

Ruling 401-98-6

Issued: April 21, 1998

Effective: April 21, 1998

Revised: June 12, 2009, citations updated, as indicated by strike-through and brackets

A ruling has been requested concerning the applicability of certain provisions of New Mexico's Gross Receipts and Compensating Tax Act to the following factual situation:

X and Y have been appointed as co-guardians of Z, their incapacitated minor son, and as co-conservators of Z's estate. Under the terms of the court appointment, X and Y are entitled to receive payments from Z's estate in the amount of \$1,000 per month for the daily care, custody and supervision of Z, for as long as Z resides in their home.

X and Y ask whether they are liable for gross receipts tax on the \$1,000 monthly payment they receive from Z's estate.

Section 7-9-4 NMSA 1978 imposes an excise tax on the gross receipts of any person engaging in business in New Mexico. "Engaging in business" is defined in ~~Subsection E of~~ Section 7-9-3 [7-9-3.3] NMSA 1978 to mean "carrying on or causing to be carried on any activity with the purpose of direct or indirect benefit." The term "gross receipts" is defined in ~~Subsection F of~~ Section 7-9-3 [7-9-3.5], NMSA 1978, to include the total amount of money or the value of other consideration received from performing services in New Mexico.

The monthly payments to X and Y are not receipts from engaging in business in New Mexico. X and Y were appointed by the court to serve as Z's co-guardians because they are best suited to provide the continuing care, supervision and rehabilitation their son needs. They are performing services with the purpose of benefiting Z, not with the purpose of benefiting themselves through the receipt of monetary payments.

X and Y are not liable for gross receipts tax on the \$1,000 monthly payments they receive from Z's estate.