
FYI-103

New Mexico
Taxation and Revenue Department

FOR YOUR INFORMATION

Tax Information/Policy Office ♦ P.O. Box 630 ♦ Santa Fe, New Mexico 87504-0630

INFORMATION FOR NON-PROFIT ORGANIZATIONS

This FYI includes information for non-profit organizations. This includes information on other federal and state agencies that a non-profit organization may want to verify reporting or registering responsibilities with and information on New Mexico taxes.

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This information is as accurate as possible at time of publication. Subsequent legislation, new state regulations, and court decisions may affect its accuracy. For the latest information please check the Taxation and Revenue Department's web site at <https://www.tax.newmexico.gov/>.

Disclaimer: All information provided on organization outside of the Taxation and Revenue Department is provided as a courtesy and may fall out of date. Make sure to contact those organizations directly for the most accurate information.

NONPROFIT ORGANIZATION

There are many different types of non-profit organizations. The federal government has its own set of definitions as does New Mexico. Different tax programs, and different acts and statutes, apply to different types of non-profit organizations.

REGISTRATION REQUIREMENTS

There are many other agencies (both federal and in New Mexico) that a non-profit organization located in New Mexico will have to either register with or have filing requirements with depending on how the organization is set up. The list below is meant to assist you, but it is not an exhaustive list. It is best that you reach out to experts on this topic and speak with a tax professional so that you can explain the goals and activities of the non-profit organization to so they can assist you in determining the proper agencies and procedures to comply with.

OTHER STATE AND FEDERAL AGENCIES

- Internal Revenue Service (IRS) - <https://www.irs.gov/charities-and-nonprofits> ;
- New Mexico Secretary of State - <https://www.sos.nm.gov/business-services/start-a-business/>
- New Mexico Attorney General - <https://www.nmag.gov/about-the-office/civil-affairs/charities/> ;
- New Mexico Department of Workforce Solutions - <https://www.dws.state.nm.us/en-us/> (unemployment insurance);
- New Mexico Workers' Compensation Administration – <https://workerscomp.nm.gov/> (workers' compensation fee collected by the Taxation and Revenue Department (Department); and
- Counties and Municipalities that the non-profit organization is located in or operating in.

NEW MEXICO TAXATION AND REVENUE DEPARTMENT

In order to be recognized as a non-profit organization by the New Mexico Taxation and Revenue Department (Department) a letter from the Internal Revenue Service is required. The Department requires that letter of determination when submitting the ACD-31015, *Business Tax Registration Application and Update Form*. Use this form to be issued a New Mexico Business Tax Identification Number (NMBTIN). Any organization engaged in business in the state of New Mexico is required to register with the Department. Depending on the nature of the nonprofit organization and its activities, this registration requirement may not apply. An exempt entity that has no tax liabilities is not required to register but may do so to obtain Nontaxable Transaction Certificates (NTTCs). If you do not have a gross receipts tax filing responsibility on the ACD-31015 for filing frequency you will want to select "casual".

New Mexico has a lot of different tax programs. A list of those tax programs and more information can be located here: <https://www.tax.newmexico.gov/businesses/other-all-nm-taxes/>. Below is list of a few of those tax programs that may apply:

- Income tax – corporate income tax
- Gross receipts tax (more information provided later in this FYI)
- Compensating tax (more information provided later in this FYI)
- Bingo and raffle tax – RPD-41345, *New Mexico Bingo and Raffle Tax Return* – If you are operating or conducting bingo, raffle, or other receipts generated by a game of chance you are subject to this tax and must file quarterly. The receipts received are not subject to gross receipts tax (Section 60-2F-21 NMSA 1978). This income is subject to income taxes.
- Gaming tax (Gaming Control Board) RPD-41209, *Gaming Operator Tax Return* – You must report to the gaming control board and then they will provide the necessary information to the Taxation and Revenue Department.
- Wage withholding tax
- Workers' compensation fee

New Mexico Business Tax Identification Number (NMBTIN) Registration	501(c)(3) Organizations	Other 501(c) Organizations	Non 501(c) Organization
	Registration required to report withholding tax, compensating tax and gross receipts tax on receipts from unrelated trade or business	Registration required.	

When you are in compliance, you reduce the risk of being assessed for late taxes, interest and penalties if you are selected for audit. In addition, lack of compliance with some of the federal reporting requirements can subject you personally, or your organization, to substantial daily penalties and could result in the loss of your federally granted income tax exempt status.

Unrelated Business Income

An important concept in the taxation of non-profits is “Unrelated Business Income”, or “UBI”. Unrelated Business Income is income from a trade or business, regularly carried on, that is not substantially related to the charitable, educational, or other purpose that is the basis of the organization’s exemption. An exempt organization that has \$1,000 or more of gross income from an unrelated business must file Form 990-T with the Internal Revenue Service (IRS). In New Mexico, the exempt organization would file a corporate income and franchise tax return.

Any income that the IRS views as "unrelated business income" is subject to federal and New Mexico taxes.

New Mexico Gross Receipts Tax

Gross Receipts Tax (GRT) is a privilege tax levied on persons engaged in business in New Mexico for the privilege of doing business in New Mexico. Gross receipts tax is due unless an exemption or deduction applies to the transaction taking place. Below you can locate some of the exemptions and deductions that exist for gross receipts tax. However, for a list of all current exemptions and deductions see FYI-105, *Gross Receipts & Compensating Taxes – An Overview* or the **TRD-41413, Gross Receipts Tax Return Instructions**.

- **Exemptions** are those receipts which are not taxable and do not have to be reported. If all the receipts of an organization are exempt, the organization is not required to register with the department unless it is required to register for another tax program.
- **Deductions** are receipts that are not subject to tax but must be reported to the department. An organization with deductible receipts is required to register with the department and maintain proof of any deductions taken.

	501(c)(3) Organizations	Other 501(c) Organizations	Non 501(c) Organization
Reporting requirement - Gross Receipts Tax	Form TRD-41413, Gross Receipts Tax Return required to report gross receipts tax on receipts from unrelated trade or business	Form TRD-41413, Gross Receipts Tax Return required	

Purchases of a Non-Profit Organization

As a non-profit organization, when making purchases, it is important to remember that gross receipts tax is a tax on the seller. However, New Mexico statute allows for that tax to be passed through to the seller’s buyers. In the instances provided below it is important to note that a nontaxable transaction certificate (NTTC) or alternative evidence can be provided by a non-profit organization to the seller in the instance that a deduction or exemption applies to the transaction taking place. It is important to note that the deduction or exemption may apply only to certain 501(c) organizations, to all 501(c) organizations, or to all non-profit organizations under New Mexico law. Taxpayers should carefully check the deduction or exemption against the basis for their non-profit status before claiming an exemption or deduction.

Type of Purchase	501(c)(3) Organizations	Other 501(c) Organizations	Non 501(c) Organization
Tangible personal property for direct use in activity	Receipts from this transaction are taxable unless the requirements of the deduction under Section 7-9-60 NMSA 1978) are met. If the deduction applies, a Type 9 NTTC or alternative evidence can be provided to the seller.	Receipts from this transaction are taxable. No exemption or deduction available.	

Tangible personal property for resale	Receipts from this transaction are taxable unless the requirements of the deduction under Section 7-9-47 NMSA 1978 are met. If the deduction applies, a Type 9 NTTC or alternative evidence can be provided to the seller.	Receipts from this transaction are taxable unless the requirements of the deduction under Section 7-9-47 NMSA 1978 are met. If the deduction applies, a Type 2 NTTC or alternative evidence can be provided to the seller.
Services for use in activity	Receipts from this transaction are taxable. No exemption or deduction available.	

Deductions for Sellers to Non-Profit Organizations:

- Receipts from selling tangible personal property to 501(c)(3) organizations for use in their exempt functions (7-9-60). This deduction is only available to 501(c)(3) organizations, and not any other type of non-profit organization.
 - ◆ Exception: receipts from selling materials included as part of a construction project and construction services provided by a construction contractor are not deductible unless the organization is providing homeownership opportunities to low-income families (7-9-60B).
 - ◆ Exception: receipts from leasing of tangible personal property or licenses or performance of construction or other services are not deductible.
 - ◆ NTTC Requirement: Type 9.
 - ◆ **NOTE:** this deduction can also be taken from governmental gross receipts tax.

- Receipts from selling construction materials and metalliferous mineral ore to 501(c)(3) organizations (7-9-60).
 - ◆ Requirement: the 501(c)(3) organization must be organized for the purpose of providing homeownership opportunities to low-income families.
 - ◆ NTTC Requirement: Type 9.

Sales (Receipts) of Non-Profit Organizations

Type of Sales	501(c)(3) Organizations	Other 501(c) Organizations	Non 501(c) Organization
Receipts from fundraisers	Donations exempt if Section 7-9-29 NMSA 1978 applies.	Receipts from 2 fundraisers annually if the deduction under Section 7-9-85 NMSA 1978 applies.	GRT due on receipts from fundraisers
Receipts from donations	Donations exempt if Section 7-9-29 NMSA 1978 applies.	No GRT due on donations provided the 501(c) performs no service and does not sell or lease property for the donation. If this is the case, the receipts would not fit the definition of gross receipts and would not be taxable.	
Receipts from dues & registration fees	Dues and registration fees paid to nonprofit social, fraternal, political, trade, labor or professional organizations and business leagues are exempt under Section 7-9-39 NMSA 1978.		
All other receipts	Receipts are taxable if from unrelated trade or business, receipts of a hospital licensed by the Department of Health, and receipts derived from operating a national laboratory unless an exemption or deduction applies	GRT due on all other receipts unless an exemption or deduction applies.	

Exemptions:

- Receipts of homeowners' associations from membership fees, dues, and assessments from owner-members to be used for tax, insurance and maintenance expenses for commonly owned areas and facilities (7-9-20).

- NOTE that “homeowners’ associations” are only those defined in Section 528(c)(1)(A through D), (2), (3), and (4)(A, B and D) of the Internal Revenue Code.
- Receipts of 501(c)(3) organizations and receipts of 501(c)(6) organizations from conducting chamber of commerce, visitor bureau and convention bureau activities (7-9-29).
 - ◆ Exception: receipts from an unrelated trade or business are taxable.
 - ◆ Exception: receipts from a prime contractor that are derived from operating a facility in New Mexico designated as a national laboratory by the act of congress or are derived from operating a research facility in New Mexico that is state owned are taxable.
 - ◆ Exception: receipts of a hospital licensed by the Department of Health are taxable.
- Receipts from dues and registration fees of nonprofit social, fraternal, political, trade, labor or professional organizations and business leagues (7-9-39).
 - NOTE: 501(c)(4) civic leagues, civic organizations and social welfare organizations are social organizations and included in this exemption.
- Receipts of a minister of a 501(c)(3) religious organization from performing religious services (7-9-41).
- Receipts from a nonprofit hospital licensed by the Department of Health (7-9-41.5). This exemption is only from the local option portion of gross receipts tax. The state gross receipts tax rate must be reported and paid. See Form TRD-41413, Gross Receipts Tax Return for more information.

Deductions:

- Receipts of a business entity from an affiliate for performing administrative, managerial, accounting and customer services or sharing office machines and facilities (7-9-69).
 - ◆ Requirement: must be on a nonprofit or cost basis.
 - ◆ **NOTE:** an affiliate is a business entity that, directly or indirectly, through one or more intermediaries’ controls, is controlled by, or is under common control with, another business entity.
- Organizations exempt from federal income tax under Section 501(c) of the Internal Revenue Code may deduct the receipts from two fund-raising events each calendar year (7-9-85).
 - ◆ Exception: this deduction is not available to 501(c)(3) organizations, the receipts of which are exempt under Section 7-9-29, except for receipts from unrelated trade of business as defined in the United States Internal Revenue Code.

Compensating Tax

Compensating tax is an excise tax imposed on persons making taxable use of property, license, franchise, or services in New Mexico as described below (7-9-7).

Exemption:

- The use of property by organizations that have been granted tax exemption under Section 501(c)(3) of the Internal Revenue Code as long as the property is used in the conduct of their exempt functions (7-9-15).
 - ◆ Exception: property used in an unrelated trade or business as defined in Section 513 of the Internal Revenue Code and property used as an ingredient or component part of a construction project are not exempt.

Deduction:

- The value of tangible personal property that is removed from inventory and contributed to 501(c)(3) organizations may be deducted in computing the compensating tax due (7-9-91).
 - ◆ Exception: contributions of tangible personal property that will become an ingredient or component part of a construction project are not deductible.
 - ◆ Exception: contributions of tangible personal property utilized or produced in the performance of a service are not deductible.
 - ◆ Requirement: the tangible personal property must be deductible by the contributor for

New Mexico Income Taxes

A non-profit may be a taxpayer if organized as a United States Domestic partnership, a limited liability company, a United States domestic corporation or trust. Any unrelated income or trade should be reported on an income tax return. You can locate more information on our income tax returns on our website here: <https://www.tax.newmexico.gov/forms-publications/> in the "Income Taxes" folder.

	501(c)(3) Organizations	Other 501(c) Organizations	Non 501(c) Organization
Reporting requirement - income & franchise tax	CIT-1 required only for unrelated income	CIT-1 required only for unrelated income	PIT-1, CIT-1 and pass through entity filing as appropriate

TAXPAYER INFORMATION

General Information. FYIs and Bulletins present general information with minimum technical language. All FYIs and Bulletins are free of charge and available through all local tax offices and on the Taxation and Revenue Department's website at <https://www.tax.newmexico.gov/forms-publications/>

Regulations. The Department establishes regulations to interpret and exemplify the various tax acts it administers. Current statutes with regulations can be located on the Department's website for free at <https://www.tax.newmexico.gov/all-nm-taxes/statutes-with-regulations/>. Specific regulations are also available at the State Records Center and Archives or on its web page at <https://www.srca.nm.gov/>

The Taxation and Revenue Department regulation book is available for purchase from the New Mexico Compilation Commission. Order regulation books directly from the New Mexico Compilation Commission at <https://www.nmcompcomm.us/>

Rulings. Rulings signed by the Secretary and approved by the Attorney General are written statements that apply to one or a small number of taxpayers. A taxpayer may request a ruling (at no charge) to clarify its tax liability or responsibility under specific circumstances. The Department will not issue a ruling to a taxpayer who is undergoing an audit, who has an outstanding assessment, or who is involved in a protest or litigation with the Department over the subject matter of the request. The Department's rulings are compiled and available on free of charge at <https://www.tax.newmexico.gov/all-nm-taxes/rulings/>.

The request for a ruling must be in writing, include accurate taxpayer identification and the details about the taxpayer's situation, and be addressed to the Secretary of the Taxation and Revenue Department at P.O. Box 630, Santa Fe, NM 87504-0630. The taxpayer's representative, such as an accountant or attorney, may request a ruling on behalf of the taxpayer but must disclose the name of the taxpayer. While the Department is not required to issue a ruling when requested to do so, every request is carefully considered.

The Secretary may modify or withdraw any previously issued ruling and is required to withdraw or modify any ruling when subsequent legislation, regulations, final court decisions or other rulings invalidate a ruling or portions of a ruling.

Public Decisions & Orders. All public decisions and orders issued since July 1994 are compiled and available on the Department's web page free of charge at <https://www.tax.newmexico.gov/all-nm-taxes/tax-decisions-orders/>.

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FOR FURTHER ASSISTANCE

Tax District Field Offices and the Department's call center can provide full service and general information about the Department's taxes, taxpayer access point, programs, classes, and forms. Information specific to your filing situation, payment plans and delinquent accounts.

TAX DISTRICT FIELD OFFICES

ALBUQUERQUE

10500 Copper Ave. NE, Suite C
Albuquerque, NM 87123

SANTA FE

Manuel Lujan Senior Building
1200 S. Saint. Francis Dr.
Santa Fe, NM 87505

FARMINGTON

3501 E. Main St., Ste N
Farmington, NM 87402

LAS CRUCES

2540 El Paseo Bldg. 2
Las Cruces, NM 88001

ROSWELL

400 N. Pennsylvania Ave., Ste 200
Roswell, NM 88201

For forms and instructions visit the Department's web site at <https://www.tax.newmexico.gov/>

Call Center Number:

1-866-285-2996

If faxing something to a tax district field office, please fax to:

Call Center Fax Number:

1-505-841-6327

If mailing information to a tax district field office, please mail to:

Taxation and Revenue Department
P.O. Box 8485
Albuquerque, NM 87198-8485

For additional contact information please visit the Department's website at <https://www.tax.newmexico.gov/contact-us/>

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