

Ruling 401-96-7

Issued: August 29, 1996

Effective: August 29, 1996

Revised: May 21, 2009, citations updated, as indicated by brackets

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

X is engaged in the business of selling cellular phones in New Mexico. X is also an agent for Y, a cellular phone service provider. X solicits and prepares cellular phone service contracts for Y and submits them to Y. Y pays X a commission for subscribers obtained by X and accepted by Y.

X asks if the commissions received from Y are subject to the gross receipts tax?

Section 7-9-3(F) [7-9-3.5] NMSA 1978 states in part:

[(1)] “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...

(1) [(2)] “Gross receipts” includes:

(a) any receipts from sales of tangible personal property handled on consignment;

(b) the total commissions or fees derived from the business of buying, selling or promoting the purchase, sale or leasing, as an agent or broker on a commission or fee basis, of any property, service, stock, bond or security;

X is providing a service of soliciting subscribers for Y and the commissions received from Y are gross receipts and are subject to the gross receipt tax. Under Section 7-9-3 (F) [7-9-3.5] NMSA 1978, gross receipts includes the total commissions received from acting as an agent or broker for promoting the sale of a service in New Mexico. Under the facts, no deduction or exemption applies. In particular, Section 7-9-66 NMSA 1978, which grants a deduction for certain commissions, is limited to commissions on sales tangible personal property; it does not extend to commissions from performing services.