
FYI-203

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 Holiday

This publication provides general information on the application of gross receipts tax to retail sales of certain tangible personal property sold during the first weekend of August from 12:01 a.m. on the first Friday to midnight the following Sunday.

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.tax.state.nm.us/.

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General Summary of the Gross Receipts Tax Holiday Legislation

The 2005 New Mexico Legislature established a deduction (Section 7-9-95 NMSA 1978) from gross receipts for retail sales of tangible personal property within a prescribed period every year in August. When retailers may deduct gross receipts, they have no need to recover tax costs from some customers. Customers can therefore buy these items during this period free of tax. For a more detailed list of taxable and nontaxable items, please see bulletin B-200.18, *List of Taxable and Nontaxable Items for New Mexico's Gross Receipts Tax Holiday* on the department's web site at www.tax.state.nm.us/.

The prescribed period of the annual "gross receipts tax holiday" is the first weekend of August from 12:01 a.m. on the first Friday to midnight the following Sunday.

Nontaxable Transactions During the Tax Holiday

The law limits the tax-holiday deduction to receipts of retailers from sales of the following types of items (please see a more detailed list in bulletin B-200.18, *List of Taxable and Nontaxable Items for New Mexico's Gross Receipts Tax Holiday* on the department's web site at www.tax.state.nm.us/):

- Clothing or shoes sold for less than \$100; however, accessories and special clothing or footwear primarily designed for athletic activity or protective use and not normally worn beyond the scope of the athletic activity or protective use remain taxable;
- Desktop, laptop or notebook computers sold for no more than \$1,000, and any associated monitor, speaker or set of speakers, printer, keyboard, microphone or mouse sold for no more than \$500, and
- School supplies students normally use in a standard classroom for educational purposes. The law specifically lists notebooks, paper, writing instruments, crayons, art supplies, rulers, bookbags, backpacks, handheld calculators, maps and globes as deductible during the tax holiday. It specifically *excludes* watches, radios, compact disc players, headphones, sporting equipment, portable desktop telephones, copiers, office equipment, furniture or fixtures. The law does not consider such items to be school supplies that students normally use in a standard classroom. Sales of those items are taxable during the three-day period.

Taxable Transactions During the Tax Holiday

Even when the transactions take place during the gross receipts tax holiday, gross receipts tax is due and payable on gross receipts from:

- Sales of services performed on otherwise qualifying tangible personal property; for example, clothing alterations, repair and dry cleaning, or computer services, installation and repair (Regulation 3.2.242.15 NMAC);
- Sales of all other services performed in New Mexico during the tax holiday, including, but not limited to, construction, repair, maintenance, landscaping, medical treatment, physical examinations for school purposes, etc;
- Leasing or renting tangible personal property that would be deductible if *sold* by a retailer during the tax holiday, and receipts from all other leasing or rental activity conducted during that weekend (Regulation 3.2.242.15 NMAC);
- Sales of licenses and other intangible personal property;

- Sales of all tangible personal property not identified by law or regulation as deductible during the tax holiday;
- Sales of tangible personal property that the law specifically identifies as taxable if sold at retail during the tax holiday. Such property includes watches, radios, compact disc players, headphones, sporting equipment, portable desktop telephones, copiers, office equipment, furniture or fixtures, everyday clothing priced at \$100 or more, clothing designed for special athletic activity or protective use, accessories, and
- Sales of qualifying items that exceed the allowable value established by statute or regulation (see “definition of school supplies” below).

Definitions

Standard Classroom is a classroom (1) located in a school; (2) configured for a general education curriculum, and (3) containing no specialized equipment such as scientific laboratory equipment or musical instruments (Regulation 3.2.242.7 NMAC).

School Supplies Normally Used by Students in a Standard Classroom for Educational Purposes means implements and materials typical students normally use in a general education curriculum. Such supplies must be priced under \$15 per unit for notebooks, paper, writing instruments, crayons, art supplies, paper clips, staples, staplers, scissors and rulers; and under \$100 per unit for bookbags, backpacks, handheld calculators, maps and globes. Please note that these items need not be used for school purposes, but they must meet the criteria for items normally used by students in a standard classroom setting (Regulation 3.2.242.7 NMAC).

Items Normally Sold as a Unit are items usually sold in pairs, sets, boxes, cartons, cases or other quantity containers, or items sold as a package in a single transaction. Those items must continue to be sold as units during the holiday. They cannot be broken down, priced separately and sold as individual items to qualify for the deduction; for example, a retailer cannot sell a \$180 pair of shoes singly for \$90 each to qualify for the deduction offered for clothing under \$100 (Regulation 3.2.242.8 NMAC).

Other Taxable Items Sold During the Tax Holiday

Ineligible for the deduction from gross receipts for the sale of tangible personal property during the gross receipts tax holiday, in addition to those specifically excluded by statute and listed on page 2 under “taxable transactions” are the following items:

- Handheld computers, Internet or e-mail devices;
- Personal digital assistants (PDAs), MP3 players, cassette players and recorders, cameras, books, magazines and other periodicals;
- All computer and computer-related equipment not specifically listed by statute as deductible (see page 2) unless bundled with and included in the price of a deductible item within the price limits set by law;
- All computer software unless bundled with and included in the price of a deductible item within the price limits set by law;
- Musical instruments;
- All games, including video games, board games, computer games, and handheld gaming devices;
- Materials and equipment for making, repairing or altering clothing; for example, cloth or

- other fabric, textile or material, thread, yarn, needles, buttons, zippers and patterns;
- Athletic and protective gloves, pads, supporters and helmets;
- Swimwear, cover-ups and caps;
- Specialized footwear not readily available for streetwear, including ski boots, riding boots, waders, bowling shoes and shoes with cleats or spikes;
- Briefcases and luggage;
- Prerecorded CDs, DVDs and cassette tapes,
- Data-storage devices such as CD drives and ZIP drives, and
- Other specialized school instruments or work tools.

Types of Sales/Exchanges

The statute limits the gross receipts tax deduction to the times specified. Accordingly, transactions either partly or wholly outside the time limits of the holiday may pose problems for some retailers and their customers. Some of those transactions are:

Rain Checks. A rain check assures the customer that a sold-out or out-of-stock sale item may be purchased after the sale at the sale price. Receipts from qualified sales of tangible personal property made with a rain check issued *during the term of the tax holiday* are deductible from gross receipts. Sales made and paid for with a rain check outside the term of the tax holiday are fully taxable regardless of when the rain check is issued (Regulation 3.2.242.9 NMAC).

Layaway Sales. When retailers hold merchandise on a layaway plan at a customer's request, they are performing a service. A layaway is not a completed retail transaction. It follows that:

1. The initiation of a layaway plan is not a sale even when the customer pays a deposit to the retailer. A "sale" takes place only when the final payment occurs and the merchandise is delivered to the customer. Until then the customer does not own the property. The sale is not complete;
2. Final payment *and* delivery of the qualifying merchandise must occur during the gross receipts tax holiday, or the retailer cannot take the deduction offered for the tax holiday, and
3. If final payment and delivery of qualifying layaway merchandise take place during the tax holiday, the transaction is deductible when other requirements are met (Regulation 3.2.242.10 NMAC).

Gift Certificates. The retailer's sale of a gift certificate in and of itself is not taxable. If a gift certificate sold during the tax holiday is redeemed after the tax holiday ends, however, the retailer may not take the tax holiday deduction even for qualifying tangible personal property. The redemption opportunity closes when the tax holiday ends.

Exchanges and Refunds.

1. Qualifying tangible personal property sold at retail during the tax holiday and exchanged at a later date for an item of the same price remains deductible.
2. Qualifying tangible personal property sold at retail during the tax holiday but later exchanged for an item of greater or lesser value is subject to the tax (Regulation 3.2.242.11 NMAC).

Internet, Mail Order and Telephone Sales. Receipts from the sale of eligible tangible personal property to persons with New Mexico billing addresses are deductible to the retailer when:

1. The item is both delivered to *and* paid for by the customer during the tax holiday period, or
2. The customer orders and pays for the item *and* the retailer accepts the order during the tax holiday, even if delivery of the item takes place after the tax holiday (Regulation 3.2.242.12 NMAC).

Reporting Gross Receipts from Eligible Tax Holiday Sales

Please note that retailers of qualifying tangible personal property are not required to participate in the tax holiday or to take the deduction offered. If they do not participate, they pay tax on otherwise eligible sales and may recover their tax costs from the customer.

Retailers should use the CRS-1 Form as usual to report and deduct receipts from the sale of qualifying items sold during the tax holiday. *Leave Column B blank on the CRS-1 Form.*

Retailers must maintain records of the type of item sold, the date it was sold, and the sales price of deductible merchandise.

The retailer may take an exemption or a deduction on a transaction only once. If during the tax holiday the retailer accepts or has a nontaxable transaction certificate on file, and the customer buys tangible personal property that otherwise qualifies for the tax holiday deduction, the retailer may not take the deduction for the tax holiday (Section 7-9-45 NMSA 1978). Gross receipts that are already exempt or deductible under other sections of the Gross Receipts and Compensating Tax Act are ineligible for the tax holiday deduction.

Filing the CRS-1 Form

Paper CRS-1 Form:

- Use the familiar CRS-1 Form for three or fewer lines of detail;
- Use the CRS-1 Long Form for more than three lines of detail, multiple locations, etc.

The CRS-1 Form and the CRS-1 Long Form are on the home page in printer-friendly format under “forms.” Both forms are also in the CRS-1 Filer’s Kit.

Please note that it is necessary to file form RPD-41299, *Gross Receipts Tax Holiday* with the CRS-1 Form. The form, separately stating the grand total of tax holiday deductions, is available on the web page at <http://www.tax.state.nm.us/forms/year99/crsforms.htm>.

The tax holiday deduction is separately stated on form RPD-41299 but is combined with all other deductions on the CRS-1 Form itself.

Online Filing:

Retailers also may choose to file online from the Taxation and Revenue Department website at <https://efile.state.nm.us/uls/default.aspx>. If you choose to file your CRS-1 Form online, please be sure to submit form RPD-41299 to the address provided on the form.

Electronic (but not interactive) versions of the CRS-1 Filer’s Kit are also available online. Check the lower left-hand margin of the TRD home page for the most recent kits.

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.tax.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.tax.state.nm.us/. 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**

<http://www.nmcompcomm.us/index.html>

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.tax.state.nm.us/. 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.tax.state.nm.us/. 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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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, the information in FYIs is overridden by statutes, regulations and case law. 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.