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# FYI-230

New Mexico  
Taxation and Revenue Department

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## FOR YOUR INFORMATION

Tax Information/Policy Office ♦ P.O. Box 630 ♦ Santa Fe, New Mexico 87504-0630

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### COMPENSATING TAX

Compensating Tax, sometimes called a “use” tax, was first imposed in 1939 under the Compensating Tax Act, a companion to the Emergency School Tax Act. It was merged into the Gross Receipts and Compensating Tax Act in 1967.

The purpose of compensating tax is to protect New Mexico businesses from unfair competition from untaxed transactions by businesses located outside New Mexico.

### CONTENTS

General Information.....	page 2
Use by Individuals.....	page 2
Agent for Collection of Compensating Tax.....	page 3
Tax Rate.....	page 3
Reporting Requirements.....	page 3
Exemptions from Compensating Tax.....	page 4
Deductions from Compensating Tax.....	page 5
Credits Against Compensating Tax.....	page 7
Examples.....	page 9
Taxpayer Information.....	page 11
For Further Assistance.....	page 12

*This information is as accurate as possible at time of publication. Subsequent legislation, new state regulations, and court cases may affect its accuracy. For the latest information please check the Taxation and Revenue Department’s web site at [www.tax.newmexico.gov](http://www.tax.newmexico.gov).*

## GENERAL INFORMATION

Compensating tax is imposed on persons using tangible property, and in some cases, services, in New Mexico on which tax has not been paid to New Mexico or any other state (Section 7-9-7 NMSA 1978). The tax “compensates” for the absence of a gross receipts tax on the purchase of property for use.

The tax applies in two types of transactions.

- 1) The compensating tax is imposed if:
  - the item is acquired inside or outside New Mexico from a person located outside New Mexico; and
  - the sale would have been subject to New Mexico gross receipts tax if the seller had nexus with New Mexico.

Tangible property purchased from an out-of-state seller, through a transaction that would be deductible or exempt from New Mexico gross receipts tax if it occurred in New Mexico, is not subject to New Mexico compensating tax when that property is used in this state. No deduction or exemption from compensating tax is offered just because tangible property is purchased by an order placed by mail or telephone, or through the Internet or a fax transmission. Please refer to examples 1 through 5, beginning on page 9.

In this type of transaction, the compensating tax protects New Mexico businesses from unfair competition from out-of-state businesses not subject to a sales or gross receipts tax. The tax serves to “level the playing field.”

- 2) Compensating tax is imposed when a manufacturer uses in New Mexico property that they have manufactured.

### USE BY INDIVIDUALS

Individuals owe compensating tax on purchases from out-of-state vendors whether by mail order, television sales programs, online, or other means. The Department is prohibited, however, from taking any active steps to collect compensating tax if the products purchased are for the personal, noncommercial use of the purchaser (Section 7-9-7.1 NMSA 1978).

The prohibition does not apply to purchases of manufactured housing regardless of use. It does not cover persons who are agents for collection of compensating tax (see page 3). The Department is free to — and does — enforce compensating tax owed by businesses.

Households that move to New Mexico are exempt from tax on the value of personal and household effects moved in (Section 7-9-27 NMSA 1978).

### AGENT FOR COLLECTION OF COMPENSATING TAX

In most cases the buyer is liable for paying the compensating tax to the state. However, if the seller has sufficient presence in New Mexico and makes sales into New Mexico that are not subject to the gross receipts tax, New Mexico requires the seller to collect the compensating tax from the New Mexico buyer and to report and remit it to the Department. Please refer to the following guidelines for determining if you are an agent for collection of compensating tax, and to Example 11 on page 11.

A person is an agent for collection of compensating tax when that person directly or by an agent:

1. carries on or causes to be carried on any activity attempting to exploit New Mexico's markets;
2. sells property or sells a combination of property and service for use in this state, and
3. is not subject to the gross receipts tax on receipts from these sales.

"Activity" includes:

- maintaining or using an office, distribution house, sales house, warehouse, service enterprise or other place of business;
- maintaining a stock of goods;
- regularly soliciting orders whether or not such orders are accepted in New Mexico, unless the activity in New Mexico consists solely of soliciting by direct mail, or
- regularly engaging in the delivery of property in New Mexico other than by common carrier or U.S. mail as a consequence of an advertising or other sales program directed at potential customers.

## **TAX RATE**

The compensating tax rate is 5.125% of the value of the property or 5.00% of the value of the service at the time of acquisition or introduction into New Mexico, or at the time of conversion to taxable use, whichever is later.

"Value" refers to the adjusted basis of the property for federal income tax purposes. If there is no adjusted basis, a "reasonable value" shall be used.

## **REPORTING REQUIREMENTS**

Unlike the gross receipts tax, liability for compensating tax rests with the buyer or user rather than with the seller. The buyer meets the tax obligation, however, if the buyer pays compensating tax to a seller who is an agent for the collection of compensating tax. If this is the case, the compensating tax must be stated separately on the invoice to verify payment (Section 7-9-9 NMSA 1978).

Compensating tax is reported with gross receipts tax and withholding tax on the CRS-1 Form. (CRS stands for "Combined Reporting System.") The CRS-1 Form is in the CRS-1 Filer's Kit mailed twice yearly to businesses registered with the Taxation and Revenue Department who file paper returns. The CRS-1 Filer's Kit is available at all local tax offices (see FOR FURTHER ASSISTANCE on page 14) and online at <http://www.tax.newmexico.gov/Businesses/forms-publications.aspx>.

The CRS-1 Form and taxes are due on the 25th of the month following the end of your report period. The report period generally is each month, but may be quarterly or semiannually for taxpayers whose CRS tax liability averages less than \$200 per month. Please refer to the CRS-1 Filer's Kit for additional information.

## **EXEMPTIONS FROM COMPENSATING TAX**

Transactions that are exempt from compensating tax do not have to be reported on the CRS-1 Form:

**Electricity Exemption**

The use of electricity in the production and transmission of electricity, including transmission using voltage source conversion technology, is exempt (Section 7-9-38 NMSA 1978).

**Fuel Exemptions**

The use of gasoline or special fuel on which the Gasoline Tax (Section 7-13-3 NMSA 1978) or Special Fuel Excise Tax (Section 7-16A-3 NMSA 1978) has been paid and not refunded is exempt (Section 7-9-26 NMSA 1978).

The use of oil, natural gas, liquid hydrocarbons, or any combination of these as fuel consumed in the pipeline transportation of any of these products is exempt (Section 7-9-37 NMSA 1978).

The use of fuel, oxidizer or a substance that combines fuel and oxidizer to propel space vehicles or to operate space vehicle launchers (Section 7-9-26.1 NMSA 1978).

The use of fuel to be loaded or used by a common carrier in a locomotive engine (Section 7-9-110.2 NMSA 1978).

**Governmental Entity Exemptions**

The use of property by the federal government or one of its agencies, or by the state of New Mexico, one of its agencies, or a political subdivision is exempt (Section 7-9-14(A) NMSA 1978) with two exceptions: (1) the use of property by a New Mexico political subdivision that is or will be incorporated into a project created under the Metropolitan Redevelopment Code is not exempt; and (2) the use of tangible personal property that becomes an ingredient or component part of a construction project is not exempt.

*The use of property on Indian reservations or pueblo grants by the governing body, agency, or subdivision of an Indian nation, tribe, or pueblo is exempt (Section 7-9-14(B) NMSA 1978).*

The use of property by any branch of the U.S. Armed Forces engaged in resale activities is exempt (Section 7-9-31 NMSA 1978).

**Not-for-Profit Organization Exemption**

The use of property by organizations granted tax exemption under Section 501(c)(3) of the Internal Revenue Code is exempt provided the property is used for purposes described in that section (Section 7-9-15 NMSA 1978). There are two exceptions:

- 1) property used in an unrelated trade or business as defined in Section 513 of the Internal Revenue Code is not exempt; and

- 2) property used as an ingredient or component part of a construction project is not exempt (see exception below).

*Exception: Construction materials used by a 501(c)(3) organization organized for the purpose of providing homeownership opportunities to low-income families would not be subject to compensating tax because of an allowable deduction under Section 7-9-60 NMSA 1978.*

### **Personal and Household Effects Exemption**

The use of personal or household effects brought into New Mexico by an individual at the time the individual establishes an initial residence in this state is exempt (Section 7-9-27 NMSA 1978). This exemption also covers the non-business use of property in New Mexico by a nonresident while temporarily within this state.

### **Railroad and Aircraft Exemptions**

The use of railroad locomotives, trailers, containers, tenders or cars procured or acquired for use in railroad transportation is exempt (Section 7-9-30(A) NMSA 1978).

The use of commercial aircraft bought or leased primarily for use in the transportation of passengers or property for hire in interstate commerce is exempt (Section 7-9-30(B) NMSA 1978).

The use of space vehicles for transportation of persons or property in to or from space (Section 7-9-30(C) NMSA 1978),

### **Vehicles and Boats Exemptions**

The use of vehicles on which the motor vehicle excise tax (Section 7-14-3 NMSA 1978) has been imposed is exempt (Section 7-9-23 NMSA 1978).

The use of vehicles subject to special registration with the Motor Vehicle Division for disabled persons (Section 66-3-16 NMSA 1978) is exempt (Section 7-9-23 NMSA 1978).

The use of boats on which the boat excise tax (Section 66-12-6.1 NMSA 1978) has been paid is exempt (Section 7-9-23.1 NMSA 1978).

## **DEDUCTIONS FROM COMPENSATING TAX**

Deductions from compensating tax, unlike deductions from gross receipts tax, do not have to be reported on the CRS-1 Form:

### **Advanced Energy Deduction**

The value of eligible generation plant costs from the sale or lease of tangible personal property to a person that holds an interest in a qualified generating facility for which the Department of Environment has issued a certificate of eligibility. This deduction cannot be claimed for the same qualified expenses for which a taxpayer claims a credit under Sections 7-2-18.25, 7-2A-25 or 7-9G-2 NMSA 1978 or a deduction under Section 7-9-54.3 NMSA 1978.

### **Agricultural Implements, Aircraft and Vehicles Deduction**

Fifty percent of the value of agricultural implements used by persons regularly engaged in the business of farming or ranching, farm tractors, aircraft not exempted under Section 7-9-30(B) NMSA 1978, and vehicles not requiring registration under the Motor Vehicle Code may be deducted from the total value before computing compensating tax due (Section 7-9-77(A) NMSA 1978). Any trade-in deduction must be taken before taking this 50% deduction.

***Biomass-Related Equipment Deductions***

The value of biomass boiler, gasifier, furnace, turbine-generator, storage facility, feedstock processing or drying equipment, feedstock trailer or interconnection transformer may be deducted in computing the compensating tax due (Section 7-9-98(A) NMSA 1978).

The value of biomass materials used for processing into biopower, biofuels or biobased products may be deducted in computing the compensating tax due (Section 7-9-98(B) NMSA 1978).

***Electric Transmission and Storage Facility Deduction***

The value of equipment installed as part of an electric transmission facility or an interconnected storage facility acquired by the New Mexico Renewable Energy Transmission Authority may be deducted in computing compensating tax due (Section 7-9-102 NMSA 1978).

***Fuel Deductions***

From July 1, 2003, through June 30, 2017, 55% of the value of jet fuel prepared and sold for use in turboprop or jet engines may be deducted from the total value before computing compensating tax due. After June 30, 2017, 40% of the value of jet fuel prepared and sold for use in turboprop or jet engines may be deducted from the total value before computing compensating tax due (Section 7-9-84 NMSA 1978).

The value of fuel to be loaded or used by a common carrier in a locomotive engine may be deducted in computing the compensating tax due.

***Government Deduction***

The value of tangible personal property that is removed from inventory and contributed to a U.S. or New Mexico governmental entity or the governing body of an Indian nation, tribe or pueblo for use on an Indian reservation or pueblo grant may be deducted in computing the compensating tax due (Section 7-9-91(B) and (C) NMSA 1978).

***Leasing Deduction***

The value of tangible personal property held for lease by a person engaged in the business of selling or leasing the same type of property may be deducted before computing compensating tax due (Section 7-9-78 NMSA 1978), with three exceptions:

- 1) the value of furniture or appliances furnished as part of a leased or rented dwelling by the lessor may not be deducted;
- 2) coin-operated machines may not be deducted;
- 3) manufactured homes may not be deducted.

To be eligible for the leasing deduction, three requirements must be met:

- 1) the person must be engaged in a business that derives a substantial portion of its receipts from leasing or selling tangible personal property of the type leased;
- 2) the person cannot use the tangible personal property in any manner other than holding it for lease or sale in the ordinary course of business; and
- 3) the person cannot use the tangible personal property in a manner incidental to the performance of the service.

***Nonprofit Organization Deduction***

The value of tangible personal property that is removed from inventory and contributed to 501(c)(3) organizations, may be deducted in computing the compensating tax due (Section 7-9-91(A) NMSA 1978).

***Space-Related Test Article Deductions***

The value of space-related test articles used in New Mexico exclusively for research or testing, placing on public display after research or testing or storage for future research, testing or public display, may be deducted in computing compensating tax due (Section 7-9-54.4(A) NMSA 1978).

The value of equipment and materials used in New Mexico for research or testing, or for supporting the research or testing of space-related test articles or for storage of such equipment or materials for research or testing, or supporting the research and testing of space-related test articles may be deducted in computing compensating tax due (Section 7-9-54.4(B) NMSA 1978).

***Test Article Deduction***

The value of test articles upon which research and testing is conducted in New Mexico pursuant to a contract with the United States Department of Defense may be deducted in computing the compensating tax due (Section 7-9-54.5 NMSA 1978). This deduction does not apply to property purchased by a prime contractor operating a national laboratory.

***Trade-in Allowance Deduction***

The value of the allowance given to a buyer for the trade-in of the same type of tangible personal property being purchased may be deducted from the value of the property sold before computing compensating tax due (Section 7-9-77(B) NMSA 1978).

***Uranium Enrichment Plant Deduction***

The value of equipment and replacement parts used to enrich uranium in a uranium enrichment plant may be deducted in computing the compensating tax due (Section 7-9-78.1 NMSA 1978).

## **CREDITS AGAINST COMPENSATING TAX**

The credits below may be applied against compensating tax. For more information on compensating tax credits or other tax credits, refer to the FYI-106: Claiming Tax Credits for CRS Taxes and Business-Related Income available on our web site at <http://www.tax.newmexico.gov/forms-publications.aspx>.

***Tax Paid to Another State Credit***

This credit essentially ensures that New Mexico compensating tax is not paid on property for which similar tax has already been paid to another state (Section 7-9-79 NMSA 1978). A similar credit exists for services taxed by another state (Section 7-9-79.1 NMSA 1978).

***Advanced Energy Tax Credit***

Taxpayers who hold an interest in a qualified generating facility with expenditures for the development and construction of a qualified new solar thermal electric generating facility or a new or re-powered coal-based electric generating unit and an associated coal gasification facility may claim a credit against compensating tax, gross receipts tax or withholding tax (Section 7-9G-2 NMSA 1978).

***Affordable Housing Tax Credit***

Persons who have received vouchers from the Mortgage Finance Authority (MFA) because they invested in affordable housing projects can claim the affordable housing tax credit (Sections 7-9I-1 through 6 NMSA 1978). The vouchers, good for up to 50% of the investment, may be sold or transferred. After receiving the vouchers from MFA, the taxpayer may apply them for credit against gross receipts (less local option gross receipts taxes), compensating, withholding, personal income, corporate income, E911 and TRS tax liabilities and carry unused credits

forward for five years.

***Alternative Energy Products Manufacturing Tax Credit***

Taxpayers who produce advanced energy products may claim a credit against compensating tax for their spending on manufacturing equipment used in a manufacturing operation that produces “advanced energy products” (Sections 7-9J-1 through 8 NMSA 1978). Advanced energy products are defined as vehicles powered by advanced energy sources, fuel-cell systems, renewable-energy systems and any components of these as well as components of integrated gasification combined cycle coal facilities and facilities related to the sequestration of carbon from integrated gasification combined cycle coal plants.

***Biodiesel Blending Facility Tax Credit***

A person who is a rack operator, as defined in the Special Fuels Supplier Tax Act, can claim a compensating tax credit equal to 30 percent of the cost of purchasing or installing biodiesel blending equipment (Section 7-9-79.2 NMSA 1978). The credit cannot exceed \$50,000 for equipment installed at one facility.

***Construction Credit***

A person in the construction business who owes gross receipts tax on the sale of a construction project may take this credit against the gross receipts tax due for compensating tax already paid on the project (Section 7-9-79(B) NMSA 1978).

***High-Wage Jobs Tax Credit***

Employers who create high-wage jobs in New Mexico may apply for tax credit against compensating tax, gross receipts tax and withholding tax, E911, TRS or ITGRT liabilities if they meet the qualifications (Section 7-9G-1 NMSA 1978).

***Investment Credit***

Taxpayers who incorporate qualified equipment into a New Mexico manufacturing operation and meet a sliding-scale job creation requirement may claim credit against compensating tax, gross receipts tax or withholding tax (Section 7-9A-1 NMSA 1978).

***Research and Development Small Business Tax Credit***

For reporting periods July 1, 2005, through June 30, 2009, and from July 1, 2011, through June 30, 2015, qualified research and development small businesses may claim a credit equal to the sum of all gross receipts 50% of withholding taxes paid on behalf of employees or owners with no more than 5% ownership, that are owed to New Mexico for the report period in which the business qualifies for the credit (Sections 7-9H-1 through 6 NMSA 1978). A qualified research and development small business is a corporation, general partnership or similar entity with fewer than 25 employees, revenues less than \$5 million per year and qualified research expenditures equal to 20% of total expenditures in the year the credit is claimed.

***Rural Job Tax Credit***

Eligible employers may earn the rural job tax credit for each qualifying job created after July 1, 2000, applying it to gross receipts tax (less local option gross receipts taxes), compensating tax and withholding tax, or to corporate or personal income tax (Section 7-2E-1.1 NMSA 1978). An eligible employer is one whom the Economic Development Department has approved for Job Training Incentive Program (JTIP) assistance. A qualifying job means a job filled by an eligible employee for 48 weeks in a 12-month qualifying period.



### **Technology Jobs Tax Credit**

A taxpayer who conducts qualified research and development at a facility in New Mexico – except at a facility operated for the U.S. government – may claim a basic credit equal to 4% of qualified expenditures (Sections 7-9F-1 through 12 NMSA 1978). The 4% credit doubles when the qualified facility is in a rural area. A taxpayer may qualify for an additional 4% credit toward income tax liability by raising its in-state payroll \$75,000 for every \$1 million in qualified expenditures claimed. The minimum is \$75,000. This credit also doubles if the qualified facility is in a rural area.

## **EXAMPLES**

*Examples 1 through 5 reflect the first type of transaction described on page 2, when goods that are purchased from a seller outside New Mexico or by mail in a transaction finalized in New Mexico, for use in New Mexico, would have been subject to gross receipts tax had the seller had nexus with New Mexico.*

**Example 1.** A New Mexico pizza parlor purchases pizza ovens from a supplier in Michigan in a transaction that is not subject to New Mexico gross receipts tax because the seller does not have nexus with New Mexico.

Because no gross receipts tax exemption or deduction would have been available to the seller had his business had nexus with New Mexico, and the sale would have been subject to New Mexico gross receipts tax, the pizza parlor becomes liable for compensating tax. When the ovens enter New Mexico for use in the pizza parlor, compensating tax is due on the value of the pizza ovens and any freight, delivery and handling charges included in the seller's billing.

**Example 2.** A New Mexico accountant purchases a computer for business use from a mail-order catalog. The vendor is located outside the state of New Mexico and does not charge customers sales tax because it does not have nexus with this state.

The accountant is liable for the compensating tax on the value of the computer because the computer is used in New Mexico. Had the seller had nexus with New Mexico, the transaction would have been subject to gross receipts tax, since no gross receipts tax exemption or deduction would have applied to the sale.

**Example 3.** A new restaurant/bar in New Mexico purchases hats and T-shirts from a factory in California. The restaurant will give away these hats and T-shirts as promotional items to the first 100 people to enter the restaurant. No purchase is required to receive a hat or T-shirt. The factory did not charge California tax on the hats and T-shirts to the New Mexico restaurant.

The restaurant is liable for the compensating tax on the value of the hats and shirts because the property is used in New Mexico. Because there is no concurrent purchase required, the items are not being resold in combination with other goods.

**Example 4.** A New Mexico business owns a special machine for use in its business. The machine breaks, and the only repair shop for this item is in the state of Washington. The machine is shipped to the Washington shop for repair, and then shipped back to the New Mexico business

after repair.

The repair, a service, would not be subject to compensating tax because the service was performed entirely outside the state of New Mexico. Services performed out of state are not subject to compensating tax.

However, if the repair shop stated the price of repair parts separately from the price of the service, the value of the repair parts would be subject to compensating tax.

**Example 5.** An attorney subscribes to law journals and trade publications published outside New Mexico to use in the practice of law in New Mexico. Because it does not have nexus with New Mexico, the publisher is not subject to New Mexico gross receipts tax.

The sales of the publications are finalized in New Mexico when they are delivered to the attorney. Had the publisher had nexus with New Mexico, the gross receipts from its sales of publications delivered to the attorney would have been subject to gross receipts tax, since no exemption or deduction would have been applicable to the receipts from the sales. The attorney is liable for compensating tax on the value of the law journals and trade publications.

*Example 6 illustrates a business' responsibility as agent for collection of compensating tax.*

**Example 6.** A Texas furniture company ("company") sells to New Mexico businesses and individuals both at its retail location in El Paso and through salespeople who promote sales of its office furniture line by calling on New Mexico businesses. All deliveries are made via common carrier F.O.B. Texas.

The company is an agent for collection of compensating tax on its sales to New Mexico customers for three reasons: 1) the company regularly solicits sales in New Mexico through its salespeople; 2) the company is selling property for use in New Mexico and, 3) the sale of the furniture is not subject to the gross receipts tax because the seller does not have nexus with New Mexico.

## TAXPAYER INFORMATION

The Department offers a variety of taxpayer information. Some information is free and other information must be purchased.

**General Information.** FYIs and Bulletins present general information with a minimum of technical language. All FYIs and Bulletins are free and available through all local tax offices, the Tax Information and Policy Office, and on the Internet. The Taxation and Revenue Department's Internet address is:

<http://www.tax.newmexico.gov>

**Regulations.** The Department establishes regulations to interpret and exemplify the various tax acts it administers. The Taxation and Revenue Department regulation book is available from the New Mexico Compilation Commission on a prepaid basis. The Compilation Commission also has a compact disk of all statutes and regulations. Specific regulations are also available at the State Records Center or on its web page at [www.nmcpr.state.nm.us/nmac](http://www.nmcpr.state.nm.us/nmac).

Order regulation books directly from:

**New Mexico Compilation Commission**

<http://www.nmcompcomm.us/index.html>

**Rulings.** Rulings signed by the Secretary and approved by the Attorney General are written statements that apply to one or a small number of taxpayers. A taxpayer may request a ruling (at no charge) to clarify its tax liability or responsibility under specific circumstances. The request for a ruling must be in writing, include accurate taxpayer identification and the details about the taxpayer's situation, and be addressed to the Secretary of the Taxation and Revenue Department at P.O. Box 630, Santa Fe, NM 87504-0630. The taxpayer's representative, such as an accountant or attorney, may request a ruling on behalf of the taxpayer but must disclose the name of the taxpayer. While the Department is not required to issue a ruling when requested to do so, every request is carefully considered.

The Department will not issue a ruling to a taxpayer who is undergoing an audit, who has an outstanding assessment, or who is involved in a protest or litigation with the Department over the subject matter of the request. The Secretary may modify or withdraw any previously issued ruling and is required to withdraw or modify any ruling when subsequent legislation, regulations, final court decisions or other rulings invalidate a ruling or portions of a ruling. Taxation and Revenue Department rulings are compiled and available on the Department's web page free of charge at <http://www.tax.newmexico.gov/rulings.aspx>.

**Public Decisions & Orders.** All public decisions and orders issued by the hearing officers since July 1994 are compiled and available on the department's web page free of charge at <http://www.tax.newmexico.gov/tax-decisions-orders.aspx>.

## FOR FURTHER ASSISTANCE

Local tax offices can provide full service and information about the department's taxes, programs, and forms as well as specific information about your filing situation.

**ALBUQUERQUE (505) 841-6200**

Taxation and Revenue Department  
5301 Central NE  
P.O. Box 8485  
Albuquerque, NM 87198-8485

**LAS CRUCES (575) 524-6225**

Taxation and Revenue Department  
2540 S. El Paseo Bldg. #2  
P.O. Box 607  
Las Cruces, NM 88004-0607

**SANTA FE (505) 827-0951**

Taxation and Revenue Department  
1200 S. St. Francis Dr.  
P.O. Box 5374  
Santa Fe, NM 87502-5374

**ROSWELL (575) 624-6065**

Taxation and Revenue Department  
400 Pennsylvania Ave., Suite 200  
P.O. Box 1557  
Roswell, NM 88202-1557

**FARMINGTON (505) 325-5049**

Taxation and Revenue Department  
3501 E. Main St., Suite N  
P.O. Box 479  
Farmington, NM 87499-0479

Main switchboard (Santa Fe): (505) 827-0700

*This publication provides general information. It does not constitute a regulation, ruling, or decision issued by the Secretary of the New Mexico Taxation and Revenue Department. The Department is legally bound only by a regulation or a ruling [7-1-60, New Mexico Statutes Annotated, 1978]. In the event of a conflict between FYI and statute, regulation, case law or policy, the information in FYIs is overridden by statutes, regulations and case law. Taxpayers and preparers are responsible for being aware of New Mexico tax laws and rules. Consult the Department directly if you have questions or concerns about information provided in this FYI.*