NEW MEXICO TAXATION AND REVENUE DEPARTMENT

NOTICE OF HEARING AND PROPOSED RULES

The New Mexico Taxation and Revenue Department proposes to amend the following regulation:

Gross Receipts and Compensating Tax Act
3.2.234.8 NMAC Section 7-9-73.2 NMSA 1978
(*Packaging and Storage Containers*)

The New Mexico Taxation and Revenue Department proposes to adopt the following regulations:

Gross Receipts and Compensating Tax Act
3.2.234.10 NMAC Section 7-9-73.2 NMSA 1978
(*Items That Are Not Prescription Drugs*)
3.2.248.8 NMAC Section 7-9-109 NMSA 1978
(*Written Statement of Farming or Ranching*)

These proposals were placed on file in the Office of the Secretary on March 3, 2008. Pursuant to Section 9-11-6.2 NMSA 1978 of the Taxation and Revenue Department Act, the final of the proposals, if filed, will be filed as required by law on or about May 15, 2008.

A public hearing will be held on the proposals on Wednesday, April 23, 2008, at 9:30 a.m. in the Secretary's Conference Room No. 3002/3137 of the Taxation and Revenue Department, Joseph M. Montoya Building, 1100 St. Francis Drive, Santa Fe, New Mexico. Auxiliary aids and accessible copies of the proposals are available upon request; contact (505) 827-0928. Comments on the proposals are invited. Comments may be made in person at the hearing or in writing. Written comments on the proposals should be submitted to the Taxation and Revenue Department, Director of Tax Policy, Post Office Box 630, Santa Fe, New Mexico 87504-0630 on or before April 23, 2008.

3.2.234.8 **[~~"INJECTIBLES":~~] PACKAGING AND STORAGE CONTAINERS**

A. "INJECTIBLES": Injectibles are a combination of tangible personal property sold as a unit for a single price in which a prescription drug is pre-loaded by the manufacturer into a device, such as a syringe, to administer the prescription drug. Receipts from selling the device, such as a syringe, by itself are not deductible under Section 7-9-73.2 NMSA 1978. When sold as part of an injectible, however, the device will be considered simply an elaborate form of packaging incidental to the sale of the prescription drug. Receipts from selling injectibles may be deducted from gross receipts under Section 7-9-73.2 NMSA 1978.

B. The receipts of an oxygen service provider from the lease of oxygen canisters or similar storage containers to recipients of oxygen services are deductible pursuant to Section 7-9-73.2 NMSA 1978 if the oxygen service provider sells the entire package, including the lease of the canisters, as part of the oxygen service they provide.

C. Receipts from the sale or lease of machines or equipment that produce oxygen or filter the air are not receipts from the sale of oxygen or from providing oxygen services and therefore not deductible under Section 7-9-73.2 NMSA 1978.

[10/29/99; 3.2.234.8 NMAC - Rn, 3 NMAC 2.73.3.8 & A, 6/14/01; A, XXX]

3.2.234.10 **ITEMS THAT ARE NOT PRESCRIPTION DRUGS:** Tangible personal property that may be sold or dispensed for human consumption or administered to a human without a prescription of a person, such as a medical doctor, licensed to prescribe the property's use or to administer it are not "prescription drugs". Items that do not require a prescription, such as medical equipment, [~~oxygen,~~] vitamins and aspirin are not "prescription drugs" even if prescribed by a licensed medical doctor. Tangible personal property sold or dispensed for non-human consumption or administered to a non-human are not "prescription drugs" unless a veterinarian is required to prescribe the use of or to administer the property.

[3.2.234.10 NMAC - N, 10/31/2000; A, XXX]

TITLE 3: TAXATION

CHAPTER 2: GROSS RECEIPTS TAXES
PART 248: DEDUCTION - GROSS RECEIPTS TAX - MEDICAL TREATMENT OF CATTLE

3.2.248.1 **ISSUING AGENCY:** Taxation and Revenue Department, Joseph M. Montoya Building, 1100 South St. Francis Drive, P.O. Box 630, Santa Fe NM 87504-0630
[3.2.248.1 NMAC - N, XXX]

3.2.248.2 **SCOPE:** This part applies to each person engaging in business in New Mexico.
[3.2.248.2 NMAC - N, XXX]

3.2.248.3 **STATUTORY AUTHORITY:** Section 9-11-6.2 NMSA 1978.
[3.2.248.3 NMAC - N, XXX]

3.2.248.4 **DURATION:** Permanent.
[3.2.248.4 NMAC - N, XXX]

3.2.248.5 **EFFECTIVE DATE:** XXX, unless a later date is cited at the end of a section, in which case the later date is the effective date.
[3.2.248.5 NMAC - N, XXX]

3.2.248.6 **OBJECTIVE:** The objective of this part is to interpret, exemplify, implement and enforce the provisions of the Gross Receipts and Compensating Tax Act.
[3.2.248.6 NMAC - N, XXX]

3.2.248.7 **DEFINITIONS:** [Reserved.]

3.2.248.8 **WRITTEN STATEMENT OF FARMING OR RANCHING**

A. Receipts from providing veterinary medical services or from selling medicine or medical supplies used in the medical treatment of cattle to a person who states in writing that they are regularly engaged in the business of ranching or farming may be deducted from the seller's gross receipts pursuant to Laws 2007, Chapter 172, Section 11. The written statement must be accepted in good faith by the seller in order for the seller to take the deduction authorized by Laws 2007, Chapter 172, Section 11. The good faith acceptance requirement applies to each transaction intended to be covered by the written statement.

B. The following is an example of a statement that will be accepted by the department as conclusive evidence that receipts from selling enumerated items to persons signing the statement may be deducted from the seller's gross receipts pursuant to Laws 2007, Chapter 172, Section 11 if the seller accepted such a statement in good faith. “I swear or affirm that I am regularly engaged in the business of farming or ranching. This declaration is made for the purpose of allowing receipts from selling veterinary medical services, medicine and medical supplies used in the medical treatment of cattle to be deducted from the gross receipts of the seller pursuant to Laws 2007, Chapter 172, Section 11.”

C. Receipts from selling any of the items mentioned in Laws 2007, Chapter 172, Section 11 to a person engaged in the farming or ranching business may not be deducted from gross receipts unless the sale is made to a person who makes a written statement which is in compliance with 3.2.248.8 NMAC

D. For the purposes of Laws 2007, Chapter 172, Section 11 it is sufficient if the seller receives one written statement from each purchaser, provided the seller maintains that statement on file.

E. When the seller accepts in good faith a person’s written statement that the person is regularly engaged in the business of farming or ranching, the written statement shall be conclusive evidence that the receipts from the transaction with the person having made the statement are deductible from the seller’s gross receipts under Laws 2007, Chapter 172, Section 11.

[3.2.248.8 NMAC - N, XXX]