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Stephanie Schardin Clarke
Secretary of Taxation and Revenue
P.O. Box 630
Santa Fe, New Mexico 87504-0630

Dear Secretary Schardin Clarke:

This is a comment for the record regarding your proposed amendments of 3.2.1.12 NMAC and 3.2.213.13 NMAC.

I. **3.2.1.12, Engaging in Business**, particularly 3.2.1.12A(3) which as proposed states:

(3) A person who has not registered or been otherwise identified is nonetheless a “taxpayer” subject to the provisions of the Tax Administration Act, 3.1.1.13 NMAC.

This is overly broad. It makes everyone alive a New Mexico “taxpayer”. Further, the Tax Administration Act is not 3.1.1.13 NMAC nor is any part of 3.1 NMAC a part of the Tax Administration Act.

This would be better:

(3) A person who is engaging in business in New Mexico but who has not registered or been otherwise identified is nonetheless a “taxpayer” subject to the provisions of the Tax Administration Act (Chapter 7, Article 1 NMSA 1978).

II. **3.2.213.13, Receipts of a Digital Platform that Displays Digital Advertising**

Subsection A, as proposed, conflates illegitimately two separate issues. The first is: are the receipts described in the rule “gross receipts”? The second is: are these receipts deductible?

(1) Are the receipts “gross receipts”? Clearly you are proposing that the receipts are indeed “gross receipts”. (If that were all this proposal were doing, it would be better placed in the definitional 3.2.1. NMAC series.) Again, the proposition is too broad.

(2) The proposal goes on to declare that these receipts are taxable, regardless of circumstances. It avers that neither Section 7-9-55 NMSA 1978 nor any other provision in the Gross Receipts and Compensating Tax Act provides a way for these receipts to not be subject to the gross receipts tax—a statement which may not be true. Suppose for example an out-of-state provider has under \$100,000 in sales for the year; the receipts would not be subject to the gross receipts tax. The proposal over-reaches.

I suggest that Subsection A be re-drafted as follows:

A. Receipts of a person engaging in business in New Mexico who is a provider of a digital platform that displays digital advertising services, whose digital platform may be accessed or viewed within New Mexico, from the sale of advertising services to advertisers within and without New Mexico are ~~[subject to the]~~ gross receipts ~~[tax]~~ and are not deductible pursuant to Section 7-9-55 NMSA 1978.

In writing laws or rules, be precise and tailor the rule to the issue(s) at hand.

I will leave to someone else the opportunity to ask why these receipts are not in interstate commerce when the provider is located out-of-state.

Sincerely,

James P. O'Neill