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September 8, 2022

Mark Chaiken
Director of Tax Policy
New Mexico Taxation and Revenue Department

Re: Comments on Proposed Gross Receipts and Compensating Tax – Digital Advertising

Dear Mr. Chaiken:

On behalf of the Council On State Taxation (COST), we are writing regarding the Department's proposed regulation 3.2.213.13 NMAC, which provides that receipts from the sale of certain digital advertising services are subject to the New Mexico Gross Receipts Tax. We recognize that the Department's position is to clarify existing tax law and note the application of the deduction available to broadcaster and advertising agencies; however, the proposed regulation highlights the complexities of the New Mexico Gross Receipts Tax regime and exacerbates the existing significant tax burden on businesses by the State.

The New Mexico Gross Receipts Tax regime is already one of the most challenging administratively and the most burdensome for business taxpayers. Among the states, New Mexico is an extreme outlier in the imposition of its Gross Receipts Tax and broad inclusion of sales of services, which creates unique complexities and burdens. Specifically, the New Mexico tax base comprises the highest percentage of business inputs of all sales taxes in the country, at an estimated 60.4%.¹

The regulation also raises some concerns over the potential for application of the tax on a retroactive basis. We encourage the Department to apply any change in policy resulting from these regulations to apply prospectively to avoid adding to the administrative and technical complexities in New Mexico.

¹ COST's study, "The Best and Worst of State Sales Tax Systems: COST Scorecard on Sales Tax Simplification, Uniformity & the Exemption of Business Inputs" can be found at the following link: <https://cost.org/globalassets/cost/state-tax-resources-pdf-pages/cost-studies-articles-reports/the-best-and-worst-of-state-sales-tax-systems-august-17-2018-final.pdf>

About COST

COST is a non-profit trade association based in Washington, DC. COST was formed in 1969 as an advisory committee to the Council of State Chambers of Commerce and today has an independent membership of over 500 major corporations engaged in interstate and international business, many of which directly do business in New Mexico. COST's objective is to preserve and promote the equitable and non-discriminatory state and local taxation of multijurisdictional business entities.

Conclusion

COST appreciates the opportunity to provide comments on this issue. We encourage the Department to preserve the fair and equitable treatment of taxpayers by effecting any policy change on a prospective-only basis; this should be done through a process including the legislature, if warranted. We also recommend that New Mexico undertake efforts to reduce the Gross Receipts Tax levied on business inputs and consider joining the Streamlined Sales and Use Tax Agreement to simplify the complexities of the New Mexico Gross Receipts Tax regime. Thank you for your time and consideration. If you have any questions or would like to discuss these comments further, please do not hesitate to contact us.

Sincerely,



Stephanie Do



Erica Kenney

cc: COST Board of Directors
Douglas L. Lindholm, COST President & Executive Director