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Governor

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Office of the Secretary

August 9, 2022

DIVISIONS

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Administrative Services
(505) 827-0369
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(505) 827-2296
Property Tax
(505) 827-0870
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(505) 827-0800
Tax Fraud Investigation
(505) 841-5578

Enclosed is the following proposal:

The New Mexico Taxation and Revenue Department hereby gives notice as required under Section 14- 4- 5.2 NMSA 1978 and 1.24.25.11 NMAC that it proposes to amend, repeal and replace, repeal and adopt the following rules as authorized by Section 9-11-6.2 NMSA 1978:

Purpose: The proposed rules are being enacted, amended, repealed, and repealed and replaced to align with current law and provide guidance on digital advertising, treatment off cannabis under certain rules, as well as removing outdated language about reimbursed expenditures.

Summary of Proposed Changes: The New Mexico Taxation and Revenue Department proposes to amend/repeal/replace/adopt the following rules:

Gross Receipts and Compensating Tax Act

(Gross Receipts – Receipts of Agents)

3.2.1.19 NMAC Section 7-9-3.5 NMSA 1978

(Definitions)

3.2.106.7 NMAC Section 7-9-18 NMSA 1978

(Cannabis)

3.2.106.15 NMAC Section 7-9-18 NMSA 1978

(Definitions)

3.2.213.7 NMAC Section 7-9-55 NMSA 1978

(Broadcasting and Related Advertising)

3.2.213.9 NMAC Section 7-9-55 NMSA 1978

(Receipts of a Digital Platform that Displays Digital Advertising)

3.2.213.13 NMAC Section 7-9-55 NMSA 1978

Tax Administration Act

(Reporting According to Business Location)

3.1.4.13 NMAC Section 7-1-14 NMSA 1978

Hearing Date: Notice of public rule hearing: A public hearing will be held on the proposed rule changes on September 8, 2022 at 10:00AM through the internet, email, and telephonic means.

Technical Information: No technical or scientific information was consulted in drafting these proposed rule changes.

Public Hearing Location: The Public Hearing will be accessible via Zoom <https://us02web.zoom.us/j/84355521638?pwd=SnViVIRaUjU2amwrSxNUN2NDUENsUT09> or by telephone by dialing 1 346 248 7799 Meeting ID: 843 5552 1638 Passcode: 543446. Any oral comments made during this hearing will be recorded and any electronic written comments can be submitted during the hearing at policy.office@state.nm.us.

How to participate: Individuals with disabilities who need any form of auxiliary aid to attend or participate in the public hearing are asked to contact Alicia Romero at Alicia.Romero@state.nm.us. The Taxation and Revenue Department will make every effort to accommodate all reasonable requests but cannot guarantee accommodation of a request that is not received at least ten calendar days prior to the scheduled hearing.

Complete Copies of the proposed rule changes can be found at www.tax.newmexico.gov/proposed-regulations-hearing-notices.aspx or are available upon request by contacting the Tax Policy Office at policy.office@state.nm.us.

The copies of the proposed amended, repealed, and replaced rules were placed on file in the Office of the Secretary on July 28, 2022. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final rules, if filed, will be filed as required by law on or about October 11, 2022.

When are comments due: Written comments on the proposals can be submitted by email to policy.office@state.nm.us or by mail to the Taxation and Revenue Department, Tax Information and Policy Office, Post Office Box 630, Santa Fe, New Mexico 87504-0630 or on or before September 8, 2022. All written comments received by the agency will be posted on www.tax.newmexico.gov no more than three business days following receipt to allow for public review.

Stephanie Schardin Clarke
Cabinet Secretary

3.2.1.19 - GROSS RECEIPTS; RECEIPTS OF AGENTS

A. Nonemployee agents.

(1) The receipts of nonemployee agents are subject to the gross receipts tax to the extent the education provided by Section 7-9-66 NMSA 1978 is not applicable. The indicia outlined in 3.2.105.7 NMAC will be considered in determining whether a person is an employee or a nonemployee agent.

(2) Example 1: S is a nonemployee salesperson for Z Corporation, an out-of-state business. Z Corporation arranges for S to sell securities belonging to corporation shareholders. Z accepts payment from the purchasers of the security, deposits this payment in a trust account, pays S the commission and then distributes the balance to the seller of the securities. Z does not incur gross receipts tax liability as the result of its activity because it is not selling property or performing services in New Mexico for a consideration. The commissions received by S for selling securities in New Mexico are receipts for performing services in New Mexico and are subject to the gross receipts tax.

(3) Example 2: The receipts of a nonemployee agent or sub-agent derived from commissions received from (a) correspondence schools for enrolling persons in those schools, (b) freight companies, bus transportation firms, and similar business concerns for rendering services, and (c) the owner of trailers or trucks for leasing those trailers or trucks, are subject to gross receipts tax.

B. Receipts of condominium and other real property owners associations.

(1) As of March 8, 1988, the provisions of this subsection do not apply to receipts which are exempt under the provisions of Section 7-9-20 NMSA 1978.

(2) Associations in which common areas are owned by unit owners.

(a) Amounts received by this type of association from unit owners (owners of homes, offices, apartments or other real property) for accumulation in a trust account owned by the unit owners and expended to provide insurance and pay taxes on the common areas, elements or facilities are not taxable gross receipts since such amounts are not receipts of the association.

(b) Amounts received by an association of this type from unit owners for accumulation in a trust account owned by the unit owners for current or future expenditures for the improvement, maintenance or rehabilitation of the common areas, elements or facilities are not taxable gross receipts since such amounts are not receipts of the association. However, with respect to receipts not exempt under Section 7-9-20 NMSA 1978, when payments are made from the trust account to the association or its employees, officers or representatives for the improvement, maintenance or rehabilitation, these payments are taxable gross receipts of the association under Section 7-9-3.5 NMSA 1978. When payments are made directly from the account to third parties, those third parties will be liable for the gross receipts tax on those receipts.

(c) With respect to receipts which are not exempt under Section 7-9-20 NMSA 1978, associations of this type which bill unit owners may issue nontaxable transaction certificates (NTTCs) when appropriate under Section 7-9-48 NMSA 1978 (sale of a service for resale) to suppliers of these services, unless the service is deductible by the association under the Internal Revenue Code as an ordinary and necessary business expense. The association must report and pay gross receipts taxes on all its receipts for services, including those for which NTTCs are given. This version of Paragraph (2) of Subsection B of 3.2.1.19 NMAC applies to transactions occurring on or after July 1, 2000.

(3) Example A 1: Property Owners Association A receives monthly payments from each individual owner of property located in XYZ condominiums. The funds are held in a separate trust account by Association A for the XYZ unit owners to pay, on behalf of themselves, the property tax accruing to the common areas, insurance covering the common areas, maintenance and repair of the common areas and future improvements and additions to the common areas. On November 10, Association A, as trustee of such funds, issues a check directly from the trust account to the county treasurer for payment of property taxes on the common areas. This payment goes from the trust account directly to the county treasurer with Association A acting as agent for the actual owners of property; therefore, these funds do not become a part of Association A's gross receipts.

(4) Example A 2: Association A employs a maintenance person to maintain and clean the common areas. The maintenance person is responsible for mowing lawns, maintaining the landscape, cleaning halls, lobbies and other common areas and making minor repairs to common facilities. Funds received by Association A from the trust account to pay the maintenance person's wages and to pay various payroll taxes and employee benefits are gross receipts for the performance of service on which Association A is required to pay tax.

(5) Example A 3: NMO Construction Co. contracts to paint and remodel the halls, lobbies and other common areas of the condominiums. Association A, acting as agent, draws funds from the trust account which are paid directly to NMO Construction Co. Since such funds do not become receipts of Association A, the association is not liable for tax on these funds. The funds pass directly to NMO Construction Co. who becomes liable for the gross receipts tax on its receipts for performing construction services.

(6) Example A 4: For the last ten years, funds have accumulated in the trust for construction of a swimming pool. A Pool Co. builds the pool and is paid directly from the trust account. A Pool Co. is subject to gross receipts tax on the receipts from the construction of the pool. Association A, acting as agent for the property owners, has no receipts and pays no tax on this transaction.

(7) Example A 5: Association A purchases, with its own funds, chemicals which its employee will use to maintain the new swimming pool. To recover this expense, Association A increases the amount it charges the property owners each month and draws funds from the trust account which it places with its own funds. These receipts of Association A are subject to the tax since Association A is performing services for the property owners. This treatment of receipts applies to purchases of other maintenance or cleaning supplies which Association A consumes in the performance of maintenance and cleaning services. Association A may not execute a non-taxable transaction certificate for the purchase of these chemicals or other cleaning supplies, because the chemicals and supplies are consumed in the performance of services by the association.

(8) Associations in which common areas are owned by the association with long-term real property rights held by individual unit owners.

(a) An association of unit owners in a real estate development in which the common elements, areas or facilities are owned by the association but subject to long-term (10 or more years) real property rights of the unit owners (as defined in Paragraph (2) of Subsection B of 3.2.1.19 NMAC) granted by deed or covenant, appurtenant to and inseparable from unit ownership, transferable only by the unit owner or upon acceptance of deed, and not extinguishable by the association shall be subject to tax in the same manner as associations described in Subsection B of this section. If the unit owners cease to hold or possess such real property rights, the association shall become subject to tax in the same manner as associations described in Paragraph (9) of Subsection B of 3.2.1.19 NMAC.

(b) All examples in Paragraphs (3) through (7) of Subsection B of 3.2.1.19 NMAC also apply to associations of unit owners identified in Paragraph (8) of Subsection B of 3.2.1.19 NMAC.

(9) Associations in which common areas are owned by association. Different treatment is required for an association of unit owners in a real estate development in which the common elements, areas or facilities are owned by the association and the unit owners (as defined in Subparagraph (a) of Paragraph (2) of Subsection B of 3.2.1.19 NMAC) do not possess the real property rights to the common elements described in Paragraphs (2) and (8) of Subsection B of 3.2.1.19 NMAC. All receipts of this type of association (e.g., payments by unit owners for maintenance and use of the common areas) are fully taxable and no NTTCs may be issued for services purchased. Because of the association's status as owner and the absence of real property rights of the unit owners in the common areas, the association is not acting as the unit owners' agent, nor is it reselling a service.

(10) Example C 1: Association C holds title to all common areas of a development which includes a clubhouse, golf course, swimming pool and tennis courts. Each owner of property within the development is a member of Association C and pays a membership fee. In consideration for the fees received, Association C grants

each member a license to use facilities owned by the association. Association C is liable for gross receipts tax on its receipts from granting the licenses to use the facilities.

(11) Example C 2: Association C contracts with a security services company to provide a security officer to patrol the facilities which the association owns. Association C does not resell these services provided by the security services company and may not execute a non-taxable transaction certificate to purchase these services.

(12) Example C 3: Association A, Association B and Association C maintain vending machines from which soft drinks, snacks and other items of tangible personal property are sold. The associations are deriving gross receipts from the sale of tangible personal property and must pay gross receipts tax on these receipts. However, they may also execute a non-taxable transaction certificate when purchasing the soft drinks, snacks and other tangibles, since these items are resold by the associations.

(13) Repealed.

C. Reimbursed expenditures.

~~(4)~~ The receipts of any person received as a reimbursement of expenditures incurred in connection with the performance of a service or the sale or lease of property are gross receipts as defined by Section 7-9-3.5 NMSA 1978, unless that person incurs such expense as agent on behalf of a principal while acting in a disclosed agency capacity. ~~[An agency relationship exists if a person has the power to bind a principal in a contract with a third party so that the third party can enforce the contractual obligation against the principal.~~

~~_____ (2) Receipts from the reimbursement of expenses incurred as agent on behalf of a principal while acting in a disclosed agency capacity are not included in the agent's gross receipts if the expenses are separately stated on the agent's billing to the client and are identified in the agent's books and records as reimbursements of expenses incurred on behalf of the principal party.~~

~~_____ (3) If these requirements are not met, the reimbursement of expenses are included in the agent's gross receipts.~~

~~_____ (4) Example 1: A, an accountant, whose office location is in Albuquerque is engaged to audit the financial statements of C, A's client. To facilitate the audit A must travel to Deming to examine the operations and records of C's business location in Deming. In addition to the normal fee for A's service, A charges C for A's expenses for travel, meals and lodging which A incurred in traveling to Deming. A's gross receipts include the total amount of consideration received from C, including amounts received to cover A's expense of travel.~~

~~_____ (5) Example 2: L, an attorney, pays a filing fee to the clerk of the district court on behalf of C, L's client. In billing for the professional services rendered, L separately states on the billing the amount of the filing fee which was paid to the court clerk. L is an agent for C in the instance of filing documents with the court. When L paid the filing fee, L was acting within the terms of a disclosed agency relationship. L should exclude the amount received for reimbursement for L's expenditure in paying the court filing fee.~~

~~_____ (6) Example 3: R, an architect, whose office is located in Santa Fe, is engaged by C to design and oversee the construction of a project in Albuquerque. In the course of performing those services for C, R incurs charges for long distance telephone calls. R charges C for the long distance telephone calls under the terms of R's contract with C. R's gross receipts include the amounts it collects from C for long distance calls. No disclosed agency relationship exists which would enable the telephone company to hold C liable for the long distance charges incurred by R.~~

~~_____ (7) Example 4: X contracts with company Y to perform administrative functions relating to the employment relationship between Y and its workers. Y pays X the costs for Y's employees' payroll, payroll taxes, worker's compensation, contributions to employee benefits and healthcare and other amounts X pays to or on behalf of Y's workers. Y separately pays X a two percent (2%) fee for the administrative services. Y or X recruits workers, selects them for work assignments, establishes their rate of pay, assigns their schedule, instructs them when and where to work, assigns them their duties, supervises and monitors the performance of their duties, authorizes leaves of absence, handles worker's complaints, union grievances or disputes, and disciplines, lays off or terminates the workers. X issues payroll checks, with X as payor. The checks are distributed by Y to workers. X also secures~~

worker's compensation coverage for the workers, calculates, withhold and submits payroll taxes to appropriate taxing authorities, calculates and makes contributions to union health, pension and welfare benefit trust funds for workers, funds unemployment insurance contributions and responds to unemployment compensation claims, and processes garnishment orders. X can require Y to post a bond or other security for the payment of payroll. Y agrees to indemnify X against worker's claims for non-payment of wages, any claims arising from the acts of worker at the work site, grievances by unions representing the worker arising from acts of Y, wage and hour claims, tax claims, and failure of Y to provide training to workers. X has no gross receipts from the amount representing the payroll, payroll taxes, worker's compensation and benefits; this amount is not subject to the gross receipts tax. The additional two percent (2%), however is X's fee for performing services and is subject to tax.

~~(8) Example 5: A enters into an agreement with its client B to provide temporary workers to B. The agreement provides that A retains the right to select and hire employees, to control when the employees are paid, and the right to replace employees. A issues the payroll checks to employees with A as payor. The employees are unaware of any principal-agent relationship between A and B. All receipts A receives from B for payroll and A's commission or fee for its services to B are subject to gross receipts tax.~~

~~(9) All receipts or fees for services provided by an agent are subject to the gross receipts tax.]~~

D. Reimbursement of expenditures made to volunteers.

(1) A volunteer who contributes time, effort or talent without expectation of consideration or remuneration is not selling the services performed. When a volunteer receives reimbursement for out-of-pocket expenses incurred in the performance of a service as a volunteer which were directly related to the work volunteered, reimbursement of those expenses is not gross receipts.

(2) For purposes of Paragraph (1) of Subsection D of 3.2.1.19 NMAC, the term "volunteer" means any person who contributes time, effort or talent for the direct benefit of an organization which is exempt from taxation under the Internal Revenue Code. The term also extends to any person who contributes time, effort or talent without the receipt of consideration or remuneration to the state of New Mexico or any agency or any political subdivision of the state, or to the United States or any agency of the United States. "Volunteer" further includes any elected official serving without consideration or remuneration and any appointive non-employee member of any public commission or board serving without consideration or remuneration, whether the appointment was made by the governor, any other elected official or a public body.

(3) For purposes of Paragraph (1) of Subsection D of 3.2.1.19 NMAC, "reimbursement" includes per diem amounts set by statute to reimburse uncompensated elected and appointed governmental officials for the expense of carrying out official duties.

[3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 6/8/1987, 1/29/1988, 12/14/1988, 12/29/1989, 4/20/1990, 11/26/1990, 11/15/1996, 10/31/1997, 9/30/1998, 3.2.1.19 NMAC - Rn & A, 3 NMAC 2.1.19, 10/31/2000; A, 12/30/2003; A, 9/30/2010; A, xx/xx/xxxx]

3.2.106.7 DEFINITIONS

~~A. **AGRICULTURAL PRODUCTS:** Agricultural products are those products and the intermediate stages thereof which are normally raised or grown primarily for use as fiber or food for human or animal consumption.~~

~~B. **POULTRY:** The term "poultry" means domestic fowl raised for sale or use in the ordinary course of business or for the production of meat, eggs, hides or feathers for sale or use in the ordinary course of business.~~

3.2.106.7 DEFINITIONS

A. AGRICULTURAL PRODUCTS:

1. Agricultural products are those products and the intermediate stages thereof which are normally raised or grown primarily for use as fiber or food for human or animal consumption.

2. Cannabis is not an agricultural product.

B. **POULTRY:** The term “poultry” means domestic fowl raised for sale or use in the ordinary course of business or for the production of meat, eggs, hides or feathers for sale or use in the ordinary course of business. [12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 4/2/1986, 11/26/1990, 12/23/92, 11/15/1996; 3.2.106.7 NMAC – Rn, 3 NMAC 2.18.1.7, 5/15/2001; A, 8/15/12; Rp xx/xx/xxxx]

3.2.106.15 CANNABIS

Receipts of a licensed cannabis retailer from the sale of cannabis products, including without limitation cannabis flowers as defined in Section 26-2C-2 NMSA 1978, are subject to the gross receipts tax. The receipts from the sale of cannabis products, including cannabis flowers as defined in Section 26-2C-2 NMSA 1978, are not receipts from the sale of unprocessed agricultural products.

[3.2.106.15 NMAC – N, xx/xx/xxxx]

3.2.213.7 DEFINITIONS:

A. **“Regional” defined:** As used in Section 7-9-55 NMSA 1978, a “regional” seller or advertiser is a person who sells from locations in more than one state or who advertises in more than one state.

B. **“Seller or advertiser” defined:** As used in Section 7-9-55 NMSA 1978, “seller or advertiser” means a person whose identity, business, service, product or products are the primary subject of the advertising message.

3.2.213.7 DEFINITIONS:

A. **“Regional” defined:** As used in Section 7-9-55 NMSA 1978, a “regional” seller or advertiser is a person who sells from locations in more than one state or who purchases advertising services intended to be heard or viewed in more than one state. A person is deemed to sell from locations in more than one state if that person either maintains a physical retail establishment in more than one state, or if that person regularly stores, warehouses, or otherwise maintains stocks of tangible personal property for the fulfillment of purchases in more than one state. A person does not advertise in more than one state if the advertisement is intended to be viewed only in one state, but some incidental views occur outside of that state.

B. **“Seller or advertiser” defined:** As used in Section 7-9-55 NMSA 1978, “seller or advertiser” means a person whose identity, business, service, product or products are the primary subject of the advertising message.

C. **“Principal place of business” defined:** As used in Section 7-9-55 NMSA 1978, “principal place of business” means the place in which a business:

(1) earns the largest percentage of its revenues; and

(2) owns the largest percentage of its capital assets; and

(3) employs the largest percentage of its full-time equivalent employees. A business can have only one principal place of business.

[3/3/1986, 4/2/1986, 11/26/1990, 11/15/1996; 3.2.213.7 NMAC - Rn, 3 NMAC 2.55.7 & A, 5/31/2001; Rp, xx/xx/xxxx]

3.2.213.9 BROADCASTING AND RELATED ADVERTISING

A. **Microwave carriers:** The receipts of a microwave carrier from relaying television signals for another party for a fee from a point of origin outside this state to a point of destination within this state may be deducted from gross receipts even though a portion of those receipts is derived from relaying the signals between towers located within New Mexico.

B. **Deduction available to broadcaster and advertising agency:** A New Mexico radio or television broadcaster may deduct from its gross receipts the receipts derived from the sale of broadcast time which is sold either directly to a national or regional seller or advertiser not having its principal place of business in or being incorporated under the laws of New Mexico, or to an advertising agency which purchases the broadcast time on behalf of, or for subsequent sale to, such national or regional seller or advertiser. No nontaxable transaction certificate is required. If the advertising agency subsequently sells the broadcast time to a New Mexico seller or

advertiser, however, compensating tax will be due on the value of the broadcast time.

C. **Sales of broadcast time:** Receipts from sales of broadcast time by New Mexico radio and television broadcasters to advertising agencies are subject to gross receipts tax, but may be deductible under Section 7-9-48 NMSA 1978 or Section 7-9-55 NMSA 1978.

D. **Cable television systems:** Cable television systems are eligible for the deduction provided by Section 7-9-55 NMSA 1978 for receipts from the sale of broadcast time to a national or regional advertiser.

3.2.213.9 BROADCASTING AND RELATED ADVERTISING

A. **Microwave carriers:** The receipts of a microwave carrier from relaying television signals for another party for a fee from a point of origin outside this state to a point of destination within this state may be deducted from gross receipts even though a portion of those receipts is derived from relaying the signals between towers located within New Mexico.

B. **Deduction available to broadcaster and advertising agency:** A New Mexico radio or television broadcaster may deduct from its gross receipts the receipts derived from the sale of broadcast time which is sold either directly to a national or regional seller or advertiser not having its principal place of business in or being incorporated under the laws of New Mexico, or to an advertising agency which purchases the broadcast time on behalf of, or for subsequent sale to, such national or regional seller or advertiser. No nontaxable transaction certificate is required. If the advertising agency subsequently sells the broadcast time to a New Mexico seller or advertiser, however, compensating tax will be due on the value of the broadcast time.

C. **Sales of broadcast time:** Receipts from sales of broadcast time by New Mexico radio and television broadcasters to advertising agencies are subject to gross receipts tax, but may be deductible under Section 7-9-48 NMSA 1978 or Section 7-9-55 NMSA 1978.

D. **Cable television systems:** Cable television systems are eligible for the deduction provided by Section 7-9-55 NMSA 1978 for receipts from the sale of broadcast time to a national or regional advertiser.

E. **Digital advertising services:** Providers of digital advertising services are eligible for the deduction provided by Section 7-9-55 NMSA 1978. Receipts of a provider of digital advertising services are deductible when the receipts: (i) are from a national or regional advertiser not having its principal place of business in New Mexico, or that is not incorporated under the laws of New Mexico, or (ii) are from an advertising agency which purchases the display of advertisements on the platform on behalf of, or for subsequent sale to, a seller defined in (i) above. However, the commissions of advertising agencies from performing services in this state may not be deducted.

[12/5/1969, 3/9/1972, 11/20/1972, 3/20/1974, 7/26/1976, 6/18/1979, 4/7/1982, 5/4/1984, 3/3/1986, 4/2/1986, 11/26/1990, 9/20/1993, 11/15/1996; 3.2.213.9 NMAC - Rn, 3 NMAC 2.55.9 & A, 5/31/2001; A, 9/30/2004; Rp, xx/xx/xxxx]

3.2.213.13 RECEIPTS OF A DIGITAL PLATFORM THAT DISPLAYS DIGITAL ADVERTISING

A. Receipts of a provider of digital advertising services, whose digital platform may be accessed or viewed from within New Mexico, from the sale of advertising services to advertisers within and without New Mexico are subject to the gross receipts tax. The gross receipts tax levied on such advertising receipts does not impose an unconstitutional burden on interstate commerce.

B. “Digital advertising services” means advertisement services on digital platforms, including advertisements in the form of banner advertising, search engine advertising, interstitial advertising, and other comparable advertising services.

C. “Digital platform” means any type of website, including part of a website, or application, that a user is able to access or view.

D. “User” means any person who accesses or views a digital platform with a device.

E. “Device” means any medium through which a digital platform may be accessed or viewed, including stationary or portable computing devices, tablets, phones, and smart devices, or similar equipment capable of accessing the internet and displaying a digital platform.

3.1.4.13 REPORTING ACCORDING TO BUSINESS LOCATION [Applicable to periods beginning July 1, 2021]:

A. DEFINITIONS: As used in 3.1.4.13 NMAC, these terms have the following definitions:

(1) "Gross receipts." Under Section 7-1-14 NMSA 1978, "gross receipts" is defined as that term is used in the Gross Receipts and Compensating Tax Act, the Leased Vehicle Gross Receipts Tax Act, or the Interstate Telecommunications Gross Receipts Tax Act, as applicable. As used in 3.1.4.13 NMAC, the term "gross receipts from" or similar terms indicates that under the applicable tax acts, the gross receipts would be treated as derived from a particular source or characterized as relating to a particular activity such as the lease or property or the sale of services.

(2) "In-person service." Under Section 7-1-14 NMSA 1978 "professional service," as defined, "does not include an in-person service." The term "in-person service" means a service physically provided in person by the service provider, where the customer or the customer's real or tangible personal property upon which the service is performed is in the same location as the service provider at the time the service is performed. If the service is not generally provided, or does not generally need to be provided, physically in the presence of or upon the customer or upon the customer's property, it is not an "in-person service" simply because it may be or sometimes is performed in the presence of the customer or at the location of the customer's property.

(a) Examples of services that will generally be treated as in-person services include, but are not limited to:

(i) Services provided by healthcare workers that are generally performed or required to be performed on or in the presence of the patient.

(ii) Mental health services, unless the provider generally provides the particular service either only in-person, or with limited exceptions.

(iii) Services provided by athletic trainers or physical therapists for clients.

(iv) Services provided by barbers and cosmetologists.

(v) Home healthcare services.

(b) Examples of services that will generally not be treated as in-person services include, but are not limited to:

(i) Architectural and engineering services. Note, however, that when performed as part of or billed to a construction project, these services are considered "construction-related services" rather than professional services pursuant to Subsection C of Section 7-9-3.4 NMSA 1978, and the reporting location for gross receipts from these services is the construction site per Paragraph (2) of Subsection F of Section 7-1-14 NMSA 1978.

(ii) Legal services.

(iii) Accounting, auditing, and tax preparation services.

(iv) Real estate appraisal services.

(3) "Professional service." The term "professional service" as defined in Section 7-1-14 NMSA 1978 means a service, other than an in-person service or construction-related service, that requires either an advanced degree from an accredited post-secondary educational institution or a license from the state to perform. As provided in Paragraph (2) of Subsection A of 3.1.4.13 NMAC, just because a service is provided in person by the service provider does not make it an "in-person" service if the service is not generally provided, or does not generally need to be provided, physically in the presence of or upon the customer or upon the customer's property.

(4) "Reporting location." 3.1.4.13 NMAC uses the term "reporting location" in place of the term "business location," the term that is used in Sections 7-1-3 and 7-1-14 NMSA 1978 as well as local option taxes to refer to the location code designated by the department and required to be used to report the gross receipts and related deductions subject to gross receipts tax or the value of items whose taxable use is subject to the compensating tax. Like the term "business location," the term "reporting location" refers to the location code and applicable tax rate for reporting gross receipts tax and compensating tax, as designated by the department.

(5) "Seller's location" or "place of performance." This regulation may use the terms "seller's location" or "place of performance" or similar terms to refer to the general facts that may be essential for determining the reporting location. In general, a seller's location may include a particular building, including a store or office, or other physical location maintained or operated by or for the seller, or used by the seller, where some

designated activity giving rise to gross receipts takes place. If the seller uses no such physical location in New Mexico, and if the seller's domicile is not in New Mexico, then the "seller's location" as used in this regulation is deemed to be outside the state.

B. REPORTING ACCORDING TO REPORTING LOCATION - GENERAL:

(1) Reporting location and rate of tax for gross receipts and taxable use. Section 7-1-14 NMSA 1978, amended effective July 1, 2021, determines the proper reporting jurisdiction and rate of tax that apply under the Gross Receipts and Compensating Tax Act, Interstate Telecommunications Gross Receipts Tax Act, Leased Vehicle Gross Receipts Tax Act and any act authorizing the imposition of a local option gross receipts or compensating tax.

(2) Effect of the substantive tax provisions on the rules for reporting location. Unless otherwise indicated, the provisions of 3.1.4.13 NMAC should be read consistently with the provisions of the Gross receipts and Compensating Tax Act, Interstate Telecommunications Gross Receipts Tax Act, Leased Vehicle Gross Receipts Tax Act, as appropriate, and any acts authorizing imposition of local option gross receipts or compensating tax, and any regulations issued under these acts. No provisions of 3.1.4.13 NMAC should be read as subjecting to tax items that are not subject to tax, or excluding from tax items that are subject to tax, under these substantive tax provisions.

(3) State reporting location and application of the state rate. In some cases, taxable gross receipts or the value of items whose taxable use is subject to the compensating tax may not be required to be reported to a particular reporting location in this state. In those cases, the reporting location is the state reporting location and only the state tax rate will apply.

(a) Example: Gross receipts from a professional service performed outside New Mexico, the product of which is delivered to a New Mexico customer for initial use in the state, are taxable in the state. Because Paragraph (9) of Subsection C of 3.1.4.13 NMAC provides that the reporting location of gross receipts from professional services is the location where the services are performed or sold, the gross receipts would be reported to the reporting location for the state and taxed at the state rate.

(b) Example: A nonresident individual with no regular place of business in the state is hired by an out-of-state seller to represent the seller. In order to perform this service, the individual obtains tangible personal property in a tax-free transaction outside the state, which would have been subject to the gross receipts tax had it been acquired inside the state. After acquiring the property, the individual brings that property into New Mexico, using the property in the service performed at various locations throughout the state. The compensating tax on the value of this property would be reported to the reporting location for the state and taxed at the state rate. See Item (ii) of Subparagraph (e) of Paragraph (5) of Subsection C, and Subsection E of 3.1.4.13 NMAC.

(c) Example: Under Subparagraph (e) of Paragraph (5) of Subsection C of 3.1.4.13 NMAC, a seller that does not have access to sufficient information for reporting sales of tangible personal property to the location where the customer receives that property may report to the gross receipts from those sales to the seller's location. So an out-of-state seller may have certain sales that would be reported to the reporting location for the state and taxed at the state rate. As explained under Subparagraph (e) of Paragraph (5) of Subsection C of 3.1.4.13 NMAC, however, sellers who have access to reliable information from which they can determine an estimate of receipts by reporting location must use that information.

(4) Gross receipts tax not required to be charged or collected. Nothing in Section 7-1-14 NMSA 1978 or 3.1.4.13 NMAC requires the person that engages in activity or transactions resulting in taxable gross receipts to charge or collect the tax from purchasers. The gross receipts tax is a tax on the seller and under Section 7-9-6 NMSA 1978, the taxpayer need only affirmatively state on the billing to its purchaser whether gross receipts tax is included in the amount billed. Furthermore, 3.2.6.8 NMAC provides that the amount of gross receipts tax owed may be "backed out" of the total charged to the customer.

(5) Gross receipts of commissioned sales agents versus consignors/consignees and marketplace sellers/providers.

(a) Commissioned sales agents. Under Subparagraph (a) of Paragraph (2) of Subsection A of Section 7-9-3.5 NMSA 1978 and applicable regulations, commissioned sales agents report only their commission or fee when the property or services which they promote for sale are those of a third party. Under Section 7-1-14 NMSA 1978, the commission is gross receipts from the performance of a service by the sales agent and the reporting location of those receipts is determined in accordance with Paragraph (9) of Subsection C of 3.1.4.13 NMAC.

(b) Gross receipts of consignors/consignees and marketplace sellers/providers. Under Subparagraphs (b) and (g) of Paragraph (2) of Subsection A of Section 7-9-3.5 NMSA 1978 and applicable regulations, the gross receipts and related deductions for sales on consignment and for sales facilitated by marketplace providers are generally defined as all amounts paid or collected from the sale, lease, or licensing of property or services even where a third party consignor or marketplace seller also has gross receipts from selling the related property or service provided. The reporting location of gross receipts and related deductions of the consignor/consignee or the marketplace seller/provider is determined under 3.1.4.13 NMAC as follows:

(i) By looking to the nature of the transaction or activity from which the gross receipts are derived, as though the consignor and consignee, or the marketplace seller and marketplace provider, is each the seller or provider of that transaction or activity to the customer; and, except as provided in Items (ii) and (iii) of this Subparagraph (b), imputing to both parties information known by either party that may be relevant in properly determining the reporting location of the gross receipts.

(ii) In a case where the consignor or marketplace seller may properly claim a deduction under the Gross Receipts and Compensating Tax Act and applicable regulations on account of the transaction with the consignee or marketplace provider, respectively, the consignor or marketplace seller may report these deductions and related gross receipts to the reporting location based on information available to them, without imputing of information known by the consignee or marketplace provider.

(iii) In a case where the marketplace provider, in determining the reporting location of gross receipts reasonably relies on erroneous information provided by the marketplace seller as provided in Subsection C of Section 7-9-5 NMSA 1978, the correct information that may be known to the marketplace seller will not be imputed to the marketplace provider.

(c) Examples:

(i) Commissioned sales agent X works for business y to sell tangible personal property owned by y to customers in New Mexico. Agent X receives a commission based on the amount of the sale made on behalf of business Y to a customer. Business Y will have gross receipts from selling tangible personal property. The reporting location of Y's gross receipts from the sale of the property is the location of Y's customer, determined under the provisions of Paragraph (5) of Subsection C of 3.1.4.13 NMAC. Agent X is performing a service sourced under Subparagraph (e) of Paragraph (9) of Subsection C of 3.1.4.13 NMAC. The product of the service performed by agent X is the completion of the order and sale to a customer of Y's products. Therefore, the reporting location of agent X's gross receipts from commissions paid by Y for services performed is also the location of Y's customer and this location should be determined consistent with the provisions of Paragraph (5) of Subsection C of 3.1.4.13 NMAC.

(ii) Same facts as Item (i) of Subparagraph (c) of Paragraph (5) of Subsection B of 3.1.4.13 NMAC, except that, rather than a commissioned sales agent, X is a consignee and Y is a consignor. Under the consignment arrangement, X receives receipts from customers for Y's tangible personal property and agrees to pay Y a portion of those receipts. Under the Gross Receipts and Compensating Tax Act and applicable regulations, both X and Y have gross receipts from selling tangible personal property. The reporting location for the gross receipts and any related deductions of both X and Y is the location of the customer determined under the provisions of Paragraph (5) of Subsection C of 3.1.4.13 NMAC.

(iii) Same facts as Item (ii) of Subparagraph (c) of Paragraph (5) of Subsection B of 3.1.4.13 NMAC, except that rather than the consignee/consignor relationship described, X is a marketplace provider and y is a marketplace seller. Under the Gross Receipts and Compensating Tax Act and applicable regulations, both X and Y have gross receipts from selling or facilitating the sale of tangible personal property. The reporting location for the gross receipts and any related deductions of both X and Y is the location of the customer determined under the provisions of Paragraph (5) of Subsection C of 3.1.4.13 NMAC.

(iv) Same facts generally as Items (ii) and (iii) of Subparagraph (c) of Paragraph (5) of Subsection B of 3.1.4.13 NMAC. In addition, while the consignee or marketplace provider offers the tangible personal property for sale to the customer and collects the payment, it is the consignor or marketplace seller that ships the tangible personal property to the customer. Information as to the customer's location is imputed to the consignee or marketplace provider when determining reporting location of its gross receipts, but the marketplace provider is also allowed to reasonably rely on information provided by the marketplace seller, even if erroneous, in determining the reporting location.

(v) Same facts generally as Items (ii) and (iii) of Subparagraph (c) of Paragraph (5) of Subsection B of 3.1.4.13 NMAC. In addition, the consignee or marketplace provider offers the

tangible personal property for sale to the customer, collects the payment, and also ships the tangible personal property to the customer. The consignor or marketplace seller may report gross receipts for which a proper deduction can be taken on account of the sale by the consignee or marketplace seller based on information known by the consignor or marketplace seller, without imputing information known by the consignee or marketplace provider.

C. GENERAL RULES FOR DETERMINING REPORTING LOCATION:

(1) Meaning of certain terms. Unless otherwise defined in Subsection A of 3.1.4.13 NMAC, Section A or otherwise indicated by the context, the terms used in these rules have the same meaning as under the Gross Receipts and Compensating Tax Act.

(2) Effect of the reporting location. A person that has gross receipts and a person making taxable use of property or services in New Mexico subject to the compensating tax shall report the gross receipts or compensating tax to the proper reporting location as provided in this section. The gross receipts and compensating taxes imposed by the Gross Receipts and Compensating Tax Act may include both a state rate of tax as well as applicable local option rates authorized by state law and imposed by county and municipal governments. The reporting location, as that term is used in 3.1.4.13 NMAC, determines the local jurisdiction to which the tax will be reported as well as the gross receipts or compensating tax rate that applies.

(3) Reporting to multiple locations. Any person that must report gross receipts or taxable use of items to more than one reporting location under one identification number is required to report gross receipts, deductions, and the value of items used for each location on the tax return and in accordance with the reporting location codes as designated by the Secretary under Section 7-1-14 NMSA 1978 and 3.1.4.13 NMAC.

(4) Gross receipts from transactions involving real property. If the gross receipts are from the sale, lease or granting of a license to use real property located in New Mexico, then the reporting location for those gross receipts and any related deductions is the location of the real property.

(5) Gross receipts from sale or license of tangible personal property and from certain licenses and other services. If the gross receipts are from the sale or license of tangible personal property, or if the receipts are from activity described in Subparagraph (e) of Paragraph (9) or Paragraph (6) of Subsection C, of 3.1.4.13 NMAC the reporting location for the gross receipts and related deductions is determined as follows:

(a) If the gross receipts are from the property or the product of a service that is delivered by the seller and received by the purchaser from the seller at the seller's location, then the reporting location of the gross receipts and any related deductions, is the seller's location.

(b) If the gross receipts are from property or the product of a service that is not delivered by the seller and received by the purchaser at the seller's location as described in Subparagraph (a) of Paragraph (5) of Section C of 3.1.4.13 NMAC, the reporting location is the location indicated by instructions for delivery to the purchaser, or the purchaser's donee, when known to the seller.

(c) If Subparagraphs (a) and (b) do not apply, the reporting location is the location indicated by an address for the purchaser available from the business records of the seller that are maintained in the ordinary course of business; provided that use of the address does not constitute bad faith.

(d) If Subparagraphs (a) through (c) do not apply, the reporting location is the location for the purchaser obtained during consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available; provided that use of this address does not constitute bad faith.

(e) If Subparagraphs (a) through (d) do not apply, including a circumstance in which the seller is without sufficient information to apply those provisions, then the reporting location for the gross receipts and related deductions is the location from which the property or product of the service was shipped or transmitted to the purchaser.

(i) Except as provided in provision in Item (ii) of Subparagraph (e) of Paragraph (5) of Subsection C of 3.1.4.13 NMAC below, the seller is not considered to be without sufficient information to apply provisions of Subparagraphs (a) through (d) if it obtains or has access to sufficient information at the time of the sale, or subsequently, but simply fails to maintain that information in its records; or it has access to sufficient information from other reliable sources to make a reasonable estimate of the reporting location under Subsection F of this regulation at the time the gross receipts are required to be reported. Examples of information from other reliable sources includes population or market-penetration information that may be used to develop a reasonable estimate of the location of consumers of certain products.

(ii) If gross receipts are derived from a single sale or transaction where the property or the product of a service provided is determined to be delivered simultaneously at multiple locations throughout the state, the seller is deemed not to have sufficient information to determine the reporting location under

Subparagraph (e) of Paragraph (5) of Subsection C of 3.1.4.13 NMAC.

(iii) Example: Company X provides an advertising service to Customer Y that will be distributed or displayed to persons in New Mexico through general access to particular media. The product of the advertising service is delivered to the location of the person accessing or viewing the advertising. Under Subparagraph (e) of Paragraph (5) of Subsection C of 3.1.4.13 NMAC, the reporting location of the gross receipts and related deductions from this service is the location of Company X as determined by the location from which the advertising service was primarily provided.

(iv) Example: Company X provides customer Y with a license to use digital goods by customer Y at various locations throughout the state. The license is delivered to customer Y throughout the state. Under Subparagraph (e) of Paragraph (5) of Subsection C of 3.1.4.13 NMAC, the reporting location of the gross receipts and related deductions of company X from providing the license to use digital goods is the location of company X as determined by the location from which the digital goods were primarily provided. A person may report different gross receipts and deductions to different reporting locations under the rules of this Paragraph (5) of Subsection C of 3.1.4.13 NMAC, as applicable.

(v) Example: Company X provides a digital advertising service to Customer Y that can be viewed in New Mexico, and is intended to be viewed only in New Mexico, through access to Company X's digital platform, as that term is defined in Subsection B of 3.2.213.x NMAC. The product of the digital advertising service is delivered to the locations of all persons in New Mexico viewing or accessing the advertising. Under subparagraph (e) of Paragraph (5) of Subsection C of 3.1.4.13 NMAC, the reporting location of the gross receipts and related deductions from this service is the location of the server of Company X hosting the digital platform from which the advertising is accessed.

(6) If the gross receipts are from the sale of a license of digital goods, or any other sale of a license not otherwise specifically addressed in these regulations, the reporting location of the gross receipts and related deductions is determined consistent with Paragraph (5) of Subsection C of 3.1.4.13 NMAC.

(7) If the gross receipts are from the lease of tangible personal property, including vehicles, other transportation equipment, and other mobile tangible personal property, then the reporting location for the gross receipts any related deductions is the location of primary use of the property, as indicated by the address for the property provided by the lessee that is available to the lessor from the lessor's records maintained in the ordinary course of business; provided that use of this address does not constitute bad faith. The primary reporting location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

(8) If the gross receipts are from the sale, lease or license of franchises, then the reporting location for the gross receipts and any related deductions is where the franchise is used. The location where the franchise is used may be determined from the franchise agreement or from other facts and circumstances related to the exercise of the franchise.

(9) The reporting location of gross receipts and related deductions from the sale of services is determined as follows:

(a) If the gross receipts are from professional services, whether performed in New Mexico or performed outside the state where the product of the service is initially used in New Mexico, the reporting location of the gross receipts and related deductions is the location of the performance of the service. Gross receipts from a service performed outside the state that are taxable in New Mexico because the buyer makes initial use of the product of the service in this state are reported to the state reporting location and taxed at the state rate.

(b) If the gross receipts are from construction services and construction-related services, as those terms are defined under the Gross Receipts and Compensating Tax Act and applicable regulations, performed for a construction project in New Mexico, the reporting location of the gross receipts and related deductions is the location of the construction site.

(c) If the gross receipts are from the service of selling of real estate located in New Mexico, the reporting location of the gross receipts and related deductions is the location of the real estate.

(d) If the gross receipts are from transportation of persons or property in, into or from New Mexico, the reporting location of the gross receipts and related deductions is the location of where the person or property enters the vehicle.

(e) If the gross receipts are from services other than those described in Subparagraphs (a) through (d) of Paragraph (9) of Section C of 3.1.4.13 NMAC, including in-person services, the

reporting location of those gross receipts and related deductions is the location where the product of the service is delivered. In general, the location of delivery of the product of the service is determined under rules consistent with Paragraph (5) of Subsection C of 3.1.4.13 NMAC. The “product of the service” is determined under applicable provisions of the Gross Receipts and Compensating Tax Act and related regulations.

(i) Advertising services. An advertising service involves an agreement with a client to communicate or to place advertisements before an intended audience, on behalf of the client. The product of an advertising service is the ad which is capable of being heard or viewed by the intended audience. The reporting location for gross receipts from an advertising service is determined under Paragraph (5) of Subsection C of 3.1.4.13 NMAC based on delivery of the product of the service, which is the location where the ad may be heard or seen by the intended audience.

(ii) Services ancillary to advertising. Services ancillary to advertising include design of the advertisement, creation of data processing or information technology to capture of customer related information, etc., which the seller may treat as a separate service under Section D of 3.1.4.13 NMAC and which are provided to a client. The reporting location of gross receipts from a service ancillary to advertising under Paragraph (5) of Subsection C of 3.1.4.13 NMAC depends on the product of the service and where it is delivered, but will generally be the location of delivery of that product of the service to the client.

(f) The reporting location of gross receipts from in-person services is the location of the performance of the service, which is also the location of the customer or the customer’s property on which the service is performed.

D. MIXED TRANSACTIONS: Where a single transaction gives rise to gross receipts that would have different reporting locations under Paragraphs (4) through (9) of Subsection C of 3.1.4.13 NMAC if they were provided to the customer in the form of separate transactions, the reporting location for those gross receipts shall be determined as follows:

(1) If the billing to the customer does not break out the charges for the separate items, then the reporting location will be determined based on how the gross receipts for the transaction would be treated under the Gross Receipts and Compensating Tax Act and applicable regulations, and applying Paragraphs (4) through (9) of Subsection C of 3.1.4.13 NMAC.

(2) If the billing to the customer breaks out the separate charges for the items and one or more items would be treated as incidental charge or an element of the sales price of other items under the Gross Receipts and Compensating Tax Act and applicable regulations, then the reporting location of those incidental receipts will be the reporting location as determined for the gross receipts from the remaining related item or items.

(3) If the billing to the customer breaks out the separate charges for the items and one or more items would not be treated as an incidental charge or an element of the sales price of other items under the Gross Receipts and Compensating Tax Act, and if the reporting location for the gross receipts from two or more such items would be different under Paragraphs (4) through (9) of Subsection C of 3.1.4.13 NMAC, then the gross receipts and related deductions reported to each reporting location will be determined as follows:

(a) the separate gross receipts for each item will be reported to the separate reporting locations, based on the separate charges in the bill to the customer; or

(b) all of the gross receipts may be reported to the single reporting location properly determined for the item or items from which the majority of the gross receipts result as properly determined under Subsection C of 3.1.4.13 NMAC.

(4) Example: Taxpayer sells a professional service along with tangible personal property delivered to the buyer. The billing to the buyer includes a separate charge of \$100 for the service, \$100 for the tangible personal property, and \$5 for shipping. Assume that under the Gross Receipts and Compensating Tax Act and applicable regulations, the taxpayer would be treated as having \$100 of gross receipts from the sale of a service and \$105 (the charge for the property and the incidental charge for shipping) from the sale of tangible personal property. Assume also that the reporting location of the gross receipts from the sale of the service under 3.1.4.13 NMAC is the location where the service is performed but the reporting location for the gross receipts from the sale of the tangible personal property is the location of the delivery to the customer. The taxpayer may report the gross receipts from the service to the reporting location as properly determined under Subparagraph (a) of Paragraph (9) of Subsection C of 3.1.4.13 NMAC and the gross receipts from the sale of property to the reporting location as properly determined under Subparagraphs (b) through (d) of Paragraph (5) of Subsection C of 3.1.4.13 NMAC. Alternatively, the taxpayer may report all of the gross receipts to the reporting location as determined for the sale of the property.

E. REPORTING LOCATION FOR COMPENSATING TAX:

(1) Except as provided in Paragraphs (2) and (3) of Subsection E of 3.1.4.13 NMAC, the value of an item that is subject to compensating tax under Section 7-9-7 NMSA 1978 is generally reported to the same reporting location to which gross receipts from the transaction in which the item was acquired would have been reported under Subsections C or D of 3.1.4.13 NMAC, had the transaction been subject to gross receipts tax. In applying Subsections C or D to determine the reporting location to report the value of items for compensating tax, the taxpayer should assume that the person providing those items would have had information on the taxpayer's location at the time of the transaction.

(2) In the case of an individual who owes compensating tax for non-business use of items acquired in a transaction with a person that did not have nexus in New Mexico, the reporting location for reporting that compensating tax is the individual's residence or primary place of abode in the state at the time of the transaction.

(3) In the following cases, the reporting location for reporting compensating tax on purchases, other than professional services, is the location of first use in the state:

(a) purchases made by a business that were not subject to the gross receipts tax solely because they were made outside the state, where the later use inside New Mexico is subject to the compensating tax; or

(b) where the taxpayer has information that can show that first use upon which compensating tax is imposed occurred at a different time and place than would be determined under Paragraphs (1) or (2) of Subsection G of 3.1.4.13 NMAC.

(4) Examples:

(a) A business acquires tangible personal property in a transaction with a person that lacks nexus in New Mexico. The business uses the property in a manner that would have rendered the transaction subject to the gross receipts tax, had the person had nexus. The reporting location for purposes of reporting the compensating tax is the reporting location to which the gross receipts would have been reported by the person if the person had had nexus and assuming, for this purpose, that the person would have had information on the location of the business that acquired the property.

(b) A business with offices both inside and outside New Mexico purchases tangible personal property at its office outside the state and later ships that property to its New Mexico office for use. The use of the property in New Mexico was such that the property would have been subject to the gross receipts tax had it been acquired in New Mexico. The reporting location for purposes of reporting the compensating tax is the office in New Mexico at which the property is first used.

(c) A business purchases tangible personal property for resale from a New Mexico seller and takes delivery of that property at the seller's place of business in Location X, using a nontaxable transaction certificate to purchase the property tax-free. Subsequent to the purchase, the business uses the property, rather than reselling it, at its own place of business in location Y. The reporting location for purposes of reporting the compensating tax is location Y.

(d) A business with offices both inside and outside New Mexico obtains a license to use digital goods which will be used at its offices inside and outside the state. In the transaction with the provider of the license, the provider knows only the purchaser's out-of-state office and conducts the transaction with that office. The reporting location for the portion of the value of the license used in New Mexico is the location of the office in New Mexico.

(e) A business purchases a service from an out-of-state person who lacks nexus in New Mexico. The product of the service is initially used in New Mexico. The reporting location of the value of the service for purpose of compensating tax is the location of the initial use by the business in New Mexico.

(f) A nonresident individual with a place of abode in New Mexico purchases tangible personal property for use in New Mexico from a seller who lacks nexus in New Mexico. The transaction would not otherwise be exempt or deductible from gross receipts tax had it occurred in New Mexico. The reporting location of the compensating tax owed by the individual is that individual's place of abode.

F. USE OF REASONABLE ESTIMATES:

(1) Use of reasonable estimates allowed. Where a person subject to the gross receipts or compensating tax maintains records or has access to other reliable information that would allow that person to determine or estimate the reporting location for those gross receipts or the compensating tax under the rules of Subsections C and D of 3.1.4.13 NMAC, those records or other information may be used to establish reasonable

estimates of the amounts reported to be reported by reporting location. Provided that the taxpayer's reporting of gross receipts or compensating tax otherwise complies with provisions of the Gross Receipts and Compensating Tax Act and applicable regulations, the department will not assess the taxpayer for additional tax if the taxpayer uses reasonable estimates, applied consistently and in good faith to determine the reporting location, so long as there is no obvious distortion. Obvious distortion shall be presumed whenever the method used to estimate the reporting location treats similar transactions inconsistently. Any method which intentionally credits sales to a location with a lower combined tax rate primarily for the purpose of reducing the taxpayer's total tax liability shall be presumed to contain obvious distortion.

(2) Use of reasonable estimates required. Where a person has gross receipts that would generally be sourced under the rules of Paragraph (5) of Subsection C of 3.1.4.13 NMAC, and where the person has records or information that would allow a reasonable estimate of the reporting location of those receipts applying Subparagraphs (a) through (d) of Paragraph (5) of Section C of 3.1.4.13 NMAC, the taxpayer shall use a reasonable estimate before applying Subparagraph (e) of Paragraph (5) of Section C of 3.1.4.13 NMAC.

G. REPORTING LOCATION - RECEIPTS SUBJECT TO THE INTERSTATE TELECOMMUNICATIONS GROSS RECEIPTS TAX:

Notwithstanding anything in Section 7-1-14 NMSA 1978, or provisions of 3.1.4.13 NMAC, the reporting location for gross receipts subject to the interstate telecommunications gross receipts tax is the state location and rate. The following telecommunications services are subject to the tax:

(1) interstate telecommunications services (other than mobile telecommunications services) that originate or terminate in New Mexico and are charged to a telephone number or account in New Mexico; and

(2) mobile telecommunications services that originate in one state and terminate in any location outside it, to a customer with a place of primary use in New Mexico as defined under Subsection E of Section 7-9C-2 NMSA 1978.

H. TRANSACTIONS ON TRIBAL TERRITORY: A person selling or delivering goods or performing services on the tribal land of a tribe or pueblo that has entered into a gross receipts tax cooperative agreement with the state of New Mexico pursuant to Section 9-11-12.1 NMSA 1978 is required to report those receipts based on the tribal location of the sale or delivery of the goods or performance of the service.

[3.1.4.13 NMAC - Rp, 3.1.4.13 NMAC, 7/7/2021; A, xx/xx/xxxx]