



**INTERNAL AUDITOR'S
REPORT ON
GROSS RECEIPTS TAX PAYMENTS**

JUNE 21, 2019

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Mr. Fernando Macias,

On June 3, 2019, you requested a review of County projects to determine if the Gross Receipts Tax (GRT) requirement was being met. The assignment contained the inquiry below.

INQUIRY

This report is in response to a request to determine if the Gross Receipts Tax (GRT) requirement below is being met, as it pertains to County projects performed both via a contractor and internally by County staff.

Authority: The Doña Ana County Purchasing Policy, § 89-8. New Mexico Gross Receipts Tax is posted below.

A. Departments shall verify that the appropriate gross receipts taxes are levied on purchases made by Doña Ana County. Doña Ana County is not required to pay gross receipts taxes on the purchase of tangible personal property. However, the County is required to pay gross receipts taxes on all services and construction materials that will become an ingredient or component part of a construction project. This applies whether or not the County is performing the construction service or has hired a contractor to perform the construction service. A "construction project" is defined as the building, altering, repairing, or demolishing in the ordinary course of business of any road, building, airport, park, dam, sewage or water treatment facility, power-generating plant, pipeline, transmission line, tower, storage tank, mine shaft, microwave station, wall, or similar work. Also included are leveling and clearing of land, excavating earth, drilling wells, or similar work.

B. Receipts from a true lease of tangible personal property to Doña Ana County are subject to gross receipts tax. In addition, licensed software sold to Doña Ana County is taxable.

C. The business location of the seller or lessor determines the rate of the gross receipts tax. The exception to this rule is that each construction site is considered a business location for the construction contractor.

PROCESS

This Assignment focused upon purchases made over the last 6 months, to determine whether assurance existed that Doña Ana County (DAC) paid the required GRT. Applicable guidance is as follows:

- New Mexico Statutes > Chapter 7 > Article 9 – Gross Receipts and Compensating Tax
- New Mexico Statutes 7-9-13. Exemption; Gross Receipts Tax; Governmental Agencies
- New Mexico Taxation and Revenue Department FYI-105 – Gross Receipts & Compensating Taxes: An Overview
- New Mexico Taxation and Revenue Department FYI-200 – Your Business Location and the Appropriate Tax Rate

- New Mexico Taxation and Revenue Department FYI-240 – Transactions with Government Agencies
- Purchasing Policy § 89-8. New Mexico Gross Receipts Tax

The following departments were contacted to request contractual and financial data on all purchases that met the GRT requirement, for the past 6-month period:

- 1) Utilities
- 2) Airport
- 3) Fire & Emergency Services
- 4) Detention Center
- 5) Facilities & Parks
- 6) Flood
- 7) Information Technology
- 8) Engineering/Roads

I coordinated with representatives from each of the departments above to learn what construction projects, leases, or licenses they were involved with, that would qualify as items for which the County is expected to pay GRT. I also met with the Finance Department to review financial documentation (invoices, purchase orders, and wires/checks) applicable to the qualifying items. After confirming with each department the type of data required, I evaluated the projects submitted by those departments. Evaluations consisted of reviewing documentation (contracts, wires, and/or invoices) for the identified projects, sampling and testing the data for correctness, and analyzing test results.

FINDINGS

My review of the financial and contractual documentation revealed the following results for the past 6-month period:

Utilities -

| Purchases | Contractors | Total Expenditures | Taxes Paid |
|------------------|--------------------|---------------------------|-------------------|
| 14 | 4 | \$751,363.34 | \$46,800.32 |

Utilities made 14 separate purchases from 4 different contractors, for projects totaling \$751,363.34; they paid taxes in the amount of \$46,800.32. Financial documentation indicates that required taxes were billed and paid on the purchases above, with the exception of \$11,837.93 as this amount was tax exempt.

Airport -

| Purchases | Contractors | Total Expenditures | Taxes Paid |
|------------------|--------------------|---------------------------|-------------------|
| 9 | 2 | \$57,738.26 | \$4,118.80 |

Airport made 9 separate purchases from 2 different contractors, for projects totaling \$57,738.26; they paid taxes in the amount of \$4,118.80. Financial documentation indicates that required taxes were billed and paid on the purchases above.

Fire & Emergency Services -

Purchases Contractors Total Expenditures Taxes Paid

| | | | |
|---|---|--------------|-------------|
| 7 | 9 | \$195,904.77 | \$19,165.15 |
|---|---|--------------|-------------|

Fire & Emergency Services made 7 separate purchases from amongst 9 contractors, for projects totaling \$195,904.77; they paid taxes in the amount of \$19,165.15. Financial documentation indicates that required taxes were billed and paid on the purchases above.

Detention Center -

Purchases Contractors Total Expenditures Taxes Paid

| | | | |
|---|---|-------------|------------|
| 2 | 1 | \$45,609.33 | \$3,544.07 |
|---|---|-------------|------------|

The Detention Center made 2 separate purchases from 1 contractor, for projects totaling \$45,609.33; they paid taxes in the amount of \$3,544.07. Financial documentation indicates that required taxes were billed and paid on the purchases above.

Facilities & Parks -

Purchases Contractors Total Expenditures Taxes Paid

| | | | |
|----|---|--------------|-------------|
| 13 | 4 | \$420,911.93 | \$24,997.66 |
|----|---|--------------|-------------|

Facilities & Parks made 13 separate purchases from 4 different contractors, for projects totaling \$420,911.93; they paid taxes in the amount of \$24,997.66. Contractual and financial documentation indicate that required taxes were billed and paid on the purchases above.

Flood -

Purchases Contractors Total Expenditures Taxes Paid

| | | | |
|----|---|--------------|-------------|
| 24 | 9 | \$808,067.81 | \$56,584.86 |
|----|---|--------------|-------------|

Flood made 24 separate purchases from 9 different contractors, for projects totaling \$808,067.81; they paid taxes in the amount of \$56,584.86. While contractual and financial documentation indicate that required taxes were paid on 8 of the purchases, 1 purchase was exempt from the GRT per New Mexico Statutes § 7-9-13. Exemption; gross receipts tax; governmental agencies. Thus, required taxes were billed and paid on the purchases above.

Information Technology -

Purchases Contractors Total Expenditures Taxes Paid

| | | | |
|----|----|--------------|-------------|
| 16 | 10 | \$414,739.04 | \$15,425.40 |
|----|----|--------------|-------------|

Information Technology made 16 separate purchases from 10 different contractors, for projects (includes leases and licenses) totaling \$414,739.04; they paid taxes in the amount of \$15,425.40. While Contractual and financial documentation indicate that required taxes were billed and paid on 13 of the purchases above, the documentation does not indicate if taxes were levied on the remaining 3 purchases, which totaled \$21,442.00 in expenditures.

The Taxation and Revenue Department can make a determination as to whether or not 'Nexus' has been established. Establishing Nexus means that an out-of-state business has a sufficient connection or presence in New Mexico for the state to have taxing authority. In the absence of

Nexus, an out-of-state company may not observe the New Mexico State Statute concerning GRT. Of the remaining 3 purchases that did not indicate the payment of taxes, none were purchases made from a New Mexico-based company.

Engineering/Roads -

| Purchases | Contractors | Total Expenditures | Taxes Paid |
|------------------|--------------------|---------------------------|-------------------|
| 169 | 9 | \$6,889,634.34 | \$610,106.26 |

Roads/Engineering made 169 separate purchases from 9 different contractors, for projects totaling \$6,889,634.34; they paid taxes in the amount of \$610,106.26. Contractual and financial documentation indicate that required taxes were billed and paid on the purchases above.

NOTE: When recalculating the tax rates for taxes paid above, one finds that stark variances in GRT rates are apparent. The variances result from - 1) the locations relevant to each purchase, 2) the non-applicability of GRT for some purchases, as well as 3) whether the vendor chose to specifically identify taxes on the invoices (See the Recommendation section below). To obtain an accurate GRT for the total expenditures above, it was necessary to revisit each individual purchase that made up those totals, to determine applicable rates.

ANALYSIS

I met with the Purchasing Manager for clarification of the applicable policies and statutes, and learned that the governing rules put the responsibility of paying GRT upon the seller/contractor/vendor, not the client (DAC). Our policy serves as a notification, not a directive, when it refers to departments paying the GRT; it informs departments when it is suitable to accept and pay the GRT, however, the tax is clearly imposed upon the vendor (see FYI-200 below).

New Mexico Taxation and Revenue Department FYI-200

Unlike most states, New Mexico does not impose a sales tax based on the point of delivery of the goods sold. Instead, New Mexico imposes a tax on the gross receipts of the seller or lessor, the person engaging in business.

In reference to some invoices listing NMGR, there are some listing taxes while others fail to do so. The Purchasing Manager informed me that state statute does not require vendors to separately state the tax, and it could already be included in their pricing and then backed out and paid when due. In addition, when the vendor indicates that taxes were paid, this is considered as GRT.

The following verbiage in DAC contracts speaks directly to our paying GRT, even when vendor invoices may not contain a listing of the taxes paid –

New Mexico Statutes require that the proposed amount exclude the applicable state gross receipts tax or applicable local option tax but that the Contracting Agency shall be required to pay the applicable tax including any increase in the applicable tax becoming effective after the date the contract is entered into. The applicable gross receipts tax or applicable local option tax shall be shown as a separate amount on each billing or request for payment made under the contract.

RECOMMENDATION

This assignment revealed the many complexities involved with applying the proper GRT, as it is based upon the location of the seller’s main office under some circumstances, and upon the actual work location in other circumstances. Still in other circumstances, such as an out-of-state seller without Nexus, the tax may be non-applicable. While this assignment did not address the question of whether or not departments are properly and consistently determining the correct GRT rate, it is recommended that departments become and remain informed about the applicability of GRT, and contact the Finance Department for any questions regarding the payment of these taxes.

CONCLUSION

A review of contractual and financial documentation indicate that each department (listed above) paid applicable taxes on purchases for the past 6-month period. While my research determined that each department paid the vendor-listed, agreed upon price for services and materials, making a determination of the paying of GRT is essentially not a DAC responsibility, as the tax is imposed upon the seller/vendor/contractor. It is DAC’s responsibility to understand the applicable GRT tax rate, to pay this tax when it is properly billed for services and materials, and to question the vendor if the rate is incorrect. Training should be made available for departments that have questions concerning the accurate and applicable GRT rates.

Because many invoices did not contain the detail required, my research also involved a review of applicable contracts. However, going forward the following ruling should allow for better transparency in the near future –

Per New Mexico Taxation and Revenue Department FYI-105:

Starting July 1, 2019, when billing a customer, the tax must be separately stated or a statement must be provided to the customer indicating that the gross receipts tax is included in the billed amount.

Ernest Harvin *13 November 2023*

Ernest Harvin, CIA Date
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