



***New Mexico Tax Treatment of Not –for-
Profit Organizations***

Interim Revenue Stabilization and Tax Policy Committee

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New Mexico Not-For-Profit Taxation Background and History

Treatment of not-for-profits (NFP's) varies by state and by type of NFP

- We focus primarily on federally designated 501(c)(3) organizations
- Many states look to federal determination but may also impose other restrictive criteria for tax benefit.

Concerns tend to be raised in those situations where there is a perceptions of unfair competition with private sector activities

New Mexico Not-For-Profit Taxation Background and History

“Competition” tends to occur in the arenas of:

- Healthcare; and
- Education

Healthcare taxation has become a subject apart from non-for-profit status as the trend has been to move away from healthcare taxation in NM:

- For example: GRT deductions for Clinical labs, Medicare services, Physicians and other practitioners, and Hospital GRT credits

New Mexico Not-For-Profit Taxation Background and History

In the field of education – services tend to be performed by other non-taxed NFP's and governmental subdivisions (i.e. public schools and universities)

- Taxable for profit examples do exist, such as University of Phoenix and ITT Technologies

Other higher profile examples:

- Church facilities for hire
- Girl Scout cookies
- Santa Fe Opera
- Los Alamos National Labs (before LANS)

New Mexico Not-For-Profit Taxation Background and History

Blue Ribbon Tax Reform Commission

- Reviewed Issues
- Review itself generated lots of public interest
- BRTRC Made no substantive recommendations
- Did recommend consideration of more informational reporting by larger NFPs

New Mexico Not-For-Profit Taxation

- Organizations described in Section 501(c)(3) of the Internal Revenue Code
 - Charitable, educational, healthcare related or religious organizations
- Federal Tax Treatment
 - Income exempt from income taxation
 - Exception - unrelated trade or business income (“UBIT”)
 - Exempt from federal unemployment tax
 - File Federal Form 990 (informational), 990T with UBIT
 - 990 made available for public inspection

New Mexico Not-For-Profit Taxation Income and Payroll

- New Mexico Tax Treatment – Income and Payroll Tax
- Follow Federal Tax Treatment
 - Income exempt from income taxation
 - No additional reporting tax reporting required
 - Exception - unrelated trade or business income (“UBIT”)
 - File Form CIT-1 with UBIT
- Not exempt from state unemployment or workers compensation
 - Can elect to be self-insured

New Mexico Not-For-Profit Taxation Gross Receipts and Compensating Tax

- Receipts of NFP's

- Gross Receipts Tax Exemption – Receipts
Section 7-9-29 NMSA 1978

“A. Exempted from the gross receipts tax are the receipts of organizations that demonstrate to the department that they have been granted exemption from the federal income tax by the United States commissioner of internal revenue as organizations described in Section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended or renumbered...

C. This section does not apply to receipts derived from an unrelated trade or business as defined in Section 513 of the United States Internal Revenue Code of 1954, as amended or renumbered.”

New Mexico Not-For-Profit Taxation Gross Receipts and Compensating Tax

- Purchases by NFP's
 - Compensating Tax Exemption
Section 7-9-15 NMSA 1978
 - “Exempted from the compensating tax is the use of property by [501(c)(3) organizations]...”
 - Use as part of a construction project does not qualify for exemption and is taxable
 - Doesn't apply to the use of property in an unrelated trade or business (i.e. using otherwise exempt property in such a way would trigger compensating tax liability.

New Mexico Not-For-Profit Taxation Gross Receipts and Compensating Tax

- Sales of tangible personal property to NFP's
 - Gross Receipts Tax Deduction (for sellers)
Section 7-9-60 NMSA 1978
 - “receipts from selling tangible personal property to 501(c)(3) organizations may be deducted from gross receipts or from governmental gross receipts...”
 - Not applicable to the purchase of construction materials
 - Sales of construction materials to gov't and NFP's is a significant audit issue
 - Require Nontaxable Transaction Certificate (NTTC)
 - DOES NOT apply to services, leases, licenses, etc.

New Mexico Not-For-Profit Taxation Gross Receipts and Compensating Tax

- Purchases of good & services for resale by NFP's
 - Gross receipts tax deduction (for sellers) for purchase or lease of TPP for subsequent sale or lease
Sections 7-9-47, 49 and 50, NMSA 1978
 - Treated just like other taxpayers in this regard
 - Gross receipts tax deduction for services for resale
Section 7-9-48 NMSA 1978
 - Requires the next sale to be subject to GRT
 - Accordingly, first-tier subcontractors of NFPs pay gross receipts tax because NFP's sales are exempt
 - If UBIT, NFP transactions may be subject to tax and in those cases they can purchases services tax free

New Mexico Not-For-Profit Taxation Property Tax

NM Constitution Article VIII, Section 3

- Exempts NM property used for charitable purposes, all church property not used for commercial purposes, and all property used for educational purposes.
- Statute makes clear that exemption include:
 - Nonprofit museum property is not subject to New Mexico property tax if certain requirements are met (i.e. Fed NFP used to provide educational services and grant free admission to local students).

New Mexico Not-For-Profit Taxation Property Tax

NM Constitution Article VIII, Section 3

- Statute make clear that exemptions include:
- Charitable nursing, retirement, or long-term care organization property. When certain requirements are met to include Federal 501(c)(3); donate or freely provide a portion of its services or facilities; and use all funds remaining after payment of its usual and necessary operational expenses to further its charitable purpose.

New Mexico Not-For-Profit Taxation Summary

- Most states provide benefits/tax expenditures for NFPs
- NM provides income tax, property tax, and GRT/compensating tax benefits
- NM allows NFPs to buy goods, but not services (including construction services and materials)
- NM has trended away from medical service taxation that may have presented tax inequities
- If states allow exemption from sales tax, they tend to include construction (NM does not)