

Delivered Groceries

This bulletin addresses the application of the gross receipts tax deduction provided to retail food stores by Section 7-9-92 NMSA 1978 for receipts from selling food to a customer when the groceries are delivered to that customer's location. This bulletin provides examples and answers concerning the taxability for a variety of different delivery methods.

Note: Retail food stores remain subject to the gross receipts tax on receipts from selling tangible personal property that does not qualify as "food" under the Section 7-9-92 NMSA 1978 unless another applicable exemption or deduction applies. This bulletin does not address the sale of prepared foods, such as take-out or pizza, whether sold by a retail food store or not. For more information on what qualifies as "food" please see **FYI-201**, *Gross Receipts Tax and Certain Foods* here: <http://www.tax.newmexico.gov/forms-publications.aspx>.

In New Mexico, gross receipts tax is imposed upon the seller, not the buyer. The seller, in this case a retail food store, has sole responsibility for reporting and paying the tax, though sellers often pass the tax on to buyers. As a result, whether or not receipts from the sale of food by a retail food store that are delivered to a buyer are subject to the gross receipts tax depends on the specific details of the transaction taking place. On the next page, are four examples that may help to provide clarity.

The deduction for a retail food store in Section 7-9-92 NMSA 1978 provides:

DEDUCTION--GROSS RECEIPTS--SALE OF FOOD AT RETAIL FOOD STORE

*A. Receipts from the sale of **food** at a **retail food store** that are not exempt from gross receipts taxation and are not deductible pursuant to another provision of the Gross Receipts and Compensating Tax Act may be deducted from gross receipts. The deduction provided by this section shall be separately stated by the taxpayer.*

B. For the purposes of this section:

*(1) "**food**" means any food or food product for home consumption that meets the definition of food in 7 USCA 2012(g)(1) for purposes of the federal food stamp program; and*

*(2) "**retail food store**" means an establishment that sells food for home preparation and consumption and that meets the definition of retail food store in 7 USCA 2012(k)(1) for purposes of the federal food stamp program, whether or not the establishment participates in the food stamp program.*

(Laws 2004, Chapter 116, Section 5)

If you still have questions after reading this bulletin, please contact policy.office@state.nm.us with information on the specific transaction details and ask for guidance.

If a taxpayer feels that there may have been an error in the way that tax was applied in prior periods, they can sign-up for a managed audit with the Department. More information on this topic can be located here: <http://www.tax.newmexico.gov/Tax-Professionals/managed-audits-esc.aspx>

Please keep in mind that starting July 1, 2021, destination-based sourcing will take effect. Destination based sourcing will make the reporting location where goods are delivered the location of the sale. This may result in several different tax rates being reported by a seller and passed on to a buyer based on the delivery location. If you would like more information on this, please see, **FYI-200**, *Your Business Location and the Appropriate Tax Rate* here: <http://www.tax.newmexico.gov/forms-publications.aspx>

Example 1: A retail food store uses a third-party delivery service company to deliver groceries directly to its customer's door. The customer orders the groceries from the retail food store online and pays the retail food store online with a credit card. The delivery service then enters the store, picks up the groceries as instructed by the store, and leaves the store with the groceries that now belong to the customer to take them to the address specified by the customer. In this case, the sale took place at the store and then the delivery service takes the groceries that belong to the customer to the location that the customer specified.

Answer 1: There are two transactions in example 1. In the first transaction, the retail food store sold groceries to its customer at the store. Therefore, receipts from selling the qualifying food is eligible for the deduction under Section 7-9-92 NMSA 1978. Currently, most retail food stores are aware that if they qualify as a retail food store and they sell specific foods they are eligible for this deduction per the Internal Revenue Code requirements for the Supplemental Nutrition Assistance Program (SNAP), previously referred to as the Federal Food Stamp Program. If they qualify, they will claim the deduction under Section 7-9-92 NMSA 1978 on the items eligible for the deduction.

The second transaction is the sale of delivery services by the delivery service company which picks up and delivers the items to the customer. This service performed in New Mexico is taxable. This service may be paid for by the retail food store or the end customer. In either case, receipts from performing the delivery service are taxable unless a specific exemption or deduction exists.

Example 2: A retail food store sells groceries and offers delivery by the store for an additional service charge. The retail food store does not charge the taxpayer until it has delivered the groceries and the taxpayer has reviewed the order at the address specified. The grocery store's employee then accepts payment at the customer's location.

Answer 2: The retail food store is the taxpayer for both the food and the service. However, it is not selling the groceries "at" the retail food store. The sale and transfer of ownership is taking place at the customer's specified delivery location. In this case, due to the plain reading of the statute, receipts from sale of the food and the separate delivery charge are both taxable. The retail food store is not eligible for the deduction under Section 7-9-92 NMSA 1978 for the sale of the food.

Example 3: A retail food store sells groceries and offers delivery by the store for an additional service charge. A customer orders groceries online from the retail food store. The retail food store accepts the customer's online credit card payment and locates and packs the groceries for delivery to the customer.

Answer 3: The retail food store is the taxpayer for receipts from selling both the groceries and the service. The sale and transfer of ownership of the food to the customer occurs at the retail food store. The grocery store may deduct receipts from selling food under Section 7-9-92 NMSA 1978. The retail food store is subject to the gross receipts tax on receipts from selling the service of delivery.

Example 4: A delivery service sells groceries and delivers them to its customer's home.

Answer 4: In this case, unless the food delivery service company is a retail food store, it does not qualify for the deduction under Section 7-9-92 NMSA. However, when the delivery service company purchases the groceries at a retail food store for resale to its customer, the retail food store is eligible for the deduction under Section 7-9-92 NMSA 1978 for food covered by the deduction. The retail food store's receipts from selling other tangible personal property to the delivery company (e.g. cleaning supplies, toilet paper, etc.) are deductible with appropriate documentation under Section 7-9-47 NMSA 1978 as receipts from the sale of tangible personal property for resale. However, unless the delivery service company is a retail food store, or a different exemption or deduction exists that the transaction qualifies for, the sale to the customer will be taxable.

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This publication provides instructions or general information to the taxpayer. It does not constitute a regulation or ruling as defined under Section 7-1-60, *New Mexico Statutes Annotated*, 1978. 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 Bulletin.