

New Mexico Tax Bites

Tax and motor vehicle news from the 47th State

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Regulations Help Clarify Tax Holiday Deductions for Retailers

Participating retailers are gearing up their cash registers and New Mexicans need to start thinking about back-to-school shopping as the second annual gross receipts tax holiday comes into view.

Designed as a competitive response to surrounding states that already had enacted sales tax holidays, as well as a tax break to soften the blow of buying new school clothes and supplies, the holiday is broad enough to benefit buyers who do not have school-aged children.

Most kinds of clothing and footwear may be purchased tax-free from participating stores, as long as the article is sold for less than \$100.00. Special clothing or footwear designed primarily for athletic activity or protective use are excluded from the deduction, which is offered by Section 7-9-95 NMSA 1978. Accessories, including jewelry, handbags, luggage, umbrellas, wallets, watches and similar items are also not included in the gross receipts tax deduction.

School supplies included in the tax holiday are those items normally used by students in a standard classroom for educational purposes. These are such items as notebooks, paper, writing instruments, crayons, art supplies, rulers, book bags, backpacks, handheld calculators, maps and globes. Desktop, laptop or notebook computers sold for \$1,000 or less are included, as are an associated monitor, speaker or set of speakers, printer, keyboard, microphone and mouse sold for \$500.00 or less.

A list of deductible items is available on our web site at www.state.nm.us/tax, along with FYI-203, which explains the tax holiday in detail. Those publications may be accessed through a direct link on the home page or by clicking on "Publications" on the "Resources" menu, then scrolling down to "Gross Receipts and Compensating Taxes."

Regulations have been enacted by TRD since last year's holiday to clarify the application of the law to specific types of sales. For example:

- Articles normally sold as a unit must be

sold that way during the tax holiday period. They cannot be priced separately and sold as individual items to qualify for the deduction.

- Receipts from qualified purchases of tangible personal property made with a "rain check" during the tax holiday period are deductible.
- If the final payment on a layaway plan and delivery of merchandise occur during the tax holiday, the receipts from that sale are deductible.
- Exchanges of deductible merchandise made after the tax holiday remain deductible if there is no additional charge for the exchange.
- Qualified items sold by mail, telephone, e-mail and Internet to buyers with a New Mexico billing address qualify for the tax holiday deduction if the item is both delivered and paid for during the tax holiday, or the customer orders and pays for the item and the seller accepts the order during the tax holiday for immediate shipment, even if delivery of the item is made after the tax holiday period.
- Retailers claiming the tax holiday deduction must maintain in their records the type of item sold, the date sold and sales price of deductible merchandise sold during the holiday.

TRD's Tax Research Bureau estimates last year's tax holiday deductible receipts at between \$45 million and \$84 million. The amount is difficult to pinpoint because only 70 taxpayers of several thousand potential retailers reported the details of their tax holiday deductions to TRD.

The tax holiday saved New Mexico taxpayers from \$3.1 million to \$5.8 million. The revenue loss to the state was from \$1.8 million to \$3.4 million, while cities and counties lost from \$1.3 million to \$2.4 million. ■

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New Laws Take Effect on July 1

Many of the legislative changes enacted by the 2006 New Mexico Legislature became effective on July 1.

On page 4 you will find a roundup of what's new in tax law.

From Secretary Jan Goodwin...

Putting a Better Face on MVD

TRD's Motor Vehicle Division (MVD) is the face of state government for most of our citizens; something we take very seriously at all levels of the MVD. Our number one priority is safeguarding the vital records of our citizens, whether it is a driver's license or title registration to a vehicle. We have strengthened the role of our internal audits, as well as our Internal Investigations Team. All transactions by MVD employees are audited and our computer systems are set up so that there is a record of all employee transactions.

During the past three years, the MVD has had many successes. A big success has been in reducing wait times at our field offices. In 2005, the 34 minute average wait time has been reduced to 21 minutes. During the last two and a half months, wait time is down even further to 17 minutes. MVD has created brochures about transaction requirements for title and registration, driver's license, DWI interlock devices, commercial vehicles and our Drive Insured program. These brochures are available in English and Spanish. Posters have been designed to help customers understand title and registration requirements, as well as the Drive Insured program, and to encourage customers to use self-service kiosks and other MVD options. We are focusing on responding

to the needs of our field offices and obtaining pay increases to encourage employees to stay with MVD, thereby helping reduce the number of vacancies.

All of our citizens are further served, thanks to the success of the Drive Insured program. The Drive Insured program has reduced New Mexico's uninsured motorist rate from 33% (the highest in the nation) to 13.5%, a rate below the national average of 14%. Efforts are underway to redesign the MVD website, making it easier to conduct business ON-LINE instead of IN-LINE.

Despite some impressive successes, we are looking for additional ways to improve the Motor Vehicle Division. Outstanding customer service, reduced wait times, expanded hours and improved communications with the public, are top priorities for your MVD.

There are many challenges currently facing MVD, as well as most government agencies. We have a strong team in place and will work hard to accomplish the goals we have set for ourselves. Our customers are the citizens of this state. You deserve the best service, and MVD is doing its part to move New Mexico forward. ■

New System Boosts Tax Collections

TRD's new automated system for identifying potential audit candidates and performing tape matches gives the department a much more effective tax compliance tool than the manual processing used in the past.

The department has purchased the DiscoverTax system from Revenue Solutions, Inc., to help streamline processes, produce higher quality results, identify additional non-compliant taxpayers, and identify mismatches faster. The new compliance data warehouse has software which can match data from many sources to find discrepancies, calculate taxes, generate cases, and perform numerous other functions.

In addition to tracking and matching data, the data warehouse also generates correspondence to non-filers and to taxpayers with noted discrepancies in their informa-

tion.

Sources of information for the data warehouse currently include information from within TRD records, including data from the Motor Vehicle Division, along with data provided by the Internal Revenue Service. The data will expand in the future to include information from the New Mexico Department of Labor and other sources.

According to Joel Matek, data warehouse manager, there is an "aggressive plan" to begin new projects using this system, some of which have never been done in New Mexico. Using three projects that have already been implemented, he reports that TRD has collected over \$3 million to date. That is about twice the amount collected in previous tax years by the same projects using manual methods. ■

Automating tax compliance processes and adding a tax data warehouse has doubled the amount collected through three TRD projects.

TRD Proposes Regulations to Address Cigarette Tax Act Questions

In response to members of the tobacco industry, TRD is proposing regulations to reduce the uncertainties raised by the 2006 New Mexico Legislature's revision of the Cigarette Tax Act. TRD also is developing legislative changes for introduction in next year's Legislature.

A public hearing on the proposed regulations will be held on August 23, 2006. Hearing details, and the full text of the regulations, are posted under "Public Events" on the "Resources" menu of TRD's web site at www.state.nm.us/tax.

As a result of House Bill 617, enacted in 2006, cigarette distributors and manufacturers must obtain an annual license from TRD and meet new reporting, record-keeping and cigarette stamping requirements. Small cigars were brought under the Cigarette Tax Act, and more consequential penalties for violations also were added (for details, please see "Big Changes for Cigarette Taxpayers" in the April-June, 2006, edition of *Tax Bites*).

To help determine what constitutes a "small cigar" subject to the provisions of this Act, the 11 proposed new regulations include a definition of a small cigar as a roll of tobacco or any substitute for tobacco wrapped in paper or in anything that is not 100 percent tobacco and weighs less than three pounds per thousand (Regulation 3.9.1.7).

Section 7-12-4 NMSA 1978 exempts from the cigarette tax sales of cigarettes to the governing body or to any enrolled tribal member licensed by the governing body an any Indian nation, tribe or pueblo for use or sale on that reservation or pueblo grant. Proposed Regulation 3.9.1.9 clarifies the documentation required to substantiate the issuance of a tribal license as: "Any documentation showing that a governing body or, if the governing body has delegated the licensing function to an administrative agency, the appropriate administrative agency, has authorized the enrolled tribal member to use or sell cigarettes on that tribe's reservation or pueblo grant is sufficient to claim the exemption under Section 7-12-4 NMSA 1978."

The documentation required to substantiate the sale of cigarettes to exempt entities under Section 7-12-4 is addressed by proposed Regulation 3.9.1.10, which specifies:

- For sales to the United States government or to an agency or instrumentality of that

government, and sales to the State of New Mexico or any of its political subdivisions, the distributor must keep documentation related to the sale showing the governmental entity's name (such as purchase orders, copies of checks issued in payment and contracts related to the cigarettes sold);

- For sales of cigarettes to a tribal government for use on that tribe's territory, the distributor must obtain a statement to that effect attested to by a tribal official; and
- For sales of cigarettes to a tribal member authorized by that tribe to sell cigarettes on the tribe's territory for use or sale on that tribe's territory, the distributor must obtain a statement signed by the buyer, or from the tribe on the buyer's behalf, that the buyer is an enrolled tribal member. The distributor also must obtain documentation attested to by a tribal official that the buyer is authorized to sell or use cigarettes on the tribe's territory and a written affirmation from the buyer that the cigarettes are being bought for use or sale on that tribe's territory.

Regulation 3.9.1.11 states that packages of cigarettes will be considered contraband subject to penalties, unless a package has at least 60 percent of the stamp visible, including the entire serial number.

The minimum order for cigarette stamps would be 1,500 and the maximum order for tax-exempt stamps would be 15,000 under proposed Regulation 3.9.1.12.

Every application for a cigarette distributor's or manufacturer's license, including annual renewals, would be subject to a \$100.00 fee (Regulation 3.9.1.13) and a cigarette retailer having in its possession cigarettes determined by TRD to have been purchased from a source other than a licensed distributor may be subject to penalties (Regulation 3.9.1.14).

The new schedule of civil penalties would be provided in Regulation 3.9.1.15 and Regulation 3.9.1.16 would set the due date for the Cigarette Distributor's Monthly Report and the Cigarette Manufacturer's Monthly Report as on or before the 25th day of the month after the reporting period. Regulation 3.9.1.17 would require a cigarette distributor who ships cigarettes outside New Mexico to report the quantity shipped for each report period, using the Schedule C form as an attachment to the Cigarette Distributor's Monthly Report. ■

FALSE & FRAUDULENT MANUFACTURING LABELS

"Product labels on packages of cigarettes, including small cigars, that are in compliance with federal requirements are not false and fraudulent manufacturing labels for purposes of the Cigarette Tax Act."

— Proposed TRD Regulation 3.9.1.18

New 2006 Laws Take Effect on July 1

Along with the new fiscal year on July 1 comes the effective date for many laws enacted by the 2006 New Mexico Legislature.

Among these are legislative changes dealing with the personal income tax and gross receipts tax programs that New Mexico depends on for the lion's share of its revenues.

As of July 1, TRD must send a notice of offset to a taxpayer whose refund is used to pay a tax liability. The taxpayer is entitled to interest until the tax liability is credited with the refund amount.

Regarding gross receipts tax, to clarify that receipts from licensing property for use in New Mexico are taxable, the definition of "gross receipts" in Section 7-9-3.5(A) NMSA 1978 is revised, in part, to mean: "the total amount of money or the value of other consideration received from selling property located in New Mexico, from leasing or licensing property 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...."

Further, the description of property to which the gross receipts tax applies is changed from "property in New Mexico" to "property located in New Mexico." The changes in language are intended to strengthen the state's authority to tax receipts from sales of property, such as licenses, located in New Mexico at the time of sale.

Receipts of certain counselors and therapists paid by managed health care providers such as HMOs and by health care insurers for contract services and Medicare Part C services became deductible this July 1. Acting to expand the pool of practitioners originally qualified to take the gross receipts tax deduction offered by Section 7-9-93 on January 1, 2005, the Legislature extended that statute to include professional mental health counselors, marriage and family therapists and professional art therapists who have obtained a master's or doctorate degree and are licensed pursuant to the Counseling and Therapy Practice Act, and independent social workers licensed pursuant to the Social Work Practice Act. To qualify for the deduction, the receipts must not be deductible under another provision of the Gross Receipts and Compensating Tax Act and the services must be within the scope of practice of the service provider.

Two new gross receipts tax deductions became effective for receipts from speci-

fied sales to a foundation or nonprofit organization for use in building a sold community provider hospital that is located in a federally-designated health professional shortage area. One deduction is for receipts from sales of engineering, architectural and construction services. The other deduction is for receipts from sales of construction equipment or construction materials used in new facility construction of such a hospital. The deductions may only be taken if the foundation or nonprofit organization has made a written agreement with a county to pay at least 95 percent of the construction costs and executes an appropriate nontaxable transaction certificate or delivers evidence that such a written agreement has been made.

Bernalillo County officials may now enact an ordinance imposing an additional one-sixteenth percent increment of county health care gross receipts tax. The revenue from the additional increment must be dedicated to the support of indigent patients. The imposition of the additional increment must be for a period ending no later than June 30, 2009.

Film production companies now may benefit from a five percent increase in the rate of the Film Production Tax Credit. The credit was boosted from 15 percent to 20 percent for all film projects in tax years beginning before January 1, 2009. The additional five percent tax credit amount is not available with respect to expenditures attributable to a production for which the film production company receives a tax credit pursuant to the federal new markets tax credit program. The New Mexico Filmmaker Tax Credit (Section 7-2G NMSA 1978) is repealed.

School bus contractors may obtain a refund of tax paid on special fuel used to propel a vehicle authorized by contract with a public school district or with the Public Education Department. Previously, the tax on special fuel used to power school buses could be refunded only if the buses were operated under contract with the New Mexico Public Education Department.

Other laws now effective allow TRD to use funds in the Weight Distance Tax Identification Administration Permit Fund for enforcing weight distance tax identification permits, as well as for paying the costs of issuing and administering such permits, and change the statutes governing the reporting, locating and disposing of abandoned property. ■

Many of the tax laws enacted by the New Mexico Legislature in its January/February session became effective on July 1. Here's a rundown of what's new.

REGULATIONS

After public hearings, these regulations were filed by TRD:

3.2.241.9 NMAC
(Receipts from Third-Party Claims Administrators);
3.2.241.11 NMAC
(Receipts of Administrative Services Not Deductible);
3.2.241.12 NMAC
(Receipts Not Deductible Under Section 7-9-93 NMSA 1978);
3.2.241.13 NMAC
(Receipts of Corporate Practice);
3.2.241.14 NMAC *(Valid Certificate of Compliance Required);*
3.2.241.15 NMAC *(Self-Insurance May Be "Managed Health Care Providers");*
3.2.241.16 NMAC
(Payments from Workers Compensation);
3.2.241.17 NMAC
(Receipts of Health Care Facilities Not Deductible);
3.2.241.18 NMAC
(Receipts from "Medigap" Insurance Policies Not Deductible).

This regulation is under review by the New Mexico Attorney General:

3.2.241.10 NMAC *(Receipts from Insurance Companies Pursuant to Contracts with Independent Practice Organizations).*

Public hearings were scheduled on July 19 for five Motor Vehicle Code regulations, on July 20 for a Property Tax Code regulation relating to the special method of valuation for land used primarily for agricultural purposes and on August 23 for 11 regulations pertaining to the Cigarette Tax Act. For details of the proposed regulations, please visit "Public Events" on the "Resources" menu on the home page of our web site at www.state.nm.us/tax.

FREE CRS WORKSHOPS

July-September, 2006

Albuquerque: July 11, 18 and 25*, 505/841-6200
August 1, 8, 15 and 22*, September 5, 12, 19 and 26*
Santa Fe: July 11, August 8, September 12 505/827-0951
Las Cruces: July 18, August 15, September 19 505/524-6225
Farmington: August 10 (1:00 p.m. to 4:30 p.m.) 505/599-9701

* Workshops for businesses that are new employers.

All free workshops are about 3 hours' duration. Call to reserve a place and verify time and location. Telephone numbers are for district offices or satellites.

The complete 2006 CRS workshop schedule is available on our web site at www.state.nm.us/tax. You will find the schedule by clicking on "Public Events" under "Resources" on the home page.

To Contact Us

Main Office Telephones

All telephone numbers use the 505 AREA CODE. Also see district office numbers above, under "Free CRS Workshops."

Main Switchboard: 827-0700
Motor Vehicle Division: 827-2296
Audit & Compliance Division: 827-0900
Revenue Processing Division: 827-0800
Admin. Services Division: 827-0369
Property Tax Division: 827-0870
Office of the Secretary: 827-0341

Tax Information & Policy:
827-0908, 0679, 2588, 0928, 2523

Office of Inspector General:
841-6580 (Alb.) 476-1510 (S.F.)

Tax Fraud Investigations Division:
841-4731 (Alb.), 476-1748 (S.F.)

New Mexico Tax Fraud Hotline:
1-866-457-6789

Satellite Office Telephones

Alamogordo 505/437-2322
Carlsbad 505/885-5616

Clovis 505/763-5515
Hobbs 505/624-6065
Silver City 505/388-4403

Mail

New Mexico Taxation & Revenue Dept.
P.O. Box 630
Santa Fe, NM 87504-0630

Street Addresses

For the street address of your nearest district office call either TRD's main switchboard at 505/827-0700 or the appropriate number shown on the CRS workshop calendar above.

For other New Mexico agencies check the state web site at www.state.nm.us.

E-mail

policy.office@state.nm.us

TRD Web Site

www.state.nm.us/tax

Fax

Tax Information & Policy 505/827-0331