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# FYI-240

New Mexico  
Taxation and Revenue Department

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## FOR YOUR INFORMATION

Tax Information/Policy Office ♦ P.O. Box 630 ♦ Santa Fe, New Mexico 87504-0630

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### TRANSACTIONS WITH GOVERNMENT AGENCIES

This FYI discusses New Mexico's Gross Receipts and Compensating Taxes as they relate to transactions in New Mexico with or by government agencies. Part I addresses a business's sales to government entities, which are subject to gross receipts tax or compensating tax. Part II discusses a government's own governmental gross receipts and purchases.

*Taxpayers should be aware that subsequent legislation, regulations, court decisions, revenue rulings, notices and announcements could affect the accuracy of this publication's contents. Please contact your district tax office if in doubt.*

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## WHO IS "THE GOVERNMENT"?

New Mexico's Gross Receipts and Compensating Tax Act refers to "government" as any one of four different entities:

1. **The federal government, and all its agencies, departments and divisions.** Included as federal entities are the District of Columbia (Washington, D.C.), the American National Red Cross, and federal credit unions. State-chartered credit unions, while not federal or state government entities, are afforded treatment parallel to federal credit unions;
2. **New Mexico state government and all state, county and local entities in New Mexico.** "State government" excludes other states and their county or local governmental entities;
3. **The governing body and subdivisions of Indian nations, tribes and pueblos.** Because transactions with Indian nations, tribes and pueblos or their members are unique, this publication does not address them, and
4. **Any foreign nation and its agencies with which the United States has a treaty requiring exemption.** The exemption does not apply to states, cantons or other subdivisions of foreign nations. New Mexico offers nontaxable transactions to those who sell to diplomatic embassies or foreign consulates.

**Note:** Governmental entities at times are customers and at other times are vendors having their own gross receipts. The state imposes tax on receipts from certain governmental business activities. This is called "governmental gross receipts tax." For a more detailed explanation of when a government's own gross receipts are taxable, please see PART II, SALES BY GOVERNMENTS, starting on page 11 of this publication.

## PART I, SALES TO GOVERNMENTS (the government is the customer)

Part I of this publication covers transactions where the buyer or lessee is the government entity and the seller or lessor is the vendor. For these transactions, it is important to remember that the tax in New Mexico is on the seller. Unless a deduction or exemption exists, the sale is taxable and the seller can pass that tax to their customer, which for this section is the government entity.

### **GROSS RECEIPTS TAX**

New Mexico imposes a gross receipts tax on the privilege of doing business in New Mexico. Although this tax is imposed on the seller (unlike a sales tax, which is imposed on the buyer), it is customary for vendors to recover the cost of the tax from the buyer. The tax is broadly based and is imposed on the gross receipts from (1) the sale of property in New Mexico, (2) leasing or licensing property employed in New Mexico, (3) granting a right to use a franchise employed in New Mexico, (4) the performance of a service in New Mexico, and (5) research and development service performed outside the state when initial use of the product of the service occurs in New Mexico. The general presumption is that all receipts of a person engaging in business are subject to the tax unless statute provides an exemption or deduction. The term "engaging in business" means carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit (Section 7-9-3.3 NMSA 1978).

Gross receipts tax is reported by the seller using **Form TRD-41413**, *Gross Receipts Tax Return* (prior to July 1, 2021 on Form CRS-1). The taxpayer (seller) can also file the return and pay the tax due online through the Taxpayer Access Point (TAP)\_here: <https://tap.state.nm.us/Tap>.

Municipalities and counties also are authorized to impose local option taxes on persons engaging in business within the municipality or county. These taxes are reported and paid at the same time and in the same manner as the state gross receipts tax (Section 7-9-3.5 NMSA 1978). A taxpayer should use the combined tax rate (which incorporates state, county and municipal taxes) these are the rates that are provided on the *Gross Receipts and Compensating Tax Rate Schedule*, which is updated every January and July. The current and prior rate schedules along with a location code and tax rate map can be located on the Department's website here: <https://www.tax.newmexico.gov/governments/gross-receipts-location-code-and-tax-rate-map/>. For more information on what tax rate to use, see publication **FYI-200**, *Your Business Location and The Appropriate Tax Rate* available on our web site at <http://www.tax.newmexico.gov/forms-publications.aspx> or at your local district tax office.

### ***Exemptions and Deductions from Gross Receipts Tax***

A list of all exemptions and deduction from gross receipts tax can be located in publication **FYI-105**, *Gross Receipts & Compensating Taxes – An Overview*.

#### Exemptions from Gross Receipts Tax

A government may say, "We're not taxable, so don't charge us gross receipts tax." Remember that the gross receipts tax applies to the *seller's* receipts. Unless an exemption or deduction applies, the seller's receipts are taxable regardless of the buyer's tax status. When an exemption is in place, the seller's receipts are not taxed and do not have to be reported on the tax return (Section 7-9-12 NMSA 1978). Only the seller or lessor can be exempt from taxation because gross receipts tax is the liability of the seller of a product or a service and of the person who leases property to someone else. While governmental entities are exempt from gross receipts tax on their own receipts (Section 7-9-13 NMSA 1978), *persons who sell to governmental entities are not automatically exempt from gross receipts tax on their receipts*. When a transaction is not exempt, it may be deductible, see below.

#### Deductions from Gross Receipts Tax

A deduction from gross receipts, like an exemption, is a nontaxable amount. Unlike an exemption, a deduction must be reported (Section 7-9-45 NMSA 1978). Only receipts from specific types of transactions with the government are deductible from gross receipts. Although there are some exceptions, sales of tangible personal property to governments are deductible, but leases of property and sales of services and intangible personal property are fully taxable (Section 7-9-54 NMSA 1978) (See Types of Transactions and Their Tax Treatment, page 4).

#### Verification of Deductions

The Department requires taxpayers to retain documentation to support any deduction from gross receipts. The most widely held substantiation supporting a deduction from gross receipts is a New Mexico nontaxable transaction certificate (NTTC). There are many different types of NTTCs, but when it comes to sales to a government the two more common NTTCs that the government will execute with the seller are the Type 9 (purchase of tangible personal property by a governmental entity or a 501(c)3 organization) and Type 15 (purchase of tangible personal property by a contractor for certain federal government agencies). A seller also may use alternative evidence to document a deductible sale to a government by retaining a purchase order, a copy of the payment check, or other documentation that verifies what was sold and who it was sold to. *Available only to foreign nations* is the Type 16 NTTC for accredited diplomats or missions for the purchase of property and services or for the lease of property.

There are other times when the government is engaging in business and resells property or services, or it may lease property on its own. In these cases, a different type of NTTC may be provided to the seller. For more information see **FYI-204**, *Nontaxable Transaction Certificates*

NTTCs. Please see Part II, Sales by Governments, page 11.

Below are also two forms of payment that government entities may use and some information on each.

- **Federal Government Credit Cards:** The federal government uses credit cards for some purchases. It is important to keep in mind that the use of a credit card does not automatically make the transaction deductible. Only credit cards bearing the legends "**United States of America,**" and "**Tax Exempt I.D. 140001849**" are acceptable. Sales to an individual who pays with these cards are sales to the federal government, so the guidelines cited above apply receipts from the sale of tangible personal property are deductible from gross receipts, but receipts from leasing property or performing services are fully taxable. Receipts from the sale of construction materials for a construction project are fully taxable to the vendor no matter the form of payment.

For information about other federal credit card categories, please call the United States General Services Administration at (703) 308-4191 or contact the web address at <http://pub.fss.gsa.gov/services/gsa-smartpay>.

- **Procurement Cards:** Payment with a government-issued procurement card, whether state or federal, does not automatically guarantee a tax-deductible purchase. The only deduction available to a vendor who deals with a government purchaser is for the sale of tangible personal property. Vendors cannot take deductions for the sale of intangible personal property, construction materials that will become components of a construction project, performance of services, or for the lease of property used in New Mexico. On or after June 30, 2003, New Mexico procurement or credit cards bearing the legend "**State of New Mexico**" and the **state seal** are considered procurement cards issued to the State of New Mexico.

Receipts from sales to employees or representatives of the federal government or the state of New Mexico who pay with credit or procurement cards NOT issued directly to the United States government or to the state of New Mexico are not deductible from gross receipts under Section 7-9-54 NMSA 1978. This applies to sales of tangible and intangible personal property, sales of services, sales of construction materials for a construction project, and receipts from leasing of property used in New Mexico.

### **TYPES OF TRANSACTIONS AND THEIR TAX TREATMENTS**

Five types of transactions are subject to gross receipts tax: the sale of property in New Mexico, the sale of services performed in New Mexico and some performed outside New Mexico, the lease or licensing of property employed in New Mexico, the granting of a right to use a franchise employed in New Mexico and selling research and development services performed outside New Mexico the product of which is initially used in New Mexico (Section 7-9-3.5 NMSA 1978). Except for more liberal transactions with accredited diplomats/missions, only receipts from the sale or lease of real property or the sale of tangible property to a governmental entity are deductible. Leases of tangible property, sales of services, sales and leases of certain intangible property (licenses, for example) and the granting of a right to use a franchise to governments are subject to the gross receipts tax.

### ***PROPERTY***

There are three kinds of property that exchange ownership: tangible personal property, real property, and intangible property:

## 1. Tangible Personal Property

Tangible personal property means property of a substantive nature that has a quantifiable value. It includes electricity and manufactured homes but not real property or such intangible property as licenses, franchises, patents, trademarks and copyrights.

- A. Sales of tangible personal property to a governmental entity are generally deductible to the seller as long as the seller retains either a Type 9 nontaxable transaction certificate (NTTC) or some other evidence that the sale was made to a governmental entity (Section 7-9-54 NMSA 1978). Proof of payment may be invoices, purchase orders, canceled checks, money orders and certified checks, etc. *There are important exceptions for which there are no deductions:*
- Receipts from selling a construction service that reflect the value of tangible personal property that will become an ingredient or component of a construction project are not deductible from gross receipts;
  - Receipts from selling tangible personal property that will become an ingredient or component of a construction project are not deductible from gross receipts. Examples of such ingredients include asphalt purchased in bulk by a government agency and stored for future use in a construction project and paint purchased by a government agency for use in a construction project;
  - That portion of the receipts from performing a service that reflects the value of tangible personal property used in the performance of the service is not deductible. An example would be a cleaning service. Cleansers, brooms, mops and the like are tangibles used to clean a governmental facility and are part of the service performed. All receipts from the service are taxable. No deduction is available for the value of the tangibles consumed in the performance of the service, and
  - Receipts from the sale of such nonfissionable metalliferous mineral ores as uranium to a governmental entity are not deductible from gross receipts.
- B. Sale of meals - Meals are tangible personal property. Receipts from selling meals to a governmental entity are deductible from gross receipts. The sale of a meal directly to a government employee, however, is not deductible because it is not a sale to a government entity. Lodging for governmental entities is addressed on page 7.
- C. Sale of utilities - Utilities that are tangible personal property (such as natural gas, water and electricity) and sold to governmental entities are deductible from gross receipts under Section 7-9-54 NMSA 1978. Utilities that are services (such as telephone and cable services) are not deductible.
- D. Sale of landscaping - materials - The sale of landscaping materials that will not be incorporated into a construction project by a governmental entity is the sale of tangible personal property and is deductible from the vendor's gross receipts.
- E. Sale of modular buildings - Portable or modular buildings, excluded from the definition of "construction" (see "Prefabricated Buildings", page 8), are tangible personal property. When sold to a governmental entity, receipts from sales of portable or modular buildings are deductible from the vendor's gross receipts.
- F. Sale of computer software - Pre-packaged, off-the-shelf, unlicensed software, although less common in recent years, is tangible personal property. When sold to a governmental entity, it is deductible from the vendor's gross receipts. Licensed software, when sold to governments, is taxable. Licensed software is limited to a specific computer or network, and the buyer may not resell the license or transfer the software package to any other person. Custom software is the sale of a service; there is no deduction for the sale of a service to a governmental entity. Please see page 9 for a discussion of custom software.
- G. School pictures - The receipts of a photographer or portrait studio from sales of school pictures are sales of tangible personal property, a manufactured product, to children or

parents and are not deductible.

- H. Non-appropriated activities of the military services - Receipts from selling tangible personal property (see “exceptions” below) to such military activities as bowling lanes, golf courses, gymnasiums, clubs and other entities that receive no funding from the United States Congress are deductible from gross receipts if military regulations declare the activities instrumentalities of the United States. The activities benefit military personnel, their families and authorized civilians. Eligible vendors are wholesalers of food and beverages or suppliers of bowling and golf equipment to such purchasers. **Exceptions** are nonfissionable metalliferous ore (uranium, for instance) and tangibles that will become ingredients or component parts of a construction project.
- I. Sale of tangible personal property to a federal contractor - The sale of tangible personal property to a qualified federal contractor or subcontractor is deductible from gross receipts if the contractor or subcontractor delivers a Type 15 NTTC to the seller under the following conditions:
- The federal contract number is entered on the appropriate line of the NTTC;
  - All conditions of the agreement between New Mexico and the federal government are met, and
  - The contracting agency is one of the agencies of the United States government signatory to the agreement.

A qualified federal contractor or subcontractor is a firm under contract to an agency of the U.S. government that has entered into an agreement with the state of New Mexico. The agreement requires that:

- The contract be for the performance of a service;
  - The contract be a cost or cost-plus, fixed-fee contract;
  - The contract contains a provision whereby title to any item purchased under the terms of the contract transfers directly from the vendor to the government. In other words, the contractor never gains title to items purchased under contract, and
  - The services performed under the contract be subject to gross receipts tax.
- J. Sale of tangible personal property for projects financed by industrial revenue bonds - *Except for sales of tangible personal property that will become an ingredient or component part of a construction project*, the sale of tangible personal property to private persons acting as agents for projects entered into under the Industrial Revenue Bond Act, the County Industrial Revenue Bond Act or similar act are deductible under certain conditions. The agent may arrange for or procure services and tangible personal property for a construction project and other tangibles necessary for constructing and equipping the facility. The government agrees to do all the following: own the facility, finance the project in whole or in part through the issuance of bonds, designate the private person as its agent in arranging for the necessary services and property, lease the facility to the private person, and sell the facility to the private person upon repayment of the bonds.

Tangible personal property sold to a bond project must not increase the basis of the structure or other facility included in the definition of construction (Internal Revenue Code Section 1011), nor may it be included in or be similar to structures or facilities specifically itemized in the definition of construction under Section 7-9-3.4 NMSA 1978. Further, the property must meet the depreciation classifications under Internal Revenue Code Section 168.

If all conditions are met, receipts from the sale of tangible personal property to a project financed by Industrial Revenue or similar bonds are deductible from the vendor’s gross receipts.

- K. Sale of tangible personal property to diplomats - Vendors of tangible personal property to diplomats receive a deduction from gross receipts if the diplomat delivers the Type 16 NTTC to the vendor.

## **2. Real Property**

The sale of land is deductible from gross receipts. The sale of established structures also is deductible. Neither type of sale is subject to gross receipts tax (Section 7-9-53 NMSA 1978). No nontaxable transaction certificate is required.

The sale of new construction, however, is the sale of a service. Sellers of services to government entities in New Mexico receive no deduction for their sales. Sellers can and do recover the cost of the tax from purchasers. When new construction is sold with the land it occupies, the seller may deduct the appraised value of the land, but not the value of the construction service. The appraised value of the land cannot exceed the difference between the sale price of the real property and the total cost of improvements constructed on the real property.

## **3. Intangible Property**

Receipts from the sale of such intangible property as trademarks, copyrights, patents, franchises and licenses are subject to the gross receipts tax. Sellers receive no deduction for their sales of intangibles to government agencies or instrumentalities. Sellers can and do recover the cost of the tax from the buyers.

- A. Lodging- Receipts from the rental of lodging in hotels, motels and facilities of the same nature are the sale of a license to use and are subject to gross receipts tax.

**Example:** An employee of the New Mexico Taxation and Revenue Department checks into a motel. The charge for the motel room is subject to gross receipts tax even if the government employee is on government business.

- B. Software - The sale of a license to use computer software is the sale of intangible property. Licensed software is limited to a specific computer or network, and the buyer may not resell the license or transfer the software package to any other person. When sold to a governmental entity, receipts from the sale are subject to gross receipts tax and are not deductible by the seller. The deduction is offered only for receipts from the sale of tangible personal property to governmental entities.

## **SERVICES**

In general, "service" means all activities done for other persons for a consideration wherein the activity does not predominantly involve the sale or lease of property (Section 7-9-3(M) NMSA 1978).

### **1. Construction**

All receipts from carrying out a construction project for any governmental agency are receipts from performing a service and are subject to the gross receipts tax. New Mexico defines "service" specifically to include construction activities and all tangible personal property that will become an ingredient or component of a construction project (i.e., paint, lumber, nails, etc). The tangible personal property retains its character until it is installed and becomes an ingredient or component of a construction project. At that point the tangible personal property becomes part of the construction service.

**“Construction” is defined** as the building, altering, repairing or demolishing in the ordinary course of business any road, building, airport, park, dam, sewage or water treatment facility, power generating plant, pipeline, transmission line, tower, storage tank, mine shaft, microwave station, wall or similar work. Also included are the leveling and clearing of land, excavating earth, drilling wells, or similar work (Section 7-9-3.4 NMSA 1978).

**Construction includes:**

- **Fixtures**, defined as the sale and installation of such items as kitchen equipment, library equipment, science equipment and other miscellaneous equipment so installed that it becomes firmly attached to the realty. Pre-assembled items that do not become permanently affixed to realty are tangible personal property, not fixtures.
- **Construction materials** means, tangible personal property that becomes or is intended to become an ingredient or component part of a construction project. A replacement fixture, when the replacement is not construction or a replacement part for a fixture, is not considered construction material (Section 7-9-3.4 NMSA 1978).
- **Prefabricated buildings** are designed to be permanently affixed to land and are manufactured (usually off-site) in components and sub-assemblies and then assembled at the construction site. Prefabricated buildings are not designed to be portable nor are capable of being relocated. Structures intended to be moved, e.g., portable buildings, modular buildings or manufactured homes defined as vehicles under Section 66-1-4.11 NMSA 1978, are not prefabricated buildings and are not classified as construction;
- **Landscaping** is construction when it is part of a construction project. The installation of sprinkler systems and the building of irrigation pipelines are construction activities. Such landscape items as ornaments, rocks, trees, plants, shrubs, sod, and seed that are integral parts of a construction project are construction materials. Those who install the landscape items in conjunction with a construction project are performing construction services. Construction does not include landscape upkeep.

***The taxable receipts in a construction project for a governmental entity are inclusive of all labor, materials, and profit.***

2. Research and Development Services

Subject to the gross receipts tax are receipts from research and development services performed and initially used in New Mexico for the government, or from research and development services performed outside New Mexico -- provided that the product of the latter service is initially used in New Mexico. (For more information on research and development, see publication FYI-270, *Information on Research and Development*.)

3. Independent Contractor Services

Anyone performing services for a governmental entity in New Mexico who is not an employee of the entity is liable for gross receipts tax on the receipts from performing the service.

**Example:** An individual is contracted to entertain at Expo New Mexico. Since the tax is the liability of the seller of services rather than the buyer, anyone performing services for Expo New Mexico should either be registered with the Taxation and Revenue Department to report gross receipts and pay the applicable tax or make certain that Expo New Mexico has him/her listed on **Form ACD-31101**, *Agreement to Collect and Pay Over Taxes* with the Taxation and Revenue Department.

4. Telecommunications Services

Sales of telecommunications services, divided into intrastate and interstate sales, are



subject to different tax acts.

**A. Intrastate telecommunications services** (starting **and** terminating within the borders of New Mexico and billed to a New Mexico address) are subject to the same gross receipts taxes as any other service performed inside the state's borders. The calls may be either local service or intrastate long-distance service. The tax rate is the rate in effect at the originating telephone set or at the billing address for cellular service. The rate includes local option taxes. Sales of intrastate telecommunications to governmental entities are subject to gross receipts tax, which is reported on **Form TRD-41413**, *Gross Receipts Tax Return*. *Sellers of intrastate telecommunications services receive no exemption or deduction for sales to governmental entities and are not prevented from recovering tax costs from governmental purchasers of services.*

**B. Interstate telecommunications services** (starting **or** terminating in New Mexico, crossing state lines and billed to a telephone number or account in New Mexico regardless of where the bill is delivered) are subject to the interstate telecommunications gross receipts tax at 4.25%. Receipts from such sales are exempt from gross receipts tax under Section 7-9-38.1 NMSA 1978 and are subject instead to the interstate telecommunications gross receipts tax, which is reported on **Form TRD-41410**, *Interstate Telecommunication Gross Receipts Tax*. (Sections 7-9C-1 through 11 NMSA 1978). *Sellers of interstate telecommunications services to governmental entities receive no tax exemption or deduction and are not prevented from recovering tax costs from governmental purchasers of services.*

#### 5. Custom Computer Software

The sale of computer software can be the sale of tangible personal property (see page 5), the sale of intangible property (see page 7), or the sale of a service. Specialized, customized software developed for an individual customer is the provision of a service. When the service is performed in New Mexico, it is taxable.

#### 6. Maintenance Contracts

In general, maintenance contracts are either taxable at the time of sale or taxable at the time of service. Contracts that provide for regularly scheduled maintenance of equipment or for periodic software updates or ongoing support (such as telephone assistance for computer software) are sales of services. These activities are taxable at the time of sale; i.e., upon entering into the contract. Maintenance contracts for repair services and parts when equipment breaks down are not gross receipts at the time of entering into the contract, but they are taxable when a breakdown occurs. Tax applies to the retail value of the parts and labor furnished.

#### 7. Services Performed Out of State

Receipts from services performed outside the state the product of which is initially used in New Mexico are subject to gross receipts tax for a person who is "engaging in business" in New Mexico, as defined by Section 7-9-3.3 NMSA 1978. Engaging in business means having physical presence in the state or, if not physically present, having \$100,000 in taxable gross receipts sourced to New Mexico in the previous calendar year.

However, research and development services performed outside New Mexico the product of which is initially used in New Mexico are exempt that are sold:

- (1) between affiliated corporations;

(2) to the United States by persons, other than organizations described in Section 7-9-29(A) NMSA 1978, who are prime contractors operating facilities in New Mexico designated as national laboratories by act of congress; or

(3) to persons, other than organizations described in Section 7-9-29(A) NMSA 1978, who are prime contractors operating facilities in New Mexico designated as national laboratories by act of congress. See *FYI-270, Information on Research and Development*.

#### 8. Services for Diplomats

Accredited diplomats or missions may deliver the Type 16 NTTC to sellers of services (Section 7-9-89 NMSA 1978).

### **LEASES**

The term “leasing” means any arrangement whereby, for any type of consideration, property is employed for or by a person other than the owner of the property (Section 7-9-3(E) NMSA 1978).

#### 1. True Lease

In a true lease the lessor retains title and ownership to the property. Receipts from a true lease of tangible personal property to a governmental agency are subject to gross receipts tax.

#### 2. Conditional Sales Lease

The lease is actually a financing agreement between a secured third party and the government when: a) the agreement contains a provision that upon completion of the term the lessee may purchase the property without additional consideration or with nominal consideration, and b) the seller does not treat the property as an asset or depreciate it. Such a transaction is in essence a sale of tangible personal property and is deductible from gross receipts.

#### 3. Lease of Real Property

As with other persons, the lease of real property (offices or vacant land) to a governmental agency is a deductible transaction (Section 7-9-53 NMSA 1978).

#### 4. Lease of Property to a Diplomat

Accredited diplomats or missions may deliver the Type 16 NTTC to lessors of tangible personal property (Section 7-9-89 NMSA 1978).

### **COMPENSATING TAX**

Compensating tax is a use tax that is imposed on persons using property or services in New Mexico when tax has not been paid to New Mexico or to any other state (Section 7-9-7 NMSA 1978). This tax is reported on **Form TRD-41412, *Compensating Tax*** Return (prior to July 1, 2021 on the Form CRS-1). This tax can also be filed, and the tax paid online through the Taxpayer Access Point (TAP)\_here: <https://tap.state.nm.us/Tap>.

The use of property, except the use of construction materials and property that is incorporated into a metropolitan redevelopment project, by the federal government and by Indian nations, tribes or pueblos on Indian reservations or pueblo grants is exempt from compensating tax both by statute (Section 7-9-14 NMSA 1978) and by preemption.

The compensating tax rate should be chosen based on where the property or service is being used. The tax rates are provided on the *Gross Receipts and Compensating Tax Rate Schedule*, which is updated every January and July. The current and prior rate schedules along with a

location code and tax rate map can be located on the Department's website here: <https://www.tax.newmexico.gov/governments/gross-receipts-location-code-and-tax-rate-map/>.

## **PART II, SALES BY GOVERNMENTS** **(the government is the vendor)**

In general, gross receipts of governments from engaging in business in New Mexico are exempt from the gross receipts tax, but certain transactions, such as receipts from activities, facilities and commodities open to the general public (please see page 11 for explanation), are subject to a governmental gross receipts tax (Section 7-9-3.2 NMSA 1978). Governments commonly recover their tax costs from their customers.

Section 7-9-4.3 NMSA 1978 establishes the governmental gross receipts tax and sets the rate at 5%.

There is a distinction between the taxability of a government's own income and the tax passed along by another vendor when selling to a government. When the government makes a purchase, the tax liability of the person selling to the government and the type of transaction determine whether or not the vendor owes tax on the transaction. **Persons selling or leasing to a governmental entity** as the final customer of goods, services or leases should consult Part I of this publication.

This section, Part II, discusses those instances in which the government engages in business. The government is the vendor. It is the taxability of the government's own gross receipts that is under consideration in this section. This section also clarifies business-related purchases that the government makes.

### **GOVERNMENTAL GROSS RECEIPTS TAX**

Governmental gross receipts tax is reported on **Form TRD-41411**, *Governmental Gross Receipts Tax Return* (prior to July 1, 2021 on Form CRS-1). Below, this publication will go over what governments may sell and lease and if the sale or lease is taxable. If the sale is deductible it does need to be reported to the Department on a return.

### **TAXABLE GOVERNMENTAL TRANSACTIONS**

The governmental gross receipts tax applies to the receipts of the state of New Mexico and any of its agencies, institutions, instrumentalities and political subdivisions, except any school district and any entity licensed by the Department of Health that is principally engaged in providing health care services. The following transactions are subject to governmental gross receipts:

- **Sale of tangible personal property** other than water (but see bullet 5 "Sale of water" below) from facilities open to the general public;
- **Performance of or admission to** recreational, athletic or entertainment services or events open to the general public;
- **Refuse collection or disposal or both** -- Receipts of a government from performing refuse collection or disposal are governmental gross receipts regardless of how or for whom they are performed;
- **Sewage services** -- Receipts of a government from supplying sewage services are governmental gross receipts regardless of how or for whom they are performed;
- **Sale of water** by a utility owned or operated by a county, municipality or other political subdivision of the state, and
- **Rental** of parking, docking or tie-down spaces or the granting of permission to park

vehicles, tether aircraft or dock boats.

Unless the receipts are from one of the above activities, they are not governmental gross receipts and are not taxable either as regular gross receipts or as governmental gross receipts.

**Caution:** government sales of gas or electricity or sales of cable television systems are subject to gross receipts tax at the rate in effect at the location of the meter or receiver (Section 7-9-13 NMSA 1978). These receipts must be reported on **Form TRD-41413**, Gross Receipts Tax Return. Government entities are not exempt from reporting and paying gross receipts tax on their sales of gas or electricity or from the operation of cable television systems when they own or operate the utility or the cable service.

**Receipts of an agent** acting on behalf of a governmental agency, institution, instrumentality or political subdivision of New Mexico are taxable when the underlying activity is taxable.

**“Facility open to the general public”** is usually a physical structure or location through which the general public may purchase tangible personal property or services. These include ticket booths, museums, athletic stadiums, zoos, etc., but they may include a remote facility or service that acts as a clearinghouse for government activities open to the general public, such as a mailroom or subscription service for a state-owned magazine. They do not include point-of-sale registers or electronic devices at a bookstore owned or operated by a public postsecondary educational institution when the customer is enrolled in the institution, displays a valid student identification card and buys textbooks or other materials required for courses.

#### **NONTAXABLE GOVERNMENTAL TRANSACTIONS**

**Excluded** from governmental gross receipts, and consequently from governmental gross receipts tax, are:

- Government sales of intangible personal property such as licenses or permits, receipts from granting licenses to use real property or from granting licenses to use information databases or government-owned personal property, fees from registrations, reports or filing of documents, and receipts from the imposition of fines;
- Receipts of governments from leasing property used in New Mexico and from provision of general services not specifically mentioned by statute as subject to governmental gross receipts tax;
- Receipts from sales of tangible personal property from facilities closed to general public patronage;
- Receipts from the sale of real estate;
- Grants that governments receive from other governmental entities (federal, state or local), or grants or bequests from private persons, and
- Governmental income from any type of time-price differential (fees for installment plans, late charges, etc.) and from investments such as interest, dividends and from gain on the sale of real estate or securities.

Receipts from the above transactions by governments engaging in business are not subject to governmental gross receipts tax.

In addition to the above exclusions, there are a number of governmental gross receipts tax deductions for various transactions. See **FYI-105: Gross Receipts & Compensating Taxes - An Overview** on our web site for detailed information on available deductions.

#### **PURCHASES BY A GOVERNMENT ENGAGING IN BUSINESS**

When a government engages in business, it may have occasion to buy tangible personal

property or services that it resells to someone else. The government is not the final customer.

- **Property:** A government may buy tangible personal property that it combines or uses to manufacture a new product that it sells; license plates, for instance. In such circumstances, like any other business it may deliver the New Mexico Type 2 NTTC for the purchase of tangible personal property that it will use to manufacture a new product for sale (Section 7-9-46 NMSA 1978). In the same way, when it buys water, electricity, or gas for resale (Section 7-9-47 NMSA 1978), it may deliver a Type 2 NTTC.

When a government buys tangible personal property (except construction materials that become ingredients or components of a construction project) for its own use, it has a choice: it can either deliver the Type 9 NTTC to a vendor, or it may follow the procedures outlined in Part I of this publication.

- **Services:** A government may buy the services of an outside contractor and resell those services intact in the ordinary course of business (Section 7-9-48 NMSA 1978); for example, a city may contract with a private refuse disposal company to perform its refuse and disposal service for the city's own customers. Because the city is engaging in business, it may deliver a Type 5 NTTC for the purchase of services that it resells, but the resale of services must be in the ordinary course of business and must be subject either to the gross receipts tax or to governmental gross receipts tax to be effective.

## TAXPAYER INFORMATION

**General Information.** FYIs and Bulletins present general information with minimum technical language. All FYIs and Bulletins are free of charge and available through all local tax offices and on the Taxation and Revenue Department's website at <http://www.tax.newmexico.gov/forms-publications.aspx>

**Regulations.** The Department establishes regulations to interpret and exemplify the various tax acts it administers. Current statutes with regulations can be located on the Department's website for free at <http://www.tax.newmexico.gov/statutes-with-regulations.aspx>. Specific regulations are also available at the State Records Center and Archives or on its web page at <http://www.srca.nm.gov/>

The Taxation and Revenue Department regulation book is available for purchase from the New Mexico Compilation Commission. Order regulation books directly from the New Mexico Compilation Commission at <https://www.nmcompcomm.us/>

**Rulings.** Rulings signed by the Secretary and approved by the Attorney General are written statements that apply to one or a small number of taxpayers. A taxpayer may request a ruling (at no charge) to clarify its tax liability or responsibility under specific circumstances. The Department will not issue a ruling to a taxpayer who is undergoing an audit, who has an outstanding assessment, or who is involved in a protest or litigation with the Department over the subject matter of the request. The Department's rulings are compiled and available on free of charge at <http://www.tax.newmexico.gov/rulings.aspx>.

The request for a ruling must be in writing, include accurate taxpayer identification and the details about the taxpayer's situation, and be addressed to the Secretary of the Taxation and Revenue Department at P.O. Box 630, Santa Fe, NM 87504-0630. The taxpayer's representative, such as an accountant or attorney, may request a ruling on behalf of the taxpayer but must disclose the name of the taxpayer. While the Department is not required to issue a ruling when requested to do so, every request is carefully considered.

The Secretary may modify or withdraw any previously issued ruling and is required to withdraw or modify any ruling when subsequent legislation, regulations, final court decisions or other rulings invalidate a ruling or portions of a ruling.

**Public Decisions & Orders.** All public decisions and orders issued since July 1994 are compiled and available on the Department's web page free of charge at <http://www.tax.newmexico.gov/tax-decisions-orders.aspx>.

*This publication provides general information. It does not constitute a regulation, ruling, or decision issued by the Secretary of the New Mexico Taxation and Revenue Department. The Department is legally bound only by a regulation or a ruling [7-1-60, New Mexico Statutes Annotated, 1978]. In the event of a conflict between FYI and statute, regulation, case law or policy, the information in FYIs is overridden by statutes, regulations and case law. Taxpayers and preparers are responsible for being aware of New Mexico tax laws and rules. Consult the Department directly if you have questions or concerns about information provided in this FYI.*

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**FOR FURTHER ASSISTANCE**

Tax District Field Offices and the Department's call center can provide full service and general information about the Department's taxes, taxpayer access point, programs, classes, and forms. Information specific to your filing situation, payment plans and delinquent accounts.

**TAX DISTRICT FIELD OFFICES**

**ALBUQUERQUE**

10500 Copper Pointe Avenue NE  
Albuquerque, NM 87123

**SANTA FE**

Manuel Lujan Sr. Bldg.  
1200 S. St. Francis Dr.  
Santa Fe, NM 87504

**FARMINGTON**

3501 E. Main St., Suite N  
Farmington, NM 87499

**LAS CRUCES**

2540 S. El Paseo Bldg. #2  
Las Cruces, NM 88004

**ROSWELL**

400 Pennsylvania Ave., Suite 200  
Roswell, NM 8820

For forms and instructions visit the Department's web site at <http://www.tax.newmexico.gov>

**Call Center Number:**  
**1-866-285-2996**

**If faxing something to a tax district field office, please fax to:**

**Call Center Fax Number:**  
**1-505-841-6327**

**If mailing information to a tax district field office, please mail to:**

Taxation and Revenue Department  
P.O. Box 8485  
Albuquerque, NM 87198-8485

For additional contact information please visit the Department's website at <http://www.tax.newmexico.gov/contact-us.aspx>

*This information is as accurate as possible as of the date specified on the publication. Subsequent legislation, new state regulations and case law may affect its accuracy. For the latest information please check the Taxation and Revenue Department's web site at [www.tax.newmexico.gov](http://www.tax.newmexico.gov).*

*This publication provides general information. It does not constitute a regulation, ruling, or decision issued by the Secretary of the New Mexico Taxation and Revenue Department. The Department is legally bound only by a regulation or a ruling [7-1-60, New Mexico Statutes Annotated, 1978]. In the event of a conflict between FYI and statute, regulation, case law or policy, the information in FYIs is overridden by statutes, regulations and case law. Taxpayers and preparers are responsible for being aware of New Mexico tax laws and rules. Consult the Department directly if you have questions or concerns about information provided in this FYI.*