

# Taking the “Gross!” out of Gross Receipts Tax: Understanding GRT

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# Introduction

- ▶ New Mexico does not have a true sales tax; it imposes the gross receipts tax (GRT) for the privilege of “engaging in business” in New Mexico.
- ▶ Enacted in 1966, GRT resembles a sales tax, but it:
  - is based on a business’ receipts;
  - places the legal incident of the tax on the seller; and
  - applies to a broader range of business activities than a true sales tax.
- ▶ Normally, seller passes the tax on to the purchaser, either separately invoiced or as part of the sales price (factored);
- ▶ A number of different acts impose or authorize the various components of what we call gross receipts taxes in New Mexico;
  - The state and the GRT local options fall under different statutory provisions;
  - Other acts impose special gross receipts taxes on receipts from leasing vehicles and from interstate communications.

# The Four Requirements for GRT to Apply

- ▶ A person (individual, business, trust, etc.) is subject to GRT if:
  - The GRT can be imposed (it is not unconstitutional or pre-empted by federal law);
  - The person is “engaged in business;”
  - The person has “gross receipts” from its activities; and
  - The person (or transactions) are not exempt.
    - The difference between exemptions and deductions are discussed more fully below.

# Engaged in Business

- ▶ Conducting any activity with the purpose of direct or indirect benefit, other than:
  - Having a website hosted on a third-party's server in NM;
  - Using a non-affiliated call center to accept orders that are approved outside the state.
- ▶ “Benefit” is construed broadly as any consideration to either party to a transaction, regardless of profitability.

# Gross Receipts: A Broad Starting Point

- ▶ The total amount of money or the value of other consideration from:
  - selling property in NM;
  - leasing or licensing property that is used in NM;
  - granting a right to use a franchise in NM;
  - performing a service in NM;
  - and performing certain R&D services outside NM if the product of that service is initially used in NM.

# Gross Receipts: Defining Some Terms

- ▶ **Property:**
  - real property;
  - tangible personal property; and
  - licenses (other than the licenses of copyrights, trademarks or patents); and
  - franchises.
- ▶ **Lease:**
  - An agreement that enables use of another's property for a fee (as distinguished from a "license") – exclusive possession and control.
- ▶ **License:**
  - Permission to use property of another, so as to make it lawful.

# Gross Receipts Includes

- ▶ Receipts from consignment sales;
- ▶ Commissions on taxable sales of property and services;
- ▶ Coop dues (if goods and services provided);
- ▶ Amounts received from transmitting messages by telephone/telegraph (intrastate);
- ▶ Sales by NM florists when the order is filled and delivered outside NM by an out-of-state florist;
- ▶ Receipts from a home-service mobile telecom provider in certain circumstances.

# Gross Receipts Excludes

- ▶ Receipts that are actually less than retail price:
  - Cash discounts allowed and taken and any type of time-price differential.
- ▶ New Mexico GRT, GGRT, and leased vehicle GRT that is payable on the transaction and any gross receipts or sales tax imposed by an Indian nation, tribe or pueblo (reciprocal agreement required)
  - No tax on tax in the same transaction.
- ▶ Amounts received as a disclosed agent of another party.
- ▶ Amounts received by a New Mexico florist where the sale is made pursuant to orders placed with an out-of-state florist for filling and delivery in New Mexico by a New Mexico florist.



# Mechanics: How GRT Works

- ▶ Reported through the Combined Reporting System (CRS) – a return that includes: GRT, compensating tax, and income tax withholding for a business' employees.
  - All gross receipts are presumed taxable;
  - Tax is separately stated or factored;
  - Return due on the 25<sup>th</sup> of the month;
- ▶ GRT (CRS) most commonly filed through Taxpayer Access Portal (electronic) or paper filing.
- ▶ Exempt businesses (or businesses that engage solely in exempt transactions) have no registration or GRT reporting requirement as long as they are not subject to another CRS reported tax.
- ▶ Taxable businesses that have deductions report the “gross” for the deductible transactions, then back out the deductible amounts.

# Governmental Gross Receipts Tax (GGRT)

- ▶ **Governmental Gross Receipts Tax – 5% rate**
  - Sales of tangible personal property from facilities open to the general public;
  - Admission to recreational, athletic or entertainment events;
  - Sales of trash collection and sewer services;
  - Sales of water; and
  - Parking and tie-down spaces.
  - Does not apply to school districts and state/local government health care providers.

# Sidebar: Other State Gross Receipts Taxes

- ▶ Leased Vehicle Gross Receipts Tax – a 5% rate and a \$2 per day surcharge apply to most leases of vehicles for six months or less.
  - Distributed to local government road fund and highway infrastructure fund.
- ▶ Interstate telecommunications gross receipts tax –
  - 4.25% for providing interstate telecommunications services.
  - Imposed in lieu of regular GRT.

# Getting to Combined Rates: Local Options

- ▶ Cities and Counties are authorized, by numerous act, to impose rate increments that piggyback the state GRT for specific purposes.
- ▶ Total GRT rates in a location are a combination of the 5.125% state rate and the various applicable local rate increments.
- ▶ Combined rates currently range from 5.5% to 8.9375%, depending on locality.
- ▶ Local rates are updated by TRD twice per year on January 1 and July 1.
- ▶ Local governments change or enact rates through ordinances that must be validly adopted and promulgated and delivered to TRD at least three months before the effective date.
- ▶ Operates as an “eat what you kill” system.

# Reporting Local GRT

- ▶ On the CRS-1 return, taxpayers report GRT by location code using a the combined tax rate for the location code.
- ▶ Location code reporting allows Gentax to quantify GRT by location for distribution purposes.

# County GRT Local Options

- ▶ County GRT (7-20E-9)
- ▶ County fire protection excise tax (7-20E-15)
- ▶ County infrastructure GRT (7-20E-19)
- ▶ County environmental GRT (7-20E-17)
- ▶ County health care GRT (7-20E-18)
- ▶ County capital outlay GRT (7-20E-21)
- ▶ County water and sanitation GRT (7-20E-27)
- ▶ County hold harmless GRT (7-20E-28)
- ▶ County hospital emergency GRT (7-20E-12.1)
- ▶ Special county hospital GRT (7-20E-13)

# County GRT Local Options (cont.)

- ▶ County emergency GRT (7-20E-12)
- ▶ County education GRT (7-20E-20)
- ▶ County wide/county area emergency communications and emergency medical and behavioral health services GRT (7-20E-22)
- ▶ County regional transit GRT (7-20E-23)
- ▶ County regional spaceport GRT (7-20E-25)
- ▶ County business retention GRT (no new enactments after January 1, 2016)
- ▶ County quality of life (7-20E-24)
- ▶ Local hospital GRT (7-20C-17)
- ▶ County correctional facility GRT (7-20F-1)

# Municipal GRT Local Options

- ▶ Municipal GRT (7-19D-9)
- ▶ Municipal Infrastructure GRT (7-19D-11)
- ▶ Municipal Environmental Services GRT (7-19D-10)
- ▶ Municipal Capital Outlay GRT (7-19D-12)
- ▶ Quality of Life GRT (7-19D14)
- ▶ Supplemental Municipal GRT (no new enactments since 1986)
- ▶ Municipal Regional Spaceport GRT (7-19D-15)
- ▶ Municipal Higher Education Facilities GRT (7-19D-16)
- ▶ Federal Water Project GRT (7-19D-17)
- ▶ Municipal Hold Harmless GRT (7-19D-18)



# Municipal Local Option GRT Enactments

CITY		MUNICIPAL LOCAL OPTION TAXES																										TOTAL RATES		
		Municipal Gross Receipts Tax								Municipal Infrastructure Gross Receipts Tax				Municipal Capital Outlay Gross Receipts Tax				Municipal Env. Svcs. GRT	Federal Water GRT	Quality of Life Gross Receipts Tax				Municipal Regional Spaceport GRT	Municipal Higher Educ. Facilities GRT	Municipal Hold Harmless GRT	Municipal Hold Harmless GRT	City Imposed Rates	County Imposed Rates	Total Tax Rate (1)
Bernalillo County	02-002			.125%	.125%	.25%	.25%	.125%	.125%	.0625%	.0625%	.0625%	.0625%	.0625%	.0625%	.0625%	.50%	0.25%	.0625%	.0625%	.0625%	.0625%	.50%	0.25%	0.25%	0.3750%	0.0000%	1.1250%	6.2500%	
Albuquerque	02-100	1/82	1/82	7/10	7/10	(23)	7/04			7/92				7/16	7/16												1.1875%	1.0000%	7.3125%	
State Fairgrounds	02-555																										0.0000%	1.1250%	6.2500%	
Los Ranchos de Albuquerque	02-200	1/9212	1/9212	1/91	1/91	1/91				7/94	7/94																1.1250%	1.0000%	7.2500%	
Rio Rancho (part)	02-647	7/82	7/82	7/83	7/83	7/85	7/852	1/11	1/11	1/92	1/92					1/92											1.6875%	1.0000%	7.8125%	
Village of Tijeras	02-318	7/81	7/81	7/84	7/84	7/94	7/12	7/12	7/12																		1.5000%	1.0000%	7.6250%	
Catron County	28-028																										0.0000%	0.5625%	5.6875%	
Reserve	28-130	7/80	7/80	1/82	1/82	1/91	1/91			7/93	7/93					1/91										7/15	1.8125%	0.4375%	7.3750%	
Chaves County	04-004																										0.0000%	1.3125%	6.4375%	
Dexter	04-201	1/79	1/82	7/83	7/83	7/88	7/88																				1.2500%	0.9375%	7.3125%	
Hagerman	04-300	1/80	1/82	1/82	1/82	7/86	7/90			7/95	7/95					7/95											1.4375%	0.9375%	7.5000%	
Lake Arthur	04-400	1/80	7/83	7/83	7/83																						0.7500%	0.9375%	6.8125%	
Roswell	04-101	7/79	7/79	1/82	1/82	7/86	7/862	7/16		7/92																	1.4375%	0.9375%	7.5000%	
Cibola County	33-033																										0.0000%	1.4375%	6.5625%	
Grants	33-227	7/78	7/79	1/82	1/82	7/85	1/87	7/09	7/09	1/93	1/93	7/06	7/06			7/91											1.8125%	0.9375%	7.8750%	
Milan	33-131	1/80	7/80	1/83	1/83	7/85	1/91			7/93	7/93					7/92											1.4375%	0.9375%	7.5000%	
Colfax County	09-009																										0.0000%	0.9583%	6.0833%	
Angel Fire	09-600	1/87	1/87	1/87	1/87	1/87	1/09	1/09	7/93	7/93	7/02	7/02	7/02 43	7/02	7/02	7/02	7/96										2.0625%	0.5833%	7.7708%	
Cimarron	09-401	7/79	7/79	1/82	1/82	1/85	1/852	7/14	7/14	1/92	7/92	7/14	7/14	7/14	7/14	7/14	1/91										2.0625%	0.5833%	7.7708%	
Eagle Nest	09-509	7/79	1/82	1/82	1/82	7/86	7/862	1/10	1/10	1/93	7/02 44	7/02	7/02			7/91											1.8125%	0.5833%	7.5208%	
Maxwell	09-202	7/79	1/82	1/16	1/16																						0.7500%	0.5833%	6.4583%	
Raton (39)	09-102	7/78	7/79	7/83	7/83	7/85	7/05	1/15	1/15	7/92	7/92	1/00	1/00			7/03											2.8125%	0.5833%	8.5208%	
Springer	09-301	7/79	7/82	7/82	7/82	1/85	1/87	1/16	1/16	1/93	1/93					1/91										1/16	2.0625%	0.5833%	7.7708%	
Curry County	05-005																										0.0000%	1.0000%	6.1250%	
Clovis	05-103	7/79	1/81	1/8215	1/82	7/97	1/0115	1/12	1/12	7/97	7/97	7/00	7/00	7/04	7/04	7/04	7/04	1/92 14									2.0625%	0.8750%	8.0625%	
Clovis Airport	05-154																										0.0000%	1.0000%	6.1250%	
Grady	05-203	7/79	1/89	1/89	1/89					7/92	7/92					7/91											0.9375%	0.8750%	6.9375%	
Melrose	05-402	7/79	7/82	1/83	1/83	7/93	1/03	7/10	7/10	7/93	7/93 36	7/04				7/91											1.7500%	0.8750%	7.7500%	
Texico	05-302	1/82	1/82	7/92	7/92	7/92	7/92			7/04	7/04	7/04	7/04			7/95											1.5625%	0.8750%	7.5625%	
De Baca County	27-027																										0.0000%	1.5625%	6.6875%	
Fort Sumner	27-104	7/79	7/79	1/82	1/82	1/85	1/85 2	1/13	1/13	7/92	7/92					1/96											1.6875%	1.1875%	8.0000%	

# County Local Option GRT Enactments

COUNTY	COUNTY LOCAL OPTION TAXES																														TOTAL RATES					
	County Gross Receipts Tax					County Infrastructure GRT		County Capital Outlay Gross Receipts Tax				County Emergency Communications & Medical Services Tax				Cnty. Educ. GRT	County Health Care	Cnty Hosp. GRT	Local Hospital Gross Receipts Tax	Cnty Hosp. Emerg.	Jail	Cnty. Env. GRT	Fire	County Regional Transit	County Regional Spaceport Gross Receipts Tax	County Water & Sanit.	County Business Ret.	County Hold Harmless	County Hold Harmless	County Hold Harmless	City Imposed Rates	County Imposed Rates	Total Tax Rate (1)			
	.125%	.125%	.125%	.0625%	.0833%	.0625%	.0625%	.0625%	.0625%	.0625%	.0625%	.0625%	.0625%	.50%	.0625%	.0625%	.125%	.125%	.125%	.125%	.25%	.0625%	.0625%	.125%	.125%	.125%	.125%	.25%	.1675%	.125%	.25%	.375%				
Bernalillo County	02-002	1/84	1/87	1/05	(49)										1/07	1/07						7/06	7/06	7/91		7/09					7/15	0.0000%	1.1250%	6.2500%		
State Fairgrounds	02-555	1/84	1/87	1/05	1/05										1/07	1/07						7/06	7/06	7/91		7/09							0.0000%	1.1250%	6.2500%	
Catron County	28-028	1/84	1/09	1/09											7/14									7/09										0.0000%	0.5625%	5.6875%
Chaves County	04-004	1/84	7/86	1/93											7/94							7/11	7/11	7/91	7/06	7/06					7/15	0.0000%	1.3125%	6.4375%		
Cibola County	33-033	1/84	1/84	1/84	7/05		7/03	7/03										(33)				7/05	7/05	7/91	7/06	7/06						7/14	0.0000%	1.4375%	6.5625%	
Colfax County	09-009	7/87	7/87		1/15																		7/95	7/05	7/05						1/15		0.0000%	0.9583%	6.0833%	
Curry County	05-005	1/84	1/84	7/05	1/05											1/00							1/05	1/05	1/91						1/15		0.0000%	1.0000%	6.1250%	
Clovis Airport	05-154	1/84	1/84	7/05	1/05											1/00							1/05	1/05	1/91								0.0000%	1.0000%	6.1250%	
De Baca County	27-027	1/84	7/91	1/06	1/06							7/09	7/09	7/09	7/09							7/06	7/06	1/91	7/04	7/04					1/16		0.0000%	1.5625%	6.6875%	
Dona Ana County	07-007	7/85	7/81	7/81	7/06											7/93						7/06	7/09	1/91	1/04	1/04		1/09	1/09			7/15	0.0000%	1.6250%	6.7500%	
Eddy County	03-003	1/88	7/93																					1/96	7/05	7/05				1/16			0.0000%	0.7500%	5.8750%	
Grant County	08-008	1/88	1/86	1/86								1/13	1/13			1/94						1/07	1/07	7/94	7/05	7/05					1/15		0.0000%	1.4375%	6.5625%	
Guadalupe County	24-024	1/88	1/89	1/04	1/05		1/04	1/04	1/04	1/04	1/04	1/04	7/05	7/05	7/05	7/05						1/05	1/05	1/91									0.0000%	1.3125%	6.4375%	
Harding County	31-031	1/84		7/06		1/02	1/02									1/10						1/06	1/06	1/91							1/15		0.0000%	1.0000%	6.1250%	
Hidalgo County	23-023	7/90	7/90	7/05	7/05		7/13	7/13														1/09	1/09	1/98									0.0000%	0.8125%	5.9375%	
Lea County	06-006	1/87	1/90																					7/04										0.0000%	0.3750%	5.5000%
Lovington Industrial Park	06-158	1/87	1/90																					7/04										0.0000%	0.3750%	5.5000%
Lincoln County	26-026	1/00	1/00																					1/91										0.0000%	0.3750%	5.5000%
Bonito Lake (77)	26-508	1/00	1/00																					1/91										0.0000%	0.3750%	5.5000%
Los Alamos																																				
(county and city)	32-032	7/85	7/98	7/06																		7/06	7/06	7/07		7/09								1.4375%	0.7500%	7.3125%
Luna County	19-019	7/94	7/85	7/85	7/05		7/07	7/07	7/07	7/07	7/07					7/95		(63)				7/07	7/07	7/06	7/06							7/15	0.0000%	1.6250%	6.7500%	
Deming Industrial Park																																				
McKinley County	13-013	1/84	1/89	7/99	1/05		7/99	7/99	1/02	1/02	1/02	1/02	1/03	1/03	1/03	1/03	1/03					1/05	1/05	1/91	1/02	1/02								0.0000%	1.6250%	6.7500%
Mora County	30-030	7/88	7/93	7/14	7/05							7/13	7/13	7/13	7/13							7/05	7/05	7/95	7/97	7/97					1/16		0.0000%	1.5625%	6.6875%	
Otero County	15-015	1/92	7/90													1/12						7/12	7/12	1/93	7/04	7/04				1/16	7/14		0.0000%	1.1875%	6.3125%	
Alamogordo Land (78)	15-322	1/92	7/90													1/12						7/12	7/12	1/93	7/04	7/04								0.0000%	1.0625%	6.3125%
Quay County	10-010	1/88	1/88	1/88	1/05							1/15	1/15	1/15	1/15				1/14	1/08	1/08	1/08	1/08	1/05	1/05	7/94							0.0000%	1.5625%	6.6875%	
Rio Arriba County	17-017	9/68	9/68	1/05	7/11							7/05	7/05	7/05	7/05	1/02						1/11	1/11	7/91	7/07	7/07	7/09							0.0000%	1.3750%	6.5000%

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# Exemptions and Deductions

- ▶ Both apply across the entire GRT regime – i.e. state and local.
- ▶ Exemptions eliminate a legal obligation to register, report, and pay GRT.
- ▶ Deductions reduce liability by eliminating certain transactions from a taxpayer's gross receipts.
  - Many deductions statutorily require the seller to be in possession of a Nontaxable Transaction Certificate (NTTC) at the time the return is filed or within sixty days of a TRD audit request.

# Exemptions

Exemptions	Statute	From	2015 TER Page
<b><u>Expenditures</u></b>			
Agricultural products	7-9-18 NMSA 1978	GRT/GGRT	239
Disabled street vendors	7-14-6(D) NMSA 1978	GRT	69
Fees from social organizations	7-9-39 NMSA 1978	GRT	80
Food stamps/SNAP	7-9-18.1 NMSA 1978	GRT	84
Fuel for space vehicles	7-9-26.1 NMSA 1978	GRT/Comp	85
Livestock feeding	7-9-19 NMSA 1978	GRT	242
Nonprofit elderly care facility	7-9-16 NMSA 1978	GRT	121
Nonprofit organizations	7-9-29 and 7-9-15 NMSA 1978	GRT/Comp	122
Officiating at New Mexico activities association events	7-9-41.4 NMSA 1978	GRT	125
Purses and jockey remuneration at New Mexico racetracks	7-9-40(A) NMSA 1978	GRT	140
Sale of textbooks in certain bookstores	7-9-13.4 NMSA 1978	GRT	156
Vehicles titled before July 1, 1991	7-14A-9 NMSA 1978	Leased Vehicle GRT	182

# Exemptions (Cont.)

Exemptions	Statute	From	2015 TER Page
<b><u>Not Tax Expenditure</u></b>			
Athletic facility surcharge	7-9-41.1 NMSA 1978	GRT/GGRT	190
Boats	7-9-22.1 and 7-9-23.1 NMSA 1978	GRT/Comp	192
Certain telecommunications services	7-9-38.2 NMSA 1978	GRT	N/A
Dividends and interest	7-9-25 NMSA 1978	GRT	196
Event center surcharge	7-9-13.5 NMSA 1978	GRT/GGRT	198
Fuel	7-9-26 NMSA 1978	GRT/Comp	199
Governmental agencies	7-9-13 NMSA 1978	GRT	N/A
Insurance companies	7-9-24 NMSA 1978	GRT	242
Interstate telecommunications services	7-9-38.1 NMSA 1978	GRT	205
Natural resources subject to Resources Excise Tax	7-9-35 NMSA 1978	GRT	208
Occasional sale of property or services	7-9-28 NMSA 1978	GRT	209
Oil and gas or mineral interests	7-9-32 NMSA 1978	GRT	209
Products subject to Oil and Gas Emergency School Tax	7-9-33 NMSA 1978	GRT	212
Refiners and persons subject to Natural Gas Processors Tax	7-9-34 NMSA 1978	GRT	214
Religious activities	7-9-41 NMSA 1978	GRT	215
Resale activities of an armed forces instrumentality	7-9-31 NMSA 1978	GRT/Comp	215
Services performed outside the state, product initially used in NM	7-9-13.1 NMSA 1978	GRT	N/A
Stadium surcharge	7-9-13.3 NMSA 1978	GRT/GGRT	223
Tax paid to New Mexico Tribes	7-9C-2(E)(2) NMSA 1978	GRT	229
Transportation from within municipality to outside municipality	7-19-14(A), 7-19D-5(A) ,, 7-20C-5, 7-20E-5, and 7-20F-6 NMSA 1978	Local option GRT	233
Vehicles	7-9-22 and 7-9-23 NMSA 1978	GRT/Comp	235
Wages	7-9-17 NMSA 1978	GRT	236
<b><u>Arquable</u></b>			
Gross amounts wagered	7-9-40(B) NMSA 1978	GRT	241
Pipeline transportation of oil and gas products	7-9-36 and 7-9-37 NMSA 1978	GRT/Comp	243
Receipts of homeowners associations	7-9-20 NMSA 1978	GRT	243



# Deductions

Deductions	Statute	From	2015 TER Page	NTTC Req.	NTTC Optional?
<b>Expenditures</b>					
Advanced energy	7-9-114 NMSA 1978	GRT and Comp	30	Type 10	
Aircraft sales or services	7-9-62.1 NMSA 1978	GRT	37		
Back-to-school tax-free weekend	7-9-95 NMSA 1978	GRT	46		
Border-zone trade-support company	7-9-56.3 NMSA 1978	GRT	51		
Construction equipment and materials used in the construction of sole community provider hospitals	7-9-100 NMSA 1978	GRT	61	Type 2 and 6	Yes
Construction of sole community provider hospitals	7-9-99 NMSA 1978	GRT	62	Type 6	Yes
DOH-licensed hospitals 50% deduction	7-9-73.1 NMSA 1978	GRT	71		
Electric transmission and storage facilities	7-9-101 and 7-9-102 NMSA 1978	GRT and Comp	73		
Electric transmission and storage facilities services	7-9-103 NMSA 1978	GRT	75		
Electricity conversion	7-9-103.1 NMSA 1978	GRT	76		
Electricity exchange	7-9-103.2 NMSA 1978	GRT	77		
Goods and services for the DoD related to directed energy and satellites	7-9-115 NMSA 1978	GRT	87		
Healthcare practitioner services	7-9-93, 7-1-6.46, and 7-1-6.47 NMSA 1978	GRT and hold harmless distribution	88		
Hearing and vision aids	7-9-111 NMSA 1978	GRT	89		
Hosting world wide web sites	7-9-56.2 NMSA 1978	GRT	92		
Investment management or advisory services	7-9-108 NMSA 1978	GRT	96		
Jet fuel 50%	7-9-83 and 7-9-84 NMSA 1978	GRT and Comp	97	Type 2	
Loan-related costs	7-9-61.1 NMSA 1978	GRT	100		
Locomotive engine fuel	7-9-110.1 and 7-9-110.2 NMSA 1978	GRT and Comp	101		
Lottery retailer receipts	7-9-87 NMSA 1978	GRT	103		

# Deductions (cont.)

Deductions	Statute	From	2015 TER Page	NTTC Req.	NTTC Optional?
<b>Expenditures</b>					
Durable medical equipment medical supplies	7-9-73.3 NMSA 1978	GRT/GGRT	N/A		
Military construction services	7-9-106 NMSA 1978	GRT	111		
Newspaper sales	7-9-64 NMSA 1978	GRT	118		
Nonathletic special event at NMSU	7-9-104 NMSA 1978	GRT	120		
Nonprofit organizations fundraisers	7-9-85 NMSA 1978	GRT	124		
Prescription drugs and oxygen	7-9-73.2 NMSA 1978	GRT and GGRT	136		
Production or staging of professional contests	7-9-107 NMSA 1978	GRT	138		
Publication sales	7-9-63 NMSA 1978	GRT	139		
Real estate transactions	7-9-66.1 NMSA 1978	GRT	142		
Sale and use of agricultural implements, farm tractors, aircraft, and motor vehicles that don't have to be registered	7-9-62(A),(B),(C) and 7-9-77(A) NMSA 1978	GRT and Comp	149		
Sale of certain services to an out-of-state buyer	7-9-57 NMSA 1978	GRT	152	Type 5	Yes
Sale or lease of real property and lease of manufactured homes	7-9-53 NMSA 1978	GRT	157		
Sales of food at retail food stores	7-9-92 and 7-1-6.46 NMSA 1978	GRT and hold harmless distribution	153		
Sales of software development services	7-9-57.2 NMSA 1978	GRT	155		
Sales to nonprofit organizations	7-9-60 NMSA 1978	GRT and GGRT	158	Type 9	
Sales to qualified film production company	7-9-86 NMSA 1978	GRT and GGRT	159	Type 16	
Sales to state-chartered credit unions	7-9-61.2 NMSA 1978	GRT and GGRT	160	Type 9	Yes
Solar energy systems	7-9-112 NMSA 1978	GRT	163	Type 6	
Spaceport-related activities	7-9-54.2 NMSA 1978	GRT	166	Type 9	Yes
Special fuel dyed diesel	7-9-13 NMSA 1978	GRT	N/A		
Uranium hexafluoride and uranium enrichment	7-9-90 NMSA 1978	GRT	180		
Veterinary medical services for treatment of cattle	7-9-109 NMSA 1978	GRT	248		
Wind and solar generation equipment	7-9-54.3 NMSA 1978	GRT	186		



# Deductions (cont.)

Deductions	Statute	From	2015 TER Page	NTTC Req.	NTTC Optional?
<b>Not Tax Expenditure</b>					
Accredited diplomats and missions	7-9-89 NMSA 1978	GRT	189	Type 16	
Bad debts	7-9C-9 NMSA 1978	Interstate Telecom. GRT	191		
Chemicals and reagents	7-9-65 NMSA 1978	GRT	194		
Construction material	7-9-51 NMSA 1978	GRT	195	Type 6	
Construction services	7-9-52 NMSA 1978	GRT	196	Type 6	
Films and tapes	7-9-76.2 NMSA 1978	GRT	198		
Internet services	7-9-56.1 NMSA 1978	GRT	204		
Interstate commerce transactions	7-14A-7 NMSA 1978	Leased Vehicle GRT	205		
Jewelry manufacturing	7-9-74 NMSA 1978	GRT	206	Type 2	
Lease for subsequent lease	7-9-50 NMSA 1978	GRT	206	Type 2	
Lease of construction equipment	7-9-52.1 NMSA 1978	GRT	207	Type 6	
Purchases by or on behalf of the State	7-9-97 NMSA 1978	GRT	213		
Sale of a service for resale	7-9-48 NMSA 1978	GRT/GGRT	216	Type 5	
Sale of a service for resale	7-9C-7 NMSA 1978	Interstate Telecom. GRT	217		
Sale of aerospace services for the US Air Force	7-9-54.1 NMSA 1978	GRT	217	Type 5	
Sale of tangible personal property for leasing	7-9-49 NMSA 1978	GRT	220	Type 2	
Sale of tangible personal property for resale	7-9-47 NMSA 1978	GRT	220	Type 2	
Sales through world wide web sites	7-9-57.1 NMSA 1978	GRT	220	Type 5	
Sales to manufacturers (consumables)	7-9-46 NMSA 1978	GRT	221	Type 11 and 12	
Services on manufactured products	7-9-75 NMSA 1978	GRT	222	Type 5	
Telecommunication providers	7-9C-8 NMSA 1978	Interstate Telecom. GRT	230		
Trade-in allowance	7-9-71, 7-14-4 and 7-14A-8 NMSA 1978	GRT/MVX/Leased Vehicle GRT	231		
Transactions in interstate commerce	7-9-55 NMSA 1978	GRT/GGRT	231		
Transactions in interstate transportation and services in interstate commerce	7-9-56 NMSA 1978	GRT	232		
Uncollectible debts	7-9-67 NMSA 1978	GRT/GGRT	233		
Vehicles used in interstate commerce	7-9-70 NMSA 1978	GRT	236		
Warranty obligations	7-9-68 NMSA 1978	GRT	237		

# Deductions (cont.)

Deductions	Statute	From	2015 TER Page	NTTC Req.	NTTC Optional?
<b>Arguable</b>					
Administrative and accounting services	7-9-69 NMSA 1978	GRT	239		
Certain commissions	7-9-66 NMSA 1978	GRT	240		
Feed and fertilizer & auctioneer's selling livestock and agricultural products at auction	7-9-58 NMSA 1978	GRT	240		
Processing agricultural products	7-9-59 NMSA 1978	GRT	243		
Resale of certain manufactured homes	7-9-76.1 NMSA 1978	GRT	244		
Sale of prosthetic devices	7-9-73 NMSA 1978	GRT/GGRT	245	Type 2	
Sales to governmental agencies	7-9-54 NMSA 1978	GRT/GGRT	247	Type 9	Yes
Travel agent's commissions	7-9-76 NMSA 1978	GRT	247		
Veterinary medical for treatment of cattle	7-9-109 NMSA 1978	GRT	248		
Wide-Area Telephone and private communications service	7-9C-6 NMSA 1978	Interstate Telecom. GRT	249		

# Battle Royale: NTTCs and Section 7-9-43

- ▶ 1992 Series NTTCs should be in the sellers position when the return is filed;
- ▶ If not, NTTC has to be in seller's possession within 60 days of a TRD audit notice;
- ▶ If it is not (and the statutory deduction requires an NTTC), the deduction *shall be disallowed*.
  - One exception for sales of tangible personal property for resale (7-9-47) would allow alternative proof if:
    - before an audit assessment is issued, or
    - for a protested audit assessment, prior to either the taxpayer's withdrawal of the protest or the formal hearing of the protest if the protest is acknowledged prior to 12/31/2011.

# NTTCs and “Good Faith” Acceptance

- ▶ When the seller accepts an NTTC within the required time and in good faith that the buyer will use the property or service in a nontaxable manner, the NTTC is conclusive evidence that the seller is entitled to the deduction.
- ▶ Court of Appeals:
  - *Case Manager*
  - *Southwest Mobile*

# Business Credits

- ▶ Can be claimed against GRT or modified combined tax liability;
- ▶ Some cross over to PIT/CIT with excess;
- ▶ Separately applied for;
- ▶ Business incentive credits against GRT.

# Business Credits

- ▶ Business Credits Against GRT Only:
  - DOH-licensed hospitals;
  - Laboratory partnership with small business.
  
- ▶ Business credits against multiple programs, including GRT:
  - Advanced energy (against GRT, Comp, Withholding, PIT or CIT)
  - Affordable housing (against modified combined tax, PIT or CIT)
  - Alternative energy product manufacturers (against modified combined tax)
  - Biodiesel blending facility tax 30% credit (against GRT and Comp)
  - High-wage jobs (against modified combined tax)
  - Investment (against GRT, Comp, Withholding)
  - Research and development small business (against GRT or 50% credit against Withholding)
  - Rural job (against modified combined tax, PIT, and CIT)
  - Technology jobs and research and development (against GRT, Comp, Withholding, PIT or CIT)

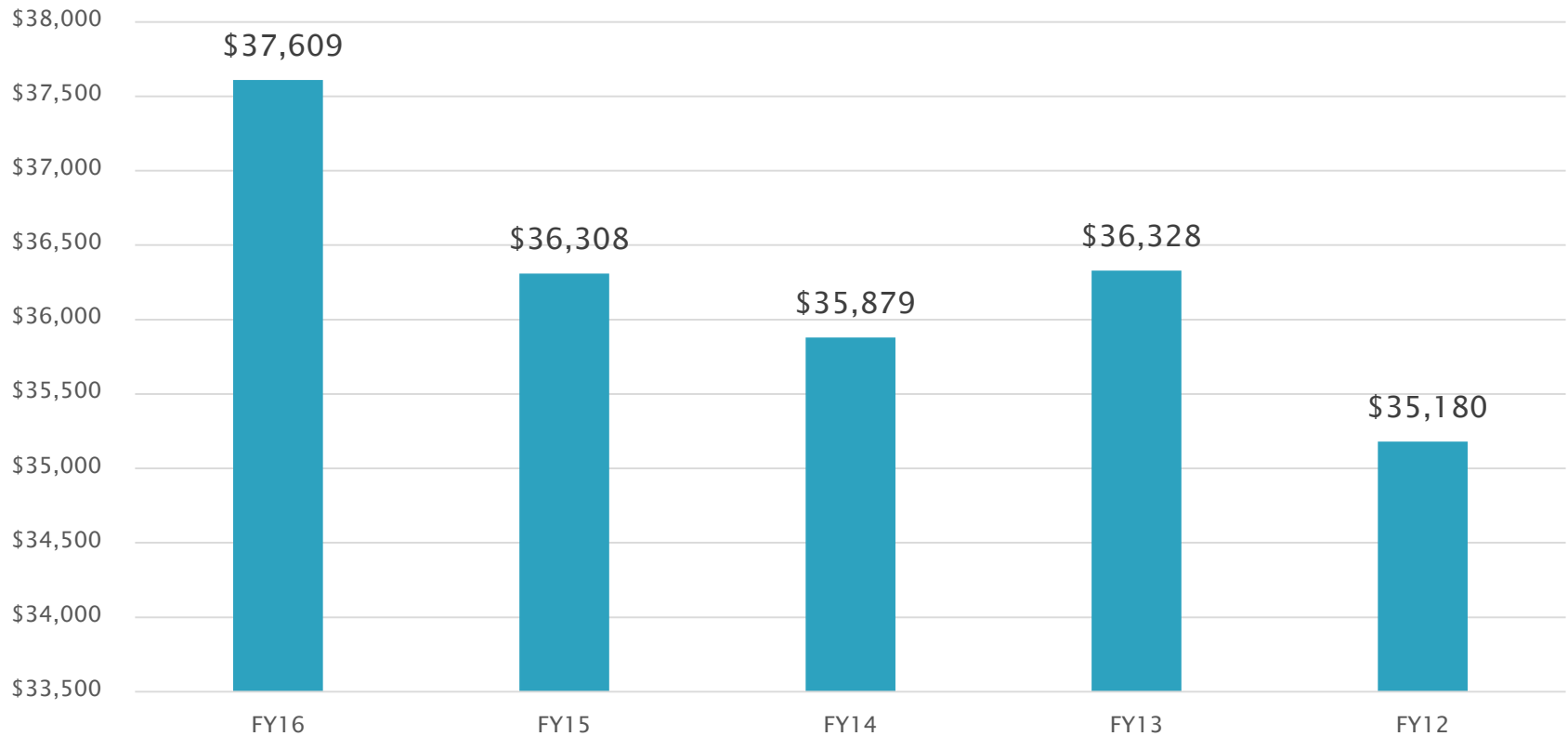
# GRT Credits (Cont.)

## CRS Tax Credits Taken Against GRT, Comp. or Withholding (thousands of dollars)

Program	FY15	FY16	Change \$
DOH Hospital GRT	\$5,514	\$32,204	\$26,690
Rural Jobs	\$109	\$1,700	\$1,591
Advanced Energy	\$585	\$1,411	\$826
Unpaid Doctors	\$668	\$929	\$261
Alternative Energy	\$0	\$24	\$24
Affordable Housing	\$653	\$141	(\$512)
Investment	\$2,578	\$1,907	(\$672)
Technology Jobs	\$4,822	\$2,830	(\$1,992)
High Wage Jobs (refund)	\$57,206	\$54,812	(\$2,394)
High Wage Jobs (credit)	\$8,631	\$3,422	(\$5,208)
<b>Total</b>	<b>\$80,767.1</b>	<b>\$99,381.6</b>	<b>\$18,614.5</b>

# GGRT

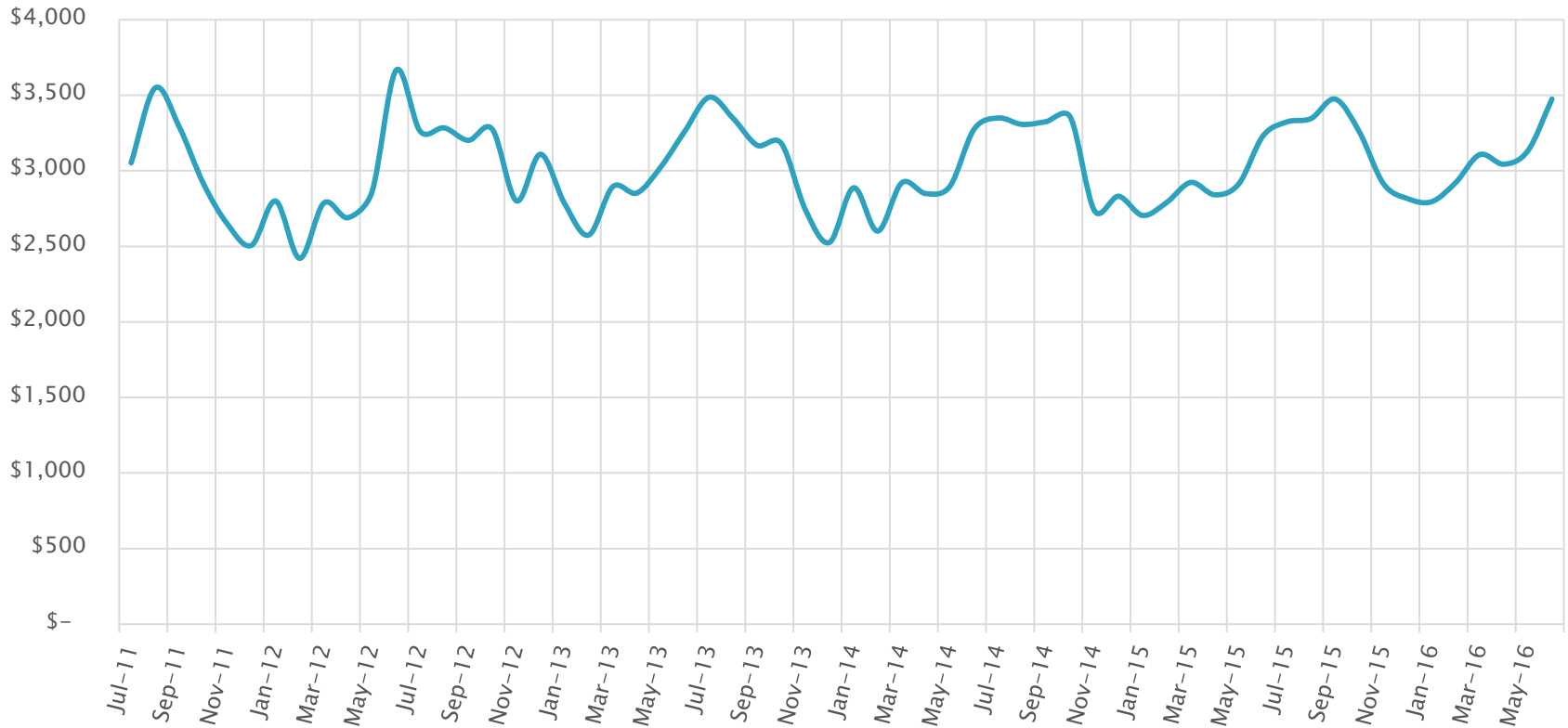
GGRT (millions)





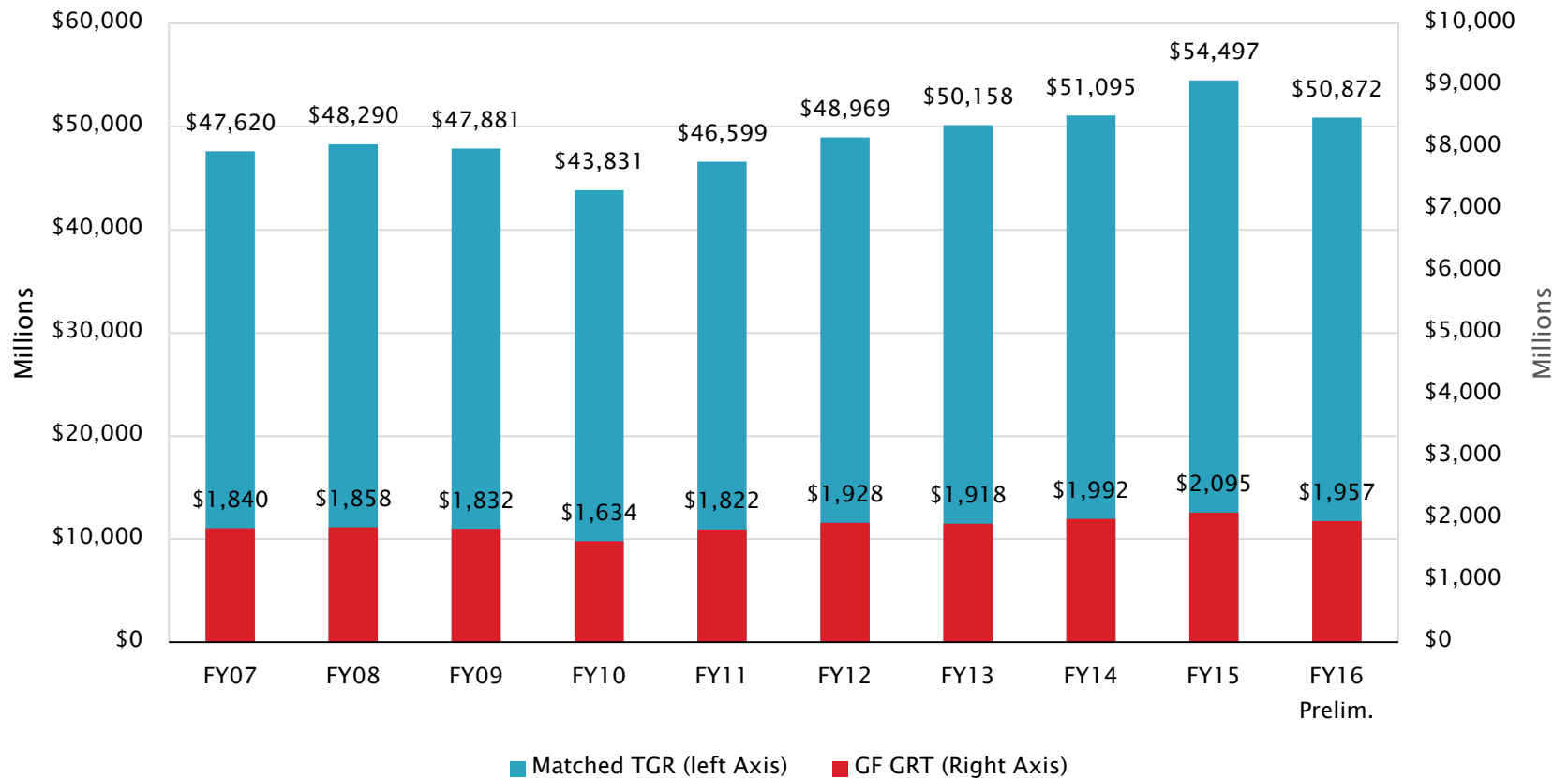
# GGRT (Cont.)

GGRT (millions)



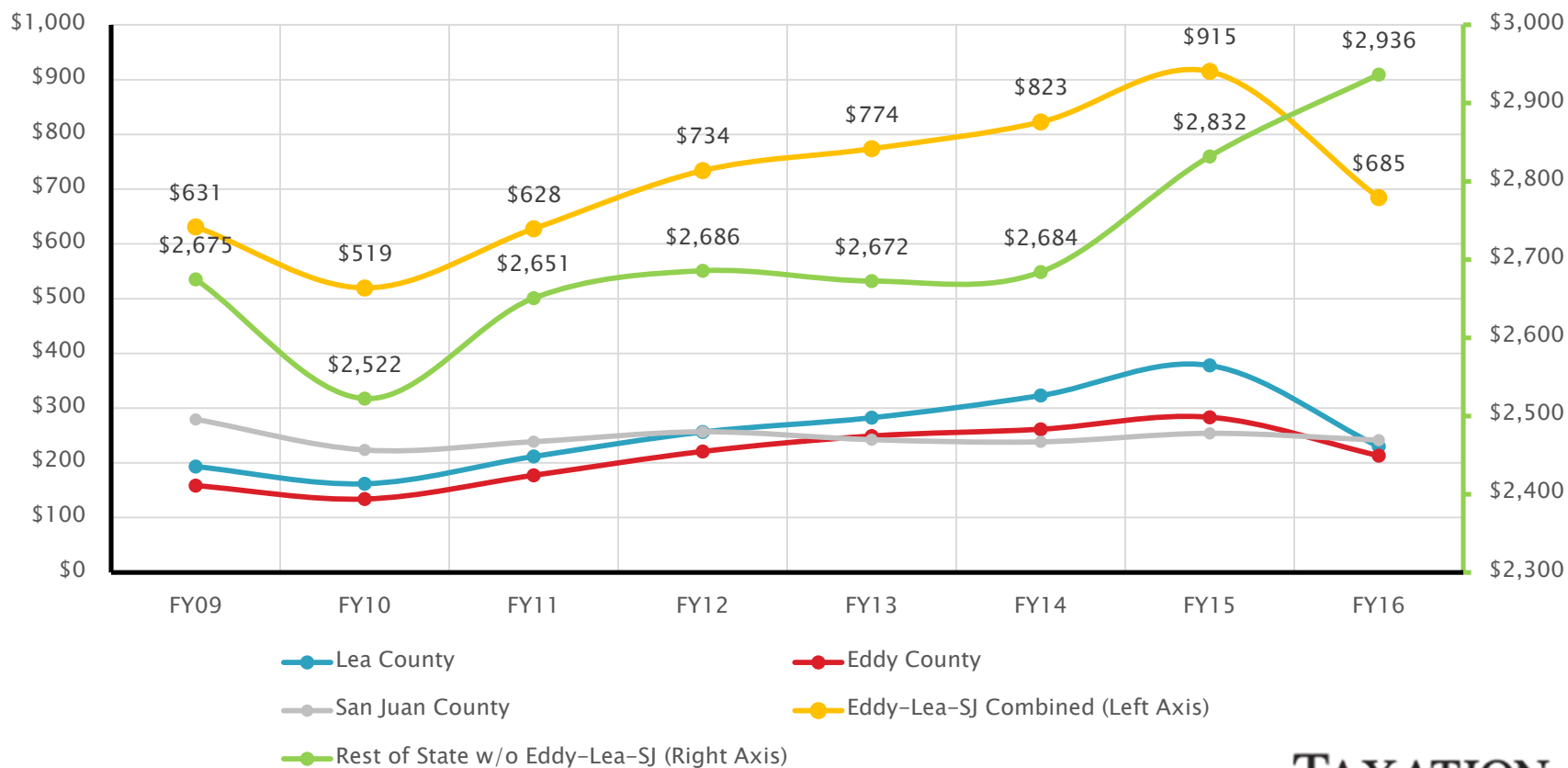
# GRT Collections

## Matched Taxable Gross Receipts and General Fund Gross Receipts Tax

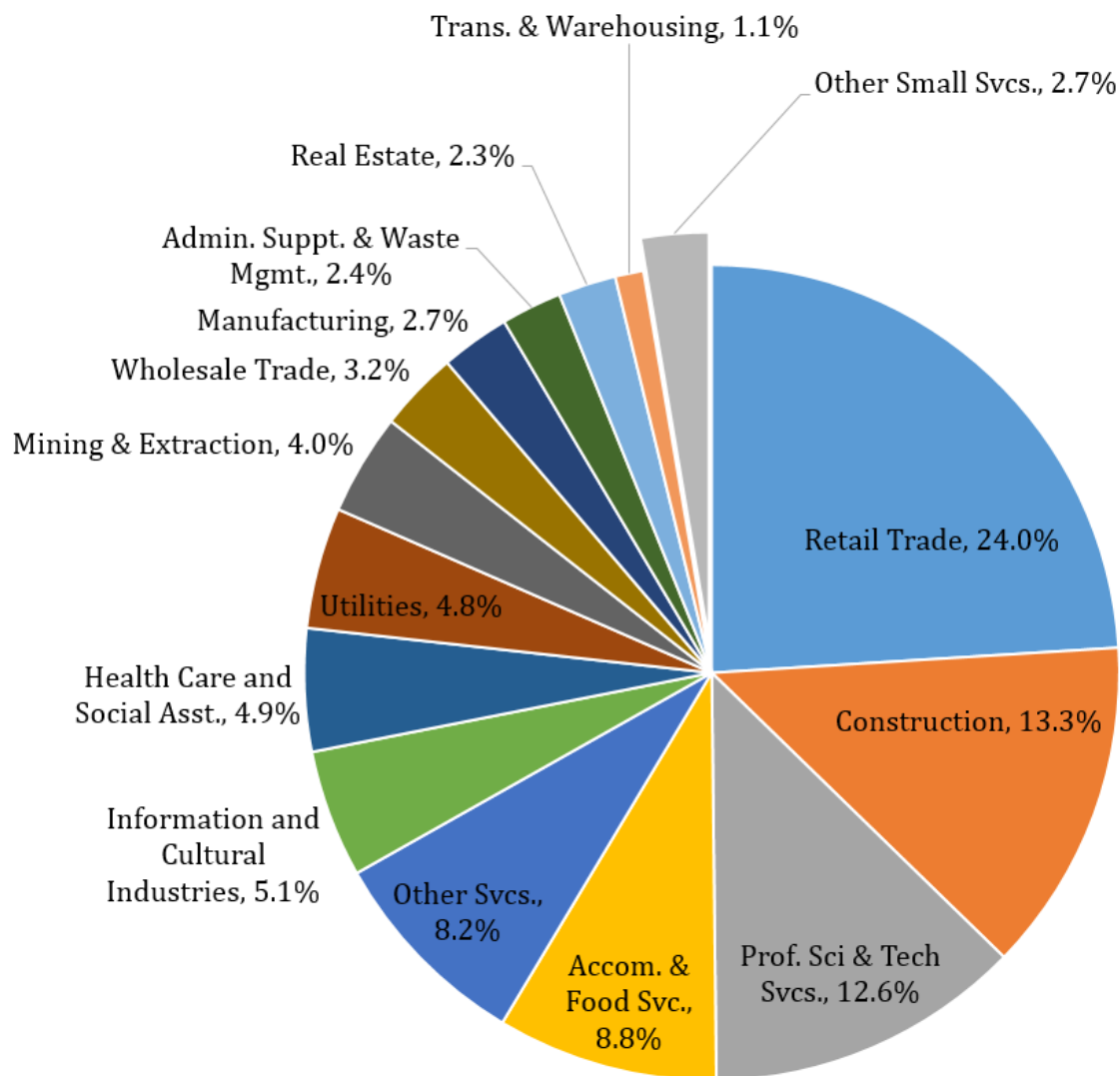


# GRT Collections

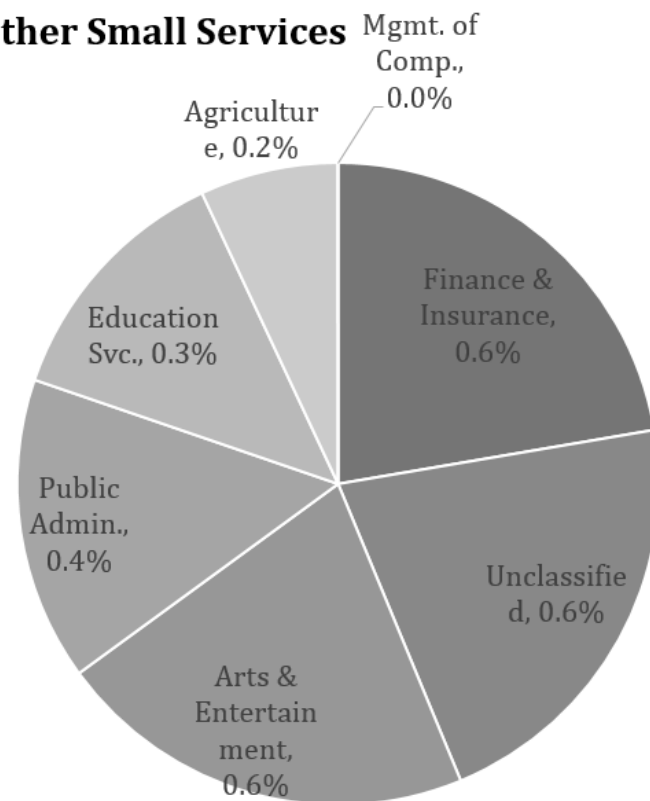
Total GRT Paid by Counties (Millions of Dollars)



## Taxable Gross Receipts by Industry Sector FY2016



### Other Small Services



# Inconceivable! – “Data Mining”

- ▶ What is “data mining” in the context of state and local taxation?
  - A tax consultant’s (or business’) systematic review of its transactions to make sure the taxpayer is taking all applicable deductions.
  - Results:
    - Taxpayer not taking an applicable deduction;
    - Taxpayer may have transactions that qualify but that would require a legal challenge.

## An Example from a Sister State: *Enterprise Leasing*, 211 P.3d 1 (Ariz. App. 2008)\*

- ▶ 1994 Legislature enacts an income tax credit for 10% “of the cost incurred to purchase real or tangible personal property used to control or prevent pollution.”
- ▶ Property that qualifies:
  - “that portion of a structure, building, machine, equipment or device, and any attachment or addition thereto...that is directly used...[for] meeting or exceeding [EPA or state regulations] to prevent, monitor, control or reduce air, water, or land pollution.”

\* All information on slides 38 and 39 comes directly from the publicly available court opinion.

# Timeline

- ▶ 1994 enactment
  - Score: \$2.5 million
  - Purpose: to encourage companies to consider immediate expansion
- ▶ Dec. 1999 – ADOR receives first credit claim for equipment pre-installed on a motor vehicle
- ▶ Mar. 1, 2000 – Legislature prepares retroactive (“clarifying”) legislation to exclude motor vehicles
- ▶ Mar. 14, 2000 – One taxpayer files \$2.5 million claim for motor vehicle equipment
- ▶ April 2000 – corrective bill passes
- ▶ ADOR denies claim/due process litigation

# No Magical Solution

- ▶ Front-end work – clear crisp statutory language with operative terms defined;
- ▶ Back-end work – corrective legislative action.



# Thank you!

At TRD, our mission is to administer and enforce New Mexico's tax and revenue laws, vehicle and driver licensing, and transportation programs in a manner warranting the highest degree of public confidence.

<http://www.tax.newmexico.gov/>