

STATE-TRIBAL COLLABORATION ACT

June 30, 2023, 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 proudly serve New Mexico with fair and efficient tax administration, revenue distribution, and motor vehicle service. 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.

In FY 2023, the Department collected and distributed over \$9.7 billion to the general fund alone. Moreover, the amount includes \$24.1 million to tribes and pueblos with a Gross Receipts Tax Cooperative Agreement.

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:

<u>Statutory Citation</u>	<u>Statutory Provision</u>
NMSA 1978, § 7-1-14	Destination Sourcing
NMSA 1978, § 7-9-3.3	Nexus Requirements
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, § 7-14-7	Tribe and Pueblo Car Excise Tax Credit
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-1	Intergovernmental Tax Credit for Oil and Gas Taxes
NMSA 1978, § 7-29C-2	Intergovernmental Tax Credit for Coal Severance Tax for Taxes Imposed by Tribe
NMSA 1978, § 9-11-12.1	Tribal Cooperative Agreements for Joint Administration and Collection of Gross Receipts Tax
NMSA 1978, § 13-1-22	Native American Resident Business and Native American Resident Contractor Certificates
NMSA 1978, § 62-16B-7	Community Solar Act

III. TRIBAL COLLABORATION POLICY IMPLEMENTATION

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:

A. Implementation of Legislation that Benefits Tribal Communities

In the 2022 regular session, HB 137 was enacted with amendments to Section 7-14-7 NMSA 1978 to allow a motor vehicle excise tax credit for motor vehicles sold on tribal land within New Mexico to prevent double taxation. The bill implementation was finalized in FY 2023. Furthermore, the Department implemented the provisions of SB 39 Procurement Preference Changes through the creation of an electronic and paper application and an accompanying YouTube instruction.

In the 2023 session, SB 147 was enacted. The bill benefits tribal sovereignty by allowing tribes and pueblos to adopt the gross receipts tax rate independent of the surrounding county rate. In addition, it provides a tribally-initiated opportunity to decide how tax administration will raise revenue. Nine tribes have since increased tribal area tax rates to raise more revenue

B. Cooperative Agreements and other Interactions

The Gross Receipts Tax Cooperative Agreements continue to be of great benefit to tribal government. Revenues distributed to tribes and pueblos continue to rise and hit record amounts. The distribution amounts have increased from \$9 million two years ago to over \$24 million in FY 2023. Moreover, there is every indication that these tax dollars will continue to become more important as a revenue source and opportunity for economic development.

Currently, the Department has a Gross Receipts Tax Cooperative Agreement with all of the tribes and pueblos that we are authorized to reach an agreement with other than the Navajo Nation, the Mescalero Apache Tribe and San Felipe Pueblo. Discussions with all three tribal governments occurred in FY 2023 and will continue in FY 2024.

Discussions with all of the current tribal governments occur informally on a weekly basis through interactions with the Tribal Liaison, the Local Government Liaison and a representative from Audit & Compliance Division, depending upon the type of issue or question that is being discussed. These discussions also occur on a formalized basis through the participation and attendance of the Tribal Liaison at the quarterly Pueblo Tax Administrator's Coalition (PTAC) meeting, a group of tribal tax administrators that gather to discuss current tax topics. New Mexico is the only example in the country where there is state participation in these tribal meetings.

The Department has also continued negotiations with Santo Domingo Pueblo in regards to the Gas Tax Sharing Agreement in FY 2023 and anticipates finalization in early FY 2024. Similar discussions, negotiations and agreement is anticipated with Nambe Pueblo in FY 2024.

Lastly, the Department continues to participate and sometimes make determinations in areas that involve tax and the tribal and pueblo interactions with various municipal or county governments.

C. Technology and Training

The Department continues to offer training in the various areas of tax administration in the interactions with tribal government officials. Moreover, a number of technology advancements

continue within GenTax, the Department's tax system of record, to improve the reports available to tribal tax officials and to more accurately display the gross receipts GIS map as it relates to tribal taxing jurisdictions. The Department continues to place great efforts in being as favorable to tribal governments as possible and offering assistance in the interactions between the state, the tribes and pueblos and taxpayers that interact with both types of governmental tax structures.

IV. KEY NAMES AND CONTACT INFORMATION

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