



This Week in State Tax (TWIST)

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New Mexico – Medical Placement Services Performed Outside the State Not Taxable

The New Mexico Court of Appeals recently held that a taxpayer qualified for the out-of-state exemption from gross receipts tax on placement services performed outside of New Mexico the product of which was initially used within the state. The taxpayer was an out-of-state medical staffing agency that provided medical professional placement services to medical facilities, otherwise known as healthcare operators, across the country, including New Mexico. The Tax and Revenue Department audited and assessed the taxpayer over \$2.8 million in unpaid gross receipts tax (GRT), interest, and a civil negligence penalty, for the period from January 31, 2010, to May 31, 2017. The taxpayer protested the assessment, arguing that it qualified for the out-of-state exemption under N.M. Stat. Ann. § 7-9-13.1, because its services were performed outside New Mexico and the product of the service was initially used in New Mexico. An Administrative Hearing Officer (AHO) upheld the Department's assessment, and the taxpayer appealed to the Court.

The court's rationale centered on two aspects: the nature of the service provided by the taxpayer and an erroneous determination made by the AHO. First, the court examined the nature of the taxpayer's services, emphasizing that the primary services—recruitment, placement, onboarding, and billing—were conducted electronically from its offices outside New Mexico. The court determined that these activities constituted the core services provided by the taxpayer, and they were performed out-of-state. The medical professionals, who were independent contractors, delivered healthcare services in New Mexico, but the court clarified that these services could not be imputed to the taxpayer, as the taxpayer did not directly provide medical services.

The court then addressed whether the product of the service was initially used in New Mexico as required by the statute. The AHO had determined that the statutory language required that the service result in a tangible product which was not the case here, meaning the taxpayer did not qualify for the exemption. The court found the tangible product determination to be erroneous and not required by the statute. The product was what flowed from the transaction, and the product of the taxpayer's service (i.e., recruitment and placement of medical professionals at a facility) occurred in New Mexico. Consequently, the court concluded that the taxpayer's receipts were exempt from New Mexico's GRT under the out-of-state exemption under N.M. Stat. Ann. § 7-9-13.1 as in place for the years in question. For more information on [Vista Staffing Solutions, Inc. v. N.M. Tax. and Rev. Dept.](#), contact [Carolyn Owens](#).

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