

LEGAL UPDATES

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## Services

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# New Mexico Rules That Anesthesia Services Can Be Purchased Exempt for Resale

New Mexico's gross receipts tax (what the state calls its sales tax) is generally imposed on receipts derived by the seller from performing services in the state; however, a resale of the services is not generally taxable if the following conditions are met:

the buyer delivers a nontaxable transaction certificate to the seller;

the subsequent sale is in the ordinary course of the reseller's (in this case, the buyer's) business; and

the subsequent sale is subject to the gross receipts tax or governmental gross receipts tax.

New Mexico's Taxation and Revenue Department recently issued a ruling on the proper application of these provisions as they relate to the purchase of anesthesia services by a hospital. In this ruling, a hospital entered into an agreement with an anesthesia services provider to provide such services for all emergency surgical cases, scheduled elective and add-on surgical cases, as well as other healthcare services requiring anesthesia.

The hospital paid an annual guaranteed fee to this third-party anesthesia provider in compliance with federal law on a monthly basis. The hospital then billed for the anesthesia services, separately stating the value of the anesthesia services on the invoices.

The department ruled that the anesthesia services were sold to the hospital for resale within the meaning of the statutes. [NMSA 1978 § 7-9-48] The department ruled that in order for the hospital to benefit from the resale exemption, it must first provide a Type 5 nontaxable transaction certificate

(provided by the department) to the anesthetist and continue to separately state the anesthesia services on its invoices to the patients, insurance carriers, and health plans.

Upon receipt of the nontaxable transaction certificate, the seller of the anesthesia services can deduct the applicable receipts from gross receipts subject to tax.

### **What this means to you**

In addition to anesthesia services, the resale exemption may apply to other services purchased by a hospital such as emergency room services. This ruling serves as a reminder that healthcare providers who purchase services, which they then resell to patients, should review their contracts to take advantage of any potential resale exemption under applicable state laws.

### **Contact us**

Please reach out to Smitha Chintamaneni, Bill Schenkelberg, or a member of Husch Blackwell's State & Local Taxation (SaLT) team for assistance in evaluating and understanding the exemptions available.