

Ruling 401-18-1

Issued: January 26, 2018

Effective: January 26, 2018

A ruling has been requested concerning the application of certain provisions of the Gross Receipts and Compensating Tax Act to the following facts:

X is a privately held corporation based outside of New Mexico. X utilizes a technology platform and mobile phone application to facilitate peer-to-peer ridesharing by connecting service providers with potential customers in real time. The mobile platform provides a marketplace where persons seeking transportation to certain destinations (riders) can be matched with other individuals able to drive to those destinations instantly (drivers). X provides the technological infrastructure, marketing, and account settlement services, and the drivers provide the transportation services to the riders.

X's customers are the drivers, who pay X for the benefits they derive from X's platform. The riders are customers of the drivers and pay for the transportation services that they receive. X's platform allows drivers and riders to access a marketplace with predictable and consistent pricing between vendors and includes a payment processing function that makes transactions easy for drivers and riders.

X uses an independent, third-party service provider, Y, to perform all payment processing. X's platform enables a single card-based payment from the rider for the transportation service transaction, but all payments are retained by Y and distributed to X and to drivers accordingly. X never takes possession of what is paid to the driver, and instead only receives the part of the payment designated for X, which is a per-ride service fee and commission.

X requests a ruling on the following questions:

1. Is X subject to gross receipts tax (GRT) on X's service fees and on the commissions X collects from drivers, which would exclude amounts paid by riders directly remitted to drivers (fares, tips and surcharges) from GRT?
2. If TRD finds that X acts as a collection agent with respect to the rider's payment, is X eligible for the disclosed agency exclusion, which would allow X to exclude from gross receipts all amounts it collects on behalf of drivers as the drivers' agent?

New Mexico's gross receipts tax is imposed on the gross receipts of "any person engaging in business in New Mexico" (Section 7-9-4 NMSA 1978). "Engaging in business" is defined to mean "carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit (Section 7-9-3.3 NMSA 1978).

“Gross receipts” is defined as the total amount of money or the value of other consideration received from selling property located 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 (Section 7-9-3.5 NMSA 1978).

X is engaging in business in New Mexico and has receipts that meet the definition of gross receipts by performing services in New Mexico. Gross receipts are subject to tax unless an exemption, deduction, or exclusion applies.

Ruling

Question 1

The receipts that X receives from Y for its service fees and commissions on payments made by riders to drivers are receipts from engaging in business in New Mexico. No statutory exemption or deduction applies to these receipts. X is subject to the gross receipts tax on the gross receipts it receives from Y. Although the gross receipts tax is imposed on the seller, it is common practice to pass that tax on to the buyer. X does not collect or possess at any time the receipts that are distributed to the drivers by Y. X does not have a gross receipts tax obligation for these receipts.

Question 2

Based on the answer to Question 1 above, X is subject to gross receipts tax on its service fees and commissions only. X is not considered to be collecting or in possession of the amounts paid to drivers because Y is collecting the rider’s payments and distributing them to X and the drivers.