



This Week in State Tax (TWIST)

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New Mexico: Department rules legal fees for out-of-state action are deductible

The New Mexico Taxation and Revenue Department recently issued two complementary rulings addressing whether legal fees earned by law firms representing out-of-state plaintiffs in New Mexico litigation are subject to New Mexico gross receipts tax (GRT). In Rulings [401-25-2](#) & [401-25-3](#), a New Mexico law firm, together with co-counsel from a Texas law firm, represented Texas-resident plaintiffs in a successful case in the New Mexico trial and appellate courts. The plaintiffs, who remained Texas residents throughout the proceedings, were awarded damages; they received the award payments in Texas and paid contingent legal fees, expenses, and costs to both law firms for their legal services. Both firms also included separately stated New Mexico gross receipts tax on their invoices, believing it was due at the time.

The law firms requested that the Department rule on whether the legal fees were deductible from gross receipts as receipts from the sale of services to an out-of-state buyer, and if not deductible, whether it was appropriate for them to bill and be reimbursed for the GRT by the client. The Department's analysis focused on statutory provisions which allow a deduction from gross receipts for services performed for out-of-state buyers when the product of the service is delivered and initially used outside New Mexico. The Department determined that the legal services provided to the Texas plaintiffs met this standard. Although the litigation occurred in New Mexico, the benefits of the service, in this case the awarded damages, were received and initially used in Texas. As a result, the law firms' receipts were deductible and not subject to New Mexico GRT, assuming that the clients deliver an appropriate nontaxable transaction certificate (or other evidence acceptable to the Department) to the law firms evidencing that the legal standard is met.

The rulings further clarified that, because both law firms had separately stated the GRT on their invoices and paid the tax in good faith, they were entitled to reimbursement from the plaintiffs for the tax paid. For further questions regarding the rulings and the New Mexico GRT, please contact [Carolyn Owens](#).

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