
***501(c)(3)
Nonprofit Groups
& New Mexico's
Gross Receipts
Tax***



*New Mexico Taxation
and
Revenue Department*

Joseph Montoya Building
1100 St. Francis Drive
Santa Fe, NM 87505

Tax Information &
Policy

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Tax Advice for New Mexico's Nonprofit Organizations...

For any questions related to taxation, please contact our Call Center: 1-866-285-2996.

The Taxation and Revenue Department conducts free, three-hour workshops monthly around the state. Please check the web site at www.tax.newmexico.gov to find the calendar under "News and Alerts".

For more detailed information about the tax treatment of nonprofit organizations, including 501(c)(3) groups, please check publication FYI-103, *Information for Nonprofit Organizations*. FYI-103 is available on our web site. Click on "forms and publications" and scroll down, or write to us at the above address for a copy.

Other agencies also have responsibility for nonprofit activity. A listing follows.

OTHER AGENCIES:

1. The IRS is the agency that first determines nonprofit status. Consult the IRS first.

Internal Revenue Service
5338 Montgomery Blvd. NE
Albuquerque NM 87109
(213) 894-2289 (California)

www.irs.gov

2. The Attorney General oversees activities of charitable organizations in New Mexico.

Attorney General of New Mexico
Registry of Charitable Organizations
111 Lomas Blvd. NW Ste. 300
Albuquerque, NM 87102
(505) 222-9000
www.ago.state.nm.us

3. The Regulation and Licensing Department handles questions on games of chance, alcohol at special events, and similar issues.

Regulation and Licensing Department
Alcohol and Gaming Division
725 St. Michael's Drive
Santa Fe, NM 87505
(505) 827-7066 and 827-7094
www.rld.state.nm.us

4. The Secretary of State registers certain nonprofits for incorporation.

Secretary of State
325 Don Gaspar, Suite 300
Santa Fe, NM 87503
(505) 827-3600
<http://www.sos.state.nm.us/>

Special to 501(c)(3) Nonprofits

New Mexico is fortunate to have so many nonprofit organizations willing to give their time and effort to improve quality of life here. Without them state and local governments would be stretched to provide many more goods and services that residents and visitors need and depend upon.

Nonprofit groups receive income not only from donations but from fees, sales of tangible personal property, sales of services, space rentals — in short, anything most for-profit businesses consider income sources.

Nonprofit organizations also buy goods and services. It is this activity that gives rise to most of the misunderstanding in New Mexico about, “But we’re tax exempt!”

This brochure explains in general terms how the gross receipts tax affects the income of a group organized under 501(c)(3) of the Internal Revenue Code. It discusses the 501(c)(3)’s purchases and explains “exemptions” and “deductions.” It surveys the most frequent nonprofit problems. Of specific value is a paragraph on construction purchases, often a difficulty for vendors and their 501(c)(3) customers.

501(c)(3) Organizations

Nonprofit organizations recognized by the federal government under Section 501(c) of the Internal Revenue Code enjoy tax-exempt status in New Mexico to varying degrees for **income** (not purchases) covered by their IRS letters of authorization. Federal law distinguishes among many types of nonprofit organizations. 501(c)(3) groups are primarily religious, charitable or educational in purpose.

New Mexico views 501(c)(3) nonprofit organizations as engaging in business. The exemptions the state grants are for property tax, income tax, and gross receipts tax. To be exempt from gross receipts tax, 501(c)(3) business income must relate to the group’s mission authorized by the IRS. **Unrelated income is fully taxable.**

Tax-exempt status applies to the organization and not to its individual members.

PLEASE NOTE: Gross receipts tax is the largest area of misunderstanding. The 501(c)(3) organization must distinguish between what it receives as exempt income and what it buys. Purchases may or may not be taxable. In New Mexico the gross receipts tax structure holds the vendor or lessor, not the buyer or lessee, responsible for taxes on transactions. *Unless the law provides the business with a deduction for a transaction, the business will likely recover its tax costs, like any other overhead, from the customer no matter who the customer is!*

There is a fundamental difference between New Mexico and sales tax states where liability for tax usually rests on the buyer. In sales tax states an exemption relieves the buyer from tax liability. In New Mexico it is the business that must be relieved of liability through a nontaxable transaction certificate, or it will pass the tax to the customer.

What a Nonprofit May Buy

The only purchase a 501(c)(3) nonprofit organization can make without paying a vendor’s passed-along gross receipts tax is a purchase of **tangible personal property**. Intangible personal property and construction materials are ineligible, unless the construction materials are sold to a 501(c)(3) organized for the purpose of providing home own-

ership opportunities to low-income families.

Vendors of services performed in New Mexico and lessors of property used in New Mexico do not receive deductions for transactions with nonprofit organizations. Their gross receipts are fully taxable, so they pass the tax to you either by separately stating the tax at the time of sale or by charging one price and later separating the tax at report and payment time.

Vendors of tangible personal property receive deductions when you give them our state’s Type 9 nontaxable transaction certificate (NTTC). That certificate is the vendor’s evidence of a tax-deductible transaction. When the vendor’s transaction is deductible, there is no tax to recover from you. The vendor must report deductible transactions even when no tax is due. Not all 501(c) categories may deliver NTTCs. Request publication FYI-103, *Information for Nonprofit Organizations*.

Construction is a service. All materials that become ingredients or components of a construction project are part of the service. A construction contractor will recover gross receipts tax from its customer— nonprofit, government, or otherwise. 501(c)(3) organizations organized for the purpose of providing homes for low-income families may use a Type 9 NTTC to purchase construction materials for use in these homes. *Organizations organized for other purposes may not give a Type 9 NTTC to the vendor of construction materials even if your organization does its own construction. Such materials are not tangible personal property when intended for a construction project.*

Use of hotel rooms, banquet halls and other rented spaces are licenses or “intangible” property. Your organization and its members can expect to pay gross receipts tax billed by the business.

Meals and other tangibles that a 501(c)(3) group buys for conferences, retreats and meetings are deductible to the vendor with your delivery of a Type 9 NTTC. The vendor may not deduct sales of tangibles to individual members of 501(c)(3) groups.

What Is an “Exemption”?

An exempt receipt is not taxable. It requires no report. If all receipts of a group are exempt, it need not register with the Department unless it must do so for another tax program; e.g., to withhold and pay withholding tax for employees.

What Is a “Deduction” ?

A deduction is a receipt that is not taxable but is reportable to the Department. Any business with deductible receipts registers with TRD and maintains proof of deductions taken. A business needs a Type 9 nontaxable transaction certificate or other evidence from you to justify its deductible sale of tangible personal property to your organization.

Applying for 501(c)(3) Status

The first stop is the Internal Revenue Service. Go to the IRS web site at www.irs.gov and search for 501(c)(3) information, or write to the IRS address in this brochure.

After the IRS recognizes the group’s status, there is nothing more to do for New Mexico gross receipts tax unless you have employees, unrelated income, or you wish to deliver Type 9 NTTCs to vendors of tangibles. In the latter case you must register with TRD to receive the CRS identification number that appears on the NTTCs your organization presents to vendors.

How To Apply for Type 9 NTTCs

Attach a copy of your IRS letter of authorization to your application for New Mexico business tax identification number (form ACD-31015). Once you have received your identification number, you may create an account and access NTTCs online on the Taxpayer Access Point (TAP) web site, www.tap.state.nm.us.

New Mexico Taxation and Revenue forms are available on our web site at www.tax.newmexico.gov. Click on “Forms and Publications”. ■