
FYI-206

New Mexico
Taxation and Revenue Department

FOR YOUR INFORMATION

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

GROSS RECEIPTS TAX AND MARKETPLACE SALES

This publication describes the imposition of the gross receipts tax upon marketplace providers whether online or otherwise, and individuals and businesses outside or inside the state who use a marketplace to sell or license property or services that are subject to gross receipts tax. It describes the threshold for determining whether an out-of-state seller is “engaging in business” in New Mexico and therefore whether its receipts are subject to gross receipts tax. Registration and filing requirements for both marketplace providers and marketplace sellers are explained, and guidance for sellers claiming the deduction for receipts from sales facilitated by a marketplace provider is provided.

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This information is as accurate as possible at the time of publication. Subsequent legislation, regulations, new state rulings and court decisions may affect its accuracy. For the latest information, please check the Taxation and Revenue Department’s web site at www.tax.newmexico.gov.

Determining if a seller is subject to gross receipts tax

In New Mexico, a tax is imposed on the gross receipts of an individual or business engaging in business in the state. The gross receipts tax is imposed on the seller, though the seller may, and frequently does, pass the tax on to the buyer. 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 are the 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 employed in New Mexico, from selling services performed outside New Mexico, the product of which is initially used in New Mexico, or from performing services in New Mexico. Gross receipts also include receipts sourced to this state and collected by a **marketplace provider** for sales that it facilitates for a **marketplace seller**, regardless of whether the marketplace seller is itself engaging in business in the state. (Section 7-9-3.5, NMSA 1978).

For an individual or business that lacks physical presence in this state, including a marketplace provider or marketplace seller, engaging in business means having at least \$100,000 of taxable gross receipts in the previous calendar year from sales, leases, and licenses of tangible personal property, sales of licenses, and sales of services or licenses for use of real property, sourced to New Mexico (Section 7-9-3.3 NMSA 1978). Taxable gross receipts are only those gross receipts that are not otherwise exempt or deductible. Therefore, anyone without physical presence in the state who had \$100,000 or more of receipts that were not exempt or deductible in the previous calendar year is engaging in business in the state, and its receipts from sales sourced to the state are subject to gross receipts tax.

Determination of the \$100,000 threshold is based on the previous calendar year, regardless of the taxable gross receipts in the current calendar year. Marketplace providers should recognize that their gross receipts include all receipts collected for the sales, leases and licenses facilitated for the marketplace seller that are sourced to this state, even if the payment received from the buyer is eventually paid or transferred to the marketplace seller. Gross receipts of a marketplace provider include the fees charged by the Marketplace provider to the Marketplace seller.

Please note that Section 7-9-7.1 NMSA 1978 provides that the Department is barred from taking gross receipts tax collection actions for tax periods prior to July 1, 2019 against a person engaging in business if that person lacked physical presence in the state and did not report taxable gross receipts prior to July 1, 2019.

Who are marketplace providers?

Marketplace providers are individuals or businesses that facilitate the sale, lease, or license of tangible personal property, or services or licenses for use of real property, on behalf of marketplace sellers, or on their own behalf. (Section 7-9-3(J) NMSA 1978). There are two requirements to be deemed a marketplace provider. First, the individual or business lists or advertises the transaction by any means, whether electronically through a website or through catalogs, television, radio, or physical means. Second, the individual or business facilitates the transaction “either directly or indirectly, through agreements with third parties collecting payment from the customer and transmitting that payment to the seller, regardless of whether the marketplace provider receives compensation or other consideration in exchange for the

marketplace provider's services." (Section 7-9-3(J) NMSA 1978).

All marketplace providers that determine they have met the threshold of \$100,000 in taxable gross receipts sourced to the state in the previous calendar year are engaging in business in New Mexico and will need to register with the Department to file and pay gross receipts tax.

Who are marketplace sellers?

Marketplace sellers are individuals or businesses that use marketplaces to sell to buyers. A marketplace seller sells, leases, or licenses tangible personal property or services or licenses the use of real property through a marketplace provider. The marketplace seller selling through the marketplace has gross receipts, even if the marketplace provider also has the same gross receipts from the sale and is paying gross receipts tax on those receipts. A deduction, however, is available for marketplace sellers that sell through marketplaces when the provider pays the gross receipts tax. More information about this marketplace seller deduction is provided later in this publication.

If an individual engages in business in New Mexico, either by the meeting the economic threshold of \$100,000 of taxable gross receipts in the previous calendar year, or by being physically located in New Mexico, the seller must register, report and pay New Mexico gross receipts tax. This includes not only a marketplace seller, but a marketplace provider that collects money on behalf of marketplace sellers in excess of \$100,000 taxable gross receipts in the prior calendar year. If a marketplace provider does not pay tax on the transaction, but the marketplace seller is engaged in business in New Mexico, the sale is still taxable and the marketplace seller will need to report and remit the tax on the sale.

Sellers using marketplaces to list and allow the use of real property in New Mexico should be aware that in addition to New Mexico gross receipts tax, their sales may be subject to other tax programs administered by municipalities such as lodgers' tax. Lodgers' tax is not a state tax and is not administered by the Taxation and Revenue Department. Sellers should contact the municipal or county government where the real property is located in order to learn whether this tax may apply.

Filing New Mexico gross receipts tax

Gross receipts tax is reported on the **TRD-41413**, *Gross Receipts Tax Return*. Taxpayers report their total gross receipts and any deductions that may be applicable on this return. Marketplace sellers that take the deduction for receipts from sales facilitated by a marketplace provider will report the receipts they deduct on the return. The gross receipts tax rate used for out-of-state taxpayers is currently 4.875%. Within the state, the tax rate varies based on location. More information can be found at <http://www.tax.newmexico.gov/governments/gross-receipts-location-code-and-tax-rate-map/>. The gross receipts tax return may be submitted electronically through the Department online filing system Taxpayer Access Point found at: <https://tap.state.nm.us/tap>.

Note: Effective July 1, 2021 New Mexico has moved to destination-based sourcing. This means that the gross receipts tax rate on the sale of property is based on the location where the property is received by the buyer. Previously, New Mexico used origin-based sourcing, meaning that out-of-state marketplace sellers and providers were required to use the out-of-state location and pay the out-of-state tax rate. More information on determining the correct gross receipts reporting location and tax rate for the sale of property, performing services, and other transactions can be found in FYI-200, *Gross Receipts Reporting Location and the*

Appropriate Tax Rate.

Gross Receipts Exemptions and Deductions

The Department provides numerous publications on the subject of New Mexico gross receipts tax. First among these is **FYI-105**, *Gross Receipts & Compensating Taxes – An Overview*, which provides a comprehensive summary of the tax program, how the tax rate is determined, as well as a list of exemptions and deductions that may be applicable to some taxpayers. It is available on the Department's website: <http://tax.newmexico.gov/forms-publications.aspx>.

Exemptions and deductions that may apply to marketplace sellers include:

- *Exemption: Isolated and occasional sale* - Exempted from gross receipts tax are the receipts from the isolated or occasional sale of or leasing of property or a service by a person who is neither regularly engaged nor holding themselves out as engaged in the business of selling or leasing the same or similar property or service (Section 7-9-28 NMSA 1978). Criteria for determining an isolated and occasional sale is found in Regulation 3.2.116.8 NMAC. A marketplace seller who has questions about whether a sale may qualify for this exemption may email the Tax Information and Policy Office at policy.office@state.nm.us.
- *Deduction: Marketplace seller* - A marketplace seller may deduct receipts for sales, leases and licenses of tangible personal property, sales of licenses and sales of services or licenses for use of real property that are facilitated by a marketplace provider; provided that the marketplace seller obtains documentation from the marketplace provider indicating that the marketplace provider is registered with the Department and has remitted or will remit the taxes due on the gross receipts from those transactions. (Section 7-9-117 NMSA 1978). This deduction can also be taken against governmental gross receipts tax for governmental entities that sell through a marketplace provider.

Marketplace sellers required to file a gross receipts tax return may take the deduction on the same return in which they report their receipts, the **Form TRD-41413**, *Gross Receipts Tax Return*. If all receipts of the marketplace seller are deductible, the result will be that no tax is owed by the seller, though the reporting is still required. **Note:** It is still important for the marketplace seller to file a timely return when required or late filing penalty will be assessed.

Supporting Documentation

The marketplace seller or marketplace provider responsible for reporting and paying the gross receipts tax should retain documentation to establish that a deduction or exemption applies to a sale in the case of a subsequent audit.

In order to support the deduction for receipts for sales facilitated by a marketplace provider, the marketplace seller must obtain documentation from the marketplace provider indicating that the provider is registered with the Department and has remitted, or will remit, the taxes due on the gross receipts from the transactions being deducted. Marketplace sellers are responsible for providing accurate information to marketplace providers to facilitate the collection by the marketplace providers of the correct amount of tax. (Section 7-9-5(C) NMSA 1978). Both the marketplace provider and the marketplace seller should retain records of all sales facilitated by any marketplace provider sufficient to show that the correct amount of gross receipts tax was

collected. **Form TRD-31117**, *Marketplace Provider Data Sharing Agreement*, allows a marketplace provider to report to the Department a list of marketplace sellers it is currently facilitating sales for and paying gross receipts tax on those sales. This form may be found on the Department's Forms & Publications webpage (see the link below) in the folder Business Taxes/Business Registration/Tax Collection Agreements.

Buyers who make purchases from marketplaces who need to issue a nontaxable transaction certificate (NTTC) will execute the certificate to the marketplace provider, who would normally pay the gross receipts tax and pass it onto the buyer. The publication **FYI-204**, *Nontaxable Transaction Certificates (NTTCs)* provides useful information on the topic of supporting documentation and what is accepted by the Department. This publication and others, as well as forms can be located on the Department's Forms & Publications webpage found here: <http://www.tax.newmexico.gov/forms-publications.aspx>.

TAXPAYER INFORMATION

The Department offers a variety of taxpayer information. Some information is free and other information must be purchased.

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 Departments 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>.

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>

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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.