

## Chapter 13

### STATE-COLLECTED, LOCALLY-SHARED TAXES AND FEES

A majority of the revenues municipalities use to operate comes from state-collected taxes and fees, certain portions of which are distributed to municipalities and some of which are restricted to specific uses.

#### GROSS RECEIPTS TAXES

Gross receipts tax is not a sales tax. It is a tax placed on businesses in the state for the privilege of doing business in New Mexico. It is based on the total (gross) receipts of the business. Businesses are not required by law to pass this tax on to their customers; however, by common practice, businesses do pass this tax on to the consumer.

The gross receipts tax is a tax on persons engaged in business in New Mexico for the privilege of doing business in New Mexico. The tax is imposed on the gross receipts of persons who:

1. Sell property in New Mexico;
  - Property includes real property; tangible personal property, including electricity and manufactured homes, licenses (other than the licenses of copyrights, trademarks, or patents) and franchises.
2. Perform services in New Mexico;
  - Service includes construction activities and all construction materials that will become part of the construction project.
3. Lease or license property employed in New Mexico;
4. Grant a right to use a franchise employed in New Mexico; or
5. Sell research and development services performed outside New Mexico when the product of the service is initially used in New Mexico.

The total gross receipts tax is paid to the state. The state keeps its portion and distributes the counties' and municipalities' portions to them.

The state's portion of the gross receipts tax, which is also the largest portion of the tax, is determined by state law. Changes to the state rate occur no more than once a year, usually in July.

Municipal councils determine the municipalities' portion of gross receipts tax. Like the counties, changes can go into effect in January and July of every year.

Because the combined gross receipts tax rate can change effective January and July of every year, a new tax rate schedule is issued twice a year and included in it the CRS-1 Filer's Kit. You can also view the tax rate schedule online at <http://www.tax.newmexico.gov/gross-receipts-tax-historic-rates.aspx>.

Always check the gross receipts tax rate schedule to see if the rate for your business location(s) has changed. Due to the frequency of tax rate changes, the Department does not send out separate notices of changes.

A governmental gross receipts tax of 5% is imposed on the receipts of New Mexico state and local governments (except public school districts and hospitals) from:

1. The sale of tangible personal property, other than water, from facilities open to the general public;
2. The performance of or admissions to recreational, athletic or entertainment services or events in facilities open to the general public;
3. Refuse collection, refuse disposal, or both;
4. Sewage services;
5. The sale of water by a utility owned or operated by a county, municipality or other political subdivision of the state, and
6. The renting of parking, docking or tie-down spaces or the granting of permission to park vehicles, tie-down aircraft or dock boats (7-9-4.3).

Each entity that collects this Gross Receipt tax is required to report to the state and pay the 5% amount collected. This reporting is done in the [www.tap.state.nm.us](http://www.tap.state.nm.us) website for monthly reporting. All other business is subject to the Gross Receipt tax rate of the entity in which the business is being conducted.

### **Exemptions From Governmental Gross Receipts Tax**

Receipts subject to one of the following taxes are exempt from governmental gross receipts tax: gross receipts tax; compensating tax; motor vehicle excise tax; gasoline tax; special fuel supplier's tax; the oil and gas emergency school, severance, conservation and ad valorem taxes; resources tax; processors tax; service tax; event center surcharge (7-9-13.5); stadium surcharge (7-9-13.3); athletic facility surcharge (7-9-41.1) or the boat excise tax (7-9-13.2). In addition, receipts from the sale of livestock or unprocessed agricultural products are exempt (7-9-18).

A business in the State of New Mexico reports to the Taxation and Revenue Department the total gross receipts collected for the period being reported and pays to the Department the total state and local taxes on those gross receipts. The report is submitted monthly, quarterly, semi-annually or annually, depending upon the amount of the taxes owed. This report and tax payment is due at Taxation and Revenue by the 25th of the month following the close of the reporting period.

Taxation and Revenue then divides the total amount into the state's share, the municipality's share, the county's share and the portion of state gross receipts tax that the state shares with municipalities. These amounts are distributed to the proper entities by the 25th of the following month.

### **Business Location Determines Tax Rate**

Generally, the gross receipts tax rate is based on the business location of the seller or lessor, **NOT** on the location of the buyer or lessee. If your business is located in Albuquerque and you deliver or lease to someone in Santa Fe, you are liable for tax at the Albuquerque rate.

For reporting purposes, business locations are broken down by county, municipality, tribal entity or district on the tax rate schedule. Here are some guidelines for determining your business location.

1. If you are in the construction business, your tax rate is determined by the location of each construction project. Always check with your Engineer or Project manager to make sure the project is being reported in your entity or it is possible you could lose the GRT for that particular project.
2. If you are in the business of selling real estate, your business location is the location of each property sold.

3. If you are a utility, your tax rate is determined by the location of the meter used to record the amount of service consumed by the customer or the location of the telephone set. For cellular service, it is the location of the customer's place of primary use.
4. If you are located in a municipality within a county, your rate is that of the municipality.
5. If you are outside any incorporated municipality, your rate is that of the county.
6. If you have more than one store within one municipality or county, e.g., three stores in Las Cruces, you have only one business location (Las Cruces) for reporting purposes.
7. If you have no business location in New Mexico but you have a resident salesperson, your business location is the location of the salesperson.
8. If you have no business location or resident salesperson but are liable for gross receipts tax (for instance, because you lease property used in New Mexico or perform a non-construction service in New Mexico), you are liable for tax at the rate for out-of-state businesses, the state gross receipts tax rate of 5.125%. Use the out-of-state business location code, 88-888.
9. If you have multiple business locations under one identification number, you should report the receipts for each location separately on a single CRS-1 Form and be sure the tax rate matches the location by checking the gross receipts tax rate schedule.
10. If you are a craftsperson who sells at craft fairs where you rent a booth, because you can be expected to be found at the booth for the duration of the fair, that booth is a business location and your tax rate is based on the location of the crafts fair.

It is a very simple system — if everyone reports and sends their payments to Taxation and Revenue on time. When there is a lag in reporting or paying, the state, municipality and county do not receive the correct amount. When you consider that municipalities depend on gross receipts taxes for approximately 70% of their budget, it may mean the difference between paying or not paying the municipality's bills.

The receipts from this state distribution may be used for general purposes or all or a portion may be dedicated by the governing body to specific uses.

Municipalities may also enact municipal gross receipts taxes this is done on January or July. The process for enacting tax rates can be found at NM Taxation and Revenue, it is good practice to have all your tax ordinances pre-approved by NM Taxation and Revenue before you start the process to ensure you do not miss a step for the process of the Ordinance approval.

Counties may also impose a general purpose gross receipts tax of up 3/8%, plus up to 1/4% for fire protection, 1/8% for county hospitals, 1/8% for county environmental services, and 1/4% for regional transit, making a potential total County gross receipts tax of 1.0125%.

The aggregate of these state and local taxes accounts for the varying gross receipts tax rates throughout the state, depending on which entity has enacted which portion of their total gross receipts tax authority.

For more information on these taxes please visit <http://realfile.tax.newmexico.gov/FYI-105%20-%20Gross%20Receipts%20&%20Compensating%20Taxes%20-%20An%20Overview.pdf>

## **COMPENSATING TAX**

Compensating tax is an excise tax imposed on persons using property or services in New Mexico (7-9-7). Compensating tax is designed to protect New Mexico businesses from unfair competition from out-of state businesses not subject to gross receipts tax.

"Use" means use, consumption or storage other than storage for subsequent sale in the ordinary course of business or storage for use solely outside New Mexico (7-9-3[N]). See Regulation 3.2.1.30 NMAC for further clarification of the definition of "use" being used in a nontaxable manner are subject to the compensating tax (7-9-7).

- Example: A contractor issues NTTCs to subcontractors for the purchase of construction services which he uses to build a house. Instead of selling the completed house, the contractor moves into it. Because the contractor has converted the house to his own use, he is liable for compensating tax on the value of the construction services he purchased with NTTCs.

Compensating tax is similar to gross receipts; however, it is imposed for the use of tangible personal property within the State of New Mexico on which gross receipts have not been imposed. Examples would be property manufactured by the person using the property or property acquired outside the state which, if acquired inside the state, would have been subject to gross receipts tax.

A portion of the compensating tax is distributed to municipalities through the Small Cities Assistance Act, by a formula, and only to municipalities under 10,000 population. A small portion is also distributed to all municipalities in proportion to their municipal gross receipts taxes.

## **CIGARETTE TAX**

Vetoed by the Governor March 24, 2010 (7-1-6.11)

## **GASOLINE TAX**

The State of New Mexico collects a gasoline tax of \$0.17 cents on each gallon of gasoline and \$0.21 for special fuels such as diesel-engine fuel and kerosene used for generation of power or propelling a motor vehicle. The distribution is based upon the total tax collected by each municipality. This amount is generated based on the proportion of motor fuel sold in each municipality to the total sold in all municipalities (§ 7-1-6.9)(7-16A-3 NMSA 1978).

Each month Department of Finance and Administration issues a check to your entity based on these reports for the municipality's portion of this tax. This tax may be used only for streets, roads, bridges and mass transit; municipalities with a population of less than 3,000 may also use the tax for general purposes.

## **MOTOR VEHICLE FEES**

A portion of the motor vehicle fees collected by the State of New Mexico is returned to the municipalities (§ 66-6-23.1A(4)). A percentage of these revenues must be used for construction, maintenance and repair of streets within the municipality and for payment of paving assessments against federal, city, county and municipally owned property. In addition, municipalities that operate a motor vehicle field office receive a payment from the State for each driver's license, identification card

or registration issued and for each title transaction performed and, except in Class A counties, for each administrative fee collected (§ 66-6-23A). Although these funds may be used for general purposes, most municipalities use them for the expenses of operating the motor vehicle field office.

### **FIRE FUND DISTRIBUTION**

A portion of the state's Fire Protection Fund is distributed to each municipality for fire protection use. The amount is set by a formula using the number of fire stations, fire insurance rating and need, as determined by the Superintendent of Insurance (§ 59A-13-1 through 59A-13-17). It is to be used only for restricted fire protection expenses which include training and equipment and cannot be used to pay any salaries.

### **LAW ENFORCEMENT PROTECTION FUND**

This is a state grant for police departments. It is to be used only for restricted police department expenses (§§ 29-13-1 through 29-13-9).

Additional information is available at

[http://www.nmdfa.state.nm.us/Law\\_Enforcement\\_Protection\\_Fund.aspx](http://www.nmdfa.state.nm.us/Law_Enforcement_Protection_Fund.aspx)

The same processes apply to both the Fire Protection Funds and the Law Enforcement Protection Funds.

### **SMALL CITIES ASSISTANCE FUND**

This is a state grant to municipalities under 10,000 population that is distributed annually. The funding formula is found in §§ 3-37A-1 through 3-37A-3. The funds come from the compensating tax and can be deposited in the General Fund and used for general purposes.

### **EMERGENCY MEDICAL SERVICES FUND**

This is a state grant for emergency ambulance medical services. It is to be used for only restricted ambulance expenses (§ 24-10A-7).

### **GRANT FUNDING OPTIONS:**

There are various types of grant funds which may be allocated to municipalities after application, hearings and approval. Most grant funds are used for capital projects and are normally restricted for use. Care must be taken in receipting and spending these funds because errors can result in a municipality's not receiving its total allocation or having to pay back all or a portion of the grant.

A number of grants and loans are available through the state:

- NMED Construction Programs Bureau -Wastewater Facility Construction Loans (§ 74-6A-7)
- NMED Construction Programs Bureau -Rural Infrastructure Fund (§§ 75-1-1 through 75-1-6)
- NM Department of Transportation Highway Cooperative Fund (§ 67-8-23)
- NM Department of Transportation-Municipal Arterial Program (§ 67-4-19)

Many other programs offer grant and loan opportunities such as:

[www.nmfa.net](http://www.nmfa.net) Water Trust Board, Drinking Water Revolving Loan Fund, Colonias Funding Programs  
<https://www.env.nm.gov/> NM Environment Department water, wastewater, and solid waste funding  
<http://www.nmprc.state.nm.us/state-firemarshal/index.html> Annual Fire Grant

[http://www.nmdfa.state.nm.us/CDBG\\_Information\\_1.aspx](http://www.nmdfa.state.nm.us/CDBG_Information_1.aspx) Community Development Block Grants (CDBG) are federal grants available for municipalities that are administered by the Department of Finance and Administration, Local Government Division.