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NEWS

'Money's money:' Walmart taxed grocery deliveries after N.M. tax deduction bill took effect

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LAS CRUCES – Weeks after the new bill went into affect that included delivered groceries in New Mexico's Gross Receipt tax deductions, two individuals reported taxes on their Walmart deliveries.

House Bill 98 was signed by Gov. Michelle Lujan Grisham on April 5, and went into effect on July 1.

William Turner, a Las Cruces resident, noticed a \$6.50 tax on his \$96.30 Walmart order receipt on July 14. A woman in Rio Rancho found a tax on her order that same week.

"It's not a great deal of money, but money's money," Turner said.

During the pandemic, New Mexicans noticed gross receipts tax charges on their delivered groceries, which would normally be tax-free in grocery stores. Delivered groceries became popular due to the COVID-19 pandemic and the push to stay indoors whenever possible. Turner was one of those people who turned to delivered grocery options.

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"The pandemic of course made delivered groceries much more attractive," Turner said. "They've been taxing (delivered groceries) ever since we started, which is probably maybe a year and a half ago."

"Under the old law, groceries had to be purchased at a qualifying grocer to be eligible for the deduction, wording that predated the recent popularity of grocery deliveries," stated a press release from the New Mexico Tax and Revenue Department on April 13.

In 2004, a bill was passed making most grocery items qualify for the food tax deduction. However, hot, pre-made foods, pet food, alcoholic beverages and household supplies are taxable.

In the previous verbiage, only "sale of food at a retail food store ... may be deducted from gross receipts." The new bill changed the word "at" to "by," effectively making delivered goods also deductible.

"It is deeply disturbing that Walmart is continuing to tax delivered groceries even though the legislature passed a law in March that explicitly prohibits taxing groceries, beginning July 1, 2021," stated Fred Nathan of Think New Mexico, a group that initially pushed representatives to make the change in the language of the bill.

Turner said he had been following Think New Mexico's push for the bill, which partly made him realize the continued tax in the first place.

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A Walmart spokesperson gave a statement to the *Sun-News* about the tax.

“After receiving clarification from the state on the new tax exemption law, we are working to remove assessment of sales tax on eligible delivered food items. We apologize for the confusion.”

The spokesperson didn't give a specific timeline regarding when shoppers will see this change enacted.

Walmart will be working toward reimbursing incorrectly charged customers as well, the company stated.

What is the state's policy?

When the *Sun-News* contacted the Tax and Revenue Department, spokesman Charlie Moore said that he couldn't comment on specific taxpayers — meaning grocers in this case — but that the department has had "discussions with members of the industry to ensure they're aware of" the policy change.

Moore went on to explain that although the Tax and Revenue Department can and will make a grocer aware of the change in the food tax deduction, the department "can't control what

deductions a taxpayer chooses to claim."

"If they decide they want to amend their returns, that will be up to them to do," Moore said. "We can't require them to again, that gets back to that question, which is we can't require somebody to take a deduction."

The way the deduction and the bill are set up, the grocer can or cannot take the deduction, so essentially the grocer can or cannot charge tax on any groceries, according to Moore.

He said most grocers do take the deduction and choose not to charge tax.

"It is up to each taxpayer to interpret their eligibility for deductions," Moore said. "The gross receipts tax is an obligation of the business."

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