

Taxation and Revenue Department

Ruling 401-25-3

August 7, 2025

FACTS

X is an El Paso, Texas law firm. Y is a New Mexico law firm. X performed legal services as co-counsel with Y for representation of the plaintiffs in a suit filed in a New Mexico district court against a trucking company and others for damages arising from the death of the plaintiff's wife and daughter and personal injuries to his son (the "Plaintiffs") in a traffic accident that occurred in New Mexico. The Plaintiffs were, and continue to be, residents of El Paso, Texas.

X performed legal services for the Plaintiffs in Texas and New Mexico pursuant to the terms of a contingent fee agreement making payment of legal fees contingent upon success in the litigation. Y performed all legal services in New Mexico. A First Judicial District Court jury, located in Santa Fe, New Mexico, awarded damages to the Plaintiffs. The defendants challenged the verdict by appealing to the New Mexico Court of Appeals and, subsequently, the New Mexico Supreme Court. Both appellate courts upheld the verdict in favor of the Plaintiffs. Following affirmance of the verdict by the New Mexico Supreme Court, the defendants paid damages to the Plaintiffs. The Plaintiffs, residents of El Paso, Texas, received and initially used the damages payment in El Paso, Texas. The Plaintiffs paid the legal fees, expenses, and costs contingent upon litigation success to X and Y.

X and Y invoiced the Plaintiffs for litigation expenses including separately stated New Mexico gross receipts tax believed at the time to be due. The Plaintiffs reimbursed X and Y for the gross receipts tax believed to be due upon receipt of legal fees under the contingent fee agreement. X and Y then reported and paid gross receipts tax that X and Y believed to be due for performing legal services in New Mexico.

RULING QUESTIONS

1. Were the receipts for legal services X performed in New Mexico deductible from gross receipts pursuant to NMSA 1978 7-9-57 as receipts from the sale of services to an out-of-state buyer?
2. Were X's receipts from legal services set forth below performed in Texas "gross receipts" subject to the New Mexico gross receipts tax?
3. If the Department rules in response to Question No. 1 that the receipts were not deductible, was it appropriate under New Mexico law for X to bill the clients/buyers of legal services for gross receipts tax due?

LAW

7-9-3.5 Definition; gross receipts.

- A. As used in the Gross Receipts and Compensating Tax Act:
 - (1) “gross receipts” means the total amount of money or the value of other consideration received from selling property in New Mexico, from leasing or licensing property employed in New Mexico, from granting a right to use a franchise employed in New Mexico, from selling services performed outside New Mexico, the product of which is initially used in New Mexico, or from performing services in New Mexico.

7-9-6 Separately stating the gross receipts tax.

- A. Taxpayers subject to the Gross Receipts and Compensating Tax Act, when billing a customer, shall separately state the amount of tax associated with the transaction or provide a statement affirmatively indicating that gross receipts tax is included in the amount billed.
- B. When the gross receipts tax is stated separately on the books of the seller or lessor and if the total amount of tax that is stated separately on transactions reportable within one reporting period is in excess of the amount of gross receipts tax otherwise payable on the transactions on which the tax was stated separately, the excess amount of tax stated on the transactions within that reporting period shall be included in gross receipts.

7-9-57 Deductions; gross receipts tax; sale of certain services to an out-of-state buyer.

- A. Receipts from performing a service may be deducted from gross receipts if the sale of the service is made to an out-of-state buyer who delivers to the seller either an appropriate nontaxable transaction certificate or other evidence acceptable to the secretary unless the buyer of the service or any of the buyer’s employees or agents make initial use of the product of the service in New Mexico or takes delivery of the product of the service in New Mexico.

3.2.5.8 SEPARATELY STATING THE GROSS RECEIPTS TAX:

- A. A person who is required to report and pay tax on gross receipts is not required to charge or collect the tax from the customer, but if the person does not separately state the amount of tax on the bill or other transactional document provided to the customer, the person must affirmatively state that the gross receipts tax is included in the amount billed. This requirement is met if the person provides a general statement on bills or invoices to customers stating that New Mexico tax is included or if the information generally provided to New Mexico customers at the time of sale or subsequently indicates that the seller has included New Mexico tax in the amount charged.

3.2.215.10 OTHER EVIDENCE:

- A. As used in Section 7-9-57 NMSA1978, “other evidence acceptable to the secretary” included invoices, contracts, photostatic copies of checks and letters which show that the sale is to an out-of-state buyer and which indicate that the initial use of the product of the service did not occur in New Mexico.

ANALYSIS

1. Were the receipts for legal services X performed in New Mexico deductible from gross receipts pursuant to NMSA 1978 7-9-57 as receipts from the sale of services to an out-of-state buyer?

X and Y are engaged in business by performing legal services in New Mexico and, thus, the receipts of these services are subject to the gross receipts tax. The presumption is that all receipts from performing legal services are subject to the gross receipts tax unless eligible for a specific exemption or deduction.

Section 7-9-57 provides a deduction for receipts from performing a service to an out-of-state buyer when the product of the service is delivered outside of New Mexico and there is not an initial use of the product of the service in New Mexico. The Plaintiffs have always been and continue to be Texas residents. The determination of the product of the service is discussed in *TPL, Inc. v. New Mexico Taxation and Revenue Department*, 2003-NMSA-007, 133 N.M. 447, (N.M. 2003). The court described the product of the service as “what benefit the buyer received-what the buyer paid for.” Though there is a degree of subjectivity even with the court’s guidance, ruling 401-16-2 concludes that a monetary judgment is the product of the service for a similar buyer of legal services. The same conclusion is reached in this instance, that the Plaintiffs sought legal services to obtain a monetary judgment for the deaths and injuries that took place in New Mexico. The monetary judgment is the product of the service and was received by the Plaintiffs in Texas. The receipts for the legal services provided to the Plaintiffs by X and Y were delivered to the Plaintiffs in Texas and the initial use was in Texas. Thus, X and Y may deduct the receipts of the services if the Plaintiffs deliver an appropriate nontaxable transaction certificate or other evidence acceptable to the secretary to X and Y in accordance with Section 7-9-57 and regulation 3.2.215.10(A) NMAC that the sale of the services was to an out-of-state buyer and that the initial use was not in New Mexico.

2. Were X’s receipts from legal services set forth below performed in Texas “gross receipts” subject to the New Mexico gross receipts tax?

X’s receipts from performing services in Texas, the product of which was initially used in Texas, are not “gross receipts” subject to the New Mexico Gross Receipts and Compensating Tax Act. The services were performed in Texas, the damages payment was received in El Paso, Texas, and the product of the services were not initially used in New Mexico. The receipts are not for

services performed outside New Mexico, the product of which was initially used in New Mexico, and thus do not meet the definition of gross receipts described in NMSA 1978 7-9-3.5.A.

3. If the Department rules in response to Question No. 1 that the receipts were not deductible, was it appropriate under New Mexico law for X to bill the clients/buyers of legal services for gross receipts tax due?

X is allowed to obtain reimbursement from Plaintiff for gross receipts tax due on fees received for performing legal services. According to the facts presented, X and other counsel separately stated the New Mexico GRT due and complied with NMSA 1978 7-9-6 and Regulation 3.2.6.8 NMAC.

The ruling is retroactive to January 1, 2022.

Approved:

Signed by: 8/15/2025
Stephanie Schardin Clarke
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Stephanie Schardin Clarke
Secretary

Review for legal sufficiency:

DocuSigned by:
Donnita Wald 8/20/2025
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Donnita Wald, Chief Legal Counsel