

**[EXTERNAL] Comment to proposed changes to NMAC 3.2.116.12 and 3.2.116.13**

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To: Office, Policy, TAX &lt;policy.office@tax.nm.gov&gt;

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Dear Cabinet Secretary Schardin Clarke,

I am very happy to see the proposed changes to NMAC 3.2.116.12 regarding exemption of Executor's and Administrator's fees from GRT. However, it seems appropriate that 3.2.116.13 regarding Trustee fees would also mirror these changes. As an estate attorney, I have represented individuals serving as Executors/Administrators and/or Trustees of the estates and trusts of their loved ones. In these cases, the appointed individuals are not in the business of administering estates or trusts, nor do they intend to make a business of it. Most have never served as an Executor/Administrator or Trustee before, or have only done so for other departed loved ones. They are always surprised to learn that their compensation would be subject to GRT. In these cases, it seems compensation should be exempt from GRT whether serving as an Executor/Administrator or as a Trustee.

Perhaps there is a distinction between fees of a Trustee serving for an extended period of time, such as for a trust for the lifetime of a beneficiary, and a Trustee who is merely facilitating the final administration and distribution of a trust triggered by the death of a person (even though it may take an indefinite number of months or years to wind down), akin to exempting the compensation of an Executor/Administrator who does not regularly engage in the business of estate administration. Even so, in the case of a trust for the lifetime of a beneficiary, regularly engaging in the business of trust administration should still be a consideration. For example, compensation to an individual who agrees to serve as Trustee of the Trusts for a deceased friend's orphaned children for an extended period of time should still be exempt if the Trustee is not otherwise in the business of serving as a Trustee.

Thank you for your consideration.

Respectfully,

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