

Pro Forma Financial Statements:

- Should produce approximately 3 years of estimates for income statement, balance sheet, and cash flow statement
 - In my opinion, the cash flow statement is the most important of the three
 - Operations, Investing, Financing
 - Primary difference between cash flow statement and the income statement is the treatment of long-lived assets
- The expense level data may be easier to estimate accurately
 - Mention consulting regarding growth versus controllable losses.
- A good idea to present monthly or quarterly estimates – Possibly for cash flow statement and longer time periods for income statement and balance sheet.
- Another highly recommended item to prepare is a break even analysis (nature of costs as fixed or variable)
 - This analysis will give you an idea of the level of business you need to obtain to reach profitability or become cash flow positive
 - Also the time frame needed to reach cash flow positive status.
 - Show difference with not-for-profit cash flow
- **Goals**
 - Identify possible seasonality of business
 - Identify periods of “cash crunch”
 - Identify staffing needs
 - Ultimately determine the type, amount, and timing of financing
 - personal funds, bank financing, angel financing, venture capital
- Helps to focus on the execution of the business opportunity.
- As a general rule, most startup businesses will experience initial losses
- Need to be flexible
- Need to be realistic
- Taking into account the funding opportunities

Choice of Entity from a Tax Perspective:

Go over the

- Contributing Factors:
 - Funding Source
 - How many investors will be involved in the business?
 - Is there any need to specially allocate income and expenses?
 - Profit or Not-for-profit?
- Flow-through v. entity-level tax
 - Sole Proprietorship – not a separate entity from the owner (Form 1040)
 - Subject to the individual tax rates
 - Subject to individual capital gain tax rates
 - Subject to the self-employment tax
 - Any initial losses can be offset against other sources of income (assuming the owner actively participates in the business)
- C Corporation (Form 1120)
 - Separate taxable entity
 - Owners are shareholders
 - Owners are taxed on dividends
 - Question of proper salary v. dividend
 - Subject to double taxation
 - Initial losses are locked into the corporation for carryover to later periods
 - A “change of ownership” triggers restrictions on the use of tax carryovers
- S Corporation (Form 1120S)
 - Flow-through entity
 - Must qualify under number of shareholder restrictions and classes of stock
 - Income and loss are limited to pro rata allocations
 - Fewer than 100 shareholders
 - Individuals as shareholders
 - Presents some opportunities with return of basis versus salary (opportunity to save on employment taxes)
 - Items at the corporate level maintain their character and “flow-through” to the shareholder level
 - Limited types of entities may be shareholders
 - Limited number of investors

- Losses can be offset against shareholders' other income if the shareholder is an active participant
- Partnerships – General, Limited, Limited Liability (Form 1065)
 - Flow-through entities
 - Differences in liability protection
 - Allows for greater flexibility in allocating income and expense items
 - Affords opportunity to use debt financing to support use of losses at partner level
 - Items at the partnership level maintain their character and “flow-through” to the shareholder level
- Limited Liability Companies
 - Owners are “members”
 - Each has limited liability
 - For tax purposes – a multi-member LLC’s default tax treatment is as a partnership, a single-member LLC’s tax treatment is as a disregarded entity (individual taxed as a sole proprietorship, corporation taxed as a component unit)
 - The owner’s can “check-the-box” and elect to have the LLC taxed as a corporation
 - Eligible for S status if it meets the other requirements

General Considerations:

- Funding source and ownership structure may have an impact on entity type – For instance, a 501(c)(3) organization is allowed to be a shareholder in an S corporation; however, this produces unrelated business taxable income
- Issues of flow-through use of losses may impact the decision
- Must be careful of issue of constructive dividend with a corporation

Contributions of Property to the Capital Structure:

- Corporations – Taxable unless the transferor group controls greater than 80 percent of the number of shares and voting rights
- Partnerships – Generally, not taxable regardless of the ownership interest.

Distributions of Property

- Corporations – Distribution, generally, triggers the recognition of any built-in gains
 - One-way valve

- Partnerships – Distributions are generally tax-free
 - Much easier to “unwind” a partnership

STARTING AND OPERATING A BUSINESS IN NEW MEXICO

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I. INTRODUCTION

New Mexico has a fairly typical tax and legal structure under which businesses must operate, except for its very pervasive gross receipts tax, which is like a sales tax but applies to almost every economic activity, including most kinds of services. Income and franchise tax rates on corporations are relatively low, and state government regulation tends to be somewhat less intrusive than in many states. For example, there is no fictitious business name law requiring any filing in New Mexico.

Like most states, New Mexico imposes an income tax, a small franchise tax on corporations, a sales and use tax (called the gross receipts tax), various excise and mineral severance taxes, with property taxes imposed at the local level. The state has also adopted a limited liability company (LLC) law, and a limited liability partnership (LLP) law, so that businesses operating in New Mexico in LLC or LLP form may obtain the advantages of limited liability, without incorporating or becoming subject to corporate taxation, generally.

In 2003, the state legislature enacted major cuts in the New Mexico individual income tax. Under these cuts, the maximum tax rate was reduced from 7.9% in 2002 to 7.7% in 2003, 6.8% in 2004, 6% in 2005, 5.3% in 2006, and 4.9% in 2007 and later years.

New Mexico's economic climate, like much of the nation, has been impacted by the bursting of the "dot-com" bubble in the stock market in 2000 and the events and aftermath of 9/11/2001. While New Mexico unemployment rates were as high as 6.7% a year earlier, the state's economy is recovering and the unemployment rate of 5.5% in June of 2004 is now slightly below the national average (5.6%).

To view the latest federal Bureau of Labor Statistics unemployment rate data for New Mexico or any other state, visit the [BLS website](#).

II. LEGAL ENTITIES -- FILING FEES AND REPORTING REQUIREMENTS.

(a) **In General.** A business that operates in New Mexico can operate as a sole proprietorship, a general or limited partnership, a corporation, or a limited liability company. In addition, like the federal tax law, the state income tax law also recognizes S corporations, for income tax purposes, and generally allows the income or losses of an S corporation to "flow through" and be taxed or deducted at the shareholder level, rather than taxing the corporation itself as an entity.

New Mexico also provides for limited liability partnerships, in which no partner is liable for debts of the partnership, in general, as in the case of a corporation or LLC, but with fewer legal formalities than are required for either a corporation or an LLC, provided that certain liability insurance requirements, discussed below, are met.

Each of the above entities is discussed below, along with the basic requirements for forming such an entity and any general ongoing (non-tax) reporting requirements that are applicable to it. The tax treatment of each form of legal entity is discussed in [Section IV](#) below.

(b) **Sole Proprietorships.** In general, sole proprietorships in New Mexico can be formed with no formalities. However, as discussed in [Section IV\(b\)](#), it will generally be necessary to obtain one or more local business licenses from cities or counties in which you operate and, in some cases, state licenses, as well.

No separate tax form filing is required, generally, for a sole proprietorship, under the New Mexico income tax law. Instead, as with the Schedule C on your federal *Form 1040*, you simply report the net income or loss from your sole proprietorship on your state personal income tax return. See [Section IV\(c\)](#) for information on the New Mexico income tax and filing requirements for individuals.

(c) **Partnerships.** As a rule, general partnerships in New Mexico can be formed with no formalities, although it is highly advisable to have a written partnership agreement. However, as discussed in [Section IV\(b\)](#), it will generally be necessary to obtain one or more local business licenses from cities or counties in which you operate and, in some cases, state licenses, for any type of partnership, including general or limited partnerships, or limited liability partnerships.

New Mexico recently adopted the Uniform Partnership Act, whose provisions went into effect on July 1, 1997. Under the Uniform Partnership Act, a partnership is allowed to file a "statement of partnership authority" with the secretary of state, listing information about the partnership and its partners, including, if desired, a statement as to which partners have been granted authority by the partnership to enter into real estate transactions or other transactions on behalf of the partnership. There is a \$50 filing fee for filing a statement of partnership authority.

A limited partnership, in which there is at least one general partner (who is liable for partnership debts) and at least one limited partner (who is not liable for partnership debts), may also be formed under New Mexico law. Unlike a general partnership, a limited partnership must generally have a written partnership agreement, and must file a certificate of limited partnership with the secretary of state, together with a filing fee of \$100.

Foreign limited partnerships must also register before being allowed to do business in New Mexico, and must pay a registration fee of \$100.

For information on limited partnership filing requirements, see the contact information for the offices of the New Mexico Secretary of State, listed in [Section VI\(a\)](#).

Limited liability partnerships (LLPs) are a new form of partnership permitted under the laws of New Mexico. Like an LLC, an LLP provides limited liability for its owners, while retaining the tax advantages of a partnership for federal and New Mexico state income tax purposes. However, unlike an LLC, an LLP typically operates like a regular partnership, and is not required to file articles of organization. To form an LLP in New Mexico, you must register your domestic or foreign partnership with the New Mexico Secretary of State and pay a filing fee of \$50. Every LLP in New Mexico is required to maintain at least \$500,000 per occurrence and \$1,000,000 in the aggregate, of liability insurance.

Note that an LLP does not affect the liability of a partner for the partner's own omission, negligence, wrongful act, misconduct or malpractice nor that of any person under the partner's direct supervision and control.

Every LLP doing business in New Mexico, which includes both domestic and foreign LLPs, must regularly renew its registration and file an annual report in order to retain LLP status . There is a \$50 annual report filing fee.

For more information on LLP registration and reporting requirements, see the contact information for the offices of the secretary of state, listed in [Section VI\(a\)](#).

Note that one potential drawback of LLPs, if you will do business in other states besides New Mexico, is that a few states, such as California and New York, only allow certain types of professional service firms to operate in LLP form.

A partnership agreement, for any type of partnership, should spell out in considerable detail such matters as the following:

- How much and what kind of property will each partner contribute to the partnership?
- What value will be placed on the contributed property?
- How will profits and losses be divided among the partners?

- How will gain or loss be allocated for tax purposes on property contributed to the partnership by one or more of the partners, where such property has a tax basis significantly greater or less than its agreed value?
- When and how will profits be withdrawn from the partnership?
- How will certain partners be compensated for their services to the partnership (if at all)?
- How will partners be compensated for making capital available to the partnership?
- How will changes in ownership of interests in the partnership be handled?
- When will the partnership terminate its existence?
- How will the assets and liabilities of the partnership be handled when the partnership is terminated?

Partnerships, as entities, are not subject to state income tax in New Mexico. Instead, the income or losses of the partnership, as allocated among the partners, must be reported on the personal income tax returns of the individual partners (or on the corporate tax returns of any corporate partners).

Partnerships are not generally required to file an annual tax returns with the state. However, as "pass-through" entities, all partnerships (and LLCs) must file a special Pass-Through Entity information return with the state. For details on New Mexico tax return filing requirements, see [Section IV\(c\)](#).

(d) Corporations. To form a corporation in New Mexico, you must file articles of incorporation with the Public Regulation Commission and pay a fee based on the number of authorized shares of stock of the corporation. The fee is \$1.00 per 1,000 shares, with a minimum fee of \$100 and a maximum fee of \$1,000.

A foreign corporation (one formed under the laws of another state or a foreign country), must obtain a certificate of authority before it may legally conduct business in New Mexico, by filing an application for a certificate of authority and paying a filing fee that is the same as for a domestic corporation, except that the minimum fee is \$200 for a foreign corporation.

For more information on filing articles of incorporation or applying for a certificate of authority to do business in New Mexico, see the contact information for the offices of the Public Regulation Commission, listed in [Section VI\(a\)](#).

In addition, once your corporation is formed, it will be required to file a biennial report and a filing fee of \$25 with the Public Regulation Commission every two years. Failure to file this report on a timely basis could result in suspension or revocation of your corporation's charter, in addition to a \$200 late filing penalty.

In addition to paying federal income taxes on its income, a corporation that does business in New Mexico must also file corporate income tax returns with the state. See [Section](#)

[IV\(c\)](#) for a discussion of state corporate income tax rates and tax return filing requirements.

Corporations that do business in New Mexico are also subject to a corporate franchise tax, described in [Section IV\(c\)](#), which is paid with the annual corporate income tax return.

For tax forms and more information on corporate income and franchise taxes in New Mexico, see the contact information for the offices of the New Mexico Public Regulation Commission, listed in [Section VI\(a\)](#).

(e) S Corporations. An S corporation is simply a regular corporation that has elected, for federal or state income tax purposes, or for both, to be taxed somewhat like a partnership, with its income, losses and tax credits flowing through to its owners, who report such income, losses, or credits on their individual tax returns.

New Mexico recognizes S corporations for state income tax purposes, and treats them in a manner similar to the federal tax treatment. An S corporation with income sources from, or registered to do business in, New Mexico must withhold and pay over state income tax for nonresident shareholders who have not filed an agreement with the state to report their income and pay the New Mexico state income tax thereon.

(f) Limited Liability Companies. New Mexico, like every other state, has adopted a limited liability company (LLC) law. Thus, in addition to the traditional choices of a sole proprietorship, partnership, or corporation, a business that operates in New Mexico may also choose to operate in the form of an LLC. LLCs are very attractive entities for many small businesses, in that they offer the same protection as a corporation from creditors for debts of the business, while offering much of the flexibility plus the flow-through tax treatment of a partnership for federal tax purposes, and in most states.

See [Section IV\(c\)](#) for a discussion of the income tax treatment of LLCs under New Mexico tax laws.

To form an LLC under the laws of New Mexico, one or more persons must file articles of organization with the New Mexico Public Regulation Commission, which must be accompanied by a filing fee of \$50. New Mexico law was amended in 1999 to permit one-member LLCs, if the articles of organization specify that it is to be a one-member LLC.

Foreign LLCs, those formed under the laws of another state, must obtain a certificate of authority to do business in New Mexico, by filing an application for a certificate of authority with Public Regulation Commission and paying a filing fee of \$100.

Unlike a corporation or LLP, an LLC is not required to file annual or biennial reports. However, if it changes its registered office or registered agent in the state of New Mexico, an LLC must notify the Public Regulation Commission by filing a *Statement of Change of Registered Office or Registered Agent*, along with a \$20 fee.

For more information on filing articles of organization for an LLC, see the contact information for the offices of the New Mexico Public Regulation Commission, listed in [Section VI\(a\)](#).

III. BUSINESS ACQUISITIONS

(a) **In General.** When acquiring an existing business, there are a number of state legal and tax issues you or, preferably, your business attorney, should attend to before closing the purchase. These include matters such as doing a title search for any real property that is being acquired, checking for any recorded security interests on personal property items, and thoroughly researching county, state, and federal records for any judgment liens, tax liens, or other liens, before property is acquired. You will also benefit from consulting a tax advisor before the agreement of sale is negotiated, in order to seek a structuring of the agreement so that the purchase price is allocated among the assets in a way that favors you. You may be able to obtain considerable tax savings if the purchase price is allocated in a way that gives you the best possible tax results under federal and state income tax laws, and other state tax laws, such as gross receipts (sales) tax or property tax laws.

Depending upon the state (or states) in which the seller's assets are located, you may also have to comply with state bulk sale or bulk transfer laws. You should also obtain tax releases from various state taxing agencies, as discussed below.

(b) **Bulk Sale Laws.** Bulk sale or bulk transfer laws were almost universal until a few years ago, when many states decided such laws provided little real protection to the creditors of the selling businesses, but added significant legal and other costs for both buyer and seller in business sale transactions. Typical bulk sale laws require either publication of legal notices to all creditors in advance of the sale and recording of such notices in some cases, or maintenance of detailed lists of the property to be transferred, for inspection by the public.

All these requirements make the transfer of a business a more arduous and expensive process. Thus, in just a few years, over half the states have repealed or drastically curtailed the coverage of their bulk sale laws.

New Mexico is one of the business-friendly states that has repealed its bulk sale laws, so you no longer have to be concerned with this requirement when buying a business in New Mexico.

(c) **Tax Releases.** When you acquire an existing business, you will want to make sure that you do not unwittingly become liable for any unpaid taxes owed by the seller. Typically, to protect yourself, you will need to receive a tax release or releases from various state taxing agencies, for such taxes as sales and use tax, income tax withholding, and state unemployment taxes, in each state in which the seller does business. If you fail to obtain such a release or written statement from the tax agency that the seller is not delinquent on any tax payments, you will be held responsible for such tax if it is not withheld from the purchase price proceeds and paid to the state at the time the sale of the business transpires.

In New Mexico, you should obtain a tax release for gross receipts taxes, by filing a written request on *Form ACD-31096* with the New Mexico Taxation and Revenue Department in advance of the transaction. They are required to respond within 30 days, or 30 days after the seller's records are made available for audit, if later, but not later than 60 days after the date of the request, in any event. The department then will issue a certificate, telling you how much, if any, of the sales price you must withhold and pay over.

With regard to state unemployment taxes, you should also seek to find out if the seller is current on all such tax payments, and must also notify the New Mexico Department of Labor by registered mail at least five days before the business is purchased.

(d) **Unemployment Tax Rating of Seller.** In addition to obtaining tax releases, you may find it advantageous to succeed to the seller's unemployment tax experience rating, if the seller has a tax rate lower than you would otherwise obtain as a new business. To obtain the seller's favorable experience rating as a successor employer, you will need to apply on a timely basis to the New Mexico Department of Labor, requesting that you be treated as a successor employer. Where you have acquired only part of a business and its employees, and seek a partial transfer of the seller's experience rating, file New Mexico Department of Labor *Form ES-963A*.

IV. NEW MEXICO TAXES AND OTHER GENERAL REQUIREMENTS.

(a) **In General.** The system of taxation in New Mexico is generally fairly favorable to business, although individual income tax rates are relatively high, and the gross receipts tax (New Mexico's equivalent of a sales tax) is much broader and more pervasive in its scope than the sales taxes imposed by any other state, except possibly for Hawaii, as the New Mexico tax applies to almost every imaginable economic activity.

On the other hand, corporate tax rates on up to \$500,000 of taxable income are quite low, and there is no property tax on business inventories, generally, and no property tax on intangible assets. While there is an annual franchise tax on corporations, it is minimal compared to the franchise taxes imposed by many other states.

(b) State and Local Licensing. Nearly any business, operated anywhere in the United States, will have to have at least one government license of some kind. In most cases, this will be a local license, issued by your city or county. Before you open your business, contact your local city or county hall and find out if your particular business needs one or more local licenses. Most kinds of local business licenses are granted upon payment of a fee, with no further requirements, except possibly for annual or other periodic renewal fees.

However, if you are engaging in any kind of food business, you will usually need to also obtain a health department permit and show that you are in compliance with health department food-handling requirements. In addition, be sure to check with an attorney or local government zoning or planning department officials to determine if your business will be in compliance with all local zoning and planning restrictions. If you own or rent any type of facility, you will generally need fire department permits, showing that you meet fire safety codes and, of course, any construction or improvements to an existing structure will almost always require a building permit. Even if you intend to simply operate your business from your home, you may be in violation of local zoning requirements, but this is less likely to be a concern if you don't have clients, customers, suppliers, or employees coming to your house on business, on a regular basis.

State governments have also traditionally required special licenses for many kinds of professionals, such as physicians, dentists, lawyers, and accountants. To further protect consumers, New Mexico has expanded the list of occupations that must be licensed by the state to include many other occupations. Most state licenses not only require payment of fees, but are only issued for a given profession or occupation upon showing that you have completed certain educational or experience requirements, or passed certain tests, or some combination of the foregoing.

For information on state licensing and business registration requirements in New Mexico, see the contact information for the offices of the Office of the Superintendent, New Mexico Department of Regulation and Licensing, listed in [Section VI\(a\)](#). Also, you should obtain a copy of *The New Mexico Checklist*, a booklet published by the state, which covers various state licensing, permitting and occupational taxes and fees, which is available from the Taxpayer Information Policy Office of the New Mexico Taxation and Revenue Department.

(c) **Income and Franchise Taxes.** New Mexico has both an individual income tax and a corporate income tax, as well as a small franchise tax on corporations.

The New Mexico individual income tax is imposed at a maximum tax rate of 6.8% (in 2004) on taxable income in excess of \$40,000, for married taxpayers filing jointly (or over \$26,000 for a single taxpayer). The maximum tax rate is schedule to drop to 6% in 2005, to 5.3% in 2006, and to 4.9% in 2007 and later years. Individual taxpayers generally pay state income tax on their business earnings from a sole proprietorship, or on their share of the earnings of a pass-through entity, such as a partnership, S corporation or LLC. The New Mexico personal income tax return is **Form PIT-1**, which must be filed with the New Mexico Taxation and Revenue Department by April 15th each year for the preceding calendar year.

While this probably will not apply to you, New Mexico's personal income law contains an interesting total exemption for centenarians. Since January 1, 2002, anyone aged 100 or older, who is not claimed as a dependent by anyone else, is completely exempted from New Mexico income tax.

Partnerships, or entities taxable as partnerships, such as LLCs, are not subject to state income taxation in New Mexico. However, partners (or members of an LLC) must report their respective shares of taxable income on their individual state income tax returns. All pass-through entities are required to file annual information returns, showing how much income is allocable to each partner or member, on **Form PTE**.

Since 1999, all pass-through entities (including partnerships, S corporations and LLCs) that have nonresident partners or owners must withhold New Mexico income tax equal to the nonresidents' share of the business income, multiplied by a tax withholding rate percentage that depends on whether the taxpayer is an individual or a corporation.

Individual taxpayers doing business as sole proprietors, or who are partners in partnerships, or members of LLCs, are required to make payments of estimated New Mexico individual income taxes. Estimated tax payments are only required if the net tax liability (not covered by income tax withholding) exceeds \$500. Estimated tax payments are due in four installments, on the 15th day of the 4th, 6th, and 9th months of the taxable year, and the 15th day of the first month of the following year.

To avoid penalties for underpayment of estimated tax, you must either pay in 90% of the current year's tax, or 100% of the previous year's tax.

The New Mexico corporate income tax rate, on corporations other than S corporations, is a graduated tax, with a top tax rate of 7.6% on income over \$1 million. However, most small businesses will pay a lower rate, since the tax rate on the first \$500,000 of taxable income is only 4.8%. The tax rate on income between \$500,000 and \$1 million is 6.4%. Certain qualified corporations may instead pay an alternate tax based on 3/4 of 1% of New Mexico sales, if they have no more than \$100,000 in annual in-state sales.

All corporations doing business within the state must also pay an annual \$50 franchise tax, which is paid with the corporate income tax return.

The state corporation income tax return is *Form CIT-1* (or Form CIT-2 for S corporations), which must be filed with the Taxation and Revenue Department by the 15th day of the third month following the end of the taxable year, or by March 15th in the case of a corporation whose taxable year is the calendar year. Corporations are required to make estimated tax payments of their state corporate income tax in advance, if their tax liability for the year equals or exceeds \$5,000.

Estimated tax payments are due in advance, in four equal installments, on the 15th day of the 6th, 9th, and 12th months of the taxable year and on the tax return due date (the 15th day of the 3rd month of the following year). The total estimated tax that must be paid in is usually equal to 80% of the actual tax liability for the year. However, if the preceding year was a full year of 12 months, the current year payments need only be equal to 100% of the prior year's tax liability.

Penalties will be imposed for failure to make the required estimated tax payments on a timely basis.

In New Mexico, a limited liability company (LLC) is taxed in the same manner as a partnership, thus avoiding the possible double taxation of income that can occur with a corporation. New Mexico law was amended in 1998 to permit the formation of a one-owner LLC, effective on or after July 1, 1998. Clarifying legislation, effective on July 1, 1999, makes it clear that the LLC's articles of organization must specify whether it is a one-owner LLC. Presumably, a one-owner LLC will be treated as a sole proprietorship under New Mexico tax laws, if so treated for federal tax purposes.

Note that it is not always entirely clear whether an LLC is a "single-member LLC" LLC or not, in a community property state like New Mexico, where the "single owner" is a married person and the LLC is owned as community property. Fortunately, the federal Internal Revenue Service (IRS) has taken a very lenient position in Rev. Proc. 2002-69, stating that the IRS will accept whatever choice the couple make, either to disregard the LLC as an entity (treating it as a "single-member LLC") or to treat it as a partnership between the husband and wife. Presumably, the couple's choice of federal tax treatment will also apply for state tax purposes, since New Mexico follows the federal tax treatment of LLCs, generally.

However, where the LLC is owned by a husband and wife as joint tenants, or tenants in common, or as tenants by the entirety, it is unclear whether the IRS treatment would be as lenient as for community property owners, since the IRS has not issued any published rulings on whether an LLC can be a disregarded entity if held in one of the various forms of tenancy by a married couple, rather than being held as community property. Thus, it is also unclear, where an LLC is owned by a husband and wife as co-tenants, whether New Mexico would treat the LLC as a single-member LLC or as a partnership.

(d) Sales and Use (Gross Receipts) Tax. New Mexico imposes a general sales tax, called the gross receipts tax, on retail sales of tangible personal property, services, rentals, and many other types of transactions, at the statewide rate of 5%. In addition, local governments are allowed to adopt local gross receipts taxes, at varying tax rates. The combined rate generally ranges from 6% to 7% in different parts of the state.

The New Mexico gross receipts tax, which fully applies to services, is much broader in scope than the sales taxes imposed by most other states, other than Hawaii. While there is a limited resale exemption, most sales of services to other businesses are subject to tax, resulting in a considerable pyramiding of the tax. However, Governor Richardson, in early 2005, has called for some relief in this regard, such as a proposed 15% reduction in the tax for all sales of services to businesses.

Sellers are required to obtain a seller's permit and to collect and pay over the state and local gross receipts taxes to the New Mexico Taxation and Revenue Department. Businesses are generally required to file monthly returns on *Form CRS-1*, which is used to report the gross receipts tax and, if applicable, state income tax withheld from wages.

Major exemptions from the gross receipts tax include wages, salaries and commissions paid to employees; receipts of growers, producers, or nonprofit associations from selling livestock, poultry and unprocessed agricultural products; interest or dividend income; receipts from sales of stocks, bonds or other securities; and receipts from the sale or leasing of oil, natural gas, or mineral interests. The gross receipts tax also does not apply to certain vehicle lessors, who are instead subject to a flat 5% tax plus \$2 a day on car rentals, under the Leased Vehicle Gross Receipts Act. Rentals of real estate, other than hotel or motel accommodations, and sales of intangible property are also exempted from tax.

Beginning January 1, 2005, receipts from the sale of food at a retail food store are exempt from the gross receipts tax. Tax still applies to food sold in restaurants and prepared hot foods that are sold for immediate consumption. At the same time, in order to pay for the lost revenues, the 0.5% municipal gross receipts tax credit is repealed and is no longer allowed as a credit against the state gross receipts tax, effective January 1, 2005. Given a choice, you may want to locate your business just outside of municipal boundaries, to avoid municipal gross receipts taxes, since you will no longer be able to offset any municipal tax you pay against the state gross receipts tax.

The New Mexico gross receipts tax also allows deductions for various Internet services, including Internet access services, and a deduction for gross receipts from sales of property or services made through a web site, if the billing address of the customer is outside New Mexico.

Sales of various goods and services for resale are usually deductible from the gross receipts tax base, if the buyer gives the seller the appropriate type of Nontaxable

Transaction Certificate. Previously, there was a one-time fee of \$100 for a buyer or lessee who sought permission to execute a Nontaxable Transaction Certificate, but this fee is no longer required.

A shadow tax, the use tax, is also imposed at the same rate as the gross receipts tax. It is primarily intended to tax property that is acquired from sources outside of the state, in transactions not subject to sales tax, when such property is used or consumed within New Mexico. Use tax may also apply to items purchased on an exempt basis, such as for resale, if such items end up being used or consumed, instead of being resold.

Before starting business, you will need to register with the Taxation and Revenue Department on *Form ACD-31015, Application for Business Tax Identification Number*.

For more information on New Mexico gross receipts tax registration and compliance, see contact information for the offices of the New Mexico Taxation and Revenue Department in [Section VI\(a\)](#).

(e) Real and Personal Property Taxes. In New Mexico, as in every other state, any business real estate you own will be subject to real property taxes. In general, there is little that you must do, unless you wish to challenge your assessed valuation, since the assessor will bill you for each year's property taxes as they come due.

New Mexico also imposes personal property taxes on tangible personal property. However, certain business personal property, such as business inventories (other than livestock), are exempt from personal property tax in New Mexico in most cases.

While New Mexico generally taxes tangible personal property, it does not impose a property tax on intangible personal property, such as stocks, bonds, promissory notes, and other such paper assets.

(f) Other Business Taxes. New Mexico imposes a number of other taxes on businesses, including:

- Taxes on alcoholic beverages;
- Cigarette and tobacco products taxes;
- Gasoline and other fuel taxes;
- Motor vehicle registration taxes and fees;
- Severance taxes on natural resources; and
- Various other taxes on special kinds of businesses, such as insurance companies and utility companies, plus environmental and hazardous substance disposal taxes.

(g) **Trade Names.** A trade name, also known as a fictitious or assumed name, is any name used in the course of business that does not include the actual legal names of all the owners of the business. Thus, if your business goes by any name other than your own real name, it is operating under a trade name. The same is true of a corporation, if it operates under a name other than its legal name. A trade name might also be one that suggests the existence of additional owners, by using such words as "company," "associates," or "group."

In most states where you do business, it will be necessary to register a trade, fictitious, or assumed name, so that people who do business with you can find out who the actual owners of your business are. You may also want to register any such trade name, as a means of protecting against other companies usurping that particular trade name.

New Mexico has a rather informal and relaxed business regulatory climate, and registration of fictitious or assumed business names is not required in this state.

V. EMPLOYER REQUIREMENTS IF YOU HAVE EMPLOYEES

(a) **Employer Registration and Withholding.** Once you hire the first employee in your business, your life becomes a great deal more complicated. Federal and state laws pile a long laundry list of responsibilities on the back of anyone who hires employees. One of the first things you will need to be concerned about as a new employer is the requirement that you withhold personal income taxes from the wages of your employees. As an employer, you are responsible for withholding the taxes and paying them over to the government on behalf of the employee.

If you have any employees, you will already be withholding federal income tax and FICA taxes from their wages. Since New Mexico imposes a state income tax on the income of individuals, you will need to also withhold New Mexico income tax from the wages of your employees. Before you begin to pay wages, you must register as an employer with the New Mexico Taxation and Revenue Department on **Form ACD-31015**, which also serves as registration for state and local gross receipts and compensating use tax, cigarette, gasoline and certain other state taxes. Withheld tax, gross receipts tax and certain other taxes are all paid over to the state on a monthly basis, on the 25th of the following month, together with the **Combined Report, Form CRS-1**.

For more information on New Mexico income tax withholding and registration requirements for employers, see the contact information for the offices of the New Mexico Taxation and Revenue Department, listed in [Section VI\(a\)](#).

(b) **Unemployment and Other State Payroll Taxes.** If your business employs one or more individuals in each of 20 weeks during any calendar year or if your payroll amounts

to \$450 in any calendar quarter, you, as an employer, will be required to pay state unemployment tax based on the amount of such wages paid.

Every new business that starts up in New Mexico, whether or not it has employees, is required to file *Form ES-802, Report to Determine Liability*, so that the Employment Security Division of the New Mexico Department of Labor can determine whether or not you are subject to the state unemployment tax.

If your business is subject to the New Mexico unemployment tax, you may want to request a copy of the book *Employer Responsibilities Under the Unemployment Compensation Law of New Mexico* from the New Mexico Department of Labor.

New employers are required to pay tax at a rate of 2.0% in 2004 on the first \$16,800 of wages paid to each employee. This is a reduction from the 2.7% rate that had applied in previous years.

After you have had employees for a while, you will develop an unemployment tax experience rating. This rating is based on the number of employees you terminate who then claim unemployment benefits and the amount of such benefits paid to those former employees, under complex formulas. The state will inform you when they have assigned you an individual tax rate based on your firm's experience rating. That rate may be higher or, if you have had relatively few benefit claims charged to your account, lower than the standard new employer tax rate you initially were paying.

All state unemployment taxes are imposed upon you as the employer, and, under New Mexico law, cannot be charged to your employees or withheld from their wages.

For more information on your New Mexico unemployment tax obligations as an employer, see the contact information for the offices of the Employment Security Division of the New Mexico Department of Labor, listed in [Section VI\(a\)](#).

(c) Workers' Compensation. Workers' compensation insurance is a state-mandated insurance requirement for most employers, in almost every state. States that require workers' compensation coverage also generally allow some companies that can demonstrate sufficient financial resources to self-insure, in lieu of purchasing such insurance from state-operated or private insurers. However, as a practical matter, most small businesses with employees will have to obtain workers' compensation insurance coverage, as few, if any, small firms will have the financial wherewithal to obtain state permission to self-insure.

While Workers' Compensation Insurance is generally required (in most states) for small employers, such coverage is legally required in New Mexico only for employers with 3 or more employees. However, no such exemption is allowed for businesses subject to the Construction Industries Licensing Act, regardless of the number of employees. Exempt employers may, if so desired, elect workers' compensation coverage.

Certain types of employees are not required to be covered by workers' compensation, including domestic servants, farm and ranch workers, and certain executive employees.

Individuals who are not considered to be "employees," such as sole proprietors, partners in a partnership, and independent contractors such as "qualified real estate salespersons" (as defined), are generally exempted from coverage.

A "qualified real estate salesperson" is someone who meets all the following requirements:

- A licensed salesperson, associate broker, or broker under contract with a real estate firm;
- Receives substantially all his or her remuneration based on performance or sales output; and
- Performs services pursuant to a written contract that specifically provides that he or she will not be treated as an employee with respect to such services.

In addition, certain executive officers of a corporation or LLC who own 10% or more of the stock of the company may affirmatively elect not to be covered under the Workers' Compensation Act.

If your business is subject to the Workers' Compensation Act, you must direct your insurance company to file a certificate of workers' compensation coverage with the insurance commissioner. There is no longer a \$5 filing fee.

Note that in New Mexico, every employer subject to the Workers' Compensation Act who has an annual workers compensation insurance premium of \$5,000 or more (or who self-insures) is subject to an annual safety inspection.

Firms subject to the Workers' Compensation Act must post an official workers' compensation poster in the workplace. There are potentially severe legal consequences for failure to display this poster. Obtain copies of the poster from the state Workers' Compensation Administration.

Employers in New Mexico who have covered employees are also subject to a special workers' compensation tax, based on the number of covered employees, and must register separately for it with the Taxation and Revenue Department. The Personnel Assessment Fee is paid quarterly, with **Form WC-1**, to the Taxation and Revenue Department.

Workers' compensation provides wage loss and medical benefits to employees injured on the job and it protects you, as an employer, from legal action for damages for injuries or job-related illnesses suffered by your employees. In effect, it is a "no-fault" insurance system for work-related injuries or illnesses. Thus, if you fail to obtain required workers' compensation insurance, and an employee is injured on the job, you will have opened yourself to unlimited liability and severe legal consequences, so it is very important to

obtain workers' compensation insurance for your employees, even if you are not legally required to do so.

Be aware that neither general liability nor health and accident insurance can properly substitute for workers' compensation insurance.

For more detailed information regarding your obligations as an employer under the New Mexico workers' compensation laws, contact your insurance carrier or see the contact information for the offices of the Workers' Compensation Administration, listed in [Section VI\(a\)](#).

(d) State Wage and Hour Laws. Some employees of certain small firms not engaged in interstate commerce are not covered by the federal minimum wage and overtime laws. However, even if few or none of your employees are covered by the federal wage-hour laws, because your firm does less than \$500,000 a year in gross sales and the employees in question are not deemed to "...engage in (interstate) commerce..." they will still generally be subject to the New Mexico wage-hour laws, which provide for a state minimum hourly wage that is currently \$5.15 an hour.

Employees must be paid for overtime worked at a rate of one and one-half their regular hourly rate, for all hours worked in excess of 40 hours per week.

Note that, as under federal wage-hour laws, certain classes of executive, administrative, and professional employees are exempted from the New Mexico wage-hour rules.

Besides the federal wage-hour posters that you must display in the workplace, you must also display a state wage-hour poster, which you can obtain from the Labor and Industrial Division of the New Mexico Department of Labor.

In addition to wage-hour laws, most businesses are subject to federal child labor laws, which put numerous restrictions on the working hours and kinds of work in which minors under the age of 18 may engage. Your business must also be cognizant of similar state child labor laws, in New Mexico.

In general, New Mexico child labor laws forbid employment of children under age 14, in general, without a permit, and even with a permit a child under age 14 cannot work:

- During school hours when school is in session;
- More than 8 hours a day or 44 hours a week; or
- Before 7:00 A.M or after 9:00 P.M.

However, children above age 12 may deliver newspapers if not in conflict with their school hours.

Children between the ages of 14 and 16 are not permitted to work:

- During school term without a permit;
- In occupations that involve power machinery and certain other hazards;
- In occupations that are injurious to health and morals;
- Before 7:00 A.M. or after 7:00 P.M. (except from June 1 to Labor Day, when evening hours are extended to 9:00 P.M.); or
- As messengers before 7:00 A.M or after 9:00 P.M. of any day.

Children under 18 are prohibited from working underground in mines, quarries, or at any place where explosives are used.

Child labor permits are issued by school superintendents or principals and are valid for one year only.

(e) State Occupational Safety and Health Laws. Approximately half of the states have their own OSHA-like agency, charged with administering the state's own occupational safety and health laws. The remaining states have no such enforcement agency, and thus rely instead on the federal Occupational Safety and Health Administration (OSHA) to administer the federal job safety rules within such states.

New Mexico is one of the states that has its own OSHA-type agency. To determine if your workplace is in compliance with federal and New Mexico job safety requirements, you may wish to contact the Occupational Health and Safety Bureau, part of the New Mexico Environment Department, and request a free on-site safety consultation. You will not be cited for any violations detected, provided that you promptly correct the unsafe conditions. This differs from the rules for consultations by federal OSHA inspectors, who are required to cite you for any violations they find.

For information on your job safety and health obligations as an employer, required posters, and possible on-site safety consultations, see the contact information for the Santa Fe offices of the New Mexico Environment Department, listed in [Section VI\(a\)](#).

(f) Other Miscellaneous State Labor Laws. Other New Mexico labor laws you need to be aware of, as an employer, include the following:

(1) *Wage payments to employees.* If an employee who is discharged works on a task, piece, or commission basis, a final wage payment is due within 10 days. If not paid on such basis, payment is required within 5 days. An employee who quits need not be paid until the next regular payday.

State law requires regular paydays which may be no more than 16 days apart, except that monthly paydays are permitted, by agreement, in the case of professional, administrative,

and executive employees, or for workers who are paid on a task, piece, or commission basis.

(2) *Right-to-work laws.* About half the states have enacted "right-to-work" laws, which guarantee that no person may be denied employment for refusing to join a union or for not paying union dues, thus banning either "union shop" or "agency shop" agreements, or both. In a union shop, an employee not belonging to a union may be hired but then must join the union, usually within 30 days. In an agency shop, an employee need not join the union but, to remain employed, must pay union dues.

New Mexico does not have such a right-to-work law and allows union shop or agency shop contracts between an employer and a union.

(3) *State anti-discrimination laws.* In addition to complying with federal anti-discrimination laws, employers must also be aware of and comply with state civil rights laws in New Mexico, and display a poster informing employees of their rights. You can obtain this poster from the Santa Fe office of the Human Rights Division of the New Mexico Department of Labor, at the address listed in [Section VI\(a\)](#).

(4) *Reporting new hires.* Under federal welfare reform laws, employers in all states now have to report newly-hired (or rehired) employees to a designated state agency (the New Mexico Department of Labor for New Mexico employers) within 20 days after the date of hire. See the "NEW HIRES" segment of [Section VI\(a\)](#) for details on where and how to report new hires.

VI. STATE SOURCES OF HELP AND INFORMATION

(a) **Key State Agencies Contact Information.** New Mexico's Economic Development Division can assist your or new New Mexico business with a variety of incentives and forms of assistance.

To find out more, contact:

Economic Development Division
New Mexico Economic Development Department
1100 St. Francis Drive
Santa Fe, NM 87504
(505) 827-2486
(800) 374-3061
FAX (505) 827-0407

Addresses and other contact information for other key New Mexico state government agencies mentioned in this book are listed below for your convenience.

PUBLIC REGULATION COMMISSION. Contact the office of the New Mexico Public Regulation Commission (which was formerly the Public Utilities Commission and Corporations Commission) for information on:

- Corporate filings, including articles of incorporation, and information on corporations
- Limited liability company (LLC) filings, including articles of organization, and information on LLCs

New Mexico Public Regulation Commission
Corporation Division
1120 Paseo de Peralta
PERA Bldg., Room 536
P.O. Drawer 1269
Santa Fe, NM 87504-1269
(505) 827-4500
(505) 827-4387 (Fax)
(800) 947-4722 (Corporations) (Within New Mexico)

SECRETARY OF STATE. Contact the office of the secretary of state, Operations Division, for information on:

- Limited partnership filings and information
- Limited liability partnerships (LLPs) filings and information

New Mexico Secretary of State
State Capitol North Annex, Suite 300
Santa Fe, NM 87503
(505) 827-3600
(800) 477-3632

TAXES. Obtain state income, gross receipts tax, and other miscellaneous business tax forms, instructions and tax information from the New Mexico Taxation and Revenue Department, which is the main tax collection agency in New Mexico. Also register with this agency as an employer, for state income tax withholding purposes.

New Mexico Taxation and
Revenue Department
Joseph Montoya Building
1100 St. Francis Drive
P.O. Box 630
Santa Fe, NM 87504-0630
(505) 827-0700

OTHER STATE LABOR LAWS. Contact the following agency about your obligations as an employer under various state labor laws, including:

- New Mexico wage-hour laws

- New Mexico child labor laws and regulations
- New Mexico unemployment laws
- New Mexico anti-discrimination laws
- Other miscellaneous New Mexico labor laws

New Mexico Department of Labor
 401 Broadway NE
 Albuquerque, NM 87102
 (505) 841-8409
 (505) 841-8576 - Employment Security Division
 (Unemployment compensation)
 (505) 841-6000 - Workers' Compensation Administration
 (505) 827-6838 - Human Rights Division (In Santa Fe)
 (505) 841-8983 - Labor and Industrial Division

NEW HIRES. Report newly hired (or re-hired) employees within 20 days after the date of hire, by mail or fax (or online, at the New Mexico Department of Labor's web site).

Mail or fax reports to:

New Mexico New Hires Directory
 P.O. Box 29480
 Santa Fe, NM 87592-9480
 (505) 995-8230
 (505) 995-8232 (Fax)
 (888) 878-1614 (Toll-free fax)

STATE LICENSES. The following agency is the main New Mexico licensing agency. Contact this state agency for information on state professional licensing requirements or regarding the issuance of securities.

New Mexico Department of Regulation and Licensing
 2550 Cerrillos Road
 Santa Fe, NM 87505
 (505) 476-4500
 (505) 476-4580 (Securities Division)

GROSS RECEIPTS TAX. Obtain your gross receipts tax permit and information on the New Mexico gross receipts tax law from the Taxation and Revenue Department, at the address listed above for that agency.

WORKERS' COMPENSATION INSURANCE. If you employ workers for whom you must obtain workers' compensation coverage, contact the New Mexico Department of Labor, Workers' Compensation Division, at the following address:

Workers' Compensation Administration
 2410 Centre Ave. SE
 P.O. Box 27198
 Albuquerque, NM 87125-7198
 (505) 841-6000
 (800) 255-7965 (Within New Mexico)

STATE OSHA PROGRAM. For information on both federal and state occupational safety and health laws that affect you as an employer in New Mexico, contact:

New Mexico Environment Department
Occupational Health and Safety Bureau
525 Camino de los Marquez, Suite 3
Santa Fe, NM 87505
(505) 827-4230
(505) 827-4422 (Fax)

STATE ANTI-DISCRIMINATION LAWS. Contact the Human Rights Division for more detailed information on New Mexico civil rights laws that may apply to your business, and to obtain anti-discrimination notices you are required to post in the workplace:

Education Bureau
Human Rights Division
New Mexico Department of Labor
1596 Pacheco Street
Santa Fe, NM 87503
(505) 827-6838

(b) Small Business Development Centers. A number of Small Business Development Centers (SBDCs) are located throughout New Mexico to assist you. These centers, usually located on college campuses, provide a wealth of start-up information and sponsor frequent business-oriented seminars. Contact the lead office below for information, or for the location of other SBDCs nearer to you.

Santa Fe Community College
Attn: NMSBDC: Lead Center
6401 Richards Avenue
Santa Fe, NM 87508
(800) 281-SBDC
(505) 428-1362
FAX (505) 428-1469

(c) Internet Sites. If you have access to the Internet, there is a wealth of state and even local business information provided by state and local governments. All states now have a state government Web page, and most major state agencies also have sites on the Internet where you can obtain useful small business information on matters such as state taxes, financing sources, or the addresses and phone numbers (or e-mail addresses) of various state and federal agencies' offices in New Mexico.

Since new sites are appearing constantly, you might also want to search for other New Mexico government Web sites by using one of the popular Internet search engines, such as Excite! or Yahoo.

To start your Internet search for New Mexico government information, you may want to begin with the following Internet sites, which have links to federal and other New Mexico agency Web sites:

State of New Mexico home page:

<http://www.state.nm.us/>

New Mexico state agencies (listing of links to agency websites):

<http://www.state.nm.us/category/government/agencies.html>

Department of Taxation and Revenue (New Mexico tax information and downloadable state tax forms):

<http://www.state.nm.us/tax/>

New Mexico Public Regulation Commission (corporate and LLC filings, downloadable forms):

<http://www.nmprc.state.nm.us/>

Secretary of State of New Mexico (limited partnership and limited liability partnership filings, trademark and service mark registration):

<http://www.sos.state.nm.us/>

New Mexico Regulation and Licensing Department (professional licenses):

<http://www.rld.state.nm.us/>

New Mexico Department of Labor home page:

<http://www.dol.state.nm.us/>

(d) **Financing Sources.** For information and help on locating financing for your small business, contact the nearest U.S. Small Business Administration office (SBA) in New Mexico, or contact the New Mexico Economic Development Department at the address listed in [Section VI\(a\)](#) for that agency.

The address of the Albuquerque SBA District Office is:

U.S. Small Business Administration
625 Silver Avenue, SW
Albuquerque, NM 87102
(505) 346-7909
(505) 346-6711 (FAX)

Links for Talk on Thursday:

- 1) <https://www.sba.gov/business-guide/launch-your-business/choose-business-structure>
- 2) <https://www.sos.state.nm.us/business-services/start-a-business/>