



2020 Special Legislative Session – GRT Exemption for funds distributed by the United States Department of Health and Human Services from the Public Health and Social Services Emergency Fund.

Position Summary

On March 27, 2020, the Coronavirus Aid, Relief and Economic Security (“CARES”) Act was signed into law. The CARES Act “provide[d] emergency assistance and health care response for individuals, families, and businesses affected by the 2020 coronavirus pandemic.” As part of the CARES Act, \$100 billion dollars was invested into the Public Health and Social Services Emergency Fund (“Emergency Fund”). The appropriated money could only be used to reimburse eligible health care providers for “health care related expenses or lost revenues that are attributable to coronavirus.”

Medical providers throughout New Mexico received much needed financial assistance from the Emergency Fund. Recently, the New Mexico Taxation and Revenue Department (“NMTRD”) has offered informal guidance that it will apply gross receipts tax to the funds received from the Emergency Fund. Instead of challenging whether the funds are subject to GRT, providers are respectfully requesting that the Legislature exempt the funds from GRT. Such an exemption will allow providers to rebuild their practices, which were hard hit by coronavirus and public health orders prohibiting non-essential services. A draft of the proposed exemption is provided below.

Background Information

In order to understand the issues presented by NMTRD’s decision to tax funds distributed from the Emergency Fund, it is helpful to understand the purpose of those funds and the circumstances surrounding the disbursement of the funds.

Shortly after the Emergency Fund was established, the United States Department of Health and Human Services (“HHS”) distributed \$30 billion to providers based on their share of total 2019 Medicare fee-for-service (“FFS”) payments. To be clear, payments from the first tranch of funding was unsolicited by providers. If a provider retained its disbursement for at least 30 days without remitting the funds to HHS, the provider was deemed to have accepted certain Terms and Conditions promulgated by HHS. *See HHS Acceptance of Terms and Conditions for Relief Fund Payment from Initial \$30 Billion General Disbursement.* Most importantly, by not returning the funds and accepting the HHS terms and conditions, providers receiving the disbursement “certif[ied] that the Payment will only be used to prevent, prepare for, and respond to coronavirus,

and that the Payment *shall reimburse* the Recipient *only for health care related expenses or lost revenues that are attributable to coronavirus.*” *Id.* at p. 1 (emphasis added).

After the first disbursements were made, HHS distributed an additional \$20 billion from the Emergency Fund with a focus on rural providers and providers with lower shares of Medicare FFS payments. Unlike the unsolicited funds distributed in the first tranch, providers had to apply for funds from the second tranch. Nonetheless, providers that received and retained funds from the second tranch were deemed to have accepted another set of Terms and Conditions from HHS. *See HHS Acceptance of Terms and Conditions for Relief Fund Payment from \$20 Billion General Disbursement.* In particular, recipients of funds from the second tranch were also required to certify that the funds provided would only be used to reimburse the provider for “health care related expenses or lost revenues that are attributable to coronavirus.” *Id.* at p. 1.

As can be seen, based on the plain language of the CARES Act and the Terms and Conditions put forth by HHS, money distributed to providers from the Emergency Fund can only be used to reimburse health care providers for “expenses or lost revenues that are attributable to coronavirus.”

Issue

The Emergency Fund was designed to reimburse healthcare providers for expenses and lost revenue that resulted from coronavirus. The funds were in no way provided to compensate providers for health care services rendered. In fact, as a matter of law, the funds cannot be used to reimburse providers for health care services provided to patients. Therefore, the funds should be exempt from GRT tax, which will allow providers to rebuild their practices that are vital to the health care system in New Mexico.

Solution

The New Mexico Legislature should exempt all funds received from the Emergency Fund from GRT by enacting the following:

_____. Exemption--Gross Receipts Tax--Provider Relief Payments

Exempted from the gross receipts tax are receipts from provider relief payments made by the United States Department of Health and Human Services from the Public Health and Social Services Emergency Fund established pursuant to the provisions of the Coronavirus Aid, Relief, and Economic Security Act.

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