

Preliminary Report on New Mexico's Compliance with  
Streamlined Sales and Use Tax Agreement (SSUTA)

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## Introduction

At RS&TPC's "Tax Summit" there was some talk of looking into the requirements for joining the Streamlined Sales and Use Tax Agreement as an avenue for taking full advantage of the opening the US Supreme Court's *Wayfair* decision seems to offer.

SSUTA was adopted in November 2002 and today has 24 full member states representing 31% of the US population. It developed a tax base of standardized items, which member states usually must choose to either tax or exempt in full. Since the idea is to simplify the tax base possibilities that interstate merchants face, only a few pieces of the tax base—e.g., food and clothing—allow additional options. This tax base is presented in Article III of the Agreement.

If the Legislature desires to align the gross receipts tax base with SSUTA's (whether or not it ultimately decides to join SSUTA) to reduce compliance problems with out-of-state vendors on sales of *tangible* products into New Mexico, it has a not insignificant task ahead of it. This is outlined in Section 1 of this report.

There are reasons for pushing ahead. The Governing Board has contracts with several private companies with whom merchants can sign up to register, file returns and pay appropriate state and local taxes in all member states. The firms have been in business for a decade or more. Since they do a lot of the administrative and collection work, they are compensated under terms of contracts entered into with the states.

The companies employ the taxability matrices of the member states. Each state is required to create and maintain a taxability matrix which essentially aligns tax jurisdiction boundaries with postal ZIP codes. New Mexico will have to develop something like this even if it does not join SSUTA to have a ghost of a chance to get out-of-state merchants to accurately report local taxes. It is my understanding that at least one of these outfits has already contacted the Taxation and Revenue Department to explore interest.

Section 2 of this report deals with the special requirements for tax holidays, of which New Mexico now has two. It appears that it will be easier to align product definitions in this limited arena.

One reason for not joining SSUTA has gone by the boards. Article VI used to require that all merchants be compensated for acting as agents for collection of the state tax. These requirements have been repealed. This is fortunate since in New Mexico the vendors are the taxpayers, not agents of the state.

Note: SSUTA does NOT apply to:

- fuel used to power motor vehicle, aircraft, locomotives or watercraft, electricity, piped natural or artificial gas or other fuels delivered by the seller;
- the retail sale of motor vehicles, aircraft, watercraft, modular homes, manufactured homes or mobile homes;
- the sale of energy; or
- the sale of marijuana or products containing marijuana.

## SECTION 1

This section of the report compares the provisions of the New Mexico tax law, mainly the Gross Receipts and Compensating Tax Act, with the requirements outlined in Article III, Streamlined Sales and Use Tax Agreement, updated as of May 3, 2018.

NM	Art III §	
☺	301	<b>State administers and collects state and local taxes</b>
X	302	<b>Local tax base identical to state tax base</b> One NM exception: <i>Local taxes exempt receipts from transporting persons or property for hire by railroad, motor vehicle, air transportation or any other means from a point in the municipality/county to a point outside the municipality/county.</i>
	303	<b>Member state participates in on-line registration system</b> <i>N/A unless/until NM applies to join.</i>
☺ ☺?	304	<b>Notice of changes in state tax changes</b> --limit effective date of rate changes to first day of calendar quarter --notify sellers of legislative changes in tax base & rules
☺ X ?	305	<b>Local rate and boundary changes</b> --limit effective date of rate changes to first day of calendar quarter --apply local rate changes in printed catalogues only from 1 <sup>st</sup> day of cal quarter after 120 notice of rate change to sellers; <i>NM doesn't care (much) what tax the vendor charges; only what it pays.</i> --apply local boundary changes only from 1 <sup>st</sup> day of cal quarter after 60 days notice to sellers; <i>TRD may have to accelerate notic.?</i> --provide and maintain database on sales and use tax rates for all jurisdictions levying tax within state. <i>N/A unless/until NM applies to join but TRD may already have a version of this database.</i>
	306	<b>Relief from liability when state-provided CSP data incorrect</b> <i>N/A unless/until NM applies to join.</i>
	307	<b>Database requirements and exceptions</b> <i>N/A unless/until NM applies to join.</i>
☺	308	<b>No multiple state or local sales and use tax rates on items of personal property or services, except food, food ingredients and drugs.</b>
☺	309	<b>State adheres to the sourcing rules in §§310, 310.1, 313, 314 &amp; 315.</b> --Florist sales are sourced as required by each member state.
☺ X X X	310	<b>General sourcing rules</b> A. For retail sales of products— (1) When product rec'd by purchaser at business location of seller, sale is sourced to that business location (2) When product not rec'd by purchaser at business location of seller, sale sourced to location where receipt by purchaser or purchaser's done occurs when known to seller (3) If (1) and (2) do not apply, sale sourced to location indicated by purchaser's address available from seller's business records if no other address is available.

<p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p> <p>X</p>		<p>(4) If (1) thru (3) do not apply, sale sourced to location indicated by purchaser's address obtained during sale, including address of purchaser's payment instrument.</p> <p>(5) When (1) thru (4) do not apply, location determined by address from which (a) personal property was shipped, (b) digital good or computer software delivered electronically was first available for transmission by the seller or (c) from which service was provided.</p> <p>B. For lease or rental of tangible personal property other than in C or D below—</p> <p>(1) For leases/rentals requiring recurring periodic payments, 1<sup>st</sup> periodic payment sourced same as retail sale in A above. Subsequent payments sourced to the primary property location as indicated by the lessee.</p> <p>(2) For leases/rentals not requiring recurring periodic payments, payment is sourced the same as a retail sale in A above.</p> <p>C Lease/rental of motor vehicles, trailers, semi-trailers or aircraft—</p> <p>(1) For leases/rentals requiring recurring periodic payments, each periodic payment is sourced to primary property location of lessee as indicated by lessor's books and records.</p> <p>(2) For leases/rentals requiring recurring periodic payments, payment is sourced same as retail sale in A above.</p> <p>D. Retail sale, lease or rental of transportation equipment shall be sourced the same as a retail sale in A above (notwithstanding the exclusion of lease or rental in A), including locomotives, railcars, trucks and truck-tractors with a GVWR of 10,000 pounds or greater, trailers, semi-trailers, passenger buses, aircraft operated by US DOT-certified carriers and containers and component parts designed for use on the foregoing.</p>
<p>X</p>	<p>310.1</p>	<p><b>Election for origin-based sourcing</b></p> <p>A. Applies to the sourcing of tangible personal property and digital goods in lieu of 310 A(2), A(3) and A(4) only.</p> <p>B. Retail sales, excluding leases and rentals, of tangible personal property and digital goods may be sourced to the location where the order is received by the seller if</p> <p>(1) the order is received in the same state by the seller where receipts of the product by the purchaser (or the purchaser's donee) occurs;</p> <p>(2) location where the receipt of the product by the purchaser occurs is determined under §310 A(2), A(3) &amp; A(4); and</p> <p>(3) at the time the order is received, the seller's sales tax recordkeeping system captures the location where the order is received.</p> <p>C. The electing state must also comply with the following:</p> <p>(1) When the order is received in one state and the product to be received by the purchaser in another, the rules in §310 apply.</p> <p>(2) Only the sales tax at the location where the order is received may be levied and purchaser is not entitled to refund if rate at purchaser's location is lower.</p> <p>(3) State may not require seller to use a recordkeeping system which captures locations where orders are received.</p> <p>(4) Purchaser has no additional liability to state if purchaser remits tax to seller in the amount invoiced if the invoiced amount is calculated at either the rate applicable where the order was received or where the purchaser received the product.</p>

		<p>(5) Location where the order is received means the physical location of the seller or a third party where an order is initially received and not where the order may be subsequently accepted or fulfilled.</p> <p>(6) State must provide for direct pay permits.</p> <p>(7) When taxable services are sold with taxable tangible personal property or digital property under a single contract or in the same transaction, are billed on the same statement(s) but would sourced to different jurisdictions, state shall elect either origin or destination sourcing for the package.</p>
np	311	Defines “receive” and “receipt” for purposes of §310. No conflict with GR&CTA. or TAA. <i>Easy enough to adopt.</i>
	312	{Repealed}
	313	<p><b>Direct mail sourcing. Notwithstanding §§310 &amp; 310.1--</b></p> <p>A. “advertising and promotional direct mail”—</p> <p>(1) Purchaser of advertising and promotional direct mail may provide the seller with a direct pay permit, an Agreement exemption certificate and info showing jurisdictions to which the “mail” is to be delivered.</p> <p>(2) If the purchaser provides the seller the permit or certificate, the seller, in absence of bad faith, is relieved of all obligations to collect, pay or remit any tax on any transaction involving the “mail” to which the permit of certificate applies.</p> <p>(3) If the purchaser provides the seller info showing the jurisdictions to which the “mail” is to be delivered to recipients, the seller shall source the sale to the jurisdictions in which the “mail” is to be delivered and collect and remit the applicable tax and, in the absence of bad faith, is relieved of any further obligation to collect tax on the sale of the “mail”.</p> <p>(4) If the purchaser does not provide info showing the jurisdictions to which the “mail” is to be delivered to recipients, the seller shall source pursuant to §310A(5).</p> <p>B. “Other direct mail”—</p> <p>(1) Purchaser of other direct mail may provide the seller with a direct pay permit or an Agreement exemption certificate.</p> <p>(2) If the purchaser provides the seller the permit or certificate, the seller, in absence of bad faith, is relieved of all obligations to collect, pay or remit any tax on any transaction involving the “mail” to which the permit of certificate applies. The purchaser shall source the sale to the jurisdictions in which the “mail” is to be delivered and report and pay the applicable tax.</p> <p>(3) Default rule: sales are sourced under §310A(3).</p>
	313.1	<p><b>Election for Origin-based direct mail sourcing</b></p> <p>A. Applies to direct mail distributed from a location within one state and delivered to a location within the same state.</p> <p>B. (2) If the purchaser provides the seller a direct pay permit or an Agreement certificate of exemption, the seller, in absence of bad faith, is relieved of all obligations to collect, pay or remit any tax on any transaction involving the “direct mail” to which the permit of certificate applies. The purchaser shall source the sale to the jurisdictions in which the “mail” is to be delivered and report and pay the applicable tax.</p> <p>C. Seller collects the tax under §310A(5) except that if the seller knows that a portion of the “mail” will be delivered to another state, the seller shall collect tax on the portion under §313.</p>

☺	314	<b>Telecommunication and related services sourcing—</b> Since federal law governs this, the rules are similar if not identical.
☺	315	<b>Telecommunication sourcing definitions—</b> Since federal law governs this, the definitions are similar if not identical.
?	316	<b>Enactment of exemptions—</b> --States may enact entity-based, use-based and product-based exemptions. [ <i>“Exemptions” here including deductions and exclusions.</i> ] --Exemptions may be enacted: (1) without restriction if Part II of the Library of Definitions (hereinafter “Part2LOD”) does not define the product; and (2) if Part2LOD does define the product, in a manner consistent with the definition & §327. -- <u>Entity-based</u> exemptions may be enacted if Part2LOD does not have a definition for such an item but does define a product that includes such an item. -- <u>Use-based</u> exemptions may be enacted if Part2LOD has a definition for a product that include such an item, if not prohibited below. -- <u>Use-based</u> exemptions are barred for an item effectively constituting a product-based exemption if Part2LOD has a definition for a product that includes such an item.
☺ ? ? ☺ ☺ X	317	<b>Administration of exemptions--</b> --General administrative provisions --Administer use-based & entity-based exemptions thru a direct pay permit, exemption certificate or other means that doesn’t burden seller -Drop shipments: must allow drop shipper to claim resale exemption based on exemption certificate provided by its customer --If purchaser improperly claims exemption, relieve seller of liability if seller has followed the rules --Seller relieved of liability if seller obtains exemption certificate within 90 days of date of sale. <i>New Mexico has no real time limit; clock starts running only on audit.</i> --Upon request for substantiation (audit), seller has 120 days to produce exemption certificate or “other information” establishing the transaction was not taxable. <i>New Mexico allows only 60 days.</i>
☺ ☺	318	<b>Uniform tax returns</b> --One tax return for all jurisdictions in state --Require due date no earlier than 20 <sup>th</sup> of the following month --Provide for simplified electronic return, a SSUTA form. <i>N/A unless/until NM applies to join.</i>
☺ ? ? ?	319	<b>Uniform rules for remittances</b> --Require one remittance per return --Allow for electronic payments by both ACH credit and ACH debit --Provide alternative method if electronic funds transfer fails for making “same day” payments --Require any data accompanying a return use approved tax and payment type codes. <i>NM may already be using code types approved by SSUTA Governing Board.</i> --Adopt standardized transmission process. <i>N/A unless/until NM applies to join but NM may be using an acceptable process anyway.</i>

<p>☺</p> <p>np</p> <p>☺</p> <p>np</p>	<p>320</p>	<p><b>Uniform rules for recovery of bad debt</b></p> <p>--Allow a deduction for bad debts from taxable sales. <i>Presumably applies only to accrual-base taxpayers. Need to inquire whether SSUTA allows both cash basis and accrual basis taxpayers.</i></p> <p>--Use definition of “bad debt” at 26 USC 166. <i>NM has never employed a definition, mainly because the vast majority of taxpayers are cash basis. Easy enough to adopt.</i></p> <p>--Provide for taxation of collected bad debts.</p> <p>--Provide that, when the bad debt claimed exceeds taxable sales for the period, that a claim for refund may be submitted (regardless of any time limitations on submitting claims for refund). <i>Has a need for this ever arisen?</i></p>
<p>☺</p>	<p>321</p>	<p><b>Confidentiality and privacy protection</b></p> <p>Essentially under SSUTA “confidential taxpayer information” is information protected under each state’s laws and rules.</p>
<p>?</p> <p>☺</p> <p>☺</p> <p>☺</p> <p>☺</p> <p>X</p> <p>☺</p> <p>np</p> <p>☺</p> <p>☺</p> <p>☺</p> <p>☺</p> <p>☺</p> <p>☺</p>	<p>322</p>	<p><b>Sales tax holidays</b> <i>NM, for its sins, now has two of these. Comments relate only to back-to-school holiday (7-9-95).</i></p> <p>--General rules. State shall</p> <ul style="list-style-type: none"> <li>• not apply an exemption unless item specifically defined in Part II or Part IIIB of the Library of Definitions. <i>N/A unless/until NM applies to join.</i></li> <li>• provide notice of the exemption period at least 60 days prior to the first day of the calendar month in which the exemption period begins</li> <li>• not apply an entity-based or use-based exemption but may limit a product-based exemption to personal or non-business use</li> <li>• not require a seller to obtain an exemption certificate from a purchaser for exempt items during a sales tax holiday.</li> </ul> <p>--Special rules:</p> <ul style="list-style-type: none"> <li>• Layaway sales: eligible if <ul style="list-style-type: none"> <li>a) final payment on layaway order made and property given to purchaser during holiday period; <i>3.2.242.10 NMAC</i> or</li> <li>b) purchaser selects property &amp; seller accepts order during holiday period for immediate delivery upon full payment even if delivery occurs after holiday.</li> </ul> </li> <li>• Bundled sales: normal practice of state.</li> <li>• Coupons and discounts: Discounts (coupons for which seller receive no third-party reimbursement are discounts) reduce sales price of item and could bring item within price range of sales tax holiday. Requires seller to allocate value of coupon when coupon applies to both taxable and nontaxable items. <ul style="list-style-type: none"> <li>• Splitting of items normally sold together: Items normally sold together must be sold together during sales tax holiday. <i>3.2.242.8 NMAC</i></li> <li>• Rain checks: Allows customer to buy item at later time because item was out of stock. Purchase of eligible item during holiday with rain check issued earlier is OK but purchase of eligible item after holiday with rain check issued during holiday is not. <i>3.2.242.9 NMAC</i></li> <li>• Exchanges: <ul style="list-style-type: none"> <li>a) Item purchased during holiday may be exchanged after holiday for similar eligible item with no tax <i>3.2.242.11A NMAC</i></li> <li>b) If item purchased during holiday but after holiday is returned for credit, normal tax due on sale of newly purchased item <i>3.2.242.11B NMAC</i></li> </ul> </li> </ul> </li> </ul>

np		c) If item purchased before holiday but during holiday customer returns item and receives credit on purchase of eligible item, no tax due on eligible item purchased during holiday period.
np		<ul style="list-style-type: none"> <li>• Delivery charges: considered part of the sales price. May have importance if eligible items have price thresholds.</li> </ul>
☺		<ul style="list-style-type: none"> <li>• Order date and back dates: No tax when customer orders and pays for eligible item during holiday and merchant accepts order during holiday but makes delivery after holiday. <i>3.2.242.12B NMAC</i></li> </ul>
np		<ul style="list-style-type: none"> <li>• Returns: For 60-day period immediately following sales tax holiday, customer returning an eligible item may not receive credit or refund of tax unless showing receipt, invoice or other documentation showing tax was paid.</li> </ul>
np		<ul style="list-style-type: none"> <li>• Different time zones: Time zone of the seller's location determines authorized time period for sale tax holiday.</li> </ul>
X	323	<p><b>Caps and thresholds</b></p> <p>--General rule: no state or local government, except as provided below, may have caps or thresholds on applying sales or use tax rates or exemptions</p> <p><i>7-9-65 "lots in excess of 18 tons";</i></p> <p><i>7-9-74 \$5,000 cap;</i></p> <p><i>7-9-114 \$60,000,000 cap</i></p> <p>--Exception for clothing. <i>NM has no caps or thresholds for clothing.</i></p>
☺		
np	324	<p><b>Rounding rule</b></p> <p>--Tax computation must be carried to third decimal place.</p> <p>--Tax must be rounded to a whole cent whenever the third decimal place is greater than four.</p> <p>--State may allow taxpayer to round on each item or on aggregate bill.</p>
np		
N/A	325	<p><b>Customer refund procedures</b></p> <p>--Applies only when seller overcharges sales or use tax and state permits customer to seek return from seller.</p>
N/A	326	<p><b>Direct pay permits</b> <i>7-1-21.1 is a nudge in that direction, however</i></p>
	327	<p><b>Library of definitions</b></p> <p>--If a term defined in the LOD appears in the state's tax law or rules, it must conform substantially to the LOD definition</p> <p>--State may not use a LOD definition in its law or rules that is contrary to the LOD meaning</p> <p>--States must tax or exempt all products or services within a LOD definition; state violates Agreement by excluding any product or service included within a LOD definition or including a product or service excluded from a LOD definition.</p> <p><i>Comment: Comparison of the LOD definitions with NM's will be done separately.</i></p>
N/A	328	<p><b>Taxability matrix</b></p> <p>Ties jurisdictional tax rates to ZIP codes. State has primary responsibility for setting up matrix and maintaining it. Private CSP's, however, generally maintain and operate matrices. State must provide tax rate changes to CSP at least 30 days before the first day of the calendar month in which the change is to be effective. <i>N/A unless/until NM applies to join.</i></p> <p><i>Comment: <b>Wayfair</b> fix may require adoption of a taxability matrix.</i></p>
	329	<p><b>Effective date for rate changes</b></p>

X		--For a rate increase, new rate applies to first billing period starting on or after effective date
X		--For a rate decrease, the new rate shall apply to bills rendered on or after the effective date. <i>In NM's system, receipts, whether received by a cash basis taxpayer or earned by an accrual basis taxpayer, during a tax period are subject to the new rate.</i>
np	330	<b>Bundled transactions</b> --States pretty much free to do whatever they want with bundled transactions, except as provided below. --bundle includes telecommunication service, ancillary service, internet access or audio or video programming service: to the extent permitted by federal law, if taxable and nontaxable components, may treat all as taxable unless provider can demonstrate by verifiable standards from books and records kept for other purposes the portion which is nontaxable. Similarly, if different tax rates apply, may apply highest rate to all unless the provider can demonstrate the nontaxable portion. <i>No NM law or rules on point; may be some rulings.</i>
np		--bundle includes an optional computer software maintenance contract for pre-written software in which there are both taxable and nontaxable components, the contract may be all taxable, all exempt, partially exempt if the seller can demonstrate the nontaxable portion or as 20%, 30%, 40% or 50% taxable or exempt, as the state chooses. <i>NM has no law or rules on these contracts but the series of rules on automotive service contracts [3.2.205.18, 3.2.206.22, 3.2.228.10 NMAC, etc.] might be a model. Probably won't come out with the nice neat outcomes contained in the Agreement.</i>
N/A	331	<b>Relief from certain liability for purchasers</b> Relates primarily to operation of tax matrices.
☺	332	<b>Specified digital products</b> --bars states from tucking these digital products into other categories, like "telecommunications services"
N/A		--states may tax products "transferred electronically" under separate tax acts, in which case, these digital terms do not apply but sets rules for such a tax,
N/A	333	<b>Use of specified digital products</b> Doubles down on prohibition of including any product transferred electronically in a state's definition of "tangible personal property", "ancillary services", computer software" or "telecommunications service".
N/A	334	<b>Prohibited replacement taxes</b> Bars separate, replacement tax on any product defined in Part II or Part III B of the LOD having the effect of avoiding the intent of this Agreement
N/A	335	<b>Tax Administration Practices</b> --Governing Board may select "disclosed practices" and require all members to employ them and "best practices" (selected from disclosed practices) Sets procedures for picking both. --Compliance with administrative practices is voluntary but each state must submit to the Executive Director for posting on the Board's website the state's administrative practices section of the taxability matrix by certain dates.
Notes:		

np	NM has no corresponding provision.
N/A	Not applicable at this time.
X	Conflict; need to fix if NM wants to conform to SSUTA.

## SECTION 2

This section of the report compares definitions presented in Parts I, II and III of Appendix C of the Streamlined Sales and Use Tax Agreement with those used in New Mexico's Tax Administration Act and Gross Receipts and Compensating Tax Act and the rules directly relating to those two acts contained in 3.2 and 3.2 NMAC.

Generally only the main, salient body of the SSUTA definition is laid out here. Many of them go on in great detail.

If I could identify a place where the term is used in NM law or rule, it is so identified with comments on how close it is to the SSUTA definition.

	<b>SSUTA Definition</b>	<b>NM Usage</b>
<b>Part I Administrative Definitions</b>		
OK	<b>Bundled transaction</b> – retail sale of 2 or more products, except real property and services to real property, where (1) the products are otherwise distinct and identifiable and (2) the products are sold for one non-itemized price. Definition goes on in great detail.	Term not used. 3.2.242.14 NMAC (back-to-school tax holidays) mentions computers and related equipment “bundled” with qualifying items, a use consistent with the SSUTA term.
??	<b>Delivery charges</b> – charges by the seller of personal property or services for preparation and delivery to a location designated by the purchaser of personal property or services including but not limited to, transportation, shipping, postage, handling, crating and packing.  Note: States may exclude all (or specified segments) of delivery charges from sales prices and may treat such charges for “direct mail” differently.	<ul style="list-style-type: none"> <li>● Term used in 3.2.1.15 NMAC (gross receipts def) in abbreviated version consistent with SSUTA term.</li> <li>● “Freight charges”, a more narrowly focused term in 3.2.1.15 &amp; 3.2.11.8 NMAC, used to distinguish delivery-related situations other than those covered by “delivery charges”. Also appears in 3.2.237.9 NMAC (under 7-9-77) but is being used in the sense of “delivery charge”.</li> </ul>
OK	<b>Direct mail</b> – printed material delivered or distributed by US mail or other delivery service to a mass audience or to addressees on a mailing list provider by the purchaser or at the direction of the purchaser when the cost of the items are not billed directly to the recipients. It includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller for inclusion in the package containing the printed material.	3.2.13.8 NMAC (under 7-9-10) employs the term in the SSUTA sense without defining it.
X	<b>Lease or rental</b> – any transfer of possession or control of tangible personal property for a fixed or determinate term for consideration. A lease or rental may include future options to purchase or extend. Excludes transfers under security agreements, deferred payment plans or completion of required payments plus a de minimis option price. Excludes	<b>7-9-3E “Leasing”</b> – an arrangement whereby, for a consideration, property is employed for or by any person other than the owner of the property, except the granting of

	providing tangible personal property plus an operator for a fixed or determinate time.	a license to use property is licensing and is not a lease. <i>“Leasing” is broader because “property” includes both real property and intangible personal property and does not explicitly make the exclusions “lease or rental” does. These appear, however, to be implicit. 3.2.1.22 NMAC excludes security agreements &amp; 3.2.1.15 NMAC lease-purchase agreements. NM permits leasing of equipment with operators; the bigger question has been whether the lease is a deductible construction service when construction equipment is involved. 3.2.210.22 &amp; 3.2.249.8 NMAC.</i>
?	<b>Purchase price</b> – applies to the measure subject to use tax and has the same meaning as sales price.	NM compensating tax is levied on the value of the property or service. Although it is not set out as a general rule, it seems to be understood that “value” in the first instance is the sales price of the item (3.2.10.8B, 3.2.11.9 NMAC).
?	<b>Retail sale or Sale at retail</b> – any sale, lease or rental for any purpose other than for resale, sublease or subrent.	Not defined, since the GRT applies to all levels of transactions. “Retail”, in the SSUTA sense, appears here and there: 7-9-18, 7-9-63, 7-9-92, 7-9-95 NMSA 1978; 3.2.1.14M/O/Q, 3.2.1.15F, 3.2.1.18HH(3), 3.2.205.8B, 3.2.221.9, 3.2.240.7, 3.2.240.8 & 3.2.242.15B NMAC
?	<b>Sale price</b> – applies to the measure subject to sales tax and means the total amount of consideration, including cash, credit, property and services, for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise without any deduction for: Seller’s cost of the property sold; Cost of materials used, labor or service cost or any other expense of the seller;	<b>7-9-3.5 “Gross receipts”</b> – total amount of money or the value of other consideration received from selling property in New Mexico, from leasing or licensing property employed in New Mexico, from granting a right to use a franchise in New Mexico, from selling services performed outside New Mexico, the product of which is initially used in New Mexico, or from

	<p>Charges by the seller for services necessary to complete the sale, other than delivery and installation charges;          Delivery charges;          Installation charges; and          Credit for any trade-in, as determined by state law.          Note: States may elect to exclude from "sales price" certain state, local, tribal and federal excise taxes but the exclusion may not be based on the type of consumer.</p>	<p>performing services in New Mexico. "Gross receipts" seems to capture what SSUTA is aiming at better than "sale price".</p>
OK	<p><b>Telecommunications nonrecurring charges</b> – an amount billed for installation, connection, change or initiation of "telecommunications service" received by the customer.</p>	<p>No specific label. Referred to generally, not just confined to telecommunications services, at 3.2.20.27 &amp; 3.2.1.18U/V NMAC.</p>
OK	<p><b>Tangible personal property</b> – personal property that can be seen, weighed, measured, felt or touched or that in any other manner perceptible to the senses. "Tangible personal property" includes electricity, water, gas, steam and prewritten computer software.</p>	<p>Not separately defined, but used in the SSUTA sense. 7-9-3J adds: "Tangible personal property includes electricity and manufactured homes." 3.2.1.15J NMAC declares sales of "packaged software" to be sales of tangible personal property.</p>
<p><b>Part II Product Definitions</b></p>		
	<p><b>Clothing-related</b></p>	
OK	<p><b>1) Clothing</b> -- all human wearing apparel suitable for general use. 35 category examples given. Excludes belt buckles, costume masks, patches and emblems sold separately and sewing equipment, supplies and materials that become part of "clothing" (e.g., buttons, fabric, lace, thread, yarn, and zippers).</p>	<p>Not defined. Used in 7-9-95, along with terms covered by SSUTA categories. Mentioned in 3.2.205.10 &amp; 3.2.242.8 NMAC. 3.2.242.14 NMAC excludes from the back-to-school tax holiday items for making, repairing or altering clothes and several categories of clothing.</p>
OK	<p><b>2) Clothing accessories or equipment</b> -- incidental items worn on the person or in conjunction with "clothing."</p>	<p>No definition. "Accessories" used in the SSUTA sense at 7-9-86B(3)(c) and 7-9-95A(2).</p>
OK	<p><b>3) Essential clothing</b> -- any article of "clothing" with a sales price below a dollar threshold set by a member state if that state chooses to tax "essential clothing" differently from "clothing."</p>	<p>No definition or need for one.</p>
OK	<p><b>4) Fur clothing</b> -- "clothing" that is required to be labeled as a fur product under the Federal Fur Products Labeling Act (15 U.S.C. §69), and the value of the fur components in the product is more than three times the value of the next most valuable tangible component. "</p>	<p>No definition and hopefully we'll never be so PC.</p>
OK	<p><b>5) "Protective equipment</b> -- items for human wear and designed as protection of the wearer against</p>	<p>No definition. Used at 3.2.242.14H NMAC.</p>

	injury or disease or as protections against damage or injury of other persons or property but not suitable for general use.	
OK	<b>6) Sport or recreational equipment</b> -- items designed for human use and worn in conjunction with an athletic or recreational activity that are not suitable for general use.	No definition. Used at 3.2.242.14H/I NMAC.
	<b>Computer-related</b>	
OK	<b>1) Computer</b> -- an electronic device that accepts information in digital or similar form and manipulates it for a result based on a sequence of instructions.	Not defined but the word appears in many places.
?	<b>2) Computer software</b> -- a set of coded instructions designed to cause a "computer" or automatic data processing equipment to perform a task.	3.2.1.7F(1) NMAC "Computer software" means computer programming in whatever form or medium.
OK	<b>3) Delivered electronically</b> -- delivered to the purchaser by means other than tangible storage media.	Not used.
OK	<b>4) Electronic</b> -- relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.	Not defined, but used in many places in the SSUTA sense.
OK	<b>5) Load and leave</b> -- delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.	Not used.
?	<b>6) Prewritten computer software</b> -- "computer software," including prewritten upgrades, which is not designed and developed by the author or other creator to the specifications of a specific purchaser.	3.2.1.7F(3) "Packaged software" means computer programming embodied in electronic, electromagnetic or optical materials for transfer from one person to another, with or without explanatory materials, instructions or other programming and intended to be sold or licensed without modification to multiple buyers or users. Used many places, e.g., 3.2.205.19 NMAC.
OK	<b>7) computer software maintenance contract</b> -- a contract that obligates a vendor of computer software to provide a customer with future updates or upgrades to computer software, support services with respect to computer software or both.	Not used. Nearest material is on the automotive service contracts.
OK	<b>8) mandatory computer software maintenance contract</b> -- a computer software maintenance contract that the customer is obligated by contract to purchase as a condition to the retail sale of computer software.	Not used.

OK	9) optional computer maintenance contract -- a computer software maintenance contract that a customer is not obligated to purchase as a condition to the retail sale of computer software.	Not used.
	<b>Digital Products Definitions</b>	
OK	1) Specified digital products means electronically transferred:	Not used. "Digital" itself appears a few times, at 7-2F-2F(1), 7-9-86B(1)(a), 7-9G-1Q(12)(d) & 3.2.242.14B.
OK	a) Digital audio-visual works -- a series of related images which, when shown in succession, impart an impression of motion, together with accompanying sounds, if any;	Not used
OK	b) Digital audio works -- works that result from the fixation of a series of musical, spoken, or other sounds, including ringtones; and	Not used.
OK	c) Digital Books -- works that are generally recognized in the ordinary and usual sense as "books".	Not used.
OK	2) Ringtones -- digitized sound files that are downloaded onto a device and that may be used to alert the customer with respect to a communication.	Not used.
OK	3) Transferred electronically --obtained by the purchaser by means other than tangible storage media.	Not used.
	<b>Food and Food Products</b>	
?	1) "Alcoholic beverages -- beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.	Not used in TAA or GR&CTA but In Liquor Excise Tax Act: "alcoholic beverages" means distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin, aromatic bitters or any similar beverage, including blended or fermented beverages, dilutions or mixtures of one or more of the foregoing containing more than one-half of one percent alcohol by volume, but "alcoholic beverages" does not include medicinal bitters.
OK	2) Bottled water -- water that is placed in a safety sealed container or package for human consumption. Bottled water is calorie free and does not contain sweeteners or other additives except that it may contain: (i) antimicrobial agents; (ii) fluoride; (iii) carbonation; (iv) vitamins, minerals, and electrolytes; (v) oxygen; (vi) preservatives; and (vii) only those flavors, extracts, or essences derived from a spice or fruit. "Bottled water" includes water	Not used.

	that is delivered to the buyer in a reusable container that is not sold with the water.	
OK	3) Candy -- a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces. "Candy" shall not include any preparation containing flour and shall require no refrigeration.	Not used.
OK	4) Dietary supplement -- any product, other than "tobacco," intended to supplement the diet that: A. Contains one or more of the following dietary ingredients: a vitamin; a mineral; an herb or other botanical; an amino acid; a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; or a concentrate, metabolite, constituent, extract, or combination of any ingredient described in [the preceding]; and B. Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and C. Is required to be labeled as a dietary supplement, identifiable by the "Supplemental Facts" box found on the label and as required pursuant to 21 C.F.R § 101.36.	Not used.
X	5) Food and food ingredients -- substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value. "Food and food ingredients" does not include "alcoholic beverages" or "tobacco." A member state may exclude "bottled water," "candy," "dietary supplements" and "soft drinks" from this definition, which items are mutually exclusive of each other.	7-9-92B(1): "food" means any food or food product for home consumption that meets the definition of food in 7 USCA 2012(g)(1) for purposes of the federal food stamp program. 7-9-18.1 also refers to the federal formerly-named food stamp program and there are references in statute and rule to these statutes and distributions related to them. Term "food and food ingredients" not used.
OK	6) Food sold through vending machines -- food dispensed from a machine or other mechanical device that accepts payment.	Not used.
?	7) Prepared food means: A. Food sold in a heated state or heated by the seller; B. Two or more food ingredients mixed or combined by the seller for sale as a single item; or C. Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons,	Not used. The undefined term "meals", however, appears and is declared to be tangible personal property; 3.2.1.7E, 3.2.212.11 & 3.2.218.11 NMAC. Also at 3.2.205.15B & 3.2.211.17A/E NMAC.

	<p>glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.</p> <p>“Prepared food” in B. does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in chapter 3, part 401.11 of its Food Code so as to prevent food borne illnesses.</p>	
OK	<p><b>8) Soft drinks</b> -- non-alcoholic beverages that contain natural or artificial sweeteners. “Soft drinks” do not include beverages that contain milk or milk products, soy, rice or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.</p>	<p>Term used but not defined in 3.2.1.19B(12), 3.2.205.13A(5) &amp; 3.2.227.9 NMAC.</p>
?	<p><b>9) Tobacco</b> -- cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.</p>	<p>Not used in GR&amp;CTA. Tobacco Products Act defines “tobacco product” as any product other than cigarettes, made form or containing tobacco. Cigarette Tax Act has a lengthy definition of “cigarette.”</p>
	<p><b>Health-care</b></p>	
OK	<p><b>1) Drug</b> -- a compound, substance or preparation, and any component of a compound, substance or preparation, other than “food and food ingredients,” “dietary supplements” or “alcoholic beverages”:</p> <p>A. Recognized in the official United State Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, and supplement to any of them; or</p> <p>B. Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or</p> <p>C. Intended to affect the structure or any function of the body.</p>	<p>Not defined. “Prescription drugs” at 7-9-73.2 &amp; 3.2.234.8 NMAC. “Drug samples” at 3.2.12.8 NMAC. Also 3.2.212.18 NMAC.</p>
?	<p><b>2) Durable medical equipment</b> -- equipment including repair and replacement parts for same, but does not include “mobility enhancing equipment,” which:</p> <p>A. Can withstand repeated use; and</p> <p>B. Is primarily and customarily used to serve a medical purpose; and</p> <p>C. Generally is not useful to a person in the absence of illness or injury; and</p> <p>D. Is not worn in or on the body.</p> <p>A member state may exclude from the product definition of “durable medical equipment” any of the following, including repair and replacement parts, for</p>	<p>NM definition derived from but not identical to SSUTA definition-- “durable medical equipment” means a medical assistive device or other equipment that:</p> <p>(a) can withstand repeated use;</p> <p>(b) is primarily and customarily used to serve a medical purpose and is not useful to an individual in the absence of an illness, injury or other medical necessity,</p>

	<p>purposes enacting a product-based exemption: oxygen delivery equipment not worn in or on the body; kidney dialysis equipment not worn in or on the body; or enteral feeding systems not worn in or on the body.</p>	<p>including improved functioning of a body part;  (c) is appropriate for use at home exclusively by the eligible recipient for whom the durable medical equipment is prescribed; and  (d) is prescribed by a physician or other person licensed by the state to prescribe durable medical equipment;</p>
	<p><b>3) Feminine hygiene products</b> -- tampons, panty liners, menstrual cups, sanitary napkins, and other similar tangible personal property designed for feminine hygiene in connection with the human menstrual cycle, but does not include “grooming and hygiene products” as defined in this Agreement.</p>	<p>Not used.</p>
	<p><b>4) Grooming and hygiene products</b> -- soaps and cleaning solutions, shampoo, toothpaste, mouthwash, antiperspirants, and sun tan lotions and screens, regardless of whether the items meet the definition of “over-the-counter-drugs.”</p>	<p>Not used.</p>
OK	<p><b>5) Mobility enhancing equipment</b> -- equipment including repair and replacement parts to same, but does not include “durable medical equipment,” which:</p> <ul style="list-style-type: none"> <li>A. Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle; and</li> <li>B. Is not generally used by persons with normal mobility; and</li> <li>C. Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.</li> </ul>	<p>Not used.</p>
?	<p><b>6) Over-the-counter-drug</b> -- a drug that contains a label that identifies the product as a drug as required by 21 C.F.R. § 201.66. A member state may exclude “grooming and hygiene products” from this definition. The “over-the-counter-drug” label includes:</p> <ul style="list-style-type: none"> <li>A. A “Drug Facts” panel; or</li> <li>B. A statement of the “active ingredient(s)” with a list of those ingredients contained in the compound, substance or preparation.</li> </ul>	<p>Not used. 3.2.234.10 NMAC:  ITEMS THAT ARE NOT PRESCRIPTION DRUGS:  Tangible personal property that may be sold or dispensed for human consumption or administered to a human without a prescription of a person, such as a medical doctor, licensed to prescribe the property’s use or to administer it are not “prescription drugs”. Items that do not require a prescription, such as medical equipment, vitamins and aspirin are not</p>

		“prescription drugs” even if prescribed by a licensed medical doctor. Tangible personal property sold or dispensed for non-human consumption or administered to a non-human are not “prescription drugs”.
OK	<b>7) Prescription</b> -- an order, formula or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner authorized by the laws of the member state.	Not defined.
OK	<b>8) Prosthetic device</b> -- a replacement, corrective, or supportive device including repair and replacement parts for same worn on or in the body to: A. Artificially replace a missing portion of the body; B. Prevent or correct physical deformity or malfunction; or C. Support a weak or deformed portion of the body. A member state may exclude any or all of the following from the definition of “prosthetic device:” A. Corrective eyeglasses; B. Contact lenses; C. Hearing aids; and D. Dental prosthesis.	No specific definition. Contact lenses, eyeglasses, frames and lenses are prosthetic devices per 3.2.232.8 NMAC but dental supplies are not by 3.2.205.14 & 3.2.232.9 NMAC.
	<b>Telecommunications</b>	
	<b>Tax Base/Exemption Terms:</b>	
X	<b>1) Ancillary services</b> -- services that are associated with or incidental to the provision of “telecommunications services”, including but not limited to “detailed telecommunications billing”, “directory assistance”, “vertical service”, and “voice mail services”.	Term used only in 7-9-103.1 (converting electricity) and 7-9-103.2 (electricity exchange), not in telecommunications sense.
OK	<b>a) Conference bridging service</b> -- an “ancillary service” that links two or more participants of an audio or video conference call and may include the provision of a telephone number. “Conference bridging service” does not include the “telecommunications services” used to reach the conference bridge.	Not used.
OK	<b>b) Detailed telecommunications billing service</b> - an “ancillary service” of separately stating information pertaining to individual calls on a customer’s billing statement.	Not used.
OK	<b>c) Directory assistance</b> -- an “ancillary service” of providing telephone number information, and/or address information.	Not used.

OK	<p><b>d) Vertical service</b> -- an “ancillary service” that is offered in connection with one or more “telecommunications services”, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections, including “conference bridging services”.</p>	Not used.
OK	<p><b>e) Voice mail service</b> -- an “ancillary service” that enables the customer to store, send or receive recorded messages. “Voice mail service” does not include any “vertical services” that the customer may be required to have in order to utilize the “voice mail service”.</p>	Not used.
OK	<p><b>2) Telecommunications service</b> -- the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term “telecommunications service” includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. “Telecommunications service” does not include:</p> <ul style="list-style-type: none"> <li>A. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser’s primary purpose for the underlying transaction is the processed data or information;</li> <li>B. Installation or maintenance of wiring or equipment on a customer’s premises;</li> <li>C. Tangible personal property;</li> <li>D. Advertising, including but not limited to directory advertising.</li> <li>E. Billing and collection services provided to third parties;</li> <li>F. Internet access service;</li> <li>G. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance and routing of such services by the programming service provider. Radio and television audio and video programming services shall include but not be limited to cable service as defined in 47 USC 522(6) and audio and video programming services</li> </ul>	No definition. Referred to in 3.2.4.9F and 3.2.10.20 NMAC. ITGRTA defines “interstate telecommunications service”.

	<p>delivered by commercial mobile radio service providers, as defined in 47 CFR 20.3;</p> <p>H. “Ancillary services”; or</p> <p>I. Digital products “delivered electronically”, including but not limited to software, music, video, reading materials or ring tones.</p>	
OK	<p><b>a) 800 service</b> -- a “telecommunications service” that allows a caller to dial a toll-free number without incurring a charge for the call. The service is typically marketed under the name “800”, “855”, “866”, “877”, and “888” toll-free calling, and any subsequent numbers designated by the Federal Communications Commission.</p>	Not used.
OK	<p><b>b) 900 service</b> -- an inbound toll “telecommunications service” purchased by a subscriber that allows the subscriber’s customers to call in to the subscriber’s prerecorded announcement or live service. “900 service” does not include the charge for: collection services provided by the seller of the “telecommunications services” to the subscriber, or service or product sold by the subscriber to the subscriber’s customer. The service is typically marketed under the name “900” service, and any subsequent numbers designated by the Federal Communications Commission.</p>	Not used.
OK	<p><b>c) Fixed wireless service</b> -- a “telecommunications service” that provides radio communication between fixed points.</p>	Not used.
?	<p><b>d) Mobile wireless service</b> -- a “telecommunications service” that is transmitted, conveyed or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance or routing are not fixed, including, by way of example only, “telecommunications services” that are provided by a commercial mobile radio service provider.</p>	<p>This term not defined but “mobile telecommunications service” defined at 7-9-3.5A(2)(f) to have same meaning as in federal Mobile Telecommunications Sourcing Act.</p>
OK	<p><b>e) Paging service</b> -- a “telecommunications service” that provides transmission of coded radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or sounds.</p>	Not used.
?	<p><b>f) Prepaid calling service</b> -- the right to access exclusively “telecommunications services”, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with use in a known amount.</p>	<p>3.2.1.16F NMAC: Prepaid telephone cards—“calling cards”. Doesn’t define service, just explains taxability but appears to be same concept.</p>

OK	g) <b>Prepaid wireless calling service</b> -- a “telecommunications service” that provides the right to utilize “mobile wireless service” as well as other non-telecommunications services including the download of digital products “delivered electronically”, content and “ancillary services”, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.	Not used.
OK	h) <b>Private communications service</b> -- a “telecommunications service” that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.	Similar Definition at ITGRTA at 7-9C-2J: " <b>private communications service</b> " means a dedicated service for a single customer that entitles the customer to exclusive or priority use of a communications channel or group of channels between a location within New Mexico and one or more specified locations outside New Mexico.
	i) <b>Value-added non-voice data service</b> -- a service that otherwise meets the definition of “telecommunications services” in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance or routing.	Not used.
	<b>Modifiers of Sales Tax Base/Exemption Terms:</b>	
OK	3) <b>Coin-operated telephone service</b> -- a “telecommunications service” paid for by inserting money into a telephone accepting direct deposits of money to operate.	Not used.
OK	4) <b>International</b> -- a “telecommunications service” that originates or terminates in the United States and terminates or originates outside the United States, respectively. United States includes the District of Columbia or a U.S. territory or possession.	Term appears in 7-9C-2F and ITGRTA definition of “interstate telecommunications service” similar in concept.
?	5) <b>Interstate</b> -- a “telecommunications service” that originates in one United States state, or a United States territory or possession, and terminates in a different United States state or a United States territory or possession.	7-9C-2F: “ <b>interstate telecommunications service</b> ” similar though conflates “interstate” with “telecommunications service”.
OK	6) <b>Intrastate</b> -- a “telecommunications service” that originates in one United States state or a United States territory or possession, and terminates in the same United States state or a United States territory or possession.	Term appears only in catchline of 7-9-56.

OK	7) Pay telephone service -- a “telecommunications service” provided through any pay telephone.	Not used.
OK	8) Residential telecommunications service -- a “telecommunications service” or “ancillary services” provided to an individual for personal use at a residential address, including an individual dwelling unit such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, “telecommunications service” is considered residential if it is provided to and paid for by an individual resident rather than the institution.	Not used.
<b>PART III Sales Tax Holiday Definitions</b>		
	<b>A. Administrative Definitions:</b>	
OK	<b>Eligible property</b> -- an item of a type, such as clothing, that qualifies for a sales tax holiday exemption in a member state.	Not used.
?	<b>Layaway sale</b> -- a transaction in which property is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time, and, at the end of the payment period, receives the property. An order is accepted for layaway by the seller, when the seller removes the property from normal inventory or clearly identifies the property as sold to the purchaser.	<p>3.2.242.10 NMAC: LAYAWAY SALES: A retailer performs a service when holding merchandise on a layaway plan at the request of the customer.</p> <p>A. The initiation of a layaway plan does not constitute a sale even if the customer makes a deposit to the retailer. A sale of the merchandise under the layaway plan occurs only when the final payment is made and the merchandise is delivered to the customer.</p> <p>B. If the final payment on a layaway plan and delivery of merchandise occur at a time other than during the time period specified in Section 7-9-95 NMSA 1978, the receipts from the sale are not deductible under Section 7-9-95 NMSA 1978.</p> <p>C. If the final payment on a layaway plan and delivery of merchandise occur during the time period specified in Section 7-9-95 NMSA 1978, the receipts are deductible under Section 7-9-95 NMSA 1978 if the other requirements of the section are met.</p>

OK	Rain check -- the seller allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock.	3.2.242.9 NMAC: <b>PURCHASES USING A RAIN CHECK:</b> A “rain check” is an assurance to a customer that an item on sale that is sold out or out of stock may be purchased later at the sale price. Receipts from qualified purchases of tangible personal property made with a rain check during the time period specified in Section 7-9-95 NMSA 1978 are deductible. Purchases made after this time period with a rain check regardless of when the rain check was issued are not deductible.
	<b>B. Product Definitions:</b>	
OK	1) <b>Disaster preparedness supply</b> -- an item purchased in preparation or response to a disaster, including any fire, flood, storm, tidal wave, earthquake, or similar public calamity, whether man-made, resulting from war, or resulting from natural causes. “Disaster Preparedness Supply” shall include the following categories of items: general disaster preparedness supplies; disaster preparedness safety supplies; disaster preparedness food-related supplies; and disaster preparedness fastening supplies	Not used.
OK	a) <b>Disaster preparedness general supply</b> -- a general purpose item that may be used in preparation or response to a disaster. The term is mutually exclusive of the terms “disaster preparedness safety supplies,” “disaster preparedness food-related supplies,” and “disaster preparedness fastening supplies,” and may be taxed differently. The following is an all-inclusive list: 1. Batteries (excluding automobile and marine batteries) AAA, AA, C, D, 6 volt or 9 volt; 2. Cellular telephone batteries and chargers; 3. Satellite phones; 4. Self-powered light sources; 5. Portable self-powered radios, two-way radios, weather-band radios and NOAA weather radios; 6. Gas or diesel fuel containers; 7. Non-electric food storage coolers; 8. Portable generators; and 9. Storm shutter devices.	Not used.
OK	b) <b>Disaster preparedness safety supply</b> -- a safety item that may be used in preparation or response to a disaster. The term is mutually exclusive of the terms “disaster preparedness general supplies,” “disaster preparedness food-related supplies,” and “disaster preparedness fastening supplies,” and may be taxed	Not used.

	differently. The following is an all-inclusive list: 1. Carbon monoxide detectors; 2. Smoke detectors; 3. Fire extinguishers; and 4. First aid kits.	
OK	<b>c) Disaster preparedness food-related supply</b> - a food or food related item that may be used in preparation or response to a disaster. The term is mutually exclusive of the terms “disaster preparedness general supplies,” “disaster preparedness safety supplies,” and “disaster preparedness fastening supplies,” and may be taxed differently. The following is an all-inclusive list: Artificial ice; Water storage container; Manual can opener; and Bottled water.	Not used.
OK	<b>d) Disaster preparedness fastening supply</b> -- a fastening item or an item used for securing property or covering property that may be used in preparation or response to a disaster. The term is mutually exclusive of the terms “disaster preparedness general supplies,” “disaster preparedness safety supplies,” and “disaster preparedness food-related supplies,” and may be taxed differently. The following is an all-inclusive list: 1. Bungee cords; 2. Rope; 3. Ratchet straps; 4. Duct tape; 5. Boat anchor; 6. Fender, anchor chain, dock line or similar device; 7. Tarpaulins and other flexible waterproof sheeting; and 8. Ground anchor or tie down kits.	Not used.
OK	<b>2) Energy star qualified product</b> -- a product that meets the energy efficient guidelines set by the United States Environmental Protection Agency and the United States Department of Energy that are authorized to carry the Energy Star label. Covered products are those listed at <a href="http://www.energystar.gov">www.energystar.gov</a> or successor address.	Not used except in some tax credits.
?	<b>3) School supply</b> -- an item commonly used by a student in a course of study. The term is mutually exclusive of the terms “school art supply,” “school instructional material,” and “school computer supply,” and may be taxed differently. The following is an all-inclusive list: 1. Binders; 2. Book bags; 3. Calculators; 4. Cellophane tape; 5. Blackboard chalk; 6. Compasses; 7. Composition books; 8. Crayons; 9. Erasers; 10. Folders; expandable, pocket, plastic, and manila; 11. Glue, paste, and paste sticks; 12. Highlighters; 13. Index cards; 14. Index card boxes; 15. Legal pads; 16. Lunch boxes;	The term “ <b>school supplies</b> ” is defined at 7-9-95 similarly as “items normally used by students in a standard classroom for educational purposes”. The combined list of particulars at 7-9-95C and 3.2.242.7B NMAC differs somewhat from the SSUTA list—which proclaims itself all-inclusive.

	17. Markers; 18. Notebooks; 19. Paper; loose leaf ruled notebook paper, copy paper, graph paper, tracing paper, manila paper, colored paper, poster board, and construction paper; 20. Pencil boxes and other school supply boxes; 21. Pencil sharpeners; 22. Pencils; 23. Pens; 24. Protractors; 25. Rulers; 26. Scissors; and 27. Writing tablets.	
OK	<b>a) School art supply</b> -- an item commonly used by a student in a course of study for artwork. The term is mutually exclusive of the terms "school supply," "school instructional material," and "school computer supply," and may be taxed differently. The following is an all-inclusive list: 1. Clay and glazes; 2. Paints; acrylic, tempera, and oil; 3. Paintbrushes for artwork; 4. Sketch and drawing pads; and 5. Watercolors.	Not used.
OK	<b>b) School instructional material</b> -- written material commonly used by a student in a course of study as a reference and to learn the subject being taught. The term is mutually exclusive of the terms "school supply," "school art supply," and "school computer supply," and may be taxed differently. The following is an all-inclusive list: 1. Reference books; 2. Reference maps and globes; 3. Textbooks; and 4. Workbooks.	Not used.
OK	<b>c) School computer supply</b> -- an item commonly used by a student in a course of study in which a computer is used. The term is mutually exclusive of the terms "school supply," "school art supply," and "school instructional material," and may be taxed differently. The following is an all-inclusive list: 1. Computer storage media; diskettes, compact disks; 2. Handheld electronic schedulers, except devices that are cellular phones; 3. Personal digital assistants, except devices that are cellular phones; 4. Computer printers; and 5. Printer supplies for computers; printer paper, printer ink.	Not used.
OK	<b>4) WaterSense product</b> -- a product that meets the water efficiency and performance criteria set by the United States Environmental Protection Agency and is authorized to bear the United States Environmental Protection Agency WaterSense label. Covered products are those listed at <a href="http://www.epa.gov/WaterSense/products/index.html">http://www.epa.gov/WaterSense/products/index.html</a> or successor address.	Not used.