

## Marketplace Providers and the Sale of Lodgings or Accommodations

**Those businesses who list and book lodgings or accommodations in New Mexico on behalf of third parties on their websites are “marketplace providers” and may owe gross receipts tax on all receipts from the sales they facilitate.**

Marketplace providers are individuals or businesses that facilitate the sale, lease, or license of tangible personal property, or services or licenses for use of real property, on behalf of marketplace sellers, or on their own behalf. (Section 7-9-3(K) NMSA 1978). An individual or business is a marketplace provider if it lists or advertises the sale, lease or license of the property or services by any means and has agreements or arrangements with third party sellers to collect payment from the customer and to transmit that payment to the seller. The individual or business is a marketplace provider regardless of whether it receives money or other consideration in exchange for its services. If a company lists a property for rent on behalf of another individual who is renting out the property in New Mexico, and accepts payment for that rental, that company is a marketplace provider. Examples of marketplace providers include Expedia, Travelocity, Airbnb, and other websites that list accommodations in the state for hotels or for individuals renting their own property.

Under New Mexico law, a marketplace provider is subject to gross receipts tax on all its receipts from sales it facilitates for other individuals selling on its marketplace if it is “engaging in business” in New Mexico (Section 7-9-3.5(A)(2)(g) NMSA 1978). A company is “engaging in business” in the state if it has physical presence in the state or, if not physically present, has over \$100,000 in taxable gross receipts in the previous calendar year sourced to New Mexico (Section 7-9-3.3 NMSA 1978). The determination of whether a business without physical presence in the state is engaging in business is made by totaling the taxable receipts in the previous calendar year and determining whether the company was over \$100,000 threshold in that year, regardless of the receipts being reported in the *current* year.

The \$100,000 in sales is based on the sales made by that entity. It does not include the sales of any of its affiliates or its parent company. For marketplace providers, “gross receipts” includes receipts received on behalf of the marketplace seller, i.e. those receipts it passes on to the marketplace seller, as well as any amount the marketplace provider is paid, or retains, for facilitating the sale. It does not matter whether each individual seller meets the threshold for “engaging in business” in New Mexico (Section 7-9-3.5(A)(2)(g)). If the marketplace provider meets either the physical presence test or the \$100,000 threshold, it is engaging in business in New Mexico and is responsible for reporting and paying gross receipts tax on the receipts of all the sales it facilitates, unless there is an exemption or deduction specifically provided in statute.

### **The rate of tax for Marketplace Providers listing lodgings or accommodations**

As of July 1, 2021, the rate of gross receipts tax that marketplace providers pay on their total gross receipts, **including both receipts from providing their services to the marketplace sellers and receipts for the accommodation or lodging**, is based on the location of the real property (Section 7-1-14(B) NMSA 1978).

This means that the gross receipts tax rate used will include the state gross receipts tax rate as well as any local option gross receipt tax for that location. This rate may be determined by visiting the gross receipts location and rate map on the Department's website located here:

<https://www.tax.newmexico.gov/governments/gross-receipts-location-code-and-tax-rate-map/>

The location of real property also determines the tax rate of any fees related to the sale.

**A note on lodgers' tax:** *Marketplace providers and sellers using marketplaces to list and allow the license of real property in New Mexico should be aware that in addition to New Mexico gross receipts tax, their sales may be subject to other tax programs administered by municipalities and counties such as Lodgers' Tax. Lodgers' Tax is not a state tax and is not administered by the Taxation and Revenue Department. Sellers should contact the municipal or county government where the real property is located in order to learn whether this tax may apply.*

### **Fees of the marketplace providers related to the sale**

All moneys that a marketplace provider receives from the buyer are gross receipts that need to be reported on the gross receipts tax return, including amounts received on behalf of the marketplace seller. If there are service fees included in the amount they are charging the buyer for the accommodations, or a fee associated with using facilities on the property, those fees need to be reported also, as those are taxable gross receipts.

Fees that the marketplace provider receives as compensation for listing the accommodations for the marketplace seller are receipts from providing a service and would therefore be included in the gross receipts reported by the marketplace provider. However, if the fee is a percentage of the receipts received from the buyer, this amount would already be included in the reported gross receipts received from the buyer and would therefore not need to be reported again. Only when the fee is charged as a separate transaction in addition to the sale would the marketplace provider report the receipts as a separate transaction. See the following example:

*The marketplace provider charges a fee to the marketplace seller of 5% on each sale the marketplace provider facilitates on the marketplace. Since the sale to the buyer is \$100, the marketplace provider passes to the marketplace seller \$95 and keeps \$5. The amount to be reported by the marketplace provider remains \$100 because this is the total amount of the gross receipts. Only if the marketplace provider charged the marketplace seller a fee of \$5 separate from the sale to the buyer, so that the provider received \$100 from the buyer and then an additional \$5 from the seller, would the marketplace provider report \$105 in receipts from the transaction.*

### **The requirements for marketplace sellers selling on the platform**

Those individuals who are providing the real property in New Mexico for rent, the marketplace sellers, are responsible for reporting the gross receipts they have for the sale of the accommodations on the marketplace provider's platform. These individuals are engaging in business in the state and subject to gross receipts tax and, therefore, will need to report all their receipts from the sale of the accommodations. However, marketplace sellers may deduct those receipts from their gross receipts under Section 7-9-117 NMSA 1978. The seller will report the receipts on the gross receipts return and then claim the deduction. Taking this deduction means these sellers will owe no tax, but the receipts do need to be reported and deducted in order for the seller to owe no gross receipts tax and be in compliance with required reporting.

### **Examples:**

1. A marketplace provider lists a townhouse on its website as a vacation rental for periods of a week in Santa Fe. Neither the marketplace provider nor the website is located in New Mexico, but the marketplace provider had receipts from facilitating the booking of lodgings in the state in the previous calendar year in excess of \$100,000. The marketplace seller charges a rate each night for the use of the townhouse, and in addition the marketplace

seller charges a fee for using the property development's recreation center. The marketplace provider has gross receipts from the total sale from renting the property and the recreation fee, and reports and pays gross receipts tax on those gross receipts. The rate used is the rate for the location where the townhouse is located. When the website charges the buyer, the website may pass the gross receipts tax on to the buyer. The owner of the townhouse, the marketplace seller, reports the receipts it receives from the website and then takes the deduction under 7-9-117 so that it will not need to pay the gross receipts tax. The owner obtains documentation from the marketplace provider that it is paying the gross receipts tax.

2. A marketplace provider lists rooms on its website for a national hotel chain with a location in Albuquerque. Neither the marketplace provider nor the website is located in New Mexico, but the marketplace provider had receipts from sales in New Mexico in the previous calendar year of over \$100,000. The marketplace provider also charges the buyer a convenience fee on the sale of certain rooms. The website (the marketplace provider) has gross receipts from the total sale from selling the hotel room and from the convenience fee. The gross receipts tax rate is based on the location of the hotel room in Albuquerque, and therefore the website reports the Albuquerque gross receipts tax rate. The hotel will report the receipts it receives from the website and then take the deduction under 7-9-117 so that it will not need to pay the gross receipts tax. The hotel obtains documentation from the marketplace provider that it is paying the gross receipts tax.

3. A new national travel publication lists rentals of a cabin near Ruidoso on its website and receives payment for the owner of the cabin. Neither the publisher nor the website is located in New Mexico and it did not have gross receipts of over \$100,000 in the state in the previous calendar year. Because it does not meet the threshold, and does not have physical presence in the state, the publisher is not subject to gross receipts tax on the sales of the cabin. When the publisher receives payment for the cabin from the buyer, it is not required to report or pay gross receipts tax for that payment. The owner of the cabin receives payment from the publisher and then reports the gross receipts and pays the gross receipts tax. The owner is engaging in business in New Mexico because the property is located in New Mexico. The owner is not able to take the deduction under 7-9-117 for marketplace sales because the website did not pay the gross receipts tax.

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.

## 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

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:

### 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 8485  
Albuquerque, NM 87198-8485

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

**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>

*This information is as accurate as possible as of the date specified on the publication. Subsequent legislation, new state regulations and case law may affect its accuracy. For the latest information please check the Taxation and Revenue Department's web site at [www.tax.newmexico.gov](http://www.tax.newmexico.gov).*

*This publication provides instructions or general information to the taxpayer. It does not constitute a regulation or ruling as defined under Section 7-1-60, New Mexico Statutes Annotated, 1978. 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 Bulletin.*