

**STATE-TRIBAL COLLABORATION ACT**

**June 30, 2022, AGENCY REPORT**

**NEW MEXICO TAXATION & REVENUE DEPARTMENT**

## **I. AGENCY OVERVIEW AND MISSION STATEMENT**

The mission of the New Mexico Taxation and Revenue Department is to serve the State of New Mexico by providing fair and efficient tax and motor vehicle services. The Department also is the unclaimed property administrator for the state of New Mexico. The Taxation and Revenue Department was created by the Taxation and Revenue Department Act (Chapter 9, Article 11 NMSA 1978) for the purpose of establishing a single, unified department to administer all laws and exercise all functions relating to taxation, revenue and vehicles charged to the department. The constituencies of the department include New Mexico's executive and legislative branches, tribal governments, counties and municipalities, and taxpayers and tax practitioners.

TRD collects and distributes annually approximately \$10 billion in revenues. This includes revenues received for the various tax programs administered by the Department but not fees received through the Motor Vehicle Division. Revenues received are deposited with the State Treasurer and distributed to the State General Fund and other recipients (road fund, local governments, tribes and pueblos) as designated by law.

## **II. AGENCY-SPECIFIC STATUTES**

There are several statutory provisions administered by the Taxation and Revenue Department related to tribes, tribal entities and tribal members. Some of these provisions represent statutory recognition of tribal sovereignty and the limitation the principle of tribal sovereignty places on the State of New Mexico's authority to impose and collect taxes. Other statutory provisions provide for exemptions or deductions from tax for taxpayers selling goods or providing services to tribes. Additionally, there are several statutory provisions that permit the Department to enter into cooperative agreements with tribes to provide for the cooperative administration and collection of taxes. Among these statutory provisions are the following:

### Statutory Citation

### Statutory Provision

NMSA 1978, § 7-1-14

Destination Sourcing Rules

NMSA 1978, § 7-9-3.3

New Nexus Requirement Rules

NMSA 1978, § 7-1-66	Immunity of Property of Indian Nations from Liens and Levies
NMSA 1978, § 7-2-5.5	Exemption from Income Tax for Income Earned by Tribal Members on Tribal Lands
NMSA 1978, § 7-9-14B	Exemption from Compensating Tax for Property Used by Tribes
NMSA 1978, § 7-9-88.1	Credit on Gross Receipts Tax for Taxes Paid to Tribe
NMSA 1978, § 7-12-4A(2)	Exemption from Cigarette Tax for Sales to Tribe or Tribal Member for Use on Reservation or Pueblo
NMSA 1978, § 7-13-4C	Deduction from Gasoline Tax for Sales to Tribe for Use on Reservation or Pueblo
NMSA 1978, § 7-16A-10D	Deduction from Special Fuels Supplier Tax for Sales to Tribe for Use on Reservation or Pueblo
NMSA 1978, § 7-29C-2	Intergovernmental Tax Credit for Coal Severance Tax for Taxes Imposed by Tribe
NMSA 1978, § 7-29C-1	Intergovernmental Tax Credit for Oil and Gas taxes
NMSA 1978, § 9-11-12.1	Tribal Cooperative Agreements for Joint Administration and Collection of Gross Receipts Tax
NMSA 1978, § 7-14-7	Tribe and Pueblo Car Excise Tax Credit
NMSA 1978, § 13-1-22	Native American Resident Business and Native American Resident Contractor Certificates
NMSA 1978, § 62-16B-7	Community Solar Act

### **III. AGENCY EFFORTS TO IMPLEMENT TRIBAL COLLABORATION POLICY**

In 2009, the Department adopted its Tribal Collaboration Policy pursuant to the requirements of the State-Tribal Collaboration Act. The Department's policy expresses the fundamental principles that guide the Department as it interacts with the sovereign tribal governments and individual tribal members and entities. The principles are designed to:

- Recognize and respect the sovereignty of tribes in New Mexico;
- Encourage positive government-to-government relations between the Department and tribal governments and entities;
- Develop means and processes to efficiently and effectively address tribal issues and concerns that relate to the Department's regulatory activities;
- Promote collaboration between the Department and tribal governments, entities and members during the development of policies or procedures and work towards the mutual resolution of tribal issues and concerns; and
- Encourage communication between the Department and tribal governments and entities using both formal and informal means.

The Department is committed to collaboration with New Mexico's tribes. Adoption of the Tribal Collaboration Policy emphasizes the importance of effective interactions and communications as a part of the Department's regulatory functions and duties. Since the adoption of its Tribal Collaboration Policy, the Department participated in several activities in which the Department's commitment to collaboration was effectively demonstrated. These activities included the following:

### **1. Development of TRD/Tribal State Tax Working Group**

New Mexico began taxing internet sales at the statewide rate of 5.125% on July 1, 2019. On July 1, 2021, New Mexico further imposed a local option gross receipts tax on internet sales; changed the gross receipts tax sourcing rules from origin-based sourcing to destination-based sourcing; and imposed local option compensating taxes like the local option gross receipts taxes.

The Department is committed to maintaining fair and equitable revenue sharing with tribal governments as we move through these changes. For this reason, we developed a viable Tax & Rev/Tribal State Tax Working Group consisting of a core group of Tax & Rev employees and Tribal members and representatives. Meetings were scheduled to discuss these tax changes collaboratively to move forward agreed upon recommendations to the Secretary of Taxation & Revenue and Tribal Leadership.

In FY2022, Tax & Rev Representatives attended three Pueblo Tax Administrator's Coalition (PTAC) meetings at the request of Tribal member representatives to discuss cooperative agreements, gross receipts tax questions, cannabis legislation and system reports.

### **2. Implemented the Administration of 2022 Legislative Impact on Tribal Communities**

In the 2021 special session, the Cannabis Regulation Act and Cannabis Tax Act were passed, legalizing the sale of adult use cannabis and providing for the taxation of adult use cannabis.

In response, Tax & Rev signed Cannabis Cooperative Agreements with the Pueblo of Pojoaque and the Pueblo of Picuris. These cooperative agreements establish an understanding between New Mexico and the pueblos on taxation of cannabis.

In the 2022 regular session, HB 137 was enacted and amended Section 7-14-7 NMSA 1978. The legislation provides a credit against State motor vehicle excise tax for vehicles acquired on a reservation or trust land within an Indian nation, tribe or pueblo located in New Mexico if a tribal gross receipts, sales, compensating, or similar tax was levied by the tribe or nation on the sale. This legislation will prevent dual taxation of vehicles sold within tribal land.

### **3. Completed Cooperative Agreements Addendums**

In FY2022, the Department signed addendums to Cooperative Agreements with the Pueblo of Cochiti, the Pueblo of Jemez, the Pueblo of Laguna, Ohkay Owingeh, the Pueblo of Picuris, the Pueblo of San Ildefonso, the Pueblo of Sandia, the Pueblo of Santa Clara, the Pueblo of Taos, and the 19 Pueblo Districts. The addendums allowed Tax & Rev and Tribal entities to resolve issues related to destination sourcing rules; memorialize Cooperative Agreements the reporting of gross receipts for internet sales; define receipts of a non-Pueblo entity as Class I Receipts; allow the Department to promulgate public guidance and if necessary regulations to use location codes for Class I Receipts for the Pueblo: and for the Department to waive the administrative fee for Class I and Class 2 Receipts for a period of five years beginning July 1, 2021.)

In FY2022, the Department entered Gross Receipts Tax (GRT) Cooperative Agreements with the Pueblo of Isleta, the Pueblo of Zia, and the Jicarilla Apache Nation and signed GRT Cooperative Agreement Addendums with the Pueblos of Acoma, Cochiti, Pojoaque, Santa Ana, and Santo Domingo, and the 19 Pueblos District.

## **V. KEY NAMES AND CONTACT INFORMATION**

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