

Ruling 400-05-1

Issued: February 11, 2005

Effective: February 11, 2005

Revised: April 23, 2009, correction, as indicated by strike-through

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

H, a hospital, has entered into a physician recruitment agreement with D, a physician. The agreement is a device to recruit and retain physicians in that part of New Mexico in which H is located. Under the agreement H provides financial assistance to the physician to allow the physician to relocate and establish a practice.

Under the agreement, H agrees to guarantee D's monthly receipts from D's practice for one year provided that D remains in practice and meets other requirements. If D's actual receipts for any month within the year are below the guaranteed amount, H will lend D the difference up to a maximum amount. At the end of the year and after a required accounting, D owes H the balance of amounts lent by H during the year less any repayments. H forgives 1/24<sup>th</sup> of this debt for each month that D remains in practice in the area.

D asks if the debt amount forgiven D is subject to gross receipts tax.

Under Section 7-9-4 NMSA 1978, gross receipts tax is levied on every person engaging in business in New Mexico. "Engaging in business" is defined (with two exceptions not relevant here) by Section 7-9-3.3 NMSA 1978 as "carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit". According to Section 7-9-3.5 NMSA 1978, "gross receipts" means the total amount of money or the value of other consideration received from selling property in New Mexico, from leasing property 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. By performing medical services for compensation, D has gross receipts from engaging in business.

H forgives 1/24<sup>th</sup> of the loan balance if D continues to practice in H's community. Each amount forgiven is "other consideration" received in exchange for performing services in New Mexico. The amount of debt forgiven each month is part of D's gross receipts for that month and is ~~be~~ subject to gross receipts tax unless an exemption or deduction applies.

No exemption applies, nor do any deductions. Section 7-9-77.1 NMSA 1978 establishes a deduction for receipts for services to Medicare or TRICARE beneficiaries. Section 7-9-93 NMSA 1978 starting January 1, 2005, provides a deduction for commercial contract services and Medicare Part C services. The debt forgiveness does not qualify under either deduction. It is not connected to the qualifying medical services or beneficiaries set out in the deductions; instead it is for the more general service of remaining in practice in H's community.