

Sales/Use/Indirect:

New Mexico: Ruling Addresses Gross Receipts Taxability and Sourcing of Marketplace Provider's Various Fees

Ruling No. 401-24-03, N.M. Tax'n and Rev. Dept. (12/11/24). In a ruling involving a marketplace provider that offers a wide range of products and services to marketplace sellers and buyers, the New Mexico Taxation and Revenue Department (Department) addresses several New Mexico gross receipts tax (GRT) issues, including:

URL: <https://klvg4oyd4j.execute-api.us-west-2.amazonaws.com/prod/PublicFiles/34821a9573ca43e7b06dfad20f5183fd/f741e0bf-7118-4b51-b97a-2950fb9f8b0d/401-24-3.pdf>

- Whether select charges for the shipment of customer return packages constitute a deductible transportation service under state law;
- Whether various fees that were taxed as part of the associated sale of tangible personal property are subject to the GRT;
- Whether certain marketplace seller fees must be sourced to the location of the seller based on the address that the marketplace provider maintains in its books and records;
- Whether certain seller fees that are deducted from the associated sale of tangible personal property are subject to the GRT; and
- Whether certain warehouse fees constitute deductible receipts from storage and shipping.

Among other topics in its analysis, the Department explains that fees a marketplace provider receives as compensation for listing an item or service sold by a marketplace seller are considered receipts from providing a service and therefore are included in the gross receipts reported by the marketplace provider. However, "if the fee is a percentage of the receipts, or a flat fee, received from the buyer, this amount would already be included in the reported gross receipts received from the buyer and would therefore not need to be reported again by the marketplace provider." In this respect, "only when the fee is charged as a separate transaction in addition to the sale would the marketplace provider report the receipts as a separate transaction." With respect to sourcing certain marketplace seller fees, the ruling concludes that they must be sourced to the location of the performance of such services – in this case, to the location of the marketplace seller based on the address the marketplace provider maintains in its books and records. Please contact us with any questions.

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