
FYI-204

New Mexico
Taxation and Revenue Department

FOR YOUR INFORMATION

Tax Information/Policy Office ♦ P.O. Box 630 ♦ Santa Fe, New Mexico 87504-0630

Nontaxable Transaction Certificates (NTTCs)

This publication provides general information on the issuance of nontaxable transaction certificates (NTTCs) by the New Mexico Taxation and Revenue Department and their appropriate use by taxpayers.

This information is as accurate as possible at time of publication. Subsequent legislation, new state regulations, and court cases may affect its accuracy. For the latest information please check the Taxation and Revenue Department's web site at www.tax.newmexico.gov.

CONTENTS

Introduction to NTTCs.....	page 2
Obtaining NTTCs	page 2
Disqualification of NTTC Application	page 2
NTTCs with Special Application Requirements.....	page 3
Applying for NTTCs through Your Computer	page 4
Applying for NTTCs Manually.....	page 4
Registering for "NTTC Only"	page 4
Using NTTCs	page 5
Deductions that Require NTTCs	page 5
Deductions for which NTTCs are Optional.....	page 7
Executing an NTTC	page 8
Good Faith Acceptance of an NTTC.....	page 9
Executing an NTTC Retroactively	page 9
Photocopies of NTTCs	page 9
Compensating Tax Liability	page 10
Suspension of NTTC Use Privileges.....	page 12
Other Acceptable Certificates	page 13
Type OSB NTTCs for Out-of-State Buyers	page 13
Multi-jurisdictional Uniform Sales and Use Tax Certificates.....	page 14
Border States Uniform Sale for Resale Certificate.....	page 15
Taxpayer Information.....	page 16
For Further Assistance.....	page 17

INTRODUCTION TO NTTCS

Unlike most states, New Mexico imposes a gross receipts tax rather than a sales tax. Gross receipts tax applies to receipts from property sold in New Mexico, services performed in New Mexico, leases or licenses of property used in this state and granting of rights to use a franchise in New Mexico. Receipts from a research and development service performed outside New Mexico also are subject to gross receipts tax if the product of the service is initially used in this state. All such receipts are subject to New Mexico gross receipts tax unless a statutory exemption or deduction applies to a transaction.

The legal liability for reporting and paying the New Mexico gross receipts tax is always on the seller or lessor, not on the customer. In common business practice, however, the seller or lessor recovers the gross receipts tax from the buyer or lessee by billing the tax to the customer. In transactions for which state law provides gross receipts tax deductions, the buyer or lessee may give the seller or lessor a New Mexico nontaxable transaction certificate (NTTC) to document the seller's or lessor's deduction of their receipts. Deductible receipts are not subject to gross receipts tax because they are subtracted from gross receipts before the tax is calculated. In deductible transactions, the seller or lessor incurs no gross receipts tax to bill to the customer, and the customer makes the purchase "tax free."

Deductible receipts, though not subject to gross receipts tax, must be reported to the New Mexico Taxation and Revenue Department on a CRS-1 Form. *Exempt* receipts are receipts which, under state law, need not be reported to this Department.

Because the gross receipts tax structure differs fundamentally from a sales tax, New Mexico does not accept any tax exemption or deduction certificates issued by other states as documentation for deductions from New Mexico gross receipts tax. New Mexico does, however, accept multi-jurisdictional uniform sales and use tax certificates (MTCs) and border states uniform sale for resale certificates (BSCs), as described on page 15 of this publication.

OBTAINING NTTCS

To obtain NTTCs, an applicant must have a New Mexico CRS Identification Number, an 11-digit number also known as a business tax identification number. That number is obtained by submitting a completed Form ACD-31015, *Application for Business Tax Identification Number*, to this Department. The form may be printed from our web site or obtained from this Department by contacting any of the local offices listed at the back of this publication. A taxpayer who has a CRS Identification Number is "registered" with this Department. Taxpayers may also register online on our web site at <https://tap.state.nm.us/tap/#1>.

Disqualification of NTTC Application

If a person is shown in the Department's records to have an outstanding tax liability or to be a nonfiler for one or more reporting periods, the Department may refuse to approve that person's application for NTTCs until the liability is paid or missing reports are

submitted.

NTTCs with Special Application Requirements

Making a first-time application for some NTTC types may require special documentation. An applicant who uses NTTC-NET to make such NTTCs requests will receive an online message to call the Department for further instructions on how to supply the required documentation.

A first-time application for a Type 6 NTTCs requires a contractor's license verification. When the license expires, the contractor must contact the Department to report renewal of the license or the number of a newly-issued license.

Initial requests for Type 9 NTTCs by 501(c)(3) nonprofit organizations must be accompanied with a copy of the letter from the Internal Revenue Service granting the organization its 501(c)(3) status.

A private person acting as an agent for a government entity for an industrial revenue bond project may apply for Type 9 NTTCs to execute to sellers of tangible personal property, other than ingredients or components of construction projects (Regulation 3.2.212.22 NMAC). To obtain the NTTCs, the agent must submit a copy of the industrial revenue bonds contract showing the expiration date and contract number.

Type 10 certificates may be executed by a person that holds an interest in a qualified generating facility for the purchase of tangible personal property or services that are eligible generation plant costs. To obtain a Type 10 NTTC an interest owner of a qualified generating facility must provide the Department with a certificate from the New Mexico Environment Department certifying eligibility.

Qualified federal contractors must submit a copy of their federal contract upon the initial request for Type 15 NTTCs. The Type 15 NTTCs are issued by the Department for specific federal contracts only. New federal contracts must be submitted upon request for the Type 15 NTTCs. The Department may contact the applicant for additional information.

A qualified film production company must submit proof of registration with the Film Division of the New Mexico Economic Development Department upon the initial request for Type 16 NTTCs.

Accredited diplomats or missions making initial application for Type 16 NTTCs must provide identification confirming their diplomatic status.

Businesses wishing to obtain a Type 11 or 12 NTTC must complete an alternative application Form RPD-41378, *Application for Type 11 or 12 Nontaxable Transaction Certificates*.

Applying for NTTCs through Your Computer

Registered New Mexico gross receipts taxpayers may obtain¹, execute and record the use of New Mexico nontaxable transaction certificates (NTTCs) through NTTC-NET on the Taxation and Revenue Department's web site. To use NTTC-NET, go to the Taxation and Revenue Department's web site at <https://efile.state.nm.us/NTTCNET/TPLogon.aspx>. For assistance with using this online program, please call (505) 827-0951 in Santa Fe, New Mexico.

Taxpayers may use NTTC-NET to make both initial and additional applications for NTTCs, and, if the taxpayer knows the CRS identification number of the seller or lessor, he or she may use this paperless program to execute an NTTC online. If the NTTC recipient's CRS identification number is known, there is no limit on the number of NTTCs a taxpayer may execute online. An NTTC also may be printed on a local printer, though the taxpayer need not print the NTTC to execute it.

Because, to obtain NTTCs for the first time a 501(c)(3) nonprofit organization must submit a copy of its 501(c)(3) designation letter from the Internal Revenue Service, if the applicant uses NTTC-NET he or she will receive the online message to call the Department for further instructions. Once approved by the Department to use NTTCs, a 501(c)(3) nonprofit organization may use NTTC-NET without contacting the Department further.

Applying for NTTCs Manually

A taxpayer who does not know the CRS identification number of the seller or lessor, or does not have access to a computer, may use a paper ACD-31050, *Application for Nontaxable Transaction Certificates* to request up to five paper NTTCs. The application may be printed from our website at www.tax.newmexico.gov. It also is included in the "CRS-1 Filer's Kit", which the Department mails to registered taxpayers who file a paper return every June and December. Mail the completed application to the address shown on that form.

Before applying for additional paper NTTCs, the taxpayer must record the executed NTTC information online or on a paper form, ACD-31098, *Nontaxable Transaction Certificate Report*. Form ACD-31098 also may be printed from our website.

Registering for "NTTC Only"

A business or a 501(c)(3) nonprofit organization that has no New Mexico gross receipts tax, withholding tax or compensating tax reporting requirements and is not required to register with this Department may obtain NTTCs without incurring a CRS-1 reporting obligation. On line one of Form ACD-31015, *Application for Business Tax Identification Number* the applicant must mark the checkbox labeled "NTTC Only." The applicant will be registered and issued the New Mexico CRS Identification Number required to request NTTCs and will not have to file any CRS-1 Forms.

¹ The NTTC-NET system can not be used to obtain Type 11 or 12 NTTCs. Instead a paper Form RPD-41378, *Application for Type 11 or 12 Nontaxable Transaction Certificates* must to completed.

USING NTTCS

A buyer or lessee executes an NTTC by giving it to the seller or lessor to retain as documentation for deductions of receipts the seller or lessor takes for qualified transactions. The buyer or lessee does not need to give the seller or lessor an NTTC for every deductible transaction. The seller or lessor can refer an unlimited number of transactions to the one NTTC given by the buyer or lessee.

Deductions from gross receipts are provided by statutes, but the law does not require a seller or lessor to take any deduction. If a seller or lessor chooses to take a deduction, the statute offering the deduction **may** require the buyer or lessee to give the seller or lessor an NTTC as documentation for the deductible transaction.

For some deductions, such as the deduction for receipts from sales of tangible personal property to agencies of the United States and New Mexico governments, the statutes make the use of NTTCS *optional*.

Many of the statutes offering deductions from gross receipts neither require NTTCS nor specify them as optional. Such deductions may be taken and documented by other forms of proof that they were legitimately claimed because the transactions met the statutory requirements. Such forms of evidence include copies of checks submitted in payment, copies of contracts, and invoices identifying the buyer or lessee. A statute may require specific documentation, such as Section 7-9-58², which requires the seller of, among other items, feed and fertilizers for livestock to receive from the buyer a statement in writing that the buyer is regularly engaged in the business of farming, ranching or raising animals for their hides or pelts.

Effective April 7, 2011, sellers of tangible personal property for resale may support their deductions for the sale with evidence other than an NTTC, as specified in rule. See Regulation 3.2.201.10 NMAC for more information on what alternative evidence is acceptable.

Deductions that Require NTTCS

The buyer or lessee **must** give an NTTC to the seller or lessor to document deductions of receipts from these transactions:

1. Sales, to manufacturers, of tangible personal property that will become an ingredient or component of the manufactured product (Section 7-9-46A), **Type 2 NTTC**;
2. Sales of tangible personal property or licenses for resale by the buyer in the ordinary course of business, either alone or in combination with other tangible personal property or licenses (Section 7-9-47), **Type 2 NTTC**;
3. Leases of tangible personal property or licenses for subsequent lease by the

² Statutory citations in this publication are to the New Mexico Statutes Annotated (NMSA 1978).

lessee in the ordinary course of business (Section 7-9-50), **Type 2 NTTC**. Excepted from this deduction are leases of furniture or appliances, which may be deducted under Section 7-9-53 without execution of an NTTC, and leases of coin-operated machines and manufactured homes;

4. Sales of tangible personal property or licenses for subsequent lease by the lessee in the ordinary course of business (Section 7-9-49), **Type 2 NTTC**. Excepted from this deduction are leases of furniture or appliances, which may be deducted under Section 7-9-53 without execution of an NTTC, and leases of coin-operated machines and manufactured homes;
5. Sale of prosthetic devices by a person who is licensed to practice medicine, osteopathic medicine, dentistry, podiatry, optometry, chiropractic or professional nursing (Section 7-9-73), **Type 2 NTTC**;
6. Sale of fuel that is loaded or used by a common carrier in a locomotive engine when certain investment requirements have been met (Section 7-9-110.3), **Type 2 NTTC**;
7. Sale of a service for resale by the buyer in the ordinary course of business, if the resale of the service is subject to gross receipts tax or governmental gross receipts tax (Section 7-9-48), **Type 5 NTTC**;
8. Sale, to a manufacturer, of a service performed directly upon tangible personal property the manufacturer is manufacturing, or upon ingredients or components of that manufactured property (Section 7-9-75), **Type 5 NTTC**;
9. Sale of aerospace services for resale by the buyer in the ordinary course of business, if the resale of the service is to a 501(c)(3) organization (other than a national laboratory) or the United States (Section 7-9-54.1), **Type 5 NTTC**;
10. Sales of construction materials that will become ingredients or components of a construction project that is either subject to gross receipts tax upon completion or that takes place on Indian tribal territory (Section 7-9-51), **Type 6 NTTC**;
11. Sales of construction services to be performed on a construction project that is either subject to gross receipts tax upon completion or that takes place on Indian tribal territory (Section 7-9-52), **Type 6 NTTC**;
12. Sales of tangible personal property other than construction materials to 501(c)(3) nonprofit organizations (except as provided in #13 below), (Section 7-9-60) **Type 9 NTTC**;
13. Sales of construction materials to 501(c)(3) nonprofit organizations that are organized for the purpose of providing homeownership opportunities to low-income families, (Section 7-9-60) **Type 9 NTTC**;
14. Sales of tangible personal property or services that are eligible generation plant costs to a person that holds an interest in a qualified generating facility (Section 7-9-114), **Type 10 NTTC**;

15. Sales of tangible personal property (other than utilities) to a manufacturer that are consumed in the manufacturing process (Section 7-9-46B), **Type 11 NTTC**;
16. Sales of utilities to a manufacturer that are consumed in the manufacturing process (Section 7-9-46B), **Type 12 NTTC**, and
17. Sales of property and services, and leases of property, to a qualified film production company (Section 7-9-86), or to a diplomat or mission (Section 7-9-89), **Type 16 NTTC**.

In limited circumstances, **Type NTTC-OSB** certificates may be executed by out-of-state buyers for the purchase of tangible personal property that will be resold or become an ingredient or component of a manufactured product, or for services performed on a manufactured product. **Type NTTC-OSBs must be obtained by the seller.** Please see “Type OSB NTTCs for Out-of-State Buyers” on page 13 of this publication.

Deductions for which NTTCs are Optional

Statutes allow, *but do not require*, an NTTC to be executed for these transactions:

1. Sales of construction equipment used in the new facility construction of a sole community provider hospital located in a federally designated health professional shortage area by a foundation or a nonprofit organization that has entered into a written agreement with a county to pay at least 95% of the costs of new facility construction of that sole community provider hospital (Section 7-9-100), **Type 2 NTTC**;
2. Sales of engineering and architectural services used in the new facility construction of a sole community provider hospital located in a federally designated health professional shortage area by a foundation or a nonprofit organization that has entered into a written agreement with a county to pay at least 95% of the costs of new facility construction of that sole community provider hospital (Section 7-9-99), **Type 5 NTTC**;
3. Sales of services to an out-of-state buyer when the delivery and initial use of the product of the service occur outside New Mexico (Section 7-9-57), **Type 5 NTTC**;
4. Sales of construction services used in the new facility construction of a sole community provider hospital located in a federally designated health professional shortage area by a foundation or a nonprofit organization that has entered into a written agreement with a county to pay at least 95% of the costs of new facility construction of that sole community provider hospital (Section 7-9-99), **Type 6 NTTC**;
5. Sales of construction material used in the new facility construction of a sole community provider hospital located in a federally designated health professional shortage area by a foundation or a nonprofit organization that has entered into a written agreement with a county to pay at least 95% of the costs of new facility

construction of that sole community provider hospital (Section 7-9-100), **Type 6 NTTC**;

6. Sales of tangible personal property, other than construction materials, to agencies of the United States and New Mexico governments (Section 7-9-54), **Type 9 NTTC**
7. Sales of tangible personal property to Indian tribes, nations or pueblos for use on Indian reservations or pueblo grants (Section 7-9-54), **Type 9 NTTC**;
8. Sales of tangible personal property to federal or state-chartered credit unions (Sections 7-9-54 and 7-9-61.2) **Type 9 NTTC**; and
9. A **Type 15 NTTC** may be executed by qualified federal contractors on a contract-by-contract basis. A copy of the federal contract is required.

Effective January 1, 2004, the types of NTTCs were consolidated as follows:

The Type 2 NTTC is good for transactions formerly requiring a Type 1, 2, 3 or 4 NTTC;
The Type 5 NTTC is good for transactions formerly requiring a Type 5, 8 or 13 NTTC;
The Type 6 NTTC is good for transactions formerly requiring a Type 6 or 7 NTTC;
The Type 9 NTTC is good for transactions formerly requiring a Type 9 or 14 NTTC;
The Type 15 NTTC remains as is;
The Type 16 is good for transactions formerly requiring a Type 16 or Type D NTTC;
and
The Type NTTC-OSB remains as is.

The Department no longer issues Type 1, 3, 4, 7, 8, 13, 14 or D NTTCs. However, the Department will continue to recognize those NTTC types in audit situations when the seller or lessee has accepted the NTTCs in good faith, reasonably assured that the buyer executing the NTTC will use the property or service in a nontaxable manner.

Executing an NTTC

By Department regulation, “execute” means the process by which a taxpayer completes an NTTC form by entering the required information about the vendor to whom the NTTC is to be delivered. “Issuing” an NTTC, on the other hand, is the process by which the Department supplies an NTTC to a requesting taxpayer. An NTTC may not be executed by anyone other than the person to whom the Department has issued it.

A buyer or lessee may execute an NTTC online or by means of a paper NTTC obtained on application to this Department.

To execute an NTTC online, the buyer or lessee must access NTTC-NET on the home page of the Department’s web site at www.tax.newmexico.gov, then select “Online Services” and follow the instructions displayed on the screen. A seller or lessor should use NTTC-NET to view and confirm records of NTTCs executed online. The Department recognizes the online record of an executed NTTC as sufficient documentation for a deduction, but the buyer or lessee may print an NTTC executed online if the seller or

lessor requests a hard copy.

To execute a paper NTTC, the buyer or lessee must enter on the NTTC the seller or lessor's name, CRS Identification Number and address and the date. Buyers or lessees who do not have access to NTTC-NET must complete and submit to this Department a "Form ACD-31098, Nontaxable Transaction Certificate Report." The Department will then enter into NTTC-NET the NTTC execution information provided on that form. A buyer or lessee who **does** have access to NTTC-NET and has executed a paper NTTC must then enter the execution information into NTTC-NET.

The seller or lessor may keep the hard copy NTTC in his or her business records but, as with NTTCs executed online, the record of the executed NTTC in NTTC-NET is sufficient documentation for the deduction.

"Good Faith" Acceptance of an NTTC

A seller or lessor may accept an NTTC from a customer in good faith that the customer will use the property or service in a nontaxable manner. A seller or lessor who takes a deduction based on acceptance of an NTTC that clearly is inappropriate or inapplicable to a transaction remains liable for gross receipts tax. For example, a seller may not deduct receipts from the sale of tangible personal property to a buyer who gives the seller a Type 5 NTTC for resale of a service. Nor, for instance, should a seller of construction services deduct receipts based on receiving a Type 9 NTTC from a government entity as documentation of a sale of construction services for resale.

Executing an NTTC Retroactively

A taxpayer should possess the proper NTTC at the time the CRS-1 Form for the receipts from the transaction is due. The taxpayer may, however, accept the NTTC at any time following the transaction. A taxpayer who has paid gross receipts tax on receipts from transactions that could have been deducted had an NTTC been executed, may obtain the NTTC and request a refund (within the statute of limitations) of the overpaid gross receipts tax. Any request for refund should be submitted to the Taxation and Revenue Department using Form RPD-41071, *Application for Tax Refund*.

A taxpayer may not accumulate the allowable deductible receipts for prior report periods and take the entire amount as a deduction for the period in which the proper NTTC or other documentation is received.

When a taxpayer receives notice of an audit, the taxpayer must possess all NTTCs within 60 days of the date of that notice. After that time, the auditor will disallow undocumented gross receipts tax deductions and any NTTCs received after the 60 days.

Photocopies of NTTCs

An NTTC may be photocopied only:

1. by this Department or, upon this Department's request, by the person to whom the

NTTC has been issued or the seller or lessor who has accepted the NTTC for audit, tax compliance or tax administration purposes;

2. by the person to whom the NTTC has been issued by this Department for internal record-keeping purposes or in response to a request from a seller or lessor to whom the person has delivered an executed NTTC for a duplicate of the executed NTTC; and
3. by the seller or lessor who has accepted in good faith an NTTC executed by a buyer or lessee for internal record-keeping purposes only.

No buyer, lessee, seller or lessor may execute or attempt to execute a photocopy or other reproduction of a previously executed NTTC. Doing so is grounds for suspension of the privilege of using NTTCs.

Compensating Tax Liability

Property and services purchased with an NTTC must be used in the manner indicated in statute and stated on the NTTC. When the property or services are used otherwise, the person who executed the NTTC is liable for compensating tax on the value of the property or services used inappropriately.

The *value* of tangible property is the adjusted basis of the property for federal income tax purposes determined as of the time of acquisition or introduction into New Mexico or of conversion to use, whichever is later. If no adjusted basis for federal income tax purposes is established for the property, a reasonable value of the property must be used.

The compensating tax rate on property is 5.125% but the rate on services is 5%. Compensating tax not paid during the report period in which it is incurred is subject to penalty and interest.

Compensating tax is reported, along with gross receipts tax and New Mexico withholding tax, on a CRS-1 Form.

Personal Use: A buyer or lessee may execute an NTTC only for purchases related to business. A person may not execute an NTTC to avoid paying a vendor's passed-on gross receipts tax on property or services for personal use. When a buyer or lessee executes an NTTC to make a business purchase according to the proper use of that NTTC, but subsequently converts the property or service from a business use to a personal use, the buyer or lessee owes compensating tax on the value of the property or service used personally (Regulation 3.2.10.9 NMAC).

Example 1: Z operates a furniture store in New Mexico. Z executes an NTTC to all of Z's suppliers. Z decides to take a refrigerator out of stock for use in Z's home. Because the gross receipts tax was not paid at the time of the acquisition, Z must now pay the compensating tax on the value of the refrigerator.

Example 2: A, a garage operator, has the radiator on A's service truck repaired by B, a radiator repair specialist. A has previously executed an NTTC to B. Therefore, B does not

pay gross receipts tax on this transaction. In this case A is not reselling the radiator repair service to one of A's customers, so A must pay the compensating tax on the value of the repair service. If A does not pay the compensating tax when due, A is also liable for penalty and interest, and if A does not pay the compensating tax within one year of the due date, A may have the right to use NTTCs suspended by the secretary for up to one year (please see "Suspension of NTTC Use Privileges" on the next page).

Example 3: G owns and operates a grocery store. G bought two dozen brooms for resale and executed an NTTC. G then removed six of these brooms from stock for use in cleaning the store. G is subject to the compensating tax on the value of the six brooms removed from stock.

Promotional Gifts: Compensating tax also applies to the value of merchandise purchased with an NTTC but given away for *advertising or promotional purposes* without a concurrent purchase being required (Regulation 3.2.10.12 NMAC). When a taxpayer requires a concurrent purchase with the "free" merchandise no compensating tax is due.

Example: Restaurant X gives a free drink to customer Y on Y's birthday. The restaurant is not subject to compensating tax on the value of the free drink if the drink is only given when there is a requirement of a concurrent purchase. If a concurrent purchase is not required, the restaurant is liable for compensating tax on the value of the drink if the liquor was acquired by the restaurant in a transaction which was not subject to gross receipts tax because the restaurant executed an NTTC to its supplier.

When restaurants or cocktail lounges promote their business by offering one free drink to a customer for every drink purchased, the restaurant or lounge is not subject to the compensating tax on the value of the free drink. In this situation, the drinks are only "given away" when a concurrent purchase is required.

Construction Materials Used on Nontaxable Projects: Construction materials purchased with an NTTC are subject to compensating tax if they are used on a project not subject to gross receipts tax upon completion (Regulation 3.2.10.15 NMAC). This regulation applies to transactions and uses occurring on or after July 1, 2000, but does not apply to projects located on tribal territory which, under federal law, the state cannot tax.

Example: X Construction Company purchases a truckload of lumber from A Lumber Company, with which X has previously executed the appropriate NTTC. X takes delivery of, and title to, the lumber at A's yard in New Mexico. X then transports the lumber by its own vehicle to a location outside New Mexico and incorporates the lumber into a construction project outside New Mexico. X is subject to the compensating tax on the value of the lumber purchased from A Lumber Company since the construction project outside New Mexico is not subject to gross receipts tax upon completion.

NOTE: A 501(c)(3) organization that is organized for the purpose of providing home ownership opportunities to low income families may execute a Type 9 NTTC for the purchase of construction materials. If the 501(c)(3) organization delivering the Type 9 NTTC employs the tangible personal property in the conduct of an unrelated trade or business, then compensating tax will be due.

Construction Projects Occupied or Leased Before Sale: A person in the construction business may execute NTTCs to purchase construction materials and construction services when the project is subject to gross receipts tax upon completion, or when the project is located on the tribal territory of an Indian nation, tribe or pueblo. Compensating tax is owed on such materials and services when the construction project is initially leased or occupied before being sold (Regulation 3.2.10.13 NMAC).

Example 1: Y is a company which constructs office buildings for sale to investors as income-producing property. Y has executed NTTCs to material suppliers and subcontractors. Upon completion of the building, Y leases office space to tenants to enhance the salability of the building. Y is liable for the compensating tax at the time it leases the first office.

Example 2: Z is building an apartment complex consisting of five separate buildings with twenty apartments in each building. Z begins renting apartments in each building as the building is completed. If Z executed NTTCs to purchase construction materials and construction services for incorporation into these apartment buildings, Z will be liable for compensating tax on the value of the materials and services purchased for each building when any apartment in the building is rented. The rental of the apartments is a conversion to use by Z. When Z subsequently sells any or all of the five buildings, the compensating tax previously paid by Z on construction services and construction materials which became an ingredient or component part of each building may be credited against the gross receipts tax due on the sale.

Business Expenses: Business services performed in New Mexico that are deductible by the buyer as ordinary and necessary business expenses under the United States Internal Revenue Code may not be purchased with NTTCs. Use of NTTCs for such purchases is an inappropriate use that may result in suspension of the buyer's privilege to execute NTTCs (Regulation 3.2.10.16 NMAC) (please see "Suspension of NTTC Use Privileges" on the next page).

Capital Expenditures: NTTCs may not be executed to purchase services performed in New Mexico which are capitalized under the provisions of the United States Internal Revenue Code. When a taxpayer acquires such services through the execution of an NTTC, compensating tax is due on the value of the services, and the taxpayer's NTTC use privileges may be suspended (Regulation 3.2.10.17 NMAC) (please see "Suspension of NTTC Use Privileges" on the next page).

Dealer Use of Parts for Sale: An automobile dealer may execute an NTTC to buy parts, motor oil and similar items for use in vehicles held for sale. However, a dealer who uses such items in vehicles used by the dealer in the operation of the dealership, rather than vehicles held for sale, is liable for compensating tax on the value of those items (Regulation 3.2.10.18 NMAC).

Suspension of NTTC Use Privileges

Use of NTTCs is a privilege that may be suspended if a person does not obey the laws and regulations governing that use.

The Department secretary may suspend a person's privilege of executing NTTCs for up to one year if that person:

1. fails to pay, within one year of the date the tax is due, compensating tax incurred on the use of property or services purchased through the execution of an NTTC in a manner other than that allowed for that type of NTTC; or
2. executes an NTTC that does not apply to the transaction.

The Department secretary may suspend for up to six months the privilege of a person to execute NTTCs, to claim deductions based on NTTCs accepted by that person, or both, if that person fails to account in the manner and time required by the Department for the NTTCs executed or accepted by that person.

The Department may notify the public of the suspension of a person's privilege to execute NTTCs.

OTHER ACCEPTABLE CERTIFICATES

To obtain NTTCs, the applicant must have a New Mexico business tax identification number (CRS Identification Number) issued by this Department. A buyer or lessee may register solely to obtain NTTCs by marking the "NTTC only" checkbox on the application for a New Mexico business tax identification number. Such a registrant is not required to file CRS-1 Forms with this Department.

Alternatively, a buyer or lessee who has no gross receipts tax, compensating tax, New Mexico withholding tax or New Mexico corporate income or franchise tax liability and is **not required** to register with this Department may, for certain transactions, execute special certificates in place of standard NTTCs. These certificates, described below, are:

Type OSB NTTCs for out-of-state buyers;
Multi-jurisdictional Uniform Sales and Use Tax Certificates (MTCs); and
Border State Uniform Sale for Resale Certificates (BSCs).

Type OSB NTTCs for Out-of-State Buyers

Unlike all other types of certificates, NTTC-OSBs must be obtained by the seller rather than the buyer, using either the paper NTTC application or NTTC-NET. Any person who is selling tangible personal property or manufacturing services in New Mexico and is registered with this Department for gross receipts tax purposes may apply for blank NTTC-OSB forms. The seller then gives the NTTC-OSB to the buyer to complete and return to the seller. Like a Type 2 NTTC, the NTTC-OSB documents the seller's deduction of receipts from sales of property for resale or for use as an ingredient or component of a manufactured product. This certificate also may be used to document the deduction of receipts from performing a manufacturing service directly upon tangible personal property that the buyer is in the business of manufacturing.

To qualify to execute an NTTC-OSB, a buyer must:

1. Maintain its principal place of business outside New Mexico;
2. Be registered with, or licensed by, the state or foreign jurisdiction in which the buyer maintains a place of business for sales or similar taxes;
3. Not maintain a business location in New Mexico;
4. Not have receipts that are subject to New Mexico gross receipts tax; and
5. Not be registered as an agent to collect and pay over New Mexico gross receipts tax.

Before the seller gives the buyer an NTTC-OSB the seller must obtain proof that the buyer is registered with, or licensed by, the appropriate taxing agency of another state or foreign jurisdiction for sales tax or similar tax program. The seller must obtain the buyer's license number or other identification number issued by the appropriate agency of the state or foreign jurisdiction in which the buyer engages in business. The seller must also obtain other documentation clearly showing that the buyer is engaged in business in that state. That documentation includes business cards, purchase orders or letterhead identifying the buyer, the buyer's business location, type of business and business name. The seller must attach the supporting documents to the seller's copy of the NTTC-OSB and keep it the same way other types of NTTCs are retained by the seller.

The seller's deduction is not valid, and the receipts will be taxable, if the supporting documents are not obtained or if the buyer does not enter all required information on the NTTC-OSB provided by the seller.

Multi-jurisdictional Uniform Sales and Use Tax Certificates (MTCs)

New Mexico sellers may accept the Multijurisdiction Uniform Sales and Use Tax Certificate (MTC) from out-of-state buyers **not required to be registered in New Mexico** as documentation for three types of deductions:

1. Receipts from sales of tangible personal property or licenses for resale (Section 7-9-47);
2. Receipts from sales of tangible personal property to manufacturers who will incorporate the property as an ingredient or component part of the product the manufacturer is in the business of making (Section 7-9-46A); and
3. Receipts from services performed directly upon tangible personal property a manufacturer is in the business of making, or upon ingredient or component parts of that product (Section 7-9-75).

MTCs are issued by the multistate tax commission or a state, other than New Mexico, that is a member of that organization. The certificates may be obtained through the commission's web site at www.mtc.gov.

Border State Uniform Sale for Resale Certificates

New Mexico sellers may accept the Border State Certificate (BSC) from out-of-state buyers from Arizona, California, Oklahoma, Texas, Utah and the United States of Mexico if the buyers are not required to register with this Department and who:

1. Wish to buy goods for resale or incorporation as ingredients or components of a manufactured product, or
2. Wish to buy a manufacturing service that will be performed on a manufactured product or ingredient or component part thereof, and
3. Will transport the tangible personal property across state or national boundaries.

For further information regarding BSCs, please contact the Border States Caucus. That organization maintains a web site at www.borderstatescaucus.org.

TAXPAYER INFORMATION

The Department offers a variety of taxpayer information. Some information is free and other information must be purchased.

General Information. FYIs and Bulletins present general information with a minimum of technical language. All FYIs and Bulletins are free and available through all local tax offices, the Tax Information and Policy Office, and on the Internet. The Taxation and Revenue Department's Internet address is:

<http://www.tax.newmexico.gov>

Regulations. The Department establishes regulations to interpret and exemplify the various tax acts it administers. The Taxation and Revenue Department regulation book is available from the New Mexico Compilation Commission on a prepaid basis. The Compilation Commission also has a compact disk of all statutes and regulations. Specific regulations are also available at the State Records Center or on its web page at www.nmcpr.state.nm.us/nmac.

Order regulation books directly from:

New Mexico Compilation Commission

<http://www.nmcompcomm.us/index.html>

Rulings. Rulings signed by the Secretary and approved by the Attorney General are written statements that apply to one or a small number of taxpayers. A taxpayer may request a ruling (at no charge) to clarify its tax liability or responsibility under specific circumstances. The request for a ruling must be in writing, include accurate taxpayer identification and the details about the taxpayer's situation, and be addressed to the Secretary of the Taxation and Revenue Department at P.O. Box 630, Santa Fe, NM 87504-0630. The taxpayer's representative, such as an accountant or attorney, may request a ruling on behalf of the taxpayer but must disclose the name of the taxpayer. While the department is not required to issue a ruling when requested to do so, every request is carefully considered.

The department will not issue a ruling to a taxpayer who is undergoing an audit, who has an outstanding assessment, or who is involved in a protest or litigation with the department over the subject matter of the request. The Secretary may modify or withdraw any previously issued ruling and is required to withdraw or modify any ruling when subsequent legislation, regulations, final court decisions or other rulings invalidate a ruling or portions of a ruling. Taxation and Revenue Department rulings are compiled and available on the department's web page free of charge at <http://www.tax.newmexico.gov/rulings.aspx>.

Public Decisions & Orders. All public decisions and orders issued by the hearing officers since July 1994 are compiled and available on the department's web page free of charge at <http://www.tax.newmexico.gov/tax-decisions-orders.aspx>.

FOR FURTHER ASSISTANCE

Local tax offices can provide full service and information about the department's taxes, programs, and forms as well as specific information about your filing situation.

ALBUQUERQUE (505) 841-6200

Taxation and Revenue Department
5301 Central NE
P.O. Box 8485
Albuquerque, NM 87198-8485

LAS CRUCES (575) 524-6225

Taxation and Revenue Department
2540 S. El Paseo Bldg. #2
P.O. Box 607
Las Cruces, NM 88004-0607

SANTA FE (505) 827-0951

Taxation and Revenue Department
1200 S. St. Francis Dr.
P.O. Box 5374
Santa Fe, NM 87502-5374

ROSWELL (575) 624-6065

Taxation and Revenue Department
400 Pennsylvania Ave., Suite 200
P.O. Box 1557
Roswell, NM 88202-1557

FARMINGTON (505) 325-5049

Taxation and Revenue Department
3501 E. Main St., Suite N
P.O. Box 479
Farmington, NM 87499-0479

Main switchboard (Santa Fe): (505) 827-0700

This publication provides general information. It does not constitute a regulation, ruling, or decision issued by the Secretary of the New Mexico Taxation and Revenue Department. The Department is legally bound only by a regulation or a ruling [7-1-60, New Mexico Statutes Annotated, 1978]. In the event of a conflict between FYI and statute, regulation, case law or policy, the information in FYIs is overridden by statutes, regulations and case law. Taxpayers and preparers are responsible for being aware of New Mexico tax laws and rules. Consult the Department directly if you have questions or concerns about information provided in this FYI.