

## Ruling 420-19-1

Issued: June 20, 2019

Effective: June 20, 2019

A ruling has been requested concerning the application of the Gross Receipts and Compensating Tax Act to the following situation:

Z comprises a group of companies organized for the purpose of designing, manufacturing, testing and operating a space vehicle system that will carry passengers into space for a fee. Two of the companies from this group will operate out of New Mexico and will provide commercial space launch services to customers who desire to experience sub-orbital space flight. X will own and lease the space vehicle system to Y. Y will maintain the space vehicle system and hold a parts inventory necessary for proper ongoing maintenance. In addition, Y will operate the space vehicle system, employ the pilots, and purchase and store the fuel for the space flights. They will fly passengers from a location in New Mexico into suborbital space, at an altitude of over 250,000 feet, and return to the same location. Y will be licensed by the federal government under Section 51 USC Chapter 509 to fly persons or property in the space vehicle system.

X and Y collectively request a ruling on the following:

- 1) Are the passenger revenues of Y subject to a deduction from NM Gross receipts tax?
- 2) Is the lease of space vehicles from X to Y subject to a deduction from NM gross receipts tax?
- 3) Are the parts and services maintained by Y subject to deduction from NM gross receipts or compensating tax upon service of the space vehicles in New Mexico?

New Mexico's gross receipts tax is imposed on the gross receipts of "any person engaging in business in New Mexico" (Section 7-9-4 NMSA 1978). "Engaging in business" is defined to mean "carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit (Section 7-9-3.3 NMSA 1978).

"Gross receipts" is defined as the total amount of money or the value of other consideration received from selling property located in New Mexico, from leasing or licensing property employed in New Mexico, from granting a right to use a franchise employed in New Mexico, from selling services performed outside New Mexico the product of which is initially used in New Mexico or from performing services in New Mexico (Section 7-9-3.5 NMSA 1978).

X and Y are engaging in business in New Mexico and have receipts that meet the definition of gross receipts from performing services in New Mexico. Gross receipts are subject to tax unless an exemption, deduction, or exclusion applies.

### Ruling on Question 1

Section 7-9-54.2 NMSA 1978 of the Gross Receipts and Compensating Tax Act provides a deduction from gross receipts which includes receipts from launching, operating or recovering space vehicles or payloads in New Mexico. While none of the terms used in that portion of the statute are defined, it seems reasonable to consider passenger revenues as receipts received for the operation of a space vehicle. Receipts received by Y from passenger revenues are deductible under Section 7-9-54.2 NMSA 1978.

### Ruling on Question 2

As stated in Section 7-9-3.5 NMSA 1978, gross receipts include leasing property employed in New Mexico. X has receipts from leasing space vehicles to Y that are employed in Y's operations in New Mexico. There are no specific exemptions or deductions available that would apply to these receipts so they are subject to the gross receipts tax.

### Ruling on Question 3

If Y purchases parts and services for maintenance of the space vehicles in New Mexico, the receipts in question would not be Y's receipts, but the receipts of the seller of those parts or services. A binding ruling cannot be issued for this question. There are deductions available under Section 7-9-62(C) and 7-9-62.1 NMSA 1978 that may apply to the seller's receipts, but it would be up to those sellers to determine if they qualify and if they want to use them.

Section 7-9-62(C) NMSA 1978 provides a deduction for receipts from selling aircraft parts or maintenance services for aircraft or aircraft parts. Additionally, Section 7-9-62.1 NMSA 1978 allows a deduction from gross receipts for receipts from the sale of or from maintaining, refurbishing, remodeling or otherwise modifying a commercial or military carrier over ten thousand pounds gross landing weight. There are no definitions within the Gross Receipts and Compensating Tax Act that would exclude a space vehicle from being considered an aircraft for purposes of these deductions.