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Deduction Lifts Gross Receipts Tax Burden For Businesses that Sell Out of State

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New Mexico's gross receipts tax might make many business owners grumble, but the tax code contains provisions to help entrepreneurs compete with out-of-state rivals who aren't subject to the tax. Taxpayers that sell services to out-of-state buyers when the product of the service is initially used outside the state and the product is delivered to the buyer outside New Mexico may be eligible for a deduction.

For transactions to be deductible, certain guidelines must be met.

Out of state buyer: An out-of-state buyer has no offices or places of business in New Mexico. If the buyer is an individual, he is not a resident of New Mexico.

Product of the service: For an architect, the product of the service is the building plan she prepares. For a writer, it is the manuscript. The product of a service may be intangible, such as when a psychiatrist treats a patient, but it's described as the benefit received by the buyer from the performance of the service.

Delivery outside New Mexico: An out-of-state buyer receives the product of a service where he or his agent or employee accepts the product. An investment adviser, for example, delivers the product of her service when she telephones her client outside of New Mexico or e-mails advice to her out-of-state client at an out-of-state location.

In contrast, when an out-of-state airline hires a New Mexico company to paint its airplanes in New Mexico and an airline employee picks up an airplane in New Mexico for return to its out-of-state base, the out-of-state buyer accepts delivery of the product of that service in New Mexico, making that transaction ineligible for the gross receipts tax deduction.

Initially used outside New Mexico: New Mexico statute defines initial use as the “first employment for the intended purpose of the service.” If a writer sends an article to a New York publisher for publication in New York, the initial use of the article occurs outside New Mexico. If an architect’s plans are used to construct a building in Colorado, the initial use occurs outside

New Mexico. Services to repair, maintain or improve real property in New Mexico are initially used in New Mexico and not eligible for the deduction even if the property owner is not a state resident or present in New Mexico.

Evidence to support deduction: To take this deduction, a business must provide evidence acceptable to the Taxation and Revenue Department to justify it. The department accepts a nontaxable transaction certificate, invoices, contracts and copies of checks or letters that show the sale is to an out-of-state buyer and that the initial use and delivery of the product of the service occurred outside New Mexico.

Montgomery and Andrews represents businesses in court and administrative proceedings and advises on state tax matters and other areas of government law. For more information, visit www.montand.com.

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