



June 13, 2024

Secretary Stephanie Schardin Clarke  
New Mexico Taxation and Revenue Department  
P.O. Box 630  
Santa Fe, New Mexico 87504-0630

Dear Secretary Schardin Clarke:

I write to provide commentary on the proposed regulation changes to NMSA 7-9-28, Regulation Section 3.2.116.10, "Persons Having Rental Units."

I do not believe that the intent of many taxpayers who own and lease one or two residential rental properties is to be "engaging in business." As a tax practitioner who has practiced public accounting in New Mexico for over 37 years, I have encountered many New Mexico taxpayers who have inherited a home from a parent and do not wish to sell the residence because of sentimental reasons or who have had to place a parent in an assisted living or memory care facility and utilize the rental income to supplement the heavy cost of receiving assistance in caring for a loved one. I also have (and have had) elderly clients, some in their 80's, who rely on the additional income and support a rental property provides. Some of these elderly taxpayers made the decision decades ago to purchase a rental property as part of their planned retirement income.

In each of the situations I've described above, I do not see the intent to be "engaging in business." For those NM taxpayers who deliberately chose decades ago to purchase rental properties as a supplement to retirement income, changing the regulation to now require registration and reporting will provide an unexpected surprise and deliver a snag to their retirement plan.

For those taxpayers who are elderly and are not computer savvy, having to create a TAP Account, register for a NM BTIN, and then remember to file a NMGRRT Return semi-annually to report NO taxable income will be burdensome. Certainly, these elderly taxpayers can hire a practitioner to perform these tasks, but this will cause a cash outlay to elderly taxpayers on a fixed income.

It is unclear to me what the benefit to the State of New Mexico and its citizens is to require the reporting and deduction of rental receipts, resulting in no taxable income. Has the Department considered the burden and cost to New Mexico taxpayers of processing the additional registrations and semi-annual NMGRRT returns? Because this change will not produce taxable income to the State of New Mexico, since the receipts are deductible from gross receipts pursuant to NMSA 7-9-53, how does the Department intend to fund the additional costs for processing the new registrations and returns when the Department is already fully subscribed?

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I am also concerned about the burden for the Department to notify the many New Mexico taxpayers who have one, two, or three rental units that they are now required to register for a BTIN and file semi-annual NMGRT Returns. Further, I'm curious what the Department's plan is for monitoring compliance with this change. Again, because this change will not result in taxable income to the State of New Mexico, what is the Department's plan for paying for the additional resources to monitor compliance for no apparent revenue benefit?

I understand that by the time the notice is given for a change to regulations, there is very little that can be done to modify the change. As a member of the Tax Practitioner Advisory Committee, I think it would have been in the State's best interests to consult the State's tax practitioners as to the efficacy of making this change and to help practitioners understand the need for this change so that we can share that information with the State's tax practitioner community and our respective clients.

Please consider re-evaluating the change to NMSA 7-9-28, Regulation Section 3.2.116.10.

Sincerely,

A handwritten signature in cursive script that reads "Bobbi Kay Nelson".

Bobbi Kay Nelson, CPA