On August 9, 2022, the New Mexico Taxation and Revenue Department published proposed regulations addressing the gross receipts tax (New Mexico’s version of a sales tax) treatment of digital advertising services. The Department states the proposed regulations do not reflect a change in policy but instead ensure the rules are consistent for all advertising platforms.

While the proposed regulations provide some clarity regarding the taxation of
digital advertising services under preexisting rules, they introduce several inconsistencies and other gaps, particularly with respect to the finer details of the sourcing provisions. For example, we believe the proposed regulations leave ambiguity regarding whether gross receipts from the provision of digital advertising services should be sourced to:

1. The purchaser’s address
2. The server’s location
3. The viewer’s location

Separately, the proposed regulations would allow a deduction for gross receipts from national or regional advertising. However, the deduction is not allowed if the purchaser is incorporated in or has its principal place of business in New Mexico. While this significantly narrows the base for the tax, it injects complexity by requiring that the seller know the state in which its purchaser is incorporated or has its principal place of business, information not likely available in the context of internet-based advertising platforms.

Collectively, these inconsistencies and lack of clarity could lead to future compliance issues, which we hope will be mitigated as part of the Department’s regulatory approval process.

The Department scheduled a public hearing on the proposed rules for September 8, 2022, at 10:00 am MDT, which also is the due date for submission of written comments. The proposed regulations would be effective upon publication in the New Mexico Register, which could happen as soon as October 11, 2022 (or thereabout).

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