

Sales/Use/Indirect:

New Mexico: Proposed Rule Says Receipts from Digital Ad Services May Be Subject to Gross Receipts Tax

Proposed Amended N.M. Regs. sections 3.2.1.19, 3.2.106.7, 3.2.106.15, 3.2.213.7, 3.2.213.9, 3.2.213.13, and 3.1.4.13, N.M. Tax. & Rev. Dept. (8/9/22). The New Mexico Taxation and Revenue Department recently proposed changes to various administrative regulations to “align with current law and provide guidance on digital advertising, treatment of cannabis under certain rules,” as well as remove “outdated language about reimbursed expenditures.” The proposed changes include language that deems “receipts of a provider of digital advertising services, whose digital platform may be accessed or viewed from within New Mexico, from the sale of advertising services to advertisers within and without New Mexico” to be subject to the New Mexico gross receipts tax (*i.e.*, the State’s version of a “sales tax”). The proposal states that New Mexico gross receipts tax levied on such advertising receipts “does not impose an unconstitutional burden on interstate commerce,” and includes some relevant definitions. For instance, the proposed changes define “digital advertising services” as advertisement services on digital platforms, including advertisements in the form of banner advertising, search engine advertising, interstitial advertising, and other comparable advertising services, while “digital platform” is defined as “any type of website, including part of a website, or application, that a user is able to access or view.” Furthermore, the proposed rule changes state that receipts of a provider of digital advertising services are deductible from the New Mexico gross receipts tax when the receipts:

URL: https://www.tax.newmexico.gov/all-nm-taxes/wp-content/uploads/sites/9/2022/08/Cannabis-Digital-Advertising-Reimbursed-Expenditure-Mailing-Notice-2022_SSC.pdf

- Are from a national or regional advertiser not having its principal place of business in New Mexico, or that is not incorporated under the laws of New Mexico, or
- Are from an advertising agency which purchases the display of advertisements on the platform on behalf of, or for subsequent sale to, such a seller.

However, the proposal states that the advertising agencies’ commissions received from performing services in New Mexico may *not* be deducted from the tax. A virtual public hearing on these proposed rule changes is scheduled on September 8, 2022, and any written comments are due by the same. Please contact us with any questions.

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