



2020 Legislative Session

New Mexico Medical Society

HB 282 and SB 227: Gross Receipts Tax Deductions - Eligible Providers

URGENT: Attorney General's recent opinion impacts gross receipts tax deduction for most medical practices

Payments from Medicare and Managed Care Contract will no longer be allowed a tax deduction for Gross Receipts Tax billed by the corporation or legal entity for Medical and Osteopath doctors, Nurses, Dentist, Psychologist, Athletic Trainers, Pharmacists, Clinical Labs, etc. Only individual providers billing as an individual may receive the Gross Receipts Deduction. The state may request a "claw back" of the gross receipt tax deductions for services provided from 2016 until present from all corporations or other forms of legal entities that have received the deduction. Private practice groups could face penalties and refunds costing millions of dollars.

HB 282 (Jim Trujillo, D-45) and SB 227 (Steve Neville, R-2) clarify the drafting error in SB 06 (2016 Special Session) and reaffirm that individuals as well as corporations or their legal entities may receive the tax deduction. There is no fiscal impact to this bill since the corporation and legal entities have been filing for the deduction since the law was originally enacted, and the attorney general opinion was challenged before practices were impacted. HB 282 and SB 227 will prevent future confusion regarding the 2016 special session drafting error and keep the original legislative intent.

Ben Roybal Esq., Tax Attorney for New Mexico Medical Society, prepared the following brief on the circumstances regarding the Attorney General's recent opinion and the importance of HB 282 and SB 227.

Section 7-9-77.1 of the Gross Receipts and Compensating Tax Act provides a deduction from gross receipts for receipts from certain health care services provided by physicians, osteopaths and certain other health care practitioners ("Health Care Practitioners") to Medicare and other patients covered by governmental health care programs.

Section 7-9-93 of the Gross Receipts and Compensating Tax Act provides a deduction from gross receipts for receipts from certain Health Care Practitioners to patients covered by insurance and managed health care plans.

The deductions were designed to apply (and have consistently been applied) to qualifying Health Care Practitioners regardless of their chosen form of business, including those practicing through corporations, partnerships and limited liability companies. Department regulation NMAC §3.2.241.13, issued by the Department after enactment of Section 7-9-93, confirms that interpretation of the law.

In April 2016, in the case of *In the Matter of the Protest of HealthSouth Rehabilitation*, the Administrative Hearings Office, ruled that a for-profit rehabilitation hospital was entitled to and could claim the deduction under Section 7-9-93. In response to *HealthSouth Rehabilitation*, in the 2016 special legislative session, the New Mexico State Legislature passed Senate Bill 6 ("SB6") amending the language of the gross receipts tax deductions under Sections 7-9-77.1 and 7-9-93. The Governor signed the bill on October 19, 2016. SB 6 was designed to reverse the Decision of the Administrative Hearing Officer in *HealthSouth Rehabilitation*, but was not intended to affect the deductions under Sections 7-9-77.1 and 7-9-93 for receipts of Health Care Practitioners that practice through a corporation or other form of legal entity.

Because of confusion created by SB 6, the Department issued Bulletin 200.30 ("Bulletin") confirming that the Sections 7-9-77.1 and 7-9-93 deductions continued to apply to receipts of otherwise qualifying Health Care Practitioners operating through a separate legal entity:

The bill does not affect the deductions under Sections 7-9-77.1 and 7-9-93 NMSA 1978 for receipts of corporations, limited liability companies, partnerships and other legal entities from the provision of otherwise qualifying health care services provided by physicians, osteopaths or other health care practitioners who own and are employed by the legal entity. The numerous regulations in place under Section 7-9-93 NMSA 1978 remain in place and are effective as they were always in line with the Department's interpretation of the Section.

Recently a local physician group (practicing through the corporate form) filed a refund claim for overpayments of gross receipts tax resulting from its prior failure to claim the 7-9-93 deduction for certain qualifying receipts. The Department approved the claim and submitted it to the New Mexico Attorney General's office for its approval as required by law. After review, the attorney general declined to approve the refund claim because the physician group practiced through a corporation and therefore "is not deemed to be a health care practitioner ...entitled to take the deduction under §7-9-93..."

The attorney general's position on the refund claim is contrary to the Bulletin and regulation §3.2.241.13. As importantly, the position calls into question the applicability of the Section 7-9-77.1 and Section 7-9-93 deductions to receipts of over a thousand physicians that practice through some form of legal entity and that, in reliance on the Bulletin and the regulation, have continued to claim the deductions since enactment of SB 6 in 2016.

Please contact your New Mexico House and Senate member to support HB 282 and SB 227. https://www.nmlegis.gov/Members/Find_My_Legislator

House: 505-986-4751 Senate: 505-986-4714 Session Switchboard: 505-986-4300

For more information, please contact Randy Marshall, NMMS Executive Director, 505-263-4912, rmarshall@nmms.org.