayers
 - Credit for compensating tax paid on a construction project constructed and used, then sold
 - Various reciprocal tribal tax credits -various requirements
 - Tax paid on tangible personal property purchased outside NM where another state has imposed a tax and the tax has been paid
 - Tax paid on services performed outside NM where another state has imposed a tax and the tax has not been paid
 - Credit for unpaid healthcare services
 - Incentive credits, including
 - Investment Credit for Manufacturers
 - Capital Equipment Tax Credit -for Call Centers
 - Technology Jobs Tax Credit -for Research and Development
 - High Wage Job Tax Credits
 - Advanced Energy Tax Credit
 - Affordable Housing Credits
 - Laboratory Partnership with Small Business Tax Credit Act
 - Alternative Energy Product Manufacturers Tax Credit Act
 - Biodiesel blending facility credit for construction or expansion of facility

- Compensating Tax Exemptions, Deductions and Credits
 - Note, in general, if receipts would not have been subject to the gross receipts tax had transaction occurred in (or into) New Mexico, it will not be subject to compensating tax
 - Federal, New Mexico and Tribal Governments are exempt with respect to tangibles (with certain exceptions)
 - 501(c)(3) organizations are exempt with respect to purchase of tangibles (with certain exceptions)
 - Vehicles and boats subject to excise tax are not subject to compensating tax
 - Fuel subject to excise tax is not subject to compensating tax
 - Space and test vehicles
 - Locomotive engine fuel
 - Personal effects brought into the state by an individual are exempt from compensating tax
 - Railroad equipment and aircraft used in transporting persons or property for hire are exempt from compensating tax
 - Use of oil, natural gas, liquid hydrocarbon or any combination as fuel in a pipeline is not subject to compensating tax
 - Use of electricity in producing and transmitting electricity is not subject to compensating tax
 - 50% of agricultural implements are deductible in computing compensating tax
 - Trade-ins are deductible in computing compensating tax
 - Except for furnishings/appliances for leased property, tangibles used in leasing business are not subject to compensating tax if not used in any other way
 - Inventory donated to 501(c)(3)'s not subject to compensating tax
- Note on Gross Receipts Taxation of Hospitals
 - Major changes to taxation of healthcare service provided by hospitals in 2019
 - Prior to July 1, 2019, only for-profit hospitals subject to gross receipts tax at lower effective tax rate
 - After July 1, 2019, for profit and non-profit hospitals subject to tax and governmental hospitals subject to governmental gross receipts tax
 - Materially changed taxation of healthcare services provided at hospital facilities, including taxation of upstream services
- Note on Statutory Interpretation
 - Statutes interpreted to give effect to intent of legislature

- General rule of statutory interpretation to apply plain meaning rule to written words to determine legislative intent
- Courts will look beyond language if language deemed to be ambiguous, including review of Fiscal Impact Reports, which rarely provide comprehensive and useful guidance of intent
- Critical that statutes be clear as to intent and coverage