

Exemptions in the Gross Receipts and Compensating Tax Act

For the Revenue Stabilization and Tax Policy Committee

July 17, 2012

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Before you is a blue booklet entitled "Exemptions, Deductions and Credits". We will begin our discussion with the section on exemptions. You can find the section entitled "Exemptions" following the first blue divider. The following four pages set forth the exemptions found in the Gross Receipts and Compensating Tax Act. We have divided the exemptions into five categories:

(1) exemptions resulting from federal "**preemption**" of the field, or exemptions reflecting situations where another tax has been enacted "**in lieu of**" the gross receipts, compensating or governmental gross receipts tax;

(2) exemptions that are part of the "**base**" of one of the taxes in the Gross Receipts and Compensating Tax Act;

(3) exemptions that alleviate "**pyramiding**";

(4) exemptions that promote the "**public good**"; and

(5) exemptions that have been enacted for "**policy**" reasons.

There are 46 exemptions in the Gross Receipts and Compensating Tax Act. The first 16 are there due to federal preemptions, governmental immunities or taxes imposed in lieu of the gross receipts tax, compensating tax or governmental gross receipts tax. Section 7-9-13 NMSA 1978 is a general preemption section in which the federal government and its agencies, departments or instrumentalities are exempted from the gross receipts tax. In addition, the State of New Mexico and its subdivisions are exempt from the gross receipts tax. The section also exempts an Indian nation, tribe or pueblo from the gross receipts tax on transactions occurring on the nation's, tribe's or pueblo's land between tribal members or tribal subdivisions, agencies or other extensions of the tribe itself doing business on the tribe's land. Excluded from the state and local government exemptions are receipts from utility or cable television enterprises of the local government. The next exemption is from the governmental gross receipts tax if the gross receipts tax, the compensating tax, the motor vehicle tax, a severance tax or the fuel tax is imposed on the transaction in question. Certain surcharges may be imposed, causing the receipts or transactions on which the surcharge is imposed to be exempt from gross receipts taxes. These

surcharges result from the Municipal Event Center Funding Act, the Minor League Baseball Stadium Funding Act or the University Athletic Facility Funding Act.

Section 7-9-17 NMSA 1978 exempts personal service receipts in the form of wages, salaries or other employee compensation. Sections 7-9-22 through 7-9-23.1 NMSA 1978 set forth exemptions from the gross receipts tax and compensating tax for receipts from selling motor vehicles or boats if the motor vehicle excise tax or the excise tax on boat sales is imposed on those transactions. Insurance premiums on which the premium tax is imposed are exempted from the gross receipts tax pursuant to Section 7-9-24 NMSA 1978. Section 7-9-25 NMSA 1978 exempts dividends, interest and capital gains from the gross receipts tax, most likely because these are all taxed as personal income or corporate income. Section 7-9-26 NMSA 1978 exempts receipts from sales of gasoline, special fuels and alternative fuels if the gasoline, special fuels supplier or alternative fuels taxes are applied to the fuel.

There are a number of natural resources exemptions granted under the Gross Receipts and Compensating Tax Act when another tax is imposed. Oil and natural gas sales or processing receipts are not subject to the gross receipts tax pursuant to Subsection A of Section 7-9-33 NMSA 1978 if the oil and gas emergency school tax has been imposed on the sale or receipts from processing. If the natural gas processors tax has been imposed on the sale or receipts from processing natural gas, the transaction is not subject to the gross receipts tax according to Section 7-9-34 NMSA 1978. However, if the transactions are not for goods or services that are to be resold, then the receipts are subject to both the gross receipts tax and the oil and gas emergency school tax or the gross receipts tax and the natural gas processors tax. If a transaction is subject to the natural resources excise tax, then Section 7-9-35 NMSA 1978 exempts the transaction from the gross receipts tax. Finally, the receipts from sale of interstate telecommunications services that are subject to the interstate telecommunications gross receipts tax are exempt from the gross receipts tax pursuant to Section 7-9-38.1 NMSA 1978.

Next are exemptions from the tax base. Not all exemptions are separately stated in the Gross Receipts and Compensating Tax Act. In the definition of "engaging in business", there are two exclusions that appear to be policy exclusions to encourage development of the businesses that benefit from the exclusions. Third-party content providers to a web site administered in New Mexico and third-party providers of call center services located in New Mexico are excluded from the definition of "engaging in business" and, therefore, are not subject to the gross receipts, compensating or governmental gross receipts taxes. These exclusions would be more correctly written as deductions or separately stated as exemptions from the base of the taxes in the Gross Receipts and Compensating Tax Act. Another unusual provision of the Gross Receipts and Compensating Tax Act is found in Section 7-9-7.1 NMSA 1978, prohibiting the Taxation and Revenue Department from collecting the compensating tax from individuals who are not businesses. It is important in quantifying the tax benefits offered by the state to carefully look at all of the ways that benefits may be stated, recognizing that not all benefits are clearly set out or easily located.

Services performed out of state and used in state are exempt from gross receipts taxation,

as noted in Section 7-9-13.1 NMSA 1978. In addition, Section 7-9-14 NMSA 1978 provides an exemption from the compensating tax for receipts of the U.S. government and the state and its political subdivisions. Another compensating tax exemption is provided by Section 7-9-27 NMSA 1978 for tangible personal property brought into the state as personal effects during a move to the state.

Nine exemptions fall into the category of "anti-pyramiding" exemptions. These reflect inputs into an intermediate step in the production of a final product. Among these exemptions from the gross receipts tax are receipts from the sale of agricultural raw products, such as livestock, produce or other crops, poultry, hides or pelts. Dairy products, however, are taxable. Certain agricultural services are also exempt from gross receipts taxation, such as pasturing, feeding, training or penning of livestock. Exemptions found in Section 7-9-30 NMSA 1978 from compensating taxation are allowed on the use of railroad equipment, aircraft and spacecraft to transport either persons or property.

Most of the exemptions provided in the Gross Receipts and Compensating Tax Act in the anti-pyramiding category deal with natural resources, such as oil or natural gas, used to produce or transport those commodities through pipelines. Electricity used to produce electricity is exempt from compensating taxation. Section 7-9-41.2 NMSA 1978 is a section that never became effective, providing an exemption from gross receipts taxation for fuel used in locomotives. The section should be repealed.

The next category of exemptions are exemptions that in some way promote the public good. These involve compensating tax exemptions for charitable organizations that are recognized by the federal government as 501(c)(3) organizations. Nonprofit housing for the elderly, food stamp purchases and dues and registration fees of various nonprofit organizations are all exempt from gross receipts taxation. Receipts earned by a minister in providing religious services are also exempt. Receipts of a disabled street vendor and receipts of a referee, umpire, scorekeeper or other person officiating at New Mexico Activities Association school activities are also exempt from gross receipts taxation and do not need to be reported.

Finally, there are policy decisions made by the legislature that were enacted as exemptions. Receipts from the sale of textbooks to students from a bookstore on the campus of a public post-secondary educational institution are exempt from the gross receipts tax. Isolated or occasional leasing or selling of property or services by one who is neither regularly engaged nor holding oneself out as engaged in the business of selling or leasing the service or property is exempt from gross receipts taxation. This includes the provision of services such as lawn mowing or offering the sale of goods in a yard sale. Homeowners association dues are exempt from gross receipts taxation. Receipts from fuel sold or the value of fuel used to propel a space vehicle or to operate a space vehicle launcher is exempt from the gross receipts and compensating taxes pursuant to Section 7-9-26.1 NMSA 1978. The receipts from sales by nonprofit organizations are exempt from gross receipts taxation pursuant to Section 7-9-29 NMSA 1978 as long as the receipts do not constitute unrelated business income. Section 7-9-31 NMSA 1978 provides instrumentalities of the U.S. armed forces with an exemption from the

gross receipts tax for receipts from the sale of tangible personal property when involved in resale activities or from the compensating tax on property purchased for resale. There are no gross receipts taxes on the sale or leasing of oil, natural gas or other mineral interests. The receipts of jockeys, horsemen or trainers from purses from New Mexico horse racetracks or amounts retained by a racetrack are exempt from the gross receipts tax.

Some of these exemptions may be better constructed as deductions so that the Taxation and Revenue Department receives a report of the gross receipts earned by the person claiming the tax benefit. Changing some exemptions to deductions would present an undue burden on the taxpayer. Some exemptions apply to part of the receipts of a business, and because that business is already reporting the taxable portion of its receipts, it might not be a significant burden to report what is now an exemption as a deduction were the status of the tax benefit changed from an exemption to a deduction.