
FYI-201

New Mexico
Taxation and Revenue Department

FOR YOUR INFORMATION

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

Gross Receipts Tax and Certain Foods

This publication provides general information on the application of gross receipts tax to food sold in New Mexico.

In the 2004 legislative session, the New Mexico Legislature repealed the general gross receipts tax on food for home consumption and tied the terms directly to the federal Supplemental Nutrition Assistance Program. It also repealed a long-standing .5% credit that businesses within municipal boundaries were using to remain competitive with similar businesses in unincorporated areas of the counties where the municipalities are located. These changes were effective January 1, 2005.

This information is as accurate as possible at time of publication. Subsequent legislation, changes in the federal Supplemental Nutrition Assistance Program, new state regulations, and court cases may affect its accuracy. For the latest information please check the Taxation and Revenue Department's web site at www.tax.newmexico.gov.

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FOOD DEDUCTION SUMMARY

Section 7-9-92 NMSA 1978 provides a gross receipts tax deduction for the receipts of a retail food store from the sale of certain food items as specified in Part 271 of the federal Supplemental Nutrition Assistance Program. This publication provides

Definitions

Eligible Food is (1) any food or food product intended for human consumption except alcoholic beverages, tobacco, hot foods and hot food products prepared for immediate consumption, and (2) seeds and plants to grow foods for personal consumption of households according to 7 USCA 2012(g)(1). See the United States Department of Agriculture site, www.fns.usda.gov/snap/. Based on the United States government definition, the New Mexico definition of food eligible for the deduction from gross receipts includes most staple grocery food items and cold, prepared foods packaged for home consumption. Also included are seeds and plants to grow food for personal consumption of eligible households. See below for exceptions.

Retail Food Store is an establishment that sells food for home preparation and consumption. For New Mexico purposes the establishment must meet the definition of retail food store in 7 USCA 2012(k)(1) for federal Supplemental Nutrition Assistance Program purposes whether or not it actually participates in the federal Supplemental Nutrition Assistance Program. To qualify, a retail store must conform to at least one of two criteria the federal government sets. It either must (criterion A) stock and offer a variety of foods on a continuous basis in each of four staple food categories – two of which must be perishable foods – or (criterion B) function as a specialty store attributing 50% or more of its gross retail sales to staple foods. The four categories of staple foods are:

- Breads/cereals
- Dairy products
- Fruits and vegetables
- Meat, fish, poultry

Exceptions follow.

Exceptions

Ineligible for the deduction from gross receipts for the sale of food at a retail food store are:

- Receipts from the sale of food already exempt or preempted by federal law or exempt or deductible under New Mexico's Gross Receipts and Compensating Tax Act.
- Nonfood items like soaps, paper products, household supplies, grooming items, cosmetics, toothpaste, hardware, sewing notions, toys and other items commonly sold in food stores;
- Pet foods, accessories, medicines;
- Vitamins and over-the-counter medicines (prescription drugs for persons – not pets – are already deductible in New Mexico). See the USDA site: www.fns.usda.gov/snap/.
- Alcoholic beverages, tobacco and tobacco products;
- Any food eaten in the store;
- Hot food: for instance, delicatessen items and items from in-store snack bars;
- Restaurant food;
- Any food purchased at establishments that do not meet the definition of retail food store.

Example: A supermarket has a delicatessen section where customers buy sandwiches and other items to eat in the store. The market cannot deduct receipts from sales of sandwiches because the foods must be for home consumption.

Example: A supermarket sells food to a charitable organization or public school for a fund-raising event. The receipts are deductible under other statutes in the Gross Receipts and Compensating Tax Act, so the supermarket cannot claim them under the food deduction. They are excluded from the deduction.

When a retailer is not sure whether an item of prepared food is a nutritional supplement or a food, and there are doubts about its eligibility for the state gross receipts tax deduction, the best advice is to consult the federal Supplemental Nutrition Assistance Program or check the latest list of federally eligible foods at www.fns.usda.gov/snap/.

Ineligible to qualify as a retail store (inclusive of but not limited to) are:

- Stores where the chief business is, for example, the sale of gasoline or other products, and the store does not stock a variety of qualifying foods in each of the four categories of staple foods on a continuous basis, two of which must be perishable;
- Stores where sales of staple foods constitute less than 50% of gross retail sales. *The food stamp program – and therefore the state of New Mexico - prohibit the store from counting coffee, tea, cocoa, carbonated and non-carbonated drinks, candy, condiments and spices in the 50%;*
- Concessions at public or private sporting and social events where food is not intended for home consumption;
- Sidewalk vendors and other open-air vendors at fairs, festivals, etc. where food is not intended for home consumption;
- Vending machines, and
- Other vendors who do not meet the definition of “retail food store” on page 2.

Automatically qualifying for the New Mexico gross receipts tax deduction on qualifying foods are all stores in New Mexico that already accept federal food cards in payment. The state deduction applies to certain foods paid for by means other than food cards.

Other establishments and house-to-house vendors of qualifying foods may be eligible to claim the deduction even if they do not choose to accept food stamps. According to state law, they would have to meet federal criteria for food card payments, but if they do, they may take the state deduction.

The department has developed a new form, RPD-41295, *Application for New Mexico Retail Food Store Certification*, for non-food-stamp retailers to complete and submit to see if they qualify for the deduction for certain food sales. RPD-41295 is available on the web site at <http://www.tax.newmexico.gov/Businesses/forms-publications.aspx>. The application form asks for the type of business, ownership, list of inventory and services available at the location, list of staple food categories in the store’s inventory, list of staple foods meeting the federal definition of “perishable,” gross sales for the tax year as reported to the IRS (new businesses may estimate), and the eligible retail food sales for the tax year. If a store sells a limited variety of staple foods, it may be a specialty store that must provide its gross annual retail food sales in addition to the information above.

When the non-food-stamp retailer submits the application and is approved by TRD, it is authorized to take the state deduction as appropriate.

Example: A business sells gasoline and as a sideline runs a small convenience store where motorists can buy snacks, soft drinks, milk, hot dogs and other incidentals. It does not stock a variety of staple foods on a continuous basis or keep them on public display. The retailer cannot take a food deduction for the sale of milk or any other staple food because the store does not qualify as a retail store under the federal – and hence state – definition of “retail food store.” Please see page 2.

Example: A bakery sells a variety of baked goods, including doughnuts, bread, cake, and other baked products. All its sales are from qualifying baked foods intended for home consumption. The bakery may take the deduction from gross receipts under federal and New Mexico law.

Example: A bakery sells only one kind of baked product to retail customers. It cannot take the deduction from gross receipts for state purposes because it does not meet the federal criteria for a retail food store. It must have a variety of baked goods.

Example: Doughnuts are sold in packages in a supermarket’s bread and snack foods section, but a doughnut shop next door to the supermarket is a specialty shop that sells nothing but doughnuts. The supermarket may take the deduction from gross receipts for the sale of doughnuts; the specialty store may not. Although the doughnuts at both locations may be classed as “baked” goods, the specialty store does not sell bread or other cereals on a continuous basis. The federal and state criteria say it is not a retail food store for federal Supplemental Nutrition Assistance Program and state purposes.

Example: A roadside stand in a rural area sells apples every autumn. Apples are a staple food, but the roadside stand is not eligible to take the deduction from gross receipts tax because the apples are agricultural products already exempt from gross receipts tax under Section 7-9-18 NMSA 1978.

Example: A store meets all criteria and standards of eligibility for the federal Supplemental Nutrition Assistance Program, but it has not chosen to be part of the program. It may take the deduction from New Mexico gross receipts for the sale of eligible foods because it meets the federal definition of retail food store. New Mexico does not require the store to accept food stamps as a condition for taking the deduction, only to meet the federal criteria.

REPORTING GROSS RECEIPTS FROM FOOD SALES

Use the CRS-1 Form or the CRS-1 Long Form to report and deduct eligible receipts from the sale of food. There are special codes to use, however. See the sample CRS-1 Form on page 6.

Section 7-9-92 NMSA 1978 says the special deduction for food does not apply to gross receipts already exempt or deductible under federal law or New Mexico’s Gross Receipts and Compensating Tax Act. If you have deductible sales of food to 501(c)(3) organizations, governmental entities, other retailers, large shipments going out of state in interstate commerce, etc., claim those deductions on the CRS-1 Form in the usual way. You cannot take them a second time by claiming the deduction for eligible foods under the special rate code described below.

Caution: Do not report receipts from sales paid for with federal Supplemental Nutrition Assistance Program food cards. Such sales are already exempt and should not appear on the CRS-1 Form. Report sales of food that qualify for the deduction from New Mexico’s gross receipts tax as described on page 2.

Example: A grocer has \$50,000 in receipts qualifying for the state gross receipts tax deduction for foods listed by the United States Department of Agriculture Supplemental Nutrition Assistance Program. Of that total, \$30,000 was purchased directly by customers who used USDA food cards. The Supplemental Nutrition Assistance Program is already exempt from gross receipts tax. Receipts from items paid for with food cards do not appear on the CRS-1 Form. The retailer cannot take a second food deduction on that \$30,000. The retailer may deduct only those receipts that were NOT paid for with food cards.

Food retailers report and deduct eligible food receipts separately from all other receipts. **Column B is VERY important.** Enter the special rate code “F” in Column B if the retailer claims the deduction for food according to the definition on page 2 of this publication. *Leave Column B blank when entering gross receipts from all other types of sales.*

The sample CRS-1 Form on the next page shows how a retail food store should state the gross receipts from food eligible for the deduction, separating the qualifying food deduction from all other gross receipts. Use one line for all other receipts (such as sales to 501(c)(3) organizations and other deductible sales as well as taxable sales), as usual, but leave Column B blank. Use another line for the qualifying food deduction and enter “F” in Column B.

Example: For an Albuquerque business location, a retailer has \$100,000 in gross receipts after removing receipts from all foods paid for with USDA food cards. The \$100,000 includes sales to nonprofit, charitable organizations recognized under Section 501(c)(3) of the Internal Revenue Code and covered by the Type 9 nontaxable transaction certificate (NTTC), and sales covered by the Type 2 NTTC (tangible personal property for resale). Receipts from sales of foods that meet the criteria for deduction under New Mexico law, as described on pages 2 and 3 of this booklet, amount to \$25,000. The remaining \$75,000 includes all other kinds of receipts: deductible sales, taxable non-food items and taxable food (food ineligible for the deduction). The report breakdown is as follows:

- ***The retailer must separate other deductible sales from sales that carry the special food code “F” because the law requires it.*** The retailer counts \$75,000 in sales that do not meet standards for the special-code food deduction. The retailer adds together all receipts already deductible under other sections of the Gross Receipts and Compensating Tax Act (sales covered by NTTCs). They amount to \$15,000. The retailer completes the CRS-1 Form in the usual way, but the total gross receipts in Column D are \$75,000 instead of \$100,000. The retailer deducts the NTTC amount, \$15,000, from \$75,000. The remainder is \$60,000. The retailer pays tax on \$60,000. See the sample CRS-1 Form in this booklet.
- On a separate line the retailer enters the \$25,000 in receipts eligible for the state food deduction, placing the special “F” code in Column B.

Local governments will continue to receive the usual gross receipts tax revenue distributions and should suffer no revenue losses ***if taxpayers within their jurisdictions report correctly.***

Paper CRS-1 Form:

- Use the familiar CRS-1 Form for three or fewer lines of detail;
- Use the CRS-1 Long Form for more than three lines of detail, multiple locations, etc.

The CRS-1 Form and the CRS-1 Long Form are on the home page in printer-friendly format under “forms.” Both forms are also in the CRS-1 Filer’s Kit.

State of New Mexico - Taxation and Revenue Department
CRS-1 - LONG FORM PAGE 1
COMBINED REPORT SYSTEM



Mail To: Taxation and Revenue Department,
 P.O. Box 25128, Santa Fe, NM 87504-5128

NAME John Doe Stores STREET/BOX 222 Santa Fe Street CITY, STATE, ZIP Santa Fe, NM 87504	NEW MEXICO CRSIDNO. 02-111111-000
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TAX PERIOD

01	01	14	through	01	31	14
Month	Day	Year		Month	Day	Year

Check if applicable: Amended report

Payment made by:
 Automated clearinghouse deposit Date _____
 Federal wire transfer Date _____

If additional space is needed, use the supplemental page.

Do not submit a photocopy of these forms to the Department. If additional space is needed, please obtain an original form from your local district office or download the form from our web site at www.state.nm.us/tax.

A	Municipality / county name	B	Special code*	C	Location code	D	Gross receipts (excluding tax)	E	Total deductions	F	Taxable gross receipts	G	Tax rate	H	Gross receipts tax
	Albuquerque/Bern				02100		75,000.00		15,000.00		60,000.00		7.00		4,200.00
	Albuquerque/Bern		F		02100		25,000.00		25,000.00		0.00		7.00		0.00
	Santa Fe/Santa Fe				01123		15,730.00		520.00		15,210.00		8.1875		1,245.32
	Santa Fe/Santa Fe		F		01123		100,000.00		100,000.00		0.00		8.1875		0.00
Enter total of columns D, E and H, this page. * See instructions for column B.							\$	215,730.00	\$	140,520.00				\$	5,445.32
If supplemental pages are attached, enter total of all columns D, E and H, from this page and all supplemental pages.							\$		\$					\$	

SAMPLE

I declare that I have examined this return including any accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct and complete.							
Signature of Taxpayer or Agent		John Doe 505-222-2222		1	TOTAL GROSS RECEIPTS TAX ALL PAGES	5,445.32	
Print name Phone		Owner 02/25/14		2	COMPENSATING TAX	10.00	
Title Date				3	WITHHOLDING TAX		
				4	TOTAL TAX DUE	5,455.32	
				5	PENALTY		
				6	INTEREST		
				7	TOTAL AMOUNT DUE	5455.32	

MUNICIPAL CREDIT REPEAL

For many years businesses reporting gross receipts from within municipal limits have received a .5% credit from the state. That credit effectively dropped the state's gross receipts tax rate by a half cent from 5% to 4.5% in municipalities. The intention was to help businesses within municipal boundaries remain as competitive as possible with similar businesses in unincorporated county areas where combined state and county rates are lower. Combined rates within municipalities include state, county and municipal gross receipts.

By repealing that .5% credit in municipalities the Legislature restored the state's rate to the 5% in use in the counties.

Accordingly, effective January 1, 2005, the gross receipts tax rates for businesses within municipal boundaries increase by at least .5% (a half cent) on all receipts subject to the tax. Qualifying food and medical receipts and other receipts already exempt or deductible under additional statutes are unaffected. Transactions taxed at the higher rate within city limits are sales of tangible and intangible personal property in New Mexico, the performance of services in New Mexico, the lease of property used in New Mexico, and the performance of research and development services out of state when initial use of the product of the research and development services occurs in New Mexico.

Because it is possible for individual municipalities to impose other local option taxes in addition to the .5% restoration, cumulative gross receipts tax rates in cities can vary widely. On the whole, businesses in municipalities should expect to pay higher gross receipts tax. Their customers should expect the businesses to recover tax costs from them at half-cent higher rates, at least, on all taxable purchases.

QUESTIONS

Questions about the deduction offered for receipts from the sale of qualifying foods should be addressed to the local district tax office. The contact information is on page 9.

Questions about specific foods that qualify under the federal Supplemental Nutrition Assistance Program should be addressed to the United States Department of Agriculture or the New Mexico Human Services Department. Please see "For Further Assistance" on page 9.

TAXPAYER INFORMATION

The Department offers a variety of taxpayer information. Some information is free and other information must be purchased.

General Information. FYIs and Bulletins present general information with a minimum of technical language. All FYIs and Bulletins are free and available through all local tax offices, the Tax Information and Policy Office, and on the Internet. The Taxation and Revenue Department's Internet address is:

<http://www.tax.state.nm.us/>

Regulations. The Department establishes regulations to interpret and exemplify the various tax acts it administers. The Taxation and Revenue Department regulation book is available from the New Mexico Compilation Commission on a prepaid basis. The Compilation Commission also has a compact disk of all statutes and regulations. Specific regulations are also available at the State Records Center or on its web page at www.nmcprr.state.nm.us/nmac.

Order regulation books directly from:

New Mexico Compilation Commission

<http://www.nmcompcomm.us/index.html>

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

Public Decisions & Orders. All public decisions and orders issued by the hearing officers 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>.

FOR FURTHER ASSISTANCE

Local tax offices can provide full service and information about the department's taxes, programs, and forms as well as specific information about your filing situation.

ALBUQUERQUE (505) 841-6200

Taxation and Revenue Department
5301 Central NE
P.O. Box 8485
Albuquerque, NM 87198-8485

LAS CRUCES (575) 524-6225

Taxation and Revenue Department
2540 S. El Paseo Bldg. #2
P.O. Box 607
Las Cruces, NM 88004-0607

SANTA FE (505) 827-0951

Taxation and Revenue Department
1200 S. St. Francis Dr.
P.O. Box 5374
Santa Fe, NM 87502-5374

ROSWELL (575) 624-6065

Taxation and Revenue Department
400 Pennsylvania Ave., Suite 200
P.O. Box 1557
Roswell, NM 88202-1557

FARMINGTON (505) 325-5049

Taxation and Revenue Department
3501 E. Main St., Suite N
P.O. Box 479
Farmington, NM 87499-0479

Main switchboard (Santa Fe): (505) 827-0700

United States Department of Agriculture Food and Nutrition Service, Supplemental Nutrition Assistance Program: 1-800-221-5689
Web site: www.fns.usda.gov/snap/

New Mexico Human Services Department
P.O. Box 2348
Santa Fe, NM 87504-2348

New Mexico Food Stamp Information: 1-888-473-3676

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.