

MICHELLE LUJAN GRISHAM
GOVERNOR



DEBORAH K. ROMERO
CABINET SECRETARY

DONNIE J. QUINTANA
DIRECTOR

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION
Bataan Memorial Building ♦ 407 Galisteo St. ♦ Suite 202 ♦ Santa Fe, NM 87501
PHONE (505) 827-4950 ♦ FAX (505) 827-4948

MEMORANDUM BFB #22-05

TO: New Mexico Counties and Municipalities

FROM: Brenda L. Suazo-Giles, Budget & Finance Bureau Chief
Local Government Division

DATE: May 3, 2022

SUBJECT: Object Codes for Reporting "Cannabis GRT" Created on LGBMS

Brenda L. Suazo-Giles

In accordance with the "New Mexico's Cannabis Regulation Act", the New Mexico Department of Finance and Administration (DFA), Local Government Division (LGD) has updated the Local Government Budget Management System (LGBMS) chart of accounts (COA) to assist in tracking of Cannabis revenues and related expenditures. Using a standard COA allows LGD to analyze data more efficiently across the various local governments in order to compile statewide reports that are used by decision makers for determining state funding such as legislative appropriations, grants, and loans.

The New Mexico Taxation and Revenue Department (TRD) has added a new distribution code pertaining to Recreational Cannabis in the GRT distribution (RP-500 Report) and will also have a monthly distribution report for the Cannabis Excise Tax. Please refer to the attached TRD publication "FYI-260" for more information.

It is highly recommended **NOT** to budget any Cannabis revenues and expenditures in your Interim or Final **FY2022-2023 Budget submission**. We are requesting all municipalities and counties to wait until you attain one (1) Quarter's worth (3 months) of actual data to determine the forecasted revenue and expenditures and then submit a Budget Adjustment Request (BAR) for FY2022-2023 for governing body approval that you will then submit on LGBMS for LGD approval.

If you have pertaining to the Cannabis revenue distribution process, contact David Monteith at TRD, David.monteith@state.nm.us.

The Cannabis Control Division of the Regulation and Licensing Department is in partnership with the local governments and are more than happy to assist you with cannabis regulatory information by contacting them at RLD.CannabisControl@state.nm.us or (505) 476-4995.

We are requiring that participating counties and municipalities use the **following Fund “28000 Cannabis Regulation Act”**. Cannabis revenue does not have any expenditure restrictions, therefore, for reporting purposes, and to not lose its identity, LGD is requiring all Cannabis revenue and related expenditures be reported in the “28000 Fund”. For expenditure support to all other funds, a **“transfer-out”** will be required using a BAR, after being approved by your governing body.

The goal of the guidelines contained in this memo is to achieve more comparable financial reporting among all counties and municipalities in the area of Cannabis budget and financial activity.

If you have any questions, contact your LGD budget analyst.

xc: David Monteith, TRD
Victor Reyes, RLD, Deputy Superintendent
Kristen Thomson, RLD, Cannabis Control Division

File

FYI-260

New Mexico
Taxation and Revenue Department

FOR YOUR INFORMATION

Tax Information/Policy Office ♦ P.O. Box 630 ♦ Santa Fe, New Mexico 87504-0630

INFORMATION FOR THE CANNABIS INDUSTRY

This FYI provides general guidance concerning the tax obligations of operating a cannabis business in the state of New Mexico.

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This publication is as accurate as possible at time of publication. Subsequent legislation, new state regulations or court decisions may affect its accuracy. For the latest information please check the Taxation and Revenue Department's web site at www.tax.newmexico.gov.

INTRODUCTION

This publication will provide a brief overview of the tax programs that most commonly impact taxpayers engaged in the cannabis industry. This includes both the more established medical cannabis industry, and the adult-use cannabis industry, which was authorized by HB-2, passed in the 2021 Special Session and signed into law by the Governor. An overview of how the gross receipts tax and cannabis excise tax are imposed on various types of businesses involved in the cannabis industry is included. Other taxes may apply to certain businesses, but these are the most common and will be the focus of this publication.

DEFINITIONS

CANNABIS EXCISE TAX

Cannabis excise tax is an excise tax imposed on a cannabis retailer that sells cannabis products in this state. "Cannabis product" is a product that is or that contains cannabis or cannabis extract, including edible or topical products that may also contain other ingredients. The excise tax does not apply to retail sales of medical cannabis products sold to a qualified patient or a primary caregiver who presents a registry identification card issued pursuant to the Lynn and Erin Compassionate Use Act or a reciprocal participant who presents similar proof from another state, the District of Columbia or a territory or commonwealth of the United States at the time of the sale (Section 7-42-3 NMSA 1978).

COMPENSATING TAX

Compensating tax is an excise tax imposed on anyone making taxable use of tangible personal property in New Mexico that was obtained in a transaction where the seller's receipts were not subject to gross receipts (Section 7-9-7 NMSA 1978).

GROSS RECEIPTS TAX

Gross receipts are any amount of money or other consideration received from selling property in New Mexico, leasing or licensing property employed in New Mexico, granting a right to use a franchise employed in New Mexico, selling services performed in New Mexico, or selling research and development services performed outside of New Mexico when initial use of the product of the service occurs in New Mexico (Section 7-9-3.5 NMSA 1978). Unlike cannabis excise tax, the gross receipts tax does not apply only to cannabis retailers. However, most sellers of cannabis products, other than retailers, will likely be entitled to deduct their receipts.

Gross receipts tax is an excise tax levied on persons engaged in business in New Mexico for the privilege of doing business in New Mexico.

Reporting Location Code and Rate - Gross receipts tax is reported using the location code and rate determined by Section 7-1-14 NMSA 1978. For cannabis sales, this will require reporting where the buyer receives the tangible personal property. If the buyer receives the tangible personal property at the seller's place of business, that sale will be reported at the location code and rate for the location of the seller's place of business. If the tangible personal property is delivered to the buyer outside of the business location, the seller will report the associated gross receipts at the location code and rate where the goods were delivered to the buyer.

Possible Deduction – Receipts from the sale of adult-use cannabis and cannabis products are taxable for gross receipts tax purposes. There is a deduction for cannabis products that are sold

in accordance with the Lynn and Erin Compassionate Use Act under Section 7-9-73.2 NMSA 1978. It is important to note that deductions are required to be reported on a gross receipts tax return. As this deduction is not required to be separately reported you can either report it using the code "7-9-73.2" or "G0-999". There is also a deduction for sales of cannabis products for resale under Section 7-9-47 NMSA 1978, which would apply to, among others, wholesale sales of cannabis products. See the gross receipts tax return instructions for more information.

WITHHOLDING TAX

Withholding tax is imposed on every employer who deducts and withholds a portion of an employee's wages for payment of income tax under the provisions of the Internal Revenue Code. These employees must also deduct and withhold an amount for each payroll period computed from a state withholding tax table furnished by the department (Section 7-3-3 NMSA 1978). For more information, see FYI -104 New Mexico Withholding Tax, or TRD-41414 Wage Withholding Tax Return.

DEPARTMENT REQUIREMENTS

REGISTRATION FOR CANNABIS EXCISE TAX

After being licensed with the Regulation and Licensing Department (RLD) as an adult-use cannabis retailer, a taxpayer also needs to be registered for the cannabis excise tax. Registration is available electronically on the Taxpayer Access Point (TAP) at <https://tap.state.nm.us>, or by using a paper form, ACD-31015, *Business Tax Registration Application and Update Form*. Online registration is encouraged for all taxpayers.

REGISTRATION FOR GROSS RECEIPTS TAX (AND ADDITIONAL PROGRAMS)

Anyone engaging in business in New Mexico must register with the New Mexico Taxation and Revenue Department and obtain a New Mexico Business Tax Identification Number (NMBTIN). The NMBTIN is used to report various tax programs (gross receipts tax, compensating tax, withholding tax, etc.). Registration is done by the same methods described above, online at <https://tap.state.nm.us>, or using the ACD-31015, *Business Tax Registration Application and Update Form*, which is available on the department's website at <https://www.tax.newmexico.gov/forms-publications/>. Registration for these tax programs must be done by all cannabis-related businesses, including adult-use retailers, medical retailers, and wholesalers. In order to register, you will need the officer information including SSNs, as well as the NAICS code for your business. NAICS codes can be researched at the NAICS website at <https://www.naics.com/search/> but codes that may be used include 424590 for cannabis wholesalers, 453998 for cannabis retailers, 111998 for open field growing and 111419 for growing under cover.

FILING REQUIREMENTS

Filing of all taxes mentioned in this publication are available online at <https://tap.state.nm.us>. E-filing is mandated for the cannabis excise tax and most gross receipts tax filers, and is highly encouraged for all other tax programs that may apply to your business.

An adult-use cannabis retailer must file Form TRD-41415 *Cannabis Excise Tax Return* and remit taxes on a monthly basis by the 25th of the month following the sale of the product. For example, the tax on sales made in April must be filed and paid by May 25. The rate of cannabis excise tax is 12 percent of sales until July 1, 2025 and then gradually rises to 18 percent beginning July 1,

2030.

All cannabis-related business, even those with no taxable receipts, must file Form TRD-41413 *Gross Receipts Tax Return* and report and remit taxes on a monthly basis, unless the total tax due averages less than \$200 monthly, the business may ask to report on a quarterly or semiannual basis. Deductible transactions must be reported even if no tax is due.

TAX OBLIGATIONS FOR CANNABIS BUSINESSES

MEDICAL CANNABIS RETAILERS

A business that sells medical cannabis at retail may deduct eligible receipts from their gross receipts as the sale of a prescription drug (Section 7-9-73.2 NMSA 1978). Any products sold by a medical cannabis retailer that are not sold in accordance with the Lynn and Erin Compassionate Use Act are subject to the gross receipts tax. Retailers of only medical cannabis are not subject to the cannabis excise tax and not required to register or file for that program. However, retailers with mixed sales will be required to file and pay cannabis excise tax on their taxable sales.

ADULT-USE CANNABIS RETAILERS

Adult-use cannabis retailers are subject to both gross receipts tax and cannabis excise tax. The gross receipts tax is imposed on their receipts from retail sales of cannabis and anything else they sell. The cannabis excise tax is imposed only on receipts from the sale of cannabis products, but not other items sold. The cannabis excise tax should always be reported using the location of the retail location. For gross receipts tax the receipts of an adult-use cannabis retailer should be reported using the code for their retail location for all sales made at the retail location, but should be reported using the location code of the delivery location for any receipts from delivered products.

CANNABIS WHOLESALERS

A business that sells cannabis only as a wholesaler to cannabis retailers must have a gross receipts tax account and report its receipts, but may deduct its receipts from the sale of cannabis for resale (Section 7-9-47 NMSA 1978).

ALL CANNABIS BUSINESSES – OTHER TAXES

All cannabis businesses need to be certain to meet any other tax obligations that they may have based on how their business is set up. These taxes most likely include withholding tax, which is the responsibility of any employer. Corporate income tax may also apply if the business is a corporation, and compensating tax may apply on certain purchases not originally subject to gross receipts tax. Our FYI-102, *Information for New Businesses*, provides additional information for new businesses in general.

PAYMENT OF TAXES BY THE CANNABIS INDUSTRY

PAYMENT TYPES

Taxpayers are encouraged to pay the Cannabis Excise Tax using ACH Debit payment (e-checks in TAP) or credit card. Credit card payments are accessible in TAP, through the call center system, and via an in-person appointment. Please note that credit card transactions are charged

a convenience fee. Fedwire and ACH credit payments are prohibited at this time for the Cannabis Excise Tax, as well as the gross receipts tax on adult-use cannabis retail sales.

TAXPAYER INFORMATION

General Information. FYIs and Bulletins present general information with minimum technical language. All FYIs and Bulletins are free of charge and available through all local tax offices and on the Taxation and Revenue Department's website at <http://www.tax.newmexico.gov/forms-publications.aspx>

Regulations. The Department establishes regulations to interpret and exemplify the various tax acts it administers. Current statutes with regulations can be located on the Department's website for free at <http://www.tax.newmexico.gov/statutes-with-regulations.aspx>. Specific regulations are also available at the State Records Center and Archives or on its web page at <http://www.srca.nm.gov/>

The Taxation and Revenue Department regulation book is available for purchase from the New Mexico Compilation Commission. Order regulation books directly from the New Mexico Compilation Commission at <https://www.nmcompcomm.us/>

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 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 Department's rulings are compiled and available on free of charge at <http://www.tax.newmexico.gov/rulings.aspx>.

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 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.

Public Decisions & Orders. All public decisions and orders issued since July 1994 are compiled and available on the Department's web page free of charge at <http://www.tax.newmexico.gov/tax-decisions-orders.aspx>.

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.

FOR FURTHER ASSISTANCE

For cannabis excise tax questions related to returns, payments, adjustments, abatements or refunds, please contact the Revenue Processing Division, Special Taxes Unit:

Phone 505-827-0764
Fax 505-827-2526
Email other.taxes@state.nm.us

Taxation and Revenue Department
P.O. Box 25123
Santa Fe, NM 87504

For other inquiries, please use the contact information below:

Tax District Field Offices and the Department's call center can provide full service and general information about the Department's taxes, taxpayer access point, programs, classes, and forms. Information specific to your filing situation, payment plans and delinquent accounts.

For forms and instructions visit the Department's web site at <http://www.tax.newmexico.gov>

Call Center Number:
1-866-285-2996

If faxing something to a tax district field office, please fax to:

TAX DISTRICT FIELD OFFICES

ALBUQUERQUE

10500 Copper Pointe Avenue NE
Albuquerque, NM 87123

SANTA FE

Manuel Lujan Sr. Bldg.
1200 S. St. Francis Dr.
Santa Fe, NM 87504

FARMINGTON

3501 E. Main St., Suite N
Farmington, NM 87499

LAS CRUCES

2540 S. El Paseo Bldg. #2
Las Cruces, NM 88004

ROSWELL

400 Pennsylvania Ave., Suite 200
Roswell, NM 8820

Call Center Fax Number:
1-505-841-6327

If mailing information to a tax district field office, please mail to:

Taxation and Revenue Department
P.O. Box 8575
Albuquerque, NM 87198-8485

For additional contact information please visit the Department's website at
<http://www.tax.newmexico.gov/contact-us.aspx>

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