

Sales/Use/Indirect:

New Mexico: Payroll Services Performed Out-of-State Deemed Incidental to Taxable In-State Employment Services

Case No. A-1-CA-40686, N.M. Ct. App. (4/29/24). In a case involving an out-of-state employment agency that served as the employer of New Mexico-based contractors hired for a third-party company and which also performed certain payroll services for the third-party company from outside New Mexico, the New Mexico Court of Appeals (Court) held that the employment agency was responsible for assessed New Mexico gross receipts tax (GRT) on reimbursed amounts from the third-party company for the prior tax periods at issue (*i.e.*, for the periods from January 31, 2013, to April 30, 2019), including on the markup fees received for the payroll services it performed. In doing so, the Court reasoned that the payroll services performed by the agency outside New Mexico were incidental to its employment of the contractors in New Mexico – that is, the agency employed contractors who performed services in New Mexico and the consumption of the out-of-state payroll services was by those same in-state employees – and thus the reimbursed amounts were subject to the GRT. Under the facts, the contractors were paid by the employment agency and the third-party company would then reimburse the employment agency for those same amounts plus a markup fee. The Court also held that because the agency was *not* a disclosed agent under N.M. Stat. Ann. section 7-9-3.5(A)(3)(f), it was responsible for the assessed GRT and did not qualify for exemption. Please contact us with any questions.

URL: <https://coa.nmcourts.gov/wp-content/uploads/sites/43/2024/04/April-29-2024-Talbridge-Corporation-v.-New-Mexico-Taxation-Revenue-Department-No.-A-1-CA-40686.pdf>

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