
FYI-202

New Mexico
Taxation and Revenue Department

FOR YOUR INFORMATION

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

Gross Receipts Tax and Health Care Services

This publication provides general information on the application of gross receipts tax to health care services performed in New Mexico.

In the 2004 legislative session, the New Mexico Legislature repealed the general gross receipts tax on certain health care services. It also repealed a long-standing .5% credit that businesses within municipal boundaries were using to remain competitive with similar businesses in unincorporated areas of the counties where the municipalities are located. These changes take effect January 1, 2005.

This information is as accurate as possible at time of publication. Subsequent legislation, new state regulations and court cases may affect its accuracy. For the latest information please check the Taxation and Revenue Department's web site at www.state.nm.us/tax.

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General Summary of the Law, House Bill 625, 2004 Session

House Bill 625 removed the gross receipts tax on certain health care services and qualifying food sales, effective January 1, 2005. It did so by establishing a deduction from gross receipts under Sections 7-9-92 and 7-9-93¹ for receipts from the sale of qualifying medical services and food. For information about the deductions of receipts from sales of qualifying foods, please see “FYI-201, Gross Receipts Tax and Certain Foods.”

The bill also adjusted gross receipts tax distributions to offset revenue losses to local governments and repealed a .5% credit against the state tax rate for taxpayers who report from locations within city boundaries. This means that effective January 1, 2005, the gross receipts tax rates for all businesses within city limits will increase by at least .5%. The adjustment restores the state’s share to the pre-credit level of 5%.

A new section of the Tax Administration Act, Section 7-1-71.2, establishes penalties for taxpayers who do not correctly report receipts deductible under Sections 7-9-92 and 7-9-93. See page 9 for instructions on how to calculate penalty. The incorrect reporting penalty applies in addition to any other penalty (such as for late filing) that may be due.

The New Medical Services Deduction

Under Section 7-9-93, a **health care practitioner** may deduct receipts from payments by a **managed health care provider** or **health care insurer** for **commercial contract services** or **Medicare Part C services** provided by a health care practitioner. Receipts from **fee-for-service payments** by a health care insurer do not qualify. The terms in bold print are defined below.

Definitions

Health care practitioners are limited to:

- 1) *Chiropractic physicians* licensed under the Chiropractic Physician Practice Act;
- 2) *Dentists or dental hygienists* licensed under the Dental Health Care Act;
- 3) *Doctors of oriental medicine* licensed under the Acupuncture and Oriental Medicine Practice Act;
- 4) *Optometrists* licensed under the Optometry Act;
- 5) *Osteopathic physicians* licensed under Chapter 61, Article 10 NMSA 1978 or osteopathic physician’s assistants licensed under the Osteopathic Physicians’ Assistants Act;
- 6) *Physical therapists* licensed under the Physical Therapy Act;
- 7) *Physicians or physician’s assistants* licensed under Chapter 61, Article 6 NMSA 1978;
- 8) *Podiatrists* licensed under the Podiatry Act;
- 9) *Psychologists* licensed under the Professional Psychologist Act;
- 10) *Registered lay midwives* registered by the Department of Health;
- 11) *Registered nurses, licensed practical nurses, certified registered nurse anesthetists, nurse practitioners or nurse midwives* licensed under the Nursing Practice Act;
- 12) *Registered occupational therapists* licensed under the Occupational Therapy Act;
- 13) *Respiratory care practitioners* licensed under the Respiratory Care Act; and
- 14) *Speech-language pathologists* or *audiologists* licensed under the Speech-Language Pathology, Audiology and Hearing Aid Dispensing Practices Act.

¹ All statutory sections are NMSA 1978.

For licensing information, please refer to the agency contacts provided under “For Further Assistance” in this publication.

Managed health care providers are entities that deliver comprehensive basic health care services and medically necessary services to persons enrolled in a recognized plan. The services may be provided through the entity’s employed health care providers or through selected or participating providers under contract to the managed health care provider. Qualifying managed health care providers must supply comprehensive basic health care services to enrollees on a contract basis². Managed health care providers include, but are not limited to:

1) Health maintenance organizations (HMOs)

These are organizations that provide a wide range of comprehensive health care services for a specified group of enrollees for a fixed, pre-paid premium. There are several models of HMOs: Group Model, Individual Practice Association (IPA), Staff Model and Network Model.

2) Preferred provider organizations (PPOs)

This is a managed care arrangement consisting of a group of hospitals, physicians and other providers who have contracts with an insurer, employer, third-party administrator or other sponsoring group to provide health care services to covered persons in exchange for prompt payment and increased patient volume.

3) Individual practice associations (IPAs)

These associations of individual physicians provide services on a negotiated *per capita* rate, flat retainer fee or negotiated fee-for-service basis. This type of association is one model of HMO managed care. IPAs may also serve non-HMO patients.

4) Competitive medical plans

These plans are health care organizations that meet specific government criteria for Medicare-risks contracting, but are not necessarily HMOs.

5) Exclusive provider organizations (EPOs)

These organizations consist of a group of providers who have a contract with an insurer, employer, third-party administrator or other sponsoring group. Criteria for provider participation may be the same as those in PPOs, but there are more restrictive provider selection and credentialing processes. Otherwise, the provider forfeits reimbursement altogether.

6) Integrated delivery systems

These are systems that bring together the components of a health care delivery system so that health care is received through one system by doctors, hospitals and other

² In other words, if the organization or plan is listed, it qualifies. If it is not listed, it can still qualify if it meets the descriptive definition in the statute: “provides comprehensive basic health care services to enrollees on a contract basis.” Section 7-9-93(B)(4)

providers working together to deliver a comprehensive range of health care services³.

7) Independent physician-provider organizations

These organizations are associations of individual physicians that provide services at a negotiated *per capita* rate, flat retainer fee or negotiated fee-for-service basis. Such an organization is one model of HMO managed care.

8) Physician hospital-provider organizations

Such organizations are group practice arrangements that occur when hospitals and physicians organize to contract with managed care organizations. These relationships are formally organized, contractual or corporate in character and include physicians outside the boundaries of a hospital's medical staff.

9) Managed care services organizations

“Managed care” is the coordination of financing and provision of health care to produce high-quality health care for the lowest possible cost and to impose control on the use of medical services and on the providers who render the care. Managed care is provided through managed indemnity plans, Preferred Provider Organizations (PPOs), Exclusive Provider Organizations (EPOs), Health Maintenance Organizations (HMOs), or any other cost management environment.

For more information about managed care, contact the Public Regulation Commission or the National Association of Health Underwriters listed in the “For Further Assistance” section of this publication.

Health care insurer is a person who has a valid certificate of authority in good standing according to the New Mexico Insurance Code to act as an insurer, health maintenance organization or nonprofit health care plan or prepaid dental plan and who contracts to reimburse licensed health care practitioners for providing basic health services to the insured parties at negotiated fee rates.

Commercial contract services are health care services performed by a health care practitioner under a contract with a managed health care provider or health care insurer. Excluded are health care services provided for Medicare patients according to Title 18 of the federal Social Security Act or for Medicaid patients according to Title 19 or Title 21 of the federal Social Security Act.³

Medicare Part C services are services performed according to a contract with a managed health care provider for Medicare patients pursuant to Title 18 of the federal Social Security Act.⁴

Fee-for-service payment: A traditional method of payment for health care services under which health care insurers pay providers under an indemnity insurance plan for each service rendered after the services have been received by the patient. Under a fee-for-service arrangement, a plan or insurer does not establish contracted or *per capita* rates of payments with providers before the insured submits a claim.

³ While it is unlikely that an integrated delivery system that is not a single entity would qualify as a managed health care provider, within that system could be payers who would qualify.

⁴ See the special Medicare note on page 7.

Eligibility for the New Medical Services Deduction

To qualify for the medical services deduction under Section 7-9-93, receipts must meet all four of these conditions:

- 1) The health care services must be provided by a health care practitioner specified on page 2.
- 2) The health care services must be within the practitioner's recognized area of practice.
- 3) The receipts must be from a managed health care provider, as defined on page 3, or health care insurer, as defined on page 4.
- 4) The payment must be made for either commercial contract services or Medicare Part C services, defined on page 4. Please see the note regarding Medicare receipts on page 7.

General Examples

Example 1: Physician P, a general practitioner, receives payments for health care services from health care insurers and an HMO. Under Section 7-9-93, P can deduct the payments from the health care insurers and the HMO.

Example 2: Radiologist R, who is not a physician, receives payments for X-ray services from a health care insurer. R cannot deduct those receipts under Section 7-9-93 because R is not a "health care practitioner" within the definition of that statute. Please see the list of qualified health care practitioners on page 2.

Example 3: Optometrist O owns a separate X-ray facility as well as O's own practice. O receives payments for X-ray services from a health care insurer and would like to deduct them from his gross receipts under Section 7-9-93. O cannot deduct the receipts for X-ray services because those services are not within the area of his practice.

Example 4: H is a for-profit hospital providing commercial contract services through staff health care practitioners. The hospital receives payments from qualifying health care insurers. H may deduct those receipts under Section 7-9-93. Because they are deducted under that statute, however, such receipts are not eligible a second time for the 50% deduction under Section 7-9-73.1. H should account for deductible receipts under Section 7-9-93 and all other allowable deductions prior to calculating the deduction allowed under Section 7-9-73.1.

Example 5: P is a physician who provides health care services on contract with an HMO. The HMO receives payment for services from Medicare. The HMO, not P, may deduct the Medicare payments from its gross receipts as provided by Section 7-9-77.1. The physician, however, may deduct payments received from the HMO under Section 7-9-93. In this example there are two separate taxpayers with two different sets of receipts, each qualifying for two separate deductions.

Exclusions from the New Medical Services Deduction

1) Receipts otherwise deductible:

Medical receipts deductible under another provision of the Gross Receipts and Compensating Tax Act do not qualify for the new medical services deduction provided by Section 7-9-93. Medical deductions other than the new medical services deduction include:

- a) Receipts of certain health care professionals from performing health care services for Medicare patients (other than Medicare Part C) are not deductible under Section 7-9-93, but may be deducted under Section 7-9-77.1. Section 7-9-77.1 provides a deduction for Medicare payments for health care services performed by medical doctors, osteopathic physicians, hospices, podiatrists and for receipts of a third-party administrator of the federal TRICARE program for providing medical and other health services by medical doctors and osteopathic physicians.⁵
- b) Receipts from sales of prosthetic devices to health care practitioners for resale to patients are not deductible under Section 7-9-93 because they are not receipts from medical services. Receipts from prosthetic devices, may, however, be deducted under Section 7-9-73. That statute provides a deduction for receipts from selling prosthetic devices to certain licensed practitioners.
- c) Receipts from sales of prescription drugs are not deductible under Section 7-9-93 because they are not receipts from medical services. Instead, such receipts are deductible under Section 7-9-73.2, which provides a deduction for receipts from the sale of prescription drugs.

2) Exempt Receipts

The following receipts are not deductible under Section 7-9-93 because they are exempt under other statutes:

- a) Receipts from health care services provided by physicians employed by 501(c)(3) organizations or provided by health maintenance organizations are not deductible under Section 7-9-93. Receipts of 501(c)(3) organizations are already exempt from gross receipts under Section 7-9-29, while receipts of insurance companies are exempt under Section 7-9-24.
- b) Receipts from a federal or New Mexico government entity for providing medical services are not deductible under Section 7-9-93. They are already exempt from gross receipts under Section 7-9-13.

3) Taxable Receipts

The following receipts do **not** qualify for the deduction under Section 7-9-93 and are taxable unless deductible under another section:

- a) Receipts from co-payments or deductibles.

⁵ A second 2003 amendment extended the deduction for Medicare payments for health care services provided by clinical laboratories and home health agencies to Medicare beneficiaries. This amendment is not compiled in the published statutes but is noted in the annotation and is administered by the Department as law.

- b) Receipts paid directly by patients to a health care practitioner.
- c) Receipts from health care services sold to agencies of the United States and New Mexico governments. Receipts from services sold to government agencies are taxable (Section 7-9-54).

Type 5 NTTCs for Resale of Medical Services

Practitioners deducting receipts under Section 7-9-93 who purchase health care services for resale may not execute a Type 5 nontaxable transaction certificate because the next sale is not subject to gross receipts tax as required by Section 7-9-48.

Example: Anesthesiologist A receives payments for subcontracted services from physician P. In the past, P has given such subcontractors a Type 5 nontaxable transaction certificate to document the deduction of the subcontractor's receipts from services resold by P. Now, though, P is going to deduct the payments from a health care insurer under Section 7-9-93. A's receipts from sales of services for which P claims the deduction under Section 7-9-93 are no longer deductible as sales of services for resale under Section 7-9-48 because that statute requires the receipts from the resale of the service to be subject to gross receipts tax or governmental gross receipts tax. A's receipts from sales of services to P are subject to gross receipts tax, and the law does not prohibit the seller from passing the tax amount to the buyer by adding it to the sale price at the time of the transaction.

A Special Note About Medicare Receipts

The new deduction under Section 7-9-93 excludes payments for health care services for Medicare patients according to Title 18 of the federal Social Security Act if those services do not qualify as Medicare Part C services. The deduction covers services under Medicare Part C, a category that allows Medicare patients to choose care from a health maintenance organization (HMO), a health maintenance organization with point-of-service (POS) provisions, preferred provider organizations (PPOs), provider-sponsored organizations (PSOs), private fee-for-service providers (PFFSs), and medical savings accounts (MSAs). *A qualifying health care practitioner who receives payments for services eligible under Medicare Part C may deduct them under Section 7-9-93.*

Section 7-9-77.1 establishes a deduction for certain medical and health care services paid for by Part B of Title 18 of the federal Social Security Act. Eligible for this deduction are receipts from Medicare Part B sources for:

- Medical or other health services provided by medical doctors, osteopathic physicians and podiatrists to Medicare beneficiaries;
- Medical or other health and palliative services provided by a hospice to Medicare beneficiaries,
- Medical services provided by a clinical laboratory to Medicare beneficiaries, and
- Medical or other health and palliative services provided to Medicare beneficiaries by a home health care service.
- Medical or other health care services provided for covered beneficiaries by medical doctors, osteopathic physicians and podiatrists when a third-party administrator of the federal TRICARE program pays for those services.

Reporting Deductible Receipts from Sales of Health Care Services

The law providing the new medical services deduction requires the state to distribute money back to local governments equal to the value of the new medical deduction claimed by health care practitioners. The law also requires that health care practitioners separately state the new medical services deduction provided by Section 7-9-93. It is important for health practitioners to report correctly in order for the Department to accurately distribute to the local governments the amount of revenue they would otherwise lose. Please use the following instructions when reporting your gross receipts tax.

Using the CRS-1 Form or the CRS-1 Long Form:

To file a CRS-1 report including deductions of receipts under Section 7-9-93, you must enter those receipts on a separate line from your taxable receipts and receipts deductible under other statutes. For each business location, you will use two lines of the CRS-1 Form. To complete the CRS-1 report for each business location:

1. On the first line for the business location, enter the information for your taxable receipts and receipts deductible under statutes *other than 7-9-93*. On this line, leave Column B, "Special code", blank. No special code is necessary for these receipts.
2. On the next line, for the same business location, enter the information for *receipts eligible for deduction under Section 7-9-93* (see eligibility information on page 5). You **must** enter the special code "M" in Column B when reporting receipts eligible for the new medical services deduction.

See the sample CRS-1 Long Form for an illustration of how a medical practitioner should segregate the gross receipts eligible for the new medical services deduction from all other gross receipts.

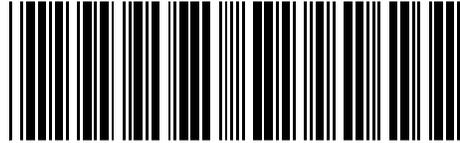
Example: For a report period, a medical doctor has \$50,000 in total gross receipts for a business location in Albuquerque, \$30,000 of which qualify for the deduction under Section 7-9-93 and \$10,000 of which are deductible payments from Medicare (which do not qualify for the Section 7-9-93 deduction because they are deductible under Section 7-9-77.1). The doctor also has a Santa Fe location with total receipts of \$36,321, of which \$20,591 may be deducted under Section 7-9-93. The doctor's CRS-1 report should be completed this way:

- ***The health care practitioner must separate other deductible sales from sales that carry the special medical services code "M"***. For the Albuquerque location, the practitioner counts \$20,000 in sales that do not meet standards for the special-code medical services deduction. The practitioner adds together all receipts already deductible under other sections of the Gross Receipts and Compensating Tax Act. They amount to \$10,000 (the Medicare payments). The practitioner completes this line of the CRS-1 form in the usual way, but the total gross receipts in Column D is \$20,000 instead of \$50,000. In Column E the practitioner enters the \$10,000 that is deductible under statutes other than Section 7-9-93. The taxable gross receipts of \$10,000 are then entered in Column F, and the practitioner pays gross receipts tax on that amount. See the sample CRS-1 Long Form in this booklet.
- On a separate line of the CRS-1 Form, the practitioner enters the information for the Albuquerque location's receipts deductible under Section 7-9-93. She must

enter "M" as a special code in Column B. Then, in Column D, the practitioner enters the \$30,000 in receipts qualifying for the Section 7-9-93 deduction. She then enters that same amount in Column E, "Total Deductions", and has zero to enter as taxable gross receipts in Column F.

- On the next two lines of the CRS-1 Form, the practitioner enters the information for the Santa Fe business location. On the first of these two lines, the practitioner leaves Column B, "Special code", blank and enters the Santa Fe location code (01123) in Column C, "Location code." In Column D, "Gross receipts", the practitioner enters the \$15,730.00 of gross receipts that are not eligible for the deduction under Section 7-9-93. In Column E, "Total deductions", the practitioner enters the \$520.00 of receipts deductible under statutes other than Section 7-9-93. After subtracting the deductible receipts in Column E from the gross receipts in Column D, the practitioner enters \$15,210.00 in Column F, "Taxable gross receipts." Multiplying \$15,210.00 times the Santa Fe gross receipts tax rate of 6.6875 percent⁶, the gross receipts tax to put in Column H is found to be \$1,017.17.
- On next line down on the CRS-1 Form, the practitioner enters the information for the Santa Fe location's receipts deductible under Section 7-9-93. He must enter "M" as a special code in Column B. After entering the Santa Fe location code in Column C, in Column D, the practitioner enters the \$20,591.00 in receipts qualifying for the Section 7-9-93 deduction. He then enters that same amount in Column E, "Total Deductions", and has zero to enter as taxable gross receipts in Column F and zero gross receipts tax to put in Column H.

⁶ This was the gross receipts tax rate in effect at the time "FYI-202" was published. For the current rate, please consult the gross receipts tax rate schedule provided on this Department's website at www.state.nm.us/tax.



Mail To: Taxation and Revenue Department,
P.O. Box 25128, Santa Fe, NM 87504-5128

NAME
STREET/BOX
CITY, STATE, ZIP

NEWMEXICO
CRSIDNO.

TAX PERIOD

Month	Day	Year

 through

Month	Day	Year

Check if applicable: Amended report

Payment made by:
 Automated clearinghouse deposit Date _____
 Federal wire transfer Date _____

If additional space is needed, use the supplemental page.

Do not submit a photocopy of these forms to the Department. If additional space is needed, please obtain an original form from your local district office or download the form from our web site at www.state.nm.us/tax.

A Municipality / county name	B Special code*	C Location code	D Gross receipts (excluding tax)	E Total deductions	F Taxable gross receipts	G Tax rate	H Gross receipts tax
Enter total of columns D, E and H, this page. * See instructions for column B.			\$	\$			\$
If supplemental pages are attached, enter total of all columns D, E and H, from this page and all supplemental pages.			\$	\$			\$

I declare that I have examined this return including any accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete.

Signature of Taxpayer or Agent

Print name _____ Phone _____

Title _____ Date _____

1	TOTAL GROSS RECEIPTS TAX ALL PAGES	
2	COMPENSATING TAX	
3	WITHHOLDING TAX	
4	TOTAL TAX DUE	
5	PENALTY	
6	INTEREST	
7	TOTAL AMOUNT DUE	

Special Penalties for Incorrectly Reporting the Tax Deduction

The 2004 Legislature enacted a new section of the Tax Administration Act that sets penalties for taxpayers who do not correctly report the amount eligible for this deduction. The penalty is the difference between the reported deduction and the correct amount multiplied by twice the applicable local option tax rates. *It applies to understating this deduction as well as overstating it.*

Example:

Within the city of Santa Fe a health care practitioner has declared a deductible amount of \$100,000 when its actual deductible amount is \$75,000; therefore

$\$100,000 - \$75,000 = \$25,000$, the difference between the reported deduction and the correct amount;

$\$25,000 \times 4.375$ (or 2×1.6875 , Santa Fe's local option gross receipts tax on January 1, 2005) = \$843.75;

\$843.75 is the special penalty for incorrectly reporting the tax.

This penalty is in addition to other applicable penalties.

TAXPAYER INFORMATION

The department offers a variety of taxpayer information. Some information is free and other information must be purchased.

General Information. FYIs and Bulletins present general information with a minimum of technical language. All FYIs and Bulletins are free and available through all local tax offices, the Tax Information and Policy Office, and on the Internet. The Taxation and Revenue Department's Internet address is:

<http://www.state.nm.us/tax>

E-mail Address. Submit questions about this publication or other New Mexico tax issues to:

poffice@state.nm.us

Regulations. The Department establishes regulations to interpret and exemplify the various tax acts it administers. The Taxation and Revenue Department regulation book is available from the New Mexico Compilation Commission on a prepaid basis. The Compilation Commission also has a compact disk of all statutes and regulations. The order form is available at all local tax offices, through the Tax Information and Policy Office and on the Department's web page at **www.state.nm.us/tax**. Specific regulations are also available at the State Records Center or on its web page at **www.nmcpr.state.nm.us/nmac**.

Order regulation books directly from:

**New Mexico Compilation Commission
P.O. Box 15549
Santa Fe, NM 87506-5549
Telephone: 505/827-4821
Fax: 505/827-4869**

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 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 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 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. Taxation and Revenue Department rulings are compiled and available on the Department's web page free of charge at **www.state.nm.us/tax**. Click on "publications."

Public Decisions & Orders. All public decisions and orders issued by the hearing officers since July 1994 are compiled and available on the Department's web page free of charge at **www.state.nm.us/tax**. Click on "publications."

FOR FURTHER ASSISTANCE

Local tax offices can provide full service and information about the Department's taxes, programs and forms and specific information about your filing situation.

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ROSWELL **505/ 624-6065**

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This publication provides general information. It does not constitute a regulation, ruling, or decision issued by the Secretary of the New Mexico Taxation and Revenue Department. The Department is legally bound only by a regulation or a ruling [§7-1-60, *New Mexico Statutes Annotated, 1978*]. In the event of a conflict between FYI and statute, regulation, case law or policy, statutes, regulations and case law override the information in FYIs. Taxpayers and preparers are responsible for being aware of New Mexico tax laws and rules. Consult the Department directly if you have questions or concerns about information provided in this FYI.