REIMAGINING TAX ADMINISTRATION

New Mexico Tax Practices & Taxpayer Rights

What you need to know

New Mexico's sales tax is called Gross Receipts Tax.

What's unfair about the New Mexico Gross Receipts Tax System

- Some taxpayers may not even be aware of their responsibility for Gross Receipts Tax.
- Low-income workers are saddled with the cost of Gross Receipts Tax when they had no idea, they were even businesses in the first place.

New Mexico Gross Receipts Tax can be confusing

- Most states' sales tax applies only to sales of tangibles.
- New Mexico taxes sales of <u>services</u> and tangibles by companies, independent contractors, consultants, gig and casual workers and anyone else who receives a 1099-NEC.
- Some states use the term gross receipts tax for taxes that do not apply to individual sales transactions

Audits

Two types of audits

- Desk audits
  - Managed audits
- Field audits

Note: The statute of limitations for all audits is December 31 of the third year after the year in which the tax is due – 7 years if no return is filed and 10 years in the case of fraud.

Common reasons for underreporting

- Reports were filed but didn't include non-taxable sales.
- The business or worker was unaware of the responsibility to file.
- Not aware that services are taxable.
- Out-of-state business selling to customers in New Mexico.
- New business did not do their due diligence.
- Confusion over terminology.

– Didn’t do due diligence

Desk audits

Desk audits are usually initiated because underreporting is easily detected by an automated process comparing gross receipts reported to the state to information reported to IRS on Schedule C and 1099s, as well as payments to U.S. government contractors. The result is automated notices proposing a liability for tax, penalties, and interest.

> *Note:* This type of audit may be avoided if all sales are reported even though some may not be taxable.

Managed Audits are a type of desk audit that are voluntary and must be requested by a taxpayer who gets a desk audit proposed assessment notice or hasn’t filed for many years and wants to catch up.

The taxpayer submits the data should have been reported to the auditor who then prepares a proposed assessment. Documentation is required only to prove non-taxable gross receipts.

Notes about Managed Audits

– If tax is paid within 180 days of the assessment, there’s no penalty or interest.

– If the tax is not within 180 days of the assessment, the taxpayer may be eligible for a payment plan which accrues interest but no penalty.

– When deciding whether to request a Managed Audit the taxpayer should take into consideration an important trade-off. The Managed Audit will cover all unfiled returns up to the statute of limitations. That means the taxpayer will be responsible for more tax than the initial notice was about but no penalty or interest.

Audit Redress Options

Informal

– Before an assessment is made the taxpayer can request a review by either a manager, supervisor, bureau chief or the Audit Review Unit. (TBOR)

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Statutory

- After an assessment has been made and before court a court has jurisdiction (whether or not the liability has been paid) the taxpayer can request abatement based on information not considered by auditor. (TBOR)
- File a formal protest within 90 days of the assessment.
- If the protest is denied an appeal can be filed with New Mexico Court of Appeals within 30 days

Taxpayer Bill of Rights

Audits

- "The right to obtain nontechnical information that explains the procedures, remedies, and rights available during audit, protest, appeals and collection proceedings pursuant to the Tax Administration Act"
- "The right to be provided with an explanation of the results of and the basis for audits, assessments or denials of refunds that identify any amount of tax, interest or penalty due"
- "The right to seek review, through formal or informal proceedings, of any findings or adverse decisions relating to determinations during audit or protest procedures in accordance with the provisions of Section 7-1-24 NMSA 1978 and the Administrative Hearings Office Act."

Collections

- LLC members and corporation shareholders are not personally liable for gross receipts tax.
- No Offer in Compromise program.
- Penalties can be abated for "non-negligence"
- The cabinet secretary can compromise liability with closing agreement
- Innocent spouse relief
- The state cannot bring an action or proceeding to collect a liability after 10 years from assessment date but cannot write off the liability. Liability can be collected from an enforceable lien.