

This Week in State Tax (TWIST)

February 17, 2025



New Mexico: Department Rules on Taxability of Marketplace Fees

The New Mexico Taxation and Revenue Department (TRD) recently issued a ruling concerning the application of the Gross Receipts and Compensating Tax Act (GRT) to a marketplace provider's (MPP) services to marketplace sellers (MPS). TRD addressed five questions posed in the ruling request.

- *First*, TRD addressed whether charges for the shipment of customer return packages qualify as deductible transportation services. TRD explained that return shipment fees are deductible as transportation services if: (1) the tangible personal property is transported from between two points in New Mexico; (2) the transportation is in interstate commerce; and (3) the MPP must have a single contract for the transportation of the return product. The TRD clarified that the fee could be deductible if the returned item was transported to a location outside New Mexico under a single contract. However, transportation to a New Mexico warehouse would fail to meet the interstate commerce test. For sourcing purposes, TRD noted that if the exact entry point was unknown, the buyer's shipping address may be used as a proxy, provided it is applied consistently and in good faith.
- *Second*, TRD addressed whether fees charged by an MPP as part of the sale of tangible personal property are subject to GRT, given the fees were already taxed as part of the underlying sale. TRD concluded that the MPP's gross receipts included the total amount collected from customers, including any fees retained for listing items or providing services related to the sale. The MPS may deduct the receipts passed on to them, but the MPP must report the total gross receipts from the sale. If, however, the MPP receipts are the result of a separate transaction with the seller not related to a sale (e.g., separate monthly fee or other contractual arrangements), the fees would be separately subject to GRT as a transaction between the MPP and MPS.
- *Third*, TRD addressed whether certain separate MPS fees should be sourced to the location of the seller based on the address maintained in the MPP's records. The MPP offered the MPS a monthly fee plan, which included marketing, back-office, and administrative support, an alternative to the per-transaction fee. TRD identified these services as the "freedom from responsibility" for marketing and administrative tasks delivered at the MPS location. Consequently, TRD concluded that the gross receipts from the monthly fee plan should be sourced to the location of the MPS, as recorded in the MPP's records, since that was where the seller benefitted from the services.
- *Fourth*, TRD addressed whether logistics fees deducted from the sale of tangible personal property were subject to GRT. The MPP imposed fees on the MPS for order fulfillment and additional logistics services such

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as special packaging. The TRD determined the logistics service receipts were inherently linked to the initial sale to the purchaser and not treated as separate transactions. Therefore, the logistics service receipts were subject to GRT as part of the overall transaction.

- Finally, TRD addressed whether warehouse fees constitute deductible receipts from storage and shipping. TRD mirrored the criteria outlined in question one, requiring that the property involved must have moved or will move in interstate or foreign commerce, and the services must be performed by a local agent for a carrier or by a carrier under a single contract related to transportation services. TRD determined that the MPP was engaged in storing and distributing sellers' property, potentially qualifying for the deduction. TRD explained that to qualify for the deduction, however, the MPP must have acted as the carrier or a local agent for a carrier, and the services must be performed under a single contract related to transportation. For more information on [New Mexico Ruling 401-24-03](#), contact [Carolyn Owens](#).

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